



COMMISSION OF INQUIRY
RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 35

Commissioner: Honourable Justice Richard LeBlanc

Tuesday

14 May 2019

CLERK (Mulrooney): All rise.

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

Please be seated.

THE COMMISSIONER: All right.

All right, Ms. Ding?

MS. DING: Good morning, Commissioner.

Today, our witness is Mr. Ken McClintock, and Mr. McClintock would like to be sworn.

THE COMMISSIONER: Okay. If you could stand, Sir, please, and just place your right hand on the bible.

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

MR. MCCLINTOCK: Yes, I do.

CLERK: Please state your name.

MR. MCCLINTOCK: Ken McClintock.

CLERK: Thank you.

THE COMMISSIONER: Just spell your last name for us, please.

MR. MCCLINTOCK: M-C-capital-C-L-I-N-T-O-C-K.

THE COMMISSIONER: Thank you. You can be seated there now.

MS. DING: And, Mr. Commissioner, we would like to enter Exhibits P-03434 to P-03437 today.

THE COMMISSIONER: All right. Those will be entered as numbered.

MS. DING: Thank you.

Mr. McClintock, can you start us with a brief overview of your education and your work experience, please?

MR. MCCLINTOCK: Sure.

I'm a registered professional engineer. I have a degree in mechanical engineering from the University of Manitoba. My work experience, when I first started I was with Foster Wheeler, then Acres – which is now Hatch – Atomic Energy of Canada, Monenco, Gendreau Construction, Belcourt Construction, SNC-Lavalin, KBR, and at the end of my career, I was with McDermott and then, after I retired, done work for Nalcor. So, basically, engineering and constructions companies, two Crown corporations and a manufacturer.

MS. DING: Okay.

And how did you get involved with the Muskrat Falls Project?

MR. MCCLINTOCK: After I retired, which was in 2009, I basically got a little bored, so I made a phone call to Mr. Pat Hussey, who was on the project team, and he put me in touch with Paul Harrington. And it just went from there that they needed some grey hair at the time. And I was available, so I started doing some work for 'em in about January of 2010, and it just went from there; it was just ad hoc services over the last several years.

MS. DING: And how did you know Mr. Pat Hussey?

MR. MCCLINTOCK: I had worked with Pat on the Terra Nova project.

MS. DING: And do you know anyone else – or did you know anyone else on the project team before you began – before you got involved?

MR. MCCLINTOCK: Really, the only person I had ever met before – and it was on Terra Nova – was Paul Harrington. And, really, I had just met him. He was in a different group than I. I had met Ed Martin, and I don't believe there was anybody else that I knew.

MS. DING: What were the various roles and scopes of work that you had with the project?

MR. MCCLINTOCK: At the beginning, I started work on the development of bid documents for the EPCM contract. And it grew

from there. I was involved with Jason Kean on development of many project documents like the execution plan, the contract strategy, Construction Management Plan. I assisted one of their people with the change management process. I've also – I was involved in bid development or bid evaluation and award for the early site services – temporary site services. And involved in some work with respect to what was called plan B for Astaldi. That was in 2016 and again in 2018.

MS. DING: In your interview, you noted that you were also the project controls manager for SNC for a brief time. Is that correct?

MR. MCCLINTOCK: Oh, sorry, forgot that one. I was project controls manager for SNC. It was at a time when a lot of documents were required to be put out. That was the first year of their execution. And later on, for three months, I was the project manager for the integrated team.

MS. DING: And, Mr. McClintock, are you currently doing contract work for Nalcor?

MR. MCCLINTOCK: Sorry, did I say project manager? I meant to say project controls manager both –

MS. DING: Okay.

MR. MCCLINTOCK: – for the SNC and for the integrated team.

MS. DING: Okay.

MR. MCCLINTOCK: Sorry.

MS. DING: And are you currently doing any work for Nalcor?

MR. MCCLINTOCK: No.

MS. DING: Do you expect to have any further work for Nalcor or the Muskrat Falls Project?

MR. MCCLINTOCK: Possibly, if they – if something came up. That was really always the procedure. If they needed some work for whatever reason, they'd call me. If I was available, we would agree, and I would just come for anywhere from a week or four weeks or whatever. So, yes, I would still do some work.

MS. DING: And have you spoken to anyone from Nalcor or the project team regarding your – the Inquiry, your interviews or your testimony today?

MR. MCCLINTOCK: Yes.

MS. DING: And who would that be?

MR. MCCLINTOCK: In early February – that was before I knew I was going to be interviewed – I was requested to come here by Nalcor, and so I met with Scott O'Brien and Pat Hussey and Ron Power; and that was really to help them to get a handle on CH0009 – this – the dams contract which I was involved in. and so I was there for two days and that just assembled a bunch of documents, went over them just to give them some background.

After my first telephone interview, I also called Ron and/or Pat – or talked to both of them at the same time, I can't recall – and also after my second telephone interview, I had called them. And also before – when I was summoned, I contacted them because I wanted to see if I could come and check some documents on the other files. And that never happened because I found out I could get the same documents by talking to my counsel.

So that was another contact I had with them, but it was just to arrange to come here to St. John's. And then last week I got a call from Ron Power to ask if I was coming and I told him no. So that was really the extent of any contact I had with Nalcor.

MS. DING: And you had mentioned some phone calls before your interviews, is that correct?

MR. MCCLINTOCK: Before my interviews, I came here to St. John's; that was in early February. And before my interviews, I did talk to them about having to be interviewed over the telephone.

MS. DING: Can you elaborate on the discussions you had?

MR. MCCLINTOCK: Really they couldn't provide me any information. I was just asking them about documents that I didn't have, and it

was only in preparation for the telephone interview; and they weren't able to provide me much information, at all. So, it's really looking information to fill the gaps in my own memory.

MS. DING: So the only thing you talked about was documents that you needed that they couldn't provide?

MR. MCCLINTOCK: Right.

MS. DING: So, we want to focus today on CH0009 and I just want you to confirm: is the work package for CH0009 – that would be the work package for the construction of the North and South dams, is that correct?

MR. MCCLINTOCK: Correct.

MS. DING: And, Mr. Commissioner, Grant Thornton has identified this work package as one of the main packages with cost overruns, and the approved change orders and back charges on this package is about \$91 million and for your reference that's set out on page 53 of the Grant Thornton report at Exhibit P-01677.

Mr. McClintock, when did you start your work on the bid evaluation team for CH0009?

MR. MCCLINTOCK: That was May 19, 2015.

MS. DING: And what was your role on the bid evaluation team?

MR. MCCLINTOCK: I was the package lead area manager. I think that was the title. I was really managing the process of bid evaluation and award of CH0009.

MS. DING: And what did that role entail?

MR. MCCLINTOCK: Really it was as a – managing the process, which meant making sure we followed procedure, making sure we met the deadlines, ensuring that we had the proper inputs for commercial, technical – I had a couple of people that were on that team, which assisted me to do that.

MS. DING: And this was the role that Mark Turpin had before you, is that correct?

MR. MCCLINTOCK: Yes.

MS. DING: Did you have involvement in the detailed commercial and technical evaluations?

MR. MCCLINTOCK: I was part of both of those evaluation teams so I had input to the extent that my background knowledge and experience allowed me both in technical and in commercial.

MS. DING: Okay.

And prior to doing the evaluation for CH0009, what was your experience doing bid evaluations?

MR. MCCLINTOCK: The experience with Nalcor – I had two previous experiences; one was with the EPCM bid with SNC, both in developing the bid documents and in evaluation of them, and also on the early works – on early works it was early site services. That was exactly the same role, is going out for bid, doing the bid documents, going out for bid evaluation and making the award recommendation.

Apart from that, in all my other experiences I had lots of involvement in developing bids in response to tender calls, but not very much in terms – really small things for maybe systems, project management systems or whatever. So, outside of the two other experiences with Nalcor, I haven't had much experience with the evaluation of bids.

MS. DING: Thank you.

And how did you get involved with the CH0009 bid evaluation?

MR. MCCLINTOCK: I – same like everything else, I just received a call – that was in spring of 2015 – because of events, of having to take Mark Turpin and move him on to the – another contract on site, and have him manage that, and there were – one person, Roy Lewis, had left the project and another had retired, so it was just a matter of we need somebody. I believe they trust me to get things done, so they called me and asked me if I would take over this – manage this bid evaluation and award process.

MS. DING: And who called you?

MR. MCCLINTOCK: It was probably either Jason Kean or Ron Power.

MS. DING: And when you came on, who was on the bid evaluation team, and can you give us some idea of what their roles were?

MR. MCCLINTOCK: Ed Over was the commercial lead, and John Mulcahy was the technical lead and that was it.

MS. DING: And how would you judge Mr. Mulcahy's experience?

MR. MCCLINTOCK: Oh, first class.

MS. DING: And I believe Greg Snyder came on the team a little bit later on, is that correct?

MR. MCCLINTOCK: Right; maybe a couple of weeks later, we realized that we needed – you know, we had the full resource of the project to support us, but we believed we needed somebody on our team, so we asked for and got Greg Snyder, who was the engineering – is the engineering manager on the project.

MS. DING: And he's – he was from SNC, is that correct?

MR. MCCLINTOCK: Yes.

MS. DING: And, so the commercial lead was Mr. Over, and who was the technical lead, technical evaluation?

MR. MCCLINTOCK: Well, technically, I guess, I was, but the real technical input came from John from a construction and engineering perspective, and Greg Snyder, certainly, from an engineering perspective. And we brought in other people – like, Tony Scott was a scheduling expert on the project, so we engaged him in anything to do with the schedule, plus other people in QA, environmental and safety.

MS. DING: But he wasn't officially on the bid evaluation team –

MR. MCCLINTOCK: Right.

MS. DING: – is that correct?

MR. MCCLINTOCK: Right.

MS. DING: Okay.

We've heard from Mr. Turpin's testimony that he and Mr. Lewis wrote and signed an award recommendation in December of 2014. Mr. Turpin testified that the recommendation was to award the contract to H. J. O'Connell-Dragados. Do you know if – to your knowledge if the recommendation in December 2014 was ever made?

MR. MCCLINTOCK: There's no evidence that there was any recommendation. There's two documents that I think have been referred to in the past. That's all we found.

MS. DING: Okay, we'll pull those up in a second. But when you first came on to the bid evaluation team, were you informed that Mr. Turpin, Mr. Lewis had already done any sort of – or had already done several months' worth of work on the bid evaluation?

MR. MCCLINTOCK: Yes.

MS. DING: And were you provided with the documents that Mr. Turpin and Mr. Lewis worked on?

MR. MCCLINTOCK: Yes.

MS. DING: Okay and was that access to hard drives or ...?

MR. MCCLINTOCK: Yes, everything was on the hard drive.

MS. DING: And on those hard drives did you see any final documentation in terms of a signed recommendation?

MR. MCCLINTOCK: No.

MS. DING: And you had mentioned you saw two sort of initial evaluation documents. Is that correct?

MR. MCCLINTOCK: That's correct.

MS. DING: Okay.

We'll just pull that up now. Madam Clerk, P-02766, please – and, Mr. McClintock, that's binder 2 for you, tab 27. So this is – it says Bid

Evaluation Results. Was this the document that you saw when you came on?

MR. MCCLINTOCK: Yes, this is the only one that actually makes a statement as to putting forward one particular bidder as the proponent, the winning bid in other words.

MS. DING: Okay and, Madam Clerk, can we please also go to P-02828, please. And, Mr. McClintock, that's binder 4, tab 101.

And so this is a main summary document filled out by Mr. Lewis and Mr. Turpin. Was this the other document that you saw?

MR. MCCLINTOCK: Yes.

MS. DING: And were you aware that these evaluation documents indicated that H. J. O'Connell should be awarded the contract?

MR. MCCLINTOCK: Sorry, could you repeat that question, please?

MS. DING: Were you aware that these documents indicated that H. J. O'Connell should be awarded the contract?

MR. MCCLINTOCK: Yes.

MS. DING: And you indicated in your interview that you noticed various flaws in Mr. Turpin and Mr. Lewis's analysis. Can you provide some examples?

MR. MCCLINTOCK: Certainly.

The – first of all this number 101, there's an error. There were a couple of errors in these documents, that's one of them. The technical weightings have the same value there and, in fact, they have different values. This is the two bids from O'Connell-Dragados.

The major items, there's about three fatal flaws, one of which is that the alternative bid from O'Connell-Dragados is the bid that's put forward as the winning bidder that's stated in tab – part – document number 27 – the first one, 02766, and that bid is an alternate bid that was provided by O'Connell-Dragados. And as this document says, 02766, it says that this is the best option, assuming RCC technical expert or

company is satisfied that RCC placement method, agitator, mixer trucks and Creter Cranes in lieu of conveyor is acceptable.

That was never evaluated by engineering, it was never accepted. So, in fact, until an alternative bid is accepted, it technically is not valid and so there was never any normalization of it. At the time, there was concerns over timing and the technical experts wanted a conveyor system because of timing, so it was in fact a deviation from the specification, which is non-compliant, but it was – and it was never accepted by engineering.

The second item is that there were multiple technical exceptions, technical and commercial. Most of the commercial exceptions were evaluated with the bidders. Very little, if any, of the technical exceptions were evaluated with the bidders, so that was outstanding in terms of the process, the evaluation process, to be able to award or to be able to make a recommendation, so that was outstanding.

And, finally, the technical scores – it's called technical weighting – were calculated using a template that deviated from the approved bid evaluation criteria. And so there was three items or three elements of the technical scoring: One was execution plan, schedule and labour relations. These technical scores exclude labour relations and so the waiting for labour relations was put on the execution plan, so it deviated from the bid evaluation plan. So it really made it invalid. So, to me, this is not a valid basis for any recommendation.

MS. DING: Okay, thank you.

So it's my understanding that – this would have been before your time – but that the bids came in substantially higher than the DG3 estimate. Is that, to your knowledge?

MR. MCCLINTOCK: Correct.

MS. DING: Okay.

And I believe the base estimate was \$117 million and there was a revised DG3 estimate, but when the bids came on initially – when the bids initially were opened in October of 2014

they came in around \$300 million to \$400 million. Is that correct?

MR. MCCLINTOCK: Correct.

MS. DING: Okay.

And when you came on did you – you had been working with the bidders to find opportunities to decrease the cost of their prices. Is that correct?

MR. MCCLINTOCK: Actually, that work got started in January of 2015 with people who preceded me, the work to reduce cost. And the team – myself and my team worked to continue that effort throughout the next couple of months before award.

MS. DING: Okay but you didn't join the team until after Mark Turpin had left, is that correct?

MR. MCCLINTOCK: Until ...?

MS. DING: Mark Turpin had left?

MR. MCCLINTOCK: Oh right, he was doing other things but he was still involved on the mixed design, I think. And I think he was still involved a little bit in the work to reduce the cost.

MS. DING: Okay.

MR. MCCLINTOCK: But when I came on he really wasn't – there was no evidence that he was really working on the evaluation any longer.

MS. DING: Okay so you wouldn't have necessarily had direct knowledge of what he was working on before you came on?

MR. MCCLINTOCK: Direct knowledge? Well, certainly looked at it. I looked at all of the previous documents so I – and there were actually revised pricings that were put together and put forward, I think at the beginning of May, that were provided by the two bidders, so certainly reviewed all of that. So all of that work I had access to.

MS. DING: Okay, thank you.

And what kinds of things, when you came on, were you clarifying and negotiating with the bidders? Can you give us some examples?

MR. MCCLINTOCK: Sure.

A lot of things had happened. One of the issues that was identified was that the right-of-way – the transmission line right-of-way was identified earlier as a laydown area or a possible area where the bidders could use for either their equipment laydown, aggregates, whatever. And it came to be understood that that was not available any longer. So we had to identify that because then the bidders would have to find another locale for – I think it was actually their crushing plant that they wanted to put up there.

Also, the availability of the spillway – the river diversion was supposed to – was scheduled to take place in 2016, but to do that, you'd need the spillway available. So the spillway was identified to be later than was originally scheduled. So that meant the schedule changed.

In addition, there was the understanding of actual – the schedule and the availability due to Astaldi work, that was a little bit up in the air. So we decided that we needed an option in the event that we had to delay river diversion by one year. So we negotiated an option so in the event that we identified, at a certain point in time, that river diversion couldn't take place because of other events, then what would be the cost impacts. To not have done that, would've certainly been an exposure for a bigger claim.

Also, there were – we talked about many specification changes, added a road to the C1 area, several other items I can't recall right now.

MS. DING: Okay.

MR. MCCLINTOCK: But they were all identified in the bid evaluation and award –

MS. DING: Thank you.

MR. MCCLINTOCK: – document.

MS. DING: And before we get into the various bid proposals, I just want to clarify the difference between the labour risk on the bids that you were looking at. And my understanding

is that the original RFP asked for a lump sum, hard-money bid, but that it also allowed for alternates. Is that correct?

MR. MCCLINTOCK: Not exactly.

With the bid documents identified basically three compensation provisions. One was lump-sum scope, a major component for fixed unit rates for quantities, and reimbursable work.

So, those were the three compensation provisions that were always set out in the bid documents. There was always meant to be some reimbursable work, and the rest of it was lump sum and fixed unit rates for both – that was the bid document. So, that’s was what was called for.

MS. DING: But for the majority of the craft labour, it was – it had asked for lump sum, is that –?

MR. MCCLINTOCK: The craft labour – other than a small component, a craft that might’ve been stuck in the reimbursable work, the majority – if not, let’s say, all of it – was to be included in the lump sum work and in the fixed unit rates.

MS. DING: And what is a lump-sum hard-money bid, and what’s the advantage of having that?

MR. MCCLINTOCK: First of all, the word “hard money,” I prefer not to use that. That means different things to different people, and it really has no official definition related to this construction industry. So, it’s just lump sum, in this particular case.

So, the lump-sum component – any component is, really, putting all the risk on the contractor to perform that scope of work, other than whatever other provisions there are in the commercial documents of the articles of agreement that provide for adjustments to that lump sum.

MS. DING: Okay. And my understanding is that H. J. O’Connell, on the main component of their craft labour, did have a lump-sum bid.

Is that correct?

MR. MCCLINTOCK: Again, it’s – the payment for labour was through two payment provisions within the lump sum. So, for example, in the lump sum was mobilization and demobilization. So, that takes some craft labour. So, all of that craft labour would’ve been rolled up into a lump-sum amount that was included in the bid document.

The rest of the labour was included in the fixed unit rates, which would’ve been applied to the units of measure when applied to, you know, tons of rock that were – or cubic metres of rock that were moved.

So, there was really no payment provision that said you get paid a lump sum for your labour. It was all rolled up into scope. So, the labour for the lump-sum scope would be paid by lump sums, along with all of the other equipment, materials, anything else that was included in that lump sum.

So, there was no such payment of labour separately, by a lump-sum amount. It was rolled up into lump-sum scope and the fixed unit rates.

MS. DING: Okay, but that –

THE COMMISSIONER: So – just a second now.

MS. DING: Yeah.

THE COMMISSIONER: So, I understand a little bit about this now, but calling a spade a spade, the H. J. O’Connell bid was a lump sum, pretty much a lump-sum bid with regards to labour. I understand your point about unit cost, respects it, but it was – certainly were not reimbursable.

MR. MCCLINTOCK: The labour was not reimbursable.

THE COMMISSIONER: Correct.

MR. MCCLINTOCK: I agree.

THE COMMISSIONER: Okay. Go ahead, Ms. Ding.

MS. DING: Thank you.

And Barnard-Pennecon's proposed a different model, they proposed a craft – target-price model. Is that correct?

MR. MCCLINTOCK: The Barnard-Pennecon bid, if they wanted to take all of the labour elements out of the lump-sum scope and the fixed-unit-rate scope, and have that paid on a reimbursable basis. Now, we did negotiate with them a target-price arrangement, a risk reward, so that at a certain point, that would be the target man-hours, that they would start sharing the risk. In other words, fifty-fifty up until a cap. And then after that, they would receive no G&A or a fee for the management of all of those man-hours. So, in fact, they're losing profit or they're losing money for anything after that as well.

MS. DING: Okay. And maybe just to make sure that I understand. So BP had a labour target amount, and above that target, Barnard-Pennecon was willing to take or accept \$3 million to \$4 million of craft labour risk, and beyond that it was reimbursable and Nalcor had to take this. Is that correct?

MR. MCCLINTOCK: Right, except that they received no G&A nor fee on those man-hours. Which, if they go their books, they get – it's important to say that they, in fact, lose money because all the labour that runs through their books – if they're not making money on it – they're losing money.

MS. DING: Okay. Thank you.

