



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 32

Commissioner: Honourable Justice Richard LeBlanc

Thursday

9 May 2019

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open. The Honourable Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

THE COMMISSIONER: Good morning, Mr. Learmonth.

MR. LEARMONTH: Thank you.

Just continuing on with the line of questioning we left at the end of yesterday.

Mr. Bader, Mr. Delarosbil said that he didn't see any evidence in his discussions or what he observed as to whether there was anyone on site with authority to spend more than \$25,000. I think that's what – generally what was said. What was your understanding about the level of authority of the on-site personnel of Nalcor?

MR. BADER: Well, I agree. My understanding was as well that \$25,000 was the limit for the individuals on site, and I believe this was said to me by the site managers. I think many of them. Because I've seen three of them. At least two of them mentioned that their limited authority or approval capacity was \$25,000. And to my understanding, even if they had it – more than that – they had to go always to St. John's. That was the last four years on the job for every commercial thing. It had to go to St. John's. And I think it's part of a process management procedure Nalcor has. So, if it's above a certain number, a committee has to take a place. That's how it was explained to me. I may be wrong, but that's how it was –

MR. LEARMONTH: Yeah.

MR. BADER: – explained to me that you would need the project control involvement to check where to bring the money from the contingency allocated. I think it was part of that change management process or –

MR. LEARMONTH: Yeah.

MR. BADER: – they had.

MR. LEARMONTH: But –

MR. BADER: Yeah.

MR. LEARMONTH: – you were on the job site for over four years.

MR. BADER: Yes.

MR. LEARMONTH: Did you ever see a situation which – in which someone on site, on their own, made a decision on an issue that involved more than \$25,000?

MR. BADER: No.

MR. LEARMONTH: You didn't?

MR. BADER: No.

MR. LEARMONTH: Okay.

And, Mr. Delarosbil, is that your recollection – the same?

MR. DELAROSBIL: Yeah. Not to my recollection. I can't remember.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: I can't remember anybody making that –

MR. LEARMONTH: Making a decision –

MR. DELAROSBIL: – that decision about (inaudible) –

MR. LEARMONTH: – involving something over \$25,000.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: Yeah. So, you would agree – both of you are in agreement on your positions on that point, are you?

MR. BADER: Yeah.

MR. DELAROSBIL: Yes.

MR. LEARMONTH: Yeah.

Okay, now I just want to turn to two exhibits. The first is in volume 1 of your documents. It's

at tab 28. I'd like you to turn to page 4 of that exhibit, P-03048. Do you have it?

MR. BADER: 03048?

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: 03048. Page 4.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: Okay, now this is a letter to Desmond Tranquilla, site manager, from Ted Vanwyk. Did you know him, Ted?

MR. BADER: I know him from Detour Gold. We worked together on the same job. I never met him at Muskrat Falls, but I know that individual. We've worked –

MR. LEARMONTH: Is he an engineer or –?

MR. BADER: Well, at AMEC he was a – no, he's not an engineer, but he was the engineering manager – site engineering manager at Detour Gold and, I think, deputy project manager for Detour, AMEC at that time if I'm not mistaken.

MR. LEARMONTH: Okay.

Well, this is a letter that he wrote on May 28, 2014, a letter of resignation. In the middle paragraph he says: "I like construction management work because it gives one the ability to be creative and to plan, organize and control work activities, work sequences and subsequent completion of the work. Job satisfaction comes from seeing work completed as you believe it should be done. On the Lower Churchill Project, construction management is now directed by Nalcor in St. John's and on site we are the eyes and ears for others to organize high level meetings with the contractor and to make decisions. The contractor is fast learning that the decision making is done in St. John's, not at the site. This undermines our authority and significantly reduces our ability to manage as I believe we should be doing. Other issues that reduce our ability to effectively manage the contractor at the site includes the lack of an agreed schedule, no site based planners, no data on earned and spent manual manhours, an unworkable approval process for contractor craft timesheets, increased intrusion by others into

management of specific contractor activities, restrictions in document flow back to the contractor and Nalcor's unwillingness to take risks and direct the contractor. I can provide details on" – this – "if requested."

What comment, if any, do you make on that paragraph that I just read from Exhibit P-03048?

MR. BADER: I think that was back in 2014. We were not there, but I believe the same issues remain on the – until the last day. Like, with their site managers, I could never settle anything. And I think we'd been promised few change requests.

One of them was very recent, back in – end of 2018, where one of their site managers or senior construction managers directed us to go in a certain way, and he said this change request is coming. I think it was change request for dewatering in the tailrace area. We got the flooding.

Another contractor was doing an excavation for the tailrace, and while it was concurrent to a rainstorm or some severe rain, and the tailrace got flooded, so we were directed to remedy the situation by adding extra pumps by doing some emergency steps.

And until the day of termination, we couldn't get it. So whatever the site managers were making on site, it would – it was evident that someone in St. John's could override that. And, for us, they were not credible when it comes to commercial.

Like, I couldn't take – if I get a promise from one of the site managers, you – a change request will – is making his way – its way to your team. I think in very few occasions it happened. They do not have that authority. And a commercial personnel, somewhere behind the scene, was making the right – the decisions not to pay or not to give a change request or – and this will make, normally, things more complicated, because you would like to know that the site managers on-site would have the authority, you know, once they direct you to go and do a certain work.

I think it didn't change, and – yeah, person – I can't work under this condition, and I would do the same unless they're family.

MR. LEARMONTH: Yeah.

Okay. And then at tab 29, page 3, Exhibit P-03049. This is a letter of resignation addressed to Desmond Tranquilla, June 2, 2014; Brian Cottrell.

Did you know him?

MR. BADER: No.

MR. LEARMONTH: Okay.

Well, he says, in the middle paragraph – he’s resigning:

“I feel that my capabilities and experience are not being fully utilized, I am not challenged by my work or my work load and have no decision making capability. Further, the management style employed by St. John’s gives me great concern as the control and decision making capabilities do not lie with the experienced people on site, but rather with St. John’s who are removed from the day-to-day site operations and this often causes unnecessary delays. I am concerned that in the month of May that 5 members of the Site Team have felt the need to resign and would expect this to have raised some major red flags with head office. Unfortunately I expect more resignations to come. Communication between St. John’s and Site have always been an issue, in my opinion, although that has improved on the HR side in the last few months. In short the Site Team seems to be here for show a concept I believe is becoming more and more obvious to all at Site, sub contractors ... as time goes by.”

Do you have any – either – have any comment on that paragraph? I mean, is that different from your – are you surprised to see that, or is that consistent from –

MR. DELAROSBIL: It’s a common – it’s a common theme. It’s – even though the other project manager, or the construction managers that are there are, we believe – or I believe, I’m sorry, are in the same boat. They don’t have the decision-making powers.

MR. LEARMONTH: Yes. So this doesn’t surprise you when you read these?

MR. DELAROSBIL: No, it doesn’t.

MR. LEARMONTH: No. And it’s consistent with your understanding about how the communications between St. John’s and site were being carried out?

MR. DELAROSBIL: Yes.

MR. LEARMONTH: Okay.

Now, Mr. Tranquilla resigned at some point. Was either of you on-site when he resigned?

MR. DELAROSBIL: We were both on-site when he resigned, but I was just there for a short period.

George would have better –

MR. LEARMONTH: Yeah.

MR. BADER: Yeah.

MR. LEARMONTH: Did Mr. Tranquilla ever advise you of the reason he was resigning?

MR. BADER: No, he just – there is no reason for him to (inaudible).

MR. LEARMONTH: No, no, I just – I know he wouldn’t have to, but I’m just saying, in passing, like, if you knew him, did he ever tell you –

MR. BADER: No.

MR. LEARMONTH: – why he resigned there?

MR. BADER: No, but I personally know Desmond, he was my manager on a different job. Like, I know he’s qualified manager and he ran projects of billion of dollars.

MR. LEARMONTH: Yeah.

MR. BADER: And I think he was very close to the contractors, Mr. Desmond, and he has – he had the intention to work with the contractors and he got the culture of believing success is built by if your contractor’s work will be successful, the project will be. So, like, personally I think it was a big loss.

MR. LEARMONTH: Yeah.

MR. BADER: Personally, I felt like we were comfortable working with Mr. Desmond.

MR. LEARMONTH: You had respect for him, did you?

MR. BADER: Absolutely.

MR. LEARMONTH: Yeah.

And the same with you, Mr. Delarosbil?

MR. DELAROSBIL: Yeah. I knew Desmond from other jobs and he is a very competent manager.

MR. LEARMONTH: All right.

I want to ask you some questions about your communications with Scott O'Brien, who was the, you know, the person in charge of the generating facility.

Did – well, I'll start with you, Mr. Delarosbil. Did you have communications with Scott O'Brien?

MR. DELAROSBIL: Yeah. Well, Scott was my direct counterpart, right. He was project manager. Mr. O'Brien was the project manager for Muskrat Falls, I was the project manager for Astaldi Canada. So him and I were –

MR. LEARMONTH: Counterparts, I guess.

MR. DELAROSBIL: – counterparts.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Yeah, that's the word I was looking for.

MR. LEARMONTH: Yeah.

And can you describe the nature of your relationship with Mr. O'Brien?

MR. DELAROSBIL: The relationship was strictly a business relationship –

MR. LEARMONTH: Yes.

MR. DELAROSBIL: – you know. And the communications were mostly dealt with in letters, you know. So most of our communication was done through letters and communication letters. We did exchange emails, but not to a great extent. And, you know, for me he was the boss. So I did what he asked me to do, so.

MR. LEARMONTH: Yeah.

Did you have a good relationship with him?

MR. DELAROSBIL: We had a professional, business relationship, yeah, yeah. He was the boss and what he said went, you know, so.

MR. LEARMONTH: Yeah.

Is that the way it usually goes in a situation like that?

MR. DELAROSBIL: Well, it depends of the individual you're dealing with, you know. Scott was a very strict, demanding person, you know, but on my prior jobs I always had very close and good relationships with my counterpart.

MR. LEARMONTH: Did you have any conflict with Mr. O'Brien or was it just sort of a distant-type relationship?

MR. DELAROSBIL: Most of my conflicts with Mr. O'Brien was around commercial issues. Our arguments, or our challenges were always around commercial issues.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: Well, did you ever have any discussions with Mr. O'Brien about your concern that he or someone with authority was not on-site to make decisions when problems arose or issues arose?

MR. DELAROSBIL: Yeah. The conversation came up in meetings that we thought there should be somebody on-site that would be able to make the decisions. A couple of commercial meetings I mentioned the fact that there was no decision makers on-site.

MR. LEARMONTH: Yeah.

And were those discussions productive?

MR. DELAROSBIL: Well, nothing changed, so – as far as being productive, they were productive for the time of the discussion, I guess, I would say.

MR. LEARMONTH: Yeah. But nothing changed?

MR. DELAROSBIL: Nothing changed on-site. There was never anybody put in position of authority on-site to be able to make the decisions.

MR. LEARMONTH: Okay.

Mr. Bader, did you have – can you explain your relationship, if you had one, with Mr. O'Brien.

MR. BADER: Yeah. It's very similar to Don's relationship. Like, it was really a business/professional relationship; pretty much what Don said. It's kind of the same – the same approach was between myself and – and then I only used to deal with Mr. O'Brien when Don was absent. So – like, any contact was done with Mr. O'Brien.

MR. LEARMONTH: Okay.

I want to talk about your experience with the craft labour. Were you responsible for that during your tenure, Mr. Delarosbil?

MR. DELAROSBIL: Yeah, I was – yes, that came under my responsibility. I had a labour relations in human resources department which answered to me.

MR. LEARMONTH: And what were your responsibilities with respect to the collective – administration of the matters arising from the collective agreement?

MR. DELAROSBIL: I was the last word on the decision-making as it came to arbitrations, making checks on hiring, both in the labour relations and the human resources side.

MR. LEARMONTH: All right.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: And were there any problems with hiring? Were all – did you have qualified people working on site or were there any issues there?

MR. DELAROSBIL: Well, there's a – there's, how would I say it – yeah, the – can you ask the question again so I can just clearly get my thoughts together?

MR. LEARMONTH: Well, I want to know, did you have any problems with the craft labour persons that were supplied to you and did work for Astaldi during the course of the contract?

MR. DELAROSBIL: We had challenges with the health and physical fitness of the workers and we did have challenges with the qualifications of the workers.

MR. LEARMONTH: Well –

MR. DELAROSBIL: So –

MR. LEARMONTH: – can you expand on that? Problems with the fitness, did you say?

MR. DELAROSBIL: Yeah. So, you know, my first and foremost obligation as project manager is making sure that I'm getting healthy workers on my work sites so they can work safely. And so when we made a request from the unions, we weren't – they would send individuals based on the – well, the qualifications we wrote on our request form, and they would send 'em in. But, often cases, we found out once they got to site that they weren't physically fit to do the work, so we implemented a –

MR. BADER: Screening.

MR. DELAROSBIL: – a pre-access screening program to make sure that the workers were, in fact, physically fit to conduct the work. So they had to go through alcohol testing, physical fitness testing prior to getting to the job, so at least at that stage we were making that, besides the qualification, that the worker was in physical fitness to be able to perform the task at hand and what was requested.

MR. LEARMONTH: Okay, so is that a standard procedure to go through on a project?

MR. DELAROSBIL: Most companies do that now.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Yeah, and most companies –

MR. LEARMONTH: So there's nothing unusual about that.

MR. DELAROSBIL: No, it's not unusual. No.

MR. LEARMONTH: Okay.

Now, we were told by, is it – it was John Mulcahy, that his observations – it's certainly, I think, before you arrived, Mr. Delarosbil – that there was – his observation was that there was poor or inadequate management of labour by Astaldi, I guess. That there were oftentimes he would observe many people working in a congested area and there was just too many people for the – the situation didn't warrant having that many people. And he blamed – he attributed that as a problem. He considered that to be a problem: Inadequate management of labour.

Mr. Bader, when you arrived did you observe – make any observations on that issue?

MR. BADER: In July, August, I think –

MR. LEARMONTH: 2014, yes?

MR. BADER: – '14, yes –

MR. LEARMONTH: Yeah.

MR. BADER: – I think Astaldi got the peak of manpower on site. Then there were – at that time, they were expecting some approvals on the mix designs or some approval to have some work fronts opened and I think it did not happen. So, after that, I think big layoffs happened in September or October – maybe September 2014.

MR. LEARMONTH: Yeah.

MR. BADER: So, like, the work fronts couldn't be available as forecasted or as planned and the situation, I think, was adjusted by performing a big layoff at that time.

MR. LEARMONTH: Yeah.

MR. BADER: That was what I can remember (inaudible), you know.

MR. LEARMONTH: But do you agree that – did you see situations where there was inadequate management of the labour force?

MR. BADER: Like, in July, more manpower than needed –

MR. LEARMONTH: Yeah.

MR. BADER: – probably to place. But layoffs happened like, I think, a few weeks after or it was adjusted.

MR. LEARMONTH: Okay.

MR. BADER: And to my understandings, a big request of manpower was – took place and the manpower was supplied before the work fronts were available, but wasn't for a very short period of time, I think. And I – and probably the records of hiring and layoffs would reflect that.

MR. LEARMONTH: Okay.

Now, in your interviews, you indicated there was – you discussed the question of or the issue of whether Nalcor was micromanaging the project. Do you remember that?

MR. DELAROSBIL: Yeah, they had a habit of getting into our business quite a bit, you know.

MR. LEARMONTH: Can you expand on that or perhaps give an example?

MR. DELAROSBIL: Well, in the – how would I say? They would – in our progress meetings, they would get into the details, how we were going to attack our work fronts, how we were going to ... And I guess some of that was curiosity but a lot of it was trying to move our people to do things that they wanted them to do.

MR. LEARMONTH: Yeah.

Was that their right or is that normal for them to act in that way?

MR. DELAROSBIL: Well, it's normal for them to come in when it comes for safety or if there is issues on safety, but as far as the means and methods of building our work, that's always up to –

MR. LEARMONTH: Oh, did you –

MR. DELAROSBIL: – that's always to the contractor, right?

MR. LEARMONTH: Yeah.

Well, did you resist any attempts to – by Nalcor to, you know, direct you on how to do your work?

MR. DELAROSBIL: Yeah, there's communications on that and there's letters on that. And in meetings when it – especially when it came to the commercial side, you know, the final word on the commercial side, whether my team could go ahead and do something, was up to me and, in my absence, was up to Georges. But they were always trying to find a workaround to go see the superintendents or the construction manager to get them to do things which they thought were approved which, in fact, weren't to go ahead. So it put us in some precarious positions.

MR. LEARMONTH: All right.

MR. DELAROSBIL: In fact, in a couple of meetings they challenged myself and my construction managers by saying something like: Are you telling me that your construction manager cannot make decisions, which puts me in a kind of a hotspot with my construction managers. And which – to which I explained to them that all commercial decisions have to be agreed to by myself before they can proceed, so I would prefer that you use the right channels.

MR. LEARMONTH: And who did you have that discussion with?

MR. DELAROSBIL: That was with Mr. Peter Tsekouras during a progress meeting, then a couple of times during some other meetings. This came up about three, four times.

My people, my team, have a lot of respect – so do I – for my client. And so you have somebody that's with authority on the site, like Mr. Tsekouras, or anyone else that would have the – some authority on the site asking somebody to do something, it just sends the wrong message because those people want to do what's right and they're going to do what the client asked them to tell them. You know, they're the client, right, but sometimes that impacts our ability to make decisions – our ability to give direction. I'm sorry, I didn't mean decisions, I meant direction.

MR. LEARMONTH: Okay.

Okay, now, you have a lot of experience in working on large projects.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: Can you say whether the relationship that you had with Nalcor –

MR. DELAROSBIL: Mm-hmm.

MR. LEARMONTH: – when you were the project manager –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – with Muskrat Falls was similar to the relationships that you had with other owners on other projects?

MR. DELAROSBIL: With the other owners on the projects, I normally would've been briefed by the project manager or the construction manager on any changes they wanted done or any additional help they needed or changes or whatever. So, yeah, it was a little bit different, yeah.

MR. LEARMONTH: Yeah.

Now, when you arrived on May 2015 I think you spent the first couple of weeks just looking around and getting a feel for the situation. Is that right?

MR. DELAROSBIL: Absolutely, yeah.

MR. LEARMONTH: Yeah, and what plans did you implement? What did you see when you got there in May 2015 that caused you a concern?

MR. DELAROSBIL: I think when I got there in 2015, I saw a group of people trying to do the best they can to get the work done. I thought it was a – all that it – I believed that – and the records will show that – that I believed the right people were on the job site. I just think they just needed a little bit of restructuring and some reorganization and basically that's what I focused on. So for the first couple of weeks, couple of three weeks, I made it a point to get to meet most of the department managers – which I did – as a first step, and try to understand what their challenges were and what the issues were on the project. And for the following four or five months I restructured basically every department –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – on the job to make it more effective and more productive.

MR. LEARMONTH: Yeah. But when you arrived, did you find that the site was somewhat disorganized?

MR. DELAROSBIL: When I got there I saw a site that was in a stage of getting prepared to build the work and not quite at the stage where they were able to organize and execute the work as I would've liked to have seen it.

MR. LEARMONTH: Okay. And then you – so you implemented some measures to give better organization to the site, is that correct?

MR. DELAROSBIL: Yes, I did, yeah.

MR. LEARMONTH: Okay.

And how did the cement pouring go during the construction season of 2015?

MR. DELAROSBIL: We met all our targets in 2015.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Yeah, and the productivity – once we did the realignment, re-

management and the refocus – the things continually, continuously continued to improve.

MR. LEARMONTH: Okay. And then you shut down the site in December 2015 until –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – March 2016.

MR. DELAROSBIL: Yeah, after the difficult decision of deciding our – the difficult decision of tearing down the ICS was done, we looked at – we as a team looked at the advantages and disadvantages of being able to proceed during the winter months. And we came to the conclusion that if we started on and around – I think it was October 15 schedule, we started around October 21 to dismantle the ICS. We continued with some small works up until December and after December 15, 14, 12, we shut down the job until the beginning of March where we started hiring people – March 15 we started building some of the work.

During that period what we did was regroup, totally regroup and replan our work, replan the job and – yeah.

MR. LEARMONTH: Now, were you living on site during your tenure at the Muskrat Falls Project?

MR. DELAROSBIL: Initially, yeah. I had a room at the camp, an accommodation.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: But then I decided to take an apartment in town. It just got too much for me. I didn't get away from the work, you know –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – please understand that myself and Georges we start at about – we'd get up at 3:45, 4 o'clock in the morning and we're on site by 5, 5:10 every morning. We have our first meeting at 6 a.m. and we don't get out of there until – the earliest time I got to my house was about 7:30 at night. So, I mean – so going to camp we would be late for supper and then we

were faced with all the union issues, all the other issues, so it didn't give us time to refocus so –

MR. LEARMONTH: Yeah. So, at all times, when you were the project manager you're either living at the camp or in Goose Bay.

MR. DELAROSBIL: Or Goose Bay (inaudible).

MR. LEARMONTH: In other words, you didn't run the project from Timmins or Montreal or –?

MR. DELAROSBIL: No, no, no. Jeez, no.

Listen, speaking for myself, I was on a two and one turnaround schedule, two weeks on, one week off, which Georges replaced me on my week off. But we were in constant communication. I was the – on the phone – on my time off, I was on the phone on a daily basis with Georges to catch up on what the project – so I – so the light – the switch didn't turn off for myself. And I didn't keep a strict two and one schedule. And neither did Georges. We – if something was happening at the site, we'd stay three weeks, we'd stay whatever time and we had to come back earlier because there was an issue or a meeting or something of importance with the project, we'd take two days off, four days off, eight days off. I mean, whatever happened, you know.

MR. LEARMONTH: Mr. Bader, what about you? When you were working on site – well, starting in July 2014 up until, I guess, October 2018, where did you live?

MR. BADER: The first three years and a half in the camp. In the last year I just moved to Goose Bay, but I was still on site, so showing up pretty much on a daily basis. And we were following, as Don said, a rotation schedule, two week to one, in theory. And sometimes four weeks to one or three weeks to one, but like, pretty much we were on site. At least Don and I, one of us was on site.

MR. LEARMONTH: Okay.

Now, in terms of your work on the labour relations issue, you said you did arbitrations and

are you – were responsible for the preparation of materials for arbitrations?

MR. DELAROSBIL: I was responsible to see if we were going ahead or not on any arbitration case that came up with labour. So my team would do the investigations, look in to – take the witness statements, I go all the way through. And there were steps to go through. There was three steps to go through with the union. And – but prior to going to arbitration I made the decision of yes, we are moving forward, and no, we're not.

MR. LEARMONTH: Okay. Was the labour relations environment similar to other projects?

MR. DELAROSBIL: I only dealt with labour relations with the same unions on the Voisey's Bay Project, as I had mentioned. I've worked with a lot of different groups, union, non-union groups, but if – here, all the unions reported in to a group that was called the RDTC, I guess. And the agreement here was not like any – not unlike any other project but it was managed by the client.

MR. LEARMONTH: Okay.

So there was nothing unusual about the labour relations, the system?

MR. DELAROSBIL: Nothing unusual in – nothing unusual with, I guess, the owner's agreement. Could it be better? Yes.

MR. LEARMONTH: And how could it have been better?

MR. DELAROSBIL: Well, I think more direct contact between the unions and the contractors would have helped out a great deal, you know, being able to really talk and negotiate with the unions in such a way that they're helping you meet the needs of your job and your requirements.

The level of supervision they had – a level of supervision, they had a general superintendent – a general foreman, I'm sorry, foreman, working foreman. I believe – and, you know, we worked with the agreement; we had to work with the agreement, but I really believe that the general foreman position should have been a staff

position. It should have been a – you know, our superintendents should have been the general foreman, or our superintendents should have been – (inaudible) – should have been the – in the general foreman position. It's just so many layers of communication that it kind of breaks down once you go through.

MR. LEARMONTH: I don't understand –

MR. DELAROSBIL: (Inaudible.)

MR. LEARMONTH: – are you saying that the general foreman should have been – should not have been part of the –

MR. DELAROSBIL: Should have been a staff. Should have been a –

MR. LEARMONTH: Non-union?

MR. DELAROSBIL: – staff person.

Yeah, non-union.

MR. LEARMONTH: Non-union, okay.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: Why would you say that?

MR. DELAROSBIL: Well, again, it's just a communications – the more people you have, the more layers you have, the more complicated it gets, you know? If you have a superintendent talking to the general foreman who talks to the foreman who talks to the working foreman who talks to the worker, it gets diluted in a lot of cases. Plus, as a non-union – you know, as a superintendent leading the team, you know, he doesn't have to rely on – there's – it's better communication is what I'm trying to say.

MR. LEARMONTH: Okay.

Now, there's – in your interview, you discuss this question about, you know, whether it's advisable for an owner to share the schedule – the overall schedule for the project with the contractors so each contractor will know what the other contractors are doing and then the contractors themselves can coordinate the work. Can you speak about that?

MR. DELAROSBIL: Yes. I think it's critical that such schedules be shared. And not for any commercial reason, okay? So let's take that off the table here. It's for being able to – it's being able to take advantages of opportunities, being able to look forward, be able to better plan your work, better understanding what's coming up. Again, taking advantage of opportunities to help the project.

MR. LEARMONTH: Okay. But what – so, did you receive an integrated schedule from Nalcor?

MR. DELAROSBIL: Not a complete integrated schedule of what we're talking about. We had a weekly, and Georges can probably speak better on the schedule we did receive. But what we were looking for – what I was looking for was a long-term schedule. So, something we could look down the line and look at the critical path and make some strategic decisions on how better to build our work and how better to build our projects.

Contractors are builders. We know this stuff. We know this. You know, that's what we do for a living. We're contractors, all right? We know how to build, right? You might be the owner, but you're not the builder. So if we can put a bunch of builders together and discuss our problems, our issues, our constraints, everything else, chances are you can come up with opportunities; you can come up with ideas; you can up with solutions for what lies ahead.

MR. LEARMONTH: Okay.

MR. DELAROSBIL: You're better able to communicate. You're better able to understand their needs. You're better able to share equipment. You're better able to share resources. You understand?

MR. LEARMONTH: Okay, well –

MR. DELAROSBIL: Those opportunities –

MR. LEARMONTH: – can you give me an example – can you –

MR. DELAROSBIL: Those opportunities are not afforded, right?

MR. LEARMONTH: Yeah. If you don't have an integrated schedule, if you're not –?

MR. DELAROSBIL: Well, if you don't know what's coming up, right?

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: If you don't know what's coming up. Now, there's probably a good reason why they didn't share the schedule, but I'm just saying to take advantage of opportunities, you share the schedule.

MR. LEARMONTH: Okay, well, can you give me an example of how an opportunity could be followed or pursued if you had an integrated schedule –

MR. DELAROSBIL: Well –

MR. LEARMONTH: – as opposed to not having an integrated schedule? Just give me an example.

MR. DELAROSBIL: Let's say you have a schedule that says this has to be – you know, you have to reach this area by the end of the month – I'll use the end of the month. So you have to reach this area for the end of the month, but you see that the other contractor is not going in there for two months, right? Let's say. As an example. So if I'm behind reaching that target for the end of the month, I'm going to put on a second shift; I'm going to work overtime; I'm going to get additional equipment; I'm going to get additional materials. I'm going to do whatever it takes because I got to meet that date.

But is it required? Is it flexible? Is there movement there? Is it – you know. And those are the advantages. I'm not saying that I want to run Nalcor's schedule; I'm just saying – I wanted to help. I just wanted my team to help with the schedule.

MR. LEARMONTH: Okay. Well, did you ever ask for an integrated schedule?

MR. DELAROSBIL: A minimum of 10 –

MR. LEARMONTH: Pardon?

MR. DELAROSBIL: A minimum of 10 times. A minimum of 10 times. It was in letters and correspondence, in meetings.

MR. LEARMONTH: So, it was an important issue, was it?

MR. DELAROSBIL: Well, for me it was. Yeah.

MR. LEARMONTH: Yeah. And who did you ask to provide you with an integrated –?

MR. DELAROSBIL: Well, this was at senior management meetings, progress meetings and reflected in correspondence.

MR. LEARMONTH: Okay.

But who would be the person that you would speak to about this point? Or persons.

MR. DELAROSBIL: Well, my counterpart was Scott and the construction manager on site during the progress meetings. But it was all in an effort to help. It had nothing to do with, as I mentioned, the commercial issues. It was all in an effort to help the project. And as I did mention, they probably had a good reason, but they didn't share that with me. Why they wouldn't share the (inaudible) –

MR. LEARMONTH: What reason are you referring to?

MR. DELAROSBIL: I have no idea, Sir.

MR. LEARMONTH: Well, on other projects you've worked on, have you, as a contractor, been provided with an integrated schedule so you'll know what the other contractors are doing and what their schedules are?

MR. DELAROSBIL: Yeah. In most cases, yeah. We were. We would sit down.

When we did the Voisey's Bay job, we had a weekly meeting with all the contractors where we sat down and went through the details and made the changes required, but we really went through the details of the work. We knew what was coming up. We knew what people needed. You know, I could have had a 250-ton crane parked on the job site for a month which a

contractor had to call in to do a pick for one day, you know? But I didn't know if he needed it or didn't need it, you know?

There's so many opportunities if you – if you're open, right? There's so many opportunities.

MR. LEARMONTH: But can't – couldn't you – without permission of Nalcor, couldn't you speak to the other contractors to find out what their schedules were?

MR. DELAROSBIL: That was frowned upon, yeah.

MR. LEARMONTH: It was frowned upon?

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: By who?

MR. DELAROSBIL: By Nalcor.

MR. LEARMONTH: By Mr. O'Brien?

MR. DELAROSBIL: Everything between the contractors had to go through Nalcor. Maybe Georges can elaborate but –

MR. LEARMONTH: Do you have anything to say –?

MR. DELAROSBIL: – that was my understanding.

MR. LEARMONTH: Do you have anything to say about this, Mr. Bader?

MR. BADER: About the integrated schedule or –?

MR. LEARMONTH: Yeah.

MR. BADER: Yeah. Well, we started with a baseline though – just to understand why we needed an integrated schedule. At least in our contract, and I'm sure in other contracts, they do have interface milestones. You have contractual milestones where we have to deliver certain areas, and we had interface milestones. The interface basically indicate when a contractor – another contractor is accessing – or the areas handed over to another party.

So that initial exhibit 9, I believe, had like 40 milestones and probably tens of interface – probably 10 interface milestones.

The baseline was developed in 2014, so with incorporating the interface dates, the schedule definitely was updated, and we had several – for over two years, from December 2014 until December 2016, we got several workshops with the clients to come up with a new schedule, trying to integrate other dates – other contractor dates in the schedule. And for fairness, Nalcor had, as well, to reschedule the job, you know, to – and reschedule the job, give dates to other contractors and the – and redevelop, probably, their execution strategy for the powerhouse.

Through 2014 and 2016, we are receiving inputs like, the other contractor execution strategy maybe installing this component before that component or a certain sequence of work. And we were the only player until 2016, I think Astaldi was the only contractor working in the powerhouse – the powerhouse area. Like, ANDRITZ wasn't there, balance of plant was not there and Barnard-Pennecon were not in that powerhouse area; they were probably working the dams – on the dams, if I'm not mistaken.

So the integrated schedule wasn't that needed, probably, at that time, and we were receiving inputs.

Following 2016, with a new approval of the baseline schedule and the schedule we were following until the date of termination, the dates were fixed. So there were no reason why we couldn't be given some of the execution strategies of other contractors. I can give you simply an example why it's – why we needed that. Schedule was one thing – the dates, but it's high level – the interface dates we have are high level. For example, July 30, the balance-of-plant contractor is mobilizing to site. Like, it wasn't clear where's – where are the – where are they sitting – where they will have the laydown areas. Is it on the tail race, the North Service Bay, is it South Service Bay?

It was always in the progress meetings we would be receiving: You have two weeks, Astaldi, to relocate those trailers from that area to somewhere else because balance of plant are coming. Or: You have less than a month to – to

demob completely from the tail race to the North Service Bay; ANDRITZ is coming or CANMEC are coming to mobilize.

Like, if we receive those information, those, like dates or some executions strategies behind some dates, we could plan ahead, efficiently. Like, probably we could start four months ahead that – you know, instead of having – it's clear disruption, you know, go and relocate your areas from one – you're relocating few hundreds men. It's 400, 300 men, it's complete laydown from the tail race to the North Service Bay.

We could have done that more efficiently. This is one example.

You would go with – to a progress meeting and you would receive a list of 300 lines of piping to be handed over to a – with a time frame. You have one month and a half to hand over those areas because Cahill-Ganotec need the pipes. For sure Cahill-Ganotec needs the pipe, you know, but those type of information could be given ahead of time. We don't have people sitting on site, waiting for such an instruction. We have a plan, they are allocated to certain areas. So you have probably 30 pipefitters, or ironworkers, or carpenters – they have a clear schedule.

When you come to a contractor and tell them you have a month and a half, you're changing his plans, or you're asking him – it's not one or two guys that – the allocation of one or two guys; you're talking – you need to assign a few crews to do those – those requests.

We could have done better job, I would say, like not us as the construction-site team, on – with Nalcor. Probably, they could have built the execution plan for the powerhouse by collecting the independent execution plans for every contractor, do a comprehensive one that will integrate all of them and share a bit a log-term plan with the contractor so we could have – definitely work easier.

I remember we moved from South Service Bay to North Service Bay to a – to the tail-race area. The intake area, we had to – like, it – everything was on a short term, like: You'll have to relocate the areas. And it did not happen, like what's – and that's why we kept asking: When do you

want you these – those trailers to be relocated? When is the transmission line crossing certain laydown, instead of telling us you have two weeks because you have a dome under the transmission line that will be pulled or (inaudible).

So, things could have been more efficient with better sharing of information. And about the execution, more than just the dates, the dates can be at a higher level, but they will mean nothing. Like, we need to know how those dates – or what are the logistics behind, at least, the main dates.

And when it came to a – when it came to the sharing of integrated – integration schedule, it happen – every week we had an integration schedule on site – integration meeting, we call it on site, where you got the contractors present, all of them. I attended some, the construction manager, Tim, and his team definitely attended every single one. Schedules were shared and they reflected, probably three to six weeks – look ahead – dates. Which was helpful, like it was helpful for the three weeks and the six weeks work you had to do. But they did not have, like, some bigger picture, probably for the next three or four months, how the logistics around site will be changed.

This is my take on this.

MR. LEARMONTH: So I don't understand – maybe you can explain.

Why wouldn't it be, not only to the contractor's advantage but to Nalcor's advantage, to have an integrated schedule so that there could be coordination among the contractors?

MR. BADER: For multiple reasons where at the beginning, probably – simply, they did not know the dates because they were still negotiating with other contractors. Like, the – the project had to be rescheduled, like we had to reschedule the job with Nalcor. So definitely, they had some planning to do, and they had to develop and agree on dates with other contractors.

So commercially, they had a challenge to get the dates, or to resolve the problems. Then once they got them –

MR. LEARMONTH: Thank you.

