



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 36

Commissioner: Honourable Justice Richard LeBlanc

Wednesday

May 15, 2019

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc
presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right.

Mr. Learmonth.

MR. LEARMONTH: Thank you.

First, I'd like to enter some exhibits for today:
03438 to 03463, 03539 to 03581, 03589 to
03591, 03595 to 03603, and also 03466 to
03487, 03489 to 03507, 03605 to 03615.

THE COMMISSIONER: Okay.

So I missed a few of those. So I'm just going to
have to go back over them again: 03438 to
03463, 03589 to 03591 –

MR. LEARMONTH: 03581.

THE COMMISSIONER: 03581. So 35 – so
just 03581 or ...?

MR. LEARMONTH: No, P-03539 to P-03581.

THE COMMISSIONER: Okay. And then
03589 to 03591, 03595 to 03603, 03466 to
03487 – next one?

MR. LEARMONTH: 03489 to 03507.

THE COMMISSIONER: Okay, and then the
next one?

MR. LEARMONTH: 03605 to 03615.

THE COMMISSIONER: Okay.

All right, I have those now.

MR. LEARMONTH: Okay.

THE COMMISSIONER: All right, thank you.

MR. LEARMONTH: Yeah.

The first witness today is James Meaney.

THE COMMISSIONER: All right.

I'll ask Mr. Meaney to stand, please.

And I believe you were sworn the last occasion
or affirmed? Sworn.

MR. MEANEY: (Inaudible.)

THE COMMISSIONER: Okay. Take the
Bible, please.

MR. MEANEY: Actually, no, Sir, (inaudible)
affirmed.

THE COMMISSIONER: Okay, affirmed,
then.

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

MR. MEANEY: I do.

CLERK: Please state your name.

MR. MEANEY: James Meaney.

CLERK: Thank you.

MR. LEARMONTH: Okay.

Now, Mr. Meaney, you testified here in late
March, is that correct?

MR. MEANEY: That's correct.

MR. LEARMONTH: For two or three days?

MR. MEANEY: (Inaudible) covered a four-day
period, yes.

MR. LEARMONTH: Four-day period that was
broken up a little bit, I think.

And please restate your position at Nalcor.

MR. MEANEY: I'm the vice-president of
finance of the Nalcor, Power Supply.

MR. LEARMONTH: Okay.

MR. FITZGERALD: I don't think Mr. Meaney's mic is on.

Thank you.

MR. MEANEY: On now?

CLERK: Yes.

MR. LEARMONTH: Yeah, it's on now.

Okay. Well, just repeat that – your position with Nalcor.

MR. MEANEY: Sure.

I'm the vice-president of finance for Nalcor, Power Supply.

MR. LEARMONTH: Okay.

And one of the days on which you gave evidence was March 28, 2019. Is that true?

MR. MEANEY: No, I think I was finished before the 28th of March.

MR. LEARMONTH: Okay.

MR. MEANEY: I think it was one of my colleagues, Mr. Sturge, might've been giving testimony on the 28th.

MR. LEARMONTH: Okay, that's fine.

Can we bring up – tab 1 in your book, Mr. Meaney. It's Exhibit P-03438.

MR. MEANEY: What tab number would that be, Mr. Learmonth, in the book, do you know?

THE COMMISSIONER: Tab 1.

MR. MEANEY: Tab 1, okay.

Okay, got it.

MR. LEARMONTH: Okay.

Now, if we could bring up the – the top of this is an email – it's self explanatory – which I received from Andy Fitzgerald, counsel for Charles Bown, concerning a text message that you are alleged to have sent to Charles Bown.

MR. MEANEY: Correct.

MR. LEARMONTH: And Mr. Fitzgerald says, "Mr. Learmonth:

"As discussed a few minutes ago, below is an email sent to me on the evening of Thursday March 28 I read this email on Friday March 29 ... and instructed my client accordingly.

"The email is a copy of a text message that was sent last Thursday evening from Mr. Meaney directly to my client" – and that's Charles Bown – "and concerns my client's upcoming testimony at the inquiry. In my opinion, the text message is inappropriate and I have been instructed to bring this to your attention to address accordingly with the Commissioner.

"If you require any further details they can be provided."

Now, I'd like you to just go to the bottom and I'd like you to first confirm that the email message – the reference to a text message that you sent to Charles Bown, who will be testifying today, is an accurate – this is an accurate reproduction of what you sent.

MR. MEANEY: Yes, that is the text I sent to Mr. Bown that evening.

MR. LEARMONTH: And you sent it on March 28, 2019, at 7:19?

MR. MEANEY: Yeah, it would've been around that time, I guess, yes.

MR. LEARMONTH: And you knew that he was going to be testifying as a witness in this Inquiry, is that right?

MR. MEANEY: Yes, I did. Yes.

MR. LEARMONTH: Okay.

I'd like you to read into the record exactly what the text – the content of your email – of your text message was. Read it in please.

MR. MEANEY: Sure.

"In Derrick's testimony today Learmonth mentioned that a number of folks who were

senior civil servants at the time of Financial Close in Nov 2013 said in their interviews they don't recall being told about the \$6.5B capital cost estimate. Of course Dalley" – that would've been Minister Dalley and Minister Davis at the time – "... have already claimed the same at the Inquiry. I know who has been interviewed and that we spent ALOT of time with some, including yourself, during that period. I sure hope you are not one of the folks who suddenly have amnesia from that time....that wouldn't seem to me to be the 'Shareholder' I've always respected."

MR. LEARMONTH: Okay.

MR. MEANEY: Shareholder is in quotation marks.

MR. LEARMONTH: So you confirmed that you actually sent that?

MR. MEANEY: I did, yes.

MR. LEARMONTH: Yeah. And you say in that email that "I know who has been interviewed." How do you – did you know at that time who had been interviewed?

MR. MEANEY: I think it was, Mr. Learmonth, during my interview process, I was made aware that part of what was driving the timing of my interview process was that a number of these folks were going to be interviewed around the same time: Mr. Bown, Mr. Myrden, I think Mr. Morris and some other folks (inaudible) –

MR. LEARMONTH: Who told you that? Are you saying you were told those names?

MR. MEANEY: Yeah, I was. And I was trying to recall how I knew that. I can't recall if it was either my counsel had advised me at the time, or maybe it came up during our interview discussion. I don't specifically recall, but I do know that –

MR. LEARMONTH: But your counsel wouldn't know who was going to be interviewed, I don't think.

MR. MEANEY: I just – I remember being advised that my – the timing of my interview

was scheduled around when these folks were going to be interviewed as well.

MR. LEARMONTH: Yeah, but there's no record of that. I'm asking you how you felt justified in saying that I know who has been interviewed?

MR. MEANEY: I meant I was aware who some of the other civil servants, including Mr. – former civil servants – were, including Mr. Bown, that were being interviewed.

MR. LEARMONTH: How did you get that information?

MR. MEANEY: I just said – I can't recall if it was counsel advised or maybe we had – when Nalcor had been provided documents to review for commercial sensitivity, I was one of the folks that was, you know, asked to look at them. I knew I was aware; I just can't specifically tell you how.

MR. LEARMONTH: Okay. Well, who were those people?

MR. MEANEY: As I understood, it was Mr. Bown, Mr. Myrden, Mr. Morris and I believe Ms. Brewer as well. And those would've been all folks that we would've, as I noted, dealt with regularly during that period of fall 2013.

MR. LEARMONTH: And you're saying that they – as far as you knew, they would've been interviewed by March 28? Is that what you're saying?

MR. MEANEY: I understood that the week that I was being – that I had been interviewed, which I think was around March 10 or 12, I understood that they were being interviewed around the same time.

MR. LEARMONTH: Okay.

And before you gave your evidence at this Inquiry, did anyone try to push you in any one direction with respect to the evidence you would be giving?

MR. MEANEY: No.

MR. LEARMONTH: And do you agree that that's your – the right of a witness to state that witness's version of the truth, according to the best of their memory?

MR. MEANEY: Sorry, could you repeat that, Mr. Learmonth?

MR. LEARMONTH: Do you agree that a witness has a right to state his or her version of the truth to the best of their recollection?

MR. MEANEY: Yes. You know, Mr. Learmonth, if I could just add something on that point, and, Commissioner, you know –

MR. LEARMONTH: Hold on, I want to finish – are you answering this question?

MR. MEANEY: Yeah, yeah. I did. So I agree –

MR. LEARMONTH: Because I don't want you to make a speech. I want you to answer the questions first, and then I'll ask if you have anything to say about this email.

MR. MEANEY: Sure.

MR. LEARMONTH: You understand?

MR. MEANEY: That's okay, yeah.

MR. LEARMONTH: Okay.

So if you recognize that a witness has a right to give his or her evidence without being pushed in any one direction, why didn't you recognize that right in your own mind before you sent this text to Mr. Bown?

MR. MEANEY: My intent with this text wasn't to influence Mr. Bown's testimony. I can assure you of that. It was – you know, it was an error in judgment on my part. And I vented frustration and I shouldn't have. But I can assure you and the Commissioner it was never my intent to influence Mr. Bown's interview or his testimony. He was –

MR. LEARMONTH: Oh, that's what you're saying now, but I suggest that any reasonable person reading this text would come to a different conclusion.

MR. MEANEY: Some may, but I can tell you that wasn't my intent.

MR. LEARMONTH: That's what you're telling us. Okay, that's fine.

And when you testified here, you gave evidence that you had no personal knowledge whatsoever as to whether Mr. Bown had knowledge of this 6.5. You said that you didn't send him any emails or written communications and that your belief that he had knowledge of this figure was based not on your own personal knowledge, but information you'd received from Derrick Sturge. Is that correct?

MR. MEANEY: I believe I stated I had seen Mr. Sturge's notes where he had –

MR. LEARMONTH: Right.

MR. MEANEY: – referenced, you know, conversations with Mr. Bown. I had also been aware of emails that were in circulation – I think it was around the 21st or 22nd of November – and acknowledged that Mr. Bown wasn't on those emails but a number of folks who worked with him were. So on that basis I believed that he would have been aware as well.

MR. LEARMONTH: Yeah.

But that's not your decision, is it? Isn't that something that should be left to the Commissioner to decide after the Commissioner hears all the evidence and the submissions of counsel? Who do you think you are to impose that judgment on Mr. Bown?

MR. MEANEY: I agree that it's the Commissioner to decide, and I wasn't trying to impose my judgment on Mr. Bown.

MR. LEARMONTH: Well, why did you write it? Why did you write this email? This text message, sorry.

MR. MEANEY: Sure.

So if I could, I guess, give some explanation to that.

As I said, Commissioner, it was an error in judgment on my part and certainly something I

shouldn't have done, and I'm embarrassed that I've put myself in this situation.

I guess in terms of what prompted me to send this text, as I mentioned, I – in the text, I had heard some commentary – I think it was during Mr. Sturge's testimony – that a number of the civil servants who were involved in the financial close and the FLG at that time were not aware of the \$6.5-billion figure prior to financial close. I was surprised, I was puzzled. I agree – you know, I admit I was frustrated when I heard that, you know, for a number of reasons.

From my perspective, as I just mentioned, I was aware of the emails and the notes that had been put on the record through my testimony and Mr. Sturge's testimony. I knew during that period in November of 2013 the amount of interface we had with a number of those folks. Some of them we were face to face with on an almost daily basis; some of them we spoke to on a very regular basis.

And also, a couple of days prior to me sending that text, Nalcor had received a copy of Ms. Dunderdale's interview transcripts, so I had been one of the folks that had been asked to review those. And I'd seen in her interview transcripts that she said she was aware of the \$6.5 billion prior to financial close and that she had believed that her Cabinet was as well. So I guess, you know, when I read that and all the other things I just mentioned, again, I was surprised and puzzled.

You know, Mr. Bown and I have always communicated in a very, I'll say, direct, honest manner with one another. That came with us working together for pretty much my entire career at Nalcor. You know, I think he was probably the one person at government that I had the most interface with. And we worked particularly close in the periods of 2012 and 2013 and then again on – in 2016 and '17 on the federal loan guarantee file – so the original loan guarantee and then the second one.

You know, we communicated very regularly and honestly with each other. Actually, earlier that same day – so the – earlier the day that I sent the text in question, he and I had communicated back and forth. I had asked – I'd seen discussions in the media about discussions

between the provincial and the federal government on the restructuring of the federal loan guarantee as part of rate mitigation –

MR. LEARMONTH: So what's this got to do with the text? Why are you making this speech?

MR. MEANEY: I'm – I guess – you had asked, you know, what caused me to send this. I'm trying to provide a bit of context for that.

MR. LEARMONTH: Context, okay.

MR. MEANEY: I won't be much longer. I promise.

