



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 22

Commissioner: Honourable Justice Richard LeBlanc

Monday

1 April 2019

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc
presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right, good morning.

All right, before we begin this morning, I want to formally introduce Ms. Irene Muzychka who has now taken over from Justice O'Brien as Commission co-counsel, so I welcome her this morning.

Mr. Learmonth.

MR. LEARMONTH: Thank you.

The first witness today will be Thomas Marshall.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Before he is sworn or affirmed, I'd like to have the following exhibits entered: They're P-02651 to P-02670; P-02679 to P-02700.

THE COMMISSIONER: Okay.

All right, those exhibits will be marked as entered, and Mr. Marshall, if you could stand and we'll have you affirmed this morning?

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. T. MARSHALL: I do.

CLERK: Please state your name.

MR. T. MARSHALL: Tom Marshall, Thomas Wendell Marshall.

CLERK: Thank you.

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

MR. LEARMONTH: Thank you.

You testified earlier in that you gave us your – the information about your – all the relevant dates and your education and political career, so I'm not gonna repeat that, that's already on the record.

However, there are a couple of points I wanted to ask you about that – can you confirm that at the time of sanction, December 17, 2012, you were the minister of Finance and Jerome Kennedy was the minister of Natural Resources?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay.

And is it correct that on January 16, 2013, you and Minister Kennedy switched portfolios –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – so that he was then minister of Finance and you were minister of Natural Resources?

MR. T. MARSHALL: That's correct.

MR. LEARMONTH: And is it correct that you continued to be minister of Natural Resources until October 9, 2013, just shortly before financial close?

MR. T. MARSHALL: That's correct.

MR. LEARMONTH: Yeah.

And that you served as premier from January 25, 2014 to September 2014; is that correct?

MR. T. MARSHALL: That is correct.

MR. LEARMONTH: And then you resigned your seat in Corner Brook about – in November of 2014 –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – that correct? Okay.

In various parts of the questioning here, I'm going to refer to the term financial close for the federal loan guarantee and when I use that term,

I'm referring to the entire period from November 29 to and ending December 13, 2013.

MR. T. MARSHALL: Okay.

MR. LEARMONTH: And the reason for that is that the financial close documents, which you signed, it was on November 29, then the bonds were priced on December 10 and the five – the funds were received by Nalcor on or about December 13. So I'm using, you know, different people –

MR. T. MARSHALL: Yes –

MR. LEARMONTH: – with very different views –

MR. T. MARSHALL: – I was aware of that and I wasn't sure about the November 29 date. But I knew that the – I knew that there was an event on December 10 where financial close was announced and I knew that the funds flowed on the 13th.

MR. LEARMONTH: Yeah.

Could you please turn to volume 1 in your book of documents, tab 35 – tab 25 and that's Exhibit P-02680. Have you got that Mr. Marshall?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: So if you look at page 1 we see that the – this is a submission to Cabinet, Title: Muskrat Falls Project – NL Equity Support Agreements and Guarantees for NL Equity Support Agreements.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And the purpose is to decide whether Nalcor would be authorized to sign the respective NL Equity Support Agreements for the construction of the project, including related Master Definitions Agreements as well as approving other documents. And also authorizing you as minister of Finance to sign the guarantee for the NL Equity Support Agreements for the construction of the project and including the Master Definitions Agreements. That was the purpose of this submission, correct?

MR. T. MARSHALL: That's correct.

MR. LEARMONTH: Yeah.

And then on page 9 of Exhibit P-02680 we can see – although this is an unsigned copy, but this was a joint submission of you and Derrick Dalley?

MR. T. MARSHALL: That's correct.

MR. LEARMONTH: Correct?

Yeah, I just wanted to go to page – turn back to page 2 of the exhibit, P-02680, the bottom paragraph. I'm just going to read it in: "The effect of the commitments outlined in the Commitment Letter and the FLG" – federal loan guarantee – "is that the Province is ultimately responsible to fund all of the necessary equity, with no limitation, to achieve Project in-service. This represents, in effect, a completion guarantee. To meet the FLG requirements, and consistent with the Government's commitment letter, Nalcor and the Province will enter into two separate agreements for each aspect of the project (MF, LTA and LIL)."

Do you agree that that's a short summary of the obligations that the province was taking on by entering into the – by the –

MR. T. MARSHALL: Yes –.

MR. LEARMONTH: – obtaining the federal loan guarantee?

MR. T. MARSHALL: – I do.

MR. LEARMONTH: Okay.

And then we turn to page 7 of Exhibit P-02680, under the heading: Financial Consideration. At the time of – the second to last paragraph on that page: At the time of project sanction, the province committed to a fixed equity contribution of \$1.866 billion. The signing of this loan guarantee does not add any additional financial costs for the province. If there are project overruns, Nalcor will be seeking additional equity contributions for the project. This risk was known at the time of project sanction. The agreement needs to be signed in order to obtain the federal loan guarantee.

Nalcor estimates the benefit of the loan guarantee to be in the order of \$1 billion.

Now, isn't that – that's a correct statement also that the province – if there are cost overruns for the project, that you – could you confirm that the province is on the hook for – to fund all of those cost overruns?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah, without any limitation at all? Correct?

MR. T. MARSHALL: Yes, the government had given that commitment to Nalcor, I think, back in 2011.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: The Cabinet approved the premier giving a – signing a letter, and that letter was used by Nalcor to – when they approached the credit rating agencies and when they approached their lenders and when they approached the federal government for a guarantee of their borrowings.

MR. LEARMONTH: Yes, and the letter you're referring to, I think, is on page 10, 11 and 12 of Exhibit P-02680; is that correct?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: All right.

MR. T. MARSHALL: So these agreements were to put into legal effect, you know, the commitments made in that letter. There was an agreement – one from Nalcor and the province agreed to guarantee Nalcor's commitment to fund the equity – the base equity and the contingent equity.

MR. LEARMONTH: Right.

Would you please turn to page 293 of Exhibit 02680?

MR. T. MARSHALL: Sorry?

MR. LEARMONTH: Two ninety-three?

Now that's a – this is a record of the Economic Policy Committee recommendation and it's dated November 12, 2013. This would be – could you just explain what the role of the Economic Policy Committee would be at this time?

MR. T. MARSHALL: Just – okay, so, when the department wants to, you know, bring something forward to Cabinet for approval, the – once the department, after consultation with other departments, you know, determines – works out its proposal, its Cabinet paper and it's approved by the minister, it goes forward to Cabinet Secretariat and they do an analysis and it's referred to one of the Committees of Cabinet.

There's the Economic Policy Committee and the Social Policy Committees. There's also a Treasury Board Committee. There was an Appointments and Routine Proceedings Committee. So, it would go – and certain Cabinet ministers would be on that Committee, Economic Policy, and that would be discussed and analyzed and might be sent back for more information, and then it would come back to the Committee again, but once approved, it would then be brought on to full Cabinet.

MR. LEARMONTH: All right.

So is it – so I don't know if you'd call it a screening process, but it's part of the review that the Cabinet would like to have done before Cabinet considers the matters?

MR. T. MARSHALL: Yes, it's – I guess the papers are divided up, sent to different committees and then on Cabinet day, the papers all come forward from the different committees to Cabinet. But the timing of that is, I think, the clerk and the premier would decide when certain papers are going to come to full Cabinet.

MR. LEARMONTH: All right.

If we could turn to page 294 of Exhibit P-02680. This is a Minute of Council dated October – November 14, 2013. We see here that the – there's a reference to the joint submission of the minister of Natural Resources. We've already talked about that earlier. And in this – paragraph 2, it says: "Approval was given for the issuance

of an Order in Council, under the authority of sections 10 and 11 of the Executive Council Act, section 7 of the Intergovernmental Affairs Act and sections 25 and 27 of the Energy Corporation Act, to authorize the Minister of Finance, as designate for the Minister of Municipal and Intergovernmental Affairs, to sign separate Guarantees for the NL Equity Support Agreements for each of ..." – well, for the project, correct?

So, by this, you were given the – you, as minister of Finance, were given the authority to sign the documents. And it says here at the bottom: "(NO ACTION IS TO BE TAKEN ON ITEM 2 UNTIL AN ORDER IN COUNCIL IS ISSUED)." Correct?

MR. T. MARSHALL: Yeah.

The authority to (inaudible) was to sign that guarantee.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: The authority would be given to Nalcor or to the, you know, the minister of industrial – sorry – the minister of Natural Resources to sign the equity agreement.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: But all guarantees that the province gives – all guarantees have to go to the minister of Finance for approval.

MR. LEARMONTH: Right, so the Cabinet authorizes you to sign –

MR. T. MARSHALL: To sign, yes.

MR. LEARMONTH: – so it doesn't have to go – there has to be an order-in-council given but it doesn't have to be reviewed again by Cabinet. Correct?

MR. T. MARSHALL: That's correct.

MR. LEARMONTH: Yes.

And if we look at page 295 – this is November 29 – this is an order-in-council under "the authority of sections 10 and 11 of the Executive

Council Act" and other legislation – "... pleased to authorize the Minister of Finance, as designate for the Minister of Municipal Affairs ... to sign separate Guarantees for the NL ..."

So, this was your authorization – one of your authorizations on the date of the financial close documents were signed to enter into those agreements. Correct?

MR. T. MARSHALL: That's correct, and I think you're to sign – any intergovernmental agreements have to be signed by the minister of Intergovernmental Affairs.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: And I may have been authorized here to sign on his behalf –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – as well.

MR. LEARMONTH: Yeah.

So, that's one of the two orders-in-council that are referred to at the bottom of page 294. I'm not going to take, you know, maybe we could bring the second one up. That's actually in volume 1, tab 14; I believe it's P-02664.

But anyway – so, this was your authority, to sign the documents. Correct?

MR. T. MARSHALL: That is correct.

MR. LEARMONTH: And you – can you confirm that you did sign the necessary documents for these – federal loan guarantee on November 29, 2013?

MR. T. MARSHALL: Yeah, I have a memory of signing a lot of documents.

MR. LEARMONTH: A lot of documents.

MR. T. MARSHALL: For – at that particular time.

MR. LEARMONTH: Now, on November 29, 2013 when you signed the federal loan guarantee documents, what did you believe was the – to be

the capital cost of the Muskrat Falls Project that was included in the financial close documents?

MR. T. MARSHALL: I would have – the number was 6.2 – was the capital cost.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: It was 6.2. I don't recall, at that time, like, seeing a document and I don't remember seeing anything that indicated the number was higher at that (inaudible). I know, subsequent to that, I did see the 6.5 number. That was in March of 2014.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And in July of 2014, when the first Oversight Committee report came out, they had in the report three numbers. They mentioned the sanction number of 6.2, which I remember; they mentioned the July 25, 2014 number, which was 6.99, which I remembered. And there's a deck for that but I couldn't recall the – I just didn't remember the 6.5

MR. LEARMONTH: Yeah.

And I think in your interview before – I think it was February 1 of this year – that you used the expression – I'm not going you say you meant it literally, but it was driving you crazy when you found out there was some suggestion about a 6.5 because you didn't remember it.

MR. T. MARSHALL: I couldn't recall that number. I knew the other – 6.2, 6.99 I remember very well and I was trying to find a document which would indicate – because I was minister of Finance at the time, so I would assume that that information of the bump to 6.5 would have come to me, and I can't find a document which does that. I have found documents which told me – there was an email from Donna Brewer, which you showed me, that indicated that – she was the deputy minister of Finance – that indicated that there was a – there would be a financial close, a new number, determined by the independent engineer.

But at that point I knew the number was 6.2 and I don't recall being told of a higher number until seeing it in March of 2014.

MR. LEARMONTH: Right.

MR. T. MARSHALL: So unless – the given – Mr. Learmonth, you know, there's a lot of meetings and activity going on around that time

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – so I would think that if the number had come to Finance officials that I would have been told. But I don't remember that and I haven't seen the document which tells me that. And possibly somebody else told me but I just don't remember.

MR. LEARMONTH: Okay.

But if someone had told you, you know, in plain language that, say, November 15 or November 20 – if one of your officials had come into your office and said: Mr. Marshall, the 6.2 number is no longer the number; it's 6.531. There's been an increase in the estimated cost of the project by over \$300 million.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: What – you're a – and before I ask that, you're fairly conservative on financial matters, aren't you? It's your nature? Is that correct? I think you said that in one of your interviews; you're careful about spending public money.

MR. T. MARSHALL: Well, I think I am. I certainly – in terms of businesses I was involved with I was certainly cautious about borrowing money.

MR. LEARMONTH: Yeah.

So, if someone had told you there's a \$300-million increase, would you have just shrugged your shoulders and said: Well, what's \$300 million? Or would you have reacted a different way?

MR. T. MARSHALL: I think I would been interested in knowing what the number was because as Finance minister I, you know, when I first went there in October – when I went back there in October, I was looking at, you know,

what was I going to be asked in the House of Assembly.

And most of the questions on Muskrat would be asked to the premier and to the minister of Natural Resources, but I knew that if there was a question to the Finance minister it would always be, how much equity have you got in? How much have you spent so far? How much have you budgeted for this year? How much have you put in? How much is to come? So if there was a new number, I knew that equity would change.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: So, yes, I would've been very interested to know.

Now, we were certainly made aware, by Nalcor and Mr. Martin, of the 6.2 number, but we were also aware there could be unknown things that could happen in the future that would drive that number high up.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So I would not be shocked to find out that there was a different number or a higher number.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: So – but I would've been very interested in knowing if there was any change in the number.

MR. LEARMONTH: And –

MR. T. MARSHALL: For what I had to do or for my job, I certainly would've liked to know what it was.

MR. LEARMONTH: And if you had been advised of a \$300-million increase –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – would you have felt any obligation or duty to communicate this to the premier and your fellow Cabinet ministers?

MR. T. MARSHALL: If I knew it, yes.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And you didn't communicate it to them, did you? Because you didn't know about it. Is that correct?

MR. T. MARSHALL: Exactly.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Exactly, unless during that – during those meetings, somebody told me and I just can't recall.

MR. LEARMONTH: Yeah.

Well, I can tell you we don't have any evidence to suggest that you were told based on the interviews we've done –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – so far so. Now, the – I just wanted to turn to volume 2, tab 36, and that's Exhibit P-02353. Do you see that, Mr. Marshall?

MR. T. MARSHALL: Tab 6?

MR. LEARMONTH: No, tab 36, volume 2.

MR. T. MARSHALL: Yes, I see it.

MR. LEARMONTH: Okay.

So if you turn to this, this is – there's two project finance agreements, and this was – you know, the parties were the Toronto-Dominion Bank as collateral agent, BNY Trust, et cetera. The parties are named on page 1. And then if we go to page 195, which is – well actually, it's page 195, which is on the reverse side of page 1. Do you see that? There's a figure \$2,546,155,104?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: You see that? And then – okay, and then –

MR. T. MARSHALL: No, I'm sorry. Just – which number are you referring to again?

MR. LEARMONTH: Okay –

MR. T. MARSHALL: The 2.546? The total?

MR. LEARMONTH: Yeah, the \$2,546,155,104.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Do you see that?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay, then turn to tab 37, which is the second project finance agreement. This is for the Labrador – for the transmission assets, there's two of them. And if we go to page 236 and 237, there are other figures. On page 36 [sp. 236], the total is \$3,265,277,545. Do you see that?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And then 237: \$720,321,928.

Now, you can take my word for this that when we take those two figures from Exhibit P-02361 and the earlier Exhibit P-02353, when we add them up, that comes to \$6,531,754,577. So these were the figures that were included in the federal loan guarantee closing documents. And I take it that you weren't – based on what you just said – that you weren't aware of that. Is that correct?

MR. T. MARSHALL: No, I was not.

MR. LEARMONTH: You weren't aware of it (inaudible).

And you may have answered this, but I just want to make sure. So when did you first hear of this \$6.531-billion figure?

MR. T. MARSHALL: Well, I don't have a document that indicates that up to and including the 10th of December that shows that – that shows this number. The first document I've seen afterwards was March 8; there's a breakdown of the 6.5 number from Nalcor to the Department of Finance. And that would've been for the minister of Finance – I would've been premier at that time. That would've been for the minister of Finance in – because the budget process was coming up.

MR. LEARMONTH: Okay. So that would've – that's the first time that you recall ever hearing about this 6.531?

MR. T. MARSHALL: Yes. And –

MR. LEARMONTH: Okay.

MR. T. MARSHALL: – and then, of course, as I mentioned, the government Oversight Committee report of July, their first report, which I would've read very – you know, very carefully at the time, that had that number in it as well. They had three numbers in it –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – you know, the 6.2, the 6.5 and the 6.99.

MR. LEARMONTH: Right.

MR. T. MARSHALL: But at that point, we had had – we had been briefed by Mr. Martin in June 25, and he took us from 6.2 to 6.99. There was no mention of the 6.5.

MR. LEARMONTH: That's in June 2014?

MR. T. MARSHALL: That's correct.

MR. LEARMONTH: Yeah, yeah.

MR. T. MARSHALL: And of course if we had the 6.99, that's the number that would've stayed with us without going back to the 6.5.

MR. LEARMONTH: Yeah. So to your knowledge, was there ever any public announcement about this 6.531?

MR. T. MARSHALL: No.

MR. LEARMONTH: No.

MR. T. MARSHALL: I don't – no.

MR. LEARMONTH: Yeah, okay.

MR. T. MARSHALL: 'Cause there was – at term sheet, when the deal with Emera was first signed, there was a ceremony and there was – the numbers were released.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: At sanction there was something similar, and the (inaudible) – the 6.2 number was released.

I remember the – at 6.99, Mr. Martin presented that, and I think he had a press conference the next day and released that number. In July, the Oversight Committee released three of those numbers, but I don't remember the numbers being released December 10 when we – when there was a ceremony in the Confederation Building, and – or the premier spoke and Mr. Martin spoke and Rob Moore from the federal government spoke and Andrew Younger, the Energy minister in Nova Scotia, spoke, and Minister Dalley was the chair. I watched that on video, and nobody mentioned 6.5. There was no mention of that.

MR. LEARMONTH: And you didn't know about it?

MR. T. MARSHALL: I certainly don't recall knowing.

MR. LEARMONTH: Yes.

If the government had been advised that there had been an increase in the project capital cost estimates to 6.531, would there not have been a duty on Cabinet to report this to the public?

MR. T. MARSHALL: I think the Cabinet felt very strongly of any information we had in – on numbers, to getting them out to the public, and then one of the roles of the Oversight Committee was to make sure these numbers were –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – were put out there as soon as we have them –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – and the Oversight Committee reports we wanted quarterly – we had first asked for monthly reports. That was considered a bit difficult, so we said, all right, we'll accept quarterly reports, and we insisted that the reports be published on the Internet, on the Web –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – and that the meetings of the committee, the minutes of the meetings of the committee, be published on the Web as well.

The idea at the time was that we heard people in the media talking about risk and oversight and the lack of oversight, and we wanted to make sure that – that the committee would gather all that information, plus additional information that it would acquire, and make sure it was publicized so it would be out to the general public.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So there was a strong view of getting that information out there –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – always.

MR. LEARMONTH: From what you just said, would it be reasonable to conclude that based on your experience in government and government's attitude towards releasing information to the public when appropriate, that if the figure of 6.531 had been known by you on December 10 or December 20 or whatever, whenever you became aware of it, that you would have reported that to the public.

MR. T. MARSHALL: Yes. My problem is that I was thinking that it was – that was already done.

MR. LEARMONTH: Well, because you didn't know about the 6.531?

MR. T. MARSHALL: No, I didn't know it then and I – but I just I think and I assume when I watched this video, I just assumed it was out there but it – there's nothing out there –

MR. LEARMONTH: There's not.

MR. T. MARSHALL: – at that time.

MR. LEARMONTH: Yeah, but you didn't know about it when you – on December 10.

MR. T. MARSHALL: No I – no.

MR. LEARMONTH: So you believe that the figure, the applicable figure, was the DG3 numbers?

MR. T. MARSHALL: Exactly – well yes –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – 6.2.

MR. LEARMONTH: Yeah.

But I'm saying let's assume, for the sake of this question –

MR. T. MARSHALL: Okay.

MR. LEARMONTH: – you had known it was 6.531 on December 10.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Would you have not felt there was an obligation to disclose this to the public because they're happily paying for it?

MR. T. MARSHALL: Yes if –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – if I knew the number, when we were having these discussions, you know, to Cabinet or in our meetings around that time period, if I knew the number, Cabinet would know the number and –

MR. LEARMONTH: Right.

MR. T. MARSHALL: – therefore, the communications people would put the number up.

MR. LEARMONTH: Right. Correct. Thank you.

Now I'd like for you to turn to tab 21 in volume 1, P-02669.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Do you see that?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: This is an email from – dated October 30, 2013. So just, you know, 29 days before financial close. From Charles – Sharon Griffiths, she worked in your office, did she? Sharon Griffiths?

MR. T. MARSHALL: I think she worked in Natural Resources.

MR. LEARMONTH: Oh, all right.

Anyway, it is to Charles Bown. Subject: Donna Brewer Called. "Minister Marshall is desperately looking for info on Muskrat Falls – pls read Donna's PIN." I don't know what that means. But were you – was that a correct reflection of your state of mind with respect to being updated on Muskrat Falls on October 30?

MR. T. MARSHALL: I think the word desperately is a little strong.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: I was – I had been moved back to Finance on October the 9th and we were gearing up for the House and it was – I was reorienting myself to what information I need as Finance minister as opposed to Natural Resources minister. And I wanted an update of the number – what's the latest number and what is the equity? Tell me how much of that is being financed by debt. How much is financed by equity? What are we in equity? What is Emera gonna pay? So, because – I felt it was gonna – if I got a question in the House, that would be it. So I was anxious to get the information.

MR. LEARMONTH: Because you wanted to report to the House.

MR. T. MARSHALL: If there was an update –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – and – 'cause I was gonna be questioned.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So, you know, I mean, in the House, if you don't know the answer to the question, you simply say it and you say you'll go and get the information and come back

and table it. But, obviously, you anticipate what the questions – you and your communication people anticipate what questions are gonna come from the Opposition and from the media. So I wanted that information for that purpose.

But the information that came, the number hadn't changed. It was still 6.2. It was still the sanction number.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: And this, of course, is before financial close.

MR. LEARMONTH: Right.

Now we referred earlier to tab 25, volume 1 of that long document, P-02680 – and I'm not gonna ask you to read through it, but I can tell you that there's no mention of the 6.531 figure in that document.

And then if we go to tab 26, which is Exhibit P-02681, which is a November 14, 2013, presentation to Cabinet by – it appears to be Charles Bown would appear to be the author of this.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah.

And if you go through that – just flip through that and tell me is there any mention – this is November 14 – is there any mention about a change in cost?

MR. T. MARSHALL: No, there's not. In all the documents that I received that I've reviewed, in that period, from the time it went to Finance up to that day, I don't remember seeing the 6.5 number.

And as I said before, I don't recall a discussion where someone else may have told me.

MR. LEARMONTH: The next exhibit I'd like to refer to is at tab 20 of your – of volume 1. It's Exhibit P-02668.

And this is a few days before the October 30 one when you said you were looking for information. So, once again it's a reference to

the minister request for information. If we go to the bottom, there's an – bottom of page 1 of Exhibit P-02668. It's an email from Derrick Sturge to Paul Myrden. Mr. Myrden was a senior official in your department, manager of debt services –

MR. T. MARSHALL: Yes, he's director of Debt Management.

MR. LEARMONTH: Debt Management, yeah.

And you dealt with him, did you, when you were in the ministry of Finance?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yes.

So this email says – it's at the bottom, October 23, 2013: from Derrick Sturge: "Hi Paul, we reviewed one draft and are making some revisions – will need to review with Ed also before flipping it over – Ed is out of town for a couple of days, so realistically probably not before Friday. Data we are working is still DG3 – no cost updates at this point."

MR. T. MARSHALL: Mm-hmm.

MR. LEARMONTH: "Meetings went well, can update"

Now, this is October 23, so, you know, a little more than a month before financial close. Were you aware while you were a member of Cabinet, at any time, that Ed Martin had absolute control over the release and distribution of evidence on cost updates and schedule? Were you aware of that?

MR. T. MARSHALL: I was – well, most of the information – a lot of the information, if not most – most of the briefings we received would be from Mr. Martin, he was the CEO of the company and he'd – he would be the logical one to bring information to Cabinet and to the appropriate minister and to the premier.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: But I wasn't aware that other people at Nalcor wouldn't be also

transferring information to officials in Natural Resources and in Finance.

MR. LEARMONTH: Well, we know for example, Mr. Sturge, the CFO, was not allowed to distribute any information on revisions to cost estimates until Ed Martin had authorized it. Were you aware of that when you member of Cabinet?

MR. T. MARSHALL: No.

MR. LEARMONTH: No.

MR. T. MARSHALL: I wouldn't be aware that no information would come from Nalcor unless Mr. Martin approved it. I do know that, you know, a lot of the information we got – we had a lot of briefings and the information would come to us from Mr. Martin.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: But whether nothing else could go out without his approval, I wasn't aware of that fact.

MR. LEARMONTH: Yes.

Please turn to tab 22, volume 1, Exhibit P-02024.

MR. T. MARSHALL: Sir, what tab?

MR. LEARMONTH: It's tab 22.

Do you see that?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: All right.

MR. T. MARSHALL: November 1.

MR. LEARMONTH: Yeah, so – no this is a – Mr. Paul Myrden, who we referred to earlier on – it's an email from October 18, 2013: Minister Request.

MR. T. MARSHALL: Right.

MR. LEARMONTH: It says – so he sends this to Derrick Sturge, Rob Hull, James Meaney, Auburn Warren and also copied to Paul Morris

and Donna Brewer. He says: Hi guys, Minister Marshall has asked to be provided with the following financial information – and you say: “A breakdown of budgeted project costs by component showing total project costs along with the portion” on “which is the responsibility of Nalcor / NL.” And then other information I won't read about – 2, 3 and 4, and then paragraph 5: “The most recent update on expected total project costs by component” or “budget (DG3?), if available. If not available, a reason why might be helpful along with an indication of when it might be available.

“Needless to say, it would be appreciated if this could be provided expeditiously.”

Now, we see at the top of this exhibit, P-02024, page 1 – it appears that on November 1, this information was provided to you. Do you agree with that?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: It says: “As discussed please find attached summary for your review.

“Cheers!

“Auburn.” That's Auburn Warren.

Now, if we turn to page 2 of this document – so, this is the response to the request of the five points that were mentioned in Mr. Myrden's October 18 email. Correct?

MR. T. MARSHALL: That's correct.

MR. LEARMONTH: Okay. Now, if we go to page 2, in the top – in the column on the extreme right, what is the figure?

MR. T. MARSHALL: The capital expenditures are 6.2 –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – and interest during construction is 1.2 for 7.4, approximately.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: That was the sanction number –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – and it's still the same number.

MR. LEARMONTH: All right. So that, I presume, satisfied you that at that point, anyway, there was no change in the capital costs.

MR. T. MARSHALL: No – sorry. That was the number and it gave me the information I wanted, you know, the capital cost at 6.2, the number – the interest – financing cost would have been 1.2 for a total of 7.4, and the breakdown shown that there's – you see the debt is \$5 billion. And the difference between \$7.4 billion and \$5 billion is 2.4 –

MR. LEARMONTH: Mm-hmm.

MR. T. MARSHALL: – and of that 2.4, Emera were paying half a billion in equity –

MR. LEARMONTH: Right.

MR. T. MARSHALL: – and we would pay – the province would pay 1.9, roughly. And the dates of when the equity went in, they are outlined there, and the dates of future equity are outlined there. So, that was the information I was looking for.

MR. LEARMONTH: So, based on this information, can I assume that you would have said: Well, there's been no change?

MR. T. MARSHALL: Exactly.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: Exactly.

MR. LEARMONTH: Did you ever receive an update on these figures? In other words, there was a reference to a – you know, a suggestion, a clear impression, if not stated bluntly, that you wanted to be kept up to date on cost increases, right?

MR. T. MARSHALL: Yes. I had asked when –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – I became minister of Natural Resources.

MR. LEARMONTH: But did you ever receive an update at any time before December 13, 2013?

MR. T. MARSHALL: 'Till when? December?

MR. LEARMONTH: December 13 – you've got this November 1, 2013 –

MR. T. MARSHALL: No, that was – this was the first update, but it's the same number.

MR. LEARMONTH: Yeah. But did you ever get an update from this? In other words, say sometime before financial close, an update: So now we have a new number, here it is. Did you ever –?

MR. T. MARSHALL: No, I was told that there was gonna be a new number coming, but I did – I don't have a document which says this is the new number, until March of 2014, when the 6.5 number was broken out similar to this.

MR. LEARMONTH: Right. Tab 23, volume 1, it's P-02670.

This is a – at the top, is an email from Charles Bown to you, among others in government and some at Nalcor. And it says – the email, the second email on page 1 is from Karen O'Neill at Nalcor to Diana Quinton, copied to Charles Bown et cetera, so you – this was just sent to you. It says: "Hi Diana and Charles,

"Attached is the latest" – document – "of the Q and A from questions Minister Marshall had on Friday." This is dated November the 3rd.

So if we turn to page – well, first, describe – what is this? Just a summary of what you said in the House, I take it?

MR. T. MARSHALL: No, this is a – this seems to be – well, it might be answers to questions I would've had from this information, from the breakdown –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – which I would've received a couple of days previously.

MR. LEARMONTH: Yeah. And so, this is standard that – for question period, you have things written out, Correct?

MR. T. MARSHALL: I'm sorry I can't – I'm –

MR. LEARMONTH: It's standard for a minister, in anticipation of being questioned on something, to have some draft answers in hand when – so that you can respond to the questions in the House of Assembly?

MR. T. MARSHALL: It is.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: It is, but I – I think this was just – I was looking for information, I don't know if these were the – these are not in the form of the communication that I would say that we'd get for question period.

MR. LEARMONTH: Okay.

Well, anyway, at the bottom of page 3 –

MR. T. MARSHALL: These were specific questions –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – and I wanted to clarify, I wanted to make sure that the information – that I had a full understanding of the information that was being given to me.

MR. LEARMONTH: Correct. And on the bottom of page 3 of Exhibit P-02670, you see right at the bottom: "2. Project Cost Questions."

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Right at the bottom, and then we turn over to page 3.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: At the top, page 4: "What is the total project budget? \$6.2 billion." So that's the same as the information you've been receiving all along. Is that correct?

MR. T. MARSHALL: Yes, the – it's an incorrect statement of it. The total budget was 7.4, capital expenditures were 6.2.

MR. LEARMONTH: Yeah, but –

MR. T. MARSHALL: At least that's how I always looked at it.

MR. LEARMONTH: You've always referred to it as 7.4, 6.2, and then the financing, the AFUDC and all that stuff, another 1.2 –

MR. T. MARSHALL: To me, that's what we had to come up with. It wasn't –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – just 6.2, there was –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – so we had to come up with the whole 7.4.

MR. LEARMONTH: Okay.

Now in – so who wrote these answers, do you know? Can you tell by looking at the document?

MR. T. MARSHALL: It looks like they came from Karen O'Neill, or K. O'Neill –

MR. LEARMONTH: Okay.

MR. T. MARSHALL: – from Newfoundland and Labrador Hydro. They went to Diana Quinton, who is the communications officer in the Department of Natural Resources, and they were sent to me from Charles Bown.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: And when I say me, they were sent to people in the Department of Finance and Natural Resources.

MR. LEARMONTH: Okay.

If we go to item c on page 4, towards the top, I'll just pick up on the fourth line: "Financing costs continue to be quite favorable in this historically low interest rate period; however, it is also obvious there are selective capital cost pressures.

That being said, these capital cost pressures are being experienced throughout NL and Canada in general, and would be similar to costs related to alternative Muskrat Falls options. These are early days on the project and we continue to aggressively manage the cost profile. At this point, we are generally on budget.”

Now, you know, we have information, and I’ll get into this later on the G – the Grant Thornton report, construction phase report, that in April of 2013, which is well in advance of the date that you received this because this was November – in April 2013, after the Astaldi bid, and perhaps some others came in, that Nalcor knew that \$368-billion contingency was gone, was consumed, there was no contingency available. Now were you aware of that until you read the Grant Thornton report?

MR. T. MARSHALL: No, this is telling me that they’re on budget (inaudible).

MR. LEARMONTH: But is that compatible with the information that I just referred to in the Grant Thornton report that the contingency is gone in April 2013?

MR. T. MARSHALL: No.

MR. LEARMONTH: No.

Would you have expected Nalcor to inform you of that? If the contingency was gone in April 2013, would you have expected Nalcor to come into your office or send you a letter explaining the circumstances?

MR. T. MARSHALL: Yeah, I had asked when I became minister of Natural Resources to – you know, in my – in early days, I wanted to know what oversight there was in terms of the construction. Mr. Bown, who was the deputy minister, indicated to me we’re now – the project’s now in a new phase, completely new phase, and this is construction phase. You know, it had been sanctioned. We had the MHI report. Based on that, we sanctioned the project. There was now a construction project and I wanted to make sure that the oversight was in place for the construction.

Mr. Bown had Mr. Martin come in. Mr. Martin took me through the oversight that Nalcor had

for the construction, and it was – you know, the people they had, the engineers they had, the accountants they had, the procedures they had in place was a lot more thorough than I would have been aware of. So I was confident that they had the people there to monitor the cost and, you know, to look monthly at the budgets and compare the budgets – the actuals to forecast or to estimates, and they would – so I said to Mr. Martin: I would bring – when there’s a material change, to bring it my attention. And he indicated he would do that or he’d let Mr. Bown know.

So, I knew it was being monitored and I knew if there was a material change that he’d bring it to my attention. So if there was an actual \$300-million overrun – if the contingency was wiped out – of course I would expect that to come to my attention.

MR. LEARMONTH: That’s obvious, isn’t it (inaudible) –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Based on the –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – this meeting you had with Mr. – you said any material changes.

MR. T. MARSHALL: It is material, yes, it is.

MR. LEARMONTH: Yes, it is material.

MR. T. MARSHALL: And, you know, at that point, you know, it would’ve gone to Cabinet, it would’ve been discussed and maybe we would’ve said: Fine, we’ll put in more contingency.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: We’ll raise the number.

MR. LEARMONTH: Correct.

MR. T. MARSHALL: But that didn’t happen until June 25, 2014, that we realized that – the higher number.

MR. LEARMONTH: Yeah.

Now, this meeting you had with Mr. Martin and Mr. Bown, I think you said, would that have been in January or February 2013?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Just after you became minister?

MR. T. MARSHALL: Yes, just after; so it would have been sometime after the middle of the month.

MR. LEARMONTH: And can I conclude from what you said that Mr. Martin assured you that if there are any material changes in the budget or costs that you would be advised?

MR. T. MARSHALL: Yes, or that Mr. Bown would be advised.

MR. LEARMONTH: Right.

MR. T. MARSHALL: And Mr. Bown indicated to me that people in the department would get that information and it would be brought to my attention.

MR. LEARMONTH: Okay.

The next exhibit I'd like you to turn to is at tab 5, volume 1, and it's Exhibit P-02655. If you go to page 1 – do you have it Mr. Marshall?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay.

Is this – do you have any recollection of this, of – it says Lower Churchill Project Federal Loan Guarantee April 16, 2013.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Was –

MR. T. MARSHALL: Just go to page 2 and I'll just see what's there.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: Yeah, okay. I do.

MR. LEARMONTH: Was – did this go to Cabinet or was it just a submission to one of the – one or more of the departments in government?

MR. T. MARSHALL: I don't – oh, wait a minute. (Inaudible) this – I know this document because I've read it since. I don't think I saw this document at that time, not this particular one.

I mean, basically, what was happening with the guarantee – well, in December we sanctioned the project so it was as far as we were concerned. But there were some incomplete – you know, obviously Nalcor had to borrow the \$5 billion. And, I – what I – I should correct that; Nalcor's subsidiaries were borrowing \$5 billion and they were dealing with the rating agencies and they were dealing with the lenders and they were dealing with the federal government to try to get a guarantee. And the guarantee would be from the federal government to the lenders promising to reimburse the lenders if Nalcor's subsidiaries failed to honour their commitment.

MR. LEARMONTH: Yeah, yeah.

If we go to page –

MR. T. MARSHALL: And –

MR. LEARMONTH: Oh sorry, I didn't (inaudible).

MR. T. MARSHALL: There was also the federal guarantee – there had been a federal guarantee signed and announced in December of 2012 by Premier Dunderdale and Prime Minister Harper. And that document – which was called at the time the guarantee, but it was an agreement – it was in reality, at least my interpretation of it, was that it was an agreement to give a guarantee subject to certain conditions precedent being first met.

