



COMMISSION OF INQUIRY  
RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Phase 2

Volume 27

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*Commissioner: Honourable Justice Richard LeBlanc*

Thursday

2 May 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.

All right, good morning.

Just a couple of housekeeping items. I understand from the technical crew this morning that we are having some difficulties with the internal feed. It doesn't impact the external feed but if anybody is looking – who internally in government, who would be looking on their screens, they can't have access through the screen right at the moment. They would have access through a mobile device but not their own computers as I understand it. But that is in the process of being fixed, as I understand it, at the moment.

The other thing that I did want to mention is that we have made some slight changes to the schedule that will be going out today, nothing significant. You know, it's again a reflection of trying to look at what we have on our plate in the sense of what evidence needs to be called and trying to ensure that we have sufficient time to allow appropriate examination and cross-examination.

I am going to stress to counsel today that, you know, we – that the schedule is very important here now and we have a lot to do in the next number of weeks. So with regards to, particularly cross-examination of witnesses, I would appreciate it where possible that there be as little repetition as – you know, as can happen. You know, I'm not sure what repetition does but, in the circumstances, I'm not sure it's going to help me an awful lot.

So just sort of narrow down your questions as best you can so that we can ensure that, as best as possible, we meet the schedule that is in place.

All right, having said that, Mr. Collins, I understand that you're on this morning.

**MR. COLLINS:** Thank you, Commissioner.

**THE COMMISSIONER:** Okay.

**MR. COLLINS:** I believe the next witness is Mr. Mulcahy.

**THE COMMISSIONER:** Okay.

**MR. COLLINS:** Okay?

**THE COMMISSIONER:** Mr. Mulcahy. So John Mulcahy is the first witness this morning. Did you have witness – any exhibits to enter, first of all?

**MR. COLLINS:** I do. I have – could we enter confidential Exhibit C83 and also public Exhibits P-02984 –

**THE COMMISSIONER:** Okay, could you just speak up just a bit? I'm having trouble listening – hearing you.

**MR. COLLINS:** I apologize, Commissioner.

Could we enter confidential Exhibit C83 and public Exhibits P-02984, 02967 and 02968?

**THE COMMISSIONER:** Okay.

**MR. COLLINS:** And P20 – C83 is the confidential exhibit of – from the Barnard-Pennecon evidence and P-02984 are the pages of the Paul Lemay interview transcript that we discussed entering.

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

Good, thank you.

Mr. Mulcahy, if you could stand please, Sir. And if you could advise me do you wish to be sworn or do you wish to affirm to tell the truth? Either one is equally acceptable.

**MR. MULCAHY:** Just to be sworn if that's –

**THE COMMISSIONER:** Sworn?

Just take the Bible in your right hand if you would, 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. MULCAHY:** I do.

**CLERK:** Please state your name for the record.

**MR. MULCAHY:** John Mulcahy.

**CLERK:** Thank you.

**THE COMMISSIONER:** Okay, Mr. Collins.

**MR. COLLINS:** Mr. Mulcahy, could we start with a brief overview of your education and experience?

**MR. MULCAHY:** Basically, I have a Bachelor of Science and Engineering diploma from Memorial in 1970. I got a Bachelor of Engineering from Nova Scotia Tech in 1972 and, also, I am gold seal certified by the Canadian Construction Association as a project manager in road building and heavy construction. I'm also gold seal certified as an estimator for road building and heavy construction.

I also have two certifications, I guess, from the faculty of law from the University of Windsor for ADR and advanced ADR dispute resolution. Also, I'm a graduate of senior executive management program in Ashridge college in the UK.

I also have the advanced trustee management standards, which is a designation from an international foundation in the US. And I also was given a honorary life membership to the – by the Heavy Civil Association for Newfoundland.

**MR. COLLINS:** Those are – that's your education and your credentials, but what about your work experience?

**MR. MULCAHY:** My work experience, based – I have over 50 years' experience in heavy construction, counting my summers as a student in Churchill Falls. As far as hydro construction, I think I have worked on about 13 powerhouses over my period of time.

Also, I've been involved in about four other hydro projects besides that. And, I guess, one of them is the second RCC dam done in Canada. That's in Grand Falls, Newfoundland. And I also got all kinds of marine experience, road construction, municipal construction, building construction over a 50-year period.

**MR. COLLINS:** And of those 13ish powerhouses, how many of them would be here in Newfoundland and Labrador?

**MR. MULCAHY:** I think it's about six or seven.

**MR. COLLINS:** Six or seven?

**MR. MULCAHY:** Six. I can name them all, but I (inaudible).

**MR. COLLINS:** Please do.

**MR. MULCAHY:** Paradise River was one, Upper Salmon was another, Hinds Lake was another, Cat Arm was another, Star Lake was another and Granite Canal was the last one. Also, I think it was – in Nova – that's all the Newfoundland ones, I think was six or seven and the Annapolis Tidal project and I've done, I think, it's five or six in Ontario.

**MR. COLLINS:** And on all these projects what was your role?

**MR. MULCAHY:** Well, in the – starting off in '78 in Hinds Lake I was, say, project engineer/office engineer for the project. And from that on I – in with Collovino construction, I was general manager in charge of Annapolis Tidal project and the Upper Salmon.

And from '82 on I was with McNamara. I was construction manager/operations manager for all the projects. And then from 2000 on, I was general manager and president of McNamara Construction and vice-president Carillion Canada for three projects which was: Granite Canal, and High Falls project and another one in Ontario was Long Sault.

**MR. COLLINS:** And these general manager/construction manager roles, is that the head office – the head of the head office job?

**MR. MULCAHY:** It was the – I was the – all the project – all the jobs came directly to me as the construction manager and was the head office job. I visited all the sites pretty near every week that I could, but the sites ran independently by themselves.

**MR. COLLINS:** So how did you come to be involved in the Muskrat Falls Project?

**MR. MULCAHY:** Well, the parent company, Carillion Canada, closed up. They were getting out of the construction business and they closed up McNamara here, basically, in 2005. So I stayed on and they wanted me to be – move to Ontario. So I wouldn't, so I took my severance and I retired. And I guess, I don't know, it was 2010, probably, I had a call from Ron Power asking me would I be interested in joining the Muskrat Falls Project.

And I said I was retired but, anyway, he said come in and I came in and met with him. And then, anyway, what – we didn't agree on the terms anyway, so I went home. And so he called me back again and he spoke to Paul Harrington and they gave me the money I wanted. So I – that's why I joined the project. I was there for, I think, pretty near six years, except for some time – you know, broken time.

**MR. COLLINS:** And what was your role?

**MR. MULCAHY:** I was – they called me the hydroelectric construction specialist. That was the title, but I was really, as they say, construction advisor.

**MR. COLLINS:** And – so before coming into that job, you had a fair bit of experience working as a construction manager from the head office, and –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – so based on that experience, what should be the relationship between the head office and the on-site management?

**MR. MULCAHY:** Our model – the on-site project managers – and they had project engineers under them or whatever and they were all self-contained – all the work sites. And we were there as – you know, me as the

construction manager and the president of the company at the time, we were there in an advisory capacity, and any problems they came to head office or anything else, but they operated the jobs themselves. We didn't – you know, we didn't dictate them what to do or anything else. They totally ran the job, the project managers.

**MR. COLLINS:** And how did that contrast with the division of responsibilities on the Muskrat Falls Project?

**MR. MULCAHY:** Well, from what I've seen, like, Mr. Power was the – need I say – the project manager, and Scott O'Brien was the construction manager, but – they had a site manager, but as far as I was concerned, everything had to come through the St. John's office before any decisions were made.

**MR. COLLINS:** So, there is – there was less on-site authority?

**MR. MULCAHY:** Pardon?

**MR. COLLINS:** So there was less on-site authority?

**MR. MULCAHY:** Very much less. I think every – everything up there had to be vetted through St. John's – through Scott O'Brien, really – before decisions were made. It was (inaudible). It was like there was a speed line from Muskrat Falls to St. John's.

**MR. COLLINS:** And did that arrangement work well, in your opinion?

**MR. MULCAHY:** Well, if – as far as I'm concerned there's – you've got to deal with the day-to-day decisions on the job. You can't be running back and forth to St. John's. That's my opinion, okay? That's not the way I would have operated the job.

**MR. COLLINS:** So –

**MR. MULCAHY:** And – same with – like, Hydro – like, under their other projects, they had a site manager on all the jobs, and, basically, they made all the decisions for the owner – there's their site manager and the head office. Like, the people in St. John's, we'd have a monthly meeting with senior management from

– like, myself and their senior management in St. John's. But we'd go to site, and any issues were always tabled at the time.

**MR. COLLINS:** So in the other jobs you worked, the owner's team – the on-site owner's team representative had more authority than (inaudible) –

**MR. MULCAHY:** Yes. They handled the day-to-day issues. Unless there was something critical came up, it was referred back to St. John's. I remember two or three times, we got called to meetings; we had emergency situations; like, we had flooding up in Cat Arm. We had to decide whether we were gonna break the dam or were gonna lose the main dam. So that was, say, an emergency meeting. But as far as the day-to-day operations were always handled on site.

**MR. COLLINS:** And you've mentioned Scott O'Brien. Would it be typical for someone with his level of authority and control to be on site or in the head office?

**MR. MULCAHY:** My opinion, he should have been on site.

**MR. COLLINS:** And was he there often?

**MR. MULCAHY:** I can't speak for that, but not to my knowledge. You know, the records should be able to show how often he's been there because they have a site access, and you can check that.

**MR. COLLINS:** So how important is it in running a job like this for the most senior people to have specific hydro experience?

**MR. MULCAHY:** Well, I think it's very critical to have hydro experience. You can't – I've seen instances up there where people never saw a dam being built before, never stood in a powerhouse before. And there were questions by the contractor, and it was – you know, it was sort of embarrassing, you know, to see some of the questions we're asked.

**MR. COLLINS:** And are you referring here to on-site management or ...

**MR. MULCAHY:** Yes, on-site management.

**MR. COLLINS:** So, a story we're going to hear, I expect, is that the most senior people on a project like this – the people like Ron Power or Paul Harrington – their job is basically pure project management.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And so specific hydro experience is less important for that role?

**MR. MULCAHY:** Yes, for the Paul Harrington role. But Ron Power was the general manager in charge of all construction. And he had hydro experience, but not in a construction capacity that I know.

**MR. COLLINS:** And so you think people at Ron Power's level or Scott O'Brien's level, it was important to have hydro experience there?

**MR. MULCAHY:** Oh yeah. Who were on the job, yes. You got a major project on your hands.

**MR. COLLINS:** The story you just mentioned where a contractor was talking to a member of the owner's team and saying you have no experience, was that someone a senior person?

**MR. MULCAHY:** Yes. It was the most senior person on site at the time.

**MR. COLLINS:** So there was a – it was the most senior person, but it was on site?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** Mm-hmm. Not someone from the head office?

**MR. MULCAHY:** No.

**MR. COLLINS:** Okay. So was it your sense that the people farther down the pyramid had more of the specific hydro experience that might have been needed for a job like this?

**MR. MULCAHY:** I think down through the pyramid, all the way through, there was – from – Nalcor after they took over from this – from SNC. There was a – they were really lacking experience all the way down the chain. But there was a lot of people – if you had senior

management, you could fit in all these gaps within an advisory capacity.

**MR. COLLINS:** Who on the project team did have significant experience?

**MR. MULCAHY:** The only one I know had hydro experience is Ron Power. He said it several times: he was on the Hinds Lake project, and he was on the Cat Arm Project. I was on site every week; I don't think he was on site. I'd say he probably worked in the engineering office in – from an engineering, not in a construction capacity. I know he was on site in Paradise River as the project manager or site manager, and he answered to St. John's, and as far as I know, he met a presentation about a job – I think it was in Africa he did, you know, a major job.

**MR. COLLINS:** What about the SNC-Lavalin people?

**MR. MULCAHY:** Well, at the early beginning, they brought in people that were, you know, very experienced from Hydro-Québec, like Luc Turcotte and Gervais Savard. And one of the better fellas I met was, you know, Sylvain Nantel. They had, you know, a lot of experience in hydro. And they had, you know, they had even, say, site people, had a lot of site development experience.

Like, take for example, there was one gentlemen, he was deputy project manager in Hibernia site, and also he was deputy project manager in – for the Voisey's Bay project, and also, matter of fact, I think he was the gentleman that was the manager for the contractor (inaudible) had set up Gull Island in 1975 – set up the camp and the water and the sewer. And he was let go by, you know, Nalcor people (inaudible).

**MR. COLLINS:** So we've heard that Nalcor reserved the rights to deny site access to individuals and that that – we've heard that that's typical for owners on large construction projects. And a power like that can be used more or less reasonably and more or less often. Do you have any comments on how Nalcor used that power?

**MR. MULCAHY:** See – sorry, repeat the question?

**MR. COLLINS:** So Nalcor reserved the right, we understand, to deny site access to people.

**MR. MULCAHY:** Yeah.

**MR. COLLINS:** Do you have any comments on how they exercised that power?

**MR. MULCAHY:** Well, I think it went a bit overboard in one sense because there were people on site that they were taken off site. I don't know why (inaudible) I presume it was – safety was the – everything was wrapped around the Holy Grail of safety here, right. So that was taboo, you weren't allowed to question anything if it was safety related. And that's all I can say to that.

**MR. COLLINS:** And so experienced people were removed from the site (inaudible).

**MR. MULCAHY:** Yes, very experienced people. I've never seen it before. You know, I've seen three, four engineers – I called – fired because one of them even phoned me up and he said it's the first time in 50 years I've ever been fired or let go. And not only that, you know, there was several other people that were just disappeared from site, from the office with – basically, it was on the SNC side.

**MR. COLLINS:** And was this approach of Nalcor's unusual in your experience?

**MR. MULCAHY:** Pardon?

**MR. COLLINS:** Was this approach of Nalcor's unusual in your experience?

**MR. MULCAHY:** Nalcor, in my experience, the Hydro that, you know, I dealt with for 30 years, Newfoundland Hydro, they were a hundred per cent professional and had the highest integrity and respect. They never carried on with that nonsense, far as I'm concerned, you know, firing people.

I'm going to add this comment, and probably shouldn't, but I don't know if I was weak (inaudible) but in my capacity I never fired anyone in 50 years. I, you know, I probably should've, but I didn't. I mean, if I can't – couldn't do any good for anybody, I didn't want to do anyone harm. We let people go home,

sometimes, because they're drinking, but, you know, we gave them a reprimand and we brought them back. But firing people and, you know, I – absolutes and all this kind of stuff, I never see so much of it. And it's, okay, everyone – it should – safety is paramount with every job, but you can put it on steroids, too.

**MR. COLLINS:** Do you think that emphasis on safety led to increased costs?

**MR. MULCAHY:** All this is all busy stuff, okay, safety, environment and everything else. It's all busy stuff. But it doesn't add value to the project. It's a necessary part of it. I see some stuff with safety, it was so unsafe, be honest with you.

I've got to tell you this one, when they were closing the upstream cofferdam between the two (inaudible), you were in a bathtub and they had three men on a rope towing a boat through the – between the two canals to get soundings, because they weren't allowed in the boat because they didn't have their safety policy. And it was buddy down the side of a rock slope towing a rope and the other fella towing the boat. I mean, this kind of stuff. You know, that's – it's small in relationship to the overall picture and shouldn't even be brought up, be honest with you. But that's what I've seen, you know. That's how ridiculous some of it was.

**MR. COLLINS:** So I understand you to be saying that this approach of removing people from site didn't necessarily make the project much safer?

**MR. MULCAHY:** Probably was, like – I think some of them could've been given reprimands rather than red flags and just removed from the project. Some of it probably was a hundred per cent necessary. If there was drugs involved and you were putting people at harm, his coworkers and everything else, I'd hundred per cent support.

**MR. COLLINS:** Can you think of an example – you've said that some members of the project team lacked the experience that you might've expected. Did that lack of experience have any costs to the project?

**MR. MULCAHY:** Yes, as far as I'm concerned. Yes.

**MR. COLLINS:** Can you think of any examples?

**MR. MULCAHY:** Cost involved, lack of experience? Okay, just early in the game, the site access road. The first five kilometres of road up there cost about \$3 million a kilometre, which is more expensive than any piece of road in Newfoundland, as far as I'm concerned. It – and the Outer Ring Road from Kenmount Road, with all the ramps and structures right to Logy Bay Road only cost a little less than \$3 million a kilometre. The Trans-Canada Highway – it's all there to check – it only cost about \$1.4, \$1.5 million a kilometre. And the Trans-Labrador Highway, a 1,000 kilometres right from Red Bay right to Wabush, I think it only cost \$300 million, which is about \$300,000 a kilometre. And we had five kilometres of dirt road – you can see they're now – access, which is \$3 million a kilometre, and – anyway.

And one site manager made that decision to rebuild the road instead of – there was two pinch points on the road. We used a – it was a forestry access road that was built by Department of Forestry. And the first contract that came out was to build the other 20 kilometres of road, and they upgraded it to the tune of, I'd say, \$1 million. And that spring there was – in '13 there was some soft spots. So we, the team, capped it off with rock (inaudible) a million – \$1.5 million on a reimbursable basis. And then the next year there was only two pinch points, there was a bridge to go in and some modifications where you enter the compound at the site, which could've been done for \$500,000, as far as I was concerned. But management decided to build a whole new five kilometres road to the tune of \$10 million. And if you drive the site now you can see its twin.

**MR. COLLINS:** I'd also like to ask you about P-02834, which is in binder 4 and it's tab 103.

**THE COMMISSIONER:** What tab again?

**MR. COLLINS:** Tab 103.

**MR. MULCAHY:** Binder 4?

**MR. COLLINS:** Binder 4.

**THE COMMISSIONER:** And, again, tab number?

**MR. COLLINS:** 103.

**THE COMMISSIONER:** Thank you.

**MR. MULCAHY:** What was the tab number?

**THE COMMISSIONER:** Tab number 103.

**MR. COLLINS:** 103. If we go to that –

**MR. MULCAHY:** Is it – I’m sorry, is it 113 or 103?

**MR. COLLINS:** 103.

**MR. MULCAHY:** Oh, sorry.

**MR. COLLINS:** If we go to page 4 we can see this is a draft report by Hatch on – it’s an Assessment of North Spur Construction Processes. And if we go to page – can we go to page 7, Madam Clerk?

If we go to page 7, in the middle of the page, we can see: “... the planned methods to produce the specified fills introduce an unnecessary cost premium due to the fact that there are more simpler and more typical methods available that would achieve the required quality.”

Can you tell me what the backstory to this report is?

**MR. MULCAHY:** Basically, this was – the till they were taking out of the site, they were screening every bucket full of till over – some of it was over a screener or some of it was a made up screener, but some of it – a lot of the till was good and it only needed selection. That’s to pick out the big rocks and – if a scatter rock got in a truck you could take them out in a dam, that’s what we did on all the projects. We never set up screeners on most all our sites, far as all the dams I’ve done. Very – sometimes, like in Cat Arm we had to haul the tills, I think it was 68 kilometres, and we weren’t hauling unsuitable material, but most of it was all selected in the pit with the backhoe or scalping bucket.

**MR. COLLINS:** Who asked for this report?

**MR. MULCAHY:** What happened – I went to site and I see stuff that has never been done in my 50 years of construction. They were building temporary roads for their 50 to 70 ton trucks and they were using four-inch crushed minus, which is really expensive material. I’ve never seen it. And I brought it up the site manager, at the time, Mr. Turpin, and he said the means and methods is up there. And I said: This is ridiculous, the money you’re spending here.

Also, I went to the quarry – McNamara opened that particular quarry – and it was a really bad rock quarry with chunks of rock coming out and, at the time, and I said: You’re in the wrong quarry. There’s another quarry up 2.5 kilometres or three kilometres up the road – way better rock.

And furthermore I did a cost analysis of – to develop this quarry and there was three to 3.5 metres – three to four metres of overburden it. I think they had to move, oh, 125 to 150,000 metres of OM, or overburden. You just truck it all away, which – I estimated, just to operate at that quarry would be about extra \$3 million.

And if you check – there was a cost – this was a cost-reimbursable contract and the contractor overran by – on this quarry – about \$4 million. And not only the till – and that was a concern with. And so also out of this rock quarry they were taking rock and bringing it down to a lay-down area and they had a buster. They were – it was busting rip rap 24/7 and they had two other backhoes moving rocks to the buster and everything else.

And, Sir, I’ve been operating a long while in Cat Arm. I think we did over 2.5 million metres of rock fill and rip rap – not – combined. And we never busted one rock. And I’m after doing breakwaters all over the province. And, matter of fact, when we did Cat Arm there was no such thing as a rock buster available. You had to select all the material. And I’m sure they did breakwaters in the North Atlantic.

