



## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Phase 2

Volume 23

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*Commissioner: Honourable Justice Richard LeBlanc*

Tuesday

2 April 2019

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

This Commission on Inquiry is now open.

The Honourable Justice Richard LeBlanc  
presiding as Commissioner.

Please be seated.

**THE COMMISSIONER:** All right, good morning.

Just before we begin this morning I just want to indicate about the schedule this week from my perspective. I'll have a better idea after today as to how this is going to go. I'm still hoping to have all of the witnesses who are scheduled to testify this week.

Our plan is assuming we are – we finish Ms. Dunderdale sometime this afternoon, we'll start with Mark Turpin at that stage. Tomorrow morning, as we have witnesses coming from out of the province for the next – for Valard, Barnard-Pennecon and ANDRITZ, we'll be doing them as scheduled in the mornings, starting them off. We don't expect those to be all day.

So Mr. Mulcahy was the other witness to testify this week. We're likely going to be fitting him in as we go along. If it becomes apparent that that's too optimistic, then what we will do is Mr. Mulcahy will be taken out for this week and we'll find another spot for him. But I'm still hopeful we'll be able to keep this schedule that we have.

All right, Mr. Learmonth.

**MR. LEARMONTH:** Thank you.

The first witness today will be Kathy Dunderdale.

**THE COMMISSIONER:** All right.

And I believe you were sworn last time?

**MS. DUNDERDALE:** I was.

**THE COMMISSIONER:** Okay, would you like to stand, please, and –

**MS. DUNDERDALE:** Sure.

**THE COMMISSIONER:** – be re-sworn?

**CLERK:** Do you swear that the evidence you shall give to this Inquiry shall the truth, the whole truth and nothing but the truth, so help you God?

**MS. DUNDERDALE:** I do so swear.

**CLERK:** Please state your name?

**MS. DUNDERDALE:** Kathleen Mary Dunderdale.

**CLERK:** Thank you.

**MR. LEARMONTH:** I'd like to enter the following exhibits: P-02441 and P-02702 to P-02727.

**THE COMMISSIONER:** All right, those exhibits will be marked as entered.

**MR. LEARMONTH:** Where do you live, Ms. Dunderdale?

**MS. DUNDERDALE:** 509 –

**MR. LEARMONTH:** No, no, you don't – I don't need your address, just what city.

**MS. DUNDERDALE:** Oh, St. John's.

**MR. LEARMONTH:** You live in St. John's. And we – you know, we had your evidence at the Phase 1 so I'm not going to repeat that. We're just going to cover the period from sanction, say, December 17, 2012, to January 24, 2014, when you left politics.

**MS. DUNDERDALE:** January 14 I think it was.

**MR. LEARMONTH:** 2014, yeah.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** And that's – so that's just a little over a year, so it's not going to – we're not going to be here as long as we were the last time.

The first exhibit I'd like you to look at is in volume 2. It's Exhibit P-02441. Do you see that document, Ms. Dunderdale?

**MS. DUNDERDALE:** I'm looking for it now.

**THE COMMISSIONER:** Tab 56.

**MS. DUNDERDALE:** Tab 56.

**MR. LEARMONTH:** Volume 2.

**MS. DUNDERDALE:** Yes.

02441?

**MR. LEARMONTH:** Yes. If you just go to tab 56 you'll find it.

**MS. DUNDERDALE:** Yeah. I have it.

**MR. LEARMONTH:** Oh, you have it.

Now, when you testified in Phase 1 we – you gave some evidence about the fact that some time in early 2013, I think it was March, that you became aware that there was a problem in that the federal government had advised that a condition precedent for sanctioning had not been met, there had only been conditional sanction. And I think you said that that caused you considerable stress and concern.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yeah.

Now, I'd like you to look at Exhibit P-02441. Now, this is a document, this is back in December 18, 2012. It was sent from Heather MacLean to Charles Bown and Jerome Kennedy. Have you seen this document before?

**MS. DUNDERDALE:** I don't believe so, Mr. Learmonth.

**MR. LEARMONTH:** No?

**MS. DUNDERDALE:** I can't say.

**MR. LEARMONTH:** Okay.

Well, there's a question, a third – you see at the bottom there's a – it's a question and answer

from a press conference and there's analysts and so on. The third question, right near the bottom of the page –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – says, question: Why are we announcing sanction before the UARB hearings? And, by the way, this is the question and answer for Emera.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Right.

“We are at a point in the project where Nalcor needs to move forward with projects. As a result of FLG moving forward it was important to create more certainty. NO costs passed to NS customers until UARB in NS has decided that this is the lowest cost alternative. Very confident is lowest cost alternative. \$200-\$500 M in savings ....”

Now, do you agree that this suggests that back in December 2012 that Emera knew that it was a conditional – you know, that it was up to the UARB?

**MS. DUNDERDALE:** No, I don't think that's what this speaks to because my understanding of the agreement – in terms of the conditions precedent, what the federal government required was that Muskrat Falls provide power, not only to Newfoundland and Labrador but to Nova Scotia as well. So we had to do that to get the loan guarantee.

Nowhere did I ever hear that the federal government was concerned at all with how much money Nalcor was going to make, or not make or what the construct of the deal was going to be between Emera and Nalcor. The critical piece was that the power from Muskrat Falls be used in Nova Scotia.

And my understanding was that the UARB would do its hearings, and its mandate from the Government of Nova Scotia was to ensure that the Muskrat Falls power would be the least-cost alternative. And so those costs were put forward, but there was a supplementary deal between Emera and Nalcor that if the UARB did not –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** – accept –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – the costs that had been put forward by both the companies, and said no, if you're saying you're gonna give us Muskrat Falls power for 10 cents a kilowatt, we know that we can find it for eight cents a kilowatt, so we're not gonna accept the 10 cents a kilowatt, we wouldn't put more than eight in the ratepayers – in the base –

**MR. LEARMONTH:** Okay, when was –

**MS. DUNDERDALE:** – for the ratepayers.

**MR. LEARMONTH:** – this agreement made?

**MS. DUNDERDALE:** This has always been the understanding as far – as I got briefed through, and then Emera and Nalcor –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – had a plan as to how to share the pain of whatever wasn't included in the base.

**MR. LEARMONTH:** When was that agreement to share the pain made?

**MS. DUNDERDALE:** I can't tell you, Mr. Learmonth, but that was my whole understanding of the agreement between Emera and Nalcor and –

**MR. LEARMONTH:** Back in December 2012?

**MS. DUNDERDALE:** Yes, I think so.

**MR. LEARMONTH:** Or was that at – when this problem arose?

**MS. DUNDERDALE:** No, I – my understanding it was then, it was in December '12, and then whatever happened with Emera and the Emera board, somehow put a fly in that ointment and that had to be sorted. That's why it was, at that point, considered a conditional sanction rather than a full sanction, which we had all understood it to be in December.

**MR. LEARMONTH:** Well, I don't think if you read this sentence that Emera thought it was an unconditional – or a meeting of the conditional precedent, because they're saying: "Why are we announcing sanctioning before the UARB hearings? We are at a point in the project where Nalcor needs to move forward with projects. As a result of FLG moving forward it was important to create more certainty. NO costs passed to" Nova Scotia "customers until UARB in" Nova Scotia "has decided that this is the lowest cost alternative."

I mean don't you agree that that suggests that, well, Nalcor wanted to go ahead with it but that the sanctioning for Nova Scotia was dependent on the outcome of the UARB – do you think that that's a reasonable interpretation of that passage?

**MS. DUNDERDALE:** Well, it might be a reasonable interpretation of that passage; I can tell you that that was not our understanding.

**MR. LEARMONTH:** Oh, I know that. I think that was the problem, that you and Emera had different understandings. Do you agree?

**MS. DUNDERDALE:** I'm not sure that that's correct either. I think there was some kind of change in position in February or March that changed the water on the beans –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – and then we were told well this is, you know, this is a conditional and they –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – had to work it out.

**MR. LEARMONTH:** But I'm asking you whether you agree that this paragraph suggests that back in December that there was – that Emera was aware that the sanctioning agreement in December, it was conditional. Otherwise, why would they write that?

**MS. DUNDERDALE:** Because what they're saying here is essentially correct. The lowest cost is all that's gonna be passed on to Nova Scotia customers.

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

But it has to go before the UARB to get the approval as being the lowest-cost option.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Yeah.

So I'm saying that Emera, it appears, knew that the sanction agreement was conditional – or their signing the sanction agreement in December 2012 was conditional upon getting UARB approval for the project. Do you agree with that?

**MS. DUNDERDALE:** No, I don't agree with that, Mr. Learmonth.

**MR. LEARMONTH:** You don't agree with that. Okay, fair enough.

Anyway, as it turned out, the position which – well, I'll suggest is indicated here was confirmed by the federal government in March that it was conditional. Do you agree with that?

**MS. DUNDERDALE:** I – yes, they said we didn't have a full sanction, that Emera had only conditionally sanctioned.

**MR. LEARMONTH:** Yeah.

And you don't think that that decision of the federal government is consistent with the passage that I just showed you in Exhibit P-02441?

**MS. DUNDERDALE:** No, I don't –

**MR. LEARMONTH:** You don't think it is.

**MS. DUNDERDALE:** – Mr. Learmonth.

**MR. LEARMONTH:** Okay, well ...

Now why if your government was so certain that, you know, the condition precedent for sanctioning had been met, why didn't your government seek written confirmation from the

federal government in December 2012 on this basis, that, okay, federal government, we have this sanction agreement, can you review it and confirm to us that the condition precedent has been met by this document? Why wasn't that done?

**MS. DUNDERDALE:** I can't speak to that, Mr. Learmonth. I can tell you that my officials, Nalcor, Emera, all parties involved came and said we met all the conditions – conditions precedent. We're going – the conditions precedent had been set. You know, we're telling the federal government that we can do this project because that's what sanction is –

**MR. LEARMONTH:** Well, but –

**MS. DUNDERDALE:** – you know, this is what we've agreed to and we're gonna prove to you over the next –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – year or whatever that we can deliver on what we've agreed to here, and this is a full sanction.

**MR. LEARMONTH:** Yeah, but hold on now. You can agree – you and Emera can agree on whatever you want as to what the effect of the sanction agreement makes. But that's totally irrelevant. What's important is what the federal government agrees. It doesn't matter what you and Emera agree to; it has to be approved by the federal government. Do you agree with that?

**MS. DUNDERDALE:** The –

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

**MS. DUNDERDALE:** Could you just re-state it, so I'm clear as to what you're saying, Mr. Learmonth?

**MR. LEARMONTH:** I'm saying that Emera and Nalcor sign a sanction agreement in December 2012, correct?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** And you're saying – for the sake of this question, we'll say both of you – both Emera and Nalcor believed that that

fulfilled the condition precedent. What I'm saying is – to you is that it doesn't matter what Emera and Nalcor agree to, it's whether it's accepted as fulfillment of the condition precedent by the federal government. So Nalcor and Emera's agreement is not really important, it's what the – how the federal government interprets it. Do you agree?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** To – that is true to the degree that power has to come in to ratepayers in Nova Scotia to satisfy the requirements for the loan guarantee.

**MR. LEARMONTH:** Yeah, but I'm not asking you about that. I'm asking you about the point that it's up to Ottawa, the federal government, to decide whether the condition precedent has been made. And it doesn't matter what Emera and Nalcor think. It's totally up to the federal government. Do you agree with that?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** So I assume – it's not about rates or anything like that. It has to do with whether the condition precedent has been met and that's up to Ottawa. Agreed?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** But that also refers to – has to be referenced to the agreement between Emera and Nalcor.

**MR. LEARMONTH:** Yeah, which Nalcor – well, you're saying – well, Nalcor thought it met the condition precedent. Emera, let's assume that they did. But I'm saying that doesn't make any difference. It's up to Ottawa.

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Absolutely – okay, we'll agree on that.

Now tab 4 of volume 1 of your book of documents, Ms. Dunderdale.

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** So, you see at the bottom – this is Exhibit P-02703.

**MS. DUNDERDALE:** Mm-hmm.

**MR. LEARMONTH:** At the bottom of this page, there's an email from Alison Manzer at Cassels Brock – and Alison Manzer is the external counsel retained by the federal government to give advice on the federal loan guarantee and related matters. So, on March 12 – and if you turn over to page 2 – Ms. Manzer says: "We have continued to struggle with the resolutions and the Sanction Agreement as to whether we have sanction or only a conditional sanction which does not meet the requirement of the condition precedent until the condition is met. We have not been able to conclude that the sanction as presented meets the condition as it remains conditional on the UARB results.

"If the Nova Scotia UARB does not issue a ruling that is an approval, or issues a ruling that is outside of the agreed parameters set out in the Sanction Agreement, Emera will not be obliged to proceed on the basis it has approved by the form of sanction. Rather, there will need to be a re-negotiation process completed to require proceeding and that is in Emera's discretion. In that case the previously approved resolutions will fall away and approval of the new re-negotiated arrangement would be needed in order to proceed. In other words, a different 'deal' would have to be sanctioned by Emera. Given the legal requirement for the UARB ruling and ... the revenue support for the project finance is dependent on that result, which is out of the control of Emera, the conditionality of the sanction is such that we cannot accept the proposition that sanction is complete until that UARB ruling has been issued. Rather, while we can accept the resolution as effective sanction subject to that condition, we must wait for the result of the UARB to finalize the sanction under this construct of the requirement for sanction."

I mean, that's a very clearly stated, well thought-out position, and it's easy to understand.

**MS. DUNDERDALE:** I agree.

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

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** So, that being the case, I go back to the question: why didn't you get – make a request – why didn't you insist, before you sanctioned the project, that you obtain a confirmation from the federal government. If you had sought that, you would have got, I presume, this same opinion that it isn't sanction, that it's subject to UARB approval.

**MS. DUNDERDALE:** Mr. –

**MR. LEARMONTH:** But why didn't you go down that road? It seems, like, very logical to me.

**MS. DUNDERDALE:** Well, Mr. Learmonth, all I can tell you is that there are a large group of public servants – Emera, Nalcor and the Government of Nova Scotia – who are putting all this together with the federal government, and all of them come back and say: We're good for a full sanction. We're good to go.

**MR. LEARMONTH:** Well, did they read the Sanction Agreement?

**MS. DUNDERDALE:** I can't – I was briefed, Mr. Learmonth, and had confidence in the people who were briefing me from a variety of different jurisdictions.

**MR. LEARMONTH:** Okay, well –

**MS. DUNDERDALE:** And I was not –

**MR. LEARMONTH:** – who briefed you? Who briefed you?

**MS. DUNDERDALE:** Well, my officials would have briefed me.

**MR. LEARMONTH:** Who? Who? I want names, please.

**MS. DUNDERDALE:** Well, I'm going with – you know, I don't recall the briefing per se. We're back six years now. I can't go back to a meeting and tell you who was in the room. But I

can tell you the clerk would have been there. The minister would have been –

**MR. LEARMONTH:** That would have been Robert Thompson?

**MS. DUNDERDALE:** In December, yes, 2012.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** The minister of Natural Resources would have been there.

**MR. LEARMONTH:** Minister Kennedy?

**MS. DUNDERDALE:** Absolutely.

His deputy and other officials of Justice would have probably been there. There would have been political staff there.

**MR. LEARMONTH:** Well, do you remember this meeting?

**MS. DUNDERDALE:** No, Sir.

**MR. LEARMONTH:** Okay.

So, you don't have any recollection. You're just surmising, are you?

**MS. DUNDERDALE:** No, I can tell you that I was briefed. You know, people just don't send me emails –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – and say show up.

**MR. LEARMONTH:** Yeah, but you were –

**MS. DUNDERDALE:** You know, if I'm – this is very important to us and important to the government.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** I have been away from Confederation Building for over five years. It's six years, and I don't even – and I'm in a completely total different life that has no reference back to any of that. So, to the best of my ability, without any reference materials whatsoever, can I go back six years and tell you

on what day and exactly who was in the room when I was briefed on a particular subject? No, Mr. Learmonth, I can't.

**MR. LEARMONTH:** Okay.

So, what you're saying then is that you believe that you were briefed –

**MS. DUNDERDALE:** I know that I was –

**MR. LEARMONTH:** – but you can't remember by whom.

**MS. DUNDERDALE:** I know that I was briefed and I know who the principles would have been in the room.

**MR. LEARMONTH:** But you can't – you don't have a recollection. You're just surmising that those people would have been in the room. Is that correct?

**MS. DUNDERDALE:** In the same way that I surmise every piece of evidence that I'm going to give here – with a few exceptions – about what happened 10 years ago, 15 years ago –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – six years ago.

**MR. LEARMONTH:** Okay.

Well, if that's what you're basing –

**MS. DUNDERDALE:** I don't have written documentation –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – to tell me.

**MR. LEARMONTH:** Okay.

If that's what you're basing your evidence on, maybe if you do have an actual recollection, you can qualify it by saying that I have an actual recollection of this?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Is that fair enough?

**MS. DUNDERDALE:** That's fair enough, Mr. Learmonth.

**MR. LEARMONTH:** Okay.

So anyway, your officials assured you that the Sanction Agreement did the trick and satisfied the condition precedent. Is that what you're saying?

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Yeah.

And Mr. Martin did, too?

**MS. DUNDERDALE:** Yes, Sir.

**MR. LEARMONTH:** Yeah.

Because you gave evidence about when you found out the reality – which I suggest was apparent if you'd read the Sanction Agreement. When you found out the reality in March, you said in your interview or your transcript that you were – excuse me in your evidence that you gave here – that – I'll quote you – you were very distraught, very upset. I could lose my government over it. How can this happen? Do you remember saying that?

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** So why were you upset and distraught?

**MS. DUNDERDALE:** Because I – it was – important – a lot of pressure to move the project ahead, Commissioner, and I kept delaying the project specifically around the loan guarantee, but other elements as well, to make sure that everything was in place, that we had done our due diligence, that the loan guarantee was lined up and secured and that all the t's were crossed, i's dotted before we went to sanction.

And, you know, originally we thought that we could sanction perhaps in June, July –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – but we didn't sanction until December. And one of the reasons for that



was making sure that all of this was copper fastened and we were good to go.

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** So in December, it was my belief that all of those demands had been met, we were in a good place. Negotiations were done, and everything was copper fastened down. There was a road forward over the next –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – six, eight, 10 months to show the federal government that we could meet all the conditions present, and then we could come to financial close. But for all intents and purposes, we could move forward with the work.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** And when I found out in March that that wasn't the case, then I was very upset.

**MR. LEARMONTH:** Well, they –

**MS. DUNDERDALE:** We had put a lot of time and effort in –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – ensuring that that kind of stuff would not happen.

**MR. LEARMONTH:** Well, who were you upset with?

**MS. DUNDERDALE:** I'm upset with Nalcor.

**MR. LEARMONTH:** Why with Nalcor?

**MS. DUNDERDALE:** Because Nalcor and Emera are doing the negotiation.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** And the issue that's arisen, to my understanding, is coming out of the conditional – conditions precedent associated with Emera.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And so my question is, you know, what's the problem with this? How did you not know this–

**MR. LEARMONTH:** Well, that's a good question.

**MS. DUNDERDALE:** – in December?

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And how is going to get resolved? Yeah, how did it happen? And how is it going to get resolved?

**MR. LEARMONTH:** Yeah.

Because you wouldn't have sanctioned the project if you thought that this condition precedent had not been met, is that correct?

**MS. DUNDERDALE:** That is correct, Mr. Learmonth.

**MR. LEARMONTH:** That is correct, yeah.

So you proceeded to sanction on what turned out to be an incorrect understanding of the facts and then you started spending money on the project as if that condition precedent had been met. So was that why you were so concerned that you've proceeded on an incorrect basis?

**MS. DUNDERDALE:** Absolutely. I – from the beginning, you know, the best practice that I aspire to myself was to make sure that we had been very thorough in the work that we had done –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – and that we had, you know, that we had independent analysis of the work that we had done –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – because this was a huge undertaking. We had –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – bad experience historically; we didn't want to make the same mistake twice, so the standard was high.

**MR. LEARMONTH:** Yeah.

But if you were being thorough, I put to you that it's obvious that you would have asked in December for confirmation from the federal government the condition precedent was met rather than just assume it. Do you agree, in retrospect?

**MS. DUNDERDALE:** I'm not sure that I assumed it, Mr. Learmonth.

**MR. LEARMONTH:** Didn't assume what?

**MS. DUNDERDALE:** That the federal government had been – had not been spoken to and had not agreed that we were good with a full and free sanction in December.

**MR. LEARMONTH:** Well, they'd have to –

**MS. DUNDERDALE:** Well, they certainly –

**MR. LEARMONTH:** – I mean, it's up to them.

**MS. DUNDERDALE:** – didn't indicate that to us.

**MR. LEARMONTH:** No, but they have to accept that the condition precedent has been met; do you see how that works?

**MS. DUNDERDALE:** Yes, but it – yes, I see how that works.

**MR. LEARMONTH:** Yeah.

And what I'm suggesting is this: that elementary business practice and prudence would have dictated in that situation that you take the sanction agreement, you send it to Ottawa, and ask for confirmation in writing that the condition precedent has been met. Do you understand what I'm saying?

**MS. DUNDERDALE:** Absolutely. And my under –

**MR. LEARMONTH:** Do you believe that that would have been a reasonably prudent step to take?

**MS. DUNDERDALE:** Yes, Mr. –

**MR. LEARMONTH:** But it wasn't taken, wasn't it?

**MS. DUNDERDALE:** I don't know if it was taken or not.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** I'm not down at that level in the organization of these events. So, when all of the people who've been charged with this responsibility come to me and say that the federal government is good, everybody else is good, everything is signed off on, we're good to go, then I accept that.

**MR. LEARMONTH:** Well, looking back, you got bad advice; do you agree – or incorrect advice?

**MS. DUNDERDALE:** I'm not sure at this point, Mr. Learmonth, because I still am not 100 per cent clear on what the issue was in February, March-time with the Emera board, and how all of this arose.

**MR. LEARMONTH:** Well, did we – you just read – I just to you Ms. Manzer's letter that sets out in detail the cause of the concerns. So, you must understand that now.

**MS. DUNDERDALE:** Yes, and you know, I don't – again, I can't speak to what I don't know in terms of the detail. I can't – I would need a fuller discussion with the people involved for a better understanding of that before posing an opinion here. And it's not that I'm trying to be difficult or avoid something; it's just – yeah, I can't, on a single point of information, say any more than I'm saying.

**MR. LEARMONTH:** Yeah, which is that you agree that you proceeded with sanction on an incorrect assumption, correct?

**MS. DUNDERDALE:** Well, yes. If the federal government in December, and nothing changed from December with Nalcor, Emera or both

governments, that nothing changed, and none of the information that had been put forward had changed, then we had to be flawed from the beginning. But if something –

**MR. LEARMONTH:** You had to be wrong from the beginning, you said?

**MS. DUNDERDALE:** We had to wrong –

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** – in assuming that it was a full sanction.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** But I'm not sure that something didn't change.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Which would have then changed the water on the beans on terms of conditional, unconditional in there's –

**MR. LEARMONTH:** Well, if you read Ms. Manzer's email, it doesn't seem that anything changed.

**MS. DUNDERDALE:** Well –

**MR. LEARMONTH:** It seems that it was reviewed and that's the position.

**MS. DUNDERDALE:** And if that's –

**MR. LEARMONTH:** There's no indication that there's any change.

**MS. DUNDERDALE:** And if that's what it is, Mr. Learmonth, then I accept it completely, if that's what it is. But I'm just saying, personally, I would like to have a conversation, again, around this piece with – or other documentation that I don't have to be able to give you a firm opinion one way or the other.

**MR. LEARMONTH:** Well, what documentation?

**MS. DUNDERDALE:** Pardon?

**MR. LEARMONTH:** What documentation would you like to have?

**MS. DUNDERDALE:** Well, I don't know. I mean, it's somewhere in my head that says there's a piece of information around something happened at the Emera board – that something they agreed to, they changed, or they didn't –

**MR. LEARMONTH:** Hmm?

**MS. DUNDERDALE:** – I don't know if it's right or wrong.

**MR. LEARMONTH:** Yeah, but don't you see it's not up to Emera? It's up to Ottawa.

**MS. DUNDERDALE:** It's –

**MR. LEARMONTH:** Do you understand that point?

**MS. DUNDERDALE:** Yes, absolutely. But it's up to Emera and Nalcor to determine what the cost of the power is going to be, and it is up to the UARB to determine how much of that cost they're going to allow into the rate base. So, it's a two-dimensional piece.

**MR. LEARMONTH:** Well, what is a two-dimensional piece?

I'm talking about – and I've said this about five or six times – the issue we're talking about is the – what happened when you were told in March that the condition precedent had not been met. That's what we're talking about now, do you agree?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** So let's confine it to that.

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** Yeah.

And I – so I don't see what that has to do with rates. It has to do with Ottawa saying that the condition precedent had not been met, do you agree?

**MS. DUNDERDALE:** Because the issue is gonna be around the – if the condition precedent

that they're talking about, Mr. Learmonth, is how much money is gonna be allowed into the rate base –

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

**MS. DUNDERDALE:** – and – then that is important.

**MR. LEARMONTH:** Well the –

**MS. DUNDERDALE:** The federal –

**MR. LEARMONTH:** – condition –

**MS. DUNDERDALE:** – government –

**MR. LEARMONTH:** – precedent is that is has to be approved by the UARB, do you agree?

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Fair enough.

**MS. DUNDERDALE:** Absolutely, and so as far as the federal government is concerned, Newfoundland – Nalcor and Newfoundland and Labrador could give power to Nova Scotia for free. They don't care. They're not concerned about costs. What they're concerned about, Commissioner, is that Nova Scotia have access to Muskrat Falls power in order to qualify for the loan guarantee.

So if there is a question around the UARB and its findings and what it's going to allow into the rate base, then that's a question between Emera and Nalcor, because they have to come up with a price that the UARB is gonna be satisfied is the lowest cost price for electricity that's available to them, and if Muskrat power is costing more for Nalcor and they wanna work that deal with Emera, then they got to find a way; they have to find a remedy –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – because the UARB is –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** – going to accept.

So, if Nalcor and Emera have both agreed that they're gonna come up with a price that is gonna be acceptable to the UARB as the lowest cost that they can actually find, and then beyond that, between themselves, they'll sort out the difference.

**MR. LEARMONTH:** But that's at the discretion of Emera. That's what Ms. Manzer says in her –

**MS. DUNDERDALE:** But that's –

**MR. LEARMONTH:** – letter.

**MS. DUNDERDALE:** – exactly right.

**MR. LEARMONTH:** It's up to Emera.

**MS. DUNDERDALE:** Yes, absolutely right, but what I'm –

**MR. LEARMONTH:** But what if there's no agreement? What if Emera doesn't agree?

**MS. DUNDERDALE:** What I'm saying to you is my understanding is that they had agreed on a formula and to share the pain if that happened, and I'm not sure that the Emera board agreed with that in March, this – and I'm not a hundred per cent sure about that, and that's how we got into this circumstance.

**MR. LEARMONTH:** Yeah, but, Miss, I don't want to – I think we've spent enough time on this and I don't – I'm not gonna prolong it much longer, but I'll just remind you what Ms. Manzer said in – on page 2 of P-02703: "Given the legal requirement for the UARB ruling and that the revenue support for the project finance is dependent on that result, which is out of the control of Emera, the conditionality of the sanction is such that we cannot accept the proposition that sanction is complete until the UARB ruling has been issued." And it says it in black and white.

Do you question the correctness of that statement?

**MS. DUNDERDALE:** I'm the – Mr. Learmonth, all I can tell you: I'm not questioning what Ms. Manzer is saying, I'm sure she's extremely competent, capable person, and that's a point of view. All I can tell you is what I recall, and that's the only thing that I can speak to here.

**MR. LEARMONTH:** Okay, I'll leave that now.

Well, there's one more document, just for completeness, that I want to refer to, and that's at tab 5 of your documents, Ms. Dunderdale, Exhibit P-02704.

**MS. DUNDERDALE:** Yes, Sir.

**MR. LEARMONTH:** This is an email from Scott Balfour at Emera to Derrick Sturge at – I guess it's his counterpart at Nalcor. He says: "Just got off the phone with Mark, Jonathan and Anoop and heard their view that ML is only 'conditionally sanctioned', and thus not 'sanctioned' from their perspective

"I understand Charles heard this directly from Mark on Friday, and this was raised in the weekly call (that I missed as I was in Jamaica)

"I'm tied up for the next 1.5 hours, but will call you when I'm free."

So this is – seem to be the time that people in your government became aware of this problem?

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** I remember it clearly.

**MR. FITZGERALD:** Commissioner, if I may, there's another Charles involved in this proceeding, a Charles Newman, who was junior counsel to Ms. Manzer. I don't think we can assume this is Charles Bown until we actually have more proof of that. I just want to make that point.

**MR. LEARMONTH:** I think that's a good point. Thank you for raising it.

**MR. FITZGERALD:** Thank you.

**MR. LEARMONTH:** Yeah.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** I'm gonna ask you some questions about the Grant Thornton report, which we reviewed at the – at your interview. Correct?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** And before I get into it, I just wanna ask you some general questions.

Were you aware that in April 2013 – it's well before financial close – that as a result of bids coming in and contracts, that the contingency of 368 was exhausted, was gone out the window?

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** You weren't aware of that?

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** When did you find out?

**MS. DUNDERDALE:** I think I became aware of that at financial close.

**MR. LEARMONTH:** That's not what you said in your interview, I don't think.

**MS. DUNDERDALE:** About – I had no – not in April, I wouldn't have known in April.

**MR. LEARMONTH:** But when did you find out? I thought it was when you read –

**MS. DUNDERDALE:** I knew that the contingency –

**MR. LEARMONTH:** – the Grant Thornton report.

**MS. DUNDERDALE:** – was used up when we – at the end of financial close –

**MR. LEARMONTH:** Who –

**MS. DUNDERDALE:** – which would have been November.

**MR. LEARMONTH:** Yeah. Are you sure that's what you said in your interview?

**MS. DUNDERDALE:** I'm pretty sure that's what I said.

**MR. LEARMONTH:** Yeah?

**MS. DUNDERDALE:** If I didn't say that, I misspoke.

**MR. LEARMONTH:** Okay. We'll have that checked.

**MS. DUNDERDALE:** Sure.

**MR. LEARMONTH:** Yeah.

And were you aware that in July 2013, the project management team had presented to the executive, Mr. Martin and Mr. Bennett, a revised forecast cost, bringing the cost of the project up to \$7 billion, subject to a possible mitigation to 6.8 billion?

**MS. DUNDERDALE:** No, I did not know.

**MR. LEARMONTH:** You didn't know that?

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** No information on it whatsoever?

**MS. DUNDERDALE:** No. I would recall, Mr. Learmonth, and I have –

**MR. LEARMONTH:** You're certain of that, are you?

**MS. DUNDERDALE:** I am certain.

**MR. LEARMONTH:** Okay.

Do you think you should have been told about that?

**MS. DUNDERDALE:** Yes, I would have liked to (inaudible) loop. I understand if there's mitigation going on and so on, but I didn't know. You know, that would have been startling to me, coming off 6.2 would be something that would make a strong impression –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – on me.

**MR. LEARMONTH:** It would be startling, you said. Is that right?

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** Yeah.

And it would have caused you to review the matter and deep – you know, take a deep – do a deep analysis of the reasons and assess – reassess the situation. Is –

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** – that true?

**MS. DUNDERDALE:** The – there would certainly have to be a plan put in place and a process put in place so that we could have a good look at where we were going here.

**MR. LEARMONTH:** Is it true that you didn't find out that information until you read the Grant Thornton report – the December 2018 Grant Thornton report?

**MS. DUNDERDALE:** The first I heard of it is – was in our interview when you pointed it out to me –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – in the Grant Thornton report.

**MR. LEARMONTH:** Yeah.

Now how do you feel about that, that you were not advised of that? You're the premier, you're representing the public, the money going into the project is public – publicly funded. How do you feel about the fact that you were not provided with this information in or about July 2013?

**MS. DUNDERDALE:** Mr. Learmonth, I checked on this project constantly and I would have wanted to be in the loop.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** You know, if we're in a process here of mitigation and we're trying to get numbers down and we're trying to do something differently here, that's all fair enough, you can offer the explanation for that.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And we'll deal with it, we'll talk about it, and we'll do, you know, the analysis that's necessary, seek other opinions if we need be. But I wanna be in the loop, I want to know what's going on. And, the first time I became aware that we had moved off that 6.2 number was at financial close.

**MR. LEARMONTH:** And what was the movement then?

**MS. DUNDERDALE:** The movement was to 6.531.

**MR. LEARMONTH:** So you knew that at financial close?

**MS. DUNDERDALE:** Yes, I did.

**MR. LEARMONTH:** Okay, you sure about that?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Did you tell your – the other Cabinet members about that?

**MS. DUNDERDALE:** I would have.

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

**MS. DUNDERDALE:** I don't remember but I would have.

**MR. LEARMONTH:** Well, you know –

**MS. DUNDERDALE:** (Inaudible), first thing, let me say: Let's go back to my best practice, in terms of how I –

**MR. LEARMONTH:** Well, before we get back to your best practice, I want to know what you actually remember, rather than your best practice, we'll talk about that later. But I want you to tell us what you actually –

**MS. DUNDERDALE:** I –

**MR. LEARMONTH:** – remember.

**MS. DUNDERDALE:** – I can't recall.

**MR. LEARMONTH:** You can't recall.

**MS. DUNDERDALE:** I cannot recall. Many, many meetings, I can't tell – Cabinet meetings, briefings, I can't tell you.

**MR. LEARMONTH:** Okay.

Well, okay, getting back to the \$7 billion, how do you feel about the fact that Nalcor didn't share that information with you in July 2013 or thereabouts, how do you feel about that? Do you think that's acceptable?

**MS. DUNDERDALE:** I – no, because I wish that I had known.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Because in – I will tell you frankly that during my interview, when you said to me: Did you know the project was at \$7 billion, in July? I assumed, in the moment, that you were giving me a hard fact. And the next thought in my mind, while I was trying to digest the information: Well, that would mean we lied to the federal government, on financial close.

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** That's how confused I was –

**MR. LEARMONTH:** Well –

**MS. DUNDERDALE:** – by the information that you were giving me. If we were at –

**MR. LEARMONTH:** Well, hold on now, I wasn't giving you, I was referring you in the transcript –

**MS. DUNDERDALE:** To the Grant Thornton –

**MR. LEARMONTH:** – to the Grant Thornton report.

**MS. DUNDERDALE:** – yeah, you’re sharing, I should say.

**MR. LEARMONTH:** Yeah, yes.

**MS. DUNDERDALE:** Sharing the information with me, that I was startled to think if it was – and not having the – but I remember thinking that was my surprise at hearing it, and then the next thought, to say: Well, that can’t be – if that’s true, then we gave incorrect information on financial close. They were my consecutive thoughts when you raised it with me in –

**MR. LEARMONTH:** Well, you didn’t say that in the interview.

**MS. DUNDERDALE:** No, my head was going a hundred miles an hour trying to digest what you had just said.

**MR. LEARMONTH:** You mean that – about this July 2013 report?

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** That really shocked you, did it?

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** And doesn’t it equally shock you that Nalcor didn’t report that to you?

**MS. DUNDERDALE:** I would have wanted to know that.

**MR. LEARMONTH:** Does it shock you in the same way that Nalcor didn’t report it to you?

**MS. DUNDERDALE:** I can just say to you it was shocking when that information was shared with me and I wish that I had known.

**MR. LEARMONTH:** Yeah.

Well, if it was shocking when you received the information, then does it not follow that you were shocked that Nalcor didn’t provide you with this information?

**MS. DUNDERDALE:** But I was confused with the information because I didn’t have a lot of time to process it. You’re telling me it’s – you

know, that Grant Thornton’s report says it was at \$7 billion in July.

**MR. LEARMONTH:** No, I said that there was a cost estimate, yeah.

**MS. DUNDERDALE:** Of \$7 billion and –

**MR. LEARMONTH:** I read it out to you, yeah.

**MS. DUNDERDALE:** – and we’re at 6.5. So I’m trying to make sense of all of this while you’re talking to me.

**MR. LEARMONTH:** But you’re not 6.5. At that point you’re 6.2?

**MS. DUNDERDALE:** But I knew in our interview that financial – at financial close we were 6.5. You asked me and I told you.

**MR. LEARMONTH:** Well, you said you – anyway, we’re talking about – just listen to the dates.

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** This report was in July 2013.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** The 6.5 number didn’t come up until November.

**MS. DUNDERDALE:** Yes Sir, I’m talking – Mr. Learmonth, I’m sorry if I’m confusing you because I’m talking about our interview –

**MR. LEARMONTH:** Yeah?

**MS. DUNDERDALE:** – which was two months ago or three months ago –

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** – which was the first time that I heard it.

**MR. LEARMONTH:** Heard what?

**MS. DUNDERDALE:** Heard about the project estimate being at \$7 million –



**MR. LEARMONTH:** In July, yeah.

**MS. DUNDERDALE:** – in July.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** I'm just telling you about my thought process then.

**MR. LEARMONTH:** Yeah. And –

**MS. DUNDERDALE:** Not that –

**MR. LEARMONTH:** And before we leave this point, I want you to answer the question that were you – you were shocked to find out this information at the interview.

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** And looking back on it, were you not equally shocked that Nalcor didn't communicate this information to you?

**MS. DUNDERDALE:** Yes, I was very surprised that – and I expressed that to you.

**MR. LEARMONTH:** Yeah.

Well, why were you, well, very surprised? Like, why is this important information?

**MS. DUNDERDALE:** It's –

**MR. LEARMONTH:** The July 2013 increase in the cost estimate?

**MS. DUNDERDALE:** Because there's a due diligence process that's taking place here through my whole time through Natural Resources and premier.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** And we're having regular meetings and regular updates.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And I do not recall in any of those updates being told that, you know, we're only six months now past sanction and that there's a potential, you know, for this project at this point to be at \$7 billion as

opposed to the 6.2 that we had sanctioned on six months before.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** So I would've wanted to know that.

**MR. LEARMONTH:** Yeah, well, that's understandable, I think, to anyone. Yeah.

Now, you – you do confirm that when you were receiving updates, it was mostly with meetings with Mr. Martin to meet –

**MS. DUNDERDALE:** And staff.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** I – yes, I never met with him alone, ever.

**MR. LEARMONTH:** Well, you said once you did talk –

**MS. DUNDERDALE:** When I was in –

**MR. LEARMONTH:** – about a headlining matter.

**MS. DUNDERDALE:** Yes, Hebron. On Muskrat Falls –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – not once.

**MR. LEARMONTH:** Not once.

**MS. DUNDERDALE:** Not once.

**MR. LEARMONTH:** Yeah, so any information – if he provided information on this July 2013 cost estimate, there would've been other officials present and those officials would most likely have been – and correct me if I'm wrong – the clerk, Robert Thompson, and Charles Bown?

**MS. DUNDERDALE:** The minister.

**MR. LEARMONTH:** And the Minister Kennedy.

**MS. DUNDERDALE:** Absolutely the minister.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And Charles Bown –

**MR. LEARMONTH:** Well, that would've been Minister Marshall, actually, at that point.

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** Yeah, yeah. So they would all be present or some of them would be present.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** But never without the minister.

**MR. LEARMONTH:** Okay.

And the updates would always be provided orally or verbally by Mr. Martin?

**MS. DUNDERDALE:** Yes, or with a deck.

**MR. LEARMONTH:** Yeah.

Did you ever make any records or – to your knowledge, did – we don't have any records of these meetings. We're told by Mr. Martin that they're – that he doesn't have any records of them and that there were discussions and meetings and so on.

**MS. DUNDERDALE:** If there –

**MR. LEARMONTH:** Was anyone – when you – you were at these meetings. Did anyone take any notes?

**MS. DUNDERDALE:** The clerk would take notes and the deputies would take notes.

**MR. LEARMONTH:** Oh.

**MS. DUNDERDALE:** And if we had to – and they would be their own working notes. If we had a request for information or you were going to do something, you know, you would ask for a briefing note.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And a briefing note generally would capture the work that had been done up to that point and the meetings and, you know, and so on. It would give you an update about where you were.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** So that is the only recall I have. You know, there are specific committees in government, Cabinet committees – the Treasury Board for example, that would have its own minutes, routine Cabinet would have its own minutes and so on. But, generally, when you're doing the work of government, if there's a reporting about what's happened to date, that would come in a briefing note and that would be prepared by officials.

**MR. LEARMONTH:** Yeah, but I'm talking about your meetings that you had with Ed Martin. Where are the notes for those meetings?

**MS. DUNDERDALE:** Well, the officials would have whatever their working notes were.

**MR. LEARMONTH:** Well, do you remember that the officials took notes at these meetings or some of them?

**MS. DUNDERDALE:** Some of them did.

**MR. LEARMONTH:** Definitely?

**MS. DUNDERDALE:** Robert always had his book with him – always.

**MR. LEARMONTH:** Okay. That's Robert Thompson.

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** And others. You know, it wasn't anything that I was paying particular attention to. But when you wanted a reflection of what had occurred – you know, and decisions were recorded, when they were official decisions –

**MR. LEARMONTH:** Yeah, but I'm not talking –

**MS. DUNDERDALE:** – but –

**MR. LEARMONTH:** – about official decisions –

**MS. DUNDERDALE:** – I –

**MR. LEARMONTH:** – I’m talking –

**MS. DUNDERDALE:** I hear you.

**MR. LEARMONTH:** – about reporting things such as cost estimates. I’m not talking about official decisions; I’m talking about communications about changes to cost estimates.

**MS. DUNDERDALE:** I don’t know that they were ever written down, Mr. Learmonth.

**MR. LEARMONTH:** Okay.

Now, the – you said that you knew at financial close that the cost estimate had gone up to \$6.5 billion?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Are you a hundred per cent sure of that?

**MS. DUNDERDALE:** Mr. Learmonth, I have – I can’t tell you how much time I have spent in the last couple of weeks beating that question around in my head – is there any other way that I could have known about that 6.5 number? And I can tell you that searching through every memory bank I have, my strong recollection is, is that I knew.

**MR. LEARMONTH:** Okay, well, if you knew, isn’t it obvious that you would’ve told that information, reported that information to the other Cabinet members?

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Well, you heard Mr. Marshall – you may have heard. Mr. Marshall says he has no recollection of ever being told –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – about this. And Minister Dalley, who was in Natural Resources, said it the same way, that he thought it went from 6.2 to 6.99. He didn’t have any recollection of the 6.5; that Minister Paul Davis, the same thing.

So if you knew – you’re saying that you’re certain that you knew about the 6.5 at the time of financial close?

**MS. DUNDERDALE:** You know, I thought – could I come in –

**MR. LEARMONTH:** No –

**MS. DUNDERDALE:** – here before you, Commissioner, and tell you something other than I knew about the 6.5? And I can’t do it, Sir, because I believe – truly believe – that I knew it was 6.5.

Now, Mr. Learmonth, I heard the testimony yesterday and I heard a lot of things that are really puzzling to me – yesterday.

**MR. LEARMONTH:** Well, what was puzzling about what was said yesterday?

**MS. DUNDERDALE:** Well, it was puzzling – well, first of all, that we had ministers coming from Nova Scotia and from the federal government for financial close; that there would’ve been an opportunity to speak to them. If somebody were trying to keep something covered up, that’s not great company to be keeping when anybody could let that drop in the normal course of conversation.

We had – I went to Google and I googled the scrum that we held after the event in the lobby announcing financial close. And the question is asked, in that scrum –

**MR. LEARMONTH:** By whom?

**MS. DUNDERDALE:** – by one of the media – about a financial update: Where are we? At sanction at 6.2, we’re a year in – where are we now? How are things looking?

And you can go look it up on Google. Anybody – you can get it very easily. It took me two minutes to find it. And Mr. Martin speaks to the

fact that they're about where they thought they might be. We're two-thirds of the way through. That some things have come as they expected it, some things have been a bit better. But there are pressure points –

**MR. LEARMONTH:** Hmm.

**MS. DUNDERDALE:** – that are causing pressure on the project and they're trying to work through those –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – and that a full financial update will be given publicly in the next couple of months.

Now, what's puzzling to me is – and I'm going to be really frank about this – if you've got a premier and a minister in a scrum stood next to the CEO saying there's pressures on this project, there's bids that are causing big pressure on this project, that as soon as that – if you didn't know – as soon as the scrum was over you'd have to go to him and say: What are you talking about? Where's the pressure on the project? What's going on? I want an update. We had, you know –

**MR. LEARMONTH:** Did you do that?

**MS. DUNDERDALE:** No, because I knew.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** I knew what the pressure was.

