



## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Phase 2

Volume 31

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*Commissioner: Honourable Justice Richard LeBlanc*

Wednesday

8 May 2019

**CLERK (Mulrooney):** This Commission of Inquiry is now open. The Honourable Justice Richard Leblanc residing as Commissioner.

Please be seated.

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

Mr. Learmonth.

**MR. LEARMONTH:** (Inaudible) following exhibits: P-03020 to P-03027, P-00135 to P-03144, P-03243 to P-03251.

**THE COMMISSIONER:** The second group that you indicated, was that 00135 –

**MR. LEARMONTH:** P-03135 to P-03144. I might have said that wrong.

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

All right, your first witness then this morning.

**MR. LEARMONTH:** Mr. Mauro Palumbo.

**THE COMMISSIONER:** Okay.

And does Mr. Palumbo wish to be sworn or affirmed? Or have you checked with him on that?

**MR. LEARMONTH:** He can be sworn.

**MR. PALUMBO:** I can swear.

**THE COMMISSIONER:** Okay, just stand up, please, Sir, if you would, and there should be a bible there.

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

**MR. PALUMBO:** I do.

**CLERK:** Please state your name.

**MR. PALUMBO:** Mauro Palumbo.

**CLERK:** Could you spell it for the record, please?

**MR. PALUMBO:** M-A-U-R-O P-A-L-U-M-B-O.

**CLERK:** Thank you.

**THE COMMISSIONER:** You can be seated there, Sir.

All right, Mr. Learmonth.

**MR. LEARMONTH:** Before we begin, I want to state that there are certain limitations on the range of questions that I will be putting to the three Astaldi witnesses. The reason for this is that Astaldi and Nalcor are involved in a commercial arbitration in Toronto dealing with issues arising from Astaldi's work on the Muskrat Falls Project. My objective is to stay away from leading evidence that is better left to this board of arbitration so that the commercial interest of both Nalcor and Astaldi, at the arbitration, are protected and not affected by the evidence presented at this Inquiry.

I believe that this approach is consistent with the approach that you, Commissioner, followed in dealing with redactions from the Phase 2 Grant Thornton report.

**THE COMMISSIONER:** Mm-hmm.

**MR. LEARMONTH:** I've discussed this with Mr. Simmons and Mr. Burgess, and they are, of course, free to object if they believe that evidence is being led which could reasonably affect their client's commercial interests at the arbitration in that if an objection is made and can't be resolved, then we will have to ask for your ruling.

I'd also like to point out that there are – there is – there are certain issues that are before the board of arbitration and there's another – at least one other issue which is in – before the courts of Newfoundland and Labrador, and that has to do with Astaldi's claim against Contractor's Engineer Inc. – that's CEI – in relation to the collapse of a draft tube form 2 in May 2016.

So, I'll proceed on that basis, and I hope that that's acceptable and understood by all parties.

**THE COMMISSIONER:** All right.

Well, just so I can better understand this and – because I’m also concerned that other and counsel and the Inquiry – I’m not certain how much communication you’ve had with them concerning these restrictions. But, you know, obviously, there are – with regards to Astaldi – I’ve allowed in a lot more documents than I have for some of the other claims because they’re already publicly available, or most of them were.

I certainly don’t want to either impact in any way either the claim of Astaldi or, alternatively, the interest of Nalcor Energy. But, you know, having said that, there is a story to be told here, and Astaldi has come up numerous times in the evidence. And I guess what I’m going to need to do is hear what the questions are.

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

**THE COMMISSIONER:** If there is an objection to a question, then I’m going to need to know the basis upon which I shouldn’t allow it – so, this is specifically for Nalcor and for Astaldi counsel – and then I’m going to have to consider my position with regards to that subsequent –

**MR. LEARMONTH:** Yeah.

**THE COMMISSIONER:** – to hearing from the parties.

You know, we are walking a bit of a tightrope here, and I understand that, but – you know, and – you know, again, the bottom line is is that as much as is possible, I do not want to impact in any way the interests of either Astaldi or Nalcor at these – at the arbitration or, alternatively, before the court.

So having said that, I’m not sure if any other counsel has anything they want to add. And as I say, I’m not even certain how much discussion has been had with other counsel on this. But, you know, obviously if you have an issue that you might want to raise, you know, we have these witnesses on for the next two days, so if there’s an issue that you might want to discuss with Commission counsel ahead of time, or something like that, feel free to do that, too, so that we can sort of get clarification and do as much – resolve as much of this without me having to make a decision if at all possible.

All right, go ahead, then, Mr. Learmonth.

**MR. LEARMONTH:** Yes. Mr. Palumbo, where do you live?

**MR. PALUMBO:** I live in Rome.

**MR. LEARMONTH:** In Rome, Italy?

**MR. PALUMBO:** Italy.

**MR. LEARMONTH:** And what is your position?

**MR. PALUMBO:** My position is contract manager in the legal and contract department of Astaldi S.p.A.

**MR. LEARMONTH:** How long have you been an employee of Astaldi S.p.A?

**MR. PALUMBO:** I started in 1987 until now, apart from a short break of just one year when I live overseas project before be based in the head office in Rome.

**MR. LEARMONTH:** Yes. And what is your educational background –

**MR. PALUMBO:** I am –

**MR. LEARMONTH:** – after high school.

**MR. PALUMBO:** Yes, high school, and after that I started university courses in University of Rome, and I graduated as a structural engineer in 1986.

**MR. LEARMONTH:** Yes. And are you a member of the association of engineers for – in Italy (inaudible) –?

**MR. PALUMBO:** I registered in the engineer association of Rome.

**MR. LEARMONTH:** So you’re entitled to practice in Italy as a structural engineer. Is that correct?

**MR. PALUMBO:** Yes, in Italy.

**MR. LEARMONTH:** Okay, thank you.

You said that you were a member of the – is it contracts and legal department of Astaldi S.p.A?

**MR. PALUMBO:** That's correct.

**MR. LEARMONTH:** Yeah.

First, is Astaldi S.p.A. the sole owner of Astaldi Canada?

**MR. PALUMBO:** Yes, of Astaldi Canada Inc.

**MR. LEARMONTH:** The wholly owned subsidiary, is that correct? Yeah.

And generally, what type of work do you – are you involved in or have you been involved in since you've been a member of the legal and contracts department at Astaldi S.p.A?

**MR. PALUMBO:** So generally, my role is starting from the procurement process. We have to – and I'm involved in the analysis of contract condition, bid documents. And once the contract is awarded to our company, we start give support and assistance to the project team for legal and contractual matters.

**MR. LEARMONTH:** When did you first become involved in the contract that Astaldi Canada was negotiating with Nalcor for the Muskrat Falls Project?

**MR. PALUMBO:** I have been involved since the pre-qualification process, because at some time, as it was the case for the Muskrat Project, the – within the pre-qualification document, it was required to provide some information about the litigation history of our company – is one section of the pre-qualification document.

So, in May, I guess, May or June 2012 when the pre-qualification document has been – request for pre-qualification has been issued, the tender department asked us to provide this information to – for the pre-qualification purposes.

**MR. LEARMONTH:** And who was the lead person in Canada – or in Canada for Astaldi Canada in the negotiations for the contract with Nalcor?

**MR. PALUMBO:** We had appointed Mr. Guido Venturini as proposal manager.

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** So, he was the main contact point between the client and our company, and the proposal team.

**MR. LEARMONTH:** Yes. And the – is – what qualifications did Guido Venturini have? Was he an engineer?

**MR. PALUMBO:** He's a geologist.

**MR. LEARMONTH:** He's a geologist.

**MR. PALUMBO:** Yes, I guess.

**MR. LEARMONTH:** So, he would be the lead person in – for this contract in North America, I would say. And who –

**MR. PALUMBO:** For the –

**MR. LEARMONTH:** – were the main – is that correct?

**MR. PALUMBO:** Sorry. For the purpose of this tender.

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

And who would be the people in the Rome office that would be working on this project in the negotiation stage, in addition to you?

**MR. PALUMBO:** The other departments had been involved as usually happen under these circumstances. So, the tender department, the procurement department, the legal and contract department has been involved, and some people from such department work specifically on this project.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** As far as I'm concerned, I was appointed for the contractual matters.

**MR. LEARMONTH:** Yes. So that would be the negotiating the terms of the contract that –

**MR. PALUMBO:** The revision of the contract documents, or for any other kind of matter which had an affect on the contract.

**MR. LEARMONTH:** All right.

First document I want you to look at is actually in – it's in binder 1 of the Don Delarosbil, Georges Bader documents, it's volume 1, tab 1.

**THE COMMISSIONER:** Tab 1?

**MR. LEARMONTH:** That's Exhibit P- 01677.

**MR. PALUMBO:** Okay.

**MR. LEARMONTH:** Now this is – if it can be brought up, this is an expert from the Grant Thornton report, in particular pages 27 to 39, which deals with the Grant Thornton's work on the Astaldi contract.

Are you familiar with these pages from the Grant Thornton report, Sir?

**MR. PALUMBO:** Yes, I read these pages.

**MR. LEARMONTH:** Yeah.

And are you satisfied that this appears to be a reasonable statement of the particulars of the contract and the other matters that are referred to in these pages?

**MR. PALUMBO:** Yes, I believe, apart from the number which I didn't verify but, apparently, are in the range of the exact numbers, Sir.

**MR. LEARMONTH:** Okay. Thank you.

Next document is in tab 1 of your binder, and that's page – P-03020.

Could you identify this document –

**MR. PALUMBO:** Yes.

**MR. LEARMONTH:** – Mr. Palumbo?

**MR. PALUMBO:** Yes, I prepared the document.

**MR. LEARMONTH:** Okay. Why did you prepare the document?

**MR. PALUMBO:** Just to have, how to say –

**MR. LEARMONTH:** Just to –

**MR. PALUMBO:** – clear, for my own purposes – aide-mémoire.

**MR. LEARMONTH:** An aide-mémoire. All right.

And on page 3 of this report, under item 6, there is a reference to M1 Contract Award on June 3, 2013.

Can you explain (inaudible) significance of that date, from your perspective?

**MR. PALUMBO:** From our perspective, the contract award – it's, of course, quite important – not quite, very important date, because it identified the effective date of the contract and the commencement date of all the activities on site. It was important because for this project, the impact of weather condition is – could be significant; therefore, having the award of the contract and the possibility to start mobilization during the favourable period of the year, as it is June, was an important matter.

So, important day to be taken into account when we prepared the construction schedule.

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** This is in line with what was already foreseen with the – within the request for pre-qualification documents. The contract award, the preliminary milestone schedules provided for in this document considered the contract award to be done in the second quarter of 2013.

**MR. LEARMONTH:** Is there any connection between the importance that you give to the start date and the weather conditions in Labrador?

**MR. PALUMBO:** Particularly at the beginning, because this allow proper mobilization, which is not – it is – mobilization is a critical period of time for the beginning of the project, and to start with the right step in the right season, it is important.

**MR. LEARMONTH:** Okay.

To your knowledge, did Astaldi S.p.A. or any of its subsidiaries or affiliates have experience in

working in cold-weather climates where there was snow and a long winter?

**MR. PALUMBO:** I know we had experience in some projects carried out in Russia – St. Petersburg, for example, the ring road of St. Petersburg – Poland, Romania, Turkey, Peru – (inaudible) power, hydropower plant in Peru.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** Of course, the – in this country, the winter period is not so extended as in this region, but we had this kind of experience.

**MR. LEARMONTH:** Yes. And would the experience that Astaldi had in those countries – would the experience involve the pouring of concrete?

**MR. PALUMBO:** Yes. In case of the Russia project, we are talking about viaduct as well as for the motorway in Turkey, with big viaducts, or for hydropower plant in Peru, in the Huanza project, for example.

**MR. LEARMONTH:** Would that be in a cold-weather climate –

**MR. PALUMBO:** Cold weather for a period of –

**MR. LEARMONTH:** – in Peru?

**MR. PALUMBO:** Yes.

**MR. LEARMONTH:** In Peru?

**MR. PALUMBO:** It was located at around 4,000 metres above the sea level.

**MR. LEARMONTH:** Level.

**THE COMMISSIONER:** So, where was that? Sorry. What country was that in?

**MR. PALUMBO:** Peru.

**THE COMMISSIONER:** Peru.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** Huanza project, H-U-A-N-Z-A.

**MR. LEARMONTH:** Yeah.

But – so, at the time that you were doing your initial work on this project, were you aware of the weather conditions that were prevalent in –

**MR. PALUMBO:** We were aware.

**MR. LEARMONTH:** – Happy Valley-Goose Bay area?

**MR. PALUMBO:** Yes, we were aware.

**MR. LEARMONTH:** And was there any significance to the weather conditions, in your view, in terms of the contract?

**MR. PALUMBO:** Sorry, say it again.

**MR. LEARMONTH:** Was it an important consideration or a minor consideration, the weather you were dealing with?

**MR. PALUMBO:** We paid due attention on this factor because it can affect the performance of the work.

**MR. LEARMONTH:** Yes. All right.

I'll ask you to turn to Exhibit P-03033, which is at tab 10 of volume 1 of the Delarosbil/Bader book.

**MR. PALUMBO:** Okay.

**MR. LEARMONTH:** Do you have that, Sir?

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** Okay. Now, so it's just a bidders list review/approval dated August 27, 2012. Correct? It's dated August 27, 2012, on page 1.

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** Yeah. And then if we turn to page 4, there's an executive summary, which I'm going to read.

“This report presents the results of the prequalification evaluation that has been carried out for package CH0007 – Intake and Powerhouse, Spillway and Transition Dams. The evaluation team has assessed and ranked the technical, commercial, health and safety, environmental, and quality capabilities of the nine Applicants for prequalification. The Overall Score for each Applicant is listed below.”

I’ll skip the next paragraph and – it says: “After further discussions with these two companies” – that’s – “they have confirmed that if both are prequalified, and to prevent a conflict of interest, they will bid as one Joint Venture” – that’s – “Salini/Impregilo ... led by Salini. The team believe that this is an effective solution to the conflict. The Team therefore recommend a Bidders List made up of the four (4) Applicants with the highest Overall Scores: Astaldi S.p.A.; the two Joint Ventures: IKC-ONE, and Aecon/Flatiron/Demathieu & Bard; and the reconstituted Joint Venture of Salini/FCC/Impregilo.”

So, that – your understanding is that there was four contractors who met the test of the pre-qualification process and so – and your company, Astaldi, was one of them. Correct?

**MR. PALUMBO:** That’s –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – correct.

**MR. LEARMONTH:** So, this is a normal stage in the bidding process, is it?

**MR. PALUMBO:** Yes, it is.

**MR. LEARMONTH:** Okay, yeah.

**MR. PALUMBO:** Of course, we have no access to this kind of record.

**MR. LEARMONTH:** Beg your pardon?

**MR. PALUMBO:** We have no access to this kind of record.

**MR. LEARMONTH:** No, no, I realize you didn’t see this until I –

**MR. PALUMBO:** (Inaudible) bids.

**MR. LEARMONTH:** – I’m just trying to bring it through in a chronologic order so people will see –

**MR. PALUMBO:** Normal practice.

**MR. LEARMONTH:** – the major steps, yeah.

Next, please turn to binder 1 of the Delarosbil/Bader documents, tab 12. And it’s P-03035. Do you have that?

Can you give some explanation as to the importance of this document?

**MR. PALUMBO:** Hmm. This document is – it was quite important for us because it was one of the last meeting we had with – at high level – with Nalcor Energy. This meeting has been held after two other clarification meetings which have been held, one in here in St. John’s, one in mid-June 2013; and another one, in beginning September 2013, still in St. John’s, in order to clarify, give explanation, further details to Nalcor about our bid.

**MR. LEARMONTH:** Okay. You weren’t present at that – this September 14, 2013 meeting in –

**MR. PALUMBO:** (Inaudible.)

**MR. LEARMONTH:** – London, but I think you were present at an earlier meeting. Is that correct?

**MR. PALUMBO:** That’s correct. I was not present in the London meeting, but I was present in the two previous meetings.

**MR. LEARMONTH:** Yes. And were you following all this meeting, I mean, were you plugged in some way to this meeting?

**MR. PALUMBO:** Yeah, I was aware.

**MR. LEARMONTH:** You were aware of it. Okay.

And this is a – on page 2 of this document, you can see it's signed by Stefano Cerrini?

**MR. PALUMBO:** Stefano Cerri –

**MR. LEARMONTH:** Yeah, okay.

**MR. PALUMBO:** – at the time it was the – he was the CEO of Astaldi S.p.A.

**MR. LEARMONTH:** Yeah. And it's also signed by Edmund Martin, who was the CEO. So this was at the top level of –

**MR. PALUMBO:** Top level.

**MR. LEARMONTH:** Yeah, okay. And this meeting was in London, England. Yeah.

Next, please turn to tab 5 in your book, which is exhibit P-03137. If you could turn to pages – page 2 first and then 3, I'd like you to identify this document and advise whether there's any significance to it.

**MR. PALUMBO:** This has been a document executed after a site visit of today's – made in mid – 11, 12 September, so mid –

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** – in September, by Emmanuel Triassi, I guess, probably some other people from Astaldi, who had a visit on site.

**MR. LEARMONTH:** Yes. And who is Emmanuel Triassi?

**MR. PALUMBO:** He was the CEO of TEQ, a company, part of Astaldi Group, Canadian company, part of Astaldi Group, yeah.

**MR. LEARMONTH:** And the dates at the bottom of page 2, what is the point in identifying these dates at an early stage, before you were awarded the contract?

**MR. PALUMBO:** Sorry, say it again?

**MR. LEARMONTH:** Okay, there's dates – if you look on page 2 at the bottom –

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** – there's various dates: "Camp accommodation will be available 30<sup>th</sup> October" – and so on.

Is there any importance to these dates?

**MR. PALUMBO:** These dates are obviously important because for us as – starting, as soon as possible, initial work was very, very important for the performance of the project.

**MR. LEARMONTH:** Okay. Now, you mentioned earlier a June 3 date, as a – very early in the game, it was your expectation that the contract may be signed in June 2013. Now we're into September 24, the contract has not been awarded.

Did that gap in time cause any concern for Astaldi?

**MR. PALUMBO:** This gap created serious concern for us, obviously, but we didn't arrive at end of September with one step only. Through some appendices to the bid documents, Nalcor amended some milestones.

**MR. LEARMONTH:** Okay.

**MR. PALUMBO:** And one of these milestone was the date for the contract award.

**MR. LEARMONTH:** Yes, but if you just turn –

**MR. PALUMBO:** First to –

**MR. LEARMONTH:** Sorry, go ahead.

**MR. PALUMBO:** Sorry.

**MR. LEARMONTH:** No, you go ahead.

**MR. PALUMBO:** Thank you. The first one was when the contract award was postponed to end of July 2013.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** So from June to July.

**MR. LEARMONTH:** Yeah. So that was the first postponement.

**MR. PALUMBO:** Yes.

**MR. LEARMONTH:** Yeah. And was that of any concern? Was that postponement of any concern to Astaldi?

**MR. PALUMBO:** July was, of course, still an important delay with respect to the original date, but we were still under a favourable season for our activities.

**MR. LEARMONTH:** All right.

**MR. PALUMBO:** So July it was still acceptable for us.

**MR. LEARMONTH:** Okay, just going back to that Exhibit P-03137 that I just referred you to, if you go to page 3, just above the signature of Emanuele Triassi, it says – and this is dated September 24, 2013: “Based on the above, Astaldi hereby confirms that, If the Limited Notice To Proceed is issued by 24<sup>th</sup> September, the Milestone Dates of the Interface and Milestone Schedule will not be impacted; and the impact of any adjustments to the execution plan and Construction Schedule is included in the Contract Price.”

Now, I just ask you that, okay, there’s a – your initial expectation, Astaldi’s, was that the contract would be signed June 3. Now we’re up to September 24. How could it be that the schedule would not be impacted, given the fact that you first thought it was going to be – if your schedule was based on the June 3 date, now we’re into September 24, 2013. How could it be that the schedule would not be impacted by that delay?

**MR. PALUMBO:** We were convinced that some – through some adjustment to the construction schedule, the original milestone date or interface date can be maintained. For sure we were convinced as well that through a co-operation that has been manifested by Nalcor during the proposal stage, we will be able to find, together with our client, appropriate solution to find any kind of difficulties or negative impact that this delay on the contract award may have on the construction schedule.

**MR. LEARMONTH:** Yeah.

And, at this point, September 24, what was the state or the tone of the negotiations between Astaldi and Nalcor for this contract?

**MR. PALUMBO:** I would say that it was – apart from what I have seen directly, totally with my colleague, I get the impression – it was the impression of my colleagues, too – that the ‘underment’ was there was co-operation between two parties.

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** There was a good faith attitude and that this certainly will help us to – help us and our client, too, to reach the target and the focus of this project.

**MR. LEARMONTH:** Okay, thank you.

Next document is at tab 14 in your book, it’s Exhibit P-01964. This is the –

**MR. PALUMBO:** Tab 14, sorry?

**MR. LEARMONTH:** Tab 14 of your book, not the –

**THE COMMISSIONER:** I’m not sure that’s –

**MR. LEARMONTH:** Oh no, excuse me, it’s tab 14 of binder 1 of the other book. Yeah. Sorry about that.

Do you see that?

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** That’s the Recommendation for Award; the Summary Report dated September 24, 2013. And if we just turn to page 15 of that document, I realize you didn’t receive this document at the time it was prepared, but can you identify in paragraph 4 –

**MR. PALUMBO:** Yes, I do.

**MR. LEARMONTH:** Yeah, yeah. So that’s the recommendation for the award. It confirms that Astaldi Canada Inc. was selected, was the successful bidder. The price at this point is \$1,117,752,550 Canadian dollars, exclusive of HST.

So at this point that you know that the – well, I guess you're advised that you're recommended for the contract, although the contract has not been signed at this point, is that correct?

**MR. PALUMBO:** Okay, yes.

**MR. LEARMONTH:** Yeah.

Next please turn to tab 4 of your book, that's Exhibit P-02139 –

**THE COMMISSIONER:** Just before we do that, what date was this document?

**MR. LEARMONTH:** This is September 24, 2013. It's shown on page 1, at the bottom of page 1.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** All right.

Next, it will be tab 4 –

**MR. PALUMBO:** Sorry, tab 4?

**MR. LEARMONTH:** Tab 4 of your book, yeah. That's the Limited Notice to Proceed dated September 24, 2013, Exhibit P-02139.

Now, I – this Limited Notice to Proceed document, is it – is this type of document something that you were familiar with before Astaldi signed this document I'm referring to?

**MR. PALUMBO:** Ye, we are familiar with this type of agreement.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** Probably with the only exception that Limited Notice to Proceed – this concept generally is included in the contract, it's not an agreement out of the contract, at least in my experience. So the final contract is executed and within the contract there are some provision dealing with this kind of concept, so with the Limited Notice to Proceed.

**MR. LEARMONTH:** Okay.

So at this time you haven't got the contract but, obviously, there's an agreement that you're

going to do some preliminary work on the contract, an expectation of getting it eventually?

**MR. PALUMBO:** In the expectation on being awarded with the full contract.

**MR. LEARMONTH:** Yeah, but there's no guarantee you're going to get the contract.

**MR. PALUMBO:** There is no guarantee.

**MR. LEARMONTH:** No.

**MR. PALUMBO:** It is clearly stated in the document. If I refer to page 3, item – clause 5, termination –

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** “Company may terminate this LNTP at its convenience upon written notice to Contractor to be effective not less than two (2) days from the date of the written notice.”

So, client – the company had the possibility of terminating this LNTP and, of course, do not award the following contract at its own convenience.

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** So there is no guarantee at all.

**MR. LEARMONTH:** Now, at this point, in preparing the bid documents, can you tell us roughly how much in Canadian dollars Astaldi had put into preparing its bid documents?

**MR. PALUMBO:** This proposal was a quite expensive proposal for the time spent, not only during the preparation of the proposal, but even thereafter. For us, this project was an important project, we want this project. And we deployed many, many resources in the different field locally, in Canada, and also in Rome with the purpose, of course, to be awarded with this contract.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** The magnitude of our expenses was in the range of \$3.5 million, \$4 million.

**MR. LEARMONTH:** Canadian.

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** Yeah.

All right.

**MR. PALUMBO:** Canadian.

**MR. LEARMONTH:** Now, so if we go to page 2 of this document, P-02139, Limited Notice to Proceed, I notice it says near the top of page 2: "The Parties shall enter into good faith negotiations to resolve any such issues by making revisions to the Agreement, if necessary as a result of such resolution, subject to discretionary board approval of both Parties."

So this is a statement of a good faith agreement. Was that consistent with the nature of your discussions with Nalcor up to this point in time?

**MR. PALUMBO:** It was consistent.

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** It was consistent. This part, as clearly indicated in this LNTP; same terms are used also some time in the – within some provision in the contract.

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

Please turn to page 6 of the document that I've asked you to – just before you. That's Exhibit P-02139. Page 6.

This is the – Schedule 1, the description of the initial work to be covered by the September 24, 2013 Limited Notice to Proceed. And one item under the heading 1: "Design and Permits: Detailed design of the Integrated cover system." That's appendix A2.1 item 5.

Now, can you explain the importance of this Integrated Cover system to the bid that was made by Astaldi for this contract?

What is the importance of the Integrated Cover system in terms of the schedule and the productivity of the workers?

**MR. PALUMBO:** In our proposal, the Integrated Cover system was of fundamental importance because it could grant it pouring activities during the winter period.

Within the original time for completion, and considering the productivity rate that we had evaluated, for us, it was not possible to achieve the milestone without the implementation of the ICS. Therefore, it was a fundamental part of our proposal.

**MR. LEARMONTH:** Yes.

The – so, this was an item specified in this description of initial work.

After signing the September 24, 2013 Limited Notice to Proceed, what steps did – if any, did Astaldi take to prepare or work on the detailed design of the Integrated Cover system, as covered in this schedule?

**MR. PALUMBO:** We enter in contact – I don't know which time precisely – with a design firm in Montreal, we remember, in order to develop the design of the ICS. And the first package of this design drawing had been submitted to Nalcor, end of November, beginning of December for approval.

**MR. LEARMONTH:** So –

**MR. PALUMBO:** So during this period we carried out the detail and design. Of course, to carry it out – in order to finalize these designs, we needed some information also from – and approval from – from Nalcor.

**MR. LEARMONTH:** – okay.

What type of information did you need from Nalcor in order to finalize the design of the ICS?

**MR. PALUMBO:** I could say that one fundamental information concerned the rock levels, because we were not in charge of the escalation of the powerhouse area where this ICS should be built; and the other one is related to the powerhouse itself because we had to verify any kind of interferences between the powerhouse structure and the ICS structure. So we have to – obtain from Nalcor mainly this kind of information.

**MR. LEARMONTH:** So just to explain it in simple terms, and correct me of course if I'm wrong, before you've completed design and – you had to know the grades or the contour of the land where the foundation would be placed, correct?

**MR. PALUMBO:** Yes, this is correct. This is fundamental to design –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – properly the foundation of the ICS structure.

**MR. LEARMONTH:** And another contractor was doing the –

**MR. PALUMBO:** Excavation works.

**MR. LEARMONTH:** – excavations and until that contractor had finished, it would not be possible to identify the exact contour of the land. Is – have I got that correct?

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

**MR. LEARMONTH:** Yeah, I –

**MR. PALUMBO:** Until the works are not completed, we don't know, nobody knows –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – which could be the exact rock levels.

**MR. LEARMONTH:** Yeah, because there could be overbreak –

**MR. PALUMBO:** Yes, (inaudible).

**MR. LEARMONTH:** – during – which would affect it.

And I take it also that until this – these contours were provided to you by Nalcor, that it would not be possible to order the steel beams because you wouldn't know how long they would be. Is that correct?

**MR. PALUMBO:** The length of the columns – the steel columns may vary based on the type of foundation and the level of the rock.

**MR. LEARMONTH:** Okay.

**MR. PALUMBO:** This may have an impact on – we have no certainty about the length of some elements of the ICS until the design is completed.

**MR. LEARMONTH:** Yeah.

So there was some work that you could do, but you couldn't do the complete detailed design that's referred to in Schedule 1, is that –

**MR. PALUMBO:** That is correct.

**MR. LEARMONTH:** – your evidence? Yes. All right.

And – what would the process be that – I'll put to you my understanding that when you got the contours or the survey of the grades or whatever, then you would – it would take – from Nalcor, Astaldi would then take a day or two – two days to verify the information before –

**MR. PALUMBO:** Mmm.

**MR. LEARMONTH:** – proceeding, is that correct?

**MR. PALUMBO:** This will take a little bit longer. The area was a big area – and it was not completely free. When we have granted access to this area, the access was still shared. It was mid-December, I remember. The expected date for the shared access to the powerhouse was originally foreseen beginning 1st of December, 2013. And, in fact happened mid-December. Before entering – of course this was a few days before the Christmas break and this creates some additional delay to the – our own survey's activities.