**MR. COLLINS:** We don’t, I think, necessarily need every –

**MR. MULCAHY:** Okay.



**MR. COLLINS:** – detail.

**MR. MULCAHY:** Anyway. I'm sorry.

**MR. COLLINS:** But you raised a number of concerns about the road – about how this access road is being built and identified ways to reduce costs. Is that fair?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And you raised these – how did those concerns lead to this report?

**MR. MULCAHY:** I went to the site manager. He wouldn't listen to me at all. He said means and methods is the contractor's responsibility. Means and methods is probably the contractor's responsibility when he's on a fixed price or a unit price but this was a reimbursable contract. So I came back and I'm almost positive I went to Scott O'Brien. Okay?

And in turn he went or asked me to go to Greg Snyder, who's the manager of engineering for SNC, and he commissioned this report.

**MR. COLLINS:** And the report concluded that –

**MR. MULCAHY:** All this stuff – they agreed with what I said. And also at – the frustration – at the time, I thought this was a Hydro-Québec thing 'cause I see gold-plated design from another contract. So I even sent an email to Normand Béchard and I just – is this the norm? And he came back and he said it was never used in Hydro-Québec either.

So –

**MR. COLLINS:** So what happened to this report after?

**MR. MULCAHY:** My knowledge from Greg Snyder – it was a draft report and it wasn't allowed to be issued.

**MR. COLLINS:** Do you know why that was?

**MR. MULCAHY:** Pardon?

**MR. COLLINS:** Do you know why that was?

**MR. MULCAHY:** Ron Power wouldn't let it be issued. I don't know why, as –

**MR. COLLINS:** Do you – so you talked about the contractor's means and methods and you said that it – that you might not interfere with the contractor's means and methods with a fixed-price contract but you would with a reimbursable contract.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** Can you explain why that is?

**MR. MULCAHY:** Well, a contractor on a unit price or a fixed (inaudible) – he's responsible for all his costs. But on a unit – on a reimbursable basis, the owner pays for all the costs, so that's –

**MR. COLLINS:** So it's important to manage the costs?

**MR. MULCAHY:** – (inaudible) even the crushing of all this material I was talking about, the four inch (inaudible) and setting up crushers and hauling material 2.5 kilometres to a crusher, which I never heard tell of before.

**MR. COLLINS:** So at this point I would like to go to P-02816, which is in binder 4, tab 81. This is a letter from you, I believe, to Scott O'Brien.

Can you outline the circumstances that led to this letter?

**MR. MULCAHY:** I guess this all transpired one Friday afternoon. Mr. O'Brien came to my office and he said: We want you to cut back your hours and we want you to move out of your office to a cubicle. And – but he said, this is not immediate or anything else. And I said: Okay, I – you know. And so this was – I think it was about 3:30 or 3 o'clock Friday afternoon, and I said I'd stay on to the end of the month.

But anyway, about 4 – quarter past 4, Mr. Woolgar comes in and he says: We want you to move out of your office immediately and we're going to draw a work – a schedule of when you can come to work. And so this was – I think it was around 4:30 on a Friday afternoon. So, I just kept my cool and I just – it's all there, I mean, you – I can – just trying to remember. And so I went home the weekend and I said at this stage

in my life, I was 50 years working; I didn't need anyone to draw up a schedule of when I could come to work. So, I wrote up a letter and I was resigning as of that day. I wanted to come back to the office because I had all my personal records there.

And I wrote a letter to Mr. O'Brien resigning and I copied Ron Power, which I never gave a copy to, and I gave – I copied Gilbert Bennett, which I never gave a copy to, but I gave Mr. Harrington a copy and put it on his desk about quarter past 7 that morning and he was in the office. So, I was in my office packing up my – I guess you'd call it a banker's box, my own private records. And he came in, and basically he was visibly upset.

And he said: John, please don't do anything rash. Give me time to deal with this. This is not – I don't want you to leave, or something to that effect. Please give me time. Anyway, and he came back again; he said I'm going to deal with this. You know, I was just continuing with – I think he came back the second time.

Anyway, so Scott O'Brien came in around 8:30, 9 o'clock and he came in. He (inaudible) sat down in my chair: John, I'm so apologetic; I should never have done that and, you know, and please accept my apology. You're my coach or my mentor. Please stay with us; we want you to stay and please consider it. And you can stay on the project, I assure you, as long as you want. You decide when you want to leave.

And so, I – to a point I didn't know whether to suck water or go on home. So anyway, I accepted his apology and I stayed, okay. That's the end of it. But I'm going to finish now with the rest of it if you want me to.

**MR. COLLINS:** Please.

**MR. MULCAHY:** And – but, from that day afterwards, 'til one year, okay, that man hardly spoke to me. He gave me the silent treatment. I asked him two or three times could I speak to him. He never engaged; basically he engaged me in very little. And –

**MR. COLLINS:** Are you speaking about Mr. O'Brien?

**MR. MULCAHY:** He – yes.

So, he engaged me in very little. It was the silent treatment, which I'd seen before, okay. I'm going to – like six months before that, Mark Turpin – for one year – for six months that man passed him by in the corridor every day; he sat in his office and never spoke one word to him.

**MR. COLLINS:** This is again – this is Scott O'Brien passed Mr. Turpin.

**MR. MULCAHY:** (Inaudible.) Yes.

And I felt so bad for Mr. Turpin because he was sitting outside Mr. O'Brien's office. Honestly, I went over every day, every week and I was – I took him to lunch. At least three times a week we went out and I never even spoke about the job; I tried to get his attention away from the job.

And, anyway, that went on for five, six months. And I found out afterwards it's only – the reason why because Mr. Turpin went to Ron Power and Jason Kean about it, because that was brought up. I seen it somewhere. And, anyway, then he did the same treatment to me and never engaged me very much. So – and that's the status on that letter.

After that, I guess it was below his status in life to apologize or anything else. And I even went to his executive assistant and I said: Can I – ask Scott to see me, please. I said: This behaviour is juvenile. I mean we can't – grown men can't behave like this. I mean just think of the bigger picture.

Anyway, that never came and I only saw – after that, I was engaged very little. And I guess it was the end of that year, one morning Ron Power came in to my office and he said we're kicking Astaldi off the job and I'm going up to take it over. Okay. And so with the meeting called with senior management that afternoon, and Ron brought up that he was going up to take over the job and for Nalcor to finish the construction.

And I don't know who it was but it was – at the meeting, I know there was – Pat Hussey was there, Ron was there and Scott O'Brien, Lance Clarke and Paul. And one of them, either Lance

or Paul, asked me: John, what's your opinion? And I gave my opinion. I said owners are not contractors. And I had with me an overhead checklist, okay, of indirects. And I said, Sir, to run this job you need a minimum of a hundred staff, indirect people. And the comment to me was, okay, that – we can hire Astaldi's but, anyway, it died there, okay?

But in a couple of weeks after that, Mr. Power showed up in my office and he said: John, I want you to finish up in a couple of weeks time. This was – there's another letter there. It's approximately a year later than that.

**MR. COLLINS:** I believe this is –

**MR. MULCAHY:** So, anyway, I –

**MR. COLLINS:** – P-02814.

**MR. MULCAHY:** What?

**MR. COLLINS:** The other letter is P-2892.

**MR. MULCAHY:** Anyway, so after – and I –

**MR. COLLINS:** And it's tab 87.

**THE COMMISSIONER:** Okay, so the second letter that you're talking about after that, if you look at tab 87.

**MR. MULCAHY:** Anyway, I'm just going by memory now, okay?

So he asked me to finish up and I said, yes, Sir. But, anyway, before he asked me he said: There's a gentleman on site that can do anything I can do now, okay? And I said: Sir – okay, I went, I'll turn over all the documents.

The following week I went to site, I turned over my 08 file to the man that was in charge, Jeff Reid. And it was on my 08 – 09 file which was related to the RCC dam, I was turning over to Jason O'Brien. But Jason O'Brien is one of the younger people who likes everything on computer, he didn't want a hard copy like an old fart like me, right?

And so he xeroxed all the copies – or scanned all the copies, he went through my computer and I turned over all the files to him. So I came back

and I was finishing up the following week, which was the two-week period. During that time, they – there was a meeting, apparently in Voisey's, so they asked me to extend my stay, would I go to Voisey with them? I guess they wanted someone with construction experience to sit down with them, so I agreed to do that.

And then we came back –

**MR. COLLINS:** So who is they here?

**MR. MULCAHY:** What – we came back, Scott O'Brien. The other guy was Tony Chislett –

**MR. COLLINS:** They asked you to go to Voisey's –

**MR. MULCAHY:** Scott O'Brien or – I think Tony Chislett came to ask me would I go to – or Scott O'Brien came in and would I go to – Bozeman with 'em – not to Voisey, Bozeman, which I did. And we came back and one thing I agreed before I finished up, Tony Chislett wanted me to go to site and show him around and give him my take – lay of the land.

So this was in 2017, it was the Friday before Labour Day, okay, because I resigned on Labour Day – or not – July 1, I'm sorry. And about dinnertime on Friday, Scott O'Brien came to my office and he said: John, I've spoken to – Gilbert wants you to stay and Paul wants you to stay, but before Ron will agree for you to stay, you have to move out of your office right away and you have to go to site for two or three days – or three or four days a week. So I said I agreed but Scott, I said, I got to clean out my office, so I said I'll do that on Tuesday because we're going to site now.

He said: John, I want you to go to site on Tuesday. I said: Scott, I just talked to Tony Chislett this morning and he – I asked him to go up on Tuesday and he couldn't make it, he only could go Wednesday. And, anyway, between the jigs and the reels, he said: John, I want you to go to site – this is Scott O'Brien – I want you to go to site when I say I want you to go to site.

So, anyway, I didn't get in – I went to site Tuesday with the agreement that I'd come back on Friday to clean out my office. Anyway, I was on site for three days and I got a call from the

office that Scott O'Brien instruct them on Tuesday morning to clean out my office. They took all my records. I had 40 years of records, all hard copy that I had collected. It was really a database that was crucial to anyone in construction and they were put out in a cubicle right next to the washroom. And I came back and I saw the mess that was there, it was all thrown out, and I just – it took me five hours to sort out me papers.

And, Mr. Harrington, I went over to his office to tell him. He wasn't in his office so I went in to see Gilbert and I said: Gilbert, I'm out of here, okay. And he said: John, what can I do? And I said: Gilbert, you can't do anything and I don't want you to do anything. So I just left that office and I went home at my own peril. After that I could have had me severance but I just left it. I didn't need that kind of stuff at this stage in my life. I don't think after 50 years, you know, you need to be – anyone needs to be treated like it.

And I don't need to be up here – I didn't even know these letters were going to be here today, okay, and I'm sorry for that. And I left, okay, and I – to be honest with you, I wrote Paul Harrington. It wasn't for me because there were some people on site, one junior engineer who was the best engineer I had – you know, not I had, the project had and he was conscientious. And I heard Scott O'Brien saying to him, this fellow got to go because he's speaking to Gilbert – he's got to go, he can't go speaking to Gilbert. This is the kind of –

**MR. COLLINS:** So you're saying that Mr. O'Brien – saying that a junior engineer shouldn't be talking to Gilbert Bennett?

**MR. MULCAHY:** Wasn't supposed to be – you can't be talking to Gilbert Bennett. And I was there, so I even went to site and I told the young fellow, okay, excuse the language, I said: Pretend you got short taken or something if Gilbert comes along (inaudible). And I phoned his supervisor, Jeff Reid, okay, and I said: Jeff, this is the kind of stuff that's going on b'y, I mean, you know.

Anyway, so the only reason I wrote that letter – was not for me; I was retired it didn't affect me, Sir – was for these young people. And all I can say, that's the story of the two letters. And I –

be honest with you – and I'm going to say it now or at the end of it, I didn't come here voluntarily, I didn't want to come here. I just want – when you retire after 50 years you should have a bit of peace and quiet, retire in a bit of dignity and a bit of privacy. That's the way I take it.

And I didn't know. I didn't come here to – you know, for a smear campaign or mudslinging campaign. I didn't. I didn't write any letters to the press or, you know, any anonymous letters or anyone – I never wrote anyone afterwards.

**MR. COLLINS:** The next area I have a question for you about is CH0008, which is –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** –the North Spur stabilization contract.

**MR. MULCAHY:** Yes

**MR. COLLINS:** So a few weeks ago, Mark Turpin testified about his view that Gilbert was the contractor for CH0008, should have been allowed to work during the winter of 2015, 2016.

Did you hear any of that evidence or are you familiar with his views on that issue?

**MR. MULCAHY:** I'm totally familiar with it because I – I totally, a hundred per cent disagree with it because, like I've been in construction and for 50 years, I never see a pay item for pushing snow or, you know, moving snow yet. And, I took – I even took their cost records over that whole period of time, you'll see my handwritten notes, and I showed in November and December that their indirects, which was added no value, were after going up twice as much as during the months of June, July and August, production months.

And also, I did a cost to complete on the job in November – December. And Mark Turpin was saying they were going to save \$26 million there. And I showed them that, as far as I'm concerned, the contract was going to come in at exactly what it was budgeted \$160 million, and it came in at \$159 million. So that was two years later, it came in at that, a year and a half.

**MR. COLLINS:** So if I understand what you're saying, you disagreed with Mr. Turpin's assessment of his winter work –

**MR. MULCAHY:** I totally disagreed. And I went to Scott O'Brien about it and he totally supported me on this.

**MR. COLLINS:** And the reasoning is that the winter work would be more expensive than it was worth.

**MR. MULCAHY:** Non-productive, as far as I'm concerned, way non-productive. I mean it was – it wouldn't have added to the job at all.

**MR. COLLINS:** And when you say you went to Scott O'Brien, there's an exhibit P-02914, which is at tab 96 of binder 4, and the – is – does this recount your discussion with Mr. O'Brien?

It says: "Gilbert called me in when he came back to the South Side and I stated" – that – "there was no valid reason from a schedule or commercial aspect to work the winter."

**MR. MULCAHY:** Yeah. That basically confirms it.

**MR. COLLINS:** Thank you.

I understand you did an estimate for the structural concrete on the powerhouse, intake and spillway.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And, Commissioner, because we've looked at some detail – in some detail at Mr. Lemay's estimate for the powerhouse, intake and spillway, I think it's important to give some background about Mr. Mulcahy's estimate.

Do you remember who asked you to do the estimate?

**MR. MULCAHY:** The best – as far as I know, is Mark Turpin asked me to do it 'cause he was handling the – you know, the cost estimates for the project.

**MR. COLLINS:** Do you remember why?

**MR. MULCAHY:** I guess it was just a spot check or just a check estimate. It wasn't the – a DG3 estimate for the project or anything, it was just a spot-check estimate – just from, I guess, my past experience.

**MR. COLLINS:** And do you remember when you did the estimate? This is before DG3.

**MR. MULCAHY:** Oh, yes. Yes. The dates are on the – should be on the sheet.

**MR. COLLINS:** So did you collaborate with SNC-Lavalin's estimating team?

**MR. MULCAHY:** No.

**MR. COLLINS:** No, you didn't.

**MR. MULCAHY:** I – they brought in Jim Daubersmith and I think Mike Pauletto was in, but Jim Daubersmith ran the estimate. The only thing I got from SNC was the take-off of quantities so that I could use. And I did my – totally my own estimate.

**MR. COLLINS:** And how would your method in putting this estimate together compare to the method –

**MR. MULCAHY:** Well, I'm –

**MR. COLLINS:** – you would have used at McNamara?

**MR. MULCAHY:** – well, it's the same method, exactly the same. I used the same crews, same production rates and I upped them here and – as of all I've used on all the powerhouses that I have been involved in.

**MR. COLLINS:** And so when you say you used the same crews, what I understand is that you sketched out, from your experience, the crews you thought you would need and how much they could accomplish –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – per –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – hour.

**MR. MULCAHY:** The crew – I got six carpenters, two labourers, general foreman, the crane (inaudible), yeah.

**MR. COLLINS:** And then you worked outwards from there to –

**MR. MULCAHY:** Yes. As –

**MR. COLLINS:** – (inaudible).

**MR. MULCAHY:** – from the bottom up, I worked.

**MR. COLLINS:** And it was just yourself, no team.

**MR. MULCAHY:** No team at all, no.

And just the cost records I had 'cause the last job I bid, I think, I – we bid Wuskwatim out in – that was the – and I updated the – prorated the labour rates that I knew was going for this project. I don't think the SPO was in place at the time, so, you know.

**MR. COLLINS:** And, then when you say the SPO, you mean the –?

**MR. MULCAHY:** That's the special project order.

**MR. COLLINS:** The collective agreement?

**MR. MULCAHY:** That's – it's a site agreement of the – the union agreement, say for the site.

**MR. COLLINS:** Now I understand when you produced this estimate, you used plug prices for many parameters?

**MR. MULCAHY:** (Inaudible.)

**MR. COLLINS:** Can you explain what that is?

**MR. MULCAHY:** See, I didn't have (inaudible) project – no estimating team. Normally for an estimating team, you need five or six people, you need your equipment manager to locate your equipment, whatever equipment you need, and the transportation, the number of loads. You need your purchasing department to get all your, say your formwork – prefab

formwork. I use that just from basic standards that I had in my own database.

**MR. COLLINS:** To – so normally, you'd have a team to round out all – various items?

**MR. MULCAHY:** Oh, yes. Everyone would – we'd do a take-off on all our quantities. There's other engineers that'd be doing, say concrete, they'd be checking quantities, they'd be checking this, checking rebars. Someone else would be calling all the subcontractors, there's purchasing department would be getting sub-prices.

**MR. COLLINS:** And where you would've had someone check or investigate something but you didn't have someone to do that, you took a number from your experience and that your (inaudible) price.

**MR. MULCAHY:** Past experience and the past database I had.

**MR. COLLINS:** So going back to how you started with your crews and you worked forward to how much concrete you could place per hour. When all was said and done, how many hours of direct craft labour did it take per hour – per cubic metre of concrete?

**MR. MULCAHY:** 5.5 man-hours I had, which – you know, and that's without the concrete supply. I just took a plug price for the concrete supply at \$250 a cubic metre.

**MR. COLLINS:** It's 5.5 hours and that's fabricating and erecting and –

**MR. MULCAHY:** (Inaudible.)

**MR. COLLINS:** – stripping the formwork –

**MR. MULCAHY:** (Inaudible.)

**MR. COLLINS:** – and pouring the concrete.

**MR. MULCAHY:** That's direct cost, that's not indirects.

**MR. COLLINS:** And it doesn't include batching of the concrete?

**MR. MULCAHY:** No.

**MR. COLLINS:** And it doesn't include hauling the concrete?

**MR. MULCAHY:** No, no. that's all under concrete supply.

**MR. COLLINS:** And that's – this is for the powerhouse and the intake alone, not the spillway?

**MR. MULCAHY:** Pardon?

**MR. COLLINS:** This is for the powerhouse and the intake, not the spillway?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** So to put that in context, Commissioner, in Paul Lemay's December 8 benchmarking, which I won't bring you there right now, but it's Exhibit 02644 – P-02644 on page 14. His comparable estimate is 3.85 direct labour hours.

**THE COMMISSIONER:** I'm sorry, (inaudible).

**MR. COLLINS:** His comparable estimate is 3.85 labour hours per cubic metre of concrete, compared to Mr. Mulcahy's 5.5.

So, Mr. Mulcahy, how does your 5.5 match your previous – your experience on previous jobs in this province?

**MR. MULCAHY:** It's probably – may be a little bit higher because of the site location, but it's – (inaudible) – I've taken that. I had records for all our powerhouses that we had actual records of, say, the man-hours per cubic metre of formwork – square metre of formwork and placing concrete.

**MR. COLLINS:** And in your mind, does it fully reflect the remote location, the climate, the schedule –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – the union terms?

**MR. MULCAHY:** Well, I think I – after the SPO added on, I think I – rather than – I put 80 – or 85 per cent availability – I put availability.

Rather than get 10 hours a day out of a man, I used eight, 8½. But –

**MR. COLLINS:** But when you saw the collective agreement, you lowered your estimate of productivity?

**MR. MULCAHY:** No, I think I put it in that one. I think you'll see it on the estimate. I had 80 per cent. I had it in that for that particular project.

**MR. COLLINS:** And that was before you saw the collective agreement you –

**MR. MULCAHY:** Yeah.

**MR. COLLINS:** So there was no change after you saw it?

**MR. MULCAHY:** There was a change – I never changed the estimate after the SPO. That was the actual estimate I put in at the time. I – after the SPO came out, I never changed it. Even when SNC did their original estimate, they didn't have an SPO. They had to take a certain rate for the hourly rate, to my knowledge.