And just for your reference, Commissioner, that would be P-01870, which sets out the target structure that BP had proposed.

MR. MCCLINTOCK: Ms. Ding –

MS. DING: Yes?

MR. MCCLINTOCK: – if you wouldn't mind, I'd just like to make a clarification for the Commissioner.

MS. DING: Sure, please.

MR. MCCLINTOCK: These bids, again, were – included compensation provisions for lump sum, unit rate and reimbursable. Sixty per cent – if you took out the man-hours out of the

Barnard-Pennecon bid, 60 per cent of that – 50 per cent of that bid was lump sum. A further 30 per cent was fixed unit rate. So 80 per cent of their bid was already covered by lump sum and unit rates. So the man-hour component was a junior component of all of the other work that was going on. Only about 18 per cent of the Barnard-Pennecon bid was related to man-hours. And when we reviewed that – and again, narrowing it down to a quantum of 18 per cent by putting on the risk-reward scheme – that's how that was handled.

But I think it's important to note that it wasn't the majority of that bid that related to man-hours. The majority of the bid already, 80 per cent of it, was covered by fixed unit rates and lump sums.

MS. DING: Mr. McClintock, prior to CH0009, did you have any experience evaluating and comparing bidders that had two different price structures for their labour risk?

MR. MCCLINTOCK: No.

MS. DING: And in the first half of 2015, when you came – after you came on, you went through a number of clarifications and specification negotiations, and I believe, on June 30, both bidders came and submitted proposals. Is that correct?

MR. MCCLINTOCK: Correct.

MS. DING: And then on July 9, there was another round of proposals. Is that correct?

MR. MCCLINTOCK: Just a further, let's say, firming up of price on both bids. When both bids came in, we identified some questions, and we talked to both bidders and asked them to respond to the clarifications or questions we have, and they then revised any revisions and answers to our questions they provided at that –

MS. DING: Okay.

MR. MCCLINTOCK: – time, and –

MS. DING: And –

MR. MCCLINTOCK: – those were the prices that we went forward with.

MS. DING: And that came out of further teleconference meetings you had with both –

MR. MCCLINTOCK: Correct.

MS. DING: – bidders? Okay.

And when they both submitted their revised prices on July 9, these prices were very close to one another. Is that correct?

MR. MCCLINTOCK: Yes.

MS. DING: Okay.

And, Mr. Commissioner, for your reference, the letters and communications with the bidders have been entered into evidence, including P-02796 and 02953.

Mr. McClintock, both bidders submitted reduced prices of just under \$285 million, is that your recollection?

MR. MCCLINTOCK: Correct.

MS. DING: And, Madam Clerk, please go to P-02793, please. Mr. McClintock, that's binder 3, tab 56 for you.

So this is an email on July 6. You send the email to John Mulcahy asking him to do some further analysis on the bid evaluation. You say – (inaudible) scroll down – “I agreed with Ed that he and I would call Len Knox after we decide if Bidder 3 can do the work, we will discuss the team” – with the team – “and ask him for agreement to change out some of the people should we decide to award to them.” And in Mr. Mulcahy's testimony, he indicated that you had met with him and Greg Snyder the next day, on July 7, and told him that the evaluation wouldn't be going any further with Barnard-Pennecon.

Mr. Mulcahy indicated that he spoke with Scott O'Brien and advised him of that, and Mr. O'Brien had said something to the effect of leave it with me. And then Barnard-Pennecon sent a reduced, revised price that was nearly identical to H. J. O'Connell's price. Do you recall this? Or – and do you have any further comment on – as to what was happening at this time?

MR. MCCLINTOCK: I don't know why that was said because we were – at that point, we were right in the middle of talking to both bidders, which went on for the next further week. We did an awful lot of work on evaluation of both bids.

At the time, just as a clarification, it's very possible that when the bids first came in on July 30, because there was a price differential of \$20 million, all things being equal, it probably was something that we all said, yeah, it looks it is going to go to O'Connell-Dragados. But I never knew he went to see Scott. Scott never talked to me, so I really – I don't know what he means.

MS. DING: Madam Clerk, please go to P-01870, please. And, Mr. McClintock, that's binder 4, tab 79. And we'll go to page 4, please.

And, Mr. McClintock, can you read from the end of that second line there? It starts with “In May” I'll wait until you get there –

MR. MCCLINTOCK: The second line?

MS. DING: Yup.

MR. MCCLINTOCK: Starting with “In May ...”?

MS. DING: Yeah. And I'll stop you when –

MR. MCCLINTOCK: Okay.

“In May, due to project resource requirements and other circumstances, bid evaluation activities were taken over by Ken McClintock, John Mulcahy, Ed Over and Greg Snyder. This team completed all activities necessary to bring this Package to its recommendation stage.”

“This new BET” – bid evaluation team – “reviewed all previous work carried out by the first BET. In addition to the activities stated in section 8.2 below, the BET believed that an alternative evaluation methodology would be more suited to the nature of the work. More specifically, the BET believed that the evaluation should focus more on project execution, schedule and quality of the proposed project management teams. Accordingly, this alternative methodology was employed as part of the sensitivity analysis conducted.

Attachments 10a and 10b provide the basis of evaluation (methodology) as well the results using two normalizing scenarios (113,295 and 382,000 Mhrs).”

MS. DING: Okay, thank you.

So here, you’re talking about an alternative bid evaluation methodology and you propose that eventually it was used as a sensitivity analysis, is that correct?

MR. MCCLINTOCK: That’s correct.

MS. DING: Okay. And, Mr. Commissioner, to simplify things I’m going to call this the revised scoring and then the original bid methodology that was designed by Mr. Lewis and Mr. Turpin in the original bid evaluation plan, I’ll call that the original scoring.

So, Mr. McClintock, as you read, you developed a revised bid scoring because you believed that the evaluation should focus more on project execution, schedule and quality of proposed management teams. Can you provide more context here?

MR. MCCLINTOCK: This package was already about six months past its award – scheduled award date. This bidder had to hit the ground running. He had to do some work later on in 2015 if he was ever to meet the schedule for the work in 2016, which was river closure.

So it was fundamental that they had proper work plans; that they knew what they were doing; they had the right team, that – it’s the team that does the work in the field, not the company. We had to make sure we had the right project management team. So, that to me was – I just thought that it was something that we should be focusing on more than what was in the evaluation plan – that was provided in the approved evaluation plan. So – but then it – I was told that I couldn’t do that, so I kept it – I kept that work, and used it as a sensitivity analysis.

MS. DING: Okay.

So we’ll get into that in a little bit more detail in a minute. When did you develop the revised bid scoring?

MR. MCCLINTOCK: That was probably – couple of weeks, let’s say end of May, beginning of June, started working on it.

MS. DING: And you were working on that all the way up ’til – into July, is that correct?

MR. MCCLINTOCK: Well it’s really not that your working on it; you just develop it, and you’re using it when – at the right time, which is when – which would’ve been, let’s say, on July – well, which was on June 30 when the bids came in, and then after the revised proposal. So we used it to do the evaluation of the bids after they came in.

MS. DING: Okay.

And at the time, you developed the revised bid scoring, did you know if it would favour one bidder over the other?

MR. MCCLINTOCK: No.

MS. DING: So let’s take a look at the revised scoring. Please go to page 49 of this document.

And can you zoom out a little bit – zoom out a little bit – perfect, thank you.

So this is attachment 10 in the award recommendation document, and this is 10a. Can you explain at a high level how this analysis works?

MR. MCCLINTOCK: Sure.

It basically is broken up into three major sections: commercial, technical, and project organization and team. Under commercial, you start off with the basic bid price that was as received. Then there is a normalization, which is also part of the approved evaluation plan. You normalize the bids, to make sure they’re on the same basis.

Then there’s any other commercial items; this would have been, let’s say, anything associated with LDs, warranties, things of that nature. That would give you a total cost and then that cost would be used to calculate a weighted scoring based on a rating of 60 per cent. So overall, commercial held a weighting of 60 out of 100

per cent, technical was 20 per cent and the project team was 20 per cent.

Going on to technical, that was scored by execution plan, schedule, and labour relations. Now these were the same three components that came from the original bid evaluation plan and those received a scoring each, and again, based on the weighting of 20 per cent, a score was calculated. And going on to number 3, the project organization team, there were scoring templates that were used. These were not in the original plan, but we felt that we needed something to document how we scored the two teams. So, those are backups to that score, and those scores were used to calculate a final score based on the 20 per cent weighting.

MS. DING: Okay –

MR. MCCLINTOCK: And – sorry, down at the bottom, Health and Safety, Quality, Environment and Risk Management, those were just pass-fails. Those didn't have any impact, and, that was the same as in the original bid evaluation plan.

MS. DING: Okay.

And if you go to the next page over, at a very high-level, can you explain the purpose of this analysis?

MR. MCCLINTOCK: We were just trying to range the outcomes; in other words, what's the sensitivity, if you add more man hours? So, what we came up with was, you had to add 382,000 man hours, which gave a normalization price of \$29,000,760. So, if you add 382,000 additional hours to the Barnard-Pennecon bid, it would have the impact, all things else being equal, of having both bidders with the same score.

MS. DING: Okay. –

MR. MCCLINTOCK: That's all that was, was provide some sensitivity, as to how many man hours could be added to the normalization.

MS. DING: Okay. So, this shows, that, the Barnard-Pennecon work hours, on this package, would need to go above 382,000, in order for H. J. O'Connell to be the better deal?

MR. MCCLINTOCK: Right.

MS. DING: Okay.

So, why was team quality weighted at 20 per cent?

MR. MCCLINTOCK: Just – I guess, in my experience commercial or price is always – has always, a high rating. And knowing that, I just knew that, you know, it had to be around 50 or 60 per cent. Sometimes it's even higher than that. So I started there, and that left 40 per cent left to go. And, so the rest of an execution plan, project team, it was – the rest of it, the 40 per cent was divided between those two.

MS. DING: Okay. So, and – so technical score is 20 per cent, team quality is 20 per cent. You felt that the quality of the project team was worth the same weight as the bidder's execution plan, schedule plan and labour relations?

MR. MCCLINTOCK: Yes.

Labour relations, by the way, was an item that the first bid evaluation team identified as something that was very significant, and fundamental to the success of the bidder. How he handled the labour relations component.

MS. DING: Okay. And have you performed other bid evaluations with a similar weighting for team quality?

MR. MCCLINTOCK: Yes.

MS. DING: And, Madam Clerk, please go to P-03435, please. And, Mr. McClintock, that's binder 4, tab 111.

So I believe this is one of two spreadsheets that were used to calculate the score for team quality. Is that correct?

MR. MCCLINTOCK: That's correct.

MS. DING: Okay. And this is for Barnard-Pennecon, and we – can you explain how this analysis works, on a very high level?

MR. MCCLINTOCK: Sure.

There wasn't any templates in the bid evaluation plan for scoring of project team. So, we asked for all of the CVs of all of the key personnel, and we developed this so as to have some quantitative basis of scoring their teams. So, basically, we took their overall years of experience, we rated their hydro experience at 1.5 times, just as a scoring methodology, and RCC experience at two times, and then we summed that up. And there was a weight based on the weight of the position. So a project manager was more – was higher than, let's say, a just an E manager, or environmental manager, by a small amount, but the general superintendent was seen to be a more important position, basically, so it received a higher weight.

So once we agreed on all those, it was a matter of taking the CVs and reading them – of course, if there was any fatal flaws in the type of experience the person had or whatever, but basically, this provided the – some qualitative method of identifying what the team was evaluated at.

MS. DING: Okay. So for Barnard-Pennecon, you ultimately get a score of 333, and for H. J. O'Connell – I'll just give the reference at Exhibit P-03434 – you get a score of 229. Is that correct?

MR. MCCLINTOCK: Right.

MS. DING: And then those were used in your revised bid scoring for the weighted 20 per cent score?

MR. MCCLINTOCK: Right.

MS. DING: Okay.

And, can you provide a little more detail on the reasons you used this method to evaluate the quality of the bidder's team?

MR. MCCLINTOCK: Well, there was – you know you had to document it and there wasn't any templates that were available, at that time, through the bid evaluation plan. So we just knew that, you know, you can't just score a team, especially if it's worth 20 per cent. You can't just say this guy's better than the other guy,

without any backup. So, that's why it's really backup to support of the evaluation.

The other technical and commercial had templates. So there was a list of items that you could check and find out on what basis you've made that evaluation. So, it's – really, that's why we have provided a record of why we evaluated at a certain level – who received what and why.

MS. DING: You're trying to find some sort of objective measure of who's on the team.

MR. MCCLINTOCK: Right.

MS. DING: Okay.

So, I would suggest that the proposed teams that bidders put forward are commonly not the exact teams that get put on the project. For example, it's quite common for contractors to put in bids for multiple projects and in all of these bids for multiple projects, they might list some of the same execution team members in each of those bids, with the knowledge that they won't likely get awarded all of those contracts.

So, when they are awarded a certain amount of contracts, bidders would then have to change out some of the people that they would have put on certain jobs and that – and that likelihood is that you won't get all of the people that bidders put in their proposal.

Is that something you're familiar with?

MR. MCCLINTOCK: Sure. It's called bait and switch.

MS. DING: Okay. And you agree that does happen.

MR. MCCLINTOCK: It does happen. In this particular case, however, key personnel would have ended up in the coordination procedures, and the articles of agreement identify that none of those people can be switched out without the approval of company.

MS. DING: And were you aware that was the case for CH0009?

MR. MCCLINTOCK: Oh, absolutely, because I knew it was in the articles of agreement. And I

had originally been involved in writing the coordination procedures so, I knew it was in there as well.

So, the final contract documents would have had to list the key personnel, and then those are tied back into the articles of agreement. So, if any switching was done at the point of – before contract signing, that would have had – that would have been identified. So, once those names are in that coordination procedure, that forms part of the contract documents which are then subject to the articles of agreement.

So they can't be switched out unless company agrees. Or, obviously, if they left the company, you can't do anything about that.

MS. DING: And at what point are those names put in the coordination procedures?

MR. MCCLINTOCK: Well, they – I hadn't checked, but they were probably put in in 2014 because that was for that first bid.

MS. DING: Or would it be done right before they awarded the contract?

MR. MCCLINTOCK: Well, it would certainly be award when you're finalizing all of the contract documents, that's a – something to be filled in in the coordination procedures. But the articles of agreement, that's standard wording in the articles of agreement – that the key personnel identified in the coordination procedures cannot be switched out without company agreement.

MS. DING: Okay. But I'm talking about the list of names that would've gone into the final agreement. When would those names have been finalized?

MR. MCCLINTOCK: Well, at the time we do the evaluation, at the time we would be finally negotiating with the contractor, we would – I wasn't involved in that latter stage, but the names that they had proposed in the proposal would then be identified in the coordination procedures, the list of key personnel only. You wouldn't list non-key personnel.

MS. DING: Okay. So it's your evidence that the list of names that was put out in the bid

proposal, say, the last one was – the last revised proposal was July 9, those list of names would've been put in the final coordination procedures.

MR. MCCLINTOCK: Yes.

MS. DING: Is that correct?

MR. MCCLINTOCK: Yeah, that's correct.

MS. DING: Okay.

Madam Clerk, please go in – to P-02798, please. And, Mr. McClintock, that's binder 3, tab 61.

So this is an email from July 21, 2015, from you to John Mulcahy. And in that email you attach Barnard-Pennecon's updated proposal from June 30. And you say: "It includes the CV's of a Mr. Roos and" – Mr. – "Lehman. Both of these are alternatesRoos may end up as the General Superintendent."

So if we go to page 70, please.

We see a few spots here, on their proposed organization charts, that indicate their potential alternates. So for Tracey Chambers' position as the general superintendent, there is listed the alternate as R. J. Roos. And then for Dave Hunt's position, which is the earthworks superintendent – here in the middle – the alternate is John Lehman, which, again, you referred to in your email. And then for the project manager Matt Wagley, the alternate is Sam Gunlock. Is that correct?

MR. MCCLINTOCK: That's correct.

MS. DING: Okay.

And so you do acknowledge that there are some alternates proposed?

MR. MCCLINTOCK: Yes.

MS. DING: And you wouldn't have done an analysis of those alternates?

MR. MCCLINTOCK: Well, like, I asked John in this – I don't know what happened afterwards, but I'd asked him to do the assessment so that if

the assessment turned out to be unacceptable, we would have got back to the bidder.

MS. DING: Okay, and if we go back to P-03435, that's the – that's your analysis. We can see people that have listed alternates – that would be Mr. Wagley, Chambers and Hunt – these are people with the most experience on the team and the ones that would have had the biggest impact on their score. Is that correct?

MR. MCCLINTOCK: That's correct.

MS. DING: And for other team members, were you aware if any of those people listed there were not ultimately put on the project?

MR. MCCLINTOCK: Not aware of that.

MS. DING: Okay.

So, we're aware that Matt Wagley was not actually put on the project and the project manager was Aaron Rietveld. Is that – do you have any knowledge of that?

MR. MCCLINTOCK: I don't even know that name, no. So, that would have taken place after.

MS. DING: And, Madam Clerk, please go to Exhibit P-02838, please. And, Mr. McClintock, that's binder 4, tab 99.

THE COMMISSIONER: What number was the exhibit?

MS. DING: Exhibit P-02838.

THE COMMISSIONER: And tab?

MS. DING: Ninety-nine.

So, I believe these are your notes. Is that correct?

MR. MCCLINTOCK: Yes, excuse the writing.

MS. DING: And if we go to page 2 here, so this is a continuation from the first page, I believe. Your notes are dated July 20. On this page, it says that Tracey – I am assuming that's Tracey Chambers – is on another job and that R. J. is available. Is that what you are reading here?

MR. MCCLINTOCK: Yes.

MS. DING: Okay.

So, it looks here like you had a conference call with Derek Tisdell from Barnard-Pennecon on July 20 and your notes indicate that Tracey would not be on the job?

MR. MCCLINTOCK: Yes.

MS. DING: Okay.

Are you aware of anyone else that was on the list that was ultimately not put on the job?

MR. MCCLINTOCK: No. Nothing.

MS. DING: So if you knew as early as July 20 that there would likely be some alternates on Barnard-Pennecon's team, why did you put so much weight on evaluating a team that you had knowledge might not end up actually on the team?

MR. MCCLINTOCK: Well, I guess you know that if you – the longer you wait, the longer you risk them moving somebody to another job. But if you award, then they're pretty much locked in. So, up until that point in time, you are at risk of that happening, unless you've got a clause in your contract that says, you know, that it's valid until a certain point in time.

So it's – like I said before, you know, you have to go – the project team that they put on the team gets the – or put on the job – gets the job done. So for the most part, the key project team members will still remain. And, you know, you always have the option of just saying: Look, you know, we're not going to accept that, and you're going to be evaluated accordingly.

So I don't know, I don't have any other answer. I mean, the majority of the people did end up working on the job, and any alternates were – like I had issued to John, if they were equivalent, then it was fine.

MS. DING: Okay, but you would agree that there was no guarantee that you would get the team that you scored. Is that correct?

MR. MCCLINTOCK: The longer we waited, that's right.

MS. DING: Thank you.

Madam Clerk, please go to P-02802, please. And, Mr. McClintock, that's binder 3, tab 65.

So you proposed the revised bid scoring to the project management team on July 24. Is that correct?

MR. MCCLINTOCK: That's correct.

MS. DING: Okay. And this is the presentation you used in that meeting?

MR. MCCLINTOCK: That's correct.

MS. DING: Okay, so who was at the meeting?

MR. MCCLINTOCK: That would've been Scott O'Brien, Ron Power, Pat Hussey, John Mulcahy and myself.

MS. DING: Okay.

Was there anyone else invited to the meeting that didn't show up?

MR. MCCLINTOCK: Yes, Lance Clarke was invited. I believe Paul Harrington was invited, and Jason Kean was invited, and – well, Ed Over we knew was in Toronto, so didn't invite him, but he would've also been invited.

MS. DING: Okay, and Greg Snyder was not invited?

MR. MCCLINTOCK: No.

MS. DING: So here – if we go to page 13, so here you're proposing the revised scoring. You say the "New scoring model emphasizing execution and project team." And then on page 15, you make the recommendation for Barnard-Pennecon, and you say that the defining factors are schedule assurance, solid team and execution plan and robust design. Is that correct?

MR. MCCLINTOCK: That's correct.

MS. DING: And so at this point, you've made sort of a formal – informal recommendation on using the revised bid scoring. Is that –?

MR. MCCLINTOCK: That's correct.

MS. DING: And when you made this presentation, what was the response to your proposal for the revised scoring?