**MR. LEARMONTH:** Yes. All right. Next document is P0337, which is found in Binder 1 of the other documents, before you at Tab 16.

**MR. PALUMBO:** (Inaudible.)

**UNIDENTIFIED FEMALE SPEAKER:** (Inaudible) 3037.

**MR. LEARMONTH:** P-0 – it's P-03037. Do you have that, Mr. Palumbo?

**MR. PALUMBO:** Yes, I do.

**MR. LEARMONTH:** Yeah? All right.

So, this was an email, starts off from Scott O'Brien to – on October 17, 2013. I'd like you to first turn to page 3 of that exhibit.

**MR. PALUMBO:** Yup.

**MR. LEARMONTH:** Item 7; this is a memorandum from Pierre Cianni and Michele Brofferio, dated October 17, 2013, to Ken Chryssolor and Vittorio Robiati correct?

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** And then, number 7 says – of this memo: – “The ICS system was based on Information given to us by Ken Chryssolor after, as I understood, he spoke to a potential supplier. The date used for the completion of the design by Astaldi is November 6<sup>th</sup>, 2013 as per Jack Zhou.” Or I think – Zhou, or whatever. Yeah.

**MR. PALUMBO:** Zhou.

**MR. LEARMONTH:** Zhou, yeah.

Can you give some explanation of the meaning of these (inaudible)?

**MR. PALUMBO:** What I understand is that Pierre Cianni, who was the senior planner of the proposal team, had prepared a construction schedule, and as far as the ICS system's activities were concerned, he drafted this schedule based on the information that a potential supplier had provided to the project manager, Ken Chryssolor. At that time, I guess, the potential supplier was Proco.

**MR. LEARMONTH:** Proco in Quebec, correct?

**MR. PALUMBO:** I guess.

**MR. LEARMONTH:** Yes. So – but when it says the date used for the completion of design by Astaldi is November 6 – if you hadn't

received the contours of the land, how would it be possible to complete the design by November 6?

**MR. PALUMBO:** For sure, should be – should not be a completed design.

**MR. LEARMONTH:** Okay.

**MR. PALUMBO:** I don't know why Cianni make – affirm that. Probably because he was convinced that the predecessor's activities in order to complete the design and prefer to the data to be provided by Nalcor, these activity have been completed timely in order to allow the –

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

**MR. PALUMBO:** – subsequent design to be completed by November 6.

**MR. LEARMONTH:** Okay.

Could you turn to page 13 of this document? There's numerous references on this to the Integrated Cover system. Can you explain what these references concern? Page 13 and 14.

**MR. PALUMBO:** In fact, you see that under the powerhouse Integrated Cover system's activities, the activity ID, EWP019-1190, “Survey Data supplied to Astaldi,” these activities should be completed by October 9.

**MR. LEARMONTH:** Yeah, so this is –

**MR. PALUMBO:** And this is a predecessors of all the other activities related to the design execution.

**MR. LEARMONTH:** Okay. And it also – actually, on page 14 – it also carries over into page 14. So this is a proposed – or a schedule for work – completion of work, various components of the work on the ICS. Is that correct?

**MR. PALUMBO:** Sorry, say that again.

**MR. LEARMONTH:** This is a schedule for the completion of various components of the ICS?

**MR. PALUMBO:** Yes. I can identify main activities in order to fabricate, deliver and erect the ICS structures.

**MR. LEARMONTH:** But once – at this point I take it that the – Nalcor has not yet provided the contours of the land that you – Astaldi would need to complete. Is that the design? Is that correct?

**MR. PALUMBO:** That's correct.

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

**MR. PALUMBO:** I believe that the final ground levels, rock levels, has been provided in April or May 2014. This kind of data, as well as the construction drawings of the powerhouse, which were drawings important for us to identified interferences.

This two categories of data has been provided on several steps and with following revisions.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** This process – so the approval of the ICS design, the approval of the ICS foundation took a very, very long time, and it was completed in April, May 2014.

**MR. LEARMONTH:** Yeah.

But is it correct that the expectation at the beginning was that the construction of the ICS would be started in January of 2014? Or was it always April 2014?

**MR. PALUMBO:** Our expectation was to have the ICS completed by November or December 2014.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** Start the ICS construction on – or the foundation on January was not feasible at the time.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** First, because we received the land some delay, the area on the powerhouse with some delay with respect to the expected date and also because all the area at the time was

frozen. We were in December, January, February. It was not possible to perform additional survey or (inaudible) to pour foundation under such circumstances.

**MR. LEARMONTH:** Okay.

So, getting back to this – the earliest date when you thought you might get the contract, June 3. If you had got the contract then, there certainly would have been plenty of time before the bad weather set in for this to be done. Is that correct?

**MR. PALUMBO:** For sure, we would not have this kind of difficulties created by the seasonal constraint.

**MR. LEARMONTH:** Yeah.

And were you advised by Nalcor at any time up to November 29, 2013, when the contract was signed, were you ever advised by Nalcor as to the reason for the delay in signing the contract?

**MR. PALUMBO:** One of the reason was the delay in the financial close for the project.

**MR. LEARMONTH:** Financial close, yeah.

**MR. PALUMBO:** And the – we were aware about the delay of the other company's contractor, which was involved in the powerhouse excavation.

**MR. LEARMONTH:** Mass excavation of the powerhouse –

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** – yeah, yeah.

**MR. PALUMBO:** The package 0007 – sorry, 0009, for (inaudible).

**MR. LEARMONTH:** All right, now we'll look at tab 6 of your book of documents, Exhibit P-03138.

You have that?

**MR. PALUMBO:** Yeah, I have that.

**MR. LEARMONTH:** Okay, turn to page 4, please?

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** Can you identify this document?

**MR. PALUMBO:** Identify the document – amendment number 1 to the Limited Notice to Proceed.

**MR. LEARMONTH:** Yeah, so this is an amendment, so this is a – do you agree it's a – there's a reference on page 1 to the September 24, 2013, and this is an extension of the Limited Notice to Proceed to November 30, 2013. Is that correct?

**MR. PALUMBO:** Is that correct. The first – the Limited Notice to Proceed one has been issued on end of September had foreseen as a date for the contract award October 21 – or not later than October 21. And on October 21, we receive this amendment who extended of one month the date for the contract award.

**MR. LEARMONTH:** Yeah.

Now –

**MR. PALUMBO:** (Inaudible) 13 November, 2013.

**MR. LEARMONTH:** Okay.

Now, this was signed – Guido Venturini, project director, signed it on page 5. That seems to be a fact, but did you have any concern about the – this passage of time, that the signing of the contract was being extended?

Did you have any concerns on that?

**MR. PALUMBO:** I could say that we were particular concern because we assisted to several postponement of the date for the contract award. We were completely committed with all our (inaudible) in order to be awarded with this contract, and we had no certainty about the possibility to be awarded or not. And this fact creates some concern within our management.

**MR. LEARMONTH:** But nevertheless, you signed it – Astaldi signed it, yes.

**MR. PALUMBO:** We signed the contract.

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** Or sorry, we signed them (inaudible) –

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** – at this point in time, we signed amendment.

**MR. LEARMONTH:** But in signing this and extending things out to November 30, wouldn't it – you know, wouldn't you have known that the schedule, at least for the ICS, would be affected?

**MR. PALUMBO:** For us it could be still maintained, notwithstanding we were very, very close to the worst period of the year for the starting of initial activities and mobilization.

**MR. LEARMONTH:** Yeah. But if it's going out to November 30 and with – you know, that's winter in Happy Valley-Goose Bay, or at least the beginning of winter – if it's frozen, how can you do the work on the ICS?

**MR. PALUMBO:** It should not be frozen. For example, the foundation area and the powerhouse because it was supposed that the watering system was in place. It was operative, could work and avoid any kind of problem in terms of ice on the surface. Unfortunately, this was not the case.

**MR. LEARMONTH:** Not the case, but you believed that it would be the case.

**MR. PALUMBO:** Should be.

**MR. LEARMONTH:** Yes. Okay.

Next, Exhibit –

**MR. PALUMBO:** And –

**MR. LEARMONTH:** Go ahead.

**MR. PALUMBO:** Unfortunately, this email still on page 1 of the same document is in Italian, but this – how to say – show our disappointment –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – about the fact to have received a few hours before the expiry date of the LNTP –

**MR. LEARMONTH:** Can you just translate the Italian in –

**MR. PALUMBO:** I'll try – a free translation.

**MR. LEARMONTH:** Okay, we'll give it a try.

**MR. PALUMBO:** This is an email wrote by Guido Venturini to me: Mauro, you will find herein attached amendment number 1 to LNTP, which notwithstanding our disappointment, we have been forced to sign to date.

The client had not been able to proceed with the finalization of the contract for technical problems arising due to environmental permits. Waiting (inaudible) – sorry – relevant to the delivery of environmental permits for a portion of the project. The cable under the sea – I don't know the right term in – technical terms in English.

During the next week we have to discuss again the content of the LNTP. We have not call you this night because of the jet lag. Don't worry for that. I will call you tomorrow with Mario.

Mario, I guess, is Mario Lanciani, the general manager of Astaldi.

**MR. LEARMONTH:** Okay.

So –

**MR. PALUMBO:** Apparently one of the problem which caused this delay was for environmental permits.

**MR. LEARMONTH:** Okay.

Next, Exhibit P-03139. That's tab 7 in your book of documents.

This is a November 12, 2013, email from Guido Venturini to a number of persons including yourself. This is a reference to a meeting with Nalcor on the LNT [sp. LNTP] progress at October 31.

And if we go down to the – towards the bottom of the page, there's a paragraph beginning "KC" – that's Ken Chryssolor – "and GV" – would be Guido Venturini – "explained to LCP that the fact to work under the LNTP and without a contract signed is generating significant technical problems and concerns mainly in the following fields ... Hiring process ... Procurement ... Visa ... Permits" – and then turning to page 2 – "Procedures."

Then it says: "All these and other subjects are strongly affecting the results, although at present is not possible to say if this situation could affect the whole project."

Now, can you give some explanation for the concern that's expressed in this document?

**MR. PALUMBO:** It appear evident that this – the fact that we were not yet awarded with the contract, this fact was generating – was negatively impacting our capability to perform some preliminary activities. This is a list of some of them.

**MR. LEARMONTH:** Yeah.

And would that be because, you know, working under a limited notice to proceed puts you in a somewhat insecure position because you may not even get the contract? Is that the source of the concern?

**MR. PALUMBO:** Is – this was mainly our concern, apart from the fact that something could not be made, in any case, in an absence of a contract.

**MR. LEARMONTH:** Right.

**MR. PALUMBO:** For example, item one: Hiring process, cannot hire people without a contract.

The other fact was that having not a contract executed, we cannot assume strong liabilities before other subcontractor, for example, because we cannot take engagement with third parties, giving them certainty about subcontract award, for example, without having ourselves be awarded with a contract.

So, all this fact had certainly an impact on the mobilization activities.

**MR. LEARMONTH:** Yes. And if it – on page 2, the second-to-last paragraph, Mr. Venturini says: “During the coffee break many of the persons that attended the meeting acknowledged the fact that is quite impossible to work under these conditions.”

Is that a fair comment that it’s impossible to work under these conditions, or is that perhaps a little bit of an exaggeration?

**MR. PALUMBO:** Impossible? I don’t know. For sure it was really, really difficult to work under these circumstances.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** And it appears from this sentence that all participants were aware – probably not (inaudible) impossibility, apart from the terms used in this sentence, but for sure about the difficulties.

**MR. LEARMONTH:** Yes.

Next, please turn to Exhibit P-03140, which is in tab 8 of your documents, Mr. Palumbo. Do you have that, Sir?

**MR. PALUMBO:** I have that.

**MR. LEARMONTH:** Yeah.

Now, this is an email from – dated November 22, at the bottom of page 1 – November 22, 2013, from Ken Chryssolor. Now, just – you – I understand Mr. Chryssolor had well – at this point, had well in excess of 30 years’ experience working –

**MR. PALUMBO:** I know him.

**MR. LEARMONTH:** – in the Hydro-Québec projects in the James Bay area. So he was your project manager –

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** – and he was – he had a lot of experience in this –

**MR. PALUMBO:** Absolutely.

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

Now, so he’s referring to a “conference call with Emmanuel Triassi, Lorna Tardif, Paul Shelley, yourself and me, with regards to the signing of the agreement shortly ....”

He says: “Astaldi submitted a proposal and work schedule on 16 April ...

“The anticipated award was 31 July, 2013 ....”

Well, I think you said that initially it was June 3. Is that correct?

**MR. PALUMBO:** Is that correct –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – the request for proposal, provided for the –

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

**MR. PALUMBO:** – contract award on June 3.

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

And then: “... On 24 September, 2013 Nalcor issued a LNTP, with signing of agreement scheduled for 31 October ...

“... On 31 October, 2013 an amendment #1 was issued extending the closing date to 30 November ...

“A delay of 4 months has already been encountered.

“The whole project schedule for the intake and powerhouse has been completely disturbed and is dependent upon two ... main factors.

“1. Supply and erection of ICS by 24 March, 2014 (Original Date)

“2. Concrete placement P.H. Unit 1, slab 02 March, 2014 – 15 April, 2014; Concrete placement Turbine Section 11 March, 2014 – 08 April, 2014.

“3. Supply of Draft Tubes (Elbows)

“As we cannot place orders for items 1&3 without Nalcor’s approval (Correspondence for approval has been addressed to Nalcor, with no response to date) Consequently, I wish to inform you not to sign any agreement unless the milestone dates have been” – I’m on page 2 now – “reviewed, revised and agreed by both parties.

“If we commit to signing a formal agreement without considering the effects of the delays we are relinquishing all our legal rights to extension of time in the contract. Signing of contract in Canada by means of ‘intimidation’ or ‘duress’ is not acceptable. (Speak to your legal advisors)

“Therefore we have two options;

“1. Refuse to sign the contract as presented.

“2. Delay signing a formal agreement until mid-February 2014 taking into consideration revised milestone dates.

“I am protecting Astaldi’s interests & not Nalcor’s.

“Please inform your superiors of my serious concerns, as we will not be able to achieve under the present circumstances the milestone date for the powerhouse and intake. You are aware that I am presently involved in a similar situation, presently in the court of Quebec for a similar situation on a large Hydro Project.

“Ken Chryssolor”

Now, you have this warning or cautionary report from a man who is extremely experienced and he’s your project director. Was – and we know that this advice was not followed. Can you provide any explanation why you didn’t – why Astaldi did not follow the advice provided by this experienced person, Ken Chryssolor? Especially, I would suggest, when it’s self-evident that what he’s saying is correct – that with all these delays, with the seasons up there, you’re just not – it’s just not feasible to stick to the schedule. Can you give us some explanation why the advice of Mr. Chryssolor, as stated in this email, P-03140, was not followed?

**MR. PALUMBO:** I can, Mr. Commissioner, give two reasons for – to explain why at the end the contract has been executed. Probably does

not appear in these documents, but after the proposal submission we started – as probably the other shortlisted bidder – closed discussion with our client. The process after the bid submission was quite long – I would say, quite unusual. Some things has been changed during this period by Nalcor, in terms of taking a specification discussion on the contract provision and so on.

So the relationship with Nalcor – we’re very, very close. We had – and we were convinced to have a good relationship with them, and that some principle of cooperation – good faith, good will – in order to achieve the target was feasible with this client. These comments of Ken Chryssolor arrived at the very late stage after six, seven months from the bid submission. During this period, we had worked closely. The milestone date has been changed during this period, and we arrived at November 22 – so a few days before the contract execution – with an option to get this project or not.

We have received – at least our impression was that we will be able to find and solve any difficulties that we, as contractor, can face during the contract execution. Moreover, there were two other packages under discussion, which has been proposed by Nalcor during the London meeting. I am referring to the main dam and the North Spur stabilization.

**MR. LEARMONTH:** The London meeting meaning the September 14, 2013 –

**MR. PALUMBO:** That’s correct, yeah.

**MR. LEARMONTH:** – meeting? Okay, correct.

**MR. PALUMBO:** And in November, if I will remember, our tender department – not here in Montreal, but in Rome – was working on the preparation of the main dam proposal on a exclusive basis, as for the agreement reached in September. So we had in front of us a contract of \$1.1 billion, plus two other packages of \$250, \$300 million, as for our estimates. Under such circumstances, it was very, very difficult to say no. The option was close to option two of Mr. Chryssolor, delay signing a formal agreement. Not a delay in the execution of the contract, but have the possibility to review the agreement

milestone, find solution for the difficulties that can be encountered at a later stage.

**MR. LEARMONTH:** Okay.

But anyway, you decided to sign it and –

**MR. PALUMBO:** We decided to sign the contract.

**MR. LEARMONTH:** – and those were the circumstances – that was your – Astaldi's understanding of the relationship with Nalcor at the time. Is that correct?

**MR. PALUMBO:** Also for that.

**MR. LEARMONTH:** Yes.

All right, Exhibit P-01865, which is in tab 9 of your documents, Sir.

And if we – this is the contract, Civil Works Agreement, number six, CH0007, dated as of November 29, 2013. If we just slip to page 93, we can see that it was signed by Nalcor. Gilbert Bennett and Edmund Martin's signature are there, and that's a Mario ...

**MR. PALUMBO:** Mario Lanciani.

**MR. LEARMONTH:** He's the president of ...

**MR. PALUMBO:** The general manager of Astaldi, president of Astaldi Canada Inc.

**MR. LEARMONTH:** Okay, so this was signed – I'll just turn to – if we go to page 36.

The – under article 12.1, the payment obligations are identified as being included in exhibit 2. Now, I'm not going to – exhibit 2 is a document found at – as our Exhibit P-01890. It's 149 pages. So I just make that comment so if anyone's interested in looking at it. I'm not gonna refer to it, but the figures for the final contract are stated in the Grant Thornton report accurately as far as you know. Is that correct?

**MR. PALUMBO:** I'm sorry, say again.

**MR. LEARMONTH:** Okay, the amount of the contract award is covered in the Grant Thornton report that I referred you to earlier?

**MR. PALUMBO:** Yeah.

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

So anyway, that's Exhibit P-01890 for anyone who has an interest in delving into that more deeply.

Next document – and this will be in the – in volume 1, tab 3 of the other book of documents. It's Exhibit P-03055. You see that? Yeah.

Now, this is exhibit 17, which was an attachment – it formed part of the contract that I just referred to, the Civil Works Agreement. Now, in this – this is a mutual release. It speaks for itself, but the effect of it, as I understand it, generally – I know it's subject to interpretation and your arbitration and so on – but on the face of it, it's your – Astaldi is releasing Nalcor from any claims that might be made respecting "... any cost or schedule impact as a result of the Agreement not being executed prior to the date of this Release." This is on the face of it anyway. As I say, it's subject to interpretation, but it seems that – by this document – Astaldi is saying: Everything is fine. We're not making any claims because of the potential for a delayed schedule as a result of the late signing of it. Is that correct?

**MR. PALUMBO:** This is a, I would say, quite typical release in terms of wording. What is unusual is the fact that has been added to the contract. Generally, this kind of mutual release are not part of contract. This is confirmed, also, by the fact that this exhibit 17 has been added at a later stage. It was not part of the original contract. The original (inaudible) proposal document.

**MR. LEARMONTH:** In the original – but it was part of –

**MR. PALUMBO:** It was not included.

**MR. LEARMONTH:** No. But it was part of the documents that were signed on November 29. Is that right?

**MR. PALUMBO:** Yes. This –

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** – is part of the contract.

**MR. LEARMONTH:** Yes. Okay.

And on page 2 of this Exhibit P-03055. This is paragraph 4. “**Legal Advice.** Each undersigned Party declares that the undersigned has had the opportunity to obtain legal advice and the terms of this Mutual Release are fully understood by the undersigned Party after consultation with the undersigned’s solicitor.”

And then it’s signed by Mario – and Mario Lanciani and Gilbert Bennett and Edmund Martin and Jennifer Hoffman, actually, on behalf of Astaldi also.

So, well anyway, I guess that speaks for itself. I don’t want to know what advice – what the nature of the legal advice you may have obtained, but do you know whether Astaldi did contact a lawyer for legal advice?

**MR. PALUMBO:** I reviewed this document, and all – notwithstanding I am not a lawyer, but this document has been reviewed, also, by our counsel at the time.

**MR. LEARMONTH:** Right. Okay. Okay.

**MR. PALUMBO:** It’s – I would say that this is a standard provision within this kind of document.

**MR. LEARMONTH:** Yeah.

Next, please turn to Exhibit P-03042, that’s in volume 1, tab 21 of the other books of documents.

Do you have that?

**MR. PALUMBO:** I have it.

**MR. LEARMONTH:** Yeah.

Okay, now this is dated December 9, 2013: Approved for Construction Drawings. It’s a letter from Astaldi Canada to a number of persons at the Nalcor office.

I just noticed on page – before I ask you about this document, on page 2 there’s a reference at the bottom to October 31, 2013. It says: “Nalcor advised Astaldi (with 2 hours notice) that Nalcor cannot sign the contract. Nalcor and Astaldi sign Amendment to LNTP – extension to 30 Nov .... Gives Astaldi opportunity to add scope to Early Work in order to maintain schedule. States that contract terms still not all resolved.”

Is that correct that there was just two hours’ notice given for this document, as far as you know?

**MR. PALUMBO:** This can be verified within – when we received the amendment, for sure the amendment to the LNTP as being received on October 21 –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – by an email of Ed Over, we can find in –

**MR. LEARMONTH:** But this suggests that the October 31 – not 21st – 2013, that Nalcor advised Astaldi with two hours’ notice. So you said – did you say October 21?

**MR. PALUMBO:** No, 31st, sorry.

**MR. LEARMONTH:** Okay, you meant 31st, yeah.

**MR. PALUMBO:** No, the date is –

**MR. LEARMONTH:** Yeah, okay.

**MR. PALUMBO:** – thirty-one of October – 31st of October.

**MR. LEARMONTH:** Okay. Okay.

**MR. PALUMBO:** About two-hour notice I cannot say.

**MR. LEARMONTH:** Okay. And what is the importance of this letter? What is going on here?

**MR. PALUMBO:** The importance is the fact that this letter relayed the fact that we were still waiting approval for construction drawings. It is important to stress the fact that we were not the designer in this project; therefore, we have to

receive the approval drawing for construction by our client. And what appears from this letter, I would say, is that there were uncertainty about the delivery of this approval for construction drawings.

**MR. LEARMONTH:** Okay.

At tab 17 in the other books, volume 1 – tab 18 we see Exhibit P-03039.

**MR. PALUMBO:** Sorry, tab?

**MR. LEARMONTH:** Tab 18.

Now, this is an internal Nalcor document. I know you wouldn't have seen it at the time, obviously, but have you read through this document?

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** It, you know, generally expresses concern by Ron Power about the way things are moving along.

Were you aware of the concerns that the Nalcor project management team had about the developments at this time, November 2, 2013?

**MR. PALUMBO:** No, I was not aware.

**MR. LEARMONTH:** Okay.

**MR. PALUMBO:** I was not aware.

**MR. LEARMONTH:** Does this surprise you, this email, or do you have any reaction to it?

**MR. PALUMBO:** Say little bit because what – to the best of my knowledge was not manifested before.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** Or at least during the meetings.

**MR. LEARMONTH:** Yeah.

Because this seems to be inconsistent – well, it is inconsistent with the understanding about the state of negotiations that you described earlier, the atmosphere and the tone. Because when I

look on page 2 at the bottom, the second-last paragraph – okay – “I believe this should have been our mode of communication irrespective of the subsequent instruction from Ed Martin.

“In my view, the extension to the LNTP should not have ...” – been – “as a result of Ed Martin’s concerns. Looking at the wording of the LNTP extension, that is exactly the path we should have been taking until we got Astaldi to deliver on their commitments. We were (and still are not), in my view, in a position to confidently move ahead with Contract signing (I am sure we will get there).”

And then he said: “I may be perceived as being naive or difficult ...” – this is at the top of page 3 – “but we need to be in the driver’s seat. It is our money. We should sign the contract with Astaldi when we are ready. The messaging that will send to Astaldi will be the right one. Our focus now needs to be to get Astaldi to deliver the goods.

“Respectfully,”

And this is from Ron Power.

As I said, this seems to be inconsistent with your understanding about the state of negotiations. This is a concern that Ron Power had about the developments.

Do you agree?

**MR. PALUMBO:** I agree that – I would say that the – this is also an evidence that shows the difficulties to close this deal with us and, probably, this is a summary of what happened in the previous months when the terms of the contract has been changed, has been discussed, milestone has been changed, and so on. So, “We should sign the contract with Astaldi when we are ready.”

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

**MR. PALUMBO:** This surprise me, because we never heard: We are not ready. We have to close our financial arrangements, okay. We knew that some activities performed by other contractors should be completed. Stressed that we were not ready to sign the contract, surprised me when I read this sentence.

**MR. LEARMONTH:** Okay.

Tab 12 of your list of documents, Exhibit P-03142.

Now, this is an email at the bottom of – this is December 17, 2013, from Federico Accorsi concerning the Proco quote for the ICS. Is that correct?

**MR. PALUMBO:** Is that correct –

**MR. LEARMONTH:** Quote for \$17,712,000. So at this point I guess you're getting bids for the ICS. Is that correct?

**MR. PALUMBO:** Is that correct? Federico Accorsi was the procurement manager appointed for this project.

**MR. LEARMONTH:** Yes, and if you turn to page 2 of this exhibit, you can see that he is the procurement manager on Saint-Antoine street –

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** – in Montreal.

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** There's a reference there, we have a total of \$17,880,222 for R30/R20; a total of \$18 million, et cetera, using R40. So this is just – there is some discussion about the different specifications and prices for it. Is that correct?

**MR. PALUMBO:** I believe so, yeah.

**MR. LEARMONTH:** All right.

Now, the next document I would like you to look at is a tab 13 of your list. It's Exhibit P-03143.

And at the top of page 1 it's an email from Emanuele Triassi to a number of people, including yourself, and then it's – that email – sent for the purpose of forwarding an email from Lorna Tardif, I believe, who she worked for Deloitte in Montreal, but was attending your team at a kickoff meeting. Is that correct?

**MR. PALUMBO:** The kickoff meeting which was held on 19 December.

**MR. LEARMONTH:** Yes.

Okay, if we go to page 3 of this exhibit we can see that the kickoff meeting was December 19 at the Delta Hotel, 8:30 a.m. to 4:30 p.m. We see the agenda on page 1, the attendance. I just want to refer on page 4 there's a – Ms. Tardif gives her account of what was said.

The introduction, Paul Harrington: "We are on a mission. On the project for 8 years. Can only do it by working together. We are honest sincere people and we are fair. This is the single biggest contract on this project and we have got to make it work. This project is the future of the province – carries a heavy burden."

And then later in that same introduction these words appear: "Start meetings with 'Value Moment' – anchor back to one of the values: Teamwork; Open Communication; Honesty and Trust; Safety; Respect and Dignity; Leadership; Accountability."

And then if we turn to page – over to page 5 under, Scope of Work, Scott O'Brien – this is attributed to Scott O'Brien, these words: "Company expectations – safe, on budget and on time delivery of the work in accordance with Nalcor's core values. Emphasis on partnership. Crux of the project is at site. Need team culture and collaborative environment."

Now, these words are very positive statements. Was it your understanding at this time that this is a – was an accurate reflection of the way that Nalcor was acting towards Astaldi?

**MR. PALUMBO:** This, to me, is a clear picture of what has been the nature and type of relationship (inaudible) we had with Nalcor along the entire procurement process.

**MR. LEARMONTH:** Yeah.

No, but when I just – and go back to that email I referred to you from Ron Power, it seems to be a little different in tone than what is stated in this – in these minutes. Do you agree?

**MR. PALUMBO:** It was an internal email.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** And this was, how to say, an open declaration made by Nalcor's representative. But apart from the declaration themselves, this was for sure what we felt at the time –

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

**MR. PALUMBO:** – in terms of also expectation from the company.

**MR. LEARMONTH:** Yeah.

And then, next, I want you to turn to page 6 of this document and – Exhibit P-03143. And this is Astaldi's opening comments from Guido Venturini, greetings.

