COMMISSION OF INQUIRY
RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2 Volume 24

Commissioner: Honourable Justice Richard LeBlanc

Wednesday 3 April 2019

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc presiding as Commissioner. Please be seated.

THE COMMISSIONER: All right.

Mr. Kelly, if they want to come in and take their pictures now, tell them they can do that right away. Quickly.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MR. LEARMONTH: No problem.

THE COMMISSIONER: All right.

Good morning, gentlemen.

Mr. Learmonth.

MR. LEARMONTH: Yes.

Before we start, there's two preliminary matters I wanted to address. I referred to Exhibit 02931 in my redirect being a transcript of a press scrum. I don't believe I asked for an order that it be entered as exhibit so I'll ask for that now. 02931.

THE COMMISSIONER: That – that's the one you referred to, yeah, in your redirect yesterday afternoon?

MR. LEARMONTH: Yes.

THE COMMISSIONER: Yup.

MR. LEARMONTH: Yeah.

THE COMMISSIONER: All right. That'll be marked as P-02931.

MR. LEARMONTH: Yeah.

Second point is one of clarification that during her examination of her client, Ms. Dunderdale, and also in my redirect, the reference was made to Exhibit P-02667. It was page 35, and there was a suggestion that this was an order-in-council made pursuant to a Cabinet meeting on November 29, 'cause there was a discussion of who might have been present so on – I think – I don't think that's correct. We'll have to get clarification other witness. But if we look at Exhibit P-02667, on page 34 there's a – the – there's an order-in-council, and it says: "NO ACTION TO BE TAKEN UNTIL THE ISSUANCE OF THREE ORDERS IN COUNCIL."

So my understanding is that that November 29 order-in-council that was referred to does not mean that there was a meeting on November 29; rather, it means that it was an order-in-council made pursuant to the authority given in the October 31 meeting. I just wanted to clarify that. And I'll ensure that we get better clarification from an appropriate government witness in due course, but I believe what I said is correct.

THE COMMISSIONER: Okay.

I notice Ms. Best isn't here right at the moment, so she may want to respond to that –

MR. LEARMONTH: Fine.

THE COMMISSIONER: – so if you could mention that to her, and –

MR. LEARMONTH: Yup.

THE COMMISSIONER: – then we could –

MR. LEARMONTH: Well, as I said, it's my understanding that that's correct, and as always, I stand to be corrected.

THE COMMISSIONER: Okay. All right.

First witnesses today.

MR. LEARMONTH: Yes. The witnesses today are B. J. Ducey and Kelly Williams. Could they be sworn or affirmed?

THE COMMISSIONER: Okay.

So I'll ask Mr. Williams to stand up first please. Do you wish to be sworn this morning or do you wish to affirm to tell the truth? Either one is equally acceptable.

MR. K. WILLIAMS: I'll be sworn.

THE COMMISSIONER: Sworn? Okay. Just put your right hand on the Bible there, please.

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

MR. K. WILLIAMS: I do.

CLERK: Please state your name.

MR. K. WILLIAMS: Kelly Williams.

CLERK: Thank you.

THE COMMISSIONER: And Mr. Ducey. You may want to just press your mic down as well, just – there's a little button there. Yeah.

Same for you, Mr. Kelly.

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

MR. DUCEY: I do.

CLERK: Please state your name.

MR. DUCEY: B. J. Ducey.

CLERK: Thank you.

THE COMMISSIONER: Okay.

And, Mr. Kelly, you may want to press your button on your mic.

Okay. Mr. Learmonth.

MR. LEARMONTH: Just a couple of – I want to enter the exhibits first, and they will be Exhibits P-02442 and P-02731 to P-2741, then P-02839 to P-02841 and then P-02856 to P-02863.

THE COMMISSIONER: All right.

Those will be entered as numbered.

MR. LEARMONTH: Thank you.

I'm going to direct, since you're a panel, I'm – I will direct some questions to each of you specifically, and other questions you're free to both answer. Well, actually that applies – even if I ask you something specifically, for example, Mr. Williams, and Mr. Ducey wishes to add something, there's no problem. So there's no strict rules. But there will be some questions which I will direct to one. As I say, if you want – if the other person wants to fill in, that's fine.

Just by way of introduction, Mr. Ducey, can you state your city of residence and your occupation?

MR. DUCEY: Yes. I live in Houston, Texas, and I'm senior vice-president with Quanta Services.

MR. LEARMONTH: Yeah.

And can you give us some – a brief description of Quanta Services?

MR. DUCEY: Yeah. Sure.

So Quanta Services is the largest speciality contractor in North America. We specialize in power-line construction and pipeline construction, so generally energy infrastructure. Roughly 40,000 employees, over $11 billion in revenue in 2018.

MR. LEARMONTH: And I believe Quanta Services, Inc. is listed on New York Stock Exchange?

MR. DUCEY: Correct.

MR. LEARMONTH: And it's a Fortune 300 company?

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah.

So what is the connection – Quanta Services' connection with Valard?

MR. DUCEY: Quanta Services is the parent company of Valard Construction, the power-line contractor for the DC link. And we also – Quanta Services would have provided the parent guarantee in the contract for the DC link.

MR. LEARMONTH: Okay.

And are you responsible for the operations of Valard in Canada?

MR. DUCEY: Correct. As my role with Quanta Services, I have responsibility for our Canadian businesses.

MR. LEARMONTH: And I believe that Valard has 12 offices in Canada. Is that correct?

MR. DUCEY: Correct. They really work across the country – all province, territories.

MR. LEARMONTH: But there's offices in provinces from BC to and including Quebec. Is that right?

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah. And so you have – you're responsible for those – the operations of those companies, are you?

MR. DUCEY: Yes. The management team.

MR. LEARMONTH: Or those – the operations of Valard –

MR. DUCEY: Yeah.

MR. LEARMONTH: – in Canada?

MR. DUCEY: The management team of Valard reports up to my organization.

MR. LEARMONTH: And Valard is headquartered in Edmonton, Alberta. Is that correct?

MR. DUCEY: Correct.

MR. LEARMONTH: Right. Thank you.

Now, Mr. Williams, can you tell us your position with Valard?

MR. K. WILLIAMS: I'm a senior project manager with Valard Construction.

MR. LEARMONTH: Okay. And how long have you worked for Valard?

MR. K. WILLIAMS: I've been with Valard a little over six years.

MR. LEARMONTH: Yeah. And are you an employee or a contractor?

MR. K. WILLIAMS: I'm an employee.

MR. LEARMONTH: You're an employee. And where are you stationed?

MR. K. WILLIAMS: I'm stationed out of the Edmonton head office, but I'm – I reside in Duncan, British Columbia.

MR. LEARMONTH: In Duncan, British Columbia. All right.

Now, we're going to – just by way of introduction – and I believe both of you will confirm this – that Valard had two contracts with the Lower Churchill Project: CT0319, which is the AC transmission line from Muskrat Falls to Churchill Falls. Is that correct? That was the first one.

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah. And the second was CT0327, which was the high-voltage direct current, or HVDC, line from Muskrat Falls to Soldiers Pond, excluding the SOBI?

MR. DUCEY: Correct.

MR. LEARMONTH: That's correct. And are you aware that the CT0327 was one of the contract packages that was investigated by Grant Thornton in their report?

MR. DUCEY: Yes.

MR. LEARMONTH: Yes. Yeah. All right. So that's the package that we're going to be focusing on today, the one from CT0327.

And I understand, Mr. Williams, you weren't involved in – you weren't the project manager for the construction of a line from Churchill Falls to Muskrat Falls. Is that correct?

MR. K. WILLIAMS: That's correct.

MR. LEARMONTH: Yeah.

Could we bring up the Grant Thornton report, P-01677? The first page.

THE COMMISSIONER: Be on your screen.

MR. LEARMONTH: So this is the report that I'm referring to. Construction Phase – December 7, 2018. Then if we can go to page 40.

Forty, right at the bottom, there's a reconciliation.

A reconciliation – it's 41, I'm sorry. Yeah, reconciliation – just there.

Have you seen the Grant Thornton report before or are you familiar to some degree with its contents?

MR. DUCEY: I'm familiar with some degree of –

MR. LEARMONTH: Yeah.

MR. DUCEY: – the contents of it.

MR. LEARMONTH: Yeah. I won't ask for a statement, as if it's an audited statement, but do the figures under that reconciliation – if you look at it, does that appear to you to be an accurate statement of the items under discussion there?

MR. DUCEY: Yes.

MR. LEARMONTH: Okay.

And I was gonna ask you also your education. I understand you have a Bachelor of Engineering, correct?

MR. DUCEY: Correct.

MR. LEARMONTH: And an MBA also?

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah.

And you've been with Quanta for 12 years?

MR. DUCEY: Correct.

MR. LEARMONTH: Okay.

Now is – you gave a description of some of the work that Quanta carries out. Is Quanta, to your knowledge, the largest linear project constructor in North America? And when I mean linear projects, I would include transmission lines and pipelines?

MR. DUCEY: To my knowledge, yes.

MR. LEARMONTH: To your knowledge. Yeah.

And Valard has been in business for 40 years. Is that correct?

MR. DUCEY: Correct – this is its 40th year.

MR. LEARMONTH: And, Mr. Williams, as far as you know, is it the largest contractor in Canada for transmission lines and pipelines?

MR. K. WILLIAMS: To my knowledge, yes.

MR. LEARMONTH: To your knowledge. Okay.

And just to complete that, is it correct that Quanta acquired ownership of Valard in 2010?

MR. DUCEY: Yes.

MR. LEARMONTH: Okay.

Mr. Williams, you've already indicated that you're the – that with respect to the Muskrat Falls Project, you were the project manager for the construction of the line. Is that correct?

MR. K. WILLIAMS: That's correct.

MR. LEARMONTH: Yeah.

I'd like you to give us some – a summary of your experience and work history in this field.

MR. K. WILLIAMS: As I mentioned before, I've been with Valard for a little over six years. During that time, I've been involved in four of their large-scale projects and megaprojects. Prior to that, I was an independent consultant on a line for a period of time in BC.

MR. LEARMONTH: Mmm.

MR. K. WILLIAMS: And prior to that I was with a BC forestry company that was on the – another significant line in southern BC. So I've got approximately eight years of transmission line project management experience –

MR. LEARMONTH: Okay.

MR. K. WILLIAMS: – and prior to that, I've got 15 to 20 years of forestry project management.

MR. LEARMONTH: So I think your title was Lead Project Manager for CH00327. Is that correct?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Yeah.

So was there anything in the – anyone in the field that you reported to – in the field?

MR. K. WILLIAMS: Not on a day-to-day basis in the field. No.

MR. LEARMONTH: No. And who would you report to?

MR. K. WILLIAMS: I would report to the Valard executive.

MR. LEARMONTH: Yeah. In Edmonton?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Okay. So you were the top person in the field then.

MR. K. WILLIAMS: Day-to-day. Yes.

MR. LEARMONTH: Day-to-day operations. I realize, perhaps, people would come –

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: – with seniority to you but on a day-to-day basis, you were the lead person.

MR. K. WILLIAMS: Yeah. There was a – there were directors from time to time associated with the project that would spend time in the field on occasion.

MR. LEARMONTH: Right.

Mr. Ducey, can you briefly explain the scope of work for the contracts – just in a general way, please?

MR. DUCEY: Yes. So we were contracted to build the overhead portion of the DC link and so that's responsibility for installing the foundations, assembling the towers, erecting the towers and stringing the conductor from Muskrat through to Soldiers Pond.

MR. LEARMONTH: And what were – those were your duties in relation to that – the main duties in relation to that contract but did you have any duties with respect to clearing the right-of-ways?

MR. DUCEY: So the clearing of the right-of-way, under the contract, there's – we kind of – there's two parts; so what I just described there – the foundations, the assembly of the towers, the erection of the towers, stringing conductors would have been done under part A of the contract. And then part B of the contract was more of a – there were some services we would provide under that contract but Nalcor had responsibility for clearing the right-of-way and establishing the access roads to access the various (inaudible) foundation locations or tower locations.

MR. LEARMONTH: Yeah. And I think the allocation in the budget for that – it was 237 million and your – the part of work that you did for part B was roughly 10 million. Is that correct?

MR. DUCEY: Ten or 20 million.

MR. LEARMONTH: Yeah. And it's a small portion.

MR. DUCEY: Yeah. It was a small portion. And under part B we'd do, like, various different professional services. We'd provide – some of it would have been surveying. So, I mean, you're pioneering, say through Labrador, and so we'd be doing surveying. We have certain – one of our businesses is surveying, so we'd be flagging the right of way where, you know, the people following behind the surveyors would be the

clearing crews and that'd be another contractor would come in and clear the right-of-way.

MR. LEARMONTH: Right.

Now, I understand that the contract that Valard entered into with Nalcor was signed following what's described as an open-book negotiations process. Is that correct?

MR. DUCEY: Correct.

MR. LEARMONTH: Can you – the other contract – that was the main – the other contract, CH00319, that – for Muskrat Falls to Churchill Falls, I understand that was done differently. It was through an RFP – request for proposal – process, there were other companies in addition to Valard submitted bids and proposals and then Valard was selected. Is that correct?

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah.

So what is the difference in the process between an open-book negotiation and the standard request for proposal process?

MR. DUCEY: So, I guess from my perspective as a contractor service provider, we still follow the same process we would have done, kind of – both in terms of establishing an execution plan, establishing cost to the scope of work and so – but yeah, through a traditional RFP process, there's a tender due date, you respond to the tender due date and then the client would evaluate the different tenders that they would receive back. Maybe it might be a bunch, might be a few.

But it would – and then – but in this open-book negotiation, that was something negotiated – that was something initiated by Nalcor and then we started kind of a collaboration with each other over multiple months of – our estimating team would work with the Nalcor estimating team to establish various different costs for the various different units in the schedule of values in the contract.

MR. LEARMONTH: And do you know or understand why Nalcor went – decided to go with open-book negotiations as opposed to an RFP process for this contract? Was that ever communicated to you or did you ever form any assessment on that?

MR. DUCEY: I formed an assessment of it and I think it's really been in through this, you know, Inquiry process and me now having had a – you know, post having a view of the documents. But if you think back in 2013 and '14 when we were doing this, there was a tremendous amount of megaprojects and transmission line construction going on across North America. And this was a, you know, a very low part of North America. There's other very large lines being built. And I really do think Nalcor was interested to make sure they had the right resources. Because it's our skilled craft labour that's a unique skill set to do this type of work; that they have access to these resources and access to all the equipment that was necessary to do the work.

And so it's not uncommon, these open-book negotiations, in this specific skill – this specific type of work in large linear projects for them to go on. Like, we've done them with other projects, not only in power line construction but also in our large linear pipeline construction projects.

MR. LEARMONTH: But is it – based on your experience, is it common for there to be an open-book negotiation process for a contract that just is as big as this one or is it usually used for smaller contracts? Is there anything you can think –?

MR. DUCEY: It really depends on the – on a customer. But I would just say it's not unusual. It's quite common, I would actually say, in our (inaudible) –

MR. LEARMONTH: All right.

So you were familiar with the process.

MR. DUCEY: Yeah, we were familiar it. It's a – my point is it's just – it's not unusual.

MR. LEARMONTH: Yeah.

And so open-book negotiation, I guess that speaks for itself, but there's no other – you sit down and exchange information and try and

work out an agreement. Is that what we're talking about?

MR. DUCEY: Yeah. And that's basic – yes.

And then on Nalcor side they have their project management team and various different – I just remember they had multiple different people that would – there were estimators that would review the work that our estimators would do and, kind of, check each other to make sure that, yeah, that made sense from a – you know, the amount of equipment that would be involved to do certain tasks, the productivity assumptions, the number of – you know, the number of labourers that would be on a certain task. And then that would go through all the different schedule values in the contract.

MR. LEARMONTH: Okay.

And is it correct that the process – or that you were contacted in September – or October 2013 by Nalcor to inquire whether Valard was interested in participating in this process?

MR. DUCEY: Yes.

MR. LEARMONTH: Okay.

And when did these open-book negotiations begin? In what month approximately?

MR. DUCEY: I would say October, November 2013.

MR. LEARMONTH: Okay.

The contract – if you go to tab 7, which is Exhibit P-01885. Can you identify this document, Mr. Ducey?

MR. DUCEY: It's the contract for the DC transmission link.

MR. LEARMONTH: Yeah.

Now – so that's the contract that resulted from the open-book negotiation process?

MR. DUCEY: Correct.

MR. LEARMONTH: Okay.

Now, this contract was – P-01885 – was signed in August 2014, which is approximately 10 months after negotiations began. That might appear – seems to be a long period. Am I right on that, or is that what you'd expect –?

MR. DUCEY: Well, it's a big contract, there's a lot – you know, I guess it has a complicated – you know, it's 1,100 kilometres or so, and so there's a lot of work went into this over that 10-month period.

MR. LEARMONTH: So was the 10-month period reasonable in these circumstances, in your view?

MR. DUCEY: Yes.

MR. LEARMONTH: A reasonable period of time to conclude the –

MR. DUCEY: Yes.

MR. LEARMONTH: – the arrangements.

All right. I'd like you to turn to your tab 3, which is Exhibit P-02732.

Now, this is an email, it speaks for itself, from Jason Kean of Nalcor, to you on January 15. If you read down the first paragraph – the first couple of paragraphs, one gets the sense that there's – of some frustration about the negotiations. I'll just read something out – right from the top, and this is 02732, page 1: "I can confirm that we will travel to Edmonton for 23/24 January with the option for spillover into the weekend. Given the discussions will have an objective of determining whether a win/win opportunity exists, I suggest the discussion is best held with a smaller group …" et cetera.

Next paragraph: "I have continued to reflect on where we are today versus my expectations of where we would be when we initiated this process back in late October. My conclusion is that we have a significant gap… in both output and expectations. While many of our negotiating principles have remained intact, I do not believe the open-book transparent pricing model (attached for reference) has been truly followed during these discussions. I am not suggesting that we have strayed intentionally, however it is realization of a concern we expressed in the 28-

Oct meeting - that is how difficult it would be for Valard to move" – forward to – "truly open book process given it is a new way of working for them."

Now, so that – you know, I'll say that expresses some level of – I don't know if it's criticism, but frustration on the length of the process. Can you give us any information on your recollection of the state of negotiations at that time, which was January 15, 2014?

MR. DUCEY: Right.

Yes, I mean, I think we were – I would say, you know, if you look back now where we started in October of 2013 and signed the contract in August of 2014. So this is still early of that whole negotiation period, and yeah. I don't know, I mean I – you know, kind of, thinking back, this type of email or letter from Jason at that time wasn't to me overly concerning or anything of that nature.

It was more, you know, he was very passionate about this process, passionate about getting this project up and running. And so I think it's – you know, I look at it as more of him trying to spur the whole team on to gather greater momentum in the estimating work that was going on.

MR. LEARMONTH: Okay.

The comment that – at the bottom of – the last two lines of paragraph 2, "that is how difficult it would be for Valard to move towards a truly open book process given it is a new way of working for them."

Is that correct?

MR. DUCEY: I don't know. It's – to my – I mean, going back on this, like I said, to me, a lot of this would be just noise in this whole process.

MR. LEARMONTH: Yeah.

MR. DUCEY: But no, not in terms of Valard because at the same time we were – there was a very large project in Alberta that we were working on at the same time as this, that was of similar price or cost and we're having very great success with that client and that project's been very successful –

MR. LEARMONTH: Yeah.

MR. DUCEY: – in itself. So yeah, it's – sometimes there's just different teams, different mixes of people, but – and then we – you know, post this January 15th email, you know, obviously we were able to, I think, you know, work as a – work – collaborate to get to the benefits of the open-book negotiation and the benefits that this contract eventually –

MR. LEARMONTH: Yeah.

MR. DUCEY: – yielded.

MR. LEARMONTH: I notice on the same – in the same Exhibit P-02732, there's one of these slide decks dated November 5, 2013. That's at the same tab?

MR. DUCEY: Yeah.

MR. LEARMONTH: Yeah.

It says, November 5, 2013, "Open Book Estimate Development Model." And if you turn to pages 8, 9, 10, 11, it seems that Mr. Kean is giving his view on the principles behind an open book negotiation and I don't know if it was done for an intended educational purpose of – but how did you take – what take do you have on this?

MR. DUCEY: So I believe – my recollection is that this presentation here, actually, was – either Jason and myself or Jason and others within the Quanta Valard team helped develop this. It's like when I – so, like what he's saying in his email – you know, he's frustrated with the process – I think it's slide 5 or it's page 8 of this tab, I guess, but it's slide 5 on the slide deck – I mean, that was something that we kind of developed, you know – that we developed together. Not when I say Jason and I, but I mean our teams –

MR. LEARMONTH: Yes.

MR. DUCEY: – we respectively developed together so that you would have, you know – what we're trying to do in this open-book process – and this is common in, I would say, the construction industry – linear construction – is define the scope – the methodologies to be

used – what are some of the, you know, factors that are going to deal with the price and then, they put in here, performance factors and then that, you know, develop your base estimate.

You know, at the time, like I said, Nalcor had a team of folks that had – who they'd hired – who had worked on other transmission line projects that were the – were – I say that our teams were checks to each other – working collaboratively to develop a reasonable, fair contract to execute the scope of work.

MR. LEARMONTH: All right.

While conducting the negotiations were you aware of what Nalcor's estimate was for the scope of work that was being considered?

MR. DUCEY: No.

MR. LEARMONTH: Did you form any impression from the nature of the discussions?

MR. DUCEY: That – my – yes, I did form an impression that whatever the work we were doing on our side to develop a base estimate was greater than what their estimate was.

MR. LEARMONTH: Yeah. And could that have been the source for any, you know, problems in negotiations in retrospect?

MR. DUCEY: In retrospect, it created friction with the teams. Or – I'd say stress and pressure to –

MR. LEARMONTH: Yeah. Okay.

So what were the key issues that were in dispute during the open negotiation process?

MR. DUCEY: Yeah. There was a lot of time spent on everything in terms of the productivity expected of the craft labour; the schedule; the number of work fronts we would have – but I think if, you know, if you say – the thing where things were spent the most time on was the amount of craft labour and the amount of equipment and the efficiencies that it would take to do every task.

So how long would it take to assemble a tower? Would – you know, we were, you know, talking about that using previous project examples that we had, or that Nalcor folks had to come up with a common viewpoint –

MR. LEARMONTH: Yeah.

MR. DUCEY: – on how many kilometres of conductor could we string per shift or –

MR. LEARMONTH: Yeah.

MR. DUCEY: – things of that nature.

MR. LEARMONTH: But that had to do with labour productivity –

MR. DUCEY: Yes.

MR. LEARMONTH: – that was one of the elements in it. So would that – would the nature of those discussions and labour productivity be something along these lines that you would say: Look, to pour this foundation we're going to need 10 hours of labour. And Nalcor would be saying: No, I think it's six. Would that be the –?

MR. DUCEY: That's a – yeah –

MR. LEARMONTH: The approximate proportions are different but –

MR. DUCEY: – different but – yeah. Yeah, that's the kind of stuff we do. It's like, hey, our viewpoint on this task is this amount of equipment, this amount of productivity. And they say: No, we think you could do it for 30 – you know, an hour less or 3 minute – you know, three hours less or something of that nature.

MR. LEARMONTH: Yeah. And I think another example of that is that during these negotiations – correct me if I'm wrong – that you were saying you'd need three boom trucks per tower erection site and Nalcor thought two would be enough.

MR. DUCEY: I don't know exactly if it was three to two or whatever, but I know we would have discussions like that of –

MR. LEARMONTH: Yeah.

MR. DUCEY: – the amount of zoom booms you would use and the amount of –

MR. LEARMONTH: Yeah.

MR. DUCEY: – towers that a crew could do a day. Things of that nature.

MR. LEARMONTH: And also the number – how many crew members would be required, things like that.

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah, okay.

So, as one would expect, you were trying to get the figures as high as reasonably possible and Nalcor was trying to reduce them.

MR. DUCEY: I would say we were trying to get the – based on our experience building large linear high-voltage construction –

MR. LEARMONTH: Yeah.

MR. DUCEY: – we were trying to bring in what we've seen on other projects to this project.

MR. LEARMONTH: Yeah. So that's like reference class – you're referring to other jobs and saying: In this job it was such-and-such, in this job it was such-and-such; in our view for this job it's such-and-such.

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah.

And Nalcor would have other reference points I presume –

MR. DUCEY: Correct.

MR. LEARMONTH: – to try and get the figure down.

MR. DUCEY: Yeah, yeah.

MR. LEARMONTH: That's just a normal –

MR. DUCEY: Yes.

MR. LEARMONTH: – part of the negotiations.

MR. DUCEY: Yeah.

MR. LEARMONTH: There's nothing unusual about that.

MR. DUCEY: No. And then – I think we brought a lot – I mean, we do a lot of this. We build thousands of kilometres or thousands of miles of this type of infrastructure, so I think we brought a lot of knowledge to it. And they had – you know, and they had a viewpoint as the customer too and we tried, you know, coming to a common viewpoint then.

MR. LEARMONTH: All right.

I'll come back to you in a few minutes Mr. Ducey.

But Mr. Williams, I now ask you to describe generally how the work of a right-of-way and the access road and the erection of towers actually progresses? Can you give me – there was a sequence, a construction –

MR. K. WILLIAMS: The workflow.

MR. LEARMONTH: – sequence, is that correct?

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: And it has to be done in a certain order, you can't change or switch around the –

MR. K. WILLIAMS: That's correct.

MR. LEARMONTH: – the sequence, is that correct?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Okay. Can you give us a summary of what the sequence is?

MR. K. WILLIAMS: So it starts with the right-of-way clearing of the trees. So the trees are cleared. Accesses are built to access to the tower locations along the right-of-way. Foundations are installed. Towers are assembled adjacent to the foundations. The towers are erected, and the conductor and other lines are strung tower to tower.

MR. LEARMONTH: Okay.

Okay, now the – going back to the first step, is it – is the first step surveying the line?

MR. K. WILLIAMS: First step is delineation of the right-of-way limits which is the surveying and flagging of the edges of the right-of-way.

MR. LEARMONTH: Okay.

And then I think there's a – the next step would be pioneering? Is that correct?

MR. K. WILLIAMS: There would be pioneering of access to get to the right-of-way to be able to physically clear the trees.

MR. LEARMONTH: Yeah.

And how are the trees cleared? What type of machinery or equipment is used?

MR. K. WILLIAMS: They're typically cleared with conventional logging equipment, excavator-style equipment with processing heads that would fell the trees. In some cases, they're hand felled with people with chainsaws.

MR. LEARMONTH: Yeah.

And coming behind the people clearing the right-of-way would be the people building the access road, is that correct?

MR. K. WILLIAMS: Yes. For the most part.

On occasion you can do a limited clearing and build the road out in front, but typically the clearing is one to two kilometres out in front of the access.

MR. LEARMONTH: Okay.

Is there a reason for that?

MR. K. WILLIAMS: The trees have to be cleared in order to build the access, and the equipment that does the clearing has to be refueled daily, so it can't get too far away from the access points where fuel and personnel can travel to.

MR. LEARMONTH: Yeah.

So if there's too much of a gap, then that presents a problem with respect to fuel and supplies and personnel. Is that right?

MR. K. WILLIAMS: It can.

MR. LEARMONTH: Okay.

Now the – so after that's done, then I take it the people erecting the towers come in. Is that correct?

MR. K. WILLIAMS: After what's done? (Inaudible) –

MR. LEARMONTH: After their ROA – right-of-way clearing has been completed.

MR. K. WILLIAMS: After the clearing and access is done, then the actual line construction – what we call the line construction – begins, which is the foundation installation.

MR. LEARMONTH: Okay.

And in terms of erecting the towers, I take it there's a selection process for the type of foundation that's required for any given unit. Is that correct?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Yeah.

And so there's different types of foundations – and we'll talk about this in greater detail later, but there's different types of foundations depending on the geotechnical analysis. Is that right?

MR. K. WILLIAMS: Depending on the tower type designed for that location and the geotechnical subsurface conditions.

MR. LEARMONTH: Yes.

The – so then, I take it, the towers are – they're assembled and erected, and sometimes that would require cranes and helicopters. Is that correct?

MR. K. WILLIAMS: That's correct.

MR. LEARMONTH: Yeah.

So once everything is done, I guess the last thing is to string the wires. Is that correct?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Okay.

Mr. Ducey, I'd like you to look at tab 4, Exhibit P-02733.

You see that?

MR. DUCEY: Yes. Yes.

MR. LEARMONTH: Yeah.

Now this is a memorandum of understanding, and we see that this is – just looking for the date on it – March 28, 2014. So that's in advance of the signing of the contract.

This is not a typical type of document that we would see in these situations or at least I'm familiar with, you know, especially when you're negotiating to sign a contract. Is – am I right that this is slightly unusual? Or is it a common practice to have a memorandum of understanding?

MR. DUCEY: It's a common practice if you – you know, so you – like you said, it's March 28, 2014, so we had been kind of at this process for five months now – I think if I do my math right, it's five months. A lot of resources on our side and Nalcor's side was being, you know, put into – poured into this, so I think our respective management teams, you know, thought it was a good idea to start kind of bringing some more – we'll call it structure or just, you know, memorialize where we're at –

MR. LEARMONTH: Yeah.

MR. DUCEY: – and that's what this does 'cause it (inaudible) – if I look here on page 3, it talks about, you know, the price of – which was $820 million, which I know the contract was signed for something less than that. It talks about kind of the – I call it the important concepts that the contract would have.

And so it was really – you know, looking back, I was really – we're just trying to memorialize where we're at after being at it for five months, that this was a process that both sides wanted to see through to the end.

MR. LEARMONTH: Okay.

You wanted to put in writing where you stood on that time, knowing you had further work to do.

MR. DUCEY: Right.

MR. LEARMONTH: And that's a standard practice, is it, I think you're saying or …

MR. DUCEY: Yes, it – doing these types of MOUs on – you know, like I said, you're – we're – is – on our side from – I can speak from a Quanta Valard side, we're allocating significant resources; we're – we have a significant fleet of equipment, people, things of that nature, craft labour that we're saying we're gonna hold that in reserve for this project versus chasing other projects around or, you know, going to pursue other work.

MR. LEARMONTH: Yeah.

MR. DUCEY: And so I think it was just us and Nalcor having memorialized where we're at, at that time.

MR. LEARMONTH: Yeah. And I –

THE COMMISSIONER: Excuse me just for a second. When you're referring to the document, can I ask you to refer to the page number that's in red at the top of the page as opposed –

MR. DUCEY: Okay.

THE COMMISSIONER: – to the –

MR. DUCEY: Yeah, no problem.

THE COMMISSIONER: – because it will help the clerk who's trying to bring up the page.

MR. DUCEY: Yeah, no problem.

MR. LEARMONTH: Yeah, I should have mentioned that to you. Thank you.

MR. DUCEY: Thank you. (Inaudible.)

MR. LEARMONTH: The – all right, so that's – now, there was nothing unusual about that.

MR. DUCEY: No.

MR. LEARMONTH: Now, I understand that the plan at the beginning was that Valard was going to be responsible for the right-of-way clearing and access road. Is that correct?

MR. DUCEY: Correct.

MR. LEARMONTH: Okay. And that – there was a change in that. Is that correct?

MR. DUCEY: Correct.

MR. LEARMONTH: And do you know – can you explain your interpretation of why there was a change? Why Nalcor decided to do that work by itself or by hiring other contractors?

MR. DUCEY: Yeah. There – on the right-of-way clearing and access construction scope of work, Nalcor and us could not agree on a price, and so Nalcor felt that they could do it in a more efficient manner through another contract arrangement.

MR. LEARMONTH: Okay. And that was fine with you? When you – well, you didn't have any choice, I suppose, if that's (inaudible) –

MR. DUCEY: Yeah. Well, we were fine with that. We were fine. By that point in the negotiations, we were – you know, our core business is the power-line construction, so if they wanted to take care of the clearing and access on their own in house, we were fine with that.

MR. LEARMONTH: Okay. Now, so the contract was – that was signed was broken down into two parts: part A and part B?

MR. DUCEY: Correct.

MR. LEARMONTH: Can you give me a summary of what was covered in part A? What type of a contract it was?

MR. DUCEY: Okay. So part B would have been the schedule values in the work to install, you know, to build the power – overhead power line. So that would be install the foundations, assemble the towers, erect the towers, string the conductor.

MR. LEARMONTH: Okay.

MR. DUCEY: That would've been part A, and then part B would have been –

MR. LEARMONTH: That was part A you (inaudible).

MR. DUCEY: That was part A.

MR. LEARMONTH: Yeah, okay.

MR. DUCEY: Yeah.

MR. LEARMONTH: Fair enough. And was that a unit-price contract?

MR. DUCEY: Yes.

MR. LEARMONTH: Okay. Subject to certain conditions – I mean, you didn't know what the geotechnical work was, so there was a formula for applying unit price to whatever –

MR. DUCEY: Right.

MR. LEARMONTH: – of the family of foundations that was used in a particular site?

MR. DUCEY: Yes. So the units would be – there's – I don't know, there's probably 1,000 of them in the contract, but they're all the various different types of foundations that the Nalcor team of engineers thought at the time that would need to be installed. Various different towers – because you, you know, you don't know how many dead-end towers you're gonna be or how high all the towers are gonna be based until – you know, 'til you get further out on the project. And so there's – I really do think of the units as kind of a – the ingredients that they're gonna take to execute on the project.

MR. LEARMONTH: Yeah.

So you work out the unit and then you apply it to the situation that you're faced with –

MR. DUCEY: Right.

MR. LEARMONTH: – right? And that's a standard process, is it?

MR. DUCEY: Yes.

MR. LEARMONTH: Yeah.

I take it that no contractor would ever do this on a fixed price contract. Is that correct?

MR. DUCEY: No, I would not – no, we've done projects of this size on a fixed price contract.

MR. LEARMONTH: Yeah.

MR. DUCEY: So.

MR. LEARMONTH: But wouldn't you – but in those situations, would you have to have a clear understanding of the geotechnical conditions?

MR. DUCEY: Yes, you would. And then those, those would be like an EPC contract, lump sum, you know, where you'd be responsible for the engineering, construction, procurement –

MR. LEARMONTH: Okay.

MR. DUCEY: – of the project.

MR. LEARMONTH: So you'd have a good handle on what you were dealing with?

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah.

Okay, so that's part A. Now part B addresses the right-of-way and access road. Correct?

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah.

And there was – yeah, I think the budget price that Nalcor had was $230 million and for whatever reason, the two, Valard and Nalcor, couldn't come to an agreement, correct?

MR. DUCEY: Correct.

MR. LEARMONTH: So then they contracted most of the work out?

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah.

And with Valard retaining the duty of performing the surveying and flagging work and coordinating work with the contractors that Nalcor had selected.

MR. DUCEY: Correct.

MR. LEARMONTH: Is that correct?

Was there any arrangement in place for a profit split if there were – if the work on the right-of-way – the scope of work for the right-of-way came in under budget?

MR. DUCEY: Yeah, so I mean – yes, there was. In the contract it contemplates a profit split or a bonus. If Nalcor was able to deliver the right-of-way and clearing access, I think, below $230 million, there was a sharing that would go on with those savings.

MR. LEARMONTH: So that would be an incentive for you to, you know, make your very best effort because if it did come in under the $230 million, there'd be some money for you.

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah.

MR. DUCEY: Correct.

MR. LEARMONTH: Is that a standard type of arrangement?

MR. DUCEY: Yes.

MR. LEARMONTH: Incentive – yeah?

MR. DUCEY: In contracting or power line contracting, having some (inaudible) that's built in the contract is common.

MR. LEARMONTH: Okay.

Now the – by the way, was there any money for you in that? Or did the cost go over the $230 million?

MR. DUCEY: The cost went over the $230 million.

MR. LEARMONTH: Okay.

So there was no incentive payment for you?

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah.

Can you tell me how far ahead of the right-of-way and access road or the transmission line constructors – what's the separation point or distance that's preferred?

MR. DUCEY: Maybe Kelly can tell you that.

MR. LEARMONTH: Okay.

Kelly, can you answer that?

MR. K. WILLIAMS: It varies but it's nice to have 50 to 100 structures out in front of where the crews are actually working so that you have the ability to get your linear construction and preparation of activities.

MR. LEARMONTH: So 50 to 100 would be the –

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: – and –

MR. K. WILLIAMS: Yeah. We strive for 100 structures.

MR. LEARMONTH: And how – what's the distance between the structures and –

MR. K. WILLIAMS: Oh, roughly 300 metres, so say three structures per kilometre.

MR. LEARMONTH: Okay, yeah.

MR. K. WILLIAMS: So.

MR. LEARMONTH: Yeah, they're roughly 300 – does the distance between the towers depend on the terrain or other circumstances?

MR. K. WILLIAMS: Depends on the terrain, the design type, the type of line, the height of the towers versus the span width.

MR. LEARMONTH: Yeah. All right.

Now if we could, again, turn to page 41 of the Grant Thornton report. It's an exhibit I referred to earlier and it is –

THE COMMISSIONER: It'd be on your screen – 01677.