**MR. LEARMONTH:** But Mr. Marshall says he didn't know about the 6.5.

**MS. DUNDERDALE:** But I don't know why Mr. Marshall wouldn't have asked.

**MR. LEARMONTH:** And I'm not talking about pressures. I'm talking about the 6.5 number.

**MS. DUNDERDALE:** But you would go ask.

What I'm saying is we had the testimony of a minister, yesterday, who said that he was constantly asking for numbers.

**MR. LEARMONTH:** Hmm.

**MS. DUNDERDALE:** And then I leave office in 2014 and there's a new premier. So you're still getting updates and I guess you're still asking for numbers, right up until July. And the question will be: Why aren't you getting the numbers? But then we have another premier who's never been near the file other than being a member of Cabinet.

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** So he is – you know, he's not deep into –

**MR. LEARMONTH:** Who are you referring to?

**MS. DUNDERDALE:** – Premier Davis would not be deep into the Muskrat Falls file. Mr. Marshall was because he was minister of Finance and minister of Natural Resources.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But surely when you become the new premier and you're now the point person in the public, and in the House of Assembly particularly, to ask questions –

**MR. LEARMONTH:** But –

**MS. DUNDERDALE:** – answer questions on Muskrat Falls.

**MR. LEARMONTH:** We're talking about financial close.

**MS. DUNDERDALE:** Yeah, but –

**MR. LEARMONTH:** We are not talking about when he was premier.

**MS. DUNDERDALE:** You asked me what puzzled me. And what I am trying to explain to you is: Is it being said that nobody was briefed from December or November or October or sanction until July of 2014 on what the numbers might be? It doesn't make sense to me.

**MR. LEARMONTH:** Well, that's not the evidence. The evidence is that there was a – before budget in March 2014 that this number,

6.531, was communicated to the Department of Finance.

**MS. DUNDERDALE:** Yes, but I haven't heard – the testimony that I've heard here is that at least one premier and one minister saying they didn't know anything about it until July of 2014. And I –

**MR. LEARMONTH:** Well, that's not correct. In the case of Davis – Mr. Davis and Mr. Dalley that may be the case, but Mr. Marshall has acknowledged, I believe, that he became aware of the 6.531 in March 2014.

**MS. DUNDERDALE:** I heard him say yesterday –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – that he knew that government had it.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** I didn't hear him say that he was aware of it.

But I'm – I'll – look, here is the point I'm trying to make. I am puzzled by all of that. You know, I have said here in my last appearance that – Commissioner, I have great confidence in the public service and I find them to be very thorough. And if somebody had said to them: The number has changed. I – that would've been enough to trigger the next question.

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

**MS. DUNDERDALE:** So why is – so there's evidence that they were told that the number had changed. And I'm puzzled that nobody asked.

**MR. LEARMONTH:** Well, we'll have –

**MS. DUNDERDALE:** That's the difference.

**MR. LEARMONTH:** – to wait until they answer. I don't think that's accepted, they were – that – anyway.

**MS. DUNDERDALE:** So I – so there's a lot of things about all of this that puzzle me, Mr. Learmonth. And I can't make sense of it,

Commissioner. And I'm very aware that I'm here and I'm under oath. In lots of ways, it might be the easy thing to say: Well, nobody told me and I knew nothing about it, so. But I can't say it –

**MR. LEARMONTH:** Okay, well –

**MS. DUNDERDALE:** – because it's not what I believe.

**MR. LEARMONTH:** Okay. Well, a couple questions then.

Who told you about the 6.5 and when?

**MS. DUNDERDALE:** Well, Ed Martin would have told me –

**MR. LEARMONTH:** Do you remember him –

**MS. DUNDERDALE:** – et al.

**MR. LEARMONTH:** – telling you?

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** You don't.

**MS. DUNDERDALE:** No.

But I – this I do know, this I'm absolutely sure of: that if somebody had come to me in October or November, and again told me the project was \$7 billion, \$6.8 billion, \$6.7 billion, I would remember. And the second thing that I know, I'm pretty sure about – I was told when the solution had been arrived at. They didn't come to me and say it's –

**MR. LEARMONTH:** What solution?

**MS. DUNDERDALE:** That the federal loan guarantee was now gonna be for 6.531 –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – and that – what I remembered is that the extra money was gonna be covered off in the loan guarantee, so I would not need to find – or even at that point, go in to the House of Assembly with a special warrant looking for extra money for the project.

Commissioner, I can tell you that would've stood out. That would've been a major, major event for me in October or November or December of 2013, having to go into the House of Assembly, on a project that's been sanctioned a year, looking for extra money. That would've taken – politically, that would've been like a bombshell going off. And there would've –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** – been a strong reaction to it.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And so – and it's not untypical – if that's a word – of Nalcor to operate in that way. To have a problem, but have the remedy as well.

So \$300 million over is a big deal. I'm told that, you know, there's still about \$2 billion worth of the tenders outstanding. That we need to be very careful how we handle this – they didn't call it the red-meat syndrome, Commissioner, but let's not trigger that by telling bidders that we're gonna up the capital cost based on bids. So we have to wait for a couple of months and this could even itself out –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – but we're gonna need to do an update in a couple of months.

**MR. LEARMONTH:** Okay.

What does this have to do with the question? We're talking about the \$6.5 billion. What is your – what you're saying now have to do –

**MS. DUNDERDALE:** I'm telling you –

**MR. LEARMONTH:** – with the 6.5?

**MS. DUNDERDALE:** – I'm telling you – you asked me, I believe, when I did find out.

**MR. LEARMONTH:** Yes, and –

**MS. DUNDERDALE:** And I'm trying to give you the context.

**MR. LEARMONTH:** Well, when did you find out? That's a simple question.

**MS. DUNDERDALE:** I found out – so I found out –

**MR. LEARMONTH:** When?

**MS. DUNDERDALE:** – after the federal government agreed to include the \$300 million –

**MR. LEARMONTH:** Okay, when was that?

**MS. DUNDERDALE:** – in the 6.5.

That was the end of November.

**MR. LEARMONTH:** End of November?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** And who told you?

**MS. DUNDERDALE:** Ed Martin would have told me.

**MR. LEARMONTH:** Ed Martin.

Okay. Do you remember him telling you?

**MS. DUNDERDALE:** No, I don't remember him telling me.

**MR. LEARMONTH:** You don't?

**MS. DUNDERDALE:** I don't remember the specific event of being told –

**MR. LEARMONTH:** But do you remember him telling you –

**MS. DUNDERDALE:** – (inaudible).

**MR. LEARMONTH:** – or not?

**MS. DUNDERDALE:** I – what I remember, Mr. Learmonth –

**MR. LEARMONTH:** Do you remember Ed Martin telling you about this cost increase to 6.531?

**MS. DUNDERDALE:** I don't recall.

**MR. LEARMONTH:** Yes or no.

**MS. DUNDERDALE:** I don't recall the specific meeting. No, I don't.

**MR. LEARMONTH:** Do you recall any meeting?

**MS. DUNDERDALE:** I can't recall it.

**MR. LEARMONTH:** No, okay. Fair enough.

**MS. DUNDERDALE:** But I know that I knew.

**MR. LEARMONTH:** Okay, you know that you knew? Okay, fair enough.

Well if you know that you knew then it follows, does it not, that you would've passed this information on to the Cabinet members and it would've been discussed at a Cabinet meeting. Is that right?

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Okay.

But the clerk, Julia Mullaley, will confirm that she knew nothing about this.

**MS. DUNDERDALE:** And I can't explain that, Mr. –

**MR. LEARMONTH:** Nothing.

**MS. DUNDERDALE:** – Mr. Learmonth, I – you know, financial close was a big deal.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And it would've been a discussion at the Cabinet, you know. We would've been briefed, you know –

**MR. LEARMONTH:** Do you remember all this? Once again, you're talking about – with this – with would.

**MS. DUNDERDALE:** Mr. Learmonth, I talk about process.

**MR. LEARMONTH:** Yeah, well, I wanna know facts first.

**MS. DUNDERDALE:** Well, I can only give you process. I can't give you hard and fast facts about meetings, dates, times, who was in the room. It is too long ago. And I don't –

**MR. LEARMONTH:** Well, why don't you just say you don't remember?

**MS. DUNDERDALE:** – have reference material.

But there's – Mr. Learmonth, somebody wouldn't have phoned me up and said we have financial close, the ministers are coming in, we're gonna have a celebration, show up.

**MR. LEARMONTH:** Hmm.

**MS. DUNDERDALE:** That is not how work gets done. When we – financial close is a big deal. Somebody is going to come brief me on it, that it's all been achieved. Because I'm out of the loop completely here now. So I know nothing about going to the federal government and asking for an extra –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – \$300 million. I know nothing about the 6.8, 6.7. I don't know – I don't know what officials know according to emails, I haven't got a clue. No minister is coming and telling me that there's a change. There's nobody from Nalcor coming to tell me there's a change.

So when all of this is clued up and done, somebody has to come brief the premier. You're just not going – have somebody pop their head in through the door –

**MR. LEARMONTH:** Well, who briefed you about this?

**MS. DUNDERDALE:** I'm sure Mr. Martin would have been one of the people briefing me along with –

**MR. LEARMONTH:** You're sure?

**MS. DUNDERDALE:** Along with the minister. Who else would tell me? The secretary is not going to come in and tell me we got financial close –

**MR. LEARMONTH:** But what about your officials, did any officials brief you on this because there's no record of that?

**MS. DUNDERDALE:** They would have been there, Mr. Learmonth. I never met with Mr. Martin or Nalcor on their own ever.

**MR. LEARMONTH:** Yeah.

So, what you're saying is that and this is just – not based on your memory but based on what you think might have happened – what you think, is that correct?

**MS. DUNDERDALE:** Yes, Mr. Learmonth.

**MR. LEARMONTH:** Okay, that before financial close, Mr. Martin came in and spoke to you, with your officials, and said to you in clear terms that the capital cost estimate for the budget – for the project has increased to \$6.531 billion, are you saying that?

**MS. DUNDERDALE:** I believe –

**MR. LEARMONTH:** Are you saying that?

**MS. DUNDERDALE:** I believe that's what happened.

**MR. LEARMONTH:** But you don't have any memory of it?

**MS. DUNDERDALE:** Commissioner, financial close –

**MR. LEARMONTH:** But you don't have any memory of it?

**MS. DUNDERDALE:** Financial close –

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

**MS. DUNDERDALE:** – is a huge –

**MR. LEARMONTH:** No, I want her to answer the question.

**THE COMMISSIONER:** Just a second. Let's just let her answer the way she is and then I'm going to ask her to answer your question after that directly. Does she remember or doesn't she

remember but let me just give her the – allow her to answer the question.

**MS. DUNDERDALE:** Thank you, Commissioner.

Commissioner, financial close is a big deal. It's a signature event in the development of this project. So large, in fact, that we organized a celebration – an announcement and a celebration in the lobby of Confederation Building similar to what we did at sanction. That's how big an event it is.

To suggest that nobody would come and brief me on that huge, momentous step forward just doesn't make any kind of sense. And I'm sorry, Sir, I don't remember – the House was open, there was a ton of things going on, lots of meetings going on and I wish that I could recall. I wish I could pull out a note and show you but I cannot.

But to tell you, Sir, that I didn't know – I feel that I would be – that that's untruthful. That I can't – I just put my hand on this bible and, given that I did, this is what I have to say because it's what I believe to be true and I can't explain any of the rest of it, Mr. Learmonth –

**MR. LEARMONTH:** Well, you're going to –

**MS. DUNDERDALE:** – about officials or ministers or (inaudible) –

**MR. LEARMONTH:** Well, you're going to have answer some more questions.

**MS. DUNDERDALE:** I'm happy to stay here all day and answer –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – every question you ask me.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** So the question – so I think now and you have the context, maybe you could ask the question and we could get an answer to the question.

**MS. DUNDERDALE:** Sure, Commissioner.



**MR. LEARMONTH:** Okay.

So you don't have any recollection of meeting with Mr. Martin and officials where during which meeting Mr. Martin said very clearly the capital cost increase, the cost of the project has increased to \$6.531 billion?

**MS. DUNDERDALE:** I don't have a clear memory. No, I don't.

**MR. LEARMONTH:** You don't have any memory, do you?

**MS. DUNDERDALE:** No, I don't.

**MR. LEARMONTH:** No, okay.

**MS. DUNDERDALE:** I don't – and it's funny, 'cause I heard Mr. Marshall speak yesterday of the event. I don't have any clear memory of that either.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** I don't.

**MR. LEARMONTH:** But, you know, you said that, you know, Mr. Martin would've told you, but you're just after acknowledging that you didn't know anything about the July 2013 capital cost estimate. So if you were kept in the dark about that, which you've acknowledged you were, why are you so confident that Mr. Martin would provide you with other relevant information?

**MS. DUNDERDALE:** But there are things you know without knowing the detail. I had to go to the Internet and look at the news conference, and only when I saw the scrum did I realize that we had had the big event in the lobby. Now, I remember Younger, I remember Moores, I remember doing the scrum once I saw him and so on, but until I had that reference I had no recall of being in that lobby and that event, 'cause it's too long ago – and it was a big event.

It's not like something you'd forget when you got hundreds of people in the celebration in the lobby of Confederation Building. But up to last week if you had asked me any detail about that gathering at all, up to that point I was thinking we had done – I knew we had done something,

but I thought we had done it up on, in my boardroom on the fourth floor.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** So you do forget things, but the main thrust of it, and the critical elements of it you do remember without remembering all the detail around it. And in last – all of the witnesses that have worked with me testified in Phase 1 how focused I was on the number and getting the number right, and hammered it home day and night. So somebody telling me that the number has changed is going to make an impact, a significant one, because it was so important.

**MR. LEARMONTH:** Well, then why can't you remember it?

**MS. DUNDERDALE:** I can't – I remember that I – I remember the number. I can't remember the detail around my briefing around the number. I don't remember the briefing around financial close period even if they hadn't given me the number.

**MR. LEARMONTH:** Okay.

So, how did you – you say you communicated this to all the members of Cabinet.

**MS. DUNDERDALE:** I would have – Cabinet. I wouldn't –

**MR. LEARMONTH:** Do you remember doing that?

**MS. DUNDERDALE:** – have caucus.

No, I don't.

**MR. LEARMONTH:** You don't.

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** But do you have any explanation for the fact that Minister Dalley, Mr. Davis –

**MS. DUNDERDALE:** None whatsoever.

**MR. LEARMONTH:** – and Minister Marshall, who was minister of Finance, have indicated that that didn't happen?

**MS. DUNDERDALE:** No. No more than I have an explanation as to why their officials, knowing there had been a change, regardless of the amount – regardless of the amount – had not told them.

**MR. LEARMONTH:** So where –

**MS. DUNDERDALE:** I don't know.

**MR. LEARMONTH:** So, Minister Kennedy would have been advised, too, would he have?

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Yeah.

Well, we're going to go through some more people and bring them in just to see what they –

**MS. DUNDERDALE:** Well, that's fine – Mr. Learmonth –

**MR. LEARMONTH:** Yeah.

Okay, was this a meeting of Cabinet where you communicated this to them?

**MS. DUNDERDALE:** It would have been a meeting of Cabinet.

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

**MS. DUNDERDALE:** No, I don't remember, Mr. Learmonth. But there is – you know, I understand that you can bring in the full Cabinet, and the full Cabinet might say to you: No, we never had the meeting. She didn't tell us.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** They might.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But I can only tell you my truth.

**MR. LEARMONTH:** Yeah.

But your truth is based on what you think you would have done, not what you actually recall, correct?

**MS. DUNDERDALE:** Mr. Learmonth, I don't –

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

**MS. DUNDERDALE:** I don't think – when you're – I think every witness who's been here, in terms of the political piece, has to operate from that point. And from the testimony I've heard, that's what we're doing. I'm trying to give a full – I don't have any reason to say otherwise.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** I don't have a reason to say I knew it was 6.5 as opposed to 6.2. You know, there's no reason in the world for me to fudge the numbers in any way. You know, it doesn't – it is what it is, 6.2 or 6.5. It's not like it's going to be some secret that's never going to get out.

**MR. LEARMONTH:** No.

Well, if you were aware of this 6.531 figure, why didn't you announce it to the public?

**MS. DUNDERDALE:** For the very simple reason that I explained after. We wouldn't have called it red meat, but the rationale that was around that we had \$2 billion worth of tenders still out and not to signal that we were going to, you know, revise numbers based on a bid and drive the cost through the roof.

**MR. LEARMONTH:** Okay.

But did you discuss that with Members of your Cabinet? That you weren't going to release it?

**MS. DUNDERDALE:** All of that would have been part of the discussion.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** As well as how the \$300 million might be –

**MR. LEARMONTH:** So –

**MS. DUNDERDALE:** – mitigated if we didn't realize savings to even it out through the other –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – \$2-billion bids.

**MR. LEARMONTH:** So all the Cabinet members that attended this meeting that you don't know when it took place or if it took – oh, you think it did take place, but you're not sure when – all the Cabinet members who attended that meeting would be aware of the 6.531, and they'd be aware of the decision not to communicate it so – on the basis of the red-meat syndrome. Are you saying that?

**MS. DUNDERDALE:** Well, they're not –

**MR. LEARMONTH:** Are you saying that?

**MS. DUNDERDALE:** Mr. Learmonth, just let us be clear now –

**MR. LEARMONTH:** Well, can – do you understand –

**MS. DUNDERDALE:** They (inaudible) – they can't –

**MR. LEARMONTH:** Let's answer the question before you go on –

**MS. DUNDERDALE:** But it's not their point – it's not their place to communicate anything. They're not under Cabinet confidentiality, so I don't even have to have that conversation with them.

**MR. LEARMONTH:** Yeah.

No, but I'm saying that – are you saying that when you communicated this information about the 6.531 to the Cabinet members, that at the same meeting, you told them that – and we're not communicating this to the public because of the red-meat syndrome. Are you saying –

**MS. DUNDERDALE:** No –

**MR. LEARMONTH:** – that?

**MS. DUNDERDALE:** – I wouldn't use red-meat syndrome.

**MR. LEARMONTH:** Well, okay –

**MS. DUNDERDALE:** I would have said, you know, we've got to wait for the rest of the bids to come in –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – and see where we are in two to three months, then we got decisions to make about what we're gonna do here.

**MR. LEARMONTH:** Yeah.

Well, can you explain to me – you mentioned this red-meat syndrome – can you explain to me why an increase from 6.202, or whatever it was, to 6.531 would affect the bids of the contractors? How is that? I mean, the contractors, if there's a capital cost increase –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – not – no contractor knows why there is a capital cost increase. It could be expanded scope; it could be someone else's contract. How does this play out when you're talking about \$300 million? How would that come into play?

**MS. DUNDERDALE:** Mr. Learmonth –

**MR. LEARMONTH:** Yeah?

**MS. DUNDERDALE:** – I'm not in construction; I'm not in finance, and I'm not into building megaprojects, not even small – minor projects.

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** So when I'm advised that we need to get through the bidding process here, see if we can even this out, this is commercially sensitive information and we shouldn't announce it – you know, we're gonna have to give the financial update here in a couple of months, let's see where we are – then I'm not gonna argue with that.

**MR. LEARMONTH:** Yeah. But did you explain that to the Cabinet members before financial close so they'd understand why it wouldn't be communicated to the public?

Because Mr. Marshall and the other Cabinet members that testified, namely Mr. Davis and Mr. Dalley, were both – were all very strong on the point that the public has a right to know.

So I'm asking you whether you can state with any degree of certainty that you explained at this Cabinet meeting about the 6.531 and you also explained that this is not going to be made public for the reasons we just discussed. Do you remember that?

**MS. DUNDERDALE:** Mr. Learmonth, there's –

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

**MS. DUNDERDALE:** Mr. Learmonth, what I have to say to you is this: when Nalcor was built there – in the legislation, there are circumstances – or there are parts of the legislation that speak to commercially sensitive information and that it doesn't have to be released to the public. And that even refers to the – when there's audit – when the Auditor General goes in to audit Nalcor, that even in that circumstance, commercially sensitive information has to be protected. And there's a specific process that the Auditor General has to follow when reporting exceptions that Nalcor may have.

**MR. LEARMONTH:** Okay, that's fine, but can you answer my question?

**MS. DUNDERDALE:** So we don't – so there is not – yes, we have to keep the public updated, and it's reasonable to give – and in the scrum on financial close, it's clearly said that a financial update will be given in three months or four months – in the very near future.

But Nalcor or the government are not required to report to the public in real time. Commercial sensitivity is an element –

**MR. LEARMONTH:** Okay, can you answer my question, please?

**MS. DUNDERDALE:** So the question is ...

**MR. LEARMONTH:** You don't even remember the question?

**MS. DUNDERDALE:** I'm trying to make sure that I answer it accurately.

**MR. LEARMONTH:** You don't remember the question, do you?

**MS. DUNDERDALE:** The question is should we have announced –

**MR. LEARMONTH:** No, that wasn't the question. Please listen –

**MS. DUNDERDALE:** Well, Mr. Learmonth, if you give me the question again, I'll be more than happy –

**MR. LEARMONTH:** The question was –

**MS. DUNDERDALE:** – to try to answer it for you.

**MR. LEARMONTH:** – at the meeting –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – where you communicated – the Cabinet meeting where you communicated to the Cabinet members in attendance that the project cost estimate had gone up to 6.531, did you advise the members of Cabinet that were present at that meeting that it was not going to be announced to the public because of this, you know, commercial sensitivity? Do you remember saying that?

**MS. DUNDERDALE:** No, I don't remember the meeting, Mr. Learmonth. I can hardly remember statements that I made at the meeting. But I can tell you what I understood to be the case and the rationale for the delay on an update – because we didn't give the update in the scrum. I told you what I recall from watching the video what Mr. Martin said, and you're certain – you know, everybody here can go have a look at that if they're interested at all; it's a full scrum.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** What I can tell you is what I knew – what I think I knew or what I believe I knew and I have in my head, and I know that I would've shared that 'cause, you know, the accusation most of my colleagues

would make about me is that I share everything and perhaps could not be so long-winded from time to time.

**MR. LEARMONTH:** So are you saying Mr. Dalley and Mr. Davis and Mr. Marshall had all forgotten about this meeting?

**MS. DUNDERDALE:** I have no – I can't explain that any more than I can explain if they knew in – why didn't they disclose in March if they had the information in March? What changed in the rules from November to March? If you're not aware in November, but you are aware in March, if government has the information in March, why didn't you tell somebody in March? Why didn't you go public in March?

So I don't understand any of it, but that's not my job. That's not my job, Mr. Learmonth. My job is to come in here and tell you and the Commissioner what I know.

**MR. LEARMONTH:** Okay, well, if that's the case, perhaps I can direct your attention to what you said in your interview –

**MS. DUNDERDALE:** Sure.

**MR. LEARMONTH:** – on page 17?

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** And this was the interview held recently.

You say, at the top of page 17 – by the way, the date of the interview was February 1, 2019.

**MS. DUNDERDALE:** Okay.

**MR. LEARMONTH:** Okay, you say – Ms. Dunderdale: 9.5, 6.9, 6.5 billion, but we also knew that we had the three – at least \$300 million from the loan guarantee that would offset the three that was included in that, but it hadn't been included so we couldn't say at that point that that knocked that out, but I know that it was there.

Okay. And then you say: And so, up to the time that I left, there was nothing indicating that we were much off that 6.2. I certainly wasn't told

that. I didn't have any concern up to the time I left that the project was off course in any kind of way – none.

Then I say: So at the time you left politics you believed that the 6.2 estimate was still – and you say yes – valid? And you say: Still valid. Yeah, absolutely, Mr. Learmonth. I didn't have any understanding that we were in heavy water with regard or – yeah. And then you say: Had underestimated or overestimated or anything.

Now, how do you square the evidence that you gave under oath at an interview two months ago with the evidence that you just gave?

**MS. DUNDERDALE:** Mr. Learmonth, I took the –

**MS. E. BEST:** Commissioner, I'd just like to point out that in her testimony at the interview, Ms. Dunderdale did clarify that point and does cite on four occasions that she knew the number was 6.5 at that time.

**MR. LEARMONTH:** Well, we can, you know, you can direct her attention – I'm directing this to a very clear statement that you made on November 1. And you're saying that at the time you left politics that the 6.2 estimate was still valid and you say: Yeah. Absolutely, Mr. Learmonth.

**MS. DUNDERDALE:** Yes.

And, again, Mr. Learmonth, as I recall telling you a number of times – and I reviewed my transcript on the weekend –and I tell you a number of times that I knew at financial close that the number was 6.5.

**MR. LEARMONTH:** Well then why did you give that evidence?

**MS. DUNDERDALE:** Because I was probably thinking about the offsets that we were getting in the loan guarantee – that we had realized 300 million more than we expected from interest relief because of the loan guarantee and that that would offset the 300 million over we were on capital.

**MR. LEARMONTH:** (Inaudible) –

**MS. DUNDERDALE:** Now, I know I'm mixing, you know, I've got two different components of the – but in – of the whole business case for Muskrat Falls. So, I'm taking something from Finance over here to offset something that's going on in capital over here. And – but basically, at the end of the day, yes, we've spent out 300 more in capital costs, but we've realized 300 million over here that we didn't realize that we were going to get, and it's a wash.

**MR. LEARMONTH:** So, is that what Mr. Martin told you when he told you about the 6.5?

**MS. DUNDERDALE:** Yes, if we were –

**MR. LEARMONTH:** Oh, he did.

**MS. DUNDERDALE:** Yes, that was part of (inaudible) thing.

**MR. LEARMONTH:** That it was a wash?

**MS. DUNDERDALE:** Well, he – yes, that –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – he didn't use those words. That – I'm just – I don't –

**MR. LEARMONTH:** Yeah, but that's what he said –

**MS. DUNDERDALE:** – I can't put words in his mouth –

**MR. LEARMONTH:** – is it?

**MS. DUNDERDALE:** – but what – I will tell you, clearly, what I recall being told, if you wish.

**MR. LEARMONTH:** Well, I thought you said you can't remember what was told to you.

**MS. DUNDERDALE:** Well, I can tell you what's in my head that I knew – that I got from somewhere. And I assume that I got it from there. You know, I don't know –

**MR. LEARMONTH:** Well –

**MS. DUNDERDALE:** – how to be any clearer on that.

**MR. LEARMONTH:** – I'd like to get a little bit more elaboration about how you confidently said, at your interview, at this point – and I know you said a lot of things at your interview that, you know, perhaps have to be reconciled. But anyway, at this point, on page 17, you talked about the 6.2 estimate – was still valid. And you said: Yes. Absolutely.

**MS. E. BEST:** Commissioner, perhaps if we were to read on the bottom of page 16, and leading up into that question, it –

**MR. LEARMONTH:** Well –

**MS. E. BEST:** – might provide some context because she actually was asked to explain and gave a similar to – answer to what she's just given now on the stand with respect to the federal loan guarantee – that evening it out, which got back to the 6.2. And then that's when they start talking about the 6.2 at the top of page 17.

**MR. LEARMONTH:** Well –

**THE COMMISSIONER:** I think the answer to this whole issue is that I'm likely going to need to see Ms. Dunderdale's interview in whole so that I can –

**MR. LEARMONTH:** Yeah.

**THE COMMISSIONER:** – assess it myself as to what she said.

**MR. LEARMONTH:** Yeah.

**THE COMMISSIONER:** We've done this for other witnesses in the past and this might be the easiest way for me to get a full story.

**MR. LEARMONTH:** I was going to suggest that we – at the break – that if anyone's listening upstairs if they can print off copies of the full interview because I would like to have it entered as an exhibit.

**THE COMMISSIONER:** Okay, all right.

Is that –

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** – satisfactory to you, Ms. Best? I think it's – I think, you know, if there's such a divergence of opinion about the interpretation of the interview, I think the best thing for me to do is to read the interview and see what I think.

**MR. LEARMONTH:** Okay, well we'll get that prepared and have it –

**THE COMMISSIONER:** Just gonna ask Ms. Best now.

**MR. LEARMONTH:** – entered as an exhibit.

**MS. E. BEST:** Well I wonder if the interview in its entirety –

**UNIDENTIFIED MALE SPEAKER:** Yeah.

**MS. E. BEST:** – needs to be entered. Perhaps only the segments having to do with the 6.2 and 6.5.

**MR. LEARMONTH:** Well, there are so many – what I would submit are conflicting statements in the interview that I think the whole thing should go in, in fairness. I think you should see this, Commissioner; I think other counsel should see it. It should be entered – the whole thing should be entered as an exhibit and not – that's my respectful submission.

**THE COMMISSIONER:** Any other response, Ms. Best?

**MS. E. BEST:** Well, of course, I believe counsel have seen the interview. It has been circulated as a document. I'm not aware of the contradictions that Mr. Learmonth is speaking of. Perhaps if we are going to take a break he can point those out to me –

**UNIDENTIFIED MALE SPEAKER:**  
(Inaudible.)

**MS. E. BEST:** – and I can have a look.

**MR. LEARMONTH:** Well, I (inaudible) –

**THE COMMISSIONER:** Anyway, let's – I don't want to waste too much more time talking

about this. I'm gonna tell you now, I'm gonna see Ms. Dunderdale's full interview, so I want it prepared and I want it entered as an exhibit. I think that's the fairest way for me to assess what everybody seems to be talking about here today. And to be frank, it gives me a better idea as to – an understanding of what Ms. Dunderdale is trying to explain to me here today as well.

So I am going to have that entered as an exhibit and hopefully somebody can prepare it and we'll enter it as an exhibit shortly. And I'm assuming you're right in saying that all counsel have a copy of the interview already. So if that's the case, that's fine; they have it. All right?

Okay, continue on Mr. Learmonth then, please.

**MR. LEARMONTH:** Okay.

Volume 1, tab 9, page – that's Exhibit P-02176.

Now, Ms. Dunderdale, you said in your evidence in Phase 1 that you put reliance on the work of the independent engineer. Is that correct?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** If that's what my testimony says, then, yes –

**MR. LEARMONTH:** Well, do you forget –

**MS. DUNDERDALE:** – I said it.

**MR. LEARMONTH:** – forget saying that?

**MS. DUNDERDALE:** Pardon?

**MR. LEARMONTH:** Do you forget saying that?

**MS. DUNDERDALE:** I don't recall ever – you know, but, yes, I had confidence in the independent engineer.

**THE COMMISSIONER:** Yeah I think – just to, again –

**MR. LEARMONTH:** And you –

**THE COMMISSIONER:** – quell this sort of thing, I think you did say that you were – part of the reliance that you had was on the independent engineer.

**MS. DUNDERDALE:** Yes, that the independent –

**THE COMMISSIONER:** So you did give that –

**MS. DUNDERDALE:** Yes –

**THE COMMISSIONER:** You did give that testimony.

**MS. DUNDERDALE:** – Commissioner, you're absolutely right.

**MR. LEARMONTH:** And you also said that you believed that the federal government did – relied on the due diligence that you thought was carried out by the federal government before sanction. Is that right? You said that.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yeah.

Well, what due diligence did the federal government do before sanction?

**MS. DUNDERDALE:** Well, they were – we were engaged in the whole negotiation around the loan guarantee and whether or not they were going to give us the loan guarantee.

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** So there was information flying back and forth on the deal. My government was fully engaged. There was some outside engagement. I think Jim Prentice was involved to help us with that piece of work and Nalcor was engaged. So they were reviewing the Muskrat Falls Project.

**MR. LEARMONTH:** What aspects of it?

**MS. DUNDERDALE:** I can't speak to the whole – certainly the capital costs.

**MR. LEARMONTH:** Before sanction they were?

**MS. DUNDERDALE:** Yes, because the prime minister and I – he agreed to the federal loan guarantee before.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And there were negotiations in Ottawa. And that's where the prime minister and I ended up in the rub in –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – November –

**MR. LEARMONTH:** Yeah but it –

**MS. DUNDERDALE:** – before he gave us the loan guarantee.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And that's what our teams were doing –

**MR. LEARMONTH:** Yeah but –

**MS. DUNDERDALE:** – in Ottawa.

**MR. LEARMONTH:** But what specific work was Canada doing on the Muskrat Falls Project costs before sanction?

**MS. DUNDERDALE:** I can't speak to that, Mr. Learmonth.

**MR. LEARMONTH:** You don't know, do you?

**MS. DUNDERDALE:** I'm not down into – as premier I would not be down at that level of work.

**MR. LEARMONTH:** Yeah because –

**MS. DUNDERDALE:** I just wouldn't be.

**MR. LEARMONTH:** – an exhibit that I'll show you soon that in the second draft report prepared by the independent engineer in July 2013 there's a statement that they didn't have information on the capital costs at the time. They expressed an opinion about contingency, but they didn't have any information on the capital



costs that would allow them to review it. So how does that square with what you're just saying?

**MS. DUNDERDALE:** Mr. Learmonth, I knew that the federal government was engaged with Nalcor and with government and with Nova Scotia –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** – and Emera and they were all at the table talking about this plan, whether it was a solid plan – a solid enough plan for the government to make that kind of a commitment to support with the loan guarantee. The negotiations went on for some time.

I wasn't in the negotiations. I got high-level briefings on a regular basis, but I wasn't down into the guts and the different elements that were being discussed. All I know is, you know, everybody was fully engaged, information was being shared.

**MR. LEARMONTH:** What information?

**MS. DUNDERDALE:** Information on the project. Mr. Learmonth, I'm premier, I'm not in any other way involved in this project. I wouldn't even have the capacity to understand many elements of this project.

It's not my background but I've got officials who do have that capacity and who do have that background. And I've got a company that's been built to do this kind of work and to do these kinds of discussions and negotiations. And I don't have any reason, at this point in time, not to have any confidence in the work that they're doing.

**MR. LEARMONTH:** Yeah but –

**MS. DUNDERDALE:** And they're coming back and saying to me that they're satisfied and they're satisfied to the degree that the prime minister is ready to come to Newfoundland and Labrador, we're going to meet in Labrador and he's going to give us the loan guarantee.

**MR. LEARMONTH:** Yeah. But, you – getting back to what we said – please listen to my question.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** You said that you put reliance on the due diligence carried out by Canada even before sanction. What information did you have as to the specifics of the due diligence that Canada carried out before sanction on December 17?

**MS. DUNDERDALE:** I didn't have any of the specifics, Mr. –

**MR. LEARMONTH:** Nothing.

**MS. DUNDERDALE:** I didn't.

**MR. LEARMONTH:** No.

**MS. DUNDERDALE:** No, Mr. Learmonth. No.

**MR. LEARMONTH:** No, no. Well, how can you put reliance on something if you don't know what –?

**MS. DUNDERDALE:** Because they agreed. And in my conversation with the prime minister – which I also spoke to in Phase 1 – he spoke specifically about some of the financial pieces in a conversation with me, and so that I knew that he had been briefed and that he was aware, certainly, of some of the financial elements of the deal.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** And I didn't speak to the prime minister again after the signing of the loan guarantee in Labrador.

**MR. LEARMONTH:** Yeah. But the loan guarantee carried with it a number condition precedents, correct?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** So when you say that you signed this deal, there wasn't a deal until financial close.

**MS. DUNDERDALE:** I'm just saying to you in terms –

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

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But in terms of the – the question was around what the federal government knew. And, Commissioner, all I'm saying is that in my last conversation with the prime minister, he seemed fairly knowledgeable about the whole Muskrat Falls plan and spoke to financial elements of it. So there would've been nothing to disabuse me of the fact that they hadn't done their due diligence and didn't understand some of the financial pieces and so on.

**MR. LEARMONTH:** Well, there was nothing –

**MS. DUNDERDALE:** Now, I have no indication that that wasn't the case, but I wasn't down – you know, I wasn't at the table negotiating, presenting documents or receiving them.

**MR. LEARMONTH:** You just assumed that, is that right?

**MS. DUNDERDALE:** I was told by my officials.

**MR. LEARMONTH:** Why were you told by your officials?

**MS. DUNDERDALE:** That they –

**MR. LEARMONTH:** By whom and when?

**MS. DUNDERDALE:** I was told by the minister, I was told by the deputy. My chief of staff was involved in the negotiations, Jim Prentice was involved, Nalcor was involved, the Government of Nova –

**MR. LEARMONTH:** What did they tell you about the due diligence the federal government –

**MS. DUNDERDALE:** I –

**MR. LEARMONTH:** – carried out before sanction?

**MS. DUNDERDALE:** We – I wouldn't have that conversation with them, Mr. Learmonth.

**MR. LEARMONTH:** You wouldn't have, no.

**MS. DUNDERDALE:** No, they would've come back and given me a high-level briefing that the federal government was satisfied, that they had signed. In fact, the night that I found out that there might be conditions attached to the loan guarantee –

**MR. LEARMONTH:** Was the before sanction?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** My chief of staff called me and he opened the conversation with: The negotiation is finished and we've satisfied all elements or whatever was required by the federal government and they've signed off. We're good to go; we got the loan guarantee, that piece. That's how we started the conversation.

**MR. LEARMONTH:** Well, you don't have the loan guarantee until financial close, right?

**MS. DUNDERDALE:** But the agreement on the loan guarantee was –

**MR. LEARMONTH:** Was subject to fulfillment of conditions?

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** Yeah.

Including your review of capital costs – some level of a review?

**MS. DUNDERDALE:** All of that, Mr. Learmonth, but it was a momentous decision. They were moving forward so big that the prime minister of Canada came to Labrador and signed an agreement with Newfoundland and Labrador on the loan guarantee.

**MR. LEARMONTH:** Okay.

Okay, I'd like you to bring up an exhibit, it's not in your book, but it's – it was referred to yesterday, Exhibit P-02653. If you could bring up page 14 first? Down to the – towards the bottom. Yes.

So – and Ms. Dunderdale, this is a *Hansard* report of the House of Assembly proceedings, March 21, 2013. And on page 14, the one we're on now, the bottom right-hand corner, Mr. Tom Marshall is responding to questions put to him by Ms. Lorraine Michael –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – the leader of the NDP.

In answer – the question is: “So I ask the Premier: Does the federal government allow her access to the independent engineer’s reports?” Hear, hear; then the hon. the minister of Natural Resources; hear, hear; Mr. Marshall: Thank you. Then Mr. Marshall says: “Mr. Speaker, the loan guarantee does 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 of behalf of the government of the Province that this project proceeds in a robust, fair, economically feasible, and fiscally feasible manner.”

Did you see that?

**MS. DUNDERDALE:** Yes, Sir.

**MR. LEARMONTH:** Do you believe that is a correct statement?

**MS. DUNDERDALE:** Yes, Sir.

**MR. LEARMONTH:** You do?

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** Because Mr. Marshall didn't think it was correct yesterday, at least the last part of it.

But anyway, please go to page 15 now. If we go down to – just above the middle of the page where you say, Premier Dunderdale: Thank you, Mr. Speaker. Well, no, I should go up a little higher. Ms. Michael was certainly onto this. She says, right up near the top of the page: “Thank you, Mr. Speaker. I asked a very direct question. I want to know: Does the Premier have access to

the information that the independent engineer is giving to Nalcor in its reports?”

Then it is hear, hear; the hon. the premier; hear, hear; and then Premier Dunderdale: “Thank you, Mr. Speaker. Absolutely, Mr. Speaker, all of the information that is made available to the independent engineer will come from Nalcor. We have been completely open and transparent about this project. We will continue to do so because it is right for the people of this Province of Newfoundland and Labrador. It creates the lowest rates for ratepayers. It creates thousands of jobs for Newfoundlanders and Labradorians, something the NDP clearly does not support.”

Now, you are saying here very clearly – in fact, you use the word “absolutely” that all the information that is made available to the independent engineer will come from Nalcor. Why did you say that?

**MS. DUNDERDALE:** I would have said it because I believed (inaudible).

**MR. LEARMONTH:** Well, in retrospect, was that a true statement?

**MS. DUNDERDALE:** I can't speak to it.

**MR. LEARMONTH:** Why would you say that if you didn't know that that was the case, that all the information would be coming?

**MS. DUNDERDALE:** I'm sorry, I can't speak to it. I am confused by it, and –

**MR. LEARMONTH:** What are you confused by?

**MS. DUNDERDALE:** I don't have context here, so I'm not –

**MR. LEARMONTH:** Well, you're asked, I would say generally, whether government is going to get the reports of the independent engineer, right?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** And you're saying absolutely.

**MS. DUNDERDALE:** Well, that would have been my understanding at the time. I can't tell you even now if it's correct, 'cause I can't remember.

**MR. LEARMONTH:** Well, the –

**MS. DUNDERDALE:** I know that when we asked for a report we got it, in that when government asked for a report in February we got it.

**MR. LEARMONTH:** What report are you –?

**MS. DUNDERDALE:** If Nalcor has anything, then we absolutely have access to it.

**MR. LEARMONTH:** But you didn't – well, if you had access to it, you certainly didn't take up the opportunity to get it, because the information that we have – and it's very clear – is that the only report that government received from the independent engineer – and it was provided by Nalcor – was the July 2013 report.

**MS. DUNDERDALE:** Yes, but the question I'm being asked, what I'm saying to – saying is that all of the information that is made – that the independent engineer makes available we have access to, and we absolutely do have access to it if Nalcor has it.

**MR. LEARMONTH:** Yeah. But it wasn't given to you by Nalcor.

**MS. DUNDERDALE:** But that's not what I'm saying. That's not what you asked me. You're asking me if that's correct. Yes, we do have access to it.

**MR. LEARMONTH:** Okay, very good. Well then if you had access to all the reports of the independent engineer, why didn't you obtain the reports from Nalcor?

**MS. DUNDERDALE:** Mr. Learmonth, I can't tell if – you know, I might've understood that the minister – I'm not in charge of the project. I'm overseeing the project at the premier's – the premier's office is like a secretariat. There's about 10 people up there, 10, 15 people operating the premier's office.

We rely on departments for everything. We don't duplicate those services in the premier's office. So all of this would've been done through the Department of Natural Resources and the minister, the Department of Justice, the minister, and the Department of Finance and the minister. And the information would've gone to them and they would've been monitoring the project. And they would come up to me, either themselves, independent of Nalcor, or come with Nalcor to report.

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

**MS. DUNDERDALE:** But I may not have been aware that there was a reason – they wouldn't come to me unless there was an issue. If they were getting reports – they were getting reports all the time; they didn't brief me on every report they were getting.

**MR. LEARMONTH:** But government wasn't getting reports –

**MS. DUNDERDALE:** But –

**MR. LEARMONTH:** – Nalcor was getting draft reports. Government – the evidence is clear that there were a number of draft independent engineer reports. There was one in March 2013, one in July 2013, one in October 2013, one on November 15, 2013, one on November 27, 2013 – I think that covers all of them.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** And there was one on November 29, which government or – and Nalcor didn't receive until November 29.

So, the evidence is clear that someone in government – I believe it was Charles Bown but I could be wrong – someone in government asked Nalcor for the July 2013 report and the government was given access to that report. Whether government actually saw it, we don't know.

But my question to you is: Why wouldn't you, as premier, have ensured that the government received all of the draft reports of the independent engineer?

**MS. DUNDERDALE:** Because, Mr. Learmonth, I'm not – you know, I have a minister of the Department of Natural Resources who's responsible for the oversight of Nalcor, and I expect that the minister is doing their job. I'm not having any indications that the minister is not doing their job, and on top of that, I'm fully engaged in oversight on the file. I'm not calling up Health on a regular basis to – on a monthly basis to tell me what's going on with half our budget in health care or housing or, you know – there's a lot more vigilance on the Department of Natural Resources and Nalcor and this project than in any other arm of government that are also responsible for billions of dollars.

But I expect the department to do its job. We don't have the capacity. So when I am asking the minister and I'm asking public officials who I've worked with and know are thorough and have a great deal of confidence in, you know, is there anything in the normal work they're doing which might be getting these engineering reports? Is there anything here that you need to raise with me? Tell me what's going on.

But I wouldn't go down and direct the department's work. That's not my role. There is – I can't be premier and 16 ministers. I can't do it, nobody can.

**MR. LEARMONTH:** Okay.

So, you didn't – you made that statement in the House of Assembly. Did you, at that time, expect that Nalcor would provide you all the reports of the independent engineer?

**MS. DUNDERDALE:** I knew that anything we wanted we had full access to, and if we needed it, then we could have access to it.

Now, it was to the department – would have to ascertain whether or not they felt it was required.

**MR. LEARMONTH:** Well –

**MS. E. BEST:** Commissioner, if I might just interject for the point of clarification, I believe what Premier Dunderdale says here in the *Hansard* is that all of the information that is made available to the independent engineer will come from Nalcor. That's what the *Hansard*

says, so I believe that's been a little bit twisted since that was initially referenced.