And that was the type of relationship that Charles and I had. We were pretty honest and upfront with each other. But in this instance, you know, I let my frustration get the better of me. I shouldn't have done it and I acknowledge that. It was offside.

So, as I said, Commissioner, I do want to apologize. It was never my intent to influence the independence of your process. As Mr. Learmonth said, this is your decision to make in terms of the facts. And Mr. Fitzgerald, I know – I don't think Charles is here. I do want to apologize to Charles and if he was here I'd do it in person, so ...

MR. LEARMONTH: Yeah because Mr. Bown was quite upset by this. You realize this, do you?

MR. MEANEY: I do, yes. I saw in his interview transcript, yes, that he was upset. You know, I – just one more piece of information. I do recall he noted in his interview – he took, in a negative manner, the fact that I put the quotations around the word, shareholder, in my text.

I had done that because, as he noted in his interview, that was a nickname that a few of us had for him. We kind of jokingly called him shareholder – myself and Mr. Sturge and Mr. Warren – but I never meant putting quotations around it in a negative manner. But, you know, given, you know, the scrutiny and the pressure folks are under in this process, I can see how he misinterpreted that. And, again, you know, it wasn't my intent to influence his testimony in any way.

MR. LEARMONTH: Well –

MR. MEANEY: It was just that it was a stupid act on my part.

MR. LEARMONTH: You’ve said that. Whether there’s any credibility to that position, it will have to be something that will be judged by the Commissioner.

MR. MEANEY: Nope. Fair enough.

MR. LEARMONTH: Yeah. So you’re apologizing to Mr. Bown, are you?

MR. MEANEY: Well, I’m apologizing to the Commissioner and I’m apologizing to Mr. Bown.

MR. LEARMONTH: And you’re apologizing on an unqualified basis?

MR. MEANEY: Yes, I’m –

MR. LEARMONTH: You’re not hedging your apology. It’s a hundred per cent –

MR. MEANEY: It is –

MR. LEARMONTH: – sincere apology?

MR. MEANEY: It is a sincere apology. It was a – it was an oversight and a stupid reaction on my part and it’s a full-on apology.

MR. LEARMONTH: Okay.

Well, I don’t plan to go any further with this, Commissioner. It’s up to you what is done. Whether Mr. Meaney’s employer decides to discipline, this is something that is certainly open to them. It’s their decision.

But I don’t recommend that we dwell on this much longer. There has been an apology given. He said it was unqualified, but there may be other questions of counsel and if we go through that and then I’ll turn it over to you, Commissioner.

THE COMMISSIONER: Okay.

All right, questions from the Province –

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: – of Newfoundland and Labrador.

Concerned Citizens Coalition.

MR. HISCOCK: Good Morning, Mr. Meaney.

I would like to know what types of communications you would send via text versus via email. I understand this was sent via text.

MR. MEANEY: Yeah.

MR. HISCOCK: How much of your communication with the government, people you’ve dealt with, Mr. Bown or others, has been sent via text versus via email?

MR. MEANEY: I would say in terms of text messages, most, if not all – actually, pretty much all would be, I’ll say of a personal or an informal nature. If it’s matters of formal communication, that’s done by email.

MR. HISCOCK: Were you aware – was your phone – prior to your first interview, were your phone and text messages checked and recorded as part of the evidence for this proceeding, or was it simply emails that were reviewed?

MR. MEANEY: I believe it was just emails; however, subsequent to my testimony, I had to provide my devices over and there was a search done for my text messages as well.

MR. HISCOCK: Prior to sending this text message were you aware that your phone and text messages hadn’t been searched as part of this Commission and your emails had?

MR. MEANEY: I couldn’t specifically recall if I knew – I couldn’t tell you if I knew if texts were or not. I knew that emails were because I had seen a lot of the evidence. I wasn’t sure about whether texts were or not.

MR. HISCOCK: Would there be communications within Nalcor that were carried out via text message versus via email?

MR. MEANEY: Oh, there would have – I certainly would have texted back and forth with

some of my colleagues within Nalcor, but that's – as I mentioned, they would be communications of an informal or a personal nature.

MR. HISCOCK: Who has been a witness at this Inquiry who you have texted with in the past? And I can run through some names if you'd like.

MR. LEARMONTH: Perhaps I could make a comment that might clarify this issue. We, the Commission, sent a summons to Mr. Meaney. We got his phone. We sent it to an expert in Calgary to have it reviewed to see if there are any relevant text messages that we could get. We've done that with – for at least one other person.

There were some text messages, some of them were tangentially related to the Inquiry and some comments he made, but we (inaudible) think they're relevant and – but we have carried out that process, if that helps your ... you know.

MR. HISCOCK: Thank you.

And I guess my question would also go to this which would be: Would there be others within Nalcor who would have regularly communicated more sensitive types of information, perhaps, or more private types of information via text?

MR. MEANEY: I couldn't speak to that. I know my own correspondence, I couldn't speak to others.

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

Thank you.

THE COMMISSIONER: Edmund Martin.

MR. SMITH: No questions.

THE COMMISSIONER: Kathy –

MR. SMITH: No questions.

THE COMMISSIONER: Thank you.

Kathy Dunderdale.

MS. E. BEST: No questions, Commissioner.

THE COMMISSIONER: Former Provincial Government Officials.

MR. J. KING: No questions.

THE COMMISSIONER: Julia Mullaley, Charles Bown.

MR. FITZGERALD: No questions, Commissioner.

THE COMMISSIONER: Robert Thompson.

MR. COFFEY: No questions.

THE COMMISSIONER: Consumer Advocate.

MR. PEDDIGREW: No questions.

THE COMMISSIONER: All right, Nalcor Energy.

MR. SIMMONS: No questions, Commissioner.

THE COMMISSIONER: Oh and I did forget Dwight Ball and Siobhan Coady.

MR. O'FLAHERTY: No questions.

THE COMMISSIONER: Thank you.

Any redirect?

MR. SIMMONS: Commissioner, Mr. Meaney does have his own counsel here today.

THE COMMISSIONER: Oh, I'm sorry.

Okay, counsel for Mr. Meaney.

MR. BUFFETT: I'm here for Mr. Meaney.

Mr. Commissioner, I have no questions.

THE COMMISSIONER: Okay, thank you, no questions.

A redirect?

MR. LEARMONTH: There's no redirect.

THE COMMISSIONER: Okay.

All right, Mr. Meaney, to say that I am surprised by this coming forward this morning would be an understatement. This Inquiry has – certainly, for myself, I’ve attempted to be fair to all parties who have appeared, all witnesses. I’m trying to determine exactly what transpired here to answer to the Terms of Reference. And for an official at your level at Nalcor Energy to have sent this sort of email is very shocking to me.

I am hopeful that this was a – basically, a moment of a mistake on your part and that others aren’t trying to do the same things. It does not reflect very well on Nalcor Energy, it doesn’t reflect very well on this process and in the circumstances, as I say, it’s a regrettable situation. And as I say, I just hope that this is not what is happening behind the scenes.

Thank you, Mr. Meaney. You can step down.

MR. MEANEY: Thank you.

THE COMMISSIONER: All right, Mr. Learmonth.

MR. LEARMONTH: The next witness is Charles Bown.

THE COMMISSIONER: Charles Bown.

No, we can see if he’s ready to come up now.

All right. Mr. Bown, do you wish to be sworn or affirmed this morning?

MR. BOWN: Affirmed, please.

THE COMMISSIONER: Okay. If you could stand, please?

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

MR. BOWN: I do.

CLERK: Please state your name.

MR. BOWN: Charles Wesley Bown.

CLERK: Thank you.

MR. BOWN: Thank you.

THE COMMISSIONER: Mr. Learmonth.

MR. LEARMONTH: Mr. Bown, I realize that you testified in Phase 1 and I’m not going to go over all the information, but there are some basic background information points that I want to make so people will understand what the position you are now occupying and your former positions in relation to this project.

MR. BOWN: Yes.

MR. LEARMONTH: So, first, tell us what your present position is with the Government of Newfoundland and Labrador.

MR. BOWN: I’m the Deputy Minister of Tourism, Culture, Industry and Innovation.

MR. LEARMONTH: Yeah.

And what position did you occupy prior to that appointment?

MR. BOWN: Chief executive of major projects.

MR. LEARMONTH: Okay.

And when were you appointed as the deputy minister.

MR. BOWN: February 1.

MR. LEARMONTH: Okay.

And did you take with you your work for the special projects into your new job duties?

MR. BOWN: Yes, I did.

MR. LEARMONTH: Okay.

So, you’re doing both now?

MR. BOWN: I’m doing both jobs now.

MR. LEARMONTH: Your workload has increased, I take it.

MR. BOWN: Significantly.

MR. LEARMONTH: All right.

Just a little bit of background. You were the deputy minister of Natural Resources from what time to what time?

MR. BOWN: December 2012, I think, until December 2016.

MR. LEARMONTH: Okay.

So, you were deputy minister at the time of sanction on December 17, 2012 as well as at the time of financial close, which is a period between –

MR. BOWN: Yeah.

MR. LEARMONTH: – let's say November 29 and December 13, 2013, correct?

MR. BOWN: Yeah, I'd correct the end date. It was September 2016.

MR. LEARMONTH: Yeah, that's when you –

MR. BOWN: When I left.

MR. LEARMONTH: – left. Okay, fair enough.

But you were deputy minister during the time frames I just identified; is that correct?

MR. BOWN: Yes, Sir.

MR. LEARMONTH: And prior to that, to your appointment as deputy minister in December 2012, you were associate deputy minister?

MR. BOWN: That's correct.

MR. LEARMONTH: And prior to that –

MR. BOWN: Assistant deputy minister.

MR. LEARMONTH: – (inaudible).

Please state your role on behalf of government with respect to the Muskrat Falls Project. You've been called the lead liaison person and there's different descriptions what have been given to your duties.

Could you give your own version of that for the period – from the time that you were appointed

in December 2012 up until the time you left in 2016?

MR. BOWN: Sure.

When I took on the role of deputy minister, clearly my responsibilities increased. When I was the associate deputy minister I spent much more time at Muskrat Falls but, as my duties were increased, I spent less time at Muskrat Falls, more so then of coordinating teams or groups, et cetera, who were doing work. Other departments were more heavily engaged in doing the work as we got closer to financial close.

MR. LEARMONTH: And is it correct that the department of government to which Nalcor reported was the Department of Natural Resources?

MR. BOWN: Correct, so any documentation that would be going through to Cabinet would come through the Department of Natural Resources.

MR. LEARMONTH: Yeah, and the Department of Finance had a role and Department of Justice had a role also; is that right?

MR. BOWN: Absolutely. By and large our engagements were equivalent in that Department of Justice was reviewing and following all the negotiations on the agreement; Department of Finance, clearly, with an eye on equity and on the financing arrangements that Nalcor was going to undertake.

MR. LEARMONTH: So the financing arrangements were more in the domain of the Department of Finance than the Department of Natural Resources?

MR. BOWN: Absolutely.

MR. LEARMONTH: Yeah.

But you – would you expect to be kept up to date with the work of the Department of Finance with respect to equity contributions and so on?

MR. BOWN: Sure, but not at the degree, not at the level that they were working at.

MR. LEARMONTH: All right.

And so why would that area of work fall into the domain of the Department of Finance, the equity and so on –

MR. BOWN: That's where the –

MR. LEARMONTH: – as opposed to the Department of Natural Resources?

MR. BOWN: Two reasons: One, that's where the expertise lay, but also the Department of Finance is responsible for the province's fiscal position, the budget, and ensuring that whatever was being done wasn't going to negatively impair government's finances – financial position.

MR. LEARMONTH: Okay.

Now, before we get into the financial close issues – and you're aware of what they are – I first wanted to ask you a few brief questions about the Grant Thornton report. That's Exhibit P-01677. It's not in your documents –

MR. BOWN: Okay.

MR. LEARMONTH: – but your counsel is aware that I was going to ask you some questions as I did at your interview.

MR. BOWN: Yes.

MR. LEARMONTH: Right.

So if we go to Exhibit P-01677, first, turn to page 12. Now, I recall – everyone I think who heard your evidence recalls that you were – you expressed, I believe your word was shock, when you found out the contents of the first Grant Thornton report which indicated there was a P1 schedule. That there was a strategic risk report identifying a management reserve, identifying the \$497 million recommendation from Westney before sanction, and you weren't aware of those facts. Is that correct?

MR. BOWN: That's correct.

MR. LEARMONTH: And you've indicated – I think your word was you were shocked when you found this out?

MR. BOWN: That was the word I used.

MR. LEARMONTH: Yeah.

And you found this out only after you read the Grant Thornton report?

MR. BOWN: Right.

MR. LEARMONTH: Okay.

And you were – were you shocked because you thought that Nalcor had been keeping you up to date?