MR. LEARMONTH: – 41.

Now if we look at this page 41, based on that, is it correct that the estimated value of part A was 809 million based on the estimated number of units, looking at the GT table?

MR. DUCEY: Yes.

MR. LEARMONTH: Yeah.

And can you confirm that the estimated value of the right-of-way and access clearing was 242 million or thereabouts? And that included the other right-of-way and access contractors' work?

MR. DUCEY: Yes.

MR. LEARMONTH: Yeah.

And the – can you confirm that the target price in the contract actually is found – well, we'll get to this later, but it's 237 million and that's in the contract at page 189. Is that what you recall?

MR. DUCEY: Yes, that's what I recall.

MR. LEARMONTH: We can turn that up later if necessary, with some adjustments. And you – I think you've already confirmed that Valard's portion of the right-of-way and access amount was estimated to be around $10 million or thereabouts?

MR. DUCEY: Yeah, it'd be $10 million roughly of – it all would have been professional services –

MR. LEARMONTH: Yeah.

MR. DUCEY: – surveying type of stuff that we've talked about, things of that nature.

MR. LEARMONTH: So most of the $242 million was for the companies doing the right-of-way clearing and access road, which would be mainly, I think, Johnson's Construction and others?

MR. DUCEY: Correct.

MR. LEARMONTH: All right.

Just for anyone who wanted to check – the $237-million figure can be found at Exhibit P-01885. That's the contract at page 189, it's 237 and some other amount but that's with the reference I provide for that.

Now I wanted to speak about the question of the geotechnical work. Was it your understanding that the – there was little or no geotechnical work done, but rather Nalcor relied on a desktop survey?

MR. DUCEY: Yes.

MR. LEARMONTH: Is that correct?

MR. DUCEY: Yes.

MR. LEARMONTH: Okay.

If we go to tab 1, which is Exhibit P-01900. Can you confirm that this document is the geotechnical information which was provided to Valard by Nalcor prior to the contract being entered into?

MR. DUCEY: Yes.

MR. LEARMONTH: Yeah.

Mr. Williams, so this is – has been described as a desktop study. You're familiar with that term, are you?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Okay.

Can you explain what is meant by the term "desktop study"? Or your understanding of the meaning?

MR. K. WILLIAMS: It's largely an office-based review of the line and using any information available at the time, so lidar, surficial mapping, air photos, any limited ground information that the reviewer may have at their disposal, but it's largely an office-based exercise.

MR. LEARMONTH: So there'd be a limited or no ground-truthing?

MR. K. WILLIAMS: Typically, that's right.

MR. LEARMONTH: And what is – what does the term ground-truthing mean?

MR. K. WILLIAMS: Ground-truthing means verification of assumed or estimated conditions, based on the desktop analysis on the ground – physically there, reviewing the conditions.

MR. LEARMONTH: So based on your – information you were provided, is it correct to say that there was very limited – actual geotechnical work carried out to determine the soil conditions along the line?

MR. K. WILLIAMS: That's correct.

MR. LEARMONTH: Yeah.

Based on your experience, what is the – is there a standard procedure or, you know, parameters of a standard procedure for doing geotechnical work on a transmission line of this length?

MR. K. WILLIAMS: I wouldn't say there's a standard, but the more information you have, the more accuracy you have in your –

MR. LEARMONTH: Yeah.

MR. K. WILLIAMS: – information.

MR. LEARMONTH: Well, have you ever seen a project of this size done or the length of this transmission line without – with limited geotechnical work?

MR. K. WILLIAMS: I have not personally, no.

MR. LEARMONTH: No. Have you, Mr. Ducey?

MR. DUCEY: No.

MR. LEARMONTH: You haven't seen that before. The – so what would be – I know there's no, you know, best practice or this is the proper way to do it, but what would be a typical way to conduct geotechnical work on a transmission line? What would be the normal practice or one that you would feel comfortable with following?

MR. K. WILLIAMS: After a desktop study or analysis, typically there would be geotechnical drilling or test pitting or some ground-truthing and verification by ground type or strata based on what's been identified in the office. Go out and ground truth, and get enough detailed information that there's a level of confidence where the ground type changes.

MR. LEARMONTH: Okay. So why does the ground type make any difference?

MR. K. WILLIAMS: The ground type and subsurface conditions have a large impact on the determination of the foundation type that goes in the ground.

MR. LEARMONTH: Okay. Why is that?

MR. K. WILLIAMS: If rock is at the surface or close to the surface, then a rock foundation will be installed. It's –

MR. LEARMONTH: And that's the cheapest or least expensive form, correct?

MR. K. WILLIAMS: It's one of.

MR. LEARMONTH: Yeah.

MR. K. WILLIAMS: Yeah. A grillage foundation would typically be less expensive than a rock foundation. But again, it depends on the depth and the type of foundation.

MR. LEARMONTH: Yeah.

MR. K. WILLIAMS: And as you move from rock, which is the most stable, into tills and cohesive soils, you would move to a grillage, and then you – as you move into non-cohesive and less stable soils, you would have to look at other foundation types that typically are more expensive.

MR. LEARMONTH: And what if you have bog or muskeg?

MR. K. WILLIAMS: Bog or muskeg or silty soils, you would move to pile foundations and variations on that.

MR. LEARMONTH: And how deep can the bog be or – on this transmission line? What was the deepest bog that you encountered at a foundation site?

MR. K. WILLIAMS: The bog can be many metres deep depending on the location. So it can – there can be many instances where you don't hit bedrock or a cohesive soil type.

MR. LEARMONTH: At all?

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: Yeah. So how deep would you go in that situation? I mean, you can't go down –

MR. K. WILLIAMS: On –

MR. LEARMONTH: – (inaudible).

MR. K. WILLIAMS: – a foundation installation?

MR. LEARMONTH: Yeah.

MR. K. WILLIAMS: Well, foundation installation on this project varied depending on the – where the frost layer was. So in Labrador, my recollection is that 3.5 metres was the foundation installation depth typically for the foundations, but if you move to a pile type, then you could go much deeper than that.

MR. LEARMONTH: But – it's obvious – you don't know what the soil conditions are until you dig or do a –

MR. K. WILLIAMS: That's correct.

MR. LEARMONTH: – test. Is that right? Yeah.

MR. K. WILLIAMS: Correct.

MR. LEARMONTH: So by proceeding with a desktop study, does that not introduce a high level of uncertainty as to what the conditions are gonna be?

MR. K. WILLIAMS: Yes. It can.

MR. LEARMONTH: Okay. Do you wish to add anything to this subject matter, Mr. Ducey?

MR. DUCEY: Yeah. From a Valard perspective, I just wanna make sure that, you know, we're clear on even though that, you know, this was the geotechnical information that was provided, there was a whole family of foundations in the contract, and, you know, it was our viewpoint at that time that, you know, based on kind of power line construction knowledge, we had a – there was a family of foundations that would work –

MR. LEARMONTH: Yeah.

MR. DUCEY: – it would really affect the mix that they were – the – in the schedule of values: you might put more H-Piles in than you would rock or grillage foundations.

MR. LEARMONTH: Yeah.

All right. On the subject of the – you use the term family of foundations. Is that –

MR. DUCEY: Yeah.

MR. LEARMONTH: – an industry term?

MR. DUCEY: That's an industry term, yes.

MR. LEARMONTH: Okay.

So if we go to the same – the last exhibit we had. That's tab 1 at page 75.

Seventy-five in the top right-hand corner. Have you got that?

MR. DUCEY: Yes.

MR. LEARMONTH: Okay. Now, here are the – at the table at the top is a – under the heading Table 1 – Foundation Types Along the Proposed Route, there's a list of six different types of foundations. Is that correct?

MR. DUCEY: Yes.

MR. LEARMONTH: Okay.

And was this the family of foundations model that was used in this project?

MR. DUCEY: Generally, yes. We might have different terminology. I mean, this is a – I'm looking at, you know, the top of that same page. It talks about 2011 document, and then in 2014, generally these look to be the same, but they probably have different terminology when you get into the contract.

MR. LEARMONTH: So there are – it's not limited to these six; it's – there's an expansion of that?

MR. DUCEY: Well, we would – like, the bog or deep, we might call it H-Piles or something like that. I'm saying they're the same thing, just different terminology.

MR. LEARMONTH: Yeah.

But would you stick to the six different – only –

MR. DUCEY: Yes.

MR. LEARMONTH: – six?

MR. DUCEY: Yes.

MR. LEARMONTH: So when you were doing the work, I take it that you'd have to determine – for the purpose of price and so on – you'd have to determine which of the families would apply to the given foundation. Is that right?

MR. DUCEY: Yeah. Which of the foundation type would apply for that specific location we would have been at along the transmission line.

MR. LEARMONTH: Yeah.

And you wouldn't know until you got to the site of the foundation and dug it up. Is that right?

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah.

And then what would you do? Would you report to Nalcor and say we have a – we need a grillage here, a rock or – what – how –

MR. DUCEY: Yup.

MR. LEARMONTH: – what – what would be the type of communications you'd have once you made your assessment of the type of foundation that was required for a particular site?

MR. DUCEY: So there's – in the contract and in – there was a whole foundation selection process of – that was followed that would involve – you know, once we kind of arrived at the – basically, when we arrived at a site and we would – we were trying to do this in front of all the work – or in front of all the construction crews – make an assessment, make a recommendation, and then that would go back to engineering for a final acceptance, generally. I'm sure some place in the documentation we could – you could find that foundation selection report – or foundation selection process.

MR. LEARMONTH: Yeah.

And so this would have to be done at every site. And would it – would there ever be delays in coming to an agreement as to what type of foundation was required for a particular site?

MR. DUCEY: Yes.

MR. LEARMONTH: That was a problem?

MR. DUCEY: Yes.

MR. LEARMONTH: Okay, can you expand on that, please?

MR. DUCEY: Yeah. And so, I mean, I think – referring back to this page 75 of this foundation selection report, as you notice, there's these numbers – so these are – this is – this assessment in 2011 of the, I say, types of foundations that would be installed and the quantities across the project. And, you know, when we got out into the field or actually doing the work and getting to these sites, it quickly became evident that, I think, the amount of – as referred to in this – grillage foundations that would need to be installed were probably less than what was anticipated in the earlier desktop geotechnical reports.

And we had the need for much, say, different (inaudible) costlier foundations. And I think – and so that would cause – we're out – you know, we're in Labrador working and there was – our construction crews and our project management teams were not finding that the actual conditions matched what was – the engineers had anticipated installing, or needing to install in the quantities that the engineers needed to install, or had anticipated installing.

MR. LEARMONTH: Yeah. So was that your experience? You were in the field. So is that what you found also, Mr. Williams?

MR. K. WILLIAMS: Yeah, yeah. At a high level, typically, the percentage of assumed rock foundation locations was lower than the original estimate and the grillage requirement was higher, and the bog and deep locations were higher. (Inaudible) –

MR. LEARMONTH: So that would mean that there would be a greater cost to put – install those foundations than had been anticipated, is that correct?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Yeah.

And were you able to generally resolve issues as to what was the appropriate foundation? Or was there ever occasions when you would say we need this type – we recommend this type of foundation, we're right here, we see what we're dealing with, and there would be – and Nalcor would have a different view?

MR. K. WILLIAMS: Yeah, there were often –

MR. DUCEY: Yeah.

MR. K. WILLIAMS: – times where we disagreed on the foundation type.

MR. LEARMONTH: So what would happen? How would the disagreement be resolved? I'm thinking of a situation – you're out there in the

field and you're ready to do some work on a foundation and you're reporting to Nalcor in St. John's, correct?

MR. K. WILLIAMS: Correct.

MR. LEARMONTH: No one – there was no one from Nalcor on site that had the authority to deal with that issue. Is that correct?

MR. K. WILLIAMS: There was limited authority on site –

MR. LEARMONTH: Limited authority.

MR. K. WILLIAMS: – with Nalcor personnel.

MR. LEARMONTH: So if you had a dispute as to whether it should be a grillage or a bog for example, would there be anyone on site who would have the authority on behalf of Nalcor to settle that issue?

MR. K. WILLIAMS: Typically no. Within the lower cost foundations, sometimes the authority would be there on site. But any significant increase in the foundation-type cost would be – would go back to St. John's for discussion and decision.

MR. LEARMONTH: But how long would it take for that – a problem of that nature to be resolved? I mean, you're in the middle of work. You can't –

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: – move all over the place. You have to do it sequentially, don't you?

MR. K. WILLIAMS: Yeah. Yes.

MR. LEARMONTH: So what would happen – were there any delays from your point of view?

MR. K. WILLIAMS: Yeah, there were delays. It could be days. It could be weeks. And on occasions it was months.

MR. LEARMONTH: Months?

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: Well, if there was a delay of months, how would that affect your work on the project, your ability to get the work done?

MR. K. WILLIAMS: It increased the non-linear nature of our work process, which is critical for our progression. So we would skip those sites, essentially, and we would move on to other sites where they were less contentious or where we were able to install the foundation and carry on with our subsequent activities.

MR. LEARMONTH: That would – that's not the way you had preferred to go, is it?

MR. K. WILLIAMS: No.

MR. LEARMONTH: No. But did this cause problems?

MR. K. WILLIAMS: It caused – yeah, it caused problems with our workflow and it caused some conflict in the field at times.

MR. LEARMONTH: Okay.

So how would – I presume that these issues would be resolved at some point, would they? Or would they just be – or would Nalcor have the final say and tell you what to do and then you move on and think about it later? How was that – how does that work?

MR. K. WILLIAMS: Ultimately, we were directed on what foundation type to install.

MR. LEARMONTH: You were directed. So Nalcor said – would say: We don't agree with your recommendation; put in this type of foundation.

MR. K. WILLIAMS: That's correct. Yeah.

MR. LEARMONTH: And Nalcor had the final say?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Yeah. So were there occasions when Nalcor disregarded or went against your advice?

MR. K. WILLIAMS: There were occasions, yes.

MR. LEARMONTH: Yeah. And were there any consequences of not following your advice on any given site?

MR. K. WILLIAMS: Yes, there were.

MR. LEARMONTH: What were the consequences?

MR. K. WILLIAMS: They varied. There were schedule impacts. There were, on occasion, cost impacts. There were multiple installation attempts, sometimes on our behalf, if the – if we were directed to install what we felt was an inappropriate foundation.

MR. LEARMONTH: What was – but I'm thinking that if you – if the wrong foundation – if you were directed to apply a foundation that, well, you didn't agree with and it turned out to be incorrect, would you find that out right away?

MR. K. WILLIAMS: Our –

MR. LEARMONTH: I'm talking about settlement of the foundation.

MR. K. WILLIAMS: Yeah. You would know during install that it was a very difficult install and it may not be the preferred foundation for that site based on the conditions. And subsequently, through monitoring and measuring, you would – in some instances – be able to identify if that foundation was shifting or moving.

MR. LEARMONTH: Okay. If you found it was – a foundation was shifting or moving, what would you do?

MR. K. WILLIAMS: It would depend on the foundation type and the type of tower that went on it and the amount of movement. In some instances, we would reinstall and in other instances, that foundation would stay in place.

MR. LEARMONTH: Okay.

So if you – so in a situation where you made a recommendation to Nalcor for one type of foundation, they came back and said: No, we want this one put in. And then it turned out that there was shifting in the foundation, I presume you'd get back to Nalcor and say: Look, this isn't working?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: And typically in that situation, what type of instruction would you get from Nalcor?

MR. K. WILLIAMS: We would receive notification that our means and methods were – of the installation of that foundation, typically, were the cause of the problem and not the chosen foundation type.

MR. LEARMONTH: So you're saying Nalcor would say: There's nothing wrong with the selection that Nalcor made, but you messed up the construction of it. Is that, in a nutshell, what you're saying?

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: Okay.

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Okay.

Now, if you didn't agree with that, what would be the process?

MR. K. WILLIAMS: A lot of discussion; a lot of exchange of correspondence; meetings. But, ultimately, that foundation type, in most instances, would stay in the ground.

MR. LEARMONTH: Would stay in the ground.

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: Yeah.

Did that happen just occasionally or was it a pattern or something in the middle?

MR. K. WILLIAMS: It was frequent.

MR. LEARMONTH: It was frequent. Yeah.

Did this cause problems for – in completing the work – or progressing with the work, I should say?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Why?

MR. K. WILLIAMS: It caused problems with productivities and caused conflict with the teams.

MR. LEARMONTH: Yes.

Would you regard it as a moderate issue, a serious issue or a minor issue? Generally, that topic?

MR. K. WILLIAMS: It was a serious issue.

MR. LEARMONTH: It was serious. It gave you concern?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Yeah.

Did these – did the type of problems that we just discussed, was that something that occurred more frequently in Labrador between, you know, Muskrat Falls and the Strait as opposed to on the Island of Newfoundland?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Or –

MR. K. WILLIAMS: It was more frequent in Labrador. It still occurred as we moved crews to the Island, but it was more frequent in Labrador.

MR. LEARMONTH: Yeah.

So in a situation where there was a dispute that, you know, they said – Nalcor said: Well, you messed up the construction. The design and the selection was correct. And you said: No, no, we didn't, it was the design. How would that be resolved? Would you just, like, file a notice of objection – or whatever the term is – with Nalcor and realize that it couldn't be resolved at that time, it would have to be resolved at the end of the contract? What was the approach that you followed?

MR. K. WILLIAMS: The – yeah, we identified those locations in numerous correspondence that we exchanged back and forth, and we did keep track of each foundation that we felt there were issues at and that was dealt with through (inaudible) negotiation that Mr. Ducey's probably better to speak to.

MR. LEARMONTH: Yeah. Yeah.

MR. DUCEY: And maybe just to add to this a little bit, is one of the things that I think is evident to show the – kind of, the amount of change that went on in the foundations, was – I want to say that there's over 50 engineering change notices that were issued to modify or change the type of foundations from, say, the original contract to what was installed in the field or what was needed to install in the field. So –

MR. LEARMONTH: More than 50?

MR. DUCEY: Yes.

MR. LEARMONTH: Is that a high number?

MR. DUCEY: Yes.

MR. LEARMONTH: Yeah.

Typically, what would you – what number would you expect?

MR. DUCEY: Something much less. Just – it was – I think it – what I'm – that demonstrates the amount of work that was trying to go on and the amount of effort that was being done post-contract execution, when you had these fields – you know, these crews already in the field – of dealing with this new information that they were learning relative to the geotechnical conditions so they had to modify the plan that they had put together on the type of foundations that they – that were gonna go in the ground.

MR. LEARMONTH: You agree it was a serious problem?

MR. DUCEY: Yes.

MR. LEARMONTH: Okay.

And was it a serious problem that continued for the duration of the contract or was there a point when it was resolved to some degree?

MR. DUCEY: There was a point that it was resolved. I think it would have been late 2016, early 2017, where we started – we were able to get to a point where we started a different –

MR. LEARMONTH: Okay.

MR. DUCEY: – I'll call it – we added a new process where our joint teams between Valard and Nalcor were going out in front, very far in front of the construction forces and going to each foundation location and doing some type of either assessment, or a borehole, to get to agreement on what type of foundation would need to go there well in front of the construction forces.

MR. LEARMONTH: And that was after Mr. MacIsaac assumed responsibility?

MR. DUCEY: Correct. That was one of the initiatives that Mr. MacIsaac initiated.

MR. LEARMONTH: Okay.

Well, we'll deal with that later. But –

MR. DUCEY: Yeah.

MR. LEARMONTH: – up to – before Mr. MacIsaac appeared in 2016, who was the main person to whom you reported and requested instructions from in St. John's.

MR. DUCEY: That would have been Jason Kean.

MR. LEARMONTH: He was in charge of this, was he?

MR. DUCEY: Correct.

MR. LEARMONTH: Okay.

Well, the primary contact anyway.

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah.

Just before we leave this topic, can you tell us what the, you know, what the range of costs for foundations would be. I understand, for example, that an H-pile or helical pile was the most expensive, is that right?

MR. K. WILLIAMS: Yes, it was – yeah. Micropile or H-pile were the most expensive.

MR. LEARMONTH: And the grillage was the cheapest?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Okay, what would be the proportions? Would the, you know, the helical pile be twice as much as a grillage or three times?

MR. K. WILLIAMS: No. It could be many times more, so –

MR. LEARMONTH: Yeah.

Can you, like –

MR. K. WILLIAMS: – tens of thousands versus hundreds of thousands.

MR. LEARMONTH: Tens of thousands for the grillage versus hundreds of thousands. So it could be 10 times as much?

MR. K. WILLIAMS: On a very complex foundation, yeah.

MR. LEARMONTH: So that would affect, obviously, the amount of compensation that you'd receive under the contract?

MR. DUCEY: Correct,

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: Yeah. Yeah. Okay.

Now in your experience – and you both said that you hadn't seen a project of this – a transmission line this long where there hasn't been any geotechnical work. Is there a big expense in conducting geotechnical work – preliminary geotechnical work, you know, before the work starts? Is that an expensive process or inexpensive? I know it varies from job to job but just give me some commentary on that please.

MR. DUCEY: Based on my other projects of – megaprojects of this size, I mean, you're – I mean, this is over a billion dollar project, just this component – for hundreds of thousands of dollars and me being generous there, you could have done a more detailed – or even millions of dollars – detailed geotechnical investigation and that would all have been data that would have been used to – the would have been used during the construction of the project then.

MR. LEARMONTH: Yeah.

And that's done – that has been done in all other projects of this size that you have worked on?

MR. DUCEY: Yes.

MR. LEARMONTH: Yeah.

And I suppose it's – it varies on – in terms of how detailed the geotechnical assessment is? Is that correct?

MR. DUCEY: Yes.

MR. LEARMONTH: Yeah.

For example if you're going across a, like, farmland – 100 acres of farmland – and you do a couple of test sites, would you be able to say well no, we're not going to test any more because we have a good idea and everything looks the same? Would that be the type of process you would apply?

MR. DUCEY: Yeah. I mean generally you – what the engineers do on something that's over a linear construction, they would – you know, to your example – develop different zones or characteristics across the line from, like, a desktop and then be able to go in and test those various different zones and say, you know, hey, I've, you know – I don't know – I've done three, four holes across this – you know, to your example – 100 acres, I'm not gonna find – you know, that's – from my engineering judgment that's a good example, I have good data, I'm confident in my – in the geotechnical properties of that 100 acres then.

MR. LEARMONTH: Well is – there's – I suppose optimum – optimally, the safest thing is to do a test at every site, but that's not really feasible or necessary. Do you agree?

MR. DUCEY: Yes. That's not feasible or necessary. Correct.

MR. LEARMONTH: And that would create a lot of expense –

MR. DUCEY: Yes.

MR. LEARMONTH: – also. Is that correct? Yeah.

I'd like to ask Mr. Williams now if you could explain how the project execution proceeded. When did you start, what was the plan and how did things proceed? I know you've already given some evidence about that, but can you just give us an overview of that? I understand the work started in Labrador in late September or early October?

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: Can you give us some indication of what you found?

MR. DUCEY: Yeah.

MR. K. WILLIAMS: The work started in Labrador close to Muskrat Falls, I believe in the first week of October 2014. We had a limited number of crews on site to start in a location that we felt had the best opportunity for success to start and had the best access available. And we started to install foundations. And had some issues with the foundation itself.

The foundations that we were able to install depended on the material available initially, which is not entirely uncommon. Sometimes there's a period where you wait for all the material to come in and you install with that you have to start. And your crews are getting used to the material types, the foundation types, the tower types so there is a bit of a learning curve there.

But we – within the first two weeks we recognized that there were some issues with the ground type and particularly with the access.

MR. LEARMONTH: But the access was Nalcor's responsibility. Is that correct?

MR. K. WILLIAMS: For the first 30 kilometres of the line it was directly Nalcor's responsibility.

MR. LEARMONTH: Okay, and what were the problems with the access – that would be the access roads, right?

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: What were the problems that you encountered?

MR. K. WILLIAMS: The accesses were not holding up to the construction traffic.

MR. LEARMONTH: What does that mean?

MR. K. WILLIAMS: It means the roads were degrading as we brought crews and equipment onto the roads to access the tower locations to start our line construction. The roads degraded where it became difficult to travel structure to structure and carry out our work activities.

MR. LEARMONTH: Well, if you couldn't get the equipment in, then that would – and that would obviously be a problem.

MR. K. WILLIAMS: We were able to get the equipment in, but it was difficult, and we were having to maintain the roads between structures as we moved along with our equipment. But it was a challenge.

MR. LEARMONTH: Did it slow you down?

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: Yeah.

Did it affect morale of workers?

MR. K. WILLIAMS: It was very early in the project. I wouldn't say that the morale was affected in the beginning. It was a challenge that they worked to overcome and get the project rolling.

MR. LEARMONTH: Now, the term fit for purpose, that's a term we've heard about in connection with these access roads. Can you explain that – explain what it means and how it applies to this problem?

MR. K. WILLIAMS: Fit for purpose was a term from the contract and a term that was used often between the teams. Essentially, it was the roads would be constructed to a level that would allow for the construction of the line using conventional equipment and techniques.

MR. LEARMONTH: Okay.

I'd like you to turn to tab 21, Exhibit P-02857, tab – page 2, please, Mr. Williams? Two and 3. This is a letter that you wrote, on behalf of Valard, October 20, 2014. Does this reflect the problem that you've just described?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Okay. So why did you send this letter?

MR. K. WILLIAMS: I sent this letter to be open and transparent with our client, to let them know of the problems that we were facing and to meet our responsibilities and obligations under the contract.

MR. LEARMONTH: Yeah. So this would be a typical letter that you'd send in these circumstances?

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: Yeah.

MR. K. WILLIAMS: Pretty standard.

MR. LEARMONTH: Yeah. And you – in the second-to-last paragraph on page 1, you say – you point out the problems. Then you say: "Valard is fully committed to working as a united team with LCP, and we will endeavor to move forward through these significant access challenges. However, the realities of" – the – "current access conditions due to the lack of fit-for-purpose roads will likely continue to affect crew production as well as onboarding of additional crews until such time as winter conditions arrive and frozen conditions prevail. As a result, project schedule may be affected and

Valard may incur additional costs due to these delays."

So you're giving notice of that, correct?

MR. K. WILLIAMS: Yeah, notice of potential change to – and with cost and schedule (inaudible) –

MR. LEARMONTH: And that's standard, isn't it, in these circumstances?

MR. K. WILLIAMS: Yes, it is.

MR. LEARMONTH: And is there – was there ever any doubt that – as to whose responsibility it was to provide the access roads for the first 30 kilometres?

MR. K. WILLIAMS: Not in Valard's opinion.

MR. LEARMONTH: Okay.

Now, if we go to page 1 of that Exhibit P-02857, this is an email from Jason Kean to Mr. Budzinski at Valard. He is the president, isn't he?

MR. K. WILLIAMS: That's correct.

MR. LEARMONTH: So you wrote the letter and Mr. Kean replied to Mr. Budzinski?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Is that normal?

MR. K. WILLIAMS: It happens.

MR. LEARMONTH: It happens.

But he says: "Adam" – this is on P-02857, page 1. "Pursuant to my voicemail, I was literally shocked to receive Kelly William's letter of this afternoon insinuating delay due to the conditions of the access road and availability of materials. While I participated in discussions on Friday wherein the challenges with access were discussed, I was perplexed as to why, given our relationship, we would receive a letter with such an inflammatory tone without as much as you have the courtesy to give me a call. Not quite the manner in which I expected our business relationship would exist. I don't have a problem working to solve the issue, however I suggest Valard has all their facts in order before starting down the road of pursuing a delay claim."

Now, do you know why Mr. Kean was shocked and perplexed by receiving the letter that we just reviewed?

MR. K. WILLIAMS: I can't speak to his frame of mind at the time, but I – it seems obvious he was offended by the letter.

MR. LEARMONTH: Yeah.

But was there anything in the letter that, in your opinion at the time, (inaudible) was factually inaccurate?

MR. K. WILLIAMS: No.

MR. LEARMONTH: And with the benefit of hindsight, looking at it now, was there anything in the letter that was factually inaccurate?

MR. K. WILLIAMS: No, it was accurate.

MR. LEARMONTH: It was accurate, okay.

Then we have at tab 20, page 1, Exhibit P-02856. This is Mr. – well actually, this is another letter from Mr. Kean to Mr. Budzinski, October 23. And he says in this: "We acknowledge" – page 1 – "We acknowledge receipt of Mr. William's letter … Road Access …. As indicated in my voicemail and email … Lower Churchill Management Corporation (LCMC) were extremely distraught by the messages exuded in this correspondence, which are in complete disregard of the basis upon which our relationship has been formed and cemented. Perhaps even more disheartening is the reality that you chose not to raise and openly discuss this apparently significant issue in person before sending us a formal notice of delay."

Now, did – is this type of reply something that you would anticipate based on your experience?

MR. K. WILLIAMS: No, I wouldn't have anticipated that response.

MR. LEARMONTH: Yeah.

Mr. Ducey, do you have anything to say about this?

MR. DUCEY: I just echo what Kelly has to say. And I would go back to say is that, you know, Kelly's letter was – we're required to do that under the contract.

MR. LEARMONTH: Yeah.

MR. DUCEY: I mean, that's – so it's like normal, business-type stuff, contractually required documentation that – what he was doing in his role.

MR. LEARMONTH: Yeah.

So would I be able to summarize this way, that you sent what you thought was a standard letter in which you indicate a willingness to collaborate and that you got a letter of this nature, which you found to be sort of out of place? Is that …

MR. DUCEY: True. No, I think that's a fair assessment. And also, I know, as you mentioned in Jason's email, Adam Budzinski happened to be in Newfoundland and Labrador at the time, and I believe he was up in Muskrat, and he was required to fly down and meet with the Nalcor team in person in St. John's to address this issue.

MR. LEARMONTH: Because of that letter?

MR. DUCEY: Yes.

MR. LEARMONTH: The president had to come to St. John's?

MR. DUCEY: Yes.

MR. LEARMONTH: Okay.

So was everything resolved?

MR. DUCEY: This was the first letter that we sent on the project, and, you know, there was many more after that.

MR. LEARMONTH: Okay.

What was – at this time, what was the – I mean, you're – Mr. Kean is the one who – to whom you report and, you know, seek direction from. Does this reflect a poor relationship or a worsening relationship or – give me something on that, please.

MR. DUCEY: I don't – I mean, it was the way that Jason communicated. It – you know, this – I think this letter and his emails and his – you know, the voice mail. Like, I've used the term many times: you know, he's very passionate about this project. And we were professionals, and, you know, we've done a lot of these big projects before and we – they're the client; they have a viewpoint. We'd accept it – we had our viewpoint and we'd be able to exchange that, at that time, kind of business person to business person.

MR. LEARMONTH: Yeah.

But I think you've made the point that under the contract if you're thinking of – if there's a delay and you want to give notice, you have to write a letter like that, don't you?

MR. DUCEY: Right. And I would refer back I think – as you pointed out it – towards the end of that letter it talks about how we want to collaborate and –

MR. LEARMONTH: Yeah.

MR. DUCEY: – work together to fix this because – you know, what Kelly's trying to say out there about, you know, to – you're – we're onboarding a bunch of people at the time, we're incurring a bunch of costs to go do this work. And it's inefficient for all of us to continue to have those costs if we can't go do the work. I mean that's only gonna increase the cost, the eventual cost to Nalcor if the construction crews can't advance in a linear fashion because at this point the roads and clearing weren't done further enough – far enough in advance of onboarding or crews and equipment.

MR. LEARMONTH: So I guess the point is, like, let's get this problem fixed.

MR. DUCEY: Yes.

MR. LEARMONTH: And not waste –

MR. DUCEY: Let's collaborate and get this problem fixed so that we can – we want to get

the job done. You want us to get the job done. Let's get together and, you know, find a solution versus arguing with each other.

MR. LEARMONTH: Mr. Williams, I understand that for the tower and foundation material, the steel and related materials were, quote, free-issued by Nalcor. Is that right?

MR. K. WILLIAMS: That's right.

MR. LEARMONTH: Can you explain what that term means, free-issued?

MR. K. WILLIAMS: Basically it means that Nalcor provided the material at material staging yards and that Valard could pull from that material as needed for construction of the line.

MR. LEARMONTH: What type of material?

MR. K. WILLIAMS: Foundation material, tower material and conductor wire.

MR. LEARMONTH: Okay. So Nalcor, under the contract, was required to provide that – those materials?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Okay. And were there any problems with the – say perhaps materials not being available when they were required?

MR. K. WILLIAMS: Yes, at times.

MR. LEARMONTH: Yeah. Did that cause delay?

MR. K. WILLIAMS: Occasionally, yes.

MR. LEARMONTH: Yeah. Was that a minor problem, moderate problem, major problem? How would you describe it?

MR. K. WILLIAMS: I would say it was a moderate problem.

MR. LEARMONTH: Okay. Was there a point when it was resolved?

MR. K. WILLIAMS: It was never completely resolved until very close to the end of the project, when there was a material and inventory true-up and we had a higher level of certainty on the foundation types. And the line design was in flux for the majority of the project.

MR. LEARMONTH: Okay.

And did the lack, or absence of geotechnical information – I should say lack, not absence – did the lack of geotechnical information affect the project execution? I'm thinking about, you know, groundwater and other materials that you encountered that you weren't anticipating?

MR. K. WILLIAMS: Yes, it did.

MR. LEARMONTH: Can you speak to that a little bit?

MR. K. WILLIAMS: Well, with the lack of geotechnical information was greater uncertainty of what was below ground and what conditions had to be managed site-to-site. In some cases, there was excessive groundwater. In some cases where we had hoped to be able to utilize local materials as part of our backfilling process, part of our foundation installation process, we weren't able to and we had to get more cohesive and competent material that met the specifications for the project from a greater distance away; from other locations. Things like that.

MR. LEARMONTH: That would cause delay and, therefore, expense, is that correct?

MR. K. WILLIAMS: It would cause additional time and loss of productivities, yes, and additional expense.

MR. LEARMONTH: Is this another result of the limited geotechnical work done by Nalcor? Was this caused by that?

MR. K. WILLIAMS: The uncertainty around it was caused by a lack of geotechnical information.

MR. LEARMONTH: Okay.

Now I asked you this before but I want to make sure I've got this right. With the problems that you were having, you know, digging into the ground, finding conditions you didn't expect and trying to figure out how to deal with the

conditions you have, obviously this called for a lot of decisions. And can you just go over again – do you feel that Nalcor had the proper or the appropriate people with authority to resolve these problems on the site?

MR. K. WILLIAMS: I think there could have been a greater level of authority provided to decision-makers in the field to increase productivities and facilitate line construction.

MR. LEARMONTH: And anything major had to go back to Jason Kean on Torbay Road in St. John's, is that right?

MR. K. WILLIAMS: Had to go back to the Nalcor team in St. John's, yes.

MR. LEARMONTH: Yeah.

How does this process of – do you want to say anything about that (inaudible)?

MR. DUCEY: Yeah, I would add that, you know, is what Kelly described too is, I'd say, probably the first half of the project. The second half of the project because of all the issues and engineering changes and foundations that were – around the foundation stuff that we'd already talked about – that the second half of the project, I'll call it the – there was a – there's a concerted effort on – to make sure that decisions were able to be made in the field well advanced of the construction crews showing up on sites to –

MR. LEARMONTH: Yeah.

MR. DUCEY: – you know, get back to what would be traditional in a linear construction project like this, so you can get the linear nature of the construction that's necessary.

MR. LEARMONTH: And that's after Mr. Kean left and Mr. MacIsaac replaced him?

MR. DUCEY: Yes.

MR. LEARMONTH: Yeah. Okay. We'll talk about that a little later.

So how does this compare with other projects you've worked on in terms of, you know, there not being always someone on site who could make decisions, if not on the spot, in a timely – on a timely basis? How did that compare with other projects –the system – the fact that you had to go to St. John's for a lot of approvals?

MR. K. WILLIAMS: The ideal is to have that field decision-making authority and control there with both teams. On occasion on other projects there – it does occur where the head office of the client is more involved than is ideal. But perhaps not to this degree.

MR. DUCEY: And you've got to think about – on these linear projects like this, think about it. We have hundreds of people out there; we have millions of dollars' worth of equipment out there; that it's inefficient – if you stop that heading, you stop that work front or get it off track or in – you know, out of sequence. It's incurring a lot of cost while it's – you know, a decision's come back into an office to be made to be then sent back out to the field.

Some – I'd say the majority of projects, the owner and the contractors understand that you need to make decisions – smart decisions, the right decisions, the correct engineering decisions in the field close to the work front.

MR. LEARMONTH: Well for – just to go backwards. When – I take it there were occasions where Nalcor would say it's your fault, you messed up the construction. But how would that issue be resolved? Would Nalcor have someone on site who would be able to, you know, do an assessment of that?

MR. K. WILLIAMS: They would do an assessment, but they wouldn't have the authority per se to direct the appropriate foundation to go in the ground.

MR. LEARMONTH: Okay. But they'd have data on it I guess so –

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: – when there was a –

MR. K. WILLIAMS: They would take that data and they would report it back to St. John's.

MR. LEARMONTH: All right.