MR. MCCLINTOCK: I guess flat. It was a little bit – it was a departure from what everybody knew was the approved bid evaluation plan. They asked me why; I told them. And although they might have commiserated with me or maybe not agreed – I know Ron Power didn't agree because he had actually had input into the original one.

So they just said there's no reason to change it, use the original one. So, that's what we did.

MS. DING: So did they provide any specific reasons as to why they were asking you to stick to the original (inaudible)?

MR. MCCLINTOCK: Well, I guess all of these things, it's based on your own personal experiences and whatever else, so they didn't see that my changing it was really of any particular benefit, that they all kind of are indicative anyways – they should be. And so to change it meant a pretty formal process to go – he had to go to all of the people who signed the original bid evaluation plan. That's why, you know, doing anything against the signed-off bid evaluation plan is not acceptable until everybody else signs it off.

So it just wasn't worthwhile, I think. They didn't see it as a worthwhile thing to do, so that was fine.

MS. DING: Okay.

And you indicated in your interview that, perhaps, some other private companies – that in other private companies, that this change in methodology would not have been an issue.

MR. MCCLINTOCK: No, if I – for example, in the same situation, in a private company, if I was working for McDermott or KBR or

whatever and gave them a good reason, they would probably say, yeah, go to it.

MS. DING: Okay.

And what was your response – what was the response from Scott O’Brien, Pat Hussey and Ron Power and everyone at the meeting as to your recommendation that the bid should go to Barnard-Pennecon?

MR. MCCLINTOCK: You know, I can’t remember any specific response one way or the other.

MS. DING: Thank you.

So you made a recommendation on July 24 and you were asked to stick to the original bid scoring. And up to this point you hadn’t, say, crunched the numbers or filled out the scoresheets for the original bid scoring. Is that correct?

MR. MCCLINTOCK: That’s correct.

MS. DING: And was the understanding with the management team that you would go back and try and do a fresh analysis using the original scoring, or was the understanding that you had a recommendation and that you had to use the original scoring to support that recommendation?

MR. MCCLINTOCK: It basically put the – my revised scoring just as not valid as the official scoring, so go back and score it and then tell us what the answer is. So that was really basically the conclusion of that meeting.

MS. DING: Okay, so a fresh analysis reusing the original scoring.

MR. MCCLINTOCK: The analysis was the same, it was just the scoring template was changed. So we had already done the analysis of looking at the project team, for example, reading all of their execution plans, looking at their schedule, analyzing their schedule. So it didn’t mean reanalyzing it. We had already analyzed it.

What it meant was taking that analysis and structuring it in a scoring model – a different

scoring model, which was the original bid evaluation plan.

MS. DING: Okay, but using the original scoring had the potential to render a different result. Is that –?

MR. MCCLINTOCK: Oh, absolutely.

MS. DING: Okay.

Madam Clerk, if we can go to P-01870. This is back to the award recommendation. And, Mr. McClintock, that’s, again, binder 4, tab 79.

And can you go to page 8, please?

Mr. McClintock, can you read that first paragraph, 8.2 FINALIZATION, please?

MR. MCCLINTOCK: Sure.

“On July 24, **Barnard-Pennecon JV** was recommended during a meeting with senior management. After this meeting work proceeded to finalize all documents and gain required approvals.”

MS. DING: Okay, so it says that you had a recommendation on July 24, and that what you did after that was work to finalize the documents.

MR. MCCLINTOCK: That’s right.

MS. DING: And is finalizing an accurate description? I’m – you had just said that you were doing new score sheets and using new scoring analysis.

MR. MCCLINTOCK: Yeah, finalizing in this context meant redoing the scoring, the analysis had already been done, redoing the scoring, but I agree that it could’ve turned out a different answer, so, yeah, probably wording was not – could’ve been different.

MS. DING: Thank you.

Madam Clerk, please go to P-02803, please, and Mr. McClintock that’s binder 3, tab 66.

And this is dated July 24. So this is dated July 24, and so this was after your meeting with the project team, is that correct?

MR. MCCLINTOCK: That's correct.

MS. DING: And you are writing to Ed Over, John Mulcahy and Greg Snyder, and you're saying:

"Gents

"Please review this and plan to complete your respective sections ... as per discussions today."

MR. MCCLINTOCK: Right.

MS. DING: So this is you going back to the team and saying we need to fill out these score sheets?

MR. MCCLINTOCK: Exactly.

MS. DING: So, Mr. Snyder and Mr. Mulcahy send their technical evaluation to you, and I will – excuse me, I just need to find a reference here.

If we could go to P-028805, please, Madam Clerk. And, Mr. Mulcahy – sorry – Mr. McClintock, that's tab 68 in that binder. So this is sent to you on July 27, and Mr. Snyder and Mr. Mulcahy are sending their technical evaluation to you. And if we go to page 3, please.

The – this is the evaluation of the execution plan that they had done, and we can see here that Mr. Mulcahy and Mr. Snyder have scored that and the difference between Barnard-Pennecon and H. J. O'Connell here is about 2 per cent. Is that correct?

MR. MCCLINTOCK: Correct.

MS. DING: And now if we go back to the final award recommendation at P-01870, please, and go to page 26. This is what ends up in the final award recommendation, and we see that the difference between the two bidders is now 10 per cent in favour of Barnard-Pennecon, and at the bottom of the page it lists the people that scored the evaluation as John Mulcahy, Greg Snyder and yourself.

MR. MCCLINTOCK: Correct.

MS. DING: So it appears that the gap has grown between July 27 and when you did this final award recommendation. Can you explain why that might've happened?

MR. MCCLINTOCK: Sure. Basically process. When I sent the documents out initially I'd asked Greg and John to do it together. They were the main technical guys. I am – was also part of that technical team, and although I would never really try to get involved in any technical decisions that those fellas are – decided on – there was a lot of work that we had done. And so, the part I can play is to, let's say, ask them why they came to a certain conclusion and find out if it was consistent with what I saw was going on in all the information I had read. So the result was that we – the three of us agreed on some different scoring in some different areas.

MS. DING: Okay. And Mr. Mulcahy in his testimony indicated that he didn't remember discussing this with you after he submitted his score sheets on July 27. Do you have any response to that?

MR. MCCLINTOCK: He didn't remember reviewing the scoring?

MS. DING: Yes, after July 27.

MR. MCCLINTOCK: With Greg and I? Oh, I guess he forgot.

MS. DING: So you don't believe that's correct?

MR. MCCLINTOCK: No, it's definitely not correct.

MS. DING: Thank you.

And, Madam Clerk, please go to Exhibit P-02815, please. And, Mr. McClintock, that's binder 4, tab 80, and we'll go to page 4.

So, this seem to be a schedule evaluation done by Tony Scott, his name is at the bottom here, and here we see a point difference between Barnard-Pennecon and H. J. O'Connell. The difference being a 6 per cent difference in favour of Barnard-Pennecon.

And if we go to the final award recommendation document again, Exhibit P-01870, please, and we go down to the schedule evaluation, we see that the spread now becomes 16 per cent, and, again, appears that the gap has grown.

Can you explain, again, why this has happened?

MR. MCCLINTOCK: Again, process step, first one you showed, Ms. Ding, was signed or identified that it was Tony alone, but, again, process, we would all then get together and put our own input into it.

Now, Tony was a scheduling lead for the project so he could certainly do some analysis that John and I couldn't. But from John and I's point of view, we would discuss it with Tony and bring some points up and then come to whatever conclusion it is, up or down for any score, and this was the conclusion.

MS. DING: Okay. And you've signed your name at the bottom there with Tony and Mr. Mulcahy. Is that –?

MR. MCCLINTOCK: That's right. The three of us, you know, we sat in the room, that was the process. You know, three different people did their reviews, all three would then come together and have to agree on a final score.

MS. DING: Okay, thank you.

Madam Clerk, can you please go to Exhibit P-02818, please. And, Mr. McClintock, that's B 4, tab 86; binder 4, tab 86.

So, on July 27, that's when this email was sent, you write in the email to Mr. Mulcahy and you talk about normalizing to the highest bidder. I think that's what you are getting at here and, basically, using H. J. O'Connell's labour hours and then you say – and I'll get back to that – but you say on – in your email here that: "In both the original evaluation scoring and our new evaluation scoring... we can still make the case for Bidder 2. I will explain morning."

Do you know why you would be making the case for bidder 2, who'd be Barnard-Pennecon?

MR. MCCLINTOCK: Sure.

This was July 27, we had done the analysis. On July 24, we had made a presentation to management, on the basis of the revised scoring, albeit. On – earlier on the 27th of July, I received the new scoring from the different people. So like this says, that the original and the – the new and the – both scoring methodologies come to the same conclusion; different levels of, or degrees of differentiation between the two, but both came to the same conclusion.

Now, I might've been asked to plug in the 356,000 man-hours, I don't know, I can't remember where that came from, but I put it into – as a normalizing value – into one of the scoring sheets and I said that the same case can be made for the better, that both the other scoring methodologies agreed with.

So, that's really all I was saying there. Why I did the 356,000 man-hours, I can't recall.

MS. DING: Okay. We'll get back to that. I do want to talk about the normalization in the original bid scoring.

Madam Clerk, please go to P-01870. And, again, Mr. McClintock, that's binder 4, tab 79. And we'll go to page 12, please.

So, at this point, you've – you're gathering the various technical and commercial score sheets and you use them for the analysis that's set out in the award recommendation. And this would be the main summary of the comparison between Barnard-Pennecon and H. J. O'Connell. Is that correct?

MR. MCCLINTOCK: That's correct.

MS. DING: Okay.

And in the first line of the chart, we see the total contract price, excluding optional scope, and we're seeing that Barnard-Pennecon and H. J. O'Connell's prices are very similar. It's almost a dead heat. Is that correct?

MR. MCCLINTOCK: That's correct.

MS. DING: Okay.

And on the second line of the chart, we see an item called: Normalization, deviations not identified by the bidder.

What is the purpose of normalization?

MR. MCCLINTOCK: It's really to keep bids on the same basis – to have a common baseline. And that is to adjust for exceptions, deviations, et cetera, which have been brought forward by a bidder. So to evaluate those and to make the adjustment through normalization so that both bids are seen to be on a common basis.

MS. DING: Okay.

So you're adding costs to one of the bids that you can compare apples to apples?

MR. MCCLINTOCK: Exactly.

MS. DING: And where a bidder has a component that is cost reimbursable, they might underestimate their hours to get the award and normalization would address that issue. Is that right?

MR. MCCLINTOCK: Exactly. That's what this was about.

MS. DING: Okay.

And is this calculation – this normalization calculation the only area in your analysis where the difference between the labour risk was taken into account?

MR. MCCLINTOCK: Yes.

MS. DING: So it wouldn't have been taken into account in commercial scoring. Is that correct?

MR. MCCLINTOCK: That's correct.

MS. DING: Okay.

So you have an H. J. O'Connell bid that was a lump sum, for the most part, for craft labour and you have a Barnard-Pennecon bid, which is mostly cost reimbursable.

MR. MCCLINTOCK: The labour.

MS. DING: The labour, yeah.

And in order to make those two bids comparable, you're normalizing them. So you have to add a cost of a certain amount of work hours to the Barnard-Pennecon bid so you can compare the prices. Is that correct?

MR. MCCLINTOCK: That's correct.

MS. DING: Okay. And if we go to page 15, please.

So this is a comparison of the total work hours between Barnard-Pennecon and H. J. O'Connell. One approach to normalize would be to say, okay, let's normalize to the highest bidder. So let's look at how many hours H. J. O'Connell is estimating on this job and let's apply that to the estimate – to the BP bid, and see what BP's price would be.

Do you agree that that's an approach that you could take?

MR. MCCLINTOCK: No.

MS. DING: Why is that?

MR. MCCLINTOCK: Well, first of all, you don't know the basis of how they estimated. You don't know, let's say, rates or productivities. You don't have the basis of their estimate, so it could be totally wrong.

Secondly, what you do know is that their man-hours are probably inflated so as to account for the fact that they were taking the risk on productivity. So just to make one of the bids equal to the other for those man-hours just doesn't make sense. What we did have was a tender check estimate that had been completed – a very detailed tender check estimate that was completed by John Mulcahy, and that was completed within the last year of – at the time.

And that's what tender check estimates are all about. That's why you do tender check estimates. So it was compared to the estimate that we believed was correct. And, not only that, the calculations in this document show that we further accommodated any changes within the last year, and that was for productivities we had seen on Astaldi contract.

MS. DING: Okay, so if H. J. O’Connell is vying for the award of this contract and it’s trying to be a competitive bidder and it’s going to try and give you a price with the lowest amount of acceptable risk that H. J. O’Connell would accept – so why wouldn’t Nalcor’s tolerance of risk – why would Nalcor’s tolerance acceptance for risk be lower than H. J. O’Connell’s?

MR. MCCLINTOCK: First of all, I agree with the concept that what you normally do look for is – well, lump sum, but like I had said, man-hours were not lump sum, some of them were included in a lump sum compensation provision and in unit rates. But, again, I come back to 18 per cent – only 18 per cent of Barnard-Pennecon’s bid was man-hours, so it was contained somewhat. It was a junior component overall, of their bid. And so by adding man-hours – we added 113 man-hours from an analysis – a calculation that was in the document – and further applying a risk reward scheme we believed that we compensated for that risk.

So, again, whereas I agree with lump sum is typically the better way to go if you can do it for those reasons, a small amount – not small amount, it was significant, but it wasn’t the major amount of that bid. And by applying the risk-reward scheme – and then, again, after risk reward the contractor was motivated to reduce those man-hours as much as he could because he was losing money – losing profit from G&A on every man-hour over the target.

MS. DING: Okay, Madam Clerk, can we go to Exhibit P-02818, please. And, Mr. McClintock, that’s binder 4, tab 86. So we’re going back to this email where you did look at this method. I believe you said you weren’t sure why you were asked to do that analysis.

And it says: “As a sensitivity exercise, I added 356,500 mhrs as a normalizing value to Bidder 2’s evaluation ... roughly \$27,500,000. The 356,500 hrs is the difference between Bidder 2 Craft Mhrs (excluding Subs) and Bidder 3 Mhrs (excluding their Subs).”

So I know you’ve said that it only accounts for 18 per cent of that bid, but that – do you acknowledge that that \$27.5 million might have made a difference had you decided to –

MR. MCCLINTOCK: Yes, I agree.

MS. DING: Okay. Thank you.

Madam Clerk, please go to Exhibit P-01870, please. So this is back to the bid evaluation – sorry, the award recommendation document. And please go to page 14 and just zoom out a bit.

So this is the normalization calculation you did. Can you explain how this works?

MR. MCCLINTOCK: Sure.

I had sat down with John and we looked at the man-hour estimates across the board – ours, Barnard-Pennecon’s and O’Connell-Dragados – and there were three areas that kind of jumped out as being possibly deficient, low. So what this table does is identifies those three which was the upstream cofferdam, the North Dam and the tailrace work.

It shows in the first column what Barnard-Pennecon proposed as their man-hours, what the Nalcor or the tender check estimate man-hours identified and what were the man-hours that we decided to use as a normalizing factor. And those man-hours are identified. The calculation on those man-hours is identified below. So for the first one, for example, the Barnard-Pennecon was 45,705, Nalcor’s estimate was 68,000. So we said use the Nalcor’s estimate for that, so we boosted it by 22,000 man-hours.

On the North Dam, there was a more detailed calculation and that is shown below. That was done – that work was done by John Mulcahy. And we had 248,000, Barnard-Pennecon 272. So they were higher than us, but we further added 70,000 more man-hours because of this calculation that we decided to do. And, again, that was looking at current productivity rates or whatever information John had about the project at that point.

And, finally, for the tailrace, Barnard-Pennecon had 20,000, our tender check estimate 41. We said let’s use our tender check estimate number. So all of that added up to 113,000, which was our normalizing factor. So we costed those and added those dollars minus the risk-reward scheme and that calculation is below. So you see

a value – the risk reward was worth about 3.8 million and so whereas the man-hours are worth 9.9 million, the additional cost was 6.1 net.

MS. DING: Okay.

And we'll go to an email in a second that demonstrates that Mr. Mulcahy was the one that did this normalization exercise and sent it to you. But for now, do you know where Mr. Mulcahy might have gotten the productivity factors for Astaldi and the RCC placement?

MR. MCCLINTOCK: No.

MS. DING: And you didn't check where he got those numbers?

MR. MCCLINTOCK: No, I didn't.

MS. DING: And through our interviews with you, you noted that there was a mathematical error in applying the productivity factors. Is that correct?

MR. MCCLINTOCK: That's correct.

MS. DING: And, Mr. Commissioner, just for your reference, Mr. McClintock's recalculation is at P-02826. But just briefly, Mr. McClintock, can you describe what the error was?

MR. MCCLINTOCK: Yes. Actually, it wasn't until our interview and you might have even asked the question. But after our discussion – and we had just moved on in our telephone interview – after the discussion, just in the quick calculation I had done during your interview, something was bothering me about it. So when I went back and checked, the application of the productivity to the numbers was really incorrect.

So in these calculations, which you see on the screen right now, the calculation was really multiplying it by 50 per cent to get the result of what the – the application of productivity when in actual fact, you should be dividing by the 0.5, so you end up with a different – slightly different result. So those are the – that was the calculation that I had sent you. So both of them – the application of the productivity to the man-hours was not done correctly.

MS. DING: Okay.

And if we could go to P-02797, please, Madam Clerk, and this is binder 3, tab 60.

So this is an email from you to – from John Mulcahy to you on July 20, 2015. And he sets out exactly what's on page 14 of the award recommendation. Is that correct?

MR. MCCLINTOCK: That's correct.

MS. DING: Okay.

And prior to this email, had you asked Mr. Mulcahy to come up with a normalization method to compare the two bids?

MR. MCCLINTOCK: Yes.

MS. DING: Okay.

And this is what he –

MR. MCCLINTOCK: This is what he –

MS. DING: – had said here.

MR. MCCLINTOCK: – submitted, yes.

MS. DING: And at the time, did Mr. Mulcahy understand that this exercise was going to be used in the final award recommendation document?

MR. MCCLINTOCK: I believe so.

MS. DING: But you don't recall specifically.

MR. MCCLINTOCK: No.

MS. DING: Okay.

Now, Mr. Mulcahy has testified that he didn't recall the reason he was asked to do this analysis, and he also testified that this method would not have been a fair basis to normalize the two bids because he would've, say, added – as an example, added more than just the three items listed here. For example, he would've added the South Dam. Do you have a response to that?

MR. MCCLINTOCK: Well, this analysis, like the first line says: "As per our discussion last week, I have tried to make a rational analysis as to where we should increase Bidder # 2 man-hrs

estimate from items in Nalcor estimate.” So if he thought that, he should’ve done that at the time.

However, if you look at the differential and man-hours, there really were only three significant areas where the Barnard-Pennecon man-hours were different from our tender check estimate and, as a matter of fact, from O’Connell’s estimate. The North Dam was by far the biggest area. There was about 325,000 man-hours differential with the Barnard – or with the O’Connell-Dragados bid, which chewed up most of the delta between them. So these were the three major areas and that’s why they were selected. So I disagree with his comment.

MS. DING: Okay, thank you.

Mr. Commissioner, I just have a few more questions, and then maybe we can take a break.

Madam Clerk, let’s go back to P-01870, binder 4, tab 79, and let’s go to page 12, please.

So back to the main summary page. So you’ve done your normalization calculation, and you’ve plugged in that \$6.1-million number from your estimate of the additional 113 work hours that you got from John Mulcahy’s analysis, and you get a total estimated value after normalization. Is that correct?

MR. MCCLINTOCK: That’s correct.

MS. DING: And then you do what is called an adjustment to low bid. And as I understand it, that emphasises the difference in price. So the lowest bidder, after normalization, would get a score of 10, and the other bidder would get a score based on the relative distance to the lowest bidder’s price. Is that correct?

MR. MCCLINTOCK: That’s correct.

MS. DING: And then that gets you the conditioned contract price?

MR. MCCLINTOCK: Yes.

MS. DING: Okay.

And then you apply the commercial weighting, and to apply it, you would take the conditioned

contract price and divide it by the percentage of the commercial weighting. Is that correct?

MR. MCCLINTOCK: That’s right.

MS. DING: Okay.

MR. MCCLINTOCK: So, divide it by 0.7065 in the case of Barnard-Pennecon.

MS. DING: Okay, and then that gets you the final conditioned contract price.

MR. MCCLINTOCK: Correct.

MS. DING: And then with that, you apply the technical weighting in the same way you would divide by the percentage of the technical weighting. Is that correct?

MR. MCCLINTOCK: Exactly, yes.