**THE COMMISSIONER:** I think though, you have to put that into perspective of what the question was.

**MS. E. BEST:** Regardless of what the question was, I think we all know how the repartee goes in the House, but this is what Premier Dunderdale actually said, is, that all of the information that is made available to the independent engineer will come from Nalcor.

**MR. LEARMONTH:** Yeah. Well, I don't get the importance of that but, anyway.

Did you feel it was important – since, you know, you've acknowledged that the government – that your government was putting some degree of reliance on the work of the independent engineer. Is that correct? Do you agree with that?

**MS. DUNDERDALE:** Anybody –

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

**MS. DUNDERDALE:** Yes. Anybody who had a role in oversight or – you know, and especially somebody who was put there independently –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – then we would – you know, we would have confidence in that person's independence and the information that they would provide.

**MR. LEARMONTH:** So you would have expected to receive all the draft reports so that – I don't mean you, personally, but – so you would have expected that your officials would have ensured that all the draft reports of the independent engineer were obtained and reviewed, and that you'd be briefed on them.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yeah.

Were you ever briefed on any of the reports of the – draft reports, of the independent engineer?

**MS. DUNDERDALE:** I can't recall. I may have been, Mr. Learmonth, but I don't have that kind of recall.

**MR. LEARMONTH:** Okay.

Do you know what the scope of work of the independent engineer was?

**MS. DUNDERDALE:** I can't recall. Now, Mr. Learmonth, again, this is not what I do, it's not where I came from, it's not where I'm trained, it's not where I'm educated, it's not my work experience. You know, I'm a reasonably intelligent person so that when somebody comes to me with a briefing, I can ask questions and I can flesh it out to the point that I understand what is going on. And if I'm asked then to give direction, I can do it, but there – you know, I don't have the training even to retain that, let alone months after the fact – I'd have to be re-briefed and so on. I certainly don't have the capacity to do it six, seven years later when I've been completely out of that world and didn't even have conversations around Muskrat Falls until this Inquiry began.

My world has been completely separate. So I can't – I can't do that for you. If I got put back in a situation where I was given the information, that I was properly briefed, I could give you an answer to a question, again tomorrow, around all of this. But I've been in a bubble, as far as Muskrat Falls is concerned, for six years. I can't do it.

And I don't have enough of the background to retain concepts that I'm not used to dealing with every day or, you know, have no experience with in my former life. I worked in social work, not building hydro dams.

**MR. LEARMONTH:** Okay.

Now if we could bring up the November 15, 2015 draft report of the independent engineer, I believe that's in, Ms. Dunderdale, volume 1 of your book, tab 31.

**MS. DUNDERDALE:** Tab 31, Mr. Learmonth?

**MR. LEARMONTH:** Yes, that's right.

**THE COMMISSIONER:** P-01949?

**MR. LEARMONTH:** P-01949, correct.

Is it – when did you first see this November 15, 2013 draft?

**MS. DUNDERDALE:** November 15?

**MR. LEARMONTH:** 2013. This is page 1 – if you go to page 1.

**MS. DUNDERDALE:** Yeah.

I don't know that I ever saw it, Mister – may have been briefed on it, but I don't know.

**MR. LEARMONTH:** Well, no, and in fairness to you, that there's no – unless you have a specific recollection, I think the evidence is that the government only got the July 2013 report, that it never requested nor was it presented with this report.

So I'm not expecting you to have a recollection of it, but I wanted to refer you to a few sections in it –

**MS. DUNDERDALE:** Sure.

**MR. LEARMONTH:** – that may have been of interest to you if you had received it.

**MS. DUNDERDALE:** Sure.

**MR. LEARMONTH:** Is that fair enough?

**MS. DUNDERDALE:** Yes, Sir.

**MR. LEARMONTH:** Yeah.

Okay, let's go to page 152. Now if we go to – let's go down to – the second full paragraph, which starts with: While Nalcor adopted – do you see that? 152?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** It says: "While Nalcor adopted a theoretical P50 contingency based on analytical modeling (... 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” – the – “LCP. The IE is not aware of a separate management reserve allowance to fund or accommodate unknown risks or changed field conditions as is typical practice for these types of projects. As per AACEI practice, the scope contingency is assumed to be spent during project execution while the management reserve is considered not to be spent in entirety during project.”

Now, this suggest that the – you know, the project – the independent engineer is saying that typically there – for a project like this, there would be contingency reserve of double to quadruple. Now the reserve was 368, so if it was quadruple, and I realize I’m going to the other extreme, but that would represent \$1-billion difference.

Now, is this not the type of information that you would expect to receive?

**MS. DUNDERDALE:** In retrospect –

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** – yes, absolutely. I mean, we talked about that in Phase 1, and, Commissioner, you asked me about P-values and had I knew more about P-values and had I revised, you know – or you asked for what my recommendation would be around the P-value, for example, and I said P75 at a minimum, in retrospect. But these were things that we didn’t understand perhaps as well as we should have at the time.

**MR. LEARMONTH:** But I’m talking specifically about this double to quadruple.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** I mean, I know you’re not trained in this, but you’re – you know, you can add up figures. And if you knew that 368 was a thing, you – you know, it’d be pretty easy to come to figure that – my God, if it should’ve been quadrupled, there could be a \$1-billion difference in the cost.

**MS. DUNDERDALE:** Absolutely, it would’ve made a huge difference.

**MR. LEARMONTH:** It would’ve.

**MS. DUNDERDALE:** Yes. Of course, it would, it’s another billion. And now we’re back to the CPW, again.

**MR. LEARMONTH:** No, we’re not back to the CPW.

**MS. DUNDERDALE:** Well, we are.

**MR. LEARMONTH:** I haven’t questioned you on that.

**MS. DUNDERDALE:** Well, if we’ve shaved off – if the – if Muskrat Falls is gonna be a billion dollars more expensive, it was going to be 7.2 as opposed to 6.2, then we’re narrowing up the difference between the two (inaudible). It would’ve been significant, Mr. Learmonth, so I’m just agreeing with you. It –

**MR. LEARMONTH:** You’re agreeing with me?

**MS. DUNDERDALE:** Yes, absolutely.

**MR. LEARMONTH:** Yeah, it would’ve caused a big –

**MS. DUNDERDALE:** No question.

**MR. LEARMONTH:** – focus of attention, correct?

**MS. DUNDERDALE:** A billion dollars is not a small amount of money.

**MR. LEARMONTH:** Yeah.

And then you say – and then the report says, excuse me: “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.”

Now, you said that you became aware of that before financial close, that the contingency had been exhausted?

**MS. DUNDERDALE:** At financial close. I knew that the Astaldi bid had come in high. It was the lowest bid, but had come in high and had – and I can't recall if I knew that the contingency was all gone, but I knew that it was significantly gone.

**MR. LEARMONTH:** Who told you that?

**MS. DUNDERDALE:** Well, again –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – I have – you know where my sources are.

**MR. LEARMONTH:** But I – when I read that passage from page 12 of the Grant Thornton report to you about the contingency being – that Nalcor knew that the contingency was exhausted in April 2013 –

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** – did you not answer that you weren't aware of that until you read the report? I'm gonna check that, but I just wanted to test your –

**MS. DUNDERDALE:** Yes, I – no, I didn't know in April.

**MR. LEARMONTH:** Did you know before you read the Grant Thornton report?

**MS. DUNDERDALE:** No. I knew something about contingency being gone around the 6.5. That's –

**MR. LEARMONTH:** Well –

**MS. DUNDERDALE:** And I knew that the contingency had been used up then obviously –

**MR. LEARMONTH:** No – well –

**MS. DUNDERDALE:** – because we're over –

**MR. LEARMONTH:** – well, we'll check the transcript. I don't wanna misrepresent anything here, but we'll check –

**MS. DUNDERDALE:** I remember –

**MR. LEARMONTH:** – the transcript.

**MS. DUNDERDALE:** – saying to you that I didn't know if the contingency – well, you'll see it in my transcript –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – because I do recall saying that to you, that I knew it was substantially gone. I didn't know if it was all gone but substantially gone.

**MR. LEARMONTH:** That's your recollection, right?

**MS. DUNDERDALE:** That's my recollection –

**MR. LEARMONTH:** In other words –

**MS. DUNDERDALE:** – of my answer –

**MR. LEARMONTH:** – in other words, you didn't say that you became aware of it when you read the Grant Thornton report?

**MS. DUNDERDALE:** That it was gone in April? No, I didn't have a clue that it was gone in April.

**MR. LEARMONTH:** And you became aware of that before financial close?

**MS. DUNDERDALE:** Well, when I was briefed on the fact that we had moved away from 6.2 to 6.531, that – those were all elements of the information that I was given.

**MR. LEARMONTH:** Are you sure? Are you – I thought you said –

**MS. DUNDERDALE:** Well I –

**MR. LEARMONTH:** – you didn't remember?

**MS. DUNDERDALE:** – I can tell you what I think I knew. If –



**MS. E. BEST:** (Inaudible.)

**MS. DUNDERDALE:** – the 6.2 is all used up, then the contingency is all gone –

**MR. LEARMONTH:** Yeah. But are you now –

**THE COMMISSIONER:** Excuse me just for a second now. Ms. Best?

**MS. E. BEST:** I might be able to shed some light on this issue. Just – because if we’re curious about where it is in the transcript, it’s on page 22, and I’m happy to read out what Ms. Dunderdale said – it was very short – with respect to the contingency. I believe her answer was –

**THE COMMISSIONER:** Well, let’s just – this is something, Ms. Best, you’re probably better to bring out in your redirect – or your examination of the witness. Like, I don’t want you here basically starting to supplement the evidence of this particular witness. She’s handling the questions the best way she can, so let her do it.

**MS. E. BEST:** Thank you, yes.

**THE COMMISSIONER:** And then if you have clarifications to make, you refer to the documents you wanna refer to.

**MS. E. BEST:** Yes, and it wasn’t Ms. Dunderdale’s evidence I was trying to clarify; it was Mr. Learmonth’s point with respect to what she did say at the interview.

**MR. LEARMONTH:** Yeah, and – which – I did acknowledge that I’ll have to check it with the transcript and that I will.

Okay, so this information anyway, would you have expected Nalcor to have provided you with the draft reports of the independent engineer even if government didn’t request it?

**MS. DUNDERDALE:** Well, I would – Mr. Learmonth, if contingency was all used up in April, then that’s something I should have been made aware of.

**MR. LEARMONTH:** But you weren’t?

**MS. DUNDERDALE:** No, Sir.

**MR. LEARMONTH:** Yeah.

Does that surprise you?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Okay. Why?

**MS. DUNDERDALE:** Because I should have known.

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

**MS. DUNDERDALE:** You know, if we’re only three-quarters of the way through tendering, and we’ve still got \$2 billion outstanding, and we really haven’t – you know, we’re not gone, you know, holus-bolus in the construction here yet, and all the contingency is used up, then that’s cause for concern.

**MR. LEARMONTH:** Mm-hmm.

Were you aware that the work of the independent engineer was based on – the scope was just for a high-level review, not a detailed review of the capital cost estimates?

**MS. DUNDERDALE:** I can’t recall at this point if I knew that or not, Mr. Learmonth.

**MR. LEARMONTH:** You don’t know?

**MS. DUNDERDALE:** I can’t recall.

**MR. LEARMONTH:** Would that – if you had known that – and that’s what Nik Argirov said when he testified – if you had known that, would that have lessened the reliance that you put on the work of the independent engineer?

**MS. DUNDERDALE:** I still would have valued the work of the independent engineer. I can’t tell you – and it would have made a difference because, you know, the reliability you put on a piece of work is certainly going to depend on the degree of engagement.

**MR. LEARMONTH:** Yes. Yeah.

But how can you put degree of reliance on the work of someone who is not under your control if you don’t know the scope of that person’s work?

**MS. DUNDERDALE:** But the department would have known, and we would have had discussions around all of that issue.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Mr. Learmonth, we spent hours and hours and hours and hours –

**MR. LEARMONTH:** Yeah, but –

**MS. DUNDERDALE:** – in briefings and in terms of who was doing what, you know, what the – you know, the information that certainly was being shared with me, what it was, where it was coming from, what it meant or what it might mean and so on.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** So, you know, in terms of somebody briefing me, I mean, you know, that's a question that's better put to them: if you were telling the premier this is where things were, were you sure of your source? Or what kind of weight did you put to the information and where it was coming from?

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** When officials came and told me that this is the case, this is how it is, and I would have questions around all of those kinds of things, but I would have expected the department – and it was my experience from having been at least in the Department of Natural Resources – that they did that kind of due diligence.

I mean, when Nalcor sent over the numbers first – and there was some question about this in Phase 1 – oh, did anybody check the numbers? Well, yes. In Natural Resources, we checked the numbers. We did a CPW analysis. So, I – my experience in the Department of Natural Resources was – this was the kind of work – this was the quality of the work that got done there. And so I wouldn't have expected any different, that that way of operating had changed because I had left and gone, too.

So I expected a high quality of work from the department. I expected a high quality of work from all the departments. And that certainly had

been my experience up to that point. So there was nothing in me saying – you know, while I might have been saying double-check Nalcor, there was nothing in me saying double-check your own departments.

**MR. LEARMONTH:** Did you ever say double-check Nalcor?

**MS. DUNDERDALE:** Yes. All the time.

**MR. LEARMONTH:** Oh, you did? Okay.

**MS. DUNDERDALE:** And –

**MR. LEARMONTH:** But anyway –

**MS. DUNDERDALE:** – Minister Marshall testified to that yesterday.

**MR. LEARMONTH:** Yeah.

Anyway, just so you'll know, Mr. Argirov, when he testified, he was asked a number of questions about the period before financial close, whether he had any communications of any kind with bureaucrats and elected politicians from the Government of Newfoundland, like, before November 29, and he said no. And then when asked if anyone from the provincial government had contacted him asking for reports or any kind of commentary on Nalcor's work since the sanctioning of the project in 2012, he said no, never.

So here we have a situation where Nalcor is not providing you all the reports, and you're not even asking from them. Doesn't that create a very poor situation, troubling situation – that you're not getting information from the independent engineer?

**MS. DUNDERDALE:** You're telling me that now, and all I can say to you is that I was not aware.

I certainly expected that all of available information was being collected and that our own due diligence inside government was taking place. You know, you could – every aspect of everything we did didn't relieve any – because Nalcor was there – didn't relieve departments of the responsibility to do their own due diligence especially around things that, you know, were

even particular to them. And what was very particular to them was to make sure that they were bringing forward the right information to the premier and to the Cabinet.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** So that they could report – when the minister reported in the Cabinet to all of us that the information was sound because it had been – not just because it'd been provided by Nalcor but that it had been double-checked by the department – the appropriate department.

**MR. LEARMONTH:** What resources did the departments have to check the work of Nalcor?

**MS. DUNDERDALE:** Well, they had a phone so they certainly could have phoned the independent engineer and asked for the reports.

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

**MS. DUNDERDALE:** That's not the point. Their obligation, their responsibility, their duty was to do that. That's my point.

**MR. LEARMONTH:** So they failed in that duty –

**MS. DUNDERDALE:** Well –

**MR. LEARMONTH:** – is that what you're saying?

**MS. DUNDERDALE:** – what I'm saying to you is my experience in the Department of Natural Resources and Innovation, Trade and Rural Development, which were the two departments I served in, that public servants did the due diligence on a regular basis. And if it wasn't done in this case, I certainly wasn't aware of it and I guess public servants are going to have to answer to it, why it didn't happen.

**MR. LEARMONTH:** Okay.

Just before we leave the topic of the independent engineer's report, there's just two brief references I wanted to ask you to consider –

**MS. DUNDERDALE:** Sure.

**MR. LEARMONTH:** – about the – remember I referred to the draft report of the independent engineer dated July 2013?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** And that's the one that on July 16 Nalcor gave the Province of Newfoundland and Labrador access to.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** We don't know whether it was – you know, the opportunity was taken advantage of but we know access was given. I just want you to turn briefly to, it's not in your book, but if we could bring up Exhibit P-02175. And if we go to page, well, 3 first. You can see this is the independent engineer's draft report dated July 12, 2013.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Okay.

And then remember we had a discussion about the work done by Canada on project cost estimates before sanction? Okay.

Now, if we turn to page 95 of this report, if we go there, if we go down to paragraph 5.1.2 Evaluate Cost Estimate and Fixed Price Estimates: "Currently under review. No comments are yet available. MWH" – that's the independent engineer – "and Nalcor agreed to update this section once more large contract bids are received."

Do you see what I mean? Like, there was no cost estimates at this stage. Does that surprise you? You know, given that you put some reliance on –

**MS. DUNDERDALE:** I can't say it surprises me. All I can say to you is –

**MR. LEARMONTH:** Is what?

**MS. DUNDERDALE:** – I took comfort from the fact that the federal government, after significant engagement with the major parties, agreed to give us a loan guarantee –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – that they thought the project was a sustainable project and a deliverable project in the parameters that have been outlined to them, and I took comfort in that.

**MR. LEARMONTH:** But you took comfort in it not knowing what the scope of the review was. You took – correct?

**MS. DUNDERDALE:** I wouldn't have known Mr. –

**MR. LEARMONTH:** No?

**MS. DUNDERDALE:** I wasn't – Mr. Learmonth, I wasn't presenting the materials.

**MR. LEARMONTH:** Yeah. And you took comfort in it not knowing that in every report that the independent engineer prepared, all the draft reports that I referred to, there was always a cautionary section about the low level of contingencies.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yeah. So, you know, I don't see how you could put much reliance on the fact that the independent engineer's work resulted in the federal government giving the loan guarantee when you didn't know those points.

**MS. DUNDERDALE:** Yeah but, Mr. Learmonth, we had to satisfy the conditions precedent, I knew –

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** – that.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And certainly before we got to financial close they were going to have to be fully satisfied.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** I mean, if they were going to book in –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – you know, they were going to have to book \$4 billion, you know, that they were going to make sure –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** – that this was a good project, that this was a good thing for them to do.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** So whether they had all of that information at sanction or they got it over the course of time from sanction to financial close, I took great comfort in the fact that there were another set of eyes on the Muskrat Falls Project.

**MR. LEARMONTH:** But you didn't know –

**MS. DUNDERDALE:** And somebody who had skin in the game, who were going to, you know, give us a loan guarantee and take on a responsibility and book –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – \$4 billion.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But did I know all the pieces of information that were being given and all the pieces of information that were being considered? Of course not, Mr. Learmonth, that wasn't my – if I had been at the table, that would've been my responsibility to know that, but I'm not. I'm the premier; I've got staff who do that. I've got departments and ministers who do that.

**MR. LEARMONTH:** Yeah. But did it ever occur to you that one of the reasons that the federal government went ahead with the loan guarantee, notwithstanding their concerns about the low contingencies, was that your government had provided a completion guarantee – an unlimited completion guarantee?

**MS. DUNDERDALE:** No, Sir –

**MR. LEARMONTH:** Did that ever cross your mind that that may have been a factor?

**MS. DUNDERDALE:** No, not at all. When I – the commitment letter was put before me, the explanation I was given that this was pro forma. This is necessary in projects of this type. It wasn't particular to this one.

**MR. LEARMONTH:** Yeah, but it's still –

**MS. DUNDERDALE:** That's not my understanding.

**MR. LEARMONTH:** But it's still a very serious commitment that you're going to fund the –

**MS. DUNDERDALE:** Absolutely, I'm going to try –

**MR. LEARMONTH:** Wait until I finish the question, please. You're going to – you know, the government, the people of the province are on the hook for the cost no matter what the costs are. That's a serious step, isn't it?

**MS. DUNDERDALE:** But that's not what you asked me, Mr. Learmonth. And what – though your statement is absolutely –

**MR. LEARMONTH:** You said it was pro forma.

**MS. DUNDERDALE:** It – a commitment letter was required. You're asking me did the federal government ask for a commitment letter because they didn't have information and so on and financial information and so on.

**MR. LEARMONTH:** I never asked you that.

**MS. DUNDERDALE:** Well, I – that's what I understood you to be asking.

**MR. LEARMONTH:** Oh, you – I never said that.

**MS. DUNDERDALE:** Well, I apologize, Mr. Learmonth. What I'm saying to you, it was – I didn't understand, nobody ever told me that it was an extraordinary request to – from the federal government for any kind of reason to have a committal – a commitment letter.

**MR. LEARMONTH:** Okay.

Just before we leave this exhibit, I have one more page I want you to turn to and that's page 187 of this July report.

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** You see – now this is in July, so we're fairly early in the game. Nevertheless, the second-to-last paragraph on page 187 says: "By arriving at the contingency levels used as input to the pro forma following a multi-faceted Project Risk Management Plan, and using AACEL'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" that "we have reviewed. The IE typically sees contingency allowances in the range of 12 percent to 18 percent at this" stage of project development.

Now, Nalcor's contingency was 6.7. If you had seen this report or if your officials had seen it, wouldn't you expected that that would've drawn some attention?

**MS. DUNDERDALE:** No question.

**MR. LEARMONTH:** No question. Okay.

Now, we're going to go to tab 1 – tab 9, volume 1. No, forget that – yeah, volume 1, tab 9, P-02176.

If we turn to page 3 of this document – do you see it? This is an email from Paul Harrington, the project manager, to Gilbert Bennett, other people at Nalcor. If you look on page 3.

**MS. DUNDERDALE:** Yes, Sir.

**MR. LEARMONTH:** "The IE then states that other similar projects are carrying larger contingencies in the 12 to 18% range and indicates that is what we may expect to realize when we get the" – et cetera.

Now, you were of the understanding that Mr. Martin was keeping you up to date on project costs and estimates and so on.

**MS. DUNDERDALE:** Yes, Sir.

**MR. LEARMONTH:** Even though you didn't get the independent engineers reports, did Mr. Martin at any time ever advise you, verbally, of what the position of the independent engineer was on project contingencies?

**MS. DUNDERDALE:** I can't remember, Mr. Learmonth. I mean, these meetings were hours long, and there were many of them.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** And, you know, if the information was shared, there certainly would have been an explanation around it as to – it just wouldn't be allowed to sit there like that. This is how it is. There would have been a conversation around then why aren't you doing something differently than if this – you know, what's your explanation around it and so on.

**MR. LEARMONTH:** But you have no recollection of this?

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** No.

**MS. DUNDERDALE:** I – look, I cannot sit here, as I said, all these years after the fact and recount specific discussions and meetings. I can't do it.

**MR. LEARMONTH:** All right.

**MS. DUNDERDALE:** I don't have that kind of recall.

**MR. LEARMONTH:** Volume 1, tab 15, P-02710.

This is an email from Diana Quinton to – quoting – it's a July 26, 2013, story – or report by Ottawa Bureau, *Chronicle Herald*, and you're in Niagara-on-the-Lake. Do you remember you were there for –?

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** We talked about that before –

**MS. DUNDERDALE:** Premiers' meetings.

**MR. LEARMONTH:** Yeah. You're quoted – or this statement is attributed to you that: "The Maritime Link will be built with or without the approval of the Nova Scotia Utility and Review Board, says Newfoundland and Labrador Premier Kathy Dunderdale."

Now, was that an accurate depiction of your statement or recording of your statement?

**MS. DUNDERDALE:** I just have to read it now, Mr. Learmonth.

**MR. LEARMONTH:** Well, the first paragraph.

**MS. DUNDERDALE:** My –

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

**MS. DUNDERDALE:** We didn't need the –

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

**MS. DUNDERDALE:** Yes, it's correct.

**MR. LEARMONTH:** Okay. Thank you.

And is that true? That you were going to build the Maritime Link – you believed at that time, July 26, 2013, the Maritime Link will be built with or without the approval of the Nova Scotia Utility and Review Board?

**MS. DUNDERDALE:** Mr. Learmonth, we didn't need the approval of the UARB to build the link.

**MR. LEARMONTH:** Yes.

**MS. DUNDERDALE:** The only thing we needed from the UARB was a decision on what the rate was that they would be allowed – that they would allow to be included in the rate base for Nova Scotia customers.

**MR. LEARMONTH:** If the Maritime Link was deemed to be the lowest cost option?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yeah, if it was? Because there were other alternatives, too.

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And all kinds of incentives for both Emera and Nalcor to ensure that it was lowest cost.

**MR. LEARMONTH:** Okay.

So on what basis do you say in this passage that, “The Maritime Link will be built with or without the approval of the Nova Scotia Utility and Review Board ...”? Wasn’t the federal government – wasn’t the federal loan guarantee subject to the approval of the UARB?

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** No?

**MS. DUNDERDALE:** It – well, the –

**MR. LEARMONTH:** No? Is that your answer?

**MS. DUNDERDALE:** No, that’s not correct.

Let me be more specific. The loan guarantee was based on Muskrat Falls power being available and used for Nova Scotia customers. And the responsibility of the UARB, given to them by the Government of Nova Scotia, was to ensure that Muskrat Falls power was the least-cost alternative.

So their responsibility was to ensure that what they put in the rate base for Nova Scotians was the cheapest power that was available. UARB couldn’t tell Nalcor or tell Emera whether or not they could build a link. They couldn’t even tell Emera how much to pay Nalcor for the power. But what they could tell Emera once they submitted – and Nalcor and the rest of us – once they submitted the rate that will be charged off to Nova Scotia customers, they could say that’s not the least-cost power available to us and if we don’t have a rate any better than that, we won’t be buying this power from Emera at this rate, we will not be buying Muskrat Falls power at this rate, which then, certainly would have nixed the loan guarantee.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** Because Nova Scotia Power –

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** – has to go in to the base.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But there are powerful incentives for Nova Scotia and Emera to find the lowest cost power; I think they already have it. But there’s still \$1.1 billion on our side that we’re going to have to forgo if we’re not able to go to find a number that works for the UARB, and there’s a significant investment by Emera in the Muskrat Falls Project that might be difficult for them to realize if this gets nixed.

So there are powerful incentives to find the number that works for the UARB. And in a subsequent interview that the premier of Nova Scotia – and we had a copy of it in the briefing materials that you gave me for my interview – that Premier Dexter confirms exactly what I say in this.

**MR. LEARMONTH:** Well, okay, but you testified earlier that your position – your personal position was without the federal loan guarantee this project wouldn’t proceed. Is that correct?

**MS. DUNDERDALE:** Yes.

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

**MS. DUNDERDALE:** But what I’m saying to you is there are powerful motivators on both sides to get the lowest cost power to the UARB – powerful. And once they come with the lowest cost power to the UARB, URB doesn’t have any choice other than to accept because that’s their mandate.

**MR. LEARMONTH:** Okay.

So have you finished your answer?

**MS. DUNDERDALE:** Yes, Sir.

**MR. LEARMONTH:** Okay, we’ll move on.

Paragraph – volume 1, tab 17, Exhibit P-02662. Can you explain me what point or what’s the gist of this email? It’s not easy to understand, in

parts, for me anyway. What are you trying to say here?

**MS. DUNDERDALE:** I'm not trying to say anything, Mr. –

**MR. LEARMONTH:** You're not trying to say anything?

**MS. DUNDERDALE:** Well, this is from Tracey Boland to my comm director.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** It's not from me.

**MR. LEARMONTH:** But this is something prepared for you, isn't it?

**MS. DUNDERDALE:** Well, they're talking back and forth on what they might, you know, advise me to say or whatever.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** The – you know, this exchange between the two of – you know, dozens of them happen on a daily basis and it depends on what they know.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** And they have to get briefed by departments because they don't have first-hand knowledge of any of this.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** Jennifer Tulk is up in the premier's office in our small secretariat. I'm not exactly sure where Tracey Boland is. She probably went down in Natural Resources.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** So this is a discussion between two communication directors –

**MR. LEARMONTH:** All right.

**MS. DUNDERDALE:** – on what they may or may not advise me to say.

**MR. LEARMONTH:** Okay, thanks for clarifying that.

And volume 1, tab 24, P-02024. This is an email where – at the bottom, Mr. Paul Myrden – in management of debt services or some other name in Finance – sent to Nalcor to ask for the project update costs. And the reply was sent on November 1, 2013.

And if you turn to page 2 you'll see that the – that information received by Minister Marshall was it was still 6.202. Were you aware of this email until you reviewed it for the purpose of this Inquiry?

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** No.

**MS. DUNDERDALE:** No, I was not.

**MR. LEARMONTH:** Okay.

Page – excuse me, tab 27.

**THE COMMISSIONER:** I'm just wondering – Mr. Learmonth, I just looked at my watch. Is it a good time to break here before you go to that or did you want –?

**MR. LEARMONTH:** No, we can break. That's fine.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** We'll take our 10 minutes.

**MR. LEARMONTH:** We'll get that transcript ... yeah.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

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



**MR. LEARMONTH:** The exhibit (inaudible).

**CLERK:** Mr. Learmonth, your mic is off.

**MR. LEARMONTH:** The exhibit I want to enter, which is the transcript of the November – February 1, 2019, interview with Ms. Dunderdale is Exhibit P-02891, which I'd ask to have entered.

**THE COMMISSIONER:** Right, that will be marked as numbered.

**MR. LEARMONTH:** Yeah.

Now, Ms. Dunderdale, you gave some evidence about knowing about the fact that the contingency had been exhausted at some point. Is that correct?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** When were you aware of that?

**MS. DUNDERDALE:** I would've been aware of it around financial close, because up to financial close –

**MR. LEARMONTH:** Okay, well, that's an answer.

Okay, so you were aware of it at the time of financial close?

**MS. DUNDERDALE:** Yes, Sir.

**MR. LEARMONTH:** Yeah and how was the information communicated to you?

**MS. DUNDERDALE:** Well, it would've been communicated around the whole briefing around this –

**MR. LEARMONTH:** Do you remember it being communicated to you?

**MS. DUNDERDALE:** No, Sir.

**MR. LEARMONTH:** No, okay, you don't. Okay.

But, anyway, in your interview transcript, page – well, it's page 23 of the exhibit, it's –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – page 22 of the actual transcript, and I refer to: Yeah, just turn to page 12 of the Grant Thornton report. So if we go to page 12 – now, the Grant Thornton report, just to make it easier to follow the Exhibit number is P-01677.

**THE COMMISSIONER:** Seventy-seven.

**MR. LEARMONTH:** Yeah.

**THE COMMISSIONER:** And you'll see that one on your screen.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Yes, Sir.

**MR. LEARMONTH:** So go to page 12, please. Twenty-three – 23, they're numbered up here. It's 22, really.

Okay, so this paragraph – as indicated above, this is the paragraph dealing with the contingency being exhausted or empty at April 2013. So on page 23 of the transcript – page 23 in the top right-hand corner, if we could bring that up you can see that I say: "Yeah. Well, just turn to page 12, please, of the Grant Thornton report. So if we go to page 12, line 1, I'll just read this out" and then I read out that paragraph.

And I say: So it was gone because of the Astaldi bid. You say: "Yeah ... Which was much lower than the other ones." Ms. Dunderdale: Yes. And then it says: In an interview with Paul Harrington, LCP project manager, we asked if there was anything that precluded Nalcor from re-baselining and so on – that's just a quote from that.

Do you have any? And Ms. Dunderdale: "I wasn't aware – hard for me to – I wasn't aware." Okay, now – and then you say I don't – on the top of page 24: "I don't recall any conversation about any of this." Now, if you were aware of it at the time of financial close, why wouldn't you have said that I didn't become aware of it until financial close, rather than what you said?

**MS. DUNDERDALE:** I can't answer that, Mr. Learmonth. I mean I was trying to answer

questions as straightforwardly as I possibly could. I was paying careful attention to what you were asking me and trying to give you straightforward answers. Why I said something and didn't say something else is not something I can speak to now.

**MR. LEARMONTH:** Do you see the –

**MS. DUNDERDALE:** It wasn't calculated, Mr. Learmonth. You were asking me questions and I was doing my very best to answer them.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** I can't tell you why I said something and didn't say something else.

**MR. LEARMONTH:** Yeah but do you think that what you said is compatible or consistent with what you said today?

**MS. DUNDERDALE:** Yes, absolutely. I didn't know anything in April.

**MR. LEARMONTH:** Well, you didn't say that though. You didn't qualify it by saying it.

**MS. DUNDERDALE:** Well, you were reading me a section that referred to April.

**MR. LEARMONTH:** Yeah, in the quote.

**MS. DUNDERDALE:** In the quote and I'm telling you I don't know anything about it.

**MR. LEARMONTH:** In April, where does it say? Just show me where I can –

**MS. DUNDERDALE:** I thought –

**MR. LEARMONTH:** – just –

**MS. DUNDERDALE:** You'll have to reel it back here because I'm just reading it here.

**MR. LEARMONTH:** Yeah.

**THE COMMISSIONER:** You can also see this in your book –

**MS. DUNDERDALE:** Oh, thank you, Commissioner.

**THE COMMISSIONER:** – Ms. Dunderdale, at tab 57.

**MS. DUNDERDALE:** Tab 57?

**THE COMMISSIONER:** Yes.

**MS. E. BEST:** I believe we see it at the bottom of the page, Commissioner, the reference to April. Mr. Learmonth mentions the date of April.

**MR. LEARMONTH:** But on the top of page 24 she says: "I don't recall any conversation about any of this."

**MS. DUNDERDALE:** Mr. Learmonth, the first time I heard about the Astaldi bid and the Astaldi bid being high, all of those things happened at financial close and the position that it put us in. So in this interview I'm responding to did I know about this before financial – in April 2013 it says here: "**MR. LEARMONTH:** ... they knew the contingency was exhausted in April 2013."

So you're saying that to me and I'm saying I'm not – I wasn't aware in April 2013 that the contingency was exhausted.

**MR. LEARMONTH:** You didn't say that though. You didn't qualify it that way.

**MS. DUNDERDALE:** I told you I wasn't aware.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** I wasn't aware in April 2013 that the contingency had been exhausted.

**MR. LEARMONTH:** Okay. Well –

**MS. DUNDERDALE:** And I wasn't.

**MR. LEARMONTH:** Okay, well, that's your answer for the record. We'll have – you know, we'll leave it like that.

Exhibit – at tab 27, that's Exhibit P-02714. This is an article that you had in the paper, in the evening Telegram. It says: "Simply put, Muskrat Falls the best project for the taxpayers and

ratepayers of the province.” Do you see that on page 1?

**MS. DUNDERDALE:** Yes, Sir.

**MR. LEARMONTH:** Question 11, do you see that on page 1?

**MS. DUNDERDALE:** Yes, Sir.

**MR. LEARMONTH:** Okay.

Okay, “are the bids that Nalcor is receiving in line with its expectations?”

“... The Muskrat Falls project has attracted significant provincial, national and international attention from companies interested in providing goods and services. Nalcor’s procurement process ensures that best value is achieved in the contracting process and value attained in this process results in savings to taxpayers.

“Nalcor is very pleased with the level of participation it has received and it has resulted in a very competitive bidding process on major and smaller contracts. To date, the bidding process is in line with Nalcor’s expectations. Project costs are addressed in Question 13 below.”

Now, you didn’t know about the contingency being exhausted at the time.

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** But Nalcor did.

**MS. DUNDERDALE:** Yes, obviously.

**MR. LEARMONTH:** Yeah.

Do you feel that what you said there, although I’m sure you believed it, you know, that it was true, looking back now, knowing what you do know about the contingency being exhausted, do you think that was fair statement?

**MS. DUNDERDALE:** It was an honest statement from me.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** That’s what I knew and what I understood.

**R. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And that’s what I knew and that’s what I understood and that’s what I said to the people of the province.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** So –

**MR. LEARMONTH:** But who gave you that information?

**MS. DUNDERDALE:** Well, that information would have come from the department and from Nalcor.

**MR. LEARMONTH:** And Nalcor. Nalcor would have been the source of the information, correct?

**MS. DUNDERDALE:** Yes, yeah.

**MR. LEARMONTH:** Yeah.

But now, knowing what you know now, would you have said that on November 9, 2013?

**MS. DUNDERDALE:** No, I would have wished to be in the loop to know exactly where we were. But I’m not surprised – at the same time – that when there was an issue that they would try to find a remedy before they came and briefed me. I’m not surprised because that’s often the way they worked. So, I understand why I’m (inaudible).

**MR. LEARMONTH:** What remedies did they find to these problems?

**MS. DUNDERDALE:** Well, the remedy was that – the remedy was the extra money that would be needed to be covered in the loan guarantee, and the offset – the offset wouldn’t be in capital costs, which I don’t always express very well, but, in the overall project, we would have been up \$300 million on capital cost, but we would have been up \$300 million on benefits that we didn’t budget, in interest relief.

And, in my view, that kept everything steady, and that was the argument that was put to me and that’s the argument that I accepted, that if there wasn’t –

**MR. LEARMONTH:** Put to you by who?

**MS. DUNDERDALE:** Nalcor.

**MR. LEARMONTH:** Mr. Martin?

**MS. DUNDERDALE:** Yes. Well, will always be Mr. Martin.

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** If the issue wasn't resolved and evened out in the rest of the bidding process, then, at the end of the day, while we were \$300 million up in cost, we were also \$300 million up in revenue, and that that would even things out, that I didn't have to go looking for more equity, and that the project wouldn't be a higher cost than we anticipated, overall.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Now, I don't always express that very well, but that's what I am trying to say.

**MR. LEARMONTH:** Yeah. But the interest was not included – the financing costs were not included in the 6.2.

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** So, wouldn't they be relevant in terms of a reduction in the financing costs that were then expected to be 1.2 rather than the capital cost?

**MS. DUNDERDALE:** I – but I – you know, I – and, again, I didn't ask for a lot of money on the financing costs of \$300 million. And we may not have had to borrow the \$300 million if we had savings in the other part of the – of the Nalcor – the Muskrat Falls business plan. So, they would have to advise me on all of that.

The big thing for me was, while we were upping cost \$300,000 that we had – \$300 million, that we had found – we had found \$300 million in extra revenue somewhere else. So, in the overall project, we were balancing ourselves out, which was keeping me calm.

**MR. LEARMONTH:** Okay.

Now, on the top of page 2 of that exhibit, P-02714, the third paragraph, you say: "We continue to aggressively manage the cost profile. At this point, we are generally on budget."

Who gave you that information?

**MS. DUNDERDALE:** Nalcor would give me that information.

**MR. LEARMONTH:** Did you believe that that was true when you wrote it?

**MS. DUNDERDALE:** Yes, absolutely, Mr. Learmonth –

**MR. LEARMONTH:** With the information – okay, sorry.

**MS. DUNDERDALE:** – Mr. Learmonth, the one thing in politics, the cardinal rule is: You do not lie. You can omit, you can try to change the subject or whatever, but I would never go before the people of this province and tell a lie. So if I said it, I believed it.

**MR. LEARMONTH:** Yeah.

Speaking of cardinal rules, isn't it a cardinal – isn't it also a cardinal rule that a Crown corporation, such as Nalcor, was required to make full and frank disclosure on all relevant matters to government?

**MS. DUNDERDALE:** Yes, and I believe that they were.

**MR. LEARMONTH:** They were?

**MS. DUNDERDALE:** I believe they were. I've got issues with timing –

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

**MS. DUNDERDALE:** – all kinds of issues with timing.

**MR. LEARMONTH:** Do you still believe that Nalcor made full and frank disclosure of all relevant information on project costs to the government?

**MS. DUNDERDALE:** I think they made –

**MR. LEARMONTH:** Do you still believe it?

**MS. DUNDERDALE:** – I think they made full and frank disclosure. I’ve got an issue with their timing.

**MR. LEARMONTH:** Well, I will – because I’m gonna put to you the proposition that the people in the government were dupes of Nalcor, that Nalcor, on a repeated basis, intentionally withheld relevant information. And I’m gonna give you examples of that, so to get your reaction to it, but that’s the proposition that I’m working from.

But before doing that, can you turn to page 3 of this article? Question 20, do you see that, Ms. Dunderdale?

**MS. DUNDERDALE:** Yes, Sir.

**MR. LEARMONTH:** Okay. “Why is there so much we’re not allowed to know?” You say: “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 project’s openness and transparency.

“The Muskrat Falls Project has been extensively studied for years. Nalcor has made public hundreds of reports, studies and tens of thousands of pages of information and analysis. This information has been presented to all government parties, the PUB, independent consultants, regulators, the public, critics and many more.”

Now, you made that statement on November 9. Did you believe it to be true then?

**MS. DUNDERDALE:** Yes, Sir.

**MR. LEARMONTH:** Do you believe it to be true now?

**MS. DUNDERDALE:** I am not convinced that Nalcor withheld information. They – and buried information so that it could never be found out by government. I don’t believe that to be true. Or, I certainly – and I don’t have any reason to believe that it’s true. And I haven’t seen any evidence that would convince me of that. So –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – you know, that’s part of the job of this – and, as I said to you in my interview, Mr. Learmonth, I’m not a disinterested bystander here. I’m very interested in what the Commissioner is going to report out of this process. What I can say to you today is that I’m disappointed, and I’m more than disappointed that there wasn’t fuller disclosure at an earlier date, on these costs.

**MR. LEARMONTH:** But, Ms. Dunderdale, you say – you qualify that “at an earlier date.” That information came out through the evidence presented at the Inquiry. It wasn’t as if they withheld information and then gave it to you. It came out as a result of the evidence presented at the Inquiry.

**MS. DUNDERDALE:** But I –

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

**MS. DUNDERDALE:** – I’m not –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – sure because I haven’t watched –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – all the Inquiry so –

**MR. LEARMONTH:** Well –

**MS. DUNDERDALE:** – I don’t know –

**MR. LEARMONTH:** – but –

**MS. DUNDERDALE:** – that.

**MR. LEARMONTH:** Well, let me give you just some examples of what I’m talking about, and this has to do with oversight. And I think – is it your position that government exercised a reasonable degree of oversight over Nalcor? Is that your position?

**MS. DUNDERDALE:** Yes, it is.

**MR. LEARMONTH:** It is?

**MS. DUNDERDALE:** Certainly, up to January 2014, Mr. Learmonth.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** I can't speak beyond that point.

**MR. LEARMONTH:** But you don't qualify that at all, do you?

**MS. DUNDERDALE:** No.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** In terms of formerly Newfoundland and Labrador Hydro and then the new energy company –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – I don't think that you can point to any project in this province, contemplated or committed to and completed, that had the scrutiny and the independence that Muskrat Falls had. I mean, we had –

**MR. LEARMONTH:** Well –

**MS. DUNDERDALE:** – we had an attempted – well, we had – an attempt in 2000 that about six people knew about.

**MR. LEARMONTH:** Mmm. Okay.

**MS. DUNDERDALE:** And the one before that was much the same for a project that was substantively bigger.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And then Muskrat Falls that we're talking about now. So I don't know – and even the ones that – you know, Portland Creek, all of the ones that went ahead, nobody can – if you can point to where they had more scrutiny or more due diligence or information was released to the public before sanction – before agreements were signed, then I'd be happy to have a look at it.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** So my statement is correct in terms of the history of the place. Now, what the Commissioner is going to decide is whether or not that was sufficient. And –

**MR. LEARMONTH:** What –

**MS. DUNDERDALE:** You know?

**MR. LEARMONTH:** – is oversight?

**MS. DUNDERDALE:** Oversight is having the appropriate departments fully engaged at the table as much as possible – and they were – to have – I was under no obligation whatsoever to involve the PUB in any way. The obligation to do that had been lifted in the 2000 legislation. I did not have to bring them in. And the fact that I did bring them in was because I wanted oversight at least on the question, was it the least cost and did we need the power? And they're two big questions. Did we need the power especially because that has become the big issue –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** – in this Commission of Inquiry? We brought MHI in again to do DG3.

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

**MS. DUNDERDALE:** Well –

**MR. LEARMONTH:** – the qualification in that.

**MS. DUNDERDALE:** Well –

**MR. LEARMONTH:** Your government deliberately, intentionally removed from the scope of work that MHI did a risk analysis so – I think you –

**MS. DUNDERDALE:** Mr. Learmonth –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – in all fairness, and with – and I realize that the buck stops here –

**MR. LEARMONTH:** That's –

**MS. DUNDERDALE:** – and that –

**MR. LEARMONTH:** – right. You're the premier.

**MS. DUNDERDALE:** Yes, I am the premier. But, you know, I am going to qualify that to say that, again, under oath, here in this Commission, Commissioner, I had no idea that strategic risk had been removed or requested to be removed. No idea.

**MR. LEARMONTH:** If you had read the order-in-council or the documentation, you would have known that.

**MS. DUNDERDALE:** I would have known that – well, first of all, we're back to Phase 1 again. We didn't talk about risk.