**MR. COLLINS:** And so does the estimate also – does your estimate also reflect winter work and working –

**MR. MULCAHY:** Yes –

**MR. COLLINS:** – under a –

**MR. MULCAHY:** – but –

**MR. COLLINS:** – temporary enclosure?

**MR. MULCAHY:** – winter work – the estimate – winter work is covered by a separate item: heating and hoarding and all that kind of stuff. That will go into my indirect costs to cover the winter work operations, to take it under cover.

**MR. COLLINS:** So you assumed that there would be a temporary enclosure?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** Yeah. And so if you estimated 5.5 – labour productivity is one of the significant inputs into this estimate. Is that right?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** So if you assumed 5.5 hours per cubic metre, and Mr. Lemay assumes 3.85 hours, how is it – I understand your estimates came out to be pretty similar.

**MR. MULCAHY:** I never saw their – I can't see their estimate. You'd have to go down – if they're similar, I guess it'd be on the indirect basis. That's where the – I'd say the direct costs should be probably the same. I don't – I can't speak for it. I know in my estimate on re-steel, which is – which has nothing to do with the formwork or concrete, (inaudible) – way higher.

**MR. COLLINS:** So you don't know how it is that his estimate comes in –

**MR. MULCAHY:** I don't know. My estimate is there. Anyone can – you can go down through it, and you can check the lines if you want to. Line for line item, it's all there.

**MR. COLLINS:** Okay.

**MR. MULCAHY:** And as far as I know, there's another – Nalcor commissioned another guy, Paul Hewitt, to come in and do an estimate, and he did an independent estimate besides. And my estimate was right on with his. I think I was a little bit lower on the powerhouse and I was higher on the spillway.

**MR. COLLINS:** So, Commissioner, my next area of questioning is focusing – and the main area of questioning is focusing on the bid evaluation for contract CH0009, which is the package for the North and South Dams. And this contract was eventually awarded to Barnard-Pennecon.

And I believe we've already heard something about this process from Mark Turpin, and we'll go into more detail today with Mr. Mulcahy and later, again, with Mr. McClintock.

Mr. Mulcahy, what was your role in the bid evaluation process?

**MR. MULCAHY:** On the bid evaluation – I was a part of the technical team for the bid evaluation.

**MR. COLLINS:** So, if we go to tab 79, P-01870 –

**MR. MULCAHY:** Which –

**MR. COLLINS:** Which is binder 4. We have –

**THE COMMISSIONER:** Tab 79.

**MR. COLLINS:** Tab 79.

This is the Bid Evaluation and Award Recommendation, the final one from ...

And on page 6, it says that you're on the commercial team as well as on the technical team.

**MR. MULCAHY:** The only commercial aspect I did with – as far as that is concerned – Steve Goulding did a summary. There was 150-odd bid items, and there were so many iterations coming back and forth. I just did a bottom-line summary – you can see it – just to keep a running total. Even – I had to go to Mr. Goulding. I said, this is confusing because there's no dates or times on it – on all this. So at the last of it, I said put a date and time so I just could get – just show it to somebody.

But as far as – I had absolutely zero authority to give any direction or make any decisions or anything else commercially. And to say I was involved in commercial, I – maybe to a limited extent, but very limited.

**MR. COLLINS:** You were primarily involved in the technical information.

**MR. MULCAHY:** All the technical – any technical analysis I was involved with or any – Greg Snyder, I made sure he was always with me.

**MR. COLLINS:** And my understanding is that the technical evaluation is focused on the bidder's execution plan –

**MR. MULCAHY:** Yes, their –

**MR. COLLINS:** – their scheduled plan –

**MR. MULCAHY:** Yes.



**MR. COLLINS:** – and the team they are planning to bring.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** So, Commissioner, as we – as I'm sure you know, contract CH0009 is the contract for two permanent structures. There's the North Dam, which is the main dam of the project, running – which – it runs from the rocky knoll to the spillway, and it's made of roller-compacted concrete. And there's the South Dam, which is the smaller earthfill dam on the other side of the powerhouse. That's right, Mr. Mulcahy?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And before starting the North Dam – this will become important later, I believe – the contractor first has to build temporary cofferdams upstream and downstream of the work site?

**MR. MULCAHY:** No, no, the two – the – oh yes, okay, I'm sorry. Okay.

**MR. COLLINS:** That's right?

**MR. MULCAHY:** There's two grinds upstream. Like, they're saying – there are two rock cofferdams, and there's a small cofferdam downstream, but that's – you know –

**MR. COLLINS:** These are both rock cofferdams?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And these are – the purpose of the – the dams are necessary to divert the river through the spillway. You have to divert the river through the spillway before you can start building the North Dam. That's right, Mr. Mulcahy?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And as I understand it, you can't start that until the spillway is complete.

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

**MR. COLLINS:** And – so one of the background factors is that by this point, the date for river diversion had already – had slipped from the original planned days. Is that –?

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

**MR. COLLINS:** And –

**MR. MULCAHY:** 'Cause the spillway wasn't ready for diversion.

**MR. COLLINS:** And as I understand it, the schedule for river diversion is quite tight. You have to start building the cofferdams after the spring flood.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And you need to finish them that summer.

**MR. MULCAHY:** That fall.

**MR. COLLINS:** Fall?

**MR. MULCAHY:** Yup.

**MR. COLLINS:** So these will become significant factors later in discussing this bid.

And one other – another piece of background here. In 2012, I understand you produced a check estimate –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – for these dams? Similar to what you did for CH0007. And so your estimate – what did you estimate that these would cost?

**MR. MULCAHY:** Two hundred million, approximately.

**MR. COLLINS:** And you prepared that in the same way –

**MR. MULCAHY:** Same way.

**MR. COLLINS:** Okay.

So in the fall of 2014 when the first bids come in, my understanding is that they're much higher than your estimate.

**MR. MULCAHY:** They were. One bid was, I guess – it's in the bid evaluation there. One was \$380 million; the other one was 320. And there was a bid – compliant bid from another bidder at 340, but he put an alternative in – the 308. So basically – and then there were some – that was the original bids. And to my knowledge, they were all over budget. I don't know what the DG3 estimate was.

**MR. COLLINS:** But in any case, the bids come in 50 per cent above your –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – original estimate.

Now, we've also heard from Mr. Turpin that he and Roy Lewis did a bid evaluation based on those initial bids, and that they recommended that the contract go to H. J. O'Connell and Dragados, who are one of the bidders. Were you involved in that initial recommendation?

**MR. MULCAHY:** I've never seen the recommendation. I know in that fall of 2014 we did make a site visit to Bozeman – Roy Lewis, Mark Turpin, myself – but as far as the evaluation or seen it, I've – I can't recall ever seeing.

**MR. COLLINS:** You never saw it. Did you hear that one was made? Was that your understanding –

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

**MR. COLLINS:** – at the time?

**MR. MULCAHY:** To answer that I really don't know, but I thought I heard Mark saying there was something. I can't – I'm not sure. I shouldn't say, I don't know.

**MR. COLLINS:** Absolutely. And – but regardless, over the spring, conversations with the bidders continued, is that right?

**MR. MULCAHY:** Pardon?

**MR. COLLINS:** Regardless, conversations with the bidders continued that spring?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And I understand that when Mr. Turpin left, he was replaced by Ken McClintock?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** Can you tell me anything about Mr. McClintock?

**MR. MULCAHY:** Well, McClintock was an engineer from Nova Scotia who came over – he took over the commercial, he took over the whole bid evaluation team.

**MR. COLLINS:** And now, Commissioner, we don't need to go in a lot of detail over the various developments that happened in the spring, but there are a few bigger issues that are more significant for Mr. Mulcahy's evidence and Mr. McClintock's and some of them are a little technical.

And the first point is the way in which the contractors dealt with labour productivity. Mr. Mulcahy, can you tell us about how Barnard-Pennecon and H. J. O'Connell dealt with labour productivity risk?

**MR. MULCAHY:** Barnard – well, H. J. O'Connell-Dragados, they had a unit price lump sum contract and they assumed all productivity risk. Whereas Bernard-Pennecon did not accept any risk on labour, there was – and at – no risk on labour; labour was a hundred per cent reimbursable.

**MR. COLLINS:** My understanding – and if we go to tab 61, which is P-02798.

**MR. MULCAHY:** Sixty-one?

**MR. COLLINS:** It's in binder 3.

**MR. MULCAHY:** I should clarify that – a hundred per cent labour reimbursable on craft labour.

**MR. COLLINS:** So I believe if we go to page 2 we'll see Barnard-Pennecon's June 30 proposal. And it says that there's a risk reward target for overrunning or –

**MR. MULCAHY:** Which – I'm sorry; I must be in the wrong –

**MR. COLLINS:** Tab 61.

**MR. MULCAHY:** Sixteen?

**MR. COLLINS:** Sixty-one, binder 3.

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

**MR. COLLINS:** Oh, I'm sorry. So if we scroll down a bit, Madam Clerk, they describe an at-risk fee of \$4.3 million. And it indicates above, the BPJV fee will be paid with a 50/50 risk reward for under running or overrunning the craft labour target price until the fee is exhausted. So does that mean that Barnard-Pennecon took on some of labour productivity risk?

**MR. MULCAHY:** Well, right in this respect, yes, they take \$4 million on, but this is not the right – this is not the final draft.

**MR. COLLINS:** No.

**MR. MULCAHY:** Okay.

**MR. COLLINS:** It isn't. It – but it puts it right on the cover.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** But – so they took on \$4 million of labour productivity risk.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** But beyond that –

**MR. MULCAHY:** Everything was 100 per cent reimbursed.

**MR. COLLINS:** And after that they lost that \$4 million, would the profits still be – would the contract still be profitable for them?

**MR. MULCAHY:** Well, at \$4 million on \$300 million is – it's only 1-point-something per cent, right? And I don't think any contractor bidding today is going to profit at that. And also, anyway, there's – they had \$150 million in indirect costs, so a lot of stuff could be buried up. I've been a contractor; I know where to put the profit to.

**MR. COLLINS:** So, essentially, we have a hard money bid from H. J. O'Connell. Is that fair?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And a contract from Barnard-Pennecon that is mostly reimbursable on labour.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And was labour productivity risk a significant factor on this contract?

**MR. MULCAHY:** In my mind, yes, because the contract before that – Astaldi, the labour productivity was going off the Richter scale and I guess this is one of the reasons, I think, Barnard-Pennecon had stated that they weren't going to take any labour productivity risk because of the – what they've seen on the previous contract.

**MR. COLLINS:** So I understand that – and I think we'll hear that – roller-compacted concrete which, as I understand it, you dump it out with dump trucks and then you flatten it out with bulldozers.

**MR. MULCAHY:** (Inaudible) yeah.

**MR. COLLINS:** It's a much more equipment-heavy process –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – than conventional concrete (inaudible).

**MR. MULCAHY:** Yeah.

**MR. COLLINS:** So we might hear the argument that this – the labour is such a smaller part of this contract that labour productivity is just not a big deal.

**MR. MULCAHY:** Well, and – but it's not as simple as that. You have formwork on both sides of your dam, whether it's stepped or slope faced, so there's – the labour risk is more labour intensive on the roller-compacted dam than an earth-filled dam – a lot more labour intensive.

**MR. COLLINS:** Okay.

So the second point I'd like to explore is something you just mentioned, you see. You talked about the sloped face. If we go – I think if we go to P-02773, which is tab 36 and it's in binder 2, and if we go to page 7, we see a March 6 proposal from Barnard-Pennecon. And, again, this is not the final proposal, but I understand that this – these elements are true of the final proposal.

And under point one, they refer to how they can reduce the cost of the project by \$9.4 million using, among other things, battered DS slope versus stepped. Can you explain what that means?

**MR. MULCAHY:** Well, stepped is the same as going up the steps of a stairs, basically, and a battered slope is just a slope on a 45-degree angle.

**MR. COLLINS:** So as I understand it with a battered – with a stepped slope, which is traditional –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – you use horizontal concrete formwork –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – which you move.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** But with a battered slope you use a sliding – a sliding diagonal –

**MR. MULCAHY:** Form all the way up on 45-degree angle.

**MR. COLLINS:** And so the battered face, is that a common technique?

**MR. MULCAHY:** I only can speak from my experience, okay?

In – the first RCC dam done in Canada was done in Lac Robertson in Quebec. And, matter of fact, McNamara, in joint venture with O'Connell – we were the low bidder but as, I guess, Hydro-Québec didn't see our bid to be – but the second RCC dam done in Canada was done in Grand

Falls, Newfoundland and McNamara did that. Now, it was only (inaudible) and all these two dams were all step-faced – a downstream step-faced and also I did one out in 2001 out in Keenleyside BC; it was 60,000 metres. It was all step-faced.

And during the bid process, Barnard had done one down in the States – Saluda Dam, if I recall. And that was step-faced. And there was another dam down in the States that there was – I looked up – the only two I looked up was the same quantity of concrete; they gave me the prices and it was all down step-faced.

So, furthermore, this stepped-face design is a tried and true and proven method. That's a design that has stood the test of time. So Grand Falls out – is out there now, the same as the day it was put there 25 years ago. And I understand the same from Lac Robertson. And during the bid stage I – people didn't know about RCC dams so I asked Mark and he got a – some lady to – who – one of the engineering ladies to go out and she took pictures of Grand Falls and did a slide show to the – our team in St. John's.

**MR. COLLINS:** Who –

**MR. MULCAHY:** And far as the downstream face is – to my knowledge it was – to my knowledge – now, it wasn't done in North America before – it was – far as I'm concerned it was a prototype and –

**MR. COLLINS:** We have an established technology against a much less conventional technology.

**MR. MULCAHY:** Not in Canada, anyway, and as far as I know, the US. I know it's been used other parts of the world but it's a different technique altogether.

**MR. COLLINS:** And was the battered face – the battered face was supposed to reduce the contract price.

**MR. MULCAHY:** Well, then, basically, engineering looked at it, and this is an engineering issue. This is a design issue, okay? This is a complete new design and they have to sign off on that from an engineering point of view. It's not only a construction methodology

issue; it's a design issue. And also by using the battered face – that 9.4 million – when they checked their design they could reduce the amount of concrete in the slip bucket, which – they gave me the amount of concrete and I priced it up to be \$2 million.

**MR. COLLINS:** So they've reduced their bid by 11 million –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – based on the assumption that they could use this –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – untested –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – (inaudible) less conventional technology. And did it work?

**MR. MULCAHY:** No.

Basically, the bid was accepted on the condition – it was accepted, was – bid was signed, but they had to prove that this battered face was done on a trial-demonstration section. And I don't want to confuse it, but they did it once and it didn't work at all. They did it the second time – I wasn't there for the second one – and it didn't work. But I know they had to go back to the stepped face on the downstream side.

**MR. COLLINS:** So they got the credit. When you were scoring the bids, they got the credit for this technique.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** So how would an owner usually treat a bid like this, which is conditional on an untested technique working and being accepted?

**MR. MULCAHY:** How would an owner – I can't speak for it, but –

**MR. COLLINS:** Okay.

**MR. MULCAHY:** – if I was the owner, if I had a tried and true, proven design that stood the test

of time and that's what was designed in the original documents and I had a guaranteed price, I'm not going to take something that's not proven and have a – no limit on labour. I'm not gonna take that chance. I wouldn't have. I was – I'm not an owner. I'm only speaking for myself – if I were the owner.

**MR. COLLINS:** So, the third point – I think it's important to explore, which I think we will hear more about later – is the two bidders' approaches to RCC placement. And as I understand it, the most common method to place roller-compacted concrete is to roll it out in one long line.

**MR. MULCAHY:** Yes, for –

**MR. COLLINS:** For –

**MR. MULCAHY:** – horizontal placement.

**MR. COLLINS:** – horizontal.

And as I understand it, neither bidder was proposing to use the horizontal placement method.

**MR. MULCAHY:** Yes. H. J. O'Connell were proposing to use the horizontal but they had a split level – they split the dam in two.

**MR. COLLINS:** Okay.

**MR. MULCAHY:** That's my understanding.

**MR. COLLINS:** I –

**MR. MULCAHY:** That's the split-level method and they – but they were using horizontal layers.

**MR. COLLINS:** And so they were proposing the split-level version of a horizontal placement.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And Barnard-Pennecon was proposing –

**MR. MULCAHY:** The slope-layer method which, basically, before you get the RC to set up, you have – it's all according to how much retarder you put in the mix, right, and you have 17 to 21 hours or something. But using the

slope-layer method, you have a lot less area open to dry out.

**MR. COLLINS:** Without getting too far into the details, in your opinion, is one of those methods better than the other?

**MR. MULCAHY:** No, they're – far as – they're both acceptable methods.

**MR. COLLINS:** And, so is – as I understand it, was the slope-layer method successful?

**MR. MULCAHY:** The dam is built. It had to be successful.

**MR. COLLINS:** Your understanding is it was (inaudible).

**MR. MULCAHY:** I wasn't there for the –

**MR. COLLINS:** Right.

**MR. MULCAHY:** – yeah.

**MR. COLLINS:** That's fair.

So, Commissioner, I think this is a convenient time – might – could be a convenient time to take our break.

I don't know.

**THE COMMISSIONER:** Okay.

It's 10 to 11. We could go a little bit longer if you wish.

**MR. COLLINS:** We can go a little longer, absolutely.

**THE COMMISSIONER:** Okay.

Are you okay to go for another 10 minutes or are you –

**MR. MULCAHY:** No, I'm –

**THE COMMISSIONER:** Do you wish to go now, or –?

**MR. MULCAHY:** Yes, if I could.

**THE COMMISSIONER:** Okay.

Well, let's take our break then for 10 minutes now then.

Okay.

**CLERK:** All rise.

**Recess**

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** Just wait for a second for the others to join us.

All right, just before we get back to where we were, I just need to go back and ask you a question, Mr. Mulcahy. So you had spoken earlier about the difference between the slope face and the stepped dam. And then we went into – the last few questions that were asked related to, I think, the process of laying out the concrete for either the stepped dam or, alternatively –

**MR. MULCAHY:** Yeah.

**THE COMMISSIONER:** – the battered face.

Okay, so I just needed to understand that and I think I do now.

**MR. MULCAHY:** Yeah, that's – yes.

**THE COMMISSIONER:** Okay, thank you.

Go ahead, Mr. Collins.

**MR. COLLINS:** So if we pick up this situation at the end of June, the beginning of July 2015, I'm going to try to summarize what the two – the two bids and tell – you can tell me if the summary is accurate.

So Barnard-Pennecon has a bid in for about \$300 million – 200, 299 – and they are only willing to accept \$4 million of labour productivity risk. After that, the contract becomes reimbursable.

**MR. MULCAHY:** On labour – on craft labour.

**MR. COLLINS:** On craft labour. Is that –?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** Is that basically right?

And if we go to P-02798, which is tab 61, binder 3 – that's 02798, thank you. At page 2 we see this is their best and final proposal. Was that your understanding?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And this proposal is using the battered-face method.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And, meanwhile, H. J. O'Connell and Dragados have a cheaper bid. I believe it's \$288 million with adjustments.

**MR. MULCAHY:** Yes, yes. I think there's a summary sheet, but yeah, yeah.

**MR. COLLINS:** There is a summary sheet, yes. And the H. J. O'Connell bid forecasts higher labour hours, but they are accepting the risk of low labour productivity.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** Yeah.

So in those circumstances why wouldn't you take the hard money bid?

**MR. MULCAHY:** I can't speak for that. It's not – wasn't my decision, not really.

**MR. COLLINS:** Yeah.

**MR. MULCAHY:** I think (inaudible).

**MR. COLLINS:** So if we – can we go next to P-02793, which is tab 56.

**THE COMMISSIONER:** Tab – what tab number again?

**MR. COLLINS:** Tab 56.

**THE COMMISSIONER:** Fifty-six.

**MR. COLLINS:** Binder 3.

**THE COMMISSIONER:** Thank you.

**MR. COLLINS:** This is an email from Ken McClintock to you on July 6, 2015.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** Do you remember this email?

So it says at the bottom: I agreed with Ed – is that Ed Over?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** "I agreed with Ed that he and I would call Len Knox after we decide if Bidder 3 can do the work." And I understand bidder 3 is H. J. O'Connell.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And that Len Knox is –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – representative.

And then it says: "We will discuss the team and ask him for agreement to change out some of the people should we decide to award to them."

**MR. MULCAHY:** Yes.

**MR. COLLINS:** So do you know – is there – at the top of the email it says "we can discuss when I arrive in the morning." Do you know if you ever discussed this with Mr. McClintock?