MS. DING: Okay, and then we can see here that Barnard-Pennecon comes out as the lowest bidder after all the evaluations and normalizations are done.

MR. MCCLINTOCK: That’s correct.

MS. DING: Okay.

So if we go to the next page, page 13, we see that this is the same summary page, except that you’re adding \$15.5 million to normalize the bids or – and that’s equivalent to 220 work hours. What’s the purpose of doing this analysis?

MR. MCCLINTOCK: Just simply to provide a range or, again, sensitivity to figure out how many man-hours had to be added just to make the two bids equal using this scoring sheet. So just to provide a range, that’s all.

MS. DING: Okay, thank you.

And, Commissioner, this would be a good time to take a break.

THE COMMISSIONER: All right. We’ll take our break, then, for 10 minutes now and come back at – 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right.

Ms. Ding.

MS. DING: Okay.

So we interviewed Mr. Over and he indicated in his interview that he prepared an outline of the final award recommendation but didn't see the final product. Do you recall if that was the case?

MR. MCCLINTOCK: I know he prepared (inaudible) –

MS. DING: Oh, you just have to turn your microphone on there.

MR. MCCLINTOCK: Sorry.

As contract administrator, that was partly his role. So, yes, he would've prepared a draft and then I would've completed it because he wasn't around. But he had full access to all of the drives from Toronto through Citrix. So, if he didn't see it, I'm sure I would've asked him, and I certainly wouldn't have signed on his behalf that document. I don't do that. I don't sign for other people without their agreement, so –

MS. DING: Okay, so let's just talk about that.

We'll go to, Madam Clerk, P-01870, and that's tab – binder 4, tab 79, again, and we'll go to page 1.

So it does appear here that you have signed for Mr. Ed Over on two of the slots there: contract administrator and senior commercial advisor. Do you know why you signed for Mr. Over?

MR. MCCLINTOCK: Only because he wasn't there that week, and again, I don't sign for people without their consent. So I either got his email consent or his verbal consent. But he certainly would've seen this document and allowed me to sign on his behalf.

MS. DING: Okay.

And Mr. Ed Over did indicate in his interview that it was not uncommon for people on the project to sign on behalf of other people. Is that correct?

MR. MCCLINTOCK: Oh, I have no idea.

MS. DING: Okay.

And Mr. Over has indicated in his interview that he was not aware that you had signed for him, but would it have been your practice to sign on behalf of somebody else without notifying them?

MR. MCCLINTOCK: It certainly wouldn't be my practice.

MS. DING: So you would've notified him that you were doing so.

MR. MCCLINTOCK: Absolutely. I don't sign for people without their consent.

MS. DING: Okay, thank you.

And did Mr. Mulcahy and Mr. Snyder review the final award recommendation?

MR. MCCLINTOCK: Yes.

MS. DING: Okay.

And let's go to P-02713 [sp. P-02813], please, Madam Clerk, and that's binder 4, tab 77 for you, Mr. McClintock.

Yeah. Oh, that looks like a wrong –

THE COMMISSIONER: It's not my 02713.

MS. DING: Yeah, that's the wrong reference there.

THE COMMISSIONER: Actually, I think the document is mis-numbered because the one that I have here is an email dated August 12, 2015, with some attachments, so –

MS. DING: Yeah, so it looks like we have the wrong message. I can read it.

So it's an email from you to Scott O'Brien attaching the new wording for CH0009, and it's

dated August 12, 2015. You have it there in front of you, do you, Mr. McClintock?

MR. MCCLINTOCK: Yes.

MR. SIMMONS: Commissioner, I think it's 02813.

MS. DING: Oh, 02813.

THE COMMISSIONER: Thank you.

So 02813 would be tab 77. Yeah.

MS. DING: So we see here that – you say: “Here is the new wording I have put into the Award Recommendation. You may need it to discuss our position and for follow-up with Bidder 3.

“The most important piece is Section 2.”

So if we go back to page 1 of P-01870, please, the final award document. It appears that there's four signatures on the document for August 10: one is yours; two of them are your signature for Mr. Over; and one of them is someone's signature for Mr. Fernandez, who is the project controls lead.

Is there a reason there would be signatures on the documents dated August 10 when you were submitting new wording to Mr. O'Brien on August 12?

MR. MCCLINTOCK: The only thing I can think of is that they were circulated for signature, and when Scott looked at it he wanted a revision made to it. So I made the revision and sent it to Scott, whereas the other people were happy with whatever I had submitted. So it would've been a wording change or asking for – develop some type of – a development of the argument or whatever.

MS. DING: Hmm.

MR. MCCLINTOCK: So whereas the other people – project controls and the other people who had signed – just signed on the basis of the document that was issued to them. I guess, technically, I should've recirculated, but I didn't.

MS. DING: Okay.

And when you said they were happy with the version, did Mr. Over and Mr. Fernandez see the new wording you sent to Mr. O'Brien?

MR. MCCLINTOCK: I can't recall.

MS. DING: Okay.

Okay. So I want to touch on something you indicated in your interview. Madam Clerk, please go to P-02802, and that's binder 3, tab 65 for you, Mr. McClintock. And we'll go to – this is your Status Presentation from July 24, and we'll go to page 9, please.

So this is – so this was included on – in your presentation. One of the reasons you indicated in your interview that you felt the award should go to Barnard-Pennecon was that H. J. O'Connell had no float in their schedule for river closure. Is that correct?

MR. MCCLINTOCK: That's right.

MS. DING: Okay. Can you elaborate on that?

MR. MCCLINTOCK: Well, if you look on the lower right-hand corner of that document, it lists some aspects of the schedule. So they were – their schedule was based on working seven days a week, 10-hour shifts, whereas the Barnard-Pennecon was six days a week, 10-hour shifts, so they had an extra day of capacity. So, they would've had some available spare capacity or float.

Now in the river closure – haven't looked at this for a while – it just simply says it meets the date with zero days float, so in other words, the schedule that they had provided met the schedule, met the milestone, whereas the Barnard-Pennecon schedule would've had seven days float in it to meet the schedule.

So that's the only – that's all I can tell you.

MS. DING: Okay.

Is it possible that float was built into the river's closure schedule for H. J. O'Connell?

MR. MCCLINTOCK: Sorry, say that again?

MS. DING: Is it possible that H. J. O’Connell built in the float to their schedule?

MR. MCCLINTOCK: Maybe, but the analysis of the schedule, I think, would’ve shown that. I don’t know why they would have done that to, you know – you know, to build it in, I don’t think serves any purpose.

MS. DING: Okay.

If we go to P-02799, please, and that’s binder 3, tab 62 for you. And if we go to page 3, and so this was a – sorry, can we go back to page 1?

So this is an email from Tony Scott to you and Mr. Mulcahy on July 21, 2015. And if we go to page 3, he’s made some notes on the schedule, and he does say, down here at the bottom, that the “B3 Schedule indicates ability to meet milestones, but has little apparent buffer (possibly built into activity durations and not transparent).”

And it also says: “At face value, B2 schedule appears to have greater flexibility, even though it presents as non-compliant.”

So did you review Mr. Scott’s comments here?

MR. MCCLINTOCK: I have no comment on that.

MS. DING: Okay.

And if we can go back to P-02802, please. Thank you.

It appears that line 2 of the cofferdam, H. J. O’Connell meets the milestone dates with two days float. Is that correct?

MR. MCCLINTOCK: This is for the upstream cofferdam? Which one are you talking about?

MS. DING: Sorry – yes, for the cofferdam.

MR. MCCLINTOCK: And what – sorry, what is the question?

MS. DING: Sorry. Line 2 for the cofferdam that H. J. O’Connell – the question, sorry, is: It looks like H. J. O’Connell started their construction or

would have planned to start their construction sooner than Barnard-Pennecon. Is that correct?

MR. MCCLINTOCK: Yes.

MS. DING: And so they would have had more time to gauge whether the schedule could be met or not?

MR. MCCLINTOCK: Possibly.

MS. DING: Okay. And –

MR. MCCLINTOCK: But they –

MS. DING: – in addition –

MR. MCCLINTOCK: – sorry, they needed more time, too, because of the execution plan. In other words, the size of their trucks – they only have a certain capacity. So there’s other factors there as well.

MS. DING: Okay, so –

MR. MCCLINTOCK: They needed to –

MS. DING: – they had smaller trucks? Is that what you say?

MR. MCCLINTOCK: – needing to start earlier.

MS. DING: Okay.

And in addition, it looks like – for the North Dam – we have a line here – for the North Dam, H. J. O’Connell meets the date with two days float. So we see, under the North Dam, that they actually end RCC construction in October of 2017, whereas Barnard-Pennecon is indicating that they will end construction on the North Dam in 2018, which is seven months after the milestone date.

So – and you’ve written here, there’s: “Opportunities exist (beyond schedule buffers) to enhance” – the – “schedule for critical North dam works to be completed by 31-Oct-17.”

So is it true that Barnard-Pennecon wouldn’t have met the milestone dates for the North Dam?

MR. MCCLINTOCK: Yea, it's true that that's what they originally planned. But if you read Mr. Scott's analysis, I think he indicates in there that the milestone, the completion milestone for the North Dam was really not critical in any case. But, on top of that, he thought that there were areas where they could be – the schedule could be brought forward to complete in – within the milestone, within 2017. But that it's – it wasn't – this is for the North Dam completion – but it wasn't a critical milestone to meet.

MS. DING: Okay. Thank you.

I'd like to take you to Exhibit P-03259, please. And that is not in your binders, but it will show up on the screen.

So this is an email from Len Knox that was sent to the Commission on May 2 of this year, and Mr. Knox describes the situation in which Jason Kean suggests to him that H. J. O'Connell, if they continued their outstanding claims on package CH 006, that there would be a negative impact on O'Connell getting other work on the site.

Do you have any knowledge of this meeting?

MR. MCCLINTOCK: I know they had an outstanding claim, it was put on the table as a factor, very early. This was in the first week that I arrived. It never went anywhere after that. After the first week, it just disappeared. It was never a factor in our evaluation.

MS. DING: Okay.

And if we go to Exhibit P-02778, please. That's binder 2, tab 41 for you, Mr. McClintock.

And so, this is an email from you to John Mulcahy, Ed Over and you've cc'd Scott O'Brien, on May 23, 2015, so this is shortly after you joined the bid evaluation team. The email attaches some notes you took from the week ending May 22.

And on page 3, please, we see some of your notes here. And on the fourth point here it says: "Need to develop a Business Risk model which addresses following ..." – and bidder 2, which would have been Barnard-Pennecon; and bidder 3, which would have been H. J. O'Connell.

Under Bidder 3, you say: "Bidder 3 – local partner may be overloaded, outstanding claim" – and then you go on to list a few other items.

Why would you have needed to develop a business risk model that addresses that?

MR. MCCLINTOCK: Well, I think this was just under – first of all, everything was on the table. I'd asked for what are the factors here we might want to consider, or what are the factors surrounding these two bidders. So, again, if you put all of that on the table, then you had to address it, be it normalization or some other, assess the risk of that as a factor in our evaluation. So, some of these items stayed and we continued to discuss them with the bidders, or we did the normalization, or we rejected it as being not worthwhile to continue with. For example, there is the – I think I just saw it down there – outstanding claim, but it – never – you never see that again in all of the correspondence. And this was the first week I had arrived, the end of May.

So some of these factors stayed and we looked at them from the perspective of does it make a difference? Should we be evaluating it? Does it have an impact on the recommendation? That's all that that meant.

MS. DING: So how would you have first become aware that there was an outstanding claim?

MR. MCCLINTOCK: Oh, probably Ed Over had told me, or John Mulcahy.

MS. DING: Okay. And did you ever speak with Jason Kean or Scott O'Brien or anyone else on the management team about outstanding claims on CH0006?

MR. MCCLINTOCK: I might've asked either Jason or Scott if it really had any impact and they probably said, no, or I tried to assess for myself what would that impact be. But, again, it was never a factor – never moved past this date.

MS. DING: Okay. Thank you.

I'll –

MR. MCCLINTOCK: The same thing with a few of those other ones. It was just put on the table and then left because it had no bearing on what our job was.

MS. DING: Okay. Thank you.

I'll take you to Exhibit P-02800, please, and that's binder 3, tab 63. So this is an email Ed Over sent to you on July 21, 2015, with edits to an outline that you had done leading up to the July 24 meeting. In the attachment we see that you've listed the pros and cons of each of the bidders – that would be page 4 and 5. So if we scroll up – so, this is – you list Barnard-Pennecon's pros and cons and you list H. J. O'Connell-Dragados' pros and cons.

So we see listed in Other Considerations here that you've listed: Local JV member continues to have a claim – to have claim from previous contract. Why would this be listed at a consideration at this point, which would be July 21?

MR. MCCLINTOCK: Oh, I don't know. If this was a presentation going forward, I might have put it there so as to table it at the July 24 discussion and see if it had any impact. So, other than that, don't know.

MS. DING: Okay, thank you.

And that's all of my questions, thank you.

THE COMMISSIONER: All right, thank you.

All right, Province of Newfoundland and Labrador.

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: Concerned Citizens Coalition.

MR. HISCOCK: Good morning.

It's Will Hiscock from the Concerned Citizens Coalition. I just have a couple of quick questions for you this morning.

If we could bring up Exhibit 03435 again? When you were discussing your testimony – in your testimony earlier you said that the alternatives

were roughly equivalent that you had looked at, when Ed suggested alternatives for some of the people that would be in these positions?

MR. MCCLINTOCK: Any alternative that they came up with we would assess, which is one of the emails that I sent to John Mulcahy. If it was decided that that alternative was not acceptable, we would've gone back to whatever company had made the alternative. And if it was assessed close to what was the person that they were replacing, then there wouldn't have been any impact on this analysis.

MR. HISCOCK: Okay, and we know that the top two positions there that do have the very high scores, that'd be Wagley and Chambers. Those people were replaced, that's correct?

MR. MCCLINTOCK: That's – I understand that.

MR. HISCOCK: And the bid evaluation was submitted – you submitted on July 24 was based on the scoring on here, correct?

MR. MCCLINTOCK: That's correct.

MR. HISCOCK: But on July 20 you knew that these people wouldn't be there, correct?

MR. MCCLINTOCK: No, I think we knew that Mr. Tracey Chambers, but I'm not sure about knowing about Matt Wagley and –

MR. HISCOCK: And you knew Mr. Gunlock would be taking one of those positions, correct, or was suggested as the alternative?

MR. MCCLINTOCK: I know from the organization chart he was listed as an alternative to the project manager, but –

MR. HISCOCK: And he has about half of the experience on score there, 18.5 versus 33?

MR. MCCLINTOCK: Mm-hmm.

MR. HISCOCK: Okay.

And we know that there was a Mr. Roos who was supposed to replace Mr. Chambers as well, correct?

MR. MCCLINTOCK: Right.

MR. HISCOCK: Okay, and what was Mr. Roos's score on this?

MR. MCCLINTOCK: I have no idea.

MR. HISCOCK: But you would have done the evaluation prior to submitting this on July 24?

MR. MCCLINTOCK: I don't know.

MR. HISCOCK: But you said that it was a roughly equivalent. You would've had to have had a way of analyzing that, correct?

MR. MCCLINTOCK: Yeah.

What I said was that I had asked the – John Mulcahy to analyze him because he was a construction superintendent, and if there was a significant differential between the person he was replacing and that person, that we would've done something about it. If there was no significant change, we wouldn't have done anything.

MR. HISCOCK: But you didn't see a significant difference. You described it as a non-significant difference going from the score of 18.5 for a manager to a score of 33, almost doubling their score, or halving their score with a replacement. And yet no change was done to the actual bid evaluation even though you knew that before any of it was submitted.

MR. MCCLINTOCK: No comment.

MR. HISCOCK: Well, you must have some comment. I mean, the – you knew that the information you were basing your bid proposal on wasn't accurate, and you knew that four days before you made the presentation. Your scoring wasn't accurate and you knew it.

MR. MCCLINTOCK: Sorry, I have no comment. I don't know why.

MR. HISCOCK: Okay.

Was – I mean, there's another thing that occurs to I think probably anybody who's been going through this evidence, which is there's a consistent effect of somebody submitting an

evaluation and then the evaluation that you and them sign off on favouring one bidder or seeming to increase the spread consistently in one direction.

It's not – in some cases, Barnard-Pennecon goes up a point, in other cases H. J. O'Connell goes up a point. It seems to be in one direction there. Did you have any associations with Barnard-Pennecon, either of the companies, or their ownership or anything like that?

MR. MCCLINTOCK: Nothing.

MR. HISCOCK: Okay.

The other thing you mentioned, in terms of when you were criticizing the initial bid evaluation that was done, was that the alternative bid for bidder 3, you know, wasn't an approved methodology, correct? And this would've been the difference of conveyors versus trucks and cranes. And they had proposed using trucks and cranes rather than a conveyor method, correct? Do you know what method was used in the end?

MR. MCCLINTOCK: Trucks and cranes.

MR. HISCOCK: Okay.

So the non-approved method that you criticized was actually the method used on the project?

MR. MCCLINTOCK: Yes.

MR. HISCOCK: Okay.

MR. MCCLINTOCK: But that wasn't understood at the time. At the time, conveyors were understood by the experts to be required to meet the schedule and so that's what we analyzed.

MR. HISCOCK: Okay.

You also mentioned that only about 18 per cent of the Pennecon bid was for man-hours. Is that correct?

MR. MCCLINTOCK: Craft man-hours.

MR. HISCOCK: Craft man-hours. So, the reimbursable portion was only 18 per cent of the – the portion that could rise if craft hours went

out of control – the initial bid had allotted 18 per cent for that and that was what portion of that that was – do you know what portion it was of the other bid, of the H. J. O’Connell bid?

MR. MCCLINTOCK: It was somewhere between 25 and 30 per cent.

MR. HISCOCK: Okay.

And do you know what the – in the final analysis, what portion of the actual monies paid was for craft hours? Was it closer to 25, 30 per cent? Was it closer to the 18 per cent?

MR. MCCLINTOCK: You mean the actual execution?

MR. HISCOCK: Yeah.

MR. MCCLINTOCK: I have no understanding of that, Sir.

MR. HISCOCK: Okay.

I think those are all my questions.

Thank you, Commissioner.

MR. MCCLINTOCK: Thank you.

THE COMMISSIONER: Thank you.

Edmund Martin.

MR. SMITH: No questions, Mr. Commissioner.

THE COMMISSIONER: Thank you.

Kathy Dunderdale.

MR. HEWITT: No questions, Commissioner.

THE COMMISSIONER: Thank you.

Former Provincial Government Officials.

MR. J. KING: No questions, Commissioner.

THE COMMISSIONER: Julia Mullaley, Charles Bown – not present.

Robert Thompson. No?

Consumer Advocate.

MR. PEDDIGREW: Good Morning, Mr. McClintock. My name is Chris Peddigrew. I represent the Consumer Advocate.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible) microphone.

MR. PEDDIGREW: Oh, sorry.

THE COMMISSIONER: Just put on your microphone.

MR. PEDDIGREW: There we go. Sorry about that. Chris Peddigrew representing the Consumer Advocate. I don’t have a lot of questions for you – just a couple on follow-up from this morning.

I guess, the decision by you – or the view by you that – you know, given that the schedule was behind that there would, I guess, be a premium put on project execution ability, scheduling and you felt that was, I guess, the right decision to make at that time – to put the premium on those sorts of factors. You were told by Nalcor that no, we need to stick to the original bid evaluation methodology. And I think you said, you know, on a private project in your past experience something – a suggestion like that may be accepted by you.

Did you find working on the Muskrat Falls Project there were times when, you know, things were too by the book or too, I guess, in accordance with something that had been planned – there wasn’t enough maneuverability or, I guess nimbleness to adapt.

MR. MCCLINTOCK: No, not out of the ordinary. I mean, there would be differences between private companies and Crown corporations but for a Crown corporation nothing out of the ordinary

MR. PEDDIGREW: Right. But, would you agree that there are times on a project when not – or maybe the established practice may need to be altered or changed based on things that are occurring?

MR. MCCLINTOCK: Oh, sure, it has to be dynamic.

MR. PEDDIGREW: And that was one instance where you thought a different type of strategy might need to be employed for evaluation.

MR. MCCLINTOCK: Well, that was my opinion.

MR. PEDDIGREW: Right.

MR. MCCLINTOCK: And there were other opinions, and again, it's just indicative. So my ideas, in this case, didn't go forward. So that's – I accepted their opinion and their collective thoughts on the issue, and so just took a different scoring methodology, that's all.

MR. PEDDIGREW: Okay.

Am I correct that most of your experience, I guess on large projects, would be on the bidder side, as opposed to the owner side evaluating bids, is that correct?