**MR. LEARMONTH:** Well, you mentioned it.

**MS. DUNDERDALE:** Yeah, but we didn't talk – you keep saying that we saw that strategic risk – we didn't even talk about risk in terms of strategic risk, tactical risk, contingent risk, those kinds of things. We didn't have those kinds of conversations. That language, Commissioner, has become so much more familiar to me in this Inquiry, not because of my experience in the planning of this project with government departments and Nalcor.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** So we talked about the risk that was included – the 7 per cent that was included in project estimates, and we really never had – the only other conversation we had was when I asked Ed or Ed told – I asked Ed if this – you know, projects go over. If we go over, what are you looking at here? And he said \$300 to \$500 million, I think it was. We could go to 6.5, 6.7. That is the only discussion we had of risk. So I wouldn't have even recognized that strategic risk wasn't included if it hadn't been included all along the way for me to see in documents or had been talked to me about in briefings and so on. I wouldn't even recognize it, Commissioner.

**MR. LEARMONTH:** But –

**MS. DUNDERDALE:** So, you know, I wasn't aware that strategic risk had been removed. And we've had conflicting testimony on who told who to do it, but, Commissioner, I do acknowledge that I'm the premier and I'm responsible, I suppose, for the public servants and what they do and what they don't do, so to that degree I have to take responsibility. But our government did not say – to the best of my knowledge – take out strategic risk.

**MR. LEARMONTH:** No, they did.

**MS. DUNDERDALE:** But who did?

**MR. LEARMONTH:** They removed it.

**MS. DUNDERDALE:** They removed it –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – but on whose instruction?

**MR. LEARMONTH:** Well, you know, that's for the Commissioner to decide, but there was – and I don't want to dwell on that, but there were –

**MS. DUNDERDALE:** But it certainly wasn't on mine.

**MR. LEARMONTH:** – but there were meetings where representatives of your office were there that – where this removal was discussed. That's the evidence.

**MS. DUNDERDALE:** But I and my ministers formed the government.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And to the best of my knowledge, there was never any instruction from government to take internally – from the politicians internally – to say to anybody take out strategic risk.

**MR. LEARMONTH:** Well, there –

**MS. DUNDERDALE:** I don't know that we would have even recognized what we were talking about in strategic risk.

**MR. LEARMONTH:** But – you know, and you’re saying you had – you know, you’re maintaining that you had good, solid oversight of this project. If you didn’t even know what strategic risk was about, how could you say that you had oversight? You weren’t in a position to exercise proper oversight.

**MS. DUNDERDALE:** That’s hindsight, Mr. Learmonth.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** I – you know, we’ve got people, you know, who work – the expertise lies within government.

**MR. LEARMONTH:** Where?

**MS. DUNDERDALE:** (Inaudible) – the Department of Transportation and Works. Mr. Learmonth, we build –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** We spent \$8 billion –

**MR. LEARMONTH:** But this is a megaproject.

**MS. DUNDERDALE:** Well, \$8 billion is not bad in terms of an expenditure over eight years.

**MR. LEARMONTH:** Yeah, but this is a megaproject.

**MS. DUNDERDALE:** But I get all of that, but we’re talking about strategic risk, Mr. Learmonth.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And strategic risk exists in building 50 miles of high road or building a \$300-million hospital, or whatever. You know, strategic risk is not determined on whether it’s high or low. It is what it is. And so, yes, there are people in government, I suppose, who would understand strategic risk, but I wouldn’t understand strategic risk –

**MR. LEARMONTH:** Who in government would –?

**MS. DUNDERDALE:** – unless somebody explained it to me.

**MR. LEARMONTH:** Who in government who was working on this project had an understanding of strategic risk?

**MS. DUNDERDALE:** Well, certainly the Department of Natural Resources certainly would. If you’re working with oil companies, you’re negotiating the building of gravity-based structures and –

**MR. LEARMONTH:** Yeah, but they’re not spending public money.

**MS. DUNDERDALE:** That isn’t – Mr. Learmonth, the question is not about public money. The question is about strategic risk and who understands the principle.

**MR. LEARMONTH:** Okay.

Now, you’re saying that there was proper oversight. I’m putting to you a few examples which I suggest demonstrate that there was – if there was any oversight, it was very weak, feeble and limited. Let me give you an example of what I’m talking about.

You know about the September 2012 strategic risk report – management reserve report that was prepared by Westney for Nalcor. Nalcor got that report, and the evidence is clear that it was never presented to government. It showed a strategic risk with a P50 of \$497 million.

Now, if you’re exercising – and that wasn’t included in the DG3 budget – now, if the government is exercising due diligence, I suggest it would have had procedures and systems in place that would have ferreted this information out of Nalcor ’cause they weren’t giving it out.

Do you agree with that?

**MS. DUNDERDALE:** Not necessarily, Mr. –

**MR. LEARMONTH:** Okay, well, tell me how you don’t agree with it.



**MS. DUNDERDALE:** Mr. Learmonth, when you build – we’re not talking about an independent – we’re talking about a Crown.

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** A Crown that was built to do this type of work on behalf of people of the province –

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** – and we looked at organizations all over the world who had state energy companies and tried to find the best examples and the best practices and so on to build Nalcor. And we believed that we had done that.

**MR. LEARMONTH:** Mm-hmm. Right.

**MS. DUNDERDALE:** So, you wouldn’t – I wouldn’t approach Nalcor any differently than I would in terms of my approach to the work any different than I would Department of Natural Resources or – you know, we set it up that – so that it reported regularly to government. We went a step further and made sure that not only did government have access to their information and be able to question them and so on, but that the shareholders, the people of the province would have that opportunity once a year to go access all of their information. They had to report to the House of Assembly; people had an opportunity to go and ask questions all day long, in the annual general meeting, and so on.

And the Auditor General had the right to go in and audit Nalcor at any particular time that he or she thought was appropriate. So in terms of being suspicious of their practices, it wouldn’t come to me –

**MR. LEARMONTH:** No.

**MS. DUNDERDALE:** – you know, all of the checks and balances were in place.

And now, on top of all of that, you’re not being left alone to go and do your work as other crowns normally are, and will check in on you every six months or once a year. We’re checking on you on a daily basis, plus we have departmental people from the Department of

Finance, particularly, from the Department of Natural Resources, particularly, sat at the table with you. When you’re talking to Emera, there’s somebody from our government sat at the table, listening to what you’re saying.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** So that would never come to me to say, you know, we need to be really suspect and go over there and drill down –

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** – and check, double-check everything that they’re saying.

**MR. LEARMONTH:** Yeah, but that’s –

**MS. DUNDERDALE:** Well –

**MR. LEARMONTH:** – that’s the point.

**MS. DUNDERDALE:** – we wanna get Nalcor 2 now –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – again, we’re back to – to check out what Nalcor 1 is doing.

**MR. LEARMONTH:** Yeah.

But that’s the point, I think, that is obvious that you’re not talking about oversight. You’re saying you didn’t have to have proper oversight over Nalcor because it was like a government agency. In other words, what you’re saying is that’s your justification for saying that oversight was not necessary –

**MS. DUNDERDALE:** That’s not what I’m saying, Mr. Learmonth.

**MR. LEARMONTH:** – because it was a government department.

**MS. DUNDERDALE:** That’s not what I’m saying, Mr. Learmonth.

**MR. LEARMONTH:** Well, anyway –

**MS. DUNDERDALE:** I’m saying that –

**MR. LEARMONTH:** – yeah.

**MS. DUNDERDALE:** – Nalcor was properly structured –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – with good reporting mechanisms –

**MR. LEARMONTH:** Yes, they were, and they –

**MS. DUNDERDALE:** – not only to the government but to the people of the province.

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** The Auditor General had access, at all times, to Nalcor to go in and have a look if there were any concerns about anything on toward going over – going on over there. And they –

**MR. LEARMONTH:** Did the Auditor General ever go in when you were there?

**MS. DUNDERDALE:** I have no – not while I was there.

**MR. LEARMONTH:** No.

**MS. DUNDERDALE:** But I don't direct the Auditor General.

**MR. LEARMONTH:** Okay.

What resources would the Auditor General have –

**MS. DUNDERDALE:** He would –

**MR. LEARMONTH:** – for – to review project costs?

**MS. DUNDERDALE:** – he would've had whatever he wanted –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – to go do his work.

**MR. LEARMONTH:** Yeah.

But did you know the Department of Finance wasn't equipped with the resources to do a review of the project costs?

**MS. DUNDERDALE:** We did in – and we did the CPW analysis –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – and the Department of Natural Resources – that's just the nature of government. Some departments are set up almost as secretariats as opposed to departments, and some are full-fledged departments, with hundreds and hundreds of employees with different capacities, depending on what's –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** – required.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And for example, in Natural Resources, we're dealing with the oil industry; billions and billions and billions of dollars, costs that have to be assessed so that we know what revenue is coming that we're entitled to in the province, what legitimately goes into non-return allowances, all of those kinds of things.

So while it may not exist in Finance, it may exist over in Natural Resources, and Finance can access that any time that they want.

**MR. LEARMONTH:** Well, are you saying that that talent existed in Natural Resources with respect to their reviews of the Muskrat Falls Project, because –

**MS. DUNDERDALE:** (Inaudible.)

**MR. LEARMONTH:** – we haven't seen any evidence –

**MS. DUNDERDALE:** Well –

**MR. LEARMONTH:** – of that.

**MS. DUNDERDALE:** – Robert Thompson testified here, leading the CPW analysis –

**MR. LEARMONTH:** Oh yeah, we know about –

**MS. DUNDERDALE:** – in –

**MR. LEARMONTH:** – that.

**MS. DUNDERDALE:** – the Department of Natural –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – Resources while he was deputy and I was –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – minister.

**MR. LEARMONTH:** But I'm speaking about project costs.

**MS. DUNDERDALE:** I – I'm just saying to you – I can't – look, I can tell you what the work and the experience is of people who work in various departments in government. And in the Department of Natural Resources where oil projects valued at billions of dollars have to be regularly assessed, understood, division of revenue, legitimate costs, non-legitimate costs, all of those kinds of things have to be assessed, and are assessed, on a daily basis.

So certainly it would seem to me, if you can tell if a gravity-based structure and all of the capital costs of that and all the other costs, financing and everything else, what's appropriate, what's not appropriate, what needs to go here and what the company gets back and all – that says to me: There's a deep knowledge of financial arrangements around megaprojects in this province seated in the Department of Natural Resources.

**MR. LEARMONTH:** Well, can you tell me who they are, because we haven't seen them yet?

**MS. DUNDERDALE:** Well, I'm sure if you get a listing, you'll get the whole audit department of the department. You know, these – we're the ones who have to determine how much royalty –

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

**MS. DUNDERDALE:** – is gonna be paid to –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – that all has to be done within departments.

**MR. LEARMONTH:** Yeah, but we're not talking about oil companies.

**MS. DUNDERDALE:** But –

**MR. LEARMONTH:** We're talking –

**MS. DUNDERDALE:** – but –

**MR. LEARMONTH:** – about Muskrat Falls.

**MS. DUNDERDALE:** But we're talking about business costs –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – around a megaproject, Mr. Learmonth, and that's what I'm talking about, capacity –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – and I would say that that knowledge, experience and skills are transferable.

**MR. LEARMONTH:** Okay.

Well, can you explain to me – this is new evidence, because the information we've had from Terry Paddon, I think from Tom Marshall, others, that government did not have the capacity to undertake a review of the capital cost estimates. They didn't have the resources, they didn't have the people there to do it.

Now you're suggesting something that I certainly haven't heard before. Would you be able to tell me who these people are that would have had, in government, the department of resources, Natural Resources or otherwise, that would have had the capacity to review the project costs, because, to date, we've heard evidence to the contrary, that there was no such talent in the government?

**MS. DUNDERDALE:** There wouldn't have been in the Department of Finance. I can tell you on the Hebron agreement, for example, that, staff of the Department of Natural Resources were at that table for two years.

**MR. LEARMONTH:** Yeah, with –

**MS. DUNDERDALE:** And, in fact –

**MR. LEARMONTH:** – expert advice.

**MS. DUNDERDALE:** – and being – one of our employees got Top 40 Under 40 –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – for the work that she did on negotiations around Hebron project, at cost and so on.

**MR. LEARMONTH:** But you were advised by experts. Do you agree?

**MS. DUNDERDALE:** We were advised by experts all the time, but we're not advised by experts in determining what royalties are and what needs to go into the return allowance, the non-return allowance. These are complex business arrangements, and I don't know that we bring in expertise to review –

**MR. LEARMONTH:** You don't know.

**MS. DUNDERDALE:** – well, we bring in experts to do the negotiation of the agreement –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – but I don't know that we bring in experts to review the costs as they go along.

**MR. LEARMONTH:** Okay. Well, I don't want to get into an argument about it. I just want to make sure your position is clear.

**MS. DUNDERDALE:** But they were in the Department of Natural Resources, Mr. Learmonth.

**MR. LEARMONTH:** Okay.

So, are you saying that at the time, let's say before financial close, say between DG2 and financial close, that there were personnel in the Department of Natural Resources, who had the ability and capacity to review the capital cost estimates that were presented by Nalcor? Are you saying that –?

**MS. DUNDERDALE:** I'm saying that –

**MR. LEARMONTH:** Are you saying that?

**MS. DUNDERDALE:** – I would be very surprised if they did not have the capacity to look at those numbers and come to a conclusion.

**MR. LEARMONTH:** You'd be very surprised.

**MS. DUNDERDALE:** Oh, yes, I would –

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

**MS. DUNDERDALE:** – given the type of work that they do –

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** – and that's what I'm basing it on, is the type of work that they do.

**MR. LEARMONTH:** Well, maybe there'll be more evidence come forward, but I think I can tell you with confidence that what you just said, you would be surprised because we haven't heard any evidence like that, okay.

**MS. DUNDERDALE:** Look, Mr. Learmonth, it is a fact that it is government's responsibility to monitor everything that goes on in the offshore with regard to royalties.

**MR. LEARMONTH:** I'm not talking about the offshore.

**MS. DUNDERDALE:** No, but I'm – Mr. Learmonth, here's what I'm trying to say to you. When a project is being built, all of the costs have to be taken into account. It has to be determined if those costs are legitimate costs, because if they're legitimate costs, they need to go into the non-return allowance. If they're not legitimate, then we're not going to take them into account, and the company is going to have – you know, is going to have to deal with that.

So there has to be – what I’m saying to you, there has to be a capacity within the Department of Natural Resources to understand enough about a business plan to determine what’s risk, what’s strategic risk, what’s legitimate, what’s not legitimate and so on. And you’d be advised, of course, by the oil companies around that, but you still got to have the capacity to understand what they’re saying to you.

And so, that is the kind of work that we oversaw all the time. So there has to be capacity there. Whether it’s sufficient, I can’t say. Does it exist in the Department of Finance? No, it doesn’t. But it’s certainly – there is certainly capacity in the Department of Natural Resources around construction costs and assessing whether or not they’re legitimate or not.

**MR. LEARMONTH:** For a megaproject?

**MS. DUNDERDALE:** Well, I would consider the Hebron gravity structure a megaproject.

**MR. LEARMONTH:** But are you saying that there was – you know, as I said, from DG – time of DG2 ’til financial close, there were those people in the Department of Natural Resources that were equipped, educated, trained in such a way that they could provide oversight over the capital cost estimates of Nalcor? Are you saying that that’s the case?

**MS. DUNDERDALE:** No, I’m not giving you a blanket statement like that. I – those people –

**MR. LEARMONTH:** Well, tell me what you are, then.

**MS. DUNDERDALE:** – well, those people are in the department.

Commissioner, the –

**THE COMMISSIONER:** I think, to tell you the truth now, I think I heard enough about this.

**MS. DUNDERDALE:** Okay.

**THE COMMISSIONER:** So I think I understand your point of view, and I will consider it.

**MS. DUNDERDALE:** Thank you.

**MR. LEARMONTH:** Okay.

And another point, if there was proper oversight of the – an example, what I referred to earlier – if there was proper oversight exercised by government over Nalcor, how is it that government didn’t know that there was a P1 or P3 factor for the schedule factor?

**MS. DUNDERDALE:** Because –

**MR. LEARMONTH:** How is it that government didn’t know that?

**MS. DUNDERDALE:** We didn’t know.

**MR. LEARMONTH:** I know you didn’t.

**MS. DUNDERDALE:** But I –

**MR. LEARMONTH:** But I’m saying, I’m suggesting to you, and I don’t think you understand my point, or maybe I’m confused, but I’m suggesting that that is an example of a situation where the reason you didn’t know was because you didn’t have oversight, proper oversight procedures in place. That’s the reason for it. Likewise –

**MS. DUNDERDALE:** Mr. –

**MR. LEARMONTH:** – that’s the reason why you didn’t know about the \$497 million strategic risk at P50.

**MS. DUNDERDALE:** Mr. Learmonth, we built Nalcor to tell us about P-factors.

**MR. LEARMONTH:** Because of what?

**MS. DUNDERDALE:** And all of those kinds of things. I wouldn’t know about P-factors.

**MR. LEARMONTH:** Well, if you’re doing proper oversight, you should have had someone in government who did. That’s my point. You don’t have to agree with it, but that’s the point I’m trying to make that, there was – that the proposition is, there was insufficient disclosure by Nalcor and that if you had had proper oversight procedures in place, then you would have picked up on this –

**MS. DUNDERDALE:** Well –

**MR. LEARMONTH:** – but because you didn't have proper oversight procedures in place, you didn't.

**MS. DUNDERDALE:** Mr. Learmonth, all I can tell you is that we engaged Wood Mackenzie as one of the companies that was engaged when –

**MR. LEARMONTH:** For what?

**MS. DUNDERDALE:** – it was decided –

**MR. LEARMONTH:** For who?

**MS. DUNDERDALE:** – to build a state-owned or provincially-owned energy company. And, in terms of what they looked like – they did a review – I remember, clearly, them talking to us about Norsk Hydro and a state-owned energy company in Vietnam and so on. And taking all of those best practices and what we needed to have in place, knowing full well that our intention was to develop our hydro energy resources, and to guide us in the construct of Nalcor. And I'm sure there's paper on that somewhere as well, what the advice of Wood Mackenzie was.

So, the company was built, you know, with good advice from an international company – at least one, maybe others. And, in fact, my very first – one of my very first briefings when I went to Natural Resources was in Premier Williams's office, and Wood Mackenzie came from London to talk to us specifically about elements – the work was well advanced by the time I got there but certainly the report on what Nalcor should look like and what the oversight mechanisms should be, in line with what was happening in state-owned energy companies that they had reviewed, which was (inaudible).

**MR. LEARMONTH:** So, what has that got to do with anything?

**MS. DUNDERDALE:** That we took the best that, you know, that – it wasn't four or five of us up in the board room –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – and building a state-owned energy company, doing what we thought should be done –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – from limited experience.

**MR. LEARMONTH:** Yeah. But what has that have to do with oversight? That's what we're talking about.

**MS. DUNDERDALE:** But we put in place the oversight through the Attorney General, through – and our own oversight in terms of the PUB and MHI and all of the things that have – have been listed here time and time and time again, but in terms of the construct of the company –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – and what we needed to do for oversight and what was being done in terms of oversight, at least on the advice of this company, was put in place.

**MR. LEARMONTH:** Hmm.

**MS. DUNDERDALE:** And so then we understood that we had oversight. Now –

**MR. LEARMONTH:** So it was –

**MS. DUNDERDALE:** – sure they be found wanting at the end of the day.

**MR. LEARMONTH:** It's what?

**MS. DUNDERDALE:** You know, at the end of this process, we might say that it needed to be more than it was. I already believe that it should have been more than what it was.

**MR. LEARMONTH:** You concede that point, do you?

**MS. DUNDERDALE:** But –

**MR. LEARMONTH:** Do you concede that point?

**MS. DUNDERDALE:** To a degree.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** There are things that I wish had been done differently, and there were

things that I wish that I had known and I feel that I should have known, but what I'm saying is, we got good advice –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – on how this company was set up and how we needed to practice our oversight.

**MR. LEARMONTH:** Okay.

Tab – well, just one further point on this before I leave it; I think we've talked – spent a lot of time on it.

Another point, if you – you've agreed that in – that the \$7 billion estimate, subject to the mitigation to \$6.8 in July 2013, was information that the province should have received, and that it was important information. Correct?

**MS. DUNDERDALE:** I would have wanted to know.

**MR. LEARMONTH:** Yup.

And you've already testified that the information in the November 15 independent engineer's report, which referred to a double or quadruple (inaudible), is information that the province should have received –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – and it was important information. Okay.

Just on those two points and also the strategic risk report, the P1 for the schedule and all that, how is it that you can, you know, sit there and assert that there was proper oversight over the project? How can you do that?

**MS. DUNDERDALE:** Mr. Learmonth, if the Project was, in fact, \$7 billion in July and I hadn't been told and government hadn't been told, then I would say there wasn't – there was a huge problem.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** If this is a number that they're working on and mitigating and they

don't want to come to us and they don't want to come to us until they have a solid number, that's something that I can understand too.

**MR. LEARMONTH:** But they never came to you with anything.

**MS. DUNDERDALE:** But they came to me with the final number, whatever it was. They –

**MR. LEARMONTH:** So you're saying now – so you're saying now that it wasn't necessary for Nalcor to make you aware of the \$7 billion –

**MS. DUNDERDALE:** No, no, no. what I'm saying to you is –

**MR. LEARMONTH:** – are you saying that?

**MS. DUNDERDALE:** – that I would prefer to know, and know that you're mitigating and all of these –

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** – kinds of things. I don't want to read that in a Grant Thornton report.

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

**MS. DUNDERDALE:** But at the same time, what I'm saying to you, I don't – you know, that's not a best practice for me, not to have me in the loop. But that doesn't necessarily mean that they were doing anything wrong.

**MR. LEARMONTH:** No, but –

**MS. DUNDERDALE:** They weren't trying to hoodwink me.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** They weren't trying to pull wool –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – over my eyes.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** They weren't trying to approve a project at a public cost and know underneath that that wasn't the right cost at all.

**MR. LEARMONTH:** Well, we don't know that, but –

**MS. DUNDERDALE:** Well –

**MR. LEARMONTH:** – that's your position, yeah.

**MS. DUNDERDALE:** – I mean there's – you know, I certainly don't know that.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** If somebody had taken a decision, which is the piece around the 6.5 where I'm having difficulty and I don't like being at odds with former ministers and public servants – it's not a comfortable position. But I can't reconcile that somebody would know for a fact that we were over 6.2, even if they didn't know the amount, and not tell me.

To think you might be over 6.2 and try and mitigate it, that's one thing. And there might be a reason why he didn't tell me that, and I'll either accept or not accept their explanation. But if we're definitely over, and there's no going back from that, and you don't tell me, then we got a problem.

**MR. LEARMONTH:** Yeah.

Well anyway, on the issue of oversight, I take that, number one, you recognize that there are a number of items that Nalcor should've disclosed to you but didn't, on material points.

**MS. DUNDERDALE:** Well, I would've liked them to disclose to me.

**MR. LEARMONTH:** Do you agree that they should've disclosed them?

**MS. DUNDERDALE:** Yes, I –

**MR. LEARMONTH:** – okay.

**MS. DUNDERDALE:** – would've wanted them to.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** From my personal perspective –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – you should've told me, because you knew that I would want to know those kinds of things.

**MR. LEARMONTH:** Right, that's fine. But notwithstanding all these items of non-disclosure that you've – that we've – you know, that you've recognized, you still, at the end, say that the government exercised proper oversight over Nalcor? Do you wanna leave it like that or do you want to – one more chance to –

**MS. DUNDERDALE:** No –

**MR. LEARMONTH:** – consider the matter.

**MS. DUNDERDALE:** – Mr. Learmonth at times the number was \$7 billion, then it was \$6.8 billion, then it was \$6.7 billion – I understand, but when they had a number, which is my point, when they had a number, and they were firm on the number, and before they took a decision on the number to move ahead with the number, we were told. That's my position, I was told. And if I was told, others were told. If we had gone – if they, you know, I am – if we really had gone to 6.5 and nobody knew until July, that's a problem.

**MR. LEARMONTH:** Well, do you wanna – are you gonna answer my question?

**MS. DUNDERDALE:** Until they took a decision – if they're working a number, Mr. Learmonth, I don't consider that some abrogation of duty or failure to communicate. If you're working a – when you get to the – I might not like it. That's not the way that I want to work. But I don't see that as being dereliction of duty or whatever. But when you arrive at a number –

**MR. LEARMONTH:** Mmm.

**MS. DUNDERDALE:** – and you're sure that number is right, before you take any decision on that number or move in any way on that number,



then you tell them. And if you don't disclose at that point, then that becomes a significant issue. Now we're talking about something else altogether.

**MR. LEARMONTH:** So you're changing the evidence you gave earlier today?

**MS. DUNDERDALE:** No, I'm not, Mr. Learmonth. I'm telling –

**MR. LEARMONTH:** Well –

**MS. DUNDERDALE:** – you that in terms of my –

**MR. LEARMONTH:** – we'll leave – it's on the record, okay, so we'll see that.

**MS. DUNDERDALE:** Commissioner, all I can say –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – to you is –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – the way that I operated with Nalcor, the more information I had, the better. So if you think the project is at \$7 billion, that we had an issue here in July, my personal way of operating was I would want to know that and I didn't know that. And they – their explanation is they're working the number. Well, that's fine, you work the number and when you get the number you come and you talk to me about it. If you had worked the number and knew your firm number and didn't tell me about it, then we'd have a serious problem.

**MR. LEARMONTH:** Okay.

Well anyway, whether you've changed your evidence or not, I'm not going to delve into. That will be for the Commissioner and other counsel to comment on. But you still haven't answered my question and my question was – did you want to write it down so you won't –

**MS. DUNDERDALE:** No, Mr. Learmonth.

**MR. LEARMONTH:** No, I'm saying that –

**MS. DUNDERDALE:** Thank you.

**MR. LEARMONTH:** – even with the items that I've pointed out to you which I described as non-disclosure, even recognizing them as issues as you have, at the end of your evidence your – are you still maintaining that the Province of Newfoundland and Labrador, the Government of Newfoundland and Labrador acting on behalf of the public exercise a reasonable level of oversight and governance over Nalcor?

**MS. DUNDERDALE:** I believe that Mr. Learmonth.

**MR. LEARMONTH:** Okay. Thank you very much.

Those are my questions.

Oh sorry, no there's one more point before I – I referred you to something from your transcript about dealing with this 368 and when you knew about it, do you remember?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** And on – I'd like to turn up Exhibit P-02891, that's page 23.

**THE COMMISSIONER:** Okay. So that's tab 57.

**MR. LEARMONTH:** No, it's not in a tab, this is a transcript.

**THE COMMISSIONER:** Yeah is this the one –

**MR. LEARMONTH:** Is it in the –?

**THE COMMISSIONER:** Is this the one that you entered earlier?

**MR. LEARMONTH:** Yes, okay.

**THE COMMISSIONER:** 02891?

**MR. LEARMONTH:** Okay. Yes.

I referred you to – I started a little too low on the page on this discussion so I just wanted to – you know, about the 368, when you knew about it? And above, just below the top, so this is what I

said, “**MR. LEARMONTH:** – compared to budget. They also knew – it was clear from this report” – and that’s obviously the Grant Thornton report – “that by the time of financial close, Nalcor knew that the 368 billion in contingency they ... had was gone. It was gone.”

Then you say, “And I remember some discussion about the contingency being substantially used up. But I can’t recall enough of it to be able to repeat it to you. But there was a conversation with me at some point around that time, around contingency, but I can’t remember the details.”

So is – do you – is that correct?

**MS. DUNDERDALE:** I – that’s – I definitely said it. That’s the transcript.

**MR. LEARMONTH:** But –

**MS. DUNDERDALE:** And that’s what I said but, you know –

**MR. LEARMONTH:** No – but are you now saying that you knew that the contingency had been spent completely? ‘Cause that’s not what you said here.

**MS. DUNDERDALE:** I didn’t know that anything around the contingency until financial close and that we were over the 6.2 million – billion then contingency had to be gone.

**MR. LEARMONTH:** Well (inaudible) –

**MS. DUNDERDALE:** So, you know, I – as I say in my transcript, you know, there was talk about contingency and contingency being gone, but I couldn’t recall enough of the detail to be sure. So, you know, I’m not trying to mislead you, Mr. Learmonth, I’m just –

**MR. LEARMONTH:** Sorry, I didn’t hear that?

**MS. DUNDERDALE:** I’m not trying to mislead you –

**MR. LEARMONTH:** Oh, all right.

**MS. DUNDERDALE:** – here or there.

**MR. LEARMONTH:** All right.

**MS. DUNDERDALE:** I’m just saying somebody – yes, we talked about contingency being gone or substantially gone, but I can’t recall enough of the detail.

**MR. LEARMONTH:** Okay, we’ll leave it at that. That’s all my questions.

Thank you.

**THE COMMISSIONER:** Thank you.

All right. Government of Newfoundland and Labrador?

**UNIDENTIFIED MALE SPEAKER:** No questions, Commissioner.

**THE COMMISSIONER:** Nalcor Energy.

**MR. SIMMONS:** No questions, thank you, Commissioner.

**THE COMMISSIONER:** Thank you.

Concerned Citizens Coalition?

**MR. HISCOCK:** We have questions. I’m wondering if, given the time, if we wanted to break for lunch or if we were planning to go for another half hour or so and what your thoughts on that was.

**THE COMMISSIONER:** It’s 25 after right now, so we’ll go for 20 minutes or so.

**MR. HISCOCK:** Thank you.

Good morning, Ms. Dunderdale. My name is Will Hiscock and I’m here on behalf of the Concerned Citizens Coalition. So we have a few questions for you this morning.

**MS. DUNDERDALE:** Sure.

**MR. HISCOCK:** I’d like to begin on page 8 of your interview that you said that you would not have gone forward without a business case in this instance – in this project. What was your source for the business case that you were referring to in your interview there?

**MS. DUNDERDALE:** The whole business case would’ve been capital costs; it would’ve been

our financing. It would've been the returns, you know, in the whole business deal and to also understand that, you know, this was least-cost power for the people of the province. That was always our main driver. And even if we had to spill 40 per cent of the water, that we were never able to find sales for the excess energy, that this was still the least-cost project for the people of the province.

**MR. HISCOCK:** And the basis, though, for that determination.

**MS. DUNDERDALE:** Would've come from Nalcor.

**MR. HISCOCK:** A hundred per cent from Nalcor?

**MS. DUNDERDALE:** Well, Nalcor and the expertise that they had and the consultants and so on that they had, and Newfoundland and Labrador Hydro within Nalcor. So all of those different aspects, you know, they would've done all of the work in putting together the business plan.

**MR. HISCOCK:** And that was all based around ensuring that it was the least-cost power that we could provide?

**MS. DUNDERDALE:** Yes.

**MR. HISCOCK:** And is that the same thing that you asked the PUB to investigate when you asked them to look into it, look at every option available?

**MS. DUNDERDALE:** Yes, was this – well, we had narrowed it down to two by that time.

**MR. HISCOCK:** Why?

**MS. DUNDERDALE:** Because of the work that had been done by primarily by Newfoundland and Labrador Hydro over the years in terms – because that was an ongoing file and that there was enough information gathered that – and the gap was so wide between the different projects, based on the information we had, that Muskrat Falls and the Isolated Island Option were considered to be the two least cost.

**MR. HISCOCK:** Well – okay. Wouldn't that be something that you would – that the PUB would be in a good position to make that determination to give you additional information there?

**MS. DUNDERDALE:** Well, that work had already been done.

**MR. HISCOCK:** On – I'd like to move on; we may circle around to that in a moment in a different way. But on page 28 of your interview you also said – and I'm going to quote there: **"MS. DUNDERDALE:** Yes. I mean, you know, I testified that when, you know, the prime minister and I had our rub that – you know, that I was going to have to go before the people of the province. I wasn't exactly sure of the money, but I certainly knew it was around 700 million at that point, if not more.

"And I was going to have to go to the people of the province and say: You know, we've spent hundreds of millions of dollars trying to develop this project and, you know, I've just knocked it on the head. This is not going to happen. So all that money – you know, some of it is will be of some value down the road, if somebody is going to develop something, but I've spent \$700, \$800 million of your money ...."

That – this idea, I think, is often referred to as sunk costs and there was a concern about telling the people of the province about sunk costs if you had pulled the plug at that point with \$700 million invested. Do you believe – did you believe at that time that you had to go ahead because so much money had already been spent?

**MS. DUNDERDALE:** Not at all.

**MR. HISCOCK:** Did you – you didn't see it as throwing good money after bad at that point?

**MS. DUNDERDALE:** No. If the project wasn't going to work it was better to lose \$1 billion instead of \$6 billion.

**MR. HISCOCK:** But in that comment in your interview you made it very clear that the idea of going to the people of the province and saying: Look, I've spent \$700 million – that that was a no go.

**MS. DUNDERDALE:** No, no.

**MR. HISCOCK:** Right? That you couldn't have killed the –

**MS. DUNDERDALE:** No.

**MR. HISCOCK:** That was what I took from it is that –

**MS. DUNDERDALE:** Oh, well, you took –

**MR. HISCOCK:** – it would have been politically unfeasible for you to go to the people of the province and say that.

**MS. DUNDERDALE:** Completely wrong –

**MR. HISCOCK:** Okay.

**MS. DUNDERDALE:** – interpretation.

**MR. HISCOCK:** Okay.

**MS. DUNDERDALE:** You know, it was – you know, I would have to go to the people of the province and say on principle, you know, I'm not prepared to go with this project without the loan guarantee. To get the loan guarantee I have to make commitments outside – there's a quid pro quo to the loan guarantee. I've got to make commitments on a completely different issue that – and these conditions were added at the eleventh hour, so I've got to concede something on CETA now to get the loan guarantee.

I can't do that. I'm not going to do that. That's not the agreement I have with the prime minister and so on principle I can't do it – I can't do it. So I'm – I've said no to the – you know, I've said – I didn't say no because the prime minister and I, we are able to work it out on the phone because I wasn't going to do it. But I had said to Nigel Wright, his chief of staff: I don't want the loan guarantee. We're not taking the loan guarantee under those circumstances.

**MR. HISCOCK:** And without the loan guarantee you would have gone to the people of the province and told them: Look, we've spent \$700 million, but that's it.

**MS. DUNDERDALE:** Yeah.

**MR. HISCOCK:** Try to cut your losses.

**MS. DUNDERDALE:** Yeah.

**MR. HISCOCK:** Okay. That wasn't what I understood from the interview.

**MS. DUNDERDALE:** Yes, Sir, that's entirely what I meant.

**MR. HISCOCK:** Okay.

Once so much money was committed you would have been still finding stock in the project to that point you say. Was there any point – or at what point did you feel you had gone too far to be able to stop the project? Or was there a point – was there a dollar number that you had in mind that if the cost projections get to this point we do have to pull the plug?

**MS. DUNDERDALE:** I didn't think of it in those kinds of terms. When I left government in 2014, even though the project – the capital project costs were up \$300 million, in the overall project I knew if we couldn't mitigate it through the outstanding bids –

**MR. HISCOCK:** Mm-hmm.

**MS. DUNDERDALE:** – that we could mitigate it through increased revenue from the interest relief on the loan guarantee and on the overall project. I express it as we'd still be in that 6.2, but that's not the correct way to express it. But, you know, we're up here but we're up on revenue as well and so if we can't mitigate here, we're still in that spot where things even out.

So when I left government in 2014 – early 2014 – basically, I didn't have any concern – outstanding concerns about the project at that point. Now, you always have concerns. This is a huge undertaking, a big responsibility and you carry it with you all the time, but there were no – you know, we had to be concerned and we were going to get – you know, there had to be a financial update within three to four months at the – you know, when the bulk of this tendering was done and we had to see where we were. And I didn't know where we were going to be but there was – you know, there was no panic setting in at this point in time. I still thought we were in a good place.

**MR. HISCOCK:** In hindsight, should there have been panic setting in?

**MS. DUNDERDALE:** No, I don't think there should have been panic setting in. You know, the fact that we said yes to the increased loan guarantee and that the tender was let to Astaldi, speaks to that point that we decided to move ahead.

**MR. HISCOCK:** Yeah, I'm not questioning that you didn't panic. I mean you were quite clear, you say you shouldn't have panicked. What I'm saying is at this point we've gone from 6.2 to 6.5. At the time you find out about the 6.5 you also know that you've blown through the entire \$368-million contingency. So the estimates aren't accurate and you know that much definitely. That would be –

**MS. DUNDERDALE:** Yes.

**MR. HISCOCK:** – eating up our entire contingency very early in this project. Not only that, but we're now over budget.

**MS. DUNDERDALE:** Yes.

**MR. HISCOCK:** The people who are making those budgets clearly aren't right.

**MS. DUNDERDALE:** Yes.

**MR. HISCOCK:** And they're not right in a direction that's negative for the province. It's not like they overestimated the cost of this project on a routine basis.

So, at that point, should there have been some panic or some discussion at least to say, okay, listen, if we – if our projections get to \$7.1 billion, we need to pull the plug, or \$8.1 billion we need to pull the plug, or – what's the number that this no longer makes sense to keep going with?

**MS. DUNDERDALE:** No, that – the conversation didn't take place like that. What we did say was: Hang on a second here because, you know, this is a big deal. You know, we're over \$300 million, as you said; contingency is gone. And that's all right, we can offset it here, perhaps in the overall business plan but, you

know, those savings aren't reoccurring, that's a one-time savings.

So we got to see where we're going here. And the assurances were – and the plan was is that we would have an update in three to four months when we got substantially through the next round of bids. And before we accepted any of those bids, we would have to do a full assessment of where we were.

So if you were going to come at a number, or whatever way you were going to approach it, that's the time you would've approached it. So is this an anomaly or is this a trend? Where are going? We got to wait until we get to this, another – at least another three months before we're going to be able to figure this out with any degree of surety that we know what we're talking about or where we are.

**MR. HISCOCK:** How much questioning was made at that point of the original estimates? That we're clearly wrong at this point, we knew we were wrong; the contingency numbers were entirely gone. Who was asked to be called in to account for this? Was there a review of the original estimates? Was there – what was put – what measures were taken when this problem arose?

**MS. DUNDERDALE:** None at this time. This was the first indication we had as a government – or I had, that the numbers were off. And until we got the next tranche – you know, we're three quarters through the bidding process and we're \$300 million off and, you know, I know that we could be \$300-\$500 million off overall on this project, that that's already been highlighted to me. But now we need to get to the next three or four months, see where we are on the rest of this bidding.

And is everything out of line? Are all the numbers out of line or is this particular to this one Astaldi bid? You know, more information was required and we agreed to that and that we would watch this very carefully and see where we are in two to three months. And in the news conference that I referenced earlier after financial close, that is referenced by Mr. Martin that we would be giving a cost – project cost update in three to four months.

**MR. HISCOCK:** I want to go to the federal loan guarantee for a moment, and you spoke quite a bit this morning about that. I was wondering why the Government of Newfoundland and Labrador would have allowed the UARB to have a veto power over the deal with Emera.

**MS. DUNDERDALE:** They don't.

**MR. HISCOCK:** Well, it was a condition of the federal loan guarantee and Emera was trapped by that. Now, at – before you answer, the decision of the UARB determined that there were changes that occurred after that and changes to how much electricity and the price of electricity that we would sell our power for. Correct?

**MS. DUNDERDALE:** Well, we did a side deal on our non-firm power.

**MR. HISCOCK:** And that side deal was – came out of a requirement based on the UARB decision. Correct?

**MS. DUNDERDALE:** I can't speak to that now because I can't recall where the – but they came and asked us for a deal on our non-firm power and we were able to work one out to their benefit and to ours. But in terms of the Muskrat Falls power – which I think is completely independent of that – all the federal government wanted to know was that Muskrat Falls power was going to service customers in Nova Scotia –

**MR. HISCOCK:** So –

**MS. DUNDERDALE:** – to give us the loan guarantee.

**MR. HISCOCK:** Is it your position today that the decision of the UARB had no impact on this project?

**MS. DUNDERDALE:** It had – oh, yes, it had impact on the project, but not whether or not the link was going to be built or they could cancel the link. UARB is just a regulator.

**MR. HISCOCK:** Yes.

**MS. DUNDERDALE:** The same as the PUB.

**MR. HISCOCK:** Yes.

**MS. DUNDERDALE:** It's not going to direct Emera, which is a publicly traded company, and it's not going to direct the Crown, you know –

**MR. HISCOCK:** It won't direct them but it can negatively direct them. It can tell them not to do something, even if it can't tell them to do something.

**MS. DUNDERDALE:** No, what it can say is we are not going to accept that number –

**MR. HISCOCK:** Right.

**MS. DUNDERDALE:** – because we don't believe it's the lowest cost.

**MR. HISCOCK:** Right.

**MS. DUNDERDALE:** But, you know, if you want to – Nalcor and Emera could – were going to arrive. They had strong incentives to – they would know what the least-cost power was available to Emera in New England, in Quebec and the Maritimes.

**MR. HISCOCK:** Yes.

**MS. DUNDERDALE:** I mean they're all utilities, they have a pretty good idea of what's on the go and they could ascertain what least-cost power is. And so between the two of them they could certainly come up with a number and if it is the least-cost power and can be shown it's the least-cost power, then the UARB has to accept it.

The federal government is not concerned whether it's zero cents or 50 cents. They just need to know that the power is going to Nova Scotia customers. But then –

**MR. HISCOCK:** Because they're not on the hook, we're the ones on the hook.

**MS. DUNDERDALE:** Yeah, but then the issue becomes between Emera and Nalcor in how much Nalcor is going to charge for the power.

**MR. HISCOCK:** Right.

**MS. DUNDERDALE:** How much Emera is going to pay for the power.

**MR. HISCOCK:** Right.

**MS. DUNDERDALE:** How much they can put it into the UARB for.

**MR. HISCOCK:** Exactly.

**MS. DUNDERDALE:** And is there a difference between those numbers? If the UARB is going to accept it at 10 cents, for example, but Emera and Nalcor arrive at 15 cents, for example, the question between Emera and Nalcor is how you're going to share that pain, as Mr. Sturge testified here to the other day.

And now we have a strong incentive to do a deal with Nalcor to ensure that – to do a deal with Emera to make sure that they are going to be able to satisfy the mandate of the UARB because we got \$1.1 billion on the table.

**MR. HISCOCK:** But why do we have the \$1.1 billion on the table? Why do we have to be at their mercy? I mean, if we're producing electricity for 20 cents an hour and the UARB tells us to sell it at five cents, why would we be in that situation having already sanctioned the project, having already spent this money?

**MS. DUNDERDALE:** But they're not – they can't tell us it's five cents unless it's the least-cost power.

**MR. HISCOCK:** Well, maybe that is.

**MS. DUNDERDALE:** But they – but what – Emera and Nalcor have a pretty good idea of what the least-cost power is.

**MR. HISCOCK:** So did anything change? Did anything change based on the UARB decision? Or did everything just proceed as if there – as if the UARB had not been needed in the first instance?

**MS. DUNDERDALE:** No, no, I mean Emera and Nalcor had to – as far as I know, from my recall, they had worked out a deal, Emera and Nalcor. Nalcor told them what they wanted to sell the power for.

**MR. HISCOCK:** Right.

**MS. DUNDERDALE:** And arrived at a price that was acceptable to Emera.

**MR. HISCOCK:** Okay.

**MS. DUNDERDALE:** And then the Government of Nova Scotia brought in the UARB on their own –

**MR. HISCOCK:** Yes.

**MS. DUNDERDALE:** – to determine if it was the least-cost power.

**MR. HISCOCK:** Right.

**MS. DUNDERDALE:** And so, you know, Nalcor and Emera had the opportunity along the course before financial close, for example, to arrive at a number that was acceptable to the UARB. The question became for Emera – and where some of the fuss might have started with the board in March – was how they were going to share the difference if the UARB number was less than the cost of the power that had been agreed on.

**MR. HISCOCK:** Right.

But, I mean, is that not a relatively big thing, to have not nailed down in a good solid contract that was – I mean, if there was this cost – this pain-sharing agreement, surely we had that in place before back in October or November or something.

**MS. DUNDERDALE:** We did as far as I know.

**MR. HISCOCK:** Well, then why did we not enforce our contract?

**MS. DUNDERDALE:** But we did – but we had –

**MR. HISCOCK:** Why did we change our tune?

**MS. DUNDERDALE:** We didn't change our tune. My understanding is that was the agreement between Emera and Nalcor. And I want to be careful, Commissioner, about – because this is second-hand knowledge that I have or – and I'm having difficulty recalling

exactly the big issue. But I think while that was agreed to by Emera when we sanctioned in December, the board had some – Emera board had some questions around that and didn't take the same position in March, which is how we ended up in – you know, what we had was a true – they wanted the way – they didn't want to make a commitment to Nalcor, is my understanding, on how to share the pain.