And so during that year officials in government were dealing with the federal government to ensure that the conditions precedent were met. And I now know that the people that were involved in that, or some of the people that were involved in that, because my understanding at

the time of who was involved is different from what it is now.

MR. LEARMONTH: Yes.

The – if you turn to page 53 of this document, under the A7, Project Sanction, it says, Task: “Emera to provide ‘clean’ Board resolution to Canada; NL to provide necessary documentation ...” And it shows there’s certain tick marks.

Now, we have heard evidence that there was a – we’ll say a misunderstanding or bad communication as to whether Canada had accepted that the sanction agreement that was signed between Emera and Nalcor in December 2017 – excuse me, 2012 – whether that was acceptable to Canada as a, you know, to confirm sanction. And we found out that, for some reason – I don’t know who, but it appears Nalcor believed that by the signing of the sanction agreement, that that satisfied that condition precedent. But that in – are you familiar with this discussion at all?

’Cause what happened in March –

MR. T. MARSHALL: Vaguely. I remember – I don’t remember it clearly, and I don’t – I wasn’t involved with any of the discussions in terms of, you know, the guarantee in November, how that came about – I had no role in that at all.

And afterwards I would have been minister and I remember something came up with Emera and there was concern that the deal would fall apart and then it didn’t. It got resolved.

But I wasn’t involved in any of the discussions that took place over that. But I do recall at one point being advised that Emera – or there was something about the sanction and that, because of that, there’d be no guarantee and the deal would fall apart, but it – I don’t know how it got resolved, but I knew it got resolved.

MR. LEARMONTH: So you weren’t on top of that. You’re aware of it generally?

MR. T. MARSHALL: I wasn’t involved in those discussions, no.

MR. LEARMONTH: Okay, very well.

Tab 9, Exhibit P-02176.

Now, before we get into that, were you aware that the amount of contingency included in the DG3 capital cost estimates was for tactical contingencies alone – nothing for strategic, but tactical – and it was \$368 million. Were you aware of that?

MR. T. MARSHALL: No, I didn’t – I wasn’t aware of tactical – a contingency for tactical risk; I was aware of a contingency.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: I was aware that there was an estimate and there was a contingency for risk, but I wasn’t aware of – at that time – I wasn’t aware until the first Grant Thornton report of contingency for tactical risk or contingency for strategic risk or management reserves. That was all new to me.

So I was not aware then.

MR. LEARMONTH: Okay.

Well, we’ll just have a quick look at the Grant Thornton report that you just referred to. We discussed this at your interview, Mr. Marshall. That’s Exhibit P-01677. If we go to page 12 first.

Yeah, so the first paragraph: “As indicated above, prior to financial close, bids were received from contractors whom ultimately were hired which collectively, exceeded the DG3 budget by approximately \$600 million, a twenty five percent ... overage. The amount of this overage exceeded the DG3 tactical contingency amount (\$368 million) by over \$230 million. Hence, prior to financial close, Nalcor should have been aware that the contingency amount included in” – the – “DG3 budget was insufficient. Furthermore, Nalcor should have known that by April 2013 when the CH0007 bids” – by the way, that’s the Astaldi bids – “were received (four months after sanctioning) that the DG3 contingency amount was exhausted. Accordingly, Nalcor knew that the remaining budget of \$4.2 billion (\$5.8 billion which is” – the – “base plus escalation, less \$1.6 billion subtotal of DG3 budget at April 2013)

after the consideration of CH0007 did not have any contingency remaining.”

Now, when did you first become aware of that information?

MR. T. MARSHALL: This information?

MR. LEARMONTH: Yes.

MR. T. MARSHALL: When I read this report.

MR. LEARMONTH: Yeah.

What was your reaction to this information, assuming it –

MR. T. MARSHALL: (Inaudible.)

MR. LEARMONTH: – was true. You can assume for –

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: – for your answer that it was true. What –

MR. T. MARSHALL: Well, you know, we had a – there was a contingency built into the budget and – which I subsequently learned was about \$700 million, but now knowing that there was – the – that that was divided between escalation and contingency and that the contingency was totally wiped out that early, that would’ve been quite a surprise. And, again, I would wonder why there was no discussion so that we could consider putting more back.

MR. LEARMONTH: Yeah.

Are you saying you should’ve been made aware of that information?

MR. T. MARSHALL: Oh, I think if the contingency is wiped out, sure, of course.

MR. LEARMONTH: And that would’ve been a material change –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – that you –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – going back to that meeting you had with Mr. Martin and Mr. Bown –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – you’d consider that to be a material change?

MR. T. MARSHALL: I do.

MR. LEARMONTH: Yeah.

So do you have any comment on the fact that you weren’t advised of it?

MR. T. MARSHALL: No. I can only tell you when I knew the information.

MR. LEARMONTH: Yeah.

But is that alarming to you that you weren’t provided with that information –

MR. T. MARSHALL: Well, the fact –

MR. LEARMONTH: – in retrospect?

MR. T. MARSHALL: – that the contingency – there was contingency in the budget and that it would be completely wiped out within a few months would be quite surprising.

MR. LEARMONTH: Yeah.

Yeah, and if you had received that information, do you agree that you would have delved into it deeper?

MR. T. MARSHALL: Well, I think there would have been a discussion with the – well, obviously there would have been a discussion with the Cabinet, a discussion with the – Mr. Martin and the executive and a discussion of what’s happening and how it happened. And we would have to obviously get a revised estimate and then determine if we’re going to, you know, put more money in and continue with the project or do otherwise.

MR. LEARMONTH: Yes. Yeah.

Because it was government’s decision. It wasn’t Nalcor’s –

MR. T. MARSHALL: It was government's decision. We would obviously be seeking Nalcor's advice.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Because they were the people we put together to do this project, and they had expertise. And we would have certainly sought Mr. Martin's advice on what the next step should be. And – but then government would have made the decision.

MR. LEARMONTH: But you didn't seek his advice because he didn't tell you.

MR. T. MARSHALL: No. We didn't know then.

MR. LEARMONTH: Yeah.

Okay, turn to page 19 of Exhibit P-00167 [sp. P-01677], please. If we go down to line 13, there's a chart under line 13. Do you see that, Mr. Marshall?

MR. T. MARSHALL: I do.

MR. LEARMONTH: So this is a final – a forecast final cost, FFC, for the project dated July 2013. Okay, the PMT Comments: "*July 2013 Final Forecast Cost deck presented by Project team to CEO of ~\$7.0B.*" Now, this July is 2013.

Communication to Executive: "Email from Paul Harrington to Gilbert Bennett July 22, 2013 states '*...here is the deck that has been produced for you and Ed.*'" And so Mr. Martin and Mr. Bennett knew – well, I don't – Mr. Harrington certainly knew, and we'll find out what Mr. Martin has to say. But anyway Excerpt from Presentation: "*We are forecasting the FFC to be ~\$7.0B which is 12% beyond the DG3...; Exposure if mitigations are successful...FFC would be reduced to \$6.8B.*"

So here we have a final – forecast final cost of \$7 billion, subject to a potential of mitigation to some degree, if the mitigations are successful – \$7 billion. When did you first find out about this information?

MR. T. MARSHALL: June 25, 2014.

MR. LEARMONTH: What – about the \$7 billion?

MR. T. MARSHALL: Six point nine-nine.

MR. LEARMONTH: Yeah. No, but did you know that in July 2013 that there had been this forecast –

MR. T. MARSHALL: No.

MR. LEARMONTH: – final cost?

MR. T. MARSHALL: No.

MR. LEARMONTH: No. No information at all?

MR. T. MARSHALL: Not on \$7 billion, no.

MR. LEARMONTH: Yeah.

And pursuant to the agreement you had with Mr. Martin that you discussed about providing you with any material information and cost update, do you agree that this forecast final cost in July 2013 would certainly be material information?

MR. T. MARSHALL: Yes, it would be.

MR. LEARMONTH: Yeah.

And what is your comment or reaction to the fact that you were kept in the dark about this?

MR. T. MARSHALL: Well, I mean, presumably – so this is the PMT – this is the project management team comments.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: It would then go to the executive, and I guess the executive would analyze it and would look at what they could do about it, and then could they mitigate it, were there any reasons they couldn't bring it to us immediately. You know, they were busy over there; they were building a big project. But obviously, within a reasonable time, that information should've come to the minister and it – onto Cabinet.

MR. LEARMONTH: And it didn't come, did it?

MR. T. MARSHALL: Not until July 25.

MR. LEARMONTH: Yeah, because we see –

MR. T. MARSHALL: Or sorry, not 'til June 25 in 2014.

MR. LEARMONTH: Yeah. Because we see, if we go on page 20, there's a whole bunch of different estimates, August 2013, September 2013, March 2014, May 2014, February 2015. We got all these estimates; they all point to there's different numbers – I guess there's certain fine-tuning – but they're all, you know, around \$7 billion or so. So I put to you this, that is there any reason why you would not expect Nalcor to, like, share this information with you, and sure, discuss things – like we've got this, but we're working on it. We're not going to release it to the public, but we want to you to know at this time so you can deal with it as you see fit – as these reports were being prepared? Do you think that would've been a proper approach for Nalcor to have taken rather than just not tell you about this?

MR. T. MARSHALL: Yes, and again, I don't know the reasons why they didn't do it. I mean, I assume they were looking at it and analyzing it and – but they would have to share it with us, and then –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – together we would make a – you know, after getting their advice on what the future would bring – because my understanding is that before sanction, you're talking estimates –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – and – but then after – after sanction, construction started, so now contracts are coming in. We're getting bids in, so we get to know numbers.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: The other thing is that at sanction, I think, 50 per cent of the engineering was done. As you proceed along, more engineering is done, so now you're getting a better understanding and you're getting clearer

specifications and you start to see firmer numbers.

MR. LEARMONTH: Correct.

MR. T. MARSHALL: But once you start getting firmer numbers, that should have been brought to us.

MR. LEARMONTH: Should have been brought to your attention?

MR. T. MARSHALL: Firm number. Yes.

MR. LEARMONTH: Yes.

And then wouldn't it be correct that you would, you know, get the information – I presume you would share it with your fellow Cabinet ministers; is that correct?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah. And then make a decision on whether you were going to inform the public or wait a little longer and so on, is that fair –?

MR. T. MARSHALL: Yes. Or something could even come from Nalcor to Natural Resources saying this is what's happened here.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: These are the reasons why it's happened.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: Lower productivity –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – tough – markets were tougher than we expected them to be so prices are higher –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – and then we would have to relook at it.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Possibly government would say, okay, we'll put the money – the extra money in.

MR. LEARMONTH: Or ...?

MR. T. MARSHALL: Or we'll let the public know that we're going to do that.

MR. LEARMONTH: Yeah.

Or ...?

MR. T. MARSHALL: Or recalculate.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And we would, you know, have sought advice from people as to whether we should not do the – just stop and not do it further.

MR. LEARMONTH: Yeah. Because this is before financial close, like the July 2013, August 2013, September '13 –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – this is all before financial close?

MR. T. MARSHALL: And I know you've mentioned a number of times about that's the lock-in date in terms of our commitment to provide the equity.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: From our perspective at the time is, after sanction, we were moving ahead with this project. So it was from that date that we thought we were locked in.

MR. LEARMONTH: Yeah.

But is it correct that by the time of the federal loan guarantee, the province had spent or Nalcor – it doesn't make much difference really – \$900 million on the project?

MR. T. MARSHALL: That is correct.

MR. LEARMONTH: Yeah. So that money was spent and it was there, there was –

MR. T. MARSHALL: That would be sunk cost, yeah.

MR. LEARMONTH: Yeah.

But I'm putting to you that after you signed the commitments, the guarantees and that – the IGA with Canada that it was – that was a watershed event because, at that point, you had the exposure that if you didn't complete, that Canada could – could – legally step in –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – complete the project and the government would have to pay the bill. So I'm suggesting that the feasibility of cancelling the project before financial close was much higher than after financial close. Do you agree with that?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So we would have known, legally, that would be a legal right that the federal government would have. But they'd have other options as well, and there was clauses in the agreement that talked about in the event of default, there could be arbitration and discussions.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So, while the federal government did have that right, they may have simply said: Here's our – here's your liability on the guarantee to the lenders, just reimburse us for that.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So we could've stopped there, or they may have taken it over and sold it like they did in – out in British Columbia, the pipeline there. They may have taken the whole thing over.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: I don't think at the time any of us thought that the federal government

would sue us. We thought that there would be a negotiation, a discussion and a settlement.

MR. LEARMONTH: If something went wrong.

MR. T. MARSHALL: If that happened.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: But we knew – you know, let me be clear; we knew that we were the owners of this project, and we knew clearly, like any owner, if you want the benefits, you have to put up your risk capital, and we had signed to do that in anticipation of a project that would have lower costs – ratepayers' costs compared to the other options, and also would provide revenue to the province that could be used – go to the shareholders, who are the people of the province. So that money, instead of, if a private person did – a private company did it, instead of that money being invested in British Columbia or be invested down in South America, that money would go back to the owners, the people of Newfoundland and Labrador in terms of programs –

MR. LEARMONTH: Right.

MR. T. MARSHALL: – and capital works and paying down debt and so on. So yes, we knew the risk.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: We knew there was risk.

MR. LEARMONTH: And it was a different ballgame after financial close than it was before in terms of the option of cancelling, do you agree?

MR. T. MARSHALL: Yes, but it was – you know, we knew we were doing this project, and we knew we had to provide the base equity and also any capital equity – or any contingent equity. In other words, any increases over and above the 6.2. We were aware of that.

MR. LEARMONTH: Okay.

Tab 19, Exhibit P-02667 – just look at page 1 of that. This is at tab 19 of your volume 1, Mr.

Marshall. This is – deals with financing directives to the Public Utilities Board, and, ultimately, there's a Minute of Council dated October 31, 2013 on page 32.

Can you confirm that this is just a – well, it's not just, these are some directives to the Public Utilities Board dealing with amendments to the legislation which was necessary in order to comply with the federal loan guarantee obligation.

MR. T. MARSHALL: Yeah, there were commitments given in the loan guarantee, and, you know, there was a commitment to set up the corporations with the power to borrow – the subsidiaries, because Nalcor wasn't borrowing the money. There were three subsidiaries in Nalcor that were actually borrowing the money and would be responsible to pay back the money. We had to set them up with the borrowing powers and the contractual ability to build and develop and operate the project and the transmission.

There was a commitment to – as we discussed previously – to put in the equity, the basic contingent equity and there was a commitment to ensure that Newfoundland Hydro would collect sufficient revenue to pay the cost of the generation and the transmission of that power.

And the equity agreements we talked about is to deal with the equity, obviously, and the guarantee of the equity. This document here was to deal with setting up these corporations and with – dealing with the PUB to ensure that there was a revenue stream that would pay the cost.

MR. LEARMONTH: And the decision was that – perhaps it was dictated by the federal government, I'm not sure, but it was accepted by the province – was that to put the total cost of Muskrat Falls on the ratepayers, correct?

MR. T. MARSHALL: Sorry, I –

MR. LEARMONTH: The result of the changes to the legislation and so on before the federal loan guarantee was put in place, the result was that the ratepayers of the Province of Newfoundland and Labrador – no, not Labrador, it was just the Island portion. The ratepayers

were on the hook for every cent of cost of Muskrat Falls, correct?

In other words, it had to be –

MR. T. MARSHALL: The cost of construction, as in any hydro project, as in any energy project, the ratepayers are on the hook to pay for the just and prudent and reasonable cost of building, of operating, of financing and including a return to the risk-taker, the owner –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – which in this case would be themselves.

MR. LEARMONTH: Yeah. So –

MR. T. MARSHALL: So yes.

MR. LEARMONTH: Yeah

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: Yes. But doesn't that suggest that there is a very high onus on government to make sure that these costs are properly spent and managed. Isn't – doesn't that go along with the fact that the ratepayers are going to have to pay the price for this?

MR. T. MARSHALL: Yes. And this was – remember the – Nalcor were seeking the guarantee of the \$5-billion debt from the federal government. And the federal government then said, well, before we give you that, we want these assurances that you're going to put the equity in and complete it and that there will be a revenue which will cover the cost so that the debt payers could – or the (inaudible) would be paid back.

MR. LEARMONTH: Yeah. The next topic I wanna get – touch on –

MR. T. MARSHALL: Let me just add – just – sorry, Mr. Learmonth, I lost my –

MR. LEARMONTH: Sure. Take your time.

MR. T. MARSHALL: – train of thought for a minute. The only difference would be that if a private developer was doing this, then the PUB

would be a body that would set the rates, and they were still gonna be allowed to set the rates. But if a private company was involved, and the PUB gave oversight here, they would reject any cost they didn't consider to be reasonable or prudent –

MR. LEARMONTH: It's at a cap.

MR. T. MARSHALL: – (inaudible) they couldn't do that –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: They couldn't do that here. And that was a requirement of the federal government to give – for us to give the guarantee. But there is nothing to prevent the government, our government, either then or now, for still allowing the PUB to look and review those costs and say if any of them are not reasonable and prudent. And then the government could say, all right, we're not going to make the ratepayers pay for that, and the government could still put that money in.

MR. LEARMONTH: But the government doesn't have the money to do that.

MR. T. MARSHALL: Oh, if it doesn't have the money, obviously it can't do it, right?

MR. LEARMONTH: Well, it doesn't have, like, the cash. I mean, I suppose it could borrow to some extent. But in any event, it's coming from the people of the province.

MR. T. MARSHALL: Yes, but it was the federal government wanted this –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – revenue pipeline, you might call it, to ensure that there would be enough rates to go to –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – Hydro so Hydro could pay the subsidiaries for the generation of transmission of power –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – which is what is supposed to happen in every energy or hydro project. The PUB was being removed from the process from the point of view of making sure that the proponent or the developer wasn't padding the cost – because higher costs, bigger profits. So I think the private sector might be tempted for some time to, you know, put in costs.

MR. LEARMONTH: Yeah. But –

MR. T. MARSHALL: So, the feds didn't want that. They wanted all costs covered, so that was agreed to to get the government guarantee, but again, there's nothing to stop a government from saying, look, we're still gonna have the PUB make that examination of the costs to determine if the costs are unreasonable or unfair. And then government could – they'd say, all right, well, won't charge the ratepayers that. Government will put the money in from other sources.

MR. LEARMONTH: Yeah, but isn't the time to do that before the project is sanctioned, not after?

In other words, like happened in Nova Scotia –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – the Maritime Link was taken to the Public Utilities Board –

MR. T. MARSHALL: Okay.

MR. LEARMONTH: – and the Public Utilities Board didn't say, well, yes, build it and whatever it costs. There was a cap –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – and anything above that would have to be eaten by Emera. They'd have to pay it, they wouldn't be able to recover it.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: So what you're putting forward now – although I suppose it, yeah, it's true the government can do that. But why wouldn't you do – isn't the proper time to do this before the project is sanctioned, not after?

MR. T. MARSHALL: Yes, it would be – yes, it would have been.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: But the option to government is always open to it.

MR. LEARMONTH: Right.

MR. T. MARSHALL: Right.

Now, again, you remember that this project had been exempted previously from consideration by the PUB and that a paper went forward in, I think, May 2011 from Finance and Natural Resources. It was a paper written by Paul Myrden, who we discussed previously. Terry Paddon, the deputy minister of Finance, brought it to me, and it was for oversight because the PUB wasn't – the PUB had been exempted.

And so within that context that the PUB had been exempted, Shawn Skinner, who was the minister of Natural Resources at the time, and I –

MR. LEARMONTH: I'll just get that exhibit brought up if you want to refer to it. That's P-00807. That's the report.

MR. T. MARSHALL: Right.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: Right. So because the PUB were not gonna hear it, we asked – or we suggested to Premier Dunderdale that an independent review be done – independent financial analysis be done, what a lot of people called a cold eyes review be done.

MR. LEARMONTH: Right.

MR. T. MARSHALL: And it would be to get one of the, you know, someone like Ernst Young or Grant Thornton or someone like that to do that, and obviously they would have to retain engineering expertise as well.

And the decision of Premier Dunderdale was to refer the matter to the PUB because – I didn't know it at the time, but it wasn't legislation. It was done by Minute in Council. And – so the

PUB plus – there was also a concern that did the PUB really have the capacity or were they like us? Did they have the resource or the capacity to examine a project like this? And I remember discussion – I think it was with the clerk, Robert Thompson, who said that the PUB will hire the capacity it needs. It'll hire the expertise it doesn't have.

MR. LEARMONTH: Hmm.

MR. T. MARSHALL: So, the – Premier Dunderdale's decision to go to the PUB and to make sure they had the resources to do it, I thought that was a lot better suggestion than what Shawn Skinner and I had suggested.

MR. LEARMONTH: In Exhibit P-00807?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Yes. Now, we know what happened with the PUB. In, you know, what went on between Natural Resources and Nalcor and the PUB, and apart from my role as a Cabinet minister, I had no role in that, and that kind of fell apart – well, it did fall apart. And – so the decision was then made to go with MHI, Manitoba Hydro International, to do this independent analysis. And they had the financial people and they had the engineering people.

So it was really what I'd asked for in the first place, except for they didn't – it was a limited question. It was limited to the two cheapest options to see which one would be the lowest cost for the ratepayer. It wasn't the full deal of looking at all options, which is what the UARB in Nova Scotia –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – did. And when you mention the UARB – you know, when I was minister of Natural Resources, I wasn't paying much attention, quite frankly, to what was going on in Nova Scotia because the Maritime Link was going to be paid for by Emera. It was going to be paid – they were going to be paid by the ratepayers in Emera, not by the ratepayers of Newfoundland. Nalcor were going to, essentially, buy a \$1.5- or \$1.6-billion Maritime

Link by transferring energy that was surplus to us.

So, I really wasn't paying much attention to Nova Scotia until the – their first decision came down, the decision they came down with in July, where they said that the Maritime Link for Nova Scotians – the power they got from Newfoundland and Labrador – that that would only be the least-cost option or the lowest cost option for Nova Scotians if they had access to this market (inaudible). That's when I read the decision of the UARB, and that's when I saw what they did compared to what we had asked the PUB to do. But, unfortunately, our relationship with the PUB had ended in – I think it was March of 2011 or '12, and the decision of the PRB [sp. UARB], which I read – was, I think, in July 2013.

So, I didn't have the benefit of comparing what they had done to what we were – we had done months earlier.

MR. LEARMONTH: Okay.

Looking back, do you regret not pushing for a fulsome review by our PUB, like was done with the UARB?

MR. T. MARSHALL: Yeah, I – I've already testified, yes, I do.

MR. LEARMONTH: Well, you know, in your interview, you did. You haven't testified at the hearings.

MR. T. MARSHALL: I think I said at my first –

MR. LEARMONTH: Did you?

MR. T. MARSHALL: – when I first testified I said –

MR. LEARMONTH: Okay.

MR. T. MARSHALL: – that in hindsight, and seeing what happened, that we should've – we should have left it with the PUB and let them do the DG3 numbers when their DG3 numbers came in.

The PUB were asked to give an opinion based on the information they had at the time, and they didn't – they came out with a report, they didn't make a decision. And while their consultant, the MHI, did – and then the decision was made by government to have MHI retained by the government to do the – do it again, do the analysis again, based on the DG3 numbers. And the request by the PUB to say we don't wanna do this or we shouldn't do this until we get the DG3 numbers, was not, in my view, an unreasonable request.

MR. LEARMONTH: It wasn't unreasonable.

MR. T. MARSHALL: Was not an unreasonable request, and that –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – therefore, we should've just said: All right, we'll give – we'll – if you're not gonna do it now, we'll give you the DG3 numbers when they come, and –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – do it then. I –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – think that – in hindsight, I think that would've been the better approach.

MR. LEARMONTH: Okay.

Just a couple of points. You had talked about the order-in-council whereby there was an exemption, I think that was back around 2000, but –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – do you agree that at the time that that exemption was given in or about 2000, that the subject under consideration was export power from Labrador? It wasn't –

MR. T. MARSHALL: Yeah –

MR. LEARMONTH: – there was no mention of the possibility of bringing it to the Island, so

for that reason, the ratepayers wouldn't be affected.

MR. T. MARSHALL: Right, but I – you know, there's lots of precedent in Newfoundland and Labrador where the PUB had been exempted –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – for –

MR. LEARMONTH: – and other projects –

MR. T. MARSHALL: – projects –

MR. LEARMONTH: – too, I realize –

MR. T. MARSHALL: – for projects –

MR. LEARMONTH: – that.

MR. T. MARSHALL: – that –

MR. LEARMONTH: Yup.

MR. T. MARSHALL: – were paid for by the ratepayer, and lots of precedent in other provinces where these projects – the PUB have exempted them, or have been exempted by government because government, for public policy reasons, says: We're doing this, we have a mandate from the people and we're doing this.

But, the problem with that is that you build up – the PUB would build up expertise over time, and why not – wouldn't it be a good idea to let them do it and get the benefit of their advice? It's another cold eyes review.

MR. LEARMONTH: Because the Nova Scotia UARB didn't have the capacity to do the detailed analysis they carry out by themselves, they hired experts and –

MR. T. MARSHALL: And they hired a number of experts.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: Yeah. Now you mentioned –

MR. T. MARSHALL: But unfortunately, when our government was dealing with our PUB – you know, I can only speak for myself that, you know, I had not appeared before the PUB, I didn't really have any real understanding of the electrical business beforehand. And, but when I read what the PUB had done – I read the report in July – you know, obviously I noticed the difference between how it was handled here and how they did it. And, ours was limited but at the time when the decision was made to go with the limited number, that was acceptable because Nalcor had done that, they'd narrowed it down, the PUB was gonna make – confirm that the final determination being the Muskrat project was right.

But, after seeing what the UARB did, and seeing the difference – yes. But unfortunately, that was well after –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – it after our relationship with the PUB had ended.

MR. LEARMONTH: Yes.

And you mentioned MHI, and before we leave that topic, I think you became aware through the evidence presented in this hearing that the MHI retention by government did not include a review – a risk assessment that MHI had proposed that they were gonna do a risk assessment, and it was removed at the request of Nalcor.

You didn't know that at the time.

MR. T. MARSHALL: I wasn't aware of that. We – you know, when we sanctioned that project, we thought, you know, there had been an independent CoreLogic review done of the Nalcor proposal.

MR. LEARMONTH: Based on what you know now, do you –?

MR. T. MARSHALL: Based on what I know now, but I learned that when I was at this table, testifying in the first phase when you told me. I didn't know that previously.

MR. LEARMONTH: Yeah.

So what is that – how does that affect your assessment on the reliance that government put on the MHI report, the fact that no risk assessment was done?

MR. T. MARSHALL: There was no independent risk assessment done.

MR. LEARMONTH: Yeah, by anyone.

MR. T. MARSHALL: And we thought there was. And, obviously that – we'd have a problem with that report if we had known that at the time.

MR. LEARMONTH: But you didn't know it?

MR. T. MARSHALL: No, not at all.

MR. LEARMONTH: Okay.

Before we leave this exhibit, P-00807, if you just go down to the bottom of page 2. And this is – Mr. Marshall, this is your recommendation, decision/direction note from a joint – decision/direction note from both the Department of Finance and Natural Resources. It's signed by – it was prepared by Paul Myrden of the Department of Finance – this is on page 4 – approved by Terry Paddon, then the deputy minister of Finance, and Charles Bown, who was either the assistant deputy – I think it was the assistant or associate deputy minister of Natural Resources; and it's signed off by you and Minister Skinner. Correct?

MR. T. MARSHALL: That's correct.

MR. LEARMONTH: Yeah. And this is when you were going for an independent type of review?

MR. T. MARSHALL: Yes, because we knew it had been exempt – the PUB work ain't here because they had been exempted.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So.

MR. LEARMONTH: Yeah.

But if we go to the bottom of page 1, we see it says: "In addition to the above, Nalcor is also

planning to undertake additional due diligence as follows:

“Completion of a project cost analysis by Independent Project Analysis Inc., an international organization that specializes in the review of large scale projects.”

And you’re familiar with that company? That’s Edward Merrow’s company, or –?

MR. T. MARSHALL: Yes, I am.

MR. LEARMONTH: Yeah. But that was never done.

MR. T. MARSHALL: Yes, I remember you telling me that.

MR. LEARMONTH: Yeah. It was done for DG2 but not for DG3. I mean, this was a big company that specializes in –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – reviews of this kind. A big – I think they’re the biggest in the world, they certainly have a –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – I think I’m confident in saying they have a sterling reputation.

But was that ever tracked by government that, you know, that – okay, there’s been a statement made by Nalcor that they’re gonna do this. Was there any tracking done of that so that by the time you sanction the project, you would’ve known that that report was not done?

MR. T. MARSHALL: No. No, I mean, Natural Resources would’ve been in – you know, there’d be communications between Natural Resources and Nalcor, we knew that Nalcor had had – they had had reviews – a lot of reviews done we were told about. Navigant was one, Natural Resources Canada did one, there were, you know, IPA, IPR. But the feeling at the time was that: Let’s have somebody independent, let’s have government do someone independent if it’s not going to the PUB.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And I give, you know, full credit to Mr. Myrden and Charles Bown and Terry Paddon for recommending that to –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – to myself and to Shawn Skinner at the time, because I – I remember having concerns and – about our ability and our lack of knowledge as Cabinet ministers about this industry, and wanting it done but I was unclear about how we should go about it. So here was a recommendation from Mr. Paddon to me, which I accepted – was pleased with, yeah.

MR. LEARMONTH: But with the removal from the scope of work of MHI, the strategic risk report, that –

MR. T. MARSHALL: That’s undermining the independence of the report.

MR. LEARMONTH: Yeah. And also, the editing back and forth –

MR. T. MARSHALL: It certainly tainted it if it hasn’t undermined it, yes.

MR. LEARMONTH: Yes.

And then on the – and you’re also – I don’t want to go over all of this, but Nalcor never provided government the strategic risk analysis prepared by Westney in September 2012. Remember, with the 497 at P50?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: So, accepting those two (inaudible) there was never any – government never did a risk assessment of the Muskrat Falls Project. Do you agree?

MR. T. MARSHALL: We thought – we certainly thought –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – Nalcor had done a risk assessment.

MR. LEARMONTH: Yeah, but government didn’t.

MR. T. MARSHALL: Government didn't do an – well, we thought the PUB and MHI would do it, and then we thought MHI would do it.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And then we found out that it had been removed.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: But we – government at the time, at sanction, thought that there'd been a cold eyes review of the entire business (inaudible).

MR. LEARMONTH: Yeah, and you –

MR. T. MARSHALL: That's why we –

MR. LEARMONTH: – since found out you were wrong?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah. Okay.

Now the SNC-Lavalin risk assessment report – I just want to touch on this, 'cause we may have talked about it in your earlier evidence – but that's P-01977. You're familiar with this report that surfaced in 2017?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah. And, you know, it shows, I think 2.4 billion in potential cost overruns. When did you first become aware of the existence of that report?

MR. T. MARSHALL: In 2017.

MR. LEARMONTH: 2017. Now, I just want to make sure there's no misunderstanding here. Grant Thornton did not – they did a review to the – one of the points is – was to determine whether this was ever received or whether Nalcor ever received, and there was no evidence to confirm that. So there is certainly the possibility that Nalcor never got the report. However, there is evidence that – certain evidence, not conclusive, but that Nalcor knew about the contents of the report. There's

different points of view on that, but, you know, one interpretation could be that.

Okay, assuming that Nalcor never got the report but was aware of the contents of the report, would you have expected Nalcor to obtain a copy of the report?

MR. T. MARSHALL: To – I'm sorry?

MR. LEARMONTH: Well, if Nalcor could've got a copy of the report – they knew it had been prepared –

MR. T. MARSHALL: Right.

MR. LEARMONTH: Okay?

MR. T. MARSHALL: Right.

MR. LEARMONTH: – wouldn't you have expected them to ask for a copy of it?

MR. T. MARSHALL: Well, I think the last time you asked me that question my answer was, well, that there was a team – there was an integrated management team.

MR. LEARMONTH: Mm-hmm.

MR. T. MARSHALL: That was the construction methodology of doing this project. It had previously been SNC-Lavalin were hired under an EPCM contract, and that changed.

And it changed – I was told that there was real disappointment with the lack of performance by SNC-Lavalin, which was very surprising to me because SNC-Lavalin, to me, was a, you know, a Canadian success story; they were, you know, well-known and well-experienced in hydroelectricity business in Quebec and throughout the world, and – but evidently there was such disappointment with their failure to perform, with the exception of the engineering, that the project team or Nalcor executive went with this new method. They changed the contract; SNC-Lavalin's role was diminished to just do the engineering 'cause they were happy with the engineering, and they went with this integrated management team.

So, but SNC-Lavalin were on the team. So if they're part of team – and I recall Mr. Martin

telling me that he took the best from the project management team, the best from Lavalin, and plus got people from other engineering companies and put together a new team with one goal, one vision. So if they're on your team, if they do a report, yeah, I think you want to look at it, but since (inaudible) –

MR. LEARMONTH: You say you wanted – you think you want – if they're on the team and they do a report, you want to have a look at it?

MR. T. MARSHALL: I would think so.

MR. LEARMONTH: Yeah, yeah.

MR. T. MARSHALL: But then again, Westney were Nalcor's risk management people from I think the beginning. From the time the company was first incorporated, I think Westney was retained to advise them throughout on risk management because I understand it's a process that you could – you continue to look at, and so I know they had Westney doing that. And I know that, you know, based on the evidence I've seen recently, that the relationship with Nalcor and Nalcor – or with SNC and Nalcor was pretty, you know, it was pretty tense, so I guess they went with Westney; they used Westney.

MR. LEARMONTH: Yeah, but that's not what I'm asking you, Mr. – I'm asking you whether you believe it would've expected by – that Nalcor, knowing that a risk assessment report had been done, and knowing part of the contents of it, that they would've asked SNC for a copy of the report?

MR. T. MARSHALL: Since SNC were on the team, yes.

MR. LEARMONTH: Yes, okay, fair enough.

MR. T. MARSHALL: But, given the fact they already had Westney to do the risk, they'd say we don't need you to do that; we already have it done.

MR. LEARMONTH: But wouldn't it be prudent to have a look at it anyway? It might be information that Westney –

MR. T. MARSHALL: Another –

MR. LEARMONTH: – didn't –

MR. T. MARSHALL: – look –

MR. LEARMONTH: – know.

MR. T. MARSHALL: – would certainly – wouldn't hurt, would it?

MR. LEARMONTH: Yes, yeah.

And I think you were quoted – I'm not sure if (inaudible), but by – an article by journalist Roger Bill, November 25, 2017. He writes – and I'm not gonna go in detail but I think you can recall this – he says: What does not take any clarifying are the words of Tom Marshall, the provincial minister of Natural Resources. When the SNC-Lavalin risk assessment surfaced in June 2017, I asked Tom Marshall if he saw the risk assessment in 2013. He said I never saw that report. I asked if he had been advised of the risk assessment findings. Mr. Marshall said no. Did he think Mr. Martin, the Nalcor CEO who he met with regularly at the time, held back the risk assessment's findings? Mr. Marshall said: That would be terrible. I can't fathom if that is the case. Would it have made a difference if he had known? Quote: It would have rung all kinds of alarm bells.

Is that an accurate description of the way you viewed this report and the circumstances surrounding it?

MR. T. MARSHALL: Well, the number was very different.

MR. LEARMONTH: Yeah. It was 2.4 billion.

MR. T. MARSHALL: 2.4 billion, which is a high number because we were looking at Nalcor – or Muskrat Falls had a preference of a similar amount when they did the CPW analysis. So, yeah, it would have –

MR. LEARMONTH: Would have rung alarm bells?

MR. T. MARSHALL: Right, because if you heard 500, for example, you might say, well, it's – you know, it's still \$1.9-billion preference for Muskrat Falls.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: If you get a number the size of this, you're now – you now have to look at other factors.

You look at – you'd have to look at factors like, you know, if it's a wash between this project and that project, you would then look at – you'd look at environmental factors, you'd look at, you know, greenhouse gas emissions, you'd look at the advantages of reliability, you'd look at the advantage that you have surface energy you can now – if you do one project there's gonna be a link and you can now sell excess energy you may have. You might get it down to, you know, the Maritimes and into New England without having to go through Quebec. But that would be a different analysis.

MR. LEARMONTH: But you mentioned the CPW, but are you suggesting that the whole decision as to whether to proceed with Muskrat Falls or not throughout would be based on the CPW?