MR. BADER: – I just think, probably, they did not to enough, the exercise, to develop the full execution. If I would be working as a construction manager for Nalcor, this will be my first task, to try to integrate the execution plans. This part of my job. I'm not saying they didn't do it, they may have done it, but we don't have it or we – it wasn't shared with us.

MR. LEARMONTH: Right.

MR. BADER: So, that's –

MR. LEARMONTH: You – Mr. Delarosbil, you said that – I think you said that you didn't take the initiative to meet with the other contractors to, you know, work out, coordinate your schedules because (inaudible) frowned upon by Nalcor. Did you say?

MR. DELAROSBIL: Well, it was – it wasn't up to me to change the other contractors' schedule or make deals or do those kinds of things. I didn't have the – I wasn't allowed to do that.

MR. LEARMONTH: But if you'd met with, well, let's say, one other contractor, couldn't you have some – achieve some degree of coordination, even without the –

MR. DELAROSBIL: Well –

MR. LEARMONTH: – assistance of Nalcor?

MR. DELAROSBIL: Not with the – not without the approval.

MR. LEARMONTH: Not without the approval. Okay, very good.

MR. DELAROSBIL: Simple coordination, lifting something or something like that, but nothing that – direct to the project.

MR. LEARMONTH: Okay.

MR. DELAROSBIL: You know, not having that schedule just affected our ability to plan and do – and build a strategy to build the work. And we did request – you know, I made a – I made the suggestion a couple of times at meetings, I

don't think it's anything in writing, but what I was – what I had requested was a weekly meeting with the scheduler – or the project engineer, whoever – the decision-maker and the construction managers so that we could go through a detail, I mean a real detailed plan, step by step, of what we were going to do for the week. But we needed decision-makers at that meeting, but that never came about.

MR. LEARMONTH: All right.

I now want to turn to some documents that I believe you're familiar with, Mr. Delarosbil.

MR. DELAROSBIL: Okay.

MR. LEARMONTH: The first being the Bridge Agreement, which is Exhibit P-03028. And that's tab 4 in your –

MR. DELAROSBIL: Right.

MR. LEARMONTH: – volume 1 of your book of documents.

MR. DELAROSBIL: Right.

MR. LEARMONTH: Can you turn that up?

MR. DELAROSBIL: Mm-hmm.

MR. LEARMONTH: Okay.

What were the circumstances, to your knowledge, that led to the signing of this Bridge Agreement?

MR. DELAROSBIL: That – well, it was – it came out of negotiations that happened just prior or during the time – as you can see it's July 2016, I got there in May – or, no, I'm sorry, it was ... The Bridge Agreement was a negotiation that was handled prior, between Nalcor and Astaldi on an agreement to move ahead and work together, and they had put a plan. They realized that to move ahead – we had already exhausted what was left in the LMax. The LMax is the labour repayment. So this was a way to provide funding until a complete agreement was done.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: So this was about –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – \$150 million or something.

MR. LEARMONTH: Yeah, I think it was –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – 150, but – so at this point, just to be – perhaps it's being too blunt, but is it correct that at this point Astaldi was out of cash?

MR. DELAROSBIL: Yeah, Astaldi was out of cash for –

MR. LEARMONTH: Yeah, and it had reached the point with – it was up to the LMax, so that any other –

MR. DELAROSBIL: That expired all the –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – labour component on the job.

MR. LEARMONTH: So that Astaldi would have to pay for any labour costs –

MR. DELAROSBIL: These were additional –

MR. LEARMONTH: – on its own –

MR. DELAROSBIL: – yeah.

MR. LEARMONTH: – and it didn't have the money or it wasn't prepared to put up the –

MR. DELAROSBIL: It wasn't –

MR. LEARMONTH: – money.

MR. DELAROSBIL: – prepared to ...

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: Okay, now this Bridge Agreement – I just want to refer to Exhibit P-

01677 which is in tab 1 of your documents. This is the Grant Thornton report.

And then page 30 of Exhibit P-01677, beginning on line 20, it says: "We reviewed various correspondence between Nalcor and Astaldi and have noted that negotiations continued until the parties executed a bridge agreement for an additional \$150 million on July 27, 2016. The agreement dictated that during the bridge agreement period, July to October 2016, all payments for labour and non-labour components for work completed would be made entirely on a pro-rata basis of pre-defined monthly payment values for specified installed volumes of concrete and the erection of specified structural steel components. Actual travel costs would continue to be reimbursed as incurred."

Is that a reasonable summary of that part of the – ?

MR. DELAROSBIL: Yeah, that is a good summary. Yes.

MR. LEARMONTH: Okay.

The next document – so this is a Bridge Agreement. And so it's a bridge to what turned out to be the completion –

MR. DELAROSBIL: Completion agreement.

MR. LEARMONTH: Okay, so if we turn to tab 5, Exhibit P-03029, this is the Completion Contract.

Page 3 it says effective as of December 1, 2017. And if we turn to page –

THE COMMISSIONER: 2016 – I think it's 2016.

MR. LEARMONTH: Yes, 2016. December 1, 2016.

And if we turn to page 15 of the document, it was signed on February 14, 2017, with the effective date of December 1, 2016. Were you involved in the negotiations for this agreement or were you aware of the negotiations?

MR. DELAROSBIL: Yeah, I was aware and I was part of the team negotiating the agreement.

MR. LEARMONTH: All right.

Now, for the Completion Contract, just if we go back to Exhibit P-01677, which is tab 1 – and that’s the Grant Thornton report – at page 31.

Lines 1 to 10, it says, Completion Contract: “The bridge agreement was extended until November 30, 2016. While the bridge agreement was in effect, Astaldi continued working” on “the job site and continued negotiating with Nalcor. These negotiations led to the completion contract which became effective as of December 1, 2016. The total contract price was \$1.83 billion and was inclusive of the scope of the original contract and all change orders up to and including November 30, 2016. In addition, PCN-0705 was issued to increase the package budget by another \$78 million for additional travel and escalation related to the completion contract. This settlement of \$884 million” – that’s \$806 plus \$78 million – “resulted in a total package budget of \$1.908 billion related to the completion contract.”

So under the completion contract there was a payment of \$884 million, is that correct, less the amount in the Bridge Agreement?

MR. DELAROSBIL: That’s right. Yeah.

MR. LEARMONTH: Yeah.

So you were involved in negotiations for that, were you?

MR. DELAROSBIL: I sat around the negotiation table. The final negotiation was ironed out by Francesco Rotundi, Lance Clarke. I imagine Gilbert would have been involved and Stan Marshall.

MR. LEARMONTH: Yeah. So the Bridge Agreement provided sufficient funding to get you through a period of time, but –

MR. DELAROSBIL: But it was contemplated to get us to complete the work. There was an additional \$50 million of potential extraordinary risk for things not encountered. That’s not here but that could have been added, but that was done at substantial completion.

MR. LEARMONTH: Yes.

And the next document is at tab 6, the one that’s P-03030. It’s tab 6 of volume 1. This is a Settlement Agreement, effective as of December 14, 2017.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: Were you involved in the negotiation of this Settlement Agreement?

MR. DELAROSBIL: The final negotiation was handled with Lance Clarke and Francesco Rotundi. I was part of developing the amount of money and putting together the package that we negotiated for settlement, but the agreement itself was done by my senior managers, right?

MR. LEARMONTH: All right. Now, under this Settlement Agreement I understand that Nalcor paid an additional \$20 million?

MR. DELAROSBIL: That’s right, Sir.

MR. LEARMONTH: That’s the amount of the settlement. And I notice that there’s a – as there was in the Completion Agreement there was a limited mutual release of further claims.

I’m turning to page 5 of Exhibit P-03030. It says, Mutual Release: “Subject to paragraph 8 and except for those items listed in Appendix A to this 2017 Settlement, Contractor and Company mutually and irrevocably and unconditionally release, waive and forever discharges each other, their respective affiliates and related companies and their respective directors, officers, shareholders, agents, representatives, employees, successors and assigns both present and former, from any and all claims, demands, actions, causes of actions, complaints, losses, interests, costs (direct and indirect) and/or damages of any kind or nature, whether known or unknown or ought to have been known, that arise out of or relate to the Agreement and Contractor’s performance of the Work from November 30, 2016, up to and including December 14, 2017.”

And there’s a similar release in the completion – or the completion agreement.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: And the only exception to that according to this – the wording to this agreement is found on page 7 of the document, Appendix A. It says Exclusions from the Provisions of Paragraphs 3(a) and 7. Seven is the release clause. So, can you turn to page 7?

Yeah, so these items were excluded, so that means that they're still – they weren't resolved, I guess. Do you know if any of these items on – in Appendix A have been resolved?

MR. DELAROSBIL: No, nothing's been resolved.

MR. LEARMONTH: Nothing's been resolved, so –

MR. DELAROSBIL: Hang on – no, I'm wrong there, Sir. There's – I think the Emergency Site Services was resolved. Of late – as of a couple of weeks ago, we found out that the – I think the ICS calculation was revised.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: But we weren't paid for it. Various Field Work Orders, number 61, Nalcor took advantage of raking back about \$800,000 from us in the definition of change order 61. Embedded – yeah, so the great majority of – (inaudible) temporary dewatering – may I let Georges have a look at a couple of these to –

MR. LEARMONTH: By all means.

MR. DELAROSBIL: – ensure that –?

MR. LEARMONTH: Well, I don't need a detailed –

MR. DELAROSBIL: No, but –

MR. LEARMONTH: – list but –

MR. DELAROSBIL: – I would say that there were some that were settled, some that are not.

MR. LEARMONTH: Okay.

MR. DELAROSBIL: You know –

MR. LEARMONTH: And so some of them are outstanding –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – and –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – presumably will be dealt with in some way in the arbitration –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – is that it?

MR. DELAROSBIL: Have we been paid for them? No.

MR. LEARMONTH: Okay.

All right, the next document is at tab 7 of your volume 1. It's P-03031. This is the 2018 Re-Advance Agreement dated May 29, 2018; amended June 11, 2018. Were you involved in the negotiation of this agreement, the re-advance agreement?

MR. DELAROSBIL: Very limited. Very limited involvement, most of these discussions were held between Francesco and Lance. I know I signed off on it –

MR. LEARMONTH: Yeah –

MR. DELAROSBIL: – you know?

MR. LEARMONTH: – you did sign on page 6.

MR. DELAROSBIL: Yeah –

MR. LEARMONTH: That's why – yeah.

MR. DELAROSBIL: – I did. I was the responsible, but that's after reviewing it. I wasn't responsible for the negotiation. That's why I'm trying to clear it.

MR. LEARMONTH: The agreement speaks for itself but –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – can you – if you were involved in negotiation, can you give us just a very general, non-binding as to your understanding of the purpose of it or the effect of it?

MR. DELAROSBIL: Well, the purpose of it is – Astaldi was on hard times, right? The company was facing some financial difficulties and was looking for some assistance in being able to push off some of the re-advance payments that were owed to Nalcor in – with – to buy some time to be able sort out the financial situations that Astaldi S.p.A were facing.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: There was a lot of things – I would be speculating now, but there was a lot of things going on at the time with Astaldi S.p.A –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – with concessions and sales and – in other projects in other parts of the world.

MR. LEARMONTH: But it appears, when we look back through all these contracts, that they were – the purpose of them was to address the fact that Astaldi was out of money on this contract and presumably would have difficulty continuing without further funding from Nalcor. Is that a – that's a very general statement, but is that your understanding?

MR. DELAROSBIL: That is our – that is clearly my understanding, and I don't want to jeopardize anything in the arbitration here so –

MR. LEARMONTH: No, no I'm not – I'm mindful of that.

MR. DELAROSBIL: I'm trying to be very cautious when I answer because, you know, I don't want to prejudice –

MR. LEARMONTH: Okay, well, I said it was non-binding, so I'm not going to hold you to it –

MR. DELAROSBIL: Oh –

MR. LEARMONTH: – but I just wanted –

MR. DELAROSBIL: Okay.

MR. LEARMONTH: – so people will understand –

MR. DELAROSBIL: All right.

MR. LEARMONTH: – that this has to do with funding. Yeah.

MR. DELAROSBIL: Well, yeah, it had to do with funding. We had things up there as you can see in the –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – settlement agreement that were still outstanding –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – to be paid, and then we still had some delay claims that had to be paid. You know it wasn't Nalcor's fault there was a delay. There was a delay by another contractor which impacted –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – our work which costs us money so –

MR. LEARMONTH: So, those are items that will be decided by the –

MR. DELAROSBIL: Absolutely.

MR. LEARMONTH: – court of arbitration, so –

MR. DELAROSBIL: Absolutely. Yeah.

MR. LEARMONTH: – we'll leave it at that.

MR. DELAROSBIL: Yes, certainly.

MR. LEARMONTH: The next document, the funding contract, this is P-03032 –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – tab 8.

MR. DELAROSBIL: Tab 8.

MR. LEARMONTH: Were you involved in the negotiation of this contract? We don't have a signed copy.

MR. DELAROSBIL: Yeah. Well, because this isn't the final document. It's incentive funding contract, the last – the way they phrase it, right? So –

MR. LEARMONTH: Yeah. And there's reference on pages 3 and 4 of that agreement to the recitals of the references to the "Bridge Agreement," the "Completion Contract" and "Settlement Agreement" –

MR. DELAROSBIL: Yup.

MR. LEARMONTH: – "Re-Advance Agreement." Okay, so this another funding contract. Okay.

MR. DELAROSBIL: Yeah. Well, it's to provide funds to accelerate portions of the work. You know, this –

MR. LEARMONTH: What do you mean by that? Accelerate portions of the work.

MR. DELAROSBIL: It was to make up the time that was lost in the delays of the company's other contractors, installations that would accelerate the work to be able to help the schedule.

MR. LEARMONTH: Okay.

Next document is at tab 9.

MR. DELAROSBIL: Mm-hmm.

MR. LEARMONTH: And this is – can you identify this document? Exhibit P-03132.

MR. DELAROSBIL: Mm-hmm.

MR. LEARMONTH: Can you identify this document?

MR. DELAROSBIL: Yes.

MR. LEARMONTH: Okay. What is it?

MR. DELAROSBIL: It's basically Nalcor giving us a – notice of termination we're talking about, right?

MR. LEARMONTH: Okay.

MR. DELAROSBIL: Yeah. Okay.

So, yeah, it's Nalcor giving us notice that we are terminated.

MR. LEARMONTH: Yeah. And that was final, was it? I mean, after that it was demobilization of the site?

MR. DELAROSBIL: That's right, Sir, yes. We were off site by then.

MR. LEARMONTH: Pardon?

MR. DELAROSBIL: We were off site by then, hey?

MR. BADER: Yeah, yeah, we were off site.

MR. DELAROSBIL: We were off site by then.

MR. LEARMONTH: Well, at the time of termination, you were off site?

MR. DELAROSBIL: Yup.

MR. LEARMONTH: Okay, so then you had –

MR. DELAROSBIL: We left site the 26th or 28th of October.

MR. LEARMONTH: Okay.

MR. DELAROSBIL: We were told to leave site.

MR. LEARMONTH: Yeah. And that was the end of your work on the contract. Is that right?

MR. DELAROSBIL: That's right, Sir, yes.

MR. LEARMONTH: Yeah. Okay.

I am now going to turn to some documents in binder 2.

There's a – at tab 42, Exhibit P-03058.

MR. DELAROSBIL: (Inaudible.)

MR. LEARMONTH: Can you identify that document, please?

MR. DELAROSBIL: It's a progress-meeting document from 2014, Sir.

MR. LEARMONTH: Yeah. And what is the effect of that – can you give a summary of what's going on at this meeting that's covered?

MR. DELAROSBIL: Personally, because of the date I wasn't there. It's 2014. So I imagine they're going through the same minutes of any progress meeting we do have. Go through the safety quality environment and the operations of the job schedule.

MR. LEARMONTH: Okay.

MR. DELAROSBIL: High level, these – I imagine, at the start, they were probably very intense meetings, because there seems to be a lot here. But they were further broken – the meetings – the progress meeting was further broken down into schedule meetings, quality meetings, safety meetings.

MR. LEARMONTH: Yeah.

Now, tab 43, Exhibit P-03059.

MR. DELAROSBIL: Mm-hmm.

MR. LEARMONTH: The December 8, 2014, letter to – from Muskrat Falls Corporation to José Alves, then project manager. And this is a letter notifying that Nalcor will provide the services of Bill Knox and Roy Collier – it states that they will no longer be employees of the Muskrat Falls Corporation, but they'd be taken on by the contractor.

Do you know what this – Mr. Bader, do you know what the circumstances were at this time, whereby, Bill Knox and Roy Collier were – their services were given to Astaldi?

MR. BADER: Yeah. Both Mr. Collier and Mr. Knox use to work as – or used to assume the construction managers' roles for Nalcor. And, at that time, Nalcor suggested that, or they kept

saying that you need – Astaldi, you need to reinforce your construction team.

And, at that period of time, I believe, Giacomo, who was the project manager, worked out a plan with Nalcor, that he's open to have the individuals Nalcor is suggesting, such as Mr. Knox and Collier, to join Astaldi's team, and to have a stronger construction management team. So the two personnel were assigned to Astaldi, I think, following a notice from – oh yeah, like, Astaldi hired them basically. And I think there was an arrangement for their fees to be covered – if I remember – if I recall – 50/50 between Nalcor and Astaldi and the intention was to strengthen the construction team.

MR. LEARMONTH: And did it strengthen the team, in your view?

MR. BADER: Yeah, definitely there's lots of improvements that the two gentlemen brought to the team. It was – they did not have an easy mission because the identity will be lost when you're working for a contractor and client pretty much at the same time, although they were assigned to Astaldi.

And commercially it became complicated because you would normally rely on the construction managers to pretty much identify the changes and to definitely build the job, but as well to assist, commercially, with guidelines on where we have to ask for extra work. Where is it – what's the scope of work? So it became a bit complicated for them because their mission, by itself, wasn't that clear. Now, on the operation side they brought value – absolutely.

MR. LEARMONTH: All right.

MR. BADER: I think it wasn't easy for them. So each one went and took a different path after that. Mr. Knox is back to – back with Nalcor and I believe Mr. Collier is working for another contractor.

MR. LEARMONTH: Okay.

MR. BADER: They left a year after this letter.

MR. LEARMONTH: But it was helpful, was it?

MR. BADER: Yeah, of course.

MR. LEARMONTH: Yes.

All right, tab 45 is a monthly progress report – Exhibit P-03061. It's a document titled *Monthly Progress Report No. 011*, December 25, 2014. So that's the end of the first year. If we go to page 9 there's an Executive Summary, it says: "At the end of the current reporting period, Astaldi employed **1,676** employees that were working on Logistics, Procurement, Engineering, Construction and supervision of the work."

So was that – the 1,676 employees at that time, how did those numbers fluctuate? Did they go up higher than that or lower? Just give me some general –

MR. BADER: Yeah.

MR. LEARMONTH: – information on that.

MR. BADER: Well, the peak manpower on site was – on site was 20, 25, 25 –

MR. DELAROSBIL: (Inaudible.)

MR. BADER: – yeah, 2,300, 2,500.

MR. LEARMONTH: For Astaldi.

MR. BADER: Yeah.

MR. DELAROSBIL: (Inaudible.)

MR. LEARMONTH: And when was that?

MR. BADER: I'd say summer 2015 and probably as well 2016.

MR. LEARMONTH: That's when Mr. Delarosbil was there. Yeah.

MR. BADER: Yeah.

MR. LEARMONTH: Okay.

MR. BADER: Yes. And the 1,676, they're not on site, right? Those are three shifts. So you would have a day and night and 30 per cent of those individuals will be at home.

MR. LEARMONTH: Yeah. So the 1,676 would not be – represent the number of people on site at any given time, that's just –

MR. DELAROSBIL: On the payroll.

MR. LEARMONTH: – the number of employees –

MR. BADER: Yeah.

MR. DELAROSBIL: On payroll.

MR. LEARMONTH: – one shift. Yeah.

If we turn to page 10 of that document there's a reference here at the bottom: "**Integrated Cover Structure ... Progress (Units 1 & 2 Only):**

"Structural Steel Fabrication Completed: **100%**

"Cladding Completed ... **100%**

"Decking Completed: **100%**"

So at this point the – for units one and two, only, everything is finalized. Is that correct?

MR. BADER: Not the cladding, though. The cladding was ordered, but the cladding wasn't installed, like (inaudible) –

MR. LEARMONTH: But it says cladding completed.

MR. DELAROSBIL: Then it says: modified scope.

MR. LEARMONTH: Oh.

MR. BADER: Yeah, modified scope, yeah.

MR. LEARMONTH: And what does that mean in this context?

MR. BADER: At that period of time we decided to use tarps instead of permanent cladding. Well, part of the building was –

MR. SMITH: Excuse me, Mr. Commissioner, the microphone is off again.

MR. BADER: Okay.

Part of the unit one included the cladding and the South Service Bay, and the remaining part was covered by tarps and some other hardware.

MR. LEARMONTH: Okay, but it was fully usable, was it?

MR. BADER: Yeah –

MR. LEARMONTH: For units one and two.

MR. BADER: No, not – well, the cranes were not commissioned yet – the cranes, and this is, I believe, like physical completion. I don't believe that the turnover, like, quality checks and the turnover of the building was complete. So the building wasn't yet ready to be used. The shelter was there but, like, you would have to certify, you would have to have –

MR. LEARMONTH: Quality assurance?

MR. BADER: Yes.

MR. LEARMONTH: But did it provide any benefit, even in that state? Or was it –

MR. BADER: Yeah, like, I think I remember probably we got some crews started to do some work in the South Service Bay shafts, if I'm not mistaken, and probably some pours preparation on the unit one.

MR. LEARMONTH: Okay.

MR. BADER: I – it should be probably somewhere in this report. I can check. But we were progressing some pours –

MR. LEARMONTH: All right.

MR. BADER: – in the powerhouse, yes.

MR. LEARMONTH: Okay.

Tab 46, Exhibit P-03025, a letter – February 17, 2015 – from Muskrat Falls Corporation, Scott O'Brien to Giacomo Orsatti.

MR. BADER: Yes.

MR. LEARMONTH: Now, this says: "On February 10, 2015 Contractor provided a draft 120-day construction schedule. This schedule

was the outcome of a commitment made at the Alignment Meetings held in Happy Valley-Goose Bay on January 27 On February 11, 2015 Astaldi provided a revised 120-day schedule which you reviewed with Mr. Lance Clarke and Mr. Bruce Hallock at a site meeting to which Mr. Ed Bush and Mr. Ron Power attended"

Later – the next paragraph: "Over the past weekend, February 14 and 15 ... Company became aware that Contractor was going to cease work in the Power House. In Contractor's email of February 16 ... Contractor confirmed that work had been suspended in the Power House until such time as the overhead cranes in the ICS are commissioned. Contractor stated it planned to reassign the workers from the Power House to the Spillway and the South Dam."

So, what is the issue here? You should be familiar with that –

MR. BADER: Yeah.

MR. LEARMONTH: – Mr. Bader.

MR. BADER: Proco was terminated at the end of December of 2014.

MR. LEARMONTH: Proco?

MR. BADER: Proco, yeah.

MR. LEARMONTH: Yeah,

MR. BADER: Yes. And following the termination we did not have – as Astaldi, we did not have a proper or complete turnover of the structure. So we couldn't really certify if the building is ready for use or if there's – if it's safe to run the overhead cranes without doing some engineering checks on the building.

From that – we received some information earlier in 2015 from Proco about the status of the building, such as, just to give you an example, some steel connections probably were missing one bolt out of eight, or torqueing reports were not finalized and – so, some turnover issues, pretty much the building we had to do an inspection by an engineer –

MR. LEARMONTH: Yeah.

MR. BADER: – to certify the building. And, actually, that was true.

Like, Nalcor received a 120-day schedule. The 120-day schedule was made with an assumption that the building was ready for it to be put in service. And we have identified that, no, maybe it's a safety risk without having – the documentations are not complete. So we decided to take two weeks to – when some crews of iron workers, our iron workers at that time – to do a survey for the building, doing pretty much a full inspection of all connections, columns, base plates, trusses, and we got it certified. Then we allowed people to work inside following that, and we commissioned (inaudible).

We were facing – we're facing two conditions. Do we dismantle the ICS? Well, you can't just go and dismantle a building. You will have to work out procedures, and you have to do a lot of work to plan. You'll have to mobilize big cranes. So – and the easiest option was to invest two weeks more. Commission seven or eight overhead cranes and spend a year profiting from that structure, and that was the decision. It was justified as the cheapest decision at that time. And I think there's a follow-up letter that we sent to Mr. O'Brien –

MR. LEARMONTH: Yeah.

MR. BADER: – explaining that.

MR. LEARMONTH: Okay, but there – okay, let's just go to tab 48 now, which is Exhibit P-03063. This is notification by Astaldi to Nalcor that the ICS temporary structure had been inspected and certified?

MR. BADER: Yes.

MR. LEARMONTH: So, why would it have taken so long, you know, in December 2014 the – in that minute that I referred to, it was 100 per cent completed. So, why would it take from December to March to have it certified? That seems, on the surface, to be a long time.

MR. BADER: Yes and no. Because – well, it's two months, right. It's really half of January and February, if you want to think of it this way. Because you normally mobilize to site the first week of January by the –

MR. LEARMONTH: Yeah.

MR. BADER: – time we get – it's 45 days. And 45 days to get it commissioned and to have the cranes functioning, but we got crews working inside the powerhouse way earlier, using some mobile cranes from the site until we justified – or we allowed to put the overhead crane in use.

So, 45 days taking over work from another contractor and trying to put a puzzle together, you know, it's a big building. You have lots of connections to check. Lots of – and you'll have to do this in the air at a cold temperature.

MR. LEARMONTH: Yeah.

MR. BADER: We have people in the main lift inspecting and probably shimming in some areas, girders, rails. So, I think it's a reasonable time.

MR. LEARMONTH: But isn't this an urgent matter?

MR. BADER: It is. But, you know, like, to do an inspection in that type, you would put two crews and two different JLGs circling the building. Then you will go to the engineer, the engineer will recommend some – what to do, where to shim, where to add, where to – how to change things. Then you will send the crews again. Then, once they are finished, the engineer will go and re-inspect the building, or at least investigate the – it's a process. So, that's...

MR. LEARMONTH: Okay.

Tab 50, Exhibit P-03026, a letter from Muskrat Falls Corporation to Astaldi, March 13. And there's discussion here about the two options regarding the ICS. One being "to retain and work within and around the portion of the structure constructed to-date. Second is to demolish the building immediately."

So, obviously, those two options were under consideration at the time. Did Nalcor have any say as to whether the ICS should be removed and decommissioned or destroyed, or was that a decision of Astaldi?

MR. BADER: I think after March, once the building was commissioned, the pressures stop.

Like, they – everyone understood that it's the best option at the – at that time was to keep the building, because you got seven hooks, or seven cranes put in service, and to dismantle a big structure you just can't send crews and – you will have to mobilize a subcontractor and mobilize big equipment, and it's not just as easy as let's go to option two. It's a few months of work.

So that's why we decided at that time, the best – or the best option is to do it in the next winter. Less progression at one and two for – from March until the next Christmas, and we will have enough time to plan it efficiently. And we took the building down in 20 days in the next winter because we did the proper planning. We mobilized the right –

MR. LEARMONTH: Yeah.

MR. BADER: – the right team, the right sub and – subcontractor, and we did it in 20 days.

MR. LEARMONTH: But with this delay, I mean –

MR. BADER: Yeah.

MR. LEARMONTH: – the benefit it would have brought to the project of having an ICS is slipping. Isn't that correct?

MR. BADER: Yes.

MR. LEARMONTH: Yeah.

Okay. If we turn to page 54 – tab 54, Exhibit P-03067. This is a CBC article: "Abandoning Muskrat Falls 'dome' is Astaldi's decision, Nalcor VP" – that's Gilbert Bennett – "says."

Now, is that correct? That it was Astaldi's decision and not Nalcor's?

MR. BADER: Somebody had to make the decision. Now, I'm sure Nalcor was happy with the decision, because I personally presented the plan in December 2014. And in that plan we did not include any activities for unit 3 and 4 for the ICS, and we explained the pouring plan or the pours taking place at various areas. And I think those two meetings were a good planning session, and most of Nalcor's personnel,

directors and managers were there and nobody objected. So, normally silence is an acceptance. So probably they did not say: yes, we accept, but they did not object.

MR. LEARMONTH: But isn't it a situation that it was either Astaldi's decision, or right –

MR. BADER: Yeah.

MR. LEARMONTH: – to make a decision, or Nalcor's, or a joint decision? Which of those three are you saying it was?

MR. BADER: So, as mentioned yesterday, since July 2014 until December, we were doing joint meetings, weekly meetings, to track the ICS structure. And you would probably – or someone would understand that Astaldi had to do the ICS because it was in the execution plan. Nalcor was expecting Astaldi to do the ICS. They put a task force and even Nalcor's individual were tracking progress – ICS building process.

MR. LEARMONTH: Yeah.

MR. BADER: So we believe it was an important thing to do for the job, and everyone was focusing on building the ICS until December.

MR. LEARMONTH: Yeah.

MR. BADER: We all realized the challenges behind having it. Astaldi definitely presented the plan and said, okay, you know, we'll have to replan the work in a different way in our execution strategies for various reasons for – so we – at that period of time we did not think, or we did not consider – did not approach it from a point of view of late start, or delayed survey, or delayed overhead or issues in design; we said we are where we are.

Now, if we look forward and really plan the work, the most efficient way is to start progressing the ICS at unit 2. And we did not hear any objection or – from anyone present in that room. At least, myself, I did not hear it.

MR. LEARMONTH: All right.

Now, at this point – I mean, we’re in May – like, the original schedule is gone out the window. Is that –

MR. BADER: Yes. Yes.

MR. LEARMONTH: – correct? I mean, absolutely.

MR. BADER: The initial baseline had negative floats; negative floats means delay, right?

MR. LEARMONTH: Yeah.

MR. BADER: That’s so – so, yes –

MR. LEARMONTH: Yeah.

MR. BADER: – they would have.

MR. LEARMONTH: So would we –

MR. BADER: And –

MR. LEARMONTH: Go ahead.

MR. BADER: I was just saying that the dates were already –

MR. LEARMONTH: Yeah.

MR. BADER: – a strict, tight schedule. And with all that, for sure, the days were gone.

MR. LEARMONTH: Yeah.

So when I look at page 3 of this exhibit, P-03067 –

MR. BADER: I’m sorry, which tab? Page 3 of ...?

MR. LEARMONTH: Well, that’s tab – same tab, 54. If we look at page 3, this is Mr. (inaudible) who – a reference to something Mr. Bennett said. He says on page 3 on the bottom: “‘The progress is improving, and their objective is to meet the milestone at the end of the project. They will still need to recover the delays that they’ve seen.’”

“He said that time can still be made up, as most of the contractors have some ‘float time’ to work with.”

Now, do you believe that’s an accurate statement of the situation at that time?

MR. BADER: I never had the schedule of the other contractors.

MR. LEARMONTH: Yeah.

MR. BADER: You know, and I understand it from – like, a manager has to be always optimistic and focusing on getting the project back on track. That’s – we all do that. We all push our teams and push the strengths of the individuals to come up with solutions. And following May 2015 we had several workshops, us and Nalcor –

MR. LEARMONTH: Yeah. Yeah.

MR. BADER: – to try to integrate the schedules to see what we can do to –

MR. LEARMONTH: Yeah.

MR. BADER: – if we can reschedule the work in a certain sequence, allowing other contractors –

MR. LEARMONTH: Yeah.

MR. BADER: – to access earlier. We tried.

MR. LEARMONTH: Yeah.

MR. BADER: Now, at that time, to have – to fully recover the dates, I never had access to the full Nalcor schedule to assess. I knew definitely it’s a long shot, it’s a stretch, but I believe that they were – everyone was trying to recover the delays.

MR. LEARMONTH: But it’s great to be optimistic, but isn’t it more important to be realistic?

MR. BADER: Yes, but how – if they don’t do the planning – I’m not defending Mr. Bennett, but if he doesn’t – if the planning is not redone, he can’t forecast the date. So at that period of time maybe he’s just saying I still want the dates to be achieved, maybe.

MR. LEARMONTH: Well – no, but –

MR. BADER: But an assessment should be done. I don't think the assessment was done at that time.

MR. LEARMONTH: Yeah.

MR. BADER: We were doing workshops.

MR. LEARMONTH: Yeah, but your – I know you can't speak for the other contractors, but your contract was – there was no way, at that point –

MR. BADER: No.

MR. LEARMONTH: – I suggest to you, that you were going to meet your schedule.

MR. BADER: Absolutely.

MR. LEARMONTH: Absolutely. Okay.

Tab 55, this is a question for Mr. Delarosbil. This is a letter that you sent to – May 30, 2015, to Scott O'Brien about the synopsis of specification thermal requirements. Can you explain the situation here?

THE COMMISSIONER: P-03027.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Yeah, basically we were just stating a position of our interpretation of some of the – of the specifications in the contract.

MR. LEARMONTH: Yeah, but this had to do with the curing time for –

MR. DELAROSBIL: Yeah, that had to do with the curing time, yeah.

MR. LEARMONTH: Okay, and what is the significance of this letter? Why would there be a dispute over this? Is it because if you have a shorter curing time, then you can get back to the work later so that if – increases the –

MR. DELAROSBIL: That's right. That's right.

MR. LEARMONTH: – the efficiency.

MR. DELAROSBIL: It decreases the cycle of building the work, you know.

MR. LEARMONTH: Yeah, so Nalcor wanted you to wait longer than you were prepared to, is that right?

MR. DELAROSBIL: That was their interpretation of the –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – specification.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: And we were trying to point 'em in the direction of where, how and what we believed and what we had used in the past as the interpretation of the specification. It wasn't to – it was actually to try and speed up the process.

MR. LEARMONTH: Yeah and how was that issue resolved?

MR. DELAROSBIL: Georges was intimately involved with the new thermal control plan we developed. Maybe you're better to speak of that or ...?

MR. LEARMONTH: No, but was your – the position that you asserted in this letter, was that eventually accepted by Nalcor or not?

MR. DELAROSBIL: Eventually we kept working on a thermal plan and came to an agreement. We've hired – we hired consultants, we gave them – and we came to an agreement sometime in 2016 on being able to accelerate the work based on our new thermal control plan.

MR. LEARMONTH: All right.

MR. DELAROSBIL: But it took a period of time to convince them that other things could be done.

MR. LEARMONTH: Okay.

Tab 56, Exhibit P-03068; it's a letter, June 12, 2015, to you from Scott O'Brien. Do you – have you reviewed this letter?

MR. DELAROSBIL: Yeah, I – yeah, I reviewed the letter. Yeah.

MR. LEARMONTH: And I – if we turn to page 2 of this letter under Mutual Release – the heading, Mutual Release (Exhibit 17): “Contractor’s position that the Mutual Release caused a delay to the start of the work is beyond comprehension. The Mutual Release offers only one, unambiguous meaning and application” et cetera.

What’s going on here? Is there a dispute about the effect of the mutual release?

MR. DELAROSBIL: Again, if you look at the date of the letter, it was sent to me, but I was just a new project manager at the time. And this was ongoing discussions between Nalcor and – so they were referencing Mr. Stefano’s letter.