MR. BOWN: Absolutely.

MR. LEARMONTH: Yeah.

As sort of a lead representative of the Department of Natural Resources, you were – you believed –

MR. BOWN: Well, not only me personally, but the government as a whole.

MR. LEARMONTH: Yeah.

But the information would usually – information like that would – if it was to be provided, we know it was kept secret, but if it was to be provided it would go through you. Is that correct?

MR. BOWN: Either coming down from the premier's office or coming up, yes. But one way or another, I would see it.

MR. LEARMONTH: Yeah.

Well, if any one civil servant was to receive it, would you, in all probability, be that one civil servant?

MR. BOWN: Correct.

MR. LEARMONTH: Yes?

MR. BOWN: Yes, yeah.

MR. LEARMONTH: Yeah, okay.

Now Exhibit P-01677 page 12 – I'm gonna read this to you. "As indicated ... prior to financial

close, bids were received from contractors whom ultimately were hired which collectively, exceeded the DG3 budget by approximately \$600 million, a twenty five percent (25%) overage.” Now the “overage exceeded the DG3 tactical contingency amount (\$368 million)” – I’ll just pause there. That was included in the budget, the 368 million for tactical.

MR. BOWN: Yeah.

MR. LEARMONTH: – “by over \$230 million. Hence, prior to financial close, Nalcor should have been aware that the contingency amount included in DG3 budget was insufficient. Furthermore, Nalcor should have known that by April 2013 when the CH0007” – that’s Astaldi – “bids were received (four months after sanctioning) that the DG3 contingency amount was exhausted. Accordingly, Nalcor knew that the remaining budget of \$4.2 billion (\$5.8 billion which is base plus escalation, less \$1.6 billion subtotal of DG3 budget at April 2013) after the consideration of CH0007 did not have any contingency remaining.”

So this was in April 2013. When’s the first time you found out about this information?

MR. BOWN: When I read this report.

MR. LEARMONTH: Okay. Now you said you were shocked when the information I referred to you came to your attention in the – from the first Grant Thornton report.

What would be your comment on reading lines 1 to 10 on page 12 of Exhibit P-01677?

MR. BOWN: My response would be the same: I was shocked, stunned when I read it because this is critical information that we should have been made aware of at that time, and it was early, it was April 2013.

MR. LEARMONTH: Yeah. Well, this is before financial close.

MR. BOWN: Right.

MR. LEARMONTH: Yeah. So it’s the same word “shock”?

MR. BOWN: Yes.

MR. LEARMONTH: And now if we’ll turn – we can turn to the same exhibit, P-01677, page 19, and I’ll carry – and then I’ll carry on to page 20 and 21.

Now you can see on the bottom, under line 13, there’s a reference to a FFC, forecast final cost, dated July 2013. It says: PMT Comments – project management team – “*July 2013 Final forecast Cost deck presented by Project team to CEO of ~\$7.0B.*”

Communication to Executive: “Email from Paul Harrington to Gilbert Bennett July 22, 2013 states ‘*...here is the deck that has been produced for you and Ed.*”

Excerpt from Presentation: “*We are forecasting the FFC to be ~\$7.0B which is 12% beyond the DG3...*”

“*Exposure if mitigations are successful...FFC would be reduced to \$6.8 B.*”

When’s the first time you became aware of this project management team forecast final cost?

MR. BOWN: When I read the Grant Thornton report.

MR. LEARMONTH: I’ll ask you the same question: What was your reaction when you read this?

MR. BOWN: I was – I was shocked that we weren’t made aware of this. Again, it was early, it was July –

MR. LEARMONTH: Yeah.

MR. BOWN: – before financial close.

MR. LEARMONTH: Yeah, and that’s quite a big jump, like, \$6.202 or \$6.2 billion –

MR. BOWN: Yup.

MR. LEARMONTH: – government was believing that that was the figure. And then in July 2013, well before financial close, there’s an indication of \$7 billion, subject to a possible –

MR. BOWN: Yes.

MR. LEARMONTH: – mitigation.

And if we turn the page, we're on 20 – August '13, and there's a series, as you can see, August 2013, September 2013. And they're all – you know, there's some adjustment, but they're certainly significant amounts over DG3.

Did you ever see these?

MR. BOWN: No.

MR. LEARMONTH: All the ones on page 19, 20 and 21, you first found out about when you read this Grant Thornton report, right?

MR. BOWN: Sorry, it's going really fast there.

MR. LEARMONTH: Pardon?

MR. BOWN: Sorry, I said it was scrolling really fast –

MR. LEARMONTH: Okay, no.

MR. BOWN: – (inaudible).

MR. LEARMONTH: Well, just had a look at page 19 and then 20 and 21.

MR. BOWN: Yeah, I hadn't seen those.

MR. LEARMONTH: Would the word “shock” applies to these (inaudible) –?

MR. BOWN: Assuming, 'cause it was inconsistent with what we were seeing in terms of the AFE was.

MR. LEARMONTH: Yeah.

Now, you were updated, according to Mr. Martin, on a regular basis by him.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Is that right?

Can you give us some indication of the nature of the communications that Mr. Martin would be making, let's say, before financial close, on cost and estimates and so on? What would be the nature? Would they be specific figures? Would they be documents?

MR. BOWN: No. I think it was our understanding that – I believe there was one meeting that we were having in the premier's office where conversation was: Bids were coming in, some of them were a little higher than we expected, but we haven't finished negotiations with contractors yet. We believe that, yeah, we'd be able to negotiate with them and keep everything on budget.

Very much a positive approach that – there was nothing going wrong.

MR. LEARMONTH: Yeah. Everything is fine? Little pressures but will work it out?

MR. BOWN: Pressures, but we're going to work through it.

MR. LEARMONTH: Yeah. Okay.

And no discussion, typically, of actual figures?

MR. BOWN: I don't recall, no.

MR. LEARMONTH: Okay.

Okay. Now, I want to turn to some questions about financial close, and we've gone over these in your interview. And I'm not going to take you through all the emails on financial close, but I want to take you through some.

Before I do, I want to ask you this question, point-blank. The evidence is that at the time of financial close, and I'll use the date November 29 – or actually, the period November 29 to December 13. That's the day that the funds were received, and I believe the bonds were priced on December 10, 2013.

The evidence before us is that there was a figure of 6.531 that went into the financial close documents that the – that Nalcor signed, and that represented an increase from the 6.2 to the 6.531, and it was based on a revision to the cost estimate. It wasn't an abstract figure, it was a real figure that went into those documents.

At any time before December 13, were you aware that there had been an increase in the budget – or forecast cost to \$6.531 billion?

MR. BOWN: Based on my recollection and a thorough review of my records, I don't (inaudible), I have not found any evidence there where we were made aware – or at least I was made aware, I should say –

MR. LEARMONTH: Yeah.

MR. BOWN: – where I was made aware.

MR. LEARMONTH: Yeah. Because, and I'm not going to take you all, through all, but I'll take you through some.

MR. BOWN: I have no reason to say no, that I didn't, because I have no reason to say that. I just looked through the documents, through my own recollections, but I couldn't find anything, and I did a thorough review.

MR. LEARMONTH: Okay.

So your position is that, based on everything you review and relying on your memory, you did not know that the forecast final cost had been increased from 6.2 to 6.531 anytime before, up to and including December 13, 2013?

MR. BOWN: Not that I've been able to uncover, no.

MR. LEARMONTH: Okay. But using your memory, you don't remember –

MR. BOWN: No.

MR. LEARMONTH: – either?

MR. BOWN: No.

MR. LEARMONTH: Now, if you'd been told of that fact, based on your practices as a senior civil servant, if you had been informed of that fact before financial close, what, if anything, would you have done with that information?

MR. BOWN: That information would've been made known to the minister and to the premier.

MR. LEARMONTH: Yeah.

MR. BOWN: But if – I'd just like to pull in the context around that – if there was a change –

MR. LEARMONTH: Yeah.

MR. BOWN: – and as I was reviewing my materials both for Phase 1 and for here, for Phase 2 as well, there is a steady and regular pattern that whenever there is a change in the project of any magnitude, that there is a presentation deck that's prepared, that the premier is briefed, and that I've seen copies of those decks before they go to ensure that they're complete, or to either facilitate them getting to the premier's office. And that's what I was expecting, that's what I was looking for here.

There was no presentation deck that was prepared to brief the premier or the minister.

MR. LEARMONTH: Yeah.

So you searched through all the records, and in addition, I think you'll be able to confirm that the Commission authorized you, through –

MR. BOWN: Yeah.

MR. LEARMONTH: – counsel of the Government of Newfoundland and Labrador to give unfettered free access to all the databases –

MR. BOWN: Yes.

MR. LEARMONTH: – that you wanted to look at –

MR. BOWN: Yeah.

MR. LEARMONTH: – in case we miss something. Is that right?

MR. BOWN: Yeah.

MR. LEARMONTH: And you took advantage of that opportunity?

MR. BOWN: I looked through everything that I was – that was made available to me, yes.

MR. LEARMONTH: Okay.

Now, the financial close documents, you have a binder there, Mr. Bown, for that. It's financial close hearing binder 1 of 1, Phase 2. Do you have that?

MR. BOWN: Oh.

MR. LEARMONTH: Maybe it's over on the table there.

MR. BOWN: I have it.

MR. LEARMONTH: Okay. If you turn to page 9, and that's Exhibit P-03471.

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

Now, if you look at the bottom, this is an email dated October 18, 2013 – so we're more than a month away from financial close – from Paul Myrden. Do you know who Paul Myrden is?

MR. BOWN: Paul was the director of Debt Management at Department of Finance.

MR. LEARMONTH: Department of Finance. And at this time, is it correct that the minister of Finance was Thomas Marshall?

MR. BOWN: You're correct.

MR. LEARMONTH: And he occupied that position starting on October 13 following the resignation of Minister Kennedy?

MR. BOWN: Yes. And he had occupied it previous to Mr. Kennedy as well.

MR. LEARMONTH: Yes.

And at this time – and he was replaced in the Department of Natural Resources. That is, Mr. Marshall was replaced by Derrick Dalley. Is that right?

MR. BOWN: You're correct.

MR. LEARMONTH: So, at the time of financial close, Derrick Dalley was the minister to whom you reported as the –

MR. BOWN: Yes.

MR. LEARMONTH: – minister of Natural Resources, and Thomas Marshall was the minister of Finance, correct?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

So, just getting back to this email, October 18. This is from Paul Myrden sending to various individuals at – in the Finance department at Nalcor saying: "Hi guys; Minister Marshall has asked to be provided with the following information: ... A breakdown of budgeted costs by component showing total ... costs ..." – et cetera. I'm not going to read through the whole thing.

And then the reply from Mr. Auburn Warren is the next email up from this. It's dated November 1, 2013, to Paul Myrden.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: "As discussed please find attached summary for your review."

Then if we turn over to page 3, and we look at the fourth line down on the right column, what is the figure there?

MR. BOWN: Six point two-zero-two.

MR. LEARMONTH: And that's the same figure that was used at financial – at the –

MR. BOWN: DG3.

MR. LEARMONTH: – date of sanction? That's the DG3 number, right?

MR. BOWN: Yes.

MR. LEARMONTH: And then this information was sent to you, and you asked Sharon Griffiths to print five copies and put on your desk, correct?

MR. BOWN: So that I could share with the minister and other staff.

MR. LEARMONTH: Yes.

Next, tab 12, this is a document – Exhibit P-03474. This is a handwritten entry which was found in the records of the Department of Finance. It's been subsequently identified as being in the handwriting of Paul Myrden.

MR. BOWN: Okay.

MR. LEARMONTH: You can see just below the middle part of it, it says cost overruns – \$300 million.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Okay.

When's the first time you saw this document?

MR. BOWN: A couple days ago.

MR. LEARMONTH: A couple days ago.

And then if we look at tab 13, which is Exhibit P-03475.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: When is the first time you saw this handwritten note, which has been identified as being the handwriting of Paul Myrden?

MR. BOWN: A couple days ago.

MR. LEARMONTH: A couple days ago.

Next, tab 17, Exhibit P-03489. The bottom email is from Donna Brewer, who at the time was deputy minister of Finance. Is that correct?

MR. BOWN: Yes.

MR. LEARMONTH: To Todd Stanley, Paul Myrden, Yvonne Power, Paul Morris and copied to Peter Au, who I think was assistant deputy minister in the Department of Finance at the time. Is that correct?

MR. BOWN: That is correct.

MR. LEARMONTH: Yeah.

So Ms. Brewer writes this on November 7: "Who is looking at this from Nalcor and when do we expect a response.

"Sounds like the project cost, debt vs equity schedule they provided over the weekend to Minister may need to change – if they know there is a cost overrun projection at time of FC.

Guess we may find out what generally on budget means!