MR. DUCEY: And I'd also like to point out, I'd have the – I'd have my own experts out there that would have a different viewpoint – a lot of those disputed locations – well-regarded engineers, well-regarded engineering firms that would have different opinions. You know, and that's not uncommon in engineering, two engineers have a different viewpoint on an item.

But it was, you know, because the dispute – you know, the issues we were having, you know, we were taking the prudent steps to make sure that we had our own, kind of, third party be looking at the data and understanding the data too, to prepare ourselves to finding a solution to these problems.

MR. LEARMONTH: Yes. Now, I understand that sometime during the execution of the work that Nalcor – I guess and Valard – decided that further geotechnical work was necessary. Is that correct?

I turn to tab 9 –

MR. DUCEY: Yeah.

MR. LEARMONTH: – Exhibit P-02737. You can look at that. This is dated March 30, 2016. If you could turn to page 5 first. It's under the heading: Our design projections were based upon desktop geotech study which was inherently inaccurate [sp. have inherent inaccuracy]. So do you agree that, at this point, Nalcor's acknowledging that – well, that there were inherent problems with the geotech desktop survey? You see that?

MR. DUCEY: Yeah, no, I see that. I was just trying to get – make myself familiar with this document – yes.

MR. LEARMONTH: Can you give me the circumstances that you recall?

MR. DUCEY: Do you remember this document?

MR. K. WILLIAMS: Yeah. Well, not at the time. But –

MR. DUCEY: Yeah.

MR. K. WILLIAMS: – in review of the –

MR. LEARMONTH: Okay.

MR. K. WILLIAMS: – packages –

MR. DUCEY: That's what I was trying to say.

MR. K. WILLIAMS: Yes.

MR. DUCEY: Were you in a meeting when it was presented or –

MR. K. WILLIAMS: No.

MR. DUCEY: No.

MR. LEARMONTH: Well, can both of you speak to it or one of you speak to it? Why it was –

MR. K. WILLIAMS: What was your question, sorry?

MR. LEARMONTH: Well, I want to know why – what were the circumstances surrounding the, you know, preparation of this document as far as you recall.

MR. K. WILLIAMS: I can't speak to the preparation of this document per se, but I – speaking to the introduction of geotechnical drilling on the project, after fairly significant conflict and a lot of discussion and correspondence and back and forth on the issue, while we were in Labrador there was a decision: Nalcor agreed that some higher level of geotechnical investigation had to take place. So a geotechnical – a limited geotechnical drilling program was started in Labrador.

MR. LEARMONTH: Yeah.

And I notice on page 8 of this exhibit that there is an acknowledgement by Nalcor that the desktop projections were inaccurate.

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Did you know that? That Nalcor had reached that conclusion in March 2016? Or is that something you learned from reading this document that was given to you by the Commission?

MR. K. WILLIAMS: It was never, to my knowledge, stated to this degree that is written here in this document.

MR. DUCEY: And I would add, I mean, we knew from just our own – you know, knowledge of this type of construction, knowledge, things of that nature, watching the changes of the – that were going on in terms of the quantities of different foundations were installed and just our own knowledge of this type of (inaudible), we knew that the initial projections were way off from what we were having installed in the field.

MR. LEARMONTH: Yeah.

So did you see this document before it was sent to you by the Commission?

MR. DUCEY: I do not recall ever seeing it until it was sent to me by the Commission.

MR. LEARMONTH: But when you flip through the pages – just take a minute to go through pages 9, 10, 11, 13, 14, 15, 16 and 17. Just look through, and I'm gonna ask you a question that was the information contained in this document – does it correspond with your understanding of the situation while you were executing the contract? Or is there anything that you see in those pages that's surprising to you?

MR. DUCEY: There's nothing that surprises me – or, you know, that I see that's – I do see on page 13, we've talked about some of the settlement and they have a position that their "Investigations have confirmed that sites are suitable for application of grillage foundations." I don't want to say I agree with that or disagree with it. I would have to – I'd have to – I'd have to go back and check my own records to be able to say that that's correct.

MR. LEARMONTH: Okay.

Just take a minute to go through the other pages and see if there's anything that surprises you in this document.

MR. DUCEY: I think page 17, comment there: "Valard's installation progress steadily improving due in part to the benefits of geo program." I'm glad that was recognized back then because that kind of – it was what we'd been saying for, I guess, the year and a half that if we could – if the engineers could better understand the geotechnical condition, the construction forces could work more efficiently.

MR. LEARMONTH: That information wasn't given to you in 2016, was it? That they – that was the position of Nalcor? That you were improving?

MR. DUCEY: Well, not in that form, but we – I mean, we obviously had a schedule; we tracked ourselves –

MR. LEARMONTH: Right.

MR. DUCEY: – we had other metrics, so we – we knew we were – you know, efficiencies were getting better.

MR. LEARMONTH: Okay.

MR. DUCEY: Yeah. I don't see anything that's –

MR. LEARMONTH: Okay. Very good.

Now, were there delays – in your mind or either of your minds – caused by the fact that engineering in certain situations was not done; i.e., the drawings or designs were not ready on time? And I'm thinking about the Long Range Mountains.

MR. K. WILLIAMS: There was – there were impacts, and there was uncertainty introduced to the program, based on the fact that the line design in the Long Range Mountains and the access plan and the overall construction plan wasn't finalized.

MR. LEARMONTH: Did that cause delay?

MR. K. WILLIAMS: Yeah. It caused some delay.

MR. LEARMONTH: Yeah. And was – is it correct that they had planned to use a helicopter while – where they needed a road?

MR. K. WILLIAMS: They had proposed that as an opportunity that we should explore.

MR. LEARMONTH: Was it feasible to use a helicopter instead of a road?

MR. K. WILLIAMS: No.

MR. LEARMONTH: So a road was put in. Is that right?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Okay. Were there any particular problems presented by the Long Range Mountains – the terrain, the soil?

MR. K. WILLIAMS: Yeah. Yeah. There were – access challenges were absolutely – probably the critical issue. But it was a challenging part of the project. There was – it was rugged terrain, weather conditions, seasonal constraints.

MR. LEARMONTH: Yeah.

Did you execute the work year-round? In other words, in the summer and the winter. Did you keep on schedule throughout the year, or did you take time off during periods of bad weather?

MR. K. WILLIAMS: We worked continuous. During the spring break-up period, we would – depending on the – what portion of the project we were working on and the ground conditions, there may be a scale down of operations for that period, just due to lack of ability to access the locations.

MR. LEARMONTH: Yeah. And you were on site all the time, were you?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Yeah. Well, where did you stay at night?

MR. K. WILLIAMS: I stayed in our camps – camp locations along the line.

MR. LEARMONTH: Were there camps built all along?

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: So you'd have how many people in a cabin or –

MR. K. WILLIAMS: We would have 150 to 250 people per camp location, and we had multiple camps active along the line.

MR. LEARMONTH: So you – would you move camps – like, once you finished a certain portion of work, would you move that forward? Or would –

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: – you have –

MR. K. WILLIAMS: Again, with the linear nature of the project, as you moved activity to activity, those crews would move from camp to camp – moving along the line. And I would typically stay at one of several camps where the project team would –

MR. LEARMONTH: What would these camps be like? I mean they wouldn't be wood, they'd be temporary obviously.

MR. K. WILLIAMS: Yes. They were installed by Valard.

MR. LEARMONTH: What would be – what type of structure would they be?

MR. K. WILLIAMS: They would be modular trailers that are brought in and assembled together with – and kitchens and all the facilities required to house that many personnel.

MR. LEARMONTH: Okay.

Did working in cold weather affect productivity? As opposed to – in other words, working in January would you get the same productivity as if you were working in July?

MR. K. WILLIAMS: Working in the cold presented challenges, at times, that could affect productivity.

MR. LEARMONTH: Yeah. Downward, right?

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: Yeah. Were you used to working in a climate like Labrador?

MR. K. WILLIAMS: Yeah. We work in a lot of remote Northern regions.

MR. LEARMONTH: Okay. Did you feel that was an advantage, that you had experience working in Northern remote regions?

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: I wanna now ask some questions, Mr. Ducey, about the claim against Nalcor.

So I take it that at the end of the contract, or as you are nearing the end, all these disputes were building up. Is that right?

MR. DUCEY: Yes.

MR. LEARMONTH: Yeah. And obviously you had to have them resolved. Is that correct?

MR. DUCEY: Correct. And I would – the only thing I would kind of add to that is that while it took 'til I guess the summer – or the early summer of 2017 to get it all – to come to the, I think, the final settlement agreement, you know, this was something – because of the significant nature of these – the significant amount of cost that Quanta had expended here, we were working a long time – constantly trying to bring, you know, to collaborate, get resolution on these issues. And it came to a head in the early summer of 2017.

MR. LEARMONTH: Now how – what do you mean it came to a head?

MR. DUCEY: Came to a resolution, I should have said.

MR. LEARMONTH: Yeah. But I understand that you, even though you were based in Houston, that, because of the problems with this contract, you spent a lot of time in Newfoundland and Labrador. Is that right?

MR. DUCEY: Yes. I'd spend, you know, over – in Canada, over 150 days in, probably, a year. So, like, in '15, '16, '17, probably of that – three-fourths of my time would have been here in Newfoundland and Labrador. So I spent many nights in the camps that Kelly talked about.

MR. LEARMONTH: Okay. Well, why was it so necessary for you to spend so much time in the camps and in Newfoundland and Labrador?

MR. DUCEY: It was a significant – this was a – we had a significant financial exposure here. We felt from a Quanta Services' perspective – as you mentioned in the beginning, we're a publicly traded company. So it was disclosed in our public finance – public filings and what have you, our financial position on this project. We, you know, we had in excess of $300 to $400 million of financial exposure here.

MR. LEARMONTH: Yeah. They were amounts that –

MR. DUCEY: That was cost out before we had been paid.

MR. LEARMONTH: – that you had paid, yeah, and there was delay in getting payment?

MR. DUCEY: Yes.

MR. LEARMONTH: Okay.

Were you told the reason for the delay in getting payment?

MR. DUCEY: Well, a lot of these – it would have been things such as our billing was incorrect, we hadn't earned the – you know, we hadn't completed the unit of work properly – it was various different reasons. There's a lot of reasons why we were into that position, but it really came down to, I think, the two parties' inability to collaborate, work together and find a fair solution.

MR. LEARMONTH: Yeah.

But if there, like – would there be disputes about the number of hours that you were charging and so on?

MR. DUCEY: On part A, the unit-price work, no –

MR. LEARMONTH: Yeah.

MR. DUCEY: – because, I mean, that's pretty simple – you complete a unit of work, you'd

done the work, you've signed off on the QA/QC documents, you should get paid.

MR. LEARMONTH: Yeah.

MR. DUCEY: That's standard contracting, that's kind of contracting 101. There were some disputes in, you know, I'd say $15-million range. On part B, there were time – you know, kind of some of the time and material, professional services stuff that we were doing around survey – as I mentioned earlier, surveying, flagging, other type of professional change notices.

MR. LEARMONTH: Okay.

MR. DUCEY: And there were other kind of items that came up from time to time over the project – I know with – and we might talk about it later, like the stringing suspension period.

MR. LEARMONTH: Yeah, we'll deal with that later. Yeah.

MR. DUCEY: And the – now that would have been an example of a cost we had that we couldn't get paid for, even though we were – you know, it was – we hadn't got paid for it, so it was like, I was up here working with the team to make sure that we're, you know, going through all the processes to make sure that we would receive the cash in the door.

MR. LEARMONTH: Yeah.

And is it fair to say at this time that you were preparing for litigation?

MR. DUCEY: Yeah, that's a pretty fair assessment, I guess, because, you know, we were at a point in that, say, 2016 time frame where there – it was very hard to communicate between the executives.

MR. LEARMONTH: Yeah.

And is it correct that because of this problem and the exposure to Quanta that you were – you mentioned that even the president of – or chief executive officer came to St. John's?

MR. DUCEY: Yeah, so our –

MR. LEARMONTH: Duke –

MR. DUCEY: Duke Austin's the –

MR. LEARMONTH: Duke Austin.

MR. DUCEY: – is the CEO of Quanta Services. He's my boss. He was in tune with this project daily and made many site visits here.

MR. LEARMONTH: This was a big problem for Valard in terms of a – getting paid.

MR. DUCEY: It was a – yes, it was a significant issue for our company. Now, yes, we're – but we're a big company, have strong balance sheet, we felt very confident in our position and we wanted to resolve it and solve it.

MR. LEARMONTH: Yes. Okay.

Now as a result of the problems that you encountered in this – I guess it's a commercial dispute, right?

MR. DUCEY: Mm-hmm.

MR. LEARMONTH: Either side has a – both sides have a different point of view on it, but in any event, there's an exhibit I'd like you to turn to at tab 5. And this is a May 20 – May 4, 2017 Settlement Meeting Presentation Materials Lower Churchill. This was something that was prepared by C2G International and then your legal – law firm McLean & Armstrong's name is on the front of it.

Can you identify this document and tell me why this was prepared?

MR. DUCEY: Yeah, so –

MR. LEARMONTH: P-02734.

MR. DUCEY: Yeah. So the situation we're in, the amount of dollars that were involved, we felt was a prudent step – on behalf of, you know, Quanta Services and Valard we engaged with C2G International. They're a large, I'd say, dispute resolution firm that specializes in various different contracting and they helped – they did do a lot – a significant amount of bodywork around linear construction. And then

McLean & Armstrong is an outside law firm that we use in Canada –

MR. LEARMONTH: Right.

MR. DUCEY: – for our work.

MR. LEARMONTH: So you were gearing up for – had entered a process to resolve this or –

MR. DUCEY: Yeah –

MR. LEARMONTH: – was it litigation?

MR. DUCEY: – a couple things.

So, yes, we were doing – you know, that would be one of the things. So we felt we were out monies, we were not receiving so we needed, you know, like, you need prudent business. But also, you know, being a – as I mentioned, as a publicly traded company, we had to do our own due diligence to make sure that we were owed this money, to make sure we're confident in our legal positions, to make sure that – you know, back to the board of directors. And I would – I'd have to go into our board meetings and report up to the board and our audit committee on this issue. And so, having outside experts like this that validated what management had – what we saw and was doing aren't – you know, it's not unusual for public companies like ourselves.

MR. LEARMONTH: Yeah.

MR. DUCEY: So it was, I'd say, you know, two-pronged. We needed to protect ourselves for future dispute resolution with Nalcor, and also to make sure we stay in compliance and work as the audit committee of our company and our executive management wants us to be doing to –

MR. LEARMONTH: Okay.

MR. DUCEY: – make sure we have, you know, valid outside people also looking at the information we think (inaudible) –

MR. LEARMONTH: And were you confident in your position?

MR. DUCEY: Yes.

MR. LEARMONTH: Yes. Yeah.

Tab 8, Exhibit 02736. This is an email exchange, starts on September '15, on page 3 – 02736, page 3. It's an email from Ken Sparkes: "Jeremy,

"Has direction been given to site to not shut down any A&B equipment?

"Please copy me …."

And then there's other emails and finally, starting at the bottom of page 1, there's an email from Jason Kean to Mr. Budzinski – he's the president.

Can you look at this email and tell me what we're dealing with here? Was there a proposed shutdown?

MR. DUCEY: (Inaudible.)

MR. K. WILLIAMS: A little. Want me to speak to it?

MR. DUCEY: Yeah, why don't you (inaudible).

MR. K. WILLIAMS: Generally speaking, A&B Construction was a company from Alberta that Valard brought in to assist with the construction of the access in Labrador to try and get the access schedule back on plan so that it wasn't constraining the line construction works. And I don't remember the specific timing of this, but roughly speaking, there was a period of time where Nalcor was – had directed A&B construction to stop activities, and there was a bit of back and forth over a one- to two-day period between our right-of-way manager and Ken Sparkes, the Nalcor right-of-way manager, as to why that was happening and who gave direction and why.

MR. LEARMONTH: Was that problem resolved?

MR. K. WILLIAMS: I don't recall the specific situation, how it was resolved, but ultimately A&B Construction was demobbed from the project.

MR. LEARMONTH: They were – okay.

THE COMMISSIONER: They were what?

MR. K. WILLIAMS: They were demobilized from the project.

MR. LEARMONTH: Yeah.

Now at the time that we referred to that presentation by the law firm and see to whatever it was, the – so just give me a summary of your recollection of the relationship between Valard, Quanta and Nalcor at that time.

MR. DUCEY: So that's in – when we were preparing these documents, the C2GI report you had there started that process. And I would've – to the best of my recollection, that would've been summer of 2016 or –

MR. LEARMONTH: Yes.

MR. DUCEY: – early 2016. And on my opinion, and I – I mean, I tried – we all tried to continue to collaborate and have a business-to-business relationship, but it had become very fractured, it was very hard to have productive discussions with each other.

MR. LEARMONTH: Yeah. And you were personally involved in – in discussions at this time. Is that correct?

MR. DUCEY: Yes. Yes.

MR. LEARMONTH: Did you form an impression as to what the cause of the problem was? Whether the – the fact that Nalcor's budget was lower than it should have been, whether that was –

MR. DUCEY: Yeah.

MR. LEARMONTH: – a contributing factor? Can you make any comment on that from your perspective?

MR. DUCEY: I mean, everybody was under a lot of stress on all sides at us, you know, just – Kelly and I were talking about that yesterday and, yeah, everything was – everything was revolving around dollars and every time that we would point out, you know – you know, significant, you know – technical issues, we would get tagged with: Oh, you're just trying to do that to drive up cost or get a delay claim or something of that nature. But, you know, in reality, these are – if you go back and look at, you know, all the documentation, these are true – you know, true technical issues that need to be resolved and really don't have much of an impact on our financial – you know, financially, we wouldn't have a big impact on us, you know, making more money or not making more money. They just need to resolve so we can get the project done.

MR. LEARMONTH: Yeah. So cost was – was something that you think was driving Nalcor's position, based on your discussions with them?

MR. DUCEY: Yes, it was a significant issue for them.

MR. LEARMONTH: Yeah.

And based on your experience, is it – is this a normal type of relationship at this point in the execution of the contract that you're, you know, you're – there's tension and …

MR. DUCEY: I mean any time between, say, service provider or contractor and owner, there's always – not always, but there can be tension at different times because people have different – you know, different roles and responsibilities but the level of – the level of lack of communication was more than – was abnormal.

MR. LEARMONTH: Have you ever seen anything like it –

MR. DUCEY: No.

MR. LEARMONTH: – before or since?

MR. DUCEY: No.

MR. LEARMONTH: Okay.

Now we know that in 2016, there was a change in leadership. Mr. Edmund Martin was replaced by Stan Marshall and Mr. Marshall decided to bifurcate or split the project into two and he – John MacIsaac was appointed as vice-president on the transmission side.

Did the appointment of Mr. MacIsaac have any affect on your relationship with Nalcor?

MR. DUCEY: Yes.

MR. LEARMONTH: Okay. Describe the affect.

MR. DUCEY: It was a benefit because one – you know, and it wasn't easy in the beginning – it was never easy, really, with – on this process but, you know, when John came in, he was, you know, a fresh set of eyes and ears and so – you know, and I think in any situation in life or business, you know, neither side is 100 per cent right or 100 per cent wrong. And so John was very interested in finding out, you know, the issues on both sides to bring them together to get, you know, to bring resolution, to bring – get the project completed successfully –

MR. LEARMONTH: Yeah.

MR. DUCEY: – and, you know, with a reasonable cost structure and things of that nature, from what the issues that we were facing.

MR. LEARMONTH: Yeah. So you saw that as an improvement, something that caused an improvement in your relationship with Nalcor.

MR. DUCEY: Yes.

MR. LEARMONTH: Mr. MacIsaac's presence?

MR. DUCEY: Yes.

MR. LEARMONTH: And what – was there any difference in the approach taken by Mr. MacIsaac as opposed to the approach taken by Jason Kean?

MR. DUCEY: So some of the things that John did – you know, John brought in some different folks to the project team. And I was in meetings with him and the project team where he was very – he made sure to give the instructions to the team, to get out into the field, to be more present in the field and I, actually, saw – for the first time on the project, these meetings – like one meeting that was, I think, a very good meeting that changed the tone of the project occurred at our – we would call it Birchy Narrows Camp, which is over by Deer Lake which was – you know, we're in the field, we're close to the work, we can go see some of the issues first-hand that were affecting the efficiencies of the project.

MR. LEARMONTH: Who's we?

MR. DUCEY: The senior leadership team of the project, we being myself, Kelly, other members of the Valard-Quanta team, John –

MR. LEARMONTH: John MacIsaac?

MR. DUCEY: John MacIsaac, other project managers –

MR. LEARMONTH: Yeah.

MR. DUCEY: – on the Nalcor side also.

MR. LEARMONTH: Yes.

And so what happened as a result of that meeting? What was – actions –?

MR. DUCEY: That's where – I remember – and one of the specific things out of that meeting was – we kicked off doing a greater amount of geotech work, and even though – I know you've previously refereed to a previous exhibit – but even after John, he was insistent that we go to every single site and location and do a joint ground-truthing and determination of what foundation type would go in each location.

MR. LEARMONTH: And you welcomed that approach?

MR. DUCEY: Absolutely. Yes.

MR. LEARMONTH: Yeah. You felt that it was an improvement?

MR. DUCEY: Yes.

MR. LEARMONTH: Okay. Is that what you were looking for from the beginning?

MR. DUCEY: Yes. Yes.

MR. LEARMONTH: All right.

By the way, what did – Mr. Gilbert Bennett was the vice-president responsible for the full LCP project, of course, including transmission, during the problem – the time that these problems were amounting and you were getting ready to make a legal claim.

Did you or, to your knowledge, anyone else at Quanta or Valard have any contact with Mr. Gilbert Bennett on this – on these problems?

MR. DUCEY: Yes, we did.

MR. LEARMONTH: Okay. What was the extent of those contacts?

MR. DUCEY: So one of the – one of my counterparts in Valard had ongoing dialogue and discussion with Gilbert, Mr. Bennett, across the – you know, during the project. Always productive and it was, you know, good conversation, but we weren't – we still weren't able to resolve these issues.

MR. LEARMONTH: The next exhibit is tab 22, Exhibit P-02858. This is January 10, 2017. It's a memorandum prepared by Jason Kean identifying, well, his take on the various outstanding issues. Have you gone through this exhibit?

MR. DUCEY: Yes, I've reviewed it.

MR. LEARMONTH: Do you have any comments on it generally?

MR. DUCEY: So it was prepared in January 2017. His, you know – he does a good job of, I guess, discussion, you know, of the issue synopses. But, you know, what was some of the significant issues and what ended up being a part of, I'll say, the settlement in the summer of 2017, so six months later, were I'd say – I mean, more significant issues and aren't even – necessarily got mentioned in his document. And so when I read it I said, you know, that's kind of interesting but it really was detached from what was the basis of the settlement or the final change in summer of 2017.

MR. LEARMONTH: So did you feel that it wasn't really addressing the real problems in dispute?

MR. DUCEY: Yeah. And it's obviously written – I mean, it's his point of view. It's – or the company's point of view or, you know, why ever that was put together. I think we have a different point of view. And we had a – you know, and if you go back to the C2GI document that was in the previous – you know, previous tab that we discussed, you know, you'll see that they have a – they – our – you know, Quanta and their point of view of the delays and the issues are different than, you know, many of the items that he highlights here.

MR. LEARMONTH: So it's just a position?

MR. DUCEY: Correct. We have, you know – these are his positions on some certain items; then we have different positions on different items.

MR. LEARMONTH: Okay.

And was dewatering an issue that was addressed in this report? And can you explain something about that subject?

MR. DUCEY: Do you want to talk about that first?

MR. LEARMONTH: Dewatering.

MR. K. WILLIAMS: Sure.

Dewatering of foundation installation sites was an issue at times. There was Valard's position that there were standard industry practices and norms for what a typical dewatering at a location would look like and many of the foundation locations required procedures beyond that expectation.

MR. LEARMONTH: Yeah.

So how did the issue affect the execution of the contract?

MR. K. WILLIAMS: It had affected production and it affected the Valard cost for the foundation installation.

MR. LEARMONTH: Was that part of the claim that you made? The dewatering, was that one of the issues in dispute?

MR. DUCEY: It would've been something we put in the – you know, would've been in the claim. But it wasn't even something that was – you know, when you look at the settlement documents and what you'll settle on, it wasn't even something that, you know – 'cause it was such a – like Kelly's point – it was – it did have

an impact. I'm not denying that. But it was minor when compared to the other big, significant issues that – you know, if you look at it, I think we had probably in the neighbourhood of about $300 million in unit pay items that we felt were owed to us under the unit – you know, the unit-based contract that were in dispute. And so we focused on really solving those versus, say, change and other things below that that would've been like the dewatering issue.

MR. LEARMONTH: Yeah.

So would – not trying to be too critical of Mr. Kean, but did you feel that he was focusing on issues that were minor issues compared to what was the substance of the actual dispute –

MR. DUCEY: Yeah.

MR. LEARMONTH: – to some extent?

MR. DUCEY: Yeah, I mean, and not to – I think that – you know, I think that you can, in situations like this, you can get yourself focusing on pennies while you're walking over quarters. And that's what we ended up focusing on and settling on were the, you know, the very significant driver – you know, dollar issues that brought risk to Nalcor and us. And all this other stuff we just, you know, let go in the interest of bringing a – you know, getting the project done, getting a fair settlement and, you know, focus on completion then.

MR. LEARMONTH: Okay.

Tab 10, Exhibit 02738.

This is a Valard – on page – starting on page 3, the number at the top right-hand corner. Valard Performance Discussion, CEO Briefing, July 14, 2016.

Now, I take it you didn't see this until you received it from the Commission, is that correct?

MR. DUCEY: Correct.

MR. LEARMONTH: Okay.

And this is written, I think, by – it appears to be written by Pat – no, it's from Jason Kean, (inaudible). John, here is the – to Mr. MacIsaac: "Attached is the slide deck for this afternoon's meeting with Mr. Marshall. … I would appreciate if you could print and provide Mr. Marshall …."

Now, there's some obvious criticism of Valard in this document. Have you reviewed this document?

MR. DUCEY: Yes, I have.

MR. LEARMONTH: Okay.

If we go to page 10, for example, the heading is: "We've achieved a lot, however predictability of HVdc TL is low given Valard's performance to-date."

That's a general statement. What is your comment, if any, on that statement in Mr. Kean's brief?

MR. DUCEY: I do not agree with it.

MR. LEARMONTH: Right.

MR. DUCEY: And that's given, you know, I would say that Valard had actually – given the site conditions and these geotechnical conditions we talked about previously, Valard's performance at the time had actually been pretty, you know, pretty good. And in – you know, like I said, this is his opinion of where we're at, but a lot of the issues on the project at that time were really driven by these –

MR. LEARMONTH: Yeah.

MR. DUCEY: – geotechnical issues that we've talked about a bunch already today.

MR. LEARMONTH: Yeah.

So can I – from what you've said, can I – can we conclude that, you know, you read these presentations by Mr. Kean but at the time you didn't really pay much attention to them because you were focusing on issues that you thought were more important?

MR. DUCEY: Right.

And so – so you're right. In I believe this – I – when I saw this, when the Commission provided

it to me, around this time frame, you know, was when Mr. Marshall had assumed, I think, his responsibilities – or Mr. MacIsaac had been named to his new responsibilities and Duke Austin, our CEO, Mr. Marshall and Mr. MacIsaac all met for the first time. So when I saw this from the Commission, I assumed this was prepared for – you know, it's not uncommon when executives get together that their staffs, you know, prepare briefing documents or whatever. So I assumed that this is what that was put together for, to prepare Mr. Marshall for that meeting.

But, you know, going on at this time in, you know, 2016 we had made the decision at Quanta and Valard to complete the project, persevere, but prepare ourselves for a future settlement or litigation. You know, so we weren't – I wasn't paying a lot of attention to this, you know, this – I just call it noise. We were focused on getting the project done. Quality, safety and getting done and then getting a future resolution down the road.

MR. LEARMONTH: Okay.

So you used the word noise, did you? Did that – is that right?

MR. DUCEY: Yeah.

MR. LEARMONTH: Yeah.

MR. DUCEY: That's like this – you know, it's like Kelly and his team, as he mentioned – we have hundreds of people out there working. Their safety is important, productivity is important, and so what I was trying to do was allow, you know, Kelly and our other folks, who are the experts in this, to work and focus on doing quality work and then take all this other, you know, customer relationship issues, dollar – you know, worrying about the financials, all this – get that away from them and let them just focus on the work that they're best at doing.

MR. LEARMONTH: Okay.

So just to go back to – well, we don't have to turn it up again, but Exhibit P-0274 [sp. P-02734] – that's the presentation by C2G and McLean & Armstrong (inaudible). That was prepared as a basis for your settlement discussions with Nalcor, is that correct?

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah.

And did it cover all the issues you had with Nalcor or just some of them?

MR. DUCEY: Covered them all – luckily.

MR. LEARMONTH: Okay.

MR. DUCEY: The vast majority of them. There might be a few we didn't have in there but the vast majority of stuff we put in there.

MR. LEARMONTH: Yeah.

Now ultimately, you did not have to litigate. You reached a settlement with Nalcor, is that correct?

MR. DUCEY: Correct.

MR. LEARMONTH: And who participated in the settlement discussions?

MR. DUCEY: I would say it was a team of people from our side and the Nalcor side. But it would – the Nalcor – from Nalcor would've been from, you know, John MacIsaac down through his project management team, his legal team, his dispute resolution team – there were many folks involved.

MR. LEARMONTH: Yeah.

I take it you had a good relationship with John MacIsaac? Is that right?

MR. DUCEY: I would – I'm not – John very much advocated for Nalcor –

MR. LEARMONTH: Yeah.

MR. DUCEY: – in his (inaudible) but I say we had a good business-to-business relationship, yes.

MR. LEARMONTH: You did?

MR. DUCEY: Yes.

MR. LEARMONTH: Yeah.

Now the tab 13, 02740. This is an amending agreement number 1 dated June 7 – June 1st, 2017, for $40,000. Can you identify this document? P-027 – 02740, tab 13?

MR. DUCEY: Yes.

MR. LEARMONTH: Okay.

And what does this document cover?

UNIDENTIFIED SPEAKER: (Inaudible.)

MR. LEARMONTH: Yeah.

Is that part of the settlement?

MR. DUCEY: Yeah, so – I'm just refreshing my memory of this. But yeah, this was the – like I said, the amending agreement and –

MR. LEARMONTH: There's also a tab – tab 14, P-0002 [sp. P-02002] is another amending agreement changing the contract price to 1,078,000.

MR. DUCEY: Yes. So these two –

MR. LEARMONTH: You might want to look at those together. Yeah.

MR. DUCEY: Yeah.

These two amending agreements, you know, in conjunction I think formed the – we kind of refer to now as the settlement agreement. And as part of that settlement is – what we did is, we went from a – 'cause we had done all this geotechnical work – now that we'd – you know, we'd done all the geotechnical, we'd been out in front of all and we had – we knew what all the type of foundations were then, we complete – you know, we – and so we had – we turned the contract from a unit-pay contract into just a lump-sum contract.

MR. LEARMONTH: Yeah. And how much did Nalcor pay you to settle your claims?

MR. DUCEY: Well – so that – so the – because we went from a lump-sum contract to a unit-pay contract, really what – in our opinion of what was due to us under the unit-pay contract would have been this – I'm looking at this document – this up on my screen here – so that would be in page 1 of Exhibit P-02002 – is the, you know, $1,780,000,000.

MR. LEARMONTH: Yeah. But how much was the settlement? We've heard a figure of $245 million.

MR. DUCEY: So yeah, that's – so that's, you know, if you look at it, it's whatever the math is, $809 million –

MR. LEARMONTH: Yeah.

MR. DUCEY: – over the original unit-pay contract. But I think people get lost in understanding, you know, the – all the different units that were necessary to do up this – you know, complete this project. If you add all those up, plus the suspension change and all that stuff, then you get to the 1078.

But – 'cause I – so the – and I remember – and I'm trying to resurrect my memory from the various different meetings. It was probably – I think – as I remember, from where we were at it was over – it was around $100 million.

MR. LEARMONTH: There was a figure of $245 million, though, mentioned –

MR. DUCEY: Okay.

MR. LEARMONTH: – in the Grant Thornton report. Can you speak to that?

MR. DUCEY: Yeah –

MR. K. WILLIAMS: It depends on what lens you're looking it at it through. So there – a lot of – the dollar figure that you, and you correct me if I'm off base, but that you're referring to was accounted for through unit pricing that was originally in the contract and that we were –

MR. LEARMONTH: Okay.

MR. K. WILLIAMS: – due and owed –

MR. LEARMONTH: Okay.

MR. K. WILLIAMS: – monies for.

MR. LEARMONTH: Okay. So –

MR. K. WILLIAMS: So it wasn't necessarily a settlement for delay –

MR. LEARMONTH: Okay.

MR. K. WILLIAMS: – as an example or anything like that. It wasn't – that large number wasn't comprised just of that.

MR. LEARMONTH: So that was a recognition of your claims under the contract, right –

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: – for unit-priced stuff? Now, what – over and above that, was there an amount that you got for delay and for other issues?

MR. DUCEY: Yeah, so over and above that would have been, like, the money due for the stringing suspension, and I'm trying to remember, there was others – you know, other inefficiencies, but what we'd – yeah, I think, what both parties and if you – if I probably would have read this – if we go through this amending agreement, we had a – you know, the vast majority of the settlement were unit-pay items that we were owed in the contract. And then there was other things such as, I guess, the stringing suspension, delays due to other things –

MR. LEARMONTH: Yeah.

MR. DUCEY: – and we, basically, came together and made a settlement, an amending agreement, and we accounted for it on our side one way – how we did it – and Nalcor accounted for it on their side of how they did it. But there was never an accounting saying, you know, this is for this, this is for this, this is, you know –

MR. LEARMONTH: It was a global settlement.

MR. DUCEY: It was a global settlement. How I view it on one side 'cause my – the way we keep our books is one way and how Nalcor views it on their side –

MR. LEARMONTH: Yeah.

MR. DUCEY: – is another way.

MR. LEARMONTH: So it –

MR. DUCEY: So –

MR. LEARMONTH: – wasn't a – there wasn't a calculation. It was just as to say you exchange information back and said $245 million –

MR. DUCEY: (Inaudible) there was a lot of documents exchanged and the volume of changes and volume of cost to get to this – the, you know, the $1 billion, $78 million. There was a lot of discussions around that to get to that number. We had a viewpoint of what were those drivers. Nalcor had a viewpoint of what – to those drivers. At the end of the day, after we did the amending agreement, you know, it was done. It was a global settlement.

MR. LEARMONTH: And that was $245 million. I'm a little bit confused.

THE COMMISSIONER: So the way we're going to look at it is – I understand what you're trying to say –

MR. DUCEY: Yeah.

THE COMMISSIONER: – you're trying to say there was certain money that was due to you under the unit-price contract but then over and above that there was another global figure to resolve other issues. So all I'm looking for is the difference between what was the original contract price, what was the final contract price and that pretty much tells me what was paid over and above the contract price. How you distinguish it –

UNIDENTIFIED MALE SPEAKER: Mm-hmm.

THE COMMISSIONER: – you know, in the number, I'm not really all that interested in. So, if you take the $1 million, 78, and you take less the contract price, you get about $245 million.

MR. LEARMONTH: Yeah. Maybe we could take our break now and maybe that'll give us some time to –

THE COMMISSIONER: Right.

MR. DUCEY: Yeah.

MR. LEARMONTH: – so you can think about that.

THE COMMISSIONER: Okay.

MR. DUCEY: That's fine.

THE COMMISSIONER: Yeah, let's do – let's take our 10-minute break then this morning now.

MR. DUCEY: Appreciate it.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

MR. LEARMONTH: Okay.

THE COMMISSIONER: Mr. Learmonth?

MR. LEARMONTH: Yes, thank you. When we took the break, we were discussing about the amount of settlement. Is there anything further you want to say about that? Because I understand it's not a simple matter because there were different components and so on. But is there anything further you can say about the amount of the settlement?

MR. DUCEY: Yeah, no – yes, I can. So while we had unit price and delay claims that were in the hundreds of millions of dollars, I can accept the Grant Thornton report where it talks about a settlement of $249 million, I believe it was.

MR. LEARMONTH: Two-forty-five.

MR. DUCEY: Two-forty-five.

MR. LEARMONTH: Yeah.

MR. DUCEY: Sorry, 245. Because, you know, just wanted to get out that, you know, we had a view on the contract, Nalcor had a view on what the ultimate contract would be, and 245 is – you know, generally reflects where we were at at the time.

MR. LEARMONTH: Okay. Very good. Two hundred and forty-five Canadian, right?

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah, okay.

Now, another topic I want to talk about is the proud-stranding issue.

MR. DUCEY: Yes.

MR. LEARMONTH: Are you familiar with that? Are both of you familiar with that?

MR. DUCEY: We both are.

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Okay. Well either one can answer the question – or both if necessary.

But one of the issues we understand affected your schedule and – was the proud-stranding issue. Can you give us some information on that, please?

MR. K. WILLIAMS: Sure. There was roughly a four-month delay period in stringing due to that issue.