MR. LEARMONTH: Okay.

MR. DELAROSBIL: Georges, can you answer this, on this mutual release at the time?

MR. BADER: I can’t really answer that because given the signature of the contracts, none of us was present in the room. But I would say it’s Astaldi’s expectations that they were treated – they should be treated fair and reasonable and in a fair and reasonable way.

And I’m assuming that Mr. Cerri was – from my understanding, was explaining to Nalcor that the late start had several impacts on – or the late signature of the contract made it a big challenge for Astaldi to do the job. And he’s kind of reminding of Nalcor with their commitment to be fair, reasonable and –

MR. LEARMONTH: Yeah.

MR. BADER: – honest people.

MR. LEARMONTH: And Mr. Palumbo discussed that issue –

MR. BADER: Yeah.

MR. LEARMONTH: – just early yesterday.

MR. BADER: Yeah.

MR. LEARMONTH: Okay.

Tab 58, Exhibit P-03070; this is an email from Edmund Martin to Gilbert Bennett and Auburn Warren, June 22, 2015. So that’s within six weeks or so of your arrival or seven weeks of your arrival, Mr. Delarosbil?

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: On page 22 of this slide –

CLERK: Sorry, which page?

MR. LEARMONTH: Page 22.

It says: “Astaldi concrete production rate vastly improved and Construction management team fully functional. Nalcor continues to support guidance and leadership.”

So was that a fair comment as of that date, June 2015? Things were up and running and ...

MR. DELAROSBIL: (Inaudible.)

MR. LEARMONTH: Did you have –

MR. DELAROSBIL: We were starting to meet our targets.

MR. LEARMONTH: Did you have communications with Mr. Martin directly?

MR. DELAROSBIL: No, I’ve only met Mr. Martin once. He was at the site, basically, a couple weeks after I started; he did a site visit. And, actually, I really appreciated his visit, if I can say that. I appreciated his visit and the fact that he came in to provide positive comments to the team.

MR. LEARMONTH: And you appreciated that.

MR. DELAROSBIL: Yeah –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – I appreciated the fact that he came in and did that, yeah.

MR. LEARMONTH: Yeah.

Okay. Tab 60; it's a letter from Astaldi to – it's signed by you to Muskrat Falls Corporation. And in the second-to-last paragraph you say: "Astaldi wishes to create a protected environment for the much more productive exercise of negotiating a cooperative path forward. In our view the best way to do so is to conduct negotiations 'off the record' and temporarily suspend contractual notice requirements while these negotiations continue, on a week by week basis if necessary"

THE COMMISSIONER: Excuse me, Mr. Learmonth, sorry, I'm lost right at the moment. What tab are we on and what exhibit?

MR. LEARMONTH: P-03072.

THE COMMISSIONER: Okay, and that's –

MR. LEARMONTH: Tab 60.

THE COMMISSIONER: – tab 60. And where are you at?

MR. LEARMONTH: Second-to-last paragraph.

THE COMMISSIONER: Okay, thank you.

MR. LEARMONTH: Do you see that paragraph I'm referring to?

MR. DELAROSBIL: Yes, Sir. Yeah.

MR. LEARMONTH: Okay.

So what are – what's going on here?

MR. DELAROSBIL: Well, basically, I – again, this was in response to Mr. Cerri's letter to our – just moving forward with his letter. So this has to do with some of the ongoing negotiations that our senior managers are having with Nalcor. And he's asking for – I – he is asking – I know I signed the letter.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: And – but the letter was structured – like, if you understand the way the correspondence works, I'm the corresponding guy that goes to Nalcor, Nalcor comes to me.

Like, Mr. O'Brien doesn't write all his letters, I'm sure, you know.

All I'm saying is that that was – I signed the letter off after being explained that this was part of the ongoing negotiations that Nalcor was having with Astaldi.

MR. LEARMONTH: Okay.

And at tab 62, Exhibit P-03073 is an email from Chelsea Beckett, Lower Churchill Project, to Lance Clarke, dated July 31. Now is – if you turn to page 2 of this exhibit, is this a – it's a without prejudice document, but is this the sort of road map plan –

MR. DELAROSBIL: Yeah –

MR. LEARMONTH: – which eventually dealt with the Settlement Agreement?

MR. DELAROSBIL: Bridge Agreement, completion agreement, yes.

MR. LEARMONTH: Yeah, the Bridge Agreement.

MR. DELAROSBIL: Yeah, that –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – is my understanding. That was the road map that was drafted out –

MR. LEARMONTH: Okay.

MR. DELAROSBIL: – and agreed to.

MR. LEARMONTH: And you were part of these discussions, were you?

MR. DELAROSBIL: No, I was not, Sir.

MR. LEARMONTH: No?

MR. DELAROSBIL: No, that was very early on. Giacomo Orsatti, who was the previous project manager, director for Astaldi, would've been in these conversations with Mr. Francesco Rotundi, I believe Lance Clarke for sure and – but I'm not aware of anyone else.

MR. LEARMONTH: All right.

Tab 63, Exhibit P-03075; it's a letter from the Muskrat Falls Corporation to Scott O'Brien to you. This has to do with a labour dispute and blockade at the site. What was the difference of opinion between Astaldi and Nalcor about this blockade and labour dispute?

MR. DELAROSBIL: Well, I mean, you know, we do – we did not control the people from the community or the nation to be able to stop work on a job site. Our argument was that was in – totally in Nalcor's control.

MR. LEARMONTH: And Nalcor was saying it was in your control?

MR. DELAROSBIL: Yeah, they said it's your problem, you know. They kept – they avoided these situations. It happened three or four times on the job and they avoided these situations instead of working together and providing some reassurance, you know.

You're a contractor on a job site, you're working, as I mentioned yesterday, close to a million dollars a day. You know, every day that goes by is a million, 2 million bucks. You got to take – this blockade happens the first day, not too bad, you've got the people on site, you're still working, the job's going on, you got fuel, you got equipment, everything's happening. But you have to understand, we got people flying in, flying out. The people that – and the people, the locals that we're hiring, can't come in to the job.

So now we can't build the work, we don't have the people, we're – we don't have the materials nor the supplies coming in, so we're asking for some help. But, hey, it's your problem, actually, that's as good as it gets. We've had meetings, contractor meetings, all the contractors put that response that it fell on deaf ears, they didn't care.

MR. LEARMONTH: Okay, well, if we turn to tab 64, Exhibit P-03076, the bottom of page 1 – and this is in reply to – this deals with the same issue that – it starts off, the letter, it's addressed to you, signed by Scott O'Brien: "On August 12, 2015 protestors commenced acts of civil disturbance at the entrance to the Muskrat Falls site" Then it goes on to give further elaboration.

And then the bottom paragraph of this document, 03076, says: "Pursuant to Company's letter of August 17 ... in response to Contractor's letter ... the labour dispute and blockade of the site are due to Contractor's fault and/or negligence which could have been avoided by reasonable diligence, including by failing to maintain labour peace in accordance" with Article 2 [sp. 32].

Can you give me some elaboration of what ...?

MR. DELAROSBIL: Yeah, there was – you know, at the time there was – the protests were – was by the Innu, the Innu Nation. They were protesting at the gates. There was a fight in the lunch trailer between an Innu member and – that worked for Astaldi and another person.

The expectation that we can control individuals to act or react is ludicrous. And this was just a way – they understood that – they understood this problem was a major financial problem – this was probably a 10-, \$20-million issue for Nalcor because of our impact, right? They understood there was a problem; they were just trying to find a way to hang it on us. That's as clear and as simple as I can put it.

To be honest, it took five days for a Nalcor representative to go meet with the Innu to resolve this issue when it could have been done in a day, you know, and that's my opinion.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: But, you know, you have a barricade at the gate, you deal with it, you know. You don't impact all the other contractors and expect that the – they expect not to pay for the issue. You deal with it.

But their strategy was to wait five days before having the meeting that was insisted on, on the first day. And so it could have been resolved in a day, limiting the impact to all the other contractors, but they decided not to do that. So why should that be our problem?

How can I control individuals on the job site that decides to punch somebody in the head? I can't do that. You know, I'm going to – I put respectful workplace policies in place, I have

safety meetings, I instruct people, I tell them how to behave, but I can't control the guy that makes a bad joke about another guy and he decides to punch him in the head. I can't control that. I can't make that a –

MR. LEARMONTH: But Nalcor was blaming you – your –

MR. DELAROSBIL: Absolutely.

MR. LEARMONTH: – for this.

MR. DELAROSBIL: Absolutely, right from the start.

MR. LEARMONTH: Okay.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: And then if we go to tab 66, that's Exhibit P-03078. This is a letter that you wrote on August 19, 2015. And this has to do with the same issue, does it not?

MR. DELAROSBIL: Yeah, basically, I think they're telling us that because we didn't send a letter with the impact that they weren't going to pay us again. It was all commercial. It's all commercial stuff. It's just commercial positioning. It's just what they do (inaudible).

MR. LEARMONTH: Well, this was – okay.

And then if we go to page 3 of this exhibit, second-last paragraph: "Contractor is, as previously stated in Contractor Letter ... tracking all cost and schedule impacts associated with this event and will notify" –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – "Company as soon as the results are known. Further, Contractor's primary focus, during this event, has been on the safety and health of Contractor and Subcontractor employees in the performance of work activities that could be reasonably executed. Contractor, reserves its rights at law, in respect to this Force Majeure event."

And then you said: "In closing, Contractor notes that, in a situation which would require cooperation and joint efforts (as exerted by

Contractor), Company instead lodges unjustified and unacceptable allegations of Contractor's fault and negligence."

MR. DELAROSBIL: That's right.

MR. LEARMONTH: So that's, in a nutshell, your position on –

MR. DELAROSBIL: Well, it's as I stated. It was – from my point of view, it was totally mishandled. Yeah.

MR. LEARMONTH: Okay.

Go – please turn to tab 69, which is Exhibit P-03081. Now, is this – this is a letter that's written by you. Can you tell me what the circumstances were surrounding the – your writing this letter?

MR. DELAROSBIL: The – I'm sorry, Sir.

MR. LEARMONTH: Is this another –

MR. DELAROSBIL: Yeah, it's just going on about the – basically the same subject, as you can see there's –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – one, two, three, four, five, six, seven, eight, nine, 10, 11, 12 letters. I mean, you know, we can sit down, have a meeting, discuss it, go through it and come to our senses, but it's trying to avoid the commercial and the blame for the situation.

MR. LEARMONTH: Well, did it get your anywhere? This letter?

MR. DELAROSBIL: Hey? Well, basically no, it never got us anywhere. This was never settled, except for rolling it all in the completion agreement.

MR. LEARMONTH: Okay. But it was addressed in one of the – in a completion agreement, was it?

MR. DELAROSBIL: Yeah, in the completion agreement, everything – all the costs were rolled into one package, you know. The job was re-estimated, and it took care – as I think you read

it out, Mr. Learmonth, it takes care of all the past, right?

MR. LEARMONTH: All right.

MR. DELAROSBIL: So ...

MR. LEARMONTH: Tab 71, Exhibit P-03083. It's a letter from you to Scott O'Brien. Last paragraph, it says: "To close out the issues surrounding this Force Majeure event and repeating the position stated in our letter ... Company will only agree to process a change order for a seven ... day extension to the Substantial Completion date with a zero dollar value."

Is that the offer that Nalcor made to resolve this?

MR. DELAROSBIL: They say we're going to give you seven days of additional schedule, but it doesn't recover any of the money. So if you have four of these at \$20 million, you're looking at \$80 million on a job, you know. I mean, Nalcor controls the agreements with labour; Nalcor controls the agreements with the Innu, and Nalcor controls the public relations with the town of Goose Bay, Labrador, Newfoundland. So they control all of that stuff.

You know, the people protesting are protesting against Nalcor. They're not protesting or the – whatever – but they're protesting against Nalcor. They're not protesting against Astaldi. They – you know, so why shouldn't we be compensated for our costs and our impacts? And, you know, and during these – we call them crises because they are for us. Can you imagine – you've got 1,500 people on site and you've got to fly these people home and then you got to fly the people back and then you got to tell your staff not to come in. Then your senior staff are stuck off site, and you got to fly them in by helicopter and – you know, it's very – but, you know, at no time – at no time – did we not co-operate 100 per cent and do everything possible to mitigate cost, mitigate risk and find solutions around this.

MR. LEARMONTH: All right. And that issue was ultimately resolved in some fashion in the –

MR. DELAROSBIL: Well, it was –

MR. LEARMONTH: – completion agreement –

MR. DELAROSBIL: – in – as I mentioned, everything was rolled up in the –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – completion agreement, right.

MR. LEARMONTH: Okay.

Now, I want to turn to, now, tab 76, Exhibit P-03088. Now, this is the stop work order issued because of the draft tube 2 incident. Now, I know that there's litigation in the courts in Newfoundland between –

MR. DELAROSBIL: That's right.

MR. LEARMONTH: – Astaldi is claiming against a company from Kansas – Contractor's –

MR. DELAROSBIL: CEI.

MR. LEARMONTH: – Engineer –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – Inc. But – so, I don't want to get into this too deeply, but I would like you to tell me, if you could, in simple terms, what this incident is about. What happened here in this draft tube number 2 incident?

MR. DELAROSBIL: Well, basically, it was the evening of the 30th of May, 2016 –

MR. LEARMONTH: Twenty-ninth –

MR. DELAROSBIL: (Inaudible.)

MR. LEARMONTH: – I think, wasn't it?

MR. DELAROSBIL: The 29th, yeah –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – I got there. It was 2 o'clock in the morning. But anyways, we were completing a pour on – one of the pours on the draft tube 2 and the shoring failed. So the shoring is what holds up the formwork from

underneath, and that could be – our – the system we were using was a timbered system, and for some reason it let go.

A very – a very unfortunate incident, and luckily no worker was seriously injured on the incident, but that’s basically what happened. We were pouring and the system let go.

MR. LEARMONTH: Yeah. And the system, the structure of the system, was built by Contractor’s Engineer limited [sp. Inc.] and shipped to the site. Is that correct?

MR. DELAROSBIL: That’s right. I think it was – they come from Kansas. They’re one of two in North America to build this formwork and shoring. They’re specialized. That’s what they do. Many of the contractors I’ve worked with in the past have used the same company. They’ve done good work in the past, and I’m sure they – in the future they’ll continue to do good work, but it was – something was missed, you know?

MR. LEARMONTH: Yeah, and that has not been resolved.

MR. DELAROSBIL: At this point in time, we’re –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – we’re still – yeah –

MR. LEARMONTH: Yeah, okay.

MR. DELAROSBIL: – in litigation, yup.

MR. LEARMONTH: All right. And I think there was an insurance claim where you recovered \$11,700 –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – 000.

MR. DELAROSBIL: There was \$11,700 –

MR. LEARMONTH: Less a deductible, yeah.

MR. DELAROSBIL: – 000, \$2 million of which were deductibles, and after –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – that we were paid \$9.7 million.

MR. LEARMONTH: All right.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: And that was a potentially very serious incident. Is that correct? I mean, fortunately, I think only eight persons were physically injured, but –

MR. DELAROSBIL: No, it was –

MR. LEARMONTH: – had the potential –

MR. DELAROSBIL: – it was five – there was five individuals –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – on the pour, but yeah, potentially, yeah, absolutely. Anything on construction is – there’s always a potential of very, very serious injuries if –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – when things happen.

But yeah, there was five individuals on the pour, if I recollect, okay, and, yeah, none of them – they came out of it unscathed, you know, bruises and –

MR. LEARMONTH: I think there were eight –

MR. DELAROSBIL: – bumps –

MR. LEARMONTH: – actually, but we won’t go –

MR. DELAROSBIL: Okay.

MR. LEARMONTH: – over that, yeah.

MR. DELAROSBIL: I apologize.

MR. LEARMONTH: Anyway, yeah.

But anyway –

MR. DELAROSBIL: (Inaudible) recollection.

MR. LEARMONTH: – fortunately there was no loss of life and there weren't any serious physical injuries. Is that correct?

MR. DELAROSBIL: Yes, Sir.

MR. LEARMONTH: Okay.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: Tab 78, Exhibit P-03090. This is a letter dated June 11, 2016, from you to Muskrat Falls Corporation, Scott O'Brien, and this is – is this another blockade that you're referring to here?

"A blockade has been installed by protestors at around 2h30 pm June 9th in close proximity to the gatehouse." And you're saying: "This blockade has been restricting any access to the ... site." And you're giving notice on page 2 that: Contractor is keeping all –

MR. DELAROSBIL: Yeah, that's –

MR. LEARMONTH: – appropriate records associated –

MR. DELAROSBIL: – yeah. That was another blockade.

MR. LEARMONTH: Another incident.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: And was that issue – did you lose any schedule or money because of that?

MR. DELAROSBIL: I'm just trying to refresh – the big blockades were August and October. I think this might've been a day blockade or a small protest that was cleared fairly quickly.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Do you remember this one, Georges?

MR. LEARMONTH: Well, if you look at tab 79 I think there's a reply from –

MR. DELAROSBIL: Okay.

MR. LEARMONTH: – Mr. O'Brien.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: That's Exhibit P-00391.

MR. DELAROSBIL: Mm-hmm.

MR. LEARMONTH: P-03091, sorry. And once again they're – Nalcor is declaring it a force majeure.

MR. DELAROSBIL: Mm-hmm.

MR. LEARMONTH: Yeah. Was that position accepted?

MR. DELAROSBIL: No, we never accepted the position they took on this. We – as I said, we – Nalcor had control, they had the agreements and they had the controls to the site. So there's no blockade that we would accept that would fall under them being able to avoid the fact that they were owing to us for any of the cost impacts –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – on that work.

MR. LEARMONTH: Now, there are – just to return briefly to the draft tube number two incident, there are a number of reports in the documents – I'm not going to go through them all, but I'll refer to one –

MR. DELAROSBIL: Mm-hmm.

MR. LEARMONTH: – there's four or five different other reports. Is it correct that after the draft tube incident there was a joint retainer of a company – there was a retainer of – by Nalcor and Astaldi of ILF Consultants to review the circumstances?

MR. DELAROSBIL: That's right.

MR. LEARMONTH: Yeah. And we have their report at Exhibit P-03093, and if you look at – there's a number of photographs and so on – but if you look at page 22 of this Exhibit P-03093, there's a conclusion or summary –

MR. DELAROSBIL: Mm-hmm.

MR. LEARMONTH: – of the findings.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: Yeah. Okay, and as I said, there's a number of other reports, but I'm not going to go into all of them.

The other reports, if people are interested in looking at them or considering them – it's P-03098, P-03111, P-03112 and then also P-03113, I thought that's most of them – sorry, two more: P-03114 and P-03115.

Now, if we go to tab 82, which is Exhibit P-03094, it's a letter from Muskrat Falls Corporation, Scott O'Brien, to you. And it deals with the – it starts off with: "Company can no longer accept any engineering work produced under Contractors permit to practice or by its professional license holders due to serious and well founded concerns with the integrity, quality and safety of the completed work."

This is dated July 27, 2016. Is this connected to the draft tube number two incident?

MR. DELAROSBIL: Yeah, it is connected to the draft tube –

MR. LEARMONTH: Okay.

MR. DELAROSBIL: – draft tube two incident. Yeah.

MR. LEARMONTH: So what's the effect of this?

MR. DELAROSBIL: Go ahead, Georges.

MR. BADER: Just a little correction: ILF was hired by Astaldi. Nalcor hired aDB as an independent engineer. Like, ILF wasn't hired jointly, just – 'cause I heard – like, you asked if it was hired jointly between Astaldi and Nalcor.

MR. LEARMONTH: Okay, well –

MR. DELAROSBIL: That's correct, ILF was Astaldi's engineer.

MR. LEARMONTH: I think originally it was joint, but I'll look at that and –

MR. BADER: Sure, yeah.

MR. LEARMONTH: – anyway, thanks for mentioning that.

MR. BADER: For – yeah so, basically after the draft tube two, we – ourselves and Nalcor figured out that we could – we have to put some measures in place to avoid similar incidents from occurring again. And like, we had to develop a procedure, it's called temporary work procedure, which draws the process – a check – it's a process check – process. So, let's say, identifying structures into high risks, medium risks, low risks and definitely shoring will fall under a category of high risks. And we made sure that our engineers would be doing – would be performing the right checks and including an engineer checking another engineer job, which is typical. We had to draw that, develop check sheets, put control measures in place, which were like – there were things that we should – we probably should have – could have done a better job with that before the draft tube two. Now, not to say that the main – the reports showed that the design done by CEI was deficient.

And the other things where probably – they could be considered as contributing factors but not the main factors. And it was a debate between aDB and ILF. Are they really the factors behind the draft tube incident, or even if they did not occur the draft tube would have still failed? So, in any case, developing a procedure like this is typical and typical for any contractor working on a megaproject. We were doing some process checks before, but we had to revamp and build this robust procedure that will avoid similar things from occurring, you know, and like basically, as simple as a check sheet saying that the design has been reviewed, who reviewed it –

MR. LEARMONTH: Yeah.

MR. BADER: – third party checks was – we decided to transfer some risk. And Nalcor suggested that – and I think it's a reasonable suggestion – to involve some third party engineers and we thought that was beneficial. And following the draft tube I think very minimum – very minimum – probably no incident of similar types occurred.

MR. LEARMONTH: No. And I think there's still a – there's one – the media reported, I think this week or last week, that there was a finding of a disciplinary panel – the association of engineers for Newfoundland (inaudible) –

MR. BADER: Yeah.

MR. LEARMONTH: – and I understand that there's also a charge outstanding against Astaldi for the draft tube number two incident.

MR. BADER: I'm not aware of the charge, I'm aware of the (inaudible) –

MR. LEARMONTH: Not a charge, an allegation –

MR. DELAROSBIL: Yeah, the allegation and –

MR. LEARMONTH: Okay.

MR. DELAROSBIL: – we're dealing with that now.

MR. LEARMONTH: Yes, okay fine.

All right, tab 84, Exhibit P-03096. Now, this has to do with the quality audit of a Supermétal, which I understand was a Quebec company in Lévis, Quebec, that was the steel fabricator for Astaldi for work on the Muskrat Falls Project. Is that correct?

MR. BADER: Correct.

MR. LEARMONTH: So why was there a – is this normal, that there would be a quality audit conducted at Supermétal's facility in Quebec in relation to the work that Supermétal was doing for Muskrat Falls? Is that the normal –?

MR. BADER: Yeah. Audits are normal, yes. Like audits from contractors to themselves or from the owner to some facilities there – they're common. You know, it's common to have audits from time to time, to make sure that the owner is getting the products he paid for or he is paying for. I think what wasn't normal is – or was the extra steps of micromanaging the (inaudible). And normally an audit will identify some corrective action, some preventive actions –

MR. LEARMONTH: Right.

MR. BADER: – some recommendations and you will request your supplier or subcontractor to take actions, and then you may – you reduce the frequency of the audits as you build confidence with what your sub was doing.

Supermétal is, I think, a very reputable steel supplier and erector in Canada. And – not to say that during an audit you would identify some deficiencies, and there are always rooms for improvement; however, Nalcor sent full-time inspectors to the shop – full-time – and Supermétal frequently requested that to reduce the amount of control and micromanagement of their staff or workers in the shop, because they're losing efficiency and their productivity rates – they have submitted a claim, as strictly related to Nalcor's involvement. The claim value was probably millions of dollars, and we settled probably at three-something or four million, probably. And the result was their productivity rates, it jumped from – up to 38 man-hours a ton, if I recall very well, from 16 or 17 man-hours a ton –

MR. LEARMONTH: 16, yeah.

MR. BADER: – production. And I think Supermétal tried desperately to improve or to communicate with Nalcor, and I think they sent even a letter to Mr. Marshall telling him –

MR. LEARMONTH: Yeah.

MR. BADER: – that your intervention is needed because it's going beyond our control.

MR. LEARMONTH: Yes.

And is it correct that Supermétal at one point during this process asked the two inspectors that Nalcor had sent to get out of the premises?

MR. BADER: Yeah. Yes, it's true. And I think it was for a little, or short period of time.

MR. LEARMONTH: Yeah.

MR. BADER: Then the inspectors were welcomed back, if I remember. But that was, I think, probably not the right step of Supermétal

but I think in their struggle they felt like they got enough.

MR. LEARMONTH: All right.

MR. BADER: So it was an exaggerated action.

MR. LEARMONTH: All right.

Tab 88, it's a letter dated September 26, 2016, from Scott O'Brien to Mr. Delarosbil. It says P-03100. Do you see that?

MR. DELAROSBIL: Yes, Sir.

MR. LEARMONTH: Okay.

Now, he is saying that – it says: “During the weekly site progress meeting on ... September” – 20th – “Company made a number of inquiries regarding Contractor’s apparent lack of progress of specific critical path works, and with particular respect to the Downstream Intake areas. Company questions were aimed at soliciting accurate and insightful information from Contractor in this regard to facilitate a better understanding of Contractor’s execution of and possible recovery plans”

And then it says: “To Company’s surprise,” – that’s Nalcor’s surprise – “consternation and concern, Contractor project manager’s response alluded that the critical path was not the Contractor’s prime focus and that Company’s questions were unreasonable and tantamount to intimidation, following which the Contractor’s project manager immediately exited the meeting and advised that he may not be attending any more progress meetings.”

So this is a reference to you, is it, Mr. Delarosbil?

MR. DELAROSBIL: Yes it was, yeah.

MR. LEARMONTH: Can you tell us what was – what happened at that meeting?

MR. DELAROSBIL: Basically, we went to the progress meeting and the individual started asking me about the project schedule, and they were really – they were really concerned that, you know, there was one area not being accessed and we weren’t working there and we should be

working there and that’s where you’re supposed to go. And I was trying to explain to him that we were going to get there, but at the time it was impossible to be able to reach those pours that they were looking for, so we’re still continuing on the production and – but the tone kept – their tone kept getting higher and higher to the point of – yeah.

MR. LEARMONTH: Well, was Mr. O’Brien present then?

MR. DELAROSBIL: No, Mr. O’Brien wasn’t present. He was on the telephone. Mike Harris and Mike Collins were the three –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – individuals that were on the telephone yelling at me.

MR. LEARMONTH: They were yelling at you?

MR. DELAROSBIL: Yeah, yeah.

MR. LEARMONTH: Do you mean that literally?

MR. DELAROSBIL: Yeah, that – yeah. So that’s why –

MR. LEARMONTH: Who was yelling at you?

MR. DELAROSBIL: Well, they were frustrated, I guess, in what I was responding, but I wasn’t trying to avoid them or do anything. I was just trying to explain that – the schedule itself, and they were very vocal. So – and, you know, to be honest, I don’t even know why they sent this letter. You know, this letter just sparked a whole bunch of letters after that, you know, but I think they were trying to – I think they were – all they were trying to do is to set their position and – because there was other people attending the meeting, so they had to make a – they made issue with it.

MR. LEARMONTH: So, in your view it was blown out of proportion?

MR. DELAROSBIL: Well, in my view – yeah, it was blown out of proportion and, you know, I walked away. I just won’t accept people yelling

at me and telling me that I'm not doing what's best for the project, because that's – I just won't accept it.

So, yeah, I was upset. I didn't raise my voice; I politely left the meeting and said if this is the way you're going to continue, I won't attend anymore. So, after that, Scott could have gave me a call – I'm sorry, someone could have gave me a call and said: Hey, listen, let's talk about this and whatever. But that didn't happen; they chose the contractual letter system. And I think it led up, I think, to three or four –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – corresponding letters which was just –

MR. LEARMONTH: Well –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – you turn to your reply. It's tab 90 and it's Exhibit P-03102. This is a reply.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: If you go to page 2 of that document –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – you write: “At the end of the referenced meeting, and contrary to Company's characterization of the events, Contractor's PM” – that's Scott O'Brien, right? No, that's you.

MR. DELAROSBIL: Yeah, me.

MR. LEARMONTH: Yeah – “made comments relating to the unprofessional conduct as noted above and asserted that should such behavior continue Contractor would not attend these meetings in the future. Please provide assurance that the aforementioned behavior towards Contractor's personnel will not reoccur and Contractor will attend such meetings and continue to work with” the “Company in a positive and collaborative environment.”

So it seems that there's some straining in the relationship between Astaldi and Nalcor –

MR. DELAROSBIL: But –

MR. LEARMONTH: – according to these letters. Is that correct?

MR. DELAROSBIL: But there's pressure, right? You know, construction is – there's pressures and I don't know why. You know, maybe – I don't know what they were thinking, so maybe they were thinking that we should have been doing something else.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: But there's pressures in construction and –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: There's another reply at tab 91. It seems like you're going back and forth wasting a lot of time. Is that right?

MR. DELAROSBIL: Yeah, yeah. It's just –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: It's just a complete waste –

MR. LEARMONTH: If you go to tab 91, Exhibit P-03103 –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – Mr. O'Brien writes: “Company utterly rejects the content of the above referenced Contractor letter ... in terms of its lack of basis of fact, for Contractor's inflammatory and accusatory response to Company's simple request” et cetera.

This seems to be like a –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – waste of time.

MR. DELAROSBIL: Yeah, basically, this is just to get on the record. So if they send you a letter you have to respond and get on the record yourself.

MR. LEARMONTH: Yeah but we're not going to deal much more with this, but I just –

MR. DELAROSBIL: No.

MR. LEARMONTH: – note the last reference is in tab 92, P-03104.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: And you're saying on October 10 to Mr. O'Brien: The ongoing series of inaccurate – this is on page 1, second paragraph.

MR. DELAROSBIL: Hmm.

MR. LEARMONTH: “The ongoing series of inaccurate, self-serving letters from Company’s site personnel serves only to create an unreliable record wholly at odds with Company’s obligations and on-going discussions” et cetera.

And, you know, it goes on, on page 2 – fairly stern language. So I would –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – suggest that, at this point, the relations between you and Scott O'Brien are not pleasant. Is that a fair comment?

MR. DELAROSBIL: Well, you know, we're not dialoguing about this where it's done in letters. I mean, everybody's trying to put a position in place.

You know, as I mentioned at first, I think they shouldn't have sent the first letter and trying to say that we weren't co-operating in that we're not following the schedule and we're not trying to help them. And, you know, they would have avoided all of this, this back and forth on this letter.

MR. LEARMONTH: Okay.

Now, we're into the final volume. There's only a few documents I want to refer to.

THE COMMISSIONER: Is this a good time, maybe, to take our break, Mr. Learmonth, or should – do you want to finish?

MR. LEARMONTH: Well, you know, I'll probably be 20 minutes to half an hour, so maybe it's –

THE COMMISSIONER: Let's –

MR. LEARMONTH: – good to take a break.

THE COMMISSIONER: Let's take our break then.

All right, so we'll break now for 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

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

MR. LEARMONTH: Okay, thank you.

THE COMMISSIONER: We should just wait, I guess, for – is Mr. Simmons on his way in, Mr. Skinner?

MR. SKINNER: He just stepped out, so I'd expect him to be back in a second.

THE COMMISSIONER: If we could just make sure that counsel are ready.

All right, Mr. Learmonth, when you're ready.

MR. LEARMONTH: Okay. Now, we're into volume – binder 3, and the first exhibit is tab 105, Exhibit P-03117. This is a May 17, 2017, letter from Scott O'Brien to you, Mr. Delarosbil. Can you just confirm – I don't want to go into it in detail, but this is a statement – Nalcor's position that it isn't responsible in any way for the draft tube number 2 incident. Is that the gist of it? You read –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – the first paragraph, yeah.

MR. DELAROSBIL: Yes, I would say so, Sir.

MR. LEARMONTH: Yeah, okay.

Okay, tab 106 is – it's 03119. This is just the preparation of your claim for the draft tube incident. Is that correct?

UNIDENTIFIED MALE SPEAKER: No.

MR. LEARMONTH: Is that correct?

THE COMMISSIONER: That's tab 107.

MR. LEARMONTH: One-oh-seven, yeah, P –

MR. DELAROSBIL: Okay.

MR. LEARMONTH: – 03119.

MR. DELAROSBIL: Yes.

MR. LEARMONTH: Okay.

And tab 108, Exhibit P-03120. This is the claim settlement agreement that I referred to earlier, \$11,700,000, dated January 26, 2018. That's a settlement with your insurer for the draft crane. Is that correct?

MR. DELAROSBIL: The draft tube, yes. Yes, Sir.

MR. LEARMONTH: Okay.

Okay. The – tab 109, Exhibit P-03121. This is another incident. This is an email from you, Mr. Delarosbil, to Scott O'Brien on the crane rail incident. It's dated May 5, 2018. This is at Exhibit P-03121. Can one of you give me a short summary of what the crane rail incident concerns?

MR. DELAROSBIL: It wouldn't be called an incident; it's an issue –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – a crane rail issue.

Basically there was, basically the problem is is that you have cranes that run in the powerhouse – or overhead cranes. They run on a rail system. The rail system is integrated into the building structure and we were having a very, very hard time aligning those rails, the gaps and the distances between the rails, and they kept shifting. There was issues that way, yeah.

MR. LEARMONTH: Okay. And was that – so it was a commercial dispute as to who was responsible for it?

MR. DELAROSBIL: Yeah, the responsibility without doing the root cause analysis, without going into the details, without getting into the work that had been completed. Nalcor's assigned the responsibility to Astaldi as far as the crane rail issue itself.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: At the time, there was a disagreement in the fact that we thought it was a design or an engineering mistake, and again, Nalcor's position was that it was a construction mistake or a construction issue. So –

MR. LEARMONTH: Excuse me, that – wouldn't that be the typical stances taken –

MR. DELAROSBIL: Yeah, yeah –

MR. LEARMONTH: – in a dispute of this kind?

MR. DELAROSBIL: – initially, initially –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – you know.

MR. LEARMONTH: Yeah. Yeah.

MR. DELAROSBIL: But to go in and – you know, this was a fair piece of work. To do this repair was about a \$7-million job, you know? It could be up to \$9 million. It all depends, you know, until you've really completed the root cause and figured out what all the changes are.

Now, as you know, we're talking about May. Back then – you saw the agreement – settlement

agreement – and all that. We’re in – Astaldi’s in financial trouble, you know? We have to meet cash flow; we got to keep things going. So, we are trying to find a solution. Like, we’re willing to do the work, but we want to be guaranteed that if the work goes on, we’re going to get paid for that work. So, you know, I am advancing some ideas on how, hey, listen, pay our costs or help us out here because we – it’s not in our budget to go back and do this repair. And until this – until the liability is secured or assured, we need some funding. Initially –

MR. LEARMONTH: So, in other words, are you saying that: Okay, if you’ll pay us, we’ll do it. Otherwise, we haven’t got the money to do it ourselves?

MR. DELAROSBIL: Yeah, basically, yeah. That sums it up, yeah.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: We don’t have it in the budget to go spend that type of money. We did an estimate on it and we projected a cost of – the initial cost of about \$7 million at the time. So –

MR. LEARMONTH: Okay.