"Paul Morris – if the equity projection of 1.866 ... is increasing due to this requirement – EPC and Cabinet need to be informed." Then turning to page 2, "Can someone point out the clause in the FLG term sheet that requires this further 'cost overrun reserve'."

Now, I note that the assistant deputy minister in the Department of Finance – excuse me, in your department is on this email but you're not on it. Does that strike you as unusual? That Mr. Morris would be on this email but you wouldn't be.

MR. BOWN: No, it wouldn't strike me as unusual. Sometimes they would carry on conversations without including me.

MR. LEARMONTH: Yeah.

And I can advise you that Mr. Morris, you know, I expect is going to testify that at financial close, he knew that this 6.531 –

MR. BOWN: Yeah.

MR. LEARMONTH: – was a, you know, a hard number, a real number, not an abstract or hypothetical.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: And I believe his evidence will be that while he has no recollection of ever advising you of that, he expected that you would have known about it.

Do you ever remember being – receiving any such information from Mr. Morris? He has no recollection of it, but I –

MR. BOWN: And I don't recall.

MR. LEARMONTH: No, okay.

Next, tab 52, this is Exhibit P-02842. And this is an email from Todd Stanley – he's a lawyer – November 7 – in the Department of Justice, and you're on this.

Can you read this and tell me what your understanding of this is in terms of the \$6.5 billion or any increase in the final forecast cost at the time of financial close?

MR. BOWN: You want me to read Todd's email?

MR. LEARMONTH: No, I just want you to read –

MR. BOWN: Okay.

MR. LEARMONTH: You don't have to read it out; just read it to yourself and then carry on – it's on page 2, and then on page 3 there's a draft of a revision to term sheet – to section 4.10, which deals with cost overruns. I'd just like to take a look at that document and tell me whether you have any recollection of it and what you understood it to mean.

MR. BOWN: I don't have a full recollection of it. But what I understand it to mean is that, referring to section 4.10 in the term sheet, there was a requirement for COREA payments or cost overrun payments and that there was a request from – I guess a discussion between Nalcor and Canada, as I saw from other documentations that I've reviewed during the exhibits, of a need to be – to put this clause or these clauses inside of the Equity Support Agreement and equity support guarantee to ensure that if there was a cost overrun, that the principles of the COREA payments in the term sheet would be in the agreements so that the Equity Support Agreement, which requires Nalcor to make its equity payments, or the equity support guarantee, which would require the Government of Newfoundland and Labrador to make such payments, should Nalcor not make them.

MR. LEARMONTH: Right. So are you saying that this was an attempt to draft a clause that would deal with a cost overrun should a cost overrun occur?

MR. BOWN: Yes, you're bringing the language that's in the term sheet into the agreements.

MR. LEARMONTH: And that would be as opposed to the situation where there already had been a cost overrun identified and that it was –

the language was being brought in to accommodate that known increase.

MR. BOWN: If that were the case, it would have been identified here.

MR. LEARMONTH: Right. Okay.

Next, tab 18, Exhibit P-02525.

MR. BOWN: You say 18?

MR. LEARMONTH: Eighteen, yeah, we're on – yeah, Exhibit P-02525.

This is on – and on page 2 – oh, excuse me. This email – this is an email from Paul Morris. If you go to the bottom of page 1 –

MR. BOWN: Yeah.

MR. LEARMONTH: – you can see this is an email from Paul Morris and it's to a number of individuals at Nalcor, and you're copied on it also –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – as is Tracy English.

And he says: "Folks,

"AS you know, the ESA/ESG and IGA papers are going to EPC on Tuesday and Cabinet on Thursday.

"The issue on cost overruns which CBB raised on" – that's Cassels Brock & Blackwell, that's –

MR. BOWN: Yes.

MR. LEARMONTH: – the law firm handling the negotiations for the federal loan guarantee on behalf of Canada.

MR. BOWN: Correct.

MR. LEARMONTH: "The issue on cost overruns which CBB raised on Tuesday needs to be incorporated into the ESA/ESG docs and we need to advise Cabinet Secretariat accordingly.

"Can you advise:

“... When we can expect a response from Nalcor on the impact of this requirement?”

“... If the equity projection of \$1.886 B is going to increase – how much is it estimated to be?”

“... How will such increase change the information that was provided to the Minister of Financer last weekend?”

So that’s your assistant deputy minister writing this and my question is: If the drafting of the language to accommodate the cost overrun was just an abstract thing to deal with a cost overrun should it occur, why would there be a reference here to the – like, if the equity projection of – is going to increase, if it was just an abstract document, there would be no need for it to be an increase. Is that correct?

MR. BOWN: Sure, but there was no understanding that the costs were going to increase, either.

MR. LEARMONTH: Okay. So this wouldn’t have alerted you to the fact that something is going on here other than drafting language to accommodate a cost overrun should one occur?

MR. BOWN: Yes.

MR. LEARMONTH: There’s nothing in that that would alert you to that possibility.

MR. BOWN: Mmm.

MR. LEARMONTH: No?

MR. BOWN: No.

MR. LEARMONTH: No. Okay.

Tab 19, Exhibit P-03478, November 8 from – just a little bit above the middle of the page. Auburn Warren – and you’re on this email. No, I’m sorry. That’s the same email that I was talking about earlier. So I won’t get into that.

But do you remember that there was a request from Auburn Warren on November 8 to have a meeting to go over the information that was contained in the last email I referred you to, which is also included on page 2 of this, P-03478.

MR. BOWN: No, I don’t recall that.

MR. LEARMONTH: Was there a meeting?

MR. BOWN: I have no idea. I don’t remember.

MR. LEARMONTH: You have no record of that?

MR. BOWN: No.

MR. LEARMONTH: And no recollection of it?

MR. BOWN: No.

MR. LEARMONTH: Okay.

Tab 22 is Exhibit P-03479. This is an Economic Policy Committee agenda, meeting number 20, dated November 12, 2013, in the executive boardroom. This document is dated November 8, 2013.

Can you explain to us what this is about, what this speaks to?

MR. BOWN: This document is the agenda for the Cabinet committee on Economic Policy. They review Cabinet papers before they are approved to go to Cabinet.

MR. LEARMONTH: Yeah.

And what role do you have in making a presentation to the Economic Policy Committee?

MR. BOWN: I would be requested to give one.

MR. LEARMONTH: And what’s the purpose of this presentation?

MR. BOWN: It was to highlight what the elements were of the equity support agreements.

MR. LEARMONTH: Okay.

Next – and by the way, at that point – so if you never – if you didn’t know about the 6.531 at the time, December 13, obviously you didn’t know at this time, but if you had known it – about it, isn’t that something that would’ve been essential for you to report to this committee?

MR. BOWN: The ministers would've discussed it, yes.

MR. LEARMONTH: So you would've included that information in the report to this committee?

MR. BOWN: In all likelihood, yes. If I was aware of it, yes. But sometimes the discussions on cost overruns took place at Cabinet and not at EPC.

MR. LEARMONTH: Okay. So it is possible that –

MR. BOWN: (Inaudible.)

MR. LEARMONTH: – you wouldn't have mentioned it to this committee.

MR. BOWN: No.

MR. LEARMONTH: But is there any doubt in your mind that if you had known this information you would've reported it to your minister, Derrick Dalley.

MR. BOWN: Yes.

MR. LEARMONTH: There's no doubt in your mind?

MR. BOWN: No doubt in my mind.

MR. LEARMONTH: Okay.

Tab 32, Exhibit P-02217, this is an email from James Meaney to Meghan Felt, she was a lawyer at McInnes Cooper, November 19.

"Hi Meg

"Please post the attached files to the data room this evening. I am going to suggest the 'Material Contracts' folder in the 'Overview' subfolder.

"Access needs to be given to Canada, Cassels Brock, Blair Franklin" – that was the financial advisor for Canada, right?

MR. BOWN: Yeah.

MR. LEARMONTH: Blair Franklin. And MWH – that's the independent engineer. "Do

not provide access to NL, BLG and Faskens at this time."

And then if we go to page 2 of this document, 02217, we have a LCP DG3 estimate versus current final forecast cost recollection [sp. reconciliation]. This is dated November 19, 2013, and it shows a detailed calculation –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – showing the current FFC to be \$6,531,754,580.

When is the first time that you saw this reconciliation?

MR. BOWN: When I read through my documents –

MR. LEARMONTH: For this Commission of Inquiry?

MR. BOWN: – (inaudible) Commission.

MR. LEARMONTH: Never –

MR. BOWN: No, no, for this particular document, the email and the reconciliation.

MR. LEARMONTH: Yeah, but when did – did you see this on November 19? Did you see –?

MR. BOWN: Oh, no.

MR. LEARMONTH: No.

MR. BOWN: No.

MR. LEARMONTH: You're saying you saw it when you were – got the documents from this –

MR. BOWN: Yes.

MR. LEARMONTH: – Commission?

MR. BOWN: Yes.

MR. LEARMONTH: And not before then.

MR. BOWN: No.

MR. LEARMONTH: Okay.

Now, do you – can you provide us with any insight as to why government, the Province of Newfoundland, which was on the hook for the costs, would not be given access at the same time as these other entities were?

MR. BOWN: The email gave me a pause. I – I struggled to understand why it would be necessary or appropriate to give Canada access to vital information, but not give it to the Government of Newfoundland and Labrador, and I haven't been able to come to any conclusion of why.

MR. LEARMONTH: Okay.

Now, there is some evidence that we've received, and I'm sure Mr. – well, I'm not sure, but Mr. Simmons may question you about this, that there's some indication – I don't know how solid it is or not – but there is some evidence that would suggest that, notwithstanding the contents of this email, that the Government of Newfoundland and Labrador was, in fact, given access in the data room to this document on or about November 19.

Can you make any comment on that?

MR. BOWN: I received no message, indication of either: one, I had access; two, that such a document existed in the data room.

MR. LEARMONTH: Okay.

Now, when you – were you familiar with the way that the data room operated?

MR. BOWN: Not so much then. I am now.

MR. LEARMONTH: Yeah. But we had some indication – I think Mr. Meaney gave evidence on this that – I think he said at some point the system evolved into this, that if there was – something was put into the data room, let's say that they wanted Charles Bown to have access to it, then an email would go to Charles Bown –

MR. BOWN: Yeah.

MR. LEARMONTH: – indicating that it was in the data room. Now, have you – have you searched your records to find – to look for any indication that you received any such email

advising you that you had access to this in the data room, at any time before December 13, 2013?

MR. BOWN: I did and I did not see one. And I recognize them. In retrospect, looking back, because I receive them regularly now.

MR. LEARMONTH: Yeah.

MR. BOWN: So – and a data room, now, is part of the Oversight Committee. So, I do receive regular email notifying me when documents are posted. So, I know what the message would look like. I didn't see that message.

MR. LEARMONTH: But you didn't – you don't have any recollection of receiving it. Correct?

MR. BOWN: No.

MR. LEARMONTH: And you searched –

THE COMMISSIONER: Just a second, because I think you referred to September 2013. Were you talking about December '13?

MR. LEARMONTH: Yeah, December 2013.

MR. BOWN: No.

MR. LEARMONTH: Yeah. No, but I want to make sure I'm clear on this point and thank you for correcting me on that.

I want to know that there will be some evidence presented and you'll probably be questioned on it, to suggest that on or about November 19, 2013 that Charles Bown was given access to this document after it had been placed into the data room. Okay?

MR. BOWN: Mm-hmm.

MR. LEARMONTH: That's the point.

MR. BOWN: Yeah.

MR. LEARMONTH: That's a position I'm putting to you.

MR. BOWN: Yeah.

MR. LEARMONTH: What do you say about that position?

MR. BOWN: I don't recall receiving that and it didn't come up in my search of my records.

MR. LEARMONTH: So, you made a specific search in preparation for your testimony today –

MR. BOWN: Yes.

MR. LEARMONTH: – as to whether you received any such notification?

MR. BOWN: I searched all my email for the period of August to December.

MR. LEARMONTH: 2013?

MR. BOWN: Yeah.

MR. LEARMONTH: To the end of December?

MR. BOWN: Yes.

MR. LEARMONTH: And what did you find?

MR. BOWN: I didn't find anything relating to the data room.

MR. LEARMONTH: Okay.

Now, if we go to tab 33 which is Exhibit P-02535. This is an email – Derrick Sturge, CFO of Nalcor at the time and still the CFO, to Auburn Warren, Rob Hull, James Meaney. This is an internal email – November 20, 2013. It says – “Hi folks, the other thing we need to do based on direction from Ed and Charles from last week is to walk Donna Brewer and Paul Myrden through the LCP cost update data.”

Now, I don't know whether that's – whether that Charles is a reference to you or there was another gentleman Charles someone from –?

MR. BOWN: Newman.