MR. LEARMONTH: Okay. Just give us some background on what the issue was, how it manifested itself.

MR. K. WILLIAMS: It was identified in Labrador. We had – I don't remember the exact number of kilometres, but we had a considerable amount of line strung when an issue with one of the strands in the main conductor began to pop up. It was noticed once the conductor was strung, and it was noticed in multiple areas. And there was a period of suspension where new stringing didn't carry on, and, ultimately, the line – the conductor that had been strung to date was replaced with new conductor.

MR. LEARMONTH: And the term proud stranding, that just means it was standing up straight –

MR. K. WILLIAMS: It just means –

MR. LEARMONTH: – so in a proud way?

MR. K. WILLIAMS: – that of the 31 or 32 strands that comprise the outer –

MR. LEARMONTH: Yeah.

MR. K. WILLIAMS: – core of the conductor, one of those strands kept popping up out of –

MR. LEARMONTH: And standing up, yeah.

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: Popping out of – yeah.

MR. K. WILLIAMS: Yeah.

MR. LEARMONTH: And this – so this was – so stringing was suspended from June 2016 to September 20, 2016. Is that right?

MR. K. WILLIAMS: Roughly, yeah.

MR. LEARMONTH: Yeah. And can you confirm that the conductor was designed and provided by General Cable Canada?

MR. K. WILLIAMS: That's correct.

MR. LEARMONTH: And did you purchase it? Or did Nalcor purchase it?

MR. K. WILLIAMS: Nalcor provided it.

MR. LEARMONTH: So they provided it. This is one of the materials that they provided.

MR. K. WILLIAMS: Yes.

MR. LEARMONTH: And we understand there's ongoing litigation between General Cable Canada and Nalcor. Is Valard involved in that?

MR. K. WILLIAMS: No.

MR. LEARMONTH: No. And in the amending agreement 2 – that's tab 14, P-02002 at page 10 – we see that general – that if the GCC – that's General Cable Canada. This is a carve out in the release between Nalcor and Valard. Is that correct? At the top of page 10?

MR. DUCEY: Correct.

MR. LEARMONTH: Yeah. So that's a carve out for that, is it?

Can you explain why there is a carve out?

MR. DUCEY: Yeah – it was something that we brought up because we – our viewpoint is that this is an engineering-manufacturing issue and it needs to be – you know, it needs to be taken care of between the engineers, Nalcor and the manufacturer. And we didn't want to get brought into the dispute between Nalcor and General Cable. And so that's what this issue is addressing. I believe what it does is it – let me just read it to make sure.

It – my understanding of what this paragraph 44 deals with is that Nalcor and Valard, Quanta couldn't sue each other, come after each other for this proud-stranding issue.

MR. LEARMONTH: Okay. Just a couple of other questions. Did you find the labour that was provided to you under the contract to be working at an efficient rate? And was the productivity acceptable? Did it meet your expectations?

MR. DUCEY: I'll take that – I mean, one of the things from a Quanta Services perspective, you know, I mentioned in the beginning that we have roughly 40,000 employees; the vast majority of those are craft labour. The men and women that worked on this project in the field did an excellent job through very strenuous circumstances at times and, I think, achieved world-class productivity when given the chance to be successful here.

MR. LEARMONTH: That was the IBEW group?

MR. DUCEY: Correct.

MR. LEARMONTH: And so you're –

MR. DUCEY: Yes, the craft labour was represented by the IBEW here. Yes.

MR. LEARMONTH: Yeah. Yeah. And you were very happy with their performance?

MR. DUCEY: Yes, absolutely.

MR. LEARMONTH: Yeah. And there was a minor issue that came up, I think, under the memorandum of understanding about travel claim allowances; I think at some time Nalcor wanted to reduce payments for travel to IBEW – under the IBEW collective agreement, and they were able to negotiate that in the contract.

MR. DUCEY: Yeah, that – that's, I think, generally referred to as the travel MOU –

MR. LEARMONTH: Yeah.

MR. DUCEY: – or – travel MOU, I think – I know it was addressed in that document prior to the break, Jason's report to –

MR. LEARMONTH: Yeah.

MR. DUCEY: – Jason Kean's report he put together. That was done between Nalcor and the IBEW. But we just felt, as an employer trying to attract workforce here, there's other projects going around – going on around North America where this workforce could go to, especially some of the very highly skilled craft labour that's needed for this project. And so we continued to pay the craft at our, you know, the original agreement we had with them when we came here to Newfoundland.

MR. LEARMONTH: But you didn't go along with reducing –

MR. DUCEY: We didn't go along with reducing the pay to the craft labour, no, 'cause we felt that it would bring risk to the project that people would leave the project and would make it even harder for us to get done.

MR. LEARMONTH: Yeah, and it was part of the bargain, too, wasn't it?

MR. DUCEY: Yeah, it was part of the bargain; it was part of the, you know, of what we had told the employees we'd do to bring, you know, for them to come work on our project, and we wanted to stand by that to the completion of the project.

MR. LEARMONTH: Okay. Thank you.

One further question: You mentioned that there were occasions where you recommended a certain form of concrete – of foundation and you were overruled by Nalcor and what was put in place was something that you didn't agree with. Is that true?

MR. K. WILLIAMS: That's true.

MR. LEARMONTH: Yeah.

And I take it that that – you didn't agree with it because you didn't think it was the proper support – didn't provide the proper support. Is that correct?

MR. K. WILLIAMS: We didn't think it was the appropriate foundation for that location.

MR. LEARMONTH: Yeah.

But what effect, if any, could that have on the reliability of the transmission line if there are foundations that are inferior or not appropriate? Can you comment on that?

MR. DUCEY: So, yeah, to Kelly's point, yes, there was a lot of discussions and at times disputes and, as I mentioned earlier in my comments today, there is a process that was updated multiple times throughout the project called the foundation selection process and that would – and at times that that, you know, it would take months, you know, on certain foundations to make the – to make a selection.

But you're right; if you install the wrong foundation at a location you would see settlement that – a potential outcome could be settlement could happen, say, of the foundation sinking to the ground quicker or faster than what the engineers had designed and which could, you know, contribute to a – maybe a potential tower being at risk.

But one thing that I wanna make, you know, to get clear is that with the new – with the team that came in at the end of the project, after we achieved substantial completion and prior to achieving final completion, you know, all the engineers had been through all the records, all the foundation locations to verify and validate that what's installed in the field at the locations now are all the correct foundations and, you know, meet the scope or the specification on the project.

MR. LEARMONTH: All right.

So that was all verified before substantial completion?

MR. DUCEY: After – before final completion.

MR. LEARMONTH: Before final. After substantial and –

MR. DUCEY: Yeah.

MR. LEARMONTH: – before final.

MR. DUCEY: Yes.

MR. LEARMONTH: Okay.

Okay so that isn't a risk then?

MR. DUCEY: Correct.

MR. LEARMONTH: Right.

Okay. Those are my questions.

Thank you, both.

MR. DUCEY: Thank you.

THE COMMISSIONER: Thank you.

All right. The Province of Newfoundland and Labrador.

UNIDENTIFIED MALE SPEAKER: No questions, Commissioner, thank you.

THE COMMISSIONER: Nalcor Energy.

MR. SIMMONS: Good morning, Gentlemen.

My name is Dan Simmons, lawyer for Nalcor Energy.

I'm going to pick up on a few things that you've been asked about so far this morning, and the first point was actually the very last one that Mr. Learmonth went to because I had a note made to come back to the foundation selection and I think you've already cleared it up, but am I correct that for every foundation selection choice there had to be a sign-off at some point, eventually, by a professional engineer to say it was a satisfactory choice for that location?

MR. DUCEY: Correct.

MR. SIMMONS: That's correct.

MR. DUCEY: Correct.

MR. SIMMONS: And while there may have been disputes along the way as to whether a choice of foundation was correct, by the end of the project, every selection was verified by a professional engineer and signed off.

MR. DUCEY: Correct.

MR. SIMMONS: And from what you've told us now, the public should have no concern about there being any reliability on that line as a result of the choice of foundations at any tower site?

MR. DUCEY: Correct.

MR. SIMMONS: Okay. Good.

Mr. Williams, you've told us a bit about your prior experience before coming to this particular project, and I understand you'd been six years with Valard. Is that six years 'til now or six years prior to starting on the HVDC line?

MR. K. WILLIAMS: Over six years currently, 'til now.

MR. SIMMONS: Okay.

How –

THE COMMISSIONER: Can you turn on your – excuse me just for a second. Just –

MR. K. WILLIAMS: A little over six years 'til now.

MR. SIMMONS: How long had you been with Valard before you came in as project manager for the HVDC line?

MR. K. WILLIAMS: Four years.

MR. SIMMONS: Four years?

MR. K. WILLIAMS: Three years.

MR. SIMMONS: And in that time frame, had you been the project manager for a complete power line construction job before that or had you played other roles?

MR. K. WILLIAMS: Yes.

MR. SIMMONS: Okay.

And which projects had you been involved in as project manager?

MR. K. WILLIAMS: The Eastern Alberta Transmission Line with Valard.

MR. SIMMONS: Okay.

And prior to that, when you'd been working as a consultant, I think, for a period of time and then before that with a forestry company, I think you said? In that time period, were you involved in power line construction or in other aspects of it?

MR. K. WILLIAMS: Yeah, I was still with Valard; I was involved in the HRTD – the Hanna Regional –

MR. SIMMONS: Mm-hmm.

MR. K. WILLIAMS: – Transmission project. And as an independent consultant I was on the NTL project in British Columbia.

MR. SIMMONS: Okay. And your involvement in those projects was in what capacity?

MR. K. WILLIAMS: It was in access and clearing capacity.

MR. SIMMONS: And your prior employment in the forestry industry – was that access- and clearing-type work, or power line construction?

MR. K. WILLIAMS: It was forestry engineering and road access, and harvesting.

MR. SIMMONS: Okay, good. No, thank you – I just wanted to clarify those points.

Now there's been a number of questions asked about the geotechnical information that was available at the outset of this work, and you'd been brought to Exhibit P-01900. I'd like to go back to that please, Madam Clerk.

THE COMMISSIONER: Okay, that's at tab – it's at tab 1.

MR. SIMMONS: Okay, now this has been identified previously, I think, as geotechnical baseline information for the Muskrat Falls to Soldiers Pond line, which is the HVDC line. And if we turn to page 2, this appears to be a document that was prepared by SNC-Lavalin. You see that?

MR. K. WILLIAMS: Yes.

MR. SIMMONS: Okay.

And I believe you've said already that this was a document that was provided to Valard during the open-book contract negotiation phase, or maybe prior to that when the RFP was issued? Do you know that?

MR. DUCEY: Yeah. It was – yes, it was provided to Valard prior to – during the open-book – or RFP phase, yes.

MR. SIMMONS: Right. Okay.

Were either – Mr. Ducey, you or Mr. Williams – were either of you involved in working with this document at this stage to evaluate the information in it? Or was that the role of anyone else?

MR. DUCEY: I was familiar with the document but we'd had also a team of estimators and engineers and others going –

MR. SIMMONS: Mm-hmm.

MR. DUCEY: – also involved in the team, going over it.

MR. SIMMONS: Right. So I wouldn't have expected, Mr. Ducey, you with your position in the organization to be turning the pages and checking the numbers.

MR. DUCEY: Right.

MR. SIMMONS: But that's the sort of work that would have been done by others. And Mr. Williams, what role would you have played in the evaluation of this geotechnical information?

MR. K. WILLIAMS: I wasn't involved with the project prior to August of 2014.

MR. SIMMONS: Okay, so until construction work was actually starting, you weren't involved at all.

MR. K. WILLIAMS: Correct.

MR. SIMMONS: Okay.

So Mr. Ducey, can I bring you to page 5 please?

MR. DUCEY: Yeah.

MR. SIMMONS: And if we scroll down, Madam Clerk, to the bottom of that page there's a series of references here to other documents. And if we look at the last one on the bottom where it says OT0024, "Field Investigations and Construction Infrastructure HVdc line GI" – which I'm going to say is Gull Island – "to SP" – I'd say that's Soldiers Pond. "Geotechnical Repot (Volume 1), June 2009, by AMEC."

Is that a document that you would've been familiar with when you were engaged in the negotiations for this contract?

MR. DUCEY: Not personally, I cannot recall.

MR. SIMMONS: Okay.

So that document is in evidence. It's at Exhibit P-002861 please, Madam Clerk. I think that might be the one.

THE COMMISSIONER: What number is that again, mister –

MR. SIMMONS: 20 –

THE COMMISSIONER: – I know (inaudible).

MR. SIMMONS: – 02861.

THE COMMISSIONER: Is it not also attached to this document? At page 13, is that the one you're referring to? Because I don't have 02061.

MR. SIMMONS: Maybe – I don't know if you have the number right. 02861, that's at tab 25.

THE COMMISSIONER: Okay.

There's also an AMEC document I just noticed at – so it's not that one?

MR. SIMMONS: I don't think this is the same one.

THE COMMISSIONER: Okay.

So I'm sorry, this one's –

MR. SIMMONS: (Inaudible.)

THE COMMISSIONER: – at tab – 02861. I'm sorry, I thought it was 02061.

MR. SIMMONS: Mm-hmm, I apologize.

THE COMMISSIONER: It is tab 25.

MR. SIMMONS: Right.

So if you –

THE COMMISSIONER: So you only have the first page.

MR. DUCEY: Yeah.

MR. SIMMONS: If we scroll down a little here – if we can stop there. This is described as a "Field Investigation and Construction Infrastructure HVdc Transmission Line Gull Island to Soldiers Pond Volume 1 Geotechnical Report June, 2009." And I just want to turn you – turn over please to page 27, Madam Clerk. Scroll down.

So there's a section in this report that begins geotechnical. Now have you seen – does this look at all familiar to you Mr. Ducey? Would you know if Valard had this document? It was referred to in the one you did have. Do you know if this was reviewed as part of your work?

MR. DUCEY: I do not know.

MR. SIMMONS: Okay.

And the reason I'm asking is because of the comments about your understanding that there was desktop study done but very little ground-truthing or anything in that nature.

MR. DUCEY: Right.

MR. SIMMONS: So Madam Clerk, if we could go – just go to the next page please? Scroll down – if we could stop there. There is a section dealing with investigation procedures and it starts with the first task: base map and fieldwork preparation. And scroll down please – stop there. Task 2 is reconnaissance. Continue down to the top of the next page.

MR. DUCEY: But can we go back to the reconnaissance?

MR. SIMMONS: Sure.

MR. DUCEY: 'Cause it talks about three reconnaissance trips were made by helicopter. I just want to see what they were doing.

MR. SIMMONS: Mm-hmm.

And the reconnaissance is – you know, trips by helicopter –

MR. DUCEY: Okay.

MR. SIMMONS: – reconnoitre the line.

MR. DUCEY: Okay.

MR. SIMMONS: I'm just going to run you through some of the headings here now.

MR. DUCEY: Okay. Gotcha.

MR. SIMMONS: We go down, then there's the section permits. Continue on, please.

You can stop here.

Then we come to "Task 4 – Ground Truthing and Geotechnical Investigations." And if you just – without going through the detail, if you look at just the first paragraph, it describes there being "… (135) test pits … (102) percussion probes … (16) rock anchor pull-out tests … (46) km of bog terrain was probed … (20) areas were mapped for geological features and two (2) boreholes … drilled at … riverbank locations …."

So does this sound like a fairly typical type of ground-truthing and geotechnical investigation that you might see on a project?

The type of activities being undertaken.

MR. DUCEY: The type of activities would be –

MR. SIMMONS: Right.

MR. DUCEY: – you know, the types you would expect during a ground-truthing –

MR. SIMMONS: Right, and –

MR. DUCEY: – or a linear construction project.

MR. SIMMONS: – and – but you can – but in your experience, and maybe, you know, you say this, I understand that from project to project there may be variation in how extensive this type of work is done, but this is the type of work that's done.

MR. DUCEY: Correct.

MR. SIMMONS: Right. Okay.

And if we go, please to page 80. This is the start of reports on some of the results, and there's something here called "TEST PIT LOGS." If you scroll down, there's photographs. Go down a bit further, it describes the types of materials that were encountered.

If you go just to the next page, please, there's something called "GRADATION ANALYSIS REPORT," which I understand to be a laboratory testing of some of the material that's been excavated.

Does this look like the typical sort of report you'd get from that kind of ground-truthing investigation?

MR. DUCEY: Yes.

MR. SIMMONS: Yeah. Okay.

There's a second document that's referred to in the report that we know you had, and that's at Exhibit P-02862, please, Madam Clerk. It's volume 2 of this same set of work.

MR. DUCEY: Mm-hmm.

THE COMMISSIONER: Tab 26.

MR. SIMMONS: And this one is – it's the same report, but it says: "VOLUME 2 - CORRIDOR AND TEST LOCATION MAPS."

And can we go to page 5, please?

Page 5 and the next two pages are described as route maps, and if we can stop there, you'll see, for example, the proposed transmission line route is mapped out and there's a series of rectangles there, each separately numbered, that mark out different segments where investigation can be carried out.

Does that look like the sort of investigation, generally, you would expect to be carried out on a project like this?

MR. DUCEY: Yes, this is – looks like other maps I've seen on other projects.

MR. SIMMONS: Okay. And go please to page 8 – and probably the next page. Now starting at page 8 we have a whole series of maps which show those segments that are marked out and there's a key there which is a bit hard to make out but it identifies where there's bog probes, where there's test pits, where there's anchor pullouts and where there's boreholes.

MR. DUCEY: Mm-hmm.

MR. SIMMONS: Do you see that?

MR. DUCEY: Yes.

MR. SIMMONS: So this would be information that would identify where that type of testing has been done. Yes.

MR. DUCEY: Correct.

MR. SIMMONS: Right. And, presumably, since this was referred to in the report you do have, this information would have been available at that – at that negotiation stage.

MR. DUCEY: Right. And I think I just would, you know, point out that is – if you look at this, it's 2009 –

MR. SIMMONS: Yes.

MR. DUCEY: – which is great. Then the – I'd assume – the engineers, which you pointed out were SNC-Lavalin – would then – that's what they'd use to design their family of foundations and then pick the quantity – and then make a decision on the – an engineering judgment on the quantities of all those foundations between earth, rock, H-piles things of that nature.

MR. SIMMONS: Right.

MR. DUCEY: But – and the only thing I would point out is – actuality, that changed.

MR. SIMMONS: Yes. And –

MR. DUCEY: So –

MR. SIMMONS: That's correct.

MR. DUCEY: –so –

MR. SIMMONS: That's right.

MR. DUCEY: And that's what, I think, was in the – I think you're, you know, this is valid – you know, what you're bringing up is a good point because us, as a contractor, seeing all this pre-work that was done.

MR. SIMMONS: Mm-hmm.

MR. DUCEY: You take it – I'm not the engineer –

MR. SIMMONS: Mm-hmm.

MR. DUCEY: – you take it – you take the – these folks have done their job correctly and it – usually the quantity mix that we saw in actuality, versus what was in the original documents – that's – was the significant change that was –

MR. SIMMONS: Right.

MR. DUCEY: – unusual in this situation.

MR. SIMMONS: Mm-hmm. Right. Okay.

And during the – this – the negotiation phase – you were aware, I think, that SNC-Lavalin had been carrying out this type of investigation work.

MR. DUCEY: Yes.

MR. SIMMONS: And I believe you'd also indicated, as well, in your interview, that they had – were confident in the – in the proportions they'd selected for what the foundation types were.

MR. DUCEY: In – yes. I think you're referring to – as the negotiations were going on – there was more work being done in this issue to confirm the – I call this preliminary geotechnical information.

MR. SIMMONS: Right.

MR. DUCEY: And that's actually one of the reasons why Nalcor was so confident in – the information that they're gaining kind of simultaneously, as the negotiations were going on – was confident in why they, you know, it was one of the contributing factors – in my recollection – of why they broke off and did the – took the contract themselves to do the clearing and access work.

MR. SIMMONS: Now, were you involved in the negotiations for the transmission line from Muskrat Falls to Churchill Falls? That's contract CT0319.

MR. DUCEY: Yes, I was.

MR. SIMMONS: Yeah. Okay. That work actually started before the HVDC line to Soldiers Pond, correct?

MR. DUCEY: Correct.

MR. SIMMONS: Okay. And I won't take you to it, but if Exhibits P-02863, 02859 and 02860 are geotechnical reports concerning that particular stretch of line.

So the reference had been made, I think, to the contractor's plan for the work that Valard would have to do as they came from site to site, each tower site, about how – what would have to be done to select the foundation type for each site.

MR. DUCEY: Right.

MR. SIMMONS: And am I correct that for the line to Churchill Falls, which had been started earlier, there was a process that had been proposed by Valard and was in place as to what those steps were going to be as you advance through to each tower site and assess each location? Does that sound familiar?

MR. DUCEY: That sounds familiar, yes.

MR. SIMMONS: Okay, well, I'll give you an idea what I understand that arrangement was.

MR. DUCEY: Okay.

MR. SIMMONS: You can tell me if you know or if you don't know.

MR. DUCEY: Yeah.

MR. SIMMONS: Either way.

But our understanding was – my understanding is that the work would be advanced on the basis that it was assumed that, generally, it would be a grillage-type foundation and that if rock was not visible at the ground surface, then the foundation type would be determined when the excavation was done at the site. You're nodding –

MR. DUCEY: Mm-hmm.

MR. SIMMONS: – your head; that sounds familiar.

MR. DUCEY: Yes.

MR. SIMMONS: Okay.

And when the excavation equipment reached a required depth, then soils would be examined, and they'd determine if a grillage foundation was suitable. Okay. And that this would be – this would happen – there was grillage foundation installation crew that would be the first crew on the site as you advanced to each tower that would be doing this particular type of work. Correct?

MR. DUCEY: Correct.

MR. SIMMONS: And if it turned out that they determined that a grillage foundation wasn't the appropriate one, then there would have be some more detailed investigation done to determine

which of the other family of foundations was going to go in there.

MR. DUCEY: Yes.

MR. SIMMONS: Sounds right? Yeah.

MR. DUCEY: Sounds right.

MR. SIMMONS: And that the plan was, then, to allow that to happen, you'd skip ahead. The grillage crew foundation would skip ahead and go to the next site and skip over this site so this other work could be carried out and the choice could be made.

MR. DUCEY: Correct.

MR. SIMMONS: Yes.

Was that the same approach that was adopted when you started the HVDC line?

MR. DUCEY: Generally, I would say yes –

MR. SIMMONS: Yes.

MR. DUCEY: – because you would want, you know, those efficiencies to happen. I think the thing that, you know, I do remember – you know, what you described would also – is memorialized in flow charts that we would – that the teams would use of how it was all supposed to work, and if we had that to refer to, I think it would make it a little bit easier for everybody to – you know, to see. The only thing I want to make sure – that was unusual I'd come back is when you talk about skipping over and what we were trying to do. One – two things I'd point out is what we were trying to do – because you're right. The folks out doing this work are very competent and capable, understand what needs to go on.

MR. SIMMONS: Mm-hmm.

MR. DUCEY: They should be allowed to make the – you know, in many projects are on site, you know, can make the decision there at the site of what the right foundation is to put in.

So it would just be the – when they got something that was, say, not – in your example – not a grillage and another type of foundation would go in, it would be unusual for the length of time in reality it took to come to a decision on what type of foundation to install.

MR. SIMMONS: So we know that, later on, on the HVDC line project, there was a joint process put in place to look – to go well ahead of the tower foundation crews to assess what type of foundation was going to be installed, correct?

MR. DUCEY: Correct.

MR. SIMMONS: But am I correct that starting with the line to Churchill Falls, Valard's work plan was not to do that, but was to make the assessment as the grillage foundation crew reached each site, and then if there was an issue, to skip over it until a decision could be made?

MR. DUCEY: Generally, I agree with your statement, yes.

MR. SIMMONS: Generally, yes.

And am I correct that that's the same approach that was adopted at the outset of the HVDC line construction?

MR. DUCEY: Yes –

MR. SIMMONS: If you don't know –

MR. DUCEY: I don't know, but I do know on the DC because it became such a – is that – I refer to as a foundation-selection process in the flow chart that dealt with that. And I would say, by the end of the project, we were at, like, revision 15 on that.

MR. K. WILLIAMS: Fourteen.

MR. DUCEY: Fourteen, sorry. Revision 14. So you can understand that –

MR. SIMMONS: Yes.

MR. DUCEY: – there was a process that started on day one of the project –

MR. SIMMONS: Yeah.

MR. DUCEY: – and by the end we were at revision 14 because the – you know, we were

modifying it constantly, you know, over the life of the project to come up with a better process.

MR. SIMMONS: Good. Thank you.

Mr. Learmonth had referred you to some analysis done by Mr. Kean in 2017, I think, which is Exhibit P-02858. And I'm not going to go through much of that with you, but I just wanted to use it as a reference point for a couple questions.

So if we go to page 12 – and that's the upper-right-hand-corner page number – this is – it's part of the discussion of issue 9, dewatering during foundation installation. And I do understand from you that that wasn't one of the big issues that drove settlement numbers at the end. But on page 12, on the right-hand column – the paragraph that begins: "The extent and occurrence" – there's reference – I'll just read this paragraph then ask my question.

"The extent and occurrence of what Valard would consider as excessive dewatering is largely an historical issue associated with Labrador, as in Segment 3 Valard Quebec's work methods and capability clearly demonstrated its ability to effective manage both surface and ground water. Internally a desktop review of foundation installation practices between Valard Quebec and Valard Alberta highlight significant anomalies that reaffirm the poor work methods used by Valard Alberta."

So my first question is the reference here to Valard Quebec, is that a reference to work crews that came to this project from a subsidiary company that Valard owns that works in Quebec?

MR. DUCEY: Yes.

MR. SIMMONS: Yes, okay.

And what kind of experience did those crews have? Did they – where did they have experience working in transmission line construction?

MR. DUCEY: I don't know specifically –

MR. SIMMONS: Mm-hmm.

MR. DUCEY: – where those, you know, the crews – I do know the leadership of that team and that leadership of that team has worked all over the eastern North America –

MR. SIMMONS: And –

MR. DUCEY: – historically in their careers.

MR. SIMMONS: – did they have experience working in Quebec and northern Quebec on Hydro-Québec projects for example?

MR. DUCEY: Yes.

MR. SIMMONS: Right.

Where we would expect fairly similar types of issues to arise, I would suggest, as would arise on this line in Labrador.

MR. DUCEY: Correct, right.

MR. SIMMONS: Okay.

Now the reference to the Valard Alberta is – do you take that to be a reference to the crews that came from the Valard operations based in Alberta? Or were there crews that came from the Valard –

MR. DUCEY: The vast majority –

MR. SIMMONS: – operations in Alberta?

MR. DUCEY: – correct me if I'm wrong here, Kelly, but the vast majority of the workers, craft labour here, came actually from the province of – this province here.

MR. SIMMONS: Yes.

MR. DUCEY: Some that may have, you know –

MR. SIMMONS: Supervision of –

MR. DUCEY: Supervision –

MR. SIMMONS: – of the crews (inaudible) –

MR. DUCEY: – of crews and things like that came from all over Canada, and a lot of them came from this province also here.

MR. SIMMONS: Okay.

Well, aside from this reference here, I'm aware that there's an observation on the Nalcor side that the crews that came from Valard's Quebec operation were more effective and efficient at the work and understood the terrain and the challenges and managed them better than the crews that came from other locations. So I just ask if you can give me some comment on that, whether there's any basis at all for that observation or –?

MR. DUCEY: I don't – I've heard that before, too.

MR. SIMMONS: Mm-hmm.

MR. DUCEY: And that would be something that would come up in our various different discussions. And I've used the term earlier today. I would just kind of – is executive management, which is kind of noise – because if you look at it from, like, a safety perspective, a – you know, a quality procedure perspective, we expect all our crews to have the same level of, you know, safety performance, quality performance, same QA/QC checklist, things of that nature.

And so, yeah, while it is true we did have a workforce and a kind of a heading from – that was made up of our subsidiary from Valard Quebec, I didn't find their quality, their productivity, financial performance, anything like that, too much different than the Valard Alberta team. And like I said earlier, this whole dewatering thing, frankly, is kind of like a red herring.

MR. SIMMONS: It's not really the dewatering I'm asking about –

MR. DUCEY: Okay.

MR. SIMMONS: – here. This is just a jumping-off point for the discussion. So the crews that were sourced or, you know, originated from the Valard Quebec operation, were they initially the ones that worked on the line to Churchill Falls? And then when that line –

MR. DUCEY: (Inaudible.)

MR. K. WILLIAMS: Component (inaudible).

MR. SIMMONS: – neared completion, they went to the Island of Newfoundland?

MR. DUCEY: They were a component of the work program.

MR. SIMMONS: Yes.

MR. DUCEY: And you're right. They did work between Muskrat and Churchill.

MR. SIMMONS: Yes.

MR. DUCEY: And exactly where they were used on the DC component …

MR. SIMMONS: And, Mr. Williams, if you know the answer to that, that's –

MR. K. WILLIAMS: Yeah. They came across and worked on the northern portion of the Island, segment 3 –

MR. SIMMONS: Okay.

MR. K. WILLIAMS: – on the DC (inaudible) –

MR. SIMMONS: So on the HVDC lines, segments 1 and 2 were in Labrador, between Muskrat Falls and the Strait of Belle Isle.

MR. K. WILLIAMS: Correct.

MR. SIMMONS: Correct. So your Quebec crews didn't actually work to any great extent on those segments 1 and 2, did they?

MR. K. WILLIAMS: No, they didn't.

MR. SIMMONS: They didn't. They came in once the work hit the Island.

MR. K. WILLIAMS: Yes.

MR. SIMMONS: Yes. Okay.

Can we go, please, to page 15 of these notes, here?

Now, this is some of Mr. Kean's comments on foundation selection and foundation settlement,

and if I can bring you, please, to the column – the Summary of Company's Position & Current Situation on the right. And there's a paragraph that begins "Company's position …." And I'll just read that one and the next paragraph. "Company's position on the subject of foundation selection has been featured prominently in several letters to Valard, including LTR-118 and LTR-304, while our concerns regarding poor quality of workmanship leading to foundation settlement have been discussed extensively going back to the start of the Work (LTR-44, 50).

"On the issue of foundation settlement, it has been Company's view that the rework exists due to poor work practices and inadequate supervision by Valard."

And then it goes on to recount some of the other information about that. So my first question is: rework, does that refer to having to go back and do some sort of repair on a foundation that had previously been completed?

MR. DUCEY: Yes, or reinstalling the foundation.

MR. SIMMONS: Or reinstalling it.

MR. DUCEY: Yes.

MR. SIMMONS: And when that happened, under the terms of the contract, that would have been at Valard's cost, without being able to make any additional charge to Nalcor for that rework.

MR. DUCEY: Correct.

MR. SIMMONS: Correct.

So the issue of rework was a cost item for Valard, and unless Valard could establish that Nalcor had contributed to the need for the rework, that would be a cost Valard would have to bear and would reduce its overall, you know, profitability on the contract.

MR. DUCEY: Yes, and there's rework – the way the contract is, if there's rework or quality issues, the contractor bears that risk.

MR. SIMMONS: Right.

And am I correct that although Valard had a position on why there was settlement on some foundations, Nalcor had another position as well?

MR. DUCEY: Correct.

MR. SIMMONS: Nalcor's position was that it wasn't design or selection issues as much as it was the workmanship that was being applied by the crews that were on the line.

MR. DUCEY: Yes, that –

MR. SIMMONS: That's correct?

MR. DUCEY: – would've been Nalcor's position, correct.

MR. SIMMONS: Page 16, please.

Again in the column on the right, if we go down, there's a paragraph under the bullets that begins "With respect to Valard's claim …."

"With respect to Valard's claim that Company's delay in decision making negatively impact the foundation installation program, Company's internal records (maintained by the Site Geotechnical Team – N. Boran) do not support such a claim, rather provide adequate evidence to support that turnaround times on decision making were well within Company's rights within the Agreement."

So the first question on that is: The agreement that was in place with Valard spelled out that there were timeframes in which responses were to come back when there was a question, such as what type of foundation to be installed at a particular site, correct? Are you familiar with that? If you're not –

MR. DUCEY: Yeah, no, I'm just kind of baffled by that paragraph –

MR. SIMMONS: Mm-hmm.

MR. DUCEY: – because this written in January of 2017 and we haven't even brought a claim forward yet. So I don't even know what claim he's referring to.

MR. SIMMONS: And, sorry, you hadn't what?

MR. DUCEY: We hadn't brought our claim forward yet so I don't even know what claim he's referring to in this paragraph.

MR. SIMMONS: Okay. And so the assertion is made here that the analysis of the records are showing that these things are getting turned around in the time provided in the contract, and I'm just going to give you the opportunity to make the comment you want on that.

MR. DUCEY: In – yeah, no, and so I would report back to the C2GI report, and there's a different set of facts over there about how long it was taking to turn some of these things around.

MR. SIMMONS: Okay.

Now, I'm going to apologize for not being very well-organized in where these questions are going to come from –

MR. DUCEY: No problem.

MR. SIMMONS: – because they're going to pop up from some different directions.

Okay.

So you've described how, near the latter part of this project, there was a process of negotiation that took place in order to resolve outstanding claims that Valard had and resulted in some extra payment coming from Nalcor to Valard in respect of all those claims.

Have you ever had a major project where there weren't claims of some sort that had to be resolved in the course of it, some claims by the contractor for payment above what the original contract said they were going to be paid?

MR. DUCEY: No, I mean, I think it's normal in small construction or large construction that there's always changes, kind of a – call it a true-up at the end.

MR. SIMMONS: Mm-hmm.

MR. DUCEY: And so can I – yeah, can I think of, you know, small projects where it was, say, $100,000 contract and at the end of the day it was $100,000? Yes, but it's very – I guess, to your point is it's common –

MR. SIMMONS: Mm-hmm.

MR. DUCEY: – in projects to have some – I'll call it a true-up at the end, either adds or deducts (inaudible).

MR. SIMMONS: Right.

And from your point of view, as the contractor –

MR. DUCEY: Mm-hmm.

MR. SIMMONS: – who wants to come out of the job with a profit and, presumably, as much profit as you can – and there's nothing wrong with that; that's good – was it correct that as you manage the job on the way through, you have to look out for where those sorts of claims are going to arise and for what – and look out for the things that may happen, that you would want to look for some extra payment for? You're not going to let them go by.

MR. DUCEY: No, I'd say that, you know, as there's changes going on – if there's changes that occur, be it on the first day or the last day of the contract versus then what was in the original contract, yes, it's up to the owner and the contractor to get together and settle those.

MR. SIMMONS: And is it your experience that, to one extent or another, you're going to expect an owner to push back on things?

MR. DUCEY: Yes.

MR. SIMMONS: Mm-hmm.

MR. DUCEY: Now, I mean, I think you have two parties that are advocating for their positions. Is – you know, I discussed earlier today, but I think it was, you know, in many situations where both sides – you know, as I look at things, the contractor might not be 100 per cent right, but they're not 100 per cent wrong.

MR. SIMMONS: Mm-hmm.

MR. DUCEY: The owner's not 100 per cent right, but they're not 100 per cent wrong either.

MR. SIMMONS: Mm-hmm.

MR. DUCEY: And so how do we come together and find a win-win, you know, business resolution versus a, you know, long-term, litigated dispute?

MR. SIMMONS: And ultimately that's the way things got resolved here.

MR. DUCEY: Ultimately that's the way it got resolved. Yes.

MR. SIMMONS: Yeah. Okay.

Mr. Williams, this may have been you that made a comment – you were asked a question concerning any delays in relation to engineering or design work for the transmission line on the – through the Long Range Mountains.

MR. K. WILLIAMS: Mm-hmm.

MR. SIMMONS: And I'd understood you to say that there was uncertainty introduced because of the fact that the line design wasn't finalized. Now, my question is: Are you aware, during the time period that this was going on, that there were any outside factors or anything that occurred here in the province that was driving design changes to that line?

MR. K. WILLIAMS: No, I can't speak to the specifics of why those changes were –

MR. SIMMONS: Right.

MR. K. WILLIAMS: – taking place –

MR. SIMMONS: Okay.

MR. K. WILLIAMS: – at that stage.

MR. SIMMONS: But you were aware that some of the issue then was design changes that were happening during the course of the contract, was it?

MR. K. WILLIAMS: I was aware that there were changes to the design and the location of the line through the Long Range Mountains.

MR. SIMMONS: Right. Right. And were those related to reliability issues, do you know?

MR. K. WILLIAMS: I have since read some information that leads me to believe that was the case.

MR. SIMMONS: You gentlemen – and Mr. Ducey, I think you responded to the questions about the proud strand issue on the cable that had been installed on the Labrador side of HVDC line and the proud strand issue which came up, which, ultimately, resulted in the replacement of that cable and that there had been a suspension of Valard's work. And was it your understanding that that suspension was to allow that issue to be investigated –

MR. DUCEY: Correct.

MR. SIMMONS: – to determine what was to be done?

MR. DUCEY: Yeah. The – ultimately, the suspension was to investigate what was causing the issue and then they ended up remanufacturing and procuring new conductor that was then – that we could then install.