MR. DELAROSBIL: – so we’re looking for some way, but we were stonewalled or just told, hey, listen, you do it. I mean, if you understand our contract, we cannot refuse to do any work that the contractor directs us to do because that again is a default so –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – so we got to do the work, okay? So – but we’re struggling. We were struggling financially at the time.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: So is that the source of – that’s one of the dynamics at work, at play throughout this, that a contractor – there’s a dispute, the contractor says it’s an engineering issue.

MR. DELAROSBIL: It –

MR. LEARMONTH: The company says it’s a construction issue –

MR. DELAROSBIL: That’s right.

MR. LEARMONTH: – which would make it your fault.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: It’s not resolved.

MR. DELAROSBIL: Mm-hmm.

MR. LEARMONTH: The company has the right to say: Well, look, do the work.

MR. DELAROSBIL: B’y you got no choice, yeah.

MR. LEARMONTH: You have no choice.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: And then that claim is dealt with at a later date.

MR. DELAROSBIL: Yeah, it would be moved into – now, if you’ve got a lot of money in the bank and you got no issues, that’s normally the way it works.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: You say, yeah, well, we have no choice; the contract says we’ll iron that out later.

MR. LEARMONTH: But if you don’t have the money, it presents a big problem, does it not?

MR. DELAROSBIL: Well, of course, it presents a problem. You’re adding staff, you’re adding costs –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – you’re adding now –

MR. LEARMONTH: And at this point Nalcor was running on fumes, we’ll say, is that right, as far as money is concerned?

THE COMMISSIONER: Astaldi.

MR. LEARMONTH: Astaldi, yeah.

MR. DELAROSBIL: Astaldi. Yeah, Astaldi was having a hard time. As you can see, you know –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – the agreements we were negotiating – I think we were negotiating a term package at the time too.

MR. LEARMONTH: All right, next, tab 110, Exhibit P-03122. This is May 23, 2018. This is a document entitled – page 1: Extraordinary Risk Request for Equitable Compensation.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: So this follows all, you know, the bridge agreement, the – this is another claim for –

MR. DELAROSBIL: Well –

MR. LEARMONTH: – equitable compensation.

MR. DELAROSBIL: – yeah, this – the Extraordinary Risk title is included in the completion agreement as a possible payment made by Nalcor –

MR. LEARMONTH: Right.

MR. DELAROSBIL: – for any extraordinary risk items identified.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: So this is permissible under the completion agreement.

MR. DELAROSBIL: Yeah, this is. And because of the delays –

MR. LEARMONTH: Yeah.

MR. SIMMONS: Excuse me –

MR. LEARMONTH: Go ahead.

MR. SIMMONS: – Mr. Commissioner. I think we should flag that we're now starting to stray into an issue that's –

MR. DELAROSBIL: Oh, thank you.

MR. SIMMONS: – going to have some significant overlap –

MR. LEARMONTH: That's fine, I agree with that.

MR. SIMMONS: – with the arbitration.

MR. LEARMONTH: Yeah, I'll withdraw that. That's fair enough.

Anyway, this is a –

MR. DELAROSBIL: I didn't know how far I could go with this, so –

MR. LEARMONTH: No, that's fine.

MR. DELAROSBIL: – I appreciate –

MR. LEARMONTH: Yeah.

Extraordinary Risk Request, so this is – anyway, it's a –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – request for compensation.

MR. DELAROSBIL: Yes, Sir.

MR. LEARMONTH: And if you go to page 5, the request is on page 5 of P-03122, paragraph 18: *“For extraordinary risks not currently known or anticipated, Company may consider additional compensation. If any additional compensation is agreed, the cumulative value of such shall not exceed fifty million dollars (\$50,000,000.00).”*

MR. DELAROSBIL: That's right, yeah.

MR. LEARMONTH: Okay, so that's something that we'll leave to the arbitration. I notice just in passing that on page 23 there's a reference to this Commission of Inquiry and the costs that will be incurred but –

MR. DELAROSBIL: Well, yeah.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Well, we're – for us it's such an extraordinary risk. At the time we signed the completion agreement we never thought we'd have to prepare, send documents –

MR. LEARMONTH: Okay.

MR. DELAROSBIL: – participate in an Inquiry.

MR. LEARMONTH: Okay.

Now, tab – at tab 111, Exhibit P-03123, there's a reference to the 250-ton mobile crane incident and the resulting – well, and the subsequent removal from site of your safety person, Brian Chaput, is that right?

MR. DELAROSBIL: That's right, Sir. It is.

MR. LEARMONTH: Yeah.

And under, I think it's article 53 of the agreement, the company has the right – that's Nalcor has the right to direct Astaldi to remove people from site at their discretion.

MR. DELAROSBIL: That's right.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: That's a very broad interpretation of the – but that's in their rights in the contract, yes.

MR. LEARMONTH: Yeah, 53, I believe it is. But, anyway, so what was this 250-ton mobile crane incident? Can you give me a brief description of what occurred?

MR. DELAROSBIL: We had one lift that was out of the reach of our cranes on the site, our Astaldi cranes. So a contractor working for ANDRITZ – LAR, I think it was – had a 250-ton crane, which we – I guess you would say it's like we borrowed it for a shift with their permission.

Like, we – and they went to make a – we were tearing apart a tower crane. And so in the

process of taking down the tower crane, the individual operating the crane overrode the crane limits and the crane fell over onto its side.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: And that was a big incident, you know. Flipping a crane is a huge incident, something to cause concern. And –

MR. LEARMONTH: Was it scrapped, the crane, after?

MR. DELAROSBIL: Yeah, the crane was scrapped. Yes, yes.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Yes, it was, Sir.

MR. LEARMONTH: And –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: And just to explain very briefly, a 250-ton crane, it can lift 250 tons in certain situations.

MR. DELAROSBIL: It's rated at a 250-ton but the –

MR. LEARMONTH: Yeah, but if you put the – as soon as you start putting the arm out –

MR. DELAROSBIL: That's right, it –

MR. LEARMONTH: – the further it goes out –

MR. DELAROSBIL: – reduces –

MR. LEARMONTH: – the less it –

MR. DELAROSBIL: – reduces its capacity, Sir.

MR. LEARMONTH: And so in this case, was the arm – was the –

MR. DELAROSBIL: Yeah, it was basically, I would say, close to fully extended, Sir.

MR. LEARMONTH: Oh.

MR. DELAROSBIL: And I think it was limited to 34 tons, I think, Georges?

MR. LEARMONTH: Okay, anyway.

MR. DELAROSBIL: I'm just going by my – but –

MR. LEARMONTH: The further the arm goes out, the lower –

MR. DELAROSBIL: Absolutely.

MR. LEARMONTH: – the weight that it –

MR. DELAROSBIL: That's right.

MR. LEARMONTH: – can carry.

MR. DELAROSBIL: That's right.

MR. LEARMONTH: It just makes sense. Okay.

So, anyway, was Brian Chaput's removal from site, I guess it was as a result of the 250-ton crane incident?

MR. DELAROSBIL: Well, Brian –

MR. LEARMONTH: It says so.

MR. DELAROSBIL: Yeah, Brian was removed from site 3½ weeks later.

MR. LEARMONTH: But it was tied to the 250-ton crane incident?

MR. DELAROSBIL: The letter –

MR. LEARMONTH: It says –

MR. DELAROSBIL: – says that upon review of the incident investigation we decided to remove –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – Brian Chaput – there's three letters, Brian Chaput, Brian Doyle and –

MR. LEARMONTH: Yeah, okay, well, Brian Doyle's removal is –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – at 112 and it's Exhibit P-03124.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: And the removal of James Jones is at tab 113. It's Exhibit P-03125.

MR. DELAROSBIL: So that's, yeah, three managers from our site.

MR. LEARMONTH: Okay. What did you do about the termination of Brian Chaput?

MR. DELAROSBIL: Well, I found out about the termination –

MR. LEARMONTH: Well, not the termination, removal from site –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – which is effectively the same thing.

MR. DELAROSBIL: Well, it's a termination –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – because that's the only job Astaldi has and ...

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Yeah.

So what did I do about it? As soon as I found out about it I immediately contacted people like Gilbert and I contacted my boss. I sent him an email. I let him know what happened. I was surprised. I couldn't understand why this happened. I couldn't understand why Brian was targeted or taken off-site.

MR. LEARMONTH: He was your safety manager, was he?

MR. DELAROSBIL: He was my safety manager.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: And I can tell you that this individual was a major part of the success of the safety record that we were holding at that – on the Muskrat Falls site, so I really couldn't understand why and it was never explained to me why. I pleaded with – I actually prepared a document, I sent it by email and I also prepared a document that's about this size –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – to Mr. Gilbert Bennett. I hand delivered it. We met with him and showing all the improvements that were done under Brian's management, but to no avail. The decision was a decision, I was told at the meeting, and that's it, we're not going there and that's what I was told.

My boss, Francesco was there also, Mr. Rotundi, CEO of the –

MR. LEARMONTH: So you flew to St. John's for this – for the meeting?

MR. DELAROSBIL: No, we had a meeting scheduled.

MR. LEARMONTH: Oh, you had a meeting scheduled.

MR. DELAROSBIL: It just so happened –

MR. LEARMONTH: All right.

MR. DELAROSBIL: – that it happened at the same time.

MR. LEARMONTH: Okay.

MR. DELAROSBIL: I was flying – I was on my way back from my turnaround. So this was also done when I wasn't on site.

So, basically, all I was looking for was an explanation. Tell me why. Tell me why you took this guy off-site, you know. Please let me understand, you know. What has he done? It's ours. That's it. We're going to do that.

So we took it a step higher. Approximately a couple of days after that, Mr. Stinellis, the CEO of Astaldi S.p.A, and Mr. Marshall had a phone

call. If I recollect well, Mr. Francesco Rotundi was on this phone call and –

MR. LEARMONTH: So he – you weren't on the phone call?

MR. DELAROSBIL: I wasn't part of it. I was just told by –

MR. LEARMONTH: You're basing this on what Mr. Rotundi told you?

MR. DELAROSBIL: From what Mr. Rotundi told me, yeah.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: So –

MR. LEARMONTH: Go ahead.

MR. DELAROSBIL: – so, basically told me they had this conversation, Gilbert was there, and that Stan had assured us that Brian would be returning to site.

MR. LEARMONTH: Okay. So he was returning to site. And that was it?

MR. DELAROSBIL: He was – no, no, they never – he never – he never returned to site, so –

MR. LEARMONTH: Didn't you say Stan Marshall assured –?

MR. DELAROSBIL: Yeah, no – that, I guess, that didn't count because it never happened. We have follow-up emails asking Scott, asking – asking them to – when, and then – then they said if he comes back, there would be limitations. So we said: Please, send us the limitations; what are the limitations; what are you looking for here?

So – but they just – they just got rid of a top safety manager in Canada; off a job with no reason, no explanation. I understand that you have a contract, I understand the language in the contract, but this is totally unreasonable as far as how you deal with your contractors, you know.

Every other job I've been on has been simple. If you don't like an individual or, you know, you're not happy with the performance of one of the individuals that work for me, you usually

come to me and I take care of that issue. And, you know, like, I listen to what the client has to say, then I deal with the individual appropriately. That could end in termination, it could end in a suspension, it could end in loss of incentives, but I can't understand, I can't understand how you can just say: Hey, it's in the contract; we're getting him out, we just want him out of here – we want him out of here. I just don't understand.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: I still, to this day, don't understand.

MR. LEARMONTH: What I don't understand is if Mr. Marshall gave the assurance, if he did –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – to Mr. Rotundi, to return, then how is it possible that he wasn't returned?

MR. DELAROSBIL: I have no idea, Sir.

MR. LEARMONTH: Okay.

MR. DELAROSBIL: I have no idea (inaudible).

MR. LEARMONTH: Okay.

MR. DELAROSBIL: (Inaudible.)

MR. LEARMONTH: The next document is tab 114, and it's Exhibit P-03126. Now this is just the – I think this is the email that you wrote in relation to the Brian Chaput –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – termination, the three letters of termination.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: So this is what got the ball rolling with Francesco Rotundi?

MR. DELAROSBIL: Yeah. Well, like I explained to Francesco, I don't understand, I didn't know what to do, you know, I – he got a

hold of Mr. Clarke because Francesco dealt a lot with Mr. Lance Clarke, but, you know, didn't know what to do. Can you imagine that – you can just throw people off-site because you want to? It just didn't make sense. I was looking for his help to help me with this – the solution –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – or find a solution.

MR. LEARMONTH: And at the bottom, second-last paragraph, you say in this July 8, 2018 email: "They have no consideration for the people, their families and their reputations. We cannot continue to work in this atmosphere. **Something needs to be done to stop this intimidation behaviour.** This can no longer be tolerated."

MR. DELAROSBIL: Yeah, that's what –

MR. LEARMONTH: Why did you characterize this behaviour as intimidation?

MR. DELAROSBIL: Well, I mean you can't – we don't know what the guy did. What if I do something? What if Georges does something? What if anybody – you know, what's our security? You know, you decide you don't like me today and you're gonna throw me off-site. I mean, how does that – you know, I received a letter, probably a couple of months into my tenure, where they said they would apply this clause to me if I didn't do as directed by the owner. And the case – in that case, it was just a simple – they wanted me to move a container for another contractor, which I disagreed, wasn't in my scope of work and I didn't want to impact my work by doing work for other people. But I got the letter. I actually kept it on my office wall for three years I was there. I couldn't believe that I would get such a letter.

MR. LEARMONTH: Who sent the letter to you?

MR. DELAROSBIL: That was done by the – Scott (inaudible), yeah.

MR. LEARMONTH: By who?

MR. DELAROSBIL: By Scott –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Mr. O'Brien, yeah.

MR. LEARMONTH: Yeah.

So – am I correct that the – well, one issue arising from this right to remove from site is that it has a chilling effect on all other employees (inaudible)?

MR. DELAROSBIL: Well, absolutely. But has an effect on me. If they can hit top managers, and they continued to do it, you know, they continued to do it. They did it with my structural manager, about a month and a half – a month later, in August. They threw him off-site, and no holds barred, I got somebody to – they delivered the letter, I think they delivered the letter at my apartment in Goose Bay, telling me that this man have – had to be gone off-site. He's a head structural manager, you know, he is the guy that knows where all the parts, the pieces – how everything goes together. The man just works hard.

And I couldn't understand – please, explain what would warrant such – what would warrant such a discipline? Like, he lost his job, you know, children don't just pick up a structural manager's job tomorrow morning that – what would deserve – what would be deserving of this, you know?

MR. LEARMONTH: Did you ever find out what the reason for this (inaudible) was?

MR. DELAROSBIL: They said, you know, they said there was a meeting where he was advised, not told, he was advised to not do grinding – I am talking about grinding the thickness of a – thickness of a pen here into a beam. But by the time he could stop that process – because he had already, from my understanding, had already directed the process – it was done so, and because that was done and he was kind of told in this meeting not to do it – not directed and not given a formal notice or – I wasn't called to say stop this or how critical that was, and at the end of the day, it wasn't critical but – yeah, they just kicked him off-site.

In another instance, about a month before we were terminated, they tried to do the same thing to Georges. He can speak to his situation.

MR. LEARMONTH: Yeah, I was going to ask. Georges, you dealt with this –?

MR. BADER: Actually, it was one week before the termination, or two weeks (inaudible) –

MR. LEARMONTH: Okay, tell us –

MR. BADER: Yeah.

MR. LEARMONTH: – the circumstances surrounding that, please.

MR. BADER: Well, we had – we – well, we purchased – we sold the concrete pump and the deal was made probably six months prior to the date that the owner of – the new owner of the pump would pick it up from site. Before that, we shared, for three days or a couple of days, some emails with Nalcor, some letters attaching the backup of – like this agreement, the sale agreement. We have no say, the money was paid way before. The pump was –

MR. LEARMONTH: So you –

MR. BADER: – already –

MR. LEARMONTH: – you sold –

MR. BADER: Yes.

MR. LEARMONTH: – the pump drop –

MR. BADER: Yes.

MR. LEARMONTH: – and it was paid for, and then the person was coming to pick it up.

MR. BADER: Yes.

MR. LEARMONTH: Pick up –

MR. BADER: His pump.

MR. LEARMONTH: – his pump, yeah.

MR. BADER: Yes, 'cause the agreement was that we would use it for five or six months or – I just can't remember the specifics of it.

So, we sent that letters, and we were running out of time because the guy was coming from a different province and he already made his travel arrangement.

So, end of the day and – end of that day, I called Mr. O'Brien and then I told him: I've sent you the letters, I've sent you the backups; we can't do much about that, it's his pump. If I tell him don't come – I just wanted to tell you – I can tell him don't show up, but that guy can come with an injunction, with the police. It's his pump, like, I am just trying to tell you that: Let's be reasonable, I can not – it's not within my decision or my authority to stop him from coming. The deal was made before; it was done by the procurement manager at that time. And I wasn't even involved in the selling process; I had just to communicate the logistics behind it.

So, apparently, the owner has talked to one of the suppliers in town or mechanic's shop (inaudible), I'm assuming, who was sent and operated to pick up the crane, probably at 9 a.m. – 9 p.m. or sometimes midnight, so the next day in the morning they would inspect it.

I received a call from Mr. Healey.

MR. LEARMONTH: From Mr. who?

MR. BADER: Dave Healey.

MR. LEARMONTH: Dave –

MR. BADER: He's the deputy site manager or, at the end, he was the site manager telling me: Georges, we got the operator at the gate. I told him: Dave, I already – it's been three days I've been sending you correspondence and the backups – that it's not within my control. If you want you stop him, stop him. The owner will come with the police with injunction, with whatever support needed to take the pump out.

I believe, at that time, Nalcor was – did not want equipment to leave site because they – probably they were considering in case of a termination we would need to possess the equipment. But that equipment, they couldn't possess it because it was sold long before that.

So Mr. Healey said: Well, that's not my (inaudible). Dave, you can do whatever you

want. I'm just telling you, I cannot stop the operator. He won't listen to me. He's reporting to his owner, the owner of the pump. Then, a few hours later, I receive a call that my –

MR. LEARMONTH: From who?

MR. BADER: From – I receive an email.

MR. LEARMONTH: From who?

MR. BADER: From Mr. Healey and I think Mr. O'Brien was copied on it if I'm not mistaken, but definitely from one of the two persons, that my site access was revoked the second day.

MR. LEARMONTH: Your site access was revoked?

MR. BADER: My site access.

MR. LEARMONTH: So you were fired, effectively?

MR. BADER: I couldn't access the site. So I picked up the phone and I called Scott and I told him: What's going on, is it the set-up or what? Like, I've been talking to you all the day and at 5 o'clock, as well, I've given you a call.

But he was reasonable – he was reasonable. He said: No, okay, it makes sense. Just clarify that in an email and (inaudible). Because I told him, if tomorrow I'm not accessing the site, even if the day after you give me access, I'm not accessing the site anymore, I can't work under these conditions here. And I think he corrected that the same night, and –

MR. DELAROSBIL: Yeah.

MR. BADER: – my site access the second day wasn't revoked. Yeah.

MR. DELAROSBIL: So the other impact that has is it totally takes away my ability to manage, right? My job is to protect my people, you know. It's fairly simple, I protect my people. You know, if I apply a discipline, they understand why. People need to know why they're terminated. People need to know why. That's just common – that is just being courteous. I mean, you need to tell somebody.

But, now, my leaders looked at me and said, well, you know, if they want to get rid of me there's nothing you can do about it, Don. So, you know, they set up – we're the boss, you're going to do what we're going to do – we're going to say and if you don't, you're gone in their view, right? So that's what was left with my management team, you know. Simple as that, everybody had to walk on their tiptoes, you know.

MR. LEARMONTH: And wouldn't that have an effect on performance and work?

MR. DELAROSBIL: Well, it has an effect on everything, plus it has an effect on people wanting to leave the site and go look for other work.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Absolutely.

MR. LEARMONTH: And you hadn't seen this – the use of this power on other job sites?

MR. DELAROSBIL: Not in my whole –

MR. LEARMONTH: Never?

MR. DELAROSBIL: Never.

MR. LEARMONTH: Never?

MR. DELAROSBIL: I have never. No, I have never. And as a project manager, I've seen situations where the client was not happy with an individual's performance on the job or have done something or issues, and it was up to – it was left up to me on what that discipline was, whether he was removed from site or other disciplines were applied. But never had a client come kick somebody off the site for no explanation, no reason, no justification, you know. It's just unheard of.

MR. LEARMONTH: Yeah. Okay.

MR. DELAROSBIL: You know, it's – I don't know, I'm going to be silly here, I guess, but you got a guy to do a body job on your car and you come in and you're the client, you're begging for the body job. But you're not going to throw out the body man if you don't like the

job. I mean, I don't understand, you know. I really, really don't understand how you can hide behind a clause in the contract with total authority like that. Yeah.

MR. LEARMONTH: Yeah.

Okay, now I want you to pull up – it's Exhibit P-03143. I believe it's tab 13 in Mr. Mauro Palumbo's documents.

MR. DELAROSBIL: Thirteen.

MR. LEARMONTH: P-03143.

MR. DELAROSBIL: Page? What page, excuse me?

MR. LEARMONTH: Okay, well, first we'll just go to page 2. This is the kickoff meeting. Do you see that?

MR. DELAROSBIL: Yeah, yes.

MR. LEARMONTH: Kickoff meeting. It says that we referred to this yesterday, December 19, 2013. Then we turn to page 4 and these are some – a presentation attributed to Paul Harrington. Halfway down the page it says: "Start meetings with 'Value Moment' – anchor back to one of the values: Teamwork; Open Communication; Honesty and Trust; Safety; Respect and Dignity; Leadership" and "Accountability."

Then if you go to page 5 under Scope of Work, this is what is attributed to Scott O'Brien: "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, given your – each of your – and I'll ask you both to provide your answer to this. Based on your work on the project, were these goals demonstrated by Nalcor either fully or partially? Just look at the words. For example, Mr. O'Brien saying collaboration – uses that word.

Okay, well, Mr. Bader –

MR. DELAROSBIL: (Inaudible.)

MR. LEARMONTH: – I'll ask for your comment first.

MR. BADER: Oh me. So the – you would probably – or you're fully aware that the project was – Astaldi was terminated once they reached a progress of 95 or 96 per cent. So I just don't think – and I believe those principles were applied on the job.

And I've been in almost all the quarterly meetings between both Astaldi and Nalcor senior management and I have even heard Mr. Marshall saying: I hear your concerns, I understand you may have incurred extra costs. Just document this, just document it and we will deal with that. I heard it pretty much in every quarterly meeting because we were approaching – at the general or high level – the issues we were having, the commercial issues, the challenges, delays from others where we thought there's an extra in the scope of – extra or changes to the scope of work.

And we – if I say I used to work 17 hours a day, left the job with pretty much 50 days – banked days. Banked days, it means when you don't go home, you stay on the job, extra time. And so did other team members. They – like, they put lots of efforts for the 4 years and a half.

And I personally think, like, no contractors could have done – at least in the years of 2015, 2016, '17. I think our performance was equivalent if not higher than anyone else who would be doing the job.

I may kind of probably say we may had a little share at the beginning, but, like, coming to 2015, '16, '17, '18, we were top-performing contractor, I guess. We met every dates for the completion agreement. And since I started – or we started the workshop preparation between Nalcor and Astaldi, since 2015, if you would compare the schedules and the plans, between 2015 and 2018, the plan was there. We were always within two curves – we've given early and late curve, and we were closer to the early curves of production. So we achieved the targets. We expected an appreciation on – like, we couldn't have done nothing to change the cost of the job. The cost would have been spent by any other contractor. That's the value of the job. This is what it cost to do the job. And we

were expecting that Nalcor would be reasonable and would understand that.

And I was so disappointed the last two months of the job because I have seen Nalcor personnel with cold blood watching the boat sinking. And they could have probably got closer to us one step, and we could have finished this job and we could have resolved commercial issues at a later stage. The contribution to complete that job was very little compared to the damage that happened as a result of the termination. Disappointed for sure.

Do I believe they used these principles? Not at all. Not to Astaldi staff or personnel. They used double standards between union workers and staff when they approached the compensation, and I won't go into specifics where the funds could have been brought from. I can tell the funds could have been brought from somewhere, whether Nalcor's, whether – it could have been paid. And we could have been avoided some families to be suffering and waiting months and months for their earned money, well-earned money and well-deserved money. They did not get the appreciation so (inaudible) Astaldi team. So I am just disappointed, and frankly, I just feel that the efforts I spent at the person level at – Astaldi's, probably, efforts in the last four years, they were not recognized.

MR. LEARMONTH: Okay. But these principles that I referred to –

MR. BADER: They were not.

MR. LEARMONTH: They were not?

MR. BADER: They were not. If they were, I wouldn't be saying what I am saying, Sir.

MR. LEARMONTH: Okay. You mean that sincerely?

MR. BADER: Absolutely.

MR. LEARMONTH: Mr. Delarosbil, same question.

MR. DELAROSBIL: I would say that the individuals working on the Muskrat Falls site itself did practice working together with us. The open communications was not there. The

honesty and trust, well, I mean – let's say maybe deceptive would be a better value. Safety, we were aligned on safety. Respect and dignity, well, as I can – as I reiterated earlier, you know, you're throwing my people off site; you're not giving people a chance to defend themselves. Leadership, well, as I mentioned in my testimony earlier – or my cross earlier – was that there was nobody on the job site. And accountability, well, it was always somebody else's fault. So, I mean, that's where we're at.

I mean – so, the values, while they look good in print, I think all they needed to do was focus on one – is honesty and trust – and we didn't need 20 – or eight of them; we just needed one. And that would have sufficed for the job.

MR. LEARMONTH: And, what about the use – the word –

MR. DELAROSBIL: But – but, yeah –

MR. LEARMONTH: – collaboration?

MR. DELAROSBIL: I want to reiterate one – I apologize – I want to reiterate one thing, though: the individuals on the job site, the Nalcor individuals, worked hard, you know.

MR. BADER: I agree.

MR. DELAROSBIL: You know –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – so let's not just paint it – everything with a white brush here. There's individuals that worked very hard to help the project and help move the project along. And, you know, you're asking me what I think that – you know, our perception is what I just said.

MR. LEARMONTH: Yeah. But (inaudible) –

MR. DELAROSBIL: That's my perception.

MR. LEARMONTH: – was it a collaborative atmosphere?

MR. DELAROSBIL: Eh? When it suited them, yes.

MR. LEARMONTH: What do you mean by that?

MR. DELAROSBIL: Well, when they needed help. When they needed help on their schedule, when they needed help in the presentation, when they needed help supplying them information, when they needed help advancing the schedule, when they needed help with the closing of the building, yeah, it got collaborative.

We had a pretty good collaborative, I would say, 2017, you know, because the goal was to get that building closed and get ANDRITZ in, and that was a big priority. And we took out all the stops. You know, we completed that building one month early. We completed that structure one month early and was able to get the heating in there, was able to get ANDRITZ mobilized in with no other impact to Nalcor.

In fact, you know, I'm not one to toot my horn, but this team, well, did what they had to do to get this job done, and I challenge anybody to put our record and put our productivity and put anything against any other contractor out there. We were as good, if not better, than anybody else.

In fact, at the end of 2017, the Keeyask Project managers and the Keeyask contractors came to meet with me and my team at – they requested this from Nalcor – so this Manitoba Hydro and the contractor that's building Manitoba Hydro – because they were having problems; they were having issues. Some similar to ours, you know, productivity, being able to get things done. And they came and we spent a full day together.

We shared everything. We shared – I didn't hold back. I told them exactly, you know, what we would do, how we would do it, what we changed, how we changed it because it's to the benefit of another company. And we didn't treat the contractor as a competition; we treated him as a partner and we got through the details. We made presentations. We actually worked with their human resources department at Keeyask to transfer some of our staff that was coming to an end – you know, coming to the end of the job so that they could be afforded opportunities on Keeyask – some good people that could go help the Keeyask Project. So, yeah – so, my team shared everything – quality, safety –

MR. LEARMONTH: Mm-hmm.

So, just so I understand – you’re saying – you know, when I asked you specifically about collaboration, did I hear you correctly to say that only when it was in Nalcor’s interest?

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: So if it wasn’t in their –

MR. DELAROSBIL: Yeah. I think they had something – they wanted something or it was – you know, that’s my perception.

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: You know, like, kicking my people off site if I can go back to that subject because it bothers me a lot. Kicking my people off site, I mean, you know, there was individuals that we complained about that worked for Nalcor, and, you know, Scott gave me a call and said: Hey, listen, Don. I know this guy was a bit out of line and this and that, you know. Hey, can we fix this, you know?

And we did, you know, because that’s the way business is done. But it wasn’t reciprocated, you know, like, that kind of help or co-operation just wasn’t reciprocated, right? So –

MR. LEARMONTH: Okay.

Okay, so how did you feel about the contract being terminated – just your own personal views. I mean, never mind the –

MR. DELAROSBIL: Oh, well –

MR. LEARMONTH: – legal or anything like that.

MR. DELAROSBIL: Well, I think it – in the documents there’s an email I sent to –

MR. LEARMONTH: Yes.

MR. DELAROSBIL: – Mr. Marshall and my super boss, I guess, CEO of Astaldi S.p.A.,

Francesco Rotundi. I’m not sure if Gilbert was copied but –

MR. LEARMONTH: Yeah.

MR. DELAROSBIL: – I think it was Gilbert and Lance.

MR. LEARMONTH: By the way, that’s Exhibit –

MR. DELAROSBIL: Yeah.

MR. LEARMONTH: – P-03131, and it’s at tab 119 from your volume 3. Is this the email you’re referring to?

MR. DELAROSBIL: Yeah, is it up on the screen?

Yeah, so – and I have a lot of respect for my bosses, I also have a lot of respect for my client.

MR. LEARMONTH: Okay.

Just read this email out, it’s dated October 25, 2018.

MR. DELAROSBIL: Yeah. Okay.

“I am reaching out to you directly to ask you to meet with each other to find a solution to the problem we are now all faced with. I don’t think I need to explain that delaying this meeting will only make matters worse and complicate things for all.” I’m sorry.

“All of us have made personal sacrifices to come and build the Muskrat Falls Project. All of us are proud of what we have accomplished and want a chance to finish what we started.

“Please do the right thing and set up a meeting of decision makers” – that’s not me –
“immediately to develop a ‘best for all’ approach to completing the work.

“Respectfully.” And I didn’t get response.

MR. LEARMONTH: And that was it?

MR. DELAROSBIL: That was it.

MR. LEARMONTH: Okay.

MR. DELAROSBIL: Yeah.

So, imagine you're sitting there and – and you are – you kind of give it all you got, right? And then, you have to – you have to tell 600 people they don't have a job anymore, it's just kind of cruel and – from my point of view. You have to call them at home, say their job is not there anymore, you've got a couple of days to get off this site.

We were – you're treated like thieves, I guess – I don't know. Get out, we don't need you anymore. Now, I understand there's complications, but, you know, in life, there's better ways of doing things and there's a right way of doing things. The people that worked on the job actually gave up their lives, right? (Inaudible.)

MR. LEARMONTH: Okay. Those are my questions.

Thank you very much.

MR. DELAROSBIL: So –

MR. LEARMONTH: Okay, go ahead – continue.

MR. DELAROSBIL: – so, you have to face them, they were crying, of course, some of them. And – so, you have to let 'em, you know, go, you got no choice.

Astaldi's ACI – Astaldi only has one job. I have no job for these people, so now they're all unemployed, couple of months – month before Christmas. Then I've got no money to pay 'em, right? So I can't – I can't meet the commitment, right?

And I think – I think we could've got help there, you know. We could've got that fixed up and – people, with a little bit of compassion, would've understood that terminating something like this, after those individuals gave so much, was not the right termination.

You know, they can have whatever they want, commercially, with Astaldi. They can have it whatever they want, but people are still the people, and they're the people that are gonna build the work. And actually, some of those

people are back, but some of those people are still looking for work. And, I made personal commitments – personal, because I put the team together, so I brought these people in.

And I made commitments to making them stay, so some people were looking for jobs at the time because, you know, we only had nine months to finish or eight months, right? So people were looking for jobs, and I was convincing them to stay 'till the end, to complete what they had started, and not take on these jobs. And I was guaranteeing them – not that I could've, but I didn't expect this – but I was guaranteeing them the employment 'till the end of the job, so I could keep my team to finish the work.

So – so, yeah, I mean, what can I tell you? First time in my life, never been through this, never. It's never happened to me, yeah, I – most of my clients have always praised up the team and what I've been able to accomplish. And I apologize if it's emotional, but it is, so...

MR. LEARMONTH: Yeah. Okay.

Well, thank you very much both of you.

THE COMMISSIONER: All right.

We can do cross-examination now.

Province of Newfoundland and Labrador?

MR. LEAMON: No questions, Commissioner. Thank you.

THE COMMISSIONER: Nalcor Energy?

MR. SIMMONS: Thank you, Commissioner.

Good afternoon, gentlemen,

Dan Simmons, here for Nalcor Energy.

We have had a number of panels testify in the manner that you've given your evidence here yesterday and today.

What I'm going to do, I'm going to direct my questions to you individually so I'll identify who I want to – who I'm directing the question to and who I'm expecting to actually answer the question for me, if that's satisfactory.

And it's only a limited number of topics. You've talked about a lot over the last little while. It's only a limited number of things that I want to ask you some questions about.

Mr. Bader, I'm gonna start with you first. We're going back to when you first came to the site and took up work for Astaldi in July of 2014. So, if I understand correctly, you had no involvement on this – with this project, prior to that date.

MR. BADER: No, July 2014.

MR. SIMMONS: Okay.

I think we have an extra microphone on somewhere, do we?

MR. BADER: Oh, I think (inaudible) with me, yes.

MR. SIMMONS: When it's flashing green, it means we have too many microphones on.

MR. BADER: In July, I joined the job; before that time, I wasn't there.

MR. SIMMONS: Right. So I think you've told us, so I want to make sure I understand this correct, that when you came there in July, work on the ICS, the Integrated Cover Structure, was under way. I believe you said there were foundations being put in for, I guess, for the steel cones that were going to support the ICS. Is that right?

MR. BADER: Correct, yeah.

MR. SIMMONS: All right.

And, so by that point, Astaldi had completed its design for the ICS, I guess, some time before that.

MR. BADER: I'm assuming that anything required for the erection of the steel building was completed.

MR. SIMMONS: Yes.

MR. BADER: Now, I don't recall the other systems such as HVAC or lighting or – if they went – I know they were under development,

that's for sure. I'm sure if they were complete or not.

MR. SIMMONS: And, the subcontract had been given by Astaldi to Proco, by that date, for the – had it?

MR. BADER: When it was signed, I'm not sure.

MR. SIMMONS: Yeah.

MR. BADER: Now I know – now I can – I know for sure that Proco has been involved since early 2013. And, yeah, they've been involved since long time. Probably, the official contract signature was probably a bit later than that.

MR. SIMMONS: So, Proco had been involved for a considerable period of time before you joined the company July of 2014. Did they have a presence on the site in July of 2014? Had they mobilized –

MR. BADER: No.

MR. SIMMONS: – any workers and equipment?

MR. BADER: I remember that they may have – yeah, I think they went on site.

They probably did not start installing in July, I can't recall that. I do remember a site visit at – probably I was part of – just being on the South Service Bay, discussing where or how the erection sequence should be taking place from the south, north – stuff like this.