The reason I mention that is that there's a separate issue of affordability in that –

MR. T. MARSHALL: (Inaudible.)

MR. LEARMONTH: – I'll put – propose this to you that –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – if – and I'm just giving you these figures for the sake of the question. I'm not saying they're reliable, but I think they well describe the point of the question I'm putting to you – that if the cost of Muskrat Falls, the project cost had been at some point before the federal loan guarantee \$9.5 billion or \$10 billion, that don't you agree that even if using that figure, the CPW would still have favoured Muskrat Falls, that the province would have to look at it in terms of – wow, you know, maybe that's the sort of the Mercedes Benz or Lamborghini solution, but we just haven't got the money.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Isn't that correct?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Yeah. Looking at projects which – I've heard you say a couple of times about – for a project to go ahead, it needs the approval of finance. But the proponent brings the project forward, and the project is then analyzed by all departments. And then once a project is approved by Cabinet, that doesn't mean it's going ahead. It means it's been approved in principle, subject to the budget process. So then when you do the budgeting, when you do that budget process, when you look at all monies that are needed for all projects, for all different priorities, some of these expensive projects would get removed. So you're right.

MR. LEARMONTH: Yeah, that affordability trumps a –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – favourable CPW?

MR. T. MARSHALL: Oh yes, no question.

MR. LEARMONTH: Yes, okay.

Next document I'd like you to turn to is – it's in volume 2, tab 28, and it's Exhibit P-02215. And once again, this is an email here, there's no suggestion that you received it, but on the bottom of page 1 of P-02215, there's an email from Gilbert Bennett to Ed Martin, copied to James Meaney and Paul Harrington, November 15, 2:28 p.m., Major Material Contract Files – okay.

So Mr. Bennett writes to Ed Martin: "We're under some pressure to demonstrate the changes to material contracts as identified by the IE" – independent engineer. "The attached sheets are intended to show ... the growth from 6.202 to 6.531 is occurring.

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

“Call me on my cell if you’d like to discuss.” So this is November 15.

Now, if you turn to page 5 of that exhibit, P-02215, will you do that, please? Do you have page 5, Mr. Marshall?

MR. T. MARSHALL: I’m looking at it on the screen, yes.

MR. LEARMONTH: So this is a “LCP DG3 Estimate vs. Current Final Forecast Cost Reconciliation.” So this is dated November 13, 2013, and you can see –

MR. T. MARSHALL: That’s November –?

MR. LEARMONTH: November 13, 2013.

MR. T. MARSHALL: Okay, November.

MR. LEARMONTH: Page 5.

MR. T. MARSHALL: November 15, is it not?

THE COMMISSIONER: Tab 28.

UNIDENTIFIED MALE SPEAKER: No?

MR. SIMMONS: (Inaudible.)

MR. LEARMONTH: No, no. It’s on page 5, you can see in the top right hand margin, it says November 13, 2013.

MR. T. MARSHALL: Oh yes, okay. I’m sorry.

MR. LEARMONTH: Yeah, that’s their calculation sheet, right. So –

MR. T. MARSHALL: And the date of the email is (inaudible).

MR. LEARMONTH: Yeah.

But you can see this is not just a figure pulled out of the air, like an extra \$300 billion; this is based on calculation. Do you agree?

MR. T. MARSHALL: Yes, yes.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: It looks like a firm number.

MR. LEARMONTH: Do you – you never got this calculation sheet at all, right?

MR. T. MARSHALL: No. No. I saw this, I think –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – a few days ago.

MR. LEARMONTH: Now can you justify, under any circumstances, Nalcor’s decision not to provide you with this calculation sheet as soon as it was done? Can you provide any justification for it?

MR. T. MARSHALL: No. Once they had – if that was a number, you know, a firm number for them, yes, I would expect it within a reasonable time. And I’m sure the Government of Canada would expect it as well.

MR. LEARMONTH: Okay.

Tab 29, Exhibit P-02216. You can see here – you remember I mentioned before that the rule – the absolute rule in Nalcor was that no one accepted – without Ed Martin’s permission, no one could release information.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: I just wanted to show you the – this Exhibit P-02216. It says – this is from James Meaney: “Had a call with Canada/CBB” – that’s Canada’s external lawyers, Cassels Brock Blackwell, I think it is – “today on the status of FLG conditions ... finalizing IE report ASAP was a hot button ... capital cost/major cost update and MWH views on schedule We got the ok from Ed today on first item.”

So I suggest that means the first item is the capital cost estimates? So we got the okay, I guess – well, I think one can infer that it’s – the okay that can be released. And this is dated November 19, 2013, it can be released to Canada.

Now, please, turn to tab 30. This is a little later in the day, November 19, this is 9:29 p.m. So it's just a little bit before, actually, the early – the P-02216.

But anyway, exhibit – at tab 30, Exhibit P-02217. This is James Meaney to Meghan Felt, who's a lawyer, I understand, at McInnes Cooper, the legal counsel for Nalcor, which was maintaining some kind of a document control process in some form.

So he says: "Hi Meg

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

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

And then if you turn to page 4 – excuse me, page 2 of this document, will you do that, Mr. Marshall?

MR. T. MARSHALL: Yes, and it's coming up on the screen now. Just go a little higher, yeah, there we go.

MR. LEARMONTH: Page 2?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay. We have the reconciliation that I referred to earlier, the earlier one was November 13.

MR. T. MARSHALL: Mm-hmm.

MR. LEARMONTH: And I can tell you that the total, the \$6,531,754,850 is the same as on the November 13 version, but there's some changes in the allocation between contingency and material contracts. There's some adjustment, but the number is the same.

MR. T. MARSHALL: Okay, so the numbers not 6.531 –

MR. LEARMONTH: Yes it is.

MR. T. MARSHALL: – or 532.

MR. LEARMONTH: Like it was on the November 13 one, but there's some changes in, like, say \$100 million was taken from material contracts to contingency, or back and forth.

MR. T. MARSHALL: Yeah, the –

MR. LEARMONTH: But the bottom line is the same –

MR. T. MARSHALL: – I noticed the contingency has gone from 89 up to 182.

MR. LEARMONTH: Yeah. But the total is \$6,531,754,580.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: That's the number that was used in the financial close documents.

MR. T. MARSHALL: Yes, it is. (Inaudible.)

MR. LEARMONTH: Okay. So this is information, November 19, and then there's also information showing the contracts – the reason for this increase, the contracts coming in.

Now I want you to turn back to page 1 of the exhibit, the words – so they're giving access to Canada and the independent engineer, but it says: "Do not provide access to NL, BLG and Faskens at this time." I can just tell you that we haven't had any record that there was – this was ever provided to government, we don't – there's no evidence of that.

Now can you understand why a document of this kind would be such that access would be – was not provided to the Government of Newfoundland and Labrador, who was funding this?

MR. T. MARSHALL: No, I don't understand.

MR. LEARMONTH: Does it surprise you?

MR. T. MARSHALL: Well, it says: Not at this time.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So I would think that maybe it came a day later or –

MR. LEARMONTH: It didn't.

MR. T. MARSHALL: Okay.

MR. LEARMONTH: There's no evidence of that.

MR. T. MARSHALL: Then it never did.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So, yes, it does.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And we were the shareholder, we're the owner.

MR. LEARMONTH: Yeah.

But I would say that, well, perhaps the disclosure to the government – I'll propose this – at worst, it should've been done concurrent with the information being sent to Canada, perhaps first. Do you agree?

MR. T. MARSHALL: Well, I would certainly think you should come to us. I mean, unless there's a reason I don't know of, you know. But, yes, we – a material change should've been brought to our attention within a reasonable time after they had calculated it.

MR. LEARMONTH: Okay, well, it was calculated on November 13 and then again on November 19, so –

MR. T. MARSHALL: Right.

MR. LEARMONTH: And we know we're looking at financial close on November 29, the critical date.

MR. T. MARSHALL: We're getting close.

MR. LEARMONTH: Yeah. So will you confirm it should've been provided to the Government of Newfoundland and Labrador, certainly before financial close?

MR. T. MARSHALL: Yes, yes.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: So is there any evidence of it being disclosed to any other government officials? Like, in Natural Resources or Finance?

MR. LEARMONTH: The document?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: No.

MR. T. MARSHALL: No.

MR. LEARMONTH: Not that we have found.

MR. T. MARSHALL: Okay.

MR. LEARMONTH: And if anyone has evidence that will contradict that, I'd like to see it.

MR. T. MARSHALL: I noticed the contingency is shown as 189 and you said earlier the Grant Thornton report indicated the contingency was gone by financial close –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – or was really wiped out by April 30, and this shows \$183 million still there.

MR. LEARMONTH: That could have been the – it could've been –

MR. T. MARSHALL: Escalation?

MR. LEARMONTH: –included in the increase from 6.2 to – I don't know the answer to that, I'm just speculating.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: But, anyway, the total figure is different. It's up \$300 million, right?

MR. T. MARSHALL: Right.

MR. LEARMONTH: Next tab 32, Exhibit P-02223. You can see this is an email from Alison Manzer, who is legal counsel at Cassels Brock that were acting for Canada. That's who Alison Manzer is. That's true so you can accept – anyway, Ms. Manzer is sending an email November 21 to James Meaney.

He says – she says in point two, which is in the fourth-to-last line: “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, obviously, Canada, well, makes what many would consider an obvious statement that the Government of Newfoundland has to be aware of this. Do you agree with that?

MR. T. MARSHALL: That we should’ve been aware of it?

MR. LEARMONTH: Yes.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah, okay.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And then, you know, later an email that is at tab 34, Exhibit P-02329 – if you turn to that and go down to the bottom. Mr. Meaney says on November 21 to Ms. Manzer: “NL are aware of the forecasted capital cost increases.” Do you see that? Well, you weren’t aware, were you?

MR. T. MARSHALL: No, I was not aware of a firm number. So, do you know who was aware, who represents Newfoundland who was aware?

MR. LEARMONTH: No.

MR. T. MARSHALL: Oh.

MR. LEARMONTH: I can’t help you on that. I wish I could but we haven’t been able to identify anyone yet. There are emails put out only showing you that could provide support for an argument that Newfoundland should have known, but that’s an open question. That’s something that the Commissioner will have to decide after he hears all the evidence and receives the submission of counsel.

THE COMMISSIONER: Plus, if – just to add to that, it seems to me that if there was a government official who was aware of this,

wouldn’t the expectation be that politicians would be advised?

MR. T. MARSHALL: Yes, definitely – definitely.

MR. LEARMONTH: Yes, that’s a – I mean, you were dealing with Charles Bown. You were in the –

MR. T. MARSHALL: No, at this point I was back in Finance. I was dealing –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – with Donna and Paul –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – Donna Brewer and Paul Myrden.

MR. LEARMONTH: This is the type of information if it came into the hands of Ms. Brewer –

MR. T. MARSHALL: Oh, of course –

MR. LEARMONTH: – she’d – you have no hesitation in saying that, correct?

MR. T. MARSHALL: Yes. She would know that I would be interested in any update of the number.

MR. LEARMONTH: Yeah.

And, likewise, did you have the same type of expectation from Charles Bown, the deputy minister of Natural Resources when you were the minister of that portfolio?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: They were both – they’re both responsible people, would you say?

MR. T. MARSHALL: Oh, yes definitely.

MR. LEARMONTH: And they communicated with you all important information as far as you knew?

MR. T. MARSHALL: Yes. One thing I've learned from what's in this Inquiry is that, you know, these officials during this time period, they would've been extremely busy. They would've been extremely busy but something like this they would certainly pass on. Because we'd be at meetings together and if they had a – if they were aware of this number, they would certainly have mentioned it to me, knowing my interest in –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – what (inaudible).

MR. LEARMONTH: Because from reading the emails – I'll put this as a question – but would you say that your interest in financial details was, sort of, higher than average –

MR. T. MARSHALL: Well –

MR. LEARMONTH: – compared to your colleagues? Or would that be an incorrect assumption?

MR. T. MARSHALL: Well, I was the Finance minister, so from that point of view, yes. But, also, I was more interested in that than in a lot of reports that the minister of Natural Resources would receive about, you know, the benefits, the jobs, the money being spent, the – or not the money being spent but the – you know, who was benefiting from it and pictures of, you know, the construction. That really wasn't my interest, it was more what were the numbers, how much did, as a Finance minister, as a province, we had to come up with to finance the project.

MR. LEARMONTH: Yeah. The –

THE COMMISSIONER: Okay, we might need to – I just looked at my watch here now, I didn't realize it was 20 after 11. So maybe we should take our break here. Is that a good time?

MR. LEARMONTH: I could finish a section in probably seven or eight minutes, if that's acceptable? But I'm fine either way.

THE COMMISSIONER: Okay, let's take our break.

MR. LEARMONTH: All right.

THE COMMISSIONER: I'm seeing a few nods, so I better (inaudible).

MR. LEARMONTH: Okay.

CLERK: All rise.

Recess

CLERK: Please be seated.

THE COMMISSIONER: All right, Mr. Learmonth.

MR. LEARMONTH: Yes, before I return to the questioning, Mr. Simmons reminded me that he had sent me an email yesterday, which I hadn't digested properly, which apparently confirms that the Government of Newfoundland and Labrador was given access to that document that we last referred to, the November 19 reconciliation on November 19.

There is no record as to whether access was made, but apparently the document clearly states that the Government of Newfoundland and Labrador was given access to that document. I had said earlier that this was never sent to government, so on the basis of that I stand corrected and thank Mr. Simmons for advising me. We're gonna get the document prepared and it'll be entered into in evidence.

THE COMMISSIONER: All right, that sounds good. Can I ask –?

MR. LEARMONTH: I think I stated that correctly, Mr. Simmons?

MR. SIMMONS: Yes, Commissioner and Mr. Learmonth.

We'd done a report in response to a request during interviews to look to see what could be found out about what happens to documents when they went into the data room that's been discussed, and we've – we provided a report back on March 19 with the available information.

And looking at that information, there is – while there's some limits to the data that you can get out of it at this point, it does, as far as we can determine, confirm that those reconciliation schedules were posted to a data room where people from the Government of Newfoundland and Labrador had access on 19th of November 2013, and that I understand now will be entered as an exhibit.

THE COMMISSIONER: Okay, it's not already an exhibit then, I'm assuming.

MR. LEARMONTH: No, it's not an exhibit, no.

THE COMMISSIONER: Okay, so it will be marked as an exhibit.

MR. LEARMONTH: Okay, thank you.

THE COMMISSIONER: All right, proceed.

MR. LEARMONTH: In volume 2, tab 40, Exhibit P-02684. Can you turn that – to that?

MR. T. MARSHALL: Yes, I have it.

MR. LEARMONTH: Now, this is a December 10 Muskrat Falls Project update.

Was this sent to government? I take it that it was but I'm not sure. Do you know?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: It was?

MR. T. MARSHALL: That – well that, you know, I use – December 10 was the day that the House closed early; it was the last day of the session. It closed for the Christmas break, and that – late that afternoon or, you know, late that afternoon, early evening there was a ceremony in the lobby of the Confederation Building where, I said earlier, the premier spoke and announced that financial close had taken place.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And this – I notice this document is dated the same day, December 10 –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – so it would lead me to think that there was a presentation; that presentation was made to Cabinet or to caucus or both sometime that day. I don't recall it, but that's what I would –

MR. LEARMONTH: But like the first 40 pages or 39 pages are just photographs, there's no – you can just look through there. Do you know what the purpose of this deck is, or?

MR. T. MARSHALL: Well, it's said to be an update, but there's, there's no numbers in it.

MR. LEARMONTH: No, that's what I mean.

MR. T. MARSHALL: There's no, there was no 6.5 in it, and there was no 6.2 in it. There was – there's no expenditure numbers, but –

MR. LEARMONTH: Nothing about cost.

MR. T. MARSHALL: – nothing about the cost, nothing about, you know, what the purpose of the event was going to be, you know, which was to announce financial close, announce that the guarantee had been finalized, announce that the funds were going to flow.

MR. LEARMONTH: Okay. At tab 44, Exhibit P-02035. It's an email from James McLeod – he was a journalist – February 20, 2014, right down at the bottom. He says: "Hi, I'm working on a story from an ATIPPA request I just got back. I was a little surprised to learn that the department hasn't had any communications with the Muskrat Falls independent engineer, and hasn't received any reports."

Now, we've had evidence that the – someone from the Department of Natural Resources – I believe it was Charles Bown – had asked Nalcor to provide government with a copy of the July 2013 draft report from the independent engineer, and we have evidence that the July 16 – that – as I said, the access was given on July 16, 2013 in the data room. We don't have any record, once again, as to whether the Government of Newfoundland and Labrador took advantage of the opportunity to get access, but we do know that they were given access.

Did you ever see any draft reports of the independent engineer?

MR. T. MARSHALL: Well, the only report I can recall is a report that was dated November 29.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And I think I was briefed on that in April of 2014.

MR. LEARMONTH: Yeah, because the November – we have evidence that the November 29 interim report was not sent even to Nalcor at any time, I think it, until February 2014.

MR. T. MARSHALL: It was not sent to Nalcor or to the Department of Natural Resources?

MR. LEARMONTH: Neither. It didn't go to Nalcor at the time of financial close. There are a couple – a few drafts I can get into but I think the evidence is clear; Nalcor did not receive that at the time of financial close. We'll see if there's other evidence that brings that point into question, but I think that's the information we have right now.

Now, we're going into volume 3, a few documents. Tab 51, Exhibit P-02693. This is a – this document is dated April 15, 2014 and in the third paragraph it said – well, the second paragraph: "Nalcor Energy president and CEO Ed Martin on Tuesday blamed rising costs for labour and international supplies among other factors. But he would not confirm a new price tag while major contracts for the dam and powerhouse in Labrador are still being negotiated. Nor would he offer a timeline for any update as the release of fiscal details could jeopardize commercially sensitive talks..."

Now, at this point, April 2014, what was your knowledge as to the capital cost estimates at that point for the Muskrat Falls Project?

MR. T. MARSHALL: Okay, in April, there was – I was briefed on the independent engineer's report but that number was still 6.2.

MR. LEARMONTH: Okay. So even at that point, you didn't know about the 6.531?

MR. T. MARSHALL: The only thing I would say, I – is that I know there was a – well, I've

seen that there was breakdown of the 6.5 that went to the Department of Finance in March, but I don't know if I saw that. I don't know when I actually saw that.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: So, yes, it would still be 6.2 at that point.

MR. LEARMONTH: Now, tab 53, Exhibit P-02695. This is an email from April 23, 2014, Tracy English to Charles Bown and Tina Williams, subject: "Muskrat to Continue Until too expensive: Premier."

Now, you're quoted here – well, in the – this is what it says, "Tom Marshall says development related to the Muskrat Falls project will continue until it's determined that it's no longer the least-cost option. At one point the hydro development was cheaper by \$2.5-billion" and then it goes on.

Second-to-last paragraph: "Premier Marshall says a sanction decision has been made to forge ahead with the development of the dam. But how much" was "too much? Marshall says when Muskrat Falls

"Marshall says \$2.5-billion is a big number, but if it comes to that, then that's when government will have to sit back and review its options."

What did you mean by that on April 23, 2014?

MR. T. MARSHALL: I mean, obviously, there's something – I must've said is missing. Sometimes you get asked a question out of the blue by the media and you don't really know the answer and you talk and you should shut up.

But when we did the CPW analysis at the time of sanction and we looked at these other projects, we knew that the Muskrat Falls Project, based on the information that we had received, was substantially lower in terms of total costs, in terms of preference to the second option, the second-lowest option.

And, again, I think we discussed this – we discussed this further – we discussed this earlier, that at some point – or there could come a point where somebody says: Look, this is getting out

of hand, it's too large and it's time to rethink this and consider your options.

MR. LEARMONTH: Tab 57, it's Exhibit P-02051. This is the report of the Muskrat Falls Project Oversight Committee, Committee Report – July, 2014. You're going to go to page 1, you'll see that Mr. Marshall?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Page 1.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And then we go to page 13 for Exhibit P-02051 and the first paragraph says, okay: "Muskrat Falls Project Budget and Schedule.

"In December, 2012, at the time of Project sanction, the capital cost of the Project was estimated to be \$6.202 billion (referred to as the Decision Gate 3, or DG3, capital budget). At that time, the engineering design was approximately 50 per cent complete. In December, 2013, upon completion of the Federal Loan Guarantee and financing, and in consultation with MWH" – that's the independent engineer – "the DG3 capital cost estimate was revised to \$6.543 billion."

Now – so this is suggesting – now, I don't – it's a little bit unclear. It says: In December 2014, upon completion – so it could be after the federal loan guarantee documents had been signed but, can you shed any light as to any knowledge that you recall having received in December 2013 which put the capital cost estimate at \$6.543?

MR. T. MARSHALL: No, all I know is that I received an email, I think this was – may have been in the binder I had in the first phase. I think I received an email from, I think, the deputy minister of Justice at the time. He was passing on the email, I think, from Todd Stanley, who was passing on an email from Faskens who indicated that – I think it was on December 13 that the funds had flowed.

And, after that, I can only remember going to a federal-provincial meeting in Ottawa at Meech Lake and then going on a first family holiday in

about 10 years and then returning to the province in January of '14. And then there was a press release from the Department of Natural Resources in which I was quoted, as minister of Finance, saying that the number was still 6.2.

So, no, I –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – was not aware of that 6.5 number at that point.

MR. LEARMONTH: Okay.

Tab 67 is Exhibit P-02034. Now, this is a release from Natural Resources and Finance, January 20, right down at the bottom.

MR. T. MARSHALL: Yes, that's –

MR. LEARMONTH: Do you see that?

MR. T. MARSHALL: That's what I was referring to.

MR. LEARMONTH: And this says: Today, the hon. – so it's a joint release. You're the premier at this time, correct?

MR. T. MARSHALL: No, no, I was Finance minister at this time.

MR. LEARMONTH: January 20 – okay, sorry, yeah.

MR. T. MARSHALL: This is just –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: This is a Natural Resources release where they –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – put in a quote from me as minister of Finance.

MR. LEARMONTH: Yes, correct, but it says: "Today, the Honourable Derrick Dalley, Minister of Natural Resources, confirmed that ... direct capital costs for the Muskrat Falls Project is \$6.2 billion, as indicated in the Decision Gate 3 cost estimate" A capital cost

estimate will be provided within the first quarter of 2014.

Now, so this is January 20, 2014, just after financial close and Minister Dalley is saying that \$6.2. Was that your information at the time also?

MR. T. MARSHALL: Yes, it would have to be. Yeah.

MR. LEARMONTH: Yeah, because you were the minister of Finance. So if you had been aware of a higher figure, would you not have done something about that?

MR. T. MARSHALL: Yes.

I mean I would think the numbers would come from Nalcor to Natural Resources and from Natural Resources then to Finance.

MR. LEARMONTH: All right.

Now, I want to ask you some questions about the reliance, if any, that the province put on the reports and work generally of the independent engineer. Can you give me a summary of the – of your understanding about the reliance, if any, that the government placed on the work of the independent engineer?

MR. T. MARSHALL: Well, the independent engineer, as I remember it, was a requirement for the federal government. They wanted to – you know, a rough analogy would be someone is getting a, you know, a builder's mortgage here or a construction mortgage here and the bank – the banks wants an engineer and appraiser to go and look at the project. When you look for money from the bank, when you're looking for a draw, they want someone to go over and look at the project and make sure there's value there for the money they're going to advance.

So it was not unusual, it was normal that the lenders, and the federal government as guarantor, would require this engineer to, you know, check the progress, make sure that good utility practices were being undertaken – making sure that the proper construction was being done and making sure that the – they had an idea of what the cost estimates would be.

That would be for the federal government. Nalcor had to pay for it – or Nalcor's subsidiaries had to pay for it. And – but Nalcor would get a copy of it and I would have expected or assumed that that information would go to Nalcor and that they would pass it on to the province.

MR. LEARMONTH: You would have expected that but you –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – I can tell you that there were a number of independent engineer reports. There was one in March 2013, there was one in July 2013, there was one in October 2013, there was one on November 15, 2013, and there was one on November 27, 2013: all of which were sent to Nalcor.

As I said before, the November 29 one was not received by Nalcor at the time of financial close, but there were a large – you know, fairly – they're extensive documents and the only record we have of the government receiving any was the July report.

Now, can you tell me why – I understand –

MR. T. MARSHALL: I'm sorry – the July draft report was received?

MR. LEARMONTH: July 2013 – well, access was given –

MR. T. MARSHALL: Access was given, yes.

MR. LEARMONTH: – whether anyone saw it or not –

MR. T. MARSHALL: Was access given to the other reports you referred to?

MR. LEARMONTH: Not as far as I'm aware. Okay.

Only the July and that was on the basis that the government didn't ask for any more reports. But would you have expected Nalcor, instead of waiting for a request for the Government of Newfoundland and Labrador – instead of doing that – would you have expected that Nalcor, upon receiving these – this series of draft

reports, would have sent it on to the Province of Newfoundland and Labrador?

MR. T. MARSHALL: Yes. And I would also expect that the province – the department – would have asked for these reports –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – when they arrived.

MR. LEARMONTH: Yeah.

But, you know, Nik Argirov, who was the independent engineer – he worked for MWH first and later for his own company – when he testified he was asked if anyone from the provincial government contacted him asking for reports or any other information on Nalcor Energy's work since the sanctioning of the project. He said: No, never. No one in the government ever asked him for information. And he also said that no one from the government – well, I guess it follows from this – but no one from the government ever inquired as to the scope of his work. You know, what he was doing, what his – he was tasked with.

And his evidence was – I'm summarizing generally – that the Government of Canada instructed him to do a high-level review, not a detailed dive into the cost estimates, a high-level review just to see whether good utility practice had been followed. So he was very clear on that. It was not a detailed review.

MR. T. MARSHALL: Okay.

MR. LEARMONTH: Now, did you hear his evidence or ...?

MR. T. MARSHALL: No.

MR. LEARMONTH: No.

MR. T. MARSHALL: No.

MR. LEARMONTH: Okay. Well, he said that – and it was last week –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – or perhaps –

MR. T. MARSHALL: But he was – the work that he was doing was for the benefit of the federal government.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: Nalcor just had to pay for it.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: The provincial government – we'd made a decision to go with this at sanction.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And – but, obviously, if that information was available to Nalcor, Nalcor would share it with the government and the government would have access to it.

I'm just trying to think. No, I lost my thought.

MR. LEARMONTH: Okay, well anyway –

MR. T. MARSHALL: Oh, I'm sorry. I remember.

When the Oversight Committee was put in place, the Oversight Committee made an arrangement with the federal government and with the independent engineer so that the Committee could have access to that information.

MR. LEARMONTH: Yeah. That's the Reliance Agreement that was signed by the province and the other parties, where Newfoundland was given access to the work of the independent engineer. But that was –

MR. T. MARSHALL: Yes, and the –

MR. LEARMONTH: – not before –

MR. T. MARSHALL: – right to sit in on all phone calls and –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – go with him on site visits and because – it was my understanding that the report was – his – the IE's report was for

the federal government. We wouldn't have it until this arrangement was made that the federal government agreed that the independent engineer could give us that information.

MR. LEARMONTH: Yeah, but you could've got it from Nalcor, I mean –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – like you did with the July 2013 –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – report.

MR. T. MARSHALL: I know that. I see that now.

MR. LEARMONTH: Yeah.

And the Reliance Agreement was dated well after financial close. So, you know, it seemed to be an unusual time to make those arrangements. Anyway, there was no contact between the independent engineer and anyone in the province – in the Government of Newfoundland and Labrador at any time up 'til, I guess, to –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – some time in 2014. Does that –

MR. T. MARSHALL: Right. The –

MR. LEARMONTH: – surprise you?

MR. T. MARSHALL: Yeah, I'm surprised if they had it, it wasn't sent over. I'm surprised that, you know, officials in the department didn't ask for it.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: I do recognize that, you know, government or Nalcor had made – you know, this decision had been sanctioned, we were going ahead with it. And now it was for the federal government to be decided – to decide if they were going to guarantee the loan.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So this was all being done for their benefit and for their protection.

MR. LEARMONTH: Right.

MR. T. MARSHALL: We made the decision to sanction. But obviously, again, if you had this extra information and not take advantage of it –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – you know, it's a major – and I know later when the Committee – one of the things the Committee looked at is whether they've hired their own engineer.

MR. LEARMONTH: Right.

MR. T. MARSHALL: And it was decided, well, the independent engineer is now doing it for the federal government, why not try to take advantage of that as opposed to hiring somebody – a separate one?

MR. LEARMONTH: Yeah.

Well, we're going to get into some of the contents of the draft reports, which would've been available to the government if it had asked for it or if Nalcor provided it. But –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – do you – don't you agree that – although it's important to have the reports at any time that the critical time is before financial close, to get the reports of the independent engineer?

MR. T. MARSHALL: If the independent reports – or sorry, if the reports, being done by the independent engineer, were available to Nalcor and they could be shared with the province, then yes, of course.

MR. LEARMONTH: Of course, okay.

Now, if you go to – let's see – volume 3, tab 63, P-02175. Do you see that?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah, and it will come up on the screen. If we can bring up the report that's starting on page 3.

So this is the report – this is the draft July 12, 2013, report that Mr. Meaney testified he arranged for the Province of Newfoundland to have access to. Whether it was – the access was exercised, we don't know, but this is the report.

MR. T. MARSHALL: I'm sorry, would you repeat that?

MR. LEARMONTH: Okay.

The evidence of James Meaney from Nalcor was that pursuant to a request from, I believe, Charles Bown to see the July 2013 draft report, he arranged for access to be given to the Province of Newfoundland on July 16, in other words, access to the report.

MR. T. MARSHALL: Okay.

MR. LEARMONTH: Now, he doesn't know whether access was availed of. In other words, he doesn't know whether the Province of Newfoundland – even though they had made their request – whether they actually saw the report but they had –

MR. T. MARSHALL: Okay. Mr. Bown, the deputy minister of Natural Resources, was looking for it.

MR. LEARMONTH: That's what he said.

MR. T. MARSHALL: Yeah. Good.

MR. LEARMONTH: But whether he saw it or not, I don't know, we'll have to ask Mr. Bown.

MR. T. MARSHALL: Right.

MR. LEARMONTH: But, anyway, this is the report that the Province of Newfoundland had access to, and if we turn to page 3, this is: *Independent Engineer's Report Lower Churchill Project*.

THE COMMISSIONER: You can see it on the screen. You have to look at it on the screen, Mr. Marshall. I don't think the whole report is (inaudible).

MR. T. MARSHALL: Okay, thank you.

MR. LEARMONTH: The whole report is not, it's just the first page is there. So you have to look at the screen.

You see it's draft July 12, 2013.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay.

Now, if you go to page 95, go down to 5.1.2. You can see at this stage they just started their work: "**Evaluate Cost Estimate and Fixed Price Estimates**

"Currently under review. No comments are yet available. MWH and Nalcor agreed to update this section once more large contract bids are received."

Okay, so there's nothing specifically on – with respect to evaluating cost estimates. You see that?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay.

But then turn to page 187 and going down to the second-last paragraph of this draft report. It says: "By arriving at the contingency levels used as input to the pro forma following a multi-faceted Project Risk Management Plan, and using AACEI's recommended practice, Nalcor has adopted a reasonable approach in the interim period. However, they have arrived at some figures that do not compare well to those used in other similar projects we have reviewed. The IE typically sees contingency allowances in the range of 12 percent to 18 percent at this state of project development."

Now, Nalcor had used 6.7. Now, I'm asking you this: If you had seen this report – and your government had access to it according to Mr. Meaney – wouldn't that have jumped out at you?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: That's an early warning signal of –

MR. T. MARSHALL: Yes, it's an indication that the amount of contingency is lower than what they normally see. So that would've been a concern.

But you mentioned 6.7, I thought the number was 6 and I thought the number was within the range of the AACEI's recommendation –

MR. LEARMONTH: Not in this draft. The numbers switch back –

MR. T. MARSHALL: Okay.

MR. LEARMONTH: There's some switching.

MR. T. MARSHALL: Okay.

MR. LEARMONTH: But at this stage, what I'm – the point I'm asking you about is that, you know, if you'd seen this report –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – wouldn't it have jumped out at you; we'd better –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – dig into this?

MR. T. MARSHALL: Yes, it would.

MR. LEARMONTH: Yeah.

Now, in terms of the reliance that you believed that you could put on the work of the independent engineer, I want you to turn to tab 3, volume 1, and on page 14 – Exhibit P-02653.

MR. T. MARSHALL: Sorry, what page, Mr. Learmonth?

MR. LEARMONTH: It's tab –

MR. T. MARSHALL: I know –

MR. LEARMONTH: – 3 –

MR. T. MARSHALL: – where you're going but –

MR. LEARMONTH: – page 14.

MR. T. MARSHALL: Page 14, yeah.

MR. LEARMONTH: And you say, at the bottom of the right-hand column on page 14, in answer to a question from Ms. – leader of the NDP –

MR. T. MARSHALL: Ms. Michaels [sp. Michael].

MR. LEARMONTH: Ms. Michael, yup.

MR. T. MARSHALL: Mmm.

MR. LEARMONTH: So there's some questioning – so it says, right in the middle of the page: "So I ask the Premier: Does the federal government allow her access to the independent engineer's reports?" And, you know, hear, hear; the hon. the minister of Natural Resources; hear, hear.

Then you say: "Thank you. Mr. Speaker, the loan guarantee does" not "call for the provision of an independent engineer. The independent engineer will be paid for by Nalcor. The independent engineer will make sure on behalf of the people of the Province and on behalf of the government of the Province that" the "project proceeds in a robust, fair, economically feasible and fiscally feasible manner."

Now, on what basis did you feel comfortable making that statement when you didn't even know what the scope –

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: – of the independent engineer's work was?

MR. T. MARSHALL: The last sentence is incorrect. The first two sentences are correct.

MR. LEARMONTH: Yeah.

But, you know, my question is you obviously believed that to be true at the time, the whole statement.

MR. T. MARSHALL: What was the date of the – March –

MR. LEARMONTH: This is –

MR. T. MARSHALL: Is this March?

MR. LEARMONTH: – this is March 21 –

MR. T. MARSHALL: (Inaudible.)

MR. LEARMONTH: – 2013.

MR. T. MARSHALL: February-March.

Okay, I was, I guess at that point, I was aware of the engineer and the role the engineer would play, but the comment I made there is incorrect, that's all –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – I can tell you.

MR. LEARMONTH: Yeah, because you wouldn't really be able to say anything in retrospect –

MR. T. MARSHALL: No.

MR. LEARMONTH: – would you?

MR. T. MARSHALL: I would've said that, you know, the engineer's report, if it's available to us, would be helpful, but the last part of it is not correct.

MR. LEARMONTH: But having received this question, did it not occur to you that, you know, that's a good point, like, we should make sure we get these reports and make arrangements with Nalcor or the Government of Canada?

MR. T. MARSHALL: I think at that stage I would've simply assumed that the reports would've been available to Nalcor and available to the province, and they'd be looked at.

MR. LEARMONTH: All right.

Now, as I said, there are a series of report, I'm not going to go into all of them, I just want to refer to the November 15 report, just to illustrate another relevant point, I believe.

This is at tab 27 and this is Exhibit P-01949. You see that? The whole report is here, so it's not like the earlier one.

MR. T. MARSHALL: What's the date of that one? November 15.

MR. LEARMONTH: It says November 15, 2013, so a couple weeks before financial close.

MR. T. MARSHALL: It's tab what? I'm sorry.

MR. LEARMONTH: It's tab 27, volume 2.

MR. T. MARSHALL: All right.

MR. LEARMONTH: Do you have it, Mr. Marshall?

MR. T. MARSHALL: I do.

MR. LEARMONTH: Okay.

I'd like you to turn to page 152.

Okay. Now the first full paragraph beginning with, "Nalcor qualifies." Do you see that?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: "Nalcor qualifies the DG3 cost estimate as an AACEI Class 3 effort. The IE agrees with this classification and confirms the implied accuracy range (-20% to +40%)." Were you aware of what was implied by the AACEI Class 3 effort according – ?

MR. T. MARSHALL: I know there's different levels of accuracy and I think this would have been number 3 and – but before financial close I thought there was going to be number 2 and then midpoint – midway through the project there would be another one, number – class 1 process.

MR. LEARMONTH: Yup.

But then it says, "However, as noted in the *Decision Gate 3 Capital Cost and Schedule Estimates Summary Report*, a Class 2 AACEI-compatible cost estimate is required at the time of Financial Close." So that's a higher level than the 3.