MR. MCCLINTOCK: Yes.

MR. PEDDIGREW: Okay.

And I guess based on your experience in putting in bids, is it normal for bids to come in significantly higher than a capital cost estimate of an owner?

MR. MCCLINTOCK: Very possible (inaudible).

MR. PEDDIGREW: Possible, but is it – in your experience is it common, or would the bids generally be?

MR. MCCLINTOCK: Definitely common, depends on how good the – your estimate is for the work. So, yeah, it's all over the map.

MR. PEDDIGREW: But if the estimate is good, normally it's closer to what the bids are?

MR. MCCLINTOCK: Well, depending on the estimate's good, but let's say there's a lot of work around, so contractors, for example, would put a premium on their bid – if they really want us, then they can pay us, because they have enough work to keep them going. So if somebody –

MR. PEDDIGREW: Sorry, when you say a lot of work around, what do you mean by that?

MR. MCCLINTOCK: Well, if a company put bids out for any construction work, but all the contractors are loaded, they've got a good slate of projects on the go, they don't really need another project at that –

MR. PEDDIGREW: Right.

MR. MCCLINTOCK: – time. So they could bid, but they would put enough money in it that – make it worth their while, in other words, otherwise they didn't need it. So that's (inaudible).

MR. PEDDIGREW: Depends on hungry they are.

MR. MCCLINTOCK: Pardon?

MR. PEDDIGREW: Depends on how hungry they are for the work.

MR. MCCLINTOCK: Exactly.

MR. PEDDIGREW: But again, just, I guess, back to my question that if the bid is a good – or sorry, an estimate's a good estimate, an accurate estimate, then it would be more likely that it's in line with what the bids are.

MR. MCCLINTOCK: Yeah, if it's competitive bidding, you would think so.

MR. PEDDIGREW: One of the answers you gave early in your evidence this morning was that you were part of the commercial and technical evaluation to the extent, I think, your experience allowed, I think was the phrase you used.

MR. MCCLINTOCK: Yeah.

MR. PEDDIGREW: And I believe you said this was the first time you'd been in a bid evaluation capacity?

MR. MCCLINTOCK: No, I had indicated that with Nalcor I had been on two other packages: the EPCM package –

MR. PEDDIGREW: Right.

MR. MCCLINTOCK: – where I helped develop the documents and do the bid evaluation and on the early site services, I had helped develop the documents and do the bid evaluation

MR. PEDDIGREW: Okay.

MR. MCCLINTOCK: – so two other previous occasions.

MR. PEDDIGREW: Prior to your time with Nalcor, you weren't involved in a bid evaluation capacity?

MR. MCCLINTOCK: Nothing as significant as these.

MR. PEDDIGREW: Okay.

Was that ever discussed with the people who were engaging you on behalf of Nalcor?

MR. MCCLINTOCK: No.

MR. PEDDIGREW: And, Mr. McClintock, this is just a clarification question. I don't think I understood your answer when you were giving it earlier. I believe you said during the July 24, 2015 presentation you gave to the project management team and, I guess, that's where the issue came up about the scoring process –

MR. MCCLINTOCK: Right.

MR. PEDDIGREW: – that you were using and there was some discussion there and I believe you said that Ron Power disagreed with the recommendation or with the process.

MR. MCCLINTOCK: The process.

MR. PEDDIGREW: The process, okay.

MR. MCCLINTOCK: Because he specifically provided comments on the approved process – methodology – scoring methodology.

MR. PEDDIGREW: Right.

MR. MCCLINTOCK: He didn't see any need for changing it because he fully understood what was the original one.

MR. PEDDIGREW: Okay. So he was in favour of the original evaluation process, okay. So I just wasn't clear if you had meant the actual recommendation.

I think that may be it, Mr. McClintock.

Thank you.

MR. MCCLINTOCK: Thank you.

THE COMMISSIONER: Thank you, Mr. Peddigrew.

Astaldi Canada Inc.

MR. BURGESS: No questions, Commissioner.

THE COMMISSIONER: Former Nalcor Board Members.

MS. G. BEST: No questions, Commissioner.

THE COMMISSIONER: Are the Building Trades Council here? No.

MS. QUINLAN: No questions, Commissioner.

THE COMMISSIONER: Oh, you are – you keep moving around.

Barnard-Pennecon is here? No.

All right.

Nalcor Energy.

MR. SIMMONS: Thank you, Commissioner.

Mr. McClintock, there's a few things I'd like to ask some supplementary questions on, more to kind of clarify the evidence than anything else.

You had used a term "exceptions" when you were describing the proposals that had originally been received for the bidders on the dam's project and I'm not sure we understand what exceptions are or what has been explained. My general understanding is that for this package bidders were able to submit proposals in response to the request for proposals but they were – they could make exceptions from the RFP requirements, and say, we're not going to do this, or we're going to do something

different, or we want to accept something out that would have to be further considered. Is that correct, or can you explain better what exceptions are, and what the purpose of them is in these responses to the proposals?

MR. MCCLINTOCK: Sure. If I could just say, compliance was a defined term in the contract documents.

MR. SIMMONS: Yes.

MR. MCCLINTOCK: So, compliance listed about eight items that, if you complied with those, one of it is – have to be in the English language, for example, have to be signed.

MR. SIMMONS: Hmm.

MR. MCCLINTOCK: And if it did not comply with those, then it was a non-compliant bid.

MR. SIMMONS: Mm-hmm.

MR. MCCLINTOCK: Appendix A17, of the tender documents, Allowed Exceptions. There was a form right in there to take any exceptions that the bidder might –

MR. SIMMONS: Mm-hmm.

MR. MCCLINTOCK: – propose, or identify. Some of the exceptions, for example, were one of the – and there was about 24 or 25 exceptions – technical exceptions from each bid. And there were upwards of 15 commercial exceptions. So, these were – there were multiple exceptions on both of these bidders. And so from a technical perspective, they might've taken – one bidder took objection to ice damage in the winter.

Another took objection to boulders, discovery of boulders. At the beginning, both bidders said if the quantities changed beyond a certain amount, then that would be a – they wanted a change. So these were provisions that weren't accounted for in the original contract documents that were sent out. So, again, that's typical of the type of exception.

MR. SIMMONS: Right. So, the effect of these exceptions, would be that there would be items that could put – if the contract was awarded to that bidder, having taken those exceptions, there

could be extra costs incurred that aren't accounted for in the bid that's been submitted.

MR. MCCLINTOCK: Right.

MR. SIMMONS: So, do I understand then correctly, that the process of looking for clarifications and negotiating with the bidders, after they've submitted their response to the RFP, is to talk through these exceptions, find a way to either get the bidder to remove the exception, or better understand it, or negotiate some arrangement which passes that risk as much as possible back to the bidder, rather than having Nalcor have to take the risk that's included in the exceptions?

MR. MCCLINTOCK: That's exactly true. And you want to do that before you sign the contract.

MR. SIMMONS: Okay.

And I believe you'd said that when you became involved in managing this bid process, after Mr. Turpin had moved to – I think it was the North Spur actually –

MR. MCCLINTOCK: Right.

MR. SIMMONS: – that he moved to, that there are – you found that there were exceptions that had not yet been resolved from the proposals that had been received from the bidders.

Is that correct?

MR. MCCLINTOCK: That's right. Most of the commercial exceptions were clarified –

MR. SIMMONS: Yes.

MR. MCCLINTOCK: – and settled, but I would say all or – the vast majority of technical exceptions for both bidders had not been resolved.

MR. SIMMONS: Right.

And between the time that the request for proposals had first gone out for the dam's contract and when you were doing your work, had there been any changes in circumstances that were going to affect, you know, whether

there might be opportunities to seek better proposals from these bidders?

And what I'm thinking of, particularly, is the timing related to when the dam work might have to be done.

MR. MCCLINTOCK: I don't think – there was, certainly, work that I had indicated that from January 'til the time I arrived –

MR. SIMMONS: Mm-hmm.

MR. MCCLINTOCK: – there was a lot of work done on cost-cutting measures.

MR. SIMMONS: Yes.

MR. MCCLINTOCK: And that resulted in new pricing that was issued – just letters from both contractors –

MR. SIMMONS: Yes.

MR. MCCLINTOCK: – in early May.

MR. SIMMONS: Mm-hmm.

MR. MCCLINTOCK: And – but when I got there, we continued that effort.

MR. SIMMONS: Right.

MR. MCCLINTOCK: So – because of time available, John Mulcahy actually had made – identified several major changes to the specifications, which reduced the price. So, those were added by us as items that we wanted to negotiate with the contractor.

MR. SIMMONS: Okay.

MR. MCCLINTOCK: Sorry, did that answer your question?

MR. SIMMONS: That's fine, yes.

So, then in addition to having to deal with the remaining exceptions, there was also further work done with the bidders to look for opportunities to reduce the cost through those types of changes that you've talked about.

And is all that what led, then, to the submission of new proposals on June 30 – correct?

MR. MCCLINTOCK: Correct.

MR. SIMMONS: Yes.

And you'd been asked some questions about Mr. Mulcahy's testimony, that around June 6 or 7, he had said that he'd understood that there didn't have to be any further work done because the low bids seemed to be H. J. O'Connell, and then further proposals came in afterwards.

Did I understand you to say correctly that in fact, in that period in early July, the work was actually continuing to evaluate the June 30 proposals that had come in?

MR. MCCLINTOCK: Absolutely.

MR. SIMMONS: And did that result in further proposals from both Barnard-Pennecon and H. J. O'Connell?

MR. MCCLINTOCK: That's right.

MR. SIMMONS: Okay.

And just to identify those, can we go to Exhibit P-02798, please.

THE COMMISSIONER: Exhibit P-02798. That would be at tab 59, book 3.

MR. SIMMONS: So – if we scroll down please. I apologize; I don't know the exact page.

Okay, if we can stop there.

That's Barnard-Pennecon's proposal. If we can continue to go down, please. Okay, we can stop there.

Commissioner, I apologize, I don't have the right exhibit reference. I was looking for the revisions from Barnard-Pennecon on July 9, but I can find the reference after and provide it to Commission counsel if it's of interest.

And we can go to Exhibit P-02853, please.

Now this is a message from you to Mr. Mulcahy and Mr. Over, on July 9 and this is in your –

should be in your binders, volume 4, tab 106. And if you can just take a look at it – and I’m not going to try and scroll through it on the screen – but if you could go to tab 106 in volume 4 – and can you just confirm to me whether this is a revised proposal from H. J. O’Connell, that had been received at this time in July?

MR. MCCLINTOCK: Yes.

MR. SIMMONS: Okay. So, revised proposals then came in, not just from Barnard- Pennecon, but also from H. J. O’Connell.

MR. MCCLINTOCK: Yes.

MR. SIMMONS: And what had happened for those revised proposals to come in? What had happened between June 30 and the 9th of July?

MR. MCCLINTOCK: As soon as we got the revised proposals, we reviewed them—

MR. SIMMONS: Yes.

MR. MCCLINTOCK: – and there were anomalies, things we didn’t understand. All of those were recorded, and there were telephone conversations to both bidders, relaying those issues, items, whatever, and there could have also been exceptions that were raised by the bidder, as well. So, all of those were listed, reviewed by the telephone, and they were asked to update their bids and submit them by – whatever, two days later or whatever.

MR. SIMMONS: Good. And those were separate telephone consultations with each of the two bidders that were in play then, were they?

MR. MCCLINTOCK: That’s correct.

MR. SIMMONS: And we won’t go to the exhibit right now, but I think you’ve provided your notes from that time period that describe those discussions in them –

MR. MCCLINTOCK: That’s correct.

MR. SIMMONS: That’s correct. Yeah.

Okay, can we go to Exhibit P-02813, please?

THE COMMISSIONER: That’s tab 77, book 4.

MR. SIMMONS: And this is the message you were referred to a little bit earlier this morning by Ms. Ding from August 12, 2015, from you to Mr. O’Brien where you say: “Here is the new wording I have put into the Award Recommendation.” And you say: “The most important piece is Section 2.”

So, I’d like to take you to the award recommendation, which is P-01870, please. And in your binder, it’s volume 4, tab 79. And if we go over, it’s probably about page 4 of the PDF, I think? Might be section 2. You can actually go to page 3. That’s the start of it.

So, on page 3 and 4, this section 2, is this a – kind of a general summary of the recommendation?

MR. MCCLINTOCK: Yes.

MR. SIMMONS: Okay.

And is this the section – do you recall what changes you made or what edits you did to this section when you submitted it to Mr. O’Brien?

MR. MCCLINTOCK: Really, I don’t.

MR. SIMMONS: Okay.

When you made these edits or changes, were there any changes to the substance of the analysis? To the scoring, to any of the technical evaluative work?

MR. MCCLINTOCK: No. What I recall is he probably asked for more beef. He knew what we had presented to them – him – and wanted that placed in here. So there was no changes to any numbers, just words.

MR. SIMMONS: So it was further explanations supporting the award as opposed to the content of –

MR. MCCLINTOCK: Absolutely.

MR. SIMMONS: – the work that had been done?

MR. MCCLINTOCK: That's correct.

MR. SIMMONS: Okay. All right.

So the only other thing I want to ask you, Mr. McClintock, is that we know here that the recommendation was made on July 24 for the award to go to Barnard-Pennecon based on the revised scoring, you'd said. The team was told to go back and use the original scoring, came back with an award recommendation that was still for Barnard-Pennecon.

Was there any influence brought to bear on you or, to your knowledge, any other members of the team throughout the time that you were involved to, in any way, favour the process in favour of Barnard-Pennecon over H. J. O'Connell?

MR. MCCLINTOCK: Absolutely not.

MR. SIMMONS: Thank you very much. I don't have any other questions.

THE COMMISSIONER: Redirect.

MS. DING: Yes, Commissioner, I just have two clarifying points.

Mr. Simmons raised what was set out in the RFP, and I'll just give you a reference for that. If we could go to P-03436, please.

THE COMMISSIONER: Tab 112?

MS. DING: Binder 4, tab 112. And if we go to page 4 – page 2, sorry. This is just the Appendix A2 of the RFP, and if we go – scroll down to page 3, it says here that the: "Company is requesting a fixed price Proposal based on all-inclusive lump sum and unit rate prices for the Work. Bidder shall present its all-inclusive lump sum and unit rate prices by completing Appendix A2.1 – Schedule of Price Breakdown."

And, Mr. McClintock, you acknowledge that that's – the preference in the RFP was for a lump sum?

MR. MCCLINTOCK: Oh, yes.

MS. DING: Okay. Thank you.

MR. MCCLINTOCK: Sorry.

Again, the preference was for work to be proposed under lump sums and unit rates.

MS. DING: Okay. But the idea of a cost reimbursable for labour was not the preference of (inaudible)?

MR. MCCLINTOCK: No, the labour would be included in either the unit rates or in the lump sums.

MS. DING: Okay.

And I will note – Madam Clerk, please go to P-03437, please.

THE COMMISSIONER: Tab 113?

MS. DING: Yeah, 113. And if you go to page 7, please.

So, this document is the instructions to the bidders, and I believe on this page there is a provision here that allows for alternate proposals. Is that correct?

MR. MCCLINTOCK: That's correct.

MS. DING: Okay. Thank you.

THE COMMISSIONER: All right. Thank you, Sir. You can step down. Thank you very much.

All right. Where are we going next?

MS. DING: Mr. Commissioner, we have Des Tranquilla on, and Mr. Collins will be examining Mr. Tranquilla. I'm not sure if we have the – he'll be attending by Skype, and I'm not sure if we have that set up yet.

THE COMMISSIONER: Okay. Do we have it set up? Five minutes?

All right. So we'll take 5 minutes, and then we'll begin with Mr. Tranquilla.

I have a funny feeling my gauging of the amount of time today was going to take us a little off, so my apologies for getting everyone up too early this morning.

So we'll come back now in five or 10 minutes, as soon as we get Mr. Tranquilla.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right, Mr. Collins.

MR. COLLINS: Commissioner, before we begin, could I seek an order entering exhibits 03534 to 03538 and Exhibit P-03594? Those are all public exhibits.

THE COMMISSIONER: All right. Those will be marked as numbered.

MR. COLLINS: I believe the next witness is Mr. Tranquilla, and he's – I believe he's available by Skype.

THE COMMISSIONER: All right, Mr. Tranquilla, can you hear me?

MR. TRANQUILLA: Yeah, I can hear you, yeah.

THE COMMISSIONER: Okay, good.

All right, Sir, do you wish – we're gonna have you affirmed right at the moment, so I'll ask you just to take the affirmation, just one moment.

MR. TRANQUILLA: Okay.

CLERK: Do you solemnly affirm that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth?

MR. TRANQUILLA: Absolutely.

CLERK: Please state your name.

MR. TRANQUILLA: Desmond John Tranquilla.

CLERK: Could you spell your name, please, for the record?

MR. TRANQUILLA: D-E-S-M-O-N-D T-R-A-N-Q-U-I-L-L-A.

CLERK: Thank you.

THE COMMISSIONER: All right, Mr. Collins?

MR. COLLINS: Mr. Tranquilla, could you begin –

MR. TRANQUILLA: Yes.

MR. COLLINS: – by giving us a brief outline of your experience?

MR. TRANQUILLA: I'm a civil engineer, graduate of New Brunswick, as you can see by the grey beard, quite a few years ago, but I – most of my career has been in infrastructure in mining, megaprojects pretty much consistently since the age of 28.

A lot of involvement in concrete, civil, structural steel, mass ex, (inaudible) and rock quarrying, mechanical piping, electrical instrumentation, all those things you encounter in multi-scope projects. Just most recently finished the AER Project for Vale in Copper Cliff, Sudbury, Ontario, and currently on helping the Western Potash Corporation launch a potash project up in Saskatchewan.

MR. COLLINS: Could you name some of the larger projects you worked on before the Muskrat Falls Project?

MR. TRANQUILLA: Detour Gold, which is Canada's largest gold mine. I went – we concluded the Detour Gold project around Christmas of 2012. I went to Muskrat Falls in June, July of 2013. That was 1.5 billion. I think we came in at 1.54, and we had a 27-month schedule for that one. We brought it in in 25.

Before that, I was on PCS Piccadilly, which was a major potash installation in New Brunswick, PCS quarry in Saskatchewan. I did the Jamer facilities – coastal aggregate facility in Saint Andrews.

The Brun-Way project, which was Fredericton to Quebec, which, I think, was a little over a billion. I had 38 kilometres of highway there and

all 12 of the structures, including the largest bridge built since the fixed link. So, big concrete pours in the 4,000-cubic metre range.

I was also on the MRDC highway project, and that was my first megaproject way back when. And I think that was (inaudible) just sub-billion.

MR. COLLINS: So, you've listed – I would describe them as a number of heavy civil onshore projects.

MR. TRANQUILLA: Yes. Yeah.

MR. COLLINS: Did you have any specific hydroelectric experience?

MR. TRANQUILLA: No. Well, other than – what would be relative, I think, would be, you know, the tailing cells, the embankments, composite – like, for instance, the tailing cells at Detour were, you know, seven kilometres in length. Till cores, sand filter, spillway structures, (inaudible) structures – all similar type scopes.

MR. COLLINS: So, those are –

MR. TRANQUILLA: And I say, a lot of concrete. And all my undergraduate work as well, way back when, was in concrete.

MR. COLLINS: And what you mean there is that some of the mining projects you were involved in did have – essentially – dams and spillways contained (inaudible) –

MR. TRANQUILLA: Oh yeah. Well, some of those tailing dams would dwarf Muskrat Falls, yeah. I mean, they're big.

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

MR. TRANQUILLA: I'm not quite sure of the source, but I had received a call, and I can't remember if it was Faustina Cornick or Jason Kean. It's been a while ago. But anyways I had – went to St. John's, interviewed with Scott O'Brien, Ron Power and Jason Kean. And they explained their need, and they were looking at a number of people.

And I was evaluating my options at the time because I did have a couple. And, so, anyways,

the offer came forth, and like I said, I don't have any documentation with me, but I believe it was the end of June or the 1st of July that I had started.

MR. COLLINS: And that's 2013?

MR. TRANQUILLA: That is correct, yeah. They were just in the process of – in the main push on the excavation of the powerhouse and spillway, and I believe that was IKC-ONE, if I remember correctly. And so that was well under way at the time.

MR. COLLINS: What was your role when you started?

MR. TRANQUILLA: I started – I was hired as the site manager, and in the conversation which – you know, Jason seemed to provide most of that description. They were looking for somebody to take the site up there and provide leadership.

MR. COLLINS: And had you worked as a site manager in that kind of role before?