MR. SIMMONS: Sure.

And, was Proco just contract – subcontracted to do the erection work or were they supplying the steel as well?

MR. BADER: Both.

MR. SIMMONS: Both? Okay.

MR. BADER: Yeah.

MR. SIMMONS: Was there steel on site when you arrived in July 2014?

MR. BADER: I can't verify, Sir. I know it was very close to that period when we started –

MR. SIMMONS: Sure.

MR. BADER: – erecting the steel.

MR. SIMMONS: Sure.

MR. BADER: It was – if it was or it wasn't – it probably – maybe a few weeks – one or two weeks after or it was at site. I can't remember.

MR. SIMMONS: No, okay.

So, in July of 2014, then, was there – was – did Astaldi have a construction schedule prepared at that point that addressed the erection of the ICS?

MR. BADER: Well, Astaldi had several schedules shared with Nalcor, and I think during that period of time the fact that Nalcor did not accept that late mobilization will affect, really, a start of work. They were not capable or able to approve any schedule because it reflected the reality.

MR. SIMMONS: Yeah.

MR. BADER: At that period of time, Astaldi shared various schedules –

MR. SIMMONS: Mm-hmm.

MR. BADER: – and just Nalcor did not like the dates.

MR. SIMMONS: So had Astaldi submitted a construction schedule that had a schedule for erecting the ICS on it when you arrived in July of 2014?

MR. BADER: Well – they had lots of submissions, Sir.

MR. SIMMONS: Okay.

MR. BADER: Now, in July – I have made a submission in August, I think so –

MR. SIMMONS: Sure.

MR. BADER: – or end of July. Prior to that, yes, because the version of schedule I worked on

was a follow-up of other schedules and the ICS activities –

MR. SIMMONS: Right, so –

MR. BADER: – could have been there.

MR. SIMMONS: – as between Astaldi and Proco –

MR. BADER: Yeah.

MR. SIMMONS: – surely there was a schedule in place for the erection of the ICS when you arrived in July 2014?

MR. BADER: Yes.

MR. SIMMONS: Okay.

MR. BADER: Between Astaldi and Proco.

MR. SIMMONS: Yes.

MR. BADER: We were – yes, but we had to – we had – that schedule kept being modified or – as the progress was going.

MR. SIMMONS: Mm-hmm.

MR. BADER: So, the visit of Proco in July aimed to have – to study a bit the execution of how the ICS will be built and if the site conditions fit with the schedule Proco had. And I do recall that I've seen a few correspondence between the Astaldi personnel and Proco management –

MR. SIMMONS: Mm-hmm.

MR. BADER: – prior to the finalization of the contract on the schedule. And between – and definitely Proco was saying now I'm starting in July, then you're changing my – as well, I have late start in my ICS, and really I just don't wanna go through the specifics between Astaldi and Proco because I (inaudible) –

MR. SIMMONS: Sure (inaudible) –

MR. BADER: – (inaudible).

MR. SIMMONS: Well, I'll just ask you a couple of basic questions about this.

MR. BADER: Okay.

MR. SIMMONS: I don't want to get into the dispute –

MR. BADER: Okay.

MR. SIMMONS: – with Proco, but I want to know a little bit about –

MR. BADER: Sure.

MR. SIMMONS: – Astaldi's plan and Proco's plan.

MR. BADER: Sure.

MR. SIMMONS: So, the point of the ICS was to have it available for the winter of 2014, 2015, correct?

MR. BADER: You are absolutely right.

MR. SIMMONS: At least have the building closed in. And I could understand that you could complete interior work once it was closed in –

MR. BADER: Sure.

MR. SIMMONS: – 'cause you were outside of the weather then. But Proco's work was to be done before the weather closed in at the end of 2014. Is that correct?

MR. BADER: Correct.

MR. SIMMONS: Right. So when you arrived, what was Proco's schedule to complete the work –

MR. BADER: As I said –

MR. SIMMONS: – to close in the building –

MR. BADER: Yeah.

MR. SIMMONS: – and have it out of the weather?

MR. BADER: As I said yesterday – and Mr. Mauro Palumbo said – the target date to complete the ICS was December 2014.

MR. SIMMONS: Yes.

MR. BADER: And with our subcontractor, we have received the schedule, and we even received the commitment from Proco at that period of time –

MR. SIMMONS: Yes.

MR. BADER: – that the installation would lead to a completion in December 2014.

MR. SIMMONS: Okay. So, that's the point I'm getting to –

MR. BADER: Okay.

MR. SIMMONS: – is that when you arrived in July 2014, plans were in place –

MR. BADER: Mm-hmm.

MR. SIMMONS: – for Proco to finish their work putting up the steel and closing the building, cladding on the sides, roof on the top by December of 2014.

MR. BADER: Yeah. I would say the full building. Then one month or two months after, that schedule just included Unit 1 and 2 to be finished in December '14.

MR. SIMMONS: Okay. Okay.

So, what happened in those couple of months for the schedule to change from erecting the entire ICS by the end of 2014 to only doing Units 1 and 2?

MR. BADER: As I was saying yesterday, the design of the ICS became complex –

MR. SIMMONS: Mm-hmm.

MR. BADER: – complex design. The requirements were, like, so demanding, and I was saying a joint force –

MR. SIMMONS: But wasn't the design complete by time you arrived –

MR. BADER: Eh?

MR. SIMMONS: – before they started the erection? Because they had to order the steel –

MR. BADER: Well –

MR. SIMMONS: – beforehand.

MR. BADER: – part of their design was – a few other things were not – yeah, the design was mainly complete for the erection.

MR. SIMMONS: Mm-hmm.

MR. BADER: We got a task force done in July between Nalcor, ourselves to optimize the schedule and to get –

MR. SIMMONS: That's Astaldi's schedule.

MR. BADER: At the end, it's a project schedule.

MR. SIMMONS: Project schedule, yeah.

MR. BADER: But, yes, it's Astaldi's schedule.

MR. SIMMONS: But we're not talking about Proco's –

MR. BADER: Yes.

MR. SIMMONS: – schedule. This is the schedule that Astaldi has to –

MR. BADER: Yes.

MR. SIMMONS: – submit to Nalcor you're talking –

MR. BADER: Yes.

MR. SIMMONS: – about now.

MR. BADER: Yes.

MR. SIMMONS: Okay.

MR. BADER: And it was – if you're pointing out that productivity was less than expected, it was, Sir.

MR. SIMMONS: Mm-hmm.

MR. BADER: And this is the basis our litigation with Proco.

MR. SIMMONS: Okay. So –

MR. BADER: Like, their performance wasn't as we planned or how –

MR. SIMMONS: Right.

MR. BADER: – we expected –

MR. SIMMONS: Right.

MR. BADER: – that we could build it as fast as we think. It's a huge building.

MR. SIMMONS: Mmm.

MR. BADER: And (inaudible) –

MR. SIMMONS: So if we can boil it down to, sort of, a more simple answer: although you had a schedule with Proco that even though they were starting in July –

MR. BADER: Okay.

MR. SIMMONS: – they were going to finish it before the end of 2014, by the time a couple of months had gone by, their productivity – they weren't meeting that schedule. They weren't performing, and you had to go to your – had to develop plan B and say: We don't get the whole building. Let's just do Units 1 and 2 and make the best we can out of it.

MR. BADER: Yeah. I think –

MR. SIMMONS: Yeah.

MR. BADER: – it's fair, Sir.

MR. SIMMONS: Okay.

MR. BADER: One of the things to say – you would know that October, November, December, those are winter months, and, as well, when you – everything has – fits –

MR. SIMMONS: Mm-hmm.

MR. BADER: – together, so you'd have to look at it as well: why the productivity wasn't achieved (inaudible) or –

MR. SIMMONS: Well –

MR. BADER: – because you got the erection into winter months as well. So, like everything is – you can't just look at a little window; you have to look at the facts why you ended up building it in November, October, December, right, that's –

MR. SIMMONS: Proco's a Canadian contractor, though, aren't they?

MR. BADER: They are and they committed to a schedule, too.

MR. SIMMONS: And they build things in the North, don't they?

MR. BADER: They did.

MR. SIMMONS: They do. So October, November, December should be no surprise. And you would've thought – I thought you would be able to entitle and to rely on your subcontractor to know what the –

MR. BADER: And they relied on –

MR. SIMMONS: – conditions are going to be.

MR. BADER: We relied on that, and we put –

MR. SIMMONS: Yeah.

MR. BADER: – it on the schedule.

MR. SIMMONS: Yeah.

MR. BADER: And if – actually, probably you would (inaudible) – North Canadian contractor, as well, couldn't do it in November, October, December.

MR. SIMMONS: Mm-hmm.

MR. BADER: You would probably realize the impact of a late start, and you would –

MR. SIMMONS: Sure.

MR. BADER: – realize what Mr. Delarosbil and I said: If you don't do this in the summer, you pretty much lost enough months.

MR. SIMMONS: So the – and the schedule that had been submitted – even though the overall – Astaldi's overall schedule hadn't been accepted

by Nalcor, and there's discussion on it, the schedule for the ICS that had been submitted to Nalcor in the July 2014 time frame did show the ICS being completed in time to be –

MR. BADER: Absolutely.

MR. SIMMONS: – implemented that winter.

MR. BADER: Absolutely.

MR. SIMMONS: Yes, okay.

You made some comments about permits and permitting being a bit of a complication. So on this job, the contract documents are pretty extensive, and there's a large set of project documents that describe all the processes and procedures that have to be followed, and you would've been –

MR. BADER: I agree, yeah.

MR. SIMMONS: – heavily involved in being familiar with those sorts of things in the position you were in, correct?

MR. BADER: Well, I can't say heavily, but I know what you're talking about.

MR. SIMMONS: Sure, sure.

And these are things that are largely in place up front before the contractors start to perform their work. A lot of it's incorporated into the contract, right?

MR. BADER: You're right.

MR. SIMMONS: Yeah.

MR. BADER: Getting the permits was a complicated process because as you will notice, it's a temporary. Normally you get an occupation permit for a house.

MR. SIMMONS: Mm-hmm.

MR. BADER: You don't get it for – or a warehouse or something that –

MR. SIMMONS: Mm-hmm.

MR. BADER: – you don't keep modify the geography inside the ICS. One thing that we got a problem or a challenge with the fire department – if I'm not mistaken, I think it was the right department we had to deal with. I may be wrong, but that's what I recall.

MR. SIMMONS: Oh, so these are not permits from, like, Nalcor quality assurance; these are –

MR. BADER: Well –

MR. SIMMONS: – permits from outside agencies, are they?

MR. BADER: – Nalcor will get us the permits. Normally –

MR. SIMMONS: Mm-hmm.

MR. BADER: – how we get permits, we submit it to Nalcor to get. I'm not saying Nalcor did delay the permits. What I'm –

MR. SIMMONS: Okay.

MR. BADER: – saying is the changes inside the ICS – because in one month you may have 10 pours, in a different month you may be at a different elevation and then in other months you would ...

So inside the ICS, the geography was changing, so it was for us to get – to be compliant with the requirement of the permit, it was a challenge. We even had to hire a Stantec – an architect from Stantec to study the changes inside the ICS and that – kind of come up with –

MR. SIMMONS: So was Nalcor dictating these changes or were these changes in design and execution that were coming about as you and Proco were working through this?

MR. BADER: This is what I was saying, like, the ICS, we (inaudible) this project.

MR. SIMMONS: Mmm.

MR. BADER: And it was as we – you would – we got permits for the other installations. We got for the workshop for the main things –

MR. SIMMONS: Yeah, but that's not my question though.

MR. BADER: No, but my thing is that we did not miss to get the permit. It was a challenge to get the permits, it was not expected. And I would just think it's difficult for someone to expect such requirements and it was one of the things that made the project more complicated.

MR. SIMMONS: Okay.

So just so I'm totally clear on this, these aren't permits that had to be given to you by Nalcor, like, from the safety department at Nalcor or quality assurance, these are things like from the Town of Happy Valley-Goose Bay –

MR. BADER: Yeah.

MR. SIMMONS: – over fire protection.

MR. BADER: But they have to go, I think –

MR. SIMMONS: Building requirements.

MR. BADER: Yeah, my understanding is, like, permits go through Nalcor.

MR. SIMMONS: Mmm.

MR. BADER: We submit Nalcor is like a receiver, pretty much.

MR. SIMMONS: Mmm.

MR. BADER: They just submit that.

MR. SIMMONS: Okay so they pass through.

MR. BADER: That's it.

MR. SIMMONS: But it was Astaldi and Proco's responsibility, I guess –

MR. BADER: Astaldi.

MR. SIMMONS: – to meet the requirements of the town –

MR. BADER: Astaldi.

MR. SIMMONS: – Astaldi – the requirement in order to get those permits.

MR. BADER: Yeah.

MR. SIMMONS: Okay.

And that was a complication for you that contributed to the time it was taking to try and get the ICS done. Yeah.

MR. BADER: Sure.

MR. SIMMONS: Okay.

MR. BADER: It was one of them but it wasn't – it didn't lead to the loss of productivity. If you are thinking of it, it's not even on the critical path –

MR. SIMMONS: Okay.

MR. BADER: – because at the end –

MR. SIMMONS: So it wasn't a concern.

MR. BADER: At the end, we didn't need a permit.

MR. SIMMONS: Mmm.

MR. BADER: I'm just saying the issues from July, August, September, similar things –

MR. SIMMONS: Yeah.

MR. BADER: – appeared to complicate the execution and imperative to the productivity –

MR. SIMMONS: Yeah.

MR. BADER: – issues Proco has seen.

MR. SIMMONS: Yeah.

So – and just one point, and I think this is probably fairly obvious to a lot of us here now because we've been learning a little bit about construction as we go along. There's a real distinction on a construction project between the permanent structures and the temporary structures. And the permanent structures are the owner – for example, here Nalcor, and through its subsidiary companies – supplies a set of plans and specifications with a design for the permanent structure, and that is what the

contractor is contracted to build, what's specified and designed. Correct?

MR. BADER: I'm not sure I –

MR. SIMMONS: Very basic.

MR. BADER: – understand the question.

MR. SIMMONS: Yeah.

MR. BADER: I understood, like, for permanent work we received drawings and specifications and we build according to that. That's true.

MR. SIMMONS: Exactly.

MR. BADER: But, you know, sometimes it depends on your commitment with the owner. If I have a design build I may get (inaudible) permits.

MR. SIMMONS: True.

MR. BADER: And our job it was construction, like –

MR. SIMMONS: Yeah, I moved past the permits now –

MR. BADER: Okay.

MR. SIMMONS: – on this point. And – but the contractor generally retains control of, as Mr. Delarosbil has said, the means and methods of how you go about building what you're contracted to build.

MR. BADER: Absolutely.

MR. SIMMONS: Right.

Now, the ICS was part of Astaldi's proposal, so it finds its way into the execution plan of the project, but it's fundamentally Astaldi's means and method of achieving the construction of the powerhouse.

MR. BADER: Absolutely.

MR. SIMMONS: Correct?

MR. BADER: Sure.

MR. SIMMONS: Right.

MR. BADER: It was the basis of that bids as well, so ...

MR. SIMMONS: Yes.

And aside from where there might be some interface with the permanent structure, the design of it essentially remains with Astaldi in order to be satisfied that it has a satisfactory design.

MR. BADER: Yes, the design is – was Astaldi's responsibility. For all temporary work, I can recall the contract requires –

MR. SIMMONS: Mm-hmm.

MR. BADER: – that Nalcor should approve the drawings because if you – you may be fully aware that Aconex is a platform where we exchange the documents with Nalcor.

MR. SIMMONS: Mmm.

MR. BADER: So even for temporary work we had to submit drawings through Nalcor and they get coded: One, it means approved, two means that approved with comments, three means rejected –

MR. SIMMONS: Yeah.

MR. BADER: – five not reviewed. So, in any case, we had to submit the drawings and they got – they had to be approved by Nalcor.

MR. SIMMONS: Okay.

Now, we – I'm going to ask you to think carefully about what you mean by approved here, because there are different types of – if I understand correctly – of submittals that will go to any owner or engineer for review and there are different levels of, we'll say loosely, approval now that come back.

So let me move away from temporary –

MR. BADER: I –

MR. SIMMONS: – ones for a moment and just – I'll just describe it and you tell me if I've got

this right. There are parts of the permanent structure where the contractor may have to submit shot drawings, more detailed drawings to show how the permanent structure is going to be put in place. Correct?

MR. BADER: Yes.

MR. SIMMONS: Yes.

MR. BADER: Okay.

MR. SIMMONS: Those have to be approved before the work can be done, right?

MR. BADER: Yes.

MR. SIMMONS: Because it's a design of the permanent structure.

MR. BADER: Agreed.

MR. SIMMONS: Right.

MR. BADER: Yeah.

MR. SIMMONS: For the requirement to submit the drawings for the temporary structures, although there's a process of submitting and feedback, Astaldi retains the responsibility for design. Nalcor does not approve the design and take responsibility for it, correct?

MR. BADER: Astaldi has to design it.

MR. SIMMONS: Yes.

MR. BADER: And I think the provision of the contract says Nalcor has to approve it. And, normally, you would – to base your approval for if I'm working on a – with a client approving it and put it in drawing, before I approve it I will ask to run not probably a detailed design checks –

MR. SIMMONS: Mm-hmm.

MR. BADER: – because you pay already the contractors to do it, at least you will have the – to put your basic engineering requirement checks for to see, okay, probably, yeah, it makes sense for the temporary drawings.

MR. SIMMONS: Okay

MR. BADER: It has to be reviewed by the owner. Or, as well, what are you approving? Why do you want to see it if you're not going to do basic checks? You would have still to do a due diligence. The same thing as doing a quality assurance, you would go and audit the shop.

MR. SIMMONS: Mm-hmm.

MR. BADER: You would do – audit part of that submittal and you would say, quality is accepted, we can approve it, but the design responsibility is the contractor.

MR. SIMMONS: Right.

And quality assurance is at a different level of review –

MR. BADER: Of course.

MR. SIMMONS: – than approval of a construction drawing.

MR. BADER: Of course.

MR. SIMMONS: Right? So the Nalcor review of the temporary structures drawings is more akin to a quality assurance process than it is to a design process.

MR. BADER: I –

MR. SIMMONS: Is that right?

MR. BADER: I already said that, so ...

MR. SIMMONS: Okay, thank you.

Commissioner, it's 12:30 so that might be a good place to break.

THE COMMISSIONER: Yeah, okay.

How long do you – I'm just trying to figure out my – rest of my day here now.

MR. SIMMONS: The lunch break will help me figure that out.

THE COMMISSIONER: Okay.

MR. SIMMONS: So I'm going to say anywhere from a half hour to an hour.

THE COMMISSIONER: Okay.

I'm just wondering should we come back at quarter to 2 as opposed to 2 o'clock. Would that 15 minutes (inaudible).

MR. SIMMONS: I guess it depends on how long we expect other counsel to be.

MR. LEARMONTH: I would ask that we do come back 15 minutes early.

THE COMMISSIONER: All right, let's do it at 2:15.

MR. SIMMONS: Okay.

THE COMMISSIONER: At quarter to 2, rather, okay?

MR. SIMMONS: Thank you.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: Mr. Simmons, when you're ready.

MR. SIMMONS: Thank you –

MR. LEARMONTH: Can I enter an exhibit before we start?

THE COMMISSIONER: Sure.

MR. LEARMONTH: It's Exhibit P-03488, if that could be entered, please.

THE COMMISSIONER: All right, that'll be marked as P-03488.

Mr. Simmons.

MR. SIMMONS: Thank you, Commissioner.

Mr. Delarosbil, I have a topic I want to ask you some questions on now and it concerns decision-

making on site, because you've expressed some views and given some evidence concerning your view that there was a lack of appropriate decision-making on site. And I want to understand a bit better, or go through with you what some of the different sorts of decisions are that have to be made in order to progress the project.

And the first – the starting point is a question I had asked Mr. Bader earlier this morning, which was that there's a distinction between the – well, first of all, let me step back. When Astaldi got the contract to perform this work, it essentially comes with a set of plans and specifications that describe what the end product is that's to be produced at the end of the day. Correct?

MR. DELAROSBIL: Correct.

MR. SIMMONS: Correct.

So – and during the course of the job there can be changes made to – for one reason or another – to those plans, specifications, or to the scope of the work that would require some form of agreement between the parties in order to make those changes.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: So that's one sort of decision-making that would have to happen.

MR. DELAROSBIL: Mm-hmm.

MR. SIMMONS: The other – and I'm going to suggest the other large category of decisions that could have to be made deal with what we've been calling commercial matters.

MR. DELAROSBIL: Mm-hmm.

MR. SIMMONS: Would you agree with that?

MR. DELAROSBIL: Yes, Sir.

MR. SIMMONS: Okay.

And by commercial matters, that largely includes things which affect the amount of payments to be made by the owner – in this case, the Nalcor company – to the contractor – in this

case, Astaldi – one way or another. Is that correct?

MR. DELAROSBIL: Yeah. Yeah, Nalcor is responsible to pay Astaldi.

MR. SIMMONS: Okay.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: Right.

And there are – am I correct that there are different sets of processes that are included under the contract for dealing with things like design changes or decisions concerning the execution of the work, versus decisions about how payments are made to the contractor?

MR. DELAROSBIL: Yeah, I think you're correct, Sir.

MR. SIMMONS: Yeah, okay.

So I just want to run through just a few of those things to make sure I've got it right. The starting point is you'd be familiar that in the contract – it's a lengthy document, and there is – one of the appendices there is called Exhibit 3 which is called Coordination Procedures. That's one you would be familiar with, is it?

MR. DELAROSBIL: I wouldn't mind having them beside me but, yes, I've seen –

MR. SIMMONS: I'm not going to –

MR. DELAROSBIL: – Coordination Procedures, yes.

MR. SIMMONS: Right, right. I'm not going to page through it.

MR. DELAROSBIL: Okay.

MR. SIMMONS: This is the one that deals with things like change orders.

MR. DELAROSBIL: Yes, Sir. Yeah.

MR. SIMMONS: Yeah, okay.

So one of the types of processes that are described in there I think are site queries. Now,

are you familiar with what site queries are?
There's a form for them.

MR. DELAROSBIL: Yes, Sir.

MR. SIMMONS: Okay, so what is a site query?

MR. DELAROSBIL: Well, it's basically just asking or wanting to make a slight change or asking for some information or exchange of information –

MR. SIMMONS: Right, right.

So site queries originate from the contract – in this case Astaldi – and go to the owner.

MR. DELAROSBIL: That's right.

MR. SIMMONS: And they can be used for things like looking for clarifications on the plans –

MR. DELAROSBIL: That's right.

MR. SIMMONS: – and specifications.

MR. DELAROSBIL: That's right. Sir.

MR. SIMMONS: So if you're uncertain about how to proceed, there's a process built into the contract of submitting a site query.

MR. DELAROSBIL: Yes, Sir.

MR. SIMMONS: And there are time frames for responses to site queries, right?

MR. DELAROSBIL: There is, Sir.

MR. SIMMONS: In the contract.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: Yeah, okay.

There's also something called a concession request.

MR. DELAROSBIL: Yes, Sir.

MR. SIMMONS: Do you know what a concession request is –

MR. DELAROSBIL: Yeah.

MR. SIMMONS: – and what it's used for?

MR. DELAROSBIL: Yes, Sir.

MR. SIMMONS: Okay, so what is it?

MR. DELAROSBIL: Well, it's when we want to change a method of construction or whatever we're asked for concessions. Instead of doing this or we want to replace the material or replace something, we ask for a concession.

MR. SIMMONS: Right.

MR. DELAROSBIL: Whether that – if we're allowed to do it, you know, if the material is close to the site where there's an advantage.

MR. SIMMONS: Right. So it's useful to the contractor because if you can find a way that's cheaper to you to perform the work and still achieve the same result from the – for the owner, you can ask for a concession so you can do it slightly differently than is specified in the contract.

MR. DELAROSBIL: Yeah, for cost and schedules.

MR. SIMMONS: Yes.

MR. DELAROSBIL: Yes.

MR. SIMMONS: Okay.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: So these originate with the contractor also, there's a form that they're submitted on there and there is a process in the contract for how those things are dealt with, right?

MR. DELAROSBIL: There is, Sir.

MR. SIMMONS: Yeah and there's time frames for dealing with them.

MR. DELAROSBIL: There is, Sir.

MR. SIMMONS: Yeah, okay.

And I had mentioned to Mr. Bader this morning that there are things – there are submittals. When the contractor has to submit shop drawings or various documents for review or approval by the owner, the contract describes what those things are and how they're all to be handled, right?

MR. DELAROSBIL: That's right.

MR. SIMMONS: And there's time frames specified there for the responses on those also.

MR. DELAROSBIL: That's right, Sir.

MR. SIMMONS: Right.

And those types of things I'm talking about now – site queries, commission requests and the submittals – that's all kind part of progressing the work and getting the work done, that's really not a commercial matter dealing with those, is it?

MR. DELAROSBIL: Not really. It can involve some commercial matters –

MR. SIMMONS: Right.

MR. DELAROSBIL: – but a –

MR. SIMMONS: Right.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: So when you talk about lack of authority on site for making decisions, are you talking about the kind of decisions that arise from the site queries, the concession requests, review of submittals? Is that what you're complaining about when you're saying there wasn't enough authority on site to deal with those?

MR. DELAROSBIL: I'm not – well, maybe in some cases but in general, no.

MR. SIMMONS: Okay, all right.

And I'm just going to bring you – just to complete that line – to Exhibit P-03024, please. And I'm just going to this letter; this is one from October 27, 2014. It's a reply from Mr. Tranquilla, I think, who was a manager – Astaldi manager on site at the time.

MR. DELAROSBIL: Mm-hmm.

MR. SIMMONS: This is before your – you were involved there.

MR. DELAROSBIL: Mm-hmm.

MR. SIMMONS: And if we just scroll down, please, I may have the wrong – okay, we can – no, that's not the right one, sorry. Is that 03024?

Yes, if we can scroll down, please. Okay, we can stop there. So as of this point in 2014 –

MR. DELAROSBIL: Mm-hmm.

MR. SIMMONS: – there's a table here and it lists site queries, concessions and workflows which are document approval.

MR. DELAROSBIL: Mm-hmm.

MR. SIMMONS: And it lists the total number of each submitted, the number that are there to be answered and it lists an average response time in days. You see that?

MR. DELAROSBIL: Yeah, 3.8 days?

MR. SIMMONS: Okay.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: And if we go to the next page, please, there's a statement here in this paragraph, third line: "To date the metrics indicate we are currently averaging much less than our contractual obligations." So in your experience, after you were there, did this continue to be the case that Nalcor continued to meet its contractual obligations for the time in which it responded to things like site queries and concession requests?

MR. DELAROSBIL: In general –

MR. SIMMONS: In general.

MR. DELAROSBIL: – I would have to say, yes.

MR. SIMMONS: So if those – if Nalcor was meeting its obligations and responding in time,

did it matter so much whether the decision was being made on site or in St. John's?

MR. DELAROSBIL: Well, you may not have needed all these concession requests if you would have had somebody with authority and knowledge of construction on site.

MR. SIMMONS: Right.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: And so there wasn't a problem with that, you had the people on site you needed with the authority and the knowledge to process these things.

MR. DELAROSBIL: To process, yes. Not to decide.

MR. SIMMONS: Okay.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: But the decisions were made within the time specified in the contract, generally.

MR. DELAROSBIL: Yeah, I guess if you read the contract. Everything was, like (inaudible) we won't get to the spot where they didn't follow the contract. They did, absolutely, to the letter.

MR. SIMMONS: Right.

MR. DELAROSBIL: It doesn't mean it helped.

MR. SIMMONS: Okay.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: So in that exhibit then, dealing with coordination procedures, the other main thing that's out there is change orders and change requests.

MR. DELAROSBIL: Mm-hmm.

MR. SIMMONS: So, under the contract, there are processes spelled out for both.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: And I'll just tell you what I understand them to be and you can correct me if I'm wrong. So a change request can come either from the contractor or from the owner. And it's more than just a question; it's a request to make some sort of change –

MR. DELAROSBIL: That's right.

MR. SIMMONS: –to the work the contractors perform –

MR. DELAROSBIL: That's right.

MR. SIMMONS: – right?

MR. DELAROSBIL: Yeah.

MR. SIMMONS: And if there's a schedule impact or a cost impact, if there is a request made for a change, the party receiving it is going to have to respond and say –

MR. DELAROSBIL: Mm-hmm.

MR. SIMMONS: – you know, this is what we think it's –

MR. DELAROSBIL: Mm-hmm.

MR. SIMMONS: – going to cost, or we agree to pay this much and so on.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: Right?

MR. DELAROSBIL: Yeah.

MR. SIMMONS: And there are also change orders. And a change order would come from the owner, the Nalcor company to Astaldi, saying: Here's a change we want you to do.

MR. DELAROSBIL: That's right.

MR. SIMMONS: And you've referred to this earlier, if you get a change order, you have to perform it.

MR. DELAROSBIL: Mmm.

MR. SIMMONS: Even if there's no agreement on impact on cost and schedule –

MR. DELAROSBIL: That's right.

MR. SIMMONS: – you have to do it.

MR. DELAROSBIL: That's right.

MR. SIMMONS: But the contract has processes in it for working out a resolution of any dispute about cost and schedule impact, correct?

MR. DELAROSBIL: Yes, it does.

MR. SIMMONS: Yes.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: Okay, all right.

MR. DELAROSBIL: It's not helpful, but it does.

MR. SIMMONS: Right.

And sort of a subset of change orders are these field work orders that can be actually issued –

MR. DELAROSBIL: On site, yes.

MR. SIMMONS: – on the field.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: And if we look at the contract, there are – they can be used for a value up to \$25,000.

MR. DELAROSBIL: That's right.

MR. SIMMONS: Does that sound right?

MR. DELAROSBIL: Yeah.

MR. SIMMONS: Yeah.

MR. DELAROSBIL: That's right.

MR. SIMMONS: And that part can happen right on site.

MR. DELAROSBIL: That's right, Sir.

MR. SIMMONS: Yeah, okay.

So is the –

MR. DELAROSBIL: But it didn't always happen. They still needed permission from St. John's.

MR. SIMMONS: Right.

So is the – is your concern about lack of decision-making on site related then to the commercial resolution of things like impact on schedule and cost resulting from change orders. Is that –

MR. DELAROSBIL: No, it's –

MR. SIMMONS: – what your concern is?

MR. DELAROSBIL: No, my concern is getting the assurance that you're going to get paid for doing the work. I mean, you can get a change order and you're instructed to go do something but, at the end of the day, you want to know that you're getting paid.

MR. SIMMONS: Right.

MR. DELAROSBIL: So that's a decision. You need somebody's word that they're going to take care of it. Yes, there's language in the contract and there's a process to follow but, you know, if you go back into the details, most of those weren't addressed.

MR. SIMMONS: Okay.

MR. DELAROSBIL: So –

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: –you couldn't get a commitment.

MR. SIMMONS: Astaldi is a big company; it does construction work all around the world, like many of these large companies do, right?

MR. DELAROSBIL: That's right, Sir.

MR. SIMMONS: So, presumably, they have to deal with commercial arrangements in many parts of the world where they have contracts in place. So, entering into this contract, Astaldi – the people running Astaldi would know what the

procedure is going to be for dealing with these commercial issues. It's spelled out in the contract, right?

MR. DELAROSBIL: Yes, Sir.

MR. SIMMONS: Right.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: Right.

MR. DELAROSBIL: You put them in dispute, right?

MR. SIMMONS: Sure.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: So there's ways to deal with it. And I understand that you would prefer if you could deal face to face with someone on the site and solve these commercial issues.

MR. DELAROSBIL: Mm-hmm.

MR. SIMMONS: But the contract doesn't necessarily say that's the way it's going to happen, right?

MR. DELAROSBIL: I know. I know and that's a flaw, right?

MR. SIMMONS: Right.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: Okay.

And the commercial issues – resolving the commercial issues that deal with, you know, future impacts on schedule, perhaps, and, importantly, you know, payment arrangements, that's not holding up getting the change work done on the site, right?

MR. DELAROSBIL: Well, when you ask for change work – you know, I think Mr. Bader alluded to this, this morning – it's simple. You have a whole bunch of people, you know. Let's say I have 500 people on day shift, right, and you're asking me to do a change order and I need another 15 people to do that work, okay?

MR. SIMMONS: Mmm.

MR. DELAROSBIL: Well, where do you think I get the 15 people to do that change order work, right, if it's a request by the client? So I have to take people off my productive work to manage this change work, so I'm getting hit twice because I don't want any change orders.

I was clear with Nalcor. I prefer they never give me a change order unless it was related to my scope. I was clear with that. They understood that because I'm impacted twice.

MR. SIMMONS: Right.

MR. DELAROSBIL: First, I do the change order –

MR. SIMMONS: Yeah.

MR. DELAROSBIL: – and I don't know if I'm going to get paid. Two, I impacted my production because I lost those 15 men on good operations that they were building for me, which I was getting paid for or was supposed to get paid for.

MR. SIMMONS: Right.

MR. DELAROSBIL: You see? So there's an impact. So if you have somebody on site that says: Hey listen, Don, yeah, I understand (inaudible) you're impacting your operation. You were supposed to get 8,000 cubic metres by the end of the month, but I'll understand if you only get 8,500 because you had to take these guys and go do this work, you know.

But the schedule never changes. To get a person on site takes seven days. If you're going to give me changes, plan your changes so that I can plan my work and not impact my work. You know, people are focusing on productivity, but disrupting my operations to go do something that's not in my scope is impacting my operations, you know? Then, at the end, not getting paid for it impacts me again, you know, so I lose twice.

MR. SIMMONS: Okay.

So you say you don't know if you're going to get paid for it, but –

MR. DELAROSBIL: In some cases, yeah.

MR. SIMMONS: Right, until you follow through the process –

MR. DELAROSBIL: Yeah.

MR. SIMMONS: – of making the claim for payment –

MR. DELAROSBIL: Yeah.

MR. SIMMONS: – negotiating it. And if you can't negotiate a settlement, you use the processes in the contract to resolve the dispute, but that's the structure of the contract.

MR. DELAROSBIL: Yeah. No, I understand it's the structure of the contract –

MR. SIMMONS: Yeah.

MR. DELAROSBIL: – but, you know, to run an operation you need cash flow and you need to be able to –

MR. SIMMONS: Mmm.

MR. DELAROSBIL: – run your operation. I mean, you can't wait till the end of the year, which has been done, and consistently done – you wait till the end of the year. You put everything in a bucket –

MR. SIMMONS: Mmm.

MR. DELAROSBIL: – and then you say it's this or nothing.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: You know, it's not the way to operate. You deal with it as you go along. And sometimes this – sometimes the negotiation is – it's a fair negotiation process. When you put everything in a bucket, then everybody sees a bigger number. Then they say, well, we're giving them so much, then we're going to cut that. You know, at the end of the – I impacted my operations to do the work and then I get cut on the other side of the – I get cut on my change order.