MR. LEARMONTH: Newman with Franklin – with the financial advisors of Canada. So when you look at this, can you come up with any insight as to whether this is likely a reference to

you as opposed to the other Charles I just mentioned?

MR. BOWN: It is a reference to me and it refers to a notation – excuse me, a notation in Derrick Sturge's notebooks that when the – there was a conversation regarding the language around section 4.10 in the term sheet. And, as I had said in my testimony, that my comment to Derrick was: If there's going to be a cost update, if there's going to be a cost change, you have to get that information to Donna Brewer or get it to the Department of Finance.

MR. LEARMONTH: Do you recall having that discussion with –?

MR. BOWN: No.

MR. LEARMONTH: Well, why wouldn't you say you'd give it to me, also?

MR. BOWN: Again because the Department of Finance were working on the equity and the financing.

MR. LEARMONTH: Okay.

No, but that's fine, I'm sure that's the case, but wouldn't you want to have knowledge of it if there was an update also –

MR. BOWN: I don't know why I characterized it that way.

MR. LEARMONTH: Okay, okay.

You see my point?

MR. BOWN: I understand your point.

MR. LEARMONTH: Yup, okay.

Next I want to go – just jumping around here, tab 65. This is November 16, so we're going back a little bit. This is Exhibit P-03613, page 1. At the top there's an email from Derrick Sturge to a number of individuals from Nalcor and the government, including you.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: And it's an email from Xeno Martis who was a lawyer at, I believe, at

Fasken. He was a lawyer for Nalcor; is that right?

MR. BOWN: Yes.

MR. LEARMONTH: And what's being forwarded is an email, November 16, 2013 from Alison Manzer and she was of Cassels Brock & Blackwell, external counsel to the Government of Canada, correct?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

So, Ms. Manzer says: "I attach the wording required by Canada to be added to the credit agreement to reflect the requirements of section 4.10 of the Term Sheet." And then the proposed language is on page 3 –

MR. BOWN: Yeah.

MR. LEARMONTH: – and page 4 of that – and it deals with cost overruns. So this is what we were talking about earlier, the drafting of language to deal with cost overruns.

MR. BOWN: Yes.

MR. LEARMONTH: I just note at the bottom of page 3 – I don't know if this is coincident or what, but 2(b), it says: "on or prior to the date of the first advance pursuant to the Project Finance Agreements in each calendar year, an amount equal to the aggregate Cost Overruns, calculated of to the end of the prior year, divided by the number of calendar years remaining to the expected Commissioning Date (the 'Annual Cost Overrun Payment') shall have been funded."

And then Ms. Manzer says: "(Example: if aggregate Cost Overruns were \$300 million as at December 2014 the Annual Cost Overrun Payment calculated" and so on – but – I don't know if it's coincident or not – but the example that Ms. Manzer uses corresponds generally with this 6.531, you know, \$300 million –

MR. BOWN: Sure. Yeah. I also recall – excuse me, sorry – I also recall in an email that Paul Myrden wrote to Minister Marshall, copied to Donna, he did something similar, and the

example he used was \$500 million. So, it was just a number to fill out the example of how the COREA payment would work.

MR. LEARMONTH: Okay.

Now, if we go to tab 35, Exhibit P-03491 – I don't see any indication that you're on this email, but I do want you to refer to this email on page 3, Thursday, November 21 – you know we're getting very close to financial close. Paul Harrington to James Meaney, copied to Lance Clarke, Gilbert Bennett and Ed Bush. And as you can see in the item 2, towards the bottom –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – is we know we have a – "Cost - "We know we have approximately 2/3rds of the total Project estimate firmed up as completed contracts, delivered Po's or firm priced executed contracts or LNTP's. The net effect of this is a cost increase of around -5% which results in the \$6.531B - so there is \$2.2B left to firm up with the contracts ... the cost to complete as far as we know today is \$6.531B and we believe that the greatest budget hits are already behind us" and so on.

Now, this – I have no indication – I haven't found any indication that you received this, but you can see that it's pretty plain and obvious at this date that we're not talking about an abstract figure.

MR. BOWN: Correct.

MR. LEARMONTH: Yeah.

But, did you ever receive anything concrete like this – you know, indicating a concrete increase?

MR. BOWN: No, it's nothing in my records that would indicate – I was never provided with tables, deck, email, nothing with the 6.5 in it –

MR. LEARMONTH: Okay.

MR. BOWN: – that I recall in that, through my search.

MR. LEARMONTH: Yeah.

And then if we go to page 36 – excuse me, tab 36, Exhibit P-03492. And this is another email on page 3 from Paul Harrington to James Meaney, the same person: “For me the only risk to sharing this with Alison” – that’s presumably Alison Manzer – “is the potential slightly higher number than the \$6.531b number ... if we all feel comfortable with that as a potential outside number for MWH” – and that’s the independent engineer – “to deal with them we are okay.”

Then just turn to page 2 and this is a November 21 email from James Meaney. He says: “See note from Harrington at the bottom of the thread, in particular #2. If Canada agreeable to having FC as starting point for measuring cost overruns and they have ‘protection’ with their equity pre-funding mechanism (which we will agree to), it would seem to me this might be a reasonable approach to try and get MWH aligned on schedule and cost. By all means let me know if anyone thinks otherwise.”

And then if we go to page 1, this is an email from Derrick Sturge, the CFO, November 21, 10:26 p.m. to the same – well, James Meaney, Xeno Martis, Auburn Warren, Rob Hull: “Are we suggesting that we talk to Canada about a \$6.6 theoretical number? Certainly need to be sure that it is not taken out of context.”

Now, can you provide any clarification here? Like, you know, Mr. Harrington appears to be talking about a solid number and then there’s a reference here to a theoretical number. Can you make any sense of this for me?

MR. BOWN: No.

MR. LEARMONTH: Do you see the problem?

MR. BOWN: I see.

MR. LEARMONTH: Yeah.

MR. BOWN: Yeah.

MR. LEARMONTH: Okay, tab 38, which is Exhibit P-03496 [sp. 03494] – 03496, tab 38. The – so this starts off – this is an email from Xeno Martis to a number of people – not you. You’re not included in this.

And – but it says – at the bottom it’s from Martis to Auburn Warren. It says: “Further to my call with Alison, below is the revised text. The only difference from last night’s text is the fact that the funds and the Escrow Account are not taken into consideration with the purposes of the DER until the debt is exhausted.

“Please let me know if I can propose the revised text to Alison.”

Then you turn to page 2 and in number 1: “On the cost overruns issue, Nalcor would agree to have funded cost overruns based on the Project budget as at financial” close “(\$6.5B capital cost estimate and not the \$6.2B DG3 estimate)”

Now, you didn’t get this, but does this suggest to you that we’re talking about a firm number, this 6.5, as opposed to a theoretical number?

MR. BOWN: Yes.

MR. LEARMONTH: It does?

MR. BOWN: Yes.

MR. LEARMONTH: But you never saw this until you received the materials from the Commission. Is that right?

MR. BOWN: Right.

MR. LEARMONTH: Okay, well, this is pretty plain and obvious, isn’t it?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

Now, just as an aside, isn’t it correct that for the point of view of the province, the higher the number, especially if it’s a theoretical number, the better it is for the province?

MR. BOWN: Absolutely.

MR. LEARMONTH: Yeah, so –

MR. BOWN: We discussed this during my testimony that it was – it’s kind of a paradox that the higher the number at financial close, if Canada agrees that the cost overrun account would be based on it, means that the difference

or the amount that the government would have to pay in, or Nalcor would pay in, in the future would be smaller.

MR. LEARMONTH: Right.

MR. BOWN: Albeit, the number of the project has increased more.

MR. LEARMONTH: Yeah.

And does this – does that – does this example correspond with your understanding that let's say that the actual project budget at the time of financial close is \$6.2 billion, but in the financial close documents it's \$6.5 billion. Well then, there's a cushion of air, we'll call it –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – of \$300 million that can cover cost increases, should they occur, and the Government of Newfoundland doesn't have to fund it under the COREA provision?

MR. BOWN: In that context it's not a bad thing.

MR. LEARMONTH: Yeah. So, you know, if the number was \$7 billion that would be even better, wouldn't it, if the cost was 6.2 – if the actual cost or estimate was 6.2?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah, okay.

But, anyway, this email would've changed your understanding of what was going on. Is that something you can say with confidence?

MR. BOWN: Yes.

MR. LEARMONTH: Now, then we have tab 42, Exhibit P-03498. This is an email March 10, 2014, from Derrick Sturge to Donna Brewer. And he says – that's Mr. Sturge – “Not sure on timing of 6.5 release.”

Now, I'm just going to back up a little bit. Can you confirm that at the time of financial close – I'll say December 13 or at any time in between December – no, November 29 and we'll say, March 1, 2014, can you confirm that the

Province of Newfoundland and Labrador never advised the public of this cost increase from 6.2 to 6.5?

MR. BOWN: Correct.

MR. LEARMONTH: That's correct?

MR. BOWN: Yes.

MR. LEARMONTH: Do you know why?

MR. BOWN: I cannot give you a good answer why.

MR. LEARMONTH: Okay.

So Mr. Sturge says in this email, getting back to it, P-03498: “Not sure on timing of 6.5 release. If Minister wants data that can be made public, then the 6.2 billion chart that we provided you in November is the best we have. Should recognize” that although “the 6.2 billion chart from November will not tie into the 10 year forecast and ... equity request – all of which are based on updated capex, final financing costs, updated in-service dates and updated spend profile. Major changes since the 6.2 billion chart in November are as follows”

So were you aware of this communication? It seems on the top here that you got it, right?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. So this is in March 2014. Now it appears that the 6.5 – it's obvious the 6.5 is a real number.

MR. BOWN: Yes.

MR. LEARMONTH: Correct?

MR. BOWN: Correct.

MR. LEARMONTH: I mean on any reading of this at any level, it's pretty obvious.

MR. BOWN: Yeah.

MR. LEARMONTH: You're not talking about a hypothetical figure.

So you receive this information on March 10, 2014. Do you recall whether you had any reaction to learning this?

MR. BOWN: I don't recall.

MR. LEARMONTH: No recollection at all?

MR. BOWN: No recollection.

MR. LEARMONTH: But if you thought that the number – right up to that point, if you thought that the number of 6.5 – or 6.531, for greater precision – if up to that point you thought that that was just a, like a – it wasn't a real number, then when you find out that it is a real number, one would expect that you'd have a reaction like, what's going on here?

Do you remember having any such reaction like that?

MR. BOWN: No., I can't remember the exact moment that I became aware of the 6.5. That's been a challenge.

MR. LEARMONTH: Okay.

MR. BOWN: I can't confirm that this was the first time.

MR. LEARMONTH: All right.

Tab 47 is Exhibit P-03503. Now –

MR. BOWN: Sorry, again, Barry?

MR. LEARMONTH: That's tab 47 and it's Exhibit P-03503.

It's an email from K. O'Neill. I believe that Karen O'Neill is in the communications department of Nalcor.

MR. BOWN: Yes.

MR. LEARMONTH: It's to Jacquelyn Howard, Dawn Dalley. I guess this is all – Hello Jacquelyn, "I have confirmation from Charles Bown that the report is planned to be released tomorrow morning. I've been working with Tina Williams on some Q&As, and Jennifer Collingwood on some images.

"Can you please send along the communications materials, NR, KMs, etc so that we are prepared for the release.

"I haven't seen any of the communication materials on this yet and I assume we will get media questions on this tomorrow."

This is July 30, 2014. Can you zone in on this and tell us what's going on here, if you have any insight into it?

MR. BOWN: I would've been tasked by the chair of the Oversight Committee to inform Nalcor that we were going to be issuing our first report.

MR. LEARMONTH: Okay. Then, if we go to tab 48.

Now this is a series of communications; I don't think you're on these.

THE COMMISSIONER: Three five –

MR. LEARMONTH: Although Paul Morris is on – can you just confirm you're not in any of these emails?

MR. BOWN: I'm not on any of these emails.

MR. LEARMONTH: Okay, but anyway, then we see the starting point for this email chain is on page 2, from Tina Williams, Wednesday, July 30, to Paul Morris, Craig Martin – he was the executive director of the Oversight Committee, correct?

MR. BOWN: Yes.

MR. LEARMONTH: And at this time, you're a member of the Oversight Committee, correct?

MR. BOWN: Right.

MR. LEARMONTH: Okay, it says, point-blank: "When did the PG know about the \$6.5 million?" Which should be billion, obviously.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: And the PG is provincial government, right?

MR. BOWN: Yes.