MR. T. MARSHALL: Right.

MR. LEARMONTH: "The IE is not aware of any ongoing efforts by Nalcor to upgrade the capital cost estimate to support Financial Close

with a higher degree of accuracy. As well, Nalcor has committed to completing a Class 1 cost estimate upgrade of the cost estimate at the mid-checkpoint of the project. The IE urges stakeholders to request these cost estimate updates from the project developer to ensure the most accurate project budget is available for inspection and proactive budget control.”

Now, if you had read this at the time, would that not of caught your attention?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: That’s a fairly serious situation, isn’t it?

MR. T. MARSHALL: Well, he’s certainly recommending that – he’s urging stakeholders, which would be the government –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – to request an update of the cost estimate prior to financial close.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And a even more accurate one, midpoint – midway through the project when, you know, more contracts are in and more – and the engineering is complete.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So, yes, it would have caught my eye.

MR. LEARMONTH: Yeah that’s important information isn’t it?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah.

And the next paragraph says: “While Nalcor adopted a theoretical P50 contingency based on analytical modeling (i.e., range uncertainty) of the project’s sub-element summary budgets, the IE expresses the opinion that the calculated overall 6.7% scope contingency is aggressive relative to our legacy experience with similar remote heavy-civil construction endeavors that typically have a contingency reserve for known,

but not specifically quantified risks approaching double to quadruple what is currently provided for LCP. The IE is not aware of separate management reserve allowance to fund or accommodate unknown risks or changed field conditions as is typical practice for these types of projects. As per AACEI practice, the scope contingency is assumed to be spent during project execution while the management reserve is considered not to be spent in entirety during project execution.”

Now let’s go back to that, the statement that: “... relative to our legacy experience with similar remote heavy-civil construction endeavors that typically have a contingency reserve for known, but not specifically quantified risks approaching double to quadruple...” and the effect of that, if you do very simple math, if you take the quadruple, I realize that’s on the extreme, but if you take the 367 million and quadruple it, multiply it by four, you get –

MR. T. MARSHALL: You mean take the 6.7 per cent and quadruple it?

MR. LEARMONTH: Well, the amount. The amount of it is 368 billion.

MR. T. MARSHALL: Okay.

MR. LEARMONTH: What I’m saying is that if it’s quadruple, you know, if this is what the – they were expected to have seen, that could be an increase of a billion dollars. And that’s a big number, isn’t it?

MR. T. MARSHALL: Yes, it is.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: So once again, you know, if you had seen this information, would that not have been a very – you know, would that not have caught your attention and would you have not done something about it?

MR. T. MARSHALL: Well, the – very much so. That it’s aggressive relative to their experience with similar projects, I think at the time if I read it I might have been a bit confused about the scope contingency versus management

reserve, because those – I wasn't aware of those concepts. But what jumps out at you is the fact that the contingency was – should've been as much as four times higher. That would've jumped out at me.

MR. LEARMONTH: Well, in fairness, it's at the extreme, two to four, you know, it could've been three or something like that, but it's at least double.

MR. T. MARSHALL: Yes, but it would've made me aware that our contingency was low.

MR. LEARMONTH: And as a person that is, you know, you're focused on the numbers, I suggest to you that that would've caught your attention in a very big way –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – if you had known it. Is that correct?

MR. T. MARSHALL: Yes, yeah. I knew there was contingency, we didn't break it down, but if it was considered that low compared to the others of what was normal for this IE, of this independent engineer, yes, that would've (inaudible).

MR. LEARMONTH: Now there's some modification of language in the November 29 report, but I'm just asking on the basis that if you had seen this –

MR. T. MARSHALL: If I had seen it, yes –

MR. LEARMONTH: – on November – yeah.

MR. T. MARSHALL: – but that's not what –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – I saw, of course.

MR. LEARMONTH: Yeah. And then if we go to the next paragraph: "As the project moves into full scale field execution with the award of CH0007 ..." – that's Astaldi – "the IE would advocate for re-thinking and reauthorization of the project contingency fund. Due to significant overruns recently recognized with the award of CH0007, the project contingency fund is

considered to be spent at this time and unavailable for future unknowns and risks associated with the field construction phase for all sub-project elements of the multi-year project. The IE believes the drivers on contingency will be varied and not entirely predictable as the project unfolds over the next several years. Issues associated with budget estimate accuracy, baseline schedule accuracy, uncompetitive market conditions, directed scope changes" et cetera, et cetera "will consume contingency on a remote large-scale heavy-civil" project. That's quite – that's of concern, too, isn't it, if you had known about that at on November 15?

MR. T. MARSHALL: Yeah, it certainly would've been. You know, at the time of sanction government was very positive about this, we thought we were doing the right thing and that this was going to be a good project for the province, provide the people with, you know, stable electricity prices and provide revenues to the province for other investments. But this would've – this obviously would've jumped out.

MR. LEARMONTH: Yeah. But do you agree with me, Mr. Marshall, that by not getting these reports from the independent engineer, by not, you know, requiring Nalcor to provide them or by not getting them from Canada and the independent engineer, that the province took a great risk with this project? I mean, you have available information that's very pertinent to the cost estimates, you could've got it and you didn't. Isn't that a serious omission?

MR. T. MARSHALL: If we could've had it, it was available to us, and we couldn't get it, yes.

MR. LEARMONTH: Yeah, you agree.

MR. T. MARSHALL: But given our relationship with Nalcor, we also would've expected this type of information would come to us. But yes, if we knew it was there, we should've – if we knew it was there and we knew that we were entitled to it, we were allowed to look at it, then yes.

MR. LEARMONTH: Well, I mean, we don't – we're all – we're talking looking back in the past, in hindsight. But Nalcor gave you the July

2013 report, gave you access to it. So there's no reason logically (inaudible) –

MR. T. MARSHALL: Mr. Bown – evidently, you mentioned Mr. Bown went looking for it.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So I would think the department would have it, that previous report. And if the department had it, I would assume I had it.

MR. LEARMONTH: Yeah, okay.

Volume 2, tab 31. That's Exhibit P-02682. This is a November 19, 2013 release from Natural Resources. It says – the second dot – “Never before in the history of this province has a project undergone such scrutiny, and never before has such detailed information been publicly available – a testament to the Muskrat Falls Project's openness and transparency.”

Now, based on what you know now, and I know this is – there's a heavy element of hindsight in it, but based on what you know now, would you have subscribed to that view on November 19, 2013?

MR. T. MARSHALL: The – this is written by communications people. We would've been under the belief at the time that given the number of reviews and – first of all, given our confidence in Nalcor and the people that were running it and the people that were working for Nalcor, and the reviews that were done by different people like IPA and Validation Estimating and Navigant and so on, we would've believed yes.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: But now we know that there appears to be information that was available that was not brought to our attention that should've been.

MR. LEARMONTH: Yeah.

So that would affect – so I take it that you would not make that statement today?

MR. T. MARSHALL: No.

MR. LEARMONTH: No.

And in terms of Nalcor being transparent – open and transparent, based on what you note, today, would you state, from your position there, that you believe that Nalcor was open and transparent with government?

MR. T. MARSHALL: You know, the leadership of Nalcor were always available to us. They would come over and brief us when we asked. But this information here should have been brought to our attention.

MR. LEARMONTH: So that suggests there was a lack of transparency, doesn't it?

MR. T. MARSHALL: It would.

MR. LEARMONTH: Would.

MR. T. MARSHALL: It would.

MR. LEARMONTH: I'm going to ask you a few questions – I don't want to take up any more time than I have to but I want to ask you a few questions about the Oversight Committee which, I think, you were instrumental in establishing in March 2014. Is that correct?

MR. T. MARSHALL: Well, the government, you know, when I became premier –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – you know, it was raised. We discussed the issue. It was not only me, it was the whole Cabinet and with a great help from the clerk, Julia Mullaley, who – we were looking for more oversight because the people of the province were looking for more oversight. There were a lot of critics who kept saying there's not enough oversight and we were not aware – I don't think any of us were aware what additional oversight we can offer.

So, we looked for help to the professionals in the civil service and the clerk gave us a suggestion at the very first Cabinet meeting that I chaired and they came back in March with a recommendation that – and we accepted it and went with it for this Oversight Committee.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: It wasn't just me. It wasn't the whole team. It was the whole Cabinet.

MR. LEARMONTH: Well, in retrospect, wasn't the proper time to set up an Oversight Committee after sanction, or before sanction even?

MR. T. MARSHALL: The – I think from my experience before I came into government, that oversight would have been provided by the board of directors and by its experts – the people it hired – like its lawyer, its accountant, its financial advisors, its engineering advisors.

But given the political situation, given the importance of the project and given the, you know, the – you know, it's at 5 billion – or a 7.4-billion-dollar project. The people wanted more, so the question is: What else can we do, or what else should we do to provide additional oversight? And that's what we were looking for and – so the clerk and the professional services – civil servants gave us this recommendation, which we accepted.

MR. LEARMONTH: Yes.

Now, if we go to tab 49, P-02691. This is a presentation to Cabinet, March 13, 2014. And it refers to the persons who will be on the Oversight Committee. And they're all senior government officials.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: And undoubtedly well-educated, intelligent, hard-working – all those things. But what's the point of putting this group of people on an Oversight Committee when, as far as we know, none of them has any experience on megaprojects at all?

MR. T. MARSHALL: First of all let me say that in addition to what I said previously, this Oversight Committee was also to help us because we, the Members of Cabinet, didn't have this experience either. And, I think we knew what we didn't know and we were looking for professionals to review the oversight that was available out there, to identify gaps, to provide additional oversight that was appropriate and to advise – make recommendations to

Cabinet, to report directly to Cabinet, and then Cabinet would give directions to the appropriate departments.

And in terms of expertise – you're talking about the civil servants here – I would point out that in addition there was – Ernst & Young were hired; their capital projects team –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – were hired to provide that additional expertise, that engineering expertise, the project management expertise. So, that's point number one.

Point number two, there was – in addition to the members of the committee there was a working group. And on that working group there were people with experience in project management; there were people in experience with engineering. (Inaudible.)

MR. LEARMONTH: Who were they?

MR. T. MARSHALL: Hmm?

Sorry, did you –

MR. LEARMONTH: Who were those persons?

MR. T. MARSHALL: Well I know – I think the deputy minister and I think the assistant deputy minister of Transportation and Works were engineers who were on the Committee. There were accountants on the Committee; there were lawyers on the Committee.

And, in addition to that – so you've got the engineer, you got Ernst & Young, you've got the working group, and also, as I said previously, the Committee formalized the relationship with the Government of Canada and the independent engineer so they could use the engineer – the independent engineer – because they were giving consideration to hiring their own independent engineer. And it was determined that, rather than do that, since Nalcor were paying it – for it anyway, that why don't we make arrangements with the federal government to get their permission for us to use the independent engineer?

So you had that expertise on that committee, I would suggest.

MR. LEARMONTH: Right.

Now, are you familiar with the evidence, or part of the evidence of Professor Guy Holburn?

MR. T. MARSHALL: I read it, yes.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Yes. I wish I had seen it when I became minister of Natural Resources many years ago.

MR. LEARMONTH: Why do you wish you'd seen it?

MR. T. MARSHALL: Well, you know, to – an expert in the governance of – oversight of Crown corporations. And, you know, what – I was surprised that – essentially, what he was saying is that you leave it to the board, and you let the board hire the experts.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: Now, for us, I don't think the people of the province would've been happy with that. I think they wanted more; they were looking for more from the government. And – but that gets into a discussion of the board and what we did with the board.

MR. LEARMONTH: Yes, yeah.

But do you agree with one of the points that Professor Holburn made, if not in his report then in questioning, that you have to have someone on the board of directors who knows what they're talking about –

MR. T. MARSHALL: Yes.

MR. LEARMONTH: – so that they can ask the right questions. You can have people that are –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – you know, as I say, intelligent and qualified, well-educated but –

MR. T. MARSHALL: Right.

MR. LEARMONTH: – if they don't know anything about a megaproject, they won't know what questions to ask Mr. Martin and management when they come forward.

MR. T. MARSHALL: Well maybe a hydro project in particular.

MR. LEARMONTH: Yeah, yeah. But – now, I'll give you an example just to make sure you understand my point.

I can't say anything with certainty but I'm fairly confident that if someone with experience on megaprojects had been on the board of directors of Nalcor, one of the first things that would've jumped out at that person is: Hold on now, show me your risk assessment –

MR. T. MARSHALL: (Inaudible.)

MR. LEARMONTH: – report. Do you agree with that?

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah and, that's an important point, isn't it?

MR. T. MARSHALL: It's very important; the whole cost estimate is important, especially the risk piece but, yeah. We – I can only speak for myself – was not aware of risk analysis and what they did, you know. We weren't aware of the different tactical risk versus strategic risk; we weren't aware of quantitative risk –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – analysis and Monte Carlo's –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – simulations that – we just weren't aware. I thought, when companies had risk officers, it was essentially insurance.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So I wouldn't have known – I mean, I asked lots of questions, as did every other member of the Cabinet. And Mr. Martin would come in with his senior people

and we would grill them, we would. And I was encouraged by Premier Dunderdale; I was encouraged by Premier Williams to challenge and to push back and – but since we didn't know – if we didn't know about the risk analysis, we wouldn't know how to – about asking questions about what contingency are you using for tactical? What are you using for strategic?

We knew there were risks, no question about that. We knew that there was a contingency built into the estimate, but we also knew that anything above the 6.2 capital cost or the 7.4 capital – total cost, we were on the hook for that and we knew – Mr. Martin made it very clear to us that there were unknowns that they may have missed, and that if that happened, we were going to have to come up with more money. We understood that. And we understood as well that there were risks that were being mitigated and if the mitigation efforts did not work, we'd have to come up with more money and –

MR. LEARMONTH: But –

MR. T. MARSHALL: I'm sorry, go ahead.

MR. LEARMONTH: – do you agree there's a difference between – knowing what you just said that, you know, any megaproject, if you pull – if there was an announced megaproject in Ontario, anyone with any sense would say: Well, their budget is this but it'll go over that. You know, anyone would say that.

MR. T. MARSHALL: A lot of people would say that.

MR. LEARMONTH: But that's different from a situation where, as here, Nalcor actually had information before financial close that the budget was gone, that the contingency was gone, so that's a different type of situation, isn't it? It's actual knowledge.

MR. T. MARSHALL: Yes, it is. You now have numbers. You now have numbers; the estimates are now more accurate. And if you were aware that the contingency that was in it had been eliminated, yes, that is a difference.

MR. LEARMONTH: Okay.

Those are my questions. Thank you very much, Mr. Marshall.

MR. T. MARSHALL: Thank you, Mr. Learmonth.

Can – there's just one other thing I'd just like to add.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: In addition to the May 11 attempt at oversight, there was also a Cabinet meeting in April of 2012 in which oversight was discussed again and it was – the question was raised that, you know, at this point, the – this was late April 2012, so at this point the PUB was done and the decision had been made to go with MHI, as an independent analysis, but there was also concerns expressed because of what people were saying, that there be an examination of other options for oversight and Premier Dunderdale directed that departments – that Natural Resources and Justice and Finance explore other options for oversight – additional oversight that might be available. And that work went on, but it seemed to have disappeared.

MR. LEARMONTH: It disappeared?

MR. T. MARSHALL: It kind of – but I – like, at the time, you know, with politicians, you know, you're so busy. Sometimes you make a decision and in your mind, that's done. You've done that. And then it might be a year later someone will come in and say: You remember you made this decision over a year ago and now we got the work done. There's a tendency sometimes to think that once you've made the decision, it's done.

And I know when I went to Natural Resources at the – well, in January of 2013, I saw a reference to a work plan for Nalcor – or for the department, I should say, Natural Resources – for 2013, which indicated that an MOC had come out of that Cabinet meeting I just mentioned and that that work was being done. And I – nothing happened. Nothing happened and then I know when I went back to Finance in November – or, I'm sorry, in October 9 of that year, from emails that I've seen, Donna Brewer and I had a discussion and then there was some email chatter between her and other officials and

I know they were working on it. And then – but nothing happened that year either. And then when I went to premier that was – we raised at that first Cabinet meeting and that's where the Oversight Committee sprung from.

But I now realize that the work of the Oversight Committee in – or in the setting up of the Oversight Committee, they would've been informed by some of the work that had been done previously. That seemed to fall away. And I found out not too long ago that a former chair of the PUB, Robert Noseworthy, and the Department of Natural Resources had also hired a company called Power Advisory, looking at the same issue: What oversight would you need during the construction phase and what oversight would you need in the operations phase? But there seems to be clashing opinions and I guess nothing happened and it just disappeared.

And the only other thing I'll say is that when I became Minister of Natural Resources, initially in January – middle of January 2013, Mr. Martin and I had a discussion about the board. And I had recommended at that time that when we went through the people that were on the boards and, you know, some very well qualified people with great reputations, but what jumped out at me was the fact that there was nobody on the board that had that expertise – that had the expertise of megaprojects or certainly hydro projects. And I suggested to him that he should go and find one and – but that decision got overruled –

MR. LEARMONTH: By who?

MR. T. MARSHALL: – and then in – I guess when I became premier in January of 2014, Mr. Martin and I had a meeting on the 7th – I think the 14th of February, where he brought – sorry – a deck to me which indicated all the corporate governance things that they had done. And there were quite a few of them that the board had done, so full credit to them for that, too. And – but there were two things missing. One was to get a skills matrix done to hire a headhunter to make a list of skills that were needed on the board, and then go and look for those people for ultimate appointment to the board.

And so I said to Mr. Martin: Do that, go hire your hunter to do that. But I said: Go and get two people with engineering and hydro experience to go on the board. That didn't happen. But in 2015 I saw, in the evidence here, that Premier Davis and his Cabinet received the report from the headhunter and there was a press release announcing that that had been done. So, I guess, efforts were made to put that expertise not only on the Oversight Committee, but also to put it on the board and it just – sometimes things in government just don't happen as quickly as you like. But I was glad to see that the work was ultimately done.

MR. LEARMONTH: You said earlier that you were overruled in one of your initiatives. Who –

MR. T. MARSHALL: Well –

MR. LEARMONTH: – overruled you?

MR. T. MARSHALL: – basically, you know, when I told Mr. Martin that I think you should go hire – you know, get the headhunter to do this skills matrix to find out what type of people we needed on the board, but I thought initially just go get two people with – people who had experience in building hydro projects in Northern Canada.

MR. LEARMONTH: Yes.

MR. T. MARSHALL: And he said – well, he thought it was a great idea and he said that would be very helpful to him, but it was gonna cost us – it would cost. And we don't – I mean apart from maybe the Liquor board and the Housing board, I don't know if we pay any – if we pay very much to any people.

We ask our citizens to go on these boards for government that there's no pay or, you know, you might get your travel. So people do it to help out, to take part. And the premier's office had a different view that they had plans for the board so I was overruled.

MR. LEARMONTH: By Premier Dunderdale?

MR. T. MARSHALL: By the premier and her office but it was – she had a plan.

MR. LEARMONTH: Right.

MR. T. MARSHALL: And Minister Kennedy, I think, in 2012 had made four or five appointments to the board. And at that point I was a new Natural Resources minister. Premier Dunderdale had either been the minister or premier for, what, six, seven years. She was much more experienced than me on these issues. She had a national reputation in terms of national energy policy, so naturally I deferred to her. But when I became premier I said – I got Mr. Martin in and I said: Look, do it and it didn't happen.

MR. LEARMONTH: Okay, good.

(Inaudible) is that everything you wanted to say, Mr. Marshall?

MR. T. MARSHALL: No, I'll probably think of some things while I'm in bed tonight.

MR. LEARMONTH: Well, you'll be cross-examined, so you can think about them and ...

MR. T. MARSHALL: Oh, yes, right, right. Sorry.

MR. LEARMONTH: It's not over yet.

Okay, well, thank you very much.

MR. T. MARSHALL: Thank you.

THE COMMISSIONER: All right, it's past our 12:30 break, so we'll break now and we will come back for cross-examination this afternoon.

MR. LEARMONTH: Can I make one more point? That we have – we had two witnesses scheduled for today, Mr. Marshall and Ms. Dunderdale. Now, obviously, we're not going to be able to accomplish that. Would you be in a position to advise counsel what the backup plan is since it seems like we are going to need one?

THE COMMISSIONER: I don't have a backup plan other than the fact that we maintain our schedule. But recognizing the importance of these two witnesses, obviously, I have to recognize the fact that they're going to be a little longer, so I'll judge that as we move along.

I think on Friday evening – to be very fair to everybody here, I have no intention of sitting

beyond Friday evening. We have a break planned and I know from some of you that you already have travel plans and whatever, so it's out of the question that we're going to be sitting on the weekend or during the time of our break. So I guess I'd like to judge it.

I – what I understand, based upon what I was told, was that it was doable to do Mr. Marshall and Ms. Dunderdale in about a day and a half and we had enough space in the schedule for this week with the last three groups of witnesses to make up the time for that.

So let's just see where we're going and I'll see how long Mr. Marshall takes and then I'll see if we get started with Ms. Dunderdale. Then I'll have to do a retake and see what we're going to do. I don't want to give up the schedule lightly, for obvious reasons, because when we come back it's just as busy as this, so – but we'll look at it and we'll see where we are after we see –

MR. LEARMONTH: Okay. Thank you.

THE COMMISSIONER: – see where things go.

All right, so we'll adjourn until 2.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: All right.

All right, Government of Newfoundland and Labrador.

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: Okay. Nalcor Energy.

MR. SIMMONS: Good afternoon, Mr. Marshall.

MR. T. MARSHALL: Mr. Simmons.

MR. SIMMONS: You know me as Dan Simmons, for Nalcor Energy.

A few follow-up questions from your evidence this morning, and I'm going to go first to Exhibit P-02842, Madam Clerk, please.

I'm not sure if you looked at this this morning, but I believe you may have referred to it in your testimony. It'll come up on your screen if it's not in the – I don't have the list here. Here we go.

THE COMMISSIONER: That's not in your –

MR. SIMMONS: It's at –

THE COMMISSIONER: – that's not in your materials, so you'll have to see it on your screen.

MR. SIMMONS: It's pencilled in here as tab 68, I think, on my list. 02842. Yeah.

So this is, I think, the message you referred to from Donna Brewer to you on November 8, 2013, mentioning the possibility of a revised project cost estimate.

MR. T. MARSHALL: Yes.

MR. SIMMONS: Right. And this is from Ms. Brewer. She was your deputy minister at the time?

MR. T. MARSHALL: Yes.

MR. SIMMONS: And it's also copied to Paul Myrden. What position did he occupy in Finance?

MR. T. MARSHALL: Paul was director of Debt Management.

MR. SIMMONS: Okay. And I've – we've heard his name along the way. I think he was the gentleman who was very closely involved in working with counterparts at Nalcor concerning putting the financing arrangements in place. Did you understand that?

MR. T. MARSHALL: I understand that he and Donna – Donna Brewer – were Finance's representatives on – along with Natural Resources and Nalcor in terms of what they

were trying to accomplish with respect to the guarantee and seeking the financing and so on.

MR. SIMMONS: Good. And who was Peter Au?

MR. T. MARSHALL: Peter Au was assistant deputy minister.

MR. SIMMONS: Okay.

So this message went to both of them as well as to you.

MR. T. MARSHALL: Yes.

MR. SIMMONS: And the third paragraph there reads, "Until Paul and I see the wording (being looked at over the weekend), it is difficult to assess the financial impact." And that seems to be in reference to an issue that was being worked on that's referred to above.

And then it says: "Our current thinking – At Financial Close, a revised project cost estimate will be provided (by the Independent Engineer) and that will form the new project baseline (not the DG3 numbers)."

Now, did you recall these events, any discussion around this prior to seeing this email message and being reminded?

MR. T. MARSHALL: No, but I – you know, I know where it fits. I know it was a discussion –

MR. SIMMONS: Yes.

MR. T. MARSHALL: – of something called the – it was an escrow account called the COREA account.

MR. SIMMONS: Yes.

MR. T. MARSHALL: And it was the federal government wanted Nalcor to – if there were cost overruns or forecasted overruns, they wanted those to be pre-funded in this special escrow account.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: And I know from this email and subsequent emails that that was being worked upon.

MR. SIMMONS: Right.

MR. T. MARSHALL: And I noticed the email indicates that they expected a new number –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – would be forthcoming.

MR. SIMMONS: Right.

And the message goes on, and I think the – what’s being discussed in the rest of that paragraph is consistent with what you’ve just said about the cost overrun escrow account. And it says: “From that time forward, any changes resulting in higher project costs, the Province / Nalcor will have to fund the difference by placing funds in what we believe may be some sort of escrow account.” So it appears it’s not worked at this point. “Paul thinks if it is a budget appropriation issue for us it may arise beginning in 2014/15 vs. 2013/14.”

So let me ask you: do you recall there being a connection between whether the government might have had to put in more equity than was budgeted in the 2013-2014 year unless this adjustment in the project cost estimate was made from DG3 up to a new, more current number at time of financial close?

MR. T. MARSHALL: I never thought of it in terms of costing us more equity.

MR. SIMMONS: Yes.

MR. T. MARSHALL: It was – the equity was going to be the same. It was just that the equity would have to come up earlier.

MR. SIMMONS: Earlier.

MR. T. MARSHALL: Right. Because it wouldn’t – the demand for equity – for the –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – government’s equity would not just come when the equity was needed. It would come when it was forecasted.

MR. SIMMONS: So, it might have come up at a time when it had not been budgeted in the provincial budget to put the money in as opposed to at a later point.

MR. T. MARSHALL: Yes. Because this is when – this is –

MR. SIMMONS: Hmm.

MR. T. MARSHALL: – November?

MR. SIMMONS: Yeah. This is November 8.

MR. T. MARSHALL: Yeah. So, we now have only November – we’re getting – well, we’ve got what? Four or five months –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – until the end of the fiscal year.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: Money has been budgeted in that budget.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: If more money is needed sooner –

MR. SIMMONS: Hmm.

MR. T. MARSHALL: – and it’s not in the budget, that would mean that the department would have to maybe go for supplemental supply –

MR. SIMMONS: Right.

MR. T. MARSHALL: – or wait ’til the next budget’s out.

MR. SIMMONS: Right.

So is this why the details of how the cost overrun escrow account was going to work was of particular interest to the Department of

Finance? Because it would affect the timing of payments that would have to be made into account and potentially have an effect on the budget?

MR. T. MARSHALL: That was the concern.

MR. SIMMONS: Yes.

MR. T. MARSHALL: But, of course, I would have been interested since – just to – on the 1st of November, I was looking for the cost numbers –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – looking for the equity numbers in anticipation of being asked the question in the House.

MR. SIMMONS: Right.

MR. T. MARSHALL: So I would've – my interest would have been piqued by the fact that there was going to be a new number coming.

MR. SIMMONS: Right.

MR. T. MARSHALL: Yeah.

MR. SIMMONS: And it's clear from this message that you're being told here on November 8 that there's going to be a new number –

MR. T. MARSHALL: Yes.

MR. SIMMONS: – a different number than at DG3?

MR. T. MARSHALL: A new number.

MR. SIMMONS: Yeah.

MR. T. MARSHALL: A revised project cost estimate.

MR. SIMMONS: Right.

And in your direct examination – just to step back a week or so – you'd been referred to Exhibit P-02522. Can we bring that up, please? I think that's the one you were referred to. And ...

yeah, you may not have been referred to this one, if you can bring it up, Madam Clerk?

And this is actually a message from November 1, 2013, where Mr. Warren at Nalcor sends Mr. Myrden, copied to Ms. Brewer. And if we scroll down, please, a response to some of the questions that you had posed.

Continue. Next page please. Okay and you can stop there. And this is the table you were shown – it came from a different message, I think. The one you saw earlier where you identified that it had reported – was still reporting \$6.2 billion as being the estimated capital cost of the project.

MR. T. MARSHALL: Yes.

MR. SIMMONS: Right.

So this was the 1st of November this information was passed on, but by the 8th of November we know from Ms. Brewer's message that you were aware that there was the potential for there to be a revised number –

MR. T. MARSHALL: Yes.

MR. SIMMONS: – by financial close.

MR. T. MARSHALL: Yes.

MR. SIMMONS: Okay.

So when you got the message on November 8th from Ms. Brewer, do you have any independent recollection of what you might have done in response? Whether you asked her any questions or convened a meeting or did any type of follow-up within your own department on that issue?

MR. T. MARSHALL: After I got that information on November – oh November 8?

MR. SIMMONS: On the 8th – when you heard on the 8th from Ms. Brewer.

MR. T. MARSHALL: I don't specifically recall.

MR. SIMMONS: Yeah. Yeah.

MR. T. MARSHALL: I do know – what do I know? I do know from emails that I saw today and –

MR. SIMMONS: Mmm.

MR. T. MARSHALL: – you know –

MR. SIMMONS: Mmm.

MR. T. MARSHALL: – last week –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – that there was a new number. Nalcor had a number.

MR. SIMMONS: Yeah.

MR. T. MARSHALL: So then the question is: Did that come over to –

MR. SIMMONS: Right.

MR. T. MARSHALL: – to officials and, then, did it get to me?

MR. SIMMONS: Yeah.

MR. T. MARSHALL: I don't remember receiving it. I have no document to show that I received the (inaudible).

MR. SIMMONS: Yeah.

You've answered a lot of the questions you've been asked this morning in a similar way to what you just said then –

MR. T. MARSHALL: Yeah.

MR. SIMMONS: – which is that you didn't have a document that would allow you to know what had happened.

MR. T. MARSHALL: Yes. Yes.

MR. SIMMONS: And I noted you did that a number of times this morning as you did just now. So can you give us some idea of how much you independently recall of the events during this period and what information was provided to you, versus what you have been able to

reconstruct based on the documents that you've been able to –

MR. T. MARSHALL: Okay.

MR. SIMMONS: – see since then.

MR. T. MARSHALL: Okay.

Well, that was my problem that I couldn't remember a lot about financial close initially.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: And, then, bit by bit –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – I was aware that – I was trying to determine if that number had come to me.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: I couldn't remember it coming to me.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: I looked at the press release for December 10, you know –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – the night of the ceremony at the Confederation Building.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: I saw the premier's comments and there was no mention of that. I watched the video –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – and there was no mention of that 6.5 number and, also, I couldn't recall ever seeing that event and – which was surprising.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: And then I thought, well, maybe I wasn't there because I knew there

was a Finance ministers meeting coming up and I thought maybe I'd left to go to that.

MR. SIMMONS: Right.

MR. T. MARSHALL: But, no, I looked in *Hansard* and I was there in the House that day and I saw the House closed early –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – so I knew there must have been an event where – there's a deck for Nalcor called the project update that did not have any real numbers in it, had a lot of pictures. So, that's it, I'm saying I don't remember getting that information.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: And the question is did somebody else give it to me and I don't recall it.

MR. SIMMONS: Right.

And so correct me if I'm wrong, but before you embarked on trying to reconstruct what happened from looking at the documents you've described and things that were –

MR. T. MARSHALL: Right.

MR. SIMMONS: – available to you, it sounds like you really had very little recollection of the detail of what happened during this period, and what might have been told to you and what might not have been told to you. Is that correct?

MR. T. MARSHALL: Well, it was – going back to finance on October 9 –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – from that point on there was an awful lot going on.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: And there would be meetings –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – and I can only remember what I remember.

MR. SIMMONS: Okay. All right.

Okay, so I'm just going to walk through several documents here. They're not things you would have seen at the time but I just wanted to put in context some of the evidence that we've seen about what sort of information was available about this 6.5 number and what communication there may have been with officials in your department.

So we'll start at P-02114, please. And I'm just using this document mainly as a marker. I don't think it's in your –

THE COMMISSIONER: Yeah, it's not.

MR. SIMMONS: – it's in your book?

THE COMMISSIONER: No.

MR. SIMMONS: So you'll see it on the screen.

This is an email message from November 19, 2013. This is the one from Mr. Meaney to Ms. Felt where the reconciliation document that reconciles the 6.2 capital cost at DG3 to the new number of 6.531 is placed – is directed to be placed in the data room. Now, did you have – were you someone who had access to the data room or knew anything about the way it worked? The electronic –

MR. T. MARSHALL: No.

MR. SIMMONS: – repository –

MR. T. MARSHALL: No.

MR. SIMMONS: for documents there?

MR. T. MARSHALL: No.

MR. SIMMONS: No, okay. So that happens on the 19th. Now I want to take you next to P-02535. And, again, this is not on – in your book, but she'll come up on the screen. It's an email message from the next morning, November 20.

And this one is from Mr. Sturge to several people within Nalcor and it says: "Hi folks, the

other thing we need to do based on direction from Ed and Charles from last week is to walk Donna Brewer and Paul Myrden through the LCP cost update data.”

And then the next one I’m going to bring you through is the next day and these are some notes made by Mr. Sturge at P-02523. And I’m not so much concerned about the content but I just wanted to give you the sequence of events.

And – I think it’s probably page 20, maybe. Yes. So these are some notes Mr. Sturge made on the next day, November 21, 2013, of a meeting. It’s headed: “Debrief with Ed/Charles” but it notes that it’s a meeting that includes Donna Brewer and Paul Myrden. And under issues it says: “OS Capital Cost Overruns.” And one of the bullets, the second one there Mr. Sturge has said reads: “Donna: creates problem as NL has no approval for equity until April 1.”

So the sequence of what we see here is the 19th –

MR. T. MARSHALL: Could you – I’m sorry, could you just – pardon me – after Donna, could you just read that? It’s not very clear here.

MR. SIMMONS: Okay, after Donna?

MR. T. MARSHALL: Could you read that?

MR. SIMMONS: I understand it means “creates problem as NL has no approval for equity until April 1.”

MR. T. MARSHALL: Okay.

MR. SIMMONS: Which seems consistent with the kind of COREA discussion that we had earlier.

MR. T. MARSHALL: Yes.

MR. SIMMONS: So we had the 19th this reconciliation of the \$6.53-billion number that was available. On the 20th we know there has to be this talk of having a meeting with Ms. Brewer to explain LCP cost update data and here’s a meeting on the 21st.

Now, my question for you is: Do you have any recollection of anything being reported back to

you following this meeting that occurred on the 21st of November 2013?

MR. T. MARSHALL: I’m afraid I don’t.

MR. SIMMONS: Were you a note taker? We know Mr. Kennedy was a fairly prolific note taker while he was in government.

MR. T. MARSHALL: I wrote on the decks and I wrote on the briefing notes –

MR. SIMMONS: Right.

MR. T. MARSHALL: – but I didn’t take notes.

MR. SIMMONS: Yeah.

MR. T. MARSHALL: If I had to do it over again, I’d have one of those police cameras and I’d wear it on my lapel –

MR. SIMMONS: Right.

MR. T. MARSHALL: – and take a copy of everything, but I did not do that.

MR. SIMMONS: Okay.

Would it be reasonable for us to expect that following a meeting of this sort that your officials would have reported back to you in some form or another?

MR. T. MARSHALL: I’m sure if they were aware of a higher number, they would have brought it to my attention.

MR. SIMMONS: Okay.

And – how and when you were minister of Finance at this time what was the kind of working practice for how your deputy and others in the department would report to you on things like this? Was everything in an email; was everything in a note; were there personal discussions; stop by the office; pick up the telephone?

MR. T. MARSHALL: All of those.

MR. SIMMONS: All of those.

MR. T. MARSHALL: Yes.

MR. SIMMONS: All right.

MR. T. MARSHALL: I mean, my office with the deputy, we were – it was very close, right? We're in the same –

MR. SIMMONS: Right.

MR. T. MARSHALL: We're only separated by a small area, so –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – we could easily –

MR. SIMMONS: Okay.

MR. T. MARSHALL: – chat.

MR. SIMMONS: Well, we see from here the meeting happened on the 21st of November –

MR. T. MARSHALL: Yes.

MR. SIMMONS: – and can we go, please, to Exhibit P-02673. And this one's not in your book either.

So when this comes up, this will be an email message from the next day, November 22. It comes from Mr. Warren to Mr. Myrden and Mr. Morris. So although this didn't go to your deputy, Donna Brewer, it did go to Mr. Myrden who we know –

MR. T. MARSHALL: Right.

MR. SIMMONS: – was closely involved here. And if we scroll down, please, Madam Clerk, to the second message in the chain. It's actually sending along a report here on outstanding items, including the escrow account, and I'm just going to look at point number 1 which is on the very bottom of the screen there.

“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).” And it goes on from there.

So this was sent to Mr. Myrden on the 22nd, which was the day after the meeting we talked about earlier.

MR. T. MARSHALL: Mmm.