And then in the first – next paragraph it says: "Working/personal relations – This is the first project where Guido has the honour to be given flowers when he arrived at airport. Emotional."

Now what's this about flowers at the airport?

**MR. PALUMBO:** Probably this is what happen. Probably behind this kind of fact, there is the fact that Guido Venturini had excellent, I would say, relationship with Nalcor's representatives. This was one of the reason why we decided to nominate, appoint Guido Venturini as project director because the personal relationship with Nalcor were excellent. And, I guess, this should be demonstration of the fact that Guido was really appreciated by our client personnel.

**MR. LEARMONTH:** Is this a normal practice in a business relationship to present someone with flowers when they arrive at an airport? I hadn't heard of it myself, but maybe I ...

**MR. PALUMBO:** I will say no.

**MR. LEARMONTH:** No. Okay.

Anyway, the honeymoon didn't last very long, did it? These flowers – no.

**MR. PALUMBO:** These flowers had short lives.

**MR. LEARMONTH:** Yes.

All right, could we turn next to tab 24 of your documents, Exhibit P-03044?

**MR. PALUMBO:** Tab 23, sorry?

**MR. LEARMONTH:** 03044, that's tab 24 of volume 1 of the other book of documents.

**MR. PALUMBO:** (Inaudible.)

**MR. LEARMONTH:** Sorry, I got ...

Actually, okay, we'll deal with this – I did miss one document that I'll bring you back to you, but can you explain the significance of this document, this January 24, 2014, letter from Muskrat Falls Corporation, signed by Desmond Tranquilla to Ken Chryssolor. What is the significance of this, if there is any?

**MR. PALUMBO:** Probably because this shows some concern from the company concerning the appointment of personnel.

**MR. LEARMONTH:** Yeah.

So it says – it uses some language at the bottom of page 1: "Quality Personnel"

"The calibre of the 'Quality Management' candidates either engaged, or proposed by Astaldi to date are less than mediocre."

Were you aware that at this point, very early on, the Muskrat Falls Corporation, or Nalcor, was expressing concern about the quality of the candidates who were retained by Astaldi?

**MR. PALUMBO:** I cannot say – understand the comments, but I cannot share the – Nalcor's position. I don't think that we put into this project mediocre personnel, absolutely not.

**MR. LEARMONTH:** Now, just go back, there was one document I wanted to bring your attention to after those minutes of the kickoff meeting on December 12 and that's document at tab 11 of your book. It's Exhibit P-03021. It's a December 18, 2013, letter from Nalcor. Scott O'Brien, project manager, Muskrat Falls Generation signed it.

And it starts off – well, in paragraph one, start of – “We have a major concern which should be addressed in the upcoming contract kickoff meeting planned ... 19-Dec-2013,” and then it goes on and there’s a lot of concern about schedule and so on, if you look at – from several – page 3: “Scheduling (P6) Review: We are aware that this schedule submission is based on a partially built schedule.”

This – what was your reaction to seeing this letter, given the very warm feelings that were expressed at the, you know, expressed by Nalcor to Astaldi up to this time?

**MR. PALUMBO:** I believe that we replied point by point to this letter, but apart from the contents of the correspondence itself, it was, how to say, surprising. I would say this is not the flower.

**MR. LEARMONTH:** Yeah, and I should say that this letter is dated December 18, 2013. I don’t know when it’s received, but the kickoff meeting at the Delta, where there’s a reference to the flowers, was December 19, 2013, so it would appear that there’s some – seems to be some disconnect between the expressions of warmth at the kickoff meeting on December 19 in –

**MR. PALUMBO:** If we –

**MR. LEARMONTH:** – this letter.

Do you agree?

**MR. PALUMBO:** Yes, of course it appears evident the, how to say, the contradiction, or at least the different approach shown – declare – during the kickoff meeting with the – respect to the content of this letter.

**MR. LEARMONTH:** Yeah, but by then you’d signed the contract, right?

**MR. PALUMBO:** The contract was already signed.

**MR. LEARMONTH:** Yup. All right.

Next, it’s tab 14 of your documents. Now this is a letter to – dated June 23, 2014 from Astaldi to Mauro Abbafati to a number of people at

Nalcor: Desmond Tranquilla, Alphonsus Kelly, Mel Melhem and Hisham Geres –

**THE COMMISSIONER:** 03022?

**MR. LEARMONTH:** – 302 – 03022, yeah.

Now, before I ask you to comment on this letter, do you have experience on, you know, the – do you have views based on your experience on the proper way to manage a problem? I’m think – a project – I’m thinking in particular to the importance, if there is any, on having someone on the site from the owner who has authority to make decisions, if not on the spot, in a timely manner.

Do you have any experience that could provide a basis for you providing an opinion on that topic?

**MR. PALUMBO:** Yes, I have an opinion on that.

We should not forget that this contract is not an EPC contract or a design-and-build contract, where the involvement of the client, or the client representative, could be limited because many risk, including the design, supervision activities, et cetera, are part of the contractor scope of work.

We had in front of us a design-build contract. So, the relationship and involvement of client representatives are mandatory for the success for our project. And what is declared here –

**MR. LEARMONTH:** This is in – you’re looking now at Exhibit P-03022, correct?

**MR. PALUMBO:** Yes, Sir.

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

**MR. PALUMBO:** I’m referring to the letter wrote by Mr. Abbafati.

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** Where the – he’s complained about the fact that company representatives were not based on site, and for a contractor and their – this (inaudible) contract (inaudible) framework, the relationship with the client is important because we have to receive instruction, we have

to receive approvals timely because, as the saying Abbafati wrote, time is of the essence. That's generally in every kind of project, so we have to comply with our (inaudible).

The absence of extraction approval or answers from the client representative will unavoidable create delay to the works. And this is what happened.

**MR. LEARMONTH:** Okay.

Well, I'll put this proposition to you: Why couldn't the – with, you know, telephone systems and emails and text message, why couldn't the person with the authority stay in St. John's, as opposed being on the site, which I think you – you think should be the case? Why not be in St. John's and just talk on the telephone and so on?

**MR. PALUMBO:** I had not very long experience as project manager. My colleague today – tomorrow will explain better than me the need to have a face-to-face dialogue. Sometimes answer – solution are find directly on site, not through an exchange of email. This can be done; this can happen. But a direct relationship with our client is fundamental because this help the – to find timely the appropriate solution for any kind of problem that unavoidable happen during the construction activities.

**MR. LEARMONTH:** And in your experience on other projects around the world, is the practice for there to be a person on site from the owner's group to make, if not on-the-spot decisions that arise, at least timely decisions?

**MR. PALUMBO:** It's normal practice to have on site if not the client personnel at least their representative with appropriate powers in order to take decision, issue instruction, provide approvals – so perform all the activities which are required in order to get – to obtain – to grant, sorry, to grant the normal execution of the works.

**MR. LEARMONTH:** Okay.

**MR. PALUMBO:** Particularly when difficulties or unexpected circumstances arises.

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** Because this will create delay to the job and a quick solution have to be found.

**MR. LEARMONTH:** And at tab 17 of your list of documents, there's a letter dated October 27, 2014. I don't know – there's a long delay between the June 23, 2014, letter that Mr. Abbafati sent. That's Exhibit P-03022.

This is October 27, 2014. I don't know if this was the first reply or – but it deals with the same subject matter where Mr. Desmond Tranquilla says that he – (inaudible) – it's P-03024.

He said – this is to José Alves who was then the project manager: "We all recall the circumstances which prompted the subject letter and the extensive discussions which followed with Contractor' Senior Management ... on site. Company concurs that timely response to issues and prompt decision making is imperative to the success of this project.

"As you are aware Company designated Desmond Tranquilla (myself) to lead the Company site team. He is supported by a team of experienced managers who have demonstrated the ability to promptly resolve issues as they arise. Responding to the changing dynamics of the Project, over the past several weeks, the Company has added" several "resources to the Company staff to increase the Company's ability to support the Contractor as it expands its work force ...."

And so, I guess, are you aware whether – is that something I should put to Mr. Delarosbil and Mr. – and Georges Bader rather than you? Like, were you – do you have any personal knowledge as to whether there was a person or persons on site at the Muskrat Falls generating station who was authorized to make decisions on the work as it progressed? Do you have any information on that?

**MR. PALUMBO:** No, but the general information we had was that this was a matter of concern for us. So we don't know (inaudible) it is but, for sure, this appears also –

**MR. LEARMONTH:** Okay.

**MR. PALUMBO:** – looking at this correspondence that it was a –

**MR. LEARMONTH:** Okay, well, we'll ask –

**MR. PALUMBO:** – matter of concern.

**MR. LEARMONTH:** – Mr. Delarosbil and Mr. Bader because they were out on the site. Yeah.

**MR. PALUMBO:** Sorry?

**MR. LEARMONTH:** It would probably be better for me to ask Mr. Delarosbil and Mr. Bader because they would have personal knowledge of that. Is that correct?

**MR. PALUMBO:** Certainly better than me.

**MR. LEARMONTH:** Yes.

Next is tab 15 of your book. This is Exhibit P-03144. And if we look at the bottom of it, this is an email, Monday, June 23, 2014, from Edy Lucchini – or Eddy, I'm not sure. This is a report – and if we go to page 3 it says: Muskrat Fall start-up operations. So there's a type of a report that is being prepared.

I just turn to – ask you to turn to page 10 and 11 of this report. Now, as I said, this was sent June 23, 2014, and at that point it appears that the design of the ICS has not yet been completed.

It says: "From what was said at the meeting, the final design of the ICS structure is ongoing." So is that – and then on page 11: "In the mean time we need to finalize the selection with the 3 potential suppliers. This preselection is ongoing."

Now, it would – it strikes one that here we are in June, the contract was signed November 29, so we're talking about, you know, seven months later. And it looks like the final design of the ICS structure has not been ongoing and the contractors for the ICS system – the contractor has not been selected. Does that strike you as unusual, given the passage of time?

**MR. PALUMBO:** First of all, I'm not sure of that at that time, the – we still had three potential suppliers.

**MR. LEARMONTH:** Mmm.

**MR. PALUMBO:** We worked closely; the email of Mr. (inaudible) was January, so –

**MR. LEARMONTH:** No, that was – I think that was December. The one where there was a reference to the Procos –

**MR. PALUMBO:** Exactly.

**MR. LEARMONTH:** – I think that was December.

**MR. PALUMBO:** Sorry, December. We had already sent meetings in Montreal – or any case, some meeting with Proco, our designer, and some people of our project team. So I found strange that here we are still talking about three potential suppliers.

**MR. LEARMONTH:** Yeah, you don't have an explanation for that, do you?

**MR. PALUMBO:** No.

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

But do you know whether, at this point, June 23, 2014, whether Nalcor had given Astaldi the contours, the grades of the land that would allow Astaldi to proceed to the final plans of the project?

**MR. PALUMBO:** On June I believe we had already received the final revision of the 3-D models of the excavation –

**MR. LEARMONTH:** In June –

**MR. PALUMBO:** – powerhouse, already received.

**MR. LEARMONTH:** In June 2014?

**MR. PALUMBO:** Yes, I guess.

**MR. LEARMONTH:** And without those items, you couldn't complete the design, is that correct?

**MR. PALUMBO:** Is that correct. Yeah.

**MR. LEARMONTH:** Yeah, okay.

**THE COMMISSIONER:** Or when they were received?

**MR. PALUMBO:** It was received – on (inaudible) I would say we received several revision of this ground survey. I guess that the last information has been received in April 2014. But the status of this data, because we solicited several times this data, certainly has been recorded in the minutes of meeting on site.

**MR. LEARMONTH:** Yeah. But if you got the last pieces of data in April – if that's what you're saying and I understand it is – why would the final design not be completed as of June 23? That's two months later. Do you have any explanation for that?

**MR. PALUMBO:** For sure we have to see if – when this design has been approved by Nalcor, notwithstanding –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – we had submitted it. And, also, if the other data required for the finalization of this design and returning to the powerhouse design, the 3-D model of the powerhouse has been provided. Interferences between these two structure is – it was absolutely critical because with our structure we cannot interfere with the powerhouse structures.

**MR. LEARMONTH:** Yeah

**MR. PALUMBO:** So we have to know which are the final dimensions –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – of the powerhouse

**MR. LEARMONTH:** Yeah.

But there is some date – you may not know it, but there is some date when you've received everything from Nalcor, obviously. And do you know what that date is?

**MR. PALUMBO:** Not exactly, but I think I did April, May. After that, there was also appeal for the approval of this design.

**MR. LEARMONTH:** Okay.

**MR. PALUMBO:** So we cannot start execution without the approval of the – of our own design.

**MR. LEARMONTH:** Well, I guess the key –

**MR. PALUMBO:** And during –

**MR. LEARMONTH:** Excuse me, go ahead.

**MR. PALUMBO:** Sorry. And, for sure, we had – we experienced a delay in the approval of the ICS design.

**MR. LEARMONTH:** Yeah.

Well, I guess what would be informative would be to know the date on which Astaldi received final approval for the design of the ICS so that it could proceed with full construction. And I take it you're not sure of that exact date, is that correct?

**MR. PALUMBO:** We – I remember that, for sure, we received approval on the ICS foundation on May. And on May we started foundation pouring at the powerhouse – foundation for the ICS, I mean.

**MR. LEARMONTH:** Okay, in May 2014?

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** All right.

Next document is at tab 16 of your documents. It's Exhibit P-03023. It's a letter, August 21, 2014, from Jose Alves, then project manager, to Desmond Tranquilla, deputy project manager for Nalcor.

Can you give us some explanation for what – what's – the purpose of this letter or your – it appears that there's problems with payment. Is that right?

**MR. PALUMBO:** Yes, of course.

And for us – not only for us, for any kind of contractors – this is a serious matter of concern. What was extremely unusual was the fact that we were not able to finalize and put in place a quick invoicing process in order to have the payment certificate processed within the time established in the contract.

This letter summarize the fact that the invoicing process was extremely long. I remember that I had some talks about this matter with some of the project team at the time because we didn't understand why the – this delay happened, why we had so longer process which allow us to finalize and have payment certificate approved.

The payment mechanism of this contract was quite complicated, I agree. Some backup information were required. But all this facts cannot justify the fact that we were not able to agree on a certificate for months and months. This is unconceivable.

**MR. LEARMONTH:** Next, please turn to tab 18, Exhibit P-03025.

**THE COMMISSIONER:** Just a – I'm just noticing the time here now. I'm just wondering is this an appropriate time to take our morning break or –

**MR. LEARMONTH:** If I could just finish this exhibit –

**THE COMMISSIONER:** Sure.

**MR. LEARMONTH:** – it would be –

**THE COMMISSIONER:** Sure.

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

**THE COMMISSIONER:** Yeah.

**MR. LEARMONTH:** Yeah.

Okay, this exhibit is P-03025, tab 18. It's dated February 17, 2015. I don't know if you were involved at this point, but this is to Giacomo Orsatti.

Are you aware that Astaldi provided a draft 120-day construction schedule in February 2015? Do you have any knowledge of the contents of this letter?

**MR. PALUMBO:** No, sorry, I don't. I was not involved in this. I don't remember something of particular with respect to this letter.

**MR. LEARMONTH:** Okay. Well, we can pause now, Commissioner.

**THE COMMISSIONER:** All right. So we'll take 10 minutes, then, at this stage.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** All right, Mr. Learmonth.

**MR. LEARMONTH:** Before I continue on I was just – I should have entered the exhibits that – from Mr. Delarosbil and Mr. Bader's book. So I'll put them in. Hopefully it'll be satisfactory: P-03028 to P-03134, P-03272, P-03277 and P-03278.

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

**MR. LEARMONTH:** All right.

Now, I'd like to now take you back to the Grant Thornton report which is volume 1 of the other book of documents at tab 1. If you could look at that?

If you could turn to page 32 first. Okay, under – at line 2, 3.6.1, Labour Hours: "The following table compares the number of labour hours included in the estimate (after 14 addendums associated with design changes) to the labour hours in Astaldi's bid" – Astaldi bid (millions): Indirect person-hours, 3.69; direct person-hours, 3.14; total, 6.83 hours.

Does that figure correspond with your recollection?

**MR. PALUMBO:** Yes, more or less.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** It was – sorry.

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** Yes, the – I don't remember the exact figure but they are in the range of 6.8 million –

**MR. LEARMONTH:** Yeah. And then –

**MR. PALUMBO:** – man-hours.

**MR. LEARMONTH:** Thank you.

Then on page 33 at line 23, it says: “The CH0007 RFP documents indicated that the total amount of concrete to be poured for Astaldi’s scope of work would be approximately 478,000 cubic meters. As shown below, the Astaldi bid included a more conservative production rate than the estimate.”

So this shows the difference between the DG3 estimate and the Astaldi bid. Once again, do those figures seem to be correct to you?

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** Yeah. All right.

Now, at the – when we did the interview –

**MR. PALUMBO:** (Inaudible.)

**MR. LEARMONTH:** Yeah so I asked you to see what you could do to provide us with documentation on the studies or examinations that Astaldi did to – on which they based their estimates of labour productivity and so on. Do you recall that?

**MR. PALUMBO:** Yes, I recall.

**MR. LEARMONTH:** Yeah. And what did you do after you received that request? What steps did you take? Did you first check your – the records at Astaldi’s office in Rome or Montreal?

**MR. PALUMBO:** Of course, I had not specifically this type of records because they were managed, used and recorded by the people within the tender department, so those people which were involved in the estimates.

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** But I did contact with the proposal manager who work at the time in our tender department in Rome, Mr. Robasto, as well as with Mr. Venturini. Unfortunately, both of them are no more in – is no more within Astaldi personnel, they are working for other

companies – Mr. Venturini for his own company. And therefore it was not easy to provide that list within this time, enough information about the supporting document that has been used during the estimation process. Guido Venturini provided me with some documents that has been given to you –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – to the Commissions.

**MR. LEARMONTH:** But so you got what you could and you sent this to us, but I take it that you really can’t provide much by way of explanation as to what the importance of the documents are. Is that correct?

**MR. PALUMBO:** This is what I was able to do within –

**MR. LEARMONTH:** Yeah. Oh no, I’m not being –

**MR. PALUMBO:** – this time frame.

**MR. LEARMONTH:** – critical, I’m just saying that you’ve got – you got – you did you best to get the documents, but you’re not able to explain all the documents insofar as they relate to the productivity issue?

**MR. PALUMBO:** No, I can –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – understand the matter, but I was not involved in the –

**MR. LEARMONTH:** Okay.

**MR. PALUMBO:** – preparation of this document.

**MR. LEARMONTH:** Okay, well, let’s just go through them and we’ll see what we can come up with. So at tab 22 of your book, this is Exhibit P-03243. This is an email from Jean-Pierre Samson at Cegerco, which I believe is a company headquartered in Chicoutimi, Quebec, and that has done work in the James Bay – at least one of the James Bay projects pouring concrete and so on. Is that your understanding?

**MR. PALUMBO:** Cegerco was one of the company that we involve in the evaluation process.

**MR. LEARMONTH:** Okay. Now, can you – you can speak French, can you?

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** Can you just translate this email – page 1 of this email?

**MR. PALUMBO:** Yes, of course.

I will send you the document that we have revised, together with an important document, a document – sorry, (inaudible) –

**THE COMMISSIONER:** Useful, useful for a –

**MR. PALUMBO:** Yes, no, I'm not sure I was talking in French or in English, sorry. Useful for the evaluation of the productivity during the winter period, page 22 to 28.

**MR. LEARMONTH:** The hours, yeah.

**MR. PALUMBO:** Yes, the hours about the general condition on the BOC, I guess, bill of cost, have been validated from the organization chart.

**MR. LEARMONTH:** Okay.

**MR. PALUMBO:** The hours related to the activities has been – have been evaluated based on the job we have done with Vittorio – Vittorio Robiati, the construction manager, and with the data of project executed under similar conditions.

**MR. LEARMONTH:** Okay.

**MR. PALUMBO:** The subcontractor's hours for the reinforcement steel and structure have been included into the BOC.

**MR. LEARMONTH:** Okay.

So this is an indication that you did do some studies on productivity and you got some work done by Canadian companies, correct?

**MR. PALUMBO:** Yes, correct.

**MR. LEARMONTH:** Now, if we go to – if we turn to – in the same Exhibit P-03243, page 51.

This is a document you sent me, it was National Research Council of Canada, it's 1993 – December 1993 document, and you sent it to me in French. So we do have the English version of this document, which is at page 106. You can just have a look at that.

**MR. PALUMBO:** Okay.

**MR. LEARMONTH:** All right.

I'm not going to go through it all. I just want to refer to something that's on page 138, about the affect of weather conditions on the productivity of a working person. At paragraph 3.3.5.1, second paragraph, it says: "Similarly, the ill effects of cold weather can be warded off by wearing proper clothing and having temporary shelters near the work area; heaters may be installed as long as they are well ventilated. The optimal temperature appears to be 5°C. At this temperature the productivity of indoor work is not greatly affected.

"Table 3.2 shows the reduction of work efficiency in cold weather. It is assumed that efficiency is 100% at 21°C (70°F)."

So would this have – and then it shows the reduction in work efficiency in cold weather as – expressed as a percentage – the colder it gets, the greater the loss of efficiency. Is this an indication that you were – you know, you were alert to the fact that there would be problems with productivity when working in cold weather?

**MR. PALUMBO:** This document provide us – provided us with some parameters –

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** – of course we were aware that working under winter condition could affect productivity. This table give us information about the loss of efficiencies related with some parameters related with – relevant to the reduction of work efficiencies in relation with the cold weather.

**MR. LEARMONTH:** Okay.

**MR. PALUMBO:** The optimal temperature appear to be 5 degrees Celsius. I guess this was the temperature that we envisage within the ICS but –

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** – I’m not sure for that.

**MR. LEARMONTH:** Yes.

And at tab 23, Exhibit P-03244, it’s an email from Jeannot Harvey at Cegerco, December 10; another one to Guido Venturini and a number of others. Can you just give us a brief translation of this email?

**MR. PALUMBO:** This, I guess, was an evidence of the first involvement of Cegerco in the estimation of our bid. The email make reference to a conversation had a few days before and the – how to say – will and availability of this company to support us in the evaluation of our bid, and to assist and suggest us – assist us on the general condition within the North environment.

**MR. LEARMONTH:** Okay. So this is further indication that Cegerco – you’re relying on Cegerco to give you support in that –

**MR. PALUMBO:** Yes and we are –

**MR. LEARMONTH:** – (inaudible) provided some information –

**MR. PALUMBO:** – in December 2012. So –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – during the formals before the submission of our proposal.

**MR. LEARMONTH:** Right.

Tab 24, Exhibit P-03245, this is a self-explanatory letter from Jean-Pierre Samson of Cegerco concerning information on Labrador HST rate, Labrador health and safety and employer – employee cost labour for Labrador. And this is the – there’s some other emails, some other documentation. But this wouldn’t apply because the contract was governed by a special order, collective agreement, right? So the

rates here wouldn’t be of much help, would they?

**MR. PALUMBO:** The basic rate are fixed, but there are some other – how to say – ancillaries –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – cost which should be evaluated –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – and –

**MR. LEARMONTH:** Well –

**MR. PALUMBO:** – the purpose of this document, it was to evaluate at the end the real cost of labour.

**MR. LEARMONTH:** All right.

And tab 25 is Exhibit P-03246. This is from Federico Della Libera to Frank Flanagan. Who is Federico Della Libera? Oh, it says at the bottom. That’s tender coordinator for Astaldi, right?

**MR. PALUMBO:** He worked together with the – Maurizio Robasto. It was part of the tender team in – based in Rome.

**MR. LEARMONTH:** Okay. And this is further work on the dealing with the labour productivity and wage costs and so on. Is that correct?

**MR. PALUMBO:** On cost.

**MR. LEARMONTH:** Yeah.

Tab 26, this is Exhibit P-03247. It’s an August 16, 2013, document. Can you tell me who prepared this?

**MR. PALUMBO:** I guess this document has been prepared by our senior planner, considering that it refers to the construction schedules.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** And they’re for all the assumptions made in the (inaudible) – the construction schedule.

**MR. LEARMONTH:** That would be Mr. Cianni who prepared –

**MR. PALUMBO:** Cianni.

**MR. LEARMONTH:** – yeah, who prepared this. And it deals with the construction strategy, it deals with the Integrated Cover system and a number of other items, including calculated man-hours parameters on page 3 and so on.

Paragraph – tab 27, Exhibit P-03248, can you identify this document, please?

I just draw your attention to paragraph – on page 1, paragraph 2.2. This indicates the team that had been assembled to provide information on this and the following construction companies: Cegerco, Laval Fortin, Greenfield and Big Land. These were companies that Astaldi consulted to get information on productivity, labour rates and so on. Is that correct?

**MR. PALUMBO:** These are correct.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** These were all of the companies involved since the beginning, during the bid preparation and thereafter.

**MR. LEARMONTH:** Okay, thank you.

Well anyway, those are the documents that you obtained. And you weren't involved in that process, but thank you for providing them anyway.

**MR. PALUMBO:** I did my –

**MR. LEARMONTH:** Now, before –

**MR. PALUMBO:** – best.

**MR. LEARMONTH:** – I end my questioning, I just wanted to go over a list of the project managers that were on site at the Muskrat Falls Project from time to time.

I'm gonna read it out and then ask you at the end whether this – the dates I have appear to you to be correct. Yeah?

You've seen this before and we –

**MR. PALUMBO:** Yes, I know all of these people with exception of José Valdez [sp. Alves] because –

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** But I know that all of these –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – people has been appointed as project manager or –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – during the construction period.

**MR. LEARMONTH:** I'll just read it into the record that – I understand Guido Venturini was the director from October 12 to August 2014, correct?

**MR. PALUMBO:** August 2014.

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** Yes.

**MR. LEARMONTH:** And then Ken Chryssolor was project manager from September 2013 to February 2014. Is that correct?

**MR. PALUMBO:** I remember that Ken had the health problem and had to resign a certain time.

**MR. LEARMONTH:** Yes.

**MR. PALUMBO:** It was a (inaudible) –

**MR. LEARMONTH:** And then Mario Lanciani, February 2014 to May 2014?

**MR. PALUMBO:** Mario Lanciani spent two, three months on site, notwithstanding it was the general manager of – or president of Astaldi Canada during – sorry – during this period.

**MR. LEARMONTH:** And the acting project manager from May 2014 to June 2014, I understand, was Mauro Abbafati.

**MR. PALUMBO:** Mauro Abbafati.

**MR. LEARMONTH:** Yes.

And then from August '14 to December '14, José Alves, correct?

**MR. PALUMBO:** Yes. He's the –

**MR. LEARMONTH:** Or José, José –

**MR. PALUMBO:** José, José.

**MR. LEARMONTH:** José.

**MR. PALUMBO:** He is a Brazilian –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – and he had, as well, some health problem for – if I will remember, to his eyes.

**MR. LEARMONTH:** His eyes.

And then Giacomo Orsatti, he was both the project manager and director from December 2014 to August 2015. Is that right?

**MR. PALUMBO:** I don't remember the date, but it was on site. I met him on site, so –

**MR. LEARMONTH:** Yeah.

**MR. PALUMBO:** – I'm sure he was there.

**MR. LEARMONTH:** Yeah.

And then Donald Delarosbil from May 2015 until the termination. Does that – do those dates appear to you to be –

**MR. PALUMBO:** Yeah.

**MR. LEARMONTH:** – accurate?

Okay. I don't have any other questions. I'm sure other counsel will, but thank you very much.

**MR. PALUMBO:** Thank you.

**THE COMMISSIONER:** Thank you.

All right, the Province of Newfoundland and Labrador.

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

**THE COMMISSIONER:** Nalcor Energy.

**MR. SIMMONS:** Thank you, Commissioner. And it's probably good afternoon or close to good afternoon, Mr. Palumbo. I'm Dan Simmons. I'm counsel for Nalcor Energy here at the Commission of Inquiry.

First, I want to know a little bit more about what your personal involvement has been through this process. I understand that in 2013, 2014, you were part of the – is it the legal and commercial division of Astaldi S.p.A?

**MR. PALUMBO:** I am part of the legal and contract department – division as you prefer –

**MR. SIMMONS:** Yes.

**MR. PALUMBO:** – of Astaldi S.p.A.

**MR. SIMMONS:** Legal and contract department. And your particular position in that department has been what through that period?