MR. LEARMONTH: It says: The provincial government became aware of the 6.5 figure during finalization of the federal loan guarantee in December 13.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: And that says: “Why did the PG not publicly release this figure?” Okay, “We have indicated for several months now that there is a possibility of an increase in cost for the Muskrat Falls Project. The provincial government did not release the 6.5” – well, it should be billion – “figure during December 2013 as Nalcor was still in the process of negotiating and awarding a number of contracts. Releasing the figure may have negatively impacted their negotiating strength and wanted to ensure we secured the best value...”

Well, anyway, I won’t – we’ll leave that point alone. Next point, “Was the PG aware of this before Nalcor’s cost update announcement?”

“Yes, the provincial government became aware of the \$6.5” – well, it says million – billion, “figure during finalization of the Federal Loan Guarantee in December 2013.” Question: “If the PG knew about the \$6.5 million figure, was the PG aware of the most recent cost update prior to it being publicly released?” Then it goes on to say: “On June 26, 2014, Nalcor issued its news release which provided an updated capital cost forecast of \$6.99 billion....” And it says: “One day prior to Nalcor’s public announcement, Nalcor provided the Premier and Cabinet with the updated \$6.99 billion figure.”

So this document suggests that the provincial government knew – was aware, of the \$6.5 billion figure during the finalization of the federal loan guarantee in December – that would be ending December 13.

MR. BOWN: Mmm.

MR. LEARMONTH: Now here’s the problem that some people may have. Derrick Dalley, the minister of Natural Resources, said he never knew about it until, you know, well into 2014. Tom Marshall, minister of Finance, same thing, didn’t know about it. Julia Mullaley, the Clerk,

will testify, as I understand it, she knew nothing about it.

So how is it that if it was known to government – if it was known to government that all these individuals, including yourself, had no knowledge of it?

MR. BOWN: The only way I can describe the way these Qs and As have been crafted is it’s a retrospective; it’s seven months later, it’s a retrospective. People are looking back over history and pulling together a narrative because at the time the Oversight Committee was going to release a report that had the 6.5 in it.

It was – that was our mandate, we were going to do that. And there was no narrative to close the gap between the 6.2 and the 6.99 and the 6.5 in between and this looks like it was a retrospective look back at that time and creating a narrative to explain the 6.5.

MR. LEARMONTH: Yeah.

Well, if government didn’t know about it, right? And now government is pretending that it did know about it, that’s not a narrative, that’s baloney, I suggest to you.

MR. BOWN: Yeah.

MR. LEARMONTH: Do you agree?

MR. BOWN: I can’t say with accuracy whether that’s baloney or not, but yes.

MR. LEARMONTH: Well, if the government didn’t know about it and now – like at the time of financial close – and now they’re saying that they did know about it, if that’s not baloney, give me a better word for it. It’s a complete contradiction in position. Is it not?

MR. BOWN: Yes.

MR. LEARMONTH: It is. Okay, you agree with that.

And then if we can bring up Exhibit – it’s not in your book but it’s just a short reference – Exhibit P-02051, if you go to page 1 first.

MR. BOWN: It’s not in my book?

MR. LEARMONTH: No, but it will come up on the screen. Do you see it? That's the report you're referring to, the July 2014 Oversight Committee report.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Okay. If we go to page 13 of that report. Okay.

"Muskrat Falls Project Budget and Schedule.

"In December, 2012, at the time of Project sanction, the capital cost of –

THE COMMISSIONER: Excuse me just for a second. We don't have the right page.

MR. LEARMONTH: Page 13.

THE COMMISSIONER: Page 13

MR. LEARMONTH: I think I said 12 by mistake.

Is that page 13?

Page 13.

UNIDENTIFIED MALE SPEAKER: It's 12.

MR. BOWN: But 13 in the PDF.

MR. LEARMONTH: 13 in the top right corner, yeah. Yeah, that's it. Page 13, right at the top right-hand corner.

So, I'm just going to read out some of this: "In December, 2012, at the time of Project sanction, the capital cost of the Project was estimated to be \$6.202 billion (referred to as the Decision Gate 3, or DG3, capital budget). At that time, the engineering design was approximately 50 per cent complete. In December, 2013, upon completion of the Federal Loan Guarantee and financing, and in consultation with MWH, the DG3 capital cost estimate was revised to \$6.543"

Now, you're a member of the Oversight Committee, correct?

MR. BOWN: Mm-hmm.

MR. LEARMONTH: And the chair of the Oversight Committee is Julia Mullaley.

Now, if you didn't know about it in December 2013 and if Julia Mullaley didn't know about it in December '13, why is this included in the first report of the Oversight Committee?

MR. BOWN: But it doesn't – it – so just to read it in context, it says in December the capital cost estimate was revised. It was revised by Nalcor.

MR. LEARMONTH: Yeah.

MR. BOWN: That's accurate.

MR. LEARMONTH: Yeah.

But government has said in the earlier – and I'll show you another document, but in the other – that the government knew about it, didn't say Nalcor knew about it. It says the provincial government knew about it.

MR. BOWN: Yeah and when in December? Post-December 13, could have been later in December, could have been in January. I didn't find anything.

MR. LEARMONTH: Okay but why would you allow a report to go out, as a member of the Oversight Committee that, you know, didn't put it plainly? I mean you're a member of the Oversight Committee. I would suggest that a reasonable person in your position would say: Hold on now, I didn't know anything about this. I want to find out why this is in here before it goes out.

MR. BOWN: And there is a body of email leading up to the completion of this report where we're asking for specific information from Nalcor on how they arrived at 6.2 to 6.5 to 6.9.

MR. LEARMONTH: Yeah.

MR. BOWN: There is a body of evidence that shows that.

MR. LEARMONTH: Okay, but – okay, well, let's go to – so you don't think there's any – you don't have any problem with that, not at all.

MR. BOWN: No.

MR. LEARMONTH: Even though you didn't know about it in December 2013?

MR. BOWN: Because it's factual.

MR. LEARMONTH: It's factual in terms of that Nalcor knew about it but you're putting out a paper which some would say suggests that the government knew about it, too.

MR. BOWN: That doesn't say that.

MR. LEARMONTH: No, it doesn't say that, but reading it – don't you think that would be a reasonable interpretation? I mean, there's nothing saying Nalcor came up with this figure and it was reported to government in March.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: You see what I'm saying?

MR. BOWN: I understand what you're saying.

MR. LEARMONTH: But you don't think there's any problem anyway.

MR. BOWN: I didn't see a problem with it then or now.

MR. LEARMONTH: Okay.

Well, then let's turn to the next exhibit and that's at tab 49.

What this is, is an email from Milly Brown. It's Exhibit P-03505.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: And who's Milly Brown?

MR. BOWN: Milly is the director of communications in the premier's office.

MR. LEARMONTH: Okay.

And you're on this email, correct?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

Do you remember receiving it?

MR. BOWN: No.

MR. LEARMONTH: Okay.

And Julia Mullaley is on it, too, and Donna Brewer is on it.

MR. BOWN: Right.

MR. LEARMONTH: And it's dated July 30, 2014.

MR. BOWN: Yeah.

MR. LEARMONTH: Okay. Page 2 – and this is the Oversight Committee Report, July 3, 2014. I'm just going through this.

Second paragraph: "Both government and Nalcor have already undertaken extensive oversight on the Muskrat Falls Project. Many senior officials throughout government have been involved in oversight from initial planning to early engineering to financing and sanction."

Now, are you comfortable right now with all you know saying that government has already undertaken extensive oversight on the Muskrat Falls Project?

MR. BOWN: That was the view at the time, yes.

MR. LEARMONTH: Yeah.

But you had – at this point the – we know from the evidence presented here that – well, up until this date, July 30, 2014, there had never been a complete review of the DG3 numbers, because when government sent it to MHI they took out the strategic risk, right?

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Up until this point, even though government is spending – you know, committing to spend, well, originally \$6.2 billion, government never saw fit to get a proper review of the cost estimate and schedule. Do you agree with that?

MR. BOWN: I would agree that it wasn't done. I won't – I would also say that it was requested and I'll refer back to the briefing note that myself and Terry Paddon, who was the deputy minister of Finance at the time, requested it.

MR. LEARMONTH: Yeah but – okay, I understand that you made that briefing note and you requested that it be done.

MR. BOWN: Okay.

MR. LEARMONTH: I'm not talking about that. I'm talking about the reality, the facts – the hard fact that such a review was never conducted. Is that true?

MR. BOWN: You're correct.

MR. LEARMONTH: Okay.

So, that being the case, how could you be comfortable in saying both government and Nalcor – forget about Nalcor – both government has undertaken extensive oversight of the Muskrat Falls Project? How could you have any level of comfort in saying that?

MR. BOWN: It's difficult looking back at this now five years later.

MR. LEARMONTH: I'm sorry, I ...?

MR. BOWN: I said it's difficult looking back at a statement like that now five years later.

MR. LEARMONTH: Well, what's difficult?

MR. BOWN: What was –

MR. LEARMONTH: Pardon?

MR. BOWN: What was the context at the time, I guess.

MR. LEARMONTH: Okay, that's your answer?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

And then we'll skip the next paragraph. The next – the following paragraph says: "Government

struck a committee of our most senior public service employees to monitor the project, both through the information being generated by existing oversight activities and by leveraging work being done currently to trigger extra measures for information and analysis."

Now, the first point: What special skills did the senior public service employees, who are appointed to the Oversight Committee, have? What capacity or backgrounds did they have to engage in any level of oversight?

MR. BOWN: The decision to structure the committee this way was made by the Cabinet.

MR. LEARMONTH: Yeah, I know.

MR. BOWN: Right? So I just wanted to make that clear. It wasn't the public servants themselves, it –

MR. LEARMONTH: No, I understand. I'm not suggesting –

MR. BOWN: – (inaudible) appointed themselves.

MR. LEARMONTH: – I'm just asking the question.

MR. BOWN: Okay, so accountants, engineers, business.

MR. LEARMONTH: Not at this time. They're all senior public servants.

MR. BOWN: You asked about their experience.

MR. LEARMONTH: Yeah.

MR. BOWN: There were accountants there.

MR. LEARMONTH: Okay.

So did you feel that the – putting aside the expertise provided by EY, that the senior public servants on the Oversight Committee were equipped to do a meaningful analysis of the project cost and schedule?

MR. BOWN: This was a task that we were charged to carry out. Yes.

MR. LEARMONTH: But, I – that’s what you’re saying here, but do you believe that without the assistance of EY, that the senior public servants on the committee at this time were capable of doing a proper review of the costs and schedule of the Muskrat Falls Project?

MR. BOWN: No and that’s why we engaged EY on four occasions.

MR. LEARMONTH: Yeah but EY didn’t really do that review until they were given a contract in July 2016. Correct?

MR. BOWN: Yes.

MR. LEARMONTH: Why the delay?

MR. BOWN: You know –

MR. LEARMONTH: His committee was struck, the announcement for the Oversight Committee was February 27, I believe, 2014. So, by the time – I know EY did, you know, some little assignments on – like, one on developing a framework, another one processes and some of that, but the actual intensive investigation didn’t begin until January 2016. Correct?

MR. BOWN: Correct.

MR. LEARMONTH: Now, the question I have is: If the government was serious about actually giving the Oversight Committee any teeth, why would it wait almost two years to do this deep dive of the cost and schedule of the Muskrat Falls Project? Can you give me an explanation for that?

MR. BOWN: Why would the government wait or why would the committee wait?

MR. LEARMONTH: Well, why would the committee wait?

MR. BOWN: That question is best probably dealt with by the chair of the committee.

MR. LEARMONTH: Well, I’m asking you though. You’re here today.

MR. BOWN: But –

MR. LEARMONTH: You’re a member of the committee

MR. BOWN: And I don’t have an answer for that.

MR. LEARMONTH: You don’t have any answer.

MR. BOWN: No.

MR. LEARMONTH: Okay. Primary Messages. “We have” – and this is page 2, Exhibit P-03505: “We have confidence in the management of the project, and we want the people of the province to have that same confidence.” So is that something you would subscribe to? That you had confidence in the management of the project at the time.

MR. BOWN: Mr. Learmonth, this is a communications document being written by communications people who are putting out government’s messages.

MR. LEARMONTH: Yup.

MR. BOWN: They’re written to the positive and meant to show support for the project.

MR. LEARMONTH: Yeah. But surely this – all the – whatever communication or primary messages go out has to be – meet with the approval of the Oversight Committee. Is that correct?

MR. BOWN: Yes.

MR. LEARMONTH: So, by implication, you would have approved all these statements?

MR. BOWN: I guess at the time, yeah.

MR. LEARMONTH: Yeah. And on page 3 of this document, the third paragraph: “The committee, in its efforts to be thorough and diligent in its work, contracted Ernst and Young ... an independent consultant, to determine international best practices for providing oversight to such a” – report [sp. project] – “including information requirements and the appropriate governance structure for the committee.” Okay.