**MR. HISCOCK:** Right.

**MS. DUNDERDALE:** They decided in March, which the CEOs apparently had agreed to or whatever. And they wanted to wait to see what the UARB was going to say before they made any commitment on sharing pain.

**MR. HISCOCK:** But what I'm saying is in March when – this is very in the game to all of a sudden be realizing that there is no agreement, that Emera's board doesn't actually – isn't on side.

**MS. DUNDERDALE:** And if you heard my testimony, you know that when I testified here before the Commissioner, that I was extremely upset when I found out that information because my position is not any different than yours. (Inaudible) –

**MR. HISCOCK:** Did you fire Ed Martin for cause on the spot?

**MS. DUNDERDALE:** Pardon.

**MR. HISCOCK:** Did you fire Ed Martin for cause on the spot –

Obviously –

**MR. HISCOCK:** – for having misled you?

**MS. DUNDERDALE:** Obviously, I did not.

**MR. HISCOCK:** Well, why?

**MS. DUNDERDALE:** And I'm not –

**MR. HISCOCK:** Why?

**MS. DUNDERDALE:** – sure that he misled me. I –

**MR. HISCOCK:** You had an entirely different belief as to what you were getting into, and in March, this comes out that, oh, the UARB is actually a big deal, this could have a big impact.

**MS. DUNDERDALE:** But Emera had agreed and Emera told us that they were making a full sanction, so I didn't know there was an issue in Emera; Mr. Martin didn't know there was an issue in Emera, so he wasn't misleading me. They had an arrangement. They had a remedy in place if the UARB did not accept the price that they put forward.

**MR. HISCOCK:** And then so how did that remedy that was put in place – how was that affected in March?

**MS. DUNDERDALE:** Because of my understanding – and, Commissioner, I want to be very careful about this because I don't have good recall on it – but my understanding is that while the CEOs or whoever – whoever agreed to it in December had a change of mind in March.

**MR. HISCOCK:** That's not how contracts work.

**MS. DUNDERDALE:** Well, I get it but I'm telling you –

**MR. HISCOCK:** This is a billion – this is a huge number of billions of dollars the province is putting down. Now, if it was a coffee shop conversation or something like that, and somebody said, well, we'll think about this, you know, and there was no contract, there was no formality, there was no follow-up, surely that is something that you would fire somebody for –

**MS. DUNDERDALE:** But there was –

**MR. HISCOCK:** – somebody like Ed Martin if he led you to that position. And then in March, you discover there's no ground under my feet –

**MS. DUNDERDALE:** I'm not sure –

**MR. HISCOCK:** – the person that led you to think you were standing on solid ground would have a lot of answering to do.



**MS. DUNDERDALE:** – I’m not sure that that’s the case.

**MS. E. BEST:** Commissioner, I just wonder if some of these questions are better left for Mr. Martin since my client has indicated that she has some poor recall with respect to that agreement.

**MR. HISCOCK:** I think the – I – Commissioner, I mean, I don’t even understand the objection.

**THE COMMISSIONER:** I don’t think there’s any problem with asking the question. So – but I do think what we will do is take our break now, and you can come back to this this afternoon.

We’ll come back at 2 o’clock.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

This Commission of Inquiry is now in session.

Please be seated.

**THE COMMISSIONER:** All right, Mr. Hiscock, when you’re ready – Ms. Dunderdale.

**MR. HISCOCK:** Thank you, Ms. Dunderdale.

When we were speaking before the lunch break there we were discussing the UARB and the Maritime Link and that situation with Emera. I’d like you to turn to exhibit – and we will bring it up on the screen here, it’s Exhibit 00227, P-00227, and we are on page 10 of that exhibit.

And, in particular, sections 3(d) and 3(e) which I want to look at there. So this is the Term Sheet between Nalcor and Emera. And if we could go to page 10 we will find sections 3(d) and 3(e) of this. And if we come down you can see it there: “The approval process for the Maritime Link should be as follows” – under (d) – “(i) Emera will make application to the UARB for incorporation on the Maritime Link in the NS rate base upon Nalcor providing Emera with the Estimated Capital Costs of the Maritime Link, approved by Emera, in sufficient detail to permit

such application in accordance with the rules and procedures of the UARB; and

“(ii) Nalcor will assist Emera in this application. The Parties undertake to take all commercially reasonable actions to preserve the project schedule as set out in Appendix “F.” The Parties agree that the target date for making the application to the UARB will be June 1, 2011.”

And if we come down to (e): “When the application is approved as filed, the Parties will proceed to consider Sanction in the Maritime Link as set out in the subsections 3(f)(i), (ii) and section (g) below.”

I’m going to turn to one more exhibit there now. If we could turn to Exhibit 00065, which is the Federal Loan Guarantee of November 30, 2012, and if we could move down to page 6, there’s a section 3.5 on page 6. And 3.5 – and then it’s subsection (vi) and subsection (vii), if we can move down just a little bit further: “Execution of an agreement between Canada and NS in which NS indemnifies Canada for any costs it may incur under the FLG as a result of a regulatory decision or a regulatory change (including through legislation or policy) that prevents a Borrower from recovering Project costs and fully servicing Guaranteed Debt” and the sanctioning of all projects, including ML – that would be the Maritime Link.

Why was there any doubt that the federal loan guarantee required the approval when it was so clear in both the loan agreement and the term sheet? I mean, these are very – these strike – I think most people who’ve reviewed them, as very clear documents that, you know, the UARB approval application was going to be required before sanction before this could move forward.

**MS. DUNDERDALE:** Yeah, the UARB was going to have to approve power, a Power Purchase that they would include in the rate base, there’s no question about that. That was critical to the loan guarantee.

**MR. HISCOCK:** So the UARB application and approval was required for the federal loan guarantee and you wouldn’t have proceeded to sanction without the federal loan guarantee?

**MS. DUNDERDALE:** Personally –

**MR. HISCOCK:** Okay.

**MS. DUNDERDALE:** – I would not. I can't tell you what the Cabinet would've done. The board was certainly of a view that they would go to full sanction without the loan guarantee.

**MR. HISCOCK:** But you wouldn't have approved sanction without the loan guarantee?

**MS. DUNDERDALE:** Personally, I would not, but that's not something I tested with my Cabinet.

**MR. HISCOCK:** But you would agree that we did in fact go to sanction without the federal loan guarantee because the federal loan guarantee required – and this is a quote – quote: “Sanction of all Projects, including ML ...” – end quote.

**MS. DUNDERDALE:** My understanding, Mr. Hiscock – and, again, you'll have to forgive me in terms of what I'm able to recall –

**MR. HISCOCK:** Mm-hmm.

**MS. DUNDERDALE:** – when we go to sanction we have all these conditions precedent that have been set down by the federal government, is my understanding, and that – so we have said – we have all decided we are all sanctioning, Emera is sanctioning, Nova Scotia is sanctioning, Government of Newfoundland.

And so they set down the conditions precedent, because now we have to prove to the federal government that we can do what we have said we could do in the sanction. So that's why things – the loan guarantee is not given until we come to financial close, because at financial close we have had to satisfy all of those conditions precedent. We can't get to financial close unless we've satisfied and proven to the federal government that we can do what we said we were going to do, which is the sanction announcement.

**MR. HISCOCK:** If we could go back to that page 10 of Exhibit 00227, the Term Sheet and to section (e) there: “When the application is approved as filed ...” – this is the application to the UARB directly referred to as above regarding the Maritime Link, right? “The

approval process for the Maritime Link shall be as follows” and then it gets into Emera has to make the application to the UARB; Nalcor is going to assist and so on.

So then in (e) it says: “When the application is approved ....” So this is the application to the UARB from Emera as assisted by Nalcor. “... is approved as filed” – so approved by the UARB – “the Parties will proceed to consider Sanction of the Maritime Link as set out” and then the sections follow.

**MS. DUNDERDALE:** I –

**MR. HISCOCK:** And that's very clear, isn't it?

**MS. DUNDERDALE:** I can't speak to it, Mr. Hiscock. I can tell you what I knew, what I was told, what I was briefed on, what the – what the premier of Nova Scotia said publicly, what I said publicly and what Nalcor said they understood and Emera said they understood.

**MR. HISCOCK:** Then why were you shocked in March?

**MS. DUNDERDALE:** Because now it wasn't a full sanction, it was a conditional sanction and I didn't understand it to be – nor did anybody else, to my understanding up to that point – understand it to be a conditional sanction.

**MR. HISCOCK:** So you do not believe that you were deceived into believing that there was an unconditional sanction, you believed that simply everybody – everybody – was misinformed about this.

**MS. DUNDERDALE:** And I haven't heard any different up to this point, Mr. Hiscock.

**MR. HISCOCK:** But the public were led to believe that the federal loan guarantee was lock solid on November 30, 2012, and that was because of your representations to the public. Correct?

**MS. DUNDERDALE:** No.

**MR. HISCOCK:** Or your government's representations?

**MS. DUNDERDALE:** No, Mr. Hiscock. The loan guarantee wasn't lock solid until we got to financial close, but we were confident we were going to get to financial close.

**MR. HISCOCK:** Did you –

**MS. DUNDERDALE:** We thought – you know, we had said: This is where we are, these are the commitments we're making, this is the business deal and we can deliver all of this, now we have to prove this to the federal government. They're going to test that now over the next period of time and when they're absolutely sure that they verified what we have said we're going to do in sanction, then we come to financial close.

And when financial close is achieved, now we're good to go, now it's full steam ahead. That's my understanding.

**MR. HISCOCK:** Do you think on November 30, 2012 – let's keep ourselves focused in on that date – on that date did the people of this province think that they had a federal loan guarantee for Muskrat Falls including the Maritime Link?

**MS. DUNDERDALE:** Yes, we all did.

**MR. HISCOCK:** Okay.

But you say now that you didn't really think that you had a federal loan guarantee at that point, that you thought you were working towards one and that it would likely come together by –

**MS. DUNDERDALE:** No –

**MR. HISCOCK:** – financial close?

**MS. DUNDERDALE:** – that's not what I'm saying.

**MR. HISCOCK:** Okay. Just clarify.

**MS. DUNDERDALE:** I'm saying the prime minister and I signed an agreement in Labrador –

**MR. HISCOCK:** Yes.

**MS. DUNDERDALE:** – on the loan guarantee.

**MR. HISCOCK:** Which had conditions.

**MS. DUNDERDALE:** Well, then the conditions precedent were set down. So now we had to – so they're accepting us that – they're accepting that we had the loan guarantee, but now we have to show them that everything that we have said, we can deliver on. And that is the process, as I understand it, we're engaged in in financial close, that we have satisfied them 100 per cent that we could do everything that we told them we could do on sanction. And now we're at financial close, and now the matter is, you know, we – they accept, you know, that we've satisfied all the conditions precedent and we can move on and everybody is satisfied, and that's when we get financial close.

**MR. HISCOCK:** And so the mistake, the only point of confusion here is that on November 30, 2012, both yourself and all the people of the province believed at that point that the conditions precedent had been met and the federal loan guarantee was in the bag, that we had knocked off the conditions that had to be met; we had the federal loan guarantee now.

**MS. DUNDERDALE:** Yes, and that we would not have difficulty demonstrating to the federal government that we had met all of these conditions or would meet them and that we would – that everything was secured.

**MR. HISCOCK:** But then was not the case?

**MS. DUNDERDALE:** It was the case when we got to financial close. We had met all of the conditions precedent.

**MR. HISCOCK:** But it was not the case on November 30, 2012. You thought it was the case that the conditions precedent had been met, but it was not the case at that point.

**MS. DUNDERDALE:** Yeah. We thought in terms of all of the conditions set out in the conditions precedent could be met. And what we found out in March was that – and I need to be careful about this because my recall is not good around the reasoning and I think it was because I was so upset over the fact that we were in the position in the first place.

**MR. HISCOCK:** Mm-hmm.

**MS. DUNDERDALE:** But because of something coming out of the Emera piece, the federal government said it's not a full sanction; it's a conditional sanction.

**MR. HISCOCK:** Right. And that's because of those sections we just read: the term sheet and the –

**MS. DUNDERDALE:** Yes, and so I – it's around the rate.

**MR. HISCOCK:** Well, it's around the approval of the UARB, which is based on rates, yes.

**MS. DUNDERDALE:** Yes.

**MR. HISCOCK:** Okay.

The Dexter letter, I'd like to turn to Exhibit 01417, which is a draft letter to Premier Dexter asking him to reconsider his position on allowing the UARB to have free rein in sanctioning the Maritime Link.

**MS. DUNDERDALE:** Yes.

This is a draft of the letter. I don't know that I ever saw that, Mr. Hiscock. That's Charles –

**MR. HISCOCK:** Okay.

**MS. DUNDERDALE:** – Bown to Charles Bown.

**MR. HISCOCK:** Yeah.

And did you ever send this letter?

**MS. DUNDERDALE:** I don't think the letter was ever sent. I don't think I ever saw it.

**MR. HISCOCK:** Okay.

You never saw this letter first nor last?

**MS. DUNDERDALE:** I don't think so.

**MR. HISCOCK:** It was never brought to your –

**MS. DUNDERDALE:** I don't think so, and I think that might be Mr. Bown's testimony here in Phase 1.

**MR. HISCOCK:** Okay.

The letter asks Nova Scotia to quote: "... provide the UARB with a narrow scope. This would see the UARB review only the Maritime Link and no other alternatives. You also agreed to ensure that the review would be completed by the end of December."

Do you believe that it was reasonable to ask the Government of Nova Scotia or would you have considered asking the Government of Nova Scotia to compromise their regulatory process – well, that – the process that they designed to protect the interest of the consumers in Nova Scotia?

**MS. DUNDERDALE:** Mr. Hiscock, Premier Dexter and I had a very, very good working relationship, as did the Atlantic premiers. And Premier Dexter was primarily responsible for that. When he became premier, he made a real effort to make sure that the four of us were completely aligned, that we were together on a regular basis and that we identified common interests. He was very much in support of this project –

**MR. HISCOCK:** Sure.

**MS. DUNDERDALE:** – and we spent a lot of time talking together and discussing how you would do it and what his ultimate goals were.

**MR. HISCOCK:** Did you discuss the UARB process with Mr. Dexter?

**MS. DUNDERDALE:** I can't remember at this point in time. We had a lot of conversations about a lot of things but I, you know, I – just it's so long ago.

**MR. HISCOCK:** But well, when – no, what's the date on this. Well, this is after the March kerfuffle, so –

**MS. DUNDERDALE:** Yeah.

**MR. HISCOCK:** – or sorry, no it's not.

**MS. DUNDERDALE:** Mmm.

**MR. HISCOCK:** This predates that.

**MS. DUNDERDALE:** Yeah.

**MR. HISCOCK:** So once the March kerfuffle came up, and you realized, my goodness, we actually do require the UARB and the federal loan guarantee now is on shakier ground than I understood it to be on at any rate. Did you call Mr. Dexter or somebody –

**MS. DUNDERDALE:** I saw –

**MR. HISCOCK:** – in the Government of Nova Scotia?

**MS. DUNDERDALE:** I may have. I certainly saw Mr. – Premier Dexter at the Council of the Federation in Niagara-on-the-Lake, and in documents that were provided to me – and my counsel might be able to give us an exhibit – there is a – I was given a copy of a newspaper article where Premier Dexter is quoted saying that he agreed with Premier Dunderdale that the project – that the – it wasn't contingent on the UARB approval.

**MR. HISCOCK:** Well, I mean, that's –

**MS. DUNDERDALE:** Well, he's obviously talking to me or knowing what I'm saying –

**MR. HISCOCK:** Yes.

**MS. DUNDERDALE:** – because he's also making a public comment on – I didn't remember it. I was –

**MR. HISCOCK:** So, what did you – what would you have asked him to do or what was the discussions there?

**MS. DUNDERDALE:** I can't recall. I really don't recall.

**MR. HISCOCK:** Who would have sat in on you when you were making those calls to Mr. Dexter?

**MS. DUNDERDALE:** That may not have been a call. We may have been sitting face to face. He came across several times. But again, you know, my – the clerk probably would have been there. The (inaudible) would have been there.

**MR. HISCOCK:** So the – would the clerk have been taking detailed notes?

**MS. DUNDERDALE:** I have no idea. You'd have to ask the clerk.

**MR. HISCOCK:** In – normally – in those kind of meetings –

**MS. DUNDERDALE:** I didn't ask to examine the clerk's notes. He always had his notebook. He was always taking notes, but as to the quality and quantity of them, Mr. Hiscock, I can't comment. I never read them.

**MR. HISCOCK:** So, let me just ask this about a process question within government, generally, in your time there. If there was a meeting between two premiers on an important subject, like the UARB, how would the internal memory of government capture that meeting? How would – a year from then – you know, we met once; we met six times. We've talked about this on each of those six times, or we never mentioned it to each other. How does that kind of institutional memory exist within the government when you were there?

**MS. DUNDERDALE:** I can't really speak to it. If – other than to say that if the clerk or a deputy didn't catch it in their own notes, or we didn't follow up with a letter to say this is, you know, our understanding of our conversation or, for example – and I can give you one example. When we were negotiating CETA and we were trying to get certain commitments from the federal government, we copied everything in letter to – every meeting we had, there was a letter that followed the meeting to the minister to say, this is what we discussed. This is what we agreed.

**MR. HISCOCK:** Did you do that here?

**MS. DUNDERDALE:** No. We didn't because –

**MR. HISCOCK:** Why?

**MS. DUNDERDALE:** – it wasn't the same kind of circumstance. We knew in terms of a – it was a process we decided on for that event, which happened after this.

**MR. HISCOCK:** You just said that was an example; you're saying now it's an exception to the norm.

**MS. DUNDERDALE:** It was an exception.

**MR. HISCOCK:** Okay. So what's the norm? What's the norm? How do you – like, when you were the premier, how would you know 6 months ago I met with Darrell Dexter? You know, Mr. Dexter – there would be minutes of that meeting somewhere. There would be a record kept of meetings between the premier and other premiers.

**MS. DUNDERDALE:** It would be in my calendar, and the – whatever we were discussing, the relevant minister might be there, but the clerk would always be there. And so I always looked to the clerk as the record-keeper. I wouldn't keep notes.

**MR. HISCOCK:** Okay, so if we went back to your calendar –

**MS. DUNDERDALE:** Yeah.

**MR. HISCOCK:** – would we find references to each of the conversations that you had with Mr. Dexter – telephone calls, or in-person meetings –

**MS. DUNDERDALE:** No –

**MR. HISCOCK:** – with Mr. Dexter on this?

**MS. DUNDERDALE:** – no. No.

**MR. HISCOCK:** Where would you go to find out that you had spoken to Mr. Dexter? There has to have been some system in (inaudible).

**MS. DUNDERDALE:** Well, I spoke to him – well, we had a number of telephone calls. And I don't know that they were ever captured in any record. They are in one piece of evidence that's come before the Inquiry, in terms of Mr. Sturge's notes, when there was some – we were all in a meeting, and there was a question about something to do with Nova Scotia – and I left the meeting to call Premier Dexter. So, you know, my secretary would have put through the calls – if she kept some kind of a record it might be there.

**MR. HISCOCK:** So do you – you think your secretary might have records of these calls. Would she also have had minutes of these calls?

**MS. DUNDERDALE:** But I don't know she wouldn't have had minutes. The conversation would have free-flowed between myself and – you know we weren't taking decisions; if we were going to take a decision on – to do something, or direct somebody, then that would go to the clerk or the relevant minister or the deputy minister. A premier cannot do anything on their own; they have to work through their political staff or the public service.

I'm not gonna write a letter to, or direct the PUB, or he's not going to direct the UARB or direct cabinet or any of those kinds of things. All of those things and every decision taken around those things always have public officials engaged. So – but I didn't take notes of my discussion; it was an ongoing discussion and we were both fairly well informed.

I know in the meeting that I left to call him, I came back to the meeting and reported that the Premier wasn't familiar with all of the facts. He was gonna go make himself familiar and then come back and talk to me again. And I would have reported that to the meeting but I don't know if anybody ever wrote it down.

**MR. HISCOCK:** Yup.

I mean, what I'm understanding is that there is actually no way to find out, after the fact, unless you happen to remember it.

**MS. DUNDERDALE:** Well –

**MR. HISCOCK:** What conversations happened between two premiers and what was discussed –

**MS. DUNDERDALE:** Well, all kinds of –

**MR. HISCOCK:** – and how often did those conversations occur?

**MS. DUNDERDALE:** – all kinds of them happened all the time, and they're not recorded. And if you went back to government now and went back for the last 14, 15 premiers, you would not find those conversations recorded anywhere. They're not there. When we did

research around the 2000 attempt to develop Gull and Muskrat, the same back in the – there – they don't exist. Not within government.

**MR. HISCOCK:** Is that a problem when you had no institutional memory of what was going on in 2010 when you were there just two years later?

**MS. DUNDERDALE:** Yes, I mean, because you're trying to find out the detail of what happened.

**MR. HISCOCK:** Yes.

**MS. DUNDERDALE:** And in terms of what we knew, was very, very little because –

**MR. HISCOCK:** Wouldn't you change the –

**MS. DUNDERDALE:** – there was starting (inaudible) –

**MR. HISCOCK:** – process then to make sure that wasn't a problem when you left office?

**MS. DUNDERDALE:** The process has been greatly changed and we tabled, in the House of Assembly, 17 banker boxes full of information on Muskrat Falls.

**MR. HISCOCK:** Yeah. That's not what I'm asking. I'm saying, you know, you're saying that we didn't even keep track of what telephone calls I was engaged in with other premiers. I'm saying if that was a problem for you because you didn't know the basics of what the premier just two years ago had been doing, then wouldn't you change it so that whoever takes over from you will at least know who I've spoken to and on what subjects as the chief representative of the Province of Newfoundland.

**MS. DUNDERDALE:** I don't necessarily agree with that, Mr. Hiscock.

I'm having – you know, we're having a discussion about a project that's going on that we both want to progress for different reasons. But both for the benefit of the people that we represent in both provinces. And we're talking about process and we're talking about what you're going to encourage your – what you're going to direct your officials to do. There's

going to be an official record of what officials do, what action is taken, regardless of what the premier and I say to one and other.

**MR. HISCOCK:** But it was important because that relationship and those conversations is the basis, as far as I can tell, for your whole understanding around the Emera-UARB scenario.

**MS. DUNDERDALE:** No, it's not – but I don't know where you would get that impression.

**MR. HISCOCK:** Well, you were saying that Mr. Dexter was on the same page as me. We had had these conversations. Look, he was saying to people this wasn't the – a term.

**MS. DUNDERDALE:** No, no, no that's not what I'm saying to you, Mr. Hiscock. What I'm saying to you is that is my understanding. I made these comments when I was questioned publicly, when I was at a premier's meeting – Council of the Federation, in – and he was there as well, and I said what my understanding was, and independently of me he said what his understanding was, knowing what I have said. But, you know, my understanding of what was going on with the UARB didn't come from Premier Dexter –

**MR. HISCOCK:** It came –

**MS. DUNDERDALE:** – it came from my officials and Nalcor. We had been involved in that for months and months.

**MR. HISCOCK:** I'm going to move on to another line of questioning here, I think.

On page 10 of your interview, you were – and this is – I'm going to have ask this. This is – it comes out of what we've been talking about, but I'm going to try and skip some of the UARB questions, but nonetheless this one has to be asked.

On page 10 of your interview you said that one arm of government said it was okay, but the other arm said no. Which arm of government was it that was saying that approval of the UARB was not needed, and which one was – I took from your evidence there that there was a bit of a debate internally –

**MS. DUNDERDALE:** No.

**MR. HISCOCK:** – maybe between two departments –

**MS. DUNDERDALE:** No, it wasn't internal to us. It was internal to the federal government. And I'm trying to recollect, you know, five years almost – five years later, almost six years later, what did I understand – you know, it was a big – it was a big event that was a huge meeting in my boardroom and I – by that time I was down on the fourth floor and the boardroom was much bigger – and the boardroom was full. And I was extremely upset when I found out that we had only a conditional sanction.

**MR. HISCOCK:** Mm-hmm.

**MS. DUNDERDALE:** But I couldn't and can't remember all of the detail around it. So there was an issue with the federal government and I can't be precise and clear what it is.

**MR. HISCOCK:** Oh, it's –

**MS. DUNDERDALE:** And there was an issue with the – I couldn't recall, Mr. Hiscock. And I don't – I haven't been doing this work for six years. I haven't reviewed these documents. I don't have access to documents. I don't have context. I don't have people I can talk to about it. So I'm trying, to the best I can, to tell the Commissioner what I remember. But I can't rely on it being 100 per cent, but all I can do is tell him what I believe to be the truth. And that's all I can do, Commissioner, that's all I can do. Whether it's factual 100 per cent, I can't say, Sir, because I – it's a long time ago.

**MR. HISCOCK:** Would you say that this misunderstanding, I guess if we want to call it that, which arose or which became evident in March of 2013 – did this ultimately place us in a position where we had to capitulate to the UARB and sign an Energy Access Agreement which compelled us to offer at least 1.2 terawatt hours of Muskrat Falls power for 24 years, valued by the UARB at \$700 million to \$1.4 billion.

**MS. DUNDERDALE:** No, it did not but even if it had, given the deal we had, it wouldn't have been a bad thing. We were going to get the best

price for that power that we could get in the marketplace, period, for that whole length of time and we were going to save ourselves transmission costs.

Now, there is nowhere else that we could get the power to that we could get a better deal on that non-firm power. So even if it had – you know, it wouldn't have been onerous for us as a condition; we would have been jumping at the bit to get that deal. Emera is promising us the best price we can get in New England and if we can even find a price better than the best price, they'll give us that too. And we don't have to wheel power through the Maritimes into New England; all we have to do is get it to the Nova Scotia border. So we don't have to pay transportation costs.

You know, it's been a big issue at the commission – in some of the evidence here. I don't understand what's hard to understand about it. We're bringing non-firm power to market and we're getting the very best price we can ever get, and that's open-ended because it's what Boston – what Mass Hub is and if we can show that we can get a better price than Mass Hub – Mass Hub is the best you can get in New England –

**MR. HISCOCK:** Yes.

**MS. DUNDERDALE:** – and if we can get better than Mass Hub, they'll pay Mass Hub, plus we're saving transmission.

**MR. HISCOCK:** So we wanted to sign the Energy Access Agreement, it had nothing to do with the UARB?

**MS. DUNDERDALE:** Absolutely.

**MR. HISCOCK:** And we wanted to send – it is your evidence that that was not a result of the UARB and that we were actually wanting to sign the Energy Access Agreement and we wanted to be compelled to offer at least 1.2 terawatt hours of Muskrat Falls power for at least 24 years.

**MS. DUNDERDALE:** Non-firm power that we can only sell on the spot market. Anybody that's coming to develop a business, particularly – and our focus was on Labrador. They're not going to



put non-firm power into their strategic plan. They need power. They need certainty of power.

Non-firm power is uncertain. You can deliver a block of power but, as you probably know, you can only deliver it when it's available but you know you can deliver it over long term, so you can only sell that kind of power on the spot market. And Emera is coming to us and saying we're – now we can only – we only got access into New England and the Maritimes and we could get into Quebec I suppose, but they're saying to us wherever you – as far as you can transmit this power, the best price you can get we're going to pay you. That's the price we'll give you and then, on top of that, we got the gravy of not having to pay transmission costs.

So, you'd be mad not to take it.

**MR. HISCOCK:** So this was the deal we wanted and so the UARB had no effect on us?

**MS. DUNDERDALE:** Not as far as I know.

**MR. HISCOCK:** The effect of this deal was that it made Nova Scotia the principal recipient of our power and gave them guaranteed access to more than 50 per cent of our power, correct?

**MS. DUNDERDALE:** Which is wonderful if we got the power to sell and they want to buy it and we don't have to pay transmission costs and we're going to get the very best price we can get.

**MR. HISCOCK:** Well, if we're turning a profit, that's good. Yeah.

**MS. DUNDERDALE:** Even if we're not turning a profit we're getting – we're making money. We're selling the power and we're making money.

**MR. HISCOCK:** Not if we're – no, we're losing money if we're not selling it at a profit.

**MS. DUNDERDALE:** Well, we're paying for the power anyway.

**MR. HISCOCK:** No, that's only after you decided to build the facility, then, yes, it should be used, but I think in the rationale of this

project it wasn't to subsidize power to Nova Scotia or something, you know –

**MS. DUNDERDALE:** No, we're not subsidizing power to Nova Scotia. We're making a good business deal on behalf of the people of the province which will help pay down, hopefully, the project or reduce rates, or build a school or a hospital.

**MR. HISCOCK:** On page 37 of your interview you stated: I don't know any other project that had the oversight applied to it that this project did, and it was all warranted and it was all – you know, certainly other attempts – the other two attempts to develop the Lower Churchill didn't have this kind of scrutiny.

I'm going to suggest that the Commissioner had heard from the testimony of Dr. Holburn and looked – he looked at this project and showed that compared with other Canadian megaprojects it failed the test of good oversight.

I'd like to turn to Exhibit P-00724 and at page 68 of that exhibit, 00724. It will be up there in a second now. Here we go.

**MS. DUNDERDALE:** Mm-hmm.

**MR. HISCOCK:** And page 68 of that exhibit. We get failing grades on evaluation, on approval, and on cost review recovery. The Maritime Link is actually well ahead of Muskrat Falls in Dr. Holburn's assessment.

Do you understand why Dr. Holburn would reach that assessment?

**MS. DUNDERDALE:** Certainly, yes, absolutely, with a project that was projected to be 6.2 and it's now 10.1. I don't have any issue with – something went seriously wrong. I'm still not sure what that is and that's the Commissioner's job, and I'm sure we'll have a good answer in due course but, you know, to – for the project to be that much over budget, something is askew, there's no question of that.

**MR. HISCOCK:** Page 25 of your testimony you stated: You know, at least you have to know about it, you know, for me, you know, I've been involved in major projects – sorry, I haven't been involved in major projects or any kind, any

kind of big construction project. I mean, the biggest project that I've ever been engaged in, in my personal life, is building our home which, again, was over budget.

I mean, obviously, this is not a suggestion that you should have been some sort of construction expert in order to be premier of the province and, obviously, everybody coming in to politics is going to bring their own expertise, whatever they come from. But wouldn't that make it extraordinarily necessary that good oversight occur here because it was outside of your wheelhouse. Correct?

**MS. DUNDERDALE:** But, Mr. Hiscock, all I can tell you is that we went outside of government and outside of Newfoundland and Labrador Hydro and engaged expertise on how to build this company and what the requirements were and what we should do. And to the advice we were given, we did just that.

You know, I suppose we could have kept on going and kept on going and kept on going, but it's not like we set up this company in isolation. We did engage expert advice –

**MR. HISCOCK:** Okay.

**MS. DUNDERDALE:** – who had a broad – you know, a company that had –

**MR. HISCOCK:** To set up the company.

**MS. DUNDERDALE:** And what the governance would be, what the oversight would be, what the rules of how the board of governors would – board of directors would be struck, you know –

**MR. HISCOCK:** Okay, so how many people should have been on the board of directors?

**MS. DUNDERDALE:** I think it's 12, I'm not sure.

**MR. HISCOCK:** Twelve, yeah.

**MS. DUNDERDALE:** Mmm.

**MR. HISCOCK:** Okay so you were aware of other projects like Hebron, the Vale project at Long Harbour?

**MS. DUNDERDALE:** Yeah.

**MR. HISCOCK:** Virtually every other project in North America, especially in Western Canada, has incurred significant cost overruns. Correct?

**MS. DUNDERDALE:** Yeah.

**MR. HISCOCK:** Okay.

Did you understand or did you ask your deputy minister of Finance or somebody else to report to you on the impact on our fiscal position if cost overruns amounted to billions of dollars?

**MS. DUNDERDALE:** Yes.

**MR. HISCOCK:** Okay.

What measures were put in place to keep those costs under control?

**MS. DUNDERDALE:** Significant – you know, a significant analysis in terms of having the plan reviewed inside government with Nalcor, the referral to independent assessments by – particularly by the PUB, MHI, Wade Locke. You know, the list goes on and on of seeing Emera –

**MR. HISCOCK:** Mm-hmm.

**MS. DUNDERDALE:** – the Government of Nova Scotia and assessing whether or not this –

**MR. HISCOCK:** I –

**MS. DUNDERDALE:** – this was a solid project –

**MR. HISCOCK:** Now and –

**MS. DUNDERDALE:** – and the business case was good.

**MR. HISCOCK:** I mean we weren't going to rely on Emera or the Government of Nova Scotia, right, because we were backstopping them,

**MS. DUNDERDALE:** No –

**MR. HISCOCK:** We were the ones on the hook, right?

**MS. DUNDERDALE:** And we weren't going to rely on MHI, but it's –

**MR. HISCOCK:** And MHI wasn't looking at a business case at all –

**MS. DUNDERDALE:** But –

**MR. HISCOCK:** – first nor last, correct?

**MS. DUNDERDALE:** But it's layered. It's a cumulative approach. They have the –

**MR. HISCOCK:** But the layers you're talking about are meaningless. Like, MHI wasn't dealing with the business case; Nova Scotia has nothing to do with the business case.

**MS. DUNDERDALE:** The banks looked at it –

**MR. HISCOCK:** You know, we're not going to rely –

**MS. DUNDERDALE:** I mean there were a myriad of different independent assessors looking at this project and telling me as premier that, yes, you need the power. The data is sound on that, as sound as predictions can be and, yes, this is the least-cost project.

Now, I don't know how MHI gets to tell me that that's the least-cost project. Even the Consumer Advocate's office had somebody do a high-level look at it and come back and say, yes.

So everybody that we had look at it came back and said this is the least-cost alternative and, yes, you do need the power.

**MR. HISCOCK:** And that wouldn't have anything to do with cost overruns though. Correct?

**MS. DUNDERDALE:** No, but you're –

**MR. HISCOCK:** Right. Or controlling costs?

**MS. DUNDERDALE:** No, and certainly an Oversight Committee was always intended. And, at one point, I instructed the departments to put that independent review committee in place. I'm

not sure that – if it had happened by the time that I left.

**MR. HISCOCK:** But that's a long time. That's was my next question is why you didn't create an Oversight Committee. So, explain to me –

**MS. DUNDERDALE:** I can't explain to you. You know, the instruction was given to departments. I'm sure of that.

**MR. HISCOCK:** Okay who – which departments, which ministers did you instruct to set up an Oversight Committee?

**MS. DUNDERDALE:** I certainly would have – Finance and Justice for sure.

**MR. HISCOCK:** Finance, so Jerome Kennedy was instructed?

**MS. DUNDERDALE:** Not finance and not Justice, the Department of Natural Resources.

**MR. HISCOCK:** So the Department of Natural Resources was instructed –

**MS. DUNDERDALE:** The Department of Finance.

**MR. HISCOCK:** – and the Department of Finance were instructed to set up an Oversight Committee.

**MS. DUNDERDALE:** In a Cabinet meeting.

**MR. HISCOCK:** Okay.

And –

**MS. DUNDERDALE:** And another department –

**MR. HISCOCK:** – to the best of your knowledge –

**MS. DUNDERDALE:** – but I can't remember.

**MR. HISCOCK:** – they disobeyed those orders.

**MS. DUNDERDALE:** Well, they hadn't completed those orders by the time I left.

**MR. HISCOCK:** When –

**MS. DUNDERDALE:** Remember, I left –

**MR. HISCOCK:** When were they instructed to do that?

**MS. DUNDERDALE:** I left 10 days after. For all intents and purposes, I was gone 10 days after we did the announcement on financial close.

**MR. HISCOCK:** At what point were they instructed to set up an Oversight Committee? Because a lot of money had been spent by the time financial close came around, correct?

**MS. DUNDERDALE:** Yes, and you'd – we'd have to go back to the records of Cabinet meetings.

**MR. HISCOCK:** Okay.

**MS. DUNDERDALE:** I have no idea, but there's been testimony to the effect here from other Cabinet ministers to verify that, that that's their memory.

**MR. HISCOCK:** And so the failure to set up the Oversight Committee would be on those ministers? Would be on the minister –

**MS. DUNDERDALE:** Well, an –

**MR. HISCOCK:** – would be on the minister of Natural Resources?

**MS. DUNDERDALE:** – an Oversight Committee was put in place. You know, we were still dealing with the PUB, with MHI on the DG3 numbers and stuff. So, you know, as far as government was concerned, whether or not you think it's adequate or not, we felt that we were exercising good oversight ourselves at that point, across government.

The reports that Minister Kennedy was getting through – when he was minister of Natural Resources with Ziff and others, there was a lot of work going on in trying to answer questions that were arising within government, but also arising outside of government and being answered by Nalcor. But trying to ensure that there was an independent look at that too and that was important to us and it was also

important to share that information with people of the province.

**MR. HISCOCK:** You're talking about the oversight. You say that this project had incredible oversight. There was no Oversight Committee in place, though, when you were premier.

**MS. DUNDERDALE:** No.

**MR. HISCOCK:** Right, okay.

And the board of directors, you said, this was a big part of it is that you had gone to the best people in the world to find the best world-class advice in setting up a state-owned energy company and it should have 12 people on the board of directors.

**MS. DUNDERDALE:** Yup.

**MR. HISCOCK:** There was only three board members, plus Mr. Martin, in May of 2012.

**MS. DUNDERDALE:** Mr. Hiscock, I testified in Phase 1 to that piece. You know, personally I didn't keep track of the number. As soon as it was brought to my attention that the board was down, within weeks appointments were made. And my instruction to the clerk was to work with Cabinet and caucus and Nalcor to identify people to come sit on the board.

I personally made recommendations, for example, around Mr. Abbass because I wanted somebody from Labrador on the board, and up to that point there hadn't been. And I remember that very directly, saying I want people from Labrador on the board.

**MR. HISCOCK:** People from Labrador on the board, I mean, look, I'm sure everybody in Newfoundland and Labrador would be glad to have representation on this board, but none of us would care an iota about that representation if we thought it was going to effect the quality of board members that we had there.

And at that time, you're saying, this was – this project had better oversight than any other project you'd heard of in government, but we have the board that's providing the oversight of management, we're the only shareholder in this

company, and our board is down to three members plus the CEO.

**MS. DUNDERDALE:** Yes –

**MR. HISCOCK:** You know, there –

**MS. DUNDERDALE:** – and as soon as I became aware, I took actions to rectify that.

**MR. HISCOCK:** Why did it take so long to become aware of these ongoing problems?

**MS. DUNDERDALE:** I have no idea, Mr. Hiscock.

**MR. HISCOCK:** But you say there was great oversight.

**MS. DUNDERDALE:** But I am telling you that I had – I believe the people who worked around me were good people and they're good public servants. And all I can tell you is, they brought it to my attention, and when they did bring it to my attention, I dealt with it.

**MR. HISCOCK:** Who did you put on – did you put people on the board that included megaproject experience?

**MS. DUNDERDALE:** No.

**MR. HISCOCK:** Okay.

**MS. DUNDERDALE:** And not that we weren't looking for people with megaproject experience or that – I don't know if megaproject experience had been approached even. What I – you know, as premier of the province, I'm not going out making phone calls to people to say: Come sit on the board.

**MR. HISCOCK:** I thought you just said you did go and reach out to people to come and sit on the board?

**MS. DUNDERDALE:** I instructed the clerk –

**MR. HISCOCK:** Okay.

**MS. DUNDERDALE:** – and that – to get together with the committee, because we had a committee around appointments, but also to canvas the Cabinet and the caucus for names, to

canvas Nalcor for names, and make – get the board back up.

**MR. HISCOCK:** So you were personally involved in getting the board back up, and that's great, that's the kind of –

**MS. DUNDERDALE:** Because the clerk brought it to my attention and I clearly said: That's not satisfactory, do something about it and do something about it right now. And the clerk moved to do that.

**MR. HISCOCK:** Do you feel it was a failure of governance to not have detailed notes and minutes regarding your meetings with Mr. Martin, in retrospect?

**MS. DUNDERDALE:** I wish we had a better record. I don't know that – I don't – I can't – I'm not sure about the detailed notes (inaudible). The problem with some of this is, is commercially sensitive information and how do we guard that within government, how do we protect that within government? And there's a risk in government all the time, of leaks.

And I – Commissioner, when we were doing the Energy Plan, and one of the elements of the Energy Plan was we were going to demand equity in future oil projects. And this was a brand new concept and something new. In terms of the work we did on that, which is ministers and the premier, we would number the drafts of the Energy Plan and reclaim – know who had draft – who had each one, and demand their return at the end of the meeting. We were that concerned about leaks.

**MR. HISCOCK:** Okay.

Well, within – surely there was somebody you could trust within the premier's office that could take notes and not give them over to Astaldi or something?

**MS. DUNDERDALE:** Well, you know, I'm just saying that's always a consideration when you're in a briefing and information is flowing back and forth.

**MR. HISCOCK:** I'm sure every single law office in this province and every business in this province deals with similar issues, if not on that

scale. But, I mean, it's still very strange to not have any minutes or detailed notes regarding important meetings with the CEO, isn't it?

**MS. DUNDERDALE:** It's not strange in government, Mr. Hiscock. You cannot – and I bet if you went up today, you wouldn't find detailed notes and minutes.

**MR. HISCOCK:** Would you agree that that's an issue if we could go up there today –

**MS. DUNDERDALE:** Absolutely.

**MR. HISCOCK:** – and government is being run without –

**MS. DUNDERDALE:** I absolutely –

**MR. HISCOCK:** – a paper trail?

**MS. DUNDERDALE:** – have no issue with developing a different practice around that.

**MR. HISCOCK:** And that was my question.

**MS. DUNDERDALE:** Yes.

**MR. HISCOCK:** Was this a failure of governance to not have detailed notes and minutes?

**MS. DUNDERDALE:** No, I think it's learning –

**MR. HISCOCK:** Okay.

**MS. DUNDERDALE:** – about a different way and a better way of doing business.

**MR. HISCOCK:** All right.

Why did you allow the Cabinet, the normal Cabinet processes to be circumnavigated by Mr. Martin? Why was he given direct access, for example, to the premier's office, or why was the Cabinet committee process bypassed?

**MS. DUNDERDALE:** He wasn't –

**THE COMMISSIONER:** Sorry.

**MR. HISCOCK:** Sorry.

**THE COMMISSIONER:** So, I'm getting mindful of the time. There are certain things that you are going over now that would have already been dealt with, with this witness and others, during Phase 1. So, I'd like to try to avoid duplication as much as possible. So, I'd ask you just to bear that in mind. Some of these things have already been dealt with and I'm not sure there's a real need to go through them, unless you have another bit of evidence or some point to make.

**MR. HISCOCK:** I can move on and, Commissioner, perhaps if I'm doing that anymore, you can interrupt me and I'll continue to jump.

**THE COMMISSIONER:** Yeah, I don't want to have to interrupt you but – and I know you weren't here on Phase 1, but there are certain things that were put to these witnesses –

**MR. HISCOCK:** Yeah.

**THE COMMISSIONER:** – and I'm trying to avoid going back over Phase 1.

**MR. HISCOCK:** Absolutely. I appreciate that. I'll skip down a few questions there.

Did you leave all the senior public civil servants and all the ministers in their positions following your discovery in March 2013 that the foundation that you had believed was there for the federal loan guarantee, the sanction, that you had thought was now, conditions had been met, wasn't done so on the ground – the conditions hadn't been met?

**MS. DUNDERDALE:** One condition precedent hadn't been met.

**MR. HISCOCK:** Yeah.

And you were given incorrect legal advice along the way. I would put it to you that that's a legal matter.

**MS. DUNDERDALE:** I'm not sure any of that is true, Mr. Hiscock.

**MR. HISCOCK:** Okay.

**MS. DUNDERDALE:** But the answer to your question is no.

**MR. HISCOCK:** Everybody was left in place?

**MS. DUNDERDALE:** Yes, as I far as I can recall.

**MR. HISCOCK:** Okay.

You stated at page 8 of your interview that it was Ed Martin was the person who had briefed you, I think, in relation to this. Why was Ed Martin left in his position following that March discovery? I mean, that strikes me as just such an incredible – it was shocking to the government. It was a shocking position to find yourself in. If he was the one who led you to be there –

**MS. DUNDERDALE:** I am not sure that he was the one who led us to be there, Mr. Hiscock. Then again, I am trying to remember, but, you know, there was a firm agreement between Emera and Nalcor, as I understand it, about how they would deal with the UARB and the least cost. And whatever the UARB, was my understanding, decided was the least-cost power that was the number that Emera was going to accept from UARB and give them Muskrat Falls power at that rate. And the legal – and the agreement, which I understand was a contract between them, was how they were going to deal with any part of the price that Nalcor had set beyond what the UARB was going to accept.