**MR. MULCAHY:** I can't recall if I discussed this.

**MR. COLLINS:** And do you know if this conversation with Mr. Knox happened?

**MR. MULCAHY:** I didn't know until the past couple of days when I saw the information that was given to me.

**MR. COLLINS:** And I think you're referring to – I believe you pointed me to tab 106, which is in binder 4, P-02853. And at page 2, we see an email from Nolan Jenkins of H. J. O'Connell –

**MR. MULCAHY:** Excuse me, what tab was that?

**MR. COLLINS:** Tab 106, I'm sorry. There's an email from Nolan Jenkins to Ed Over and Ken McClintock.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And it says: Please see the attached response on the outstanding action items raised in our call on the 7th.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** So it seems that there was a call.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** Do you recall what discussion you and – any discussions between you – yourself and Mr. McClintock about these two bids around this time?

**MR. MULCAHY:** I recall specifically, on the 7th, okay – this was the 6th that he – on the 7th, that afternoon, my meeting with Mr. McClintock and Greg Snyder, to my knowledge, was there, that we put – we weren't going any further with bidder number 2.

**MR. COLLINS:** That means you're not going any farther with Barnard-Pennecon?

**MR. MULCAHY:** That's my – look, that's the way I recall it.

**MR. COLLINS:** And by implication, the contract would go to H. J. O'Connell-Dragados.

**MR. MULCAHY:** That's – if that's – and I came back to my office, I had, you know, folders, hard copies and I threw 'em in my banker's box.

**MR. COLLINS:** Because you understood that the decision had been –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – made.

**MR. MULCAHY:** Well, at that time anyway.

**MR. COLLINS:** And did you communicate that to anyone else around this time?

**MR. MULCAHY:** I spoke to Scott O'Brien, okay? Went over to him and I said: Scott, I don't think we can go any further with – or we're not going to go any further with bidder number 2 and he said: Okay, leave it with me. That's it – something to that effect. I don't know the exact words but I did communicate that to him late that evening.

**MR. COLLINS:** So if we – can we go now to tab 59, which is P-02796?

**MR. MULCAHY:** That's a different binder, is it?

**MR. COLLINS:** This is binder 3, yes.

And at the bottom of the page, we have an email from Derek Tisdell, from Barnard, to Ed Over and Ken McClintock. And it's dated July 9, so two days later, and it says: "Hi Ed, Attached is Barnard-Pennecon JV's revised proposal as we discussed yesterday." Which would be July 8.

**MR. MULCAHY:** The eighth, yes.

**MR. COLLINS:** Do you remember the discussion on the eighth?

**MR. MULCAHY:** I can remember putting this away on the seventh, okay. And the next day I came in – matter of fact, coming up through the corridor I said to Greg – he come – I'm glad this is over. And the next morning, I find out there's another meeting that afternoon.

**MR. COLLINS:** It's with Barnard-Pennecon.

**MR. MULCAHY:** Yes, a conference call.

**MR. COLLINS:** And in this conference call, do you remember what happened?

**MR. MULCAHY:** I can't recall all the details of the conversation. I know there was one item there about type C rock-fill, but that – I brought that up long before – about two years before that or a year and a half before that – not only for this project, for all the projects because of the spec.



**MR. COLLINS:** So, if we go to page 3 of this tab, this exhibit, we can see that Barnard-Pennecon is pleased to offer a revised proposal for the contract and there's a new price.

When you make all the adjustments – I understand there are a few adjustments that have to be made to these prices.

**MR. MULCAHY:** Yes, the summary sheet, I made them, and the two prices are identical.

**MR. COLLINS:** So after this proposal, their bid is the same as H. J. O'Connell's?

**MR. MULCAHY:** Identical, within \$40,000 or something and –

**MR. COLLINS:** So, do you know if there's any connection between you making a decision on the seventh and communicating that decision to Scott O'Brien and then the next day –

**MR. MULCAHY:** That was – I don't know.

**MR. COLLINS:** You don't know.

So, after this proposal comes in, you now have a hard-money bid and a partly reimbursable bid, and they're for –

**MR. MULCAHY:** Yeah.

**MR. COLLINS:** – about the same amount.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** That's a fair summary?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** So, Commissioner, at this point we're going to turn to the final bid evaluation and award, which is found at tab 79, and it's P-01870.

And there are few aspects of this evaluation that we're going to cover.

**MR. MULCAHY:** (Inaudible.)

**MR. COLLINS:** And –

**MR. MULCAHY:** I'm hard of hearing. What tab – what binder?

**MR. COLLINS:** Oh, it's binder 4, tab 79.

And before we get into the details of how this particular evaluation worked, can you describe – there's a technique called normalization. And before we describe how it's used in this case, can you describe what normalization is?

**MR. MULCAHY:** Well, normalization, to me, is comparing apples and apples. That's what normalization to me is. But – okay ...

**MR. COLLINS:** So if you have two bids made on different assumptions, you normalize them by bringing them under an apples-to-apples basis somehow?

**MR. MULCAHY:** Yeah.

**MR. COLLINS:** So if we go to page 15 of this bid.

So – sorry, before we look at this, just in general, if one contractor comes forward with a hard money bid, and they estimate a lot of hours, and the other contractor has a lower number of hours, and they don't accept the risk of large overruns, how would you normalize those two bids in general?

**MR. MULCAHY:** I'd have to – just to do a bottom line on what I'm – exposure have I got.

**MR. COLLINS:** And how would you measure the exposure?

**MR. MULCAHY:** The difference between man-hours. The one person got, say, a hundred and – 1.2 million man-hours; the other fella got 800 or 850. That's 400,000. So at \$80, you're talking about another \$30 million to –

**MR. COLLINS:** So you –

**MR. MULCAHY:** – exposure that you got to the bid, just based (inaudible) on the man-hours.

**MR. COLLINS:** So how much do you need to add to the reimbursable contract? How many hours do you need to add until it takes the same

number of hours that the hard-money bidder was willing to estimate?

**MR. MULCAHY:** You have to add another \$30 million or whatever the analysis is.

**MR. COLLINS:** And so if we go – if we look back at page 15 of this exhibit –

**MR. MULCAHY:** What –?

**MR. COLLINS:** – page 15 of the same exhibit. It's tab 79, binder 4.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And there's a table here of the number of craft hours in the Barnard-Pennecon and H. J. O'Connell bids. And it says, as I understand it, 560,000 hours for Barnard-Pennecon and 866,000 for H. J. O'Connell. So how many hours would you have to add to the Pennecon bid? You said –?

**MR. MULCAHY:** Three hundred thousand.

**MR. COLLINS:** That's how you'd normally do normalization?

**MR. MULCAHY:** Right. You see, this is called a sensitivity analysis. I don't know anything about sensitivity analysis, to be honest with you. A sensitivity analysis to me is a case of what ifs, okay.

**MR. COLLINS:** So if we go to page 3 of this document now we see there's a recommendation: First place, Barnard-Pennecon; second place, H. J. O'Connell. And right beneath that it says: "Based on the approved Evaluation Plan, the 'Final Estimated Contract Value' is a composite value which takes into account the initial bid price, bid normalization, commercial assessment and technical evaluation for each bidder. The ranking above takes into account the addition of 113,295 ... as a normalizing factor to account for the additional site craft" hours believed to be required to complete the work.

So is adding 113,000 hours a sufficient adjustment to compensate for H. J. O'Connell taking on the risk of labour overruns?

**MR. MULCAHY:** Not in my mind, no.

**MR. COLLINS:** Can you explain why that is?

**MR. MULCAHY:** Because I know where this 113,000 came from.

**MR. COLLINS:** Okay.

**MR. MULCAHY:** Okay, because someone asked me to spot check – it's got to be there somewhere. Someone asked me to spot check three items. That 13,000 came from three items, not nine items –

**MR. COLLINS:** So –

**MR. MULCAHY:** – which was part of the summary.

**MR. COLLINS:** So if we go to page 15 – sorry page 14, I believe, we'll see this analysis called: Normalization & Cost Impact. And it compares in the second column, Barnard-Pennecon proposed hours to, in the third column, Nalcor estimated hours. Do you know what Nalcor estimated –?

**MR. MULCAHY:** That's not Nalcor's, it's mine. That's what I was with – at Nalcor – they are Nalcor's, I guess, but it's not the DG3 estimate, that's my own estimate I did up.

**MR. COLLINS:** So in the second column is your estimate for these three components: the upstream cofferdam, the North Dam and the tailrace.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And then the fourth column is the normalized man-hours. And it says down below that they've increased your hours by a little bit. Is that ... do you know who did this work?

**MR. MULCAHY:** This – Ken McClintock had to do this work. I – as far as the –

**MR. COLLINS:** So –

**MR. MULCAHY:** This table?

**MR. COLLINS:** Yes.

**MR. MULCAHY:** I don't do tables so it had to be Ken McClintock.

**MR. COLLINS:** So he formatted this. But do –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** The underlying calculation of how to increase your estimate – your original estimate, which was based on a \$200-million contract –

**MR. MULCAHY:** No.

**MR. COLLINS:** – how to scale that up for the productivity at Muskrat Falls, this is your work, is it?

**MR. MULCAHY:** That's how I came up with the – I took these three items, yes, okay? That's just three items in the bid.

**MR. COLLINS:** So –

**MR. MULCAHY:** That's mine, yes. I added on – on item number one, their estimate had 159 – 60 – no. Where's Nalcor's – I'm a bit ...

Anyway, I did this estimate here on these three items. I – it was a spot check and I came up on just three items to increase Barnard-Pennecon's – not Barnard – Barnard-Pennecon's by 113,000 on three items, yes. And I just took the – just took a straight proportional basis.

**MR. COLLINS:** This is your – you did these calculations?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And did you have – where did you get these numbers? You've increased –

**MR. MULCAHY:** Based on my knowledge of what was on the go at the time.

**MR. COLLINS:** Well, you –

**MR. MULCAHY:** I – if I had my – where I did it, there's an email with mine on I can follow. I'm just – with this table the way it is here is confusing to me.

**MR. COLLINS:** I'll find that email now.

**MR. MULCAHY:** But –

**MR. COLLINS:** Excuse me, Commissioner.

**MR. MULCAHY:** So the way I see this now –

**MR. COLLINS:** Yeah.

**MR. MULCAHY:** – on the upstream cofferdam, Barnard-Pennecon had 45,000 man-hours. I just took my estimate, okay? It was 68,000, so I just increased it by 22,000.

**MR. COLLINS:** Yes.

**MR. MULCAHY:** And then, on item number two, they had an estimate of 270,000 and mine was 248. But based on what I know from the previous contract, I increased the – reduced the productivity, so that's where I came up an additional 70,000 hours.

**MR. COLLINS:** And –

**MR. MULCAHY:** And then, on the last one, it was – I don't see number three here, is – that's not the RCC. There's a tailrace, I don't see it here.

**MR. COLLINS:** So there's an additional 21,000 hours.

**MR. MULCAHY:** Yes, but I don't see it on the bottom of it, okay?

**MR. COLLINS:** Why –

**MR. MULCAHY:** The tailrace that it was.

**MR. COLLINS:** (Inaudible.)

**MR. MULCAHY:** That 21,000.

**MR. COLLINS:** So this is your work, but you don't believe it represents a fair adjustment to (inaudible) bid?

**MR. MULCAHY:** No, but there was a third calculation here, I don't see it, okay? But, anyway, that is my work and on them three items I found that the bid should've been increased by 113,000 man-hours. That is my work.

**MR. COLLINS:** And so how much would you have to – your work was – your estimate came out to \$200 million. If you had to scale your estimate up to about \$300 million –

**MR. MULCAHY:** This – that’s just simple math. My labour content in that \$200 million was 33 per cent, okay? So if a hundred million –

**MR. COLLINS:** Yes.

**MR. MULCAHY:** – extra, I’d have to add on 33, which is about \$33 million labour. And I’d divide that out by \$84; I’m come up with 380,000 to 400,000 man-hours. That’s what I’d have to add on to my bid to make it comparable with the other two bidders for man-hours. Is that –?

**MR. COLLINS:** And that – yes –

**MR. MULCAHY:** Does that explain it?

**MR. COLLINS:** I apologize, both to you and to the Commissioner; I misplaced the document you’re referring to. It’s tab 60, P-02797. This is your email, which is the basis of that work.

**MR. MULCAHY:** What binder was that?

**MR. COLLINS:** It’s in binder 3.

**MR. MULCAHY:** Anyway, that comes out to the same thing anyway.

**MR. COLLINS:** So when you did this work, did you understand that the purpose of it was to normalize –

**MR. MULCAHY:** No, I – listen, the purpose of it was I just cherry-picked three items, okay, where I have to increase. Just on three items I’d have to increase by 130,000 man-hours – or 113,000.

**MR. COLLINS:** And when you say three items, you mean three –

**MR. MULCAHY:** There’s – if you go to your list you had before, there’s nine items of work there.

**MR. COLLINS:** Mm-hmm.

**MR. MULCAHY:** And that’s only three of ’em, out of the nine.

**MR. COLLINS:** So, for example, there’s no adjustment to the South Dam.

**MR. MULCAHY:** There’s no adjustment to the other six items.

**MR. COLLINS:** And so one problem with using this as normalization is that you haven’t normalized many of the –

**MR. MULCAHY:** No, I haven’t.

**MR. COLLINS:** – items on the sheet.

**MR. MULCAHY:** Straight normalization for me, there’s \$100-million difference in my bid. And my labour content, like I said before to repeat myself, was 33 per cent, so that have 33.5 per cent labour. So if I’m short 100,000 I’d have to add on 33 million labour.

**MR. COLLINS:** So why would you do this analysis, if not for normalization?

**MR. MULCAHY:** I don’t recall right now why – okay, I must – I just did it on the spot check on three items.

**MR. COLLINS:** Regardless, you don’t believe it was a fair basis for –

**MR. MULCAHY:** No, no, not – definitely not.

**MR. COLLINS:** So those are my questions about normalization. The next issue is the technical scores used for both bidders in their execution plan and schedule. And, Mr. Mulcahy, do you recall being involved in scoring?

**MR. MULCAHY:** Yes, I sat down with Greg Snyder and he did the tabulation and we agreed on the scoring.

**MR. COLLINS:** And, Commissioner, I expect these technical scores will come up again with Mr. McClintock. And I expect Mr. McClintock will explain that the technical scores were combined with the bid prices to produce the final estimated contract value, which you saw in the bid evaluation. And the – I expect you’ll

hear that they had a significant effect on the ultimate evaluation.

So I'd like to start with P-02805, which is tab 68. This is an email – and the dates at this point become important. This is an email from July 27 and it's from Greg Snyder to Ken McClintock. And it says: "Here is the review from John and I."

And on the next page, as we see – we see the attachment, which is a series of technical scores. On page 3 they're the scores for the execution plan evaluation. And at the bottom, we see Bidder 2, which is Barnard-Pennecon, was scored 76.8 per cent and Bidder 3, H. J. O'Connell, scored 74.5 per cent. So the gap is 2.3 per cent.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** Is that right? And is this the scoring –

**MR. MULCAHY:** That's the scoring because –

**MR. COLLINS:** This – and on the next page we see a scoring for schedule evaluation and we see this time there are more bidders. We still have the Astaldi bid and H. J. O'Connell is divided up, but H. J. O'Connell has 60 per cent on their schedule and Barnard-Pennecon has 52 per cent. Do you remember those – doing those scores?

**MR. MULCAHY:** Yes. I can't find it, the tab.

**MR. COLLINS:** Oh, sorry, this is tab 68.

**MR. MULCAHY:** Sixty-eight. Binder ...?

**MR. COLLINS:** Binder 3 and we're looking at pages 3 and 4.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** So, at this point, H. J. O'Connell – the two are quite close on the execution plan.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And H. J. O'Connell is ahead on the schedule.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** Now, if we go – if we jump forward to P-02815, which is tab 80 and that's in binder 4, this is an email from Ken McClintock to you on August the 14, which is the same day as the last signatures for the execution plan. And it attaches technical scores, Greg and John, July 27.

And on page 3 we see the same scores: "Scored By: John Mulcahy & Greg Snyder." At the bottom it's 76.8 per cent for Barnard-Pennecon, the 74.5 per cent for H. J. O'Connell. There's – had you rescored in the interim?

**MR. MULCAHY:** Not to my knowledge.

**MR. COLLINS:** Not to your knowledge.

And on page 4 we have a new scorer. This is by Tony Scott for schedule. And Tony Scott has scored Barnard-Pennecon 60 and H. J. O'Connell 54.

Now, I'd like to go to tab 79, the tab before, on page 26.

**UNIDENTIFIED MALE SPEAKER:** Which exhibit?

**MR. COLLINS:** 01870. Thank you.

**CLERK:** Page?

**MR. COLLINS:** Page 26.

And at the bottom of this page we have: "Scored By: John Mulcahy & Greg Snyder & K. McClintock. Do you have this, Mr. Mulcahy?"

**MR. MULCAHY:** I'm in binder 4 and I'm on tab – I can't hear very well, Sir.

**MR. COLLINS:** Oh, sorry, at tab 79.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** Tab 79 and it's page 26.

**MR. MULCAHY:** Okay then. Okay, Sir. Yes.

**MR. COLLINS:** At the bottom of the page we have scored by: John Mulcahy, Greg Snyder and

Ken McClintock. Do you remember re-scoring the bidders with Ken McClintock?

**MR. MULCAHY:** Not that I recall. And the only thing I notice is the same days. I can't remember sitting down with Ken McClintock and Greg. I can't remember but I know I don't do spreadsheets, so someone else, you know, did the spreadsheets.

**MR. COLLINS:** And we see that the scores have changed and now Barnard-Pennecon has gone from 76.8 up to 80.5, and H. J. O'Connell has gone from 74.5 down to 70.5. So the total gap has increased from 2.3 to 10.

And on the next page, page 27, we have the schedule evaluation. And this time the names at the bottom are Tony Scott, John Mulcahy and Ken McClintock. Do you remember scoring –?

**MR. MULCAHY:** No.

**MR. COLLINS:** You don't remember this? And the scores now are 66 for Barnard-Pennecon to 50 for H. J. O'Connell. So the gap has increased from six to 16.

Mr. Mulcahy, can you explain why Barnard-Pennecon's technical scores would rise so much and H. J. O'Connell's would fall so far this late in the bidding process?

**MR. MULCAHY:** I can't explain it. The only thing – I can't explain it at all because if I look at what you sent me, the two of them are on the same day.

**MR. COLLINS:** I think you're referring to –

**MR. MULCAHY:** The bottom of the page is that Ken and John the 27th of July and – 2015 – and the other one was on the 27th of July. It's the same day, if you go back to the first one. Greg Snyder's email was the 27th. Two of them are the same day.

**MR. COLLINS:** Yeah.

**MR. MULCAHY:** I don't know why it'd change that much on the same day if I'm correct.

**MR. COLLINS:** And even if there's an error in that day at the bottom, did anything significant

change on the technical or schedule in those late weeks?

**MR. MULCAHY:** No.

**MR. COLLINS:** So there wouldn't be much of a reason for a change anyway.

**MR. MULCAHY:** No.

**MR. COLLINS:** So, I'd now like to show you a few documents to establish a timeline. If we can start off again at the same tab, tab 79, on page 8.

And we see Finalization: "On July 24, **Barnard-Pennecon** ... was recommended during a meeting with senior management. After this meeting work proceeded to finalize all documents and gain required approvals."

So this seems to be referring to a meeting which will be three days before your original scoring and weeks before the ultimate recommendation.

**MR. MULCAHY:** Yeah.

**MR. COLLINS:** Now, if we go next to tab – to P-02802, which is tab 65, which is in binder 3. This appears to be a status presentation on July 24 on the dam contract. And on page 15, we have a slide entitled Recommendation. And it says: "Barnard Pennecon ... is recommended by bid evaluation team."

Do you remember this presentation, Mr. Mulcahy?

**MR. MULCAHY:** I don't recall it.

**MR. COLLINS:** Regardless, it seems consistent with what's in the bid evaluation plan.

If we go to the next tab, tab 66, which is P-02803, we have an email from Ken McClintock to you, Ed Over and Greg Snyder. And this is on July 24, the same day as the presentation. And it says – it attaches the December bid evaluation plan and says: "Gents; Please review this and plan to complete your respective sections all as per discussions today."

Mr. Mulcahy, how can you and Mr. Snyder be filling in your technical scores on July 27 if a recommendation was already made on July 24?

**MR. MULCAHY:** I can't answer that question.

**MR. COLLINS:** Do you know if these technical scores were part of a real bid evaluation process, in which you start with the scores and move to the recommendation? Or was it more an after-the-fact rationalization of a decision that had already been made?

**MR. MULCAHY:** Well, it looks like it's a validation of a decision that was made. That's the way it appears.

**MR. COLLINS:** Is that – was that your understanding at the time? Or –

**MR. MULCAHY:** No.

**MR. COLLINS:** – is that what it looks like to you from the documents?

**MR. MULCAHY:** That's from the documents I read now. If we scored it on the 27th, and then, on the same day, you change the scoring again, there's something that doesn't add up to me.