Now, why didn't the Oversight Committee, at this point, ask EY to do the cost estimate and review of schedule that it ultimately began to work on under a contract given in January 2016? Why the big gap?

MR. BOWN: Because the next piece of work that was done was to, if I recall – after this piece of work was finished –

MR. LEARMONTH: Was to what?

MR. BOWN: After this piece of work was finished, as I recall, the next piece of work was to determine whether Nalcor had the appropriate processes and controls in place – management process and controls in place so that the committee could determine whether it could rely on the information it was receiving from Nalcor.

MR. LEARMONTH: Yeah. But why didn't the committee simply eliminate that step and go right to the core of the matter?

MR. BOWN: I don't recall the discussion that we had at the time, but the – clearly it was – our first step was we needed to understand whether we have management processes and controls –

MR. LEARMONTH: Yeah.

MR. BOWN: – in place. It was after that (inaudible) –

MR. LEARMONTH: Well, you had to have time, but I mean –

MR. BOWN: (Inaudible.)

MR. LEARMONTH: – almost two years is a long time, isn't it? With very little to show for it for the Oversight Committee up to January 2016, I would suggest. Do you agree?

MR. BOWN: The committee was busy and dealing with EY and understanding the project better.

MR. LEARMONTH: Yeah.

So you think all that time that week was justified?

MR. BOWN: Justified in what context? It was –

MR. LEARMONTH: Well, in other words, why didn't we just get on with it? Rather than this little tipsy toeing, which I'll call it, or, you know, having one little contract to talk about, you know, mandate and what you should be looking for, then giving the contract to review processes – not the hard numbers, the processes – which ultimately took, I'll say, forever. The report wasn't filed until October 31, 2015. Why wouldn't you just skip those steps and just get a review done? Like, why wasn't the review that was ultimately done in July – in January 2016 – why wasn't that done in – starting in April 2014?

MR. BOWN: I can't answer why one was done over the other.

MR. LEARMONTH: You can't. And you don't think it's a long time? You don't think it's a long time?

MR. BOWN: I didn't – at the time, it didn't feel like it was a long time.

MR. LEARMONTH: Yeah. And you knew – if you saw the evidence of EY, you know, say, in November 2014, I think it would be very fair to say that the view of EY was that the committee, in simply relying on Nalcor's report, was just wasting money. And I want to refer to a few exhibits. I'm not going to examine you in detail on this, but if you look at – we bring up – and they're not long exhibits – Exhibit P-03297.

THE COMMISSIONER: So is that – which book is that in? Or is it in any of the books?

MR. LEARMONTH: No, it's not in the book.

THE COMMISSIONER: No?

MR. LEARMONTH: This is just the evidence – and I'm not going to spend a lot of time on these emails but just to – as you can see this is November 25, 2014, email from Richard Noble to David Steele, they're both with EY. "I have performed an initial review of Craig's draft report." Presumably this is the December 2014 report.

MR. BOWN: (Inaudible.)

MR. LEARMONTH: “I have 15+ notes... most significantly: There is insufficient data to be able to perform any useful analysis on Management’s Forecast to Complete.” Then we jump down to the next – “The number craig uses for cost overruns (using a fraction of overall budget instead of fraction of expenditure to date) understate.” And then there is commentary: “Overall it is not possible to give a clear picture... but there are some concerning trends.

“Furthermore the format and style of the report does not give a strong direct impression... this is because he is having to use indirect material from Nalcor’s own reports.

“The lack of provision of data must be solved or the OC will not meet their mandate.

“Furthermore... they have to review Project Controls at earliest opportunity to even judge the ability to use the data as provided.”

Then if we go to – well, there’s a number of exhibits; I’m not going to take you through all of them. The next one though is – if we can bring up Exhibit P-03300. And this is November 27, also, from David Steele to Richard Noble, and then it refers to an earlier – Richard Noble to Emiliano Mancini: “They are still struggling with this report.

“The data clearly is shaky. The process and controls have not been vetted... and the baseline appears not fully stable. Basically... their report is being built on untested sand... and all it is doing is restating management’s assertion that ‘the project is going fine’.”

And then at the bottom of this exhibit, Mr. Noble says: “We will need to put this in writing... EY would not want to be associated (albeit loosely) with a public report that is clearly missing the mark... we will need to have our position clear and that position documented prior to the reports release.”

Now, that’s fairly strong criticism of the work of the Oversight Committee. Do you agree?

MR. BOWN: I don’t – is it a criticism of the Oversight Committee or of the materials that it’s receiving –

MR. LEARMONTH: Well, the work of the –

MR. BOWN: – and EY’s ability to complete the work that we’ve asked them to do on process and controls, as – which they identify as an important first step?

MR. LEARMONTH: Well, okay. That’s what you’re saying.

Let’s go to Exhibit P-03303. This is Mr. Richard Noble to David Steele: “Yep... the report” – and I suggest that’s the Oversight Committee’s report – “is basically a shoddy lash-up restating Management’s half baked and possibly dubious data” – and – “we really should avoid our name on it.

“OC has” – this may be a typographical error – “‘spit the bed’ on this one... would honestly be better to say ‘we’re getting back to you in the new year’... cos as it stands, they’re saying nothing and spending the electorates money to do so.

“I ... think Nalcor will kick like a mule... there’s a while till we’re on-site yet”

So that’s a pretty plain statement that, you know, according to – the opinion of Mr. Noble is that you’re spending the electorate’s money and there’s no benefit to it. Do you agree that that’s an appropriate contact for Mr. Noble to have made at the time?

MR. BOWN: No, I can’t agree or disagree with Mr. Noble. That’s his position.

MR. LEARMONTH: Yeah, but if you’re just restating, manage what Nalcor is telling you, what’s the utility of it? I mean, Mr. Kennedy, when he testified, I think very generously said that there’s limited value in that and I suggest to you that it’s completely useless information.

If all the Oversight Committee is doing at this time is restating what Nalcor is telling you, what’s the utility of that at all? Can you answer that?

MR. BOWN: Oh, sorry, I thought it was a statement.

MR. LEARMONTH: No, I'm not making a – I'm asking you a question: What's the utility – what's the benefit to the taxpayers who are funding the Oversight Committee and your Oversight Committee simply, according to what Mr. Noble is saying, you know, restating what Nalcor is telling you?

MR. BOWN: I recognize that at the outset it was difficult. Again, the concept of an Oversight Committee was new and we needed EY's help to get started.

At the outset, it was difficult getting the information – as I've shared with you in testimony and I've shared with Grant Thornton in my testimony with them as well – but over time things have improved dramatically. The amount of information and useful information we have been receiving and reporting on is much better and it just took a little while to get moving.

MR. LEARMONTH: Well, a little while. I mean, we had evidence, for example, that in January 6, 2016, there were extreme difficulties experienced by EY in getting information. To the extent that in one record we have, Paul Harrington, in a meeting with Mr. Mancini and Craig Martin, when he was asked one question he said: I'm not answering questions and left the meeting.

So when you're saying that over time things improved, I expect you're talking about after EY completed their report under their January 2016 contract. Am I correct in that?

MR. BOWN: In the last report that they prepared for us, the response back was that the relationship between themselves and Nalcor had improved dramatically.

MR. LEARMONTH: Yeah, and that's after Mr. Marshall stepped in. Correct?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. Correct?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

But that's a long time. This committee was struck in March 2014 and we're talking about, like, a two-year period almost. That's a long time to tolerate – for government to tolerate Nalcor's resistance to produce documents, isn't it? Do you agree?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

Now in this exhibit, P-03505 that I referred to – and, once again, since we've left it for a while, this is an email that you received. Correct?

MR. BOWN: Yes.

MR. LEARMONTH: We go to page 7, Questions and Answers. This is page 7 in the third paragraph under Questions and Answers: "The independent engineer is providing due diligence on behalf of the Federal Government as the guarantor of the financing."

Well, you know, we hear from – we heard from Nik Argirov, who said that their review of cost and schedule was just a high level. It wasn't a deep dive, it was high level. Was that your understanding? Did you know that before financial close?

MR. BOWN: No.

MR. LEARMONTH: No. Well, why didn't you know it?

MR. BOWN: Our assumption was that the independent engineer was doing a deep dive, along with Canada's other advisors, Blair Franklin and Cassels Brock.

MR. LEARMONTH: Yeah, but they weren't. So why would you simply assume that, without making inquiries to determine the nature of the work that the independent engineer was carrying out?

MR. BOWN: But that's not an assumption. That was our understanding, based on our conversations with Canada.

MR. LEARMONTH: But that was a false assumption, wasn't it? I mean, if you thought that they were doing a deep dive –

MR. BOWN: Yeah.

MR. LEARMONTH: – and Mr. Argirov sat in that same chair you're sitting in and said we weren't, and that we'd had no communication from the Government of Newfoundland and Labrador until well after financial close.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Do you dispute Mr. Argirov's point that he never had any communication with the Government of Newfoundland –

MR. BOWN: Right.

MR. LEARMONTH: – and Labrador? You dispute that?

MR. BOWN: No.

MR. LEARMONTH: No. Okay.

So then, the Government of Newfoundland and Labrador just simply assumed that the independent engineer would do due diligence and that rather than get the reports, that you just – you just drew an inference that, well, if the federal financing guarantee goes through, then that means that there's proper due diligence and everything is okay.

MR. BOWN: But we had an understanding of – we had seen the contract for MWH. We knew what they were going to be doing.

MR. LEARMONTH: Okay, but why didn't you ask for their reports of the independent engineer before financial close?

MR. BOWN: We did.

MR. LEARMONTH: Well, you got one report.

MR. BOWN: Yeah –

MR. LEARMONTH: According to the evidence we have –

MR. BOWN: Absolutely.

MR. LEARMONTH: Excuse me?

MR. BOWN: Absolutely, I agree with you.

MR. LEARMONTH: Okay.

According to the evidence we have from Mr. Meaney, you, Charles Bown asked to see a July 2013 report.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Correct?

MR. BOWN: Correct.

MR. LEARMONTH: And you got it and it was a draft report, obviously. And on page 178 of that report there are some, I'd say, serious observations made about the lack of contingency. Now, if you're saying you acknowledge that you got that report, did you?

MR. BOWN: Yes.

MR. LEARMONTH: Did you study it?

MR. BOWN: I read it; I don't think I understood all of it.

MR. LEARMONTH: You didn't understand it?

MR. BOWN: I don't think I understood all of it.

MR. LEARMONTH: Yeah, but do you remember the reference –

MR. BOWN: Yes.

MR. LEARMONTH: – that the contingency was low?

MR. BOWN: Yeah.

MR. LEARMONTH: Okay.

If you understand that issue that the independent engineer had with the level of contingencies, I suggest that it would've been reasonable for you to say there's possibly a problem here, we're going to have to run this down. And then get in touch with either Nalcor or the independent engineer and say: Look, we want to make sure we get all of your report – your draft reports, can

we make those arrangements, so that you could follow the issue. Why didn't you do that –

MR. BOWN: We had –

MR. LEARMONTH: – when you knew that there was an issue with contingencies?

MR. BOWN: We had an understanding with Nalcor for them to provide us with copies of the reports.

MR. LEARMONTH: But they didn't.

MR. BOWN: They didn't.

MR. LEARMONTH: Well, why didn't – wasn't this monitored?

MR. BOWN: As I look back through Mr. Sturge's notes and other email as well, that whenever we went through the list of conditions precedent, the IE report was always there and always discussed at every meeting, whether I was there or not. What is the status, we haven't received a draft yet, we're still waiting to receive the draft working with the IE.

So I read down through Mr. Sturge's notes and did see that. So we did follow up as we were going through the whole process in October, November.

MR. LEARMONTH: But you didn't get the reports.

MR. BOWN: They didn't provide it to us.

MR. LEARMONTH: But why didn't you follow up with Nalcor and say, look, we want the reports?

MR. BOWN: (Inaudible.)

MR. LEARMONTH: Because if you had read – sorry to interrupt you, but – and I'm not going to go into the reports in detail, they're in the record; everyone knows what they say – there was a report done in October, around October 15, 2013, there was a report done November 15 and there was a report done on November 27: all of which were received by Nalcor.

And if you had read, if you had received the report, I think it's November 15 or the 27 or both – I think it's probably both but I'll stand to be corrected – there's a statement which says that in a project like this we would normally see – I'm paraphrasing – contingency allowances of two to four times the amount, okay? The amount of the contingency, the tactical, was 368.

So if you take the four that would've been over a billion dollars. And I suggest that if the government had seen that – and it should've seen that – that that would've – alarm bells would've sounded. Do you agree?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. So I guess your answer is that

MR. LEARMONTH: Yeah. So I guess your answer is that you asked Nalcor to provide these and they didn't, and you didn't follow up on it.