MR. TRANQUILLA: Oh yeah. No, I've been the project director or project manager for all aspects of the site. You know, Detour is a good example. I'd just finished that one, and we finished that on a high note. We managed everything from interfacing with the First Nations – there were five groups there – the environmental work, the actual construction of the process facility. We established the camps, the utilities, the sewage plants, water, transportation, you know, all aspects of supporting the project.

MR. COLLINS: And who did you report to as site manager?

MR. TRANQUILLA: Jason – or, sorry, Scott O'Brien.

MR. COLLINS: Were you the senior Nalcor owner's team member on site? Would that be fair to say?

MR. TRANQUILLA: Yeah, I think that's fair to say. And, you know, I can't speak of multiple occasions, but there was – I know on at least one occasion, I had helped Jason Kean, as well,

when he was having issues in Labrador. So I'd go try to, you know, represent Nalcor.

MR. COLLINS: And when you say the site manager, my understanding is that the site includes the dams, the powerhouse, the intake, the spillway, the camps, the North Spur and the road, but it doesn't include the switchyards at Muskrat Falls.

MR. TRANQUILLA: No, they fell under Darren DeBourke. So, yeah.

MR. COLLINS: But the rest of it did (inaudible) –

MR. TRANQUILLA: But the rough grading was by IKC-ONE for that. But outside of that, there's – that fell under (inaudible).

MR. COLLINS: What were your responsibilities as site manager?

MR. TRANQUILLA: Well, I mean, to provide leadership to the team. I mean, obviously there was a series of managers there at Muskrat Falls, you know, everything from quality, contracts management. The package management when I got there, you know, there was a couple of CM supporting the IKC-ONE package. And that was Mark Turpin, Paul Oblander and another gentlemen. I believe his name was Sylvain. So I tried to, you know, provide leadership and support for those packages. It was always the intent to put a, you know, a senior CM there – you know, with me there obviously due to the load. And – but that was the goal.

MR. COLLINS: Mr. Tranquilla, could you speak a little slower at times?

MR. TRANQUILLA: Okay, sure.

MR. COLLINS: Thank you. The connection isn't perfect.

MR. TRANQUILLA: Okay.

MR. COLLINS: So, how long did you serve as site manager?

MR. TRANQUILLA: I was there approximately 24 months.

MR. COLLINS: Twenty-four months. And so you left in 2016?

MR. TRANQUILLA: 2013 to 2014, 2014 to 2015.

MR. COLLINS: And why did you leave the project?

MR. TRANQUILLA: I wasn't a good fit there. And, you know, the traditional delivery methods that I'm accustomed to typically have more active involvement and more authority at the site level. And so it was quite – it was different for me, and I did struggle with that. Now, I'm not saying it's wrong; I'm just saying I did not necessarily fit that style or that application.

MR. COLLINS: So, you chose to leave?

MR. TRANQUILLA: I – well, they – you know, Scott had recognized that I was not happy. You know, he told me to speak to Brian Crawley. Brian Crawley had told me – he said: Des, you don't have to go, but if you want out, I can help you. And I was not happy there, and I do appreciate both those gentlemen for helping me exit graciously.

MR. COLLINS: And before we talk more about those issues, have you discussed the possibility of testifying here at the Inquiry with anyone at Nalcor?

MR. TRANQUILLA: No, but, you know, interfacing and travelling through regional airports and whatnot – you know, and I don't mind being open about this. I've always maintained that stand that I'd rather not; I'd like to be honest about that. I think around the Christmas break, I had run into David Clark at the Fredericton Airport and I – David's retained for labour relations issues but – and 'cause he'd be – you know, this isn't a high point of an engineer's career. That's for sure.

But, anyways, after consultation with the legal counsel – I work for SNC currently, and it was through that legal counsel, Mélanie Proulx, that you guys had made contact with myself. And she advised me that I should so ...

And, by the way, like, in no way would I want to obstruct or interfere with this process. It's just

I've got such a fine, small little slice of the timeline of this project. So I can only tell you what I know. And I respect the Inquiry.

MR. COLLINS: Thank you, Mr. Tranquilla.

So, you've already touched on one of the issues that we've heard a bit about already in this Inquiry, which is the division of authority between Nalcor's head office in St. John's and its on-site management.

Can you describe how the authority was divided? What you had versus what you had to go to St. John's for?

MR. TRANQUILLA: It's a bit of a loaded question, I mean, most of the direction did come from St. John's, and I'm not saying that's a bad situation.

You know, when it comes to strategizing and discussing which way the project's gonna go, where you're gonna focus, you know, any manager at Muskrat Falls probably was, at some point in time through the week, on the phone with their manager in St. John's to get updates or look for guidance on things. It was a model that they chose to employ and, you know, that's – well, the rest is history. I mean, that's fine if they choose to manage that way.

MR. COLLINS: So, how did the decision-making authority you had been given compare to what you were used to for other jobs?

MR. TRANQUILLA: It's a hard comparison 'cause, you know, like, the mining projects, for instance – and, sorry, for qualifying, but I have to, you know, it – depending on what the priorities are for the job, you know, schedule and cost, those are what you focus on in project management. And in private industry, you deliver or they find somebody that can. So, it's just a different – it's a different world from a project perspective. The goals could be quite different, so ...

And I did, by the way, in the interview process, I asked if this project was schedule or cost driven. I remember discussing that with Jason Kean and, you know, I'm not – I can't recall the answer, but I do remember asking him.

MR. COLLINS: So you said that in the private industry world you deliver or they find someone who can. Does that mean –?

MR. TRANQUILLA: I've been on projects where, you know, there's been three and four project managers because you, you know, you deliver the project to the level of expectation of somebody who wants to know why, quickly.

MR. COLLINS: And is that in contrast to what you experienced at Nalcor?

MR. TRANQUILLA: No, I'm not saying that. To accommodate that the level of authority at the site can be vastly different. That's the point I'm trying to –

MR. COLLINS: So, the site manager is given the authority to manage the project and held accountable for the results, whereas –

MR. TRANQUILLA: Of course. You don't like being in situations where you believe you have all the accountability, but none of the authority to bring it about.

MR. COLLINS: Whereas in the Muskrat Falls model, the lines of authority between head office and site were more muddled, and the accountability also. Is that fair?

MR. TRANQUILLA: Yeah, I think that's fair.

MR. COLLINS: So if we can go to P-03535, which is tab 2 in your binder, Commissioner. And if we go to page 3 of that, Madam Clerk.

CLERK: Page?

MR. COLLINS: Page 3.

CLERK: Okay.

MR. COLLINS: So, Mr. Tranquilla, do you have this document in front of you? It's the Capital Expenditure Authorization Procedure.

MR. TRANQUILLA: Yeah, I can see that, yeah.

MR. COLLINS: And are you familiar with this document?

MR. TRANQUILLA: Oh, yes, yeah. Yeah, I remember this, yeah.

MR. COLLINS: And if I can characterize it broadly, this document describes how the Nalcor board authorized the CEO and the Nalcor executive to spend money and how – then how that authority is delegated through the project team.

So, if we go to page 15 we see: “Delegated authority should be commensurate with normal day-to-day activities associated with responsibilities of the position.”

And then if we skip down a little: “Where the business requirement exists to (permanently) delegate authority to enable a position to fulfil its Responsibilities, authority can be delegated to the position by the manager of that position in consultation with the Project Controller”

And a little farther down: “Permanent delegation should not be greater than 75% of the authority of the delegator.”

Does that all match your understanding of how authority was –?

MR. TRANQUILLA: Yeah.

MR. COLLINS: And so your spending authority was delegated to you by Scott O’Brien. Is that right?

MR. TRANQUILLA: That would be correct, yeah.

MR. COLLINS: And so if you go to page 24 of this document, we see this chart, which is signed at the bottom. Just scroll down a little, Madam Clerk. We can see this is signed by Scott O’Brien on August 15, 2012 – 2013. And if we scroll up again, we can see that the project manager for Muskrat Falls generation – that’s Scott O’Brien, I believe – has the ability to authorize \$2 million of an award recommendation, \$2 million for a change order, \$1 million in single source and so forth. And he’s delegating to you, the Muskrat Falls site manager, \$250,000 in award recommendation and \$250,000 in change order.

Is this all right, Mr. Tranquilla?

MR. TRANQUILLA: Yeah. No, no.

MR. COLLINS: This is the spending authority you had?

MR. TRANQUILLA: Yeah, I recall that. Yeah.

MR. COLLINS: Yeah.

Does \$250,000 give you the authority and autonomy that you need to do your job?

MR. TRANQUILLA: It’s a little light. I mean, I think we all realize that, yeah. But with the assured communication, I guess, and ability to get to St. John’s for that guidance and approval, that’s how we worked.

MR. COLLINS: Can – were there any examples where \$250,000 didn’t give you the authority you needed?

MR. TRANQUILLA: No, I mean, look, I mean that’s a great exhibit, and it demonstrates, you know, it’s a fairly light number for a site of that size, but, as I’ve said, I probably communicated with Scott on a daily basis. And, you know, a lot of what we undertook was, obviously, in excess of that.

Do I remember the ins and outs of assigning change management at sites? Well, you know, of course I did, but I don’t recall to any detail, not this far along.

MR. COLLINS: I believe when we spoke before you described to me a situation where there was a road that was dusty. Can you tell us –?

MR. TRANQUILLA: Oh, that’s when I first got there.

If you look at the date of issue of this, I think this came out in August, okay? But when I was first there in June and July, we did a situation where we – the blue form, occupational health and safety – for the access road ’cause the grading work had been completed, I mean, it was quite dusty. And I think it was 70 (inaudible) of calcium that our team had cited – appropriated in town, (inaudible). And at that time, in over – this was distributed, you know, obviously that had to go. And I assumed it went

before the Change Control Board, but it was weeks before we got that back, right.

So, in the meantime, the only choice we had was to rent water trucks to take care of that, and I don't recall the value of that, but it took some time. And then the – the only reason why I mention that is when you receive (inaudible) from the ministry to take action, we had no choice, we had to take action, what we could sign for.

MR. COLLINS: What about working with the overall schedule on site, the project schedule? Did you hold schedule risk reviews?

MR. TRANQUILLA: I never recalled having a risk review. I did partake on some schedule events out of my very first – my involvement. I sat down with a schedule planner by myself in St. John's and then on other occasions we had, as well, we had met on schedule. The week-to-week schedule reviews, we used the schedules submitted by the contractors and monitored the (inaudible) productivity and tried to consult with the contractors and bring about the desired outcome.

MR. COLLINS: Were you able to hold schedule and risk reviews on site?

MR. TRANQUILLA: We could do schedule reviews with the contractors, and for instance with Astaldi, you know, on occasion Mike Collins or Scott would show up. But towards the end of the project, no, I wasn't part of it.

MR. COLLINS: Where were management decisions made, on site or in St. John's?

MR. TRANQUILLA: No, no, those management decisions were made in St. John's. As I've said before, that was the model employed. And I'm not saying it's a bad thing. It's just the way it was, right? I mean, when you're part of the everyday conversations, packages are less subject to confusion when you do have centralized communication. But at the end of the day, (inaudible) that's why you would call every day to try to get updates or get direction on what the – you know, the next path forward was.

I mean, those positions on site, I mean, those really were observe and report positions. And especially when we were in crisis – you know, I mean, obviously the Astaldi file became a challenge early. And so we tried to observe and communicate – represent Nalcor properly at weekly meetings, try to get things minuted properly for the protection of Nalcor and assist the contractors (inaudible) –

THE COMMISSIONER: Can I just –?

MR. COLLINS: Absolutely.

THE COMMISSIONER: So, you know, as I've been listening to this witness there are times that I cannot make out what he is saying. I don't know if it's just me but – and I thought maybe I'd just let it go to see if I can get the general gist of it. But it's getting to the point where I'm missing things that I think I need to hear.

MR. COLLINS: Yeah.

THE COMMISSIONER: So we have a technical issue here, Mr. Tranquilla, and we're going to have to try to fix it. So I'm going to see how long that's going to take.

We may take our break here now, start early – we only had an hour break yesterday. So – and then come back at 2 o'clock. But I just want to see how long it's going to take to see if we can fix this problem, because I'm having difficulty hearing.

So we're just going to adjourn for five minutes, Mr. Tranquilla, and I'm sure somebody will be speaking to you on the technical side very shortly.

CLERK: All rise.

Recess

THE COMMISSIONER: All right, good.

CLERK: Please be seated.

THE COMMISSIONER: Mr. Tranquilla is in Saskatoon and the issue is not our system. The issue is apparently the microphone that's attached to his headset. So we're in the process of trying to locate another headset with a

microphone on it for him and it's going to take a bit of time.

So we're going to take our break now until 2 o'clock this afternoon and we'll come back.

And, Mr. Collins, we may have to repeat a few things for this afternoon just to – just so that every – am I the only one that is having problems here?

UNIDENTIFIED MALE SPEAKER: No, it's difficult to discern what he is saying.

THE COMMISSIONER: Okay.

So maybe – you may need to just review a few of the pieces that you've dealt with all ready.

All right, so we're adjourned until 2 o'clock.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: (Inaudible) problem to solve (inaudible).

CLERK: Your microphone.

THE COMMISSIONER: Mr. Collins, I understand we had a problem to solve. I think we had a bit of doing to get it done but, anyway, I understand that it's now working properly so we'll ask the witness to join us.

MR. COLLINS: Hello again, Mr. Tranquilla.

I was –

MR. TRANQUILLA: Hi.

MR. COLLINS: Sorry. I'm going to try to summarize some of the points I understood to have – you to have made this morning, just to make sure that we're in the same place.

As I understand it, you were – you said that you were used to a management structure in which most of the major management decisions were made on site. Is that right?

MR. TRANQUILLA: Yeah.

MR. COLLINS: And that in the Muskrat Falls Project, most of the major management decisions would be made in St. John's, not on the site.

MR. TRANQUILLA: That's correct, yeah.

MR. COLLINS: And you were used to having a significant amount of signing authority. You were used to the top person on the site having a significant amount of signing authority relative to the scope of the job –

MR. TRANQUILLA: That's right.

MR. COLLINS: – at Muskrat Falls who had a lower amount of signing authority.

MR. TRANQUILLA: That is correct, yeah.

MR. COLLINS: Yeah.

And the discrepancy between what you were used to and what you found was a source of stress and ultimately the reason you left the project?

MR. TRANQUILLA: Yeah.

The – if I can be – state this. When I went to Muskrat Falls I had noted a fair degree of micromanagement and I can give you an example. There were guys there with probably north of 30 years of hydro experience, but every morning at 8 o'clock they would have a call with the representative in St. John's to discuss the issues for the day. And I kind of took that in stride because, obviously, they hadn't (inaudible) site.

So I wanted to try to work – reduce type of things and get them, I guess, more reliant on myself. And so I was – and I can't remember the exact date (inaudible) give me, but it could possibly be the (inaudible) the non-immediate issues of signing authority about the end of

(inaudible). But I had actually (inaudible) and what I was observing, the site (inaudible) –

THE COMMISSIONER: So excuse me just for a minute please, Mr. Tranquilla, if I can.

MR. TRANQUILLA: Okay.

THE COMMISSIONER: We're still having difficulty hearing you here, so we're going to have to try again.

MR. TRANQUILLA: If I hold this mic right by my phone, is that better?

UNIDENTIFIED MALE SPEAKER: Yes.

THE COMMISSIONER: Yes, try that and we'll see how it works. I apologize for that.

MR. TRANQUILLA: No, no, no (inaudible), we'll get through this together. So if I could reiterate, I had resigned (inaudible) a few months into the job because of the micromanagement that I had been (inaudible) and I was finding it difficult to work that way.

THE COMMISSIONER: Okay, I think we're still having problems. So we're going to take five minutes and just see if we can't figure out what's going on here to try to solve the problem that we have.

So, again, we'll just take another break. I apologize to everyone.

MR. TRANQUILLA: No? Okay.

CLERK: All rise.

Recess

CLERK: Please be seated.

THE COMMISSIONER: Okay, I'm not sure that we can solve the problem that we have, so luckily this is a short witness. You know, I'm going to be hard pushed to agree to another Skype during this Inquiry.

But luckily this morning, or this afternoon we have some time, I understand, so what we're going to do is try to proceed on. I've asked Mr. Collins, basically, if he breaks up, basically to

stop him and then – or at least get him to repeat his answer once he's finished so that we all understand what he has to say.

We could actually do it by avoiding – if we didn't have him on the screen and he was on the phone, apparently it would work, but I need to see him as well as to hear him so ...

So it's not the best situation. I apologize to everyone for it, but there's not much we can do. So we'll ask Mr. Tranquilla to join us again, please.

Mr. Collins.

MR. COLLINS: You were saying, Mr. Tranquilla, that your experience of being micromanaged was part of the reason that you left the project.

MR. TRANQUILLA: Correct, yeah.

MR. COLLINS: One of the questions I'm interested in is the extent to which your perception was individual to you and the extent to which many other people with your experience and background would have had the same perception.

And I have a few documents to point to in that respect, and the first is P-03048, which is tab 5 of the binder. At page 4 of this document, we see a resignation letter from – it's signed at the bottom Ted Vanwyk. Are you –?

MR. TRANQUILLA: Correct, yeah.

MR. COLLINS: Are you familiar with Mr. Vanwyk?

MR. TRANQUILLA: Yeah.

MR. COLLINS: He says, if we scroll up a bit: "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."

Is it – was that – is that reflective of your opinion also?

MR. TRANQUILLA: Yes and if I could point out, Ted was my deputy for the Muskrat – or not Muskrat Falls but for the Detour Gold project, so he would be like-minded to myself. This man had extensive experience on a number of megaprojects in his career and so, yes, we were very much like-minded.

MR. COLLINS: And if we go to P-03049, tab 6 at page 3, we see another resignation letter from Mr. Cottrell, Brian Cottrell. And he writes, if we scroll up a little, “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.”

Do you – are you familiar with the five members of the site team who resigned in May?

MR. TRANQUILLA: Yeah, there were more than five. I think over the course of 14 or 16 months there was north of 13.

Now, there’s various other reasons in there – relocation due to marriage – but a number of them were – you know, I personally thought might’ve been excuses to just move on, right?

MR. COLLINS: Did this exodus lead to a change in the management structure?

MR. TRANQUILLA: Well, the management structure, you know, changed. Like, for instance, I remember two different quality managers being there in a short period of time. And it’s hard to see, you know, a large portion of your relevant knowledge base leave the team, and I think you can appreciate that’s, you know, fairly demoralizing.

MR. COLLINS: So after these people depart, the circumstances they were complaining about don’t change, they stay the same. Is that –?

MR. TRANQUILLA: No, it never. It didn’t change; in fact, it probably got a little worse.

MR. COLLINS: Mr. Vanwyk described the role on site as being the eyes and ears for others to make decisions. That’s –

MR. TRANQUILLA: Yeah, I think –

MR. COLLINS: Is that accurate?

MR. TRANQUILLA: – that’s a fair decision. I mean, I’ve got to answer that honestly and what I really feel. And they did not need people of our magnitude at site; they weren’t going to let you manage. And, you know – so, really, a number of coordinator positions there to observe and report probably would’ve suited, right?

MR. COLLINS: And there’s one more document I’d like to refer to. It’s not in the binder.

Madam Clerk, if we could bring up P-02819? This is a resignation letter by John Mulcahy from after you left the project in July 2017. And on page 3, he writes – on page 2, I apologize – “In all my years in construction, the field team ran the construction site and the head office supported the field team. On Muskrat Fall, it is vice versa and is to the detriment of the project and the people of the province especially with all the interfaces coming up. It cannot be micro managed from head office.”

Does that capture the period when you were there as well as 2017?

MR. TRANQUILLA: Oh I – I would assume. I mean that had been going on for a while.

MR. COLLINS: Do you have any comments following up on the division of authority between site and head office?

MR. TRANQUILLA: No. I think it – none that I believe I need to table here. It’s just – I can make that point that, you know, that the job was managed – it was managed from St. John’s and that was the model that they had chosen.

MR. COLLINS: I do have a few questions about the Astaldi contract. Can you, generally,

outline your involvement in managing the Astaldi contract?

MR. TRANQUILLA: Being the site rep, obviously, once the package was awarded we were involved in, you know, various kick-offs and early definition of, you know, what they were going to need for support at the site, how they were going to mobilize – remembering correctly, they mobilized a little bit later. They did undertake some work on a limited notice to proceed for a while. But I did assist Scott in kick-off meetings and, you know, some of the early definition of roles and understanding what the various team members of Astaldi were going to undertake.

MR. COLLINS: Were you involved in negotiating the contract?