You know, I just want to get paid for what I do. That's all I want, you know. And I think that's all people want. You go, you go do a job, you're honest, you know that it's going to cost so much money. I put in an estimate. You don't agree with my estimate. We have a challenge right there. And we go through that estimate and say this is the price you're going to pay to do that work. That's all. It's not complicated.

MR. SIMMONS: So –

MR. DELAROSBIL: Contract language just gets around that. So you use a contract language, as you say, to bring everything to the end because you can in the contract, but that's abusive. That's not the way you do things. That's not the way you should operate.

MR. SIMMONS: So –

MR. DELAROSBIL: It just isn't.

MR. SIMMONS: So I'm going to suggest that – and when I say, you, I mean corporately the company, I'm not –

MR. DELAROSBIL: Yeah.

MR. SIMMONS: – personalizing it to you.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: But the company, Astaldi's concern here is not so much whether the decision for payment is made on the site in Muskrat Falls or in an office in Goose Bay or in an office on Torbay Road in St. John's.

MR. DELAROSBIL: I don't care where they meet –

MR. SIMMONS: It's that they're not –

MR. DELAROSBIL: – to pay me, I just want to get paid.

MR. SIMMONS: Right.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: It's that Astaldi is not happy with some of the decisions that were made.

MR. DELAROSBIL: Not happy with the decisions were made.

MR. SIMMONS: Didn't agree with –

MR. DELAROSBIL: Well, on the –

MR. SIMMONS: – some of the decisions that were made.

MR. DELAROSBIL: – commercial side –

MR. SIMMONS: Not happy on the commercial side.

MR. DELAROSBIL: – were not happy with the decisions are made, but what I'm talking about –

MR. SIMMONS: Yeah.

MR. DELAROSBIL: – is day to day, you're running – like I told you, we were spending 750 to \$1.5 million –

MR. SIMMONS: Mmm.

MR. DELAROSBIL: – in a day, right? There's things that change, there's things that happen. You know, someone with construction experience on the job site, boot on the ground that you can – that he can direct and make those changes, you know, may help schedule – may help get opportunities, you know.

That's all I'm saying. You know, that's the way – every other job I've been on has had that person. Maybe I was spoiled, I guess. You know, maybe people think they can run it from an office now and there's a lot of people in companies that think that, but it's boots on the ground, you know.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: My boss – you know, one of my ex-bosses once told me, he said, Don, he says, I'm on – in the office and I work out of the office and you're on the ground. And he says: Tell you what, I'll let you make 85 or 95 per cent of the decisions and please let me make 5. And that's the way it works, that's the way it operates. That's the way it always was –

MR. SIMMONS: Yeah.

MR. DELAROSBIL: – you know.

MR. SIMMONS: Now, you do appreciate that the people – the Nalcor and its management people have a different view on a lot of this than you do, of course.

MR. DELAROSBIL: Oh absolutely.

MR. SIMMONS: Absolutely.

MR. DELAROSBIL: Like, I mean, it's their business –

MR. SIMMONS: They have another side to all this story.

MR. DELAROSBIL: Absolutely, they can run the business any way –

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: – they want, you know. I was asked my opinion, you know. But Nalcor – hey, listen, I'm not going to tell them how to run their operation.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: I'm going to make suggestions on how I can help them run their operations but I won't run their operations.

MR. SIMMONS: And, of course, on the Nalcor side, Nalcor is not making claims to be paid money by people. Nalcor is the one that has to pay the claims that are made by the contractors.

MR. DELAROSBIL: Absolutely, yeah.

MR. SIMMONS: It's a public company.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: You know, we'll hear from – Mr. Hogan is – often reminds us when – if he's here – when Nalcor witnesses are on the stand, that it's the ratepayers that are paying for all this.

MR. DELAROSBIL: Mm-hmm.

MR. SIMMONS: So you can understand that Nalcor has a responsibility to only pay what properly needs to be paid in order to build this project.

MR. DELAROSBIL: I agree with that.

MR. SIMMONS: So –

MR. DELAROSBIL: That's their responsibility.

MR. SIMMONS: Right. So there have to be processes in place, like those that are in place under the contract, to apply some rigour to how –

MR. DELAROSBIL: I'm not –

MR. SIMMONS: – payments are made.

MR. DELAROSBIL: I'm not disagreeing with you, Sir.

MR. SIMMONS: Mmm.

MR. DELAROSBIL: Not disagreeing with you at all. There has to be – but you have to work within that, you know. Putting everything into dispute until the end of the year is not a way to work the contract.

MR. SIMMONS: Okay.

You had – in reference to the Nalcor project manager positions, the position held by Mr. O'Brien – oh, first of all, I think you'd – when you were asked about one of the letters that you'd signed, you said that on the Astaldi side, letters to Nalcor generally went out under your signature – commercial letters.

MR. DELAROSBIL: They did, Sir.

MR. SIMMONS: Right.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: And the ones that came back to you from Nalcor came under Mr. O'Brien's signature.

MR. DELAROSBIL: That's right, Sir.

MR. SIMMONS: And on your case, you didn't write all the letters.

MR. DELAROSBIL: No, but the ones – most of the – no, well, the ones with my signature I saw.

MR. SIMMONS: Certainly, yeah. Yeah.

MR. DELAROSBIL: I saw –

MR. SIMMONS: Yeah.

MR. DELAROSBIL: – I read –

MR. SIMMONS: Yes.

MR. DELAROSBIL: – and –

MR. SIMMONS: Yeah.

MR. DELAROSBIL: – took advice from –

MR. SIMMONS: Right.

MR. DELAROSBIL: – the qualified managers. And, like –

MR. SIMMONS: Yeah.

MR. DELAROSBIL: – you know, I might be the project manager but the – I have very qualified managers in various disciplines.

MR. SIMMONS: Sure. You have a team and people –

MR. DELAROSBIL: Absolutely.

MR. SIMMONS: – on the team have jobs to do.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: And you have to rely on them in order to deal with these types of issues.

MR. DELAROSBIL: That's right.

MR. SIMMONS: And they find their way up to you and you have to sign off on what's going to –

MR. DELAROSBIL: Yeah.

MR. SIMMONS: – Nalcor.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: So you take the responsibility when the letter –

MR. DELAROSBIL: Mm-hmm.

MR. SIMMONS: – goes out, but it's –

MR. DELAROSBIL: Yes, yes.

MR. SIMMONS: – but there are other people who have been involved in putting – in bringing it to the point where that letter goes out.

MR. DELAROSBIL: Oh absolutely.

MR. SIMMONS: Yeah.

MR. DELAROSBIL: Yeah. Well, I think for Nalcor, it's the same with us, yeah.

MR. SIMMONS: It's the same thing.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: It's the same thing.

MR. DELAROSBIL: Yeah. It's typical to any –

MR. SIMMONS: Yeah.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: And in Mr. O'Brien's case, whereas you'll – you were the project manager for one contractor, for Astaldi –

MR. DELAROSBIL: Yeah.

MR. SIMMONS: – you'd be aware that Mr. O'Brien was the project manager for the generation part of the project.

MR. DELAROSBIL: Oh yeah, he had a big job.

MR. SIMMONS: So he had –

MR. DELAROSBIL: I mean, huge.

MR. SIMMONS: He had many other contractors where he played the same role for the other contractors as he did for Astaldi.

MR. DELAROSBIL: Yeah, he –

MR. SIMMONS: Correct?

MR. DELAROSBIL: – might've needed help.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: Yeah. And, likewise, there's a team under him.

MR. DELAROSBIL: That's right.

MR. SIMMONS: And whereas for your work Nalcor had a team of people, area contract managers, all sorts of other positions assigned to the Astaldi package, similarly, there were other people for other packages reporting up through to Mr. O'Brien.

MR. DELAROSBIL: That's right.

MR. SIMMONS: You had been aware of that.

MR. DELAROSBIL: Yeah, yeah.

MR. SIMMONS: Yeah.

MR. DELAROSBIL: But that's it, you know. Mr. O'Brien had a huge job.

MR. SIMMONS: Right.

MR. DELAROSBIL: You know.

MR. SIMMONS: And another difference between your job and his is that by being the project manager for Astaldi –

MR. DELAROSBIL: Mm-hmm.

MR. SIMMONS: – your primary – a big responsibility you have is actually directing the construction, the performance of the work, right?

MR. DELAROSBIL: In all aspects.

MR. SIMMONS: Yes –

MR. DELAROSBIL: Yeah.

MR. SIMMONS: – in all aspects.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: That's right, yeah.

And Mr. O'Brien, on the Nalcor side, doesn't actually direct the performance of the work; he interfaces with the contractors who are performing the work.

MR. DELAROSBIL: I assume that's what he does.

MR. SIMMONS: Right.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: Right.

So it wouldn't be a fair comparison to make between the two of you and to say that while it may be important for you to be on the site all the time, the same reasoning for you to be there wouldn't necessarily apply to Mr. O'Brien because his job is different.

MR. DELAROSBIL: Oh and that's not what I said, Sir.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: I don't know if I was misinterpreted.

MR. SIMMONS: Yeah.

MR. DELAROSBIL: I said somebody with construction and decision-making –

MR. SIMMONS: Right.

MR. DELAROSBIL: – abilities. Mr. O'Brien, I imagine, had a big job and probably had a good reason to be in St. John's.

MR. SIMMONS: Right.

Now, you had a construction manager from Nalcor on site. Correct?

MR. DELAROSBIL: We have a construction manager from Nalcor on site, yeah.

MR. SIMMONS: Right, yeah. Who is a permanent – it was a full-time site position.

MR. DELAROSBIL: Yes, Sir.

MR. SIMMONS: Yeah.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: Okay.

And while you might not agree with the way Nalcor divides up its authority and decision-making among people, Nalcor did maintain an, you know, experienced construction person as the construction manager on site.

MR. DELAROSBIL: Well, they maintain a construction person on site.

MR. SIMMONS: Yeah, okay.

MR. DELAROSBIL: And – but, you know, they all told us, every one of them, that they didn't have the decision-making power.

MR. SIMMONS: And continuing with you, Mr. Delarosbil, I asked Mr. Bader a number of questions about the situation when he arrived on site in July of 2014 around the ICS.

MR. DELAROSBIL: Mm-hmm.

MR. SIMMONS: You first arrived there in May of 2015. Had you had any involvement in the project or were you familiar at all with what was happening before you arrived on site?

MR. DELAROSBIL: Not at all, Sir.

MR. SIMMONS: Yeah.

MR. DELAROSBIL: No.

MR. SIMMONS: Okay. And you've told us a bit – I'm not going to ask you any other questions about the ICS, but you've told us a bit about the events, I think, that led up to removing the ICS.

MR. DELAROSBIL: Yeah, I was just getting there when those decisions –

MR. SIMMONS: Just there when that's happening.

MR. DELAROSBIL: – were being made.

MR. SIMMONS: Okay, all right.

So prior to you becoming the project manager for Astaldi, we've heard yesterday that there had been a series of project managers in place, many of them for very short time periods until you took up the position. Had you been aware of that?

MR. DELAROSBIL: I was aware of it, yeah.

MR. SIMMONS: Yeah, okay.

And you've also told us this morning that – in fact, I was – I wrote down – I tried to write down what you said, I may not have it right. I think you said that when you arrived there, the project was at a stage of getting prepared to do the work and not quite able to organize and execute the work like you would have liked to see it.

MR. DELAROSBIL: Oh –

MR. SIMMONS: So that was – have I got that correct, that that was –

MR. DELAROSBIL: Yeah, I mean every –

MR. SIMMONS: – what you found when you arrived there?

MR. DELAROSBIL: Yeah, every manager has his way –

MR. SIMMONS: Yeah.

MR. DELAROSBIL: – of doing things, right –

MR. SIMMONS: Right.

MR. DELAROSBIL: – organizing things.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: I mean, if you get another project manager, he's going to change what I did –

MR. SIMMONS: Yeah.

MR. DELAROSBIL: – and he probably –

MR. SIMMONS: Right.

MR. DELAROSBIL: – didn't like what I –

MR. SIMMONS: Can you –

MR. DELAROSBIL: – what I had set up.

MR. SIMMONS: Can you offer me any comment on what the impact of – had been on the organization of Astaldi's work from there being a succession of short-term project managers in the position before you took it up?

MR. DELAROSBIL: Well, it – well, I'm sure that changing management in any company, you know, would have impacts because, you know, you have one idea, you're going this way, and somebody else has another idea, as I mentioned.

To the extent of the impact, I –

MR. SIMMONS: Mmm.

MR. DELAROSBIL: – I couldn't – I wouldn't be able to tell you because I saw a couple of (inaudible) and a couple of things that were tossed around here during the course of the last two days where the individuals seemed to be confident.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: You know, I don't know why they left site. There's a couple of them that had medical reasons and, but I'm not quite sure why –

MR. SIMMONS: Yeah.

MR. DELAROSBIL: – why the –

MR. SIMMONS: So –

MR. DELAROSBIL: – rapid succession.

MR. SIMMONS: Yeah.

So what were some of the changes you had to make or things that you had to implement and get moving when you arrived, in order to –

MR. DELAROSBIL: Well –

MR. SIMMONS: – get Astaldi prepared to –

MR. DELAROSBIL: Yeah.

MR. SIMMONS: – start to undertake the work?

MR. DELAROSBIL: Yeah, well, I understood, you know, they had all the materials on site, they had all the equipment on site, they had all the stuff to be able to execute the work. I – you know, I understood that the priority was pouring concrete, you know, and getting the concrete done and getting production and getting things moving. So, basically, I divided the scopes, I took away responsibilities from some people –

MR. SIMMONS: Yes.

MR. DELAROSBIL: – right, which I thought may have had too much responsibility –

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: – and focused them in the critical areas.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: And I pulled back some of the areas, and I took on those responsibilities personally –

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: – for a short period of time until we could kick off basically what was asked in the schedule.

MR. SIMMONS: Right.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: So what type of responsibilities did you take on yourself in that short-term period in order to get them in order?

MR. DELAROSBIL: In that short-term period, you know, I had – I took away the site service responsibilities from my construction manager, which he –

THE COMMISSIONER: Could you just repeat – excuse me, I missed what you said.

MR. DELAROSBIL: Oh.

THE COMMISSIONER: You took away what?

MR. DELAROSBIL: The site service responsibilities, so that's the support, you know: busing, grading the roads, you know, all those things. So what I – I took away the distractions from my team members, you know, so that they could focus in the areas that they needed to focus in.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: I took away their distractions so there was – I reorganized the maintenance department, reorganized the site service department, you know, production. I mean, once we organized we were hitting all the targets.

MR. SIMMONS: Right.

MR. DELAROSBIL: They understood what the job was.

MR. SIMMONS: So what was – what were the deficiencies in the concreting productivity when you arrived that you were able to fix and in order to improve production?

MR. DELAROSBIL: Oh, hey, listen, they had the right people, they had the right things, it was just the ability to be able to focus and handle one task. You know, when you're giving three, four things, it gets harder, right?

MR. SIMMONS: Yeah.

MR. DELAROSBIL: So my approach is fixing things in small pieces, okay?

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: And that's just my approach, you know. I don't take the big pie and try to eat it all at once.

MR. SIMMONS: Right.

MR. DELAROSBIL: I take the little pieces, I fix one thing, then I move on and go to the next.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: And I fix that, then I move on to the next –

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: – you know?

MR. SIMMONS: Right.

So when you arrived, you did find things that needed to be fixed like that?

MR. DELAROSBIL: Man, I'll go on the job tomorrow, which I've managed –

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: You know, every day I came in there was things to be fixed. You know, continuous improvement is a goal of any construction company.

MR. SIMMONS: Right.

MR. DELAROSBIL: So there's things to be fixed all the time.

MR. SIMMONS: When you came in, did you make any assessment of how far behind Astaldi was in concrete placement on a spillway and on powerhouse?

MR. DELAROSBIL: No, I did not, Sir. No, I – you know, I took the job from that day –

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: – and I was moving forward. I wasn't going to get lost in what happened, I wasn't interested – honestly, I wasn't interested. I didn't take no interest. I didn't get involved. I didn't look at the numbers.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: I went and, you know, I focused on people.

MR. SIMMONS: Right.

MR. DELAROSBIL: So my idea was to find out if I had the right leaders in the right place to be able to manage this job.

MR. SIMMONS: Did you understand it as a – the position you were coming in to as being one where you had to continue the process of turning around this job to make it successful after a bad start.

MR. DELAROSBIL: Yeah, that's why I took it.

MR. SIMMONS: Yeah.

MR. DELAROSBIL: Yeah, I did, honestly.

MR. SIMMONS: Okay.

MR. DELAROSBIL: I took the job, I made a very conscious decision and I had a successful career with the company I was with.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: Been with them for 22 years.

MR. SIMMONS: Mm-hmm

MR. DELAROSBIL: Actually, if I would have – I can't say I was set for life, it's just, you know –

MR. SIMMONS: So this was a challenge for you.

MR. DELAROSBIL: – this challenge came up; a couple of friends gave me a call and said: Hey, Don, you know, what do you think? We need help. So, that's what I did.

MR. SIMMONS: How much – did you make any assessment or any determination of how much the failure of the completion of the ICS had impacted the position that Astaldi was in when you came in, in of May of 2015?

MR. DELAROSBIL: No, I didn't do an assessment of the ICS.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: I had heard that, you know, I think in May, Gilbert made the – or made the announcement. I think that was all behind them and everything else. So I was just looking forward to the plan to do the work around and how we were going to get things achieved.

MR. SIMMONS: Right.

MR. DELAROSBIL: And that's – and, basically, that's what we did. You know, in 2015, even with the draft tube incident, we poured 110,000 cubic metres. I don't know if you know how much that is but that's a frigging lot.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: And the next year we poured 130,000 cubic metres of concrete, plus we finished the building one month early. And, you know, I mean you can't ask much more of a contractor, you know.

MR. SIMMONS: Well, the – well, I guess you could ask –

MR. DELAROSBIL: Well, yeah, you could have asked, right.

MR. SIMMONS: – Astaldi to have finished the project in the – according to the original schedule and on the original budget.

MR. DELAROSBIL: Oh yeah, but I mean, you know, at that point you can ask the impossible too, right?

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: There's a lot of things you can do, but at that point there was no turning back, you know.

MR. SIMMONS: So when you came in –

MR. DELAROSBIL: Well, we took advantage of the whole schedule.

MR. SIMMONS: Right.

MR. DELAROSBIL: So every month we poured the maximum amount of concrete that could be poured –

MR. SIMMONS: Right.

MR. DELAROSBIL: – given camp accommodations, protests, everything that came with that, labour, everything.

MR. SIMMONS: So –

MR. DELAROSBIL: We poured the maximum – actually, you know, we were very proud of what we did.

MR. SIMMONS: Right.

So, from your perspective, it was possible to do it and you didn't look back to see why that hadn't happened before you got there.

MR. DELAROSBIL: Well, I mean, I can't fix the past –

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: – you know, so my focus is on the future.

MR. SIMMONS: Okay.

MR. DELAROSBIL: And dwelling on the past and saying, well, we should have done this, we should have done that, you should have done this, you know, there's no need to do that.

MR. SIMMONS: I had a couple of questions regarding the draft tube form failure.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: And I'll stay with you, Mr. Delarosbil. And, Mr. Bader, if you want to, you can jump in on these.

MR. DELAROSBIL: Yeah, Georges was a big part –

MR. SIMMONS: Unless I decide to split you up again and keep the questions separate.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: So, first of all, the forms are – well, let me back up. So the draft tube, if I understand correctly, is a channel in the main concrete structure that the water flows from the intake down to the draft – through the draft tube and it goes into the turbine –

MR. DELAROSBIL: Okay –

MR. SIMMONS: – spins the turbine –

MR. DELAROSBIL: Yeah.

MR. SIMMONS: – the turbine creates power. So in the real basics –

MR. DELAROSBIL: That's –

MR. SIMMONS: – that's what the draft tube is.

MR. DELAROSBIL: That's basic, yeah. Yeah.

MR. SIMMONS: And the draft tube is created by building a large concrete, rebar-reinforced structure, that the draft tube is a tube inside that structure.

MR. DELAROSBIL: It's pouring concrete –

MR. SIMMONS: Yes.

MR. DELAROSBIL: – (inaudible).

MR. SIMMONS: Yeah.

MR. DELAROSBIL: Yeah, around the form.

MR. SIMMONS: Around the form.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: And it is – it's all made of curves. It's all curved –

MR. DELAROSBIL: Oh, yeah –

MR. SIMMONS: – forms.

MR. DELAROSBIL: – it's complicated.

MR. SIMMONS: Complicated curves.

MR. DELAROSBIL: Yeah, I think it's six weeks, hey, Georges, to put –

MR. BADER: Yeah.

MR. DELAROSBIL: – put one together? Yeah.

MR. SIMMONS: Yeah.

And in order to shape it, you – Astaldi subcontracted a Kanas company to make wooden-shaped forms that were shipped to Goose Bay and assembled, put in place on structures so that the concrete could be poured. And the forms would create the shape that had to be left when the forms were removed and the concrete was cured.

MR. DELAROSBIL: That's right, Sir.

MR. SIMMONS: Okay.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: All right.

MR. DELAROSBIL: Right.

MR. SIMMONS: So the formwork is a classic example of a temporary structure and part of the contractor's means and methods of doing the work. Correct?

MR. DELAROSBIL: Yes, it's formwork.

MR. SIMMONS: Yes.

MR. DELAROSBIL: Yes.

MR. SIMMONS: Okay.

Not everyone would appreciate that.

MR. DELAROSBIL: Mmm.

MR. SIMMONS: So it's one of these things that is squarely within the design responsibility of the contractor, not the owner. The owner may review – may have a review function, but the obligation to do the engineering design rests on the contractor – in this case, Astaldi – for the formwork.

MR. DELAROSBIL: Yeah and all that is submitted to the client.

MR. SIMMONS: Right.

MR. DELAROSBIL: Right.

MR. SIMMONS: Right.

And the engineering stamp that approves the drawings for use is a stamp supplied by an engineer on behalf of Astaldi, not on behalf of Nalcor.

MR. DELAROSBIL: Registered with –

MR. SIMMONS: Right.

MR. BADER: Not completely accurate, Sir. Astaldi subcontracted the design –

MR. SIMMONS: The – your –

MR. BADER: Yeah.

Astaldi subcontracted the design to a company called CEI.

MR. SIMMONS: Right.

MR. BADER: CEI engineers stamped it.

MR. SIMMONS: Mm-hmm.

MR. BADER: They were based in US.

MR. SIMMONS: Mm-hmm.

MR. BADER: Astaldi reviewed it at that time, like, I think it was back in probably spring 2014. When we came to the site they were already ordered.

So I think Nalcor – or it was in the contract that a Newfoundland engineer or an engineer from PEGNL should stamp any temporary work and the drawings, which we're not arguing that. Astaldi engineer, at that time, performed it – performed a review and he put his stamp on it.

MR. SIMMONS: Mm-hmm.

MR. BADER: So – but it wasn't his design. Still, he's assuming responsibility the moment he put the – his stamp on it.

Now, to say that – to say it's an Astaldi – falsework design and formwork design is the contractor responsibility, we're not arguing that. As well, there's a review which we talked about it before, it's a review at a certain level. We have emails from Nalcor personnel who went to CEI and it's in the letters as well. They were saying it's an impressive job, everything was okay. The material was okay, like, acceptable and so, as well, they did not do a proper review; however, they decided to spend millions doing unnecessary audits.

If they would have probably invested a little bit of that money on doing proper review on the high-risk items, probably – and, as well, at that time everyone could have done a better job. So just strictly to say it's a contractor responsibility, yes, the design is the contractor responsibility. That review, as well, is a client responsibility; otherwise, why do you approve it. Otherwise, those drawings have been sent to the company engineer at that time who replied only comments are just on the design parameters, such as the loads to be applied on the draft tube and not the components themselves. If you would have taken the drafts or one drawing and tried to do his sand check, probably as well.

MR. SIMMONS: Okay.

MR. BADER: So, like, they could have, as well, avoided this –

MR. SIMMONS: So –

MR. BADER: – if they have applied the right review.

MR. SIMMONS: So, several points coming out that. First of all, I take your point that when I say Astaldi responsibility I'm including –

MR. BADER: Astaldi.

MR. SIMMONS: – Astaldi's subcontractor in that in order to compare it to Nalcor.

The second point is you spoke of the drawings that had been prepared in the United States and

stamped by Astaldi's engineer. And I think Mr. Learmonth had earlier referred to a recent media report of the professional association for engineers here disciplining an engineer. That was Astaldi's engineer who was disciplined for applying his stamp, correct?

MR. BADER: Just to clarify that as well, engineers working for Astaldi, they have to work on an engineering permit for the company, like Astaldi's permit for PEGNL. And based on that permit, you normally select a chief engineer or some resources.

Yes, automatically, like, since the engineer was working for Astaldi, right now would have probably some queries or something – some measures against Astaldi to clarify. It's still in that stage so I can't really – like, I know about it, like, just a little bit before now, but it doesn't surprise me if PEGNL will investigate this further. And, yes, the engineer was an Astaldi engineer and the companies, when they hire engineers, they're professionals.

MR. SIMMONS: Mm-hmm.

MR. BADER: So, like, I don't believe – for the sake of example, Nalcor tells you how to do your job, as well, we don't normally tell the engineer how to do his job.

MR. SIMMONS: Sure.

MR. BADER: He's a professional. He's responsible of that.

MR. SIMMONS: Mm-hmm.

MR. BADER: And the company's responsibility is when they hire the professional they assume that responsibility. So, yes, that PEGNL had some measures against the engineer who stamped it. And, following that, we had implemented procedures to avoid just relying on one professional.

MR. SIMMONS: Mm-hmm.

MR. BADER: The procedures dictated professional checking on other professional, and sometimes we requested that that professional be a third party, not an internal player to the team.

MR. SIMMONS: And, in fact, Nalcor insisted –

MR. BADER: Yes.

MR. SIMMONS: – that Astaldi –

MR. BADER: Yeah.

MR. SIMMONS: – used third party engineers after the drafting –

MR. BADER: And it was –

MR. SIMMONS: – incident, correct?

MR. BADER: – a great recommendation.

MR. SIMMONS: Yes. And that was adopted by Astaldi in order to do that.

MR. BADER: Absolutely.

MR. SIMMONS: Right.

I think we were shown a letter earlier this morning. I won't go there, but it's P-03094, which was Nalcor's correspondence saying that they required that that –

MR. BADER: Yes, we –

MR. SIMMONS: – process be implemented.

MR. BADER: – disputed the cost coverage –

MR. SIMMONS: Mm-hmm.

MR. BADER: – but not the principle of hiring a third party.

MR. SIMMONS: Okay.

Now, when the draft tube form failed, the provincial department of occupational health and safety actually issued a stop work order, correct?

MR. DELAROSBIL: They did, Sir.

MR. SIMMONS: Yes. So it wasn't Nalcor, per se; this was a – the government agency issued it. And if I understand correctly, that remained in place for about five months. Is that correct?

MR. BADER: I don't know.

MR. DELAROSBIL: It remained in place – it was – I'm just looking for my words –

MR. BADER: Partial release.

MR. DELAROSBIL: – partial release, exactly – partially released as we progressed the work. So it allowed – once we fixed this, we could do that – you know?

MR. SIMMONS: Right.

MR. DELAROSBIL: But it was done over an extended – really extended –

MR. BADER: Three months.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: So the –

MR. DELAROSBIL: Yeah, it's three months.

MR. SIMMONS: – draft tube form failure then, had a substantial impact on Astaldi's ability to progress the work and an impact on schedule, correct?

MR. DELAROSBIL: Yeah, it impacted us on – obviously.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: Obviously, it impacted us. Yeah, I've answered your question. It impacted us.

MR. SIMMONS: It did.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: And it stopped – it essentially stopped all work on pouring concrete in the powerhouse in order to progress to where pits – pit one would be finished, and then pit two, pit three, pit four.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: So ANDRITZ, for example, wasn't able to get in to the pits, arguably, as early as they would have had that not happened.

MR. BADER: That's not accurate, Sir.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: Okay.

MR. DELAROSBIL: Okay, go ahead.

MR. SIMMONS: Yeah?

MR. BADER: That's not accurate because when you look at the schedule, you have to study the critical path.

MR. SIMMONS: Mm-hmm.

MR. BADER: And, at that time, not all the work in the powerhouse stopped – then, just the powerhouse, turbines areas. And to get to that turbine, you'll have to build the building, as well, right?

So the building was on that critical path at that time, and the draft tube, specifically, two, three and four, I – I'm pretty sure they were not, at that time, on the critical path; unit one, as well, because the building was that key driver for the start of ANDRITZ. So, when you study a schedule, you have, really, to address the critical path.

MR. SIMMONS: So –

MR. BADER: I can't say it impacted, yes, the cost, and for one month and a half, I would say – well, unit one was even pretty much done. Unit two, yes – unit one was done. The formwork was done, so it's definitely – it wasn't on a critical path.

MR. SIMMONS: Okay.

MR. BADER: Unit two and three are far away.

MR. SIMMONS: Thank you.

A couple of questions about the evidence that you've given regarding the – is it Supermétal is the name of the company in Quebec –

MR. DELAROSBIL: Yeah. Sure. Sure.

MR. SIMMONS: – that was supplying the steel?

MR. BADER: Supermétal.

MR. SIMMONS: Mr. Bader, I'll ask –

MR. DELAROSBIL: Yes.

MR. SIMMONS: – you those.

First of all, would you agree with me that it is of high importance to make sure that there's good quality assurance for the structural steel that's used on the project?

MR. BADER: Absolutely.

MR. SIMMONS: And that under – where Supermétal was a subcontractor to Astaldi, the –

MR. BADER: Yeah.

MR. SIMMONS: – contractual responsibility for doing that quality assurance in the first place rested on Astaldi?

MR. BADER: Yes.

MR. DELAROSBIL: That's right.

MR. BADER: That's assurance, right?

MR. SIMMONS: Yeah.

MR. BADER: Quality assurance, not quality control.

MR. SIMMONS: Right. Because it's the – Supermétal would do their own quality control for their own work, and Astaldi's role would be to provide quality assurance, which is checking their processes and making sure that their work was reliable and was safe to rely upon.

MR. BADER: Yeah.

MR. SIMMONS: Right? Okay.

Now, if I understand it, Supermétal provided steel for more than just the powerhouse. There were other – there's other steel supply before the powerhouse.

MR. BADER: Bridges.

MR. SIMMONS: Bridges. And that there were a very large number of what's called non-conformance reports, NCRs.

MR. BADER: Yeah, very probable, Sir.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: Okay.

Would – is that something you'd be personally familiar with?

MR. BADER: I was familiar that nonconformities – well, they're found there – you can find nonconformities in anything you do and this is a process, right? That's why there's a process you identified –

MR. SIMMONS: Mm-hmm.

MR. BADER: – nonconformity. You go and you recommended this position. It's part of that regular work. Like, anything we construct – any builder will have nonconformities, any asked to rectify, the more fabricators.

So, yes, I believe we had nonconformities. Now, many or not, I just don't know.

MR. DELAROSBIL: On the bridges of – yeah, I don't know.

MR. SIMMONS: And there were non-conformance reports on steel that had actually been delivered to the site.

MR. BADER: Yes, and it may happen, Sir. It's not unusual.

MR. SIMMONS: Okay.

MR. BADER: Sometimes things get missed and that's why the quality assurance – the obligation of contractors and owners to do this quality assurance at different levels. And sometimes they miss it, that's why an audit was done. And that's why when I've seen the audit I said it's reasonable to perform and all that. And it's reasonable, as well, to reduce the extent of control you would do, and as you build confidence with the production and the help as the processes improve.

MR. SIMMONS: Right.

So, would you agree with me that when you get to erecting the powerhouse steel, the quality of the powerhouse steel is of crucial importance?

MR. BADER: It is, yeah.

MR. SIMMONS: Right.

MR. BADER: Absolutely. Specifically, the portions related to the crane, Sir. And I understand –

MR. SIMMONS: Correct. Yes.

MR. BADER: – Nalcor's concern –

MR. SIMMONS: Yes.

MR. BADER: – of doing an audit.

MR. SIMMONS: Yes. And I think we saw in the news last week that the 450-ton turbine was placed in pit number one using the overhead cranes.

MR. BADER: Yeah.

MR. SIMMONS: And those cranes are supported on this structural steel that was prepared by –

MR. BADER: And –

MR. SIMMONS: – Supermétal, correct?

MR. BADER: (Inaudible.)

MR. SIMMONS: Yeah.

So the quality of that steel is of –

MR. BADER: High importance.

MR. SIMMONS: – high importance.

MR. BADER: Absolutely.

MR. DELAROSBIL: Mm-hmm.

MR. SIMMONS: So would you agree with me then that once there were a large number of non-conformance reports coming out of the

Supermétal plant that it was very reasonable for Nalcor to have a high concern to ensure that there was good quality control in that plant before the steel ended up being erected in the powerhouse.

MR. BADER: Not really, Sir, the way you phrase it. I agree that Nalcor should have taken some measures and they took them, perform an audit.

MR. SIMMONS: Mm-hmm.

MR. BADER: I should say they should have forced the contractor, us and Supermétal, and basically force us to do a certain assurance on the subs –

MR. SIMMONS: Mm-hmm.

MR. BADER: – and to take care of the recommendations and the corrective measures they have identified. And they had an obligation to keep doing follow-ups. I agree that's the minimum they should do at least.

MR. SIMMONS: Mm-hmm.

MR. BADER: Now, they went way beyond that to control the operation at the shop by having an inspector telling him, controlling and micromanaging welders and inspect – this is – I think it's beyond any reason or for any common practice. Unless it is part of the Supermétal contract and you award it to – you award the contract as time and material basis, then you can do whatever you want.

MR. SIMMONS: Mr. Delarosbil, I'll go back to you now and I don't have very much more. Near the end of your examination you were asked a number of questions regarding the termination of Astaldi's contract –

MR. DELAROSBIL: Yes, Sir.

MR. SIMMONS: – last fall. And I'm not going to get into any big discussion with you about that, but I just want to present a few facts and just have you confirm whether or not I'm stating these correctly.

MR. DELAROSBIL: Okay.

MR. SIMMONS: So is it correct that Astaldi Canada was terminated for insolvency?

MR. DELAROSBIL: Where –

MR. SIMMONS: That that was the ground that was given for termination.

MR. DELAROSBIL: From Nalcor?

MR. SIMMONS: Yes.

MR. DELAROSBIL: Yes.

MR. SIMMONS: Yes.

MR. DELAROSBIL: That's what they said. Yeah.

MR. SIMMONS: Okay.

And is it correct –

MR. DELAROSBIL: We're disputing the termination, right?

MR. SIMMONS: It's a disputed –?

MR. DELAROSBIL: Yeah.

MR. SIMMONS: The termination may be disputed –

MR. DELAROSBIL: Yeah.

MR. SIMMONS: – but the notice of termination that came to Astaldi Canada from Nalcor terminated the contract for insolvency of Astaldi Canada. Correct?

MR. DELAROSBIL: That's what Nalcor ...

MR. SIMMONS: And is it correct that Astaldi S.p.A., the Italian parent of Astaldi Canada, had guaranteed Astaldi Canada's performance of this contract?

MR. DELAROSBIL: There was – there's some language in the contract like ...