MR. SIMMONS: So is there any doubt in your mind that at least the officials in your department had knowledge that the number that was being discussed as the current capital cost estimate was \$6.5 billion?

MR. T. MARSHALL: Well, it indicates that Nalcor would agree to that number.

MR. SIMMONS: Hmm.

MR. T. MARSHALL: It was sent to Mr. Myrden.

MR. SIMMONS: Mm-hmm. Right.

MR. T. MARSHALL: Whether – they said they would agree to it, whether that agreement was reached –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – I don't know.

MR. SIMMONS: Well, it certainly – it – even if you take it, interpret it and read it that way, it at least raises the potential that at financial close –

MR. T. MARSHALL: It certainly does.

MR. SIMMONS: – it's going to be \$6.5 billion.

MR. T. MARSHALL: It's possible, yes.

MR. SIMMONS: Right.

MR. T. MARSHALL: Yes.

MR. SIMMONS: Right.

Now, I know you don't have a complete clear recollection of this time period.

MR. T. MARSHALL: Right.

MR. SIMMONS: Then is it possible that this sort of information did find its way to you, and because you hadn't seen it in the material you reviewed that you just haven't been able to recall discussions with your officials about this?

MR. T. MARSHALL: Again, if Mr. Myrden had it, if my officials had it, it could very well have come up.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: I just don't recall it.

MR. SIMMONS: Okay.

MR. T. MARSHALL: Yeah.

MR. SIMMONS: Okay, and I'll just take you to one more document in that chain, and that is Exhibit 02125, please, and this one is in your book at tab 64, if you prefer to look at it in the book rather than on the screen.

So, this is now of four days later. The last message we saw on the 22nd was a Friday and this is now Tuesday, the 26th of November. It's from Mr. Sturge to a number of people, including Ms. Brewer and Mr. Myrden, and it's a report on outstanding business issues with Canada.

So, I'll just read the part of the first paragraph there: "Hi folks, we heard back from Canada last evening on the outstanding project finance business issues. As you may recall, we gave them a written proposal Thursday evening last week on all of the remaining eight business issues. They came back last evening and gave us everything we asked for with one exception and with two clarifications. Included in the written proposal back to them (that they accepted) was that cost overruns would be pre-funded in an escrow account, but only from the cost estimate at Financial Close, which is certainly better than calculating overruns from the DG3 number."

So from this message, which went to Ms. Brewer and Mr. Myrden, although it doesn't say how much different the financial close cost estimate is from the DG3 number, you would read this as fairly – as clearly stating that there is a difference.

MR. T. MARSHALL: Yes.

MR. SIMMONS: And in order for the estimate at financial close to be better than calculating from the DG3 number, the estimate at financial close would have to be higher.

MR. T. MARSHALL: That's correct –

MR. SIMMONS: Yes, you would –

MR. T. MARSHALL: – and could it be –

MR. SIMMONS: – agree with that.

MR. T. MARSHALL: – better, yes.

MR. SIMMONS: Right.

MR. T. MARSHALL: Yeah.

MR. SIMMONS: So it seems clear again here that officials in your –

MR. T. MARSHALL: But –

MR. SIMMONS: – department –

MR. T. MARSHALL: – better from the COREA, not better for the – for the whole – the idea of the project.

MR. SIMMONS: Right.

MR. T. MARSHALL: Right.

MR. SIMMONS: Correct, I – exactly.

MR. T. MARSHALL: Mm-hmm.

MR. SIMMONS: Glad you qualified that, okay.

So the only thing – other thing I wanted to ask you about is through this time period up to financial close and around financial close, did you have any conversations with the premier about capital cost estimates and whether there was any change in the capital cost estimate?

MR. T. MARSHALL: I'm sure. I mean, there were meetings or Cabinet meetings, the premier would've been present, I would've been present. Of course we had discussions.

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: Whether we had specific discussions on this, I –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – don't recall.

MR. SIMMONS: Do you know whether the premier had any access to any source of information about capital cost estimates that you didn't?

MR. T. MARSHALL: Well, I would've got my information at that point from Finance officials.

MR. SIMMONS: Right.

MR. T. MARSHALL: I don't know if Natural Resources officials may have passed that information on, or the premier may have directed Mr. Martin –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – or other people from Nalcor –

MR. SIMMONS: Mm-hmm.

MR. T. MARSHALL: – I don't know.

MR. SIMMONS: Okay, good.

Thank you very much. I don't have any other questions for you, Mr. Martin.

MR. T. MARSHALL: Thank you.

THE COMMISSIONER: All right.

Concerned Citizens Coalition.

MR. BUDDEN: Good day, Mr. Marshall. As you may recall from Phase 1, my name is Geoff Budden, and I represent the Concerned Citizens Coalition, and I've got a few questions today, probably about a half hour, a little more.

I'd like to start with some questions about oversight, and within that I'm going to begin with the board of directors. And I'm not going to bring you to a particular exhibit, but I'll be asking questions based on some of the evidence given by Dr. Holburn, Guy Holburn, earlier in this Inquiry.

MR. T. MARSHALL: Yes.

MR. BUDDEN: And I believe you have had the opportunity to review at least that portion of his evidence arising out of my cross-examination of him.

MR. T. MARSHALL: I have – actually, I'd read it the day before I was aware of what you required.

MR. BUDDEN: Okay, perfect.

MR. T. MARSHALL: But, good afternoon, Mr. Budden.

MR. BUDDEN: What's that again?

MR. T. MARSHALL: I said, good afternoon (inaudible).

MR. BUDDEN: Good afternoon to you as well, Sir.

MR. T. MARSHALL: Yeah.

MR. BUDDEN: So you were aware, obviously, if you read that transcript, that Dr. Holburn was qualified by this Commission as an expert in the governance of Crown corporations.

MR. T. MARSHALL: Yes.

MR. BUDDEN: Of which, Nalcor clearly is one.

MR. T. MARSHALL: Yes.

MR. BUDDEN: And I think you might be aware – yes, I'm putting it you for your agreement or otherwise that having been asked to consider – once Dr. Holburn was asked to consider when I put to him the evidence of some of the board members, Mr. Clift, Mr. Ken Marshall and so on, about their, I guess, working conditions, for want of a better word, but there being, you know, a shortage of board members at different times, their remuneration essentially being non-existent, the hours they were working and so on – and he was, I would suggest to you, Dr. Holburn was very critical of this governance model that was in place at Nalcor. Would you agree that that's a fair assessment of his findings?

MR. T. MARSHALL: I think he had concerns about the conditions under which the board had to operate –

MR. BUDDEN: And – go ahead, I’m sorry.

MR. T. MARSHALL: – and other things as well. But yes, generally, yes.

MR. BUDDEN: Okay.

MR. T. MARSHALL: Mmm.

MR. BUDDEN: Well, let’s look at a couple of things. I’m not going to go through the whole thing but there’s a couple of points in this transcript.

And so what I – I put to him, for instance, about the fact that the board was acting in a – was under resourced in terms of its members, they were down to three independent members at one time. And they had issues, as well, about a lack of expertise on the board, which you discussed with Mr. Learmonth, in which we’ll talk about a bit too. And Dr. Holburn said: “I think this would lead to some questions” – and I’m on page 71 in his evidence of February 25 – “I think this would lead to some questions as to the ability of a board to effectively challenge management, and act in a capacity of providing informed expert oversight and providing that forum for sober second thought.”

So that is indeed what he said, you’re not challenging that?

MR. T. MARSHALL: No, I understand that there were some very good people on the board. That number, I think, was increased. I think, Mr. Kennedy made some additional appointments to that board – Mr. Kennedy and Premier Dunderdale.

MR. BUDDEN: That’s quite true –

MR. T. MARSHALL: But yes, they were – when you’re small in number, it puts a lot of pressure –

MR. BUDDEN: Sure.

MR. T. MARSHALL: – on the board. They don’t have the resources, they get overworked

and they don’t do as good a job as one would hope.

MR. BUDDEN: And we’ll – I recognize and we’ll get into this in a moment that the situation is exactly the same at all times and the board was beefed up in – later in 2012. But certainly in the years leading up to sanction, for most of that period of time, you would agree that the board was not compensated, was complaining repeatedly of lacking its – lacking expertise and trying to resource –?

MR. T. MARSHALL: I wouldn’t have guessed – I wouldn’t have known that at the time.

MR. BUDDEN: Okay.

MR. T. MARSHALL: I did – you know, I testified earlier about my discussion with Mr. Martin when I became minister and then later when I became premier about adding expertise to the board.

MR. BUDDEN: (Inaudible.)

MR. T. MARSHALL: And also, basically, I was going to look for some names to make appointments, but the suggestion to me was that we should do it in a professional way by having, you know – I use the word “headhunter,” I don’t know –

MR. BUDDEN: Mm-hmm.

MR. T. MARSHALL: – if that’s the right word but –

MR. BUDDEN: That’s the word he used in the fall, you’re quite right, yeah.

MR. T. MARSHALL: Yeah, but essentially somebody had to go and do a matrix about the skills that were needed for the types of people that the board would need and – but in addition I thought – see I, you know, I wasn’t going to be there that long and I thought let’s go right away and get the hydro experience. And that didn’t happen.

And then in – when I became premier we did it again and I said let’s do it now. I actually, at that point, got a list of names from the Department of Natural Resources of people that they had

considered for appointment. And I think I – and I know I added three names to that list and I wanted to – I thought given that I was only going to be there for four months, I thought: Why don't we just go ahead and appoint some people. But the advice I received was: Look, let's do it properly, let's do it professionally, let them get the matrix first and (inaudible) –

MR. BUDDEN: Okay. Well, we'll get to your – to what happened when you achieved, I guess, some direct –

MR. T. MARSHALL: Sure, yeah.

MR. BUDDEN: – power in the situation. But you're in Cabinet in senior portfolios from 2003 onward –

MR. T. MARSHALL: Yes.

MR. BUDDEN: – of my understanding.

MR. T. MARSHALL: Yes.

MR. BUDDEN: So during – and you would also agree – at least Dr. Holburn, who is the expert, has concluded in his evidence that for much of that period of time, at least, certainly right into 2012, there are major governance issues with the board of directors.

MR. T. MARSHALL: Okay. Well –

MR. BUDDEN: That is what he says, right?

MR. T. MARSHALL: Yes. Well, that would be something that the minister of the department would deal with.

MR. BUDDEN: Okay. Well, we'll get to that too.

MR. T. MARSHALL: Right.

MR. BUDDEN: And in the result, the board was – at least from Dr. Holburn's opinion – the board was lacking ability to effectively challenge management, to act in the capacity providing informed expert oversight. And you would recognize – I mean, you've been around the world of business and so forth, that's the kind of thing a board of directors is supposed to do, isn't it?

MR. T. MARSHALL: Yes.

MR. BUDDEN: And this board could not.

MR. T. MARSHALL: Well, I'm sure the ones that were there did a good job and there was some –

MR. BUDDEN: Are you really –

MR. T. MARSHALL: – very good people.

MR. BUDDEN: Are you really –

MR. T. MARSHALL: Very good people.

MR. BUDDEN: Well, leaving aside for a second whether they're good people. I'm not disputing that. But I would challenge you that they did a good job.

Do you really think the board of directors from Nalcor, prior to – or at any point during your tenure, were doing a good job in providing oversight over management?

MR. T. MARSHALL: What I think I'm saying is that the ones that were there were capable and would do their job well, but I don't dispute the fact that they should've had help and resources.

MR. BUDDEN: And you don't dispute the fact that Dr. Holburn says that they simply lacked the resources to do a good job, however well intentioned they were.

MR. T. MARSHALL: Well, let me – I think he meant more directors because the board, certainly, had the capacity and the ability to hire experts that they needed – consultants that they needed. That was always open to them. I think he was referring to –

MR. BUDDEN: He was, of course, referring to the board of directors.

MR. T. MARSHALL: – he was referring to the number of people on the board.

MR. BUDDEN: The number of people, their remuneration –

MR. T. MARSHALL: Yes.

MR. BUDDEN: – and the skills they brought to the table.

MR. T. MARSHALL: Yes. Yeah.

MR. BUDDEN: So he certainly found –

MR. T. MARSHALL: Yeah.

MR. BUDDEN: – them wanting in those essential –

MR. T. MARSHALL: Right.

MR. BUDDEN: – areas.

MR. T. MARSHALL: Remuneration for politicians – in paying remuneration to people who serve on the boards, it's a difficult issue because there are a number of boards, a lot of boards. And, you know, a lot of appointments to boards, people criticize politically. They say they're political appointments and we want people – you know, we go to people that want to help. I mean, I – I'm sure everybody in this room has probably served on one of these government agencies. I was on the Law Reform Commission at one time, and there was no pay but it was, you know, you were doing your bit to help out.

MR. BUDDEN: Sure.

But in the result – and again, we're not attacking them as individuals but I think it's fair game to say as a board there were issues here. I mean, another point Dr. Holburn says – or my question to him was: “Have you, in your studies, in your practice, in your research, come across a board of a major Crown corporation with so few board members receiving so little compensation for so many hours work?”

And he said: “No, I have not.” Elsewhere he said: “I feel sorry for the board. It's an extraordinary stress to put on a board” And that was the point they were down to three independent members.

So, I guess I'm suggesting to you, and again we have to separate the individuals and their intentions, but as a –

MR. T. MARSHALL: And their abilities, there was some strong abilities on that board.

MR. BUDDEN: There were some strong abilities, but they themselves felt they were lacking in other strong abilities.

MR. T. MARSHALL: Sure, sure.

MR. BUDDEN: We don't need to review it but you've seen that evidence.

MR. T. MARSHALL: Yes.

MR. BUDDEN: I mean, the pleas, really, to Robert Thompson repeated over a number of years.

MR. T. MARSHALL: Yes.

MR. BUDDEN: So they themselves were – saw their – none of these issues, I would suggest to you, were unknown to the board or were they in denial about it.

MR. T. MARSHALL: Mm-hmm.

MR. BUDDEN: But what I'm suggesting to you, in the result when you took office in 2013, we had a board that perhaps until very recently was just really grossly under resourced to do its job. And you'd agree with that?

MR. T. MARSHALL: I would agree that the board should've been larger. And –

MR. BUDDEN: Okay. And should've had certain requisite skills it didn't have.

MR. T. MARSHALL: Yes, and I attempted to deal with a part of that and that would mean Mr. Martin and I had a conversation and he said: This is going to cost you.

MR. BUDDEN: Yeah.

MR. T. MARSHALL: And I said: Well, it's worth it. And so we went to do it, but that was not the decision that government ultimately decided to pursue.

MR. BUDDEN: Right. And I respect that. There was a chain of command, so to speak –

MR. T. MARSHALL: Right.

MR. BUDDEN: – and the premier has the ultimate say. But in the result, I would suggest to you, another year was lost from the time you became minister to the time you became premier.

MR. T. MARSHALL: Yeah.

MR. BUDDEN: Nothing was done really to bring these skills in, were there – was there?

MR. T. MARSHALL: Again, direction was given but there was no – it didn't come back to me by the time I left.

MR. BUDDEN: Sure. And –

MR. T. MARSHALL: But the – my successor, it came back to them and they dealt with it.

MR. BUDDEN: Okay.

MR. T. MARSHALL: Well, they –

MR. BUDDEN: Well, we'll get to that. But –

MR. T. MARSHALL: – yeah.

MR. BUDDEN: So you became premier at pretty much the beginning of 2014, I think January at some point.

MR. T. MARSHALL: The end of January.

MR. BUDDEN: Yes. And you remained premier and others are – probably longer than you intended, but you were there for eight or nine months.

MR. T. MARSHALL: Yes.

MR. BUDDEN: And during that time – again, you spoke of your intention – but during that time was anything done to add individuals to the board who had the requisite skill set? Or put it – were they –

MR. T. MARSHALL: No.

MR. BUDDEN: – added to the board?

MR. T. MARSHALL: No. My focus – when we got there, my focus was on this – a new government Oversight Committee.

MR. BUDDEN: Okay.

MR. T. MARSHALL: That was my focus at the time.

MR. BUDDEN: Okay. And we'll get to that, too.

But you are aware that Nalcor – the present board has 10 members, of whom nine are independent. And I suggest to you there's some very impressive names on that present board of directors.

MR. T. MARSHALL: Surely are.

MR. BUDDEN: You wouldn't dispute me there?

MR. T. MARSHALL: No, no.

MR. BUDDEN: Okay, we've got Brendan Paddick, all kinds of people that have a strong background in the resource industry: Mark MacLeod, Brian Maynard.

MR. T. MARSHALL: Yes.

MR. BUDDEN: These names don't mean a lot to me, but –

MR. T. MARSHALL: Yes.

MR. BUDDEN: – clearly, from their biographies on the Nalcor web page –

MR. T. MARSHALL: Yes.

MR. BUDDEN: – these are people with deep roots in, really, the kind of skills that the board was crying out for for all those years.

MR. T. MARSHALL: Well, yes, some of the skills.

MR. BUDDEN: Some of the – can you think of any skills they were calling for that are not –

MR. T. MARSHALL: Well, I'm not aware –

MR. BUDDEN: – present on the board?

MR. T. MARSHALL: – there could be, but I’m just not aware of whether there’s the – what I was looking for was somebody who built hydro projects in Northern Canada.

MR. BUDDEN: Sure.

MR. T. MARSHALL: I don’t know if that’s there.

MR. BUDDEN: That may not be there specifically –

MR. T. MARSHALL: Yeah.

MR. BUDDEN: – but there’s certainly people there who have built megaprojects. I mean, the former president of – or the present president of Marathon Oil is on the board, a former senior official with Chevron.

MR. T. MARSHALL: Then that’s good.

MR. BUDDEN: Yes.

MR. T. MARSHALL: That’s good.

MR. BUDDEN: And I guess I’m asking you, in retrospect, do you regret the fact that nothing was done during your tenure in government to add that kind of talent to the board of directors?

MR. T. MARSHALL: Well, in hindsight, yes –

MR. BUDDEN: Okay.

MR. T. MARSHALL: – but at the time, directions were given for it to happen, and it didn’t happen before I left. But I know my successors did the work that I had asked to be done, and then their successors had the opportunity that that work is done and could go and find the people with the appropriate skill sets that I assume the headhunter said this is what the board needs.

MR. BUDDEN: And finally, the board had the talent in place to provide oversight over management.

MR. T. MARSHALL: Yes, but – you’re right, but in addition to that the – you have to

remember that Dr. Holburn also indicated that the CEO should meet with the deputy minister. The CEO, under Premier Dunderdale and under Premier Williams, they met with the entire Cabinet, and not once a year, but many, many meetings. So there was – and both Premier Dunderdale and Premier Williams encouraged Cabinet ministers, encouraged their staff to come and probe and test and push back. So that was happening in another venue.

MR. BUDDEN: I think what Dr. Holburn actually said – I wasn’t planning to go there, but if I recall his evidence on direct and otherwise, he was saying that the chair of the board should be meeting – the board as a whole should be meeting with the minister. And the evidence of the members was if that was happening at all, it was happening very infrequently. So I would suggest to you that Dr. Holburn really can’t be used to, I guess, to support a position that governance in that respect was appropriately done.

MR. T. MARSHALL: The – all I can tell you that when I was minister, I met with the board.

MR. BUDDEN: Okay.

MR. T. MARSHALL: Yeah.

MR. BUDDEN: Fair enough.

MR. T. MARSHALL: The entire board.

MR. BUDDEN: And in that – pardon?

MR. T. MARSHALL: The entire board.

MR. BUDDEN: And how often did that happen, minister?

MR. T. MARSHALL: Well, I wasn’t there – I was only there, I should say, eight or nine months, and I understand the recommendation is that it would happen yearly.

MR. BUDDEN: Sure. Okay.

I’m going to move on to the Oversight Committee. I don’t have a whole lot on that, but what I thought I’d do – I just had a question or two.

If we could call up Exhibit 02653 again, please, Madam Clerk? And that is *Hansard* from the – March – I believe, March 21, 2013, and that was that quote you gave that you – as you said, the first two sentences were accurate; the third one wasn't. And perhaps, Mr. Learmonth, you can help me here with the page reference on that? I think it might be 4257, but I'm not sure.

MR. T. MARSHALL: Page 14.

MR. BUDDEN: Page 14, is it? Okay. Perhaps we can scroll – thank you – to page 14.

Yes, so that last question – well, I'll just read it: "The independent" – perhaps a little bit more, Madam Clerk? Thank you.

I've lost you there. We had it a second ago. It's your answer I'm interested in.

Yeah, here we go. And the question that you've now disowned, I guess, for want of a better word: "The independent engineer will make sure on behalf of the people of the Province and on behalf of the government of the Province that this project proceeds in a robust, fair, economically feasible, and fiscally feasible manner."

Firstly, I have no doubt at the time you said it, you believed it to be true. So I accept that. And you said a moment ago that you were – you believe you were briefed by somebody with that information and –

MR. T. MARSHALL: Well, I simply said this was early in my days as the Natural Resources minister, and it's possible I didn't have a real, deep appreciation of the role of the independent engineer.

MR. BUDDEN: Sure.

MR. T. MARSHALL: I knew that the independent engineer was – responsibility was to the Government of Canada and that Nalcor is just paying for it. I don't think I had an appreciation, at that time, that we can also get information from the independent engineer. And I know that the governance committee, when they were formed, went and formalized and got the permission of the Government of Canada so

that we could access the independent engineer's report.

MR. BUDDEN: Sure. And –

MR. T. MARSHALL: But at the time I didn't appreciate it. It's – the sentence – the last sentence is not correct.

MR. BUDDEN: Okay. So you inadvertently, and I stress inadvertently, gave incorrect information in your answer in the House?

MR. T. MARSHALL: Yes.

MR. BUDDEN: Okay.

Are you able – and I realize, now, this is five-plus years later – are you able to tell us on what you based that answer on, who briefed you, what you read? Any help at all?

MR. T. MARSHALL: No. I can't recall. I – you know, when I heard about the independent engineer for the first time I – as I say – I thought it would be like under a construction mortgage –

MR. BUDDEN: Sure. Yeah.

MR. T. MARSHALL: – where the bank wants somebody to go to make – they're not going to disburse funds until they have somebody saying that, yeah, there's work there. If you're drawing down \$50,000, the bank wants to make sure there's at least \$50,000 of work in the ground and is done properly.

MR. BUDDEN: Sure. Yeah. I know –

MR. T. MARSHALL: Yeah.

MR. BUDDEN: – I realize what you're saying. I guess my next question is sort of a related one.

At some point, obviously, you got off your feet; you left the House. Do you recall anybody saying to you from your department, anybody at all: Excuse me, Mr. Minister, we have to correct you? You're in error on that point. Were you corrected?

MR. T. MARSHALL: I don't recall that.

MR. BUDDEN: Okay. Do you think that's something you would recall? Being told you've just misled the House.

MR. T. MARSHALL: If I had said something that was clearly wrong in the House, I would want to go back and correct it.

MR. BUDDEN: Yes. And the fact you didn't –

MR. T. MARSHALL: I don't recall that.

MR. BUDDEN: Okay.

All right. We're – moving on now to the Oversight Committee. And at one point, and I have it in my notes, is when the committee was struck, but I think that's wrong. I think it was on the release of the draft report. You made some public comments about the Oversight Committee providing strong oversight and prudent oversight. Those were the – were your words, and I guess I'm asking you, what did you mean by that? What did you envision from your Oversight Committee to sort of put meaning behind prudent oversight, strong oversight?

MR. T. MARSHALL: Well, as I indicated earlier, there had been efforts at – I think we're going to talk about different types of oversight or different phases of oversight. There was oversight for the first phase, a business case, which was the sanction decision.

MR. BUDDEN: Sure. But I'm talking now just to help you a bit –

MR. T. MARSHALL: So –

MR. BUDDEN: – specifically about the Oversight Committee that was struck in – under your premiership.

MR. T. MARSHALL: Okay. That was at the first Cabinet meeting that I was premier, and I'd gone into that meeting with four or five items because I was only going to be there for four months. And I've testified to this before – one item was the ATIPP legislation and we took steps to deal with that.

The second thing was oversight over Muskrat; the third thing was whistle-blower; the fourth thing was open government initiatives.

MR. BUDDEN: I should say I'm having a little bit of trouble hearing you, sorry.

MR. T. MARSHALL: Oh, sorry.

MR. BUDDEN: Yeah, that's okay.

MR. T. MARSHALL: So, of the things on my list, I remember ATIPP was number one; number two – well really, I mean, the budget – we had to get a budget done and there was going to be legislation that would come out of that budget that had to be passed.

But, in terms of new initiatives, ATIPP, oversight over Muskrat Falls, open government initiative, whistle-blower legislation. And I think Premier Dunderdale had announced a review of the electricity system. And the other thing was a personal thing – is to do something about the (inaudible) pension liability. They were my priorities.

MR. BUDDEN: Sure.

MR. T. MARSHALL: But the main one there was – or one of the major ones – was oversight over Nalcor for the construction phase.

MR. BUDDEN: (Inaudible.)

MR. T. MARSHALL: I'm sorry – yeah, for the phase they were in, and then ultimately oversight from the operations phase.

And, you know, members of the public were very vociferous in their comments and there were concerns expressed. And so we needed to deal with it and we had a discussion about what is in place now and what can we do to add oversight, to meet the concerns that people had and not to duplicate but to add, fill in the gaps.

And so there was a discussion and then, again, I didn't know the answer, personally. And, the clerk, Julia Mullaley, made the suggestion and – that the officials in the government, the senior officials, could provide that oversight that would not only address concerns but also address – help us as Cabinet ministers. I mean, you know, we're not professionals in the sense that, you know, there's no application form that you have to be the – you have to know how to run a hydro plant to be a Cabinet minister. We're just a

representation of a cross-section of the population.

MR. BUDDEN: Sure. Yeah.

MR. T. MARSHALL: And so we know, or a lot of us know that we don't know how to do this or – so you seek advice; you seek the advice of the professionals and they would come to you with suggestions and alternatives, and the pros and cons of each.

MR. BUDDEN: Sure.

I guess a couple of points there –

MR. T. MARSHALL: Yeah.

MR. BUDDEN: – you say seek the advice of the professionals, but there were – I would suggest to you there were no – the only professionals on the Oversight Committee were professional public administrators – and not to denigrate those (inaudible) –

MR. T. MARSHALL: No, what I meant was seek the advice of the civil servants, the public service, as to what options we had and the pros and cons of the options.

MR. BUDDEN: Okay.

MR. T. MARSHALL: And so the clerk – we said to the clerk, like, we like what she's talking about; come back to Cabinet with a more detailed proposal. And that's what happened in March.

MR. BUDDEN: Okay.

A couple of thoughts there – a couple of follow-up questions, I guess. You're aware, obviously, when one talks about independent oversight, one is talking about somebody who is standing outside the, I guess, the structure that is carrying out the project. You would agree, I would presume, that there's nobody here – I mean, this is the public civil service working for a government that is publicly, strongly behind the project, and some of the members of the Oversight Committee, like Charles Bown, were intimately involved in the decisions leading up to sanction.

So I would suggest to you whatever other strengths that Committee may have, they surely are not – that's not independent oversight, is it?

MR. T. MARSHALL: But the civil servants, the public servants, would give us their best advice as to how we should proceed, and that's what we were looking for as Cabinet ministers. They would give us that advice and tell us what to do. One of – one piece of advice could've been, why don't we find Dr. Holburn and bring him in?

MR. BUDDEN: Okay.

MR. T. MARSHALL: But the Committee – they came up with advice; we wanted to do something and move on it. Whatever we decided to do, we knew that it could be looked at more in the future and other things could be done as well, but this was the suggestion to us, as we could start – let's get some – let's get more oversight in place now.

MR. BUDDEN: Okay.

Well, let me put it this way, your – the government that succeeded yours did add individuals to that Committee, including at least one instance I'm aware of an engineer independent from government. So I would suggest that is true independent oversight.

MR. T. MARSHALL: Well, I would say, again, that there were – I think for a while there were – I mean, I know you're going to say they're not independent, but let's say this: The Committee went out and engaged Ernst & Young and their capital projects group. So there was independence for you. In addition, the Committee formalized an arrangement with the Government of Canada with the independent engineer to use that person. So there's more independent oversight.

MR. BUDDEN: So you saw those things – the engagement of EY, the liaison with the independent engineer – as, I guess, a substitute for independent oversight on the Committee itself?

MR. T. MARSHALL: I thought it was terrific independent oversight, quite frankly.

MR. BUDDEN: Okay.

Okay, this is the last – my last real line of questioning. We could perhaps bring up Exhibit 01988, Madam Clerk. And I don't believe you have this one in front of you, but what it is is the presentation that Stan Marshall gave; the transcript of that was in there early in the Inquiry and this exhibit was entered this spring.

And so it's a presentation by Stan Marshall dated 15th of February, 2018, entitled Understanding Muskrat Falls. And I'd like to start at page 26, Madam Clerk. It should be on your screen, Mr. Marshall. And –

MR. T. MARSHALL: I don't think I've seen this before.

MR. BUDDEN: You probably have, yeah.

MR. T. MARSHALL: No, I don't think I have.

MR. BUDDEN: Oh, you don't – okay. You may not have but I'll walk you through it. It's – as I was saying, it's a public presentation that Stan Marshall gave in early 2018.

MR. T. MARSHALL: Is this the one at Memorial?

MR. BUDDEN: Yeah, I believe it was.

MR. T. MARSHALL: I watched it on video, yeah.

MR. BUDDEN: Okay.

Well, you have seen it before.

MR. T. MARSHALL: Yes.

MR. BUDDEN: Not that I expect you to remember it slide by slide, but I'll walk you through the parts I'm interested in.

So, you can see there, what this chart is is a – this slide compares the power sales projections that were done. The green line is the projections from 2012. The blue line would be the projection from 2017. In each cases the projections run through 2040.

And it's obvious from this slide, I would suggest, that the projections have been – become much more conservative as of 2017 than they were in 2012. And, in the result, the – over that span of five years from sanction to 2011, the projections dropped to the point where, at present, as of the date of this slide a little more than a year ago, there was – projections were for annual consumption of 7,000 terawatt hours per annum, and that that wasn't going to increase a whole lot, just very modest increments through 2040.

So, that obviously isn't information that was available to you in 2012 or even during the life of your government, but it's – plays a role in some of the questions I'm about to ask.

So, if we move on to the following page please, Madam Clerk. What we have here, Mr. Marshall – and the heading there is pretty descriptive: Muskrat Falls Energy Deliveries. And this really breaks down in a helpful graph form where the power generated by Muskrat would be – where it would be delivered to.

So, if we look at the – and again, this was – this dates from 2018, so if we take the left-hand column, which is 2021 – do you see it there, Mr. Marshall?

MR. T. MARSHALL: Yes.

MR. BUDDEN: Okay.

And then of those numbers, Emera is responsible of the – a little over 4,000 – I think it's about 4,600 of gigawatts and Emera is getting a little over 1,100 of that – almost 1,200, actually. However, that power, in return for Emera building the Maritime Link, that's delivered essentially free to Emera for the next several decades. You're aware of that, of course?

MR. T. MARSHALL: I don't agree with your comment that it's given free. It's given to acquire a \$1.6-billion Maritime Link.

MR. BUDDEN: You're quite right. That was a clumsy –

MR. T. MARSHALL: Plus the right to use the majority of the capacity on that thing to –

MR. BUDDEN: Yes.

MR. T. MARSHALL: – to allow us to export –

MR. BUDDEN: So –

MR. T. MARSHALL: – power into Atlantic Canada and New England.

MR. BUDDEN: Quite true. So that was a clumsy term of – turn of phrase, but certainly –

MR. T. MARSHALL: It's used a lot but it's not correct, right.

MR. BUDDEN: What's that? Yes, okay.

MR. T. MARSHALL: I hear people using it a lot. It's not correct.

MR. BUDDEN: But it's – in this sense, it is not generating any revenue – any direct revenue for the next 30-plus years.

MR. T. MARSHALL: Only –

MR. BUDDEN: You would agree with me there?

MR. T. MARSHALL: Only in the sense of it enables us to acquire a tool that enables us – that will allow us to export other energy.

MR. BUDDEN: But in the interval for the next 30-plus years it doesn't generate any revenue?

MR. T. MARSHALL: No, but it – no.

MR. BUDDEN: Correct, yeah.

MR. T. MARSHALL: It's to buy a link, okay –

MR. BUDDEN: Okay.

MR. T. MARSHALL: – yeah.

MR. BUDDEN: So perhaps we'll move on to the next slide, and this will all come together in a second.

MR. T. MARSHALL: Oh, I'm sorry, the basic power for the link, yes, it does not provide us with revenue. It's the surplus power that would hopefully provide us (inaudible).

MR. BUDDEN: It provides a mechanism for delivering surplus power to markets.

MR. T. MARSHALL: Yes.

MR. BUDDEN: Okay.

MR. T. MARSHALL: Yes.

MR. BUDDEN: Next page, please, Madam Clerk. So what we have here are two pie charts, and the – in each case the end result is a unit cost of the – unit cost projections for the Muskrat Falls power of 17.42 cents a kilowatt hour.

And I haven't worked through the math myself, but David Vardy, who has, has told me that when you do that, when you multiply that by the – you know, 17.42 cents a kilowatt hour by 4,636 gigawatt hours, you get \$808 million. And if I'm wrong on that – and that basically would be the annual revenue requirements to pay for Muskrat Falls power.

So I'll ask you to take that figure to be true. If I'm wrong, then this whole exercise is flawed.

MR. T. MARSHALL: I'm going to have to ask you to –

MR. BUDDEN: Sorry?

MR. T. MARSHALL: I wonder if you could repeat that, where that –

MR. BUDDEN: Sure.

MR. T. MARSHALL: – that number.

MR. BUDDEN: So this is what it costs to generate Muskrat Falls power and there's two different ways it's been pie charted there.

MR. T. MARSHALL: Yes, you got the cost at the bus and you got the delivery and – what's the – okay, so it's 17.42. Is that at Soldiers Pond?

MR. BUDDEN: Yes, if you look up at –

MR. T. MARSHALL: And is that before the blending?

MR. BUDDEN: Pardon? Yes, that is before blending.

MR. T. MARSHALL: Before blending?

MR. BUDDEN: Yes.

MR. T. MARSHALL: Okay.

MR. BUDDEN: I wasn't planning to get into blending but we can if you want. Unit cost projections for energy delivered at Soldiers Pond: 17.42 cents a kilowatt hour. And what – the math I was just putting to you, if you multiply that by the quantity of the power, the 4,600 –

MR. T. MARSHALL: Which is –

MR. BUDDEN: – gigawatts –

MR. T. MARSHALL: Which is the basic power going to Nova Scotia – or to Emera?

MR. BUDDEN: No, that's everything. They – Nova Scotia is 1,166 but the total power is 4,600.

MR. T. MARSHALL: Okay.

MR. BUDDEN: So if we multiply that by the 17 cents we're – we come up to \$808 million, I would suggest.

MR. T. MARSHALL: As your cost of providing the power.

MR. BUDDEN: Yes.

Now, so that's our cost, \$808 million at 17.42 cents. But I would suggest to you obviously if we're not receiving any revenue any time soon for the power that's going through Emera – and everybody's known that since 2010, so that's obviously no surprise – then, obviously, that has to be factored in. So the cost, once we get to the blending, rises well above 17.42. You agree with me so far?

MR. T. MARSHALL: You're dazzling me with numbers here.

MR. BUDDEN: It's –

MR. T. MARSHALL: I'd need some time to –

MR. T. WILLIAMS: Mr. Commissioner, I have some concerns about where this line of questioning – I know it's all very interesting in terms of discussion, but in terms of the relevance of what the witness is here before us in terms of Phase 2 mandates – and it may be of interest to, obviously, Mr. Budden's clients, but Mr. Marshall is being questioned now on a report that was submitted two years after he was out of office totally, with respect to projections down the road. And given some of the interest in time, I just wonder where we're going with this and the relevance of it to this phase of the Inquiry and what the witness is presenting before us today.

THE COMMISSIONER: Mr. Budden?

MR. BUDDEN: I think it's much like the Holburn information – or the Holburn line of questioning. It is information – while the raw data may have been available in some cases, in others it wasn't – we really needed to filter it through Dr. Holburn to understand it and therefore to have particular findings put to the witness.

This isn't exactly the same information but the – some of the information here is information that became available during Mr. Marshall's time in government, some subsequent, but it all really informs decisions that were made pre-sanction and then, I suppose, to continue with the project after the financial close date. And I won't repeat what Mr. Learmonth established in that regard, but I think it is relevant and I don't have a whole lot further to go with it.