MR. TRANQUILLA: No.

MR. COLLINS: Do –

MR. TRANQUILLA: We didn't see the contract – I don't think until it actually came to site with a St. John's-appointed contract administrator.

MR. COLLINS: At P-03538, which is tab 7 and at – starting at page 7, we have an email from you to my namesake, Mike Collins, and he – you write: “I know it does not need to be stated but as of right now” – which is November 2014 – “the ch0007 file has consumed 25 percent of the labor budget but is only 4 percent complete.”

And Mr. Collins replies: “One of our biggest” – risks – “is running up on LMAX in a yr with more work remaining than the bonds we have available. There should be a cap on labour per area to slow it down.” And on page 5, you reply, in the same time: “there should have been a max of labor to be charged against each line item including mobilization.”

So as I understand what's going on here, if you pay your contractor in line with performance, and if they've taken 50 per cent of the money, you know they've done 50 per cent of the work. And so, in that kind of a situation, if your contractor runs out of money, your exposure is limited, you can always cancel the contract, take

your bonds and (inaudible) find someone else to finish the job.

But in a context like this, where they can bill the whole contract irrespective of how much work they've completed, then you can give them a billion dollars, and they can run out of money, and now you're a billion dollars out with nothing.

Is that – is that a fair summary –

MR. TRANQUILLA: Correct.

MR. COLLINS: – of the issue –

MR. TRANQUILLA: Yup.

MR. COLLINS: – you're describing?

MR. TRANQUILLA: Yes, yeah.

I think my concern was by the time we had access to the contract, and we had no idea that within a unit price appearance of a contract, that labour had been isolated and they could bill against each labour allotment without a tether to control how much of that was consumed before you'd see the lagging actual progress, and I was concerned with that.

MR. COLLINS: Had you – had you experienced that kind of contract structure before?

MR. TRANQUILLA: No, because it's a – I've either seen completely cost reimbursable or a unit price that rolls up to a sum, but I've never seen a unit price contract where a risky item is isolated, right?

MR. COLLINS: Did you ever raise this concern with anyone?

MR. TRANQUILLA: Oh, yeah. No, there have been (inaudible) conversations on that. I was concerned, and – if I remember correctly – there was \$600 plus million in labour, I believe, in that package. And, when I saw the productivity rates – you know – anybody can do the math of where you believe it's going to go.

So, I did raise that with Scott, and I do remember, at some point in time, Lance Clarke –

who was head of business services, if I remember correctly – you know – he advised me, he said: Look, Astaldi will do that job for that price, regardless; this is their first job in Canada, and they want to break into the Canadian market, and – you know – I – I’ll be honest, I struggled with that concept.

MR. COLLINS: Could we go next to P-03536? Which is tab 3 in the binder, and at page 2 we see an email from you to Scott O’Brien. And, you write under “LEVEL OF INVOLVEMENT,” the second bullet:

“I am hearing and observing some of our team members wanting to or have” – having – “already provided *guidance* to components of the Astaldi execution team. Although this may be currently viewed as contributing to the relationship I see liability in doing so as the job matures. If we choose to provide ‘direction’ to the contractor then I believe we need to evaluate the risk in doing so before commencing with such activity. Direction can be perceived in many forms.”

Can you explain – what are the dangers of directing a contractor?

MR. TRANQUILLA: Well, in my entire career, if you direct, you pay. And if in crisis you choose to do that, that’s fine, but you typically – and maybe I state it in there – you need to reassess and evaluate what that risk ultimately is. And then, obviously, risk is money at the end of the day. And that – you know – good budget practice – and maybe that was done – but you should allocate accordingly. But, in the world I come from, if you direct, you pay, and I wasn’t comfortable with that. And, I think, initially, Scott shared my concerns on that, as you can see in the email.

MR. COLLINS: So if you have a contractor who’s struggling, how can you help them without directing them?

MR. TRANQUILLA: Well, that’s a – you know, we had a summit meeting in, I believe it was April of 2014, and they would call these off site, so it was at a hotel in St. John’s. And there was, if I remember correctly, there was 17, 18, 19 people there.

Lance, Scott were chairing the meeting, Paul Harrington was there, Ron, Jason, Mark Peddle, a number of people, and I had my two CMs with me: Roy Collier and Bill Knox. And we had demonstrated to the team, I think it was 20 or 23, maybe, initiatives that – without directing – that we had undertaken to support Astaldi and we were getting, obviously, very limited results.

So I lightly suggested de-scoping them and possibly taking away an element of the work to try to get some pressure off them, and I really didn’t get a chance to table it to any degree because it’s – yeah, at that time, Mr. Harrington left the (inaudible), yeah.

MR. COLLINS: Was Mr. Harrington angry?

MR. TRANQUILLA: No, I don’t think so. He actually, if I remember correctly, he said, I’m not – he actually stated he wasn’t, he just said he’d have to (inaudible). So, if – and I’m going on recollection here, but generally speaking.

MR. COLLINS: So, if a contractor is struggling, you can offer things, but you can’t require them to take your advice. Is that the kind of line you have to tow?

MR. TRANQUILLA: No, I mean, it’s – it all comes down to risk management. So if you want to direct them, formal directives or other – and, I mean, I’m no contracts guru, but there’s usually a facility to do so in your contract, but you do have to recognize there may be a cost in doing so. You know, and I mean, obviously, that’s after you’ve done everything you can to invest in them and trying to get them up to speed. And I believe that we had demonstrated that, but they, you know, they continued to struggle.

MR. COLLINS: At P-03537, which is tab 4, we see another email from you to Scott O’Brien. It’s for a month later than the previous email. It’s from April 6, 2014. And you write, a little farther down the page, you write: “I think it is important for our team to assist but be very careful as not to direct. There is an obvious ‘change order’ and/or substantiate ‘claim’ theme developing amongst their leadership.”

Can you describe what you meant by that?

MR. TRANQUILLA: I think we had gone through an issue. They struggled providing the level of reporting that Scott and I needed to manage and – but we did get a monthly report from them. And I remember we had rejected the monthly report because there were statements in there that would lend you to think they – we just had a glitch, sorry – but there was statements in there that, like those ones stated, that were making you think they wanted things on the record to support a claim.

MR. COLLINS: So the possibility of a claim became apparent already in April 2014?

MR. TRANQUILLA: Yes, yeah.

MR. COLLINS: And –

MR. TRANQUILLA: Or what we saw as a risk and, you know, that was the one area we could contribute is to get things itemized in the weekly contract meetings on site. Quite often somebody from St. John's – Mike Collins – would fly up and attend those weekly meetings. But we tried to get issues in the meeting minutes weekly and – so, obviously, we would cross-examine – not cross-examine but review the monthly reports very, very carefully.

MR. COLLINS: Is it fair to say that the concern about a possible claim was a major factor in Nalcor's dealings with Astaldi throughout this period?

MR. TRANQUILLA: I can't speak to conversations, you know, held in St. John's, but I believe that Scott recognized that, you know. And I believe Lance did, as well.

There was a lot going on at the time, steering committee meetings and others, and so people were scrambling to try to get the results.

MR. COLLINS: Something we've heard quite a bit about was Astaldi's Integrated Cover system. Did you have any experience building structures like that?

MR. TRANQUILLA: Oh, yeah, every process facility I've been involved with would be that size or bigger. I mean, it's typical column, beam, stringer, built-up roofing, metal cladding, yeah, very common in the mining industry.

MR. COLLINS: Was the concept feasible?

MR. TRANQUILLA: I think had it started earlier, I think it would have worked. I mean, it was a substantial undertaking. I think it got started late. If I remember correctly, I don't think they started erecting steel until August and that took the erection into winter weather, which it's, you know, doing architectural finishes, roofing, siding, it's almost impossible, and that's not unique to Labrador. It varies here, you always try to get your building and closure done before November.

MR. COLLINS: Did other people on Nalcor or Astaldi's team have experience with similar structures to that?

MR. TRANQUILLA: I can't speak to everybody, but what I can tell you, there was an appointment on site when our concern, which had been tabled for some time, had resulted in a site meeting with – Ron Power was there, a number of people from Astaldi, and we were standing at the intake end of the powerhouse, and I still don't know why I did this to this day, but I said before we start, can I ask a question: How many people have experience in building structures like this: beams, stringers, built-up roofing, metal cladding? And, obviously, my hand was up 'cause I did, but there wasn't one other hand that went up out of a delegation of probably 20 people.

MR. COLLINS: With your experience, did you question the decision to allow Astaldi to proceed with the ICS at any point?

MR. TRANQUILLA: Yes, when that started, Ted was still with us and I remember Ted and I conversing. If I remember there was 8,000 tons of steel or whatever it was and, you know, averaging, say, 27 man-hours per ton to erect that type of steel and, you know, we were afraid it was going to get well into the late fall and winter.

So we had raised it, and I know the CMs had these issues as well because we had seen a less than desirable performance of the smaller overall structure application at the spillway. And I remember Scott advising us that we probably shouldn't question that cover

(inaudible) structure any more, that direction had come from Mr. Harrington.

MR. COLLINS: Another issue that we've heard quite a bit about is the question whether Nalcor's owner's team have the experience needed to run a job like that – do you have any comments on that?

MR. TRANQUILLA: No, I don't and I'd rather not. And to be honest with you, I've never seen their CVs. I mean, I know my own and I know that I went there to contribute but I – that obviously wasn't, you know, utilized. And that's fine, I accept that, but I will tell you this: On two different occasions, there was a management (inaudible) team that came to site and I just assumed that they evaluated the management team out beyond us – site.

Maybe they didn't, but I would prefer that you go to those types of evaluation tools to support your understanding of that. And I believe it might have been Ernst & Young and there was, I think, a couple gentlemen came to site to speak to Neil Ferguson and myself. There may have been others. A gentleman by the name – I believe his first name was Bruce Hollick or Hallick [sp. Hallock] or – he brought them to site, and I remember these gentlemen sitting in front of me, and one gentleman I (inaudible) Spanish, and he said to me – and I was surprised how open they were. But he said to me in the (inaudible) my office, he said, you know, Desmond, he said to me, in my 27 years in (inaudible), haven't seen this before. (Inaudible) got the most relevant experience and (inaudible) essentially zero authority at the site.

MR. COLLINS: Mr. Tranquilla –

MR. TRANQUILLA: And those were his –

MR. COLLINS: Mr. Tranquilla, could – did – Commissioner, did you hear that?

THE COMMISSIONER: No, I'd like him to repeat that –

MR. COLLINS: Could –

THE COMMISSIONER: – please.

MR. COLLINS: – you repeat that, Mr. Tranquilla?

MR. TRANQUILLA: I basically – the gentlemen doing the review said to me in my office at Muskrat Falls that he had reviewed my credentials and recognized that I was one of the more experienced people that they had, but that he was surprised that I'd had zero authority at the site, and I believe he was with Ernst & Young, and I did try to find his business card but I believe I left – I did leave all that stuff (inaudible).

So that happened to me at Muskrat Falls.

MR. COLLINS: Mr. Tranquilla, do you have any other comments you'd like to share with the Commission?

MR. TRANQUILLA: No, I just – doing my best to recall, and I hope you all respect that, and I appreciate you accommodating me today via Skype 'cause – and I'm sorry for the inconvenience.

THE COMMISSIONER: All right, no problem.

MR. COLLINS: Those are my questions, Commissioner.

THE COMMISSIONER: All right, cross-examination then.

Government of Newfoundland and Labrador.

MR. LEAMON: No questions, Commissioner.

Thank you.

THE COMMISSIONER: Okay, Concerned Citizens Coalition.

MR. HISCOCK: Good morning.

My name is Will Hiscock; I'm here on behalf of the Concerned Citizens Coalition. I have a couple of questions for you this morning – this afternoon, sorry.

You said in your interview that you were to observe and report, but not to direct, is that correct that – in terms of your role at site?

MR. TRANQUILLA: Yeah, it wasn't established in the interview what I had learned over time, that that's really what it was going to amount to, right? Yeah.

MR. HISCOCK: And if I suggested to you that that's not actually the job of a real site manager, what – how would you comment on that?

MR. TRANQUILLA: That's – I acknowledge that, having been such in my career. And it's regrettable, but I can't change that.

MR. HISCOCK: Understood.

You talked about in your interview as well, Nalcor having a matrix-style organization. Can you explain what you mean by a matrix-style organization?

MR. TRANQUILLA: I thought it was – typically a matrix-style organization is one where you have functional managers that tell you how to do your job, but you have line management that takes care of the job, all right? So the difference is, is there's authority distributed to take care of the project, but you rely on those functional managers for guidance on what forms do you use, how to resolve a deficiency issue, how to work through a commercial issue, and those are common project organizations.

I'm not saying what we had was a matrix-style organization, but it was the closest thing that I could think of that demonstrated how we worked. But with time, you could see that wasn't the case, right?

MR. HISCOCK: Okay.

You also made another comment I'd like to ask you about and it was in relation to Mark Turpin. I believe you used the words soft way – he had a soft way. Can you explain what you meant by those comments?

MR. TRANQUILLA: I don't remember soft way, but Mark Turpin was quite capable and he had a smart way which was Mark made sure he supplemented his site time with the appropriate amount of St. John's time. I think what the end result was – he ended up staying in the

information stream, right, which worked for him, and I'm glad, yeah.

MR. HISCOCK: And –

MR. TRANQUILLA: He was very capable.

MR. HISCOCK: – okay.

And if I'm understanding you, I mean, really you would've preferred it more if the project management had adopted more of Mr. Turpin's methods – in terms of their balance between site and off – and St. John's?

MR. TRANQUILLA: I wish I would have done that; it probably would've helped more, right?

MR. HISCOCK: Okay.

MR. TRANQUILLA: So.

MR. HISCOCK: You spoke a little bit with Commission counsel regarding the Astaldi contract. I was wondering if you had any comments in terms of the timing of the award in November.

MR. TRANQUILLA: Yeah. We – there was a situation – the initial move towards engaging Astaldi, and it was actually fairly well organized. You know, that I'll give Scott. He was quite organized. And we had – I myself had travelled into St. John's to start to kick-off – series of kick-off meetings – where we wanted to, very much, you know, reinforce our expectations and move forward. And, obviously, anticipating the mobilization of Astaldi once award was complete.

There was a gap there and then I was advised that we'd have to do some work under an LNTP – if I remember correctly – because they wouldn't be able to award 'til later. There was – I remember talking to Scott about this and I have – had never saw anything on paper but apparently it had something to do with how you draw against the loan guarantee.

So therefore, Astaldi – their agreement, really, wasn't signed – I think it was signed before Christmas that year.

MR. HISCOCK: Okay. Do you think there was – did you – would you attribute any significant costs to that delay in the signing of the contract – from your perspective?

MR. TRANQUILLA: I know – I know, from stopping in and speaking to – there was a gentleman by the name of Ken Chryssolor who seemed to be quite capable. And so they had an office in Goose Bay and I'd stop in to offer him support and he had mentioned that, you know, there are a number of sub-contracts pending. There was a lot of pressure on him to get those in place.

As well, conversations with Guido Venturini – their project manager. He mentioned that they were having a hard time getting people and getting working visas.

So, there were complications like that, that I can't speak to the net effect, but I would assume it would affect you. And then, I think, it's also reasonable to think that, you know, mobilizing in winter is definitely not advantageous.

MR. HISCOCK: Sorry. Could you repeat the last thing you said there? I didn't catch all of that.

MR. TRANQUILLA: Mobilizing in winter would not be advantageous.

MR. HISCOCK: No, okay.

You made some comments in your interview as well about a Roy and a Bill joining the Astaldi team. I was wondering if you could tell us who those people were and what they were doing.

MR. TRANQUILLA: Well, they were two CMs that we retained on the site team, and both very capable, very, very experienced. I think one of them had probably three or four, maybe more, powerhouses in his experience base that he'd been involved with. And it was proposed that they go to the Astaldi side and – seconded or whatever arrangement it was – I never saw it – but to try to shore up Astaldi from a management perspective, and to try to get the job going.

MR. HISCOCK: Did you agree with that assessment, or that decision?

MR. TRANQUILLA: No, I wasn't in favour of that, not initially, and – not that there's anything wrong with, but, you know, if you undertake, as I said earlier, a risk review in directing before you direct, that's fine, but it's – it can be difficult. I would've much rather seen Astaldi source people on their own.

MR. HISCOCK: Thank you.

In relation to the Astaldi contract, you also elaborate, or you also made some comments regarding labour productivity and your top 10 reasons. I was wondering if you could elaborate on those comments, and perhaps give us some context in relation to – the context around which you gave those recommendations.

MR. TRANQUILLA: I think we were generally speaking about productivity and, you know, there were a couple of things that came to mind. I knew there were challenges having materials available, and there were challenges with PPE availability. Other things like defined breaks, late starts, early stops. I remember Bill Knox and I going and – going to the powerhouse, sitting at the top of the slope and watching, you know, trade workers well before the break, you know, already in stand-down mode. And so there were a number of things like that that we had, you know, realized, you know, on site that eventually got better. But I did warn Astaldi about not managing labour close enough, and that it might be hard to recover from bad habits once they're established. And that's probably in minutes 'cause I know I raised that.

MR. HISCOCK: Okay.

In relation to the dome, I was kind of shocked by your evidence that – of the 20 people on site building this large – the enclosure, that really nobody had any experience building a similar type of building.

Can you provide some explanation why there weren't experienced people brought in to do that project? People with experience on similar types of enclosed structural steel projects, I guess, or were you even shocked?

MR. TRANQUILLA: I – yeah, and I can't comment on it. I think that goes back to, you know, Astaldi going out and getting their own

relative supervision and – but, yeah, I was a little surprised, and, I think, you know, Ron may have been as well.

I remember Ron pointing to me and said: You know, keep an eye on this. But the contractors do the work and they've got to have the resources to do the work.

MR. HISCOCK: And the resources, in this case, being the right people on the job?

MR. TRANQUILLA: As supervision, yeah.

MR. HISCOCK: Yeah. And –

MR. TRANQUILLA: Remember on the sites, the trade labour, the foreman, the general foreman, typically they all come from the (inaudible). The resource that is in greatest demand across our country, even with things being as slow as they are, are superintendents – front-line superintendents and leadership. And it was a challenge – you know, it's a challenge on every job I go on; not unique to Muskrat Falls, but those people make the difference.

MR. HISCOCK: Okay.

And when we're trying to understand, you know, the costs that factored into the attempt to create the dome, and then as a failed project, and then the removal of that structure, would you say that the lack of experienced leadership by the contractor would be one of the pieces of that puzzle? Do you think that had a material impact on the fact that that failed or wasn't able to get off the ground?

MR. TRANQUILLA: I think the start of that – and you would have to go backwards and see what the route cause was. Yeah, I don't think it's that simple. I think what you may observe is a series of issues and – or just getting the work started later than they should've, right? Normally, like, process buildings for mines, we try to start standing steel at the latest, you know, May and June, and they're bigger than this structure, of course, a lot of them, but to ensure that we have them enclosed by late fall.

MR. HISCOCK: Do you believe that if this project had been managed, as other projects that you've worked on, managed, you know, directly

on the site, for the most part, and that the most experienced people had been put in the positions of authority, that this project could have costed less than it ultimately did, that the taxpayers could have seen a significant savings here?

MR. TRANQUILLA: That's – you know, that would be an opinion (inaudible) –

MR. HISCOCK: Well, that is what I'm asking you for is your opinion given your experience, and you were on site for 2 years. Did you see failures as a result of that that you think, at the end of the day, cost this project significant money?

MR. TRANQUILLA: That could be hard to quantify. My gut feeling would be yes.

MR. HISCOCK: Thank you. Those are all my questions.

THE COMMISSIONER: Very good. Thank you.

Edmund Martin.

MR. SMITH: No questions, Mr. Commissioner.

THE COMMISSIONER: Thank you.

Kathy Dunderdale – not here.

Former Provincial Government Officials.

MR. KING: No questions, Commissioner.

THE COMMISSIONER: Charles Bown – not here.

Robert Thompson.

Consumer Advocate.

MR. PEDDIGREW: Good afternoon, Mr. Tranquilla.

My name is –

MR. TRANQUILLA: Good day.

MR. PEDDIGREW: – Chris Peddigrew, and I represent the Consumer Advocate. I represent

the ratepayers of the province. A few questions for you today. Some of what I was going to ask has been asked and answered already.

Just in relation to the – some of the questions about the authority on site versus what had to go to St. John's. And what's your understanding of the, I guess, the process, once it went to St. John's? Were you able to go to Scott O'Brien, say, for decisions up to – I believe that table that we saw earlier today was of up to \$1 million for some decisions, \$2 million for other decisions within Mr. O'Brien's authority, but were there other decisions that you sought to have made that had to go beyond Scott O'Brien?