**MR. COLLINS:** So, I'd also like to turn to tab 86, which is in binder 4. And it's P-02818.

**MR. MULCAHY:** Can I – (inaudible).

**MR. COLLINS:** This is an email from – at the bottom of the page, we have an email from Ken McClintock to you on July 27.

**THE COMMISSIONER:** What tab are we at now?

**MR. COLLINS:** Sorry, tab 86.

**THE COMMISSIONER:** Eighty-six. Thank you.

**MR. COLLINS:** And it says: "As a sensitivity exercise, I added 356 hours [sp. 356,500 mhrs] as a normalizing value ...." But the next paragraph says: "In both the original evaluation scoring and our new evaluation scoring ... we can still make the case for Bidder 2."

Do you know why you'd be making the case for bidder 2?

**MR. MULCAHY:** If what you say is right before, then the decision was already made on the 24th. I can't say that, but I know he's adding 356,000 man-hours versus my – remember I said there was 30 million if I did the difference. And – but there was – the two bids were the same, and I don't know where the \$27 million came ...

**MR. COLLINS:** Now, if we could now go to P-01870, which is tab 79 in the same binder, at page 15.

If we go farther down on the page, you see Evaluation Results Based on Original Bid Evaluation Summary Sheet. And if you – my interpretation of this – and confirm this for me, Mr. Mulcahy – is that if you add 113,000 man-hours per hours, Barnard-Pennecon is cheaper than H. J. O'Connell. But if you add 140,000 hours, they're equal. And if you add 306,000 hours, as you suggested earlier, H. J. O'Connell would be the low bid.

Is that how you interpret that?

**MR. MULCAHY:** Like, I don't understand this. The two bids were equal, okay? And if you add \$6 million, you're adding \$6 million on to the low bidder. And then you can go right down to add \$29 million. But the contract was awarded without any of this, I mean, added into the contract. As far as I know, the contract was awarded for \$287 million or something. That can be found out. It's in the award.

**MR. COLLINS:** I expect we'll hear from Mr. McClintock that these figures in these two columns are combined in some way with the technical and commercial scores.

But – so you can't comment on whether, adding the 306,000 hours, H. J. O'Connell would be the low bidder?

**MR. MULCAHY:** If the two – H. J. O'Connell, or Dragados, they were the low bidder in the beginning, okay? By \$40,000 – if you go to my summary sheet. But then if you're doing this sensitivity analysis, you're – if this goes up, you're adding on money to it. So really they're

not the low bidder then. You're adding more money.

**MR. COLLINS:** So –

**MR. MULCAHY:** I'm confused.

**MR. COLLINS:** So – Mr. Mulcahy, was the schedule a significant factor in choosing between Barnard-Pennecon and H. J. O'Connell-Drageados?

**MR. MULCAHY:** I don't think so. In H. J. O'Connell's – if you go to their schedule, H. J. O'Connell were meeting the milestone dates, whereas the other – the original schedule, Barnard-Pennecon, they were extending the milestone into the second year. And that's why in the original scoring that H. J. O'Connell got a better score than Barnard-Pennecon. Because – the histograms, they show you that.

**MR. COLLINS:** So, notwithstanding Mr. Mulcahy's opinion that in his view (inaudible), schedule wasn't a significant factor, Commissioner, I expect we're going to hear that concerns about the schedule were a significant part of why Barnard-Pennecon eventually secured the contract. And I think that the best document to look at to understand the schedule issues is binder 3, tab 65, which is the July 24 presentation to senior management that we looked at earlier.

And it – in – oh, I'll wait until we get there.

So if we go to tab – just page 9 of this document. There's an overview of the two bidders' schedules. And if we start with the key milestones, which you were just referring to, Mr. Mulcahy, we see that bidder two, Barnard-Pennecon, meets the river closure date with float, and H. J. O'Connell doesn't. They meet it with no float.

If you look at the North Dam completion, H. J. O'Connell has float this time – two days' float – but for the North Dam we see: "Opportunities exist ... to enhance schedule for critical North dam works."

Is that the same thing, Mr. Mulcahy, as what you were saying, that they didn't meet the milestone?

**MR. MULCAHY:** Yes.

They were completing the North Dam in August of '18 whereas H. J. O'Connell were completing the North Dam in October of '17.

**MR. COLLINS:** And so, nevertheless, we see at the bottom, on the overall evaluation, that Barnard-Pennecon has a "Believable plan and schedule, supported by solid project team" and H. J. O'Connell has a "Challenging work plan and schedule, especially for proposed project team."

And at the bottom of the page (inaudible). I don't know if it's legible there.

Mr. Mulcahy, can you explain – can you – does that evaluation match your understanding of the two bids?

**MR. MULCAHY:** I'm going through the details right now. My understanding of the milestone dates are correct, but to go through this analysis right now to comment on it?

**MR. COLLINS:** Okay.

I would like to ask you a few questions about float and about a couple – a few other issues. So first, this sheet highlights under "Spare capacity/float" that Barnard-Pennecon has allowed a "4d/month" weather allowance, and their plan – they plan to work on a 6-day work week, whereas bidder 3 has no apparent weather allowance and they've scheduled seven days a week.

So, does that mean, Mr. Mulcahy, that Barnard-Pennecon have a more conservative schedule than H. J. O'Connell?

**MR. MULCAHY:** By carrying it into another year they have a conservative schedule there; they're carrying it out. But right now, H. J. O'Connell – they have float built into their schedule with their production rates, as far as I'm concerned.

**MR. COLLINS:** And what you mean – if I take – as I understand what you're saying, one way to build in – build flex into your schedule is to allow – is to choose a high production rate and assume that you're going to need days of float or



weather allowance. And another way is to choose a lower production rate to begin with and then that takes into –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – that allows for what interruptions might occur.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And do – in – if we look at the table on top we can see the work duration in days that each bidder is setting out for each step. This is on top of the same page, and as I understand it – and please correct me, Mr. Mulcahy – it looks like Barnard-Pennecon is setting aside 38 days for the – of work for the starter groins and H. J. O’Connell is setting aside 49 days. And Barnard-Pennecon is setting aside 64 days for the rest of the cofferdam, whereas H. J. O’Connell is setting aside 98 days.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And so on down the line.

Does – do these numbers support the idea that H. J. O’Connell has – is maybe using lower production rates?

**MR. MULCAHY:** Yes, because from – if you go to their execution plan, Barnard-Pennecon are using a 75-ton truck, whereas I think in the execution plan for H. J. O’Connell they’re using a 40-ton truck or a 45-ton truck.

**MR. COLLINS:** Does that mean H. J. O’Connell needs more days?

**MR. MULCAHY:** Yes, on production to finish the – that’s there – what it is was the capacity that the bridge – one bridge was 150-ton and the other one was, I think, 90-ton or 100-ton bridge.

**MR. COLLINS:** Does that suggest that there is more flex in the Barnard-Pennecon schedule?

**MR. MULCAHY:** Well, they’re starting at a – they’re starting at a later date. So, they’re still finishing on the same day, but they’re – it’s the start date –

**MR. COLLINS:** (Inaudible.)

**MR. MULCAHY:** – shows you where the float is picked up.

**MR. COLLINS:** And you mean that the H. J. O’Connell start dates are earlier in many cases.

**MR. MULCAHY:** Starting on the 25th of July where Barnard-Pennecon is starting, say, the river closure on the 10th of August. So, that’s 15 days, right there.

**MR. COLLINS:** Was H. J. O’Connell’s schedule achievable in your mind?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** And were they capable of bringing – was their team capable of achieving it?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** Okay.

Now, my – next I’d like to go to tab 109, which is in the binder 4. And that’s P-02967.

Have you seen this?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** You’ve seen it before, Mr. Mulcahy?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** Do you remember sending it?

**MR. MULCAHY:** Yes.

**MR. COLLINS:** You do?

**MR. MULCAHY:** Yeah, I remember – I don’t remember sending it, only when I saw it – when I – document – that’s the first time I can recall seeing it, but it’s my writing. So, I must have written it.

**MR. COLLINS:** So, you acknowledge writing it but you don’t remember writing it.

**MR. MULCAHY:** No.

**MR. COLLINS:** And the email says: “Scott, Listed below are some bullet points for each bidder as discussed with Ken.”

**MR. MULCAHY:** Yeah.

**MR. COLLINS:** And there’s a series of points. Is it fair to say that these are generally critical of Pennecon’s ability to meet the schedule?

**MR. MULCAHY:** Sir, this is written three weeks after the award recommendation. So, this was to back up the award recommendation, I guess. And I wrote this. Yes.

**MR. COLLINS:** And at the top of the email it says: “Listed below –

**MR. SIMMONS:** Excuse me –

**MR. COLLINS:** Mr. Simmons.

**MR. SIMMONS:** Commissioner, I think in the last question that was asked – the question was, was it fair that this was critical of Pennecon’s schedule.

**MR. COLLINS:** I misspoke.

**MR. SIMMONS:** I think you meant O’Connell’s.

**MR. COLLINS:** Certainly. I certainly meant O’Connell. Thank you, Mr. Simmons.

So, you believe that you wrote this to support a decision –

**MR. MULCAHY:** Yes.

**MR. COLLINS:** – that had already been made.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** Do you –

**MR. MULCAHY:** I either have to support the team, buy into it or go home, okay?

**MR. COLLINS:** And is this your memory or is this an explanation of –?

**MR. MULCAHY:** That’s the only – it’s an explanation, not memory.

**MR. COLLINS:** And, Commissioner, at this point I’d like to point out that the date of this email is August 13, 2015. And if we flip to tab 79 of the same binder, on the first page of the award evaluation we see that this document was signed on August 10 by Ken McClintock for Ed Over, by Ken McClintock for Ed Over, by Carlos Fernandez, by Ken McClintock for Ken McClintock.

On the 12th of August – those are all on August 10 – on August 12 by Scott O’Brien and Pat Hussey; by August 10 again by Anthony Embury. And so the only signatures that were missing from this were Jason Kean and Jason Kean for Ron Power.

Mr. Mulcahy, which contractor had the better bid for CH0009?

**MR. MULCAHY:** Can you repeat the question, please?

**MR. COLLINS:** Which contractor had the better bid for CH0009?

**MR. MULCAHY:** The better bid?

**MR. COLLINS:** Which contractor had the better bid?

**MR. MULCAHY:** In my mind?

**MR. COLLINS:** In your mind.

**MR. MULCAHY:** H. J. O’Connell.

**MR. COLLINS:** Do you have any idea how much money the decision to choose Barnard-Pennecon over H. J. O’Connell might have cost the (inaudible)?

**MR. MULCAHY:** Well, when I left – I only can speak – when I left, up to that point in time, you were – on the labour, it was trending over \$100 million versus the \$44 million and then there was a river closure. That didn’t work because the dam leaked and I – that was – cost \$15 million.

So I'm saying you're \$100-million-plus but the labour-intensive part of the job, which was the formwork and concrete on the North Dam –with – for the steps, that's the labour-intensive part and that hadn't even started when I left.

**MR. COLLINS:** Mr. Mulcahy, do you have any other comments that you think would help assist the Commission?

**MR. MULCAHY:** I don't know. I was concerned about some of the clauses in some of the contracts that were awarded like –

**MR. COLLINS:** Can you describe that?

**MR. MULCAHY:** Like, I've been dealing with contracts all my life and most contracting agencies all across Canada have standard general terms and conditions. Even Nalcor had all standard general terms and conditions when it came to extra work, standard markups.

There's one contract here right now had markups on materials, labour and subs, 35 per cent, when normal in the industry is 5 and 10 and they had a markup on labour of 60 per cent, which normal is 15. So that's the only concern I have in one sense.

**MR. COLLINS:** Do you have any idea why that would be?

**MR. MULCAHY:** I don't know, Sir.

**MR. COLLINS:** And which contract are you referring to?

**MR. MULCAHY:** 0006.

**MR. COLLINS:** CH0006.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** The bulk excavation contracts.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** All right, Commissioner, those are my questions.

**THE COMMISSIONER:** All right. Thank you.

All right cross-examination then.

The Government of Newfoundland and Labrador.

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

Thank you.

**THE COMMISSIONER:** Concerned Citizens Coalition.

**MR. HISCOCK:** Thank you. Good morning.

My name is Will Hiscock. I'm here on behalf of the Concerned Citizens Coalition and I just have a couple of brief questions for you there.

From your interview it appears that you were by far the most experienced person, from a hydro construction project – or hydro construction perspective anyways – on Nalcor's project management team. Would you say that's correct?

**MR. MULCAHY:** Yes.

**MR. HISCOCK:** And during this Inquiry we've seen many – perhaps hundreds of official Nalcor procedures for this project used by management. Have you seen some of these, the procedures that they've – the Nalcor procedures used during the project? Did you use any of those procedures?

**MR. MULCAHY:** Not that I recall, Sir. I can't be specific.

**MR. HISCOCK:** The procedures were signed off on by many people such as Jason Kean, Ron Power, Scott O'Brien and Paul Harrington, but we didn't – we haven't seen any that were signed off on by you. Do you know why, as the most experienced person on the team –?

**MR. MULCAHY:** Sir, like I said before, I had no authority to give any direction or make any decisions.

**MR. HISCOCK:** Can you explain why the most experienced person on the Nalcor team had no authority?

**MR. MULCAHY:** No, Sir, I can't.

**MR. HISCOCK:** It seems that you were advising people who had little to no experience, in many cases, and that these people sometimes agreed or sometimes disagreed with your comments.

**MR. MULCAHY:** Totally disagree.

**MR. HISCOCK:** Okay.

Totally disagree?

**MR. MULCAHY:** Yeah, basically.

**MR. HISCOCK:** Yes. And – but you had no authority to make anything happen if they disagreed with you, correct?

**MR. MULCAHY:** Yes.

**MR. HISCOCK:** Why was – who allowed this to continue on the project, where the most experienced person would regularly be making recommendations, yet would have no authority and could be overturned so easily by people with no experience? Who, at the top, would you say was allowing that to carry on?

**MR. MULCAHY:** Well, my direct report was Scott O'Brien and his direct report was Ron Power. Paul Harrington was, ultimately, the – but Mr. Harrington, to me, was 100 per cent professional and courteous. I can't say – you know, he was totally professional with me and courteous and I never had no, you know, one-to-one dealings with him, but he was totally good to me. As far as I'm concerned, it was Ron Power and Scott O'Brien were making decisions.

Early in the game, for the first four to five years, Scott O'Brien supported me well. And I challenged, you know, an awful lot of SNC's design and I saved a bundle of money because of value engineering, which on previous jobs, if I continue, was design-build.

So the contractor owned the engineering or was responsible for the engineering and we worked hand in hand. And I saved a lot of money on the job with value engineering – a lot of money. I could've saved more from a construction point of view but no one listens. Like, take the North Dam. I said it was going to leak the first day I

saw the construction procedure and no one listened, but it leaked anyway.

**MR. HISCOCK:** On page 21 of your interview, you talked about two really experienced people that were on site from SNC, a Mr. Edmunds and Savard? Did you know these guys before this project?

**MR. MULCAHY:** I knew – personally, I knew Mr. Edmunds for the last 45 years. That's the gentlemen I was talking about had all the experience.

**MR. HISCOCK:** And, so you knew of their experience. Do you know why they left the project early?

**MR. MULCAHY:** They didn't leave, one – they were fired.

**MR. HISCOCK:** That was the gentlemen you were talking about –

**MR. MULCAHY:** Yes.

**MR. HISCOCK:** – who was fired?

**MR. MULCAHY:** And another fellow, Mr. MacNeil.

**MR. HISCOCK:** And they were fired directly by Scott O'Brien, the same manager who had no –

**MR. MULCAHY:** As far as I know.

**MR. HISCOCK:** – experience, correct?

**MR. MULCAHY:** That's what the man told me.

**MR. HISCOCK:** Do you understand why Scott O'Brien was able to keep his job and carry on in that matter?

**MR. MULCAHY:** I don't know, Sir. I can't say.

**MR. HISCOCK:** Those are all my questions.

Thank you.

**MR. MULCAHY:** Yeah.

**THE COMMISSIONER:** Thank you.

Edmund Martin.

**MR. SMITH:** No questions.

**THE COMMISSIONER:** No questions – sorry. Okay.

Kathy Dunderdale.

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

**THE COMMISSIONER:** Former Provincial Government Officials '03-'15.

**MR. J. KING:** No questions.

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

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

**THE COMMISSIONER:** Robert Thompson.

**MR. COFFEY:** No questions.

**THE COMMISSIONER:** Consumer Advocate.

**MR. PEDDIGREW:** Good morning, Mr. Mulcahy.

My name is Chris Peddigrew, I represent the Consumer Advocate. I just have a couple questions for you.

The productivity targets, I guess, that you had used in your estimates and they were based on your experience over many years –

**MR. MULCAHY:** Yes.

**MR. PEDDIGREW:** – working on hydro projects –

**MR. MULCAHY:** Yes.

**MR. PEDDIGREW:** – and other types of engineering projects.

**MR. MULCAHY:** Yeah.

**MR. PEDDIGREW:** Is it fair to say that the productivity targets that you had seen on other projects were not achieved at Muskrat Falls?

**MR. MULCAHY:** Yes, Sir.

**MR. PEDDIGREW:** Okay.

And I'm just wondering, why – based on your experience being on the project, based on your experience of many years working on hydro projects, what do you chalk it up to?

**MR. MULCAHY:** It's management of labour.

**MR. PEDDIGREW:** Okay.

Could you elaborate on that?

**MR. MULCAHY:** Just take for example, on all the powerhouses I've ever done, on productivity, man-hours on rebar it's – just as an example, okay – is about 10, say, 12 man-hours per ton of steel. I used 15 here, but the actual man-hours per ton of steel, as far as I know, is 40 here. So – and down the hole or down – when the powerhouse, there were so many – so much people. The labour wasn't managed. You could've taken so many people out of there and you wouldn't miss them. That's all I'm saying. Management of labour is your problem.

**MR. PEDDIGREW:** What do you mean? There were people who –

**MR. MULCAHY:** Were not (inaudible) –

**MR. PEDDIGREW:** – were on site but not working?

**MR. MULCAHY:** They were non-productive. That's my feeling, okay?

**MR. PEDDIGREW:** Okay.

And that's based on – I mean, you were on site – what was your schedule on site? Were you on like a fixed –

**MR. MULCAHY:** I –

**MR. PEDDIGREW:** – turnaround?

**MR. MULCAHY:** No, I wasn't – schedule, I'd say average two to three days – two days a week, three days a week.

**MR. PEDDIGREW:** Okay.

And would you be actually on the site? You'd be down observing the work going on?

**MR. MULCAHY:** I went down – (inaudible) Gilbert – last year, Gilbert Bennett and I went through it. You know, up and down through the powerhouse, nine, 10 flights of stairs up or ladders all the time, Sir.

**MR. PEDDIGREW:** Okay.

**MR. MULCAHY:** And I observed that. I see productivity that, you know, just – sometimes I walked away from the site I saw it so bad.

**MR. PEDDIGREW:** When you say lack of productivity, and I'm just – I'm trying to get a sense because my understanding of, I guess, your background is you have experience in construction projects and when you're observing what's happening –

**MR. MULCAHY:** (Inaudible.)

**MR. PEDDIGREW:** – whether something is productive or not. So I'm trying to get a sense of how did you form that opinion that there was a lack of productivity?

**MR. MULCAHY:** You could see it, Sir.

**MR. PEDDIGREW:** Okay. In what way? Like, people sitting down not doing work?

**MR. MULCAHY:** Not sitting down, but just so many people in a confined space, non-productive. That's what I – managing labour, I think they had too many people for the activities they were at.

**MR. PEDDIGREW:** Okay.

And what particular areas?

**MR. MULCAHY:** In the powerhouse especially, okay?

**MR. PEDDIGREW:** Anywhere else?

**MR. MULCAHY:** Well, I saw it on, you know, on 0009 in some – or not 0009 – yeah, some – 0009, in the foundation preparation and that, I saw non-productive labour. And it's, you know, basically taking rocks and piling it here and then by hand, a hundred dollars an hour, instead of using a skip bucket and taking it away, take it from here and pile it there. So, I mean, this is non-productive.

**MR. PEDDIGREW:** And any other reasons why the productivity targets wouldn't be achieved besides too many people?

**MR. MULCAHY:** That's – I can't speak for it, Sir. I can't speak for the contractor. But I know if I was a – if I was the contractor, things would be done different, but I can't speak for someone else.

**MR. PEDDIGREW:** And I guess that's what I'm – I'm just interested in your experience.

**MR. MULCAHY:** Sir, look, every powerhouse, I can tell you right now, that McNamara did, okay – not only (inaudible), but Carillion – we always got our productivity, we got one or we got better.