THE COMMISSIONER: Well, I'd like to know where you are going with it because not – I just need to know – like, I am mindful of time here, too –

MR. BUDDEN: Yes.

THE COMMISSIONER: – but I just sort of need to understand where you're going with this because I'm trying to figure out how it fits into the Terms of Reference.

MR. BUDDEN: Where I'm going with it, Mr. Justice, is the next issue I was to put to – or the

next question, really, for Mr. Marshall was we – this far in our assumptions we have the 17.42, which obviously has to be blended to account for the Emera power. But it further, I would suggest, needs – into that needs to be factored in the power, the surplus power, which it is envisioned will be sold through the Maritime Link and what would be necessary for that to be sold for, and where – and what that is likely to generate. And the implication flowing from that is that the 17.42 is nowhere near what would be required to meet the costs of the project.

So it's only another couple of questions, but that's where I'm going with it.

THE COMMISSIONER: Well, you know –

MR. BUDDEN: I realize it's a –

THE COMMISSIONER: – I realize –

MR. BUDDEN: – blend of Phase –

THE COMMISSIONER: – that's of –

MR. BUDDEN: – 1 and 2 –

THE COMMISSIONER: – interest to your clients, so I'll – I will let you ask two more questions but, to me, it goes to more about what the PUB is presently doing. And as I said Friday I think it was, you know, I have no intention of duplicating their effort.

MR. BUDDEN: I understand.

THE COMMISSIONER: So ask your questions quickly and I'll let you ask 'em. If it goes on too long I might have to say no more.

MR. BUDDEN: I appreciate it.

So have you – in that moment, had you had a moment to look at these numbers? Are you further ahead, Mr. Marshall?

MR. T. MARSHALL: These are not the numbers that – back at sanction or back in early days. I mean, that seven was four. I'm just trying to think, now, if – of my memory. There was the transportation cost, give it to Soldiers Pond and then blend it with the other power and the – and one of the problems was the – you know, the

Holyrood power was very expensive because it was oil-based at the time.

It was –

MR. BUDDEN: Sure.

MR. T. MARSHALL: – still is, but –

MR. BUDDEN: At the time especially, I get that.

MR. T. MARSHALL: Yeah. And now you're giving me numbers from when Mr. Marshall took over and so instead of four, he's now saying seven – seven plus 10 for transportation?

MR. BUDDEN: No, that 17.42 cents is –

MR. T. MARSHALL: That's everything, that's all in.

MR. BUDDEN: That's all in to Soldiers Pond.

MR. T. MARSHALL: Okay.

MR. BUDDEN: So –

MR. T. MARSHALL: So that's –

MR. BUDDEN: – basically –

MR. T. MARSHALL: – the number now.

MR. BUDDEN: That's the number as of –

MR. T. MARSHALL: After the cost increases.

MR. BUDDEN: – after – as of 2018. It –

MR. T. MARSHALL: Right.

MR. BUDDEN: – may not be the number of today, but that –

MR. T. MARSHALL: Right.

MR. BUDDEN: – was the number from that presentation.

MR. T. MARSHALL: Okay but the number, when we made the decision, the seven was four.

MR. BUDDEN: I realize, obviously –

MR. T. MARSHALL: Yeah.

MR. BUDDEN: – that the – well, the – that goes back to our first line about how the demand has been – demand is not what was anticipated but –

MR. T. MARSHALL: Yeah. All I can say on demand – projections – there were projections back in 2012, there's new projections in the future. We can't predict the future.

MR. BUDDEN: Well arguably, we can to some degree –

MR. T. MARSHALL: (Inaudible.)

MR. BUDDEN: – but we won't revisit that. But perhaps –

MR. T. MARSHALL: All I can tell you is –

THE COMMISSIONER: Let's just – just –

MR. T. MARSHALL: – there's an old biblical saying that when man plans for the future, God chuckles. (Inaudible) there's some truth there.

MR. BUDDEN: Laughs, yeah.

THE COMMISSIONER: I think there was a lot of predicting for the future in a lot of the numbers that were being utilized at sanction, for instance, with regards to load, things of that nature. So while it can't – you know, while I agree that it can't be predicted with certainty, certainly people made predictions.

It was on the basis that – those predictions, that the business case was made out. So I don't think it's – you know, I think that's a point that needs to be understood, which I'm sure you do –

MR. BUDDEN: Sure.

THE COMMISSIONER: – anyway, let's get to it, Mr. –

MR. BUDDEN: My two questions – my first one, if we go back a slide, I think I can accomplish this – previous slide please, Madam Clerk. No, not that one, I think there's one in between – yeah, that one. That's the one.

So you'll see there that the exports, just the Muskrat Falls export, the grey one, that's almost 1,500 gigawatts. So that's roughly a third of the total power, and it's anticipated of course in that graph. If it's costing 17.42 cents to produce it, obviously it has to be sold for these numbers to hold up at greater than 17.42, and I suggest right now market – power is not being sold anywhere remotely close to 17.42 cents; would you agree with me there?

MR. T. MARSHALL: Spot market, yes.

MR. BUDDEN: Yes. So any market that you're aware of in North America.

MR. T. MARSHALL: Yes. But again, we know markets fluctuate. Sometimes they're very bad, sometimes they're okay, sometimes they're very good. The important thing is being able to get your product to that market.

MR. BUDDEN: Okay.

And so, however, what we know, keeping that chart there, is our requirements are 1,324 megawatts as of 2021, increasing modestly into the foreseeable future. But yet the unit cost, assuming all the power is sold, is 17.42 and that had to be blended to account for Emera. So I guess my final question is –

MR. T. MARSHALL: I guess to be blended – the power goes into – all the power goes in, is blended, is it not? Once it hits Soldiers Pond?

MR. BUDDEN: Assuming that the export power is sold.

MR. T. MARSHALL: Yes.

MR. BUDDEN: And there's even talk of dividends at some point, though I think that's probably gone by the board. But I guess where we can end this now with this simple question – can you not see from this simple chart and these numbers that those critics who were concerned that the project was really, grossly overbuilt for our domestic market and that we would be left very, very vulnerable to fluctuations and markets – they had a point, didn't they?

MR. T. MARSHALL: Well, anybody who says that any project you're going to do, that there's a

risk of overruns – yes, there’s a possibility that those will happen. And the way to avoid it is to not do anything; but sometimes your numbers are right and sometimes your markets are good and sometimes there’s a lot of money in – a lot of revenue comes in, especially when you have – especially when you operate a monopoly.

So why not have a monopoly that’s owned by the people of the province instead of allowing the business factor – you know, the private community to do it, except the fact they’re taking the risk; if it doesn’t go well, they lose.

MR. BUDDEN: But, Sir, there’s no monopoly that can – we can force that export power on anybody, is there?

MR. T. MARSHALL: No, but the power – the original idea here was to supply the needs of the people of the province. Well, I guess they started originally talking about export Gull Island. Then that shifted, because of the fact that hydro forecasts indicated we were going to need power – we were going to run out of power on the island. And – blackouts at peak times and then blackouts at all times after ’21.

That was the information we had then. So, the Muskrat proposal – as we understood it – was that even though we were going to use only 40 per cent of the power – it was going to be 4.9 terawatt hours per year – we would use 2, and even if the rest – the water was spilled for the rest, it was still the lowest cost, the lowest alternative for the people of the province.

MR. BUDDEN: But you know – you said yourself, you know overruns happen.

MR. T. MARSHALL: Pardon me?

MR. BUDDEN: I say, as you said a moment ago, it’s known that overruns happen.

MR. T. MARSHALL: Yes.

MR. BUDDEN: It’s known that markets fluctuate.

MR. T. MARSHALL: Yes.

MR. BUDDEN: What plan did you guys have if this situation materialized?

MR. T. MARSHALL: Well, obviously the plan was, first of all, to provide the people of the province with power for them, to meet their needs. Any surplus power, it would be a bonus. We knew – anybody would know that sometimes markets are not good, but then sometimes they are. And over the long term, the numbers we were given indicated that we would have the power for our own people at stabilized rates; in other words, we’d get off the oil. And, on average there was going to be all this income.

MR. BUDDEN: That’s gone by the board, hasn’t it?

MR. T. MARSHALL: Well, it’s the capital cost (inaudible). So yes.

MR. BUDDEN: It’s the last question I have and I’ll word this carefully. And pause a second before you answer because it may be a question that other counsel have a problem with, but it is this – and it’s really a yes/no question I’m asking. And it has to do with the water management legal issue. And the question is: Did the possible legal issues relating to water management impact the decision post-sanction to continue with the project.

And, if the answer is no answer no, if the answer is yes, I won’t pursue it any further either way.

MR. T. MARSHALL: I don’t recall.

What I recall about the water management was the – there was legislation to ensure that if you have more than one owner on a river, they would maximize the value of output. That was number one, and number two was, I knew that Hydro-Québec were interpreting the renewal contract –

MR. SIMMONS: Mr. Commissioner, I don’t know how much Mr. Marshall is aware that we dealt with water management in camera, in many aspects of it. So, it is an area where we have to tread carefully about what’s –

THE COMMISSIONER: Right.

MR. SIMMONS: – discussed.

MR. BUDDEN: Yes, and that’s why I framed the question as I did.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

THE COMMISSIONER: I think – excuse me just for a second – I think the question is properly put because it's been asked of others – including Ms. Dunderdale – in Phase 1. I think the area of concern that I had was whether or not issues related to water management – related to strategy, legal advice, things of that nature – I wanted to know what the province were aware of at the time but I felt it was appropriate that that should be kept in camera so that it would not potentially feed anyone who might well not be in the position of – taking the position of the province.

So, I don't have any problem with the question and the answer the way it was going now. You said you knew Hydro-Québec was the reading the –

MR. T. MARSHALL: I knew there was – yeah, there was the renewed contract after the first term ended, that there was a difference on interpretation, that Nalcor had taken an interpretation. The wording was slightly different, and Nalcor, I think, argued that that meant something other than what was the position before and Hydro-Québec disagreed with that and went to court with it.

That's about what – that's pretty much what I knew.

MR. BUDDEN: Okay.

I think my question has been answered.

Thank you very much, Mr. Marshall.

MR. T. MARSHALL: Thank you, Mr. Budden.

MR. BUDDEN: Yeah.

THE COMMISSIONER: All right.

Kathy Dunderdale.

MS. E. BEST: (Inaudible.)

Sorry, counsel for Mr. Martin has no questions.

(Inaudible) skip, oh.

THE COMMISSIONER: Sorry, Mr. Smith.

Edmund Martin.

MR. SMITH: I knew I lost some weight, but I didn't think I'd gotten invisible.

THE COMMISSIONER: My list is actually changed. Your name comes after Kathy Dunderdale, which I should've known was wrong. So that was my error.

Go ahead.

MR. SMITH: Mr. Marshall, I'm Harold Smith for Edmund Martin.

MR. T. MARSHALL: How are you?

MR. SMITH: Mr. Marshall, I'm a little curious about within a department. You've been in the premier's chair, yes, but I'm thinking about in the departmental chairs of Natural Resources and Finance.

MR. T. MARSHALL: Yes.

MR. SMITH: Okay?

Is there any protocol in Natural Resources and Finance as to what is released to the public or how it's released?

MR. T. MARSHALL: Well, press releases go out from time to time.

MR. SMITH: Yes.

Do they get approved by certain levels within the department before they're released?

MR. T. MARSHALL: Yes, and –

MR. SMITH: Or can anybody in the department release them?

MR. T. MARSHALL: – I don't really know the detail but I know that there's a communication. There's a communications division in the public service of the Cabinet Secretariat out of the clerk's office. And then each department had their own communications people, so I assume there's a lot of back and – you know, back and fro between them as to what goes out, when it

goes out, but I didn't pay a lot of attention to that.

MR. SMITH: Okay.

You indicated in your evidence, or at least what I thought I heard you say, that you recall being made aware or becoming aware of the \$6.5 billion in March of 2014?

MR. T. MARSHALL: Well no, that's the first document I saw.

MR. SMITH: First document.

MR. T. MARSHALL: It's a – whether I – I don't know whether I was aware at that time but I see there that was the document that went from Nalcor to the Department of Finance so, I mean, government would have it then.

MR. SMITH: Okay.

MR. T. MARSHALL: And I don't remember if I was given it but –

MR. SMITH: Okay.

MR. T. MARSHALL: – you know, government had it.

MR. SMITH: Okay.

While I'm just taking it for a moment, just leaving Mr. Simmons's questions aside as to officials in your department having knowledge of –

MR. T. MARSHALL: Yeah.

MR. SMITH: – the 6.5.

MR. T. MARSHALL: Yes.

MR. SMITH: And presumably you would have because they would report such things to you. That would be the standard operating situation. Is that – if the officials of the department knew and it was –

MR. T. MARSHALL: If they knew.

MR. SMITH: – yeah. And –

MR. T. MARSHALL: Yes, at some point it would be passed on to me.

MR. SMITH: Right.

MR. T. MARSHALL: Yeah.

MR. SMITH: But let's assume for a moment that the first information that came to you was in the document in March of 2014. My understanding is, is that it never went public until June of 2014.

MR. T. MARSHALL: That's correct.

MR. SMITH: Okay –

MR. T. MARSHALL: Yeah.

MR. SMITH: – and my questions is, why the delay?

MR. T. MARSHALL: I can't answer that. That's – I've wondered that myself, right?

I know that number came over from Nalcor to Finance in March, and that was budget time.

MR. SMITH: Okay.

MR. T. MARSHALL: And I don't recall it being announced at budget, and I don't recall anything after that until the June 25 date when Mr. Martin came in and briefed the Cabinet on the 6.99 number, and there was a chart taking it from 6.2 to 6.9, so that would pass through a 6.5 but there was no – I don't recall a specific mention of 6.5.

MR. SMITH: Could it have been anything to do with commercial sensitivity –

MR. T. MARSHALL: Possibly.

MR. SMITH: – of the bids coming in?

MR. T. MARSHALL: Possibly, I don't know.

MR. SMITH: You don't know.

Now, I ask the clerk to put up 01677 and try and draw an analogy if we can, okay?

Page 19? Okay, okay scroll down further, please?

Now, this is the beginning – at line 13 there's a beginning, it says the PMT were giving the executive a number of \$7 billion. However, on the far right you'll see that they were hoping to have that ameliorated to 6.8 – then scroll further again, please. And then the CEO was told it was 6.9, and again, on the far right, looking at going down to 6.8 – scroll down – and now we have a range of 6.7 to 6.95, and trying, again, to mitigate to 6.8, and it looks like ultimately they arrived at 6.531, ultimately, in terms of the –

MR. T. MARSHALL: Okay.

MR. SMITH: – the costs, okay?

Now, if we look at these numbers – and scroll back up again, if you would, to line, I think it's line 10 – 13, rather, there you go – you'll see that that's July – and scroll down – August and September. So, in three months, there are three sets of different numbers.

Do you see that causing a problem if that's released to the public? Three different numbers in three months?

MR. T. MARSHALL: A problem? I –

MR. SMITH: Well, an issue of confusion within the public as to what the actual cost is when it changes in three months, three times.

MR. T. MARSHALL: Yes, it would be – I guess it would be a good idea to – maybe on a regular basis to put out the latest number.

MR. SMITH: Right. And one that's – you're confident of?

MR. T. MARSHALL: Oh, definitely, and I notice there's mitigation going on here as well.

MR. SMITH: Right.

MR. T. MARSHALL: Yes.

MR. SMITH: So –

MR. T. MARSHALL: You'd want a firm number.

MR. SMITH: You want a –

MR. T. MARSHALL: Based on bids that were coming in, based on additional engineering that was being done, I guess, you're trying to get away, at this point, from, you know, the earlier numbers, which are predictions, but now you're starting to – it's firming up.

As you move along, you get firmer numbers, and they should be – when you have information – material information, the public has a right to know; they're the owners of the project.

MR. SMITH: Okay.

But you'd agree that, generally speaking, it's better to have a number that someone has confidence in, that is accurate, as opposed to just putting out numbers for the sake of putting out numbers?

MR. T. MARSHALL: Yes, but I would expect if the project management team brought the number and they were confident in the number, the number would be released.

MR. SMITH: Yeah.

MR. T. MARSHALL: Right?

MR. SMITH: But they're not very confident if they're talking about mitigation of the number, are they?

MR. T. MARSHALL: If they've actually mitigated it.

MR. SMITH: Yes, but if they're trying to mitigate the number, they're not confident in that number. They're attempting to mitigate it.

MR. T. MARSHALL: Well, I guess there's a conflict, but I – you know, government – we have a duty to let the people know what's happening.

MR. SMITH: Yes. But, again, your duty is to be informative and accurate.

MR. T. MARSHALL: Yes.

MR. SMITH: Right?

MR. T. MARSHALL: Yes, but also to make sure the public is aware.

MR. SMITH: Okay.

Now, I'm going to bring you to an area of your testimony this morning where you suggested and answered to Mr. Learmonth's questions, that it wasn't very transparent when the drafts of the IE, the independent engineer, were not provided to government. And I'll just point out to you that were five or six drafts of the IE, all of which were different.

MR. T. MARSHALL: Yeah, I didn't know that until recently. I was only aware of –

MR. SMITH: Okay. Now –

MR. T. MARSHALL: – the December drafts.

MR. SMITH: – my query is: How is it not transparent to, if you will, not have five or six drafts of a document that changed? How is that not transparent, which is what the answer was to Mr. Learmonth's question, that you felt it wasn't very transparent to have not been provided, except for that one that was requested – the July IE report? You indicated that you felt it was non-transparent. I was wondering if perhaps you may have spoken too quickly.

MR. T. MARSHALL: Well, if it was put in this data room, and Natural Resources and Finance –

MR. SMITH: (Inaudible.)

MR. T. MARSHALL: – knew that –

MR. SMITH: Yeah.

MR. T. MARSHALL: – and could access it –

MR. SMITH: Yeah.

MR. T. MARSHALL: – that would be, you know, then the burden falls on the departments: Why weren't you seeking that information?

MR. SMITH: Yeah.

MR. T. MARSHALL: But that, you know, I mean, Natural Resources and Nalcor work so

closely together that, you know, you'd think they would just be here, this alleged –

MR. SMITH: So, you're –

MR. T. MARSHALL: – draft.

MR. SMITH: – suggesting if it was – if these drafts were put in the data room and they had access, that transparency would have been fulfilled.

MR. T. MARSHALL: Yes, provided –

MR. SMITH: Yeah, that they had (inaudible).

MR. T. MARSHALL: – the departments know it's there –

MR. SMITH: Yeah.

MR. T. MARSHALL: – and you can get it if you want it.

MR. SMITH: And you don't see any danger of confusion when the information is constantly changing over five drafts?

MR. T. MARSHALL: Well, I think it's more important that the department be updated with what's the latest information that you have.

MR. SMITH: Wouldn't the – wouldn't –

MR. T. MARSHALL: I guess you'd, there would be a recognition that month to month the information can change. I think the department would want to be looking to see where – what the trend – what trends were.

MR. SMITH: But in relation to the independent engineer, only the final draft is that which was intended to be relied upon. Would you not agree?

MR. T. MARSHALL: Normally, yes.

MR. SMITH: Okay.

MR. T. MARSHALL: But here I understand they relied on a draft report.

MR. SMITH: Well, they – there was a – the indications we have is that the – there was a

final report prior to financial close, and it wasn't released to Nalcor until the next year.

MR. LEARMONTH: (Inaudible) I don't think that's correct. The report that was available at financial close was the November 29 interim report. There was a December 30 report, but there was no final –

MR. SMITH: I'll stand corrected.

MR. LEARMONTH: – there's no final report prepared by the independent engineer at time of financial close –

MR. SMITH: What –

MR. LEARMONTH: – that we've seen anyway.

MR. SMITH: Okay, I'll stand corrected if that's the case, but my understanding was – is that the report that – of the independent engineer was released to Nalcor in the spring after financial close.

MR. T. MARSHALL: I know in February, from what I've read –

MR. SMITH: Yeah.

MR. T. MARSHALL: – the department got it in February.

MR. SMITH: February.

MR. T. MARSHALL: And I think it came to me, or the deck came to me in April.

MR. SMITH: April, okay.

MR. T. MARSHALL: But your point about draft reports – yeah, you wouldn't necessarily want to see the draft; you'd want to see the final report. But I'm noticing there's all these – there seems to be a monthly draft report. There's not a monthly final report for each month.

MR. SMITH: I'm not disputing that, Sir. I'm just indicating that there were drafts –

MR. T. MARSHALL: Yes.

MR. SMITH: – and drafts require –

MR. T. MARSHALL: Changes.

MR. SMITH: – changes.

MR. T. MARSHALL: Right.

MR. SMITH: Usually.

MR. T. MARSHALL: Yup.

THE COMMISSIONER: Not for everything though.

MR. SMITH: Pardon?

THE COMMISSIONER: Not for everything though.

MR. SMITH: Not of everything, yeah. The reports itself contained changes. I think Mr. Learmonth pointed that out, that there were changes in each of the drafts.

THE COMMISSIONER: I guess the question here, more aptly is is that, notwithstanding the draft reports – I think you referred to it earlier, Mr. Marshall – you said, you know, at least if there are monthly reports then the department and government can look at it. How much reliance they put on it depends on their own views and what they see each month if they can assess trends or whatever.

MR. T. MARSHALL: Yeah, you have information and then you say, well, there's the final draft still to come but at least you have that information.

THE COMMISSIONER: Right.

MR. SMITH: I'm looking at P-01988.

THE COMMISSIONER: You don't have that one; you'll have to see that on the screen.

MR. SMITH: Page 28, please.

You were referred to this by Mr. Budden in his examination of you. What is your true understanding of how these charts were created? Are you just looking at the chart as everybody else would look at it, and – yeah, well it's an interesting chart, has (inaudible) – useful information on it –

MR. T. MARSHALL: Well –

MR. SMITH: – but –

MR. T. MARSHALL: What I remember was comparing cents for kilowatt hour, starting with the – what it would cost you to buy it at the bus I think they call it, and then the cost of transporting. And then there would be – once it got to Soldiers Pond it would be blended with Holyrood power and other power and then it would go to Newfoundland Power and then Newfoundland Power would – their charges would be added on. Then you'd get the cost to the consumer and there were taxes added to that.

I always tried to look at that number in comparison. What was it back then, what other options were there? For example, you know, if you could get Upper Churchill power, if that could be sold and if you get that at two cents, it was still gonna cost you – it's still gonna cost you a lot of money to transport it. So it still wasn't dirt cheap. It wasn't two-cent power by the time you got it, and then it was blended and so on.

MR. SMITH: So, I –

MR. T. MARSHALL: These are things that I was trying to put together, but there was always the question: Is that –before Newfoundland Power get it, is that before or after blending? It was different numbers and you never knew if –

MR. SMITH: Yeah.

MR. T. MARSHALL: – you were comparing apples to apples.

MR. SMITH: Right.

So it's a complex set of equations –

MR. T. MARSHALL: Yes.

MR. SMITH: – in order to get –

MR. T. MARSHALL: Yeah.

MR. SMITH: – to these numbers. It's not, therefore, not particularly easy to interpret them without knowing the calculations or how they were achieved.

MR. T. MARSHALL: It would have been nice to have seen this before and have a chance to play with the numbers a bit. Then –

MR. SMITH: Yeah.

MR. T. MARSHALL: – I would have given Mr. Budden a better answer to that.

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

THE COMMISSIONER: All right, I think we'll take our break here now, then, and – for 10 minutes and then we'll ask Kathy Dunderdale.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

MR. LEARMONTH: Okay, can I just jump in here quickly?

THE COMMISSIONER: Sure.

MR. LEARMONTH: Yes, I'd like to enter – have two new exhibits entered: P-02842 and P-02843.

THE COMMISSIONER: All right.

Those exhibits will be marked as numbered.

Are they in the books now, Mr. Learmonth?

MR. LEARMONTH: Pardon?

THE COMMISSIONER: Are they in the binders or –?

MR. LEARMONTH: I'm not sure if they're in the binders.

THE COMMISSIONER: Okay.

All right.

Kathy Dunderdale.

MS. E. BEST: Good afternoon, Mr. Marshall.

MR. T. MARSHALL: Good afternoon.

MS. E. BEST: I'm Erin Best. I'm counsel for Kathy Dunderdale, and we met in Phase 1.

MR. T. MARSHALL: Yes.

MS. E. BEST: So, my questions are going to overlap Mr. Simmons's and Mr. Smith's. I'm just going to try and clarify a couple of points that they were getting at.

MR. T. MARSHALL: Right.

MS. E. BEST: And I'm going to address the time period from around the date of financial close, November 29, 2013, up until about December 10, 2013.

Okay.

And you were the minister of Finance at that time, we know –

MR. T. MARSHALL: Yes.

MS. E. BEST: – right? Okay.

So, it seems clear from the documents now that people in your department, in particular Paul Myrden and Donna Brewer, knew that there were overruns with respect to the cost estimate prior to financial close. And earlier today you were asked whether you followed up with them or whether you asked them about the details of that overrun. And you said that you couldn't recall.

MR. T. MARSHALL: Mm-hmm.

MS. E. BEST: So my question for you is a bit different than did you ask them. My question for you is, would you have asked them?

MR. T. MARSHALL: If I knew there was information there?

MS. E. BEST: If – yes, yeah.

Would you have followed up with them? Would that have been your practice? If you put yourself back into your shoes back then, what would you have done?

MR. T. MARSHALL: Well, as I said, I was very interested to know if there was gonna be a new number because the number that I'd gotten in November 1 was the same number as we had at sanction. There was an email from Donna Brewer to me saying that a new number was coming for financial close.

MS. E. BEST: Right.

MR. T. MARSHALL: So I would have been interested in that information.

MS. E. BEST: Okay. So –

MR. T. MARSHALL: Yeah.

MS. E. BEST: – you think you would have asked. Is that what you're saying?

MR. T. MARSHALL: If I knew it was in the – if I knew Nalcor had it, yes.

MS. E. BEST: Okay.

MR. T. MARSHALL: But I – you know, there were a lot of meetings going on. If somebody in government had it, I would have expected them to tell me.

MS. E. BEST: Yes.

MR. T. MARSHALL: Right?

MS. E. BEST: And I –

MR. T. MARSHALL: It's just that I don't remember if anyone told me, and I had no document to show it.

MS. E. BEST: Right. Okay.

So – and then – and you did say this morning as well – and I wrote it down: I'm sure that if they were aware of a higher number, they would have brought it to my attention.

So I guess my question is, are you positive that they didn't?

MR. T. MARSHALL: No.

MS. E. BEST: No. Okay.

MR. T. MARSHALL: No.

MS. E. BEST: Because looking back on it, and considering that – you know, the consequences of the number – the higher number, right –

MR. T. MARSHALL: Right, right.

MS. E. BEST: – if the federal government had not agreed to include the 6.5 number, you know, in the federal loan guarantee documents –

MR. T. MARSHALL: Yes.

MS. E. BEST: – if they had not agreed to that, there would have been a consequence with respect to a payment into the COREA –

MR. T. MARSHALL: Yeah, it'd be higher.

MS. E. BEST: Right.

MR. T. MARSHALL: Yeah.

MS. E. BEST: And so you would have needed to know how much the overrun was at that time, right?

MR. T. MARSHALL: There was gonna be a new number coming from the independent engineer, a new – that would replace the DG3 number. And that was – sorry – that was needed for determining the COREA account, that –

MS. E. BEST: Yes.

MR. T. MARSHALL: – would be the, I guess, the new baseline.

MS. E. BEST: Yes.

MR. T. MARSHALL: So, yeah – from my perspective, it was – if it was a change in the total project costs, I would have been very interested to know that number, and –

MS. E. BEST: Okay.

MR. T. MARSHALL: – I'm sure the officials would as well.

MS. E. BEST: Yeah.

And with respect to the 6.5 number that was used in the federal – for the purposes of the federal loan guarantee –

MR. T. MARSHALL: Right.

MS. E. BEST: – you would have known about that as well, wouldn't you? You would have had knowledge of the 6.5 number in the – as it was used in the federal loan guarantee documents, wouldn't you? At financial close or at least shortly thereafter in about that time period between financial close and December 10?

MR. T. MARSHALL: Again, I don't remember being told. The information would have been very useful –

MS. E. BEST: Yeah. But that's not exactly – my question is –

MR. T. MARSHALL: Yeah.

MS. E. BEST: – not that you'd – you know, did you know; it's would you have?

So, for example, the TD Bank agreements –

MR. T. MARSHALL: Sorry?

MS. E. BEST: I said, for example, the TD Bank agreements, you –

MR. T. MARSHALL: Yes.

MS. E. BEST: So, I know that you weren't one of the people who signed those agreements. I know that.

MR. T. MARSHALL: (Inaudible.)

MS. E. BEST: But wouldn't you have asked for a copy of those agreements? Wouldn't your department have reviewed them?

MR. T. MARSHALL: Yes, but, you know, there was lots of agreements, right?

MS. E. BEST: Yeah, but –

MR. T. MARSHALL: Yeah.

MS. E. BEST: – certainly those would have been reviewed by your department, wouldn't they?

MR. T. MARSHALL: The project finance agreements would've been, yes. Yeah.

MS. E. BEST: Okay. Okay. And those two – those agreements together would've included the 6.5 number as well?

MR. T. MARSHALL: So, I – I see today, yes.

MS. E. BEST: Okay.

MR. T. MARSHALL: Mmm.

MS. E. BEST: And then just lastly, on December 10, on that day when the – Nalcor gave the presentation, and then –

MR. T. MARSHALL: Right.

MS. E. BEST: – I think there was an interview with the press that, I believe, you watched the video.

MR. T. MARSHALL: No, I didn't see an interview with the press. I just saw –

MS. E. BEST: Okay.

MR. T. MARSHALL: I watched the video of the speakers.

MS. E. BEST: Of the speakers, okay.

MR. T. MARSHALL: Yeah.

MS. E. BEST: And federal minister Rob Moore was there that day.

MR. T. MARSHALL: That's right.

MS. E. BEST: That's –

MR. T. MARSHALL: Yeah.

MS. E. BEST: Yes. And did you spend some time with Minister Moore at that time –

MR. T. MARSHALL: No.

MS. E. BEST: – on that day –

MR. T. MARSHALL: No.

MS. E. BEST: – with others? Wasn't he there for the presentation?

MR. T. MARSHALL: He was there for the presentation –

MS. E. BEST: Okay.

MR. T. MARSHALL: – and with Andrew Younger from Nova Scotia.

MS. E. BEST: Exactly.

MR. T. MARSHALL: But I have no recollection of talking to him or talking to Mr. Younger. I don't even have a recollection of that event, but I know I was there.

MS. E. BEST: Okay.

MR. T. MARSHALL: I know I had to be there.

MS. E. BEST: Yes.

MR. T. MARSHALL: And – but, no, I don't recall talking to them.

MS. E. BEST: I guess what I'm getting at – no, my question wasn't, did you have a conversation with them, personally? I mean that –

MR. T. MARSHALL: Okay.

MS. E. BEST: – you would've all been together in a room, and –

MR. T. MARSHALL: No, see, I wasn't one of the speakers.

MS. E. BEST: Okay.

MR. T. MARSHALL: The event was in the lobby of the Confederation Building.

MS. E. BEST: Yes.

MR. T. MARSHALL: My office would've been down the hall, but I would've been in the – if I was there, I would've been in the audience. I wasn't one of the speakers. It was – as – you know, having watched the video recently, you know, the clerk welcomed everybody –

MS. E. BEST: Right.

MR. T. MARSHALL: – Ms. Mullaley.

MS. E. BEST: Yeah.

MR. T. MARSHALL: Derrick Dalley, the minister of Natural Resources – 'cause it's a Natural Resources file –

MS. E. BEST: Right.

MR. T. MARSHALL: – with the premier leading. So, Derrick Dalley, minister of Natural Resources, he MC'd it. Premier Dunderdale was the speaker for the province.

MS. E. BEST: Right.

MR. T. MARSHALL: Rob Moores spoke for the Government of Canada; Andrew Younger spoke for Nova Scotia, and then Ed Martin spoke. They were the only speakers.

MS. E. BEST: Okay. Okay, I'll leave it at that.

So, then, just to summarize, what I take your evidence to be is that you're not really sure if you knew about the 6.5 number around financial close. You just can't recall.

MR. T. MARSHALL: I can't – I'm thinking with all these meetings going on, someone – if government officials had that, someone would've mentioned it to me. But I have no document to show that and I just don't remember (inaudible).

MS. E. BEST: Okay, thank you.

Those are my questions.

MR. T. MARSHALL: Thank you.

MS. E. BEST: Thanks.

THE COMMISSIONER: Thank you.

Julia Mullaley, Charles Bown.

MR. FITZGERALD: No questions, thank you.

THE COMMISSIONER: Robert Thompson.

MR. COFFEY: Good afternoon, Mr. Marshall.

MR. T. MARSHALL: Good afternoon, Mr. Coffey.

MR. COFFEY: Bernard Coffey, I represent Robert Thompson. I just have a couple of questions.

Could we bring up, please, Exhibit P-00023? This is an Exemption Order from 2000. And Mr. Learmonth asked – he asked you about the Exemption Order from 2000; I don't think he showed it to you.

If we could go just to – just scroll down a tiny bit, please, Madam Clerk. Okay, right there, yeah. It's filed December 14, 2000, and it's dated November 30, 2000, signed by Gary Norris the then-clerk.

If you go down again to the second page, please, and just here: "In this Order, the 'Labrador Hydro Project' means" – and it describes pretty well most anything connected with it – (a) the generation and facilities at Churchill Falls; (b) Gull Island; (c) Muskrat Falls; and (d) the dams, dykes and other works associated with the generation sites. And (c) – I'm sorry, "(e) the transmission facilities necessary to deliver power generated at the sites referred to in paragraphs (a), (b) and (c) to the island portion of the province and the border of the Province of Quebec and Labrador"

So Mr. Learmonth has suggested to you, or asked you, in fact – or put it to you that there was no suggestion back in that 2000 Exemption Order that, you know, if Muskrat Falls was developed that it – you know, it might involve the ratepayers of Newfoundland.

And just looking at that and I'm – well, first of all, I'll ask you: Have you ever seen this before?

MR. T. MARSHALL: No.

MR. COFFEY: Okay.

In terms of this, though, it does seem in 2(b) combined with 2(c) to exempt – and for that matter 2(f) – exempt a plant at Muskrat Falls as well as a line to the Island from –

MR. T. MARSHALL: Yes, it does.

MR. COFFEY: – the PUB.

MR. T. MARSHALL: Yes.

MR. COFFEY: And whoever might pay for it, that might be another story but – okay, so that's number one. Number two, Mr. Marshall, you – a couple of times in answering questions from Mr. Learmonth, once you said: We'd sanctioned the Muskrat Falls project – and I'm paraphrasing. As far as we were concerned, the project was a go. From our perspective at that time, we felt that after sanction we were moving ahead with the project and we made a decision to go with this at sanction. I think that's three paraphrases of what you had to say to Mr. Learmonth –

MR. T. MARSHALL: Yes.

MR. COFFEY: – at various times.

I'm going to ask you, because, well, you're – of course, you spent your career as – before you were a politician you were a lawyer.

MR. T. MARSHALL: Yes.

MR. COFFEY: Okay.

What's your recollection – in terms of looking back on it, you know, in 2011, 2012, in particular, 2013 into 2014. Was there ever a point in your view of things where it was a point of no return? What was your view of the point of no return, if there was one?

MR. T. MARSHALL: Well, I think sanction – the way we looked at sanction, it was that it was a go, subject to certain conditions precedent being met –

MR. COFFEY: Yes.

MR. T. MARSHALL: – and subject – and one of the most important ones, of course, is could they raise financing –

MR. COFFEY: Yes.

MR. T. MARSHALL: – which had been worked on.

MR. COFFEY: Yes.

MR. T. MARSHALL: And it was Nalcor's subsidiaries that were borrowing the money, not the government.

MR. COFFEY: Yes.

MR. T. MARSHALL: Then there was the desire to get this guarantee from the Government of Canada, which would be a guarantee to the lenders –

MR. COFFEY: Yes.

MR. T. MARSHALL: – not from what the province had to put in.

MR. COFFEY: Yes.

MR. T. MARSHALL: And but then there were commitments – they wanted commitments from the province –

MR. COFFEY: Sure.

MR. T. MARSHALL: – and that was our concern.

MR. COFFEY: Yes.

MR. T. MARSHALL: And that commitment had been given in the letter back in 2011.

MR. COFFEY: Yes.

MR. T. MARSHALL: The commitment to put in the equities and we knew we were going to do that.