MR. SIMMONS: Right.

And is it correct that Astaldi S.p.A. had stopped provided any substantial amount of funding to Astaldi Canada in May of 2018?

MR. DELAROSBIL: Yeah. Nalcor was aware of that.

MR. BURGESS: Commissioner –

MR. DELAROSBIL: Yeah.

MR. BURGESS: – if I could address the – I'm concerned where the questioning is going. The solvency of Astaldi S.p.A. and Astaldi Canada – excuse me – are issues before the arbitration and are very sensitive in that litigation. And I think it's appropriate for the Commissioner to know that and to deal with it appropriately. I'm not sure where the creditworthiness or the solvency –

THE COMMISSIONER: Let me just ask you this because, again, I don't know enough about what's going on between the two parties to really make a determination. I guess those things that are factual and that are not being disputed in the arbitration are matters that, I would think, I'd like to know about.

So, the last question that was asked and maybe – is this the one that you're objecting to was whether or not Astaldi S.p.A. rather had stopped funding Astaldi Canada in May of 2018, isn't it? Was that the –

MR. SIMMONS: That's correct, Commissioner, yes.

THE COMMISSIONER: So is that something you see as being disputed in the arbitration?

MR. BURGESS: It's an issue. The formation of the arbitration, which has, as has been indicated to the Commissioner many times before, is a commercially sensitive and a private matter as between the parties and pursuant to the terms of the arbitration is confidential.

What I would suggest to you, for purposes of the Commission, is what would be relevant is the notices that were provided; they're on record, they're part of the exhibits. That on October 26 of 2018, I believe it was, that there was a suspension of work ordered by Nalcor and then

in November there was a termination notice. And I would suggest for purposes of the Commissioner and the Commission and its mandate that would be sufficient to see what the terms and what the notice is. Whatever constitutes –

THE COMMISSIONER: Well, just a second now. I think I need to take you back just a bit because my question is: Is the fact that Astaldi S.p.A. stopped funding Astaldi Canada in May of 2018 something that is disputed at this particular point in time? If it is, then I can understand how that might – to ask too many questions about that could well go into the arbitration. If it's not something that's disputed, I want to know about that.

MR. BURGESS: I can advise the Commissioner that the matters that will be before the arbitrator are being formulated in the pleadings on behalf of Astaldi with their claim. And the issues, as I understand it, are scheduled to be submitted to the arbitration tribunal at the end of this month.

So the exact issues are being formulated as we speak. I can tell you that whether the termination in November of 2018 was a valid termination or not is an issue as for the arbitrator.

THE COMMISSIONER: I don't think it's a rocket science to figure that out. I'm just trying to figure out again – I'm just trying to figure out – like, I'm not – you know, I've already gave you the right, basically, disclosure of a great deal of information in this Inquiry that related to the – to – or could relate to this arbitration, based upon the fact that it was already matters that were public and were not in dispute. I'm going to do the same thing for Nalcor.

So I want to know – and I'm not sure what the next question is going to be, and maybe we'll be asking this – I'll be having to deal with it the same way I'm dealing with this one. I want to know is Astaldi taking issue with the fact that Astaldi SPCA – S.p.A. – basically stopped funding Astaldi Canada in May of 2018. Yes or no.

MR. BURGESS: Well, the witnesses have certainly already indicated, Commissioner, that there was financial difficulties encountered –

THE COMMISSIONER: Right, so –

MR. BURGESS: – which led to it. So that part is not in dispute, and that's –

THE COMMISSIONER: All right.

MR. BURGESS: – I didn't object at that point.

THE COMMISSIONER: Okay.

MR. BURGESS: I'm raising my concern now because I'm not sure where the questions are going –

THE COMMISSIONER: Okay.

MR. BURGESS: – as they continue to go on. We're not disputing – again, it's evidence. I didn't stand up at that point in time.

THE COMMISSIONER: Right, okay –

MR. BURGESS: So the financial –

THE COMMISSIONER: – I understand that.

MR. BURGESS: – difficulties are there.

THE COMMISSIONER: Okay, so it's not the question, per se, that Mr. Simmons is asking right at the moment, it's what he may ask that you may have objections to because it's going to the heart of the arbitration.

MR. BURGESS: Correct. And it's not as much did Astaldi Canada Inc. – that's who the contract is with. There may be guarantees and other security and things of that nature, but Astaldi Canada Inc., that is the relevant party to look at whether there's financial difficulties. Where that money comes from I don't think is appropriate, nor necessary for the purposes of the Commission. That's my objection.

THE COMMISSIONER: Okay.

So I want you to be on your toes as we continue on because that question that he just asked I'll allow the witnesses to answer, and then if there's an issue, please tell me so that I know. But – as I say, keep in mind that I'm trying to be fair both to you and your client and, as well, to Mr.

Simmons and his client. So what I do for one, I'm doing for two, right?

MR. BURGESS: I've already – Mr. Simmons and I have already discussed that. And, as you know, this is the first time I stood to my feet, so –

THE COMMISSIONER: Right, okay.

MR. BURGESS: – understood, Commissioner.

THE COMMISSIONER: Okay.

Go ahead. So the question, Sir, was: Were you aware that Astaldi S.p.A. had stopped funding Astaldi Canada in May 2018?

MR. DELAROSBIL: I don't know the decision or if the – a conscious decision was made not to fund, okay, so if I can get that clear.

MR. SIMMONS: No, that's not my question.

MR. DELAROSBIL: All right. Was there more funding coming in from Astaldi, whether Astaldi –

MR. SIMMONS: Yeah.

MR. DELAROSBIL: – Canada or –

MR. SIMMONS: My question, actually, was substantially stopped funding. So I'm not worried about whether there was some relatively small amounts after that date, but I'm just – I just – you know, the information that I understand is that as of May 2018, Astaldi S.p.A. was not providing any liquidity, any cash, any substantial funding to Astaldi Canada to enable it to carry on doing its work.

THE COMMISSIONER: Are you able to answer that question?

MR. DELAROSBIL: Well yeah, it's just complicated for me, guys, but – and not that I'm trying to avoid it at all. I would just say that there was no more money coming in.

MR. SIMMONS: That's fine.

MR. DELAROSBIL: Okay? So –

MR. SIMMONS: That's good, okay.

MR. DELAROSBIL: – and that's why we were trying to reach term agreements with Nalcor.

MR. SIMMONS: Sure. So – and I'm just gonna give you a couple more factual statements like that and ask you if they're correct or not and hopefully they won't be objectionable. Am I correct that it is a matter of public record that before the termination of the contract, Astaldi had failed to pay its workers?

MR. DELAROSBIL: Wow. That's quite the question, right? There's reasons for that.

MR. SIMMONS: No, I didn't ask the reasons, I said –

MR. DELAROSBIL: I know –

MR. SIMMONS: – is it a matter –

MR. DELAROSBIL: – but I mean it –

MR. SIMMONS: – of public record?

MR. DELAROSBIL: – but it doesn't – it doesn't send the right message out there, so let's be clear.

MR. SIMMONS: Well, answer the question first.

MR. DELAROSBIL: Well – I – it could not.

MR. SIMMONS: Okay, so the answer is: Yes it's correct that before the termination, Astaldi had not paid its workers.

MR. DELAROSBIL: Could not pay its workers.

MR. SIMMONS: I'll take that to mean – take that as an agreement with the statement.

MR. DELAROSBIL: Because –

THE COMMISSIONER: All right, I think what he's saying –

MR. DELAROSBIL: – he says Nalcor owed us money.

THE COMMISSIONER: Sorry – so we’re –

MR. SIMMONS: Okay.

THE COMMISSIONER: – sort of splitting hairs here –

MR. SIMMONS: Yeah.

THE COMMISSIONER: – and I get this, you know? Like I get it that you’re there and there’s something else going on in the background –

MR. DELAROSBIL: Absolutely.

THE COMMISSIONER: – and I don’t really care too much about what’s going on in the background, I’m ultimately gonna care, I guess but –

MR. DELAROSBIL: Yeah.

THE COMMISSIONER: – anyway but –

MR. DELAROSBIL: But he knows –

THE COMMISSIONER: – my –

MR. DELAROSBIL: – it’s public record.

THE COMMISSIONER: – I guess your answer is that they were not paying the workers, because they could not pay the workers.

MR. DELAROSBIL: That’s right sir.

THE COMMISSIONER: Thank you.

MR. DELAROSBIL: Yeah, right. But everybody knows that already, so –

THE COMMISSIONER: Right.

MR. DELAROSBIL: – you know.

MR. SIMMONS: Right, and that’s why I said it’s public record, right?

MR. DELAROSBIL: Yeah, so we don’t need it here.

MR. SIMMONS: Similarly, is it – it’s a matter of public record that Astaldi had not paid

suppliers, and that there were liens filed against the project for millions of dollars.

MR. DELAROSBIL: When?

MR. SIMMONS: Prior to the termination of –

MR. DELAROSBIL: Oh yeah, prior to – yes, there was sir.

MR. SIMMONS: Tens of millions of dollars?

MR. DELAROSBIL: Sure.

MR. SIMMONS: And it’s also a fact that – well, we know there’s an arbitration underway, and that’s – prior to the termination of the contract, Astaldi had given a notice of arbitration before the contract was terminated, correct?

MR. DELAROSBIL: Yes.

MR. SIMMONS: Yes. And –

MR. DELAROSBIL: And that’s in the contract, we’re allowed to give an arbitration as you –

MR. SIMMONS: Right.

MR. DELAROSBIL: – mentioned a while ago, we can go there. That’s in the contract –

MR. SIMMONS: And I just –

MR. DELAROSBIL: – and we’re able to do that.

MR. SIMMONS: I’m just establishing the sequence, that’s all.

MR. DELAROSBIL: Okay well I’m trying to –

MR. SIMMONS: The notice of arbitration was given before the stop work order was issued –

MR. DELAROSBIL: Yep.

MR. SIMMONS: – and before the contract was terminated.

MR. DELAROSBIL: That’s right.

MR. SIMMONS: And if – and the final one, it's a matter of public record as well, that within a couple days or a day of giving the notice of termination, that Astaldi S.p.A. in Italy, went into creditor protection.

UNIDENTIFIED MALE SPEAKER: Notice of arbitration.

MR. SIMMONS: Notice of arbitration.

UNIDENTIFIED MALE SPEAKER: (Inaudible).

MR. SIMMONS: No.

Okay.

MR. DELAROSBIL: Well, this is the sequence. We gave our notice of arbitration.

MR. SIMMONS: Yes.

MR. DELAROSBIL: And then Nalcor gave us a notice of default, because we had filed the arbitration and, yeah, S.p.A went – corporate data is what they call it in Italy, but creditor protection, yup.

MR. SIMMONS: Yeah, and those things happened. The Italian parent went into the – our equivalent of creditor protection immediately after the notice of arbitration was given.

MR. DELAROSBIL: Yeah, that's record, yeah.

MR. SIMMONS: And then Nalcor delivered a notice of default.

MR. DELAROSBIL: No, prior to that. Yeah.

MR. SIMMONS: Same day.

MR. DELAROSBIL: Right – well, maybe the same day, yeah.

UNIDENTIFIED MALE SPEAKER: A few days.

MR. SIMMONS: Okay.

MR. DELAROSBIL: I think we sent in our notice of arbitration and, as you mentioned a while ago, we're allowed to do that.

MR. SIMMONS: Sure.

MR. DELAROSBIL: You know –

MR. SIMMONS: Not disputing that.

MR. DELAROSBIL: –we weren't expecting a notice of default –

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: – because we sent in the notice of arbitration, you know. (Inaudible.)

MR. SIMMONS: And the only other thing, Mr. Delarosbil, are you still employed with Astaldi Canada?

MR. DELAROSBIL: I was asked that, at my cross for the arbitration. My lawyer told me that's none of your business.

MR. SIMMONS: Mm-hmm.

MR. DELAROSBIL: So –

MR. SIMMONS: Well, I'm going to ask you now.

Are you still employed with Astaldi Canada?

MR. DELAROSBIL: (Inaudible) making a difference for anything?

MR. BURGESS: If I can then place an objection. This is a live issue as before the arbitration and I think we are straying into areas and I'm not sure where – what –

MR. DELAROSBIL: I don't mean to be impolite –

THE COMMISSIONER: I –

MR. BURGESS: – what difference where Mr. Delarosbil was employed at this time.

THE COMMISSIONER: Okay.

So, I have – you know, I think there's some relevance to this question because, obviously, I'm hearing from witnesses that are called – these witnesses aren't called by Astaldi. These witnesses are called by the Commission counsel,

so I think one of the things I would like to know, and actually that's a question I was going to put to both witnesses myself, was whether or not they still remain employed with Astaldi Canada, or a subsidiary of Astaldi.

I don't see how that in any way impacts the result of the arbitration so –

UNIDENTIFIED MALE SPEAKER: No, it's –

THE COMMISSIONER: So, I'm going to ask the question, so you won't have to ask it.

So, are you still – I'm going to ask both of you – are you still both employed with Astaldi Canada?

MR. DELAROSBIL: I am still employed with Astaldi Canada, and intend to remain employed with Astaldi Canada to see this through.

THE COMMISSIONER: Okay.

Mr. Bader.

MR. BADER: I'm not, Sir.

My last – my last day was February 18.

THE COMMISSIONER: All right.

Good.

Thank you.

February, 2018?

MR. BADER: February 28, 2019.

THE COMMISSIONER: Oh, 2019.

Okay.

MR. SIMMONS: And one other question, Mr. Delarosbil. Does Astaldi Canada have any business at all on its books other than pursuing any remedies it can pursue against Nalcor (inaudible)?

MR. BURGESS: Commissioner –

THE COMMISSIONER: That's one I don't need an objection for. You don't need to answer that question.

MR. SIMMONS: Thank you, Commissioner.

I found where the line is.

MR. DELAROSBIL: Yeah.

MR. SIMMONS: Thank you gentlemen; I don't have any other questions for you.

MR. DELAROSBIL: Thank you (inaudible).

THE COMMISSIONER: All right, Concerned Citizens Coalition.

MR. HISCOCK: Good afternoon gentlemen. My name is Will Hiscock. I'm here on behalf of the Concerned Citizens Coalition.

MR. DELAROSBIL: Good day, Sir.

MR. BADER: Good day.

MR. HISCOCK: So I have a number of questions for you. I'd like to start off by asking you about the collapsed formworks incident, a few follow-up questions on that.

That was May 29, 2016 obviously incident, we've already spoken about today. I understand that you're familiar with the report of the investigation by engineer consultant aDB dated April 20, 2017?

MR. DELAROSBIL: Yes Sir.

MR. HISCOCK: Yup, okay.

That report notes – has a list of unacceptable work and I'm not going to go through all of them. J. L. Gordon, who is Canada engineer did that on the Uncle Gnarley blog, but I'm just going to nail a few of these and I'd like to – I'd like you to confirm that these were problems that existed, at least to the best of your knowledge. If you have any insight into any of these particular problems, I'd appreciate knowing about them.

I understand that there was flooding up to about three feet above the tower foundation, was one

of the problems that was noted. Did you – were you aware of that?

MR. BADER: Well, flooding – there is permanent water there, Sir, because the underground water level is higher than the bottom of the draft tubes, so we had to pump water frequently.

MR. HISCOCK: Yeah, you had to keep the water out from – right. I understand; it's like if you were digging a well and you had to get down in it, then you got to keep the water pumped out. But it was being kept pumped out; it had risen to about three feet over the tower foundation.

MR. BADER: I can't recall the flooding Sir.

But I can confirm that the area is wet.

MR. HISCOCK: Okay, yes.

MR. DELAROSBIL: There could have been –

MR. HISCOCK: (Inaudible) –

MR. DELAROSBIL: Oh, I'm sorry. There could have been times where, you know the pump shut off or the power went out and you know, the water rose, but you know we kept it as dry as we could.

MR. HISCOCK: Yes.

I understand there was fungus and decayed wood in the towers and indeed mushroom growths were noted on the wood

MR. DELAROSBIL: Yeah.

MR. HISCOCK: Yes.

Exposed and untreated wood was exposed to the rain and the snow, the untreated wood, no treatment on it. Is that correct?

MR. BADER: Well we did some – we brought some hygienist, I think?

MR. DELAROSBIL: Yup.

MR. BADER: Yup, at frequent – multiple occasions to take care of draft tubes area as well,

where mould were – took place or where I had (inaudible). They were on site. Now, maybe to your question, they were after the incident probably or before – I can't recall but they were on site. We brought them on site frequently. Most probably at the (inaudible) frequency following the draft tube incident.

MR. HISCOCK: Okay.

And there's severe weathering, and some of that weathering actually occurred during the storage on site, correct?

MR. BADER: Correct.

MR. HISCOCK: Okay.

There's ice build-up between the ribs, and that was even in June I understand it, there was ice build-up between the ribs of the wood. Is that correct?

MR. BADER: Probable.

MR. HISCOCK: Okay.

MR. DELAROSBIL: They have it in their report (inaudible).

MR. HISCOCK: Yeah, you're not disputing that that – any of those incidents –

MR. DELAROSBIL: No.

MR. HISCOCK: – out of the report – okay.

Bucking of the tower timbers – I'll just run through the rest of them and maybe you can tell me if you object to any of these or if they seemed appropriate – you know, if they were things that you guys noted. Bucking of the tower timbers, gaps between timbers and a lack of shims at the top, wood saw marks indicating no quality control at the fabrication plant, incorrect alignment of some towers, inadequate nailing of the braces – would you say that those were issues that came out of the report, or do you dispute those?

MR. BADER: If they were done by – mentioned in the reports, Sir –

MR. HISCOCK: Yeah.

MR. BADER: – there’s a high chance they’re accurate.

MR. DELAROSBIL: But you have to look at what they were looking at, right? You know, the draft tube collapse itself, they’re not talking about any of that material or that observation in there, it was impossible. What they’re looking at is ongoing work, with draft tube 3 and 4. And the buckling they’re talking about draft tube 1, unit 1.

MR. HISCOCK: Mm-hmm.

MR. DELAROSBIL: And there would be some buckling because you have the weight of the concrete on it, so it does come down and cause some buckling. So depending – you know, I’d have to look at the report in detail, but I’m sure that they’re professional engineers and, you know, their observations in the report must be correct.

MR. HISCOCK: And this is a serious incident because, you know, some workmen found themselves up to their necks in cement, correct?

MR. DELAROSBIL: Absolutely, it was a serious incident.

MR. HISCOCK: And one was hospitalized, I believe, and there was a number who, you know, received first aid at the site but were basically okay.

MR. DELAROSBIL: They were checked. I don’t think anybody was hospitalized –

MR. HISCOCK: Okay.

MR. DELAROSBIL: – but – not to my knowledge, or maybe just brought in to check.

MR. HISCOCK: Sure.

MR. DELAROSBIL: But that’s what I was aware of.

MR. HISCOCK: So as far as you’re aware, nobody sustained any permanent injuries from that –

MR. DELAROSBIL: Mm-hmm.

MR. HISCOCK: – but it’s an incident that could’ve easily been fatal as well.

MR. DELAROSBIL: Oh yeah, like I said a while ago –

MR. HISCOCK: Yeah.

MR. DELAROSBIL: – on a construction site, their exposure –

MR. HISCOCK: You’re dealing with large –

MR. DELAROSBIL: Yeah.

MR. HISCOCK: In the current context, the workmanship reflects poorly on Astaldi, on its engineers, its supervisors, inspectors and its management. Wouldn’t you agree that an incident like that – I mean, it was directly under Astaldi.

MR. BADER: Sir, as a contractor, we had to build it, we had to assure a standard – well, achieve the standards in the (inaudible) works. And like, if you want to understand, if we could have done better, absolutely, we could have done a better job. We learned from that; we revamped our procedures. And it’s unfair, though, just to say it’s you, Astaldi – yes, it is our responsibility. But you need to know, as well, that we can’t do anything on this job if it’s not inspected by or signed by Nalcor.

It’s still our responsibility. We’re not proud of it. We took from that what lessons and we improved our weaknesses or what we had to develop.

MR. HISCOCK: I think you’ve probably actually answered – just answered my next question but – because I assume that the readiness of such structures had to be signed off by various engineers and inspectors and I wanted to know were those signed off on by Nalcor as well.

MR. BADER: Yes.

MR. HISCOCK: Okay.

MR. BADER: And just for these factors, actually, the two professionals – it doesn’t mean that we shouldn’t have corrected these but they –

there's a dispute between the two professionals or (inaudible) of whether these are contributing factors or whether these – if they have occurred or they did not occur did they contribute to that because the design was deficient.

MR. HISCOCK: Yeah.

MR. BADER: They both agreed on the design. I think they did not agree that those factors caused that.

MR. HISCOCK: I understand there's a dispute over that.

MR. BADER: Hmm.

MR. HISCOCK: However, you know, I think they do suggest that there were visible issues that would have been visible to the bare eye – to a layman, you know, who could have walked in and said boy, that doesn't look good on, you know – mould growing on forms like that, weathering, cut marks on the boards that shouldn't be there. I mean that's stuff that, you know, even as somebody without a trade background, you'd probably –

MR. BADER: Can I give you –

MR. HISCOCK: –say make you uncomfortable.

MR. BADER: – a short background?

MR. HISCOCK: Yes.

MR. BADER: The draft tube 2 – it's not like it was (inaudible) – it was built. And once it's built, it's not like one pour at the top of that. So, there's a very high chance the towers would be placed, probably, a year before – or a few months before. So, you did not have to go inside – it's not a good area to go outside. You'd understand, it's wet. It's not an area –

MR. HISCOCK: Yeah.

MR. BADER: – you go so frequently to it. Once you build the shell, you're working above it and you will do, like, lots of pours above the shell.

MR. HISCOCK: Yeah.

MR. BADER: So, there is no real justified reason to go so often there. Like, I wouldn't be surprised if the construction manager wouldn't go inside the draft tube after it was built. Probably do it while it was built, yes.

Now, we understood after it happened – we made the dam – we made it (inaudible) – like, it must go every time before you do any one of the pours, even if you think that the shell was built, inspected, to watch in any deterioration or any other deficiencies that can be resulted as an impact of adding extra loads which is a new pour on the draft tube.

MR. DELAROSBIL: Yeah. You know, and we're not – you know, I don't want to – I don't want anybody to think that we're shying away from any of our responsibilities. As Georges mentioned before, we could have done some things better.

MR. HISCOCK: Yeah.

MR. DELAROSBIL: The observations were made on something that was ongoing –

MR. HISCOCK: How do you explain both your people and Nalcor's people signing off on those draft tubes? I mean, it strikes me as a real issue why whether – well, I tell you what, I am going to take you back to Mr. Gordon, the engineer, J. L. Gordon, who we mentioned earlier. He, on that blog post, said this – and I just want your opinion on it: The level of incompetence described in the report is so widespread that it brings into question the integrity of all other structures in the development. All staff, from carpenters to engineers, are included within the ranks of the incompetent. The substandard construction was clearly visible to all, but nothing was done to rectify the errors.

Now, that was his opinion as an engineer –

MR. BADER: There is no real justification, but I will just tell you that normally when everyone is inspecting a structure, he is focusing on the permanent work. Because the permanent work is the work that is remaining there for a 100 year, and the draft tube was a temporary structure. As a temporary structure that it's why normally we develop specific procedures and, in turn,

proceed to control that, 'cause sometimes they get missed.

If you ask a field engineer, he will probably focus on do I have the right number of rebar, do I have the right embeds at the right place, at the right elevation, more than focusing on the temporary structure. The lessons learned we had from that incident, we had – we put more emphasis and more focus on the temporary structure. We classified our temporary structure into various risks and we put multiple check points so like these inspectors, field engineers, chief engineers will not be missing standard and basic checks.

MR. HISCOCK: The flooding of the three feet above the tower foundation, you say that may have occurred from time to time, you did try to keep it dry. Before that incident, before the collapse, was there a regular and ongoing attempt to keep that area dewatered?

MR. BADER: We had pumps there –

MR. HISCOCK: And that was before the collapse, as well, it wasn't after?

MR. BADER: Yes.

MR. DELAROSBIL: Yeah, yeah, yeah.

MR. HISCOCK: I would like to go through a couple of exhibits from – or a couple of the recommendations and this is Exhibit P-02318.

THE COMMISSIONER: I'm not sure if they have –

MR. HISCOCK: Sorry.

THE COMMISSIONER: I don't think we have that in our books, so (inaudible) –

MR. HISCOCK: No, I don't believe – sorry, P-02318, if we could bring it up there, perhaps.

MR. BADER: What binder, Sir?

THE COMMISSIONER: No, it's not (inaudible) –

MR. HISCOCK: It's not in the binder, you're going to have to look off of the screen for this

one, I'm afraid. And if we go down, there is a number of top recommendations and if we could scroll down just a little bit there. Yeah, that's fine.

I'd like to begin with recommendation number 2 and get your thoughts on this: "Relocate all the project team staying in St. John's" – and this was a recommendation to Nalcor – to "Relocate all the project team staying in St. John's to Happy Valley-Goose Bay. SHUT DOWN the Torbay office, except for possibly a few accounting people. Relocate all key management and engineering staff to the MF site" – then it follows up with a, I guess, the comment that "... the very idea of managing such a project remotely from St. John's is expensive and damaging to morale. Even minor decisions have to be referred to St. John's."

I take it from your comments earlier that you would agree with that, that that would've been appropriate?

MR. DELAROSBIL: Well, I don't know if you want to shut the Torbay office or not, hey; I'm just saying my comments were directed towards having just construction-experienced people, you know. The accounting people, I don't know, they have big departments. Who wrote this?

MR. HISCOCK: This is a group of engineers who worked with some of our clients on this.

MR. DELAROSBIL: Ah, okay, yeah.

MR. HISCOCK: There's another suggestion. I'd like your thoughts on it there. It's item number 5: "Establish a project execution plan." And they go on to note that: "There has never been a project execution plan for this project." The article states that: "Such a plan tends to be what one engineer called a 'wordy' document but it is a critical piece of work because it outlines a construction strategy, describes how milestones will be achieved, and identifies the risk and how to manage them. (An execution strategy also identifies the planning tools and strategies to assure productivity and break down work packages; it reflects the challenges and takes into account the size and complexity of such a large project. It helps define solutions to labour productivity issues, project management, workforce planning and organization, always

using industry based best practices. Weather, snow, and cold temperatures would have been a major focus of such an execution strategy.)”

Was such an execution strategy or execution plan ever given by Astaldi to Nalcor – or given to Astaldi by Nalcor, yes?

MR. BADER: We have submitted, as Astaldi, when I worked with this, we have submitted execution plans. That’s for sure. And probably 60, 70 method statements, which are like sub-execution plans. Now, this is what I was mentioning before to Mr. Barry. We said, like – we asked for the full execution plan. Maybe it was that not given to us, but that for sure we did not have it or we did not have access to it to understand how the job was done. Now, having an execution plan is definitely a must.

MR. DELAROSBIL: And they may have had one. You know, Nalcor may have had one (inaudible) –

MR. HISCOCK: But –

MR. DELAROSBIL: – execution –

MR. HISCOCK: – it was never given to Astaldi for you to be able to work off of?

MR. BADER: No, we asked –

MR. DELAROSBIL: No.

MR. BADER: – frequently for similar documents.

MR. HISCOCK: Okay. But as you say, Astaldi did write its own execution plan.

MR. DELAROSBIL: Yes.

MR. HISCOCK: Yes.

MR. DELAROSBIL: Yeah

MR. HISCOCK: Finally, recommendation number 8 is the last one I’m gonna look at here.

It suggested a review of “... major contracts in regards to their ability to control total cost.” The engineer suggested while Nalcor says that “... its contracts are ‘unit price’ based, Astaldi, for

example, can perform work in a most inefficient way and still invoice Nalcor.”

Would you comment on that assertion by one (inaudible)?

MR. DELAROSBIL: Yeah.

MR. BADER: Well, not really, because –

MR. DELAROSBIL: We’re a unit-price contractor. We got to pour concrete, and we got BOQ items, so I mean, the – we can’t bill – well, we can’t bill Nalcor; we get impacted if we don’t produce work efficiently.

MR. HISCOCK: Okay.

MR. DELAROSBIL: So we do get – it’s not a time and material job; it’s a – it’s nothing like that; it’s a unit-price job.

MR. BADER: Actually, unit-price jobs are typical as well, they exist in the – and I think we suffered more by having unit price –

MR. DELAROSBIL: Mm-hmm.

MR. BADER: – because, like, lots of things were rolled into that unit rate.

MR. DELAROSBIL: Yeah.

MR. BADER: And we’ve been given extra work based on unit rates which were probably less than what the values we were seeing, so for us, the unit rate actually saved Nalcor money, more than –

MR. HISCOCK: That’s your view on it, yes.

MR. BADER: Yes.

MR. HISCOCK: Okay.

MR. BADER: Absolutely.

MR. DELAROSBIL: Yup.

MR. HISCOCK: Okay.

Thank you, those are all my questions.

MR. DELAROSBIL: Thank you.

MR. BADER: Thanks.

THE COMMISSIONER: Thank you.

Edmund Martin.

MR. SMITH: No questions, Commissioner.

THE COMMISSIONER: Okay, thank you.

Kathy Dunderdale.

Former Provincial Government Officials.

Julia Mullaley, Charles Bown, not here.

Robert Thompson is not here.

Consumer Advocate.

MR. HOGAN: Good afternoon, my name is John Hogan. I'm counsel for the Consumer Advocate.

Most of my questions are just follow-up to the evidence – some of the evidence you've already given.

Mr. Bader, I'll start with you. You were the one dealing with the schedule, correct?

MR. BADER: Absolutely.

MR. HOGAN: And I get the sense there was some frustration there. Is that a fair word to use?

MR. BADER: In what terms of –

MR. HOGAN: I'm putting words in –

MR. BADER: I was –

MR. HOGAN: – your mouth.

MR. BADER: – frustrated –

MR. HOGAN: Were you frustrated –

MR. BADER: – with lots of things on site, but specifically what exactly?

MR. HOGAN: Were you – okay, well, let's put it this way: how many iterations of the schedule did you draft and propose?

MR. BADER: Actually a lot. I can't even count them. Like, a lot. Like, we had some regular submissions on monthly basis. I don't count these. But, like, a re-baselining was a long process –

MR. HOGAN: Yeah.

MR. BADER: – an exhaustive process for sure.

MR. HOGAN: Okay, so you can't even count how many –

MR. BADER: No.

MR. HOGAN: – drafts –

MR. BADER: I –

MR. HOGAN: – there were.

MR. BADER: – can't because there's so many. Like –

MR. HOGAN: Was it an abnormal number of drafts?

MR. BADER: If you really notice the sequence of work, it didn't change significantly from 2015. So I can't tell you that I – we've gone – we've done like months and months of schedule for every submission.

And the schedule of completion contract (inaudible) 2015, they're close enough. I think what was frustrating that it took two years for everyone to realize that realistic dates fall within that range of, you know, period of time. And it took really two years and that was the frustrating part, probably.

MR. HOGAN: And is that abnormal, to take two years to finalize the schedule?

MR. BADER: No, normally you approve your baseline before you start, before you even mobilize. That's for sure.

MR. HOGAN: Okay.

MR. BADER: Now, when I got there, like, lots of reasons, I guess. Some late start issues, you know, you're brought to the job and you're delayed to get access, and I understand Astaldi

signed the contract, but, like, I'm just talking practically. You're delayed; you still have a baseline schedule. And every time, it's a big effort to go and re-baseline, and so they had to do – to redo this while the operation was going, and, no, Sir, that's not normal.

MR. HOGAN: So are you submitting these drafts to Nalcor?

MR. BADER: Of course, yes.

MR. HOGAN: Okay.

And are they being rejected or ignored or what's happening?

MR. BADER: No, they used to provide comments, suggestion. At first they were probably a bit hard on the dates. Then, with time, everyone understood that they are becoming realistic dates.

MR. HOGAN: It took a long time to get to the point where everyone knew it was realistic.

MR. BADER: I think so.

MR. HOGAN: And who at Nalcor were you dealing with in terms of the scheduling submissions?

MR. BADER: Couple of people. And they're professionals, don't get me wrong –

MR. HOGAN: No, I – no – yeah.

MR. BADER: – it's – I think Mr. Tony Scott, he was the lead planner, Andrew Whitty for a period of time. Those are – I'm talking about the St. John's office because mainly the approvals of the baseline came from St. John's office. And, as well, the civil package lead at that time – then I think he became the interface manager – Mr. Mike Collins. So we used to deal with them to develop the schedule.

MR. HOGAN: Okay. Thank you.

Now, this can be directed to both of you. I do have a copy of the transcript of the interview you did with Ms. O'Brien and Mr. Learmonth.

So you were asked about the ICS, and I'm just gonna read out some of the comments you made during the interview process.

And, Mr. Bader, you said: The ICS didn't – it turned out to be a different thing than what we put in our bid – than what Astaldi put in our bid.

Mr. Bader, you also said: One thing is underestimating the complexity of the ICS. I think Astaldi believed the concept doesn't have to be complex, but some more digging should have been done behind the engineering, behind, like, calculations, load specifications prior to, you know, dot dot dot.

So I just want to get some more detail on that. It sounds like what was initially thought of, maybe when the bid was done, was – well, you said completely different than what actually was designed and constructed. So my question is: How does that happen? How can a bid be put in for one thing, and then two years later you're building something that's completely different?

MR. BADER: It depends on how detailed is your design, your initial design, right – yeah. And I couldn't – frankly, I didn't do any forensic – behind how the ICS was developed or how it was thought. Just the execution plan during the award showed that the ICS had – it was a jumping roof or – you keep lifting the roof or sections as you go higher.

And I think later on once – the designers probably checked a bit or went a bit more in details; they found that it's more complicated than it's – the cold regulations, the wind loading did not justify such an option. This was how it was explained to me. And so they had to go with just a fixed building that will cover – like all the tailrace work and the powerhouse work and the intake work. And –

MR. HOGAN: So that's fine, but I guess the question is: Why wasn't that picked up on earlier in the process? Like, Nalcor reviewed the bid, is that correct?

MR. BADER: Yeah. Even with the final design, I'm just thinking, like, if the mobilization to site happened in June, some time in June 2013, enough time would have been there to have an ICS building for the winter of 2013-14 ready or

near completion, and you could have profited from the full 2014 season –

MR. HOGAN: Winter season –

MR. BADER: – instead of using it for mobilization and for – to build your site installation, you would be just ready to start hitting high production rates. So I just think, like, keep pushing the contract, there is an impact there. I think –

MR. HOGAN: And there's an impact from the design not being –

MR. BADER: No, from any possibility to remedy or to – like, your floats are gone. If you had floats in your initial schedule, they're definitely gone. And I believe, from Mr. Palumbo's comments in the discussions, that Astaldi had reached a stage where they have invested enough on the bidding to get awarded the job, and they were pushed in the winter and they were – probably they were ready to take a bit of risk, knowing that there are two other jobs. And it was a – it was more risk taken, definitely, from the side of the contractor. And it couldn't have been missed from the client, that's – I can't understand how they can miss it.

MR. HOGAN: Okay.

MR. BADER: Even by saying (inaudible) analysis was done for other contractors –

MR. HOGAN: You can't understand how who missed it?