**MR. PEDDIGREW:** And –

**MR. MULCAHY:** And we were never, never late on a job.

**MR. PEDDIGREW:** And that's what I'm trying to figure out. Why did Muskrat Falls not achieve the same productivity? And I'm interested in your opinions on it, just given your background.

**MR. MULCAHY:** I think, like I say, it was management of labour.

**MR. PEDDIGREW:** And what do you mean?

**MR. MULCAHY:** If I'm –

**MR. PEDDIGREW:** Do you mean on-site management or upper management?

**MR. MULCAHY:** No, on-site management from the contractor in the beginning, okay. There was people looking around everywhere,

Sir. They weren't given proper supervision and direction.

**MR. PEDDIGREW:** Okay.

And who would've been responsible for providing that proper supervision and direction?

**MR. MULCAHY:** The contractor.

**MR. PEDDIGREW:** And who –

**MR. MULCAHY:** In the beginning, Astaldi. That's where the big productivity (inaudible).

**MR. PEDDIGREW:** Okay.

During your direct examination early this morning you were asked a question about there was, I think, work being done and you said, you know, they were – they could've excavated work – or sorry, rock, or obtained rock for the cofferdam, I think, somewhere closer by, but they were taking the rock and bringing it to a different location to crush it.

**MR. MULCAHY:** No. Basically, that's in the quarry operation. Normally, you set up your crusher right in the quarry.

**MR. PEDDIGREW:** Yeah.

**MR. MULCAHY:** I never – they set up their crusher two and half – three kilometres away, and they took the – they loaded the rock aboard the truck, brought it down to the crusher, all the waste and oversize, and then they loaded it aboard the crusher, and then they trucked it away again. It was all double handling.

**MR. PEDDIGREW:** Okay, and which contractor was that?

**MR. MULCAHY:** 0008.

**MR. PEDDIGREW:** And who was the contractor on that contract?

**MR. MULCAHY:** Gilbert.

**MR. PEDDIGREW:** All right.

**MR. MULCAHY:** Reimbursable contract.

**MR. PEDDIGREW:** Okay, those are all my questions.

Thank you.

**THE COMMISSIONER:** Thank you.

Astaldi Canada.

**MR. BURGESS:** Good morning, Mr. Mulcahy.

My name is Paul Burgess, I'm the legal counsel for Astaldi Canada Inc. Just some follow-up questions from what Mr. Peddigrew asked you.

With respect to the productivity, in relation to the Astaldi contract in particular, what was your involvement with your – with the work that was being conducted by Astaldi?

**MR. MULCAHY:** None.

**MR. BURGESS:** Right.

And in relation to the productivity and the people that you saw around, did you see the productivity improve in – with respect to Astaldi?

**MR. MULCAHY:** Yes, when Don Delarosbil came. And –

**MR. BURGESS:** Okay.

When would that have been about, Sir?

**MR. MULCAHY:** Probably '14, '15, something like that.

**MR. BURGESS:** Okay. That's all my questions.

Thank you, Sir.

**THE COMMISSIONER:** All right.

Former Nalcor Board Members I don't believe are present.

And Newfoundland Construction – Building and Construction Council.

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

**THE COMMISSIONER:** Barnard-Pennecon. They're not here? Okay.

All right, Nalcor Energy, I'm just wondering how long you anticipate being because I may be sending a little bit of a note upstairs to say we should be getting the next witness teed up. Approximately, I don't need ...

**MR. SIMMONS:** I don't anticipate being more than an hour. I'm a bit uncertain. Probably less than that, I expect.

**THE COMMISSIONER:** Okay.

I think what we'll do is – I'm not sure if we're gonna be able to get Grid Solutions up anyway. But I'll get you to start now and we'll continue on when you come back, and we'll find out what we're gonna do with regard to the next witness by the time we come back.

Go ahead, Mr. Simmons, proceed.

**MR. SIMMONS:** Hello, Mr. Mulcahy.

Dan Simmons. We know each other I think.

**MR. MULCAHY:** (Inaudible), Sir.

**MR. SIMMONS:** I do have a few questions for you today. As I indicated, I'm not exactly sure how long we're going to be, but I'm – I'll try and keep it as focused as possible because you've covered a lot of ground here already.

First of all, you started this morning by talking about your long experience in the construction industry, heavy civil, the number of power plants you've been involved in and so on. And I think one of the exhibits that is in – hasn't been referred to is a résumé, it lists your time with McNamara Construction and subsequently Carillion Canada –

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** – which I think took over McNamara, correct?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** And prior to that also, Collavino.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** You worked with Collavino for a while on a number of things.

So prior to coming out of retirement to work as a construction advisor on the Muskrat Falls Project, had all your prior experience been with the contractor on the contractor's side and not on the owner's side of the work?

**MR. MULCAHY:** All on the contractor's side.

**MR. SIMMONS:** The contractor's side. Okay.

So you had previously worked as part of an owner's team that was overseeing the work of a contractor in a hydroelectric project. Is that correct?

**MR. MULCAHY:** I don't understand the question.

**MR. SIMMONS:** So you'd been involved as general manager and in other roles for the contractor –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – that had a contract to construct powerhouses –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – and you've listed a number. Your prior experience did not include being part of the owner's team, such as at Newfoundland and Labrador Hydro, that was overseeing –

**MR. MULCAHY:** No, I was never a –

**MR. SIMMONS:** – the work of a contractor.

**MR. MULCAHY:** – part of that. The only part – I guess, part of the owner's team or (inaudible), like – was out in Whiffen Head was, like, it was the so-called alliance which was –

**MR. SIMMONS:** Yes.

**MR. MULCAHY:** – the owner and –

**MR. SIMMONS:** Mm-hmm.



**MR. MULCAHY:** – that kind of stuff. So that was the only experience I had with the owner’s team.

**MR. SIMMONS:** Right.

So the insight you’d have about how things would normally work on the owner’s side would have been what you observed from the contractor’s perspective over your long experience. Is that fair to say?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Okay.

You were asked some questions earlier this morning and there was some discussion about the safety standards employed –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – on this project and the effect that that may have had on cost.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** And I believe in your answer you referred to both safety and environment –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – as things that may have contributed overall to the cost of the project. Did I understand that correctly?

**MR. MULCAHY:** It could have led to, yes, increased costs, not an environment (inaudible) safety.

**MR. SIMMONS:** Okay.

And how did the safety standards that were adopted for the Lower – the Muskrat Falls Project you’re familiar with, not the transmission part –

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** – how did the safety standards that were adopted compare to those standards that had existed over the years on the previous projects you’d been involved in? Had there been change, over the years?

**MR. MULCAHY:** Like I say, they were upgraded to, you know, a much higher standard –

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** – than a lot of – take for example, like, when I was with McNamara you referred to, like, when we went to Hibernia, you know, (inaudible) they didn’t have a safety program. So what –

**MR. SIMMONS:** Hmm.

**MR. MULCAHY:** – as such and when we started off the road, they used our safety manual.

**MR. SIMMONS:** Yes.

**MR. MULCAHY:** And our safety manual was – you know, that’s what they used for the –

**MR. SIMMONS:** Right.

**MR. MULCAHY:** – first couple of years on the job and –

**MR. SIMMONS:** And when was that?

**MR. MULCAHY:** What?

**MR. SIMMONS:** When was that? How long ago?

**MR. MULCAHY:** I – Hibernia was 25 – in ’94 or something, I think –

**MR. SIMMONS:** Mmm.

**MR. MULCAHY:** – or something like that. I’m not sure.

**MR. SIMMONS:** Right.

And you retired from – it would have been Carillion Canada, I guess –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – when?

**MR. MULCAHY:** That’d be 2007 – finished up in 2009 or something –

**MR. SIMMONS:** Yeah.

**MR. MULCAHY:** – with (inaudible).

**MR. SIMMONS:** So between then and when you started at the – as an advisor on the Lower Churchill Project, that was 2010, I believe, you started there.

**MR. MULCAHY:** Yeah, '10 or '11.

**MR. SIMMONS:** Right.

**MR. MULCAHY:** I'm saying '10 or '11.

**MR. SIMMONS:** Yeah. Yeah. So you were out of the industry for that intervening period?

**MR. MULCAHY:** For a year or two. Yes.

**MR. SIMMONS:** Right, okay. And is it fair to say that over – in the recent – well, we've heard people say that in the recent 10 or 15 years that there's been a much heightened emphasis on promoting safety in construction projects and megaprojects compared to the earlier years.

**MR. MULCAHY:** No, we always had a high standard for safety.

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** And a matter of fact, we bid a lot – like, when you bid work for the – especially the oil companies, you've got to have a –

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** – you know, a great safety record.

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** Because if not, I don't care if you're low bid or not, they're not going to take you on board unless you have a high standard –

**MR. SIMMONS:** Right.

**MR. MULCAHY:** – of safety.

**MR. SIMMONS:** Okay. Okay, thank you.

You also told us – this is on another topic – in some of the discussion about the North Spur project, which I think was contract CH –

**MR. MULCAHY:** Eight.

**MR. SIMMONS:** – 0008, that you were asked about the idea that Gilbert, who is the contractor, would continue to work through the winter.

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** So do I understand correctly that their contract and their contract schedule called essentially for a shutdown in the winter at the North Spur –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – and just pick up work again in the spring?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** That was the schedule that was planned.

**MR. MULCAHY:** As far as I know right now, yes.

**MR. SIMMONS:** Right. And I understand Mr. Turpin was promoting having them work through the winter.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** And am I correct that he felt pretty strongly about that?

**MR. MULCAHY:** Very vocal about it.

**MR. SIMMONS:** Yeah.

**MR. MULCAHY:** And I was twice as adamant against it.

**MR. SIMMONS:** Right.

And Mr. Turpin didn't give that – give up easily on that. He tried to promote that idea –

**MR. MULCAHY:** That's –

**MR. SIMMONS:** – and carry it forward.  
Correct?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Yes.

And, similarly, you'd done your assessment and you came to the opposite conclusion.

**MR. MULCAHY:** No. I did my assessment, I did the analysis why we shouldn't do it and I went to Scott O'Brien and I – you know, I didn't put it in writing. I don't – flatly, I have never seen productive work like that and it wasn't on the critical path.

**MR. SIMMONS:** Right.

**MR. MULCAHY:** So ...

**MR. SIMMONS:** So this is a case where we've got two people involved in the team, we'll call it – different roles because your role and Mr. Turpin's role weren't the same, right, right – and who had very different views and someone had to make a decision. Is that right?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Right. And those kinds of decisions – would they fall to be made then by someone like the project manager? Was it Mr. O'Brien's role to try to resolve issues like that and determine what had to be done?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Yeah.

And in this case – in that case, he agreed with you and the work wasn't done during the winter.

**MR. MULCAHY:** Right.

**MR. SIMMONS:** Right. Okay.

Is that a particularly unusual thing on a large construction project for people involved to have differing views about how the project should be executed?

**MR. MULCAHY:** No, I think people should work as a team –

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** – and they should work together because – right, especially on this job. It's the taxpayer's money you're dealing with.

**MR. SIMMONS:** Yeah.

Okay, but you do find differences of opinion that do have to be resolved.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Okay, you've been asked some questions about labour productivity by the last couple of counsel who were up and spoke with you. And I think this is pretty clear now but I want to make sure that when you say you observed problems with labour productivity at the site, you spoke of down in the hole.

**MR. MULCAHY:** Yes, that's down in the powerhouse, right.

**MR. SIMMONS:** Right. So that is the excavation where the powerhouse was –

**MR. MULCAHY:** Yes –

**MR. SIMMONS:** – it now sits in, is now built.

**MR. MULCAHY:** – you dig a hole and you fill it up again with concrete, okay?

**MR. SIMMONS:** Yeah.

So the labour productivity that you were referring to, that was the Astaldi workers who were under the supervision of Astaldi.

**MR. MULCAHY:** Correct.

**MR. SIMMONS:** And when you attribute that labour productivity to management –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – it's Astaldi's management –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – that you're attributing that to.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Yeah.

I'll find the right notes now in a second here.

So, much of your examination this morning then, turned to the bid evaluation and the eventual bid award for the dam's contract which is CH0009.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Now, when we look at the – one of the documents that's in evidence is the original bid opening –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – record which was back in 2014 when the first bids came in.

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** There were three then, I think. Astaldi –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – was a bidder at that point too.

**MR. MULCAHY:** Yes, I was at the bid opening.

**MR. SIMMONS:** You were at the bid opening; you've signed off on the sheet.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** And much of what you've been asked about was your involvement in the next year, in 2015, once Mr. McClintock had taken over from Mr. Turpin as the lead on the bid evaluation.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** So, first of all, how much were you involved through 2014, in the 2014 bid evaluation process led by Mr. Turpin?

**MR. MULCAHY:** Like I said this morning, all I can remember I went to Bozeman with Mr.

Turpin and Mr. Lewis sometime in the fall of '14, but as far as involvement, I had very little. I can't recall any involvement.

**MR. SIMMONS:** Right.

So does that mean that the example you give us you know to be your only involvement or that you can't recall the extent to which you were involved (inaudible)?

**MR. MULCAHY:** I can't recall.

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

**MR. MULCAHY:** That's what I said this morning.

**MR. SIMMONS:** Now, for your involvement during 2015 – you've been interviewed twice by Commission counsel, I believe.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Yes. And you've had access to various documents that are in –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – evidence and some that aren't I believe that you've –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – had a chance to look at.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Prior to those interviews and seeing those documents, how much did you recall – independently recall – about your involvement in that process?

**MR. MULCAHY:** In – prior to '14? Or prior to – when Mr. McClintock came along?

**MR. SIMMONS:** Since Mr. McClintock was involved, before you were interviewed and saw the other documents, how much did you remember about your involvement through 2015? How clear were your recollections?

**MR. MULCAHY:** Well, as clear as my memory is.

**MR. SIMMONS:** Mm-hmm. Okay. So would you say you have a good recollection of those events? Or did you have to be reminded of things by looking at the documents?

**MR. MULCAHY:** I had – I remember some of it, and I had to be reminded of some of it.

**MR. SIMMONS:** I'll just pull out one example. See if I can find the right document now.

Exhibit P-02797, please?

**THE COMMISSIONER:** That would be tab 50 – tab 60 in your book. Volume 3, tab 60, Mr. Mulcahy.

**MR. SIMMONS:** Number 3, tab 60. So Mr. Collins brought you to this message. I'll wait until you find it.

**MR. MULCAHY:** Volume 3. What was the –

**THE COMMISSIONER:** Tab 60.

**MR. SIMMONS:** Tab 60.

**MR. MULCAHY:** Volume 3?

**THE COMMISSIONER:** Yes.

**MR. SIMMONS:** Volume 3, tab 60 is what's indicated.

**MR. MULCAHY:** Sixty-eight.

**MR. SIMMONS:** Sixty.

**THE COMMISSIONER:** Six-zero.

**MR. SIMMONS:** Six-zero. So when you look at the top of that page, it should say P-02797. Is –

**MR. MULCAHY:** Right.

**MR. SIMMONS:** – that the one you're looking at?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Okay.

So this was a message, on July 20, 2015, from you to Mr. McClintock. And this was the message that has the adjustments to the labour hours in it. I'm not gonna dig into that with you right now.

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** But I just wanted to bring this one to your attention.

Now, in your first interview, is it correct that you did not recall this?

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

**MR. SIMMONS:** You did not recall being involved in any work on adjusting the labour hours that found its way into the normalization in the bid award evaluation?

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

**MR. SIMMONS:** Right, and you'd believe that Mr. McClintock did all that work?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Right. And in your second interview, you were shown this email message.

**MR. MULCAHY:** Yes. Yes, and I – this is my writing. That's mine.

**MR. SIMMONS:** Right.

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** So apart from looking at this message, do you have any independent recollection of what lead to this –

**MR. MULCAHY:** No.

**MR. SIMMONS:** – or what the circumstances –

**MR. MULCAHY:** No.

**MR. SIMMONS:** – or how you did it?

**MR. MULCAHY:** No, I mean, basically I – like I said this morning, when I look at this, just a spot check on three items.

**MR. SIMMONS:** Right, so you're sort of figuring that out now by –

**MR. MULCAHY:** No, what I mean –

**MR. SIMMONS:** – looking at what's in the message, are you?

**MR. MULCAHY:** I'm trying to – if someone is asking me to do a normalization, I'm not gonna cherry-pick three items; I'm gonna take the –

**MR. SIMMONS:** All right.

**MR. MULCAHY:** – the whole –

**MR. SIMMONS:** All right.

**MR. MULCAHY:** – the whole nine items.

**MR. SIMMONS:** All right, so I'm not asking you so much about the content right now –

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** – because we can come to that later. But I do want to understand how much of what you're able to tell us you recall from the time, compared to what your conclusions are based on looking at documents like this email that you originally didn't remember at all.

**MR. MULCAHY:** Sir, like I say, this is almost four years ago.

**MR. SIMMONS:** Right.

**MR. MULCAHY:** I mean, I haven't got every piece of paper.

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** I mean, there's pieces of paper I had – I never saw – I couldn't –

**MR. SIMMONS:** Right.

**MR. MULCAHY:** – remember 'til I was shown it, and once I was shown it –

**MR. SIMMONS:** Right.

**MR. MULCAHY:** – I remembered.

**MR. SIMMONS:** Okay, good.

**MR. MULCAHY:** Now, not remembered it. I – it's my writing, okay? It's my email.

**MR. SIMMONS:** Right, okay. All right.

So I do have a few questions for you about the – that bid evaluation. I'm not gonna go in the same depth that Mr. Collins has with it. But maybe we will start with that same exhibit that we were just looking at there.

So you were asked some questions about the purpose of rationalizing – of doing a rationalization analysis on two different bids. So, let me give you a couple of things that I understand about it. And I'll get you to comment and tell me if I'm right or wrong because I may be completely wrong on it.

For something like a government road construction job, typically there will be a set of specifications that all the bidders get, and they all submit a bid with maybe unit-price amounts or lump-sum amounts for doing the work. And everyone's bidding against exactly the same specification.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** And so when you have a job like that, it's fairly easy to compare the bids because you just look at the bottom-line numbers to what everyone's bid, and the low bid is the low bid.

**MR. MULCAHY:** Right.

**MR. SIMMONS:** That's often the way we think of –

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** – the way tendering works. That's not the way tendering on contracts like this really works, is it?

**MR. MULCAHY:** This was – this – in the beginning, this was a unit-price, lump-sum bid.

**MR. SIMMONS:** Mm-hmm, okay.

And there were – what was sought here was proposals from the different bidders.

**MR. MULCAHY:** (Inaudible) you – I guess what you’re referring to now is the tenders. An RFP is different than a tender.

**MR. SIMMONS:** Yes.

**MR. MULCAHY:** But, I mean, you still have to provide securities and everything else with your tender.

**MR. SIMMONS:** Sure.

**MR. MULCAHY:** So to differentiate, say, an RFP and a tender – is the same to me.

**MR. SIMMONS:** All right.

In a process (inaudible) like this though, you – what happened here was the bid evaluation team ended up with – the Astaldi proposal was out – screened out.

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** It ended up with two proposals that weren’t on exactly the same terms that had to be evaluated.

**MR. MULCAHY:** In the beginning they – I think they were on the same terms.

**MR. SIMMONS:** Yeah.

**MR. MULCAHY:** They were –

**MR. SIMMONS:** Right.

**MR. MULCAHY:** – defined bids.

**MR. SIMMONS:** Right.

And they were all high, so there was some effort engaged in to try to find ways to reduce –

**MR. MULCAHY:** (Inaudible.)

**MR. SIMMONS:** – the cost.

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** And so it – if – it moved from the beginning to a point in 2015 when there were proposals from each of H. J. O’Connell group and the Barnard-Pennecon group which were not on exactly the same terms, right? There were differences in them aside from the price they were bidding.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Right?

So is the point of normalization then to try to find a way to rationally compare two bids that have some differences between them in things like the way the work is to be executed or the way the payments are going to be made and so on?

You said it was – you need to compare apples to apples.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** And that’s what you need to do.

**MR. MULCAHY:** Yes.

When I came down, apples and apples, after all the normalization or whatever you call it with the bid submitted, the two bids were identical.

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** Okay?

That’s what it came down to at the end before they got into all this sensitivity analysis, normalization and everything else.

**MR. SIMMONS:** Right. Okay, yeah.

So let’s look at this message then from July 20, 2015. And it starts out by saying: “As per our discussion last week, I have tried to make a rational analysis as to where we should increase Bidder # 2 man-hrs estimate from items in Nalcor estimate.” So the first thing is bidder number 2 is Barnard-Pennecon –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – right?

Now, there's a reference there to our discussion last week. Do you remember anything about what that discussion –

**MR. MULCAHY:** No.

**MR. SIMMONS:** – was?

Is it possible that that was a discussion where you and Mr. McClintock discussed you doing what you're reporting on here on now – preparing this?