MR. COFFEY: Yeah.

Now, if I could, just before you go on –

MR. T. MARSHALL: Yeah.

MR. COFFEY: – back in October of 2011, that letter – now, we've – I believe we've heard evidence from Todd Stanley, who is one of the government lawyers involved. And I think Mr. Stanley –

MR. T. MARSHALL: Yeah.

MR. COFFEY: – if I remember correctly, has told the Commissioner, you know, it was a letter, you know, but not legally binding.

MR. T. MARSHALL: No, no.

MR. COFFEY: Okay? And that's your understanding too?

MR. T. MARSHALL: Yes, yes.

MR. COFFEY: Okay (inaudible). So it was a political commitment in effect.

MR. T. MARSHALL: Yes.

MR. COFFEY: Okay, go ahead. I'm sorry I stopped you.

MR. T. MARSHALL: And then it was required as part of financial close –

MR. COFFEY: Yes.

MR. T. MARSHALL: – that we take that the next step and put it in the form of a binding –

MR. COFFEY: Yes.

MR. T. MARSHALL: – legal agreement, plus some other things.

MR. COFFEY: Sure.

MR. T. MARSHALL: But in the meantime, work started and – to try to get a jump on the schedule. So that's where – that's where our thinking was, recognizing that if we didn't get the guarantee, that that would have an impact on the number. But in the beginning when we were briefed, it was – we could still do it without the guarantee –

MR. COFFEY: Yes.

MR. T. MARSHALL: – and we didn't – in the beginning there was no need – we didn't need Emera. If we didn't have Emera, it didn't make any difference because it was about bringing power to the Island for the people of the province.

MR. COFFEY: Yes.

MR. T. MARSHALL: That was the thinking at the time that I can recall.

Have I answered – have I –?

MR. COFFEY: Oh, yes.

MR. T. MARSHALL: Yeah.

MR. COFFEY: And following up on that, Ms. Dunderdale has told us, and – when she was here in December, that from her perspective as premier – and she said I – you know, I don't know what the Cabinet would've thought, but she said from her perspective as the premier, unless the province, Newfoundland and Labrador, had the – Nalcor, in particular, had the federal loan guarantee, she was not going to go ahead with this. And you recall her saying –

MR. T. MARSHALL: I –

MR. COFFEY: – or hearing her say that?

MR. T. MARSHALL: I did.

MR. COFFEY: Yes.

MR. T. MARSHALL: I did.

MR. COFFEY: And did she ever convey that to you back at the time? She says she – says she didn't and I'm not suggesting she did at all. I'm just asking you would – like, because, what I'm asking you to reflect on, Mr. Marshall, is from your perspective, you know, you just said a minute ago well, you know, this made sense even without the federal loan guarantee, from –

MR. T. MARSHALL: But based on the information –

MR. COFFEY: – your perspective –

MR. T. MARSHALL: Based on –

MR. COFFEY: Yes.

MR. T. MARSHALL: – the information we had –

MR. COFFEY: The information you had –

MR. T. MARSHALL: – we had –

MR. COFFEY: – at the time.

MR. T. MARSHALL: – at the time.

But the guarantee was something that, if it could be obtained, would mean a, we were told, a billion-dollar savings for the ratepayers.

MR. COFFEY: Yes.

MR. T. MARSHALL: So, obviously –

MR. COFFEY: It was a good thing.

MR. T. MARSHALL: Yeah, yeah, we were very interested.

But in the beginning it was, this is a project for the people. We really – we can do it without the guarantee, it won't be as attractive. We can do it without Muskrat, we would do without the Maritime Link, it won't be as attractive. But I saw the comments of the premier and she – you know, she was the leader and the premier, that if she didn't get the guarantee she wouldn't have gone ahead.

MR. COFFEY: You know, I referred to the fact earlier, or a couple of minutes ago, the fact that you, of course, are trained as a lawyer and practised as a lawyer for a long time.

When the agreements were signed November 29, 2013, from a legal perspective, was – what was your understanding of the effect of that? I'm not asking you as a politician, now, but legally –

MR. T. MARSHALL: Yeah the –

MR. COFFEY: – what was your understanding?

MR. T. MARSHALL: That we were committed to this, that we had – we were going to do this and we had to do this. We had to put the equity in, all of it, whatever –

MR. COFFEY: Yes.

MR. T. MARSHALL: – whatever it was. And as I said before, we thought it was a worthwhile risk in terms of the rates to the consumer and the fact that we would, on average, have revenues of – I know there were different numbers, but they

were quite substantial, on average, and it was back-end loaded –

MR. COFFEY: Yes.

MR. T. MARSHALL: – but on average, something like \$400 to \$500 million a year that could go into either reducing rates further or programs for the people of the province.

MR. COFFEY: So – and in terms of – you just referred to a political commitment, you know, in contradistinction perhaps to a legal commitment, okay, and we've just discussed that. For a politician, I take it, well, a legal commitment might be important but a political commitment is very important, isn't it? As a politician, a political commitment is important.

MR. T. MARSHALL: It is, but if it turns out the business case has changed and it –

MR. COFFEY: Oh, yes.

MR. T. MARSHALL: – doesn't make sense –

MR. COFFEY: Yeah.

MR. T. MARSHALL: – then you back off –

MR. COFFEY: You back off.

MR. T. MARSHALL: – right?

MR. COFFEY: For a civil servant, a career civil servant, I'm gonna suggest to you that, like, a political commitment is not really their concern.

MR. T. MARSHALL: Right.

MR. COFFEY: Their concern is, you know – in the greater scheme of things, is a legal commitment.

MR. T. MARSHALL: Yes.

MR. COFFEY: That's where their focus would be, generally. They might have to, you know, fulfill political commitments because, you know, they take instructions, but their main concern would be a legal commitment.

And I ask you – I suggest this to you because of this: Because Mr. Stanley, when he testified, he wasn't flipping about the October 2011 letter, but it was – you know, he made the point that it wasn't – there was no legal – that wasn't legally binding –

MR. T. MARSHALL: That's right.

MR. COFFEY: – and it was kind of ...

MR. T. MARSHALL: Right.

MR. COFFEY: But –

MR. T. MARSHALL: After we signed the equity support guarantee –

MR. COFFEY: Yes.

MR. T. MARSHALL: – it was.

MR. COFFEY: Yeah, but from – but – as of November 29, 2013, in his world, you know, that was the –

MR. T. MARSHALL: That was the day of, there was no going back.

MR. COFFEY: Good enough. All right.

MR. T. MARSHALL: Yeah.

MR. COFFEY: Thank you, Commissioner.

THE COMMISSIONER: Yeah.

Consumer Advocate.

MR. HOGAN: Hello, Mr. Marshall. My name is John Hogan, counsel for the Consumer Advocate.

MR. T. MARSHALL: Good afternoon, John.

MR. HOGAN: Good afternoon.

Just want to follow up on some questions Ms. Best was just asking you about whether you knew – I guess you said you can't recall for sure being told that 6.5 number. I just want to see if I can jog your memory, because you seem to be the only one who refers to the total project cost, including interest.

MR. T. MARSHALL: Yes.

MR. HOGAN: So you would always refer to it as 7.4, as opposed to 6.2.

MR. T. MARSHALL: (Inaudible.)

MR. HOGAN: Or you would 6.2 plus 1.2.

MR. T. MARSHALL: Right, right.

MR. HOGAN: So just in trying to jog your memory –

MR. T. MARSHALL: Yeah.

MR. HOGAN: – if someone had said to you the project is now 6.5, would you have asked what the new interest rate would be, what the new interest calculation would be, because presumably – not presumably, it would be more than 1.2 now, wouldn't it?

MR. T. MARSHALL: Yes, yes.

MR. HOGAN: So do you recall making that request? Does that jog your memory at all?

MR. T. MARSHALL: No, no.

MR. HOGAN: No.

MR. T. MARSHALL: If it was 6.5 and 1.2, it would be 7.7, right?

MR. HOGAN: Well, that's my question is –

MR. T. MARSHALL: Yeah.

MR. HOGAN: – it's 6.2 and 1.2, right?

MR. T. MARSHALL: It is –

MR. HOGAN: At one point in time.

MR. T. MARSHALL: – 6.2, 1.2, 7.4.

MR. HOGAN: So if it's 6.5 –

MR. T. MARSHALL: Right, plus 1.2 would be 7.7.

MR. HOGAN: But why would it be plus 1.2? Wouldn't the 1.2 have gone up as well?

MR. T. MARSHALL: Yes.

MR. HOGAN: Yes.

MR. T. MARSHALL: Yeah.

MR. HOGAN: So none of that jogs your memory, though, those numbers?

MR. T. MARSHALL: There was a number that the media used of 7.7 –

MR. HOGAN: They did. So –

MR. T. MARSHALL: – but it was, when they used it – and they used it before, and they used it subsequently – they used to refer to the Newfoundland number, 6.2, and the Nova Scotia number, the 1.5 –

MR. HOGAN: Okay, I –

MR. T. MARSHALL: – to get a 7.7.

MR. HOGAN: – then you’re clearing this up for me. If we can just turn to P-02693, please.

MR. T. MARSHALL: Yeah.

MR. HOGAN: And so in the context of that conversation that we just had, and in the context of what Mr. Smith asked you, which is that you were first aware of the 6.5 number in March 2014 –

MR. T. MARSHALL: Well, I –

MR. HOGAN: – that was not public –

MR. T. MARSHALL: – again, I –

MR. HOGAN: – just let me finish.

MR. T. MARSHALL: – got to correct.

MR. HOGAN: Just let me finish.

MR. T. MARSHALL: I’m sorry, yeah, go ahead.

MR. HOGAN: But that number was not publicly disclosed until June of 2014. So the media is reporting 7.7 in April 2014.

MR. T. MARSHALL: Right.

MR. HOGAN: So I’m confused as to what that number 7.7 is now?

MR. T. MARSHALL: Well, I can give you two interpretations.

MR. HOGAN: Okay.

MR. T. MARSHALL: One is: It’s 6.2 plus 1.5.

MR. HOGAN: And where is the 1.5 coming from?

MR. T. MARSHALL: The Maritime Link Project, Nova Scotia.

MR. HOGAN: Okay.

MR. T. MARSHALL: And the other one is that: If it was 6.5 –

MR. HOGAN: Financial close number.

MR. T. MARSHALL: – yes –

MR. HOGAN: Yes.

MR. T. MARSHALL: – and, we would say 1.3 –

MR. HOGAN: Oh, we don’t –

MR. T. MARSHALL: – is interest?

MR. HOGAN: – we don’t know (inaudible).

MR. T. MARSHALL: We don’t know.

MR. HOGAN: Yeah.

MR. T. MARSHALL: But if it was still 1.2, the number would be 7.7, wouldn’t it?

MR. HOGAN: If it was –

MR. T. MARSHALL: (Inaudible) 6.5 plus –

MR. HOGAN: – still 1.2.

MR. T. MARSHALL: – 1.2.

MR. HOGAN: Yes. So we don't know if this is –

MR. T. MARSHALL: No.

MR. HOGAN: – we don't know if the financial close number is in here in April of 2014 or not.

MR. T. MARSHALL: Pardon me?

MR. HOGAN: We don't know if the financial close number of 6.5 is in this number, do we? 'Cause you gave me two interpretations.

MR. T. MARSHALL: April, there was an update, there was – I got the deck from the independent engineer. There was a deck, I think a Nalcor deck, and they were briefing us on the independent engineer's report, and there was no number in that. There was no – and when I saw the November 29 number, the – I'm sorry, the November 29 report from the independent engineer, the actual report, it was still 6.2. So, that's – that's a confusion.

MR. HOGAN: It is confusing.

MR. T. MARSHALL: Yeah.

MR. HOGAN: Do you think it would have been less confusing if everyone had, sort of, agreed to just use numbers all-in at that point in time as opposed to you using interest and other politicians not using interest, Nalcor just referring to capital costs?

MR. T. MARSHALL: It seems – when the engineers are dealing with it or – they seem to talk about the capital cost numbers, whereas, to me, I guess, as a Finance minister, you – it was: How much we're gonna come up with? It was 7.4 and 5 was gonna be debt that – our equity was 2.4, Emera were taking half a billion of that and we were taking 1.9 –

MR. HOGAN: So Nalcor's concerned with the capital cost whereas the Finance minister is concerned with the total cost –

MR. T. MARSHALL: Yes.

MR. HOGAN: – 'cause you're the one who has to –

MR. T. MARSHALL: Yes.

MR. HOGAN: – pay for it.

MR. T. MARSHALL: Yeah.

MR. HOGAN: Okay.

MR. T. MARSHALL: Just getting back to that March number, I know when that number – that's when – from the papers I have and the – you know, the ones that were given to me by the Commission, there's a – we can see the 6.5 plus 1.2 went to the Department of Finance. And I don't know if I had it then, but it – government –

MR. HOGAN: It existed.

MR. T. MARSHALL: – certainly had it, we had it.

MR. HOGAN: I was just trying to jog your memory that – to me, the 1.2 number should increase as well, because the capital cost had –

MR. T. MARSHALL: Yes –

MR. HOGAN: – increased.

MR. T. MARSHALL: – it should.

MR. HOGAN: I was just hoping that I would jog your memory but ...

MR. T. MARSHALL: Sorry.

MR. HOGAN: Okay.

Just wanna go back to January 2013, I guess that's when you became minister of Finance. Is that right?

MR. T. MARSHALL: Natural Resources.

MR. HOGAN: Natural Resources, January 2013?

MR. T. MARSHALL: January –

MR. HOGAN: What department were you in January?

MR. T. MARSHALL: January 15, 2013, that's when I became minister of Natural Resources.

MR. HOGAN: Natural Resources, sorry. Okay.

So when you did your interview, in your transcript, you're talking about meeting with Mr. Martin around that point in time. Do you recall this?

MR. T. MARSHALL: After I became Minister of Natural Resources, yes. Yeah.

MR. HOGAN: Okay.

And I'll just read it out just to jog your memory. It says you were satisfied: I was satisfied based on what he told me, that there was ample, you know, ample oversight in terms of accounting, in terms of getting the documents, you know, a monthly budget, getting the documents monthly, you know, having monthly reports, which is something I was familiar with from my previous experience before I went into politics, you know, and having a budget done, having it broken down by 12 months.

So do you recall giving this evidence?

MR. T. MARSHALL: Yes.

MR. HOGAN: Okay.

So did you get monthly reports, specifically reports that would show the budget to actual numbers?

MR. T. MARSHALL: No, no.

MR. HOGAN: You did not.

MR. T. MARSHALL: No.

MR. HOGAN: Do you know if the minister of Finance did at that point in time?

MR. T. MARSHALL: Well, when I became minister of Finance in October I asked for an update –

MR. HOGAN: Well, we'll get to that.

MR. T. MARSHALL: – and that was the one that – yeah.

MR. HOGAN: So –

MR. T. MARSHALL: So I would think they were not coming in. If I had to ask, obviously –

MR. HOGAN: You weren't getting them.

MR. T. MARSHALL: I was –

MR. HOGAN: So you wouldn't get –

MR. T. MARSHALL: – the Finance minister (inaudible) getting any.

MR. HOGAN: And you wouldn't get any reports showing any variance analysis at that point in time either?

MR. T. MARSHALL: I don't think there was anything –

MR. HOGAN: I'm gonna – sorry – fill you in on some more information that you said. You said if there was any information from Mr. Martin, that you thought was material, he should tell you that.

MR. T. MARSHALL: Yes.

MR. HOGAN: So, to be fair, you didn't ask for the reports. You asked to be advised what was – if there was a material change.

MR. T. MARSHALL: Yes.

MR. HOGAN: Okay.

MR. T. MARSHALL: Yeah.

Basically, Mr. Hogan, I was told when I went to Natural Resources that it's now in a new phase – a totally different phase and it that was construction phase. So I asked the question – all right, it's in construction – when we have these people coming in and doing construction. One oversight is in place to make sure – that they were the ones I was worried about, not so much Nalcor. And –

MR. HOGAN: Sorry. Could you say that again? There – what did you say?

MR. T. MARSHALL: Well, it was – a construction company was –

MR. HOGAN: Yeah.

MR. T. MARSHALL: – doing the construction to make sure there was oversight over what they were doing and –

MR. HOGAN: But the government was the one with the money. They wanted to know what sort of – they wanted financial updates, I would have assumed, which is what you asked for.

MR. T. MARSHALL: Yes. And so what Mr. Martin explained to me was how the project team worked and who was in the project team – the people they had that were doing this. And I think if you read the Grant Thornton they talk about it as well. About project controls, you know, the budgeting, the comparison of actual numbers to budget or estimate, the variances. So once you got the variances and you saw the – you’d know what to jump on.

MR. HOGAN: Well, that’s what I’m asking you.

MR. T. MARSHALL: Yeah.

MR. HOGAN: I mean, you would’ve seen a budget – you can see budget analysis, budgets compared to actual (inaudible) variance.

MR. T. MARSHALL: Yes, yes.

MR. HOGAN: So my question is – where I’m going with this is in April of 2013 the Astaldi bid would’ve come in –

MR. T. MARSHALL: Yes.

MR. HOGAN: – and Nalcor would’ve known that it was quite a bit higher than what the estimate was –

MR. T. MARSHALL: Yes.

MR. HOGAN: – in April 2013.

MR. T. MARSHALL: Yes. So that would mean a substantial –

MR. HOGAN: But you weren’t advised of that in April 2013, were you?

MR. T. MARSHALL: No.

MR. HOGAN: Okay.

It’s a long-winded way to get to where I wanted to go.

MR. T. MARSHALL: Sorry.

MR. HOGAN: That’s okay.

MR. T. MARSHALL: Yeah.

MR. HOGAN: And then just to follow up on the Astaldi issue, can we just please look at P-02663, please?

Well, this is a news release –

THE COMMISSIONER: Tab 14.

MR. HOGAN: – in October of 2013 and you can see it – now you’re – this was sent to you so you would’ve had this information. At the very last sentence in that paragraph: “The answer to that question” – which is the cost of the Astaldi contract – “is in the Q&As. We will release the value of approx \$1b when asked.”

So were you aware that the DG3 estimates was about three-quarter of a billion for the Astaldi contract?

MR. T. MARSHALL: Not then. I was when I – what I knew about the Astaldi contract was that the Astaldi were substantially lower than the other bidders.

MR. HOGAN: Okay.

MR. T. MARSHALL: But I wasn’t aware that the bid was higher than what had been estimated. And I think there’s some information with that – I don’t know if that’s the next exhibit or not – where the question is put, what – how did it compare to the estimate? And the answer was about where we thought it would be – about in the range where we thought it would be.

MR. HOGAN: Sorry, you thought that the billion-dollar number was about where it should’ve been, is that what you said?

MR. T. MARSHALL: No, that was the information in the Q & As that came with this. I don’t know what the –

MR. HOGAN: Well, feel free to look through the Q & A if you want. You take the time. But my question is – I’m a bit surprised to hear now that you didn’t realize that that was over the DG3 estimate by a quarter of a billion dollars.

MR. T. MARSHALL: No, you’ll see – there’s a document there – I don’t remember the number – from K. O’Neill that was dealing with the questions and answers. Somebody asked me about that earlier. And in that there’s a question that says: how does the number compare – how does this number compare to the estimate? And the answer was that it was in the range where we expected it to be.

So to answer your question: I did not know then. I knew then that it was substantially lower than the others, but I didn’t know it was over the estimate at that time. But I saw it in the second Grant Thornton report, the one that came out (inaudible).

MR. HOGAN: So did nobody brief you on the value of the contract compared to the estimate at this point in time, on October of 2013? Other than this – you know, this sort of (inaudible) language?

MR. T. MARSHALL: I – if I could find that –

MR. HOGAN: You can look through it Mr. Marshall. I mean, it’s attached to that document. There are questions and answers starting at page 6.

MR. T. MARSHALL: What exhibit is that?

THE COMMISSIONER: I think the exhibit you’re looking for is the one that listed the numbers down and compared the – you know, the first four questions of your request, there was a table. I’m just trying to remember what that is and maybe Mr. Learmonth can tell us.

MR. HOGAN: Commissioner, if I may?

On page 7, there’s a question that says: “Did this contract come in as expected in the DG3 estimate? Is it over budget? If yes by how much?”

Answer: “It is generally in the range we expected.”

MR. T. MARSHALL: Yeah, (inaudible).

MR. HOGAN: “We recognize and are sensitive to various cost pressures for the project, and are managing project costs carefully to ensure we maintain our schedule and budget.”

MR. T. MARSHALL: Yes.

MR. HOGAN: So –

MR. T. MARSHALL: And what’s the date on that? When did I get that?

MR. HOGAN: Well, this is October 8, 2013, I believe.

MR. T. MARSHALL: October?

MR. HOGAN: It’s early October 2013.

MR. T. MARSHALL: So I don’t recall being – apart from this, I don’t recall – until I read the Grant Thornton report, you know, the most recent one.

MR. HOGAN: So is –

MR. T. MARSHALL: That indicated that there was like \$200 to \$300 million increase in that.

MR. HOGAN: So you don’t recall that that was over the estimate by that much?

MR. T. MARSHALL: No.

MR. HOGAN: Okay.

So you don’t recall having any discussions about that being a large variance?

MR. T. MARSHALL: No, I –

MR. HOGAN: You don’t recall any discussions about the fact that one of these contracts has such a large variance maybe we need to revisit all of the other bids and estimates?

MR. T. MARSHALL: No.

MR. HOGAN: No.

MR. T. MARSHALL: No.

MR. HOGAN: Okay.

Don't you think that knowing in October of – you know, a couple of months before financial close, that one of the estimates was off by \$250 million would have raised some signs that the numbers should be revisited?

MR. T. MARSHALL: It would be: Is this an indication of a trend with what's happening?

MR. HOGAN: Exactly, yeah.

MR. T. MARSHALL: And as it turned out, I think it was. But at that point, there was – I don't recall any discussion.

MR. HOGAN: Okay.

Who would you have expected to advise you of that difference with the DG3 number? Would it be someone from Nalcor or would it be someone from your department?

MR. T. MARSHALL: Well, I think where we left it would be that, you know, Nalcor had these, you know, the accountants and the engineers who were doing this, project controls and what have you. And that number, once it was a variance – material variance, it would be brought either directly to me or to the deputy.

MR. HOGAN: Okay.

MR. T. MARSHALL: And –

MR. HOGAN: Isn't the Department of Finance somewhat delegating its authority to manage the province's finances then to Nalcor? You're trusting them; you're saying, you know, it would've been on the accountants of Nalcor to bring it to your deputy or to you.

MR. T. MARSHALL: It's interesting. This is a Crown corporation, a separate person in the eyes of the law, but owned by the people of the province and owned by the government on their behalf. And this project – this \$7.4-billion project was – it was – Nalcor were carrying this out for the government and they were coming up with \$5 billion of the 7.4, and came up with the money with very attractive rates and an attractive guarantee. Government would monitor that because government was responsible for the

base equity and whatever came above the 7.4. So yes, government would have to monitor it carefully and there was – or Finance would and they'd be watching it and that's why Finance – there's Finance people on the various committees.

MR. HOGAN: But this information didn't come to you, so where –

MR. T. MARSHALL: Well, I was in Natural Resources then, right.

MR. HOGAN: Pardon me?

MR. T. MARSHALL: In October – no I was back in – what date in October? What's the date?

MR. HOGAN: Well, this email to you is October 7, 2013.

MR. T. MARSHALL: Okay. Well, that's – I was in Natural Resources then. Two days later, I went to Finance.

MR. HOGAN: Okay. So we'll leave it at that.

The Oversight Committee –

MR. T. MARSHALL: Yes.

MR. HOGAN: – you said this morning, when Mr. Learmonth was asking you about it: the public wanted more from government. And that's fair enough. And with all due respect to the people on the committee, they were all government employees from various departments within the government.

MR. T. MARSHALL: Yes. Yeah.

MR. HOGAN: So my question is why wasn't anyone – I'm not talking about experts; I'm just talking about anyone external in general. And, again, with all due respect to those people, it's sort of more of the same. They're there to do their jobs, and now I just, sort of, see them as a – just another ad hoc committee that's been struck with people who are already doing their jobs. So where is the extra level of oversight without someone external in there –

MR. T. MARSHALL: Well, first of all –

MR. HOGAN: – to question these people?

MR. T. MARSHALL: First of all, what they did: they were given clear terms of reference as to what to do. Nalcor were provided with a letter from the premier and the minister of Natural Resources saying this information has to be provided to this committee. The committee retained Ernst & Young, the capital projects group from Ernst & Young, to advise them to make sure that they were meeting best practices in oversight, what should they do in addition to what was already appropriate out there. And they would report directly to Cabinet. That was a – I think a difference as well.

And they were, you know, senior civil servants who had a working group with them. Craig Martin was the executive director. And they had people that would have skills that on Cabinet, we didn't have, like project management –

MR. HOGAN: It's not – I'm not asking –

MR. T. MARSHALL: – or experience.

MR. HOGAN: I'm not necessarily about the skills.

MR. T. MARSHALL: Okay.

MR. HOGAN: I'm asking about an external person who may be able to speak up to the minister of Finance because their job doesn't depend on it – or the minister of Natural Resources –

MR. T. MARSHALL: Well, Ernst & Young –

MR. HOGAN: – because they don't work within –

MR. T. MARSHALL: – anything – Ernst & Young reported the same way Grant Thornton – you're paying attention to Grant Thornton here; Ernst & Young were independent.

MR. HOGAN: And I see Ernst – the report would be submitted to this committee, who could then do as they see fit with the committee – with the report, I should say. But, again, I mean, just why wasn't anyone external put on the committee? It's a pretty simple question.

MR. T. MARSHALL: Well, I think by having Ernst & Young – that was your internal – you see, I think if you look at the minutes in – the minutes that are setting up the Minutes in Council – the orders-in-council setting up the committee, if you'll notice, there's changes. There's two, three drafts of that report, and one of them says to put a person on who's independent. Then that comes off. And the reason it came off was because Ernst & Young were going to play that role.

Then there was – initially it didn't say anything about engineering. And then there were two engineers added, and I remember that distinctly. And then it was decided by the committee that instead of hiring independent engineers, why don't we – we would have engineers from the department on the working group and formalize – the relationship would be made with the independent engineer.

MR. HOGAN: (Inaudible.)

MR. T. MARSHALL: So, that's where that –

MR. HOGAN: The retention of the expert was to replace the – or to be the external appointee on the committee.

MR. T. MARSHALL: Sorry?

MR. HOGAN: The retention of an expert was to be the external entity on the committee?

MR. T. MARSHALL: Yes.

MR. HOGAN: Okay.

MR. T. MARSHALL: And the independent engineer as well, right?

MR. HOGAN: Yeah. Thank –

MR. T. MARSHALL: Ernst & Young and the independent engineer.

MR. HOGAN: If we can just please bring up – Mr. Learmonth took you to these this morning – P-02353? Tab 36, volume 2?

THE COMMISSIONER: Tab 36.

MR. HOGAN: I'm not going to ask you to read these. These are very lengthy documents.

MR. T. MARSHALL: Which one is this?

THE COMMISSIONER: Tab 36, book 2.

MR. T. MARSHALL: Volume 1 or volume 2?

MR. HOGAN: Volume 2.

Do you recall –

MR. T. MARSHALL: (Inaudible.)

MR. HOGAN: – this document this morning?

MR. T. MARSHALL: I – it's – I think it's, what, a table of contents? There's no document, right?

MR. HOGAN: Pardon me?

MR. T. MARSHALL: It's just a table of content, I think.

MR. HOGAN: This is the – well, this is a document related to the federal loan guarantee.

MR. T. MARSHALL: Yes, okay.

MR. HOGAN: Right. So, when Mr. Learmonth took you through this document and another one, P-02361, this morning –

MR. T. MARSHALL: Is this the guarantee? Or is this is actual financing document?

MR. HOGAN: This is the financing document.

MR. T. MARSHALL: Okay.

MR. HOGAN: But Mr. Learmonth took you to some mathematical calculations to show that they – the numbers add up to 6.531.

MR. T. MARSHALL: Right.

MR. HOGAN: Do you recall him asking you about that this morning?

MR. T. MARSHALL: Yes, I do. I do.

MR. HOGAN: So, my question is, this was in November of 2013?

MR. T. MARSHALL: Right.

MR. HOGAN: You signed these documents, correct?

MR. T. MARSHALL: I don't know if I signed this one.

MR. HOGAN: You didn't sign – did you review these documents?

MR. T. MARSHALL: I reviewed with Todd Stanley and Charles Bown.

MR. HOGAN: Okay.

MR. T. MARSHALL: We went through the documents, but –

MR. HOGAN: Who would've briefed you on these documents?

MR. T. MARSHALL: Again, the – I don't recall – you know, the Equity Support Agreement, that came to Cabinet. The intergovernmental affairs agreement [sp. Intergovernmental Agreement] came to Cabinet. The Equity Support Agreement, as opposed to the guarantee, came to Cabinet. I remember those.

I remember government did not borrow the \$5 billion. So, I don't think I was on this.

MR. HOGAN: Okay.

MR. T. MARSHALL: (Inaudible.)

MR. HOGAN: (Inaudible.)

MR. T. MARSHALL: Yeah.

MR. HOGAN: I guess my question is: Were you briefed on them?

MR. T. MARSHALL: Yes.

MR. HOGAN: (Inaudible.)

And it would've been Mr. Stanley?

MR. T. MARSHALL: Well, Todd Stanley, Charles Bown.

MR. HOGAN: Okay. And they didn't raise the 6.5 number with you? Not that you can recall?

MR. T. MARSHALL: Look, I –

MR. HOGAN: I hate to beat the number to death, but this is –

MR. T. MARSHALL: Yeah, I know, it's – I mean, as I say, I did not see a document with the 6.5. I didn't see this. And, again, I've said it a number of times, I don't recall it, but that doesn't mean there's not –

MR. HOGAN: Okay.

MR. T. MARSHALL: – someone out there that can tell me, but I just don't remember.

MR. HOGAN: If you could please look at 02661, please. So ...

THE COMMISSIONER: Tab 12.

MR. HOGAN: So this is in relation to an ATIPP request regarding records in the Department of Natural Resources from the independent engineer.

MR. T. MARSHALL: Yes.

MR. HOGAN: And the answer is – do you recall this?

MR. T. MARSHALL: Well, I've read this.

MR. HOGAN: Okay.

MR. T. MARSHALL: August 13 – okay. Yes.

MR. HOGAN: So, the question I just wanna ask is – obviously, you were on this email in August of 2013, so you were aware at this point in time that all reports presented to the provincial government by the independent engineer – this is the request for all of these reports by the independent engineer as required by the federal loan guarantee.

MR. T. MARSHALL: Yes.

MR. HOGAN: And the answer is, when the ATIPP request was processed, the Department of Natural Resources did not have records from the independent engineer. So that's fine. My question is, it was obviously on your radar that the department didn't have any in August of 2013, correct?

MR. T. MARSHALL: Yes.

MR. HOGAN: Okay, so was this a reason to sort of, say, in September or October or November, to ask for the reports? Knowing that it had been brought to your attention that the department didn't have any at that point in time in the summer of 2013.

MR. T. MARSHALL: Yes, it would've been.

MR. HOGAN: And what happened?

MR. T. MARSHALL: I did not request it.

MR. HOGAN: Didn't request it.

MR. T. MARSHALL: No, not that I recall. I don't recall seeing those reports until April.

MR. HOGAN: Okay.

If we could please look at P-02669, please.

THE COMMISSIONER: Tab 21.

MR. HOGAN: This is just to jog your memory from this morning. Mr. Learmonth asked you about you requesting some information. And the word you used was that you were anxious, not desperate, to get the information. Do you recall?

MR. T. MARSHALL: Yes.

MR. HOGAN: Okay, so this is October 30 –

MR. T. MARSHALL: Yes.

MR. HOGAN: – of 2013. There was a follow-up by your administrative assistant. If we could please look at P-02024.

MR. T. MARSHALL: That wasn't my – October – I was back in Finance at that point, so it wasn't my administrative assistant. I think that was Charles Bown's administrative assistant.

MR. HOGAN: Oh okay.

MR. T. MARSHALL: Yeah.

MR. HOGAN: Okay.

My question is though – if you look at this email a little bit further down from Paul Myrden. And it says: “Minister Marshall has asked” – to provide the following – been asked to provide the following information – “has asked to be provided with the following information” And this email is October 18.

MR. T. MARSHALL: Yes.

MR. HOGAN: So, I read through that – you can read through it if you want – it doesn’t look like to me it’s very complicated information. It’s sort of just a summary. So you don’t get it by October 30, and Mr. Bown’s assistant follows up.

So my question is, you know, did it give you any concern that – why is it taking over – almost two weeks to get this very basic information, which is budgeting numbers, debt numbers, equity numbers?

MR. T. MARSHALL: Well obviously I was looking for the information.

MR. HOGAN: Yeah.

MR. T. MARSHALL: The deputy, when she referred to it, she said he’s desperately looking for it. I mean, basically, quite simply, I had been moved to Finance – back to Finance – and I knew I was gonna be questioned in the House of Assembly, and I knew that most of the questions that – about Muskrat would go to the premier, or go to the minister of Natural Resources, and I was giving consideration to what would they ask me, and when they ask the Finance minister a question it’s usually the same –

MR. HOGAN: Totally appropriate to ask for the information.

My question is: You’re over – you’re two weeks waiting for it, for very simple information.

MR. T. MARSHALL: Yeah, well –

MR. HOGAN: Do you recall that?

MR. T. MARSHALL: Well, I see the dates, so yeah, I can see – I asked for it October 18; I got it on November 1, and they – but the information was dated as of September 30. So if you’re gonna send me September 30, why does it take so long?

MR. HOGAN: Exactly.

MR. T. MARSHALL: Although September 30 – a lot of the times the information, the monthly information, the information will trickle in after the end of the month and, you know, the information could come from Ottawa or whatever.

But, yeah, I would’ve liked to have had it quicker, obviously –

MR. HOGAN: Mmm.

MR. T. MARSHALL: – but, you know, they’re building a \$7.4-billion project over there. I’m sure they had a lot on their minds and a lot on their –

MR. HOGAN: Okay, well we can ask –

MR. T. MARSHALL: – (inaudible).

MR. HOGAN: – yeah.

MR. T. MARSHALL: And they had to give the information to a lot of people, but I would expect it in a reasonable period of time.

MR. HOGAN: Okay, thank you.

If we could please turn to – or P-02670.

THE COMMISSIONER: Tab 23.

MR. HOGAN: So this is an email chain again. And again there’s some question and answers attached to this. This is dated – you are on this email chain at the beginning on November 3, Sunday night.

And if we could turn to page 4, please.

MR. T. MARSHALL: Yeah, well this is – what I was referring to before.

Remember – I think in here is the answer to that question about the Astaldi. Is that in – not in here, or –

MR. HOGAN: I think I read out the answer to the Astaldi question.

MR. T. MARSHALL: Yes, you did, but –

MR. HOGAN: So –

MR. T. MARSHALL: – was it –

MR. HOGAN: – I just –

MR. T. MARSHALL: – not from this –

MR. HOGAN: No.

MR. T. MARSHALL: – paper, no?

MR. HOGAN: This is different.

MR. T. MARSHALL: Oh, okay.

MR. HOGAN: I wanna ask you about item C –

MR. T. MARSHALL: Mm-hmm.

MR. HOGAN: – about halfway down it says: “Financing costs continue to be quite favorable in this historically low interest rate period; however, it is also obvious there are selective capital cost pressures. That being said, these capital cost pressures are being experienced throughout NL and Canada in general, and would be similar to costs related to alternative Muskrat Falls options. These are early days on the project and we continue to aggressively manage the cost profile.”

So my question is: Was any analysis done to compare cost pressures on Muskrat Falls compared to any of the alternatives at this point in time?

MR. T. MARSHALL: (Inaudible) I certainly don’t –

MR. HOGAN: This is just –

MR. T. MARSHALL: – recall.

MR. HOGAN: – a blanket –

MR. T. MARSHALL: Yeah.

MR. HOGAN: – general statement.

MR. T. MARSHALL: But notice that the next little statement is that: “At this point, we are generally on budget.” So ...

MR. HOGAN: I know, but you’re saying that there’s – someone is saying that an answer to this question should be costs are going up, but costs are going up everywhere. So my question is: What facts are used, if any, to base this statement on, because if we’re comparing two options, which was the whole point of this exercise –

MR. T. MARSHALL: But isn’t this after – well after that?