So if Nalcor was selling it to them for 12 cents or 50 cents a kilowatt and the UARB would only accept 35 cents, then Emera was going to sell the power to the UARB for 35 cents, and Nalcor and Emera were going to work out together how to deal with the other 15 cents.

Now, I understand that that was a contractual piece between Emera and Nalcor. And why that wasn't acceptable, either to the Emera board or to the federal government, I am not clear at this point in time. I don't have enough recall to be able to say to you or to say to the Commissioner, this is the circumstance that I understood. But there was a binding agreement that the UARB would get the least-cost power that they identified. They would get the power from Emera at that price –

**MR. HISCOCK:** Well, yes, it was the UARB – it wasn't an agreement. The UARB just can dictate that, yes, yeah –

**MS. DUNDERDALE:** Yes, but if the UARB – if Nalcor was saying to Emera this is 50 cents –

**MR. HISCOCK:** Yes.

**MS. DUNDERDALE:** – and the UARB said we're only paying 35 cents –

**MR. HISCOCK:** Right.

**MS. DUNDERDALE:** – then Emera had agreed with Nalcor that they would sell the power to Nova Scotia at 35 cents. Then the remedy that they worked out was how they were going to deal with the 15 cents that the UARB would not include in the rate base.

**MR. HISCOCK:** Right.

**MS. DUNDERDALE:** And somehow on March – and everybody understood that that was acceptable and that was fine and we were gone with a full conditional – a non-conditional sanction. But somehow in March someone somewhere, either in – you know, in both the federal government, and maybe the federal government and Emera together – the Emera board – took exception to that, and then we were told that we had a conditional sanction. So it wasn't necessarily a cause for running out and firing people. We had to work our way through it. And eventually the UARB did accept the price that had been put forward.

**MR. HISCOCK:** Did it you concern you that even under the provisions of the 20-20 agreement – and that's the 2010 deal – that it was our province that had to pick up the tab for any cost overruns?

**MS. DUNDERDALE:** No, I mean, basically what did with Emera was do a – well, they were going to pick up some of the – if there were overruns on the Maritime Link, there were agreements in place to how that was going to be dealt with.

But, you know, essentially what we did with Emera was a power purchase agreement that we were going to sell them 20 per cent of the power.

And instead of – you know, because we could've built the link and then sold them 20 per cent of the power. But instead of having to go borrow that money and then have to earn it back (inaudible), we did a PPA with them and said here is the value of the power that you want for this length of time. Instead of doing a PPA and giving us the money, we want you to take the project and build the Maritime Link.

And they worked out all the conditions and what would happen with overruns and who would own it and when they'd own it and how much power we could put through on it. You know, effectively, we have 65 per cent control of the link; we have right to use their transmission right through into Maine and their utility in Maine. We don't have to pay a cost like we would in other jurisdictions if we're not using their transportation infrastructure, transmission infrastructure.

So, you know, it was a good deal.

**MR. HISCOCK:** And they put in 20 per cent of the capital and they got 20 per cent of the energy, right? That's what they mean –

**MS. DUNDERDALE:** Yeah.

**MR. HISCOCK:** – by the 20-20 deal. But we had to pick up the cost overruns, which means in effect they put in 10 per cent of the capital and get 20 per cent of the energy.

**MS. DUNDERDALE:** But they had to pick up the cost overruns on the Maritime Link. There was a formula worked out between them and Emera how they would deal with overruns on the Maritime Link. But essentially what we're talking about is a power purchase agreement. We're not talking about a full partnering, a full project.

**THE COMMISSIONER:** Ms. Best, did you have –?

**MS. E. BEST:** I just wanted to say, Commissioner, that I believe this question or this line of questioning was asked and answered in Phase 1.

**MR. HISCOCK:** I'm happy to move on at any rate.

Either when you were Natural Resources minister or as premier, did you check with anyone to seek assurances that Ed Martin possessed the skills and experience to undertake a \$7.4-billion project?

**MS. DUNDERDALE:** That was all done before I came to the department.

**MS. E. BEST:** Again, Commissioner, I believe this line of questioning was also asked and answered in Phase 1.

**MR. HISCOCK:** Did you check with anyone to see if he had backup at the senior levels to assist in a task as large as this one – actual construction of the project – where after sanction he is building – Nalcor has to build this project.

Did you check with anyone to see if this was the person you should have pursuing it?

**THE COMMISSIONER:** Ms. Best, I'm just going to let him ask a few more questions on this, and when he gets too far, I'll move him along. So answer the question.

**MS. DUNDERDALE:** Mr. Hiscock –

**THE COMMISSIONER:** The issue right now is a question about what checking was done with regard to the hiring of Mr. Martin to deal with this project, what backwards search was done with regard to his abilities and – so I'm just going to ask you to speak from your own perspective, what you did or what you didn't do –

**MS. DUNDERDALE:** Mr. Commissioner, I didn't have to do anything. Mr. Martin was hired long before I came to the department, became fully engaged. This was Mr. Bennett and others. And the premier of the day, Premier Williams, gave me a description of the work that he had done and his personal experience and so on and gave me assurances that we had the very best people that he could identify working for us.

**MR. HISCOCK:** So, what was your understanding of Mr. Martin's experience?

**MS. DUNDERDALE:** I knew that, you know, he had worked with Hebron, you know, was – you know, I don't have any personal experience



with Mr. Martin. And I come from a social justice background, so I work in community all of my life, so I don't know what's going on in the business community.

So when the premier of the day, who's highly engaged in business, when my colleagues throughout government and others that I speak to speak in the highest terms about the people that we've engaged in Nalcor and their personal experience with them and others who have worked with them, then I accept them at their word.

**MR. HISCOCK:** So you didn't have any knowledge at the time of Mr. Martin's actual experience outside of an oil project that he was related to? Hebron (inaudible) –

**MS. DUNDERDALE:** No, I had more – I was fully briefed by the premier at the time as to what his credentials were, what his resume was, what experience he brought to the table.

**MR. HISCOCK:** Did you understand him to have hydroelectric experience?

**MS. DUNDERDALE:** No, but I knew that he had megaproject experience, that he had been engaged – you know, I believe in transferable skills and knowledge and so on. I knew that we had Newfoundland and Labrador Hydro, who, well, may not have had megaprojects, but certainly had big hydro projects. I mean, you know, that's a highly valued corporation in this province that –

**MR. HISCOCK:** What –

**MS. DUNDERDALE:** – Newfoundlanders and Labradorians believe have a great deal of expertise.

**MR. HISCOCK:** Well, we're not – this isn't about – everybody in the province wasn't working on this. But what of Paul Harrington?

**MS. DUNDERDALE:** I didn't know Paul Harrington.

**MR. HISCOCK:** No. Did you know that the VP, Gilbert Bennett – he – I believe he's testified that he had never led a project over \$100 million before. Did you realize that when

you were instructing them to be the ones that carry this out?

**MS. DUNDERDALE:** Yes, I probably did. I can't say to you that I absolutely knew that. But I'm – you know, that wouldn't surprise me.

**MR. HISCOCK:** So, effectively, rather than checking on them though, it was – I take it your evidence, basically, that these people were already in place when you came in, they were put in place by Mr. Williams when he was premier and that given Mr. Williams experience in the business community, you accepted these would be good people to carry forward with the project.

**MS. DUNDERDALE:** Mr. Hiscock, Premier Williams was my premier. I was serving at his pleasure –

**MR. HISCOCK:** Yes.

**MS. DUNDERDALE:** – and –

**MR. HISCOCK:** But not when you were – when you're premier now, though.

**MS. DUNDERDALE:** No, when I got – you know, we're already years now into, you know – we're all – I've been working with Mr. Martin et al. four or five years by the time I become premier. You know, I went over to the portfolio, I think, in 2006, and, you know, I didn't become premier until 2011. So I –

**MR. HISCOCK:** Yes.

**MS. DUNDERDALE:** – I'm on a regular working basis with these people every day.

But, you know, when the premier of the day, who I know to have high standards, tells me these are the people we've put in place and we've checked their credentials and, you know, this is what I think of them and this is what my experience is of them so far, then I'm certainly going to take the premier at his word. I'm not going to go – you know, start checking out if the premier got it right or not.

**MR. HISCOCK:** Okay.

If – did you have any engineer with megaproject experience advising you on this project (inaudible)?

**MS. DUNDERDALE:** No, not me.

**MR. HISCOCK:** Why not? Why not hire somebody who would know that kind of stuff?

**MS. DUNDERDALE:** Because that is why we built Nalcor. It's like saying that we hire an engineer down to do something in Works and Transportation. You know, we spent billions of dollars over – you know, in eight years we spent \$8 billion, and then going out and get another engineer to check to see if what he's doing is right. I mean, you hire people and put people in place to do a specific task –

**UNIDENTIFIED MALE SPEAKER:**  
(Inaudible.)

**MS. DUNDERDALE:** – and if you don't trust in their ability to do it when you hire them, you know, there's something wrong with that that you have to hire somebody else.

**MR. HISCOCK:** I'd suggest to you that hiring people for oversight capacity is completely routine in that – in fact, you said yourself that you should have had an oversight committee in place and you suggested an oversight committee be put in place.

**MS. DUNDERDALE:** Absolutely. And, we did do the – you know, we trusted the work that they were doing, but we tested the – we tested that work on a regular basis, but there wasn't somebody over their shoulder – well, in lots of ways there were, I suppose, Commissioner, because most of the work they did had somebody from government at the table, had a public (inaudible) –

**THE COMMISSIONER:** I guess the point here that I'm sort of stewing in my mind about this whole issue is, to be quite frank, Ms. Dunderdale, is this – is that, and I think it's been said many times during this Inquiry already: As well-intentioned people may be, if they don't know what to ask about, then it's difficult to, basically, get the right answers and, really, get the whole story.

So, the question that you were just asked about whether or not you had an engineer on staff who could have been advising you or whatever, from my point of view, has little to do with the fact that you formed Nalcor. Nalcor was the one that was building this project. You were the premier or the minister of Natural Resources that was responsible for this particular project in government.

So if you don't know the questions to ask, then a lot of times what does happen, people go out to hire people. For instance, the federal government, in this particular case, went out and hired an engineer to, basically, do whatever it needed to get done, and it wasn't near what you needed to do, to oversee this particular project and to make sure that everything was in place the way it should be in place.

So I think there's a distinction to be made here that you may be missing with regards this – you know, as well-intentioned as people may be, if you don't know the questions to ask or the things to look for, then it's pretty – it might make it a little bit more difficult to actually see where – what is going on.

**MS. DUNDERDALE:** And I appreciate that, Commissioner. I understand exactly what you're saying, but at the same time, we had access to the independent engineer's information, plus we went to these other bodies who did have expertise to say: Are we on track here; are these – is this information that's been given to us, you know, is it answering these critical questions.

And I have to tell you, Commissioner, that nowhere in my whole experience with it – because this is a – this is a huge thing. Sometimes, it's easier to walk away from it than make the decision, you know. You have to take a deep breath to make the decision because it's a huge responsibility. And all the consultation that we did, regardless of what people think of it, nowhere along the way in – people who had expertise, who had all the facts that, as far as I was concerned, on the project, not one of them ever said to me: This is not a good idea, don't do it.

**THE COMMISSIONER:** See, the problem is – the problem with that, Ms. Dunderdale – and I'm sorry, Mr. Hiscock, for interjecting – is that,

as you just said, assuming that they had all the information. Well, if you don't know if they have all the information when they're giving you reports or whatever the situation is, 'cause it's been clear in this Inquiry, there's been a lot of reports, but the question is: What's being taken out of those reports? Is it just a few select sections, what is being – what is the scope of work for the report?

If you don't know those things, then you can see why people might question you as to how effective the oversight is, when you're relying on those things to give you the answers that you just said.

**MS. DUNDERDALE:** And I agree with you, Commissioner, but we only come to this information after the fact, after –

**THE COMMISSIONER:** You should have it – you know, technically – I don't want to say too much more about this – but technically, you should have the information before the fact.

We're now six years down the road. As you've said yourself, this is not the way you expected this project to go, and so we have a problem here.

**MS. DUNDERDALE:** Yes.

**THE COMMISSIONER:** So it's – might be after the fact, but hopefully we can learn some lessons for the future so that –

**MS. DUNDERDALE:** No question.

**THE COMMISSIONER:** – it doesn't happen again.

**MS. DUNDERDALE:** No question.

**THE COMMISSIONER:** And, go ahead, Mr. Hiscock.

**MR. HISCOCK:** Mr. Commissioner, I've only got about four questions, five questions left there.

Now that the project that your administration sanctioned is running over \$12 billion, and the current administration is at a complete loss as to how to mitigate the forecasting – doubling of

electricity rates, what do you have to say for your role in this debacle?

**MS. DUNDERDALE:** That I worked in good conscience, with full integrity to do, based on the information I had, what was best for the people of the province.

There was no corruption, there was – there was – my ego certainly wasn't involved, this never gets identified as my legacy, I gain nothing from Muskrat Falls, there's no person – there's not one personal benefit in it for me. I did it because I believed it was the right thing to do, and that the information we had supported the decision that we made.

**MR. HISCOCK:** You knew that those around you did not have experience with megaprojects. And you knew that neither Mr. Martin nor Mr. Gilbert had hydro experience, yet you continued to refer to them as world-class experts and you did nothing to seek advice from people with genuine expertise.

How can this be justified?

**MS. DUNDERDALE:** Now that's not true, Mr. Hiscock. MHI had expertise in building hydro projects. That's why the PUB hired them. And wherever we could find, and we thought was a good source of – and we went to Ziff, we went to Wood Mackenzie, we had all – we went to forecasters here, in UK and in the United States. Wherever we thought there was information that would assist us and inform what we were doing, we sought it out.

**MR. HISCOCK:** The independent engineer that Canada had offered them a lot of information, and it's because it was a person with specific expertise in the field. And we had nobody equivalent representing our interests as Newfoundlanders.

Do you agree with that?

**MS. DUNDERDALE:** No. We didn't, but we had access to their engineer, is my understanding. It –

**MR. HISCOCK:** Well, there's been a lot of evidence on that.

Do you feel that we ought to at – that you should have had somebody advising you, similar to the independent engineer? Somebody with a similar qualification should have been advising the premier and the minister of Natural Resources?

**MS. DUNDERDALE:** In retrospect, that is certainly something that should be considered. But at the time, that is not what I believed. If I believed that that was the correct thing to do at the time, that's exactly what I would have done.

**MR. HISCOCK:** So a lot of people are very upset by what's gone on, obviously –

**MS. DUNDERDALE:** Yeah, as am I.

**MR. HISCOCK:** – and the impact – I'm sure.

**MS. DUNDERDALE:** As am I, Mr. Hiscock.

**MR. HISCOCK:** I'm sure.

And do you think that you and other people in this province should have some sort of a recourse when it comes to the politicians who, they feel, were negligent in their duties on this?

**MS. DUNDERDALE:** No. I made an oath to act in the best interest – to the best of my ability and knowledge and skills, on behalf of the people of the province. And I kept my word and my commitment. I never faltered. And you're gonna be hard pressed, let me tell you, to get somebody to put their hand – it's hard enough to get people to put their hand up now. But that's what democracy looks like, and you don't always get it right.

But I, you know, to the best of my ability and my experience and my knowledge, I did the very best that I could do to ensure that this project was done properly.

**MR. HISCOCK:** With your significant experience in public service, how do you think that trust in the institution of government could be restored? What reforms could we have that would – or would be required if we were going to avoid repetition of these sorts of events?

**MS. DUNDERDALE:** Well, the Commission, you know, asked – has asked that question, do we have any recommendations with regard to

oversight, and, you know, I was happy to respond to that.

I'm not sure what form that it should take, but it should be – as the Auditor General is absolutely independent of the functions in government and absolutely independent from politicians. I mean, the Auditor General generally of a day knows every penny that's spent in government and he or she gets a monthly roll-up of money spent so they're always on top of the dollar on a monthly basis – on a daily basis if they want to.

They can go in and do an audit of departments at any time they like and they can bring whatever they need to it. I think somehow in government – and not just for megaprojects, projects period – that if they're – if we can – and find a mechanism, something like that, an office, something like that, where somebody is completely independent, has the funds to bring the resources to inform them in areas that they don't have expertise and has full and open access to all of the information with regard to the project.

**MR. HISCOCK:** Well we already have an Auditor General and it didn't work –

**MS. DUNDERDALE:** I'm not talking about an Auditor General –

**MR. HISCOCK:** – (inaudible).

**MS. DUNDERDALE:** – I'm saying a set-up similar to the Auditor General that's within government but is outside of government. It's not open to influence from public officials. It's not even open to influence from public officials. But has access to all of the information around projects and has the resources to get the proper analysis in areas where they don't have expertise. And then to have a reporting mechanism probably to the House of Assembly.

**MR. HISCOCK:** We know where we are now.

**MS. DUNDERDALE:** Yes.

**MR. HISCOCK:** Most of us don't want to be there. Is there an action that you seek in looking back – in retrospect, not something you would have necessarily seen at the time – is there any actions on your part that you could have taken or

could have avoided that you wish you had done so to avert this situation we're in?

**MS. DUNDERDALE:** I don't know what the specific action would be, but wishing that something different could have been done, absolutely.

**MR. HISCOCK:** But specifically, is there something that you could have done, a decision that was made that in retrospect you think: If I had done that differently this could have worked out better?

**MS. DUNDERDALE:** I can't point to a specific decision. You know, when I left we had a project that was significantly over the projected cost and we didn't know at that point if that was an anomaly or we had started a trend. You know, if I had been there for another three or four months and we'd had the rest of the bids in and we could see where we were going, whether this was a trend or one anomaly, then I could give you a different answer.

**MR. HISCOCK:** In hindsight, would you agree that the trust – the level of trust placed in Mr. Martin by yourself was not warranted.

**MS. DUNDERDALE:** I'm not sure I can answer that at this point in time. I'm going to look forward to the report of this Inquiry and – because I'm still not sure that we understand how we got to \$10.1 billion. And I would like the full story and the Commissioner's report before I draw any conclusions.

**MR. HISCOCK:** Thank you, Ms. Dunderdale.

Those are all my questions.

**MS. DUNDERDALE:** You're welcome.

**THE COMMISSIONER:** Thank you.

Edmund Martin.

**MR. SMITH:** No questions, Mr. Commissioner.

**THE COMMISSIONER:** Former Provincial Government Officials.

**MR. J. KING:** Good afternoon, Ms. Dunderdale.

Justin King, on behalf of a group of former provincial government officials between 2003 and 2015, all of whom you would be familiar with from your time in government.

So my understanding of – I only have one line of questioning in relation to the 6.5. So my understanding of your evidence this morning was that at the time of financial close you personally were aware of the change of the capital cost estimate from 6.2 to 6.5.

**MS. DUNDERDALE:** That is what I believe.

**MR. J. KING:** Okay.

And can you say with definite certainty that all Members of Cabinet were advised of this change, this increase?

**MS. DUNDERDALE:** I can tell you that if I knew, my Cabinet knew.

**MR. J. KING:** And that –

**MS. DUNDERDALE:** There's no way that I would know and not tell my Cabinet. There's no way that I would know and my minister would not know.

**MR. J. KING:** So are we speaking of Cabinet in its entirety?

**MS. DUNDERDALE:** Well, whoever was available at the time.

**MR. J. KING:** Okay.

**MS. DUNDERDALE:** I mean, certainly Cabinet would have been briefed on financial close. You know, it was such a big event for us that we had the big celebration, as I said, in the lobby.

**MR. J. KING:** Hmm.

**MS. DUNDERDALE:** So that wouldn't have been a casual sharing of information.

**MR. J. KING:** I'm assuming you've been following the evidence, and we've heard from

certain other Cabinet ministers who have testified that they were not aware of this cost increase at the time of financial close.

**MS. DUNDERDALE:** I've heard that. It – you know, it has caused me to reflect deeply on what I know and what I don't – what I think I know or I don't know. And when I am asked the question did you know, I feel compelled to say, yes, I do, because that's what I believe, but it pains me to be at odds with everybody else. I – you know, I'm – there's pieces of this that I can't make sense of. You know, our public servants knowing and not saying, that is out of character and out of practice for them.

And the number is not important. The fact that we're over 6.2 is what's important, you know. There's not an arbitrary line that public officials get to pick as to when you're going to tell us we're over the 6.2. And, you know, there's evidence that some knew or might have known – or the evidence is, you know, from certain people that they might have known. That is really hard for me to reconcile.

**MR. J. KING:** So –

**MS. DUNDERDALE:** You know, but if nobody else knew – if nobody else knew, then it's impossible for me to know.

**MR. J. KING:** So, in terms of the disclosure to Cabinet, would that have been in a Cabinet meeting that that information came across?

**MS. DUNDERDALE:** Oh, probably, because that's the most effective and efficient way –

**MR. J. KING:** Okay.

**MS. DUNDERDALE:** – to communicate.

**MR. J. KING:** So that's the type of information that would normally be conveyed or necessarily have to be conveyed in a Cabinet meeting?

**MS. DUNDERDALE:** Oh, we would do that in a Cabinet meeting. I mean, we'd be anxious to share that we had achieved financial close, you know, we were going to have a big celebration. Everybody would sign on to that, that the federal minister was coming, that Nova Scotia was coming. You know, they're all important –

**MR. J. KING:** Sorry –

**MS. DUNDERDALE:** – events.

**MR. J. KING:** – not in relation to the fact that financial close was achieved, but specifically in relation to the fact that we have now gone from 6.2 to 6.5.

**MS. DUNDERDALE:** Oh, absolutely would be in Cabinet because that would be confidential at that point.

**MR. J. KING:** Okay.

**MS. DUNDERDALE:** Because, you know, part of my recollection is, you know, we got to wait and see where we are. We – you know, we're not going to announce that we're at 6.5 and adjusting up because of bids, because we still got \$2 billion outstanding in bids and that may drive that up and be – it'd be harmful to the people of the province, so which is the greater good?

So let's just let this play out for another two or three months, see those bids come in and then, you know, we'll see where we are. And that was my understanding –

**MR. J. KING:** Okay.

**MS. DUNDERDALE:** – and, you know, whether I've come to that after the fact, I don't know how I would've, but it's my understanding that I knew all that. If I knew that, the minister knew that and we would have shared it.

**MR. J. KING:** And, again, the medium for that would have been a Cabinet meeting. So, in terms of a specific Cabinet meeting, do you remember – recall dates or times in terms of when that meeting –?

**MS. DUNDERDALE:** I can't.

**MR. J. KING:** I mean, we're in a – you know, there's a period here, November to December –

**MS. DUNDERDALE:** Yes –

**MR. J. KING:** – right?

**MS. DUNDERDALE:** – but the House is –

**MR. J. KING:** Do you recall a specific Cabinet meeting that occurred –

**MS. DUNDERDALE:** It –

**MR. J. KING:** – where that issue was discussed?

**MS. DUNDERDALE:** It would not have occurred – the one thing that I’m absolutely sure of is that I would not have been told – I was not told before there was a remedy, because it’d be like the condition precedent situation all over again. And I don’t remember that, I don’t remember anything about it.

So while I may be upset because we’re \$300 million over, you know, there’s a remedy here. And, you know, a big thing for me, if they had come and told me that number without a remedy that – without it being included in the loan guarantee, that probably meant that I would’ve had to go to the House of Assembly for a special warrant –

**MR. J. KING:** Mmm.

**MS. DUNDERDALE:** – to get money for the COREA. Because I heard Mr. Sturge say that it probably – you know, \$85 million would’ve been required the next month.

So, you know, the spectre of – even – any kind of a spectre of having to go to the House of Assembly for a special warrant would’ve made an impression on me.

**MR. J. KING:** Mmm.

So again, I mean, in terms of an actual Cabinet meeting, we have seen no evidence to suggest that this was discussed at a Cabinet meeting.

**MS. DUNDERDALE:** No.

**MR. J. KING:** Do you have any documentation or notes or correspondence to suggest that –?

**MS. DUNDERDALE:** I don’t. I didn’t pack up my – you know, as I testified in Phase 1, when I – I returned, I think, on a Monday and I left the office on a Wednesday or a Thursday. And I took my hat and coat and handbag, and the staff

packed up my office and sent to me whatever they thought was appropriate.

**MR. J. KING:** Okay.

**MS. DUNDERDALE:** I unpacked those boxes some four years later when this Inquiry was called. And the Commission notified me and said I should send any information that I had, pertaining to the project, to them –

**MR. J. KING:** So you have –

**MS. DUNDERDALE:** – which I did.

**MR. J. KING:** – no personal notes that relate to –

**MS. DUNDERDALE:** No, and I made personal notes –

**MR. J. KING:** – the Cabinet meeting when this was discussed?

**MS. DUNDERDALE:** – along the while, but, you know, I’m not a note keeper like some of our lawyer friends seem to be. Yeah, I make the notes when I get the questions answered that I was wondering about or whatever. Then, you know, when the – I just give the book to the secretary to dispose.

**MR. J. KING:** Okay. Okay.

So my final question is: Is it possible that because you were aware, you’re presuming that others were aware?

**MS. DUNDERDALE:** No, I wouldn’t – well, I can tell you this: There is no way that the minister would not have known and that his deputy would not. I didn’t take meetings with Mr. Martin alone – ever – on Muskrat Falls. Not ever.

**MR. J. KING:** And by “the minister,” who are you referring to?

**MS. DUNDERDALE:** It would’ve been Minister Dalley.

**MR. J. KING:** Okay. So do you have a specific recollection of –

**MS. DUNDERDALE:** I don't –

**MR. J. KING:** – a meeting with Minister Dalley –

**MS. DUNDERDALE:** – I don't even have –

**MR. J. KING:** – where this topic was discussed?

**MS. DUNDERDALE:** – I don't even have specific recollection of the event in the lobby. I don't.

**MR. J. KING:** Okay. Thank you.

That's all my questions.

**MS. DUNDERDALE:** You're welcome.

**THE COMMISSIONER:** Okay.

Julia Mullaley, Charles Bown.

**MR. FITZGERALD:** Commissioner, I'm probably gonna need about 20 minutes or so. I don't know – it's been an hour and a half for the witness.

**THE COMMISSIONER:** Okay.

We'll take our break now then.

**MR. FITZGERALD:** Thank you.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** Mr. Fitzgerald, when you're ready.

**MR. FITZGERALD:** Thank you, Commissioner.

I have some questions, Premier Dunderdale, regarding oversight and governance, and I – I will try not to be repetitive but it is a bit of a different angle, I would suggest Commissioner, a bit of a higher level.

But just before I get into that, the last comment you made, I believe, was that Minister Dalley would've been aware of the 6.5 number.

**MS. DUNDERDALE:** What I'm saying, Mr. Fitzgerald, was if Nalcor came to brief me –

**MR. FITZGERALD:** Yeah.

**MS. DUNDERDALE:** – then the minister, if he were in St. John's, would've been in that meeting.

**MR. FITZGERALD:** But the reason I ask is that when you – when you look at the documentation that we have here at the Commission, the names Donna Brewer and Paul Myrden are all over this issue with the COREA language and the COREA fund, and I would think it'd be more likely that Minister Marshall would be the one briefing you on 6.5 and not Minister Dalley.

**MS. DUNDERDALE:** That might be so, but I would expect that Mr. Martin would be in the room as well –

**MR. FITZGERALD:** Okay.

The other –

**MS. DUNDERDALE:** – and we would never exclude Minister Dalley –

**MR. FITZGERALD:** No, no.

**MS. DUNDERDALE:** – regardless of what the discussion was specifically about. If it had to do with Muskrat Falls, whoever was the minister of the day would be included –

**MR. FITZGERALD:** How certain –

**MS. DUNDERDALE:** – in the –

**MR. FITZGERALD:** – you are –

**MS. DUNDERDALE:** – meeting.

**MR. FITZGERALD:** – are you that this actually occurred in a Cabinet meeting?

**MS. DUNDERDALE:** Not – not certain, but I know that Cabinet would've been brought



together – we’re gonna, you know, perhaps we’ll be able to check the Cabinet schedule or what documents we issued on the day of financial close –

**MR. FITZGERALD:** Mmm.

**MS. DUNDERDALE:** – because the Cabinet would have to be –

**MR. FITZGERALD:** Well, and the reason I’m asking is because Ms. Mullaley, who was the clerk, has no memory of 6.5 at that time.

**MS. DUNDERDALE:** I – I’m – and I can’t speak to that.

**MR. FITZGERALD:** No, I understand, but I – this is – this is –

**MS. DUNDERDALE:** Yeah, I – and I –

**MR. FITZGERALD:** – the point, this is the disconnect –

**MS. DUNDERDALE:** – and I have –

**MR. FITZGERALD:** – I have here, you know?

**MS. DUNDERDALE:** – the highest respect for Ms. Mullaley. She became clerk while I was premier –

**MR. FITZGERALD:** Yeah.

And if a document does come out that shows she did know, fair enough, but based on what we have right now, she has no recollection of that number at financial close, so I just wanted to make you aware of that.

**MS. DUNDERDALE:** I – I am aware of that.

**MR. FITZGERALD:** Yeah, okay.

Commissioner, Madam Clerk, I would like to take the witness to P-01770, and this was the Commissioner’s – oh sorry not the Commissioner’s – this was the Commission’s expert report, Dr. Guy Holburn. I don’t believe it’s in your volumes.

**MS. DUNDERDALE:** No.

**MR. FITZGERALD:** (Inaudible.)

And this is entitled: “BEST PRACTICE PRINCIPLES OF CORPORATE GOVERNANCE FOR CROWN CORPORATIONS” and one of the terms of reference here, Premier Dunderdale, is whether the government employed appropriate measures to oversee the project, and with a focus on governance arrangements.

That’s what it says and, you know, and I’d like you to keep in mind the word appropriate, because it doesn’t say perfect.

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** Okay?

If we can go to page 3 of this report and paragraph 2? Thank you.

It states, “Unlike government departments, Crown corporations are designed to operate at greater arm’s length from government since it is deemed that their objectives are best implemented through a corporate model, which affords more autonomy and flexibility in operations and strategic planning. At the same time, as public sector organizations, Crown corporations are accountable to the government and are required to comply with legislated mandates, regulations, and policies.”

This would be similar to your establishment of Nalcor, wouldn’t it?

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** It’s in line with Dr. Holburn’s comment here, isn’t it?

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** If we could just go to page – bottom of page 4, top of page 5, please?

Thank you.

“In Crown corporations, corporate governance is centred on the board of directors, which is authorized through enabling legislation to oversee the corporation and its management,

based on the assumption that a board is better qualified and positioned” – positioned is a key term there, I would suggest – “to govern than the responsible Minister or senior department officials. The board of directors is accountable to the responsible Minister who acts as the representative of the shareholder ... and is responsible ‘for the oversight of a Crown corporation’s business activities and other affairs, and has the duty to act in the best interests of the corporation and to exercise due care and diligence’. Day-to-day operations are the responsibility of the ... (CEO), who is accountable to the board” of directors – sorry, “who is accountable to the board for the overall management and performance of the corporation. In fulfilling their duties, boards of directors exercise their judgement in four main areas ....”

One of these includes reporting to government, doesn’t it –

**MS. DUNDERDALE:** Yes, it does.

**MR. FITZGERALD:** – Premier Dunderdale?

Exhibit P-00431 is actually a copy of the *Energy Corporation Act* that was established. I don’t think I, necessarily, need to bring it to you, but are you aware that in that legislation that there were specific provisions of the *Corporations Act* that the government decided would be applicable to Nalcor? I’ll take you to section 4.

**MS. DUNDERDALE:** Yeah, you’re – I don’t have that kind of recall.

**MR. FITZGERALD:** No, and it’s not fair for me to ask.

If we can just scroll down, please? Section 4, I believe. Keep going. Thank you.

It says: “The *Corporations Act*, except for” – and there’s a number of sections – “... does not apply to the corporation.”

One of those sections, Minister – Premier Dunderdale – is section 203 and that section sets out the duties and obligations of the board of directors that could honestly, in good faith, and

to carry out – to exercise the care, diligence and skill that a reasonable, prudent person would exercise in comparable circumstances.

So, I guess, what I’m asking you is that when you were – when the government was establishing the *Energy Corporation Act* it had in mind, I would suggest, that the board of directors would be accountable, as any other corporate board would be accountable, to the shareholders and the people that it represents.

**MS. DUNDERDALE:** Yes, absolutely.

**MR. FITZGERALD:** Because it – the government actually turned its mind in this piece of legislation, I would suggest, Premier Dunderdale, to that fact by actually including section 203. Would you agree with me?

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** And this would be a piece of accountability, wouldn’t it?

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** The model that Dr. Holburn describes here of an independent corporation and a CEO being responsible to the board of directors. That’s very similar to what you set up, isn’t it?

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** In terms of oversight, Premier Dunderdale, it was really the duty of the Nalcor board to exercise oversight over the CEO and then for the CEO to exercise oversight over its employees, wasn’t it?

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** And that was the whole reason this was set up in that fashion.

**MS. DUNDERDALE:** Yes, it was, to get it arm’s length from government –

**MR. FITZGERALD:** Yes.

**MS. DUNDERDALE:** – to have it operate like a – you know, like a publicly traded corporation

to the degree of how it managed its business and handled its business, had the right expertise.

Our analysis, you know, was that, you know, we haven't – we hadn't, as a province, performed very well on behalf of the people of the province in terms of our deal making over the years, and it was because we didn't have the right people at the table. And it was no fault of the people we sent, you know, but when you hire a deputy minister to manage a department, you're not thinking about negotiating oil agreements or any of those other things. And we recognized that we needed that expertise.

**MR. FITZGERALD:** In terms of reporting mechanisms, you know, Dr. Holburn does mention the fact that the board is responsible for reporting; it's in his report. And I would suggest that one of those responsibilities is reporting to government, once they have information in its possession.

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** Would you agree?

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** So in terms of a structural mechanism, the onus was really on the board to ensure it had mechanisms in place to ensure it was getting accurate and timely information from the CEO and employees.

**MS. DUNDERDALE:** Yes, and that is certainly one – but we never ever felt that that relieved us of our responsibility to exercise oversight as well, especially on a project like this, and which was part of our mandate which we went to three elections on.

**MR. FITZGERALD:** If we can go to page 10 of Dr. Holburn's report, please, and it's section 3.3.4. Okay, right there, thank you. It states that – and this is Dr. Holburn: "There should be limits around the appointment of public servants to Crown corporation Boards."

It states: "Public servants and elected officials, while bringing knowledge of government priorities and processes, may inhibit effective functioning of the Board, and at times, may be in a conflicted position. Public servants may not be

– or be perceived to be – in the same position as an independent director in developing and approving corporate plans. In addition, other members of the Board may perceive that directors who are also public servants speak more authoritatively as representatives of the government. Boards with such members should develop a clear understanding of oversight conflicts, guidelines on voting eligibility, and involvement during in camera sessions."

Was – were any of these considerations considered by the government when you were establishing – when the energy corporation was being established?

**MS. DUNDERDALE:** Yes, and I remember a conversation with either my deputy or assistant deputy minister when I first came to the department and we were talking about the energy company and I think – and the new energy corporation, and that person may have been the representative on Newfoundland and Labrador Hydro –

**MR. FITZGERALD:** Yeah.

**MS. DUNDERDALE:** – and the fact now that we weren't going to have deputy ministers and so on sit on this new board. So I recall a general conversation about that.

**MR. FITZGERALD:** So that would've been a policy choice of government, correct?

**MS. DUNDERDALE:** Yes, yes.

**MR. FITZGERALD:** And the government could've made a policy choice to say, well, we're going to put a deputy minister or an ADM on the board. That could've been a policy choice.

**MS. DUNDERDALE:** Absolutely.

**MR. FITZGERALD:** And but based on the advice you were given, the government decided that it wasn't going to proceed with that policy.

**MS. DUNDERDALE:** Absolutely because that had been the practice to the best of my recall.

**MR. FITZGERALD:** And based on the model you set up, it would be your expectation, I would

suggest, and it would be the duty of the board, if there were draft reports with respect to the independent engineer talking about aggressive contingency, they would go to the board and that that would subsequently be communicated to you.

**MS. DUNDERDALE:** I would expect that the board would have full access to information within Nalcor. The CEO answers to the board.

**MR. FITZGERALD:** Exactly, and the reason I'm asking the question is because I mean we are, in this Inquiry, looking at the model, and this is the model that was chosen. So I think it's important to bring out how the model is supposed to operate in practice and what safeguards you had in there, including appointing an independent board.

The Commissioner asked you a couple of questions earlier with respect to oversight and the role that it should play, but there was nothing in the legislation preventing Nalcor's board from hiring their own consultant that could report directly to them, is there?

**MS. DUNDERDALE:** No, not that I'm aware of.

**MR. FITZGERALD:** They had a big budget; they had a lot of money –

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** – and they could've said we're hiring our own consultant, independent of Mr. Martin, independent of the project team to report to us. That was – they had the ability to do that.

**MS. DUNDERDALE:** I believe that they did. If the board had any issue –

**MR. FITZGERALD:** Mm-hmm.

**MS. DUNDERDALE:** – with the CEO or the running of Nalcor or whatever, it is certainly something they could've brought to our attention. You know, I didn't receive any representations from the board of directors.

**MR. FITZGERALD:** Well, I'm putting the question to you, Premier Dunderdale, because

obviously you were involved in creating the legislation and –

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** – managing the process, but we've heard from board members who say, well, we need some more expertise –

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** – and we need some more pay.

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** But there was really nothing in the legislation preventing them from going out and hiring their own expertise to report directly to them, wasn't there?

**MS. DUNDERDALE:** No.

**MR. FITZGERALD:** It didn't need to be a we need to pay every board member more money now for them to carry out their obligations, did it?

**MS. DUNDERDALE:** No, it didn't mean that and that's –

**MR. FITZGERALD:** No.

**MS. DUNDERDALE:** – that circumstance hasn't changed since I left government. I mean I think it's the same today as it was the day that I left, so subsequent premiers and governments, you know, haven't taken a different view than the one in the period that we're referring to.

**MR. FITZGERALD:** Now, there's been some evidence at the Inquiry about a lack of flow of information from the PMT, project management team, to Mr. Martin to the board. And, ultimately, the responsibility for having the mechanism in place to ensure that flows forward is with the board, isn't it –

**MS. DUNDERDALE:** Yes, it –

**MR. FITZGERALD:** – according to your model.

**MS. DUNDERDALE:** Yes, it is.

**MR. FITZGERALD:** Did you see the testimony of Mr. Sturge?

**MS. DUNDERDALE:** I saw some of it, a substantial amount of it.

**MR. FITZGERALD:** Okay.

Exhibit P-02531, please, and we'll need P-02533. Thank you.

I don't intend to take you through this. I'm almost done, actually, Commissioner, I just have a couple of other questions.

And, you know, I want you to think about structure and board governance and, ultimately, what is government supposed to do in these certain situations. Exhibit P-02531 is a board briefing deck that was sent to Mr. Martin and it did include – and Mr. Learmonth will correct me if I'm wrong – a \$6.5-billion number in a slide. It subsequently gets removed and it doesn't go to the board and this is on November 13, 2013.

So the board is not being kept in the loop there in terms of you have two senior people at Nalcor removing slides that should be going to the board. You would agree they should know that information.

**MS. DUNDERDALE:** They should know the information. Whether they get it through a slide or some other method –

**MR. FITZGERALD:** I accept that.

**MS. DUNDERDALE:** – is not particular to me –

**MR. FITZGERALD:** I agree.

**MS. DUNDERDALE:** – but the board should know.

**MR. FITZGERALD:** That's right. I accept that but the evidence we do have is that the slides were removed.

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** And, I guess, in terms of the public servants trying to get information from Nalcor, if this is the type of conduct that's

going on at the corporate level of Nalcor, I mean what is the government and public service supposed to do to ensure they're getting accurate information?

**MS. DUNDERDALE:** It's a good question. I mean, the only answer I can give to you is that they could directly question Mr. Martin.

**MR. FITZGERALD:** The board could.

**MS. DUNDERDALE:** And public servants could, too. Because when Mr. Martin came to brief me and we had our meetings, you know, deputy ministers were there; ministers were there. And whatever question they wanted to ask Mr. Martin in that meeting, they could.

**MR. FITZGERALD:** Oh yeah, but –

**MS. DUNDERDALE:** And they could ask him external to meetings where we were.

**MR. FITZGERALD:** But realistically, we're here now, November 13; there's \$300 million.

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** You can do a lot with \$300 million as a premier, I would suggest.

**MS. DUNDERDALE:** Yes.

**MR. FITZGERALD:** Yes, you could.

**MS. DUNDERDALE:** Yeah.

**MR. FITZGERALD:** And, you know, really should the onus be on the CEO and the CFO to inform the board in writing – here is the \$6.5 billion number; we're dealing with \$300 million – as opposed to putting the onus on the public service to say –

**MS. DUNDERDALE:** I agree.

**MR. FITZGERALD:** – any chance there's a new number. Really, when you think about it, who has the obligation here? The statutory obligation is on the board and the company, isn't it?

**MS. DUNDERDALE:** I agree.

**MR. FITZGERALD:** Yeah.

And the model that your government created in terms of Nalcor and, I guess, the reporting structures therein and, as well, the duties as they were placed upon the board, that did not envision any formal role for the public service, did it?

**MS. DUNDERDALE:** No.

**MR. FITZGERALD:** And the reason for that, as we said, was because there needed to be some independence.

**MS. DUNDERDALE:** Yes.

And the CEO and the chair of the board – you know, there were mechanisms put – reporting mechanisms put in place.

**MR. FITZGERALD:** Mm-hmm.

**MS. DUNDERDALE:** You know, they had the final report with the House of Assembly annually. They had to have an annual general meeting, you know, provide their audits, all of those kinds of things, and they had to be open and available to the people of the province who wanted to attend to ask questions and so on.

You know, in terms of this project though, I mean, we had – you know, it wouldn't be right for me to say the onus lay completely. We had a vested interest –

**MR. FITZGERALD:** Absolutely.

**MS. DUNDERDALE:** – I mean, given the fact that we have written a commitment letter. And so there – you know, the CEO and the board, it was incumbent on them to keep us informed as well.

**MR. FITZGERALD:** Absolutely.

As I began my questioning of you today, you know, I mentioned the fact that, you know, oversight doesn't need to be perfect and none of us need to be here. But do you feel that your oversight and your – the model that was created, which is similar to what Dr. Holburn talked about, was appropriate in the circumstances at the time?

**MS. DUNDERDALE:** We were –

**MR. FITZGERALD:** You can always look back, but at the time.

**MS. DUNDERDALE:** We were doing the best we could –

**MR. FITZGERALD:** Yeah.

**MS. DUNDERDALE:** – at the time, and we thought – it was certainly more than had ever been done. And as I said earlier in my testimony, we went out and we got consultants and we got experts who reviewed what was going on in state-owned energy companies around the world and came back to us with advice on how to structure this company and the different reporting mechanisms and all of the issues that we've discussed here today.

So, you know, we understood that we were getting very good advice.

**MR. FITZGERALD:** Given the roles that are set out in the model and in – particularly in the *Corporations Act* and the duties upon directors, do you feel on any level that you've been let down by the board of directors of Nalcor in relation to how their management of Mr. Martin and the employees was carried out?

**MS. DUNDERDALE:** I can't say that. I can't say that.

You know, they had their issues. There's no doubt about it. And when I found out about them, you know, I worked hard to get enough people on that board to properly share the load.

**MR. FITZGERALD:** Well, I was more talking about, Premier Dunderdale, the information flow, now that we know the way the information was flowing. And it's not just the 6.5 number. There was information on risk that was kept back; there was information on other items.

I mean, this is – in part, it's part of your legacy. I mean, it was your government. Do you feel somehow let down the way this information flow flowed from Mr. Martin up to the board? I mean, the board had an obligation here, and did you feel let down by that?

**MS. DUNDERDALE:** There's a number of areas where I'm not happy with the flow –

**MR. FITZGERALD:** Yeah.

**MS. DUNDERDALE:** – of information.

**MR. FITZGERALD:** Thank you very much.

**MS. DUNDERDALE:** You're very welcome, Sir.

**THE COMMISSIONER:** Robert Thompson.

**MR. RYAN:** Commissioner, if I can interrupt, I have a flight today at 6, and I've canvassed it with Mr. Coffey and Mr. Hogan, but I was wondering, if you're amenable, if I could skip ahead –

**THE COMMISSIONER:** Certainly.

**MR. RYAN:** – in line just to get my questioning over with?

**THE COMMISSIONER:** Sure.

So, NunatuKavut.