**MR. PALUMBO:** I'm a contract manager; therefore, I deal with contract negotiation, change order, claims, disputes, correspondence. We receive and give advice –

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

**MR. PALUMBO:** – to our project team when this is required.

**MR. SIMMONS:** So through the bidding process for this particular project that we're talking about here today, from 2013 up until the project award on November 29, 2013, do I understand correctly that you and your department were providing a supporting role to the tendering department, who were responsible for managing that tendering process?

**MR. PALUMBO:** Yes, as far as the mainly contractual aspect are concerned.

**MR. SIMMONS:** Yes, good. And I think you mentioned that you attended at least two bid clarification meetings with personnel from Nalcor through that period.

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

**MR. SIMMONS:** Yes.

**MR. PALUMBO:** One in June, and the second one in September of –

**MR. SIMMONS:** Yes.

**MR. PALUMBO:** – 2013.

**MR. SIMMONS:** Did you have any other direct dealings or direct communications with anyone at Nalcor concerning the bid process up until the contract award on November 29, 2013?

**MR. PALUMBO:** No.

No, generally, not directly because we have just one point of contact, which was the proposal manager –

**MR. SIMMONS:** Yes.

**MR. PALUMBO:** – Mr. Guido Venturini, which – we entered all the information, and so this was one of these two – I got these two opportunities to participate directly –

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

**MR. PALUMBO:** – and with Nalcor people.

**MR. SIMMONS:** Very good.

So then –

**MR. PALUMBO:** I remember – sorry – that in November there were – before the contract execution, there were some specific provision that should be discussed with Ed Over.

**MR. SIMMONS:** Ed Over, yes.

**MR. PALUMBO:** And we had the conference call in Rome: me, Jennifer Hoffman, the risk manager, and probably Emanuele Triassi.

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

**MR. PALUMBO:** That's it. This is what I remember as direct contact with –

**MR. SIMMONS:** Yes.

**MR. PALUMBO:** – Nalcor's people.

**MR. SIMMONS:** So we heard already this morning that the Limited Notice to Proceed document, the LNTP, was signed on September 24, 2013. And that – we'll look at that in a minute, but that was signed, I understand, to enable Astaldi to actually start doing some work.

So from that time, when that document was signed in September, up until when the contract was signed on November 29, did you have any involvement at all in Astaldi's performance of work, the execution of the work that was described in that LNTP document?

**MR. PALUMBO:** I can say no that – cannot say that I have been involved. It is not part of job.

**MR. SIMMONS:** Right.

And similarly, after the contract was executed on November 29, did you have any involvement in the execution of the work – directing it, monitoring it, providing advice on it – after the contract execution?

**MR. PALUMBO:** I repeat, cannot be involved in this kind of activities. Of course, I had been aware of those circumstances that, from the contractor point of view, may have an impact –

**MR. SIMMONS:** All right.

**MR. PALUMBO:** – on the contract execution, on when some of the project team asked us some advice on the fact or circumstances that happen at the time.

**MR. SIMMONS:** Sure.

And would it also be correct that your department, legal and contracts, would also become involved after contract execution, if there was a claim to be made against the owner for extra payment that you might become involved in at that point?

**MR. PALUMBO:** Of course, we appointed and nominated a contract manager on site, as part of our organization chart, it's quite normal. And, any time that something is required in terms of

advice, counsel that we can provide to the project team, we are involvement with.

**MR. SIMMONS:** Okay. All right.

You had mentioned this morning in response to a question from Mr. Learmonth, that Astaldi Canada had invested between \$3.5 million and \$4 million in the preparation of this bid and working up to the award of the contract. Now, of course we know there were three other bidders, who must have invested also in the preparation of their bids. And in those circumstances, not everybody gets the contract.

So is it part of the business – part of the construction business, that when you submit a bid, you're taking a chance on whether you'll get the contract or not, so that money you invest in the bid is just part of the cost of doing business?

**MR. PALUMBO:** Not to such extent –

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

**MR. PALUMBO:** – I would say. The amount is a huge amount –

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

**MR. PALUMBO:** – that has been involved. Fortunately, we have not to face this kind of cost, when we have to submit the bid. But it was – of course – not to such extent, but part of our investment.

**MR. SIMMONS:** Certainly, yes. Okay.

All right, can we bring up Exhibit, I think it's P-02139 please, this is the LNTP document, and I'll find it for you.

**THE COMMISSIONER:** It's probably in one of the other binders and I don't have the list.

**MR. SIMMONS:** It's binder 1, tab 4 – I think it says on the list I have here.

**THE COMMISSIONER:** Ok, tab 4 that's right.

**MR. PALUMBO:** My binder, sorry?

**MR. SIMMONS:** I think so. It's – I have a list here, it has your name on it, it says binder 1, tab 4 – so you might find it there.

**MR. PALUMBO:** That's (inaudible).

**MR. SIMMONS:** You have it?

**MR. PALUMBO:** (Inaudible.)

**MR. SIMMONS:** Okay. So that's the LNTP document that you are familiar with. And this was, as we've said, entered into on September 24, 2013. Now, first of all, I believe you told us that you're familiar with this type of a document which, I understand, allows a contractor to start some work on a project, before all the final contractual arrangements are made with the owner.

**MR. PALUMBO:** In this case, yes.

**MR. SIMMONS:** Yes.

And I heard you say that what was unusual here was that this wasn't actually part of the contract arrangements for there to be an LNTP document. Now, I understand that correctly?

**MR. PALUMBO:** Generally the – at least –

**MR. SIMMONS:** Yes.

**MR. PALUMBO:** – in my experience – quite large experience in contract administration –

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

**MR. PALUMBO:** – this concept generally is included. It's part of a contract –

**MR. SIMMONS:** Right.

**MR. PALUMBO:** – therefore we find this provision within the contract (inaudible).

**MR. SIMMONS:** So, my first question, then, is would you agree that, in this case then, Astaldi Canada was under no obligation to enter into this Limited Notice to Proceed agreement, and that it had to agree to do so in order to be bound by any of the terms of this agreement.

**MR. PALUMBO:** Nobody – we have the freedom to make a choice.

**MR. SIMMONS:** Yes.

**MR. PALUMBO:** It is clear that nobody forced us –

**MR. SIMMONS:** Yes.

**MR. PALUMBO:** – what – I believe is important to stress is the fact – to see also at – all the other circumstances around the discussion we had –

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

**MR. PALUMBO:** – around this Limited Notice to Proceed and the contract in general.

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

But all that said, Astaldi was aware at the time of what the circumstances were that it found itself in, and there's no dispute that the company voluntarily entered into this agreement on September 24, correct?

**MR. PALUMBO:** There were no disputes. There were (inaudible) circumstances that should be also satisfied by Nalcor.

**MR. SIMMONS:** Certainly.

**MR. PALUMBO:** We were expecting that Nalcor's task should be fulfilled as – for us, similarly for us. Both party have their own obligations.

**MR. SIMMONS:** So, can we go to page 2, please?

And scroll down a little more, please. You can stop there.

I'll just draw your attention to paragraph 2 (c) here. It says: "The Company is providing the Contractor with this binding LNTP so that Contractor can start its work on the Initial Work to preserve and maintain the Contract Price and schedule for the Agreement."

So, am I correct, then, that one of the main objectives of this LNTP was that work could be

carried out so that the price that had – was under negotiation for the contract would be preserved without having to be increased and that the schedule that was in place at that point would be preserved because of the work that was being done.

You're nodding your head, so am I describing that correctly?

**MR. PALUMBO:** Yes.

This is the purpose, of course.

**MR. SIMMONS:** Okay.

And if we could go over please to – it's probably page 6 or 7, schedule 1. Yes (inaudible) okay there.

So, Mr. Palumbo, there's a description here in schedule 1 of what the initial work is that we're – just referred to.

I'm not going to go down through the list with you of what it was to be carried out. But, according to this agreement, this is a description of the activities that Astaldi was to carry out in order to achieve that objective to preserve the contract and the schedule. So, I know you weren't involved in directing the performance of this work, but can you tell me whether you're aware or not whether that work was carried out in accordance with this agreement?

**MR. PALUMBO:** I can see that all these activities have started.

**MR. SIMMONS:** Yes.

**MR. PALUMBO:** Procurement was done also well before the Limited Notice to Proceed. The design activities were, how to say, performant. Strategic suppliers – we had contact with strategic supplier for steel reinforcement, AFG, I remember, Labrador Ready Mix, Doka for the formworks. So all this kind of stuff – activities were ongoing.

**MR. SIMMONS:** Right.

And one other feature of the LNTP – excuse me – agreement, was that Astaldi would be paid for all the work that was done under this agreement,

regardless of whether it eventually got the contract or not?

**MR. PALUMBO:** Astaldi should be paid for the work performance during the LNTP –

**MR. SIMMONS:** Yes. Yes.

**MR. PALUMBO:** – irrespective of the contract award. Astaldi should be paid also at the signing of this in-advance payment (inaudible) remainder –

**MR. SIMMONS:** Right.

**MR. PALUMBO:** – at the signing of this contract. I'm referring to page 8, schedule 2, in order to initially cover the above listed activities and to start up the following subcontractors and supplier. An initial amount of \$15 million Canadian as part of the total advance payment payable portion to the agreement should be paid to contractor immediately upon signature. And this doesn't happen – didn't happen – sorry.

**MR. SIMMONS:** Okay.

So, the structure of the LNTP (inaudible), was that Astaldi was not –

**MR. PALUMBO:** (Inaudible.) Sorry, say that again?

**MR. SIMMONS:** Astaldi was not at risk of not being paid for the work that was being done, aside from whether there was any process involved with the payment of the advanced payment, and others can probably speak to that. Astaldi was not at risk of losing the cost it would incur to dig in and do the work that was necessary under the LNTP to save the schedule and preserve the schedule on the project.

**MR. PALUMBO:** It's not completely correct to me, because it is not a matter only of cost incurred –

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

**MR. PALUMBO:** – this would be reimbursed. But there is all other activities that we have to perform for which there is not a direct payment.

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

**MR. PALUMBO:** I'm referring to myself, for example; I'm not costing so much but –

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

**MR. PALUMBO:** – I would say the head office, for other kind of expenses that are not part of the payment foreseen. And I would say we could not incur additional liability in terms of engagement with third parties because this could not be paid.

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

So, when the LNTP contract was entered into, was it Astaldi's understanding that where the purpose was to preserve the schedule and preserve the contract costs, that Astaldi was going to be expected to do the things that were necessary to achieve that goal?

**MR. PALUMBO:** These activities were foreseen to allow any kind of delay on the construction schedules.

**MR. SIMMONS:** Okay.

**MR. PALUMBO:** But these activities should be performed together with some other task and activities to be performed by Nalcor as well.

**MR. SIMMONS:** Sure. So –

**MR. PALUMBO:** We have a list, for example, of this kind of support that should be given by Nalcor in the site visit records –

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

**MR. PALUMBO:** – where there is a list of task that Nalcor should be perform during the LNTP period.

**MR. SIMMONS:** Okay.

**MR. PALUMBO:** And some of them, unfortunately, has not been complied with.

**MR. SIMMONS:** Okay.

Can we go to Exhibit P-03137, please? That's the pre-award record of site inspection that you've referred to.

**MR. PALUMBO:** Okay, is tab – sorry?

**MR. SIMMONS:** And I have a couple of questions for you concerning it.

**THE COMMISSIONER:** 03137, did you say?

**MR. SIMMONS:** Yeah, Exhibit – tab 5 of book 1, please.

And I just wanted to bring you to page 3 of that document.

**MR. PALUMBO:** Sorry, just for completeness, I was referring to item 4 when I –

**MR. SIMMONS:** Yes. Yeah.

**MR. PALUMBO:** – talk about the company’s task: camp accommodations, offices, telephone services, radio mobile system, power. Many of these task has been completed with some delays.

**MR. SIMMONS:** So this document is dated September 24, 2013, which is the same date as the LNTP agreement.

**MR. PALUMBO:** As execution date.

**MR. SIMMONS:** Yes, as execution date. And if you look on page 3, there’s a statement in the paragraph there that begins: “Based on the above, Astaldi hereby confirms that, If the Limited Notice To Proceed is issued by ... September” – 24th – “the Milestone Dates of the Interface and Milestone Schedule will not be impacted; and the impact of any adjustments to the execution plan and Construction Schedule is included in the Contract Price.”

So, at this point Astaldi was confirming that it had made some assessment and was committing itself that it was not looking for any change to milestone dates or interface dates at that point. Correct?

**MR. PALUMBO:** Is that correct? Of course. And there is still the assumption that each party should perform its own task on time.

**MR. SIMMONS:** Yeah.

One point I wanted to ask you about on this page also, and it’s item 4.7, and it refers to dewatering.

**MR. PALUMBO:** Mmm.

**MR. SIMMONS:** You see on the second line from the top on this page. It says: “4.7 Dewatering.”

**MR. PALUMBO:** Sorry, say it again.

**MR. SIMMONS:** Dewatering.

**MR. PALUMBO:** Dewatering, yeah.

**MR. SIMMONS:** Yeah. “Astaldi shall be responsible commencing” November 30, 2013.

Now, do you know what the dewatering referred to here?

**MR. PALUMBO:** Sorry, I don’t know to which document you are referring. Sorry, 4.7. Sorry, Sir.

**MR. SIMMONS:** Yes.

**MR. PALUMBO:** I was looking at page 2.

**MR. SIMMONS:** Oh, sorry.

**MR. PALUMBO:** Yeah.

**MR. SIMMONS:** So, would this be the dewatering of the excavations for the spillway and the powerhouse?

**MR. PALUMBO:** I guess it was – watering system was implemented for the spillway and the powerhouse. So, I guess that this was referring to these two project areas.

**MR. SIMMONS:** Right. So as of September 24, then, Astaldi would have been aware that the responsibility for keeping the water out of those excavations – once they were turned over, it was going to be Astaldi’s responsibility and not anyone else’s. Is that correct?

**MR. PALUMBO:** It was Astaldi responsibility. We, however, had a problem with this dewatering system which was provided by Nalcor’s other contractors.

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

**MR. PALUMBO:** It – the problem was that this dewatering system was not fit for to work under winter conditions and therefore we had to replace it. This create delay and, unfortunately, the formation of eyes on this area was unavoidable. I believe that this was also declared in one of these documents by Mr. Robiati in his complain list or list of events which affected the work's performance.

**MR. SIMMONS:** Right. So is the –

**MR. PALUMBO:** So, dewatering was not fit for its purpose. It could be responsible but with the proper system, and the system was not.

**MR. SIMMONS:** Well, I don't see any mention here of a requirement for someone else to provide the system. So, was Astaldi responsible itself to ensure that it provided a proper dewatering system?

**MR. PALUMBO:** I don't know –

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

**MR. PALUMBO:** – but I remember that this dewatering system has been provided to us and we have to operate it.

**MR. SIMMONS:** Okay.

You also gave some evidence about the survey of the excavation, and I think it was primarily the powerhouse excavation that you were referring to. You gave this evidence in the connection with the ability to complete the design of the ICS structure.

Contractually, do you know whose responsibility it was to perform the survey of the excavation for that purpose?

**MR. PALUMBO:** The excavation had to be – was performed by another contractor. We had the obligation to verify the information and survey data provided to us. And this is, in fact, what happened. Because I remember that on mid-February we sent a notice to Nalcor saying that after such a verification, we identify significant over break with respect to the original ground levels. And we send a letter, a

notice under close 14.8 – yes, 14.8 – and asking for a change order in order to evaluate the consequences of this over break.

**MR. SIMMONS:** Can we bring up Exhibit P-03278, please?

**THE COMMISSIONER:** That one is in the –

**MR. SIMMONS:** Yes, that's probably in the other book.

**THE COMMISSIONER:** Do we have the – maybe somebody in the back can give me the exhibit list for Mr. Delarosbil, and, as well, Mr. Bader's documents, and then I could get that quite quickly. Just wait, I'm sure somebody's gonna (inaudible). Can you – would it be possible to move on to another one, or is that gonna take you out of place? 'Cause I can take a –

**MR. SIMMONS:** Well, there's –

**THE COMMISSIONER:** I can take a break for a –

**MR. SIMMONS:** Yeah.

**THE COMMISSIONER:** – couple of a minutes if –

**MR. SIMMONS:** No, there's only one page I need to refer to, so –

**THE COMMISSIONER:** Okay.

**MR. SIMMONS:** – and it's – it should be fairly easy to do it on the screen (inaudible).

**THE COMMISSIONER:** Okay.

All right. Let me just see if I can – so it's 03278.

**MR. SIMMONS:** And I'd like to go to page 21, please.

**THE COMMISSIONER:** Okay. That's at tab 121, book 3 of the Delarosbil. So if you look at book 3 over here.

**MR. PALUMBO:** Book 3? Yeah.

**THE COMMISSIONER:** Book 3, tab 121.

**MR. SIMMONS:** And it's page 21 of that document, please.

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

**THE COMMISSIONER:** Book 3 of the Delarosbil, George Bader exhibits.

**MR. PALUMBO:** Yes, I have it.

**THE COMMISSIONER:** Okay. And tab 121.

**MR. PALUMBO:** Page?

**MR. SIMMONS:** Page 21, please.

So, Mr. Palumbo, this is a scope of work specification for the intake and powerhouse contract. It's issued for construction, and the date on that is September 27, 2013. Do you see that?

**MR. PALUMBO:** Yeah, I see that.

**MR. SIMMONS:** Okay.

So this would be, I think, this is part of the scope of work that would have been delivered to Astaldi as part of the process of it preparing to submit its bid. This was actually, I think, attached to an addendum – addendum 14 in September.

And what I want to draw your attention to is the section 3.4, which is headed: "**SETTING-OUT OR IMPLEMENTATION OF SURVEY POINTS AND LINES.**"

And the second subparagraph, 3.4.1.1, says: "Surveying required for setting-out the structures and for as-built profile of the excavation and structures." Those are the responsibility of the contractor.

So it appears that under the scope of work, it was clearly stated that the surveying needed for the excavation profile was Astaldi's responsibility to do. Now, does that square with your understanding of what Astaldi's obligations were under the contract?

**MR. PALUMBO:** The surveying is – we have, as I told you before, perform such survey which is necessary for the setting out of the structure.

And this is what we have effectively done. At the same time, it is also true that Nalcor informed us during 2013 in similar cases that we have to provide us the ground levels after the excavation performed by its own contractor and we were waiting for this data.

**MR. SIMMONS:** Okay.

When did Astaldi do its survey of the excavation for the powerhouse?

**MR. PALUMBO:** The survey take quite long time. I can say that during the period of December and January it was not possible to do it – at least, to complete it. For sure, we have done – we have performed survey activities in February because we were able to inform Nalcor that there were some other break with respect to the data that had been provided before. So –

**MR. SIMMONS:** So the powerhouse site was turned over to Astaldi in December of 2012.

**MR. PALUMBO:** The –

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

**MR. PALUMBO:** Not completely correct because we had been granted shared access –

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

**MR. PALUMBO:** – so no full access to the powerhouse on mid-December, so with 15 days delay, with respect to the milestone foreseen for this activity in the contract.

**MR. SIMMONS:** Okay.

So, Astaldi was given shared access to the powerhouse site in mid-December. Was it not given full access before the end of December?

**MR. PALUMBO:** I don't remember when the – the full access has been granted. Probably, it's – can find it in one of these document.

**MR. SIMMONS:** So let me ask you another question then. At the point when Astaldi was given access to the excavation site – I'll just give you my understanding of what the events were and you can tell me if that's right or wrong.

Is that before the end of December 2012 – 2013, Astaldi was given access to the powerhouse site and either responsibility of maintaining the dewatering in the site. And from the point where Astaldi had access to the site, it was his – its responsibility to then do the surveys it needed to do in order to complete its ICS design. And that Astaldi did not maintain the dewatering, the site flooded and froze and that was why Astaldi could not do its survey that it was required to do until February.

**MR. PALUMBO:** We could perform our surveys activities. The surveys activities – sorry, I rectify. The surveys activities has been affected by the dewatering system which was not fit for its purpose.

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

**MR. PALUMBO:** Which therefore create – allow the formation of ice frozen in this area. Survey activities has been performed because we had not full access to the powerhouse area, and the access to a portion of this area was granted with delay.

Having access to the powerhouse on mid-December – so a few days before the Christmas break – means that we lose, I don't know how many, weeks before entering again into the powerhouse area. Different was if the access could be granted in beginning December, first December, as foreseen.

**MR. SIMMONS:** Okay.

So it is correct, though, that this was an – this is an area of disagreement between Nalcor and Astaldi. Are you aware of that?

**MR. PALUMBO:** Yes, I guess this is a matter of discussion with Nalcor.

**MR. SIMMONS:** Yes, yeah.

**MR. PALUMBO:** Yeah.

**MR. SIMMONS:** And now you've also said that when the surveys were eventually done by Astaldi, that you were saying that there was overbreak which had occurred. And if I understand correctly, overbreak refers to the amount of rock that's been blasted out and that if

there is excessive overbreak there can be concrete required to be put in, in order to make up the difference.

So our information is that the amount of overbreak in the powerhouse did not exceed what was anticipated in the contract documents. Do you know if that's correct or not?

**MR. PALUMBO:** I don't know if this was correct. I simply know that our project team was particularly concerned about the impact that this overbreak had on the finalization of the design of the ICS foundation and the impact on the design of ICS structure as well.

**MR. SIMMONS:** Sure.

Question for you then about the design of the ICS structure. I hear you to be attributing Astaldi's inability to complete the design on wanting these surveys of the excavation, which I understand or gather from you, would affect the foundations for the steel pillars that would form part of the ICS structure. Do I have that basically right?

**MR. PALUMBO:** Sorry, say it again?

**MR. SIMMONS:** Okay.

The effect – what was the effect on Astaldi's ability to design the ICS, from not having had the surveys done in December? The survey –

**MR. PALUMBO:** Impact was –

**MR. SIMMONS:** – and the excavation.

**MR. PALUMBO:** – as I told on the foundation design, because (inaudible) foundation must be poured in a known site and on the ICS structure.

**MR. SIMMONS:** Now, I know you weren't involved actually in the ICS design or in managing that, but can you explain to me how – the questions about the foundations for the steel posts, how that would prevent the designers from completing the remaining design, the rest of the design of the ICS? Because my understanding is that most of the ICS design could have been done and that the only difference, once the survey was done, would concern the length of the pillars or how the

pillars would be founded once the foundations were put in. But the balance of the work could all have been done.

**MR. PALUMBO:** The ICS cannot be considered a – constituted by parties but must be designed as a whole, because all action and forces acting on this structure have to be considered in their totality. So we cannot say that a part of the ICS structure could be finalized first, waiting for the finalization or another part of the design. The ICS should be verified as an entire and whole, unique – unique is not correct – as a sole structure, not –

**MR. SIMMONS:** Okay –

**MR. PALUMBO:** – by part. I mean we cannot design just one pier of the ICS.

**MR. SIMMONS:** Okay, thank you.

So I'd asked you a number of questions then about the LNTP which –

**MR. PALUMBO:** And – sorry, just to (inaudible) and forget it. It is not a matter of ground levels only, but the finalization of the ICS go through, also, the eventual or potential interferences with the powerhouse structure. Therefore, we have to receive drawings of the powerhouse structure and, for sure, these drawings – the final revision of these drawings has not been received in November, December, January or February in 2014.

**MR. SIMMONS:** Okay.

The information that I have is that the complete set of drawings for the powerhouse were finalized and delivered in July of 2013 and were available in July of 2013 with some revisions, perhaps, in addendum 14 that was issued in September of 2013. So what were the drawings that were not available as of July and September of –

**MR. PALUMBO:** Maybe –

**MR. SIMMONS:** – 2013 that Astaldi needed in order to complete the ICS design and integrate it with the permanent structure?

**MR. PALUMBO:** I believe that we – this is recorded and for sure can find this kind of information on the minutes of meeting on the Aconex platform, the minutes of meeting that has been held during end of 2013, 2014 when Nalcor declared that – to the best of my knowledge that they will provide 3-D model of the powerhouse. Because he ask it correctly, that he want to verify the potential interference between the ICS structure and the powerhouse. To do that, the 3-D model of the powerhouse should be provided to us.

**MR. SIMMONS:** Okay.

Now, the 3-D model was something different from the design drawings, the specifications for the powerhouse.

**MR. PALUMBO:** It's a consequence of the design.

**MR. SIMMONS:** It's a consequence of the design, but do you disagree with me –

**MR. PALUMBO:** Consequence.

**MR. SIMMONS:** Do you disagree with me when I say that the complete set of construction drawings had been provided in – if not, you know, on July 5, 2013, certainly by September of 2013?

**MR. PALUMBO:** I'm not aware about the date of the revision of the powerhouse. I'm surprised about that because the drawings has been – we received several revision of the drawing sets after the submission date of our bid. So I'm not surprised that some change also has affected the – interested the powerhouse drawings.

**MR. SIMMONS:** Okay.

**MR. PALUMBO:** But probably.

**MR. SIMMONS:** So we've started that discussion looking at the LNTP in September 24. Could we bring up, please, Exhibit P-03139? And this is the amendment number 1 to the LNTP.

**MR. PALUMBO:** Yeah.

**MR. SIMMONS:** And that should be at tab 7 of your binder number 1, please.

And it's just a very simple question on this one. You've identified this as being an extension of the LNTP period to November 30, 2013, and it's really the same question as when the LNTP was signed. This is not something that Astaldi was obligated to agree with, was it?

**MR. PALUMBO:** No way.

**MR. SIMMONS:** No.

**MR. PALUMBO:** Of course we were not obligated.

**MR. SIMMONS:** Right. So at this point Astaldi voluntarily agreed to the extension of the time and was in a position where they could evaluate whether that was something that they considered appropriate to agree to or not.

**MR. PALUMBO:** The contract has been signed in the end of November.

**MR. SIMMONS:** Okay. We know the agreement was eventually signed then on the 29th of November which is within the extension period.

And can I bring you, please, to Exhibit 03140, which is at tab 8, the next eight – the next tab. This is one that Mr. Learmonth brought you to and this was Mr. Chryssolor's message of November 22, 2013, which is about a week before the agreement is signed. He brought you through this.

Mr. Chryssolor, he was your project manager or director? What was the position?

**MR. PALUMBO:** Project manager.

**MR. SIMMONS:** Project manager. He was the gentleman, I think, who had 30 years' experience in hydroelectric projects in Canada. Correct?

**MR. PALUMBO:** That's correct.

**MR. SIMMONS:** Yeah.

And he'd been a person who had been put forward by Astaldi to Nalcor as the gentleman who would be leading the – Astaldi's work at the site. Correct?

**MR. PALUMBO:** Yeah –

**MR. SIMMONS:** Yeah.

**MR. PALUMBO:** – as project manager.

**MR. SIMMONS:** Now, Mr. Chryssolor, in fact, after the contract was awarded he only spent a very short time at the site. And, then, as Mr. Learmonth went through, there was a succession of short-term project managers after that, right?

So on the 22nd of November, Mr. Chryssolor sent this message internally. And he seems to be very strongly of the view, not only that Astaldi shouldn't sign the contract, but that Astaldi will not be able to meet the milestone dates and the interface dates in the contract.

So my question is: Did you or anyone at Astaldi inform Nalcor that that was Mr. Chryssolor's view?

**MR. PALUMBO:** There was no need to inform Nalcor. Nalcor was aware that the circumstances under which we – that we were facing could affect the milestone. Otherwise, to me, there was no reason to ask us to sign a (inaudible) release as foreseen under Exhibit 00017 of the (inaudible).

**MR. SIMMONS:** Okay.

So it is your evidence then that no one at Nalcor was informed that the opinion, the view expressed by Mr. Chryssolor – who was the person you were relying on as having extensive experience in hydroelectric construction in Canada – that his view was that Astaldi would not be able to meet the milestones and interface dates? That was not told to Nalcor.

**MR. PALUMBO:** I don't know if this has been told to Nalcor but I repeat: It wasn't necessary to inform Nalcor about this matter.

**MR. SIMMONS:** Okay.

So then shortly afterwards, the civil works agreement was signed on November 29. Mr. Learmonth has already brought you to Exhibit 00017 which was the release document and I know you're not a lawyer so you can't provide a legal view. But from your position in contracts administration, you recognized, I expect, that by signing that release, Astaldi was saying that it would not and could not make any claims for delays or extra costs related to any of the events that had occurred up to the time of signing of the contract.

**MR. PALUMBO:** The wording of the mutual release is self-explanatory.

**MR. SIMMONS:** Yes. Yes, okay.

So by signing that mutual release, was Astaldi committing itself to the performance of the work by meeting the milestones and the interface dates that were set out in the contract?

**MR. PALUMBO:** Yeah.

**MR. SIMMONS:** Because those dates are set out in the contract. So, Astaldi was committing itself to achieving those dates.