MR. BADER: Yeah, I couldn't understand, like, how could they believe that the float wasn't (inaudible), by just signing the contract six months –?

MR. HOGAN: Who – you can't understand who didn't believe that?

MR. BADER: Like, how Nalcor could have even –

MR. HOGAN: Right.

MR. BADER: – thought that there's enough float in the schedule.

MR. HOGAN: And they had the opportunity to review that, and you're saying that you don't understand how they missed it?

MR. BADER: I can't understand it.

MR. HOGAN: Okay.

MR. BADER: I would have picked it up. So – I would have.

MR. HOGAN: Okay. Thank you.

Now, the ICS was – I just want to be – you may have given this answer – either of you can answer it – I think you said it was started to be dismantled in October of 2015.

MR. DELAROSBIL: That's right.

MR. HOGAN: Okay.

MR. DELAROSBIL: Mid-October.

MR. BADER: Late 2015. It was pretty much (inaudible) January, February – we started the preparation and –

MR. DELAROSBIL: We started some dismantling, Georges.

MR. BADER: Yes, just some South Service Bay.

MR. HOGAN: Okay.

And it's not clear to me – I understand you decided to do it through the winter, but it's not clear to me how long it took. When was it dismantled completely?

MR. DELAROSBIL: By – I'd say – the 1st of February, it was down.

MR. BADER: Yeah.

MR. DELAROSBIL: That's for sure.

MR. HOGAN: Okay.

MR. DELAROSBIL: Of –

MR. HOGAN: 2016.

MR. DELAROSBIL: Yeah.

MR. HOGAN: Yeah, okay.

And was there anything else going on on the site between October 2015 and February 2016, or was it only the –?

MR. BADER: Yes.

MR. HOGAN: There was a –

MR. BADER: Yeah, we kept the concrete operation until December 1.

MR. DELAROSBIL: Yeah. Yeah.

MR. BADER: December 1.

MR. HOGAN: So October, November, December there's work going on –

MR. DELAROSBIL: Yes.

MR. HOGAN: – and dismantling?

MR. DELAROSBIL: Yeah.

MR. BADER: Yes.

MR. HOGAN: My question then is: What effect did the dismantling have on other contractors who were on site for those three months at the end of 2015, if any?

MR. BADER: Nobody was on site. We were the only contractors.

MR. HOGAN: So what other work was going on? Other work Astaldi was doing?

MR. DELAROSBIL: Oh yeah, we kept progressing work in other areas while we dismantled the ICS.

MR. HOGAN: So there were no other contractors on site during the dismantling?

MR. DELAROSBIL: No.

MR. BADER: They're not – I'm not sure if Barnard-Pennecon –

MR. DELAROSBIL: Yes, but –

MR. BADER: – but they're independent.

MR. DELAROSBIL: – not in our area.

MR. BADER: They're independent –

MR. DELAROSBIL: Nobody –

MR. HOGAN: No one in your area that was affected?

MR. DELAROSBIL: No.

MR. HOGAN: Okay.

Now, Mr. Bader, you said in your interview that you thought there was no point in taking it down. Is that – do you agree with that, or is that still your solution?

MR. BADER: At what time? Back in –

MR. HOGAN: Well, I guess that's what I'm asking you. Back –

MR. BADER: Of course, like, the decision – at the end of December '14, taking it down – it wasn't – the methods, statements for dismantling were not prepared, so like –

MR. HOGAN: Sorry, what wasn't there? The –

MR. BADER: The execution plans to dismantle, they were not prepared because the expectations were to keep it. And we just seeing if we can make use of what was built so far. And we did work almost two winters. Like the winter of 2015 and the winter of –

MR. DELAROSBIL: (Inaudible.)

MR. BADER: – yeah – end of two-thousand (inaudible) –

MR. HOGAN: So there's no justification put to you where you thought it should've been taken down at that point in time?

MR. BADER: Not at that point, absolutely.

MR. HOGAN: Did taking it down increase any costs?

MR. BADER: No, because we kind of – when we made the decision to keep it, we have used relative floats between the unit three and four, and unit one and two. And we have advanced enough unit three and four, (inaudible) the float because there were enough total float remaining – total float it means you can – we can delay your schedule without – your activities without delaying the end dates or some milestones.

We know that the units were staggered. So unit two has to be finished two months after unit one, and unit three, two months after unit two. So we had a relative float. So we said if we pick a winter period, we just work on and progress the critical concrete areas on the critical path. We would save cost working on necessary winter concreting work, and at the same time, we will dismantle the ICS. So it was the cheapest option or the cheapest period to dismantle it. Though, I understand that dismantling steel in the winter is not like summer activity but it was cheaper than working on concrete – working all winter.

MR. HOGAN: If the ICS had been completed, would it have eventually been taken down?

MR. BADER: I don't think so (inaudible) –

MR. DELAROSBIL: Yeah, yeah.

MR. BADER: What do you mean, sorry?

MR. HOGAN: I don't – well –

MR. DELAROSBIL: At the end – at the end of the job –

MR. BADER: At the end. Okay, that's –

MR. HOGAN: (Inaudible.)

MR. DELAROSBIL: Oh, yeah –

MR. BADER: – it has to go down.

MR. DELAROSBIL: – it's got to go down. Yeah, so –

MR. HOGAN: And I'm presuming it would've been taken down in summer or spring months. Is that correct?

MR. DELAROSBIL: Sequentially, as you're erecting the structure, you would have to take down the ICS.

MR. HOGAN: You've testified that it's cheaper to do work in months other than the winter. So by –

MR. DELAROSBIL: Yes, Sir. Yeah.

MR. HOGAN: – from that statement, I'm just assuming that taking it down in the winter of 2015, 2016 was more expensive than what was initially planned.

MR. DELAROSBIL: Well, you would've taken it down sequentially. I don't know if it was more than originally planned, but it was the most cost effective –

MR. HOGAN: At the time.

MR. DELAROSBIL: Yeah, yeah, absolutely, at the time.

MR. HOGAN: Because of what happened.

MR. DELAROSBIL: Yeah, absolutely. Hmm.

MR. HOGAN: So –

MR. BADER: So – yeah, I just wanted to say, doing steel in winter – steelwork, you would – you're pretty much limited by the crane capacities under severe weather conditions, and it's crane work, pretty much. So you would have your guys unbolting, bolting something, then you pick the pieces. So it's – yes, it's more expensive than the summer, but if you have the choice to do concrete work or steelwork in the winter, I would say steelwork would be cheaper.

MR. HOGAN: Okay. Thank you.

I just want to talk about the relationship between SNC and Nalcor on site. So you were aware that it was an integrated team approach?

MR. DELAROSBIL: Mm-hmm.

MR. HOGAN: Were you aware of this?

MR. DELAROSBIL: Yeah.

MR. HOGAN: Do you have any comment on how that approach worked, or how it manifested itself on site?

MR. DELAROSBIL: Well, in areas where we had disagreements with design or engineering, we just found it one sided, you know, so we couldn't – we had a hard time winning those arguments.

MR. HOGAN: What do you mean by one sided?

MR. DELAROSBIL: Eh?

MR. HOGAN: What do you –?

MR. DELAROSBIL: One sided – well, Nalcor, SNC, since he being the designer were always defending their designs, so they could do no wrong and it was always a constructability problem which created issues for us. You know, when admitting – it took a long time to – for them to admit if at any time they would admit that they made a mistake.

MR. HOGAN: Who would be in charge then? SNC is the engineer; it's an integrated team approach. We've been told would have leaders from both teams, both Nalcor and SNC. Is that the way you felt it was on site?

MR. DELAROSBIL: Leaders from Nalcor and SNC? No, they were all leaders from Nalcor. There was a few SNC guys there, the engineer – hey Georges – and there was the civil package manager was SNC.

MR. HOGAN: How did you find the relationship between SNC and Nalcor?

MR. DELAROSBIL: I could – well, very tight actually. Yeah.

MR. HOGAN: So, Mr. – I'm going to say it right – Delarosbil –

MR. DELAROSBIL: Close enough.

MR. HOGAN: Okay.

You said in your transcript – you said: I doubt that there's anything that's been done at six man-hours per cubic metre in Canada.

MR. DELAROSBIL: Yeah, for the work we were doing.

MR. HOGAN: Right.

MR. DELAROSBIL: Yes, Sir.

MR. HOGAN: Okay, so you still agree with that?

MR. DELAROSBIL: Oh yeah.

MR. HOGAN: Okay.

So – and, Mr. Bader, I'm just going to go to you. You said in your transcript: In the bid analysis, Nalcor had full access to the immediate bill analysis and assumptions. That's my understanding that Nalcor reviewed our bid. And this is the same conversation talking about these rates. So I'm just wondering what you meant by that.

MR. BADER: At that time it was explained to me that Nalcor, and probably SNC on behalf of Nalcor, had access to how the prices or unit prices were built up or were made. So if it was 6.7 cubic metre man-hours, they could chase down how it was built.

MR. HOGAN: Should Nalcor have been aware that that number wasn't possible? Is that what you're stating? Or, sorry, that number hadn't been found anywhere else in Canada, let's say that.

MR. BADER: You know, it's –

MR. DELAROSBIL: Can I ...?

MR. HOGAN: Yeah.

MR. DELAROSBIL: Yeah, so, well, they had an estimate from SNC-Lavalin that said it could, right, okay? And – but as it was mentioned here, you had two North American contractors that said it couldn't. And so flags should have been raised then –

MR. HOGAN: That's what I'm getting at.

MR. DELAROSBIL: – you know. And when you look at the – I've only had access to the Thornton report and when I look at it, there's

questions that should have been asked, you know.

MR. HOGAN: At the time of the –

MR. DELAROSBIL: At the time, yeah.

MR. HOGAN: Thank you.

MR. DELAROSBIL: Now, they had processes, they had systems, they probably went into a lot of detail. We weren't part of that. But from what I've seen, yeah, questions should have been asked.

MR. HOGAN: Okay. Thank you.

And this is the last question I have for you. So Mr. Learmonth took you through several agreements this morning, bridge agreements, settlement agreements –

MR. DELAROSBIL: Yeah.

MR. HOGAN: – which you said you were involved in negotiating.

MR. DELAROSBIL: Yeah.

I wasn't the – it was Francesco Rotundi and Lance Clarke, Gilbert – like, I mean, I was involved in helping to prepare those agreements.

MR. HOGAN: Well, my question just is, though, your involvement with that would have taken you away from on-site management.

MR. DELAROSBIL: Yeah, to a certain extent. Yeah.

MR. HOGAN: Well, that's – so to what extent did it take away from your duties on site? And then the follow-up question is: To what extent did it have effect on the whole project site for you and your workers, knowing that these issues were going on? Did it have a downward spiral effect at all?

MR. DELAROSBIL: Oh, I mean, of course.

We just worked more hours, as I said. We didn't always take our turnarounds, we worked extended periods. Georges and I always worked out coverage on the job site. We also had about

three more competent individuals backing us up, you know. We had Vern Shaver, Brian Chaput, James Walsh. They were also individuals that had capacity to be able to direct.

MR. HOGAN: So you needed –

MR. DELAROSBIL: If it weren't for Erasmo Bassano – you know, we had competent people there.

MR. HOGAN: So safe to say you needed more manpower to deal with increasing issues?

MR. DELAROSBIL: Yeah, yeah, but we were backstopped. We were solidly backstopped, yeah. And some of these took me away from site for maybe two, three days, three, four days, you know. But, you know, that's part of the package, you know.

MR. HOGAN: And what about – this is last question: What about the morale of the workers?

MR. DELAROSBIL: Morale of the workers. Well, I mean, the morale was terrible when we got terminated. During our construction, during the construction process I would say that morale was okay, on average, for a construction project.

MR. HOGAN: What about when these issues arose though, needing the settlement agreement, needing the bridge agreement, needing the conditional (inaudible)?

MR. DELAROSBIL: Oh, yeah, well, they were always concerned about the work, you know. Our team was proud. You know, I say for the vast majority of union and non-union of my staff, they were proud to be a part of the Astaldi team. They waved the flag pretty good.

So they were happy, they were ecstatic because, you know, there was some worry, sometimes, you know, prior to the completion agreement. But, you know, they – again, everybody was happy; everybody wanted to finish the job. And, yeah, there were some times there was some lows for sure, but, in general, I would say that the morale was okay. Yeah.

MR. HOGAN: That's all the questions I have, gentlemen. Thank you.

MR. DELAROSBIL: Thank you.

MR. BADER: Thank you.

THE COMMISSIONER: The Innu Nation is not present.

Former Nalcor Board Members.

MS. G. BEST: No questions.

THE COMMISSIONER: Thank you.

Newfoundland Power is not here.

Newfoundland and Labrador Building and Construction and Trades/Resource Development Trades Council of Newfoundland and Labrador.

MS. QUINLAN: Good afternoon, gentlemen.

MR. BADER: Good afternoon.

MR. DELAROSBIL: Good afternoon.

MS. QUINLAN: My name is Cathie Quinlan. I'm on for the Newfoundland and Labrador Building Trades Council and the Resource Development Council.

I just have a few questions for you about the labour relations relationship you talked about earlier today. You had said you had control and discretion over whether or not to send agreements to arbitration. Is that correct?

MR. DELAROSBIL: From the Astaldi side, yes.

MS. QUINLAN: Yes.

MR. DELAROSBIL: Yeah.

MS. QUINLAN: Would you say you have the authority to settle any disputes you had with workers?

MR. DELAROSBIL: Yes.

MS. QUINLAN: Full authority?

MR. DELAROSBIL: Full authority.

MS. QUINLAN: So what role did the MFEA play in those relations?

MR. DELAROSBIL: Well, any arbitration – or what came out of an arbitration was paid by Astaldi.

MS. QUINLAN: Mm-hmm.

MR. DELAROSBIL: MFEA, basically, was Nalcor – a Nalcor group, Muskrat Falls Employers' Association –

MS. QUINLAN: Right, yeah.

MR. DELAROSBIL: – which comprised of everybody, but it was controlled by Nalcor. Basically, they supplied legal representation –

MS. QUINLAN: Mm-hmm.

MR. DELAROSBIL: – for the arbitration cases.

MS. QUINLAN: Okay.

MR. DELAROSBIL: And we paid 50 per cent –

MS. QUINLAN: So what decision-making –

MR. DELAROSBIL: – for the legal fees, hey?

MS. QUINLAN: Sorry?

MR. DELAROSBIL: For the legal fees, it was split 50/50 –

MS. QUINLAN: Okay.

MR. DELAROSBIL: – Nalcor and the contractor. In this case, it would've been us, Astaldi.

MS. QUINLAN: Okay.

MR. DELAROSBIL: Mm-hmm.

MS. QUINLAN: So would you say that Nalcor had a hands-on approach when they were involved in the MFEA and these grievances and the arbitration?

MR. DELAROSBIL: Oh yes.

MS. QUINLAN: Yes?

MR. DELAROSBIL: Yes, very much so. Yeah.

MS. QUINLAN: What would that involve?

MR. DELAROSBIL: Well, I mean, if we proceeded and went ahead with the grievances, there were some discussions and there were some – trying to convince us to say yes or no, or to go ahead or – you know, they were hands on with all of our arbitrations.

MS. QUINLAN: Would you say they had an important role in the discretion that you exercised, in terms of whether to proceed or whether to discipline? Would they have more of a decision-making capability?

MR. DELAROSBIL: Whether I disciplined?

MS. QUINLAN: Sure, whether you settled a disciplinary issue without proceeding to arbitration. If you were leaning towards settling something, and Nalcor said: Actually, we'd like to go to arbitration; we're not dealing with this –

MR. DELAROSBIL: Oh –

MS. QUINLAN: – who overruled who?

MR. DELAROSBIL: – no, and let's be clear here, you know, I went to arbitration when I thought it was right to go to arbitration. I didn't care who told me what –

MS. QUINLAN: Okay.

MR. DELAROSBIL: – to be quite honest.

MS. QUINLAN: Okay.

MR. DELAROSBIL: Yeah.

MS. QUINLAN: In your interview, you suggested that there was one person in charge of all labour relations on site, and you made reference to – he was the lord and ruler of labour relations on site. Do you remember that statement?

MR. DELAROSBIL: Yeah, Dave Clark.

MS. QUINLAN: Yes.

MR. DELAROSBIL: Yeah.

MS. QUINLAN: Can you tell me a little bit more about Dave Clark's role in labour relations with respect to Astaldi and grievances and arbitrations and the whole process of negotiating that within the MFEA and the RDTC?

MR. DELAROSBIL: Well, you know, from what I understand, he negotiated the agreement for – you know, on behalf of Nalcor and he had full – he was the gentleman in full power of making the decisions for Nalcor. I guess he probably talked to others within the company, but he was the guy that handled the labour relations. I'm not sure if I answered your question –

MS. QUINLAN: Yes, yeah.

MR. DELAROSBIL: – I'm trying to but – yeah. Yeah.

MS. QUINLAN: So he had full control over Nalcor's role in these arbitrations.

MR. DELAROSBIL: Yeah.

MS. QUINLAN: And you've said that Nalcor controls the MFEA.

MR. DELAROSBIL: Yeah.

MS. QUINLAN: And the MFEA is really who the grievance is with. Is that correct?

MR. DELAROSBIL: The grievances are with the contractors who belong to the MFEA.

MS. QUINLAN: So the MFEA takes it to arbitration on behalf of the contractor?

MR. DELAROSBIL: Yeah, like Astaldi or Barnard or ANDRITZ or –

MS. QUINLAN: Right.

MR. DELAROSBIL: – yeah.

MS. QUINLAN: So –

MR. DELAROSBIL: They're named – the contractor is named in the arbitration. It's the MFEA, but the contractor is named.

MS. QUINLAN: Right.

MR. DELAROSBIL: Yeah.

MS. QUINLAN: So David Clark, then, has a role in determining whether or not you settle something on the side with a worker to reduce discipline or to proceed to arbitration? He would coordinate with you and make that decision or – ?

MR. DELAROSBIL: No, that was my decision.

MS. QUINLAN: So fully your decision, and David Clark had no role in whether that proceeded?

MR. DELAROSBIL: He would suggest and recommend –

MS. QUINLAN: Mm-hmm.

MR. DELAROSBIL: – and I would listen –

MS. QUINLAN: Mm-hmm.

MR. DELAROSBIL: – and, based on our discussions, would decide if we move forward or not.

MS. QUINLAN: So he was not the lord and ruler with respect to Astaldi's grievances?

MR. DELAROSBIL: I didn't let him be.

MS. QUINLAN: Okay.

MR. DELAROSBIL: Yeah.

MS. QUINLAN: Okay.

Those are all my questions. Thank you very much.

MR. DELAROSBIL: Okay, thank you.

THE COMMISSIONER: Thank you.

Siobhan Coady – not here.

Astaldi Canada.

And I wonder, just looking, it's 25 after 3. Did you want to take a break first before you start or do you feel you're gonna be quick enough that we should keep going?

MR. BURGESS: I'm guessing (inaudible) minutes.

THE COMMISSIONER: Okay, would you like to – I think we'll take our break here now.

MR. DELAROSBIL: Yeah, I need a bathroom break.

THE COMMISSIONER: Okay.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

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

MR. BURGESS: Thank you, Commissioner. Paul Burgess, on behalf of Astaldi Canada, Inc.

Gentlemen, good afternoon. I just have a number of questions that I want to follow up on that perhaps clarify some of the evidence that you've given earlier today.

Mr. Delarosbil, in your evidence earlier you had talked about your communication with Mr. O'Brien, and your advice about having someone on site that had the proper authority. My understanding – I didn't hear you say – but my understanding from your interview transcript was that at one point you made a trip to St. John's to meet with Mr. O'Brien. If that's correct, could you tell the Commissioner about that?

MR. DELAROSBIL: Yeah, I did take the time to – and I did that a couple of times, have a meeting with Mr. O'Brien and, basically, that was to have a conversation between him and I on matters that were happening on site, how we could streamline resolving issues and how we could – how we can move forward together.

MR. BURGESS: And as a result of those concerns that you raised with Mr. O'Brien, what, if any, impact did you see on site or whatever was implemented by Nalcor?

MR. DELAROSBIL: The communications at that time got a bit better with Scott and I, you know. We were – it was post-completion agreement; it was 2017. So in 2017, as I said, it was a heavy schedule and I must say that Nalcor and Scott and his team did try to help us a bit more.

MR. BURGESS: But in particular did you see any change in the on-site authority in relation to the concern that you had raised and have testified about here today?

MR. DELAROSBIL: No real changes.

MR. BURGESS: Okay, thank you.

MR. DELAROSBIL: No real changes.

MR. BURGESS: You – Mr. Delarosbil, as well, earlier you testified with respects to the challenges with some of the health and physical aspects of some of the workers. My understanding is that you implemented the necessity of passing a medical test of some kind?

MR. DELAROSBIL: Yes, we did. Yeah.

MR. BURGESS: And what was the impact or the result as a consequence of that?

MR. DELAROSBIL: Well, basically, as a consequence of that, it was found that about 25, 30 per cent of the employees that were referred did not pass the examination.

MR. BURGESS: And if they didn't pass the examination – that's medical examination, I take it –

MR. DELAROSBIL: That's right.

MR. BURGESS: – if they didn't pass the medical examination?

MR. DELAROSBIL: Well, it's a combination of drug, alcohol, medical, but it's the examination itself.

MR. BURGESS: And I take it if they didn't pass that, they didn't get on site in the job.

MR. DELAROSBIL: That's right, yeah.

MR. BURGESS: Okay.

You've given evidence, Mr. Delarosbil, as well, with respect to the superintendent and whether there should be a general foreman or any – you gave some evidence with respect to that. But, I take it those were observations that you made 'cause my understanding is you had a collective agreement in place that you had to follow.

MR. DELAROSBIL: Yeah, we followed the collective agreement. My comment was meant to reflect what I would see as an improvement moving forward, I guess, streamlining the supervisory roles so that more direct contact was made with the worker at the face.

MR. BURGESS: Right.

MR. DELAROSBIL: So it's basically trying to take out a level of supervision.

MR. BURGESS: Okay.

Mr. Bader, you gave some evidence with respect to the ICS and we went into permits – I am not going to go there – but generally, can you tell the Commissioner whether you or Astaldi advised Nalcor of the status of ICS and its schedule throughout.

MR. BADER: Of course, Nalcor was aware on a weekly basis of the status and the complication and the efforts required to be put in place, to have the building finalized. And, as I was saying, a weekly tracking meeting for the schedule and the progress was taking place. And I recall it was even led by Nalcor's personnel.

And in December, as I mentioned before, we had a presentation. We presented the plan that we're not progressing the unit 3 and 4 and North Service Bay of the ICS. And although everyone was silent, we took that as an acceptance or a blessing for the plan to move forward.

MR. BURGESS: Okay, thank you.

MR. BADER: So, I don't believe that this can only be an Astaldi decision. Being on site for four years and a half, and being micromanaged enough, I am not sure Astaldi would be let – to decide alone if the ICS would stop or not. Yes, it is the contractor's means and methods, but I am pretty sure if somebody objected or wanted to object, Astaldi would have finished the ICS. So, that's my take there.

MR. BURGESS: Okay.

So, if I understand your evidence, your experience with Nalcor was that if they wanted to go a certain way, they expressed that to you.

MR. BADER: Absolutely. Absolutely.

MR. BURGESS: Mr. Delarosbil, in your evidence and in questions put to you by Mr. Simmons, you talked about change orders and change requests and I just want to make sure that I understood part of what you were saying. As I understood it, your issue was whether the change orders, the change requests or the disputes were legitimate or not, it was always being pushed down the line. The impact of disputing a change order would push the cost and payments down the line, but at some point it's going to have to be dealt with.

MR. DELAROSBIL: That's right.

MR. BURGESS: Okay.

Also, either one of you gentlemen – I don't know which one is the most appropriate to answer – can you explain to me – my understanding from the agreements and the contracts is that Nalcor was the payment certifier in this relationship and, if so, can you just explain what that means?

MR. DELAROSBIL: (Inaudible.)

MR. BADER: Sure.

So basically our progress payment were – followed a certain sequence. The first sequence was – the first step was a meeting between our quantity surveyor guys and then their counterpart at Nalcor, where the progress is approved. And once the progress is approved – like unofficially, like mutually agreed upon – a

payment certificate is sent through the system, the payment certificate was reviewed by Nalcor personnel – not by Nalcor team – or LCP team. And once it's approved by LCP, we – it was sent back to us and we sent an invoice. So pretty much Nalcor had to approve those. The – our payments.

And the progress was agreed upon before that. We couldn't certify any amount if it wasn't – or we could – but simply, Nalcor wouldn't accept it. So we had to have the pre-meeting with the site personnel, agree on the progress. Then like this, we guarantee that the payment certificate will be returned from Nalcor approved. This was the process.

MR. BURGESS: Right.

So my understanding then is, until Nalcor certified or approved it, there would be no payment coming to Astaldi.

MR. BADER: Absolutely.

MR. BURGESS: Okay.

MR. BADER: Like, you can't send an invoice if there's no –

MR. BURGESS: Right.

MR. BADER: – no payment certificate. You can, basically, send an invoice, but you won't be complying to the contract.

MR. BURGESS: Right.

MR. BADER: So it won't be approved.

MR. BURGESS: So the bottom line is if there's a disputed amount and Nalcor doesn't certify the payment, the payment's not forthcoming.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. BURGESS: Right.

Mr. Bader, in your evidence with respect to the DT2 claim, I understood you to say, and I just want to make sure I'm correct on this and that the Commissioner understands, when the – the impact of the collapse of the DT2 happened, that

– while yes, there was an impact, it wasn't as major because you could focus your work elsewhere and it didn't impact anything on the critical path. Did I understand that correctly?

MR. BADER: Pretty much, yes. Like that – the impacts were minimal on the schedule. Well, we had some impacts on the schedule for sure, but they were not equivalent to the shutdown period. So unit 2, 3 and 4, the impacts were almost not – I believe a little bit on unit 1, but it wasn't equivalent to the three months of shutdown for specific areas. And we got partial releases, so that the impacts were mitigated, specifically the focus was to get unit 1 free at first, then unit 2, and we kind of followed the priorities of the schedule.

MR. BURGESS: And my last question is to either or both of you, because this is the opportunity – Astaldi sought standing and is participating in this Commission to give you the opportunity. You've given a lot of evidence today, but is there anything you'd like to add to advise the Commissioner to consider in his deliberations?

MR. BADER: Good.

MR. DELAROSBIL: You're good?

Yeah, if I can take a minute. I don't know if it's the right forum, but anyways, I just want to let everybody know that we're quite proud – we're not happy, yeah, we're disappointed on the way this ended for us – but we're quite proud of what we built; and I just want to thank my team for sticking with me to do and get the work done that we needed to get done. But unfortunately – it's a project that's over budget, but it's a very complicated project, it's a tough project and I think the team and the people that worked on it should hold their heads high that they did a good job.

MR. BURGESS: Thank you, Sir. Thank you, gentlemen. Mr. Learmonth and then the Commissioner may have further questions, thank you.

THE COMMISSIONER: All right. Redirect.

UNIDENTIFIED SPEAKER: (Inaudible.)

THE COMMISSIONER: You'd have to turn the other one off over here.

MR. LEARMONTH: No, it's on.

Mr. Bader, you – Mr. Will Hiscock put some questions to you about the quality assurance on the draft tube number 2, and you gave some evidence about your understanding of the respective obligations or duties of Nalcor and Astaldi, correct?

MR. BADER: Correct.

MR. LEARMONTH: Could you go over that again? I just wanted to make sure what your understanding was in terms of the obligations, if there were any, on Nalcor, as opposed to Astaldi's obligations.

MR. BADER: Sure. Designing the falsework and temporary structure is mainly the contractor's responsibility.

MR. LEARMONTH: So that's Astaldi's?

MR. BADER: Yes.

MR. LEARMONTH: Yeah.

MR. BADER: However, you can't use that until you submit the drawings through Aconex, and after that, they go – they go under some review from Nalcor and they will be coded differently. So sometimes we used to submit some drawings and they may be returned as not reviewed or not approved; such as some drawings for swing stages were done by our subcontractor or engineering supplier.

And they were tasked through Nalcor and Nalcor had some – valid comments – I'm not saying it's valid or not valid, I'm just saying that Nalcor had an obligation to review. Maybe not in a – not to a very detailed level, but they had some obligation to review them, otherwise, why you would submit drawings for the client if he won't care if they are approved or not. However the responsibility as per our contract was – I believe, it was on the contractor, on us, to make sure the design is right.

MR. LEARMONTH: Yeah.

MR. BADER: Like, the client doesn't have, probably, a liability or whatever you want to call it, but he has to review it, so he has to do certain level of reviews.

MR. LEARMONTH: Is there any specifications as to the level of review that Nalcor in these circumstances would have been required to carry out?

MR. BADER: No, I can't recall some details of what level of review they have to do. But if I'm doing a certain review and I know I'm not putting my stamp on, I'll probably do a minimum checks just to say – to be confident before I would approve it for use. If it would be put on my desk, I will do enough exercise as part of the – before giving a recommendation to be using it. I have to be comfortable that's right. I will have to do this; otherwise, if I am working there, I can't approve these drawings. I will tell you: don't give them to me; the moment you give them to me, I'll have to look –

MR. LEARMONTH: Yeah.

MR. BADER: – I'll have to do my due diligence.

MR. LEARMONTH: But so – what if – let's assume for the sake of the question, I don't think it's been decided – but for the sake of the question, that there was an obvious design problem with the – for the draft tube; assuming that's the case, would it be your expectation that Nalcor would pick that up in its review?

MR. LEARMONTH: If they did their review, I think they should have done – they should have picked it up. Like, other engineers did, our engineer did not pick it up.

MR. LEARMONTH: Hmm.

MR. BADER: I would say they should, I think they did not want to do any review when the draft tubes drawings were shared and probably in one of the site queries or in the submittals with – for the engineering analysis done, probably by CEI, they said they limited their review to the design parameters. So they just wanted to see if the right loads were applied; but you would know, like, you would put – you will

have design parameters then you will have to design as per the parameters of the formwork.

Parameters are like, what's the thickness of concrete to be poured; how many pours needs to be supported by the shoring; and basically all the forces to be put on a formwork. Then you go and you design – you size the structure and you finalize your design. So they – I think, it mentioned in one of – or they mention in one of the documents that they have limited their review to the parameters used.

MR. LEARMONTH: All right. All right, that's my only question.

THE COMMISSIONER: Okay. Thank you.

Just – if I can just follow up because I have to say, I think I am a bit confused on this whole issue and maybe I need to use the word quality assurance because that's what you said earlier. So if there were all these visible defects with the draft tube – for instance, with regards to mould and rot and all that sort of things – would Nalcor personnel have any opportunity to see that? Or would they have any obligation to look at that?

MR. BADER: Obligation – again, that's a contractor's obligation.

THE COMMISSIONER: Right.

MR. BADER: But, you know, you can't pour any permanent concrete work unless you submit something called a pour package. A pour package normally includes the drawings – all the drawings – the rebar drawings, (inaudible) drawings and some quality checks and temperature for the pour, et cetera.

So, Nalcor signature is there. It's – and I think their signature can be as simple as checking are all the documents there, you know. Or it can go into detail. If every drawing – let's say a rebar drawing – there to verify the installation versus drawing.

THE COMMISSIONER: I know. I understand that some of the issues that were found were related to design. I understand that. But also there were other issues that were seen – that were found that are not so much the design but the product – the actual material –

MR. BADER: Yes.

THE COMMISSIONER: – that was used. So with regards to material that is used –

MR. BADER: Mm-hmm.

THE COMMISSIONER: – was there any opportunity for Nalcor or was it their practice or – and, for that matter, Astaldi's practice – how was it that these materials were reviewed to make sure they were fit?

MR. BADER: They were definitely reviewed. And Nalcor's engineers, absolutely, they walked the draft tube formwork. Otherwise – and adding to that this – you understand it's a curvature; it's a curved formwork. So, that's why it was subcontracted. It's a very special form. So, there is no way Nalcor's engineers and personnel and inspector did not look enough to that formwork.

Now, I understand they may say it's not their responsibility, but they have looked at that. That's for sure. They walked it down. They walked the areas down. Their engineers did. And there is no way it was left for the contractors. There is no way a structure that critical was left alone for the contractor to figure it out.

At least once we got the signature that the concrete is – or an authorization to pour, Nalcor would have done certain checks. This is definite.

THE COMMISSIONER: So, who would have been involved in those checks?

MR. BADER: Probably the resident engineers. Probably their quality inspectors. They may have called their designer, SNC, as a minimum, you know, like, I would say. Sometimes they may just ask for photos. Sometimes they may walk it physically. On – normally – I don't know who specifically, but one of – one person from that group would do that.

THE COMMISSIONER: And you would've had a similar type person doing the same sort of thing?

MR. BADER: Sure. So we had –

THE COMMISSIONER: So you – your person, aside from your engineer, who approved

the design and whatever, you would've had other people, like, in quality assurance or –

MR. BADER: Field engineers.

THE COMMISSIONER: – field engineers, whatever to be (inaudible) –

MR. BADER: Construction managers.

THE COMMISSIONER: – doing a walk-through to make sure that it was appropriately done.

MR. BADER: Yes.

MR. DELAROSBIL: Yes, Sir.

THE COMMISSIONER: And then Nalcor would do the same thing?

MR. BADER: Sure.

MR. DELAROSBIL: Yes, Sir.

THE COMMISSIONER: And you would need to get an authorization to start to pour the concrete from Nalcor?

MR. BADER: The pour package needs to be signed by Nalcor.

THE COMMISSIONER: And you think it was done before then?

MR. BADER: There is no way it – it's definitely done. Definitely they signed and authorized that pour.

THE COMMISSIONER: Right, but you're saying that – I'm trying to figure out – you know, like, I don't think you were down in the hole – the in the draft hole when they were down there walking through or looking at pictures or whatever.

MR. BADER: Yeah.

THE COMMISSIONER: It's your belief that they would've had photographs at the very least or alternatively done a walk-through; they would've been able to see the material.

MR. BADER: Yes. And probably they did not walk the – inside the draft tube before that one, because it was the last one – the last one – or probably the fourth or third pour on that draft tube. So at that time, you built the shell and you really don't have to inspect again unless you'd – we put it as mass order, to do it later on. To go to see if the previous pours caused any damages, but, like, someone could miss that.

THE COMMISSIONER: Right, I understand that. But when the – this pre-manufactured piece of material got put where it was supposed to put so that you could put the concrete on top of it. What I'm asking you is would there have been some inspection by –

MR. BADER: Yes.

THE COMMISSIONER: So okay, that's –

MR. BADER: Yep.

THE COMMISSIONER: – so there would've been inspection by your people and there would've been inspection by Nalcor people.

MR. BADER: Absolutely.

THE COMMISSIONER: That's what you're telling me.

MR. DELAROSBIL: Yeah.

THE COMMISSIONER: Okay. All right.

That's all the questions I have, gentlemen, thank you very much.

MR. DELAROSBIL: Thank you.

THE COMMISSIONER: You can step down.

All right, we're adjourned until tomorrow morning at 9:30.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.