**MR. RYAN:** Good afternoon, Ms. Dunderdale.

My name is Victor Ryan. I'm counsel for NunatuKavut Community Council.

I just have a few quick questions for you. They're with respect to the Joint Review Panel, which we discussed in Phase 1, and specifically the Government of Newfoundland and Labrador's response to the Joint Review Panel recommendations.

Madam Clerk, the response is at P-00051.

And so if you'll recall, we talked about this in Phase 1. This document is the provincial government's response to the Joint Review Panel recommendations. There were a number of recommendations made sort of within the purview of Nalcor, within the purview of the provincial government, within the purview of the federal government.

And there are a number of instances in this document where the Province of Newfoundland

and Labrador accepts a JRP recommendation and says either: yes, we will do that; yes, we will do that in concert with Nalcor and the federal government; or we will do our best to help. And I'd just like to go through those quickly and see if you can recall, from your time as premier – I believe it would cover just your time as premier, maybe the tail end of your time as minister – whether you remember anything coming up either mentioned to you or mentioned in Cabinet about these recommendations.

So the first one, Madam Clerk, is page 10, and it's this one, No. 21, the Wetland compensation plan. And so the JRP recommended that Nalcor develop a detailed Wetland compensation plan in consultation with the federal and provincial government, and the – Newfoundland and Labrador's response was that they accept this recommendation: We will develop and implement a detailed Wetland Compensation Plan.

Do you have any recollection of that compensation plan being completed or implemented?

**MS. DUNDERDALE:** No, I can't say that I do.

**MR. RYAN:** Yeah.

And again on page 10, it's number 22, the Riparian Compensation Plan. So same circumstances, detail and implement a riparian compensation plan between Nalcor and the provincial government and the federal government. Do you have any recollection of this being brought up or being completed in your time as premier?

**MS. DUNDERDALE:** I don't recall.

**MR. RYAN:** Yeah.

Page 11, Madam Clerk.

Sorry, Madam Clerk, yeah, just up a little bit. Yeah, this is good.

And so here you'll see sort of in the middle of the screen, Ms. Dunderdale, it says: "Recovery document development and critical habitat identification is a complex process which, under provincial legislation, requires the formation of a

recovery team.” They’re talking about the JRPs recommendation to – yes, there you go – to create strategies around endangered species and species at risk.

So do you have any recollection of a recovery team being created or being administered to handle endangered species, species at risk?

**MS. DUNDERDALE:** I don’t recall. You know, I – if we had – you know, when we accepted all of these recommendations, the various departments would have been tasked to deal with the ones that were appropriate. And I would have expected that they were being worked on as per the commitment in the response.

**MR. RYAN:** Right.

**MS. DUNDERDALE:** But I don’t recall details of implementation.

**MR. RYAN:** Okay.

Is it – well, I just have a few more –

**MS. DUNDERDALE:** Sure.

**MR. RYAN:** – and just – there are not many government officials that are being called in Phase 2, and I just really want to get a sense of whether any of these responses and their implementation were brought to your attention. Not saying that they didn’t happen, just wondering if they ever came across your desk?

**MS. DUNDERDALE:** I may not be much help to you but I’m prepared to do my best here.

**MR. RYAN:** That’s fine.

Page 19, Madam Clerk, so there’s a recommendation about “**Naming Project-Related Features**.” And so there’s a recommendation that the Government of Newfoundland and Labrador develop a formal approach to naming project-related features in concert with local and Indigenous communities.

Do you recall anything about that being brought up in your time as premier?

**MS. DUNDERDALE:** It may have been but I can’t confirm or discount it.

**MR. RYAN:** That’s fine, just no recollection.

**MS. DUNDERDALE:** No.

**MR. RYAN:** Page 21, Madam Clerk. Recommendation 49, so just a little bit below – or sorry, keep going down, please.

Okay, I might not have that page reference correct but there was a recommendation to continue the Labrador Aboriginal Training Partnership –

**MS. DUNDERDALE:** Yes.

**MR. RYAN:** – beyond –

**MS. DUNDERDALE:** I do remember that.

**MR. RYAN:** Okay and do you recall whether that partnership was continued past the release of the project from environment assessment?

**MS. DUNDERDALE:** I don’t recall but I remember lots of conversations around it and how important it was, the importance of that work to make sure that we were doing everything we could to help work with Indigenous people so that they could take advantage of opportunities on the project.

**MR. RYAN:** Do you recall if those conversations are pre-environmental assessment or post-environmental assessment?

**MS. DUNDERDALE:** It’s something that would have run through all of that.

**MR. RYAN:** Okay.

Page 24, Madam Clerk, and I’m looking for – oops, sorry, Madam Clerk, it was the top, sort of where we were. Yeah.

So maybe if we ... yeah, so there’s the Recommendation 13.2, it’s “**Social Effects Needs Assessment and Outreach**.” So the JRP recommended that the provincial government undertake a social effects needs assessment, sort of poll the members of the community, see what sort of social impacts this project might have.



And the government's response was that they accepted the intent of the recommendation and that they'd be happy to participate, but it wouldn't be appropriate for the provincial government to do it on its own. The government would be happy to partner with their research institution, our university or an Indigenous group to do this.

So do you have any recollection of this?

**MS. DUNDERDALE:** I don't.

**MR. RYAN:** No. Okay.

**MS. DUNDERDALE:** I remember the discussion –

**MR. RYAN:** Right.

**MS. DUNDERDALE:** – around the importance of it, but what action was taken, I can't recall, if any.

**MR. RYAN:** Yeah.

And just one more – page 25, Madam Clerk, and it's a recommendation – yeah: "Capacity agreement with Happy Valley-Goose Bay."

And so the JRP recommended that both Nalcor and the provincial government negotiate a capacity agreement with Happy Valley-Goose Bay to provide financial assistance for the strain on public infrastructure and public monies that the town might be expected to bear. And that the Government of Newfoundland and Labrador accepted the intent and that they said they'd work with Nalcor and the Town of Happy Valley-Goose Bay to negotiate such an agreement.

Do you recall any conversations about that agreement?

**MS. DUNDERDALE:** I remember the conversations. I can remember having a discussion around these issues, but I wouldn't be able to tell you what actions were taken.

**MR. RYAN:** Whether it actually was –

**MS. DUNDERDALE:** But I certainly –

**MR. RYAN:** – signed or not.

**MS. DUNDERDALE:** – do remember –

**MR. RYAN:** Okay.

**MS. DUNDERDALE:** – the conversation.

**MR. RYAN:** So you can't recollect whether an agreement was finalized or ratified?

**MS. DUNDERDALE:** I couldn't address that for you, but I know there were more than one discussion around this issue.

**MR. RYAN:** Okay.

And I just have one other question. It's not to do with the provincial government's response to the JRP; it's about the issue of Nalcor's injunctions on the Muskrat Falls site.

And so, in your tenure as premier, I believe it covers – you might have become premier just shortly afterwards, but for most of your tenure was covered by an injunction that Nalcor sought and was awarded on the Muskrat Falls site, and which several protestors violated and which NunatuKavut challenged in court. And the argument challenging that injunction was heard in the Court of Appeal shortly before you resigned as premier and the decision came out about a year later.

So I don't intend to ask you about the ultimate Court of Appeal decision, but do you recall any conversations in your government about this injunction, or was it considered sort of this is Nalcor's issue, we're leaving Nalcor to deal with it?

**MS. DUNDERDALE:** I would've been aware of the injunction. I can't recall all the discussion around it, but I certainly would've been aware.

**MR. RYAN:** Yeah.

**MS. DUNDERDALE:** And, you know, we – in the news conference that I referenced this morning that I brought up on Google on the weekend, at the tail end of that scrum after – it wasn't a news conference, it was a scrum after financial close celebration, one of the reporters asked me a question around Indigenous claims, and, you know, I acknowledged in that how – that I understood that it was very frustrating for

groups like NunatuKavut, but we were caught in a process of which we had no control until the federal government made the decision.

There wasn't a great deal that we could do. We had the duty to consult. We did that to the degree that – the high standard that was put to us. And, you know, until the federal government made a ruling, we were caught within the process in much the same way that NunatuKavut was.

**MR. RYAN:** Were those questions in that scrum that you just referenced, were they general questions about Indigenous land claims in the area, or can you recall –

**MS. DUNDERDALE:** Yes, at about –

**MR. RYAN:** – if they were specific to protests on the site?

**MS. DUNDERDALE:** I don't think it was about protests on the site.

**MR. RYAN:** Just (inaudible).

**MS. DUNDERDALE:** Here we are at financial close –

**MR. RYAN:** Right.

**MS. DUNDERDALE:** – you know, there's a big issue with Indigenous groups in Labrador, you know, what do you have to say to them.

**MR. RYAN:** Right.

Can you say, now, thinking back, whether you considered the injunction and the court challenges to the injunction to be an issue in which government had a role to play, or did you consider it to just be a Nalcor issue?

**MS. DUNDERDALE:** I – you know, it's an issue that concerned all of us, so it certainly wasn't just a Nalcor issue. But, again, we were in a process where particular claims had not been recognized, and until they were recognized, you know, there weren't special privileges or rights assigned. And to that degree, we were all under the rule of law that applied to us.

So, you know, as I said, Indigenous groups, who hadn't had a claim recognized, were caught in a process, but we were caught in the same process because we couldn't assign rights, we couldn't diminish rights. And I say in that's wrong, that if somewhere down the line, the federal government recognizes status for any Indigenous group that doesn't have it right now, you know, we're going to have to back up and come back here and do a renegotiation, and so on, around this project. But until that happens, we're caught just the same as the Indigenous groups are.

**MR. RYAN:** Okay.

Thank you very much, Ms. Dunderdale.

**MS. DUNDERDALE:** You're very welcome.

**MR. RYAN:** Those are my questions.

Thank you, Commissioner.

**THE COMMISSIONER:** Thank you.

Robert Thompson.

**MR. COFFEY:** Good afternoon, Ms. Dunderdale.

**MS. DUNDERDALE:** Mr. Coffey.

**MR. COFFEY:** Bernard Coffey. I, of course, represent Mr. Thompson.

If I could, please – I have, really, three, possibly four, areas I'm going to touch – canvas with you. The first is the area of the sanction. I remember you were asked at some length about sanction when Mr. Learmonth covered it with you, and how the federal loan guarantee played into that and so on.

Ms. Dunderdale, I appreciate you're not a lawyer, but are you aware of any actual legal definition anywhere in this whole affair of what sanction would be? An actual legal definition somewhere that's spelled out?

**MS. DUNDERDALE:** No, I wouldn't know the legal definition.

**MR. COFFEY:** Okay.

Now, in relation to this, if we could bring up please Exhibit P-00067. And if we could go – sorry, I’ll just bring up my own here. Just a moment please – oh, yes. And if we could go to, please, to page 22. Ms. Dunderdale, you will recall this. This document – you referred to it, I believe, in Phase 1.

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** And this is the one – well, it’s titled – it’s a Cabinet paper; it’s titled, Sanction Decision on the Muskrat Falls Project. It’s – somebody’s handwritten on the top right-hand corner December 6, 2012. And as you pointed out in Phase 1 of the Inquiry, this contains the signatures of everybody in Cabinet at the time. So this was the (inaudible) – this was the time where, as – the issue is whether to sanction the Muskrat Falls Project at this time. And there’s a recommendation there that that occur, in number 1. And that was done, wasn’t it?

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** And, you know, and I’m not gonna take you through (inaudible) everything that’s there. There is a reference in this just – if one – the Commissioner will in due course – I’ll just take you to page 28, please, in particular. And you’ll see there that heading in italics on the top left-hand side: *Federal Loan Guarantee*. So, you know, this is – there’s a couple paragraphs there dealing with that. And this is, I take it, what you would have been relying upon in terms of the federal loan? Would – you know, in sanction and –

**MS. DUNDERDALE:** Yes, and –

**MR. COFFEY:** – the status of the federal loan guarantee.

**MS. DUNDERDALE:** – briefings that went along with that.

**MR. COFFEY:** Briefings, sure.

And it’s pointed – it points out – the last sentence in the second paragraph says: “The FLG is contingent on sanction of both Muskrat Falls and the Maritime Link project,” right?

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** Okay, so that’s December 6, 2012.

And if we – shall we just go to – we go to the page 43. This is the MC that actually implements the Cabinet’s decision at the time, and number one: “Approval was given to Nalcor Energy to sanction and proceed with the development of the Muskrat Falls Projects,” and it goes on from there.

Now, if we could bring up, please, Exhibit P-00066.

Ms. Dunderdale, this is an Executive Council Natural Resources December 17, 2012 media release. It’s entitled: Government of Newfoundland and Labrador Announces Sanction of the Muskrat Falls Development. In fact, this is the media release, and if you scroll down a bit please, to the bottom there, keep going and, keep going – yes, you’ll notice there at the very bottom of the page is “2012 12 17 6:10 p.m.” is the release time.

So this is the day that that reception you’ve been speaking about occurred in the Confederation Building lobby.

**MS. DUNDERDALE:** One of two.

**MR. COFFEY:** One of two, but that’s –

**MS. DUNDERDALE:** There was two; one at sanction and one at financial close.

**MR. COFFEY:** Yes.

I’m sorry, no I apologize, I said there was a – and there may have been one that day, too, I –

**MS. DUNDERDALE:** There was.

**MR. COFFEY:** Okay, fair – (inaudible), good.

Now, so at the time, having Cabinet approve of this on December 6, and then there’s this public announcement on December 17 of 2012, it’s certainly your thought at the time that the matter had been sanctioned.

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** Okay.

And you'll notice, as well, if we could just go back to page – actually (inaudible) go up a bit on this page please; keep going up. I'm sorry, not up there. If you go – if we go back to Exhibit P-00067, and you'll notice there on page 43 of that, Ms. Dunderdale, it says: "Approval was given to Nalcor Energy to sanction," isn't it? It's Nalcor that's actually – however, you know, one might phrase it, but the MC actually refers to that.

Now, if we can go, please, to Exhibit P-01675. Now, this is an exhibit that I understand it was – entered the Inquiry either at the very end of Phase 1 or the beginning of Phase 2. It's kind of on the border there. I haven't checked to see which. But this reads – it's on Emera letterhead and it says: Emera Inc. Approves Sanction of the Maritime Link Project. Company release: December 17, 2012, 16:25 hours.

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** Let's look at the first paragraph: "Emera Inc. ... is pleased to announce sanction of the Maritime Link, an energy transmission project that will link the provinces of Newfoundland and Labrador and Nova Scotia for the very first time." And it goes on, the second paragraph begins: "The Sanction Agreement entered into today will enable Emera and Nalcor to move forward ...."

So, was it your understanding that there was actually a sanction agreement? An actual agreement, you know, or do you have any recollection of that?

**MS. DUNDERDALE:** I can't – I assume there was an agreement, because we had to – the sanction agreement would inform the federal government of the commitments of Nalcor and Emera. So, some kind of documentation, whether you refer to it as a sanction agreement or not, there may have been an actual agreement – I can't recall. But it is certainly written down somewhere what the sanction agreement is, what Nalcor and Emera are going to do and the conditions precedent would come out of that, because they would have had to demonstrate through the process from sanction to financial close that they could deliver what they had put before the federal government to qualify for the loan guarantee.

**MR. COFFEY:** Okay.

So if we can go, please, to Exhibit P-01304. Now, this is an email – well, it's a couple of emails, but there is an email from – if you look further down the page, at 11:11 a.m. on December 18, 2012, which is the following day, and it is from Jerome Kennedy to Charles Bown and Heather MacLean. And the subject is: Is Sanction agreement released? And Mr. Kennedy asked: "Are you going to have time to summarize, as you did with FLG?"

"I am not real comfortable with the Financing bill." And it goes on from there.

And then above that, Ms. MacLean responds at 11:18 a.m. to Mr. Kennedy and Mr. Bown. She says: Sanction agreement released last night. Caucus briefed this a.m. by Derrick Sturge. Opposition and media being briefed right now on Nalcor/Emera agreement. I will check on summary of agreement.

So, that certainly suggests here that Mr. Kennedy and Ms. MacLean understood that there was a sanction agreement –

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** – as you understood.

**MS. DUNDERDALE:** Yes

**MR. COFFEY:** I hesitate to, and I'm not expecting you to answer the question, Ms. Dunderdale, but is that sanction agreement actually an exhibit? I just pose the question. I've searched the –

**UNIDENTIFIED MALE SPEAKER:**  
(Inaudible.)

**MR. COFFEY:** – (inaudible), I just – it doesn't come up in the database I have.

If we could go, please, to – down where the second topic I'm gonna take you to – is the independent engineer's reports, we've spent some time on that. And if we could go, please, to Exhibit P-02172.

Now this, Ms. Dunderdale, is an email from – these are people at Nalcor – from Mr. Meaney to

Mr. Clarke on June 14, 2013, and he's asking that copies be printed. And there is evidence before the Inquiry that there was a briefing for certain people, including particularly your then-deputy minister of Finance, Ms. Skinner, Laurie Skinner.

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** And if we go to the second page, please. This is – you will see here: Lower Churchill Project Governance & Controls Overview June 14, 2013, and this is a deck, a presentation, PowerPoint deck that goes on for more than 80 slides, okay.

So, it's not suggestion you were there, but some people from government went over and were briefed.

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** And, the independent engineers is dealt with in this –

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** – (inaudible) the fact that the independent engineer was engaged and so on.

Now Donna Brewer replaced Ms. Skinner in 2013. I'm gonna suggest to you that Ms. Brewer began as deputy minister of Finance on June 20, 2013.

**MS. DUNDERDALE:** If you say so –

**MR. COFFEY:** Okay, (inaudible).

**MS. DUNDERDALE:** – Mr. Coffey.

**MR. COFFEY:** So if I'm correct on that, and that would suggest if the media – government's media release is correct, that means six days after Ms. Skinner was briefed in detail on this, she was gone, okay, replaced by Ms. Brewer.

If we could bring up, please, Exhibit P-02174.

Now, again, Ms. Dunderdale, this is an email from Mr. James Meaney to Paul Morris, who, I understand, was an assistant deputy minister of Natural Resources –

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** – at the time. It's to Rob McGrath, who, I understand, was a director in Natural Resources planning at the time, and to Todd Stanley, who would have been a government lawyer, heavily involved in this. And you'll notice attachments are: Fully-executed IE Contract (MWH), Independent Engineer RFP SOW – scope of work – (with Highlights), and Executed IE Reliance Agreement.

You see those?

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** And in this –

**MS. DUNDERDALE:** (Inaudible.)

**MR. COFFEY:** – could scroll down the page a bit, please. Right there.

'Cause you were – you've been asked about, you know, the government getting the IE reports, okay. And here is what Mr. Meaney told one of your assistant deputy ministers, okay: "You will also see I have highlighted different sections of the IE SOW that outline the types of reporting the MWH will provide to Canada, both in Phase 1 (prior to Financial Close) and Phase 2 (Construction Period) of it's engagement. As we have indicated, while the IE will be producing these reports for Canada, Nalcor as project owner (and NL as our sole shareholder) will also be able to receive copies."

So, is – would that suggest – and I'm not suggesting this was brought to your attention at the time, but in late June of 2013, somebody at Nalcor had told the assistant deputy minister of Natural Resources, a director of Natural Resources, and a Justice Department lawyer, who apparently is most involved in this, that the Government of Newfoundland and Labrador would have access to the IE reports.

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** That's what that seemingly says.

**MS. DUNDERDALE:** Yes, that's what he says.

**MR. COFFEY:** And, finally – two things, really. You have been asked about (inaudible) recording things in meetings. If you look around the room right now, you'll see, from time to time, people taking notes or not taking notes. Right?

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** Now, of course, we have the advantage here that this is all being taped.

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** And it will be transcribed in due course. But, that doesn't exist in the Confederation Building, does it?

**MS. DUNDERDALE:** No, it doesn't.

**MR. COFFEY:** There's no, kind of, tape system that, kind of, continuously records what's going on in meetings or anything like that. There isn't, is there?

**MS. DUNDERDALE:** Not that I'm aware –

**MR. COFFEY:** Not that you're aware of? No.

**MS. DUNDERDALE:** Not that I'm –

**MR. COFFEY:** No.

**MS. DUNDERDALE:** – aware of, no.

**MR. COFFEY:** And, if there are notes being taken at meetings, and you said, in fact, at times you took notes yourself. You've taken them for your own purposes –

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** – you might or might not keep them, depending upon whether they were kind of, just kind of transitory.

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** If they were transitory, you'd get rid of them –

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** – have them shredded, or whatever. If it was necessary in a meeting, because of the type of meeting there was, that there'd be minutes kept, then, presumably, minutes would be kept?

**MS. DUNDERDALE:** There were.

**MR. COFFEY:** Yes.

**MS. DUNDERDALE:** Like at Treasury Board, for example.

**MR. COFFEY:** Yes, for example. And, in fact, are they approved of, afterward?

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** Yeah, they're subsequently –

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** – they're gone, they're distributed and reviewed by everybody, and then they vote on whether or not to adopt them?

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** So, that – I'm gonna suggest to you that the way, for government employees, generally, things work – and – would be that they would keep minutes for their own purposes –

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** – and, depending upon what the purpose was and, perhaps, the significance of what it was they're noting, to them and their job function, they might or might not retain them.

**MS. DUNDERDALE:** That's right.

**MR. COFFEY:** You wouldn't see anything remarkable about the fact everyone wasn't noting everything continuously?

**MS. DUNDERDALE:** No, I –

**MR. COFFEY:** You wouldn't?

**MS. DUNDERDALE:** – it was not my experience that –

**MR. COFFEY:** No, no.

**MS. DUNDERDALE:** – government worked that way. For information we were – when we required a record –

**MR. COFFEY:** Yes.

**MS. DUNDERDALE:** – or information from public servants on what had occurred to date, we asked for an information note, a briefing note –

**MR. COFFEY:** Yes.

**MS. DUNDERDALE:** – or a decision note when whatever information they had gathered in whatever was their practice was put together in that kind of a format and presented –

**MR. COFFEY:** Yeah.

**MS. DUNDERDALE:** – at a meeting or in – you know, would be sent up to me. I might ask for an information note on what's progressed, what's happened and so on, and it would come to me like an information note.

**MR. COFFEY:** Yes, a note. And that's a briefing, sort of, document.

**MS. DUNDERDALE:** It's just that it's a briefing –

**MR. COFFEY:** Yes.

**MS. DUNDERDALE:** – document. Tells me clearly –

**MR. COFFEY:** And you –

**MS. DUNDERDALE:** – what's taken place here.

**MR. COFFEY:** Yeah. And, for example, in then reviewing it, you'd read it.

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** You might or might not make your own notes on it –

**MS. DUNDERDALE:** I might.

**MR. COFFEY:** – at the time.

**MS. DUNDERDALE:** I might, for –

**MR. COFFEY:** You might or might not.

**MS. DUNDERDALE:** – reference –

**MR. COFFEY:** Yes.

**MS. DUNDERDALE:** – with the meeting with the clerk, for example.

**MR. COFFEY:** If the briefing note then was being used at a meeting where a verbal briefing was going on, you might or might not make notes on that.

**MS. DUNDERDALE:** Yes, and actually –

**MR. COFFEY:** The slide decks in the same way –

**MS. DUNDERDALE:** Yes.

**MR. COFFEY:** – we've seen those.

**MS. DUNDERDALE:** And often the clerk – we had daily briefings.

**MR. COFFEY:** Yes.

**MS. DUNDERDALE:** And when the clerk would come to brief me, he might have a number of those notes.

**MR. COFFEY:** The briefing notes.

**MS. DUNDERDALE:** Information notes –

**MR. COFFEY:** Yeah.

**MS. DUNDERDALE:** – briefing notes and decision notes that he would go over with me.

**MR. COFFEY:** And in terms of information notes and briefing notes and decision notes, they're logged in some kind of registry, aren't they? There's some –

**MS. DUNDERDALE:** Yes, they are.

**MR. COFFEY:** They're kept track of?

**MS. DUNDERDALE:** Yes, they are. It's my understanding they are.

**MR. COFFEY:** Thank you very much, Commissioner.

**THE COMMISSIONER:** Thank you.

**MR. COFFEY:** Thank you.

**MS. DUNDERDALE:** Thank you.

**THE COMMISSIONER:** Consumer Advocate.

**MR. HOGAN:** Good afternoon. It's almost good evening, Ms. Dunderdale.

**MS. DUNDERDALE:** (Inaudible.)

**MR. HOGAN:** John Hogan, counsel for the Consumer Advocate.

So I'm going to go to – right to March, that March timeline when you found out there was issues with the federal loan guarantee. And you talked about – to Mr. Hiscock – the arms of government had different opinions.

**MS. DUNDERDALE:** It was the federal government. I don't have clear –

**MR. HOGAN:** No, I understand that.

**MS. DUNDERDALE:** – recall on it, Mr. Hogan.

**MR. HOGAN:** My question is then if – do you recall anyone in particular at the federal government who raised this as a new issue to you?

**MS. DUNDERDALE:** They didn't raise to me –

**MR. HOGAN:** Okay.

**MS. DUNDERDALE:** – Mr. Hiscock –

**MR. HOGAN:** To (inaudible) –

**MS. DUNDERDALE:** – Mr. Hogan. I – Mr. Martin came over to brief us. We gathered in the boardroom, and he told us there was an issue around that.

**MR. HOGAN:** So the first time you heard of it was from Mr. Martin.

**MS. DUNDERDALE:** Yes.

**MR. HOGAN:** Okay. And do you know – we can ask Mr. Martin, obviously – but do you know who at the federal government or how Mr. Martin –

**MS. DUNDERDALE:** No, I don't know.

**MR. HOGAN:** Okay.

You have no idea or no recollection of what department, what people or any individuals within the federal department who had changed their opinion in your view and in Nalcor's view on sanction versus conditional sanction?

**MS. DUNDERDALE:** I don't know.

**MR. HOGAN:** Okay.

And we can ask Mr. Martin, obviously, if he's the one that brings the news to you.

I know your reaction was you're upset. Now, you're the premier. Do you reach out to anyone at the federal government after this point in time? Do you pick up the phone and call anyone at the federal government?

**MS. DUNDERDALE:** No, because I've been told that Emera and Nalcor are working together with the federal government to resolve the issue.

**MR. HOGAN:** Okay.

So you – okay. You were comfortable with that at that point in time?

**MS. DUNDERDALE:** Yes.

**MR. HOGAN:** You didn't feel like there's anything you could do or needed to do in terms of –

**MS. DUNDERDALE:** No.

**MR. HOGAN:** – calling the minister of the federal Crown or anything like that?

**MS. DUNDERDALE:** The issue were – had to be resolved at that level.

**MR. HOGAN:** Yes.



**MS. DUNDERDALE:** And while I recall officials being at the table while they were working through the issue, we didn't engage with the federal government or directly with Emera.

**MR. HOGAN:** Okay. Now, I'm just – why wouldn't you or the government deal with the issue? Because it sounds like, to me, it was an interpretation that the federal government had regarding the loan guarantee. I mean, there's – surely there could have been someone at government that picked up the phone or wrote a letter or tried to work through those issues as opposed to leaving it to Nalcor.

**MS. DUNDERDALE:** No, because the two companies had to come to the agreement. If there were – as far as I understand, there weren't any issues at Nalcor, but my recall is there were some issues within Emera. So that had to be worked out at that level. They had to find a solution that was acceptable to Nalcor and Emera and acceptable to the federal government. So that was a negotiation that they had to do. So we wouldn't –

**MR. HOGAN:** You –

**MS. DUNDERDALE:** – put ourselves in the middle of that.

**MR. HOGAN:** Okay.

You did talk about, I guess, remedies that were in place in the event that there was issues with this. Are you talking about written agreements that were in place between Emera and Nalcor?

**MS. DUNDERDALE:** I can't swear to it, but my recall is there were written agreements –

**MR. HOGAN:** Okay.

**MS. DUNDERDALE:** – with regard to it.

**MR. HOGAN:** So that's what you recall. And do you recall whether these agreements were part of sanction agreements or were these agreements – were these side agreements?

**MS. DUNDERDALE:** I can't tell you one way or the other.

**MR. HOGAN:** Okay.

So are you remembering this from March? Or are you remembering this from December of 2012?

**MS. DUNDERDALE:** No –

**MR. HOGAN:** Do you see the distinction that I make?

**MS. DUNDERDALE:** – the issue – no, no. No, the issue was discussed and discussed right – thoroughly for months after.

**MR. HOGAN:** After what?

**MS. DUNDERDALE:** After the March – you know, we just didn't have this discussion at March – in March.

**MR. HOGAN:** Your awareness of these remedies, though, only came – you only became aware of these possible remedies in March is what I'm asking.

**MS. DUNDERDALE:** No, I'm not sure that that's true either.

**MR. HOGAN:** Okay.

So, that's what I'm asking then.

**MS. DUNDERDALE:** I'm not sure that that's true because – you know, I remember one of my speeches or remarks that I was making in the House of Assembly that I talked about that process that we were negotiating and that we were coming to agreements. But we recognize that things might not go the way that we anticipated, so this is what we do in best-case scenario. But if that breaks down somewhere along the line, what do we do next, what's the remedy?

And I speak to that at length in *Hansard* now. You'll have to find it, but I talk about having remedies before a problem arises.

**MR. HOGAN:** But in your mind back then in December 2012 those remedies wouldn't have affected the status of the federal loan guarantee though. You thought that was in place. These

remedies weren't in case the federal loan guarantee didn't happen, right?

**MS. DUNDERDALE:** If Nova Scotia – if the UARB would not accept the price that Emera was giving them as the lowest cost power available to them, then we wouldn't have gotten a loan guarantee. They would have nixed the loan guarantee. But what I knew was that both Emera and Nalcor were extremely interested and heavily vested in this project going ahead and that they had made an agreement that whatever the UARB came up with as the lowest cost, that Emera would sell at that cost to –

**MR. HOGAN:** Mm-hmm.

**MS. DUNDERDALE:** – Nova Scotia. And Emera and Nalcor had worked out a remedy where they both shared the pain of the difference if there was a difference.

**MR. HOGAN:** So that shared pain, is that additional cost to Nalcor then?

**MS. DUNDERDALE:** I suspect that it would have been in terms of they wouldn't have realized the cost that they anticipated. But remember, there's a \$1.1-billion –

**MR. HOGAN:** Benefit.

**MS. DUNDERDALE:** – benefit.

**MR. HOGAN:** I'm giving your evidence for you but –

**MS. DUNDERDALE:** That's in the mix here, too, so there's a large incentive to get where they need to go.

**MR. HOGAN:** How much of that benefit then were you – pain were you – was Nalcor was prepared to share? Because the evidence from most people was that they would have sanctioned the project anyways regardless of that \$1.1-billion benefit.

Your evidence is that you wouldn't have sanctioned it without the \$1.1-billion benefit. So if the shared amount of pain would cost Nalcor anywhere between zero and \$1.1 billion –

**MS. DUNDERDALE:** Yes, but that's all part of the negotiation. I – you know, you're down in the weeds now –

**MR. HOGAN:** I am down in the weeds now.

**MS. DUNDERDALE:** – and I – you know, I don't think that the costs – I don't know, you know, the Link was 1.2, you know, and there's all other additional costs and all of those kinds of things. So, you know, the cost of power certainly wouldn't have been \$1.1 billion –

**MR. HOGAN:** Okay, we'll move on because it's –

**MS. DUNDERDALE:** – you know, for 20 per cent, you know, so ...

But that was the remedy as I understood it.

**MR. HOGAN:** Did you have any, or did you provide any authority or instructions to anyone at Nalcor with regards to the negotiation of the excess energy agreement?

**MS. DUNDERDALE:** I may have but I – again, I don't – I can't tell you. I couldn't swear here that I did or I didn't.

**MR. HOGAN:** Do you recall if – when the excess energy agreement was reached, was it brought to you and were you briefed on it?

**MS. DUNDERDALE:** Oh yes, absolutely.

**MR. HOGAN:** And did you have any – did you have to give any sign-off or approval or anything like that?

**MS. DUNDERDALE:** No, I don't think I did.

**MR. HOGAN:** Okay.

And do you know if any alternatives were brought to you, or was that the only one that was brought to you?

**MS. DUNDERDALE:** Well, the only alternative is for – you know, all you can do with non-firm power is sell it on the spot market.

**MR. HOGAN:** In terms of alternatives, I guess, I mean we do have the agreement that's been signed.

**MS. DUNDERDALE:** Yes.

**MR. HOGAN:** I'm sure there were negotiations going on, so there possibly could've been other options put on the table by either party. So I'm wondering if any of those other options, if they existed, were brought to you.

**MS. DUNDERDALE:** I don't understand your question, Mr. Hogan, so I can't answer it.

**MR. HOGAN:** Okay, well then, I'll try –

**MS. DUNDERDALE:** You know, you sell non-firm power on the spot market because it's not reliable power in the short term.

**MR. HOGAN:** But the excess energy agreement – was that the only option presented to you that needed to be signed to fulfill the UARB conditions?

**MS. DUNDERDALE:** I wasn't even sure that that – I can't say that that was associated with the UARB. It might've been and I don't recall.

**MR. HOGAN:** Okay.

**MS. DUNDERDALE:** But I think that was something separate and a great benefit to the people of the province.

**MR. HOGAN:** So you can't recall any other options.

**MS. DUNDERDALE:** No, and I still don't understand –

**MR. HOGAN:** Okay.

**MS. DUNDERDALE:** – what you're asking me, so ...

**MR. HOGAN:** I want to talk about when the, I guess, in particular the Astaldi bid came in. You were aware that that was higher than the DG3 estimate?

**MS. DUNDERDALE:** I was only aware at financial close.

**MR. HOGAN:** Okay, so you were aware at financial close that the Astaldi bid –

**MS. DUNDERDALE:** Was –

**MR. HOGAN:** – which had been awarded at that point in time –

**MS. DUNDERDALE:** I am not sure. I think it was awarded on the day of financial close.

**MR. HOGAN:** Okay. So do you – were you aware how much over the DG3 estimate that was?

**MS. DUNDERDALE:** We were over by \$300 million.

**MR. HOGAN:** On the Astaldi contract?

**MS. DUNDERDALE:** No, not on the Astaldi contract because I think there was – contingency might've been in the \$300 million as well, so I can't give you the detail. I know that the – I know that instead of the project now, project costs had been at 6.2, were 6.531.

**MR. HOGAN:** Okay.

**MS. DUNDERDALE:** I didn't know about –

**MR. HOGAN:** I'll –

**MS. DUNDERDALE:** – the 3.1 either. I –

**MR. HOGAN:** The award of the Astaldi contract was about \$250 million more than the estimate.

**MS. DUNDERDALE:** Yes.

**MR. HOGAN:** So does that ring a bell?

**MS. DUNDERDALE:** I'm sure that I was briefed on that but –

**MR. HOGAN:** Okay.

And did you have any concern then that the trend was going upwards, that the bids were coming in over the estimates?

**MS. DUNDERDALE:** No, I didn't have a concern that we were in a trend.

**MR. HOGAN:** Okay.

**MS. DUNDERDALE:** What I wanted to know was if we were in a trend.

**MR. HOGAN:** And did you ask if we were in a trend?

**MS. DUNDERDALE:** Yes.

**MR. HOGAN:** And who did you ask?

**MS. DUNDERDALE:** Well, I would've asked Nalcor because that was the reason for waiting until other bids came in because I was told, you know, they might come in high, they might come in low. They might come in – you know, we might be able to even this – we got \$2 billion worth of bids outstanding and so, you know, until we get further into that and see where they're coming in – you know, if they're all coming in high, we got a problem.

**MR. HOGAN:** Yeah.

**MS. DUNDERDALE:** But they might come in, in such a way that, you know, we'll smooth out this \$300 million.

**MR. HOGAN:** And it's possible it could have but this is (inaudible).

**MS. DUNDERDALE:** But we don't know until we get there.

**MR. HOGAN:** No, you don't.

**MS. DUNDERDALE:** So we have to do an assessment in three to four months and then we'll know if we have an anomaly in Astaldi or we got a trend.

**MR. HOGAN:** So what you said in your transcript on page 26 is mostly along the lines of what you're saying now. The second half of that conversation was we're expecting other bids lower and that should even itself out. And I give – I'll give it to you that that might've happened. My question is who gave you that comfort that the other bids that were going to come in were going to be lower to offset the \$300-million increase?

**MS. DUNDERDALE:** Might be lower, could be lower.

**MR. HOGAN:** Well, this says we're expecting other bids so –

**MS. DUNDERDALE:** Yeah, well, I would have gotten that from Nalcor, but generally that's what – you know, I wasn't being promised. I have no recall of being promised that everything was going to even itself out. In fact, I was given comfort if it didn't even itself out, that we could offset – if everything came in exactly as expected, that in the overall project it could even itself out.

**MR. HOGAN:** It could –

**MS. DUNDERDALE:** But if they all came in high, then we got to assess where we're going – this is the time we got to have this conversation.

**MR. HOGAN:** Right, but I guess I'll put to you –

**MS. DUNDERDALE:** You know, where are we going?

**MR. HOGAN:** I put to you that the evidence before the Inquiry is that the financial close is sort of the last chance to make a decision on whether to proceed or not. So the trends at the time of financial close are the – not even the trends, there are bids that are coming in over estimate, and your evidence is that you were told you were expecting the rest of the bids to come in lower.

So I want to know who specifically told you that and on what basis were they saying that.

**MS. DUNDERDALE:** If I said that, then I wasn't being clear.

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

**MS. DUNDERDALE:** What I'm – you know, what I was told, you know, we're expecting some might come in low, some come in on target, some, well, might come in high. This might even itself out or we might have an issue, but we can't tell until we get further through this. That's my understanding.

**MR. HOGAN:** And would that have been Mr. Martin or –?

**MS. DUNDERDALE:** Oh, absolutely, Mr. Martin, yes.

**MR. HOGAN:** Yeah.

**MS. DUNDERDALE:** There's no one else to tell me in government that information and I wouldn't receive that information from government officials. That's not their place to tell me that. They can tell me that but, you know, not to brief me on the situation.

**MR. HOGAN:** Okay.

I need to just read out a paragraph of your transcript again. Just maybe there's an explanation. Maybe I'm not understanding this, so if you could just help me out.

So, again, this is in relation to the 6.2 and the 6.5 difference, the \$300 million, okay? And you say in response to a question from Mr. Learmonth: "... the only thing ... I remember having a conversation about was ... that we were about 300 million over on our bids, but it was in the middle of the bidding process and we didn't know how the rest of the contracts were gonna come in" – which is what you just said.

"... we also understood at that – or I understood at that time that we had extra – we had calculated a certain amount of interest relief because of the loan guarantee, and we had underestimated and we had enough to offset – we had enough gain on the interest to offset the 300 million that we were over."

**MS. DUNDERDALE:** In the overall project.

**MR. HOGAN:** Is this a new calculation, this \$300 million interest offset that – is there a miscalculation made?

**MS. DUNDERDALE:** No, no, no.

We – the calculation on how much interest relief there would be was an ongoing exercise, Commissioner, is the best way to tell you, and one I was keenly interested in. And one of the reasons I was keenly interested, Commissioner, because James McLeod had written a piece in

*The Telegram* and had valued the loan guarantee benefit of \$400 million to the people of the province and I knew it was much more than that. And I considered that to be wrong information and, you know, and the people didn't know the full benefit.

So I kept pressing Mr. Martin for: What is the number? What is the number? And, you know, the answer I was given: We're still calculating, still calculating. And I understood that they had estimated around \$700-million debt relief from the loan guarantee and the number at the end of the day ended up to be \$1.1 billion.

**MR. HOGAN:** Okay.

So do you know when – did the change happen to take place around the same time the 6.2 went to 6.5, or is that just –?

**MS. DUNDERDALE:** Oh, yes, because it was all –

**MR. HOGAN:** It is.

**MS. DUNDERDALE:** – remember I'm gone 10 days later. I'm out of government.

**MR. HOGAN:** I'm not – I don't want to use this word to imply anything, but it's a convenient time that they found the \$300 million interest savings at the same time that they realized they were \$300 million over budget.

**MS. DUNDERDALE:** Well, I can't speak to that, Mr. Hogan.

**MR. HOGAN:** But it is around the same time.

**MS. DUNDERDALE:** But it is, and they may have talked about the excess energy, the – you know, but there was extra money, more than \$300 million, in fact, to – in the overall business plan to offset any overrun on capital we might have been able to compensate for it on the other side.

Now, I didn't know I was leaving, they didn't know I was leaving; but, for all practical purposes; other than the three or four days of DarkNL, 10 days later, I was gone. You know, I went away for Christmas, I came back from DarkNL, I went away on a holiday with my

family, I cut it short, came home and within three days resigned and walked out the door.

**MR. HOGAN:** So does this \$300 million offset that was discovered around the same time as the increase, does that give you any recollection as to whether the 6.5 number was disclosed to Cabinet, or did it just give you more comfort – and you correct me – that you didn’t have to disclose it because there had been an offset found at the same point in time. Does that ring a bell or anything –

**MS. DUNDERDALE:** No.

**MR. HOGAN:** – to help you remember it?

**MS. DUNDERDALE:** That would’ve meant that we would’ve had to have a solitary conversation. That’s the only thing I can rely on. You know, I keep getting asked in the Inquiry if there’s some way that that would’ve been shared with you only, and the one thing that I’m clear about, from beginning to end, was I was never briefed where there were just two people in the room.

**MR. HOGAN:** All right.

Now, you brought up DarkNL. In your transcript as well you said you didn’t have any concern – major concern with the project when you left office. Right?

**MS. DUNDERDALE:** No.

**MR. HOGAN:** Okay.

**MS. DUNDERDALE:** Well, I mean, you know –

**MR. HOGAN:** I said major concerns so –

**MS. DUNDERDALE:** I didn’t think we – the project was in big trouble.

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

**MS. DUNDERDALE:** Because I – to be quite honest with you, I don’t know if I would’ve left if I believed that.

**MR. HOGAN:** My question is given that you just went through DarkNL and the issues related

to Hydro, didn’t that give you any concern that there was an additional risk in the project now?

**MS. DUNDERDALE:** No.

**MR. HOGAN:** Not at all?

**MS. DUNDERDALE:** No, it was (inaudible) – you know, Holyrood was falling apart. You know, we had lost power for – and I’m not sure of what exactly caused the loss of power and we were out for about 24 hours. And so I know on the Saturday morning we got power back.

**MR. HOGAN:** But didn’t it give you any concern that Hydro might have some issues with regards to reliability for the system as a whole including, maybe, when Muskrat Falls is scheduled to come on.

**MS. DUNDERDALE:** No, it didn’t because there was nothing we could do about Holyrood. We couldn’t get power in past Come by Chance with the transmission facilities we had in place. When the power went down and we got it back up, then we had a fire in Sunnyside, which caused it all to go out again. And by the time we got that fixed and all the facility in Holyrood was shut down, now we had to bring it back up.

And because the equipment was so old and antiquated that we could only get it up so far and it would black out, and we’d get it up so far. So I mean it just underscored again what bad shape Holyrood was in and something had to be done.

**MR. HOGAN:** So –

**MS. DUNDERDALE:** And we were doing that something.

**MR. HOGAN:** – we’re getting into the future here now, so the Commissioner can let me know if I can proceed but we – there are – there is evidence. So there’s reports in the media now that Holyrood may not be shut down, and that we do not have a reliable back-up plan in the event that the Labrador-Island Link fails.

So, my question is: What was your understanding of the back-up plan once Muskrat Falls came online?

**MS. DUNDERDALE:** The back-up plan – well, first of all, it would be in terms of reliability of transmission would take – one storm might occur in 150 or 200 years that would take out one of those transmission lines. I would suggest to you that everything else would be matchsticks if one of those lines came down, 'cause we're not replacing all the transmission facilities.

The second piece is: If for some reason we couldn't transmit across LIL, we owned, for all intents and purposes, 65 per cent of the capacity on the Maritime Link. We could bring power in from the United States or the Maritimes, and we have been doing that, I understand, over the past year. There's been 130 megawatts of electricity brought in, for some time, over the Maritime Link.

And, now, we can bring power from Bay d'Espoir into the Avalon Peninsula.

**MR. HOGAN:** So –

**MS. DUNDERDALE:** It was something we couldn't do.

**MR. HOGAN:** Was that your understanding at the time – and I'm going to put it to you that my understanding is only 100 megawatts can come over that Maritime Link to here.

And the second issue with reliability is that: We've heard evidence that it's important to have the source close to the population. So, the population, for the most part, is on the Avalon, and, obviously, the Maritime Link is as far away as you can get from that.