**MR. PALUMBO:** Yes.

**MR. SIMMONS:** Yes.

**MR. PALUMBO:** As (inaudible) under the contract.

**MR. SIMMONS:** Right.

And, at that point, Astaldi had not told anyone at Nalcor that they did not believe that they could meet those dates.

**MR. PALUMBO:** I don't know. I – as I told you before I had not direct contact with Nalcor therefore I cannot give you an answer to that.

**MR. SIMMONS:** Okay.

Okay, can we go to Exhibit P-03042, please? This was a letter you were referred to briefly that came from Mr. Chrissolor on –

**THE COMMISSIONER:** Tab 12.

**MR. PALUMBO:** Tab?

**THE COMMISSIONER:** Tab 12.

**MR. SIMMONS:** – December 9, yes.

So this is just not long after the contract has been executed. Scroll down a little bit, please. And his letter simply refers to asking, "... when the contractor can expect to receive the drawings?" And he says: "Drawings 'Issued for Construction' are not considered 'Approved for Construction.'"

So do you know any of the background to this letter or what this issue is that's being raised here?

**MR. PALUMBO:** No. I know that the issue here was that we (inaudible) not clear evidence on the delivery of the approved for construction –

**MR. SIMMONS:** Okay.

**MR. PALUMBO:** – drawings.

**MR. SIMMONS:** Do you know what happened after this letter was sent? How this was resolved?

**MR. PALUMBO:** After – specifically after this letter, no.

**MR. SIMMONS:** Okay.

'Cause the – what I understand – and I think there could be evidence to this effect – is that the drawings that were issued in July were labelled issued for construction and, within two days of the receipt of this letter, Astaldi was informed that the issued for construction drawings are the approved for construction drawings – they mean the same thing – so that Astaldi had had those drawings in its possession for that time.

Are you aware of that?

**MR. PALUMBO:** I – sorry, can you tell me where –

**MR. SIMMONS:** That correspondence isn't in evidence. We can certainly provide it and ensure that it –

**MR. PALUMBO:** No, no, sorry –

**MR. SIMMONS:** – does.

**MR. PALUMBO:** – this document is in my binder?

**MR. SIMMONS:** Oh, sorry, yes –

**THE COMMISSIONER:** No, it's not in – it's – I don't think it's in your binder. I think, again, it's in one of the other binders.

**MR. SIMMONS:** The one on the screen is in your tab 12, I think. That's the one you're looking for.

**MR. PALUMBO:** Yeah. I guess there is an attachment to this letter.

**THE COMMISSIONER:** No, it's not that exhibit, Mr. – it's not in tab 12 of his book.

**MR. SIMMONS:** Okay, this is – this should be –

**MR. PALUMBO:** Stop here, please.

**MR. SIMMONS:** Yeah, it's at the top, I believe. The first page.

**MR. PALUMBO:** So I am at paragraph 3 point –

**MR. SIMMONS:** Oh, I'm sorry, it's Exhibit 03042. So this must be in the other collection.

**MS. MUZYCHKA:** Book 1, tab 21.

**MR. PALUMBO:** Tab 21?

**THE COMMISSIONER:** Tab 21.

**MR. PALUMBO:** Oh, finally. We got it. Yeah.

So I guess that the –

**MR. SIMMONS:** And it's the first page, Madam Clerk.

**MR. PALUMBO:** This letter made reference to clause 3.8.1.1.

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

**MR. PALUMBO:** “Scope of Work Specification” and – “At Effective Date” – so when the contract has been executed – “a schedule of issue of the Approved for Construction ... Drawings will be provided.”

Looking at this letter, I guess that this was not the case.

**MR. SIMMONS:** So are you aware though that this issue was resolved by informing Astaldi within a couple days that the drawings labelled issued for construction were the approved construction drawings and that there did not have to be any new drawings issued, that they were all in Astaldi's possession? If you're not aware of that, fine.

**MR. PALUMBO:** No, I am not aware, but I am aware that as far as the powerhouse is concerned, we received revision of the powerhouse drawings in 2014. So, well beyond effective date.

**MR. SIMMONS:** Exhibit P-03021, please. And that's at tab 11 of your binder, please, Mr. Palumbo.

And you were referred to this earlier; this is Mr. O'Brien's letter of the 18th of December, 2013, to Mr. Chryssolor and Mr. Robiati in which he raises various concerns. And I just wanted to bring your attention to page 2, please, because there's some dates here for when access was provided to Astaldi to the site.

**MR. PALUMBO:** Yeah.

**MR. SIMMONS:** And for the powerhouse in particular, if we go to page 3, in the second bulleted paragraph on page 3 there's a reference here to the “... actual of 16-Dec-2013 for takeover of dewatering for the spillway and a projected date of 18-Dec ... for takeover of dewatering for the powerhouse.”

So I just draw your attention to this reference because it appears here that by the 18th of December, 2013, the powerhouse excavation would be available for Astaldi to take over the dewatering. Does that date fit with what your understanding is of when Astaldi assumed that responsibility?

**MR. PALUMBO:** Hmm.

Yeah, so – sorry, which is your question?

**MR. SIMMONS:** Does that date match your recollection or understanding of when Astaldi took over responsibility for the dewatering of the excavation?

**MR. PALUMBO:** I don't know that. It was clear that we had to, how to say, take over the – this dewatering system –

**MR. SIMMONS:** Okay.

**MR. PALUMBO:** – both for the spillway and the powerhouse. Now, about the dates are – I don't know.

**MR. SIMMONS:** Thank you.

Commissioner, I notice it's coming up on 10 to 1, so I don't know what time you want to break for lunch?

**THE COMMISSIONER:** We can break now if it's convenient for you.

**MR. SIMMONS:** Yes, please.

**THE COMMISSIONER:** All right. Well, let's take our lunch break now, and we'll return at – just try to get a feel, because I have two – I think we have a panel on this afternoon later on as well.

How much longer do you expect to be?

**MR. SIMMONS:** I don't expect to be very much longer, Commissioner.

**THE COMMISSIONER:** Okay.

So I think we should give notice to the other two witnesses to be here around – certainly around 2:15 or so or 2:30 this afternoon.

So we're adjourned until 2 o'clock.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

This Commission of Inquiry is now in session.

Please be seated.

**THE COMMISSIONER:** All right.

Mr. Simmons.

**MR. SIMMONS:** No further questions, Commissioner.

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

All right, Concerned Citizens Coalition.

**MR. HISCOCK:** Good morning.

My name is Will Hiscock. I'm here on behalf of the Concerned Citizens Coalition.

Good afternoon, I should say.

Obviously the Commissioner's role – principal role here is to determine why the Muskrat Falls Project went over budget and behind schedule. And obviously Astaldi is an important part of that narrative. What surprises me, and I think others as well, is that on the one hand Astaldi proclaimed its international construction experience, including on hydro projects. And yet, according to Grant Thornton, the overruns on this work project, and this package 0007, account for \$1.2 billion, or 39 per cent of our total cost overruns, and your original bid was only 1.14 billion.

So that becomes a difficult thing for us to understand, I think. And bearing in mind that the two Canadian bids on this project were for \$2.05 billion and \$2.03 billion.

Was this simply a major miscalculation on Astaldi's part in terms of the initial bid?

**MR. PALUMBO:** Thank you and good afternoon.

I believe this is not a question to which I can answer considering the role that I had during the preparation of the bid. I was not involved within the estimation. What I can say in this respect is that we put all necessary – at least in our opinion – resources in order to properly understand the condition (inaudible) for the execution of the

works, and to properly evaluate the cost for the execution and completion of the awards awarded under this package.

**MR. HISCOCK:** Okay.

But, you know, you didn't bid even half of what the project end – that work package ended up costing. You know, you bid \$1.14 billion and then we ended up with \$1.2 billion on top of that.

And it seems that either this is a wildly off-base initial quote or – and I hope I'm not being too blunt here, but I mean the other possibility that comes automatically to mind is that Astaldi was trying to buy the contract in the hopes that there were sufficient deficiencies in the contract language and enough poor management in Nalcor to make up for your losses.

**MR. PALUMBO:** Sorry, may I ask you to speak more slowly?

**MR. HISCOCK:** Absolutely.

**MR. PALUMBO:** Have a better understanding to me.

**MR. HISCOCK:** So, I mean, what we're looking at is: From the outside, the numbers are so far off the final numbers that two things jump to mind. Either one, the initial bid estimates were just completely off base, or secondly, that you perceived weak enough contract language and an inexperienced enough management team that you thought you could make up the difference once you already had the contract in hand. 'Cause it's either the incompetence or the buying the contract. I can't see that there's another alternative there.

**MR. PALUMBO:** I cannot say that we are incompetent, or that personnel which – who was incompetent has been involved in this project.

**MR. HISCOCK:** Mm-hmm.

**MR. PALUMBO:** And concerning the estimate, we were convinced that, based on the information received, the assumption made our bid price was the correct one.

**MR. HISCOCK:** Okay.

And – but, obviously, it wasn't.

**MR. PALUMBO:** The change in the contract price was not – we cannot say that the overrun in the contract price was due to underestimation. There were some circumstances which rendered the execution of the works more costly.

**MR. HISCOCK:** And some of those would've been known, though, before the contract was even signed. Some of those problems were known – would've been around the timeline, not being able to get started until the winter when you had thought you had a whole construction season before that. But that stuff was known before the contract was even signed – that these problems had occurred.

**MR. PALUMBO:** Some of the circumstances were unknown.

**MR. HISCOCK:** Was Astaldi given any verbal assurances that it was okay to proceed, and that Nalcor would take care of you – that the contract wouldn't be held too strictly, and that, you know, we will make this work?

Were there verbal assurances that made you comfortable signing a contract, even though your project manager had advised that these timelines weren't able to be met, that you shouldn't sign the contract?

Was there any verbal assurances given by Nalcor that would've given you a comfort level in signing that?

**MR. PALUMBO:** The indirect insurances that we received from Nalcor was based on the perception we had in dealing with Nalcor representatives that in the event some unfavourable events will happen, this will be properly dealt with the spirit of co-operation and with good faith that has been manifested during the whole procurement process until the contract award.

**MR. HISCOCK:** And though we're talking about a business relationship and a contract price of a – over a billion dollars. Surely, this wasn't simply a sense of goodwill between friends or something like that, some sort of gentlemen's agreement that you were basing signing a \$1 billion contract on.

Do you know – do you see why I think most of us would feel that that just doesn't – doesn't seem reasonable to just rely on, you know, a sense that somebody's a fair person or that they've been dealing with a co-operative individual so – so let's enter into a billion-dollar contract where we have serious concerns anyways.

There must've been something more substantial than that from Nalcor.

**MR. PALUMBO:** Mmm, what? I can refer also to the fact that we were expecting to be awarded with two other packages, the main dam and the North Spur stabilization works, which may have a favourable impact on 0007 project in terms of cost because we can share general resources among these three contract and so on. So we had, in front of us, other opportunities, you know.

**MR. HISCOCK:** Would that have been – is that part of the contract that the price would be different? If you awarded the other two packages, it would be at the lower price; if you weren't, it would be at the higher price because of those cost savings? Or was it just a hope on Astaldi's part?

**MR. PALUMBO:** No, this is clear – this was clear in the contract because it was put into the contract, in the BOQ –

**MR. HISCOCK:** Mmm.

**MR. PALUMBO:** – a provision stating that \$4-million discount would be applied in case of award of these two packages –

**MR. HISCOCK:** Yes.

**MR. PALUMBO:** – and, if we will remember, some clauses had been added into the contract in order to deal with this kind of circumstances.

If – if you give me one second, I can find them. For example, clause 10.12 of the civil work agreement.

**THE COMMISSIONER:** Okay. So you – wait, what exhibit are you looking at?

**MR. PALUMBO:** Sorry, tab 9, Exhibit P-01865, page 35.

**THE COMMISSIONER:** Okay, go ahead.

**MR. PALUMBO:** “If Company, in its sole and absolute discretion, is satisfied with the performance of the Contractor in executing the Work, then Company intends to negotiate certain scopes of work in addition to that contemplated within Exhibit 1 – Scope of Work. Any such additional scopes of work shall be performed in accordance with the provisions of this Agreement” –

**THE COMMISSIONER:** Mm-hmm.

**MR. PALUMBO:** – “*mutatis mutandis*, except that Company agrees to negotiate in good faith the particulars of such work, the price” – et cetera, et cetera.

So there was an amount as discount in the event of the – these two packages being awarded.

**UNIDENTIFIED MALE SPEAKER:** Yeah.

**MR. PALUMBO:** And there were some clauses dealing with this potential circumstance.

**MR. HISCOCK:** Yeah, and none of this is nailed down, there's nothing here to guarantee you that secondary scope of work, I mean it's clearly in the sole and absolute discretion of the company.

**MR. PALUMBO:** No, but the fact that this option has been discussed at the highest level of Astaldi and Nalcor, between the CEO of the two companies, could give some guarantees that at least an attempt to start the negotiation for these two package will happen.

**MR. HISCOCK:** Right.

**MR. PALUMBO:** Would be happened, sorry.

**MR. HISCOCK:** Yeah, okay. I mean I can understand that you were hoping for a second piece of work, but the contract you signed and the estimates you gave were based on the package of work that you were bidding on. Right?

**MR. PALUMBO:** Based on the –

**MR. HISCOCK:** Yeah.

**MR. PALUMBO:** – 0007 package, yeah.

**MR. HISCOCK:** I mean it's clear – and again, I'm gonna come back to this concern I have that part of why this bid was so much lower than the Canadian counterparts, like almost half the estimate, was that this was being – you were buying into the contract, effectively. Because it's clear that once a major contractor is embedded on the work site, it's a difficult and expensive process to replace that contractor, you know, if a contract is failing.

In the Grant Thornton report, it was noted that – in the Astaldi Analysis and Path Forward study that's from February 2016, conducted by Westney, that negotiating with Astaldi provides the least cost – or the least risk exposure.

Is it not further evidence that on a large contract as this one – a contract as large as this one, that once on the job site – once on the job site, the contractors are in a very strong position, especially against an inexperienced owner; that once you were there, once you were on the ground, Nalcor, to some degree, had its hands tied; and that it was gonna be an exceptionally expensive process to remove you and substitute a new contractor even if – even, you know, even if the cost overruns were significant; that they would, all of a sudden, have to weigh that really significant expense of changing contractors on such a big contract.

That gave you a significant advantage in negotiation with Nalcor, once you were on the ground, would you agree?

**MR. PALUMBO:** Mm-hmm, as a – I can see that company Nalcor has all tools to take its own decision based on the contract revisions. Demonstration of that is – I was standing, we were very, very close to the completion of the contract, they send a notice of termination.

**UNIDENTIFIED MALE SPEAKER:** Mm-hmm.

**MR. HISCOCK:** Okay. So, if that's not the case, you gentlemen have said your lengthy

experience on megaprojects – you know, as Astaldi's lengthy experience and expertise on megaprojects, would you not agree that, on balance, considering the bids of the competition at \$2.3 billion and \$2.5 billion, those were the two bidders with sub-Arctic experience, that on any basis other than the bid price, Nalcor ought to have culled Astaldi from the competition?

**MR. PALUMBO:** Sorry, and say it again.

**MR. HISCOCK:** Given your experience on megaprojects–

**MR. PALUMBO:** Yes.

**MR. HISCOCK:** – and given the difference in those bid price from the people who actually had experience in sub-Arctic construction there, the two Canadian companies were over \$2 billion on their bids each, do you think that Nalcor should have culled Astaldi from the bid process when its bid was that dramatically under the others?

**MR. PALUMBO:** I don't know which was the decision process within the Nalcor's representatives. I guess that we, as probably also the other bidders, provided full and detailed information. For sure we did – full and detailed information about the composition of our price. So Nalcor had full access to all our data and full access to our bid, to properly evaluate and compare our bid with the other bidders.

**MR. HISCOCK:** Okay. On Grant Thornton, as the – you've read the Grant Thornton report, obviously – on page 29 of that report they cite Edward Merrow and his book titled "Industrial Megaproject Concepts, Strategies and Practices for Success."

And, when talking about low bids, it has the following to say in relation to a very low bid: *"Acceptance of such bids guarantees that the bidder does not fully understand the project or has made a disastrous bidding error."*

When you see that sort of a difference between most of the bids and one other bid, I mean – Merrow, who seems to be the – an expert, anyways, on these projects, megaprojects, suggested they shouldn't even be considered.

**MR. PALUMBO:** Sorry, I don't see the excerpt here –

**THE COMMISSIONER:** Yes, maybe we could just find the excerpt.

**MR. HISCOCK:** Yes.

**THE COMMISSIONER:** It's at page 32, did you say?

**MR. HISCOCK:** Sorry, 29.

**THE COMMISSIONER:** Twenty – page 29. Just – if you could go there, and just –

**MR. HISCOCK:** It's right at the top there.

**THE COMMISSIONER:** Right there. So, lines 2 to 7.

**MR. PALUMBO:** Okay.

Thank you.

**MR. HISCOCK:** You can review that if you need.

**MR. PALUMBO:** I believe that we are not under such circumstances. I cannot say that we have – we didn't fully understand the project, or that we had – that we made a disaster – disastrous bidder – bidding error. So, I don't think this is applicable to our case.

**MR. HISCOCK:** Well, how could you explain that people with more – or some Arctic experience, would bid almost twice – that all the other bids would be so much higher? And the two Canadians bid over \$2 billion, yours being \$1.14. What – how could that occur, that that would be that far off?

**MR. PALUMBO:** For many – for many reasons the formation of bid price is made through different components. Therefore, the evaluation of the labour forces, the methodology of execution, the others who are since employed, equipment, et cetera, may affect the value of the bid. I don't know Aecon bid or details of the other bidders.

**MR. HISCOCK:** Okay.

We've heard a lot about the Integrated Cover System, the ICS. I'd like to ask you a couple questions about that, too. I mean, one of the things that just strikes – is very striking about the construction of the ICS and this issue in the initial year – in the initial winter, especially – is the whole reason that the ICS was needed was because you couldn't do the construction effectively in the winter in Labrador, but you came with the delays in the contract and continued delays in the contract, not getting it 'til the end of November. You then planned to turnaround and build the ICS in the middle of the winter.

Do you know what I – do you see how that's sort of ironic? In that the whole reason for the ICS is that you can't do construction effectively in Labrador in the winter, and then the project is delayed and you say these delays aren't going to be significant and yet the delays mean that you're actually going to have to construct the ICS in the winter in Labrador. How does that – how do we square those two things? Obviously, you realize there were significant construction delays that would be caused by winter, which is why you needed an ICS, but then didn't think there would be significant, serious delays and problems caused by trying to develop the ICS during the winter.

**MR. PALUMBO:** We had no alternatives at that time to continue with our – based on our assumption, hypothesis in terms of methodology or execution, the ICS was fundamental for us –

**MR. HISCOCK:** Yes.

**MR. PALUMBO:** – of how we had envisaged to execute and complete this work. It was part of our bid and, therefore, we tried to continue and implement this system because it would allow us to pour concrete in powerhouse during the winter season.

**MR. HISCOCK:** The ICS – and this comes out of some of the Astaldi interview notes – is that the ICS was actually supposed to be a smaller structure in the initial bid and it became increasingly complex as the discussions went on, and this seems to be consistent with Astaldi's bid assumptions.

At who's expense was this increasing complexity, Nalcor's expense or Astaldi's? Bearing in mind that the cost of constructing, presumably, a more basic ICS was included in Astaldi's bid.

**MR. PALUMBO:** I don't remember that this system has been changed. It is true that, initially, the – winter protection was made by another system which was self-lifted, but at a certain time we decided to implement the ICS system as it is. And in our bid, we take into consideration the ICS as being done partially during the – after the contract award. So our bid had foreseen the ICS as it is.

**MR. HISCOCK:** Okay. So there weren't any – it wasn't more complex, the final request, I guess – obviously, the thing was never completed, but the final –

**MR. PALUMBO:** Yes.

**MR. HISCOCK:** – design wasn't that much more complex than what was in the bid?

**MR. PALUMBO:** The final design has been changed because we have to adopt the – this steel structure to the ground condition and to the powerhouse structure.

**MR. HISCOCK:** And whose expense – at whose expense were those changes, Nalcor's or Astaldi's? Who suffered the cost of those changes?

**MR. PALUMBO:** We have evidenced this problem of over break, for example, to Nalcor. But, at the end, I don't believe that any change order has been approved in order to pay us additional cost for the ICS.

**MR. HISCOCK:** Okay.

Do you know – I'm gonna skip a couple of questions here, actually.

Can you give the Commission some context here, because when you consider Astaldi's late start, Nalcor ought to have been aware that ICS design issues further threatened the schedule and Nalcor already knew that meeting that schedule was gonna be virtually impossible.

There must have been discussions between Astaldi and Nalcor around this concern, were there not? Around finalizing the design, and the changes that were needed on the ICS were causing delays and it was already a schedule that Nalcor – you know, it was gonna be virtually impossible to meet. But this had to have been – further delays had to have been foreseen at this point. Were those discussions ongoing over this period?

**MR. PALUMBO:** We were not expecting that the revision of the ICS design and the approval of the ICS design and foundation would take such a long time. And, of course, this impacted the fabrication erection of the ICS.

**MR. HISCOCK:** Why was that issue not better understood by Astaldi at the time of the award of the contract?

**MR. PALUMBO:** How this can be envisage – we cannot envisage to be faced with ground condition different from what was shown in the – in terms of time and in terms of levels, for example. We cannot anticipate delay in the design approvals.

**MR. HISCOCK:** Okay.

Did Astaldi attempt to renegotiate the contract and obtain a schedule extension, knowing, as you must have, that the late ramp-up would be a source of dispute with Nalcor later down the road? In other words, why would Astaldi knowingly squeeze an already thin margin? I mean, our understanding is that the margin is just 7 per cent.

**MR. PALUMBO:** Sorry, I –

**MR. HISCOCK:** Did you try to renegotiate the time frames? You knew that this was going to come up with Nalcor; these were very tight time frames.

**MR. PALUMBO:** (Inaudible.)

**MR. HISCOCK:** You were on a slim margin, right?

**MR. PALUMBO:** Sorry, I'm not been involved within the further agreement that has been

executed with Nalcor, so I cannot give you an answer on that.

**MR. HISCOCK:** We've heard several times from other witnesses about problems and delays caused by Nalcor's management team not being on site. What were your experiences with that issue? Did you have any and how did you handle those challenges?

**MR. PALUMBO:** I believe I gave already an answer on that this morning to Mr. Learmonth. Anyhow, I'll repeat that. For any contractor, having an active and prompt answer from your counterparty is fundamental for the success of a project and this is what happened – didn't happen in this project.

**MR. HISCOCK:** Agreed.

And what I'm – I guess I'm wondering is how you dealt with that? I mean, obviously it caused delays in getting decisions from Nalcor. How did you deal with that problem?

**MR. PALUMBO:** The project manager will certainly give you a better answer than me. What I can say that we were constantly on site with all our services. So we're ready to deal with any representative from Nalcor which were – who was on site in order to give answer or receive instruction on –

**MR. HISCOCK:** Okay.

**MR. PALUMBO:** – (inaudible).

**MR. HISCOCK:** I'd like your views on this – and this, I think, is my last question. If I propose that the large payment to Astaldi was as a result not only of Astaldi, but the failures of Nalcor and SNC, how would you respond? What kind of detail could you provide to that?

**MR. PALUMBO:** Sorry, I didn't understand your question.

**MR. HISCOCK:** The large payment – the large additional payment, we'll say, that was made to Astaldi, the overruns, if I proposed that that wasn't entirely because of Astaldi but was also due to failures of Nalcor and of SNC, would you agree with that? And what were the failures of

Nalcor, in your mind, that led to this large cost overrun?

**MR. PALUMBO:** I'm sorry; I don't understand your question.

**MR. HISCOCK:** Okay.

We had an initial –

**MR. PALUMBO:** Can you put it in other words?

**MR. HISCOCK:** Yeah, I will. Yes.

The initial bid was for \$1.14 billion. The payments, though, are that amount plus another \$1.2 billion. What I'm wondering is: Are the additional payments not just due to problems that Astaldi encountered, but to failures of Nalcor and/or failures of SNC-Lavalin? And, if so, what were those failures that led to this \$1.2 billion?

**MR. PALUMBO:** About the reasons for the granting of this additional amount, there are the agreement which told by themselves. I repeat, I have not been involved within these additional agreement, but if such additional amount has been recognized to our company, certainly it's not because of Astaldi's default.

**MR. HISCOCK:** It would be because of a failure of Nalcor; otherwise, the money wouldn't have been awarded to you.

**MR. PALUMBO:** Generally, when there is an overrun payment of additional costs, it's for circumstances which are far beyond the party's responsibility or because of a failure of one of the two parties.

**MR. HISCOCK:** Okay.

In this instance and this specific contract, and the specific \$1.2 billion of it, was it because of things that were out of everybody's hands or was it because of failures of Nalcor?

**MR. PALUMBO:** To me it was because there were some obligation of Nalcor that has not been fulfilled and therefore entitle us to a payment of additional cost.

**MR. HISCOCK:** All right.

And the failures of Nalcor that led to this \$1.2 billion being paid to Astaldi, what were the chief failures in your mind, in your knowledge?

**MR. PALUMBO:** I believe that they are linked to the delay in the execution of the works which were due to some circumstances under Nalcor's liabilities which led to the execution of this additional agreement.

**MR. HISCOCK:** And so the delays in site preparation caused a cascading effect, is that basically it, and that cascading effect is the \$1.2 billion?

**MR. PALUMBO:** The initial delay? I don't know if this –

**MR. HISCOCK:** Well, explain to me, because \$1.2 billion is a lot of money. So I just want to know the specific failures that you're seeing that would've led to that big of an overrun that Nalcor made.

**MR. PALUMBO:** You are asking me some detail that I am not aware about. So the bridge agreement, the completion contract, I have not been involved in that so I cannot give you an answer.

**MR. HISCOCK:** Okay.

Those are all my questions. Thank you.

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

Edmund Martin.

**MR. SMITH:** No questions, Mr. Commissioner.

**THE COMMISSIONER:** Thank you.

Kathy Dunderdale.

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

**THE COMMISSIONER:** Former Provincial Government Officials.

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

**THE COMMISSIONER:** Julia Mullaley, Charles Bown – I don't think they're here.

Robert Thompson – not there.

Consumer Advocate.

**MR. HOGAN:** Good afternoon, Mr. Palumbo.

My name is John Hogan; I'm counsel for the Consumer Advocate. The Consumer Advocate, if you're not aware, represents the ratepayers in the province.

I just want to turn to a document first. I don't know if you've seen this. It's at P-01678, please.

**MR. PALUMBO:** Which tab, sorry?

**MR. HOGAN:** I don't think you'll have this one so you're going to have to look at it on the screen.

**MR. PALUMBO:** Okay.

**MR. HOGAN:** So this is a report by a company called Williams Engineering, to provide some, I guess, evidence and opinions for certain engineering aspects of the project to the Commission. So have you seen this document?

**MR. PALUMBO:** No.

**MR. HOGAN:** Okay.

If we could just turn to page 16, please. So I just – they make some comments about the – scroll down a little bit please, thank you – about the temporary enclosure, the ICS, so I just want to get your reaction or comments regarding what Williams Engineering says.

So I'll just read the last sentence there which goes over into the next page: "An enclosed workspace using a temporary metal building" – the ICS in this case – "is very standard on a large construction site. Putting the ICS on top of a massive concrete structure that is being built under and around the ICS is not standard."

Do you have any comment on that?

**MR. PALUMBO:** I don't know if I can qualify the ICS structure as we have foreseen as

standard or not. But I consider – we considered that that this was the right solution in order to face the difficulties in executing the work during the winter period.

**MR. HOGAN:** Okay. So had I – had Astaldi built or constructed an ICS like this one before?

**MR. PALUMBO:** No.

**MR. HOGAN:** No. So would it – so on what basis did you – did Astaldi conclude that this was the right –

**MR. PALUMBO:** Base it on –

**MR. HOGAN:** – pardon me – right structure for this project, seeing that you’ve never done one before?

**MR. PALUMBO:** It’s not because we have never done this kind of structure of – that this could not be executed.

**MR. HOGAN:** I understand that.

**MR. PALUMBO:** We have never executed Muskrat Falls Project but we have done it –

**MR. HOGAN:** Right.

**MR. PALUMBO:** – or we have never built Santiago Airport or – we are doing that so ...

**MR. HOGAN:** No, I understand, and that’s fine and reasonable. But before you do something that you’ve never done before, when you’re making a proposal I would have – I would assume you would do some sort of analysis, maybe look at other examples of similar ICSs, do some research, figure out why the proposal you put forward is the right proposal for this project.