MR. HOGAN: Well then, I mean, it’s not my question and answer, Mr. Marshall. This is your answer, right, that you’re supposed to be saying to the public. So if you’re telling the public that costs to the other projects are going up as well, my question is where is the information to show that?

MR. T. MARSHALL: Well this is – this statement is made by somebody else to me. It’s part of this information that’s provided to me. All I know is that in June 24 when we got the update then, the 6.99, we became aware of these cost pressures and the contracts. At that point we were told that there were contracts came in 200 million more, but there were also some scope changes to make the project more reliable and productive.

MR. HOGAN: The purpose of that statement is, well, you know, don’t worry about it, because costs are going up on the other projects. The point is we don’t have that evidence, do we?

MR. T. MARSHALL: No.

MR. HOGAN: Okay.

MR. T. MARSHALL: No, not then, no.

MR. HOGAN: Just want to get some clarification; you may have already answered this when – your oversight recommendations

that you made that were rejected or overruled – was that April of 2012?

MR. T. MARSHALL: (Inaudible.)

MR. HOGAN: Did you make some oversight recommendations?

MR. T. MARSHALL: In October of 2012?

MR. HOGAN: Is it October 2012?

MR. T. MARSHALL: Yes.

MR. HOGAN: Okay.

MR. T. MARSHALL: There was a discussion about additional oversight. The decision had been made at that point, I think, to have MHI do the cold eyes review.

MR. HOGAN: And you had said it was rejected by the premier –

MR. T. MARSHALL: No, no –

MR. HOGAN: – and the Premier's office.

MR. T. MARSHALL: – no. The premier directed that officials examine options for – other options for oversight.

MR. HOGAN: Well, I'm talking about – didn't you give evidence about – you had wanted to have some sort of extra oversight committee – not referring to the PUB, not referring to MHI. I thought you had said something along the lines of –

MR. T. MARSHALL: Oh, that was back in '11 –

MR. HOGAN: Okay, '11.

MR. T. MARSHALL: – (inaudible) '11. Shawn Skinner and I signed that. It was a recommendation –

MR. HOGAN: You did give evidence the Premier's office had rejected some sort of oversight recommendation outright.

MR. T. MARSHALL: Well, that –

MR. HOGAN: Was that –

MR. T. MARSHALL: – proposal – that was that; that was it. But that proposal was made within the context that the PUB had been exempted. So when the premier got the suggestion that was made in that paper in October – I think it was October 2011 – she rejected that. But, in my view, she made a better –

MR. HOGAN: (Inaudible.)

MR. T. MARSHALL: – (inaudible) decision. She said: Let's have it go to the PUB plus this expert or consultants, so that they would have – the PUB then would have the resources it needed to answer the question.

MR. HOGAN: Okay.

And you did say it was the premier and the Premier's office, so I'm wondering who in the Premier's office you were referring to then, if you can remember.

MR. T. MARSHALL: Premier made the decision and it was – I didn't remember this previously, but it was at a Cabinet meeting where the premier said we're gonna go to the PUB. But we were very happy with that.

MR. HOGAN: No, I understand that.

MR. T. MARSHALL: Yeah.

MR. HOGAN: Yeah, okay.

MR. T. MARSHALL: And I had a discussion with – not – no, no one from the Premier's office, but from – with Mr. Thompson, the clerk. And I asked him – I said – I remember asking: Do they have the resources? Because there was some criticism in the media and I think Premier Peckford even said in a public letter that the PUB really didn't have the capacity to handle this. And I asked Robert Thompson, but (inaudible) – but he said that the PUB will go and hire their experts.

MR. HOGAN: (Inaudible) okay.

MR. T. MARSHALL: (Inaudible) – yeah, she said no to our proposal but I think she came up with a better one.

MR. HOGAN: Okay.

That's all the questions I have. Thank you.

MR. T. MARSHALL: Thank you.

THE COMMISSIONER: Thank you.

The Innu Nation.

UNIDENTIFIED FEMALE SPEAKER: No questions. Thank you, Commissioner.

THE COMMISSIONER: Nunatsiavut Government I don't believe is here – yes they are. Nunatsiavut Government.

MR. RYAN: Hi, Mr. Marshall. My name is Victor Ryan and I represent NunatuKavut Community Council.

Just very brief questions for you. Madam Clerk, if we could just turn to P-02654?

And Mr. Marshall, this is a press release that went out under your name when you were Minister of Natural Resources in 2013.

MR. T. MARSHALL: Mm-hmm.

MR. RYAN: And it's just commenting on a CRA poll that shows that a majority of residents in Newfoundland and Labrador completely or mostly support the Muskrat Falls hydroelectric project. And there's quotes here attributed to you about how much the people of Newfoundland and Labrador support the project and how great the project is gonna be.

This press release came out on April 2, 2013, which is a Tuesday. And by Friday, eight members of NunatuKavut, including our president, had been arrested for protesting on the Muskrat Falls site in violation of a Nalcor permanent injunction.

So I just put it to you, does this press release indicate a lack of awareness about the feelings on the ground in Labrador about the Muskrat Falls project?

MR. T. MARSHALL: Yeah, as you were – as you were speaking I looked at this and I said well, you know, it would be nice to have a breakdown to see what the vote was in Labrador. And your question was?

MR. RYAN: Well, my question is about the incongruity between this press release, which came out on Tuesday –

MR. T. MARSHALL: Sorry.

MR. RYAN: – saying how great Muskrat Falls is, how great it is that people support it –

MR. T. MARSHALL: Yeah.

MR. RYAN: – and on Friday there being multiple arrests at a protest of the Muskrat Falls project –

MR. T. MARSHALL: Just after this came out.

MR. RYAN: Three days after this press release –

MR. T. MARSHALL: Yes.

MR. RYAN: Was the provincial government out of touch with the feeling on the ground in Labrador?

MR. T. MARSHALL: I know the government at the time, we had – I don't know if John Hickey was still there and Patty Pottle was still there and they would certainly keep us in touch with what's happening in Labrador. All I know is that I guess Nalcor got the injunction and the injunction wasn't obeyed and it was being enforced.

I can tell you that I met with Mr. Russell and you know, our discussions were cordial. I found him an advocate for his organization and always reasonable, I thought.

MR. RYAN: Just one more question, Mr. Marshall. The injunction that Nalcor received from the court was originally overturned by the Court of Appeal. The appeal was argued just before you became premier and the decision was released very shortly after you stepped down as premier. So I don't think that it would have come up during your term as premier but while

you were at Cabinet, do you recall Cabinet discussing the injunction at all?

MR. T. MARSHALL: No, I – what I recall was discussions with – when I was in Justice – with the deputy minister, at the time, and being brought up to date on areas of Indigenous law that I wasn't previously familiar with. And what I remember in particular was the – he impressed upon me the obligation that, even though a – even though NunatuKavut did not have an accepted land claim – that we had an obligation to always consult. And I remember we had funds for NunatuKavut to deal with, I think, the forestry permits. And I remember in budget cuts – would take them away, which we were not pleased about, but that happens.

MR. RYAN: Okay. So, –

MR. T. MARSHALL: Did –

MR. RYAN: Sorry.

MR. T. MARSHALL: – well – the only other thing I can recall is – when I was premier we had a – I think the Department of what is now Indigenous Affairs – then Aboriginal Affairs – we'd worked out a policy in consultation and we'd had discussions with various Aboriginal groups – if we could agree on – to avoid all these court cases where allegations would be we didn't consult enough – if we could agree on a process so that there would be – the proper protocol for the consultations that everyone would be happy with.

And I recall hosting a meeting in the Confederation Building and the various Indigenous groups were there. But, unfortunately, one of the – one Chief came to me and said he wasn't comfortable with it even though – I think the meeting was being held to do a signing and we thought everyone had signed off. And he wasn't comfortable with it and – so, we had a discussion and I said – well, if you're not comfortable, don't sign it.

And it – I don't know if it's since been brought back on the radar – I just don't know.

MR. RYAN: I suppose, Mr. Marshall, what I really just want to, sort of, nail down is – the

provincial government didn't begin the proceedings that led to the injunction – it was a Nalcor proceeding, and the provincial government wasn't a party to the Supreme Court action. Nor did the provincial government intervene in the Court of Appeal and so I'll just ask if, in Cabinet's view, the injunction on the Muskrat Falls site – did you consider that to just be a Nalcor issue that Nalcor was handling, and that there was no provincial government role in interfering or –

MR. T. MARSHALL: I can't recall. I just can't recall whether – you know, whether the officials from Aboriginal Affairs, whether they briefed us, whether Justice briefed us, I really – I'm sorry, I don't have memory of that.

MR. RYAN: That's fine.

Those are my questions.

MR. T. MARSHALL: Thank you.

MR. RYAN: Thank you.

THE COMMISSIONER: I think I referred to Nunatsiavut, that's NunatuKavut.

Grand River Labrador Land Protectors – Labrador Land Protectors. Riverkeeper Land Protectors.

MS. URQUHART: (Inaudible.)

THE COMMISSIONER: No questions.

Okay, Dwight – sorry, Former Nalcor Board Members.

MS. G. BEST: No questions, Commissioner.

THE COMMISSIONER: Newfoundland and Labrador Building and Construction Trades and Resource Development Trades Council of Newfoundland – not here.

Dwight Ball, Siobhan Coady.

MR. O'FLAHERTY: No questions, Mr. Commissioner.

THE COMMISSIONER: Thank you.

All right, Mr. Williams.

MR. T. WILLIAMS: Mr. Marshall, I only have a couple of questions for you, to conclude. I want to address one matter, and I don't want to harp on this too long because we've spent an extensive amount of time on this 6.5 issue.

But in summary – for purposes of summary and hopefully closure on this issue and clarity, is that: Is it not true that your evidence, if we take it in capsule today, is that prior to June of 2014, the only number that you were familiar with, or you wouldn't – you knew in relation to the base cost estimate, was \$6.2 billion?

MR. T. MARSHALL: Yes.

MR. T. WILLIAMS: Okay.

MR. T. MARSHALL: Yes, until the 6.99.

MR. T. WILLIAMS: And that in June of 2014, you had a presentation whereby that number increased to 6.99.

MR. T. MARSHALL: Yes.

MR. T. WILLIAMS: And I know that Mr. Simmons has referenced two – has referenced four emails which included discussion about other numbers, but you were not cc'd on any of these emails, nor were you copied, nor was there any evidence to show that they were brought to your attention.

MR. T. MARSHALL: I haven't seen any and I don't recall any but, you know, there were – we were having meetings, there was people, it's obviously possibly, but I do not recall it.

MR. T. WILLIAMS: Okay.

So the power of suggestion, you can't say I definitely didn't see that.

MR. T. MARSHALL: Well I –

MR. T. WILLIAMS: I don't know, but you have no recollection of ever having seen these numbers?

MR. T. MARSHALL: No.

MR. T. WILLIAMS: Okay.

MR. T. MARSHALL: I think if I'm here another day I'm probably gonna say I saw it but –

MR. T. WILLIAMS: For the record, you're saying that lightheartedly.

The one point I do want to go back to is in your direct testimony with counsel this morning. You made reference – the first time that you saw 6.5 that you were aware, was in March of 2014. And what I want to bring your attention to is a document that I don't think has been entered into evidence yet, but it is one that's before the Commission, document 20140311, which is a March 8, 2014 email from Donna Brewer to Auburn Warren and Derrick Sturge of Nalcor.

And that email states, and I read from it: Could you update the attached – which is an earlier email – and return. I would like to provide Minister Johnson. House opens March 12, 2014. And attached to that email is the exhibit that we have in evidence whereby you sought numbers back in November.

So basically, what Ms. Brewer did is took your specific email from November and then asked in March, sent it back to Nalcor again and said please update this. I'd like to give that to Minister Johnson.

MR. T. MARSHALL: Yes.

MR. T. WILLIAMS: Okay.

Now, that document – you had never seen that document, I trust, prior to this Inquiry; is that correct?

MR. T. MARSHALL: I don't recall it. I –

MR. T. WILLIAMS: You don't recall.

So, in fact when that document would have been seen in March 8, 2014 –

MR. T. MARSHALL: The reason I recall it is seeing it in the materials.

MR. T. WILLIAMS: In the materials but you were, in fact, premier at the time. You weren't the minister of Finance.

MR. T. MARSHALL: I was premier at the time, but I have to say, as premier, the government did have it.

MR. T. WILLIAMS: So it was in the possession of – well, we're assuming because you requested it –

MR. T. MARSHALL: (Inaudible.)

MR. T. WILLIAMS: – and we know it was delivered.

MR. T. MARSHALL: Yeah.

MR. T. WILLIAMS: So, we know it was delivered. But your evidence, to date, is in keeping with that as well of your Cabinet colleagues who were subsequently premier and minister of Natural Resources, Mr. Davis and Mr. Dalley because they'd given evidence in Labrador during Phase 2 of this Inquiry stating that they were not aware of any numbers between 6.2 –

MR. T. MARSHALL: Yes.

MR. T. WILLIAMS: – and the 6.5.

MR. T. MARSHALL: Yes.

But unless Donna sent it over to me, I don't remember seeing it.

MR. T. WILLIAMS: Would you agree with me that there is no evidence before this Inquiry to show that at no time did Nalcor ever send an email, a letter, or a document to any elected government official that you're aware of that states we wish to advise you that there has been an increase in the base cost estimate of 6.2 to 6.5?

MR. T. MARSHALL: I haven't seen a document which would show me that.

MR. T. WILLIAMS: Thank you. Okay, that's all the questions I have in that regard.

With respect to the meeting, or the presentation that you had by Nalcor in June of 2014 when they did advise of the 6.99 –

MR. T. MARSHALL: Yes.

MR. T. WILLIAMS: – increase, I believe your evidence this morning – correct me if I'm wrong – was that the increase was attributed to market pressures, external factors, and some \$500 million worth of scope changes.

MR. T. MARSHALL: Planned changes.

MR. T. WILLIAMS: Planned –

MR. T. MARSHALL: I refer to scope changes but planned changes to make the project more reliable and more – enhance productivity.

MR. T. WILLIAMS: Okay.

At any time between the time of sanction, being December of 2012 and June of 2014, were you ever provided with any budgets, estimates, or seek approval for any of these scope changes, or were they only presented to you at the point in time June of 2014?

MR. T. MARSHALL: No, no, and that was the concern that was raised. You know, we recognized that scope changes were made and we took those to mean additions and the question was well – 'cause in government we're used to – that would come to us. And this was done, so there was concerns about how would this be done without coming to us first for approval.

And – but the answers, I remember it, was that at sanction only 50 per cent of the engineering was done; we were now at a phase where 97 per cent of the engineering was done. At sanction, only so many of the contracts had been awarded; we're now at a phase where many more had been awarded. I think it was over 90 per cent awarded. There was only a few major ones to come. So that additional engineering and additional definition is what justified them making these changes.

But the concern of our colleagues was we felt that that should come to us before they would make a scope change because that changes – you

know, Cabinet had approved a \$6.2 billion project and if you're going to add scope to it – you know, if you have a cost estimate to build a house and then you decide halfway through you're going to add a garage, well that's different from a cost overrun.

MR. T. WILLIAMS: Exactly. Okay.

Also, your direct testimony this morning with Mr. Learmonth, you'd indicated that when you became the minister of Natural Resources you had requested, that being in June – that being in January, I'm sorry, I think of 2013 –

MR. T. MARSHALL: Yes.

MR. T. WILLIAMS: – that you requested a meeting with Mr. Martin to get an overview and one of the issues that came up at that point in time, one of the issues of your concern, were what oversight existed at that point in time and then I think you alluded to the fact that he'd taken you through that.

MR. T. MARSHALL: Yes.

MR. T. WILLIAMS: I'm wondering, for the benefit of the Commission, can you list off for me, please, what elements of oversight were indicated to you at that time were in place for which you took some comfort in at that stage?

MR. T. MARSHALL: Okay. I've done this previously –

MR. T. WILLIAMS: I know you did it during your interview, but I don't think we've listed them out here today and I think it's important.

MR. T. MARSHALL: Again, my concern was that we're in a new phase. The oversight that we thought for the business case was MHI. For this new phase, it was construction phase and we – I wanted to see what oversight was in place for this part of the project. And then in the future, there'd be the operations phase.

Mr. Martin took me through the project team and the engineers and the accountants and so on that would oversee that construction. And they would prepare the – they, you know, would prepare the monthly statements and there would be, you know, the comparison to estimated

monthly statements and variances. The data would be determined, the variances would be analysed and then rectification actions could take place.

Then over and above that project team was the executive team, and the executive team under Mr. Martin would have been – Gilbert Bennett was overseeing that whole project. Derrick Sturge was the finance person, and Mr. Sturge's reputation was well known and his previous experience working for Deloitte and their corporate governance office and so it was reassuring that he would be there to monitor that. They had a risk officer. And then Mr. Martin would be the CEO over that.

And then further oversight would then be the Board of Directors and Ken Marshall was the chair, Tom Clift was there from Memorial, Mr. Shortall was there – I didn't know him. I wish I did. I saw his testimony. I wish I knew him better. The committee had – the board had committees. They had a corporate governance committee and they had an audit committee and other committees, of course.

But the audit committee was key 'cause the audit committee would meet separately with the independent auditors that Nalcor had employed. And they would meet with the external auditor.

Then you had the reporting to government and government would be representing the shareholder and there'd be oversight from the – I guess the electricity division of the Department of Natural Resources. There was the Auditor General who had the right to go in any time he wished.

I'm drawing a blank now.

MR. T. WILLIAMS: What about the role of the independent engineer –?

MR. T. MARSHALL: And then the – there's the role of the independent engineer who was there. You know, again, they were providing that function for the benefit of the guarantor and the lenders. But Nalcor would obviously have access to that document.

And so then we put the government Oversight Committee in place in addition. Nalcor would

have annual meetings; there'd be annual reports or a number of reports. There was financial reports and we directed Nalcor to report quarterly as opposed to annually. We directed them to – their auditors to do a special report on validity of cost in addition to the normal audit and we directed the auditors to prepare a separate financial statement for the Muskrat Falls Project, separating it from Nalcor's entire operations.

So I would suggest that is – I mean, you know, obviously, from the auditor's work, that's assurance, that's fundamental.

MR. T. WILLIAMS: Hmm.

MR. T. MARSHALL: There were reports – there was the annual meeting that would be webcast across the province. People could go to the meetings, ask questions. There are other reports in the *Transparency and Accountability Act*. There were benefit reports put out as well and, of course, the government Oversight Committee using Ernst & Young, in addition, and then formalizing the arrangement with the IE so there'd be no question about the fact that the IE's information could come to the government through the Oversight Committee. And I think I recall Stan Marshall called it the most oversight in that – of that project, any project ever.

So I know Mr. Learmonth and I have debated this but there was lots of oversight. I'll just leave it at that.

MR. T. WILLIAMS: Okay.

That's all the questions I have. Thank you.

THE COMMISSIONER: Redirect.

MR. LEARMONTH: Yes.

Mr. Marshall, the point arising from the questions that Mr. Simmons put to you about these emails – and there was – that you, I think, have indicated that some time before financial close you were aware that a cost increase in the project's budget would or may be coming.

MR. T. MARSHALL: Yes, there was an email

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – from Donna Brewer –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – November 8.

MR. LEARMONTH: Exactly.

MR. T. MARSHALL: Right.

MR. LEARMONTH: Okay.

Well, that being the case, with that knowledge why wouldn't you press for details of that before financial close on the basis of it – okay, I know something is coming, I haven't got it. I want to find out where that stands. Why didn't you follow up on that?

MR. T. MARSHALL: Okay, well, I'd followed up seven days before that.

MR. LEARMONTH: No.

MR. T. MARSHALL: I had asked for a number seven days before that.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: This came – this –

MR. LEARMONTH: Hmm.

MR. T. MARSHALL: – email from – came from Donna Brewer. It came out they were talking about the COREA agreement.

MR. LEARMONTH: Okay.

MR. T. MARSHALL: There were other emails that you showed to me that showed that discussion was going on for a while.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So if the officials were telling me that a number was coming, then when the number came, they would let me know.

MR. LEARMONTH: Yeah. The –

MR. T. MARSHALL: But I think it's reasonable to assume they – when they had that number, if it came –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – they would tell me.

MR. LEARMONTH: Yeah, but the number didn't come and I'm asking why you didn't have the presence of mind to go to your officials or go to Nalcor and say we thought that there was – you've indicated that a new number is coming. We don't have it; we must have this revised information before financial close. Why wouldn't you have followed that approach?

MR. T. MARSHALL: Mr. Learmonth, you know, the officials that were there – I was in Finance at that point – these were highly qualified people that would let me know if there was a number. I wouldn't have had to inquire.

MR. LEARMONTH: Well, I know but you knew a number was coming or likely to be coming and –

MR. T. MARSHALL: There was an email that –

MR. LEARMONTH: Yeah and you knew that your – by financial close you knew that your officials had not told you there was a revised number, correct? They hadn't told you?

MR. T. MARSHALL: That's true.

MR. LEARMONTH: So –

MR. T. MARSHALL: I knew a number was coming at some point.

MR. LEARMONTH: Yeah but why wouldn't you press Nalcor or your officials to find out what that new number was before financial close?

MR. T. MARSHALL: Well, all I can say is that, you know, I was doing the job. I wasn't just sitting there doing nothing else except waiting for that (inaudible).

MR. LEARMONTH: No, I'm not suggesting you were doing nothing.

MR. T. MARSHALL: And I know you're not and –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: But when numbers came –

MR. LEARMONTH: Mmm.

MR. T. MARSHALL: – the way we operated is that that would come to the minister.

MR. LEARMONTH: Yeah, yeah, but – I know that but –

MR. T. MARSHALL: So they –

MR. LEARMONTH: – they didn't come –

MR. T. MARSHALL: – would have known I would be very interested in the number.

MR. LEARMONTH: Yeah, yeah but –

MR. T. MARSHALL: And when they have (inaudible).

MR. LEARMONTH: – I'm asking why you didn't take it upon yourself, when you didn't have a new number, knowing that one was coming, why you wouldn't press Nalcor simply by asking them, say: Look, you've told us there's a new number coming and I want it before I sign the financial close documents. I want your best number. Why wouldn't you do that?

MR. T. MARSHALL: Because the information I was getting in Finance was coming from Finance officials.

MR. LEARMONTH: Yeah. Well, why didn't – wouldn't you press your Finance officials –

MR. T. MARSHALL: Oh –

MR. LEARMONTH: – to make that demand on your behalf?

MR. T. MARSHALL: Well, possibly I would have said to them over a coffee one day or in the office, any new numbers yet?

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: But from the evidence I've seen –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – I mean I know now from the evidence that Nalcor had the number that it went into the data room on the 19th of November.

MR. LEARMONTH: Mmm.

MR. T. MARSHALL: I don't – I haven't seen any document that says I got it. I haven't seen – I can't remember if I had it. Did somebody tell me? Maybe they did.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: I just don't remember.

MR. LEARMONTH: But that's not really the question I'm asking.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: The question I'm asking is knowing that one was coming and knowing that you hadn't received a number by financial close, why wouldn't you take the initiative to inquire, either of your officials or Nalcor directly, pick up the phone at this point and say: Look, I'm not signing any documents until I have this up-to-date number. Why didn't you do that?

MR. T. MARSHALL: If a new number was available and it came to the officials who were working on that committee –

MR. LEARMONTH: Mmm.

MR. T. MARSHALL: – as soon as they had that number, they would have brought it to me.

MR. LEARMONTH: Yeah but they didn't bring it to you so you knew that they didn't have it. So that would have – that should have –

MR. T. MARSHALL: No. Mr. Learmonth, I – you know, and I started on October 18 looking for –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – the number. I got a number on November 1.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: That was the number. That's what I was taking to the House –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – of Assembly.

MR. LEARMONTH: Yeah but –

MR. T. MARSHALL: On November 8, in a discussion of COREA, which –

MR. LEARMONTH: Mmm.

MR. T. MARSHALL: – was relatively complex at the time, they mentioned there might be a new number.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So I would have said: Great, let me know when you get it. Or –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – I would have –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – it's good to know.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: But whether I was every day saying: Where is the number, where is the number? I –

MR. LEARMONTH: I'm not suggesting you should have done it every day, but I'm suggesting that with that information that one was coming, that you should have pressed either Nalcor or your officials to find out what that new number was before financial close. And I just want your reason why you didn't do that. We know you didn't do that and I want to know why you didn't do it.

MR. T. MARSHALL: I would – the only thing I can say is that I knew a number was coming at some point and I was doing other things also.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And because when we're told things, when we make decisions things don't happen instantaneously, things will show up when they show up –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – and I expected they would.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Yeah.

MR. LEARMONTH: But we're talking – it's not just – this is a critical time. This is financial close when the government is really on the hook for this. And I'll ask you one more time –

MR. T. MARSHALL: (Inaudible) a lot of critical times in government.

MR. LEARMONTH: I know and I know you were busy and I know you were doing your best and that, but I don't think you really answered the question as to why you didn't press to get this information. And I've heard you give various answers but I don't think you really answered that question: Why didn't you?

MR. T. MARSHALL: I was confident that the number would come to me in due course.

MR. LEARMONTH: And it didn't matter to you whether it came before financial close or after financial close?

MR. T. MARSHALL: Well, it was a number that was possibly going to be used in financial close. Instead of the 6.2.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: So.

MR. LEARMONTH: Okay well, I've asked you a number of times and your answer is there, so I'm not going to spend any more time on that.

I wanted to get back to the – I thought at the end of the final line of questioning that your counsel put to you, that you're suggesting that government had proper oversight over the Muskrat Falls Project.

MR. T. MARSHALL: I am saying there was a lot of oversight.

MR. LEARMONTH: But do you think it was adequate?

MR. T. MARSHALL: Well, certain parts of the oversight did fail.

MR. LEARMONTH: Okay. Yeah. But – I'll just go through a few points, not an exhaustive list, but a few points. If you had – if the government had proper or adequate oversight, how could it be that you didn't receive the strategic risk report before sanction? The 497 million. If you had proper oversight in place, how could it be that you didn't get that information?

MR. T. MARSHALL: Well. We didn't – we knew of contingency for risks. We knew that Nalcor and their team were putting together a cost – you know, a budget for costs, or total costs. In the time I was in Finance, we never went behind the numbers that the proponent department would come forward with –

MR. LEARMONTH: (Inaudible.)

MR. T. MARSHALL: – they would have their engineers and they would come forward with the numbers, and the job of Finance would've been to determine whether we can come up with the money.

MR. LEARMONTH: Yup. But –

MR. T. MARSHALL: That process of examining the numbers, challenging of the numbers – that would be done by the whole Cabinet, through the Cabinet process. And then it was approved, then it goes to Finance and see if Finance can come up with money.

MR. LEARMONTH: So you are saying, well, we did proper oversight but we never got the 497 million strategic risk report, and so what? Is that what you're saying?

MR. T. MARSHALL: (Inaudible.)

MR. LEARMONTH: I am suggesting to you that if you had proper procedures in place for oversight, that you would have ferreted that document out of Nalcor's hands.

MR. T. MARSHALL: So you're talking about the number at sanction? Or the number –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – at financial (inaudible)?

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: At sanction –

MR. LEARMONTH: 'Cause you're talking about oversight generally. Yeah.

MR. T. MARSHALL: Yeah, okay. Well, at sanction, the – there was oversight from the board –

MR. LEARMONTH: No, but I'm talking about this risk report. How is it consistent –?

MR. T. MARSHALL: Sorry –

MR. LEARMONTH: How can you say if you didn't get the strategic risk report and then the other – and you're saying there's proper oversight –?

MR. T. MARSHALL: This is the Westney report?

MR. LEARMONTH: Yeah. There was proper oversight. I'm suggesting that if you had proper oversight in place, you would've ferreted out this September 12 – or September 2012 strategic risk report from Nalcor, because they withheld it from you, they didn't disclose it to you.

MR. T. MARSHALL: That's right and –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – none of us – none of us in Cabinet that knew that –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – such a thing existed, yeah.

MR. LEARMONTH: But if you had had proper oversight and in place, you would've been able to learn –

MR. T. MARSHALL: Well also, it appears the board didn't pick up on that either.

MR. LEARMONTH: Well then you're just confirming what I'm saying; you didn't have oversight, and you're relying on the board to provide oversight, and they didn't even know about it.

MR. T. MARSHALL: But also –

MR. LEARMONTH: Isn't that right?

MR. T. MARSHALL: Yeah – it is, but –

MR. LEARMONTH: It is.

MR. T. MARSHALL: – but Nalcor was also put in place by Premier Williams –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – and Minister Dunderdale.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: For the purpose of being the experts to oversee this project.

MR. LEARMONTH: So are you saying that that relieved the government of the obligation –

MR. T. MARSHALL: No, I'm not –

MR. LEARMONTH: – to maintain oversight?

MR. T. MARSHALL: – I'm not saying that at all.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: I'm not saying that at all.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: But they were the experts that were put in place to advise us.

MR. LEARMONTH: Right. But what's that got to do with oversight?

MR. T. MARSHALL: Well, then they should've told us that there was – that it wasn't just a contingency for risk, that there were different types of risk, and there was a risk paper, a risk analysis done, and we should look at it.

MR. LEARMONTH: But they didn't tell you.

MR. T. MARSHALL: I know.

MR. LEARMONTH: So that reflects, I would submit to you, a lack of oversight on the part of the government. You don't agree with that?

MR. T. MARSHALL: Well I'm – what I'm gonna say is that normal oversight processes for a corporation, I think, were in place. Later on, we added more.

MR. LEARMONTH: Mmm.

Okay, well another point, because – and I'm responding to your last question, I didn't intend to go over this again, but I'm responding to the position you stated to your counsel. If, as you say, there was adequate oversight in place, how is it that government didn't know that there was a P1 – or a P3 schedule for first power? If you had been doing – exercising proper diligence and oversight, once again, you would've been able to ferret that information out from Nalcor, but you didn't even know about it.

MR. T. MARSHALL: We did not.

MR. LEARMONTH: No. So how can you say that there was proper oversight? I mean, I would – I suggest that you could say that we thought we had proper oversight but events proved to us that we didn't. Would you agree with that?

MR. T. MARSHALL: I would agree with that.

MR. LEARMONTH: You would agree with that?

MR. T. MARSHALL: But –

MR. LEARMONTH: Okay, fine.

MR. T. MARSHALL: – but I would say that –

MR. LEARMONTH: Okay.

MR. T. MARSHALL: – at some point there was much – there was more oversight added to try to address –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – anything that was missing.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Experts were hired to advise the committee

MR. LEARMONTH: Yeah, but that's after sanction, that's after –

MR. T. MARSHALL: That is after sanction.

MR. LEARMONTH: – and it's after financial close –

MR. T. MARSHALL: It is, yes.

MR. LEARMONTH: – Oversight Committee. Okay, well thanks for agreeing to that, that you thought there was, but – and another point that you made about the – well, I'll just list a couple of more examples, and we talked about this this morning, but – proper oversight.

Well, if you had proper oversight, you would've known in April of 2013 that the contingency had been exhausted, you would've known in July 2013 that the project estimate was \$7 billion, subject to a possible mitigation. You didn't know any of that. So how can you say that there was oversight?

MR. T. MARSHALL: The normal processes were put in place.

MR. LEARMONTH: Yes, the processes were put in place and government thought they had proper oversight, but events have demonstrated that that was –

MR. T. MARSHALL: And government added to the oversight.

MR. LEARMONTH: Government?

MR. T. MARSHALL: Government added –

MR. LEARMONTH: Yes.

MR. T. MARSHALL: – over time –

MR. LEARMONTH: But I'm talking before you set up the Oversight Committee, you didn't have proper oversight. You thought you did, and perhaps you were –

MR. T. MARSHALL: (Inaudible.)

MR. LEARMONTH: – dealing in the best of faith, but you didn't –

MR. T. MARSHALL: (Inaudible.)

MR. LEARMONTH: – have it, did you?

MR. T. MARSHALL: Well, we didn't get certain vital information –

MR. LEARMONTH: Yeah –

MR. T. MARSHALL: – (inaudible).

MR. LEARMONTH: – material information.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah.

And you also mentioned that – you also mentioned about these – this external auditors, and I think we talked about this in the interview, but we got some clarification on this from Mr. Meaney – and I think you're indicating that oversight was provided by the external auditors, Deloitte?

MR. T. MARSHALL: They would certainly –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – give assurances that the documentation, the financial documentation that was being presented, was prepared in accordance with accounting standards.

MR. LEARMONTH: Yes, but Mr. Meaney said very decisively that it was not within the scope of work that was assigned to Deloitte to review project budgets or contingencies, that that was outside their scope of work. So what I'm putting to you is that –

MR. T. MARSHALL: Outside?

MR. LEARMONTH: (Inaudible) the scope of work. Deloitte wasn't retained to do that.

MR. T. MARSHALL: Right.

MR. LEARMONTH: It wasn't part of their duties. So, that being the case, if you accept that, do you agree that your reference to Deloitte providing some kind of oversight was misplaced?

MR. T. MARSHALL: Well, as I said, the – in 2014 when we set up the Oversight Committee, Deloitte were directed to provide us with additional –

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: – additional work other than the normal auditing work.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: And they were asked to comment on the validity of the costs being used on the Muskrat Falls Project.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: I would suggest that's oversight.

MR. LEARMONTH: Yeah, but that's not –

MR. T. MARSHALL: Well –

MR. LEARMONTH: – until after –

MR. T. MARSHALL: – (inaudible) but then we –

MR. LEARMONTH: – that's after financial close.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Not before.

MR. T. MARSHALL: Yes.

They're also directed to, you know, your quarterly reports and to account for the project separately.

MR. LEARMONTH: After financial close, correct?

MR. T. MARSHALL: After financial close, but those of us who were there then were in a position to do it and it was done from that point on.

MR. LEARMONTH: Yeah, after financial close.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Yeah.

MR. T. MARSHALL: Yes.

MR. LEARMONTH: Okay, those are my questions.

THE COMMISSIONER: Okay.

I just have one question – I don't want to keep you much longer, Mr. Marshall. But, you know, during this Inquiry it's been common to – it's so now common to use \$6.2 billion, \$7 billion, \$10 billion. It's like we're talking about – sometimes I feel like it's almost like we're almost talking change.

MR. T. MARSHALL: Yeah.

THE COMMISSIONER: Three hundred million dollars in the Province of Newfoundland and Labrador, I suggest to you, you were the minister of Finance, would be quite a large sum of money.

MR. T. MARSHALL: Yes, it is.

THE COMMISSIONER: So sitting here, even though it's five years later, six years later, could

I not reasonably expect that if you were told about a \$300 million increase in the cost of some project, that you would recall it today? Particularly –

MR. T. MARSHALL: Yes.

THE COMMISSIONER: – the Muskrat Falls Project –

MR. T. MARSHALL: Yes.

THE COMMISSIONER: – that had as much publicity as it did?

MR. T. MARSHALL: Yes.

THE COMMISSIONER: So, you know, it's – what's really – what I'm struggling with is this is \$300 million. I don't know what you can build for \$300 million. I don't know if you can build a hospital for \$300 million or whatever. I suspect you have a good shot – good start at it anyway.

MR. T. MARSHALL: We were looking at building an \$800 million (inaudible).

THE COMMISSIONER: Right – in Corner Brook, right.

So, you know, I just sit here wondering, like, \$300 million and I ask you, would you not – if you were told that there was a \$300 million increase in the cost of a project like Muskrat Falls, would you not recall it today?

MR. T. MARSHALL: I think I would, yeah.

THE COMMISSIONER: You think you would.

All right, that's what I needed to hear.

MR. T. MARSHALL: Yes, your Honour, the – you know, in preparing for this, for this phase, what I looked at initially was the report of the Oversight Committee. And that committee had a breakdown of three numbers. And as I recall, I recall the 6.2 clearly, and I recall the 6.99 clearly. I just don't recall the 6.3 and – sorry, the 6.5.

And, you know, it's possible that, you know, if I was aware of the 6.5, as soon as we became

aware of the 6.99, you'd forget the 6.5. But I hadn't seen the document, and as I said many times today I don't recall being told, and there may be somebody out there who's – who will say they've told me, and that could very well be the case, I just don't remember.

THE COMMISSIONER: All right, thank you very much, Mr. Marshall.

MR. T. MARSHALL: Thank you.

THE COMMISSIONER: All right, obviously we're at the end of the day, so we'll start with Ms. Dunderdale tomorrow.

I think I'll start to consider what we're gonna do about her schedule this week, based upon what happens tomorrow.

Thank you very much. Tomorrow morning – we'll start at 9 o'clock tomorrow morning.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.