So –

**MS. DUNDERDALE:** (Inaudible.)

**MR. HOGAN:** – was any of that discussed, at the time, in terms of reliability issues –

**MS. DUNDERDALE:** We talked about –

**MR. HOGAN:** – in the way Muskrat Falls –

**MS. DUNDERDALE:** – reliability –

**MR. HOGAN:** – should proceed?

**MS. DUNDERDALE:** – issues all the time, and the – you know, I understand there's a current report that says we have better reliability now than we ever had in terms of Muskrat Falls.

Now, I don't have first-hand knowledge of all that, but I knew we'd – you know, we certainly brought power in over the Maritime Link, and now we can get power from Bay d'Espoir, which we could not do before.

**MR. HOGAN:** Ms. Dunderdale, you and a lot of people frequently refer to the least-cost option analysis, and I just want to – you're aware that the legislation of the *Electrical Power Control Act* refers to the lowest possible cost, correct? So – yes?

**MS. DUNDERDALE:** Yes.

**MR. HOGAN:** Yeah.

Why is that you refer to the least-cost option as opposed to the lowest possible cost?

**MS. DUNDERDALE:** I can't tell you, Mr. Hogan.

**MR. HOGAN:** Okay. Here's a better question: Do you see a difference?

**MS. DUNDERDALE:** But it was the least-cost option.

**MR. HOGAN:** Of two options, right?

**MS. DUNDERDALE:** Of two options, but all the options that we looked at – you know, there's – I know that some people share a different view of – you know, and the 2041 option, and so on. But, you know, I can – you know, there are all kinds of challenges around the piece, too. So, I'm satisfied in terms of where we are – yeah, I'm not satisfied that the project –

**MR. HOGAN:** No.

**MS. DUNDERDALE:** – is \$10.1 billion, let me tell you. And I'm still not certain how we got there. And, as I said before, I'm very interested in finding out. But in terms of what we understood, what we knew, the comparisons we made, we really believed that we were making

the right decisions, and we had done the due diligence.

I don't know how you could do a power project, Commissioner, in this province. You know the Upper Churchill hangs over our head. You know, that's not a club you want to belong to, so you're aware of that all the time and trying to do a better job, a better job, a better job than was done, because we certainly don't want to repeat history.

**MR. HOGAN:** Was there any concerns expressed or discussions had at the time that decided that the ratepayers would be on the hook for all the costs of the Muskrat Falls Project, that potentially that would mean that Island ratepayers were not now paying the lowest possible cost because the project may go into huge overruns?

Because – and I'll just put this to you as well. Like, the PUB is responsible for setting the rates and effectively what that legislation did was took that away from the PUB and put it in the hands of Cabinet. So, that's not really how rate regulation works. So I want to know what discussion was had at the Cabinet table around that issue.

**MS. DUNDERDALE:** Lots of discussion, especially with regard to excess power at 40 per cent, because we didn't include that, the revenue from that 40 per cent –

**MR. HOGAN:** No, I understand but –

**MS. DUNDERDALE:** – in the equation.

**MR. HOGAN:** – the point is that the Muskrat Falls Project has to be paid by the ratepayers.

**MS. DUNDERDALE:** Yes.

**MR. HOGAN:** That's legislatively mandated now.

**MS. DUNDERDALE:** But –

**MR. HOGAN:** And then, your analysis was that the 6.2 was the least-cost option, but by ensuring that they have to pay for everything, if there are overruns, the Island ratepayers then may not be

paying the lowest possible cost anymore, and you've legislated that.

So, the question is: Was there any concern around locking the ratepayers into that scenario?

**MS. DUNDERDALE:** But we had options. And I can remember Minister Kennedy lobbying me vigorously to make an announcement that any sales from the 40 per cent of excess power would be used for rate reduction. And I wasn't prepared to go there at that point in time. And, you know, you and I talked about that in – you know, the whole overall business plan for this project to provide electricity for 50 years is over \$50 billion. And, there are opportunities that we can offset, and I know that the PUB is looking at that and others are looking at that but there are opportunities because, you know, there's equity, there's return on equity, there's water rentals. There's all kinds of revenue that the Government of Newfoundland and Labrador are gonna take from that 50.

**MR. HOGAN:** But none of that was decided to be done. That was left to future governments to decide – I think was your (inaudible) – so my question is –

**MS. DUNDERDALE:** But that was a decision we made. We made. Because I could've come out and said we're gonna use the sale of excess power –

**MR. HOGAN:** I guess I'll just put it this way: the decision that was made was that the ratepayers were paying for this regardless of the price. And when I say regardless of the price, I mean regardless of whether it was – it ultimately ended up being the lowest possible cost. Do you agree that that was what the decision was (inaudible) –?

**MS. DUNDERDALE:** Well, we believed it was the lowest possible cost.

**MR. HOGAN:** Right.

**MS. DUNDERDALE:** And we thought we could bring it home at the lowest possible cost.

**MR. HOGAN:** You brought up – I think you brought up, but you referred to red meat and not wanting to put certain numbers out there.



**MS. DUNDERDALE:** We wouldn't have called it that, Mr. Hogan.

**MR. HOGAN:** Okay, that's – I've never heard of it until this morning –

**MS. DUNDERDALE:** I never heard it –

**MR. HOGAN:** – that's fine.

**MS. DUNDERDALE:** – 'til it was said here.

**MR. HOGAN:** But my question is, isn't the federal loan guarantee in and of itself red meat? Because contractors now know, at this point in time, that the government is going to finish this project. So that alone, isn't that red meat?

**MS. DUNDERDALE:** I don't believe so.

**MR. HOGAN:** Okay. Why not?

**MS. DUNDERDALE:** Because the loan guarantee, initially, was for 6.2, and then it was for 6.5 –

**MR. HOGAN:** No, but the –

**MS. DUNDERDALE:** – so – and all of that is –

**MR. HOGAN:** But you have to finish the project regardless of the amount. The federal –

**MS. DUNDERDALE:** Well –

**MR. HOGAN:** – loan guarantee's value is irrelevant in terms of completion cost. So my point is that contractors know that the government has to finish this project. They're never going to say, it's too much, we're gonna stop, because Canada's gonna sue 'em.

**MS. DUNDERDALE:** I'm not sure that that's true back in December of 2013 or the end of November 2013. If we had said no, we would not have accepted the Astaldi bid, and, you know, it would've been – if we had felt the project – if I had felt that the project was out of control, and my Cabinet felt the project was out of control, I'm not sure we wouldn't have cancelled at that point in time. I can't say that, Mr. Hogan.

**MR. HOGAN:** Okay.

I just wanna clarify, you said that you went to three elections on this, but the decision to go with Muskrat Falls alone wasn't made until 2010, correct?

**MS. DUNDERDALE:** Yes, and I went to an election in 2011.

**MR. HOGAN:** You did, right. But the elections in 2003 and 2007 wouldn't have been elections with a mandate to do –

**MS. DUNDERDALE:** Not on Muskrat Falls –

**MR. HOGAN:** – Muskrat Falls –

**MS. DUNDERDALE:** – but certainly –

**MR. HOGAN:** No.

**MS. DUNDERDALE:** – development of the Churchill River.

**MR. HOGAN:** That's – I just wanted to clarify that.

**MS. DUNDERDALE:** Yeah.

**MR. HOGAN:** That's all the questions I have.

**MS. DUNDERDALE:** Thank you.

**THE COMMISSIONER:** Okay.

Grand Riverkeeper/Labrador Land Protectors?

**MR. SMYTH:** No questions.

**THE COMMISSIONER:** Former Nalcor Board Members?

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

**THE COMMISSIONER:** Newfoundland and Labrador Building and Construction Trades Council/Resource Development Trades Council of Newfoundland and Labrador.

Not here.

Dwight Ball, Siobhan Coady, I don't believe is here either.

All right, Kathy Dunderdale.

Oh, I'm sorry.

**MS. BROWN:** Sorry, Commissioner, I think we might've been left out of the order or I have the order incorrect, but Innu Nation doesn't have any questions, and I want to get that on the record at the moment because I'll have to leave in a moment as well, like –

**THE COMMISSIONER:** Okay, thank you, very much.

**MS. BROWN:** – Mr. Ryan.

**THE COMMISSIONER:** Yes, I didn't see –

**MS. BROWN:** Thank you.

**THE COMMISSIONER:** – anybody from the Innu – I didn't realize you were from the Innu Nation, so I apologize for that.

**MS. BROWN:** Thank you.

**THE COMMISSIONER:** Thank you.

Kathy Dunderdale.

And just –

**MS. E. BEST:** Thank you.

**THE COMMISSIONER:** – before you begin, I'm not sure if Mr. Turpin and Mr. King are still here. Obviously, the plan was that we were going to be proceeding this afternoon. I think you should go upstairs to the fifth floor. My plan now is to see if we can start you tomorrow sometime, but it'll be after the morning. So my intention is still to have you called this week. And we may well be sitting on an evening to do it if we have to, but we'll let you know how that's going to work out. But I don't want to keep you here any longer 'cause we're obviously not going to sit late today – later than what we are already.

Thank you.

Ms. Best.

**MS. E. BEST:** Thank you, Mr. Commissioner.

Madam Clerk, if you could please pull up Exhibit 02441. Page 4, please. Thank you.

Ms. Dunderdale, this is a press release from Emera. I'm just going to ask you to have a look at it there. It says, "**Emera Inc. Approves Sanction of the Maritime Link Project.**" If you could just read out maybe the first line there.

**MS. DUNDERDALE:** "Emera Inc. ... is pleased to announce sanction of the Maritime Link, an energy transmission project that will link the provinces of Newfoundland and Labrador and Nova Scotia for the very first time. When completed, The Maritime Link will supply affordable, reliable and renewable energy to Nova Scotians."

**MS. E. BEST:** And if you could continue reading the first sentence in the next paragraph, please.

**MS. DUNDERDALE:** "The Sanction Agreement entered into today will enable Emera and Nalcor to move forward with the project on terms that are consistent with the Federal Loan Guarantee announced on November 30, 2012."

**MS. E. BEST:** Thank you.

And now in the fourth paragraph down, the paragraph starting with the word, recovery. If you could read that line, please.

**MS. DUNDERDALE:** "Recovery of costs on the Maritime Link project from NS customers remains subject to regulatory approval in Nova Scotia. The project partners have committed to ensure that the Maritime Link is built under the terms of The Sanction Agreement."

**MS. E. BEST:** Okay, that's fine.

Is this consistent with your understanding of – on the date of sanction –

**MS. DUNDERDALE:** Yes.

**MS. E. BEST:** – being December 17, 2012. Thank you.

There's just one more paragraph I'd like to point out on this page. If we scroll down a little bit

further, we see this paragraph that's highlighted there: "In addition Emera, Nalcor, the Government of Nova Scotia and the Government of NL have signed a further intra-provincial agreement that provides for the coordinated oversight of the parties efforts to meet the conditions precedent to the Federal Loan Guarantee."

Does that refer to anything that you've testified to here today?

**MS. DUNDERDALE:** Well, in – yes, 'cause in terms of the meetings between Emera and Nalcor, we would've had officials at the table as they were negotiating around conditions precedent.

**MS. E. BEST:** Okay, thank you.

So I'm gonna move on to a different topic here now and just talk about the 6.5 number and who knew about it.

You said earlier today something along the lines of, the issue is not simply whether civil servants knew about the 6.5 number, but the real issue was whether they knew about a potential cost overrun.

Can you just expand on what you mean by that?

**MS. DUNDERDALE:** Well, the number was 6.2.

**MS. E. BEST:** Right.

**MS. DUNDERDALE:** So if somebody, you know, from Nalcor –

**MS. E. BEST:** Yes.

**MS. DUNDERDALE:** – has indicated that the number is no longer 6.2 – and it doesn't matter if it's 6.3 or 6.250 – if the number is no longer 6.2, then surely somebody's gonna ask them what's the number and report that number to their appropriate minister.

**MS. E. BEST:** Right.

And if it had been 6.3 – just bring us back to that point in time. I mean, 6.3, would that have made a big difference or ...?

**MS. DUNDERDALE:** It would've made a big difference because it's a hundred million dollars –

**MS. E. BEST:** Right.

**MS. DUNDERDALE:** – and the federal loan guarantee is for 6.2. You know, if we were gonna have to put into the COREA agreement, somebody certainly should've been putting their head around any amount over the 6.2 and doing a heads-up, you know, we may have to do this – if they knew.

**MS. E. BEST:** Right.

And those civil servants, if they knew, or if they asked, they would have a duty to communicate that information to their minister. Is –

**MS. DUNDERDALE:** Absolutely.

**MS. E. BEST:** – that right? Okay.

With respect to the issue of the minister of Natural Resources not knowing the 6.5 number, I'd like to go, please, Madam Clerk, to Exhibit 02842, please. This is a November 8 email. I'm going to just pull up a few documents quickly; none of them should be new to anyone.

But we have here a November 8 email from Donna Brewer and she says: "Minister

"NR" – which I assume she means Natural Resources –

**MS. DUNDERDALE:** She does.

**MS. E. BEST:** – "and Nalcor are working on the issue raised by Todd below."

And then if we go down 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)."

So she seems to indicate there that NR is working on the issue. Does that make sense to you?

**MS. DUNDERDALE:** Yes, NR would – but they would – obviously, they’re in communication with Finance.

**MS. E. BEST:** Right.

**MS. DUNDERDALE:** And this is what’s troubling to me. You know, here’s an email that says we’re not at DG3 numbers anymore.

**MS. E. BEST:** Right.

**MS. DUNDERDALE:** There’s a difference.

**MS. E. BEST:** Right.

**MS. DUNDERDALE:** Well, what is the difference and who knows there’s a difference?

**MS. E. BEST:** Right.

Okay, we also have a few documents which indicate that Paul Morris would have had an awareness of a different number. And, Paul Morris, do you know who – what department he was with?

**MS. DUNDERDALE:** Natural Resources.

**MS. E. BEST:** Natural Resources.

So if we could please go to Mr. Sturge’s notes which is P-02126, Madam Clerk, please. And we see there – we’ve already reviewed this, as I said, so I won’t go over it in detail, but it says there on the left-hand side: Capital cost overruns. You can see the date there, November 21, 2013. And, again, it looks like Paul Morris was on this – at this meeting, would you agree?

**MS. DUNDERDALE:** Yes, yes.

**MS. E. BEST:** And then if we could please go, Madam Clerk, to P-02523, page 20 – oh, sorry, is that – that’s the same one, sorry. I had that noted there twice.

So – sorry, the next one is P-02673. And we see here this is a November 22 email again indicating that Paul Morris is on the – he’s received this email. And if we can scroll down, please, it was indicated, I believe, during Mr. Simmons’ cross-examination of Mr. Marshall that – if we can scroll up, please, Madam Clerk,

actually – that what Auburn Warren was talking about in this email had to do with a discussion of the 6.5 number that was going to be used in the federal loan guarantee.

So these couple of documents seem to indicate that Paul Morris was in the loop with respect to at least some sort of overrun. Is that consistent with what you –

**MS. DUNDERDALE:** Yes, it is.

**MS. E. BEST:** – would have understood?

**MS. DUNDERDALE:** Yes.

**MS. E. BEST:** Thank you.

With respect the issue of a potential briefing, and your recollection of a briefing on November 29, 2013, the date of financial close – Madam Clerk, if you could please pull up Exhibit 02667, if we could go to page 35, please.

So this is actually a – this is a true copy of a minute of a meeting of the committee of the Executive Council. And you’ll see – you see the date on there –

**MS. DUNDERDALE:** Yes.

**MS. E. BEST:** – right?

**MS. DUNDERDALE:** Yes.

**MS. E. BEST:** And it is dated November 29, 2013.

**MS. DUNDERDALE:** Yes.

**MS. E. BEST:** That seems to indicate to me that there was a meeting –

**MS. DUNDERDALE:** Yes.

**MS. E. BEST:** – on November 29, 2013.

**MS. DUNDERDALE:** Yes.

**MS. E. BEST:** And over on the left-hand side, there are some people listed there and I really don’t know – is this a list of the people who would have been present at this meeting?

**MS. DUNDERDALE:** Yes.

**MS. E. BEST:** Or a list of the people who would have received a copy of this –

**MS. DUNDERDALE:** Would have been at the meeting –

**MS. E. BEST:** – meeting minute?

**MS. DUNDERDALE:** I believe it's people who attended the meeting.

**MS. E. BEST:** And we can see that Ed Martin's name is on there –

**MS. DUNDERDALE:** Yes, the –

**MS. E. BEST:** – right?

**MS. DUNDERDALE:** – deputy minister of Natural Resources, deputy minister of Finance, deputy minister of Justice, assistant secretary to the Economic Policy Committee, the deputy clerk. I'm not sure what the AG –

**MS. E. BEST:** So if there was a meeting of the Executive Council on November 29, 2013, and later you were all getting together to do this presentation or – what was it you called it, an event to –

**MS. DUNDERDALE:** Yes.

**MS. E. BEST:** – announce financial close, wouldn't there have been a discussion at that time, or would there have been a discussion at that time of the issues and details surrounding financial close?

**MS. DUNDERDALE:** Yes.

**THE COMMISSIONER:** Wasn't that event December 10?

**MR. LEARMONTH:** Yes, it was.

**MS. E. BEST:** Oh, sorry. Sorry, later on that week but – sorry, on the date of financial close, if there was a meeting, wouldn't there have been discussion of the issue at financial close?

**MS. DUNDERDALE:** Yes.

**MS. E. BEST:** Thank you.

Those are my questions.

**THE COMMISSIONER:** Redirect, Mr. Learmonth.

**MR. LEARMONTH:** Now, do you agree that, at the time, Julia Mullaley was the clerk?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yeah.

And I can put to you that her evidence is that she had no recollection whatsoever of the 6.5 figure around the time of financial close.

**MS. DUNDERDALE:** I understand that this –

**MR. LEARMONTH:** Yeah, no recollection.

**MS. DUNDERDALE:** – was her position.

**MR. LEARMONTH:** And if this was – if there was – we see this Minute of Council or order-in-council. There's no reference to any cost update in that, is there?

**MS. DUNDERDALE:** No and it doesn't appear that Julia is at this meeting either.

**MR. LEARMONTH:** Yeah.

Well, who was there from the –

**MS. DUNDERDALE:** The deputy minister of Natural Resources –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – the deputy minister of Finance –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – the deputy minister of Justice –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – assistant secretary to the Economic Policy Committee –

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** – Mr. Martin – I’m not sure what AG refers to – deputy clerk.

**MR. LEARMONTH:** Yes. So someone from Ms. Mullaley’s office would be there?

**MS. DUNDERDALE:** Yes, yeah.

**MR. LEARMONTH:** Yeah.

And there’s always a record of these meetings with terms of an agenda, isn’t there?

**MS. DUNDERDALE:** I can’t say, Mr. Learmonth. I don’t remember.

**MR. LEARMONTH:** Well, I think that’s the case, yeah. But Ms. Mullaley –

**MS. DUNDERDALE:** We had an agenda when we went in to Cabinet.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Yes, we did.

**MR. LEARMONTH:** Yes.

And there’s nothing – I believe Ms. Mullaley searched and couldn’t find any reference to the – this 6.5 figure. Does that cause you any concern?

**MS. DUNDERDALE:** It absolutely causes me concern, Mr. Learmonth. I – as I said earlier today, I find it really difficult to be at odds with public servants and members of my Cabinet.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** But I cannot come in here and swear an oath to tell the truth, the whole truth as I understand it and know it, and say something that I don’t believe to be true. I have to tell you what I believe happened.

**MR. LEARMONTH:** But you agree that there’s certain pieces of evidence that contradict what you’re saying.

**MS. DUNDERDALE:** Yes and there’s certain pieces of contradiction – of evidence that

contradict what some of the public servants are saying.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** You know, there’s evidence –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – that’s been given that some public servants knew that we were beyond the DG3 numbers.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And my puzzlement is why that wouldn’t have been communicated. It’s hard for me to believe that that wasn’t communicated because that would not be the practice that I observed.

**MR. LEARMONTH:** Yeah.

Well, I can tell you that based on interviews that we’ve conducted that there’s going to be evidence that the – some of the civil servants, if not all of them that we’ve been discussing – they were aware of a 6.5 number but they believed that they were talking not about an increase in project cost, but as a new baseline for the COREA account.

**MS. DUNDERDALE:** I can’t speak to that.

**MR. LEARMONTH:** Do you understand what I’m saying?

**MS. DUNDERDALE:** Yes, but you know, I – you know, that’s not what I – I’d be interested to hear that testimony.

**MR. LEARMONTH:** Well, you will.

**MS. DUNDERDALE:** But in terms of what I’ve seen, it just indicates to me that people – that some people knew.

**MR. LEARMONTH:** Well, you’re assuming that the references to 6.5 had to deal with an increase in the capital cost as opposed to an increase in the baseline for the COREA account.

**MS. DUNDERDALE:** I can't – you know, I really can't debate that with you, Mr. Learmonth. What I can tell you and tell the Commissioner is what I've testified to here.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And I can't come in here and tell you I didn't know.

**MR. LEARMONTH:** Hmm.

**MS. DUNDERDALE:** I can't tell you in – I can't tell you that, Commissioner –

**MR. LEARMONTH:** Yeah, but –

**MS. DUNDERDALE:** – because it's not what I believe.

**MR. LEARMONTH:** But –

**MS. DUNDERDALE:** And I have no reason to say one way or the other.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Yeah, I just have to tell you what I believe to be true.

**MR. LEARMONTH:** Yeah.

So, if all the Cabinet Members were present at this – well, if all the Cabinet ministers, never mind this meeting because there's no reference to a cost update in this meeting. You agree with that, right?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yeah.

So if all the Cabinet ministers were to say we never heard of the 6.5 – and we know three of them already have. Would that not shake the confidence that you're expressing that you knew about the 6.5 as a cost overrun?

**MS. DUNDERDALE:** Absolutely, and I've said that –

**MR. LEARMONTH:** It would?

**MS. DUNDERDALE:** And I've said that here today, Mr. Learmonth.

**MR. LEARMONTH:** Yeah.

So you're really not sure are you?

**MS. DUNDERDALE:** I'm sure now, but I'm going to have to – if every public servant and all the Cabinet and everybody comes in and says that didn't happen, I know that I can't know it alone; I can't.

**MR. LEARMONTH:** Yeah.

Well, for example, Paul Myrden, who is involved in this quite deeply in Finance –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – I believe he is going to say he wasn't concerned about any cost increase; he was dealing with a COREA number and he wanted to – he didn't – he wasn't concerned about – he wasn't dealing with capital cost increase. He was dealing with the COREA account and only the COREA account. And, you know, he will say that; I think he will. That's what he told us.

Now, do you understand the significance of adjusting the COREA account number that went into the financing agreement higher as opposed to leaving it at 6.2?

**MS. DUNDERDALE:** I don't know – understand enough of it to repeat it back to you, but –

**MR. LEARMONTH:** You don't?

**MS. DUNDERDALE:** – but I was briefed on it.

**MR. LEARMONTH:** Well what –

**MS. DUNDERDALE:** That's not my language –

**MR. LEARMONTH:** – is the difference? What would be the effect of, instead of having a 6.2 COREA number, having a 7 billion or a 6.5 billion –

**MS. DUNDERDALE:** I can't tell you this far beyond, Mr. Learmonth; I can't tell you that.

**MR. LEARMONTH:** You can't give me any information –

**MS. DUNDERDALE:** No –

**MR. LEARMONTH:** – about it at all?

**MS. DUNDERDALE:** – I cannot give you any information. You know, that's not stuff that I would retain –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – you know, six years after the fact – this – or five years after the fact. I just wouldn't. It's not language that I'm used to using. It's not business that I'm doing. I'm not associated with it in any way. It's not my background. You know, I can understand when I'm briefed, the same as everybody here is understanding as they're briefed. But I don't know that you can retain it if you're not familiar with it years after the fact.

**MR. LEARMONTH:** Yeah.

Well, do you know what the effect would be of having a higher COREA baseline that would go into the –

**MS. DUNDERDALE:** Not enough –

**MR. LEARMONTH:** – used (inaudible) – wait 'til I finish the question, please.

**MS. DUNDERDALE:** Sorry.

**MR. LEARMONTH:** Do you understand what the effect would be of – assuming there's no project cost increase, okay?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** And that you're just adjusting the COREA account. Do you understand what the effect would be of having, like, a \$300 million cushion, we'll say, in the COREA account baseline?

**MS. DUNDERDALE:** I –

**MR. LEARMONTH:** Do you understand that?

**MS. DUNDERDALE:** I can't speak to that, but here's the thing.

**MR. LEARMONTH:** No, but – so, you don't understand what I'm talking about, do you?

**MS. DUNDERDALE:** Not right now I don't. Not all these years after the fact but, you know, the point is though, Mr. Learmonth, if the loan guarantee had increased from 6.2 billion –

**MR. LEARMONTH:** What – for (inaudible)?

**MS. DUNDERDALE:** – of – the loan guarantee had been based on 6.2 billion and now the loan guarantee covered 6.531 billion –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – do – doesn't somebody – you know, somebody should have been aware of that in government.

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** And if we got a cushion built in there then – and officials knew about that –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – then the premier and minister should have been briefed on it.

**MR. LEARMONTH:** No, but –

**MS. DUNDERDALE:** And this is the first – you know, I don't ever remember the loan – saying that the loan guarantee was increased because we were building in – sorry – we were building in a cushion. I don't remember any conversations –

**MR. LEARMONTH:** Well, first of all –

**MS. DUNDERDALE:** – around that.

**MR. LEARMONTH:** – Ms. Dunderdale, the – this has nothing to do with increasing the amount of the loan guarantee, nothing to do with that. This has to do with the figure that went into the financing documents. The loan guarantee for



our share of it remained at 5 billion, regardless of the amount that went into the financing dockets. I take it you weren't aware of that?

**MS. DUNDERDALE:** Oh, I may have been aware of it, Mr. –

**MR. LEARMONTH:** But you're not now?

**MS. DUNDERDALE:** But I'm not able to recall now. What I'm able to recall now is that we had a \$300-million overrun – that's what I believe that I was told – and that we had to watch what was going on in tendering before we could see –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – if we had an anomaly or a trend –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – and whether the project, you know, could be getting into some heavy water. And, up to this point, we had savings in other parts of the business plan –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – that could offset that 300 million. That's all I can tell you.

**MR. LEARMONTH:** Okay, well then if you had an offset of 300 million, why would there be any change from the 6.2 if there was a corresponding offset –

**MS. DUNDERDALE:** Because the –

**MR. LEARMONTH:** – for a \$300 – \$300 million increase in capital cost?

**MS. DUNDERDALE:** Because the – if – the offset is not in the capital cost piece of the plan. The offset is in interest reduction in –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – another part of the business plan altogether.

**MR. LEARMONTH:** So, why was it relevant? You've talked about this \$300 million offset –

why did you bring it up if it has nothing to do with what we're talking about?

**MS. DUNDERDALE:** Well, I'm just telling you that that's what I was offered as reassurance that if we were – if everything remained equal and project costs had increased by 300,000 that we had 300,000 plus unexpected revenue on the other side of the equation.

**MR. LEARMONTH:** So, there wouldn't be any real cost increase if there were those offsetting amounts, right?

**MS. DUNDERDALE:** That's right.

**MR. LEARMONTH:** Yeah.

So, why would you have to increase the project budget by \$300 million if you had an offset?

**MS. DUNDERDALE:** No, you'd have to increase the project cost.

**MR. LEARMONTH:** Why?

**MS. DUNDERDALE:** Because the amount is not in the project cost and these monies are going to be realized over, you know – the federal government – we're not going to get all the 1.1 billion before the time the project has to be completed. We're going to have to, you know, and now that we've got the increase in the loan guarantee we don't have to put in more equity, nor – so, we've dealt with the problem. There was no immediate pressure on the province to find money and, at the end of the day, in the financing of the project, we know a way that we can deal with that 300 million increase in capital cost.

**MR. LEARMONTH:** Okay.

So, you know – anyway, I've heard your answer and it's been recorded, of course. But you don't understand, now, how the COREA account works. Is that true?

**MS. DUNDERDALE:** Well, I can't give you detail of how a COREA account works here today. You know, I know that the project cost – we have to show that the federal government – show the federal government that we have the funds to complete the project. And so there are

financing costs and we have our equity and so on in the COREA account, that can be drawn on by Nalcor so that we can show clearly that we have sufficient funds between our financing and our COREA account to complete the project.

**MR. LEARMONTH:** So –

**MS. DUNDERDALE:** That's my understanding.

**MR. LEARMONTH:** So if you had a – if the project cost was 6.2, would it be better, more advantageous to the province, to have the COREA baseline at 6.2 or 6.5?

**MS. DUNDERDALE:** I can't give you that kind of information. Now, I may have known it at the time, but I can't speak to it now.

**MR. LEARMONTH:** But, you don't understand what I'm talking about, is that right?

**MS. DUNDERDALE:** I understand the COREA account –

**MR. LEARMONTH:** Well, can you answer the question?

**MS. DUNDERDALE:** – and the purpose of the COREA account, but how interest is calculated and which number is best –

**MR. LEARMONTH:** No.

**MS. DUNDERDALE:** – and the –

**MR. LEARMONTH:** I'm not talking about interest; I'm talking about if you – if the project cost is 6.2 –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** – is it better for the province if the COREA account baseline is 6.2 or 6.5?

**MS. DUNDERDALE:** I don't know.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** I would have been briefed at the time, would've – you know – been given the answer to that question, and would've

agreed or disagreed, but I would have accepted it from people who understood fully –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – what they're talking about.

**MR. LEARMONTH:** But the reason I mention that is because the evidence that I anticipate will be coming from the Department of Finance and the – I'll – just to give you some – my understanding of what it is with respect to the COREA account. That if the project cost is 6 – is estimated to be 6.2, then the higher the COREA baseline above that, the better it is for the province because then there's a cushion before the province will have to put money into the COREA account. Do you understand what I'm saying?

**MS. DUNDERDALE:** Yes, I do understand what you're saying.

**MR. LEARMONTH:** Yeah, but you didn't understand it before I explained it, right?

**MS. DUNDERDALE:** Well, I could – understood it six years ago when it was explained to me –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – Mr. Learmonth; I just can't recall it.

**MR. LEARMONTH:** Yeah. But I – the reason I mention that is so that you'll be aware that the evidence from the civil servants are – if not all of them, most of them – is saying that they were talking about establishing a higher baseline for the COREA; they didn't understand that there was an actual increase in the project costs.

**MS. DUNDERDALE:** And I accept that.

**MR. LEARMONTH:** You accept that?

**MS. DUNDERDALE:** Yes, Mr. Learmonth.

**MR. LEARMONTH:** Yes. Okay.

**MS. DUNDERDALE:** People are gonna come and tell their truth –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – and that’s what I’m doing.

**MR. LEARMONTH:** Yeah. And, when – so, are you saying that your council brought up this order-in-council, 2013-11-29, which does not deal with costs at all, correct? There’s nothing in there about costs.

**MS. DUNDERDALE:** Well, no, but – you know, we’re at financial close –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – so, there – you know, I think the point is – you know, we’re at financial close, there is a discussion going on –

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** – in government about financial close –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – and, certainly, questions are being – if – my experience of who – all the officials that are at that meeting, questions are being asked about costs, about price, about estimates, and say –

**MR. LEARMONTH:** Well, how do you know that?

**MS. DUNDERDALE:** Well, Mr. –

**MR. LEARMONTH:** You’re guessing, aren’t you?

**MS. DUNDERDALE:** – Learmonth, it was being asked in the scrum –

**MR. LEARMONTH:** That was on December 10.

**MS. DUNDERDALE:** No – yes, December – but what I’m saying to you, reporters were asking the question.

**MR. LEARMONTH:** That’s on December 10.

**MS. DUNDERDALE:** Yes, so –

**MR. LEARMONTH:** I’m talking about November 29.

**MS. DUNDERDALE:** So you can certainly assume that officials were asking the same type of questions on November 29.

**MR. LEARMONTH:** You can assume that, can you?

**MS. DUNDERDALE:** Well based on my experience. I’d be surprised if they didn’t, Mr. Learmonth.

**MR. LEARMONTH:** Well if – well, they will deny that.

**MS. DUNDERDALE:** Well, I can’t do anything about that, Mr. Learmonth.

**MR. LEARMONTH:** Yeah. But if there’s – if you’re – how can you be so confident that there would have been discussions at the Cabinet meeting where this order-in-council was discussed, if you don’t have any memory of it and there’s no reference to costs in the documents?

**MS. DUNDERDALE:** Mr. Learmonth, you know, a number of us are coming here with the same issue. Time and time yesterday, I watched the testimony of Mr. Marshall and he testified that he didn’t remember, that he did not remember. He didn’t know if he was briefed or not briefed. He didn’t think he was but he didn’t remember –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** –and we’re all reaching back and doing our best to remember and tell to the best of our ability what we knew. I don’t have one reason in the world to come in here to the Commissioner and tell him that I knew it was 6.5 if I didn’t know it was 6.5.

There is no reason in the world for me to do that.

**THE COMMISSIONER:** Yes, I guess the question here though, Ms. Dunderdale, is not really about that. The question really is: if you don’t have a minute of Cabinet that says you discussed an overrun – like, I would expect if you were spending \$300 million more, there

would be some sort of a Cabinet minute or something, a Cabinet note or something to indicate: hey boys we got \$300 more million in the bucket here.

And this – what you referred to and I just pointed out to Ms. Best, was that this actual one that you pointed, which is P-02667 was dated November 29, 2013. You had said this morning – or I thought you had said – that your meeting took place before the celebration event on December 10, when you – when financial close actually happened. So we're not even looking at the same minute for that but we haven't found any minutes either that would suggest that the issue of \$300 million was discussed at a Cabinet meeting.

**MS. DUNDERDALE:** Yes. And I can't tell you, Commissioner, that even at the Cabinet – there may have been a briefing at the Cabinet – and there were lots of briefings that happened at Cabinet that didn't get captured in a minute.

**MR. LEARMONTH:** Well, Ms. Dunderdale, are you sure that there was a Cabinet meeting on November 29?

**MS. DUNDERDALE:** I'm not sure –

**MR. LEARMONTH:** Because –

**MS. DUNDERDALE:** – I'm not sure.

**MR. LEARMONTH:** – we'll have to check this but there was a Cabinet meeting November 14, which said that certain things could only happen by the issuance of orders-in-council.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** So, I'm wondering whether this is one of those orders-in-council.

**MS. DUNDERDALE:** I can't tell you, how – you know –

**MR. LEARMONTH:** There's a record of that, but you don't know –?

**MS. DUNDERDALE:** – there would be a record of that.

**MR. LEARMONTH:** So, you're not saying there was meeting on November 29?

**MS. DUNDERDALE:** No, I'm not.

**MR. LEARMONTH:** No.

**MS. DUNDERDALE:** I'm not because I don't remember.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** But I'm also saying that there are lots of briefings in Cabinet that don't get captured in minutes, either.

**MR. LEARMONTH:** Yeah. Yeah. But, you know, as your acknowledged before, if there's a meeting of Cabinet, which you said there was, where you communicated the 6.5 to your colleagues. You've said that.

**MS. DUNDERDALE:** I would have, absolutely. If I knew it, they would've known it.

**MR. LEARMONTH:** And there would've been a meeting?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** And there would've been an agenda?

**MS. DUNDERDALE:** Not necessarily.

**MR. LEARMONTH:** No agenda?

**MS. DUNDERDALE:** No. We may have come just for that purpose.

**MR. LEARMONTH:** No.

Would the Clerk or the Deputy Clerk have been present?

**MS. DUNDERDALE:** Absolutely.

**MR. LEARMONTH:** Well, Julia Mullaley didn't know anything about it.

**MS. DUNDERDALE:** I don't know what you expect me to say, Mr. Learmonth. I accept that.

**MR. LEARMONTH:** Well –

**MS. DUNDERDALE:** But I can't come up here and tell you something else.

**MR. LEARMONTH:** Yeah. Well, Ms. Dunderdale, when you're – you've made the point that you never met with Mr. Martin without there being at least one other person present?

**MS. DUNDERDALE:** Yes, more than one.

**MR. LEARMONTH:** More than one.

**MS. DUNDERDALE:** Mmm.

**MR. LEARMONTH:** Okay. And around financial close, do you agree that the – that four of the people who would most likely to be present when you met with Mr. Martin around –

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** –would be Minister Dalley – yes?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Minister Marshall?

**MS. DUNDERDALE:** Not necessarily, but probably in this case.

**MR. LEARMONTH:** Yeah. Julia Mullaley?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Charles Bown?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** And Donna Brewer?

**MS. DUNDERDALE:** Not necessarily Donna Brewer.

**MR. LEARMONTH:** Okay. But those four: Dalley, –

**MS. DUNDERDALE:** Definitely –

**MR. LEARMONTH:** – Mullaley, Bown and who else?

**MS. DUNDERDALE:** Would definitely be Martin, Julia, Dalley, Bown, and very likely –

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** – Minister Marshall and Donna Brewer.

**MR. LEARMONTH:** Yeah.

Does that give you any concern that those four people – and we don't know whether they're all present, but all of those four people – like, Dalley didn't – says he didn't know anything about the 6.5; Marshall says he didn't have any recollection at all about the 6.5; Mullaley has no recollection about the 6.5, and Bown, as I understand it, will state that any reference to 6.5 was dealing with that cushion issue with the COREA.

Does that give you any concern?

**MS. DUNDERDALE:** Absolutely, as I've said a number of times here today.

**MR. LEARMONTH:** Okay.

There's one further exhibit that I'd like to – I'd like to enter Exhibit P-02931. This is a transcript, a partial transcript of the press conference that you referred to. You asked us to look at it or consider it or – I think.

**MS. DUNDERDALE:** The news conference that's on Google, on the Internet?

**MR. LEARMONTH:** The December 10 press conference: The bonds were priced –

**MS. DUNDERDALE:** The scrum?

**MR. LEARMONTH:** Well, it's a press conference December 10. Well, scrum is a press conference, isn't it?

**MS. DUNDERDALE:** No, there is a difference between the two.

**MR. LEARMONTH:** Well, okay, well maybe it's misnamed, but anyway –

**MS. DUNDERDALE:** I think we did a news release and that –

**MR. LEARMONTH:** Mr. Younger was there.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Ed Martin.

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** And you.

**MS. DUNDERDALE:** Yeah.

**MR. LEARMONTH:** And – was that all?

**MS. DUNDERDALE:** Minister Moore had to get a plane back to Ottawa.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Or Toronto, and the Indigenous people, the Innu people, weren't with us.

**MR. LEARMONTH:** Okay, well, who – did you say Mr. Marshall was there?

**MS. DUNDERDALE:** No, Mr. Dalley.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Mr. Martin.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** Mr. Younger.

**MR. LEARMONTH:** Okay.

**MS. DUNDERDALE:** And myself.

**MR. LEARMONTH:** So, if we bring up – so, at this point, December 10, if your recollection is correct, if it is, you would have known that the project cost estimate was 6.531?

**MS. DUNDERDALE:** Yes.

**MR. LEARMONTH:** Yeah. But if we bring up Exhibit P-02931, this partial transcript, there's no reference to that number.

**MS. DUNDERDALE:** No, and –

**MR. LEARMONTH:** There is a reference to 6.2.

**MS. DUNDERDALE:** Yes, and if you listen –

**MR. LEARMONTH:** There's a reference. Now, I'm not saying – there's a – someone says – if we go to page 3, the second Unidentified Male Speaker – we don't know who this is – says: "Just to clarify on the \$5 billion loan. So that \$5 billion covers the \$6.2 billion Muskrat portion and so the equity is 1.2 that the province is putting in?"

**"PREMIER DUNDERDALE:** Well, we haven't disclosed the amount of equity up to this point but we have guarantee for \$5 billion. Ed, you might want to speak ...."

And then Mr. Martin says: "Yeah, so in essence, you know, what you're saying is correct, you know, 6.2 is the capital – was the capital cost estimate at DG3." Then there's further discussion. Later on, there's discussion about, you know, things can go up and down and so on.

You turn over to the next page, to page 4, the last sentence in the second – or the first full paragraph, the one that begins with: So there's puts and takes. It says: "On the project capital side, there's puts and takes, and we're not yet ready to give, you know, a final flavour for that until we get a little bit further into it."

Now, I wonder why in – given your obligation to make full disclosure to the public, if you had a figure that was of sufficient reliability that you put it into financial documents that were given to the federal government, so it wasn't a guess. If that was the case, why wouldn't you have disclosed that at this December 10 scrum?

**MS. DUNDERDALE:** Because I was told it was commercially sensitive. And there are exceptions in the legislation that allow us to withhold commercially sensitive information.

**MR. LEARMONTH:** But –

**MS. DUNDERDALE:** And the decision was made to wait 'till we got further into the bidding process, because we had \$2 billion out in bids, and the concern that was expressed to me –

**MR. LEARMONTH:** By who?

**MS. DUNDERDALE:** By Nalcor.

**MR. LEARMONTH:** Yeah, you mean Mr. Martin?

**MS. DUNDERDALE:** Probably, always Mr. Martin would be in the meetings with me.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And would lead the briefing.

**MR. LEARMONTH:** Right.

**MS. DUNDERDALE:** That, you know, we needed to be careful about disclosure, because we didn't want to cloud up the bidding process in any kind of way and drive it in any kind of a negative way.

**MR. LEARMONTH:** And you bought that argument, did you?

**MS. DUNDERDALE:** Yes, I did.

**MR. LEARMONTH:** Yeah.

**MS. DUNDERDALE:** And, you know, given the fact that we were two to three months going to give cost estimates, going to give an update on cost estimates, that was the commitment made there in the scrum.

**MR. LEARMONTH:** Yeah, well, the cost estimates didn't come until June.

**MS. DUNDERDALE:** Yes, and that's a puzzle to me as well.

**MR. LEARMONTH:** Why is it –?

**MS. DUNDERDALE:** But I wasn't there.

**MR. LEARMONTH:** Why is it a puzzle to you?

**MS. DUNDERDALE:** Because, we have a new premier in, and one that has, during his tenure in both Finance and Natural Resources, expressed a deep interest in the financing costs and project costs of Muskrat Falls, and is constantly seeking

information. So – and you know, he's having to work through another department and so on, but now he's premier.

**MR. LEARMONTH:** Yeah, so –

**MS. DUNDERDALE:** So he can demand a meeting with Nalcor every day if he wants it, and a full update and a deep update.

**MR. LEARMONTH:** Okay, so when did, Mr. Martin, was he able to persuade you that by announcing the \$300 million or three point whatever it is increase, that that would – was commercially sensitive because, as I think you said earlier, that would play into the red-meat syndrome, right?

**MS. DUNDERDALE:** Yes, and again –

**MR. LEARMONTH:** Yeah, so when did he persuade you of that – on that argument?

**MS. DUNDERDALE:** Well, when the whole argument was presented to me, remember –

**MR. LEARMONTH:** When?

**MS. DUNDERDALE:** – remember I'm into the last three weeks of my time, in office.

**MR. LEARMONTH:** Mm-hmm.

**MS. DUNDERDALE:** And, so –

**MR. LEARMONTH:** Well, you didn't know it at the time though, did you?

**MS. DUNDERDALE:** Pardon?

**MR. LEARMONTH:** You didn't know that at the time?

**MS. DUNDERDALE:** No, I didn't know that.

**MR. LEARMONTH:** No.

**MS. DUNDERDALE:** But I'm just saying, the opportunity for briefings –

**MR. LEARMONTH:** Yeah, but okay –

**MS. DUNDERDALE:** – is narrow, given the fact that I’m certain that I didn’t know until the end of November.

**MR. LEARMONTH:** Yeah, but when – who was president when Mr. Martin was able to persuade you that public disclosure of this revised capital cost estimate would be – you know, it was commercially sensitive information and should not be disclosed to the public. Who was president?

**MS. DUNDERDALE:** Mr. Learmonth, I’ve told you that I don’t recall.

**MR. LEARMONTH:** But it would’ve been with one of the –

**MS. DUNDERDALE:** From my experience, it would have definitely been the clerk, it would’ve been the minister and it would’ve been deputy minister.

**MR. LEARMONTH:** Okay, thank you.

Those are my questions.

Thank you very much.

**MS. DUNDERDALE:** Thank you.

**THE COMMISSIONER:** All right, good.

Thank you very much, Mrs. Dunderdale.

**MS. DUNDERDALE:** Thank you, Commissioner.

**THE COMMISSIONER:** We’ll adjourn for the day and we’ll start tomorrow morning. Again, we’ll try to start at 9 o’clock and try to get Mr. Turpin in this week somehow. So we’ll start at 9 o’clock tomorrow morning.

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.