So, can you comment on what research or evidence you used to come to the conclusion that what you proposed was the right proposal for this project?

**MR. PALUMBO:** I can say that this solution has been – I repeat, I was not the proposal manager. This is a matter of the proposal manager. He has envisaged it together with other colleagues. But what I can say is that the –

within the original time for completion, and without envisaging this kind of structure that could allow pouring during the winter period, we could not match the milestone date because we cannot pour concrete just during the good season or –

**MR. HOGAN:** Without the structure.

**MR. PALUMBO:** Without such construction – such structure.

**MR. HOGAN:** Why were you sure that this was the right structure for this project?

**MR. PALUMBO:** Because I don’t see any other alternative to – at least this is what we have chosen.

**THE COMMISSIONER:** Right. Maybe –

**MR. PALUMBO:** Carefully chosen.

**THE COMMISSIONER:** Maybe you don’t quite understand the question. I think the question is, is why build it – why, for instance, would you build it on top of another massive concrete structure as stated by Williams? Or why would you not build a smaller one over two of the turbines – two of the turbine placements or – instead of all four and just move it as a temporary building?

Like, these are the sorts of things that I’ve heard about during the Inquiry. Do you have any idea why this particular type of ICS was picked versus another type of an ICS?

**MR. PALUMBO:** I know, simply, that this ICS structure has been carefully evaluated. The activities below this cover system were quite complicated. So, this solution, which will grant the possibility to cover the entire powerhouse structure, would facilitate the operation inside the ICS. But, for sure, we have evaluated different solution. At the end, we made this choice.

**MR. HOGAN:** Okay. Is that okay, Commissioner?

**THE COMMISSIONER:** Yes. Thank you.

**MR. HOGAN:** If we could just scroll down – I guess I’ll just follow up a little bit on that – to the last paragraph. Sorry. Back a little bit more. The last paragraph that starts there with the ICS solution. Do you see that? Just a little bit ways through.

I’ll read it out. It says: “All parties – Astaldi, Nalcor, and SNC Lavalin Inc ... would need to accept that the ICS could achieve production targets.”

So while I understand that Astaldi, obviously, thought this was the best solution for the project to work throughout the winter, did you – or were you aware of any meetings amongst Astaldi, SNC and Nalcor to discuss this specific proposal and whether it was the right one for this project?

**MR. PALUMBO:** I can say that not only for the ICS, and therefore I can confirm this matter has been discussed. But all items of our proposal has been carefully evaluated by Nalcor and SNC, particularly for the ICS because I agree this isn’t (inaudible) solution.

This may have an impact on the value of our bid, and therefore all parties involved pay attention on the solution that we propose. So, for sure, this has been discussed.

**MR. HOGAN:** And, for sure, it was accepted because we know the contract was signed with the ICS proposal.

Do you recall any push-back from Nalcor at all to Astaldi to say: We’re not so sure this the best option. Did you look at other options or anything at all like that – that you thought Nalcor had some concern with this ICS proposal?

**MR. PALUMBO:** No, I don’t remember that. I cannot say that – we received some warning from Nalcor or SNC about such solution.

**MR. HOGAN:** You did – you don’t recall that?

**MR. PALUMBO:** I don’t recall that.

**MR. HOGAN:** Okay. Thank you.

Just go up a little bit more, please?

This paragraph here, Mr. Palumbo: “Without the ICS, Astaldi did not appear to have an alternate plan to deliver the required production rate in order to achieve the overall schedule.”

So, we know now, obviously, the ICS was not fully completed and that it was dismantled. So, was there an alternate plan in the bid in the event that the ICS was not successful?

Williams is saying it doesn’t appear there’s one. I’m asking you if there was one.

**MR. PALUMBO:** No, there were no alternative plan.

**MR. HOGAN:** Okay.

**MR. PALUMBO:** This was part –

**MR. HOGAN:** This was the plan.

**MR. PALUMBO:** This was part of our bid and therefore –

**MR. HOGAN:** So, it was never contemplated that this wouldn’t be successful and you would need a plan B?

**MR. PALUMBO:** We cannot propose a solution that we understand is not achievable. It will be a –

**MR. HOGAN:** And, again, did Nalcor ever question a plan B if there was a plan B? Anyone at Nalcor or SNC?

**MR. PALUMBO:** I don’t remember that this kind of comments has been made, but I cannot confirm it.

**MR. HOGAN:** Okay. I’ll just read this into the record, too, just so you can comment.

It says: “Should the ICS not work” – which it didn’t work – “Astaldi would need to react quickly to find/buy/transport/erect/operate traditional construction cranes and determine how to meet productivity targets with limited

crane placement capacity. Without developing an alternate system quickly, significant delays and increased costs would result.”

So, I’ll put it to you that we know there were increased costs; we know there are increased delays; we know there’s no plan B. So, I guess, just again, was that ever discussed with Nalcor? Was that ever contemplated by Astaldi that in the event that the ICS was not successful, you’d need to react quickly and there should be a plan in place?

**MR. PALUMBO:** I don’t know to which period you are referring to.

**MR. HOGAN:** Pardon me?

Sorry.

**MR. PALUMBO:** Which period of the 2014, 2015 –

**MR. HOGAN:** 2013. 2013.

**MR. PALUMBO:** At that time, no, to my knowledge, we were – no, we were not thinking to a failure in the erection of the ICS, and therefore I don’t remember that this kind of discussion or, how to say, envisaging alternative plan in order to – sorry, in order to find a solution to this likely or expected – potential – sorry, potential problem has been done.

I cannot remember this kind of discussion at least on my level because ...

**MR. HOGAN:** Okay. Thank you.

You stated earlier this morning that you or, I guess, Astaldi individuals or personnel were aware of the cold climate in Labrador, correct?

**MR. PALUMBO:** Yes.

**MR. HOGAN:** Can you just discuss how that would have affected your bid? And what aspects of your bid would you move up or down or change because of the fact that there’s a cold climate? Just – if you could just explain that to the Commission and the general public, what the cold climate does to your bid?

**MR. PALUMBO:** I don’t know it in details. This is a matter of our estimator. I can, anyhow, clearly confirm that we take into account the weather condition in order to evaluate the productivity. And in this respect, we involve some Canadian firms, consultant, in order to give us their advice on productivity based on the climatic condition of the site.

**MR. HOGAN:** And did you or anyone at Astaldi do a site visit to the Muskrat Falls location prior to making the bid?

**MR. PALUMBO:** Yes, a site visit has been done from some people of Astaldi before the submission of the bid for sure.

**MR. HOGAN:** Okay.

And – okay, you don’t know when that was or who went?

**MR. PALUMBO:** I don’t remember if this site visit was mandatory or not, but some of our people moved to site to make a site visit.

**MR. HOGAN:** And do you know if anyone at Nalcor would have attended with people from Astaldi?

**MR. PALUMBO:** I guess that this was a joint – generally a site visit and not made alone.

**MR. HOGAN:** Yeah.

**MR. PALUMBO:** We didn’t know the site; therefore, I guess that some people from SNC or Nalcor joined us during the site visit.

**MR. HOGAN:** Thank you.

Prior to the Muskrat Falls Project, had Astaldi bid on any other projects in Canada?

**MR. PALUMBO:** No, to my knowledge. No.

**MR. HOGAN:** No other bidding whatsoever.

**MR. PALUMBO:** No.

**MR. HOGAN:** Okay.

Had it gone through any pre-qualification processes in anywhere else in Canada that you're aware of?

**MR. PALUMBO:** No. At that time we participate to either – I don't remember if before or after this project to either pre-qualification process but, I guess, this was one of the first one, if not probably the first one to which –

**MR. HOGAN:** Okay.

And did you say either before or after you did participate in another pre-qualification process?

**MR. PALUMBO:** No, I don't think so.

**MR. HOGAN:** You don't think so.

**MR. PALUMBO:** But I believe that this one was one of the first one – it was the first one.

**MR. HOGAN:** Was the first one.

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

**MR. HOGAN:** Thank you. That's okay.

**MR. PALUMBO:** Then after, we participate to other pre-qualification process in Canada.

**MR. HOGAN:** Where have you done other ones?

**MR. PALUMBO:** Don't remember exactly name of the project. One was of some viaduct in Montreal. I don't remember any other. Anyhow, we participated to –

**MR. HOGAN:** Have you ever been – I'm not sure what the right term is but have you passed through all the pre-qualification processes or has –

**MR. PALUMBO:** No.

**MR. HOGAN:** – Astaldi ever been rejected?

**MR. PALUMBO:** No, because now this is the only project we are carrying out.

**MR. HOGAN:** So you've been rejected because – you would say, because of this project.

**MR. PALUMBO:** I don't know if I were – we had been rejected at pre-qualification stage or after the proposal has been submitted.

**MR. HOGAN:** Okay.

**MR. PALUMBO:** Anyhow, no other contract has been awarded.

**MR. HOGAN:** Okay.

I just want to talk about the delay between the award in June of 2013 and the Limited Notice to Proceed in September 2013. You said earlier today that – I think you were told or you thought that there – this delay was because there was a delay in financial close. Do you recall that?

**MR. PALUMBO:** Yes, I recall.

**MR. HOGAN:** Okay.

**MR. PALUMBO:** One of the causes was –

**MR. HOGAN:** One of the causes.

**MR. PALUMBO:** – financial close.

**MR. HOGAN:** So who told you that?

**MR. PALUMBO:** This was an information given to us by a Nalcor representative. I remember that we were, before the September meeting – the meeting – the clarification meeting held on 4th of September 2013, we asked clarification about the financial arrangement for this project.

So I guess that some information has been received before and these were not enough to us to understand what is going on in terms of financial close. And during this meeting in September, Nalcor has provide us some details about the structure of the financial arrangement.

**MR. HOGAN:** So were you told that the project couldn't proceed fully until there was financial close? Was that the reason for the delay?

**MR. PALUMBO:** Without the financial close the project could not proceed in any case, so ...

**MR. HOGAN:** Is that what – well, okay, you missed a lot of the evidence from the earlier phases so I’m not –

**MR. PALUMBO:** Oh, sorry.

**MR. HOGAN:** I don’t want to get into it too much, but there was a sanction date – the project was sanctioned in 2012, okay, and financial close was not until later in 2013. So I guess it’s arguable whether the project was proceeding or not, before financial close but after sanction.

So what I want to know is what you were told about how important financial close was?

**MR. PALUMBO:** For us, financial close was fundamental because it is the only tools – if we can call that – that will grant us the possibility to be awarded with the contract. But more than that, the fact that all the work will be paid because funds were available, so –

**MR. HOGAN:** So it was your understanding that without financial close the project would not proceed. That was fundamental to moving forward.

**MR. PALUMBO:** Yes, it is a –

**MR. HOGAN:** That was your understanding from speaking with Nalcor.

**MR. PALUMBO:** Yeah.

**MR. HOGAN:** Okay.

If we could please turn to P-03140, please?

**THE COMMISSIONER:** 03140.

**MR. HOGAN:** Page 2. So you saw this earlier today, Mr. Palumbo.

**THE COMMISSIONER:** Tab 8 in your book – tab 8.

**MR. HOGAN:** Sorry.

**MR. PALUMBO:** Yeah, yeah, I can remember.

**MR. HOGAN:** I just want to ask you about this – these words here at the top. It says: “Signing of contract in Canada by means of ‘intimidation’

or ‘duress’ is not acceptable.” Those words, intimidation and duress, are in quotation marks.

So, I’m wondering where those words came from? And did you or did people at Astaldi feel intimidated or under duress by Nalcor?

**MR. PALUMBO:** This is an email and terms that, as also suggested by the writer, speak to your legal advisor, that can be – use it carefully, not by contract – sorry, construction manager, neither by contract manager –

**MR. HOGAN:** But I mean how did –

**MR. PALUMBO:** But –

**MR. HOGAN:** Did you feel any intimidation or pressure to get anything done? I know the – we can get into the legalities of it, obviously, but – which is the purpose of this letter, but just in terms of the relationship at that point in time.

**MR. PALUMBO:** The relationship at the time led us to say that we will be able to execute this contract and perform the contract together with Nalcor. This was the feeling that we had.

Of course, the fact that we arrive at this point of time, close to the contract execution, but not starting from April submission with our bid to the contract execution, but we arrive at the contract execution through a long process which modifies step by step the – some terms of the initial bid.

**MR. HOGAN:** At this point in time –

**MR. PALUMBO:** So –

**MR. HOGAN:** – did you feel there was a rush or any sense of urgency?

**MR. PALUMBO:** Because at the time we knew that the contract should be – the financial close should be reached shortly and, therefore, the possibility to be awarded with the contract is a real one.

**MR. HOGAN:** So there was pressures.

**MR. PALUMBO:** Pressures – what do you mean for pressure?

**MR. HOGAN:** Well, that's what I'm asking you. I want to know if there was pressure or – on you, on Astaldi –

**MR. PALUMBO:** We – if I understand your question –

**MR. HOGAN:** I mean you made the decision to sign the contract. That's fine –

**MR. PALUMBO:** Oh, of course, we take our own decisions.

**MR. HOGAN:** Yeah.

**MR. PALUMBO:** You know, but –

**MR. HOGAN:** But in terms of the relationship –

**MR. PALUMBO:** We arrive at such decision through a long process that cannot be disregarded. This is what I would like to –

**MR. HOGAN:** All right.

That's all the questions I have. Thank you.

**THE COMMISSIONER:** Thank you.

Innu Nation – not present.

Former Nalcor board members.

**MS. G. BEST:** No questions, Mr. Commissioner.

**THE COMMISSIONER:** Thank you.

Newfoundland and Labrador Building and Construction Trades Council.

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

**THE COMMISSIONER:** Thank you.

Dwight Ball, Siobhan Coady – not here.

All right, Astaldi Canada Inc.

**MR. BURGESS:** Paul Burgess on behalf of Astaldi Canada, Inc.

Good afternoon, Mr. Palumbo. I just want to clarify some of the questions and answers, sort of, in particular, the answers that you gave in response to the questions during your evidence today.

You have indicated and testified that you have some 30 years' experience in construction. Can you break that down and explain to the Commissioner your experience in number of years on site at projects versus off-site and in more of an administrative role in the cases that you've been involved with.

**MR. PALUMBO:** Yes, I could say that I been involved within project management so directly in on-site activities for 10 years, more or less, for projects in Africa, in Pakistan and the last one was in a hydro power plant in Vietnam. This has been concluded in 1998, if I remember, when I moved to our head office, being employed in the contract department.

**MR. BURGESS:** Thank you.

And, your experience around the world, can you give some examples of the projects, either from an administrative standpoint or an on-site experience you would have so that we can get a flavour for your global experience?

**MR. PALUMBO:** So, concerning the first years of my career, I work in some road project in some country in Africa, where Astaldi was involved with infrastructure project; as I told you, in Pakistan and in Vietnam for hydro power plant. After that, when I move to the contract department, apart from some area – as Turkey, for example, when I was involved with an on-the-spot basis – I follow and been involved in project in South America, Central America, Poland, Romania, Indonesia –

**MR. BURGESS:** Sorry, where was the last place?

**MR. PALUMBO:** Indonesia.

**MR. BURGESS:** Indonesia.

Thank you.

**MR. PALUMBO:** Indonesia, a hydro power plant, the Balambano project in Sulawesi Isle,

and in Middle East – sorry – so Qatar, Oman, Saudi Arabia.

**MR. BURGESS:** Thank you, Sir.

You were asked some questions with respect to the bid preparation, and you explained some of the details with respect to the bid proposal team, and I'd like to direct you – and, Madam Clerk, Exhibit P-03248. And Mr. Palumbo, that would be tab 27 in your binder, Sir.

**MR. PALUMBO:** Okay.

**MR. BURGESS:** First of all, can you explain for the Commissioner what this document is?

**MR. PALUMBO:** This document is a summary that has been provided to me by the proposal manager and project director Mr. Guido Venturini, who summarize some of the activities that has been – and resources that has been involved – give an overall view of the tender organization, making reference to the team, consultant – first that had been involved at that stage.

**MR. BURGESS:** Okay.

And if I can turn your attention, Sir, to page 2 of that exhibit and at paragraph 2.3, it's entitled: Tender organization and management. Am I correct that that's – when you talk about your bid proposal team, are those the individuals within Astaldi who comprised your bid proposal team?

**MR. PALUMBO:** This list includes people who work in our Montreal office and people who work in our head office. This list is not exhaustive. These are – how to say – the main, the responsible people for each activities: risk manager, scheduling, estimation and so on. So these were the main – the reference persons during the tender preparation.

**MR. BURGESS:** Okay.

And if I could suggest to you, and you can tell me if I am correct, there was approximately 30 people, just an approximate number, involved in the bid proposal; 20 or so of whom were based in your Montreal office dealing directly and solely with this contract and approximately 10 or

so that were in the Rome office. Are those the right numbers and the composition or would you like to clarify?

**MR. PALUMBO:** No, this is more or less the right number. I repeat, here are not indicated assistants or other employees who work with the estimating managers or with some other people, these are the main manager involved with the – during the preparation of the bid.

**MR. BURGESS:** Thank you.

There was some discussion in your earlier evidence with respect to when you knew or thought that you were going to get the contract award, the ultimate contract CH0007, and you explained how you went through the Limited Notices to Proceed. But at what date did you ultimately know with certainty that you would obtain and be awarded the contract CH0007?

**MR. PALUMBO:** As I probably had the opportunity to already say that we had certainty to be awarded with the contract, just the day that the contract has been executed.

**MR. BURGESS:** So if the contract is November 29, 2013, that was the date in which you were –?

**MR. PALUMBO:** It was the date. We have never received confirmation by Nalcor that the contract could be signed within – I don't know, which period of time. On the contrary, the contract execution has been postponed several times.

**MR. BURGESS:** I heard in your evidence earlier this morning, and I don't want to oversimplify it, but I want to attempt to simplify it for our purposes as laypersons. When you use the term "over break," and it was in relation to excavation of the site and so on, as I understand it – and please confirm if I'm correct in this or clarify – over break means, essentially, that there was an over excavation, so too much of the foundation or rock was taken away. Is that essentially what over break term –?

**MR. PALUMBO:** Yes, I would say that this – an expected over excavation. The – provide generally should have – how to say – clear surfaces and in the event these are irregular, this

creates over break. In case of excavation of rock, this can be due to use – an appropriate use of explosives.

**MR. BURGESS:** Thank you.

In your evidence you also indicated, both earlier this morning and just more recently when Mr. Hogan was asking you some questions, with respect to your understanding for the delay in the award of the contract by Nalcor to Astaldi. And your understanding was the financial close aspect was a concern and an issue for Nalcor, correct?

**MR. PALUMBO:** Yes.

**MR. BURGESS:** And can you explain to the Commissioner what concern there would be – knowing as Astaldi did that there was issues and not yet financial closure by Nalcor – what concerns, if any, would that cause to Astaldi as it's proceeding at that time with the Limited Notice to Proceed?

**MR. PALUMBO:** The consequence – the dire consequence was of course the fact that the contract could not be finalized and executed. But also the fact that probably we may have – in terms of recovery of the expenses and costs incurred during the LNTP execution, so during the execution of the initial works. Part of these works – part – the works were paid, but not only the cost that we have incurred during that period.

**MR. BURGESS:** Thank you.

In relation to the questioning that you had with respect to site access, as I understand it there was a document that you went through – and I won't bring it to you directly – but there was a document we saw in your evidence earlier today that said Astaldi had a site visit in September of 2013. Do you recall that?

**MR. PALUMBO:** Yes, I remember.

**MR. BURGESS:** And then we heard from you that sometime in the middle of December, you had shared – some shared access, but then later on in December of 2013, you were provided access to the site. Is that – my understanding correct?

**MR. PALUMBO:** I know that we receive shared access to the powerhouse on December 15.

**MR. BURGESS:** Right.

**MR. PALUMBO:** I don't know if – what happened for the other part of the job, but one of the milestone for – so the fact provide us shared access to the powerhouse at that specific date, the case of the powerhouse was 1st of December.

**MR. BURGESS:** So by implication, is it correct when I say that from September, when you do that site visit, until the middle of December, whenever you get that access, you don't have the opportunity or the ability to go to the site to, what I'll call, kick the tires or do anything else? For that period of time, that gap, the site is not accessible to you. Is that correct?

**MR. PALUMBO:** I cannot say that the access was inaccessible in its entirety. Certainly we had limited access to the site.

**MR. BURGESS:** Okay, thank you.

Now, there's been – you were asked some questions with respect to the dewatering, and Mr. Simmons asked you some questions on the obligations for the dewatering. And I just want to look a little further. If, Madam Clerk, we can get Exhibit 03144. And, Mr. Palumbo, that's tab 15.

And I'd ask you to refer to page 89 of that exhibit, please.

**MR. PALUMBO:** Yes.

**MR. BURGESS:** And I'm just going to refer you to number 2 on page 89 with dewatering. And it says there: "The systems passed over to Astaldi at the beginning of winter were in reality summer dewatering systems. All the pipes and the pumps froze and they had to be all replaced with winter suitable ones heat traced. To do this in the winter conditions was really very messy and costly."

Can you explain to the Commissioner if that does fit within your description? I had heard you reference a phrase called not fit for the purpose.

Is that an explanation or help you explain to the – further to the Commissioner the not-fit-for-purpose aspect with this issue.

**MR. PALUMBO:** As I told before, we received this dewatering system by Nalcor. This is a note made by our construction manager, and there is a difference between this kind of system that can work under summer condition or winter condition. What has been provided to us does not allow to dewater the site area because all components of this system – pipes and pumps – are frozen; therefore, they were not fit for their own purpose.

So, dewater – the project area by water during the winter season. I believe this is self-explanatory.

**MR. BURGESS:** Okay. Thank you.

Next, I want to refer you to Exhibit 03042, and I apologize, Mr. Palumbo, I don't have the tab for that. I believe it might be in the Delarosbil –

**THE COMMISSIONER:** That's going to be in tab 12 – volume 1 of – did you say 03142?

**MR. BURGESS:** 03042, Commissioner.

**THE COMMISSIONER:** Sorry. 03042 is volume 1 – tab 21 of the other ...

**MR. BURGESS:** And, Madam Clerk, if we could just scroll down a little bit, please? This is a – as I understand it, Mr. Palumbo, this is correspondence from Astaldi, December 9, 2013, and it's from Ken Chryssolor, who is saying to Astaldi we need the – we don't consider the issued for construction drawings as the approved for construction.

Then when I look over, Sir – if you can just look at page 3, clause 3.8.1. And that's – as I understand it, that's the scope of work specification. And if I read the 3.8.1.1, it's basically saying you need approved for construction drawings, and then when Astaldi receives those drawings, the contractor then verifies all the site levels and dimensions. So, that's then the verification aspect. Is that correct?

**MR. PALUMBO:** Yes, this is correct. Yes.

**MR. BURGESS:** Okay.

And as I understand it, in December 9, 2013, this letter was giving notice to Nalcor: We don't have the drawings necessary and as per contemplated in 3.8.1.1. Please give them to us.

They come back then – I think Mr. Simmons referenced a letter, but I don't think we were brought to it – a few days later where Nalcor says those are the ones you can rely upon.

Is that your understanding? And have I interpreted that section correctly?

**MR. PALUMBO:** Your interpretation of the section is correct. This is the meaning of this letter. I am not aware if – when an answer has been received by us with respect to this subject.

**MR. BURGESS:** Okay.

Mr. Palumbo, you gave also earlier today of the interaction and communication going back and forth between you and Astaldi and with the Nalcor representatives with respect to whether you had the drawings and the designs in relation to the ICS.

And can you just explain to me the interaction that you had in January 2014 and shortly after with respect to the design and the drawings of the ICS?

**MR. PALUMBO:** You are asking for, sorry, the (inaudible)?

**MR. BURGESS:** The ICS, with respect to the designs and things of that nature, do you recall – can you just summarize – I think it was in January of 2014 you were being asked questions concerning the communication back and forth as to approvals for drawings and design and information.

**MR. PALUMBO:** I remember that our first submission – or one of our first submission – concerning the ICS design has been made in end of November, beginning of December. The first reply with respect to this drawings, this design has been received on January, mid-January, 10th of January, 2014, by Nalcor. And with this was one of the – the start of a long process back and

forth in – concerning the approval of the ICS design.

We received some data that we were required to ask to finalize and design concerning the ground levels on end of January. Some other has been provided in March. In February, we (inaudible) the problem of the overbreak and made a part of the survey and having identified the overbreak in the powerhouse platform. And so it was a quite long process in order to collect and modify our design based on the information that we were receiving by Nalcor at the time concerning the powerhouse itself, the structure and concerning the ground levels.

I remember that Nalcor itself evidenced the opportunity to made an analysis between – to evaluate the interferences between the powerhouse and the ICS structure, which is comprehensible because these two structure cannot interfere, or at least can be one into the other, but without affecting the powerhouse structure. It was also a matter of concern of Nalcor; therefore, they wish to provide us with some more information related with the powerhouse.

**MR. BURGESS:** Thank you, Sir.

Mr. Hogan most – more recently today in the – your examination asked you about the interaction that Astaldi had with Nalcor and SNC in relation to the design of the ICS. You had explained to the Commissioner earlier on that you attended personally certain meetings in St. John's. At those meetings, would the ICS and its design have been communicated and discussed at that time or was it at other times the discussion?

**MR. PALUMBO:** No, sorry, probably I didn't explain me correctly. I didn't attend any meeting with Nalcor on the ICS. I attend a meeting with – clarification meetings in September and in June where Nalcor and SNC personnel attended this meeting, but not meeting with the ICS supplier, Nalcor or the designer of the ICS. I know that the ICS designer held some meeting together with our personnel and with Nalcor and I guess, also, with the participation of the subcontractor, with Proco personnel.

**MR. BURGESS:** Okay.

With respect to the site visits in particular and in relation to Mr. Guido Venturini which – who was the person, I understand, that led the proposal team, is that – that was his role, was it not? Do you have knowledge that he made site visits himself to the Muskrat Falls site?

**MR. PALUMBO:** The first site visit, I guess, has been carried out by the proposal manager, the estimator, Mr. Maurizio Robasto, I guess together with our risk manager, Jennifer Hoffman. This was the first site visit. But, at that time, Guido Venturini was visiting in Canada in our Montreal office so I do not exclude that he visited the site.

**MR. BURGESS:** Okay. Thank you, Sir.

I don't have any more questions but Mr. Learmonth and the Commissioner may have further questions. Thank you.

**THE COMMISSIONER:** Redirect.

**MR. LEARMONTH:** No redirect.

**THE COMMISSIONER:** All right then.

Thank you, Sir. Thank you for your time.

You can step down now.

**MR. PALUMBO:** Thank you.

**THE COMMISSIONER:** We'll take our break here now and get ready for the next two witnesses to come up.

**CLERK:** All rise.

### Recess

**CLERK:** Please be seated.

**THE COMMISSIONER:** All right.

Mr. Learmonth.

**MR. LEARMONTH:** The two witnesses at the table are Don Delarosbil and George Bader. Both will be sworn.

**THE COMMISSIONER:** All right.

Mr. Bader, if you could stand?

**CLERK:** Do you swear that the evidence you shall give to this Inquiry shall be the truth –

**MR. BADER:** I do.

**CLERK:** – the whole truth and nothing but the truth, so help you God?

**MR. BADER:** I do.

**CLERK:** Please state your name.

**MR. BADER:** George Bader.

**CLERK:** Thank you.

**THE COMMISSIONER:** All right.

Mr. Delarosbil.

**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. DELAROSBIL:** I do.

**CLERK:** Please state your name.

**MR. DELAROSBIL:** Donald Delarosbil.

**CLERK:** Thank you.

**THE COMMISSIONER:** Okay. You can be seated, Sir.

Thank you.

**MR. LEARMONTH:** Mr. Bader, could you give us a summary of your education after high school?

**MR. BADER:** Yeah. I have a bachelor of civil engineering from Notre Dame University in Lebanon. Following that, I did a master of – well, I have a master of engineering, building engineering from Concordia University in Montreal, and I'm a professional engineer registered in Quebec.

**MR. LEARMONTH:** Yes. And when did you graduate from Notre Dame University in Lebanon?

**MR. BADER:** 2008.

**MR. LEARMONTH:** And when did you graduate from Concordia?

**MR. BADER:** 2011, but it was an intermit. So between 2008, 2011, it was a mix of my master's degree and my professional experience.