**MR. MULCAHY:** Sir, I've been in – in the business 50, you know, 50-odd years.

**MR. SIMMONS:** Yes.

**MR. MULCAHY:** Sir, if I'm \$100 million lower, I'm not going to – I know I got to add on 400,000 hours, okay? I'm not – I'm not that stupid to add on 100,000 hours and say that's gonna be rationalized.

Now I mean – give me some credit, please.

**MR. SIMMONS:** No, but I – but what I need to understand, Mr. Mulcahy, is what you can tell us, from your memory, about what this – just a second now, I'll – let me ask question.

So there's a reference to the discussion the prior week. Do you know what it was you were asked to do, if you were asked to do something when you prepared this? Do you know what the task –

**MR. MULCAHY:** No –

**MR. SIMMONS:** – was –

**MR. MULCAHY:** – I don't –

**MR. SIMMONS:** – that was –

**MR. MULCAHY:** – know.

**MR. SIMMONS:** – given –

**MR. MULCAHY:** I –

**MR. SIMMONS:** – to you?

**MR. MULCAHY:** – can't – I can't rationalize, I'm only saying –

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** – if someone is using that figure –

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** – to justify a bid –

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** – is wrong, totally wrong –

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** – okay?

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** It – they took this totally out of context, if they're using that, to do their rationalization, because I know –

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** – in my own heart of hearts –

**MR. SIMMONS:** Okay.

**MR. MULCAHY:** – if I'm a hundred thousand – \$100 million lower, I'm not gonna add on 100,000 man-hours when I need to add on 400,000 hours. And my bid is there, you can check my labour content on it.

**MR. SIMMONS:** Right, I understand.

So after the July 20, then, when you sent this message to Mr. McClintock, did you have any further discussion with him about this; about how this was prepared, how was to be used –

**MR. MULCAHY:** No.

**MR. SIMMONS:** – anything like that?

**MR. MULCAHY:** No.

**MR. SIMMONS:** No.

Did you ever – can you remember ever having any conversation with him to explain anything



more about this than what we can read in this email?

**MR. MULCAHY:** Not that I recall.

**MR. SIMMONS:** Okay. All right.

In the message – if we scroll down a little bit, please – you’ve got some calculations done there where you apply some productivity factors.

**MR. MULCAHY:** Yes, yes.

**MR. SIMMONS:** And in item number 2 there, 2a, it says: “Reduce productivity to .5 from estimate on concrete and formwork ....” And then in b, it’s: “Reduce productivity to .75 for RCC placement ....”

So I’ll tell you what I – I understand, which may be wrong, about what you were doing here, and then you can tell me if I’m on the right track or explain it.

So, I understood you, for the North Dam work, to have started with the number of hours that you had included in your estimate that you’d prepared earlier.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** And because that estimate was about, I think probably about a year old then?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** And there was experience with how labour productivity was working out on site, principally from Astaldi –

**MR. MULCAHY:** Mm-hmm.

**MR. SIMMONS:** – that you increased the number of hours you had originally estimated using this 0.5 factor.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Right? So, instead of relying on your original estimate of hours, you used a higher estimate.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** That was an increase by 50 per cent or – how did the math work on that?

**MR. MULCAHY:** 25 per cent, I think.

**MR. SIMMONS:** Okay. Right.

And that at the time that you sent this message, was your estimate of how much the labour hours had to be increased to account for the observed productivity on the site? Is that right?

**MR. MULCAHY:** Yes. Yes, Sir.

**MR. SIMMONS:** Yeah.

**MR. MULCAHY:** But – okay.

**MR. SIMMONS:** Hmm.

**MR. MULCAHY:** Can I just –?

**MR. SIMMONS:** Sure, go ahead.

**MR. MULCAHY:** So, like I said before, I’d have to increase my – just on my base bid –

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** – I’d have it increased, say, 400,000 man-hours. But, based on that, I’d have to increase it by 53 more (inaudible) based on the productivity I observed.

**MR. SIMMONS:** Okay.

**MR. MULCAHY:** So, my – instead of \$400,000 as straight-line proportion on the bid, it – on this basis, I’d had to increase it again.

**MR. SIMMONS:** Okay.

**MR. MULCAHY:** Man-hours a bid, we increased by another 53 there – or 70,000 man-hours a bid.

**MR. SIMMONS:** So, what I just want to do is understand the basis of the thinking that went into doing this work.

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** So, let me try that again and make sure I got that part right.

So, you started with the labour hours you'd estimated, you adjusted them to account for the productivity that was being –

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** – observed on site, and then you got this 0.5 productivity factor, and that's what you reported to –

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** – Mr. McClintock.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Right. Okay.

Now, what about for the 0.75 for RCC placement? I take that to be that you took the number of hours you had in your estimate for roller-compacted concrete placement, and then you made an adjustment to account for something.

So, what – why that 0.75 in that case, Sir? Do you know?

**MR. MULCAHY:** Right now, basically, if I took – if I had 100 cubic metres (inaudible) per hour –

**MR. SIMMONS:** Yep.

**MR. MULCAHY:** – I reduced it then to 80 (inaudible) or 85 cubic metres an hour, and that's where the 75 per cent comes in.

**MR. SIMMONS:** Right.

So, that was, sort of, a change in your view from the time you done your estimate a year earlier.

**MR. MULCAHY:** Yes, but I was increasing my – the difference in –

**MR. SIMMONS:** And I'm just wondering why. What had changed for you to make that change?

**MR. MULCAHY:** Because when I looked at the spreadsheet, I did not have the spread in – I took this from past records.

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** But I figured I was low because of the distance –

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** – on the dam.

**MR. SIMMONS:** Okay. So, it was a reconsidering your –

**MR. MULCAHY:** Mm-hmm.

**MR. SIMMONS:** – original estimate resulted in you making a change.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** And then – so, this is the factor, then, that you sent on to –

**MR. MULCAHY:** (Inaudible.)

**MR. SIMMONS:** – Mr. McClintock

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Right. Okay.

So, just a question for you now about, kind of, the – again, going back to the objective of the normalization here.

I think Mr. Collins put it to you that the objective of the normalization would be to bring the Barnard-Pennecon bid hours up to be equal to the hours in the H. J. O'Connell bid. And I think you agreed with that when he put that to you.

I'm gonna suggest something different.

**MR. MULCAHY:** Okay then.

**MR. SIMMONS:** Okay.

So, I'm gonna suggest that the objective is to try and make the bids rationally comparable. The H. J. O'Connell bid – because it had a cap on labour, and if labour exceeded that amount it would be at the risk of the contractor – was a firmer bid price than the Barnard-Pennecon bid, right?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** And this – the labour was only part of each bid, right; there were also lump-sum amounts and unit-price amounts in both bids –

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** – right, so it wasn't like one bid was entirely reimbursable and the other one entirely not. So, we have the H. J. O'Connell bid, which has some more certainty around it because of that labour –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – cap.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** So I'm gonna suggest that the objective in normalizing the Barnard-Pennecon bid is going to be to try and predict what the actual outcome is going to be – how much it's gonna actually cost –

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** – and the work you did was trying to estimate what the labour hours would probably actually be.

**MR. MULCAHY:** That's on three items.

**MR. SIMMONS:** On three items, yes. I understand that point. But for those three items, that was the work that you did.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** And the productivity figures you gave to Mr. McClintock for those three items were your estimate of how much labour hours would have to be increased to get to a likely outcome for the Barnard-Pennecon of those items. So would that be then allowing an apples-to-apples consideration, we'll say, for those items between – the two bids, approaching it that way?

**MR. MULCAHY:** No, not really.

**MR. SIMMONS:** Why not?

**MR. MULCAHY:** Because that labour was just reduce – bring them up to the labour I had. But there's a big difference in labour when you put the whole – you got to take – you just can't take three isolated items. You got to take the whole picture.

**MR. SIMMONS:** Yeah.

**MR. MULCAHY:** Just – these three items just don't bring it up –

**MR. SIMMONS:** Okay.

**MR. MULCAHY:** – through the whole picture.

**MR. SIMMONS:** So can you tell us anything about why you were only reporting to Mr. McClintock on three items? 'Cause the top line – I read it to you – said: "I have tried to make a rational analysis as to where we should increase Bidder # 2 man-hrs estimate from the items in Nalcor estimate."

**MR. MULCAHY:** Sir, I –

**MR. SIMMONS:** That sounds like for the whole bid.

**MR. MULCAHY:** No, Sir, it's not for the whole bid.

**MR. SIMMONS:** Hmm.

**MR. MULCAHY:** Sir, just take common sense.

**MR. SIMMONS:** Mmm.

**MR. MULCAHY:** If I'm \$100 million low –

**MR. SIMMONS:** Mmm.

**MR. MULCAHY:** – 100 million – and my labour proportion of that is 33 per cent, just – common sense would tell you I have to add on 33 million.

**MR. SIMMONS:** Okay.

So –

**THE COMMISSIONER:** So, is this – might be a good place to break now or you tell me –

**MR. SIMMONS:** It probably is, Commissioner, yes.

**THE COMMISSIONER:** – okay.

If not I don't mind going a little longer, but –

**MR. SIMMONS:** No, that's as good a time as any.

**THE COMMISSIONER:** – okay, all right.

Mr. Mulcahy, we're gonna take our noon break now and come back at 2 o'clock this afternoon.

**MR. MULCAHY:** Okay, Sir.

**THE COMMISSIONER:** All right?

**MR. MULCAHY:** Do I have to come back?

**THE COMMISSIONER:** You do.

**CLERK:** All rise.

Recess

**CLERK:** All rise.

This Commission of Inquiry is now in session.

Please be seated.

**THE COMMISSIONER:** All right.

When you're ready, Mr. –

**MR. SIMMONS:** (Inaudible.)

**THE COMMISSIONER:** – Mr. Simmons.

**MR. SIMMONS:** Thank you, Commissioner.

Mr. Mulcahy, before lunch we were talking about the bid evaluation on the dams contract, CH0009. So I'm going to pick up and I want to go through a few more exhibits, kind of, in chronological order and ask you a few questions about it.

First of all, you told us earlier that you recall having very limited involvement in 2014 when Mr. Turpin was leading the bid evaluation. Do you recall that?

**MR. MULCAHY:** (Inaudible.)

**MR. SIMMONS:** Yeah.

**MR. MULCAHY:** All I can recall, like I said before, (inaudible) I was – I know I was in Bozeman with him, but far as –

**MR. SIMMONS:** Mm-hmm, right.

**MR. MULCAHY:** – I can't recall.

**MR. SIMMONS:** So there is some evidence, I think, that we've seen or will see that there were some technical evaluation sheets done during that part of the process when Mr. Turpin was still involved. Do you recall having any involvement with those? Or preparation of any of those?

**MR. MULCAHY:** I don't recall, Sir.

**MR. SIMMONS:** Don't recall. Okay.

Well, let's go up then to May of 2015. I think that's when Mr. McClintock became involved. And if we can look at Exhibit P-02778, please.

**MR. MULCAHY:** What binder, please?

**MR. SIMMONS:** That is binder 2, tab 41.

And this is really just a marker here now for you, just to place some events in time. So this – the first page here is an email message, and it's on May 23, 2015. And it comes from Mr. McClintock to you and to Ed Over.

So what was Ed Over's role in the bid evaluation process while you were involved?

**MR. MULCAHY:** He was part of the commercial evaluation, and really on a technical – or commercial really.

**MR. SIMMONS:** Okay.

**MR. MULCAHY:** And he had all communications with the (inaudible) or the bidders, two and three. He handled all communications –

**MR. SIMMONS:** Right.

**MR. MULCAHY:** – with them. I think he did – whatever commercial was at that time, you know. But Ken – once Ken came in, he took over commercial, (inaudible).

**MR. SIMMONS:** Okay.

So you were on the technical evaluation team, I'll say, group, and that was you and Mr. Snyder, Mr. Greg Snyder, right?

**MR. MULCAHY:** Yeah, I brought him in because he was the engineering manager for SNC –

**MR. SIMMONS:** Right.

**MR. MULCAHY:** – on the project.

**MR. SIMMONS:** Right.

So am I correct in understanding that it was you and Mr. Snyder who were charged with doing the technical evaluations of the two proposals and ultimately doing the scoring for the technical evaluations for the two proposals?

**MR. MULCAHY:** I'd say – well, yes.

**MR. SIMMONS:** Okay. And Mr. Over was involved in the commercial evaluation and doing the commercial scoring. Is that right?

**MR. MULCAHY:** I'd say, yes.

**MR. SIMMONS:** Okay.

Well now, if we look at this message that went to you on May 23, once you get to page 3 there's a number of notes there. And these are Mr. McClintock's notes. I'm not going to take you through those. But what I understand is that when he became involved, in the week of May 22, was when he first started to dig in and start getting organized for carrying this bid evaluation on.

Does that ring any bells with you? Do you recall anything from that time period?

**MR. MULCAHY:** I'm sorry, repeat the question?

**MR. SIMMONS:** Do you recall what happened when Mr. McClintock first became involved? What was done to continue the bid evaluation?

**MR. MULCAHY:** He set up all the tasks to go forward.

**MR. SIMMONS:** Yes, okay.

And did he assign tasks to you?

**MR. MULCAHY:** There was communications back and forth to check this, check that, or something else I think. Specifically I, you know ...

**MR. SIMMONS:** Okay.

Do you recall that there were requests made then to both Barnard-Pennecon and H. J. O'Connell-Drigados to update the proposals they had made previously in 2014?

**MR. MULCAHY:** There were some requests made. As a matter of fact there was requests made right up to Barnard-Pennecon – not Barnard-Pennecon, but O'Connell, right up – the 24th, after the award there's a letter coming in – that's at the 24th, they were still requesting information from O'Connell.

**MR. SIMMONS:** Right.

Now, we can go to the documents if we need to. I'm not going to ask you questions about what their proposals actually were. But does it sound right that there was a couple – two new proposals that came in from each of the two bidders about June 30, and then some more information that came in about July 9, and that was information that had to be evaluated in that time period.

**MR. MULCAHY:** Yes, and – yes. And I did a summary of the two proposals, a bottom line summary –

**MR. SIMMONS:** Yeah.

**MR. MULCAHY:** – that you should have in your documentation.

**MR. SIMMONS:** Okay, good.

So before that came in though – I’m going to bring you back to some messages we have around earlier in June. So can we go to Exhibit P-02785, please?

**MR. MULCAHY:** Which is tab ...?

**MR. SIMMONS:** It is volume – binder 3, tab 48.

**MR. MULCAHY:** Forty-eight.

**MR. SIMMONS:** Please, yeah.

Okay, so this is email messages again and if you look at the first page, at the bottom of the first page there’s a message from Mr. McClintock to you and Mr. Snyder. And the date of it appears to be June 8, 2015. Do you see that? It’s 06/08.

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** And if you go to the top message on that page, on page 1, it’s from Mr. Snyder to Mr. McClintock, copied to you and it says: “Here are the spreadsheets.” And then when you go over to pages 3 and 4, there’s spreadsheets there for evaluations of the contractor teams for Barnard and for Dragados. See those?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Okay.

So did you participate in preparing the information that’s in these contractor team evaluations?

**MR. MULCAHY:** I’d say, yes.

**MR. SIMMONS:** Do you remember it?

**MR. MULCAHY:** I don’t remember it, but I – you know.

**MR. SIMMONS:** Okay.

**MR. MULCAHY:** Because I worked with Mr. Snyder on this, so he didn’t do it in isolation I don’t think.

**MR. SIMMONS:** Okay.

So you were copied on both messages, so is it fair to conclude that you would’ve been aware of what these evaluations were and that you would’ve participated in preparing these team evaluations?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Okay.

And if you look at page 3, the Barnard-Pennecon evaluations got a score of 263.45.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** And if you turn to the next page, to page 4, the Dragados – that’s H. J. O’Connell, Dragados, score is 195.9.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** So Barnard-Pennecon clearly came out as scoring better –

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** – on that evaluation.

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** Okay.

And if we go to Exhibit P-02786, please.

**MR. MULCAHY:** Tab?

**MR. SIMMONS:** Probably the next one.

**THE COMMISSIONER:** Eighty-six –

**MR. SIMMONS:** Tab 49.

**THE COMMISSIONER:** Tab 49, yeah.

**MR. SIMMONS:** So this is an email message on June 12, so this is a few days later. And it’s from Mr. Snyder to a Francois Couturier at SNC-Lavalin, copied to you.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Did you know who Mr. Couturier was?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** And what was his role?

**MR. MULCAHY:** He was – well, he was the executive vice-president of SNC, but I think he was – then he was in St. John’s office hitting up the engineering at one time for the SNC people.

**MR. SIMMONS:** Okay.

And if you look at the message, he starts up by referring to you saying: “John Mulcahy stayed up at site last night, but I did talk to him today.” He refers to there being a big concern on execution and whether they are bringing the team that can do the job. And says – refers to RCC experience as it was taken into consideration in the ranking.

You can take a moment to read that through as you need to. My question is: Does this relate to this constructor – contractor team scoring evaluation that we looked at a moment ago?

**MR. MULCAHY:** Not really because, as far as I’m concerned, when I was the contractor doing – I’m getting off track a bit probably. When I was the contractor doing Grand Falls for an example, RCC, I wanted – as a contractor, I wanted an RCC specialist on board.

**MR. SIMMONS:** Do you remember anything about what’s being discussed in this message here?

**MR. MULCAHY:** I guess they wanted both – both contractors were required to have a specialist, as far as I know.

**MR. SIMMONS:** Okay, yeah. Well, that’s not my question.

**MR. MULCAHY:** Okay.

**MR. SIMMONS:** So take your time and look at the message. Do you remember anything about what’s being discussed here, and can you tell me what this message is about? If not, that’s fine, we’ll move on.

**MR. MULCAHY:** I guess this message of – if I’m just glancing through it, they wanted to

make it a part of the specification to have an RCC specialist.

**MR. SIMMONS:** Okay.

**MR. MULCAHY:** Can see –

**MR. SIMMONS:** Okay.

So can we go now to Exhibit 02799, please?

**MR. MULCAHY:** Tab?

**MR. SIMMONS:** We’re going to jump ahead a little bit now.

This is binder 3, tab 62, please. So this will bring us up to June 21, 2015.

Okay, you have that one?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** So this is the day after the message we looked at this morning from July 20 when you’d sent Mr. McClintock the productivity –

**MR. MULCAHY:** Yeah –

**MR. SIMMONS:** – your hours calculations for adjustment of hours to Barnard-Pennecon. So this is now the next day. It’s a message from Tony Scott to Ken McClintock and you and it starts up by saying: “John asked me to have another look at the CH0009 bidders schedules, and do some analysis and notes.”

Can you recall what it was you were asking Mr. Scott to do here?

**MR. MULCAHY:** Which tab was that again, sorry? I just – I picked up the wrong tab here.

**MR. SIMMONS:** I’ll show – sorry, I’ll give you a moment to find it – 62.

**MR. MULCAHY:** Huh?

**MR. SIMMONS:** Tab 62.

**MR. MULCAHY:** Yeah, I just picked up a tab and I – remember you went back to the scoring on – just a few minutes ago on the two teams –

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** – and how they stood out?

**MR. SIMMONS:** Yeah.

**MR. MULCAHY:** But on the 21st of July there's a – they changed out their two top players and that would've certainly changed their scoring too.

**MR. SIMMONS:** Okay.

**MR. MULCAHY:** Right?

**MR. SIMMONS:** All right.

Can you turn up tab 62, please?

**THE COMMISSIONER:** Let me – just for a second, what are you referring to there?

**MR. MULCAHY:** I'm referring to page 1 or the Exhibit 02798. I just happened to pick up the wrong –

**MR. SIMMONS:** Okay, yeah.

**THE COMMISSIONER:** Seventy-one – just give me the number again?

**MR. MULCAHY:** 02798.

**THE COMMISSIONER:** So this is at tab what? Can you just tell me what tab you're at in there?

**MR. MULCAHY:** Oh, I'm sorry, 61.

**THE COMMISSIONER:** Sixty-one? So what is your – I'm just trying to understand.

**MR. MULCAHY:** I'm just making the point a few minutes ago, Mr. Simmons brought up about the scoring of the Barnard-Pennecon team way higher than the O'Connell team, but then they changed out their top players which would've reduced their scoring a lot.

**MR. SIMMONS:** Well, I guess depending on who the other people were –

**MR. MULCAHY:** But, anyway –

**MR. SIMMONS:** – and how they were evaluated.

**MR. MULCAHY:** But the scoring was – should've been – right, okay.

**MR. SIMMONS:** Anyway, my point is at this point you were actually involved in this process of doing –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – this part of the evaluation.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Yeah, okay.