MR. SIMMONS: And I think you'd said that the suspension had cost Valard money, which is understandable, and that there hadn't been payment for that and that ended up being part of the claim, at the end, that had to be resolved –

MR. DUCEY: Yes.

MR. SIMMONS: – in a global settlement, but that was an impact on Valard from Nalcor not having made payments earlier than that. And what my question is – at the time when the suspension was made, and this was under investigation, was it an open question then whether this was a cable-design issue or whether Valard's installation methods had contributed to the problem? Was that an issue on the table?

MR. DUCEY: No, because nobody would communicate to us about it, but, like I said, we're very experienced in this type of stuff. So our conductor installation, we install more conductor than anybody –

MR. SIMMONS: Mm-hmm.

MR. DUCEY: – else in North America, so we're – we were very – you know, still are and

were very confident in our position of what caused the issue –

MR. SIMMONS: Mm-hmm.

MR. DUCEY: – and, you know …

MR. SIMMONS: So, nevertheless, though, as we saw in amending agreement number 2, while that agreement says neither party can make any claims against each other for things that have happened to the point of signing that agreement –

MR. DUCEY: Mm-hmm.

MR. SIMMONS: – this issue was exempted out from that release. Correct?

MR. DUCEY: Correct.

MR. SIMMONS: Yeah. Okay.

MR. DUCEY: And, but if I – I believe the reason why it's exempted out in there is because we can't – Nalcor or us can't exempt something that a third party might do.

MR. SIMMONS: Right.

MR. DUCEY: So it really has to do with what third-party claims might be.

MR. SIMMONS: Right, so a third party could choose to say we think Valard bears responsibility and add them to a lawsuit, for example.

MR. DUCEY: If they so do, yes.

MR. SIMMONS: Yeah. Okay.

A question about C2G – C2G was hired by Valard to provide advice to Valard; C2G wasn't retained jointly by Nalcor and Valard to provide some independent view on these claims. Correct?

MR. DUCEY: Correct. It was –

MR. SIMMONS: Correct.

MR. DUCEY: – C2GI was our advisor.

MR. SIMMONS: Right, and part of their business is to advise a party on claims that they are making, the contractor, on claims they are making against an owner and to provide some support for those. Correct?

MR. DUCEY: Correct.

MR. SIMMONS: Right, and Nalcor would've had its own advisors –

MR. DUCEY: Yes.

MR. SIMMONS: – who would've provided their support.

MR. DUCEY: Yes.

MR. SIMMONS: So –

MR. DUCEY: In that industry, there's a couple of major firms, and Nalcor had a major firm engaged.

MR. SIMMONS: Yeah.

MR. DUCEY: We had a major firm engaged.

MR. SIMMONS: Right. And I just want to make sure everyone understands that C2G wasn't some independent party –

MR. DUCEY: Correct.

MR. SIMMONS: – that was retained to provide some independent, objective evaluation.

MR. DUCEY: That's correct. And I did use that but – I did use them for that, too, for my own –

MR. SIMMONS: Yes.

MR. DUCEY: – for Quanta's sake, that it was – that I had, you know, that they – that –

MR. SIMMONS: Yeah.

MR. DUCEY: – we had validity in our positions.

MR. SIMMONS: Okay.

And the last thing that I want to go to is – the Grant Thornton report you were referred to at

page 41 identified $241 million as the amount that was paid in excess of the contract award value, I think it said. Maybe we can go there. That's page 41.

THE COMMISSIONER: 01677.

MR. SIMMONS: Yeah, and the clerk is way ahead of us. She has it on the screen already.

THE COMMISSIONER: (Inaudible.)

MR. SIMMONS: Now, if we just scroll down, please, and we can stop there.

Under Reconciliation, there's a number there for 809,000 as the "Contract award amount." Now, am I correct that the contract award amount would be calculated using unit prices for unit-price items and some estimate of the number of units that would be required?

MR. DUCEY: Correct.

MR. SIMMONS: So in the ordinary course on a unit-price contract, that award amount could go up and down with absolutely no dispute between the parties, just with a tally of what the actual units are that are used.

MR. DUCEY: Yes, that's how it works.

MR. SIMMONS: Right.

So when you say there's a global settlement and there was an increase of $245 million here, I understand from your evidence, correct me if I'm wrong, that part of that would've been some of that true-up about what the actual number of units were that Valard was entitled to be paid for under the existing terms of the contract.

MR. DUCEY: Yes.

MR. SIMMONS: That's correct.

MR. DUCEY: Yes.

MR. SIMMONS: Okay.

Thank you very much. I don't have anything else.

MR. DUCEY: Thank you.

THE COMMISSIONER: Concerned Citizens Coalition.

MR. HISCOCK: Good morning. Will Hiscock. I'm here on behalf of the Concerned Citizens Coalition.

We have a number of questions to run through with you. Some of it may have been covered a little bit, so we'll knock some of them out as we go through.

THE COMMISSIONER: So let me try – you know, like, one of the things I'm noticing now about the schedule is that I'm losing it, so I'm gonna start saying to counsel: If it's already been done –

MR. HISCOCK: Yep.

THE COMMISSIONER: – don't ask the same question again. We don't need it done twice, unless there's a point to be made that's missed or something. I don't wanna restrict you, but can you please bear in mind that we do have a schedule to maintain and I'm getting to Mr. Turpin this afternoon, so I wanna get cracking.

MR. HISCOCK: Great.

Were you ever told why geotechnical investigations along the HVDC line were rejected in favour of map or aerial interpretations? Why there was the reliance on map and aerial interpretations instead of more thorough geotechnical investigation?

MR. DUCEY: That – I would address that to the engineers. I don't have an opinion on that or an answer.

MR. HISCOCK: Okay.

My understanding is that there was at least one proposal given Nalcor for helicopter support work with boreholes at every pylon location or reduced subset. Had this geotechnical work gone forward, would that have greatly assisted the work under your contract?

MR. DUCEY: I don't have an opinion on that.

MR. HISCOCK: Mr. Williams?

MR. K. WILLIAMS: I'm not aware of the proposal. I can't speak to it.

MR. HISCOCK: Okay.

Would you agree that the borehole, though, the geotechnical work, that was baseline data, really, for a project of this size?

MR. K. WILLIAMS: Can you restate your question?

MR. HISCOCK: Yeah, so, you know, this was constructed – the transmission line was being constructed without the benefit of geotechnical investigation, and that was obviously a concern here. Would that geotechnical investigation – would that be a normal or necessary baseline data for a project of this size?

MR. DUCEY: I think we've established, though, that at each location and, you know, what was actually – you know, while the project had some – you know, what we've established, though, that it – you know, at the end of the project and through substantial and then final completion, all the locations have been backed through QA/QC documents, professional engineers have signed off on all foundations as installed and they're all installed properly, quality, we're warranting it and their behaving and installed to what the engineers had originally specified.

So I don't – while in hindsight it might be – been better to have more geotechnical information when we started, it doesn't affect the reliability and resiliency of the line as we sit here today.

MR. HISCOCK: Okay, but it would've affected the cost, perhaps, along the way, cause delays, cause added costs?

MR. DUCEY: Potentially.

MR. HISCOCK: Okay.

Soil conditions and weather have been blamed for hampering work on the construction of the transmission lines, and more than one person working on those contracts have suggested that the soil conditions encountered and the weather were not unusual, but in fact were par with what should've been expected in the environment.

I know you can only generalize, but would you agree with that statement, that it wasn't unusual, the soil and weather conditions were much as you should have expected with your experience in working in the North?

MR. DUCEY: Yeah, from a weather condition, yes. And I think we address it that we're built for that. We're used to it. Our equipment is engineered to be used in this type of weather conditions. Our camps are built to be in very cold weather climates. Our – the men and women that work on our projects are trained and are used to working in these – you know, in extreme – not only cold, but heat that we would have sometimes in the summer.

And, you know, I'm not sure about the soil conditions, but, you know, it was what we would – I would've guessed what – if they're referring to the quality of the access roads to make sure that they were the – you know, as in the contract, the class C access roads and then the geotechnical conditions at each location.

MR. HISCOCK: Thank you.

We've heard reports about quality issues on the AC line and that there was no concrete testing conducted and some tower foundations had to be redone four or five times.

Can you confirm for the Commissioner that that was the case or not?

MR. DUCEY: I'm not familiar with exactly what you're referring to. But what I would say is that at final completion on the AC line, our engineers and Nalcor engineers have gone through every location and made sure that there's, you know, the proper quality documentation, proper warranty, proper installed and a professional engineer has stamped the engineering documents for each site as installed.

MR. HISCOCK: So you're not aware, though, that there were any quality issues on the AC line and that – of around concrete testing? Is that something that you're not aware of?

MR. DUCEY: No, I'm aware of the issue –

MR. HISCOCK: Okay.

MR. DUCEY: – and – but what I'm – and what I'm saying is it's been addressed and dealt with appropriately, as per industry norms and standards.

MR. HISCOCK: Okay, yeah, and so – but the issue had to be addressed. You had to go back and redo some of those because that testing wasn't getting done. Is that correct?

MR. DUCEY: It had to do – I think it was – was it the winter of '14-'15? You know, that significant snow?

MR. K. WILLIAMS: '15.

MR. DUCEY: So it would've been the winter – yes. And it was the issue of significant snow in the winter of '15. Well, one of the contributing factors was significant snow in the winter of '15 and, you know, concrete has to be to a certain temperature and installed and distances and all that –

MR. HISCOCK: Mm-hmm.

MR. DUCEY: – kind of stuff that went on. But like I said, is – and I think, you know, the gentlemen before you, we've discussed that every single location has been back – gone back through and properly validated from a engineering perspective, signed off on by a professional engineer and warranted.

MR. HISCOCK: Yes, and I understand that the correction work went on afterwards, but part of what this Commission is looking at is not simply how things got resolved in 2017, I guess, or there in latter years –

MR. DUCEY: Right, and I guess what I'd say –

MR. HISCOCK: – but some of the issues (inaudible).

MR. DUCEY: – and what I talked about previously, all the – if there were quality issues, they were dealt with. Those costs were borne by the contractor, not Nalcor.

MR. HISCOCK: Okay.

Can you confirm that for the first one to two years there was no quality control testing on tower foundations and that it wasn't until 2016 that the geotech program on the HVDC line started on an as-needed basis? Is that correct?

MR. DUCEY: That's not – that's not – I don't believe that to be correct.

MR. HISCOCK: Okay.

MR. DUCEY: Or recollection of my knowledge, or your knowledge.

MR. K. WILLIAMS: I think there were two questions in there.

MR. HISCOCK: Yes. So first, I guess, can you confirm that for the first one to two years there was no quality control testing on the tower foundations?

MR. K. WILLIAMS: So if you're speaking to the DC line, which I can speak to, that's incorrect.

MR. HISCOCK: Okay.

On the AC line, though, we're not sure –

MR. K. WILLIAMS: I wasn't project manager on the AC line. I can't speak to it.

MR. HISCOCK: Fair enough.

And then I guess the second part is: In 2016, that would be when the HVDC program – or when it began on the HVDC line. Is that correct?

MR. K. WILLIAMS: What program?

MR. HISCOCK: The testing.

MR. DUCEY: We started the HVDC project in October 2014 and I would say from the very beginning of the project it would've had a – you know, and it's in the contract, a requirement of our QA/QC procedures and policies. So I don't know what you're asking.

MR. HISCOCK: So what was the role of Stantec in that process? Stantec was doing the coring on the selection of the towers from Churchill Falls. Is that correct?

MR. K. WILLIAMS: We're talking the DC line right now?

MR. HISCOCK: Yes.

MR. K. WILLIAMS: There was some coring of foundations done to confirm the properties of the concrete at the concrete foundations, and they were almost to 100 per cent – they were – they met the specification.

MR. HISCOCK: Okay.

Can you confirm that from the Muskrat Falls to St. John's that there was about – or I think it's 460 locations requiring some form of piled foundation? Is that right? Around 500?

MR. K. WILLIAMS: I don't recall the actual count.

MR. HISCOCK: Okay, and that they – do you know if they were all unplanned and that they fell into a category referred to as atypical foundations? Is that correct?

MR. K. WILLIAMS: I would not say they were all unplanned.

MR. HISCOCK: Okay.

MR. DUCEY: But you could go to the as-builts and get the number on that.

MR. K. WILLIAMS: Yeah.

MR. DUCEY: It would be in there.

MR. HISCOCK: The unplanned work, these additional added pylons or the pile foundations, I guess, can you confirm that the unplanned or poorly planned work had a significant cost? I had been told by one person the figure of approximately $500 million, but …

MR. K. WILLIAMS: So I hesitate to say – I don't know why you're referring to unplanned, but the piles were contemplated in the contract, so …

MR. DUCEY: Yeah, honestly, I don't even know how to respond to that because I think it's so off base. It's not reality of what went on at all in the contract.

MR. HISCOCK: Okay, so please explain. Do you not encounter a significant number more, say, 400 or 500 locations, that required the pile foundations that weren't initially expected?

MR. DUCEY: So pile – H-Pile foundations are one of the foundation types in the contract, in the family. We talk about families, so H-Pile would be –

MR. HISCOCK: Yes.

MR. DUCEY: – one of the families. And as Kelly said earlier, and I would be the same way, it's like, yes, there was H-Piles put in. I'm not sure – foundations put in. I'm not sure of the exact number, but I know it would be in the as-builts and – but when you say 500, that seems a lot more than what I recollect.

MR. HISCOCK: Okay, and that would correspond with your memory as well, that it wouldn't be – it would be significantly less than, say, 460 out of the 3,200, approximately?

MR. K. WILLIAMS: Yeah, without getting into detail, you're probably talking about some optimization that was done and a new foundation type called macropile that was put in. And there was a number of those put in, and that was to – that was done in conjunction with Valard and Nalcor to optimize the line for both schedule and cost.

So the vast majority of the numbers that I think you're referring to are likely macropile, not H-Pile or micropile.

MR. HISCOCK: Okay.

And the – in terms of the quality control on the transmission line, it would be Valard that would do the quality control and Nalcor that would do the quality assurance work, right?

UNIDENTIFIED MALE SPEAKER: Right.

MR. HISCOCK: Normal process like that?

Are there – is there a specific standard that the contractor is supposed to adhere to, an engineering standard or somebody who sets standards for transmission lines like that? You

know, were – is there a set, sort of, standardized (inaudible) –

MR. DUCEY: It – in this – in the – what I believe you're asking is in the contract there would be a scope of – there's a specification scope of work, and in that specification or scope of work, it will dictate to the contractor what standards you're supposed to follow.

MR. HISCOCK: Okay, and do those standards – were the standards achieved in both the LITL and the Labrador – the LIL link as well, the AC line and the DC line? Were those standards met on both of those?

MR. DUCEY: We – I would say that we complied with the contract on both of them.

MR. HISCOCK: What was your experience with Nalcor's quality assurance work?

MR. K. WILLIAMS: I would say they had a fairly robust quality assurance program in place.

MR. HISCOCK: Okay.

One engineer has reported to a member of our coalition that members on that team actually had no laboratory testing experience before working on that project. Did you have any encounters with similar issues like that?

MR. K. WILLIAMS: I can't speak to that.

MR. HISCOCK: Okay.

The Commission has heard from the workers' panel that there is evidence of tipping amongst some of the towers on the LIL. What evidence can you supply the Commissioner on whether this is still a problem?

MR. DUCEY: So, if it was a significant issue, I would assume that Nalcor would report that to us as a warranty item, and to my knowledge no warranty claims or anything has been brought to my attention on these projects. We have ongoing work with Nalcor. We continue to work in the province and we're here regularly, and I've never – no quality or warranty claims have been brought forward to us.

MR. HISCOCK: Okay.

The Public Utilities Board of this province is preoccupied with issues of security of supply for Muskrat, and I take it on your – based on your earlier suggestions, that you don't believe that there's any concern around the stability of towers that we – that the province needs to be concerned about.

MR. DUCEY: Correct.

MR. HISCOCK: Okay.

Should we be more concerned, in the early years – the Commission – in considering the problems that you encountered with soil or water conditions than might otherwise be the issue? Based upon your experience, I guess, performing installation where the proper investigations have been done beforehand, preceding tower erection, do you think that we're going to have to deal with a disproportionately high number of tower-stability issues, either because of site locations or whatnot that were caused by that initial planning stage?

MR. DUCEY: I go back to what the gentleman before you said, that every tower site has been signed off by a professional engineer. At this – you know, at final completion, validating the tower, the conductor, foundation was all installed per engineering prudence. And I think you really need to address that question to the engineers.

MR. HISCOCK: I'd like to get your views about how repairs or maintenance can be conducted in some of the remote areas, the areas between DC1 and the DC3 camps, for example. The access roads – the access road was temporary and is likely degraded, and is going to continue to degrade. Helicopters can do routine inspections and light repairs, but with 20,000-pound tension lines, it's going to be a challenge. Is there – it is, you know, impossible, really, to do that work by helicopter.

The question is, again I guess, how fast can heavy machinery get to DC2 if it goes – if the line goes down?

MR. DUCEY: I've – you know, that's – I would address that – that's an operation and maintenance question. That would be best

answered by Nalcor. I would – I know just from the industry, if you look over in Quebec, similar access issues to their 735 kV and we're there now working throughout Quebec and Labrador through helicopters on similar type of projects. So I think you'd be surprised at how advanced the industry is doing work helicopter-wise, and you think about all the remote lines across North America. Folks are very adept at maintaining this infrastructure with challenging access and historically lots done through helicopters.

MR. HISCOCK: So you would think it would be all right to be able to do a lot of that remote repair work by helicopter? We wouldn't need to bring (inaudible)?

MR. DUCEY: I don't know. You'd have to study the specifics around this. But all I can say is – point to neighbouring utilities that do do a tremendous amount of work via helicopter and in remote access areas.

MR. HISCOCK: Did you have any discussions with Newfoundland and Labrador Hydro or Nalcor, really, as to the difficulties they might encounter if they had to make substantive repairs to either the HVDC or HVAC lines? Was that part of your discussions with Nalcor – was around the repair and the maintenance schedule afterwards?

MR. DUCEY: We had very – we – just as, you know, industry partners and things of that nature, we had very preliminary discussions around things of that nature, but nothing in depth.

MR. HISCOCK: You gentlemen both up on the access roads themselves – do you think the access roads were built to a standard where they could be maintained with a reasonable maintenance plan?

MR. DUCEY: I think that's a difficult – I mean, you're talking, you know, you're talking a line that stretches 1,100 kilometres. You know, the contract discusses the roads being built – as I use the terminology, there's a defined term in the contract calling them class C access roads. I'm not an expert and so I think you need – you know, I'd say talk to people in the road-building industry of what would be the appropriate to maintain those roads going forward.

MR. HISCOCK: I understand welding was a major issue. Can you give this Commission – give the Commissioner a picture of the issues and inform him of how many towers on the DC line were involved where base connections were found to contain substandard welding? Our understanding is it's about 350, but …

MR. K. WILLIAMS: (Inaudible.)

MR. DUCEY: You know, I'd say on a project stretching over 1,100 kilometres, as part of the punch – you know, we haven't talked about this, but as part of the punch list of going through and validating everything, there were some welding corrections that needed to be made on some of the foundations. That was all carried out and done at our expense. And, I mean – you know, like I said, it would be all part of a normal punch list that was done. It was all done, signed off by the engineers and our customer, Nalcor, was satisfied with the work we did and happy with it. So it's a resolved issue.

MR. HISCOCK: Perfect. And was that an issue on the AC line or as well as the DC line, do you know? I'm not sure. I don't know.

MR. DUCEY: I don't know specifically AC or DC. I mean, I know it was on the DC line.

MR. HISCOCK: Yeah.

MR. DUCEY: We were talking about that, but that's not an – you know, punch list, going through and kind of, you know, ticking off everything that you kind of go through and do a shakedown or walk-down of every tower, you'll find – you'll flag little stuff as part of the QA/QC process at the end 'cause literally every location, every tower, every metre of conductor was viewed at the end of this project, and so you'd find stuff, and then you'd have a team of folks go back behind it and fix everything.

MR. HISCOCK: And so was that just identified in the normal quality control, quality assurance process or how was that problem initially identified?

MR. K. WILLIAMS: Yeah, I – to B. J.'s point, I think it was just part of the QC/QA process and punch list – two-stage punch list for substantial and final completion.

MR. HISCOCK: And it's my understanding that the remediation work took about two years. Is that accurate, do you think, on the various lines starting from beginning to end on the welding issue?

MR. DUCEY: That's – no, it didn't take two years and it's – and I'm not trying to say – and also – 'cause it wasn't two years' worth of work –

MR. HISCOCK: Okay.

MR. DUCEY: – nor was it – but if you think about the AC, when the AC completed and DC completed, I want – you know, we – you know, you had a few people working for a couple of months to complete this work.

MR. HISCOCK: Okay.

Was – did that work arise out of any sort of a labour shortage or labour – it wasn't a labour issue per se, was it, that –

MR. DUCEY: No.

MR. HISCOCK: – that caused that, okay.

Were – was Valard the first party to take note of the proud-stranding issue? Or was that originally discovered by Nalcor? Do you know?

MR. K. WILLIAMS: I don't recall. I think it was jointly discussed. I can't remember who first pointed it out.

MR. HISCOCK: Okay, and didn't – Nalcor, though, was the ones who directed you to continue stringing the cable after the issue was discovered, correct? Or for some distance, is that correct?

MR. K. WILLIAMS: I don't believe they direct – they directed us when to stop.

MR. HISCOCK: Okay.

I think all of the rest of that issue has been covered. I'd like to move on. I've got a couple of questions on the – some labour issues there.

I guess, what was your experience in attracting Newfoundland and Labrador linesmen and other labourers to work on the transmission line? Did you have any issues getting –

MR. DUCEY: I –

MR. HISCOCK: – labour within the province?

MR. DUCEY: I wanted – like I've said before, is we very much enjoyed the work, the craft labour that we got from the province, found the folks to be, you know, excellent employees, and we're very proud to have 'em as part of our team. And then we're able to bring 'em, after this project, to some other of our projects in the east, but I'd – but, you know, you're bringing – you're onboarding a bunch of people; you're training. It's what we do –

MR. HISCOCK: Mmm.

MR. DUCEY: – so it's – I don't wanna make light, like it was easy, like you just flip a switch and it happens. There was a big process to it, and I think we had a good success with that.

MR. HISCOCK: Would you be able to give the Commission some sense as to the approximate percentage, anyways, of your workforce that was from Newfoundland and Labrador versus from elsewhere – either other parts of Canada or elsewhere?

MR. K. WILLIAMS: I would suggest you get that from Nalcor. Those are all numbers that we had to report on a regular basis. I don't recall the numbers to – accurately enough to state them here.

MR. HISCOCK: Perfect.

MR. DUCEY: But there – as Kelly said, there is a hiring preference in the contract. We followed that, and we reported that, not only in Labrador, but in, you know, in the rest of the province also.

MR. HISCOCK: Okay.

And Valard won the contract for the LTA line from Churchill Falls to Muskrat in the first instance, correct? That was the first part of it?

MR. DUCEY: Correct.

MR. HISCOCK: Okay.

And the initial value of that contract would be about $600 million, is that correct?

MR. DUCEY: No.

MR. HISCOCK: No?

MR. DUCEY: No.

MR. HISCOCK: Okay.

What was the initial value of that contract?

MR. DUCEY: You talked – this is the Muskrat to Churchill –

MR. HISCOCK: Churchill Falls to Muskrat, yeah.

MR. DUCEY: It was around 200 –

MR. HISCOCK: Oh, okay.

Between $200 and $300 million, say?

MR. DUCEY: That's fair, yes.

MR. HISCOCK: Okay.

And when was that – and do you know what the value was of that when it was completed?

MR. DUCEY: Not off the top of head, no.

MR. HISCOCK: Would you confirm that Nalcor had no quality assurance in place for the bulk of the construction performed under that contract?

MR. DUCEY: As Kelly stated, he wasn't the project manager on that. I can – you know, I can speak – can you repeat your question?

MR. HISCOCK: Yeah.

If you could confirm that Nalcor had no quality assurance – now, you're doing the quality control, but Nalcor is taking care of the quality assurance – that they had no quality assurance in place for the bulk of that construction?

MR. DUCEY: That doesn't – I can't speak to that, but that doesn't sound familiar at all.

MR. HISCOCK: Okay.

Is it true that Valard lost money on that contract?

MR. DUCEY: I have no – I have – I don't know.

MR. HISCOCK: Okay.

Subsequently, though, Valard, through the open negotiation, received the entire project: the LTA and the LIL. Did the money or – I guess, you say you don't know – you're not sure if you lost money on the AC line –

MR. DUCEY: I would say that that's commercially sensitive information. I'm not sure I can disclose that because being a publicly traded company –

MR. HISCOCK: I think that's very fair.

MR. DUCEY: – that's the – I'd want – I would want to talk to somebody if I could talk further about that.

THE COMMISSIONER: Well, from my point of view –

MR. HISCOCK: I'm going to leave that.

THE COMMISSIONER: – the question is –

MR. HISCOCK: That's the end of my questions.

THE COMMISSIONER: Okay. That's good.

From my point of view, I'm not even sure that's of real interest to me with regards to the Terms of Reference, but that's fine.

Thanks, (inaudible) – thank you, Mr. Hiscock.

Edmund Martin.

MR. CONSTANTINE: No questions, Commissioner.

THE COMMISSIONER: Former Provincial Government Officials (inaudible).

MR. J. KING: No questions.

THE COMMISSIONER: Robert Thompson.

Robert Thompson, sorry.

MR. COFFEY: No questions.

THE COMMISSIONER: No questions.

Consumer Advocate.

MR. PEDDIGREW: (Inaudible.)

THE COMMISSIONER: Yup.

MR. PEDDIGREW: (Inaudible.)

MR. K. WILLIAMS: (Inaudible.)

MR. PEDDIGREW: Good afternoon, Gentlemen.

I won't keep (inaudible) very long, just a couple of quick questions.

MR. DUCEY: Sure.

MR. PEDDIGREW: The place of manufacture for the towers – (inaudible) do you know where that was?

Were they all manufactured –

MR. DUCEY: They were –

MR. PEDDIGREW: – in the same place?

MR. DUCEY: No, they were purchased by Nalcor, so you'd need to talk to them. That would – you need to – I would ask them for the manufacturer of all the towers.

MR. PEDDIGREW: And do you know – were they all sourced from the same supplier or were there multiple suppliers?

MR. DUCEY: I think there were multiple – well, for the AC and DC I think they had different suppliers, and then they had some local supply on some things at the end I would say, too.

MR. PEDDIGREW: Some local suppliers –

MR. DUCEY: Well –

MR. PEDDIGREW: – you said?

MR. DUCEY: – North American supply –

MR. PEDDIGREW: Okay (inaudible).

MR. DUCEY: – 'cause the vast majority of towers still, just, we do a lot of this stuff, is no longer manufactured in North America, so a lot comes from –

MR. PEDDIGREW: Okay.

MR. DUCEY: – Europe.

MR. PEDDIGREW: And then the last couple of questions just about the – so you said most of your dealings with the project management team were with Jason Kean.

Did you have dealings with anybody else directly on the project management team – Paul Harrington, Lance Clarke, any of these people?

MR. DUCEY: Yeah, I mean, yes, I mean I dealt with – our team dealt with, I'd say, top to bottom of the Nalcor organization, so when – from Ed Martin, when he was here, Gilbert, when he was – Gilbert, Paul Harrington, Lance Clarke, Jason Kean, Pat Hussey and then a lot of other folks throughout the organization.

MR. PEDDIGREW: Okay, and then during your interview that was done, I think, back in January, there is some reference in the transcript to – in bringing concerns to the – to Nalcor and it falling on deaf ears.

When you made that – do you recall making that comment? I guess concerns about –

MR. DUCEY: Yeah, yes.

MR. PEDDIGREW: Yeah, I'm just –

MR. DUCEY: Yes, yeah, yeah.

MR. PEDDIGREW: – would that have been –

MR. DUCEY: That would be – yes.

MR. PEDDIGREW: Okay, and who in particular were you referring to when you made that comment?

MR. DUCEY: Probably – well, we had a steering committee of executives. So it would've been like Lance, Pat, Jason that we would – that we initially tried meeting with regularly, and so it'd be that steering committee where we would bring issues forward and, like I said, for whatever different reasons, we had business disagreements and we weren't able to resolve them during the times that they were there.

MR. PEDDIGREW: Okay, thank you.

THE COMMISSIONER: Thank you.

Have I missed anybody? I haven't asked everybody but I think that's all that's here. Okay, counsel for Valard, any questions?

UNIDENTIFIED MALE SPEAKER: No questions.

THE COMMISSIONER: Thank you.

UNIDENTIFIED MALE SPEAKER: Thank you.

THE COMMISSIONER: Redirect, Mr. Learmonth? None.

All right, good. Thank you, Gentlemen. I appreciate your time and so we'll adjourn now until 2:15 this afternoon. We'll start 15 minutes later because it's almost 1 o'clock now and we'll start with Mr. – we'll deal with Mr. Turpin this afternoon.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: All right, good afternoon.

So this afternoon Adrienne Ding is going to be leading the questioning. She's one of our associate counsel. I think this is the first time she's publicly made an appearance at the Inquiry. So Ms. Ding, when you're ready.

MS. DING: Thank you, Mr. Commissioner.

Before I begin, I just want to enter in some exhibits. One exhibit we're entering today is P-02966, which is the Nalcor and Emera sanction agreement. I believe that was talked about yesterday. We're entering it in today, as well as Exhibits P-02742 to P-02838, P-02852 to P-02855, as well as P-02901 to P-029 – and 02914.

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

Our next witness then is Mr. Turpin – Mark Turpin.

MS. DING: Okay, thank you.

Good afternoon, Mr. Turpin.

MR. TURPIN: Good afternoon.

MS. DING: Adrienne Ding, associate counsel for the Commission.

THE COMMISSIONER: Okay, so maybe I'll get you to rise Sir, please?

First of all, do you wish to be sworn on the Bible or do you wish to affirm?

MR. TURPIN: The Bible is fine.

THE COMMISSIONER: Okay, place your hand on the Bible then please.

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

MR. TURPIN: I do.

CLERK: Please state your name.

MR. TURPIN: Mark Turpin.

CLERK: Thank you.

THE COMMISSIONER: Be seated, Sir.

Ms. Ding.

MS. DING: Mr. Turpin, to start off I'll start with your LinkedIn page at Exhibit, Madam Clerk, 02901.

THE COMMISSIONER: That's tab –?

MS. DING: Binder one, Mr. Turpin, tab 2. If we could just scroll down – scroll down a bit further. Great, thank you.

Mr. Turpin, can you provide us with a brief overview of your education and work experience, please?

MR. TURPIN: Yeah, sure.

1992, I've – I graduated from the College of the North Atlantic with a civil engineering technology certificate. Upon graduation, I've worked with a mechanical and electrical contracting firm here on the Island, bidding work, executing work, closing out work.

From there I moved to – I worked in the concrete industry in the Allstar Rebar, working for – as a rebar detailer, again, bidding work, tendering jobs, executing. From there I moved to a company that eventually became Comstock Canada, where I worked out at the North Atlantic refinery where we had a labour supply contract with multi-discipline, multi-trade personnel doing refinery shutdowns. We've also done hard-number jobs in at the refinery, bidding work and executing work.

From there I went to work with – after Comstock, I left Comstock and went with the Vale project here in Long Harbour. I started off there as an estimator and I complied the Fell 2 and Fell 3 estimates for Vale for project sanction and submitted it to the Vale board of directors for a sanction decision. I was there for approximately five years of which I then moved to Nalcor.

I started with Nalcor as the estimating coordinator in October 2011. From there I went to the area construction manager of the bulk excavation with Nalcor. After successful completion of bulk excavation, I moved on to the area manager for the North and South Dams. I was there for about one year, seven months, which then I moved to the area manager for the North Spur and stabilization work as construction manager for that scope of work.

After Vale, I then took a position with ABB on the Maritime northeast project. Where – as the construction manager, for their interest in Bottom Brook, which is the switchyard converter station in Bottom Brook. And upon completion of the switchyard portion of that project, I'm currently now engaged for approximately the past two years at Husky Energy at their White Rose Project with their interest in Argentia on the GBS.

MS. DING: And what's your position at Husky?

MR. TURPIN: I work with the project controls group in – with Husky.

MS. DING: Thank you.

Can you just give me a brief overview of what package CH0009 is?

MR. TURPIN: CH0009 is the North and South Dams. So that package consisted of the – it starts with river diversion. So it was actually diverting the Churchill River through the spillway. So there's a bit of demolition work left over from CH006 removal of cofferdams, install the upstream cofferdam, do river conversion, close off the river, construct the upstream cofferdam in preparation for the construction of the north RCC dam.

It also consisted of construction of the south rockfill dam. It included the removal of the rock plug – the tailrace rock plug and other miscellaneous clean up.

MS. DING: Okay, thank you.

Mr. Turpin, the primary focus of my examination today with you is an issue that was raised in the Grant Thornton report. This has to do with the email you sent to Stan Marshall on May 22, 2015 –

MR. TURPIN: Sure.

MS. DING: – and we can bring that letter up here now. Madam Clerk, P-01901, please?

And Mr. Turpin, that's binder 4, tab 85.

MR. TURPIN: Eighty-five?

MS. DING: Yes, thank you.

So I'll take you to page 5. So this is the email that you sent to Stan Marshall. Your original email was dated May 22 – sorry, May 22, 2016, and at the end of the page there – we'll just scroll down to the bottom paragraph. Do you mind reading that bottom paragraph for me?

MR. TURPIN: Sure.

"Another topic that needs to be investigated is the actual award of CH-0009 North and South Dams itself. As the Area Manager, I was the lead team member responsible for the tabulation of the award recommendation to LCP Management. After a year of technically reviewing the proposals both technical and commercial scores, an award recommendation was made promoting HJOC / Dragadoss JV. This was a unit rate contract with no labor risk for Nalcor. After I was assigned to the North Spur in April of 2015, I was surprised to learn that the award went to Barnard Pennecon JV with a contracting strategy that assigned all labour productivity risk to Nalcor (similar to the current Astaldi contracting strategy except with an even greater risk of No Labour Cap) with a Contract Value greater than the HJOC Dragadoss JV proposal with no labor risk."

MS. DING: Okay, thank you.

And just going back a little bit – what circumstances led you to write this letter to Stan Marshall?

MR. TURPIN: So when I was asked to – in my experience, I was the area manager, construction manager for the North Spur. When I was asked to take over that project, that work was just started. I was asked to go there. The project – the management team felt that it was at risk and asked me to go in and see if I can straighten it out. Any time you go into a project and take it over you've got to – if it's already up and running you got to get the lay of the land.

When I went there, there was a gentleman in charge of the clearing. The clearing for the whole Lower Churchill Project was being run by a gentleman by the name of Bill Evans, which had extensive clearing work in Abitibi. When he was looking for a resource for the North Spur portion, he selected a gentleman by the name of Gord Oldford. So when I went to site it quickly became evident. I looked at Gord, he had quite extensive experience in his work. He was a guy that got things done, he knew how to manage people, he knew how to – he knew the lay of the land. Me and Gord quickly developed a mutual respect for each other. He knew we were both pushing to get the job done in the safest way, manner. After the clearing was finished, Gord moved on to other things; I remained with the project.

After the first year in May when I left Nalcor, Gord kept in touch with the guys, he developed a relationship with the contractor, he developed a relationship with me. Gord found out that I had been removed from the project. Gord was – couldn't believe it. After the success of the bulk excavation, after turning the North Spur around, he just couldn't believe the situation that Nalcor management have made. Nalcor, because of his involvement with Abitibi's operations – international operations, vice-president, Gord had a relationship with Stan Marshall, on a personal level, to the point he knew his cell number. Gord called Stan himself and voiced his opinion with the decision to remove me from the project. Stan was just after taking over at the time. Stan encouraged Gord to put his thoughts on paper. So Gord penned a letter to Stan. Gord encouraged me to do the same, where I was involved in many aspects of the project and this is where this letter came from.

MS. DING: Okay. Thank you.

I'm going to come back to that letter –

MR. TURPIN: Sure.

MS. DING: – and the recommendation that you made in a little more detail.

But I will say that, Commissioner, the bid process for CH0009, North and South Dams, would've followed a similar bid evaluation process that Mr. Hussey would've brought us through last month. But I will still take a little

bit of time just to establish a timeline with some important dates on the bid.

So, Mr. Turpin, if you could confirm some of the dates that I'm going to lead you through that would be helpful just to establish a timeline.

MR. TURPIN: Sure.

MS. DING: And, for the sake of time, I won't bring up every document that I'm going to talk about but if you need to see the document we can, absolutely, bring that up.

MR. TURPIN: Sure.

MS. DING: So in 2014 you're on the bid evaluation team. You're doing some preliminary work identifying bidders, putting out expressions of interest and vetting questionnaires. Is that correct?

MR. TURPIN: Sure.

MS. DING: Okay.

MR. TURPIN: Correct.

MS. DING: And in – the bidder selection evaluation report was done on July 29, 2014. Is that correct?