**MR. LEARMONTH:** Yes. And when did you become a registered engineer in Province of Quebec?

**MR. BADER:** I remember I applied right after my master's degree in 2011, and I started as a junior engineer. So I'm assuming 2013, 2014, I got my P. Eng.

**MR. LEARMONTH:** So –and you're a member in good standing now –

**MR. BADER:** Yes. Always.

**MR. LEARMONTH:** Yes, yes.

Please state your work history.

**MR. BADER:** Yeah. Like, following graduation from Notre Dame, I worked in Nigeria on a road and highway bridges project for a year and a half. I was a project engineer and then a site manager. And then I joined Detour Gold project, which is a gold mine in – close to Timmins, a few hours from Timmins.

**MR. LEARMONTH:** Timmins, Ontario?

**MR. BADER:** Timmins, Ontario – as a senior planner for Detour Gold, Amec. It was an EPCM job, so for both of them, for the team.

Then, I have joined BBA on a short mandate in Lab City doing a mine conversion for IOC mines, Rio Tinto. Then I joined for – yeah for – then I joined the joint venture Kiewit and Aecon at Lower Mattagami. It was, as well, close to Timmins; or closer to Kapuskasing, Ontario – for a bit more than a year, and I was the lead planner for the job. I was hired by Aecon, assigned to the job.

Then, I have joined the Muskrat Falls in 2014 as a lead planner or senior planner, and I was given my job in February 2015 as a deputy project manager. I remained on the job until the termination, October 2018, and I stayed with Astaldi until end of February 2019. Then I have joined FTI Consulting, where I still work there as a senior director within the construction solution practice.

**MR. LEARMONTH:** That's in Toronto, is it?

**MR. BADER:** Well, (inaudible) I'm working in Toronto, but this is temporarily. Then I'll be moving to Montreal very soon.

**MR. LEARMONTH:** Okay.

Now, you mentioned the Lower Mattagami Project in Ontario.

**MR. BADER:** Yeah.

**MR. LEARMONTH:** That's in a northern climate, is it? It's about 45 miles north of Kapuskasing and 90 miles south of James Bay. Is that right?

**MR. BADER:** Yeah; pretty much, yeah.

**MR. LEARMONTH:** Yeah. So it's not quite as far north as Happy Valley-Goose Bay but –

**MR. BADER:** Sure.

**MR. LEARMONTH:** – it's a northern climate, is it?

**MR. BADER:** Absolutely.

**MR. LEARMONTH:** So, you're used to working in the north?

**MR. BADER:** Yeah.

**MR. LEARMONTH:** And likewise, you worked at IOC. So –

**MR. BADER:** Yeah.

**MR. LEARMONTH:** – you're used to Canadian winters.

**MR. BADER:** Pretty much, yeah. Well, and Detour Gold as well as this site. It's around Lower Mattagami.

**MR. LEARMONTH:** Yeah.

Thank you.

Mr. Delarosbil, can you give us your work history please?

**MR. DELAROSBIL:** Yeah. I followed a different line than George. I came up through the ranks to where I am now. I started in 1974 as a – in a mining – with a mining company as a surveyor. And I worked for that mining company, progressing through being a superintendent in charge of the operations and a mine planner, scheduler and – for about 14 years. Then I joined a construction company called Leo Alarie & Sons in Timmins, Ontario, which I worked with for about four or five years.

Then, after that, I started working with Peter Kiewit Sons of Omaha. The main office was in Montreal. And during my tenure with Kiewit, I was involved in mostly remote sites – remote site work. I was involved in mining, hydro, bridges. You know, the whole spectrum of construction. And my roles there were project manager – construction manager, project manager, area manager, sponsor. And when I left Kiewit to join the Astaldi company, I was an area manager for Kiewit Construction, which oversaw many of the projects.

My strengths are logistics, management, being able to make things work – that's my strong suit. And when I was approached by some individuals from Astaldi to join the Astaldi company, I saw a good challenge. I saw a project that needed some help, both on the Nalcor side and the Astaldi side. And I had another good job in me, if not two, so I said I'll join up and go help the team up at Muskrat Falls. Muskrat Falls, I was the project manager, and then they named me a CEO – COO of Astaldi Canada Inc.

**MR. LEARMONTH:** Yeah.

And you went to Muskrat Falls in May 2015. Is that correct?

**MR. DELAROSBIL:** I did. Yeah –

**MR. LEARMONTH:** Yeah.

**MR. DELAROSBIL:** – May 2015.

**MR. LEARMONTH:** And you're from Timmins, Ontario?

**MR. DELAROSBIL:** I'm from Timmins, Ontario. Yeah.

**MR. LEARMONTH:** And are you used to working in the Canadian North?

**MR. DELAROSBIL:** That's almost all I've done, Sir, is work in Diavik Diamond Mines. I did about seven years there. That's up in the Northwest Territories. The Voisey's Bay project here in Labrador, I did that project for SNC-Lavalin in Voisey's Bay.

Cloudworks and Plutonic, which is up in the Rockies, actually, they're two hydro projects. The – at the time, those combined projects, I was a sponsor, so I managed over the project managers. And the value of those projects, at the time, were \$1 billion combined. So, in today's dollars, they'd be about \$2-billion projects.

And they were all remote site, plane access, boat access and winter conditions.

**MR. LEARMONTH:** Yeah.

Was it – is it correct that your last project before joining Astaldi for the Muskrat Falls Project was a solar project in Cochrane, Ontario?

**MR. DELAROSBIL:** Yeah. The last project I did was a project they started on a solar farm in northern Ontario. Not that far from Mattagami, actually, probably a couple of hours.

They were having issues with the project. The client approached Kiewit at the time. Kiewit took the job. So, I was, I guess, assigned to go help and turn that job around. Which I did, and then I joined Astaldi after that.

**MR. LEARMONTH:** Now, you mentioned you were area manager for Kiewit at one point. Is that correct?

**MR. DELAROSBIL:** Yes. Yes, I was, Sir.

**MR. LEARMONTH:** Yeah.

**MR. DELAROSBIL:** Yeah.

**MR. LEARMONTH:** And did – was Kiewit involved in the Lower Mattagami Project that Mr. Bader worked on?

**MR. DELAROSBIL:** Yeah. Peter Kiewit was involved in the lower – actually, they were the prime contact – contractor. They were partners with Aecon on that project.

**MR. LEARMONTH:** It was 85 per cent Kiewit and then 15 per cent Aecon or something like that?

**MR. DELAROSBIL:** Yeah. I think it was 80-20 or 85-15, I think –

**MR. LEARMONTH:** Yeah.

**MR. DELAROSBIL:** – I think those are the right numbers, Sir.

**MR. LEARMONTH:** Did you know each other when – with respect to the work on the Lower Mattagami Project?

**MR. DELAROSBIL:** No, I would've stole him. But, no, I didn't know him at the time.

**MR. LEARMONTH:** Okay.

**MR. BADER:** I heard his name –

**MR. DELAROSBIL:** Yeah.

**MR. BADER:** – and his involvement, but, like, I was Aecon.

**MR. DELAROSBIL:** Yeah.

**MR. BADER:** He was Kiewit, so –

**MR. LEARMONTH:** And that's a hydroelectric development, is it, about –

**MR. DELAROSBIL:** Yeah. It's a hydroelectric project, yeah.

**MR. LEARMONTH:** – 240 megawatts or –?

**MR. DELAROSBIL:** Yeah. In that neighbourhood, 250, yeah.

**MR. LEARMONTH:** Near Smoky Falls, is that right?

**MR. DELAROSBIL:** Yeah.

**MR. LEARMONTH:** And there are other hydroelectric projects on that river, is there?

**MR. DELAROSBIL:** Yeah. They were doing repairs to three and one new one, and prior to that, Kiewit had built the Upper Mattagami projects, which was refurbishing of – I think it was five of Ontario Hydro's facilities. You know, refurbishing because of the age – you know, changing the equipment and concrete and –

**MR. LEARMONTH:** You used the word sponsor. Can you tell us what a sponsor is as opposed to a project manager?

**MR. DELAROSBIL:** Yeah. A sponsor, basically, mentors the project manager, helps the project manager to see his way through the project, helps him with whatever issues he has. So, it's one – you know, if the project manager is at the 100-foot level, the project sponsor is probably at the 2,000-foot level. You know, just looking – just making – guiding him; helping him with the safety, the training; helping him with the scheduling; looking out for the traps. It's a – it's, one, a mentoring role, and other times it's a management role.

In most of my cases, I was – I'm a hands-on type of individual, so I spent a lot of time on the jobs sponsoring. So, I would spend lot of time with the project manager.

**MR. LEARMONTH:** Okay.

In the course of your work experience, did you have – develop any – or make any connections or have contact with Indigenous groups and labour unions?

**MR. DELAROSBIL:** Yeah, as part of one of my roles with Kiewit – I was in charge of Aboriginal relations across Canada for Kiewit. So, I've made a lot of good partnerships and allies with the Innu, Inuit and Aboriginal people

and the Metis people. So, I worked in Manitoba with the Metis, Nova Scotia, Labrador, Iqaluit, the Northwest Territories, Yellowknife – also in the Northwest Territories. But, yes, I had a lot to do with First Nation relationships. And –

**MR. LEARMONTH:** And when you were working at the Voisey's Bay – that was up – that was in Labrador – did you have responsibility for Indigenous affairs?

**MR. DELAROSBIL:** I was the project manager, and on site I took care of Aboriginal relations. Yes.

**MR. LEARMONTH:** Yes.

And while you were working at the Voisey's Bay site, did you become familiar with the labour situation in the Province of Newfoundland –

**MR. DELAROSBIL:** Yeah.

**MR. LEARMONTH:** – the collective agreements –

**MR. DELAROSBIL:** Yeah, we –

**MR. LEARMONTH:** – and so on.

**MR. DELAROSBIL:** – we actually worked with the – the contract was – I'm sorry – the collective agreement was basically with the same 16 unions. It was a Voisey's Bay agreement. So, the same unions that we were working with at Muskrat Falls, we worked with at Voisey's Bay.

**MR. LEARMONTH:** All right.

Now, Mr. Bader, you indicated that you started in July 2014 and that you were – got promoted to deputy project manager in January 2015. Is that correct?

**MR. BADER:** February 2015.

**MR. LEARMONTH:** February 2015. Okay, thank you.

And when you went to the Muskrat Falls site, you were a planner – a lead planner, were you?

**MR. BADER:** Yes.

**MR. LEARMONTH:** What is a lead planner?

**MR. BADER:** Normally a lead planner is – well, he has a team of planners to manage. And apart from building a baseline, putting the schedule control measures, tracking a schedule, keep updating it, preparing three week look-aheads, working with the project managers and most of the departments on addressing modifications to the execution plans or developing new ones, assisting in the overall planning of the job from all aspects.

**MR. LEARMONTH:** Thank you.

**MR. BADER:** From the subcontracts, engineering, organization such as site services, maintenance warehouse. His job is to make things fit together and assist the project managers with his decisions – with their decisions by showing them some of the impacts of their decisions if they would–

**MR. LEARMONTH:** Yeah.

**MR. BADER:** Pretty much.

**MR. LEARMONTH:** And you had a similar position in the Lower Mattagami Project –

**MR. BADER:** Yes and –

**MR. LEARMONTH:** – is that right?

**MR. BADER:** – at Detour Gold as well.

**MR. LEARMONTH:** All right.

Now, when you arrived on site in July 2014 what were your observations as to the state of the construction? What was going on, on site when you arrived in July 2014?

**MR. BADER:** In July 2014 Astaldi was finalizing – in the last stage of finalizing – starting mix design. I think it was called a temporary mix to be used at that stage.

**MR. LEARMONTH:** That's the concrete mix.

**MR. BADER:** Yeah, concrete –

**MR. LEARMONTH:** Yeah.

**MR. BADER:** – mix design.

**MR. LEARMONTH:** Right.

**MR. BADER:** The batching plant was near completion. Then the ICS was the main – and the main focus. Mainly the foundations of the ICS were under construction. I remember probably we were at 40 or 50 per cent complete foundation-wise.

Spillway base slabs were in progress. Definitely the concrete was – they show the bottleneck, but the slabs were progressing, so out or near completion –

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

**MR. BADER:** – the four corners of – four out of eight corners or out of eight base slabs were advanced enough. Site installations were taking place, mainly the maintenance of the carpentry shop, the welding shop, some trailers installations, some laydown areas were being developed or being prepared.

**MR. LEARMONTH:** Okay.

**MR. BADER:** Pretty much this should summarize and definitely the baseline was under development while they had few submissions or exchange schedules with the client. And at that stage the baseline wasn't yet approved and that was my main first task.

**MR. LEARMONTH:** And the baseline is the schedule.

**MR. BADER:** Schedule, control schedule.

**MR. LEARMONTH:** Yeah.

Okay so when you arrived, the main batching plant was about a month from being finished. Correct?

**MR. BADER:** Yeah.

**MR. LEARMONTH:** Roughly?

**MR. BADER:** Yeah.

**MR. LEARMONTH:** And the concrete designs were at the final stages which I think, it's a 70- to 90-day period to get the –

**MR. BADER:** It's –

**MR. LEARMONTH:** – concrete designs approved, is that right?

**MR. BADER:** Yes, we have many mix designs. At that stage we – what was near completion or like the main ones critical to use – or I think we went with a general formula that was accepted at the beginning while we develop or we get approval on the remaining mix designs.

**MR. LEARMONTH:** All right, now, you know, we've heard a lot of evidence on the ICS and you gave some evidence just now about your observations about the state of development of the ICS. I'd like you to give us your observations on the ICS and, you know, the concept and the – how the development – how the construction developed.

I'd also like you to comment on this question that's come up about Astaldi allegedly being delayed in completing its design for the ICS because Nalcor had not signed off on the final survey or contours. Can you give us some information on that topic, please?

**MR. BADER:** Yeah.

First, the ICS is pretty much a steel building and in the case of Muskrat Falls it was a fairly big size building. I think it included roughly 20 overhead cranes, and while the cranes were mainly to transport material or more rebar and various cleanout of – from the powerhouse, inside the ICS it was intended to have some placing booms to pour concrete. And it was supposed to be enclosed with a proper HVAC system for heating, definitely, and some lighting. So that was the purpose of the ICS to have a good environment. Within that environment Astaldi will do concrete and avoid winter work or eliminate winter works as much as possible.

Excuse me. So concerning the progress, I believe sometimes in July, Proco mobilized to site around that time –

**MR. LEARMONTH:** That's July –

**MR. BADER:** '14.

**MR. LEARMONTH:** Yeah.

**MR. BADER:** Yes, mobilized to site. And if I'm not mistaken, some deliveries were received, mainly the columns, and I think the priority was to build the south service bay and to go south to north. So at least it will provide some work areas.

By working south to north, we were planning at that stage to have temporary handover of the units, let's say. If the enclosure above the south service bay is complete, then overhead works will be eliminated while working on the adjacent units or fairly far enough from the south service bay, so we can progress the concrete work as – along while the structure is being completed.

And at that time, the foundation of the south service bay were poured, so it was a good area for Proco to start at that time. Then the structural steel, we had a target date to have the ICS completed by, as Mauro pretty much said, in December 2014 or –

**MR. LEARMONTH:** That was the plan, was it?

**MR. BADER:** Yes.

**MR. LEARMONTH:** Yeah.

**MR. BADER:** Revised plan.

**MR. LEARMONTH:** Yeah.

**MR. BADER:** Because the initial plan was to have it ready sometimes earlier that year, like, probably April or –

**MR. LEARMONTH:** April 2014.

**MR. BADER:** – or May of 2014 –

**MR. LEARMONTH:** Yeah.

**MR. BADER:** – if this was, we're going to assume, mobilization on June 3. This was kind of my understanding from the documents I have looked at.

**MR. LEARMONTH:** Yeah, yeah.

**MR. BADER:** So that was the plan. The – and the baseline we submitted took into consideration that the ICS will be completed or near completion sometimes in December 2014. And it made – the purpose of the baseline that got approved in September of that year.

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

So on what –

**MR. BADER:** Sorry.

**MR. LEARMONTH:** On what date did you – did Astaldi have sufficient information from Nalcor that it would allow Astaldi to proceed, you know, on an expedited basis with the foundations and the general construction of the ICS? What date are we talking about?

**MR. BADER:** What Nalcor was – when I joined in July, I think there had a – while on site, a task force existed, if it's fair to call it task force, but it was a joint effort or team efforts, workshops between Astaldi and Nalcor. And I do believe meetings were run by – because Nalcor, obviously, they wanted to have the building, or they were aligned that the building is essential for the schedule and to – in order to enable the concrete work inside the powerhouse to progress.

So they were leading meetings, tracking meetings – or weekly meetings to make sure where are we, if we're meeting the planned targets that – installation targets, if we – if the permits required such as, I think, occupancy permits. And we got some other permits to obtain, because that building – you know, as we were progressing the work, we were discovering that the building was requiring a bit more – or it was a bit more complex to complete. You needed a permit before you use it, then you needed a specific emergency response plan that takes into consideration the progress inside the powerhouse, at a different level.

So the meetings were run, and Nalcor was aware that it required the focus from everyone and joint efforts, and the –

**MR. LEARMONTH:** So it was a more complex –

**MR. BADER:** Yeah, it's –

**MR. LEARMONTH:** – project than was anticipated. Is that your understanding?

**MR. BADER:** I'm not sure if they anticipated that all that is required, but all those requirements were required. So weekly meetings were taking place – Astaldi, Nalcor, with the key people such as the engineering team, the construction teams, and any departments who were – who (inaudible) identified that there's a need for them to be present or to participate, such as the safety in some other occasions. Yeah, like, the engineering, safety – pretty much, and the construction, and the management, definitely.

So I will remember like some key personnel from Nalcor were present. And I think the meetings were even tracked by Nalcor's civil manager or – package lead manager.

**MR. LEARMONTH:** Okay, so what effect did the overbreak have on the construction? We've heard the –

**MR. BADER:** Yes, so –

**MR. LEARMONTH:** – there was an issue about overbreak –

**MR. BADER:** Yes.

**MR. LEARMONTH:** – that the rock was –

**MR. BADER:** Sure.

**MR. LEARMONTH:** – yeah.

**MR. BADER:** So, specifically on the downstream – and I can't really say it was because of the overbreak or just the geometry or how it was planned or how the neat lines or the excavation lines were planned to, but I can say that the excavation – the retaining walls, which was served as well as foundation walls, they were big walls and they required some special design or some reinforcement dowels to be drilled into the concrete and – drilled into the rock to be – to stabilize the walls.

So, pretty much, the foundations required lots of design, and we had to – if I'm not mistaken,

DPHV did design that with our technical departments. I think this was the case for the walls.

And, so the internal foundation – the internal footings were a bit more simpler – or more simple than the downstream and upstream wall, at that time, because they were pretty much square foundations.

So normally, the overbreak is – you'll just have to have an extra layer of concrete or some reinforcements, depending on how big it is or – pretty much, this is how it – it's not like the end of the world. If you have an overbreak, you just have to account for it when you –

**MR. LEARMONTH:** You fill it in with concrete –

**MR. BADER:** Yeah, you can.

**MR. LEARMONTH:** – to bring it up to the –

**MR. BADER:** You –

**MR. LEARMONTH:** – required level. Is that right?

**MR. BADER:** – sure. Or sometimes you make with reinforcements, you may redesign the slabs. It depends on the depths.

**MR. LEARMONTH:** Okay.

**MR. BADER:** But –

**MR. LEARMONTH:** All right.

So, the revised plan was to – for the ICS to be completed in December 2014 so the work could continue through the winter of 2014,'15. Is that right?

**MR. BADER:** Yeah.

**MR. LEARMONTH:** Okay.

I just want to pause now for a minute. I wanna ask Mr. Delarosbil about this.

We know that the contract originally – at the beginning, the expected date – or Astaldi expected that the contract would be signed in

June 2013. And it was extended to – well, there were a number of extensions and Limited Notice to Proceed, and ultimately, the contract wasn't signed until November 29, 2013.

Now, based on your experience working in the Canadian North, now what, if any, comment do you have on the advisability of starting work in – at the Muskrat Falls site in – well, after November 29, 2013? What are your observations on that?

**MR. DELAROSBIL:** Well, based on my experience working – winter weather almost has a factor of three for the workforce – you know, if you were gonna do it in one hour, you're gonna do it in about three hours. So I would say that starting work at that time would extend your schedule, so you wouldn't be able to meet what you had scheduled for a summer month, in a winter month.

So, I would've probably – and I can't – I don't understand, I'm sorry, I do understand but I don't know what the thinking was behind, and I don't know the reasons why Nalcor or Astaldi had to go ahead, but it would have been wise to pause at that point and start the construction work probably in the – April months, you know, unless there was a real sense of urgency. If there was a real sense of urgency, then you can justify starting at that time and spending the money to get ahead. So it's time and money, starting in the winter is time and money.

**MR. LEARMONTH:** Have you seen projects start in the winter in the Canadian North before?

**MR. DELAROSBIL:** Most companies avoid it. But as I said, it's – if it's a sense – if there's a sense of urgency, if there's a deadline that has to be met, don't matter what, if the companies are willing to spend the money to make that happen, then I would have to say: It can and would be done.

I remember a project in Diavik where we had to do some drilling during the winter months, which was something unheard of, but we came up with a system to be able to do it. But the owner understood that it would be of a – an extreme cost.

**MR. LEARMONTH:** Yeah.

**MR. DELAROSBIL:** And, that's why we went forward.

**MR. LEARMONTH:** Now, so what – explain to me how this works. If you – so you're in – by say, December 1, winter is set in at that Muskrat Falls site, correct?

**MR. DELAROSBIL:** (Inaudible.)

**MR. LEARMONTH:** So what type of work can you do? If the ground is frozen and there's snow and that, what type of work – construction work can you do?

**MR. DELAROSBIL:** Well, you can do any work if you're willing to pay for it, you know, like the – to pay that price. So just to be clear, it's not recommended to start a project in the winter, but if you're willing to spend the money and there's a sense of urgency, then – then you would do the work, you know, the winter.

**MR. LEARMONTH:** But if everything is frozen over, how can you actually work?

**MR. DELAROSBIL:** Well, that's where you spend the money. You got to get heating systems, you get tarping, you get to find methods of getting the work done, and that's where the money comes in, you know.

**MR. LEARMONTH:** Okay.

Now on – if we – we don't have to go to the exhibit, but let's bring it up. It's Exhibit P-01677, and this is the excerpt that I have from the Grant Thornton report. Actually, it's in your volume 1, tab 1, it's the first document, but it's coming up on the screen here. And I'd like to go to page 34.

Under the – at the heading “3.6.2 Productivity of Astaldi,” it says: “Astaldi began mobilization at the end of September 2013, near the end of the construction season for the 2013 calendar year. Don Delarosbil, the current Astaldi Project Manager explained, that due to the inability to work effectively in the winter months that” – quote – “*if you start in November instead of June you're not just losing four months, you're probably losing ten months. You almost lost a year of construction.*”

**MR. DELAROSBIL:** Yeah, and that goes back to what I said. It's a factor of three, right? So whatever takes a month would take three months in the winter.

**MR. LEARMONTH:** Yeah. So you –

**MR. DELAROSBIL:** So you – so to advance one month of summer weather you would have to work three winter months, right?

**MR. LEARMONTH:** Yeah. So you stand by that statement, do you?

**MR. DELAROSBIL:** Oh yeah, yeah. Well, from my experience I stand by that statement. Yeah.

**MR. LEARMONTH:** And is it not correct that, you know, say – so this contract was signed on November 29 – there could have been good use of the winter months for planning and organization. It wouldn't have been wasted, it could have been used for, you know, planning the work that would be anticipated.

**MR. DELAROSBIL:** Of course it could have, yeah, and moving in some less complicated facilities like offices, setting up some shelters, moving in containers, doing the mobilization, then waiting until spring to do the final set-up. Yeah.

**MR. LEARMONTH:** Yeah.

And on the same page, page 34 of the Grant Thornton report, if we go down to line 19 – 18, excuse me, it says: “In an interview with Don Delarosbil, the current Astaldi Project Manager it was noted that” – this is a quote – “*... if I would have been involved at the time of the signing of the contract, probably would have tried to convince, me personally, probably would have tried to convince everybody to set the start date as March 15 of the following year' and 'it gets complicated, you need heaters right off the start.*”

Do you still stand by that statement?

**MR. DELAROSBIL:** That's what I would have done.

**MR. LEARMONTH:** Yeah.

**MR. DELAROSBIL:** Personally, yeah, and I do stand by the statement.

**MR. LEARMONTH:** Okay.

**MR. DELAROSBIL:** But I don't know the history, right, but from my point of view it's very challenging in the winter. Yeah.

**MR. LEARMONTH:** Mr. Bader, do you have anything to say about this subject?

**MR. BADER:** Well, I just concur with Don that mobilizing in the winter months is very challenging, specifically knowing that, well, we had to explore borehole pits for sand, we had to crush aggregates, frozen stockpiles, setting up a batching plant in the winter, setting water lines – you need to heat trace them, set up your temporary power in some areas where you can't even see the land or the rock. It's doable, it's just less efficient.

And, if I understood, that Astaldi got access in December. So pretty much in December to the site, there will get – we know. Like, we lived five years there and we know December, January, you can't see – it's – those are tough months, mainly January. End of December you will go on your Christmas vacation or, normally, we shut down. So coming back to site in January, it's a big job to start. Like, you have to do snow clearing probably for a few weeks, then winterize everything and it's a start. If you had your infrastructure already built, you can be prepared for winter work, but if you just mobilize in the winter, it's very challenging.

**MR. DELAROSBIL:** If I can add something, just to give you an example. I started May '15, so the winter of '15-'16, we shut down the job 'til March so that we could plan. And we avoided building any work during the winter months and –

**MR. LEARMONTH:** So when you came in May 2015 –

**MR. DELAROSBIL:** Yeah.

**MR. LEARMONTH:** – you shut the project down?

**MR. DELAROSBIL:** Well, I shut our portion of the work down for after – from the Christmas break up until about March '15.

**MR. LEARMONTH:** Well, why did you do that?

**MR. DELAROSBIL:** So we could plan, reorganize. And, like I said, you know, one cubic metre of concrete that you pour in December is going to cost you three times as much. So let's say you have, let's say, a thousand cubic metres scheduled for December, so – in January and February. Instead of paying three times more for that, you say: Hey, listen, during the summer I'll divide 3,000 into my schedule and that means that I've got nine months. So I – proportionally, 300 cubic metres a month makes up what I would have done during the winter, but I would have saved three times the money for those cubic metres.

**MR. LEARMONTH:** Okay. Is that a rule of thumb? Is that something that you go by? Or do you think that that is – that three times factor is something that –

**MR. DELAROSBIL:** Yeah, it's pretty consistent. Even if you look at the numbers that we were achieving, you know, up at Muskrat Falls – if you look at the numbers we were achieving there, we were in the high 30s man-hours per cubic metre during the winter. It became more difficult then –

**MR. LEARMONTH:** Yeah.

**MR. DELAROSBIL:** – from then.

**MR. LEARMONTH:** Okay, now, on the – we've had evidence presented on the advisability of this ICS structure, you know, to begin with, that it was much bigger. We know that there was – it's common if you're going to be working the Canadian North that you have some kind of a covered system, maybe it's tarps, maybe it's something more elaborate. But this ICS system, apparently, was much bigger and more complex, with the cranes and so on, than anything before that was built in Canada. Is that your understanding?

**MR. DELAROSBIL:** Yeah. Yeah, that is my understanding, that it was bigger. I think the

conceptual idea of the ICS was good. I think could they have made it work earlier on, they probably could have. It just seemed to me, from when I listened – because I don't have first-hand experience – but from what I understand it just got complicated; complicated with time, complicated with design, complicated with size, complicated with permits, complicated – so it just got complicated, which dragged out the process.

**MR. LEARMONTH:** Yeah.

**MR. DELAROSBIL:** So I think everything was well intentioned. You know, nobody says I'm going to build an ICS and go scrap it. And I'm sure that at one point that, you know, you have to make the decision, moving forward, am I doing the right thing or not. But the ICS, as a concept, was okay. For size, it was a big undertaking.