And Exhibit-02799, which is at tab 62, I think, please.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Okay, so this is a message from Mr. Scott to you and Mr. McClintock. And it starts out saying: "John asked me to have another look at the CH0009 bidders schedules, and do some analysis and notes." So take your time and have a look.

And what – you know, why were you making this request to Mr. Scott and what were you asking him to do?

**MR. MULCAHY:** I don't recall at the time, right now.

**MR. SIMMONS:** Okay.

If you turn to page 2 you'll see that there's a summary there. And if we carry on to page 3 at the bottom ...

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** All right, continue down, Madam Clerk. Okay, stop there.

So, the last three paragraphs on page 3 starts out: "B2 schedule indicates non-compliance with milestones. However the milestone is likely unrealistic due to other project conditions. Unclear if B2 fully understood the modified milestones or not. B2 schedule indicates ability



to meet critical portion of the North Dam completion milestone for impoundment with minor modifications.”

So B2 was the Barnard-Pennecon bidder, correct?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Do you recall this discussion about the Barnard-Pennecon schedule? And can you add anything to what’s been stated here in Mr. Scott’s analysis?

**MR. MULCAHY:** No.

**MR. SIMMONS:** The next one says: “B3 Schedule indicates ability to meet milestones, but has little apparent buffer (possibly built into activity durations and not transparent).”

B3 would’ve been H. J. O’Connell?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** And then it says: “At face value, B2 schedule appears to have greater flexibility, even though it presents as non-compliant.”

So did you agree or disagree or have any view on Mr. Scott’s conclusion that the B2 schedule appeared to have the greater flexibility?

**MR. MULCAHY:** I can’t recall at this –

**MR. SIMMONS:** Mmm.

**MR. MULCAHY:** – time, this instance.

**MR. SIMMONS:** Okay. All right.

02802, please. Which is exhibit – at tab 55 – 65. Sixty-five.

So you were shown this before. This is a July 24, 2015, presentation, just shortly after some of those emails we looked at. Did you play any role in preparing this or do you know?

**MR. MULCAHY:** I don’t know.

**MR. SIMMONS:** Okay. Do you – were you present when it was presented?

**MR. MULCAHY:** I don’t know, Sir.

**MR. SIMMONS:** Okay.

Do you know if there was a meeting with anyone to present it or what it was used for?

**MR. MULCAHY:** I guess that was presented, it says here, as presentation to senior management or something, wasn’t it?

**MR. SIMMONS:** Turn over page 11, please.

Now, you may not be able to help me with this or not, but on this page – it’s headed Bidder Overview. You have that? And this is the bidder overview for Barnard-Pennecon Joint Venture. It lists pros and cons.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Yes.

The first bullet under cons says: “Higher evaluated price (additional mhrs added for RCC, Upstream CD & Tailrace Works).” The RCC, that would appear to refer to the roller compacted North Dam?

**MR. MULCAHY:** Roller-compacted concrete, yes.

**MR. SIMMONS:** Upstream CD, that’s upstream cofferdam?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** And then tailrace works, well, that’s the – yeah.

So do those correspond to the three items that had been in your email message on July 20, where you determined what adjustments needed to be made for man-hours?

**MR. MULCAHY:** I don’t recall right now.

**MR. SIMMONS:** Okay.

**MR. MULCAHY:** But –

**MR. SIMMONS:** Okay. All right. Well, we’ll leave that.

Page 13. So this is headed Evaluation and Scoring, and there's a bullet that says, "New scoring model emphasizing execution and project team." Do you remember anything about the team adopting a new scoring model once Mr. McClintock became involved?

**MR. MULCAHY:** No, I don't recall.

**MR. SIMMONS:** Okay.

Well, I'm –

**MR. MULCAHY:** I – listen, this is not a patented answer. I just don't recall, Sir.

**MR. SIMMONS:** Well, let me just give you a scenario, and you can tell me if that sounds right or wrong or if you don't know. So my understanding is that when that – at the outset there was a bid evaluation plan.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Do you recall there being a bid evaluation plan in existence?

**MR. MULCAHY:** I've seen something that was written off by Mark Turpin in the beginning –

**MR. SIMMONS:** Right.

**MR. MULCAHY:** – and there was another one that Mr. McClintock did up.

**MR. SIMMONS:** Okay.

So, I'm gonna suggest that there was an original bid evaluation plan and that before Mr. McClintock became involved, the bid evaluation work was proceeding under the provisions of that bid evaluation plan.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Then when Mr. McClintock became involved in 2015, sometime later, there was discussion of changing the emphasis to place more emphasis on the contractor's ability to perform the contract. Does that ring any bells with you?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Okay.

And that this presentation on July 24 was based on a revised approach to the bid evaluation plan.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Does that sound familiar to you? You're saying yes, but does that – do you know if that's the case or not?

**MR. MULCAHY:** I don't know if it was the case.

**MR. SIMMONS:** Okay.

And then the next step I'm gonna suggest is that at this meeting on July 24, Mr. McClintock and the team were told, no, we want you to use the original plan and not your revised approach, and the team then had to go back and complete a reassessment based on returning to the original plan.

Does any of that sound familiar to you?

**MR. MULCAHY:** No.

**MR. SIMMONS:** It doesn't.

**MR. MULCAHY:** No.

**MR. SIMMONS:** Okay.

Exhibit 02803, please, which is tab 66.

So if you're on page 1, this is an email message that same day, July 24, 2015, from Mr. McClintock to Mr. Over to you and to Mr. Snyder, and it says, "Please review this and plan to complete your respective sections all as per" – our – "discussions today." And the attachment to it is a 2014 bid evaluation plan. See that?

So do you recall receiving this and being tasked to complete respective sessions as per whatever discussion you had on July 24?

**MR. MULCAHY:** No, I don't recall.

**MR. SIMMONS:** (Inaudible.) Exhibit 02804, please, tab 67.

So this is three days later. It's an email on July 27. It's from Mr. Over to Mr. McClintock and to you. It says, "Attached is my commercial evaluation of Bidder 2 and Bidder 3 (Alt proposal) per the original evaluation plan."

Do you recall receiving this information from Mr. Over?

**MR. MULCAHY:** No.

**MR. SIMMONS:** And we'll go to one more, 02805, which is your tab 68. And now we're up to Mr. Snyder's message to Mr. McClintock copied to you – also on July 27, 2015 – where he says: "Here is the review from John and I. I have indicated which values" – we've – "changed and by how much." And it includes a bid evaluation here.

So is it possible, Mr. Mulcahy, that the bid evaluation that you and Mr. Snyder prepared here was done following the July 24 presentation in order to now conform to the criteria in the original bid evaluation plan instead of the modified approach that had been under discussion prior to that date?

**MR. MULCAHY:** I don't know the reason for it. I know – like I say, it was just – like I said, I don't do spreadsheets, so I had to sit down with Mr. Snyder to do one but –

**MR. SIMMONS:** Right.

**MR. MULCAHY:** – that's all I'm saying.

**MR. SIMMONS:** Okay.

Okay. So from this point on – the 27th – it's – we know that on the 10th of August – is the first sign-offs on the actual bid evaluation document. Can you remember what involvement you had or what work you did after July 27 until the bid evaluation document began to be signed off on August 10 – in that two-week period?

**MR. MULCAHY:** What's the date of this – 27th?

**MR. SIMMONS:** This is 27th of July, 2015. And we know from looking at Exhibit P-01870 – that's when Mr. Over and Mr. McClintock and

several others signed off on the formal bid recommendation –

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** – August month – two weeks later. Do you know what you – if you had any involvement in that two-week time period leading up to the bid evaluation?

**MR. MULCAHY:** I can't recall, Sir.

**MR. SIMMONS:** Okay. If when – we also know from that document that the final sign-off on the bid evaluation by Ron Power and Jason Kean was August 14. Now, you sent a message the day before that, August 13, and it's at P-02967.

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** You were referred to this earlier – tab – binder 4, tab 109. It'll probably come up on your screen there, too.

**MR. MULCAHY:** Tab – binder 4?

**MR. SIMMONS:** Binder 4. Tab 109, when you've got it.

**MR. MULCAHY:** Yes. I got that – right here. That's – I think we discussed that one this morning.

**MR. SIMMONS:** Right. You were (inaudible) – and so this is actually the day before the final sign-off by Mr. Power and Mr. Kean on the bid evaluation. And it's a message from you, and it goes to Scott O'Brien and to Mr. McClintock.

It starts out: "Scott, Listed below are some bullet points for each bidder as discussed with Ken."

So I want to make sure here – do you have any recollection of preparing and sending this email message?

**MR. MULCAHY:** I don't have a recollection. I only seen it this week, but –

**MR. SIMMONS:** Yeah.

**MR. MULCAHY:** – it's mine. Like I said this morning, my only rationale for that is that I said

my piece during the evaluation; I told them what my points were – no management (inaudible). So I either had to buy into it and work with the team or go home.

**MR. SIMMONS:** Do you remember that happening? Do you remember that being the reason why you sent this email?

**MR. MULCAHY:** No, I don't know. I'm just trying to rationalize it.

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

So –

**MR. MULCAHY:** I don't know why.

**MR. SIMMONS:** So you can't tell us anything else about why this email was sent.

So, if we just have a look at it, under "BPJV" – that's Barnard-Pennecon Joint Venture – there's six numbered points there and they're all positives about Barnard-Pennecon's ability to execute –

**MR. MULCAHY:** Yeah.

**MR. SIMMONS:** – the work. Correct?

**MR. MULCAHY:** That was to support the decision.

**MR. SIMMONS:** Yeah.

And under "ODJV," there's several points on some of the same topics that aren't as positive for that joint venture's ability to complete the work on time. Correct?

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** Yeah.

Now, I can't imagine that you would have been comfortable sending that message unless you believed this was correct.

**MR. MULCAHY:** Sir, right now I don't know why I sent it or anything else, but I'm saying we had to buy into the team and we had to support this decision. This decision – this is on August the 13th. The decision to go with Barnard-

Pennecon was done on July 24. Whether I supported this on the 13th of – it was irrelevant.

**MR. SIMMONS:** Right. Yeah.

And, Mr. Mulcahy, I wouldn't have expected you to have sent this message unless you were comfortable that this was a correct representation –

**MR. MULCAHY:** But all I'm saying – the decision –

**MR. SIMMONS:** – of the evaluation.

**MR. MULCAHY:** – the decision by this time – decision was made.

**MR. SIMMONS:** Okay. So –

**MR. MULCAHY:** If it had to be before the decision was made, I could understand your point. But the decision was made to go with –

**MR. SIMMONS:** Right.

**MR. MULCAHY:** – Barnard-Pennecon.

**MR. SIMMONS:** Even though the decision's been made, would you have sent this message if you –

**MR. MULCAHY:** Sir, I –

**MR. SIMMONS:** – thought that what you were saying wasn't a fair evaluation?

**MR. MULCAHY:** Sir, I – look, I'm trying to answer your question honestly.

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** I don't – you're trying to put words in me mouth. I really don't –

**MR. SIMMONS:** No, I'm asking a question.

**MR. MULCAHY:** I'm – Sir, I don't know, okay, why I sent this email. But the decision was made by this time.

**MR. SIMMONS:** Right.

**MR. MULCAHY:** Okay? And I'm – someone had to ask me, 'cause I tell you the reason why – one thing that really twigs me here – I never sent an email to Paul Kennedy in my life, I don't think, and Paul Kennedy is copied on this email. And he was – he signed off on – he was the sign-off on that bid evaluation. So, I guess it was something – I – that's – I don't understand. Like, all during the process here Paul Kennedy was never involved and this is copied to Paul Kennedy. I don't –

**MR. SIMMONS:** Right.

**MR. MULCAHY:** – I don't know where –

**MR. SIMMONS:** Okay.

**MR. MULCAHY:** – Paul Kennedy –

**MR. SIMMONS:** Right. So, okay –

**MR. MULCAHY:** – he was for the sign-off as far as Procurement or something is concerned. So I guess someone wanted some backup or something for Paul Kennedy – when did Paul Kennedy sign off on this evaluation?

**MR. SIMMONS:** Oh, he doesn't.

**MR. MULCAHY:** He did. He did somewhere on the – for the sign-off, not on the evaluation. I saw it there.

**MR. SIMMONS:** Okay.

I can't answer that. I can't –

**MR. MULCAHY:** No, but –

**MR. SIMMONS:** – I can't tell you that.

**MR. MULCAHY:** – can we look up the tab to see where he signed off?

**MR. SIMMONS:** I don't know where to look for it, but that's – we can leave that.

If the Commission counsel want to pursue that they can pursue that –

**MR. MULCAHY:** But anyway, Paul Kennedy signed off –

**MR. SIMMONS:** – they can pursue that with you.

**MR. MULCAHY:** – before this letter. To my knowledge the last two to sign off was Jason Kean and –

**MR. SIMMONS:** Yeah, you may be right. Paul Kennedy signed for Pat Hussey –

**MR. MULCAHY:** Yes.

**MR. SIMMONS:** – who was the supply chain manager.

**MR. MULCAHY:** And what time was that?

**MR. SIMMONS:** 12 o'clock.

**MR. MULCAHY:** Yeah, so this is after the fact too.

**MR. SIMMONS:** Mm-hmm. Mm-hmm.

Okay, so be that as it may, you can't – right now you're reconstructing this based on what you see in the message –

**MR. MULCAHY:** I'm not, Sir, I –

**MR. SIMMONS:** – and you can't tell us –

**MR. MULCAHY:** – all I'm saying –

**MR. SIMMONS:** – what you recall about what –

**MR. MULCAHY:** No.

**MR. SIMMONS:** – led to this message (inaudible).

**MR. MULCAHY:** No.

No, all I'm saying Paul Kennedy's popped up here –

**MR. SIMMONS:** Mm-hmm.

**MR. MULCAHY:** – and I have never written – and Paul Kennedy was never involved in any of this. So I had – someone had to ask me to write Paul Kennedy on this. I didn't do it on my own 'cause Paul Kennedy was never involved in this.

**MR. SIMMONS:** Okay. (Inaudible.)

**MR. MULCAHY:** (Inaudible.)

**MR. SIMMONS:** Well, thank you, Mr. Mulcahy.

Someone else may be able to shed some more light on that for us –

**MR. MULCAHY:** Okay.

**MR. SIMMONS:** – so thank you for being patient with my questions and I don't have anything else for you.

**MR. MULCAHY:** Thank you very much.

**THE COMMISSIONER:** Okay, redirect.

**MR. COLLINS:** Okay, Mr. Mulcahy.

You discussed with Mr. Simmons that your experience, up until you came to work on the joint – the Lower Churchill Project, your experience was all with the contractor's side –

**MR. MULCAHY:** Right.

**MR. COLLINS:** – not with the owner's side.

**MR. MULCAHY:** Yes.

**MR. COLLINS:** As the contractor, would you have any experience retaining contractors, evaluating, requesting for bids, evaluating them, managing contracts?

**MR. MULCAHY:** Yes.

Like, some of the design – build contractors, there was – they had a separate contract and that was assigned to the contractor. Also, on our major projects we had a lot of subcontractors, like electrical, mechanical, whatever, especially (inaudible), and we'd evaluate – we'd get sub prices in and we'd have to sit down and evaluate 'em and see who was the best to take.

**MR. COLLINS:** Would the situation about prime contractor dealing with subcontractors be analogous to the situation of an owner dealing with contractors?

**MR. MULCAHY:** In a similar vein, yes.

**MR. COLLINS:** Could we go to tab 62, which I think is in binder 3, and this is P-02799, and it's one of the documents you just discussed with Mr. Simmons.

**MR. MULCAHY:** Tab 3, or binder 3?

**MR. COLLINS:** Binder 3, tab 62.

And I just wanna go to page 3. Could we scroll down a little – and a little –?

**THE COMMISSIONER:** So, we're on page 3?

**MR. COLLINS:** Page 3.

**MR. MULCAHY:** Tab 68, binder 3, yes.

**MR. COLLINS:** So –

**MR. MULCAHY:** That's –

**MR. COLLINS:** – I'd like to –

**MR. MULCAHY:** – that's not the right one –

**THE COMMISSIONER:** No, no, you're supposed –

**MR. COLLINS:** It's tab –

**THE COMMISSIONER:** – to be at –

**MR. COLLINS:** – 62.

**THE COMMISSIONER:** – tab 62.

**MR. COLLINS:** Oh, tab 62, Mr. Mulcahy, yes.

And it says: "B3 schedule" – that's H. J. O'Connell's schedule – "indicates ability to meet milestones, but has little apparent buffer (possibly built into activity durations and not transparent)."

Is that a reference to what you discussed earlier about how a contractor might use a lower production –

**MR. MULCAHY:** Productivity –

**MR. COLLINS:** – rate?

**MR. MULCAHY:** – rates. That was all I was saying – duration. If you got a dump truck, you’re gonna haul more than a pickup truck, that’s all I’m saying; that’s to do with productivity. That’s the only reference I was making. As far as this, I can’t recall what all this was about.

**MR. COLLINS:** Okay.

Do you have any other comments? Is there anything about the answers you’ve given you’d like to clarify or return –

**MR. MULCAHY:** The –

**MR. COLLINS:** – to?

**MR. MULCAHY:** – only comment I have if – so much emphasis and that on that 113,000 man-hours that I came up with on July the 20th for \$6 million, but if you go to, I think it was July 27, Mr. McClintock’s – when he sent to me about the sensitivity analysis, he came up with 300,000 man-hours, \$27 million that’s – I’d just like to check that email. I don’t know what tab it is.

**MR. COLLINS:** (Inaudible.)

**MR. MULCAHY:** And so, if so much emphasis is made on the three items that I cherry-picked, how come seven days later he came up with \$27 million on his sensitivity analysis. I don’t know what tab it is.

**MR. COLLINS:** I believe you’re referring to tab 86, binder 4.

**MR. MULCAHY:** Tab what, binder 1?

**MR. COLLINS:** Binder 4.

**MR. MULCAHY:** Binder 4.

**MR. COLLINS:** And that’s P-02818.

**MR. MULCAHY:** That’s the only one I – just sticks out in my mind. That’s all. Tab?

**MR. COLLINS:** The tab – 86.

**MR. MULCAHY:** Yeah. This is on the 27th. My email was on the 20th. This is seven days later, as I’ve had – as a sensitivity exercise, I’ve

added 356,000 man-hours as a normalization to bidder 2’s evaluation. So – so something is – doesn’t make logical sense. You’re putting emphasis on the 113,000 man-hours, which is only \$8 million on the 20th. And on the 27th, as a normalization, he added 356,000 man-hours. So I just can’t explain it.

That’s what stuck out to me this morning when I was going through this.

**MR. COLLINS:** And for reference –

**MR. MULCAHY:** That’s the only comment I had to make, Sir.

**MR. COLLINS:** And for reference, if we go to P-01870, which is tab 79 of the same binder. And if we go to page 15, you’ll see if we scroll down a little bit – if you add more than 140,000 hours to Barnard-Pennecon’s bid, then H. J. O’Connell becomes the low bidder. Is that –?

**MR. MULCAHY:** I mean, well, that’s all – what I’m saying is: He’s added 300 – which is an – what – when I do it, I’ve said, I’d have to add on 380,000 man-hours to my bid to normalize it with the other bidders, the \$100 million. That’s the reference I was trying to make, if I make myself clear.

**MR. COLLINS:** Those are all my questions.

**THE COMMISSIONER:** All right, Mr. Mulcahy. Thank you very much for your time, and you can step down. Thank you.

**MR. MULCAHY:** Can I – can I say something?

**THE COMMISSIONER:** Well, actually, questioning is finished now. Is there –?

**MR. MULCAHY:** No, but I just want to make – this is the lowest day of my life after 50 years. I never had, you know...

**THE COMMISSIONER:** Well, let me put it to you this way, Mr. Mulcahy: You know, I recognize that you’re here not by choice but as a result of the summons from the Inquiry.

This Inquiry has a – I think, a fairly important job to do. So, we’re trying to get to –

**MR. MULCAHY:** But, I'm trying to –

**THE COMMISSIONER:** – I'm trying to get the story as to what transpired here. And while I'm sure it's not comfortable to come in and act as a witness in any sort of a case like this, you know, the fact is it's just a necessary part of what is required here.

**MR. MULCAHY:** Anyway –

**THE COMMISSIONER:** So.

**MR. MULCAHY:** – (inaudible) – thank you, Sir.

**THE COMMISSIONER:** Okay. Thank you, and you can step down.

Just to – we are going to adjourn here now.

The witnesses for tomorrow – one of them is not arriving until later this afternoon, so we will be starting tomorrow. We will have no trouble finishing tomorrow, I've been assured of that, with GE and Grid Solutions.

So, we'll start again tomorrow morning at 9:30. All right?

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.