MR. TRANQUILLA: Yeah, I think, you know, if you look at commercial material decisions, Scott and Robert may have to table those at a change control board or other – and – now, the one thing I will say is Scott did always make himself accessible. I didn't have a hard time getting him.

MR. PEDDIGREW: Okay.

MR. TRANQUILLA: And he was really good that way. But, at the end of the day, it goes in the organization there, and then it would go into process. And I don't have any issue with process, but it was defined as it was, and, you know, they'd usually let you know.

MR. PEDDIGREW: Right. And I believe the term I saw in your interview and you may have just used it then – change review team or change review board? Is that – could you explain what that is?

MR. TRANQUILLA: Yeah, they had a change review board.

MR. PEDDIGREW: So what was that?

MR. TRANQUILLA: So, I think that's a group of Nalcor members that essentially meet – and I was never at one of these meetings, that's like only what I've had been told and (inaudible). But, basically, you would go there and table the potential change and explain that and then, obviously, enter into dialogue if anybody wanted to challenge that path forward. And then it would carry on the approval process or go for further definition.

MR. PEDDIGREW: And do you know where – something that would go to the change review board, would that be something beyond, say, something beyond the \$2 million limit of Scott O'Brien's authority or would things within that limit still have to go to the change review board? Do you know?

MR. TRANQUILLA: I can't state that.

MR. PEDDIGREW: Okay.

MR. TRANQUILLA: I'm not aware of – like I said, I was never –

MR. PEDDIGREW: Went to those meetings.

MR. TRANQUILLA: – really involved.

MR. PEDDIGREW: Okay.

MR. TRANQUILLA: Yeah.

MR. PEDDIGREW: I believe as well – and again, referring back to your interview and some of the things that might not have been covered this morning in your evidence, but there was some discussion, I think, when you initially agreed to take on the position on this project with Mr. Kean and Mr. Power, and you had asked a question about whether it was a cost-driven or a schedule-driven project? And, I guess, that was of interest to you in deciding whether to take the job or not.

And do you recall that conversation with Mr. Kean and Mr. Power?

MR. TRANQUILLA: Yeah, I do. And I think what had ensued there was a conversation of length. But I don't think I ever really received a complete answer there. I don't recall.

MR. PEDDIGREW: Okay.

Was your experience that it was more – and I know cost and schedule sometimes are – a lot of times go hand in hand, but was your experience that it was a more cost-driven focus, even at the expense of schedule sometimes?

MR. TRANQUILLA: Yeah, I think I saw it that way, essentially, and –

MR. PEDDIGREW: Did you see it that way?

MR. TRANQUILLA: Yeah, I believe it was, yeah, personally, and that's just opinion, but that's –

MR. PEDDIGREW: Right, yeah.

MR. TRANQUILLA: The actions kind of dictate that.

MR. PEDDIGREW: Okay.

Again, one of the things you were asked about in your interview, that I don't believe was raised today, was about a conversation you might have had with Ron Power about – he mentioned to you about getting pressure to sign the Astaldi contract in late summer of 2013 in order to enable Astaldi to mobilize.

Could you just describe or elaborate on that conversation?

MR. TRANQUILLA: Well Ron, you know, is a cautious individual and I – you know, and I respect that. And he and I were speaking, and I can't remember what the origin of the conversation was, but – because Ron would be very accommodating as well. But you could see that he was a little anxious, I mean, it was a big package. And he had mentioned that, you know, he needed to spend a weekend looking at this 'cause obviously the project wanted to move on. And he told me, he said: You know, they're putting pressure on me, they want me to sign this.

So, if I remember correctly, I might've been at site, he might've been at site, or he might've been in his office, but I do remember – 'cause I liked Ron – and I said: Ron, look, if I can help in any way, let me know, I'll come down and spend the weekend with you. But that was the point, Ron was a very – I won't say concerned – but he was very much aware of the size and scale of that package.

MR. PEDDIGREW: And did he say who he was receiving this pressure from? Was it Nalcor people, Astaldi people, both?

MR. TRANQUILLA: No, no. I mean, I would think it would be collective. I mean, it was at

that point in time in a project when it's got to move forward and, you know, and that was his duty, you know.

MR. PEDDIGREW: So he didn't mention anybody in particular about who might've –

MR. TRANQUILLA: No, no.

MR. PEDDIGREW: – been putting pressure on him? Okay.

MR. TRANQUILLA: No.

MR. PEDDIGREW: I guess, I'd be interested in your – you've worked a number of times on work sites with organized labour, craft employees. Is that correct?

MR. TRANQUILLA: Absolutely, yeah.

MR. PEDDIGREW: Okay.

And just – I'd be interested in your thoughts just on the importance of familiarity with the collective agreement and some of the issues that can arise and how that, I guess, interplays with managing craft labour on a work site like the Muskrat Falls Project.

MR. TRANQUILLA: You know, I think it's good when you get out in front of your labour needs and you establish, you know, that well understood playing field, so to speak, of what labour is to be employed. And the biggest point is to educate all parties, you know, on that collective agreement so people know what to expect. I think Nalcor did a good job at supplying resources to define when any anomalies came up and, you know, and work through those challenges.

But most important is for the trade contractors to know those agreements intimately well because it can be a challenge. And IKC-ONE, for instance, that was there early – my observations of them – and I can't remember the gentleman they utilized for labour relations, but I thought they did a pretty good job. And it's not just his job – be aware of that – it's all the leadership within IKC-ONE and I think they did a pretty good job there.

MR. PEDDIGREW: And what were your views on Astaldi's ability to manage the collective agreement and the issues that arose from it?

MR. TRANQUILLA: I think they probably retained some good, experienced labour relations people. But I'm not sure the understanding was distributed down through the supervisory team to the same order – not in the time frame that I'm speaking of. I – knowing Don Delarosbil, that eventually took over there, Don would be very experienced in such. And I would assume the people that Don would bring in would be as well, right, very experienced. And I know Don had specific experience in Labrador.

MR. PEDDIGREW: Okay.

MR. TRANQUILLA: (Inaudible.)

MR. PEDDIGREW: And, I guess based on your experience, things like taking breaks too early, or starting a shift too late, or knocking off a shift early, those are all things that can obviously impact productivity but something that somebody with experience and capability in managing craft labour would certainly assist with, based on your experience, certainly helped increase – or keep productivity at the level you want it at?

MR. TRANQUILLA: Oh yeah, and the focus has to be there right from the beginning, yeah.

MR. PEDDIGREW: Mr. Tranquilla, just a question about a conversation that you had with Scott O'Brien about doing a schedule and risk review. I think when it became apparent that the dome that Astaldi was building was, you know, going to be late and perhaps not even completed. You made a suggestion to Mr. O'Brien about doing a schedule and risk review, but he did not want that done on site. Does that ring a bell?

MR. TRANQUILLA: Yeah, it was – and I am trying to remember right around the time frame for that, but I had asked – and probably more than once. And we did do a schedule review at site, but I was never part of a risk review. And it doesn't mean that it wasn't done –

MR. PEDDIGREW: Right. Okay.

MR. TRANQUILLA: – I just was not a part of one, right?

MR. PEDDIGREW: Right. Your input was not sought?

MR. TRANQUILLA: Not that I can recall.

MR. PEDDIGREW: Do you know around when you would have made that suggestion to him that that review take place?

MR. TRANQUILLA: Well, obviously, that would have been driven by schedule concerns, so it's probably around the same time frame as the, you know, the schedule slippage on the Astaldi package, right?

MR. PEDDIGREW: Okay.

And, Mr. Tranquilla, just last area of questioning is just around I believe that you said as well that you clearly advised people of the, I guess, the risk of starting the dome structure so late in the year and the risk that it would not be able to be completed. I am just wondering when you say that you advised people, do you mean Nalcor people or the Astaldi people, or again would it be both.

MR. TRANQUILLA: Those types of conversations were probably had in-house with Scott and myself, you know, Bill Knox, Ted Vanwyks of the world, people like that. Obviously, Scott and I spoke almost daily, so Scott would have been aware of that. And, you know, I think right across the team we wanted them to be able to be successful. That was a selling point of their execution strategy, but we started becoming very concerned when the fall started coming on.

MR. PEDDIGREW: But your understanding is you were directed by Mr. O'Brien to stop bringing up the issue based on something that Mr. Harrington had – Paul Harrington had decided.

MR. TRANQUILLA: Yeah. And, you know, and I respect that, because you could go back to the dictating what a contractor should and should not do. You know, I understand that.

MR. PEDDIGREW: Okay.

All right, thanks very much.

THE COMMISSIONER: Thank you.

Astaldi Canada Inc.

MR. BURGESS: Good afternoon, Mr. Tranquilla. My name is Paul Burgess and I represent Astaldi Canada Inc.

Mr. Tranquilla, you had talked about how you were the site manager for a specific portion of the project which included the powerhouse. How many site managers would be on the project in relation to the same area of work where you were the site manager?

MR. TRANQUILLA: How many site managers?

MR. BURGESS: Yes.

Were you the only site manager for that designated area of the powerhouse and the areas you indicated?

MR. TRANQUILLA: Oh no, no, there were multiple on our team. I was the overall site manager and then, depending on the time and people coming and going, there were a number of people involved to support the project, right?

MR. BURGESS: Okay.

MR. TRANQUILLA: And I mentioned some names, you know, Ted Vanwyk, Bill Knox, Bill [sp. Roy] Collier, Paul Oblander. There was a number of people that supported Astaldi – Mark Turpin. We had a number of people.

MR. BURGESS: Right.

But I'm just talking about you in your position as site manager for Nalcor and the area that you were responsible for, would you have been the sole site manager responsible for that area, I'll call it?

MR. TRANQUILLA: For the site, yes.

MR. BURGESS: And how often were you on site? What was your shifts?

MR. TRANQUILLA: I was three and one.

MR. BURGESS: So three weeks there –

MR. TRANQUILLA: Three weeks on, one week off.

MR. BURGESS: – and one week – okay, thank you.

And in your –

MR. TRANQUILLA: And I had a deputy.

MR. BURGESS: Right.

And that was going to be my next question, that when you weren't on site, who would have the responsibility that you would've had if you were on site?

MR. TRANQUILLA: That would be Dave Healey.

MR. BURGESS: And he was what I think you just referred to as the deputy site manager; is that correct?

MR. TRANQUILLA: I saw – yeah, I saw him as my deputy, yeah.

MR. BURGESS: What authority would he have while you weren't on site? Would it have been the same authority that you had or different?

MR. TRANQUILLA: I don't have the documentation, but I would assume that it would be the same, yeah.

MR. BURGESS: Okay.

MR. TRANQUILLA: But he also had the same access to the entire group in St. John's that I had access to for support.

MR. BURGESS: Right.

And I think if you've explained it and I understood it correctly, that your contact from Nalcor or St. John's was primarily with Mr. Scott O'Brien. Is that correct?

MR. TRANQUILLA: That is correct, yeah.

MR. BURGESS: Okay.

You mentioned the name Mr. Don Delarosbil, and you said you were familiar with Mr. Delarosbil?

MR. TRANQUILLA: Yes, yeah.

MR. BURGESS: How were you familiar with him?

MR. TRANQUILLA: Don was with Kiewit and Don and his team had bid the concrete package and I believe the excavation package at Detour Lake, which is Canada's largest gold mine, and I had managed that program.

MR. BURGESS: Right.

With your involvement at Muskrat Falls Project, did you overlap – Mr. Delarosbil came in in – I believe it was May or so of 2015. Did your time at Muskrat Falls overlap with Mr. Delarosbil or were you gone by the time he came on site?

MR. TRANQUILLA: No, I overlapped. By that time, the management of the Astaldi contract had largely been taken away from myself and really resided with Ron.

MR. BURGESS: And why was the management of that contract taken away from you?

MR. TRANQUILLA: I can't answer that.

MR. BURGESS: It – was it taken away with no explanation?

MR. TRANQUILLA: It was actually taken away with notice and distribution to our company system without me being aware initially. But Lance Clarke did follow up and explain to me the path forward and why and that they wanted Ron to take that to finish so ...

MR. BURGESS: So that's Ron Power would take it over?

MR. TRANQUILLA: That was the understanding, yeah.

MR. BURGESS: Right.

MR. TRANQUILLA: There always the intention of putting a CM with me at site regardless.

MR. BURGESS: Right.

MR. TRANQUILLA: But then all the authority and signing authority for the Astaldi package was also taken away, and either – I can't remember if it went back to Scott or it went to Ron. I don't recall that level of detail.

MR. BURGESS: Okay.

And was Mr. Power, when he took over that responsibility, on site in the same manner that you were? Or was he based in St. John's?

MR. TRANQUILLA: I think he tried to spend as much time at site as he could. And – but he travelled back and forth.

MR. BURGESS: And so your assessment of as much time as he could, could you calculate that and equate it or compare it if it's – was it anything near your 3-1 ratio?

MR. TRANQUILLA: Oh, I wouldn't – it's hard when you're on a cycle like that. You know, 3-1, you're missing 25 per cent of the time. That's not math I can responsibly do for Ron.

MR. BURGESS: Okay, fair comment.

Mr. Tranquilla, we heard from Mr. Delarosbil and, in fact, Mr. Georges Bader, who was the deputy project manager with Astaldi. Are you familiar with Mr. Bader?

MR. TRANQUILLA: Georges Bader actually worked for me on the Detour Lake project.

MR. BURGESS: Right.

One of the comments we have –

MR. TRANQUILLA: And I helped Mr. Bader get his job with Astaldi.

MR. BURGESS: Thank you.

We heard from both of those individuals, and they testified on a number of things, but one of

the things we heard from each of them – and both of them were consistent – that in all of their time on site at Muskrat Falls, they didn't deal with anyone from Nalcor who had authority to do anything about \$25,000. And when they were asked, well, could they have had authority beyond that, in paper, they said they might've had it on paper, but they didn't have the authority to exercise it.

So with those comments in mind, I'd like to ask you a question. You referred to a chart and it was at page 24 of P-03535 – and I'm not going to ask to bring it up unless you want it brought up – but we see, on that chart, the site manager has authority of \$250,000, and you were asked about that, I believe, earlier. Do you recall that?

MR. TRANQUILLA: Yes.

MR. BURGESS: Can you comment as to whether you felt on paper, perhaps, you might've had a certain authority, but whether in actuality you had that authority and, if so, how that squares with the evidence we heard from Mr. Delarosbil and Mr. Bader?

MR. TRANQUILLA: If the contract administrators were formatting something to be signed, and it was inside of my level of authority, they would bring it to me, and I would sign it. Do I recall actual numbers on change management? I'm sorry, I just can't. But I – anything that I could support, I did. And what happened after me, I can't – obviously, I don't know.

MR. BURGESS: Okay.

Well, I'll give you another comment that they made, and I'd ask you to speak to it to the extent that you can. They said they were in fact told by many of Nalcor's site people that they only had authority for \$25,000. Again, from your experience, how does that relate to what you saw and understood at site?

MR. TRANQUILLA: That may have been communicated, but once again, you know, in an environment like that, managing one side of the site to the other, you rely on your contract administrators to format things, prepare it and then go to the individuals, and sometimes multiple individuals, to make sure we're in line

with the level of authorities assigned to site. And I'm quite sure that it was conducted that way. I just can't – I just don't know any more to tell you.

MR. BURGESS: Okay.

Their comments were also, Sir, that to the extent that there was any issues that they brought up and suggested changes, that it would often take too long for the process, and perhaps that's what you described with the change review process, that by the time they got a response back from Nalcor's side as to whether a change in the process or material it was almost too late and that really had an impact on their ability to work on site.

What if any comments would you have to that?

MR. TRANQUILLA: I mean that could be the case; the only thing that I do recall that may be relative to this is I remember sitting in on one steering committee meeting that we had at site with Astaldi, and I do remember Astaldi asking for more authority to be based on site, if I remember correctly. And keep in mind, I'm going back a number of years trying to recall but that's all I can think of that would be relative.

MR. BURGESS: And do you recall what the response from Nalcor was with such a request?

MR. TRANQUILLA: No, I – it's – I just don't.

MR. BURGESS: Okay.

Thank you, Sir, for your evidence.

MR. TRANQUILLA: (Inaudible.)

THE COMMISSIONER: Thank you.

Former Nalcor Board Members.

Not present.

Newfoundland and Labrador Building and Construction Trades Council.

MS. QUINLAN: No questions, Commissioner.

THE COMMISSIONER: Thank you.

Nalcor Energy.

MR. SIMMONS: Good afternoon. Mr. Tranquilla, Dan Simmons for Nalcor Energy.

Only one thing I wanted to ask you about; it's just coming out of some questions that were just asked by Mr. Burgess. And he had asked you about levels of authority on site. So first thing I wanted to ask you, do I understand correctly that there was a process for fieldwork orders on site that had a maximum limit of \$25,000, and that those things could be initiated and handled entirely on site without going to St. John's?

MR. TRANQUILLA: Yeah, if I remember correctly we probably did use a FWI process, that's common.

MR. SIMMONS: Right, and the –

MR. TRANQUILLA: I mean that's –

MR. SIMMONS: – and the –

MR. TRANQUILLA: – sorry, that's down in the details and I recognize that.

MR. SIMMONS: Sure. And you may not remember the detail of this and I can understand that. And the other site staff included – I may get the names wrong here – site area managers and site package, or contract managers, is that correct?

MR. TRANQUILLA: Well, there's contracts managers –

MR. SIMMONS: Yes.

MR. TRANQUILLA: – contract manager –

MR. SIMMONS: Yes.

MR. TRANQUILLA: – contract administrators –

MR. SIMMONS: Yes.

MR. TRANQUILLA: – those were assigned per package.

MR. SIMMONS: Right, and –

MR. TRANQUILLA: There would be a package engineer –

MR. SIMMONS: Mm-hmm.

MR. TRANQUILLA: – and those are usually St. John's based and, you know, they'd be responsible to roll everything up and report and then we had the construction management team as well at site.

MR. SIMMONS: Right. So, the construction management team on site, who were at a level below you, I think we've heard or may hear some evidence that their approval authority in the matrix was \$25,000. Does that sound correct to you – that they individually –

MR. TRANQUILLA: I –

MR. SIMMONS: – had a \$25,000 authority before they even had to come to you?

MR. TRANQUILLA: Yes, and it well very may be the case. Yeah.

MR. SIMMONS: Right. And that the things that would then come to you would only be things they couldn't approve up to their \$25,000 limit and it would require the exercise of your higher level of approval authority.

MR. TRANQUILLA: Understandable.

MR. SIMMONS: Yeah. And –

MR. TRANQUILLA: Yeah –

MR. SIMMONS: And that you would be able to do that on site and it's only things that you couldn't approve within that structure that would require the involvement of St. John's before a decision could be made.

MR. TRANQUILLA: Fair enough. Yeah.

And like I said – you rely on the contract administrators to provide the guidance. Right?

MR. SIMMONS: Good. Okay. Thank you very much. I don't have any other questions.

THE COMMISSIONER: Right. Redirect.

MR. COLLINS: Commissioner, I have no questions on redirect.

This Commission of Inquiry is adjourned for the day.

THE COMMISSIONER: Okay.

Right, Mr. Tranquilla, thanks so much for your cooperation there. I know, over lunchtime, you spent a fair bit of time trying to fix that microphone. So, I appreciate your efforts and things did work out later on this afternoon. Thank you very much.

MR. TRANQUILLA: No. Thank you, and I appreciate you accommodating me.

THE COMMISSIONER: All right. So, tomorrow, I think we start – so there's a little discussion I need to have here, now, about tomorrow.

So, tomorrow morning on the schedule, we have Charles Bown for two days and I expect he's going to be – take the most part of two days. We – I've been advised that we are actually going to be calling one other witness before Mr. Bown but only shortly and it's Mr. Meaney – James Meaney – who's already testified.

As a result of that Mr. Learmonth has asked me to – I think he's had some discussion with Mr. Fitzgerald, as well – to ask to start tomorrow morning at 8:30 and – I know I'm pushing hard here but I'm hopeful that that's not going to conflict with your obligations for your families or whatever but I think I'm going to have to accede to Mr. Learmonth's request here because I'm not exactly sure where all this is going tomorrow.

So, does anybody have any strong opposition to us starting at, like 8:30 tomorrow morning? I will take two breaks tomorrow morning, just to accommodate everybody.

So, if that's acceptable then we'll start at 8:30 tomorrow morning. I'm hopeful this will be the only time we have to do this.

All right. We're adjourned 'til tomorrow morning at 8:30.

CLERK: All rise.