MR. TURPIN: Correct.

MS. DING: And that would've shown that you had three bidders on – potential bidders on the project, Astaldi, Barnard-Pennecon JV – Barnard being the managing partner of that. Is that correct?

MR. TURPIN: Yeah, that's correct. Yup.

MS. DING: Okay. And H. J. O'Connell-Dragados JV and H. J. O'Connell being the managing partner of that partnership.

MR. TURPIN: Correct, yeah.

MS. DING: Okay. Then you'd put out the RFP or the request for proposals on August 1, 2014. Is that correct?

MR. TURPIN: Sure. You have the documentation in front of you.

MS. DING: Sure.

MR. TURPIN: It's –

MS. DING: Yeah.

MR. TURPIN: – I'm sure it's correct.

MS. DING: I'm just getting you to confirm –

MR. TURPIN: Yes.

MS. DING: – that that's along your recollection.

MR. TURPIN: Yeah, yeah.

MS. DING: Okay. Thank you.

MR. TURPIN: Yeah.

MS. DING: Then you did bidder meetings in August 25 and 26 of 2014.

MR. TURPIN: Sure.

MS. DING: Okay. There was some – as I understand – addendums and clarifications to that and then there was a bid evaluation plan that was signed somewhere around October 2015, around the same time the bids were opened.

MR. TURPIN: Yeah. It would've been signed off prior to the bid opening.

MS. DING: Okay. Just prior.

MR. TURPIN: Yes.

MS. DING: Right. So – yeah, I believe it was October 21 –

MR. TURPIN: Yeah.

MS. DING: – of 2015 and then the bids were opened October 22.

MR. TURPIN: Yeah.

MS. DING: Is that correct?

MR. TURPIN: That's correct.

MS. DING: So you received three bids –

MR. TURPIN: Mm-hmm.

MS. DING: – Astaldi, Barnard-Pennecon, H. J. O'Connell-Dragados.

MR. TURPIN: Yeah.

MS. DING: And I'll just make a small note here that Astaldi was later dropped as a contender and really the consideration was between Barnard-Pennecon and H. J. O'Connell.

MR. TURPIN: That is correct. Yeah.

MS. DING: Okay. Great.

So the bids are evaluated and as you say in your letter, you made a recommendation for H. J. O'Connell that you described in your letter to Stan Marshall.

MR. TURPIN: That is correct. Yeah.

MS. DING: Okay. And I'm going to come back and talk about the date in a little bit.

MR. TURPIN: Sure.

MS. DING: And then you leave the position as area manager for the North and South Dams in April of 2015.

MR. TURPIN: Mm-hmm.

MS. DING: And you moved to North Spur stabilization.

MR. TURPIN: Correct.

MS. DING: Okay.

And then, to your knowledge, the ultimate contract was awarded in August 14 of 2015?

MR. TURPIN: Sure, there's –

MS. DING: Great.

MR. TURPIN: – documentation to support that.

MS. DING: Yes. And Commissioner, Exhibit P-01870 will confirm that date.

So I want to go back now and flesh out some of those details.

MR. TURPIN: Sure.

MS. DING: You became area manager in October of 2013, which involved leading that bid evaluation team.

MR. TURPIN: Yeah.

MS. DING: So –

MR. TURPIN: It was actually to conclude the detailed design as well, to prep the engineering package for the North and South Dams, which led into an RFP, which then leads into the request for proposal.

MS. DING: Okay.

How were you brought on to work on the team, initially, for the North and South Dams?

MR. TURPIN: The North and South Dams? After the successful completion of CH006, it was a – CH006 was a pretty large, complicated project that involves a great deal of rock excavation, over 400,000 cubic metres of overburden. It involved an RCC dam, three earth filled cofferdams to protect the excavation during spring runoff. We completed that project in 11 months, from start to finish. It was quite a challenging project but when that was completed, Ron Power and Scott asked me what would I like to do next.

MS. DING: That's Scott O'Brien?

MR. TURPIN: Scott O'Brien, correct.

When I looked at the whole Lower Churchill Project, the Astaldi contract was already up and running and I really didn't want to touch that very closely. So the – I took the next challenging project on the roster. The North and South Dam was critical path work. River closure was very challenging, it had a very tight timeline, had to be done in a certain period. The RCC dam – after just completing the riverside RCC dam, which was 45,000 cubic metres of RCC. The North Dam being 355,000 cubic metres would be, I thought, a great challenge. So I asked if I could become the area manager for the North

and South Dams, of which both Scott and Ron agreed.

MS. DING: Okay, thank you.

And you said you were involved in the bulk excavation, were you also involved in the bid evaluation for that contract?

MR. TURPIN: Similar to the North and South Dams, I prepped the engineering package and the RFP. Myself and Roy Lewis, who was the same gentleman that evaluated CH009 – we both did CH006 as well.

MS. DING: Okay.

MR. TURPIN: Yep.

MS. DING: Thank you.

Madam Clerk, P-01867, please.

And in, Mr. Turpin, your binder, binder 2, tab 21.

Thank you. We'll go to page 33, Madam Clerk.

That's not the right page – can you scroll down?

Keep scrolling.

There we go. Stop, thank you.

So, I just want to ask you a few questions about your evaluation team. Can you describe who was on the team and what, exactly, they were doing for the team, please.

THE COMMISSIONER: This is at page 44.

MR. TURPIN: So underneath me as the scope lead there was a technical evaluation team which was led by Abdellah. Abdellah was the design engineer, I guess, within SNC-Lavalin. Todd Smith was a design engineer. Then we get into QA – Paul Fraser (inaudible) lead for quality. Sean Lee for HSA – HAS, safety. Dave Haley was an EA component. Roy Lewis was the LRA. Carlos Fernandez was the project controls.

We had Dr. Malcolm Dunstan, as well, on the project, leading the – helping with the technical review. Dr. Malcolm Dunstan was a third-party subject matter expert we engaged for the project because of the – the RCC was never done in – to that extent, was never done in Canada. This was the largest RCC dam to be constructed in Canada.

On the commercial side, Roy Lewis ran the commercial evaluation through support from John Mulcahy and Maria Morgan [sp. Maria Moran] for Industrial Benefits and coordination procedures was all done through the project controls.

MS. DING: And if you just scroll up, Madam Clerk, just a little bit. And I also see that, I guess you would be reporting to Scott O'Brien and Ron Power – is that correct?

MR. TURPIN: That's correct. It all ended up through the C1 component manager Scott O'Brien and then (inaudible) fed into to Ron Power.

MS. DING: Okay and that dotted line there means that, I guess that, you're – you'd be directly reporting to them.

MR. TURPIN: Yes. I directly reported to Scott at the time. Yeah.

MS. DING: Okay. Thank you. I also want to get a sense of what the target dates were when you first began evaluating the bids. Page 2, Madam Clerk in this –

MR. TURPIN: Same tab?

MS. DING: Yes. Scroll down. Keep going. Can we stop right there? So this would be page 4.

So it looks at the stage that tenders have just closed and you're planning to issue the award recommendation. It says here – December 10 of 2014. Is that correct?

MR. TURPIN: That's correct – the bid plan at the time. Yeah.

MS. DING: Right and you wanted to execute the contract on December 23, 2014.

MR. TURPIN: Yeah. It was a very aggressive time schedule. Again, this package was critical path. We had to get the contractor mobilized and

moving. There was a lot of – there was a lot of material to procure. There was a lot of equipment to procure to get into Goose Bay. So it was – it was, at the time – it was of utmost importance to award in a timely fashion.

MS. DING: And what does critical path mean?

MR. TURPIN: Critical path is a scheduling term for construction – for planning. If an activity is on the critical path, it has to be done at that time. If the activity is not done at that date the project end date slips –

MS. DING: Okay.

MR. TURPIN: – in simplistic terms.

MS. DING: And the reason you needed to award the – do the award recommendation in December of 2014 – was that in contemplation of needing to start construction the next – I guess, the next spring?

MR. TURPIN: Correct. The next spring was river diversion.

MS. DING: Okay. Thank you. I'd also – maybe you can give us an overview of the bid methodology and how you go about evaluating bids with the team that you just described.

MR. TURPIN: Sure. So – page 44 was the org chart, I believe.

MS. DING: Yes.

MR. TURPIN: So, as you can see, the team is broken down into a technical and a commercial team. And the technical review team is not aware – sorry. The bids are opened in a secure room. Very select few people are aware of the results. I'm not – me as the scope lead, I was not aware of the results. The technical team takes the bid information from all bidders, reviews all the technical information with respect to, you know, compliant with specifications, if there's any deviations, if there's any – and provide a technical scoring.

The commercial team does the same, strictly on the commercial side and provide a commercial scoring. It is only after both the technical and commercial teams have reviewed and generate their scoring that it then comes together and the overall scoring is compiled and then I would get involved. Review – myself and Roy then, in consultation with the team, we would make a bid recommendation to management.

MS. DING: Okay.

And it was Roy who was the primary person who combined the scores to provide a summary, is that –?

MR. TURPIN: Yeah.

This is Roy Lewis's world. He's the – he was the contract administrator. He maintained all the documentation. He maintained all of the scoring systems and I helped by, as you can say, rounding up all the pieces and making sure people were doing their technical scores and getting them into us in time and –

MS. DING: Okay.

And this process was similar to what you had done previously on the bulk excavation bid –

MR. TURPIN: The –

MS. DING: – evaluation process?

MR. TURPIN: – the actual bid plan –

MS. DING: Yeah.

MR. TURPIN: – is pretty much a mirror image of the bulk excavation bid plan that we did for bulk excavation, correct.

MS. DING: Okay. Thank you.

I'm going to go to, Madam Clerk, P-02758, please.

So this is the bid open record –

MR. TURPIN: Is that in my binder, sorry?

MS. DING: Oh sorry, yes. Binder 2, tab 18.

So this is the bid opening record and this is – this gets opened in October 22nd of 2014.

MR. TURPIN: Correct.

MS. DING: And we can see there, if you scroll down Madam Clerk, that the Astaldi bid comes in at $394 million, BP comes in at $315 million and H. J. O'Connell comes in at $340 million for the base bid and $308 million for the alternative bid –

MR. TURPIN: Correct, yeah.

MS. DING: – it says there. Can you explain the difference between the H. J. O'Connell base bid and alternative bid, please?

MR. TURPIN: Sure.

So if you look at the results, in actual fact knowing now there is only one compliant bid in the package. And what I mean by compliant bid – a bid that satisfy all the requirements of the – what was asked of them in the tender package.

The compliant bid and – as you can see, 340, 365, base bid as per the specifications. And that was given by H. J. O'Connell. You can see they've also provided an alternate bid of 308 million. And not noted at the time, I guess, until you got into it, the Barnard-Pennecon Joint Venture bid was bid with a labour cap. There was an exclusion, an exception which was noted in clarifications and exceptions when the bid was submitted.

MS. DING: So the bid was non-compliant because of the fact that it had a –

MR. TURPIN: It was not in compliance because it didn't provide the pricing for what we've asked for –

MS. DING: It was –

MR. TURPIN: – that's correct.

MS. DING: – not a lump sum bid.

MR. TURPIN: Correct.

MS. DING: Okay.

MR. TURPIN: Yep.

MS. DING: And –

MR. TURPIN: And if you look at the package dictionary for CH009, I'm sure you'll see that the bid – the contracting strategy was a lump sum unit-rate contract is what was asked for –

MS. DING: And –

MR. TURPIN: – and that's what the tender documents asked for.

MS. DING: Okay, thank you.

And the difference between the base bid for H. J. O'Connell and the alternative was the use of a conveyor to –?

MR. TURPIN: Sure. So that was all driven by the RCC and the timing for the RCC.

Dr. Malcolm Dunstan, a world-leading expert in RCC, has spent a lot of time with the project, studying RCC. If we were be to – if we were to be successful in executing the volume of RCC in one season like we were in the – there was, like, a small percentage chance that we would be successful.

So in the tender, we had asked for the Cadillac of delivery systems for RCC to the dam surface. So we had quite an extensive conveyor system from the RCC batch plant, which is up in the laydown area, down across the South Dam, across the upstream bridge going across the spillway, out onto the dam surface.

H. J. O'Connell recognized the cost of that and you can see it's in the $30-million range and they propose an alternate delivery method to deliver via trucks and a Creter Crane.

MS. DING: Thank you.

Madam Clerk, P-02754, please. And Mr. Turpin, that'll be binder 1, tab 14. And page 8, please, Madam Clerk.

So this was Paul Lemay's DG3 estimate for this package and down at the bottom here you see that the – the total cost of the estimate was about $167 million and this was, I mean, slightly – significantly below the bids when they came in.

Were you aware that the bids came in slight – significantly higher than the DG3 estimate?

MR. TURPIN: No. As I said, I was not privy to the bid opening. It was only 'til later –

MS. DING: It would have ben Roy Lewis?

MR. TURPIN: – when both the commercial and technical came together that I – I understood what the pricing arrangement was.

MS. DING: It would have been Roy Lewis who would have known – who would have been aware of the DG3 estimate?

MR. TURPIN: Sorry, pardon me?

MS. DING: Roy Lewis would have been the person who would have known what the DG3 estimate was?

MR. TURPIN: Yes, he probably did, yeah.

MS. DING: Okay.

MR. TURPIN: And John Mulcahy, he was – was in the bid opening as well, so he would have been aware of the DG3 estimate. And Pat Hussey was there and Pat Hussey was aware of the DG3 estimate as well.

MS. DING: Okay. Thank you.

I wanna get – expand a little bit about the idea that the – I guess, the fact that the Barnard-Pennecon bid was different from the H. J. O'Connell bid in that the H. J. O'Connell bid was a lump sum hard-money bid.

MR. TURPIN: Right.

MS. DING: And the Barnard-Pennecon was a target price plus cap on labour. Can you describe the – the reason for those – those differences and what those differences are?

MR. TURPIN: Sure. So a hard number unit-rate contract is as the – as the – as the owner, we present a set of documents, drawings and specifications, which indicate to the bidder how we want to build it. It determines everything from material specifications to timing of schedule, when we want it done. The hard number unit-rate contract, if you – if you look at any of the bid tabs on any of the contracts, it's all broken down into little pieces. So you'll see there's a rate for installing concrete, there's a rate for removal, there's a rate for installing different zones in the cofferdam.

So basically, the hard – if – if as the owner we don't change anything, there is no change in the price. He took the risk to do the job at that rate, at that – at that cost, in this environment, and he's fully responsible for his own destiny, let's say. If he can execute it at better than he estimated, he is making more money. If he takes more cost to execute a unit rate, it's the contractor's risk, so it's up to the contractor to perform.

With the Dragados – with the Pennecon-Barnard bid, Barnard didn't feel comfortable with the labour units – with the labour productivity in eastern Canada, in Newfoundland, in a northern environment. So they priced the job, but they had an exception where they said: We are only responsible for labour up to this amount; after that it will be Nalcor, you have to reimburse us for any labour overruns.

MS. DING: And did they voice their concern when they came to the site, to visit the site in August of 2014?

MR. TURPIN: Yes.

During the site visit, Barnard was concerned with the labour, with what they've seen on site from Astaldi was current – was – I believe they were pouring the base slab of the spillway at the time. There was, I believe, a gentleman in the Barnard team, Kevin Ellerton, he even did a head count on white hats to supervision. He expressed his concern once he returned to Montana, actually, in an email somewhere, I remember.

MS. DING: So Barnard-Pennecon did not want to take on the labour risk and that's how they bid, and H. J. O'Connell gave you a lump sum, all included.

MR. TURPIN: Correct.

MS. DING: So whatever overruns on labour, they would have to absorb that.

MR. TURPIN: It would be absorbed by the –

MS. DING: Contactor.

MR. TURPIN: – joint venture, O'Connell and Dragados – correct.

MS. DING: Thank you.

Madam Clerk, I just want to go to the Grant Thornton report. Mr. Turpin, you won't have this in your binder but – P-01677, please, at page 53. Scroll down – great. You can stop there, thank you.

So I believe Grant Thornton pointed to overruns of about $91 million dollars in improved change orders and back charges, which, if there were overruns in labour, it would be incorporated into that number.

Mr. Turpin, to your knowledge, do you know whether the package ended up with overruns on labour?

MR. TURPIN: From what I hear, the labour component was exhausted before they even started the RCC dam, so.

MS. DING: Okay.

And you would know this because you were still on site –

MR. TURPIN: No –

MS. DING: – working?

MR. TURPIN: – I was not on site at that time.

MS. DING: Okay. So it was just rumours –

MR. TURPIN: Yes.

MS. DING: – from what you had heard?

MR. TURPIN: Correct, yeah.

And this – I do know that the North Dam is just – has just been finished. I doubt if it's financially closed yet.

MS. DING: Okay.

MR. TURPIN: But I'm not sure if this would be the final, closeout report for the project –

MS. DING: Okay.

MR. TURPIN: – on full, total cost.

MS. DING: Thank you.

So after the bids come in, your team goes out and evaluates those bids. As you said, the commercial team and the technical team will read the bid packages; they'll fill out their scoresheets. Mr. Lewis combines the scores, plugs them into a main summary, and that's what would form the basis for your recommendation. Is that correct?

MR. TURPIN: Correct, yeah.

MS. DING: Okay.

Madam Clerk, can I go to page 55 of this report, please? So Grant Thornton writes here – if you can scroll down – scroll up – okay, sorry, yeah, go back up. Scroll up to the previous page. Okay, yes, here.

So Grant Thornton writes: "During an interview with Mark Turpin on December 2, 2018 when asked about the award recommendation for CH0009, he stated '*We – myself and Roy [Lewis] did bid recommendation and we recommended the project be awarded to an alternate, not Barnard Pennecon, it was a Joint Venture between Dragadoss and H.J. O'Connell.*' We asked him whether his team's evaluation was completed and submitted and he responded '*It was. We put a nice bow on it and said here you go … here's the package.*' As of the date of this report, we were unable to locate the original bid award recommendation completed by Mark Turpin, Roy Lewis, and their team."

Now, Mr. Turpin, our Commission team also searched for the award recommendation, and we weren't able to find it. But you had located a few documents and you sent them to us. We can bring the main one you sent to us here – Madam Clerk, P-02828, please?

THE COMMISSIONER: Twenty-eight …?

MS. DING: 02828. And Mr. Turpin that will be binder 4, tab 101.

MR. TURPIN: Binder 4, tab what? Ten?

MS. DING: A hundred and one.

MR. TURPIN: A hundred and one.

MS. DING: Yeah.

So this would be the main summary of when you plug in your findings from the commercial and the technical team. And I believe what happens is you normalize it and see which bidder comes out with the lowest option. So here, this is the document you provided us. It indicates that H. J. O'Connell, who is bidder 3, would have had the lower score with their alternative bid.

MR. TURPIN: Correct.

MS. DING: And bidder 2, being Barnard-Pennecon, would have a higher bid.

MR. TURPIN: Yup.

MS. DING: Okay. I'll also – so the other document you provided to us, Madam Clerk, at P-02766, please? And that's –

THE COMMISSIONER: Tab 27.

MS. DING: Tab 27 in binder 2, Mr. Turpin.

MR. TURPIN: Binder 2? Yup.

MS. DING: Great. So this is – it's titled Bid Evaluation Results, and, again, it's looking at the scores from the different bidders for their technical and commercial evaluations. If you scroll down, Madam Clerk – thank you. It does say, at the bottom there, that – in the comments – that "Bidder 3 price + normalizing + reviews =" – the – "best option assuming RCC Technical Expert (Company) is satisfied that RCC placement method" – with the –"(Agitator Mixer Trucks and Creter Crane(s) in lieu of Conveyor System) is acceptable."

So, I guess, in both of these documents, it indicates that H. J. O'C is the preferred bidder. And I just want to clarify that these documents wouldn't be the recommendation itself; these would be supporting a recommendation (inaudible) –

MR. TURPIN: This would be supporting documentation to the recommendation, yeah.

MS. DING: Okay. And – but the document that, ultimately, you are saying was a recommendation, that was submitted and signed by you and Roy Lewis?

MR. TURPIN: I do know that once we put a bow on it – I do know Roy signed it and I signed it.

MS. DING: Okay.

MR. TURPIN: And the technical team would've had their reviews all signed off on the back of it, so the QA from safety to everybody would have signed off on their technical reviews. That would have been put together, and Roy would have presented that to – I guess it might have been Pat Hussey or maybe directly to Scott. I don't know.

MS. DING: Okay.

MR. TURPIN: Yeah.

MS. DING: And I want to note that this document is dated the 15th of December, 2014, and the previous document – we had gone back and found the original spreadsheet, and that was dated December 12, 2014.

MR. TURPIN: Yup.

MS. DING: Now, I note that, in your letter to Stan Marshall, you said you had made the recommendation in April of 2015.

MR. TURPIN: Yup.

MS. DING: Is that date incorrect?

MR. TURPIN: I would think so. I would definitely rely on Roy's compiling with these dates that Roy have on his document.

MS. DING: Okay.

MR. TURPIN: So if that was an oversight by my part on the letter to Stan Marshall, it was an oversight.

MS. DING: Okay. And you believe that the recommendation had actually been made in December of 2014?

MR. TURPIN: Correct.

MS. DING: Okay.

Around that time, I also believe that Roy Lewis had retired in December, I think, December – on or around December 22 of 2014. Is that –

MR. TURPIN: Yep.

MS. DING: – correct?

And he would have submitted that before he retired?

MR. TURPIN: Well, in actual fact, Roy was brought on for – to do this package.

MS. DING: Yeah.

MR. TURPIN: Once the recommendation was done, Roy was done.

MS. DING: Roy was done. Okay.

MR. TURPIN: Yeah.

MS. DING: Who did you submit that recommendation to?

MR. TURPIN: Like I said, Roy would have submitted that through to – either directly to Scott or Pat Hussey. I would suspect he brought it up through Pat.

MS. DING: Okay.

MR. TURPIN: I can't say for sure, though.

MS. DING: So you stay on the team for a few months after. I believe you moved on –

MR. TURPIN: Mm-hmm.

MS. DING: – to North Spur in April of 2015.

MR. TURPIN: April of the following year.

MS. DING: What were you doing during that – those four months?

MR. TURPIN: Well, once Roy had left, Ed Over as the commercial – took over the commercial aspect of the package. I would guess there was – they were proceeding along the line; they were working out – negotiating articles within the contract with H. J. O'Connell – or who I suspect was H. J. O'Connell.

Also at the same time, there was quite an extensive RCC mix design program that we – were being executed up on site at the Muskrat Falls site in the concrete lab. So I would have been fully engaged in the mix design program because, again, as – that was critical path to the RCC dam as well. So that package was being performed by Nalcor through our own forces, so we were actually doing – being – it was being managed by Dr. Malcolm Dunstan. And that was executed at site, and I was coordinating that on site. So I would have been back and forth between St. John's office and Goose Bay site extensively, I would think, over that winter.

MS. DING: Okay.

I wanna bring you to some revised bids that were submitted while you were still on the team. Madam Clerk, P-02773, please, at page 7.

THE COMMISSIONER: (Inaudible) – it's 02723?

MS. DING: Binder 2, tab 36, Mr. Turpin.

MR. TURPIN: Tab 36.

MS. DING: So if you can just scroll down a little bit – thank you, that's good.

So this letter is dated March 6, 2015 and it's a letter from Barnard-Pennecon. And they are submitting a revised bid. They decreased their base amount from $315 million. Do you have it there, Mr. Turpin?

Okay.

MR. TURPIN: Yes.

MS. DING: They revised their bid amount from $315 million to just under $287 million, if you scroll –

MR. TURPIN: Mm-hmm.

MS. DING: – down there.

THE COMMISSIONER: So this is at page 7, is it?

MS. DING: Yes.

And if you go down to, I believe it's page 6 – go up to page 6, you can see that the – that's where they decreased their – they've given their revised proposal cost –

MR. TURPIN: Mm-hmm.

MS. DING: – and it summarizes some of the items that they are, I guess, finding opportunities for cost savings on. And at around the same time – I won't bring it up here for time's sake – but Exhibit 02771, H. J. O'Connell also comes back with a revised bid on March 6 in which they decreased – their new proposal cost is decreased by about $4 million. And I know you said you were working on the RCC mix design –

MR. TURPIN: Yeah.

MS. DING: – at the time, but were you aware that these revised bids had come in on March 6?

MR. TURPIN: No, I don't think so. I was aware – I mean, even during the – through the evaluation process we were striving to transfer the risk back to Barnard-Pennecon, saying we wanted a fully compliant bid. We were trying that. I guess Ed Over and the team took it upon themselves or was trying the same, but I notice they've also went through some other optimizations. I guess by then the costs (inaudible) are from the DG3 estimate to the bids so they were trying to do any cost optimization to get the prices as low as possible.

MS. DING: So you had no knowledge that – at the time that – around early 2015 that the other people on the bid evaluation team were continuing to do these clarifications?

MR. TURPIN: Not that I'm aware of. That was a while ago. I may have – I know there was – I'm looking here now at jet grouting.

MS. DING: Yeah.

MR. TURPIN: I do remember conversations, not specifically with Barnard, but I do remember conversations with H. J. O'Connell-Dragados on the jet-grouting risk with regards to not having them present at the time and what it would do to critical path and things like that, so …

MS. DING: 'Cause in December 2014 you submitted what you thought was a formal recommendation –

MR. TURPIN: That would have been the final –

MS. DING: – and you had thought it would have gone to H. J. O'Connell?

MR. TURPIN: Correct.

MS. DING: So you had no knowledge that they were continuing to make these –

MR. TURPIN: No.

MS. DING: – clarifications.

MR. TURPIN: No.

MS. DING: Okay.

MR. TURPIN: I knew that there was extensive discussion with H. J. O'Connell on contract articles in preparation for what I thought would be a final contract signing for the document, but –

MS. DING: Okay.

So, in April 2015 you leave the package, and I know you described it a little bit, but why were you asked to leave the North and South Dams and move to the North Spur?

MR. TURPIN: When – in April, is it – April of the following year, I was called into the think tank – it's a boardroom at the Nalcor project offices – by, again, Scott and Ron. I was told – I was asked about the North Spur. I said I heard it's not going very well over there and they indicated it wasn't. It got off to a bad start. And Ron and Scott asked me if I could travel to Goose Bay and have a look at the North Spur to see if I can provide some input to help straighten it out.

MS. DING: Okay.

And was your work on the North Spur intended to be temporary?

MR. TURPIN: I had indicated to both Scott and Ron at the time that I don't mind going up to lend a hand, but I really did not want to lose the North and South Dam package. I wanted to – after working through the engineering, after working through the RFP, after making a bid recommendation, I thoroughly wanted to execute that scope of work and take it to finish.

MS. DING: So, you expected to come back as the area manager for North and South Dams.

MR. TURPIN: I made that – I said I would go to the North Spur provided I don't lose the North Dam.

MS. DING: And what was their response to that?

MR. TURPIN: Sure, no problem.

MS. DING: Okay.

Thank you.

So, Ken McClintock was brought onto the team, I believe, and stepped into the area manager slash package lead role.

MR. TURPIN: Mm-hmm.

MS. DING: And I believe Ed Over was the new contract administrator for Roy Lewis after that. Was that correct?

MR. TURPIN: Correct, yeah.

MS. DING: Okay.

And, the other members of the team that were brought on were Greg Snyder – I believe you had some overlap with Greg, is that correct?

MR. TURPIN: Greg Snyder was the engineering manager for SNC-Lavalin, so he would have (inaudible) would have directly reported to Greg Snyder, so Greg Snyder was involved in the project from the beginning.

MS. DING: All right.

And then John Mulcahy.

MR. TURPIN: John Mulcahy was involved in the project from the beginning as well.

MS. DING: Okay.

Thank you.

MR. TURPIN: He was at the bid opening, as you can see.

MS. DING: So, these were the people – when you left – who were essentially the bid evaluation team.

MR. TURPIN: Correct, yeah.

MS. DING: Okay.

Madam Clerk, P-02777, please.

Mr. Turpin, that's binder 2, tab 40.

Okay, can you scroll down, please? And that's good; thank you. Actually, scroll down a little bit more, keep scrolling, next page – that's good. Thank you.

So, we have a record of you speaking to Ken McClintock after you left –

MR. TURPIN: Sorry, page number, sorry?

MS. DING: Sorry, page –

THE COMMISSIONER: Three.

MS. DING: – 3.

MR. TURPIN: Three, got it.

MS. DING: So, we have a record of you speaking to Ken McClintock via teleconference on May 22, 2015, I believe, after you've left your role there. And here it says – these are Ken McClintock's notes from this meeting. Here it says that "MT suggests Company maintain resp'y for mix design" and on the second bullet at the bottom it says Mark Turpin believed, or "MT believed that there was enough information

at this point to be able to select the successful bidder."

Do you remember having this teleconference meeting with Mr. McClintock?

MR. TURPIN: No, I don't remember this teleconference, no.

MS. DING: Okay.

Do you recall if Mr. McClintock contacted you at any other time?

MR. TURPIN: Yes, he did actually. There was a time before – I can remember one conversation I had with Ken. Ken called me; I was at – I do remember up on the North Spur. It was quite early 'cause we were not quite down the upstream face. I was parked at the top; I received a call from Ken. His question to me was – he asked me who the project manager for the joint venture partnership would be.

MS. DING: Okay.

MR. TURPIN: Yeah.

MS. DING: And so what was – what was exactly the issue?

MR. TURPIN: So I – he – I said it was – Justin Fillier was in the org chart and he said: Are you sure it's not Don Strickland? And I said no. I said: It's not Don Strickland, it's Justin Fillier. It's – I was surprised that he was asking to be honest with you. He said: I'm looking at an org chart that shows Don Strickland as the project manager for the project.

I indicated to Ken that – I said: Ken, what you're probably looking at is – as part of the submission, all the bidders were asked to provide sample quality documents, sample safety documentation, sample work packs. What H. J. O'Connell had did in their QA submission, as a sample of a QA document, they provided their QA document from CH0006, of which Don Strickland was the project manager for the job for a while.

MS. DING: Okay.

MR. TURPIN: So that was just a sample document, and somehow it seemed to me that the evaluation team had taken that one instance in a sample document and interpolated it that Don Strickland was going to be the project manager.

MS. DING: Okay, and so he was mixed up with the documents and thought – wanted to clarify with you whether Don Strickland was on the –

MR. TURPIN: Correct.

MS. DING: – team.

MR. TURPIN: Correct.

MS. DING: Okay.

MR. TURPIN: Yeah, and I was – again, I was surprised that – I don't recollect this conversation, the one that's in the exhibit here, the teleconference; I only remember that conversation that I had with Ken.

MS. DING: Okay.

MR. TURPIN: I'm not saying I didn't have this conversation. It's possible I did, but I just don't remember it.

MS. DING: Okay.

Do you know why Mr. McClintock would've needed to clarify why the project manager – or who the project manager for H. J. O'Connell was?

MR. TURPIN: Well, it's – in a bid evaluation, it's very important who the project manager is, of course. The project – I guess there was some concerns with H. J. O'Connell's submission as a project – for the project manager.

MS. DING: Okay. Can you expand on that?

MR. TURPIN: I guess Justin Fillier was new to the project. If they thought it was Don Strickland, I guess there was some – Don Strickland was the project manager for CH0006, and there were some issues that came to light – there were some issues that came up during CH0006 that led Don Strickland to be removed from site.

MS. DING: Okay. Can you expand on those issues?

MR. TURPIN: There was an – early on in CH0006, there was some safety infractions on the project. It was – I felt – as the construction manager on site, I felt they were very minimal. Not that safety is not important, but at the time in a new project just getting up and running, we had – Lower Churchill Project had 16 safety absolutes on the project at the time. There was a few minor safety infractions with working at heights, and Scott O'Brien wanted to send a clear message to O'Connell with respect to that, and Scott decided to remove Don Strickland from the project.

MS. DING: Okay, and so the concern here for Mr. McClintock might've been that they were worried that Don Strickland was going to be the proposed manager for the H. J. O'Connell team.

MR. TURPIN: After the conversation, that's exactly what I thought.

MS. DING: Okay.

MR. TURPIN: That they were concerned Don Strickland would've been the project manager for the team.

MS. DING: And you clarified that it would – it was actually Justin Fillier.

MR. TURPIN: Correct. Correct.

MS. DING: Besides, I guess, these two conversations, would you have expected the person taking your position to have more communication with you on your methodology for doing the bid evaluations?

MR. TURPIN: Ms. Ding, in your exhibit – even if I did have the conversation with Ken McClintock – there's one, two, three, four, five bullet points which he discussed with me. If I – I have no doubt the conversation happened. I just don't remember it.

MS. DING: Okay. But –

MR. TURPIN: I was the area manager for the North Dam for one year, seven months.

MS. DING: So he had ample opportunity to see to it.

MR. TURPIN: No, my point is – I took the project through engineering, through an RFP process, through a bid recommendation project. It was one year and seven months' worth of work. For Ken McClintock to come in and only ask me five bullet points as a handover, I can't – I do not understand it.

MS. DING: Okay. So you would have expected more?

MR. TURPIN: I would have expected a lot more.

MS. DING: Okay. Thank you.

For – one issue that I'm – that we have looked at – we understand that IKC-ONE – who – or IKC-O-N-E – the contractor for CH0006, the bulk excavation contract –

THE COMMISSIONER: Could you just repeat that? I just didn't quite hear what you were saying.

MS. DING: Sure. Yes. So the contractor for the package CH0006 was IKC-ONE –

MR. TURPIN: Correct. Yeah.

MS. DING: – of which H. J. O'Connell was one of the partners in that contract –

MR. TURPIN: And they were the managing partner there as well.

MS. DING: Right. Okay. They had an outstanding claim against Nalcor that was unresolved during the time you were evaluating for the North and South Dam contract.

MR. TURPIN: Correct. Yup.

MS. DING: Is that – okay. And just to clarify: IKC-ONE, who were all the partners of that?

MR. TURPIN: Oh. It was a joint venture between H. J. O'Connell, Kiewit, Neilson and – oh, there's another company that fails to – the name escapes me right –

MS. DING: EBC?

MR. TURPIN: EBC. Correct. Yeah.

MS. DING: EBC. So we know that it was outstanding – that claim. Was that claim ever discussed in your bid evaluation process for CH0009?

MR. TURPIN: Not with me, no. I don't think anyone would dare to bring it up with me to be honest.

MS. DING: Okay. And it was never part of your consideration?

MR. TURPIN: No. They –

MS. DING: Thank you.

MR. TURPIN: – not my consideration. No.

MS. DING: And Roy Lewis as well?

MR. TURPIN: Definitely not.

MS. DING: Okay. Thank you.

So the award recommendation, Madam Clerk, is at P-01870. Mr. Turpin, binder 4, tab 79.

MR. TURPIN: Four, 79.

MS. DING: Okay, thank you.

So this – the date's cut off, but it is August 14 – I think the last signature is August 14, 2015. When did you find out about the Barnard-Pennecon bid award?

MR. TURPIN: I don't remember the exact date, but I would suspect it would've been the day that it was formally announced –

MS. DING: Okay.

MR. TURPIN: – or the day after.

MS. DING: And how did you find out about it?

MR. TURPIN: Just – I was at the North Spur, at the time it would've been just rumour on site that once a major award package, that spreads through site pretty quick.

MS. DING: Okay.

And you were surprised by that announcement?

MR. TURPIN: I was very surprised by that announcement.

MS. DING: Okay, thank you.

I'm gonna switch to another issue that you had brought up – raised in your May 22 letter to Stan Marshall. Madam Clerk, Exhibit P-01901 – we'll go back to that letter. And Mr. Turpin, it's binder 4, tab 85. And Madam Clerk, can you scroll down, please?

And stop there, thank you.

Can you just read the first part of that paragraph that starts with "Its decisions like this …"? And I will stop you partway through.

MR. TURPIN: Sure.

"Its decisions like this from the C1 Component Manager that are stestimic to the overall problems associated with the entire C1 construction program at Muskrat falls. His lack of 'Boots on the Ground' construction experience has stifled the execution progress with site decisions having to be vetted through an inexperienced St John's management team leading to incorrect and late decisions. The lack of team approach and failing to listen to opinions and suggestions from other more experienced professionals will continue to plague the project."

MS. DING: Okay. Thank you.

And then you go on to give the example of the RCC mix design responsibility, as an example. Can you tell me what the issue was around the RCC mix design and what went on to lead to that disagreement?

MR. TURPIN: That was quite simple. The RCC mix design – people have got to realize the project was doing something that in RCC has never been done. I believe it was done once before, but we were introducing air-entrained concrete into RCC mix design. Because of working in Labrador, the North Dam had to have air-entrained concrete. The mix design was

critical in order to get the right recipe for the RCC in order for the contractor to build it.

In order to do that testing program, it takes in excess of a year by the time you test different cementitious materials, different fly ashes, different chemicals in order to get it right. By the time you test it, wait for the cylinders, which can take up to a year to break, to prove that you mixed it properly.

The North Dam was critical path; we just didn't have time to wait for a contract award, let the contractor do that mix design – for him to come up with his own recipe. Nalcor had no choice but to perform the mix design ourselves.