**MR. LEARMONTH:** Yeah.

But I know there's – nothing is straightforward in construction and here you had the construction and the –

**MR. DELAROSBIL:** Mmm.

**MR. LEARMONTH:** – levels, the grades and –

**MR. DELAROSBIL:** Mm-hmm.

**MR. LEARMONTH:** – all that.

**MR. DELAROSBIL:** Yeah.

**MR. LEARMONTH:** But the building itself, it was just a big warehouse, wasn't it?

**MR. DELAROSBIL:** Yeah, the building itself was a big warehouse, but it also incorporated a lot of craneage, right –

**MR. LEARMONTH:** Yeah.

**MR. DELAROSBIL:** – cranes, overhead cranes, in the design to be able to –

**MR. LEARMONTH:** Yeah.

**MR. DELAROSBIL:** – move concrete materials around inside the building.

**MR. LEARMONTH:** Okay.

Mr. Bader, do you have any thoughts on it? Was this a good plan or was it foolish or somewhere in between? What's – what are your thoughts on it?

**MR. BADER:** Well, I spoke to many technical managers and I've been in one of the powerhouses and I have seen some execution plans for other powerhouses. They all used some winter protection, like structures. Maybe not as big as this one, I didn't see a big structure. Like in – probably in other powerhouses they may change the full execution anyway, instead of having unit 1 followed by unit 2, then by unit 3, then 4. Because this was the construction sequence dictated by exhibit nine of our contract, you had to follow in certain order.

There's probably different ways done on other jobs where you do unit 1 and 3, and then you do a temporary cover for the unit in between, such as 2 and 4. It will be easier to heat and hoard and you say, of the two units in the summer, two units in the winter protected by just having two units, so it's a staggered. This is one option.

The other options, like, I think the initial option for the ICS was to have a roof that's removable, and you just keep jacking it or – as you go, as you progress with the work. I think some design requirements couldn't make that an easy idea, when it comes – when it came to the detailed engineering behind the ICS, and it became in one unit.

I think if the mobilization happened back in June 2013 we would be saying now that the ICS was a great idea because it would have been completed in the summer season, used in the winter. Unit one and two are – like, you would see that unit one and two were used, you know, they were used. Not as intended or as was the main purpose, but they were used. Like, we had seven cranes. And we saved some cost and, like, we did not do a lot of snow clearing. People were working under rain. So you would see some improvement. Definitely I would have loved to see it complete so I could say – I think it's a good idea.

**MR. LEARMONTH:** Yeah.

**MR. BADER:** And – yeah, it's just a way – I think, just a delay in the contract and pushing things in the winter and keep putting pressures to get work done, ICS complete, with somehow – it requires lots of planning. It requires enough engineering for the HVAC, for the clashes of the ICS with a concrete structures – the permanent concrete because the columns are embedded. It requires some permits to be achieved such as – as we said – occupation permits, some lighting permits, HVAC – you may need to have some specific – depends – the air compressed that you have. Like, all these needs to be planned ahead of time.

And I think if they were – the contract was awarded June 3 and enough planning was provided and the same drive for the people who worked on the proposal was maintained, the same – you know, like, instead of keep extending the contracts and people were not sure: Do we take the contract? Do we put efforts in doing the engineering? Or is it a wise investment? It's not – or it's not.

We may have been facing a great idea. Like, it's – you can work within an ICS. We did work in unit one and two. Now, we had to work around the initial design and the ICS wasn't complete. So some – in some occasions we've seen we could have done a few things better in terms of execution. But that's not a crazy idea.

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

**MR. BADER:** It's a good idea. You just have to plan it right. Allow the contractor to plan it right. And whenever you see you need to re-plan, put the task force earlier on the job. I'm not sure when the task force started related to the ICS. I'm sure in July, joint meetings between Nalcor and Astaldi took place. If this probably started back in like six, seven months ahead of that or prior to that maybe the ICS could have been a success.

**MR. LEARMONTH:** Yeah.

So, just to sum up what you're saying, that if the contract had been awarded in June, or let's say July even, that there would've been sufficient time before winter set in to get everything done and it's conceivable that the ICS could've been

up and running for the winter of two-thousand and –

**MR. BADER:** Sure, sure. That is true.

**MR. LEARMONTH:** Do you think that's a reasonable comment, Mr. Delarosbil, based on your experience?

**MR. DELAROSBIL:** Yeah, I was listening to what Georges had to say and, of course, given the right timing you can make – you could've made this work. But as Georges mentioned, it was – it could've been a great idea. I mean, because as he said, we'd be sitting here today and celebrating the fact that we put in an ICS.

And the other thing is that, you know, in construction you have to make hard decisions, and taking down the ICS was the right decision. So, you know, when you're faced with the circumstances and the timing, you have to make the right decisions for the project.

**MR. LEARMONTH:** Now, you mentioned that Proco, I understand, was initially involved in the early design work and they eventually did some work, but – and mobilized on the site in July 2014. Is that correct?

**MR. BADER:** Yeah.

**MR. LEARMONTH:** Yeah.

**MR. BADER:** But they mobilized July '14; they couldn't progress work as fast paced until some time in August, I guess.

**MR. LEARMONTH:** Because of the lack of information that would be necessary to complete the foundation?

**MR. BADER:** I believe they started on the South Service Bay and we had to do a few adjustments in the powerhouse, we had to do some backfilling for the cranes to reach the trusses. So we had to do some preparatory work and do a few adjustments. That execution plan – a bit changed and with the available cranes, 400 and 300 tonnes, we had to increase the pad or to do some extra backfill for them. So I believe that was some delay.

**MR. LEARMONTH:** Yeah.

**MR. BADER:** But it was a change in their execution plan. Now, I am not sure I can give it a bit more details about that period because you may appreciate we're in – Astaldi has still an issue, so I can't (inaudible) detail a bit more –

**MR. LEARMONTH:** Yeah.

**MR. BADER:** – on this topic.

**MR. LEARMONTH:** You're not saying that Astaldi was completely in the clear; that it bears no responsibility for the delay? You're not saying that are you?

**MR. BADER:** For the ICS –

**MR. LEARMONTH:** Yeah.

**MR. BADER:** – execution, our position is that – or Astaldi's position, it was that Proco did not perform.

**MR. LEARMONTH:** Now, the contract with Proco, as I understand, was terminated in December 2014. Is that correct?

**MR. BADER:** December 2014.

**MR. LEARMONTH:** December 2014. And I understand there is litigation in the courts between Astaldi and Proco over the ICS. Is that –?

**MR. BADER:** Yeah, that's still ongoing.

**MR. LEARMONTH:** That hasn't been resolved yet.

And when was the decision made to tear down, remove the ICS? We know that the – I think the public announcement was in May 2015, but was there a decision made earlier at the time – that Proco was terminated in December 2014 – to tear down the ICS, as far as you know?

**MR. BADER:** You won't find anywhere, to my knowledge, anyone who published something we were not doing the ICS. I think the joint efforts – or the joint meetings that took place, at least from July until December, and following the progress of work and understanding the real challenges that needs to be overcome to

complete the ICS – end of 2014, Astaldi did a presentation on their execution plan for the 2015. And it was, I think, over three days workshop or presentations where pretty much the senior management – I would say, enough senior management were present, and more senior than the project manager, so I would say directors and from both sides were present.

And we have presented a plan, the plan showed that there's a value to stop progressing the ICS at unit two, and to enclose with temporary tarps instead of permanent cladding, and focussing on unit one and two. And by the time unit one and two will be progressed enough, unit three and four were not anymore on the critical path, because as I was explaining earlier, each unit needs to be – or there's an offset between each unit of two months. Unit one, then after two months, you deliver two, then the second and so on. So we said if we invest in the winter of 2015 to progress unit one –

**MR. LEARMONTH:** That's the winter of 2014-15, right?

**MR. BADER:** Yes.

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

**MR. BADER:** So we could advance unit one and two. And probably use the float – I know that probably using the float is not right word – the relative float between units to kind of postpone or justify not to do unit three and four. And we – this was presented in January – in December, end of December 2014. And it was in our presentation, an Astaldi presentation at that time. And we couldn't see any objection, so we couldn't see any objection from anyone, because I think it was the right idea –

**MR. LEARMONTH:** Yeah.

**MR. BADER:** – to stop the ICS unit one and two, profit from that to do unit one and two and profit from the relative float for unit three and four.

**MR. LEARMONTH:** Okay, so tearing it down was a decision –

**MR. BADER:** Yeah.

**MR. LEARMONTH:** – made because the structure got in the way of other parts of the construction of the project. Is that correct?

**MR. BADER:** So what I was talking about is not tearing it down. It is stopping progressing the ICS –

**MR. LEARMONTH:** But using it, okay.

**MR. BADER:** – beyond unit 1 and 2.

**MR. LEARMONTH:** Okay.

**MR. BADER:** The ICS, we scheduled it – as Don said – in the next winter. We said winter, probably, is not that efficient to do concrete work. So, let's go and do an activity which we have to do anyway, dismantling the ICS unit 1 and 2, because work was progressed enough that the value of the concrete to be done on that unit 1 and 2 versus removing the ICS in a winter condition rather than summer condition, you know, it was really a good idea, or the cheapest option.

So we decided to in that – the next winter to remove unit 1 to on the – the south service bay, and do minimum – minimal work in the concrete in the critical areas. So that was the plan. So a year after, almost a year after.

**MR. LEARMONTH:** Okay.

**MR. DELAROSBIL:** So the schedule date, we started – we scheduled October 15, 2015, to tear down the ICS. And, as I said, we shut down for the winter, I think –

**MR. LEARMONTH:** Oh, it wasn't torn down until October?

**MR. DELAROSBIL:** We started tearing it down in October 2015. That's why I was clearing it up.

**MR. LEARMONTH:** But the decision was made much earlier than that.

**MR. DELAROSBIL:** Yeah, I think Gilbert had made an announcement in May, or something like that.

**MR. LEARMONTH:** Yeah.

**MR. DELAROSBIL:** And – but to take it down we still had to figure out when. And that's when we decided, as George mentioned, we'll take down the ICS, we'll regroup, we'll re-plan our work. We'll reschedule our work and start right out of the starter blocks in mid-March, go 100 miles an hour.

**MR. LEARMONTH:** Right.

Do either of you have an approximate figure for the total cost of the ICS? Is that something you can tell us? In other words, the – whatever was paid to Proco and the cost of tearing it down, is there a number for that, or – that you could give us some approximation of, as opposed to a guess. I don't want a guess, but just an approximate figure if you know it.

**MR. BADER:** I can't guess. We'll have to do a –

**MR. LEARMONTH:** All right.

**MR. BADER:** We'll have to do an analysis.

**MR. LEARMONTH:** Yeah.

**MR. BADER:** That – yeah, I can't. I can't come up with –

**MR. LEARMONTH:** Okay. That's – fair enough.

Now, one topic that's come up time and time again here at the Inquiry is the – whether there's – it's important for the owner to have a representative on the construction site with decision-making authority so that when, you know, problems or issues arise that a decision can be made by the owner, if not immediately, on a timely basis. That's the general issue. And I'd like to have both of you provide your comments on whether that is a necessary requirement or not.

Don, can we start with you?

**MR. DELAROSBIL:** Well, from my point of view, it's important to have somebody on the job site that has full responsibility for that project and the ability to be able to make decisions,

construction decisions. They need somebody with construction experience that'll be able to see the impacts and understand your requests, what you're looking for and why you're looking at it, and the ability to be able to make a timely decision, some on a day-to-day basis and some – have the ability to instruct others to dig in deeper to be able to get back to the contractor or contractors on the information requested.

So, it's critical – as an example – and I believe Nalcor believed it was critical, too, from the contractor's point of view, because if myself or George left the site we had to send a letter. So, I was a project manager for Astaldi, managing a \$1-plus-billion contract, I couldn't see myself not be on the job site to manage that work. It's just – it's just there's too many things that happen in a day that requires senior management attention.

You know, you're building at our – in 2017, we were building at one, \$1.5 million a day. I don't know if you know how hard it is to spend \$1.5 million in a day, but that's a lot of people moving and a lot of materials happening. So, you probably got 14 – 1,200-1,400 people working on the job site. There's a lot of things that happen. So, for me, it's critical; you need a decision maker.

**MR. LEARMONTH:** Okay.

So it's critical from – for the contractor. You're speaking of yourself now –

**MR. DELAROSBIL:** Yeah.

**MR. LEARMONTH:** – someone on site –

**MR. DELAROSBIL:** Sure.

**MR. LEARMONTH:** – but I'm talking about the owner, in this case now –

**MR. DELAROSBIL:** No, no, I meant the – I meant the owner. I was using myself as an example. I apologize if I –

**MR. LEARMONTH:** Okay.

**MR. DELAROSBIL:** – if I confused things. I was saying as an example, you know, me as a contractor. I'm managing this, so it should be

equally as important for the owner to have that individual on-site that I can talk to or that I can relate with, or he can relate with the other contractors or make everything work. It is critical.

**MR. LEARMONTH:** Okay.

Now, based on your experience from working on other projects, what – how does this apply on other projects at this point, apply on other projects that you've worked on?

**MR. DELAROSBIL:** Well, every other – every other site that I've worked on there was a person on-site that had that authority.

**MR. LEARMONTH:** A representative of the owner?

**MR. DELAROSBIL:** That's right, yeah.

**MR. LEARMONTH:** Yeah.

**MR. DELAROSBIL:** Yeah.

**MR. LEARMONTH:** Yeah. And you said it was critical. Is that right?

**MR. DELAROSBIL:** Well, it's critical because of the pace you're going at. You know, you're going at a – at a very fast pace. You're building up a lot of work. You're pouring close to 800 cubic metres a day. So things change; 800 cubic metres a day when – take a house basement has 40 cubic metres, so you just poured 20 houses. I mean, you're moving at a really good pace, so.

So, a lot of things happen. Quality issues happen, safety issues happen, just logistic issues happen, camp issues happen. You know, there's so many things that happen in the course of a day: union, labour issues. So you need somebody that understands construction and that can make the decision. You just do, you know.

**MR. LEARMONTH:** Okay.

So, you've talked about your belief in what is necessary, what's required in these circumstances. Can you give us some evidence about the experience that you had at the Muskrat Falls site in this – on this topic?

**MR. DELAROSBIL:** Well, unfortunately, we didn't have that person on the Muskrat Falls site. The people on the Muskrat Falls site – I must say, the work team on Muskrat Falls tried hard and they worked hard, but all their decision-making power was left to St. John's in, you know, main office of Nalcor.

So, they had authority – my understanding is they had authority – and this has been told by me a couple of times, by several individuals that worked on the job site, was \$25,000. Well, \$25,000 is not much authority in the game we're working.

**MR. LEARMONTH:** What was your authority on-site? You're the project manager.

**MR. DELAROSBIL:** I had \$5 million.

**MR. LEARMONTH:** You could spend \$5 million without calling head office?

**MR. DELAROSBIL:** Yeah.

**MR. LEARMONTH:** Yeah.

**MR. DELAROSBIL:** Yeah.

**MR. LEARMONTH:** Okay.

Now, you're saying that based on the communications you had with other people – with Nalcor representatives, that their authority was \$25,000?

**MR. DELAROSBIL:** That's right. The construction managers on-site had about \$25,000. Now, that's what I've been told.

**MR. LEARMONTH:** Yeah.

**MR. DELAROSBIL:** Maybe Nalcor has a different number for that, but –

**MR. LEARMONTH:** Well, I – no, we've been told –

**MR. DELAROSBIL:** Yeah.

**MR. LEARMONTH:** – and there will be – I think that some Nalcor representatives on-site had authority up to, say, \$200,000 or something, maybe even – maybe 250.

**MR. DELAROSBIL:** They didn't use it.

**MR. LEARMONTH:** They didn't?

**MR. DELAROSBIL:** Well, they didn't use it if they had it.

**MR. LEARMONTH:** On what basis do you say that?

**MR. DELAROSBIL:** Well, approving change orders – change orders, change requests, approving site instructions, approving – what's the word I'm looking – field work orders, right? They're topped out at \$25,000 on the field work orders.

**MR. LEARMONTH:** And was that – did – that \$25,000 figure, was that throughout your tenure at that – from May 2015 until October 2018, was there any change in that, as far as you know?

**MR. DELAROSBIL:** Not that I know of, no.

**MR. LEARMONTH:** Yeah.

And that information, the \$25,000, is based on discussions with on-site construction managers?

**MR. DELAROSBIL:** Yeah, that's what I was told. Yeah.

**MR. LEARMONTH:** Employed or retained by Nalcor?

**MR. DELAROSBIL:** Yeah, yeah.

**MR. LEARMONTH:** Yeah.

Now, give me an example about how this decision-making process would cause problems.

**MR. DELAROSBIL:** Well –

**MR. LEARMONTH:** Give me an example, like a day-to-day –

**MR. DELAROSBIL:** Decision-making process. Well, it had to do with a lot of the – let's say, a field work order where they're asking you to do something that's outside your scope, whether it's going to cost a lot more money. Well, you don't want to move ahead and do the work if you're not going to get paid for it. If you

want to change a schedule sequence of sorts, right, you don't have somebody there that you can talk to, to be able to convince that, you know, this is the right move without going through a lengthy process of approvals.

And I'm not saying that Nalcor wasn't doing this because they wanted to be cautious or do the right thing, I'm just saying when you have the one-on-one conversation and you build a relationship of trust, you're able to, as a contractor with the experience – you know, when you have the experience you see opportunities every day that come up. And those are the opportunities I'm talking about to be able to discuss with your counterpart to be able to take advantage of.

**MR. LEARMONTH:** But if there's no counterpart there with decision-making authority, you can't take advantage of those opportunities. Is that right?

**MR. DELAROSBIL:** Well, it makes it much harder to take advantage of the opportunities, yeah.

**MR. LEARMONTH:** Okay.

So how did the – you've already mentioned about this \$25,000 limit that you understood applied. So how did – if a decision came up – let's say, for example, of a \$100,000 or \$200,000 item – what process would have to be followed to get approval for what you are suggesting or proposing? What –

**MR. DELAROSBIL:** I'll let Georges explain the approval, I'll explain the impact. You know, for a lot of these small changes, you know, in the \$100,000 range, which was, let's say, outside of our scope in this case. So it's outside of your scope, they want you to do the change so – and if you don't do the change – because of the changes required. So if you don't do the change, you're going to impact yourself.

So you're not, not going to do the change, but then you have to worry about getting paid for it and that's pushed off and pushed off on whose responsibility it was, who had to get paid for it. And it brings it into commercial meetings and is pushed off and is pushed off and is pushed off.

**MR. LEARMONTH:** Yeah.

**MR. DELAROSBIL:** So that's what it is. And you're making big – you know, hundred-thousand-dollar decisions are still big decisions, you know, for any company, so ...

**MR. LEARMONTH:** Well – so this – I understand that there were weekly meetings that you were expected to attend while you were working there. Is that correct?

**MR. DELAROSBIL:** Yeah, there was weekly commercial meetings that were to address, you know, the issues that came up during the course of the week and anything that was lagging behind and then you would sit down and try to negotiate back and forth. And while the concept is perfect, you know – while the concept is perfect, having a commercial meeting once a week so that things don't drag on is perfect. That's what you should be doing.

The issue was that there was nobody at these meetings from the Nalcor side with any decision-making power so everything dragged on. So the issue you had last week was compounded by the issue you had this week, compounded by the issue you were going to have next week. It was just compounded all the time and it was dragged on all the way through until, you know, in most cases, it was put into a pot and then after that we negotiated the pot, you know.

**MR. LEARMONTH:** But, like, what would be the point of these commercial meetings. Like, I understand commercial –

**MR. DELAROSBIL:** Well –

**MR. LEARMONTH:** – to mean that you're dealing with dollars and so on, right?

**MR. DELAROSBIL:** Yeah.

**MR. LEARMONTH:** What would be the purpose of them if there was no person present by –

**MR. DELAROSBIL:** I –

**MR. LEARMONTH:** – representing Nalcor that had decision-making authority?

**MR. DELAROSBIL:** I think it was more of a way of showing where we stood, what the accounting was, what the amount was and, you know, providing a record actually. Personally, I attended for about three months. I tried my best to get decision-makers at the table but to no avail. So after three months I personally stopped attending commercial meetings.

**MR. LEARMONTH:** Why?

**MR. DELAROSBIL:** Well, there was no decisions being made. So if I had no counterpart on the other side that could make a decision, then what was the use of the meetings? So my team kept going – and, listen, I wasn't being arrogant or ignorant about this, it's just it was a waste of time. So I could let my staff go and do that accounting rigmarole, I guess, because the issues weren't solved at that table, you know. And that was the purpose is being able to clear the issues and get things solved, in my understanding of –

**MR. LEARMONTH:** Yeah.

**MR. DELAROSBIL:** – how that should work.

**MR. LEARMONTH:** Yeah.

And so at these meetings that you ultimately stopped attending, was there anyone connected by telephone from the St. John's office?

**MR. DELAROSBIL:** No decision-makers. No, I requested decision-makers to attend those meetings. Yeah.

**MR. LEARMONTH:** Who did you request?

**MR. DELAROSBIL:** Decision-maker, you know, whether that was Scott, Gilbert. Who had the authority, who had the wallet basically, you know, who had the authority to make that decision. And I don't know who had the authority because I don't know what Scott's authority is and I don't know what Gilbert's spending authority is.

**MR. LEARMONTH:** Yeah. But did you believe that one person was in charge of making the decision?

**MR. DELAROSBIL:** Well, at the end of the day, ultimately, there has to be somebody, or a committee, or there has to be something, somebody that makes a decision. I have to make the decision. See, I could make that decision on the spot. You know, if I accepted 50 per cent of the offer, if I expected – if I said, no, that is not yours, that's ours, you know, you're right, we made a mistake. I could say hey, listen, I could wipe off – what if I told you – \$5 million, so I could wipe off whatever was put on the table on the spot.

You know, if I was convinced that we were wrong, we were wrong and we just stroked it out. And if they wanted to settle for any amount, I could accept or reject that and that would have been a dispute, let's say, okay, so that would have been pushed off.

**MR. LEARMONTH:** So if there's no decisions made at this meeting and there's a delayed process –

**MR. DELAROSBIL:** Yeah.

**MR. LEARMONTH:** – am I correct that these issues just keep piling up?

**MR. DELAROSBIL:** Yeah, the issues keep piling up. That is the issue, they just keep piling up. So you're not only – you're trying to get rid of issues as you go along, you know. You know how it is; you're trying to do your dishes as you go along. So now the sink keeps getting full and after a while you're starting to pile it on the table, and then you're going to pile it in the living room. I mean, basically –

**MR. LEARMONTH:** Yeah. And did that ever – did that problem that you identified from your perspective ever change? Was it ever any correction of that situation while you were on site?

**MR. DELAROSBIL:** There was some field work orders that were paid in, you know, in the smaller range but, no, the situation – not to my understanding or not that I remember, it didn't change.

**MR. LEARMONTH:** Okay.

Now, Mr. Bader, I'd like your take on this subject. You heard Mr. Delarosbil give his version. Can you –

**MR. BADER:** Yeah.

**MR. LEARMONTH:** – offer us any information on this topic?

**MR. BADER:** Yeah. Yes, I can.

**UNIDENTIFIED MALE SPEAKER:** Mr. Commissioner, Mr. Bader's mic is not on.

**MR. BADER:** (Inaudible.)

**THE COMMISSIONER:** The red light should come on.

**MR. BADER:** Yeah, yeah.

So I have been almost all the progress meetings. Normally, the progress meeting you should be discussing with the client: Did you achieve the targets of the previous weeks? What are the targets of the new week? What are the challenges? What are the key issues? What are the commercial items that require specific attention? It may require a separate meeting, maybe not just the progress meetings.

So in most of those meetings we talked about progress preferably. We mainly heard what Nalcor's instructions are, and we were less listen – like, they did not listen enough to what we need.

And at the beginning, probably back in 2015, '16, the Nalcor senior management were attending – specifically Mr. Power and, I guess, Mr. O'Brien in most cases, they were attending. Last year, 2018, almost they never called or dialled in to anyone and the previous year, maybe one every three weeks or something like this, or they will dial in for 10 minutes, then they will be busy or –

**MR. LEARMONTH:** They'd dial in, you say, by telephone?

**MR. BADER:** Yeah.

**MR. LEARMONTH:** Yeah.

**MR. BADER:** Yeah, yeah, they don't attend personally, very rarely. Mr. Power, the first two years he did attend physically.

The importance of having a project manager on site is one side is commercial; the second side is developing a culture, a leadership for his team, for the contractors on site, a reference. So if a specific department within the owner's team is – probably requires a push or a shake or – the presence on site will make the project manager more familiar with the issues. It will facilitate for him the decision-making process. Instead of just relying on a department manager take on an issue, he will have his input as well, his own judgment. That was missed; frankly, that was missed on the site.

And Nalcor's personnel on site were well qualified enough to help, you know? Like, department managers, inspectors, site managers, they had a job to do, they had a site to run. They were less concerned about the commercial issues because it's a project manager job. So, every time we had a commercial issue, we had to meet with a dispute resolution personnel.

Like, normally you would keep these personnel in a room in the – separate, working and protecting your interest as a client or contractor, but they were the personnel taking the minutes, they were the personnel approving our – or reporting or pushing our requests, our entitlement for a change order. So, we sent you a letter – this was a typical answer: We sent you a letter about it. So what's in that letter? Can you explain to us? Can you guide us? Can we discuss it? That's the right meeting to discuss our issues. Can we send you a letter, read it, answer back?

If you look to the records, you would see around 3,000 letters – 3,000 letters between project managers; most of the letters signed by Ron, some by myself in his absence with his authorization. So I think it's excessive. The presence of a project manager could eliminate at least half of these letters, a phone call, a face-to-face meeting. It will develop and build trust between project managers on site. And we followed the same patterns as our subcontractors; like, we used to call them to site. If our construction team is a bit hard on them or a bit, you know, not approving, not signing their

(inaudible), we used to meet with them, hearing their issues and take corrective actions.

(Inaudible) of contractor's success is an indication of our success, as well as contractors. Our success an indication of the owner's success, so that's why I just think he's the leader, his presence on site is a must. And in the other two jobs I've been in, in Ontario – one was an EPC and then one was a design build, pretty much – the project manager was on site, absolutely, and if he's not there, he had a counterpart. And, yeah, we're not talking that \$50-million decision should take – should happen on site on the right day, on the – it's you start this negotiation, you just prepare the ground for probably the (inaudible) to settle on things.

Like, I just think it was a strategy to run to the future and I think that intention – the intention was to protect a limited – a strict budget, which is probably good intention to protect it, but it's the wrong approach. You're just pushing the problem to the future and you will end up with claims, arbitration. So it's just a temporary solution not to pay bills, but I think over the long term it's – the impact is there and probably worse because it will take our time on site, being – lacking some clear instructions resulting some problems between key departments, let's say both engineering departments, both quality departments.

You'll see letters on specific topics, probably 10 letters on specific topics; heating and hoarding or site instruction. For example, (inaudible), et cetera. So lots of letters exchanged. One meeting between two senior managers would resolve this. It would free up the time for both personnel to focus on improving the job rather than worried about looking for how to get the money or financially or commercially be protected.

I would love to have a site presence on site. Like, I'm not attacking any of Nalcor's personnel on site; they had a job to do. But that wasn't their job to lead the full site; it was the job of the project manager. Now, whether it's Scott or someone designated by Scott, it doesn't matter, that person should have been on site. That's my take.

**MR. DELAROSBIL:** Yeah, when you think 3,000 letters today, that's equal to 3 letters a day. Three letters a day that you have to answer and reply to and spend the time and get your commercial guys and read through the contract of where it could have been settled with a simple conversation or an understanding or something else. It just takes up a lot of time.

And everything was – well, I mean, if you look through the records you'll see everything is commercially oriented, you know, everything is set up so that – protect, protect, protect, protect, so –

**MR. LEARMONTH:** But the comment that –

**THE COMMISSIONER:** Excuse me just for a second. I think – I just noticed now we're past 4:30, so I think – is this a good spot to break until tomorrow morning?

**MR. LEARMONTH:** Unless you want to go to 5?

**THE COMMISSIONER:** No, I'd like to – we have another meeting that I have to –

**MR. LEARMONTH:** All right.

**THE COMMISSIONER:** – go to, so –

**MR. LEARMONTH:** Okay. I think –

**THE COMMISSIONER:** – I think we'll break here. I'd like to start tomorrow morning at 9 o'clock.

**MR. LEARMONTH:** Yes.

**THE COMMISSIONER:** I'm getting the feeling we may not – we may need extra time tomorrow so let's start tomorrow morning at 9 o'clock then.

**MR. BADER:** 8 o'clock?

**THE COMMISSIONER:** 9 o'clock.

**MR. DELAROSBIL:** 9 o'clock.

**THE COMMISSIONER:** 9 o'clock.

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.