It was also important – one of the things that's important with RCC, and it's a little counterintuitive, the faster you go with RCC, the more of an improved product you have. So, RCC is placed layer by layer by layer. If you have a quality issue as you're producing that layer, you have to stop. Stop then brings you a cold joint, so you have to constantly keep moving. If you don't have the right workability of the RCC, it leads to quality issues on the surface, which leads to stopping, which leads to problems with the installation.

So the mix design, although we get the proper cake mix recipe, it also produces the right workability in order to give the best product on the dam's surface. Nalcor had no choice but to maintain the mix design program, what it was. At the time we've – at the time we were doing the stage one, stage two trial mix design, we even had to bring in – Malcom had suggested we do accelerated curing on our cylinders.

MS. DING: Sorry, Malcolm Dunstan?

MR. TURPIN: Dr. Malcolm Dunstan, yes.

MS. DING: Okay. And he was an expert that you had brought in?

MR. TURPIN: Dr. Malcolm Dunstan, if you google RCC mix design experts, you'll – Malcolm Dunstan will be on the top of the list. If he's not the top, he's the second and the person that replaces him is Brian Forbes, which also supported the program.

MS. DING: And you brought both in.

MR. TURPIN: Both of them were instrumental in steering us through the proper mix design process.

MS. DING: Okay.

And –

MR. TURPIN: Yep.

MS. DING: – they gave you a recommendation –

MR. TURPIN: Yes.

MS. DING: – as to what to do?

MR. TURPIN: Yes, yes.

And Nalcor had no choice. We – I don't know how to explain it any simpler. It had to happen in order to give the proper recipe to the contractor – not only the recipe, but it – materials had to be procured. With RCC there's a lot of fly ash. Hebron was in competition for fly ash for their GBS structure. We had to make a determination what we were gonna purchase in order to secure supply as well.

MS. DING: Okay.

So just – so I'm summarizing you and I don't wanna put words in your mouth, but the usual course would be for the contractor to take on the responsibility for the RCC mix design. Is that correct?

MR. TURPIN: Without a doubt, yes.

MS. DING: Okay.

MR. TURPIN: Yeah.

MS. DING: But in this case, because you had such a tight timeline, your recommendation and the recommendation of the two experts you brought in were that Nalcor –

MR. TURPIN: And SNC's engineering manager, Greg Snyder, as well.

MS. DING: And Greg Snyder.

MR. TURPIN: Yep.

MS. DING: Was – your recommendation was that Nalcor would take on the responsibility for the mix design because the schedule was so tight.

MR. TURPIN: Correct, yeah.

MS. DING: 'Cause normally –

MR. TURPIN: We were already started – the mix design was already progressing.

MS. DING: Okay.

MR. TURPIN: Yep.

MS. DING: 'Cause normally –

MR. TURPIN: So –

MS. DING: – if a contractor was doing it, there'd be some back and forth with the owner to make sure that the mix design was acceptable to the owner.

MR. TURPIN: Correct, yeah.

MS. DING: Okay.

And so in your letter you describe a meeting. Can you give me a little bit more – can you expand on that meeting?

MR. TURPIN: Scott was adamant that Nalcor was not gonna own the mix design. He wanted to transfer that to the contractor. And, like I said, in normal – if you're talking normal, I would agree with that as well; I have no problem with that. As a matter of fact, it's better left with the contractor if he has time.

And in normal CVC concrete, yes, you can do that. But where we were doing something different with RCC – it was new to Canada, it was new, sorry, to Newfoundland – the introduction of the air entrainment, the team – myself, Malcolm Dunstan, Brian Forbes, Greg Snyder – felt it best that Nalcor control that in-house.

We had prepared a statement – it's an attachment to the letter. We had a meeting with Scott where we were gonna present him with this presentation, say: Scott, you have to let us continue the mix design program.

The meeting – because of Brian Forbes was sitting in Australia – the meeting was quite late in the evening time. Malcom was chairing the meeting via teleconference from the UK. Myself and Greg Snyder were in the meeting room. We got about 10 minutes into the presentation and Scott shut it down flat. Not happening. And walked out of the room.

MS. DING: Okay.

And you followed him out.

MR. TURPIN: I followed Scott to try and reason with him to get him to come back and explain, to let us at least present the thing. Scott turned around, looked at me, he ripped the report up in front of me and said if this report ever sees the light of day someone is getting fired.

MS. DING: Thank you.

In the letter you go on to say: "As of last week," – I guess last week to May 22, 2015 – "As of last week the RCC mix design program is still the responsibility of the contractor and is still not finalized, no flyash supplier has been confirmed (Malcolm is currently investigating a turnkey supplier for flyash) and the lack of results from the mix design could possibly push the installation schedule of the North Dam."

MR. TURPIN: Correct.

MS. DING: "In fact, the CH-0009 North Dam evaluation took so long the design team recommended Nalcor proceed with securing the supply of Cementitious Materials and Flyash as a Frame agreement and assign to the successful bidder, however, the component manager abandoned this option as well."

MR. TURPIN: Correct.

MS. DING: So, do you believe that the decision to put the responsibility of the RCC mix design on the contractor caused delays on the project?

MR. TURPIN: Luckily, I don't think so. I don't have enough information to really form that

basis; but I think the delay in Astaldi pushed out – pushed the North Dam off the critical path. The North Dam was not constructed in one year. It was not started in the timeline that it was supposed to. So I think the actual North Dam didn't become critical path because the powerhouse actually took over critical path.

MS. DING: (Inaudible.)

Okay.

But had it not been for that, there was a potential to cause delays –

MR. TURPIN: Yes.

MS. DING: – because of this decision?

MR. TURPIN: Yup.

MS. DING: Okay.

Thank you.

So, in your letter you described the management of this particular issue as inexperienced and failing to listen to suggestions –

MR. TURPIN: Mm-hmm.

MS. DING: – even the suggestions of experts. And, obviously, there were some important timelines to meet and I mean, it's a big project. Given the scale, how does your experience with the management on this package compare to your experiences on other bid evaluations?

MR. TURPIN: Well, I mean in this example itself, we had the top two leading experts in the world make a suggestion, a recommendation, and it was not followed.

MS. DING: Is that unusual in your experience, or usual?

MR. TURPIN: Yes, very unusual.

MS. DING: Okay.

MR. TURPIN: Usually when you reach out to third-party subject matter experts – and we had two of 'em – and not following the project team, not following the advice of the subject matter experts – the design – Greg Snyder was SNC's engineering manager. SNC owned design responsibility for the project; they made a recommendation – I can't understand why you would not.

The common sense timeline dictated what we did. There was – what should've happened, right?

MS. DING: Okay, thank you.

So, you left Nalcor in May of 2016. Why did you leave Nalcor?

MR. TURPIN: I was removed from site. I was never given a reason, never given an explanation from the management team.

MS. DING: Okay.

Was there a specific person who let you go?

MR. TURPIN: No.

MS. DING: No, just –

MR. TURPIN: No.

I had found out through a recalled email from my service provider that my contract has been terminated.

MS. DING: Okay, and you were never provided a reason.

MR. TURPIN: I – I – no.

I was never given an explanation, never – nothing was explained to me.

MS. DING: Okay, thank you.

Those are my questions, Mr. Turpin.

THE COMMISSIONER: All right, thank you.

All right, cross-examination – try to get my list here now.

Province of Newfoundland and Labrador.

UNIDENTIFIED MALE SPEAKER: No questions, Commissioner, thank you.

THE COMMISSIONER: Okay.

Nalcor Energy.

MR. SIMMONS: Commissioner, I'll be a few minutes, so I just wonder if this is appropriate time for the afternoon break?

THE COMMISSIONER: Sure.

Let's take our break now for 10 minutes.

CLERK: All rise.

Recess

CLERK: Please be seated.

THE COMMISSIONER: All right.

Mr. Simmons.

MR. SIMMONS: Commissioner, actually, I think, considering that Mr. Turpin is an ex-Nalcor contract representative, I actually come a bit later in the sequence in the examination.

THE COMMISSIONER: Right. So you will be second-last then.

All right.

Concerned Citizens Coalition.

MR. HISCOCK: (Inaudible) – oh, sorry.

Good day, Mr. Turpin.

My name is Will Hiscock. I represent the Concerned Citizens Coalition.

MR. TURPIN: Mr. Hiscock.

MR. HISCOCK: Have you – do you have any background in estimating for hydroelectric projects prior to coming into Nalcor?

MR. TURPIN: Hydroelectric? No.

MR. HISCOCK: Okay. You worked as a Nalcor estimator, however, for Jason Kean. Is that correct?

MR. TURPIN: That's correct, yeah.

MR. HISCOCK: Okay.

Did Paul Lemay and the other SNC estimators work for you?

MR. TURPIN: I was the estimating coordinator, so I don't think they really worked for me but I coordinated the SNC information. There was more than just the SNC estimate. It was – the SOBI had to be put in too. There was owner's – Nalcor's owner's costs that had to be compiled. So –

MR. HISCOCK: So their component of it, along with the others, you would be the one to take those different elements and bring them together.

MR. TURPIN: I brought all the pieces of the puzzle together, correct.

MR. HISCOCK: Okay.

What were your responsibilities for the estimate, and in particular the DG3 estimate? I guess – maybe I'll just follow that question up. Did – were you the one or did you roll up all the figures to the $6.2 billion total?

MR. TURPIN: No. That was done in the software package. We had a database administrator do that for us. But I guess whether you say I was responsible to make sure all the pieces got into the database, maybe that would be a more accurate statement.

MR. HISCOCK: Okay.

Did you have confidence in the estimates at that time?

MR. TURPIN: I was the coordinator that brought all the pieces together. I was more concerned with making sure all the corner pieces and all the pieces of the puzzle were in there.

MR. HISCOCK: Do you have any insight into where mistakes may have been made in those DG3 estimates compared to how things played out?

MR. TURPIN: No. Not at the time, no.

MR. HISCOCK: Okay.

As the area – or as the manager for the bulk excavator work, did you have signing authority for the work or did you have to get approval from St. John's?

MR. TURPIN: Approval had to come from – everything had to go through St. John's.

MR. HISCOCK: And at this point your boss had changed to Scott O'Brien, correct?

MR. TURPIN: As the area manager, I reported to Scott O'Brien. As the construction manager on site –

MR. HISCOCK: Mm-hmm.

MR. TURPIN: – I reported to the acting site manager at the time. And at the time it started off as Mark Dykeman, then moved to Des Tranquilla, then moved to Ron Power, I guess.

MR. HISCOCK: Okay.

MR. TURPIN: So I guess I had two reporting streams, really.

MR. HISCOCK: Okay.

MR. TURPIN: Yeah.

MR. HISCOCK: I want to ask you a little bit about the North Spur work.

MR. TURPIN: Sure.

MR. HISCOCK: It seems by your account that this contract was well controlled and completed on budget, is that correct?

MR. TURPIN: The North Spur?

MR. HISCOCK: Yes.

MR. TURPIN: I don't think there will be – never another time in my career where everything could go so good; with the exception of me being removed from site.

MR. HISCOCK: Was that the same budget as in the DG3 estimate? Is that the budget you're talking about –

MR. TURPIN: I can't remember.

MR. HISCOCK: – (inaudible)? Okay.

MR. TURPIN: I would have to check some documentation for that.

MR. HISCOCK: Had you ever looked after or managed that type of work before that you were doing on the North Spur?

MR. TURPIN: A large civil project?

MR. HISCOCK: Yeah.

MR. TURPIN: Yes, yeah.

MR. HISCOCK: Okay.

It seemed like you were getting mixed messages from Nalcor with Paul Harrington writing to you on a job well done on the one (inaudible), and continuing conflicts with Scott O'Brien on the other. Can you explain that?

MR. TURPIN: Not sure I can.

MR. HISCOCK: Okay.

Do you think that harmed the project?

MR. TURPIN: Harmed the project? I'd have to say yes. You know, you get a letter of recommendation from the project director saying what a great job you're doing. Turned the North Spur around, you know, with – you know, we've had a couple of shutdowns on the North Spur, Mr. Commissioner. You know, we handled that very well –

MR. HISCOCK: Mmm.

MR. TURPIN: – and then shortly after that being removed from site – devastated, to be honest with you.

MR. HISCOCK: Yeah.

MR. TURPIN: Yeah.

MR. HISCOCK: Yeah.

Who and – how was that project finished after you left?

MR. TURPIN: So the North Spur – we had an excellent team on the North Spur. Once I went up to site it started off very poorly. We turned it around. We – I hired a team. There was, I think, 26 of us looking after the team. You couldn't have got a better team working together. We had Dr. Juan Cobo on our materials division making sure everything was installed properly. The engineer himself, Alvaro from SNC, transitioned from the design team into the field office.

MR. HISCOCK: Mm-hmm.

MR. TURPIN: Alvaro was one of those unique individuals that if you take a designer out of the office he can transition seamlessly into the field. We hired two more geotechnical people for the cut-off walls.

I don't want to sound like I'm (inaudible) – but the North Spur, I'll never get that type of environment again. It was excellent. The North Spur –

MR. HISCOCK: Do you – yes.

MR. TURPIN: – was a target-cost project as well.

MR. HISCOCK: Mm-hmm.

MR. TURPIN: There was a target of $16 million which would be shared 50-50 between the contractor and Nalcor. My goal, when I took over the project and I explained this to the contractor, I'm going to help you get your $8 million, your share of that.

MR. HISCOCK: Right.

MR. TURPIN: We're going to get there together. We're not going to sacrifice safety. We're not going to sacrifice quality. But we're going to get you to your bonus, full bonus.

MR. HISCOCK: Right.

Do you believe that the work you did on the North Spur will stabilize that area for the next 50 years after impoundment?

MR. TURPIN: I have confidence in the design engineer. I have confidence that the North Spur is built exactly as the design drawings and the specifications showed.

MR. HISCOCK: Were there any surprises while working on the Spur? Did they cause any design changes as you were working through it?

MR. TURPIN: Not that I'm aware of. I do know on the upstream slope, some of the geotechnical conditions were not as severe as we had anticipated which led to the contractor performing better than anticipated in the plan.

MR. HISCOCK: Okay.

MR. TURPIN: In the first year, we advanced the upstream slope far enough that we actually took a fleet of equipment and started the downstream slope in the first year which was not scheduled to start until the second year.

MR. HISCOCK: Did you see quick clay or sensitive clay – quick clay – while you were on the spur?

MR. TURPIN: Yes.

MR. HISCOCK: Okay. Have you seen the Elfgren-Bernander reports?

MR. TURPIN: No.

MR. HISCOCK: Okay. Last question then is in relation to a letter – the letter to Stan Marshall –

MR. TURPIN: Mm-hmm.

MR. HISCOCK: – and your subsequent communications, I guess. Did Mr. Marshall agree with any of your comments?

MR. TURPIN: Mr. Marshall was in full listening mode. I do know that after the letter, Mr. Marshall called me and asked me to come in. I actually went to Hydro Place and sat down with Mr. Marshall for a morning and discussed the issues with regards to the North Spur. He alluded that he was taking the week to listen to all critics about everything to design. So –

MR. HISCOCK: Okay.

MR. TURPIN: – but he was in full listening mode.

MR. HISCOCK: Did he offer you your job back?

MR. TURPIN: No.

MR. HISCOCK: Did he make any changes to the Component number 1 staff that you were aware of – in particular, Scott O'Brien?

MR. TURPIN: The same people are on the Muskrat Falls Project today that had been there when I left, I believe.

MR. HISCOCK: Those are all my questions. Thank you very much, Sir.

MR. TURPIN: You're welcome.

THE COMMISSIONER: Edmund Martin.

MR. CONSTANTINE: No questions, Commissioner.

THE COMMISSIONER: Kathy Dunderdale is not here.

Former Provincial Government Officials.

MR. J. KING: No questions.

THE COMMISSIONER: Julia – No. Robert Thompson.

MR. COFFEY: No questions.

THE COMMISSIONER: Consumer Advocate.

MR. PEDDIGREW: Good Afternoon, Mr. Turpin.

MR. TURPIN: (Inaudible.)

MR. PEDDIGREW: My name is Chris Peddigrew. I'm representing the Consumer Advocate who represents the ratepayers. Just a couple of questions for you.

MR. TURPIN: Sure.

MR. PEDDIGREW: During your examination you were asked a question about the RCC mix.

MR. TURPIN: Yeah.

MR. PEDDIGREW: And it being done by – or, I guess, Nalcor-owned as opposed to contractor-owned in terms of who came up with the mix. And did you say – so, if the contractor did it, it was a 12-month process to determine whether the mix was correct? But if Nalcor did it itself, it could take a shorter period of time? Just wondering if you could –

MR. TURPIN: No. That's not.

MR. PEDDIGREW: No.

MR. TURPIN: No. No. The mix design from start to finish would take the same amount of time no matter who did it.

MR. PEDDIGREW: Right.

MR. TURPIN: What I alluded to is there was not enough time to tender, award a contract and have the contractor do it from the start of award to the time you have to place the first cubic metre of RCC.

MR. PEDDIGREW: Right.

MR. TURPIN: So the mix design would have taken the same amount of time. I believe what you might be getting at is Dr. Malcom Dunstan introduced an accelerated curing method which helped. We cured our cylinders in a hot water bath at – I believe it was 100 degrees C. So we boiled them, and that gives you an indication of a one-year break result in seven days.

MR. PEDDIGREW: Okay.

MR. TURPIN: So you were able to do that. It's – Dr. Dunstan has done that in the past, and it gives a great indication on where you – where your test results will be in one year.

MR. PEDDIGREW: Right.

MR. TURPIN: So it can save you on some of the – if you do one and it turns out to be a – not a beneficial mix design, you know you can abandon that and not proceed with it.

MR. PEDDIGREW: And how long does that process take? Do you know? The accelerated process?

MR. TURPIN: Like I say, you can get a test result in seven days and a boiling bath that mimic a 365-day test result.

MR. PEDDIGREW: Okay.

And would Mr. – would Scott O'Brien have been aware of this as an option?

MR. TURPIN: Yeah, we had to purchase a fair amount of gear to get the accelerated curing tanks into our lab because our lab was not set up for RCC.

MR. PEDDIGREW: Okay.

On site, Ron Power, I'm just wondering the – was he on site at a set schedule, just periodically?

MR. TURPIN: I don't think there was a set schedule. I don't – I can't answer that; I don't know.

MR. PEDDIGREW: But, I mean, was he – based on your, I guess, recollection, was he somebody who was on site more than he was off site? Was he someone who would just show up from time to time?

MR. TURPIN: Oh no, he was – there was a time Ron would just – Ron was St. John's based. He would just travel to site when required. There was a time when Ron was the acting construction manager, where he ended up at site.

MR. PEDDIGREW: I guess that's what I'm talking about.

MR. TURPIN: Yeah.

MR. PEDDIGREW: When he was construction manager, was he –

MR. TURPIN: Yeah, he was on site long – I guess, I don't – I'm not sure of his turnaround schedule.

MR. PEDDIGREW: You're not sure of schedules.

MR. TURPIN: He didn't have a set – like me, I didn't have a turnaround schedule either. I –

MR. PEDDIGREW: Were you there sort of as needed?

MR. TURPIN: – most of the project was set up with a 14-and-seven rotation.

MR. PEDDIGREW: Right.

MR. TURPIN: You're in for 14 days; you're out for seven. I personally feel that if you're running a job, you can't effectively manage a job if you're only there two-thirds of the time. I stayed on site – if I went on a turnaround, I would look ahead; I would pick a time; I'd say: Okay, I'm gonna go, I leave Thursday evening. I'll be back Monday morning. That's how I managed CH0006 and CH0009 – or 0008 sorry, the North Dam.

MR. PEDDIGREW: Right, okay.

MR. TURPIN: Yeah.

MR. PEDDIGREW: Okay, thank you.

THE COMMISSIONER: Thank you.

Astaldi Canada Inc.

MR. BURGESS: No questions, Commissioner.

THE COMMISSIONER: Thank you.

Former Nalcor Board Members.

MS. MORRIS: No questions, Commissioner. Thank you.

THE COMMISSIONER: Newfoundland and Labrador Building and Construction Trades Council/Resource Development Trades Council. Not here.

Barnard-Pennecon.

MR. GOSSE: Thank you.

THE COMMISSIONER: Just identify yourself, please.

MR. GOSSE: Certainly.

Mr. Turpin, my name is Richard Gosse. I'm here on behalf of Barnard-Pennecon Limited Partnership and –

MR. TURPIN: Mr. Gosse.

MR. GOSSE: Good to meet you again. We met a couple hours ago.

MR. TURPIN: Yeah.

MR. GOSSE: I just have some questions that are gonna be focused on references made in your direct testimony to my client, Barnard Pennecon Limited.

And reference was made to the bid that Barnard-Pennecon limited put forward as being not compliant when it was submitted. If it was not compliant, shouldn't it have been disqualified at that point?

MR. TURPIN: Perhaps yes. Keep in mind, Nalcor – we were quite interested in – we – the beginning of once we realized – sorry, once I realized it was a noncompliant bid, there was quite an effort put in to trying to have Barnard-Pennecon's bid made compliant. Roy had spent – there's a considerable amount of time – correspondence back and forth with Kevin Ellerton to try and get the bid to be a lump-sum, unit-rate price.

MR. GOSSE: Okay.

Now, the process itself wasn't a traditional tender call. It was a bit more sophisticated than that. Is that fair?

MR. TURPIN: I guess – not within Nalcor's standards, I don't think. It's the same process we followed with CH0006. There was an RFP, we had a mandatory site visit up on site where all bidders were mandated to come to site to view the site. After the RFP closed, we had extensive RFP sessions with all three bidders. We travelled to Bozeman on several occasions, to the home office of Barnard for evaluations. We travelled to Dragados's home office; we travelled to Astaldi's office in Canada for extensive bid reviews.

MR. GOSSE: Okay. And just to focus on that a little tiny bit, though – didn't the RFP invite the proponent to identify if there were gonna be any deviations or exceptions – that they should outline them, that they should present them?

MR. TURPIN: I think that once the RFPs were open, they were clearly identified of exceptions –

MR. GOSSE: Sure.

MR. TURPIN: – and – yeah, so.

MR. GOSSE: But in the invitation itself, the RFP that Nalcor issued would have said to the proponents, if you have any exceptions, if you want to make any deviations, you should spell them out in your proposal.

MR. TURPIN: I – it probably does; I don't have the documentation right in front of me, but that –

MR. GOSSE: Okay.

MR. TURPIN: – that would be standard language, I would expect.

MR. GOSSE: Okay, and if there was room to negotiate with people, to work with them after they'd submitted their bid, was compliance really a black or white issue?

MR. TURPIN: Sorry, ask that again, sorry?

MR. GOSSE: Would there be an – would it be a little bit more flexible than that, that if they put forward – if a proponent put forward a proposal that wasn't exactly on all squares with what the RFP asked for –

MR. TURPIN: Yep.

MR. GOSSE: – but there was room to continue and negotiate with them, would that mean that they were non-compliant and it shouldn't go forward, or would that mean that they were substantially compliant or would you have a view on that?

MR. TURPIN: Well, as with – even in CH006, after that was closed, there was negotiations with regards to – like I say, articles are always an issue once you're getting ready to sign a final

contract on liquidated damages, so that negotiation will happen after.

If there was cost-saving measures, if there was advantageous material selection, that can process through the negotiations as long as it's well-documented and agreed upon.

MR. GOSSE: Sure.

MR. TURPIN: Yep.

MR. GOSSE: And those negotiations were meant to put forward a revised proposal, an amended proposal that might or might not be accepted.

Is that the way it was intended to work?

MR. TURPIN: I guess, correct, yes.

MR. GOSSE: Okay.

So, in terms of the comment that you made that when they were opened, there was only one compliant bidder –

MR. TURPIN: Mm-hmm.

MR. GOSSE: – and that was H. J. O'Connell, but H. J. O'Connell had put forward two prices – a higher and a lower.

MR. TURPIN: Correct.

MR. GOSSE: But only the higher price was compliant.

MR. TURPIN: I guess, exactly.

What I – in the exhibit where you show the bid opening, there's four – there's four pricing.

MR. GOSSE: Right.

MR. TURPIN: Only one of 'em was compliant. If I said one bidder, maybe I may have –

MR. GOSSE: Sure.

MR. TURPIN: Yeah.

MR. GOSSE: So –

MR. TURPIN: It was one –

MR. GOSSE: – only one –

MR. TURPIN: – price that –

MR. GOSSE: – price was –

MR. TURPIN: – was compliant.

MR. GOSSE: – compliant.

MR. TURPIN: Correct.

MR. GOSSE: But then when you went forward, and looked at a recommendation that you suggest was made in December of 2014, it's on that lower pricing structure – that non-compliant price from O'Connell's – that you recommend them as the highest ranked proponent.

MR. TURPIN: Sure, if the RCC expert, Dr. Malcolm Dunstan, had a view on delivery method with Creter cranes and trucks, that would've – would be an acceptable option to take.

I – keep in mind Barnard-Pennecon's base bid was with a similar-type delivery method as well. They did not – their base bid was not with an extensive conveyor system either.

MR. GOSSE: Okay.

MR. TURPIN: Yeah.

MR. GOSSE: And so then, just to be clear so that I understand it –

MR. TURPIN: Yeah.

MR. GOSSE: – when you say that the price was non-compliant, that doesn't mean it was disqualified?

MR. TURPIN: No, it was not disqualified, no.

MR. GOSSE: Okay.

MR. TURPIN: No.

MR. GOSSE: In December of 2014, it was – it had been projected that there should be an evaluation and a contract award, and it turns out

that the contract wasn't awarded until the following August. Do you know why there was time to continue with the process if the – this was a critical path item –

MR. TURPIN: Yep.

MR. GOSSE: – and it needed to go forward, why was there room to continue negotiations with the proponents?

MR. TURPIN: I'm guessing, but I would think that Astaldi lack of performance was pushing the project to the right.

MR. GOSSE: Okay.

So, is it fair to say that that would have been recognized around about the time that it was expected that you would have made a recommendation and award? It was projected originally that –

MR. TURPIN: Mm-hmm.

MR. GOSSE: – it would be awarded by December of 2014?

MR. TURPIN: Mm-hmm.

MR. GOSSE: At that time, when it was expected to have been awarded, was it recognized that no, actually guys, we're going to have some time. Astaldi is behind. We have some room here to try to look at some further refinement revision – some better pricing, some better proposals.

MR. TURPIN: I'm not sure if that was fully coming to light at that time or not. I'd have to look back at the schedule at the current time. I don't have that documentation.

MR. GOSSE: Sure.

MR. TURPIN: Yeah.

MR. GOSSE: Sure.

Now, in reference to when – you say there was a recommendation made by yourself and Roy Lewis that an award be made. Did you know that there was no award made immediately following that, that negotiations continued?

MR. TURPIN: Yes. I wasn't aware that the award was made until the August, I guess, when the award was actually – whatever the documentation shows.

MR. GOSSE: Okay.

MR. TURPIN: Yeah.

MR. GOSSE: So what did you think was going on between December and August with the proponents – with O'Connell's and with Barnard-Pennecon?

MR. TURPIN: I know there was article discussions with H. J. O'Connell. There's all sorts of documentation on checking with alternates. I was not involved. I can't answer.

MR. GOSSE: Okay.

Did you personally go to Barnard's office in Bozeman, Montana?

MR. TURPIN: A couple of times. Two, maybe three times.

MR. GOSSE: Do you remember when that was?

MR. TURPIN: No, I don't, no.

MR. GOSSE: So, between when the RFP was issued and the evaluations were done and the award, which would have been fairly quickly, it's – I think it's fair to say through the fall of 2014 – did you go to Montana two or three times then, or would it – one of those trips or more of those trips have been in 2015?

MR. TURPIN: I can't – I don't remember. I know we've been there three times. I would think that once the bid recommendation was done, whether we went after that – I don't think I was there without Roy Lewis. So, Roy Lewis left in December so –

MR. GOSSE: Okay.

MR. TURPIN: Yeah.

MR. GOSSE: And I don't have any documentation to present to you, but the

suggestion from my client is that you were there in March of 2015.

MR. TURPIN: I can't –

MR. GOSSE: That doesn't sound familiar to you.

MR. TURPIN: No.

MR. GOSSE: Okay.

MR. TURPIN: I'm not saying I wasn't; I don't – I just don't remember.

MR. GOSSE: Sure.

MR. TURPIN: Yeah.

MR. GOSSE: And if you were – if you would have still been visiting with the Barnard Pennecon Limited partnership, that would have been because they were still in negotiations; it wasn't at a point where you were only negotiating contract terms with H. J. O'Connell. You were still considering the proposal from Barnard-Pennecon?

MR. TURPIN: I can only guess that.

MR. GOSSE: Okay.

Would you recall if the revised proposals that were put forward in March of 2015 that were put to you a little while ago as exhibits, there was a letter from –

MR. TURPIN: (Inaudible.)

MR. GOSSE: – Barnard –

MR. TURPIN: Yep.

MR. GOSSE: – would that have come after continued efforts to negotiate with them?

MR. TURPIN: It would be the only catalyst to send that letter, I would suspect.

MR. GOSSE: Okay.

Those are all my questions, thank you.

THE COMMISSIONER: Thank you.

Nalcor Energy.

MR. SIMMONS: Thank you, Commissioner.

Hello Mr. Turpin –

MR. TURPIN: (Inaudible.)

MR. SIMMONS: – Dan Simmons for Nalcor Energy.

MR. TURPIN: Good afternoon.

MR. SIMMONS: Mr. Gosse has covered a little bit of the ground that I was going to, but I might have to go back over some of it.

MR. TURPIN: Sure.

MR. SIMMONS: But I would like to start first by looking at the bid evaluation plan at P-01867, please.

MR. TURPIN: Binder tab, please?

THE COMMISSIONER: 01867 is at tab 21 in book 2.

MR. SIMMONS: Twenty-one, book 2.

So on the very first page there, Mr. Turpin, we see that it was prepared by Roy Lewis and it was reviewed by you and you've signed off on it on – it looks like October 21, 2014.

MR. TURPIN: That's the date, yes.

MR. SIMMONS: Okay.

If we go to page 7, please.

So this plan – this bid evaluation plan sets out the ground rules about how the bid is to be evaluated – describes the criteria that are to be applied, the scoring system that's going to be used, the process that is to be followed through to the point where there's a recommendation for contract award. Right?

MR. TURPIN: Correct, yep.

MR. SIMMONS: Okay.

And there – two of the significant pieces of that evaluation are the commercial evaluation and the technical evaluation. And you've told us that there were kind of separate sub-teams responsible for each of those.

MR. TURPIN: That's correct, yep.

MR. SIMMONS: And here at section 7, we have the commercial evaluation. If we can scroll down a little bit, please, Madam Clerk. And stop there.

So in the first full paragraph under the bullets, it says that: "Compliance and/or acceptance with commercial and financial requirements will form an integral part of the commercial evaluation. Commercial acceptance will also be influenced by any exceptions/deviations from the RFP."

So what are exceptions and deviations from the RFP? What's being referred to there?

MR. TURPIN: Well, the bidder – I guess we prefer to have the project priced exactly as per the specifications –

MR. SIMMONS: Mm-hmm.

MR. TURPIN: – exactly as per the timeline that's prescribed, exactly as per the conditions.

MR. SIMMONS: Mm-hmm.

MR. TURPIN: All bids come in with exceptions and deviations.

MR. SIMMONS: Mm-hmm.

MR. TURPIN: A lot of them are article-based – I don't agree with the liquidated damages, I take exception with the rights for dismissal, that type of thing.

MR. SIMMONS: Mm-hmm.

MR. TURPIN: So that's mostly what you get in a deviation and exceptions. Although sometimes, you do get deviations with regards to – you asked for this type of product, we can offer an alternate product.

MR. SIMMONS: Right.

MR. TURPIN: So they list them in their bid.

MR. SIMMONS: In your work before this, have you ever been involved in public tendering on government projects –

MR. TURPIN: Yes –

MR. SIMMONS: – for example –

MR. TURPIN: – very much so.

MR. SIMMONS: – where there are, for example, on roadwork –

MR. TURPIN: Yep.

MR. SIMMONS: – and you're invited to submit a set of prices on a form and there's no room for deviations, there's no room for exceptions.

MR. TURPIN: Works, Services and Transportation. You're at the seventh floor of –

MR. SIMMONS: Right.

MR. TURPIN: – the Confederation Building –

MR. SIMMONS: Right.

MR. TURPIN: – you're opening up tenders, yup.

MR. SIMMONS: And if there's a deviation or exception, the bid is non-compliant and it's out.

MR. TURPIN: Gone.

MR. SIMMONS: Right.

And the lawyers in the room that do construction law, the reason I think Mr. Gosse asked you so much about your statement that the bid was non-compliant –

MR. TURPIN: Yeah.

MR. SIMMONS: – those of us who do this law hear non-compliant as legally non-compliant –

MR. TURPIN: Yep.

MR. SIMMONS: – requiring rejection of the bid.

MR. TURPIN: Point taken.

MR. SIMMONS: That's not your use of the word.

MR. TURPIN: No, not at all.

MR. SIMMONS: No. So –

MR. TURPIN: Non-compliant is – having tendered Works, Services and Transportation work –

MR. SIMMONS: Mm-hmm.

MR. TURPIN: – and having that strict, regimental – non-compliant in my terminology was probably not the correct terminology to use. It's just not as per the drawings and specifications.

MR. SIMMONS: Right, okay.

MR. TURPIN: No – not meant to be non-compliant, kicked out, I guess.

MR. SIMMONS: So in this case, when Barnard-Pennecon submitted a bid that had a different set of payment terms –

MR. TURPIN: Mm-hmm.

MR. SIMMONS: – than had been asked for, in your view that didn't match what had been asked for and –

MR. TURPIN: Correct.

MR. SIMMONS: – I'm assuming that's why you described it as non-compliant –

MR. TURPIN: Correct, but –

MR. SIMMONS: – but not in the legal sense.

MR. TURPIN: Correct, and that – and just because –

MR. SIMMONS: (Inaudible.)

MR. TURPIN: – it's non-compliant, in my terminology non-compliant –

MR. SIMMONS: Right.

MR. TURPIN: – would – that wouldn't have led to the reasoning for making a bid recommendation for H. J. O'Connell-Dragados –

MR. SIMMONS: Right.

MR. TURPIN: – either.

MR. SIMMONS: Right.

And in fact, in the very next sentence there, in that same paragraph, says: "Any proposed change(s) to the Agreement Articles and/or other Exhibits/Appendices" –

MR. TURPIN: Will be normalized.

MR. SIMMONS: – "will be negotiated."

MR. TURPIN: Yup.

MR. SIMMONS: And one of the standard exhibits to these contracts, I think it's exhibit two, is the one that's headed compensation, spells out what all the payment terms are going to be.

MR. TURPIN: Yep.

MR. SIMMONS: Right.

So, right here in the bid evaluation plan, there's a statement here that there can be exceptions from the payment terms that can be negotiated with the bidders prior to formal review and subsequent acceptance – and then it has to be cleared through legal counsel.

MR. TURPIN: Correct.

MR. SIMMONS: All part of the standard process.

MR. TURPIN: Yup.

MR. SIMMONS: Okay.

And, in the next paragraph, it says: "Each bidder, total contract price"– et cetera – "will be

normalized to a base equivalent bid for each Bidder."

So, what does it mean to normalize the bid? What's happening there?

MR. TURPIN: So, normalizing the bid takes – it looks at your exception, and you normalize it against bidder 2's exception, or if he – if you – if bidder – one bidder said I neglected the price installing this whole component –

MR. SIMMONS: Mm-hmm.

MR. TURPIN: – normalizing means the bid team, commercial team, would look at it and say, okay, if they were, if –

MR. SIMMONS: Mmm.

MR. TURPIN: – there's intelligence in the bid, we would assume that he would price it at this rate, so you can – you – you're trying to do an apples-to-apples comparison.

MR. SIMMONS: Okay, apples to apples. So –

MR. TURPIN: Yeah.

MR. SIMMONS: – because the bidders have the ability to make exceptions and to deviate in what they respond to from the RFP –

MR. TURPIN: Yep.

MR. SIMMONS: – there has to be a process where the bid evaluation team makes adjustments for the purpose of comparing one bid to another.

MR. TURPIN: Correct, yep.

MR. SIMMONS: Okay, and that's what that means. Yeah.

Next page, please. Okay, if we can just scroll down to technical evaluation. Stop there.

Now this is the section that deals with technical evaluation, so this is a different team.

MR. TURPIN: Yep.

MR. SIMMONS: And what is the technical evaluation team looking at?

MR. TURPIN: The technical evaluation team is looking to ensure the design specifications and drawings are going to be built. So they would look at the execution plan –

MR. SIMMONS: Mm-hmm.

MR. TURPIN: – they would look at things to ensure their timing is right on certain installs, they'd make sure that we ask for this type of product and we get that type of product.

MR. SIMMONS: Right.

The execution plan is actually mentioned here in the third paragraph so –

MR. TURPIN: Yeah.

MR. SIMMONS: – so, and it's a bidder's execution plan –

MR. TURPIN: Correct.

MR. SIMMONS: – not an execution plan supplied to the contractor.

MR. TURPIN: No. The bidders have to provide their own execution plan.

MR. SIMMONS: Mm-hmm.

And what does the execution plan address? What do you lean from it?

MR. TURPIN: The execution plan is the chance for the bidder to demonstrate to the owner that he fully understands the project and can execute the work according to the timeline –

MR. SIMMONS: Right.

MR. TURPIN: – and the price that he submitted.

MR. SIMMONS: So we've heard of – mention of the means and methods by which the work is going to be done. Is that where we'd find the contractors proposal for the means and methods they are going to use?

MR. TURPIN: Some of it –

MR. SIMMONS: Mm-hmm.

MR. TURPIN: – you would see it. I wouldn't expect it to be a detailed means and method.

MR. SIMMONS: Hmm.

MR. TURPIN: There's detailed means and methods that I wouldn't expect to see in execution plans.

MR. SIMMONS: Right.

MR. TURPIN: But the overarching execution plan, you would expect to follow it through from start to finish and get an understanding that the project – that this contractor understands –

MR. SIMMONS: Mm-hmm.

MR. TURPIN: – the work scope.

MR. SIMMONS: And different bidders could submit execution plans that are different and are going –

MR. TURPIN: Oh yes.

MR. SIMMONS: – to approach the work in a different way –

MR. TURPIN: Correct.

MR. SIMMONS: – and it requires evaluation by the bid evaluation team, the technical evaluation team –

MR. TURPIN: Correct.

MR. SIMMONS: – to determine if they're satisfactory and to score them one against the other.

MR. TURPIN: Correct.

MR. SIMMONS: Right. Yeah. Okay.

Can we go to page 10, please?

MR. TURPIN: Of the evaluation plan?

MR. SIMMONS: Yes.

MR. TURPIN: Okay.

MR. SIMMONS: Of the – yeah.

And the –you can stop there, scroll down just a little. Okay, stop there. Thank you.

So section 15 here is called the Award Process and it works through – and if you go down about five lines, there's references here to the Bid Evaluation and Award Recommendation, capital letters at the beginning of each word.

MR. TURPIN: Mm-hmm.

MR. SIMMONS: It appears there several times.

So is that a particular form of document?

MR. TURPIN: I would say, yes. And again, I'll revert back to – this is a mirror image of the bid evaluation plan, pretty well to what was supplied to CH0006 contract that was prepared by Roy Lewis.

MR. SIMMONS: Mm-hmm.

MR. TURPIN: So –

MR. SIMMONS: But I'm referring to Bid Evaluation and Award Recommendation, not plan as this one refers to – and the – "The successful Bidder will be nominated" –

MR. TURPIN: Right.

MR. SIMMONS: – "and will be included in the Team's Bid Evaluation and Award Recommendation."

MR. TURPIN: Yeah.

MR. SIMMONS: "The Bid Evaluation and Award Recommendation will be prepared by the Contract Administrator for sign off and approval"

MR. TURPIN: Yup.

MR. SIMMONS: – "by the Bid Evaluation Team."

MR. TURPIN: That's correct.

MR. SIMMONS: And then it goes on to say that that document will be routed for review and approval and so on.

So this is a particular form of document –

MR. TURPIN: Mm-hmm.

MR. SIMMONS: – that formalizes the recommendation that comes from the bid evaluation team.

MR. TURPIN: Correct.

MR. SIMMONS: And you're – are you familiar with what those documents look like?

UNIDENTIFIED MALE SPEAKER: Yes.

MR. TURPIN: Yes.

MR. SIMMONS: Yeah. Okay.

MR. TURPIN: We would have done it for CH006.

MR. SIMMONS: Yeah. Let's take a look at P-01870, please?

THE COMMISSIONER: Tab 79.

MR. SIMMONS: Tab 79, book 4. But –

MR. TURPIN: Book 4?

MR. SIMMONS: – but I'm not going to dig into it here now. I'm just gonna show you the cover page. So here's one that says: Lower Churchill Project Bid Evaluation and Award Recommendation CH0009 Construction of North and South Dams

So is this – do you recognize this as being the document that a bid evaluation team prepares that formalizes the recommendation for (inaudible).

MR. TURPIN: Just scroll down through. There should be an executive summary on page 2, I guess – making – the recommendations should be first.

MR. SIMMONS: Yeah.

MR. TURPIN: Yeah. So –

MR. SIMMONS: This is what it looks like.

MR. TURPIN: This would be the document that – as the scope leader gets signed off and presented up for award.

MR. SIMMONS: Right. So this particular one is the one that ultimately –

MR. TURPIN: Yup.

MR. SIMMONS: – was signed off in August of 2015.

MR. TURPIN: Correct.

MR. SIMMONS: So did you or Mr. Lewis or anyone else who was involved up until the time you left – did you ever prepare a document like this and get it – sign it off and circulate it around?

MR. TURPIN: I wouldn't have, but Roy would have.

MR. SIMMONS: Okay.

MR. TURPIN: Roy would have done it for bulk excavation and Roy would have done it for North and South Dams.

MR. SIMMONS: Did you ever see a document like this that Roy did for North and South Dams?

MR. TURPIN: I signed – if you look at the cover page, I signed a bid recommendation for CH0009. I know Roy had signed it. I don't think you will ever find one with anybody else's signature other than two of ours on it.

MR. SIMMONS: We haven't found the one –

MR. TURPIN: No, I –

MR. SIMMONS: – that you and Roy signed.

MR. TURPIN: No, I –

MR. SIMMONS: You know, turn people's pockets out –

MR. TURPIN: Yup.

MR. SIMMONS: – and we haven't found it.

MR. TURPIN: Yup.

MR. SIMMONS: So are you absolutely certain that it was more than just the supporting documents and a formalized bid recommendation that you delivered?

MR. TURPIN: In my testimony we put a bow around it. It was –

MR. SIMMONS: Mm-hmm.

MR. TURPIN: – it was done.

MR. SIMMONS: Right. Now –

MR. TURPIN: Yup.

MR. SIMMONS: – Ms. Ding took you through a couple of documents you identified as supporting documents that came from December of 2014. And we know Mr. Lewis left the project in December of 2014.

MR. TURPIN: Yup.

MR. SIMMONS: So if you signed one of these –

MR. TURPIN: Yup.

MR. SIMMONS: – that had to have been in December of 2014.

MR. TURPIN: It would have been – it would have been in that time frame, yes.

MR. SIMMONS: Right. Okay. All right.

So let's just take a look at those then, let's go to P-02766, please.

MR. TURPIN: P-02766?

MR. SIMMONS: Yes.

THE COMMISSIONER: That's at tab 27, book 2.

MR. SIMMONS: So this is one of the documents, the two documents that was identified as being things you found, which you tell us were the supporting documents for your bid recommendation?

MR. TURPIN: Yes.

MR. SIMMONS: And it's very – if you scroll down, it's very clearly identified here as dated December 15, 2014 and just so we can see it again. The other one is P-02828, so if we can pop that up. And I gather for P-02828, it's the properties on the original file that have identified it as being December of 2014.

MR. TURPIN: (Inaudible.)

THE COMMISSIONER: Tab 101, that's in – gonna be in book 4.

MR. TURPIN: Which book?

THE COMMISSIONER: Four.

MR. TURPIN: Tab 101.

MR. SIMMONS: Yeah, you haven't signed either of these. Correct?

MR. TURPIN: No, they were paper copies.

MR. SIMMONS: Okay. All right.

So, I'm gonna run through with you just a few documents that we have here now that follow this. Some of these Ms. Ding showed you already and there's been some questions related to what happened after December '14 from Mr. Gosse, but I want to run through a few. So, first is P-02771, please.

Scroll down to the bottom half –

THE COMMISSIONER: (Inaudible.)

MR. SIMMONS: – little further**,** stop there. And we can see on the screen this is an email message from Lenard Knox and his email address is H-J-O-C. So that would be H.J. O'Connell, is it?

MR. TURPIN: That's correct.

MR. SIMMONS: And it's addressed to Mr. Ed Over.

MR. TURPIN: Mm-hmm.

MR. SIMMONS: The date is, this is actually March 6, 2015 when you look at the rest of the chain. So, in March 6, 2015 what were you doing? Where were you working?

MR. TURPIN: 2015 I was with Nalcor. I was – I was before the North Spur assignment, so I would have been, as mentioned earlier, the mixed design program was going full tilt.

MR. SIMMONS: Yes.

MR. TURPIN: I may have been involved in some of these commercial – article negotiations with Ed Over. I – that type of thing.

MR. SIMMONS: Okay.

So this is addressed to Ed Over and it says: "Pleas see updated summary of our Target scenario's which clarifies our intent." And it goes on and discusses target price and so on. So this appears to be further discussion about the terms of the H.J. O'Connell bid –

MR. TURPIN: Correct.

MR. SIMMONS: – in March.

P-02775, please. And we'll go to page 2.

THE COMMISSIONER: Tab 38.

MR. SIMMONS: This is March – it's either March 4 or April 3 – and I think it's March, yes, if we scroll – other messages in the chain say March. So this is March 3 and this is also from Mr. Knox to Ed Over. This one is copied to you –

MR. TURPIN: Yup.

MR. SIMMONS: – to your address. And it's "Potential Cost Savings" here.

MR. TURPIN: Yup.

MR. SIMMONS: So had you been involved at this point in going back to the contractors to have them make submissions on potential cost savings to – value engineer their bids?

MR. TURPIN: Is there a – is there a starting email to this?

MR. SIMMONS: Yeah. But do you remember, first, do you remember being involved in any of this?

MR. TURPIN: I'd have to look down through the documentation though.

MR. SIMMONS: So the answers no, you don't remember.

MR. TURPIN: I don't remember, I very well could have been because I do know even – there was great pressure on the – on the budget to get the budget down. So –

MR. SIMMONS: Right.

MR. TURPIN: – it's typical we were looking for cost savings.

MR. SIMMONS: Right.

MR. TURPIN: That –

THE COMMISSIONER: I think –

MR. TURPIN: – that sounds –

THE COMMISSIONER: – I think in fairness to the witness, we should let him see the chain of –

MR. SIMMONS: Sure.

THE COMMISSIONER: – emails.

MR. SIMMONS: Yes. Yeah. It's – it's in your book. That may – if that's easier.

MR. TURPIN: Sure.

THE COMMISSIONER: Tab 38.

MR. SIMMONS: 38.

MR. TURPIN: Binder 4?

THE COMMISSIONER: Binder 2.

MR. TURPIN: Binder 2. Tab 38, binder 2. Ed Over (inaudible).

So I – I'd have to look back, but I believe this was during a time where articles were being negotiated, there was – I think Jose-Daniel, the Dragados person was involved at that time, so there's a – personal correspondence back and forth.

MR. SIMMONS: So – so do you recall if this process was happening only with H. J. O'Connell or if it was also proceeding with Barnard-Pennecon simultaneously?

MR. TURPIN: I don't – I don't remember.

MR. SIMMONS: Okay.

MR. TURPIN: It may have been going on with both –

MR. SIMMONS: Mm-hmm.

MR. TURPIN: – I'm – I can't recollect.

MR. SIMMONS: Well, we'll just confirm it.

MR. TURPIN: Yeah.

MR. SIMMONS: Exhibit 02772, please.

THE COMMISSIONER: That's tab 35.

MR. TURPIN: Tab 35?

THE COMMISSIONER: Thirty-five.

MR. SIMMONS: So this is a letter from Barnard-Pennecon to Mr. Ed Over on March 6, 2015, which is around the same time. The subject is: "**Value/Engineering & Cost Savings**."

MR. TURPIN: Yeah.

MR. SIMMONS: So it certainly appears here that the cost-saving discussion is –

MR. TURPIN: Was continuing.

MR. SIMMONS: – conducted with both.

MR. TURPIN: Yeah.

MR. SIMMONS: Both bidders. Okay.

And then if you go to –

MR. TURPIN: Was this one here cc'd to me as well?

MR. SIMMONS: I don't – that's a letter so I don't see that. Unless you scroll down, maybe it is, I don't know. Okay. It doesn't appear to be.

And I'll bring you to one more and that's 02773, please.

THE COMMISSIONER: Tab 36.

MR. SIMMONS: And if we scroll up to the top it's from Derek Tisdel. Do you know who Mr. Tisdel is?

MR. TURPIN: No, I don't. The name doesn't ring a bell.

MR. SIMMONS: Okay.

And the attachments there, one of them says: BPJV revised proposal March 10.

MR. TURPIN: Barnard-Pennecon joint venture, yeah.

MR. SIMMONS: Right.

And if you scroll down a little bit we'll see that there's a reference to the first attachment being a revised proposal and the second attachment being a reconciliation of proposed cost reductions. So this negotiation process appears to be underway here –

MR. TURPIN: Yeah.

MR. SIMMONS: – with both H. J. O'Connell and Barnard-Pennecon.

MR. TURPIN: Well, obviously, the evaluation plan was rewritten by another team and –

MR. SIMMONS: Mmm.

MR. TURPIN: – and –

MR. SIMMONS: Yeah. Now –

MR. TURPIN: And, you know, I mean, that's in to evidence. It's –

MR. SIMMONS: Sure.

Now, Mr. Gosse asked you –

MR. TURPIN: Yeah.

MR. SIMMONS: – if you'd ever been to Bozeman, Montana.

MR. TURPIN: Mm-hmm.

MR. SIMMONS: Now, that's where Barnard-Pennecon's offices are, correct?

MR. TURPIN: Yeah, been there several times.

MR. SIMMONS: And you'd been there several times.

MR. TURPIN: Yeah.

MR. SIMMONS: Yeah.

Do you recall going there in March 2015?

MR. TURPIN: I don't recall the date, no.

MR. SIMMONS: Okay.

MR. TURPIN: I may have been there in March.

MR. SIMMONS: Right.

MR. TURPIN: Yes.

MR. SIMMONS: Right.

So if you've submitted an expense report –

MR. TURPIN: Yeah.

MR. SIMMONS: – for a trip to Bozeman in March of 2015, we can probably safely conclude you were there at the time.

MR. TURPIN: It – you would have it, yeah.

MR. SIMMONS: Okay.

MR. TURPIN: Yeah.

MR. SIMMONS: Now, why on earth would you be going to Bozeman, Montana to talk to Barnard-Pennecon if there'd been a final bid evaluation wrapped up with a bow on it in December of 2014?

MR. TURPIN: Again, I can't remember ever going to Bozeman without Roy Lewis.

MR. SIMMONS: Mm-hmm.

MR. TURPIN: Every time I went I – as far as I remember and recollect Roy Lewis was with me.

MR. SIMMONS: Do you remember going with John Mulcahy?

MR. TURPIN: Yes.

MR. SIMMONS: Okay.

MR. TURPIN: John Mulcahy went a couple of times with us as well.

MR. SIMMONS: Okay. Yeah.

MR. TURPIN: Scott O'Brien went one of those trips as well.

MR. SIMMONS: Okay.

So if we assume now that I mean you've submitted an expense report –

MR. TURPIN: Yeah.

MR. SIMMONS: – for a trip in March and we'll assume you were there in March –

MR. TURPIN: Okay.

MR. SIMMONS: – my question was can you give me any explanation of why, if there was a final recommendation made in December by Roy Lewis –

MR. TURPIN: Yeah.

MR. SIMMONS: – that would have ended the consideration –

MR. TURPIN: Yeah.

MR. SIMMONS: – of giving the contract to anyone other than H. J. O'Connell, why all – why these other presentations were coming in from Barnard-Pennecon and why you went to see them in March.

MR. TURPIN: There was further commercial negotiations happening.

MR. SIMMONS: Okay.

And if there's further commercial negotiations happening it's because there's been no decision made yet on who the contract is going to be awarded to.

MR. TURPIN: I'm not disputing that there was.

MR. SIMMONS: Oh, okay.

MR. TURPIN: We had made a recommendation, myself and Roy. It – I never alluded that it was ever accepted or acted upon.

MR. SIMMONS: Right. And from –

MR. TURPIN: They'd only got to – the last signature on it would have been mine, my (inaudible) –

MR. SIMMONS: Yes.

MR. TURPIN: – and the technical team and the commercial teams. But as for anything above myself –

MR. SIMMONS: Mm-hmm.

MR. TURPIN: – being this scope area, I don't think anybody ever signed off on it or accepted it.

MR. SIMMONS: Right.

And after you went to the North Spur then, in April –

MR. TURPIN: Yeah.

MR. SIMMONS: – between then and August you didn't – aside from having heard from Mr. McClintock, you had no involvement – you don't know what further discussions went on, what further proposals were made –

MR. TURPIN: None whatsoever.

MR. SIMMONS: – what changes there were in technical or commercial evaluation after that point?

MR. TURPIN: None whatsoever.

MR. SIMMONS: No. Okay.

MR. TURPIN: I do know the contract was awarded with a labour cap and a risk move to Nalcor.

MR. SIMMONS: But as for how that was evaluated, that would be for others to say.

MR. TURPIN: That would be for others inside.

MR. SIMMONS: Right.

MR. TURPIN: There was Ken McClintock, another team. There's another bid tab. They rewrote the bid plan.

MR. SIMMONS: Mm-hmm.

MR. TURPIN: The bid plan was – our bid plan was scrapped, a new one was written by Nalcor, right?

MR. SIMMONS: Mm-hmm.

MR. TURPIN: They did their own thing then and they came up with a different conclusion.

MR. SIMMONS: Okay. And I did notice that in your letter to Mr. Marshall you didn't say it was wrong to give the contract to Barnard-Pennecon, you said it's something that needed to be investigated.

MR. TURPIN: Correct.

MR. SIMMONS: Correct.

MR. TURPIN: Correct.

MR. SIMMONS: Yeah.

This is where my questions get a bit more scattered, where I pick some things out of the –

MR. TURPIN: Sure.

MR. SIMMONS: – out of the notes.

MR. TURPIN: Go ahead.

MR. SIMMONS: Okay.

On that point where you say you didn't hear anything until the award recommendation was announced later in 2015, if you were no longer involved as part of the bid evaluation team, the normal rules of confidentiality would have kept the work of that team confidential among themselves. Correct?

MR. TURPIN: Without a doubt, yeah.

MR. SIMMONS: It wouldn't have been widely known.

MR. TURPIN: Yeah.

MR. SIMMONS: No.

MR. TURPIN: If there was a new bid evaluation team –

MR. SIMMONS: Mm-hmm.

MR. TURPIN: – if the management – if Nalcor management put a new bid evaluation team, that would be their prerogative.

MR. SIMMONS: Their prerogative. Good.

MR. TURPIN: Yeah.

MR. SIMMONS: Just a couple of questions on the RCC mix design.

MR. TURPIN: Sure.

MR. SIMMONS: And I understand the technical explanations that – well, I don't fully understand the technical side of it, but I think I hear what you're saying –

MR. TURPIN: Yeah.

MR. SIMMONS: – about what the practical considerations were about getting this done –

MR. TURPIN: Yeah.

MR. SIMMONS: – and the time it would take to do it. And for that reason, you were promoting doing something different than would normally be done: Take the mix design out of the hands of the contractor and have Nalcor get on with it and hand the design over to the contractor when the contractor was selected. Is that what you were promoting?

MR. TURPIN: Me and three other people –

MR. SIMMONS: Yes.

MR. TURPIN: – along with two of the world leading experts, yes.

MR. SIMMONS: Certainly, right.

MR. TURPIN: Yeah.

MR. SIMMONS: And you were looking at it that way.

Now, will you acknowledge though that by taking it out of – the mix design out of the hands of the contractor, there were commercial considerations that had to be taken into account?

MR. TURPIN: Without a doubt.

MR. SIMMONS: Yes.

MR. TURPIN: Yes.

MR. SIMMONS: And –

MR. TURPIN: I'm a proponent of if there's enough time –

MR. SIMMONS: – yeah.

MR. TURPIN: – I would fully support having the mix design –

MR. SIMMONS: Right.

MR. TURPIN: – in the contractor's hands.

MR. SIMMONS: Yeah, yeah.

So there are considerations on the other side such as once Nalcor takes on the mix design, it then assumes the responsibility for the mix design.

MR. TURPIN: Correct.

MR. SIMMONS: And if you have a contractor who decides that their lack of performance is because the mix doesn't flow very well –

MR. TURPIN: Yeah.

MR. SIMMONS: – then you are attracting a risk of claims from the contractor based on their complaint about the mix design.

MR. TURPIN: One hundred per cent correct.

MR. SIMMONS: Yeah, okay.

MR. TURPIN: Although in this situation, at the time the bid was done, the timeline wouldn't allow a mix design.

MR. SIMMONS: Right.

MR. TURPIN: So the obvious choice was for Nalcor to have to perform the mix design themselves. And that happens in instances as well.

MR. SIMMONS: And you do understand though that other people in – within the project management team would have had to consider the commercial implications of that.

MR. TURPIN: Oh without a doubt.

MR. SIMMONS: Right, yeah.

Now, did you just make this proposal once or – and someone said no, or was this something that you spent some time and effort fairly persistently promoting, that the mix design be transferred to the contractor?

MR. TURPIN: If I can remember correctly, the mix design program from start to finish –

MR. SIMMONS: Mm-hmm.

MR. TURPIN: – that Malcom had prepared and we planned out, as we moved through this, we broke it into a stage one, stage two and stage three mix design proposal. So at one point I thought, okay, we got Scott convinced, we're going to carry on with the mix design, and then it was no, only take to the end of phase 1, then turn it over to the contractor.

I believe we ended up – I believe when I left, Scott had – phase 2 was within Nalcor's design, then turn it over to the contractor.

MR. SIMMONS: Okay.

MR. TURPIN: So time was running out –

MR. SIMMONS: Right.

MR. TURPIN: – and you had no choice –

MR. SIMMONS: Mm-hmm.

MR. TURPIN: – to continue –

MR. SIMMONS: Right. So this –

MR. TURPIN: – with the Nalcor mix design.

MR. SIMMONS: So this meeting you told us about –

MR. TURPIN: I'd have – you'd have to look at the overall mix design program to see the different stages.

MR. SIMMONS: So this meeting you told us about where you and Mr. Snyder and Mr. O'Brien were in the office on Torbay Road, I guess –

MR. TURPIN: Yep.

MR. SIMMONS: – Mr. Dunstan was in England –

MR. TURPIN: UK.

MR. SIMMONS: – and the other gentleman was in –

MR. TURPIN: Australia.

MR. SIMMONS: – Australia on the phone. That wasn't the first time anyone ever heard tell of the idea of Nalcor taking over the mix design. This had been a long-running –

MR. TURPIN: There was great –

MR. SIMMONS: – topic of discussion.

MR. TURPIN: – pressure from Scott to move it over to the contractor.

MR. SIMMONS: Yeah. And –

MR. TURPIN: Yeah.

MR. SIMMONS: – but this wasn't the first time anyone had talked about this.

MR. TURPIN: Oh, definitely not.

MR. SIMMONS: By far not.

MR. TURPIN: No.

MR. SIMMONS: No. Okay.

MR. TURPIN: As a matter of fact, the first proposal by Malcolm was very aggressive, and I've – I requested that Malcolm – I said, Malcolm, let's take the edge off this a little bit. It's a little too aggressive, so let's take it down a notch so we can see if we can get Scott to come to the water and drink.

MR. SIMMONS: And aside from Mr. O'Brien, were other members of the project team involved in this discussion through this period of time?

MR. TURPIN: Greg Snyder would have been, the –

MR. SIMMONS: Yes.

MR. TURPIN: – RCC with the –

MR. SIMMONS: Ron Power?

MR. TURPIN: Sorry?

MR. SIMMONS: Ron Power.

MR. TURPIN: Ron Power would have been at a high level –

MR. SIMMONS: Mm-hmm.

MR. TURPIN: – he appreciated Mr. Dunstan's input –

MR. SIMMONS: Mm-hmm.

MR. TURPIN: – and Ron was very curious – very, very keen to the timelines of the RCC (inaudible).

MR. SIMMONS: Right. And of course Mr. O'Brien reports to Mr. Power.

MR. TURPIN: He does, yep.

MR. SIMMONS: Right.

Lance Clarke, commercial manager – would he have been involved in any these discussions? Maybe not.

MR. TURPIN: No.

MR. SIMMONS: Okay, right.

So, there would have been other people other than Mr. O'Brien who would have been aware this discussion was going on and giving it some consideration.

MR. TURPIN: Correct, yep.

MR. SIMMONS: Yeah. Okay.

Okay, thanks very much, Mr. Turpin. I don't have –

MR. TURPIN: Oh –

MR. SIMMONS: – any other questions.

MR. TURPIN: – thank you.

THE COMMISSIONER: Thank you.

Mr. King for Mr. Turpin.

MR. M. KING: I'll be brief, Commissioner. Just a couple of questions.

If I could ask to refer the witness to P-01901, please.

MR. TURPIN: We've been there before. I forget –

THE COMMISSIONER: 01901, yeah. Tab 85.

MR. TURPIN: Binder –

THE COMMISSIONER: Book 4.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MR. M. KING: And if we could go to page 8, please.

Thank you.

So, Mr. Turpin, I believe – if I understood correctly, I believe this letter – this correspondence was brought up earlier during your testimony –

MR. TURPIN: Yep.

MR. M. KING: – and this is – you would acknowledge that this is a letter from – or I guess an email from Paul Harrington.

MR. TURPIN: Correct.

MR. M. KING: And it's addressed to Scott O'Brien and yourself.

MR. TURPIN: Yes, that's correct.

MR. M. KING: Okay, I'd just like to – I'm just going to read that correspondence to you.

"I would like to acknowledge the good work that is being carried out on the North Spur and the hard work that Mark Turpin is putting in to ensure that continues. Both Gilbert and I report to the Excom, The Oversight Committee and the Leadership Team on a regular basis and we have both made specific reference to the good progress that is being made on the North Spur and the much improved productivity as compared to the MF site. We know that performance does not come easily and requires constant attention and management- We will make sure senior management know that we have an excellent team with solid leadership that is making that happen. The handling of the Jim Learning Vigil and site intrusion was very well handled and Nalcor came out of that in a very positive light. So well done in that regard also.

"Many thanks - keep up the good work. Paul."

Now, I suppose the correspondence speaks for itself, but I'll first ask you: You're familiar, of course, with this?

MR. TURPIN: Of course.

MR. M. KING: And can you take us through the circumstances under which you received this correspondence?

MR. TURPIN: I would have to guess it started from my tenure when I started at the Lower Churchill project. As the estimating coordinator and pulling the DG3 estimate together, I was then asked would I go to look after the CH007 – CH006, sorry – bulk excavation contract package. Myself and Roy – we brought Roy in. Again, this was the beginning of the integrated team. It was a very challenging environment. We were – Roy was a contract hire like myself and we had taken the work away from – or sorry, Nalcor was taking the work away from SNC, so it was a very difficult time. But we managed our way through that.

Was then after SNC went to site they had put a construction manager up on site, I believe it was that October, November. He lasted six weeks. I was asked: Mark, can you go look after this until we find a replacement? SNC's replacement showed up; he lasted a couple of months, until finally they said: Mark, can you finish the bulk excavation?

MR. M. KING: Right.

MR. TURPIN: Two point three million cubic metres of rock in 11 months is a lot of work.

We had a very competent contractor of which any one of the four joint venture partners could have pulled that job off by themselves. But it was a very difficult time with Nalcor just starting and everybody finding their ground.

MR. M. KING: Right.

MR. TURPIN: Right? That was the beginning.

Then I was asked on the – to look after the area manager for the North and South Dams. I said: No problem. I'd like to bring Roy back to manage the commercial aspect and the bid recommendation.

MR. M. KING: Right.

MR. TURPIN: We mirror-imaged it; we did it exactly the same.

MR. M. KING: Okay.

MR. TURPIN: Right? We made a bid recommendation based on sound technical information, sound commercial and removing risk from Nalcor.

MR. M. KING: Right.

MR. TURPIN: We –

MR. M. KING: Okay.

MR. TURPIN: Once that happened, I was then asked to go to the North Spur. As Ron Power said: Mark, the North Spur is in the shitter. Please, can you go over and help? I said: Sure, Ron. I went over to the North Spur in the first year. We were targeting the eight – the $16-million savings after year one.

MR. M. KING: Right.

MR. TURPIN: It was open to both, right?

MR. M. KING: Right.

MR. TURPIN: If it wasn't for the interference with regards to reaching in and dictating, that job could've been done in two years, of which Nalcor would've seen their $8-million savings. Instead, the project was shut down prematurely and the project then went into the third year.

MR. M. KING: Okay.

MR. TURPIN: So, this letter, I think, speaks for itself from Mr. Harrington, about my services.

MR. M. KING: We've also heard about the correspondence that you sent to Mr. Marshall –

MR. TURPIN: Mm-hmm.

MR. M. KING: – after you were, I guess, removed from your position.

MR. TURPIN: Correct.

MR. M. KING: And I believe that's the same exhibit. If I can refer you to page 9 – I'm sorry, page 6.

MR. TURPIN: Sure.

THE COMMISSIONER: Same exhibit.

MR. M. KING: Thank you.

And the first full paragraph on the – on that page. I'm just going to skip down four lines, and you state: "In my past 25 years I have seen it before on several projects. It takes a certain type of Management to take a project through the early stages of Feed Engineering, Preliminary Design, and Detail Design to a project sanction decision. This involves countless board room meetings, optimization sessions, review cycles and it takes a certain type of engineer to get that done and I commend the current LCP Management team for that effort."

MR. TURPIN: Yes.

MR. M. KING: Now, when somebody reads this correspondence in total, it's obvious that you raise certain concerns –

MR. TURPIN: Yes.

MR. M. KING: – throughout your experience with the project.

MR. TURPIN: Yep.

MR. M. KING: This particular excerpt that I just referred you to – can you explain to the Commission why you saw fit to make that statement?

MR. TURPIN: Exactly as it sounds.

The – I had to weigh heavily on writing this letter. I am not a disgruntled ex-employee; I did not want it to come across that way. And I truly believe that to get the project through the early stages of fee design, the LCP management team did a great job in theirs – again, there's constant boardrooms, there's constant slide decks that you're familiar with. It's not a boots-on-the-ground type of project. You're in boardrooms, you're wearing suits and ties all day.

MR. M. KING: Right.

MR. TURPIN: As you transition into site, it becomes a different project. You need boots on the ground, you need decisions. Site moves at a 100 kilometres an hour. The project office have to move at that speed as well.

MR. M. KING: Right.

MR. TURPIN: So I commend the management team for getting the project to where they did in project sanction.

MR. M. KING: Right. So even though you are raising certain concerns and in the letter you also give credit where you feel credit is due.

MR. TURPIN: Without a doubt. Yeah.

MR. M. KING: Thank you, Mr. Turpin.

Those are my questions, Commissioner. Thank you.

THE COMMISSIONER: Yes, I just – then, just before –

MR. SIMMONS: I was going to say, Commissioner –

THE COMMISSIONER: – Oh, I'm sorry.

MR. SIMMONS: – if I might just quickly in my examination of Mr. Turpin I've referred to – it's a travel expense records for March of 2015. It's actually the end of April. And so – and we'll make sure if those aren't already in the Commission's materials that those are provided to the Commission but –

THE COMMISSIONER: Okay, so –

MR. SIMMONS: – I had the dates –

THE COMMISSIONER: – the travel claim that you're referring to is the end of April?

MR. SIMMONS: April. Yes. Not March, 2015.

THE COMMISSIONER: Right.

When did you go to the North Spur?

MR. TURPIN: It would have been April, I believe. It was April.

THE COMMISSIONER: Okay.

I'll ask for redirect first of all then and I have a question I want to ask the witness.

MS. DING: Just a few questions, Commissioner.

Madam Clerk, if we can return to P-02758, please?

THE COMMISSIONER: 275 –?

MS. DING: Eight, yeah. And this is the opening bids.

THE COMMISSIONER: This is tab 18, book 2.

MS. DING: And if you can do the scroll down a little bit.

Mr. Turpin, is it usual – we see here that H. J. O'Connell has provided two numbers. One that – I won't say is non-compliant; I'll say it doesn't fit the specifications that have –

MR. TURPIN: An alternate. Yeah.

MS. DING: An alternate, yeah. They've provided an alternate as well as a base bid that does fit the specifications.

MR. TURPIN: That's correct.

MS. DING: Now Barnard-Pennecon never provided one that fit the specifications nor did they intend to. Is that correct?

MR. TURPIN: That is correct. Yeah.

MS. DING: And that's because of the – their concerns about the labour productivity?

MR. TURPIN: Yeah. Barnard was not – Barnard-Pennecon Joint Venture was not confident in the labour productivity, so they disqualified it out.

MS. DING: Okay. So they never intended to provide a bid that fit the specification.

MR. TURPIN: Correct.

MS. DING: Okay. And if we can go, Madam Clerk, to P-02766. Mr. Turpin, that's binder 2, tab 27 for you.

Now I understand Mr. Simmons referenced the bid evaluation plan and he highlighted that it was possible to consider a bid that doesn't fit specifications with the intention that there would be clarifications later on and further negotiations. Now it does say in your comments here, bidder 2 being Barnard-Pennecon that – it says: "Bidder 2 price + normalizing + reviews = consider but has the highest risk due to exclusion of Direct Labour Risk and subsequent impact on Equipment (extension of time claim). Bidder accepts Risk for Staff."

MR. TURPIN: Yup.

MS. DING: So, the decision by Nalcor, if they were to accept this bid, would have been that they were going to accept the labour risk – that would have been an owner's team decision. Is that correct?

MR. TURPIN: That's correct, yup.

MS. DING: And they would have passed that down to you – or you would have made the recommendation and they would have accepted it, if – your recommendation, if that was the case.

MR. TURPIN: Correct.

MS. DING: Okay.

But that risk wasn't contemplated when you originally did your bid specifications. Is that correct?

MR. TURPIN: No, that's right. We – we considered it too high a risk, actually, to – to take on, if – that's why we recommended bidder 3.

MS. DING: Okay. Thank you.

And just a question on the RCC mix design, Mr. Simmons spoke briefly about the financial and commercial considerations that – that would have been considered when deciding – making the decision for the responsibility for the RCC mix design.

MR. TURPIN: Mm-hmm.

MS. DING: Now you had Dr. Malcom Dunstan and Brian Forbes, both advising you. And you had mentioned they're renowned experts in the area.

MR. TURPIN: Correct. Brian Forbes was actually on the advisory committee to the entire Project so he was already part of the program.

MS. DING: Okay.

And you – the idea was that you would have two renowned experts providing advice and assisting, you mentioned, running tests on your own model of the mix designs. Is that correct?

MR. TURPIN: Yeah. And – and – and Malcolm was – was heavily engaged in the – in the execution plans from the bidders as well.

MS. DING: Okay.

MR. TURPIN: He commented on their execution plans as well, yup.

MS. DING: And in your mind, would've that – would that have mitigated a lot of the commercial risk that Nalcor would have been taking on, bringing these experts who were experts in RCC mix design?

MR. TURPIN: Yes, most definitely.

MS. DING: Okay, thank you.

That's all my questions.

MR. TURPIN: Thank you.

THE COMMISSIONER: Can I get you to go back to P-01901, which is on tab 85 in book 4.

MR. TURPIN: Tab 85, book 4.

THE COMMISSIONER: Mm-hmm.

And turn to page 6.

So I just want to follow up with a point being raised by your counsel. So am I understanding – like I said, I've read this paragraph now in full.

So am I understanding, what you're saying is that you had praise for the lower project – Lower Churchill Project management team for their effort at least up to the construction phase? Is that what you're saying there? And then after, construction it changed or …?

MR. TURPIN: I'm saying to get a project sanctioned is a – I'm trying to reference – it's very difficult work, Mr. Commissioner, to get the project into a sanctioned state.

I think I make reference to, "However, once a project enters the construction phase a different type of person/engineer is required." So –

THE COMMISSIONER: This is where you're talking about the need for quick decisions –

MR. TURPIN: Quick decisions; the project runs at 100 kilometres an hour. The project office in Torbay can't be going at 10 kilometres an hour.

THE COMMISSIONER: So is that what you were seeing?

MR. TURPIN: Pardon?

THE COMMISSIONER: Is that what you were seeing, that the project – that the site was going 100 kilometres an hour and that the –

MR. TURPIN: Yes.

THE COMMISSIONER: Okay.

MR. TURPIN: Most definitely.

THE COMMISSIONER: Okay.

All right. Thank you, Mr. Turpin.

MR. TURPIN: You're welcome.

THE COMMISSIONER: All right. That's it for the day.

I just wanna – just to give everybody a heads-up. So based upon what I'm – what we did today, I – my expectation with regards to tomorrow's evidence in the morning is that we will definitely finish in the morning, which leaves us the afternoon because ANDRITZ won't be starting 'til Friday.

So Mr. Mulcahy is back on if we can reach him, and I'm not sure if we have been able to do that or not. So we will notify everyone this evening if Mr. Mulcahy will be called in the afternoon. That's my hope right at this stage.

And then if we don't finish him tomorrow afternoon, we'll bring – hold him over 'til Friday afternoon, after ANDRITZ is finished because they're coming from away and we sort of promised that we would get them on their way on Friday, so.

All right. Good.

Adjourned 'til tomorrow morning at 9:30.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.