MR. BOWN: We continued to follow up with stuff.

MR. LEARMONTH: But you never got the reports.

MR. BOWN: They didn't provide us with the reports.

MR. LEARMONTH: Well, why didn't you order them to provide you?

MR. BOWN: Well, that's the same as us saying: Do you have a report? No, we don't have it.

MR. LEARMONTH: But you knew there were drafts. Like –

MR. BOWN: No, we didn't know there were drafts. We knew – one draft is what we were aware of.

MR. LEARMONTH: But why didn't you contact the independent engineer?

MR. BOWN: We weren't engaged with the independent engineer.

MR. LEARMONTH: But you could've been. You got a reliance agreement on them in July 2014 under which you got full access to their reports. You could've got that earlier.

MR. BOWN: The – that was after the fact. And after some long discussion with Canada, or prior to that, they didn't want us anywhere near the independent engineer. That's the Government of Canada.

MR. LEARMONTH: Who told you that?

MR. BOWN: The Government of Canada.

MR. LEARMONTH: When?

MR. BOWN: That was during our discussions on the federal loan guarantee.

MR. LEARMONTH: Yeah.

MR. BOWN: We asked repeatedly. We did want to get access to the independent engineer.

MR. LEARMONTH: So what evidence can you produce to show that either you or anyone else with the Government of Newfoundland followed up with Nalcor in your request to be provided with copies of the draft reports of the independent engineer?

MR. BOWN: All I can give is my testimony that whenever there were meetings where we went through the conditions precedent, that that topic was raised. We asked: Was there a new report? The response back was: No, we don't have a report yet. We are working with the IE and we'll get it to you when it's done.

MR. LEARMONTH: Okay, well, when was this? Do you remember that discussion?

MR. BOWN: That was at all the meetings that we had. And if you follow –

MR. LEARMONTH: With who?

MR. BOWN: Well, that would've been with Derrick Sturge, Jim Meaney, Auburn. And if you go through Derrick Sturge's notes, you can see it there that IE was raised.

MR. LEARMONTH: Yeah.

But, you know, you may suggest that that's enough that we asked them and they didn't provide it, but I'm going to suggest to you that it wasn't enough. That you're the government, you're protecting the taxpayer's money, you knew that there were going to be subsequent reports. You should've documented your requests and you should've pressed them, demanded that they provide you with all the reports. And you didn't do that and I wonder why.

MR. BOWN: That wasn't our way that we did business with them.

MR. LEARMONTH: What do you mean by that?

MR. BOWN: Well, we would ask for things, not write memos and demand. That's what I'm differentiating.

MR. LEARMONTH: But, in this case, I suggest to you that you should've demanded. You should've put your foot down very firmly. Do you agree in retrospect that that would've been appropriate?

MR. BOWN: I believe, as I shared in my testimony, in retrospect we would've been more vigilant.

MR. LEARMONTH: Okay, now, let's return to page 7. That's Exhibit P-03505.

Page 8: **“We are seeing that when the financing was put in place, the government knew the cost of the Project had already gone up. Why did you go ahead with the project?”**

“We went ahead because it” was “the best option for us to provide reliable power to the people of the province at stable rates.

“Why didn't you reveal ... the number was \$6.5 billion?”

“Since major contract packages were being finalized, releasing costs ... could have been harmful to Nalcor's negotiating position, and by extension, could have been harmful to the interests of the people of the province. Protecting the commercial information at our corporation protects the interests of

Newfoundlanders and Labradorians. Nalcor had” – also – “indicated that it would update the capital cost estimates once the major contracts had been let.”

Well, to start off with, this point about, you know, hurting the negotiating position of Nalcor should there be public knowledge of a \$300-million increase, we’ve heard this time and time again. I just would like to give your – you to state your understanding of the basis for this. I know Nalcor would continue to say that, but why did you buy this argument?

MR. BOWN: Well, that was – well, why did we buy it? Because they were advising us and we were assuming them to be the experts, that if there was going to be an indication that there was growth in the project, that people who they were negotiating with now or receiving bids now would take that opportunity to pad their bids because they knew that there was going to be room for growth.

MR. LEARMONTH: Yeah and you believed that, did you?

MR. BOWN: We believed it from Nalcor, yes.

MR. LEARMONTH: Yeah.

And can you explain to me – this is not complex. Can you explain to me how, when you’ve got a number of contracts, a number of companies bidding on a number of contracts, how a contractor would know that there’s been an increase in the estimate internally at Nalcor for the contract that they’re working on? How would they know that?

MR. BOWN: I can’t answer that. I don’t know.

MR. LEARMONTH: Do you see the point?

MR. BOWN: I understand your point.

MR. LEARMONTH: And I’m suggesting to you that this reasoning, in terms of 6.5, is bogus. Do you agree?

MR. BOWN: I can’t answer whether it is or isn’t.

MR. LEARMONTH: Okay.

Anyway, the next question: “**When did government know about the \$6.5 ...**” – well, I keep on saying million. We all wish it were a million, but anyway.

We believe, no – “We became aware of the \$6.5 million figure during the finalization of the federal loan guarantee.” Now, this gets back to the same point –

MR. BOWN: Yes.

MR. LEARMONTH: This is going to be a release. You’re releasing this to the public and your information – that information you’ve given us here was that you didn’t know about it at the time of the federal – during the finalization of the federal loan guarantee, correct?

MR. BOWN: I’m saying that I didn’t know.

MR. LEARMONTH: Yeah.

And Julia Mullaley is saying that she didn’t know about it, correct?

MR. BOWN: Correct.

MR. LEARMONTH: And you’re a member of the Oversight Committee, correct, at this time? And Julia Mullaley is the chair of the Oversight Committee. So, based on that, why would you allow this type of discussion to continue as opposed to saying: wait a minute, where does this come from? We didn’t know anything about it. The ministers didn’t know anything about it. Why are you allowing this type of information to be contained in this document at this time when you know that it doesn’t align with your understanding?

MR. BOWN: And I don’t recall the context for why that was there (inaudible) –

MR. LEARMONTH: You understanding what I’m saying?

MR. BOWN: I understand exactly what you’re saying. I just don’t have an answer for you for that.

MR. LEARMONTH: You don’t have an answer for it. Okay.

Page 10 of P-03505, the last emboldened question: “**There have been calls for true independent oversight of the Muskrat Falls Project. Provincial Government and Nalcor oversight is not true independent oversight. We need oversight, so what is government going to do about it?**”

“There is independent oversight of the Muskrat Falls Project. Independent experts have reviewed the project including Manitoba Hydro International, Navigant Consulting, the Board of Commissioners of Public Utilities, Dr. Wade Locke and Ziff Energy Group of Calgary.

“Due diligence undertaken by the Government of Canada prior to issuing the federal loan guarantee was supported by experienced external legal advisors, independent financial advisors, an independent engineer and an independent insurance consultant, all engaged directly by the Government of Canada.”

So you were relying on this information to come to the conclusion that – you know, to make the statement that they’re already had been, we’ll say, proper oversight.

MR. BOWN: Up to this point before the Oversight Committee was put in place, yes.

MR. LEARMONTH: You believed that did you?

MR. BOWN: We did at the time, yes.

MR. LEARMONTH: Do you believe it now?

MR. BOWN: In the passage of time and the documentation that we both read and heard, I would – I would say less so.

MR. LEARMONTH: Yeah.

Okay.

THE COMMISSIONER: I think what we’ll do, Mr. Learmonth, before we move on, I promised counsel yesterday that we’d take two breaks this morning because we’re starting at 8:30.

So I think we’ll take a break now for 10 minutes and come back.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Okay, Mr. Learmonth.

MR. LEARMONTH: Thank you.

Before I continue, there was an exhibit that Harold Smith – counsel for Edmund Martin – referred to that he wanted to go into evidence and it’s the document entitled – Full Scale of Olympic Financial Disasters Revealed – and I’d like to have that entered as Exhibit P-03604.

THE COMMISSIONER: All right. That’ll be entered as marked.

MR. LEARMONTH: Thank you.

Now, Mr. Bown, I’m going to ask you some questions starting with binder 1 of 2 if you could bring that for you – and turn to tab 2, please?

This is an October 26, 2012 Minute of Council and –

THE COMMISSIONER: 03438?

MR. LEARMONTH: No, 03439 – sorry.

THE COMMISSIONER: 03439?

MR. LEARMONTH: 03439. So, it’s October 26, 2012. It’s entitled: The Submission of the Minister of Natural Resources respecting Legislative Amendments Required to Advance the Implementation of the Muskrat Falls Project was considered.

Now, consideration 4 was – “The Department of Natural Resources, the Department of Finance and the Department of Justice, in consultation with Nalcor, are directed to develop options for a Muskrat Falls Project cost accountability protocol that builds upon existing accountability mechanisms (including public reporting), which would include an independent process to review

costs associated with the Muskrat Falls Project to determine the reasonability of costs incurred, with such protocol to be included in the final communications plan, to be approved by the Cabinet Secretariat and the Communications Branch.”

Now, I’ve referred to, earlier, the fact that the Oversight Committee that you served on was announced to the public February 27, 2014.

MR. BOWN: Yes.

MR. LEARMONTH: And the work got under way in March 2014?

MR. BOWN: Yes.

MR. LEARMONTH: So, we’re back roughly two years before that, and Cabinet has given approval to this initiative.

Do you – and I presume that because this direction was given based on a submission of the Minister of Natural Resources that you would’ve been involved in this; is that correct?

MR. BOWN: A team was put in place of officials from the three departments.

MR. LEARMONTH: That’s Justice, Finance –

MR. BOWN: Finance and –

MR. LEARMONTH: – and Natural Resources.

MR. BOWN: – Natural Resources.

MR. LEARMONTH: Who was on the committee?

MR. BOWN: I know that my associate headed it up for me, Tracy English, and I don’t recall – Todd Stanley and Randy Pelletier for Justice. And I don’t recall the Finance representative.

MR. LEARMONTH: Okay.

MR. BOWN: It was Paul Myrden. I know it was one, but I know that there was another as well.

MR. LEARMONTH: Okay, well what work was undertaken?

MR. BOWN: They developed options for what oversight would look like, and actually they engaged two consultants to help them do that work.

MR. LEARMONTH: Okay, if we turn to tab 3, Exhibit P-03440 –

MR. BOWN: Uh-huh.

MR. LEARMONTH: This is an information note from the Department of Natural Resources. On page 3 it is indicated it’s date October 4, 2012. So this would’ve been connected to the work that was directed under the Minute of Council I just referred to. Is that correct?

MR. BOWN: You are correct.

MR. LEARMONTH: Okay.

Did you draft this information note?

MR. BOWN: No, I did not.

MR. LEARMONTH: Okay.

So Mr. Robert Noseworthy and Power Advisory were retained to assist in the analysis of the term sheet. That the November 10, 2010 –

MR. BOWN: Right.

MR. LEARMONTH: November 18, 2010 term sheet with Nova Scotia. Is that right?

MR. BOWN: Actually, no. This is the term sheet between Muskrat Falls and Newfoundland and Labrador Hydro.

MR. LEARMONTH: Okay, the Power Purchase Agreement.

MR. BOWN: Yep.

MR. LEARMONTH: Okay.

So, Mr. Robert Noseworthy is identified as being the former chair and CEO of the board of commissioners of public utilities, was a deputy minister of the provincial government for 12

years, and also a former chair and CEO of the Newfoundland and Labrador Housing Corporation – in addition to having extensive experience, he's also well educated. He owns an engineering degree and an MBA. Correct?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

So, why did you seek the advice of Robert Noseworthy on this initiative?

MR. BOWN: We were concerned that the potential for the non-arm's length negotiation between Muskrat Falls Inc. and Newfoundland and Labrador Hydro would be just a little bit too close and that we wanted to ensure that while we agreed with the memorandum of principles that had developed we saw, over time, that the term sheet was drifting more towards the benefit of the project and Nalcor versus the ratepayer. That's why we engaged them.

MR. LEARMONTH: Okay.

And in the middle of page 1 after the – under the heading Robert Noseworthy, it says: Mr. Noseworthy divided his assessment of the term sheet into four main areas, each of which will be summarized below. One was: Departures from the memorandum of principles, MOP. His overall assessment is there's been a clear shift from protecting the interest of the ratepayer as contemplated by the MOP to a focus on ensuring the financial viability in the project in the term sheet. Mr. Noseworthy believes there is no benefit accruing to NLH in the early years, and Nalcor receiving all the benefit.

This is a pretty fundamental criticism –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Isn't it?

MR. BOWN: It is.

MR. LEARMONTH: Yeah.

In the end, was any attention paid to this observation?

MR. BOWN: As a result of this memo, this information note, we formed a team inside of government of Natural Resources, Finance and Justice staff to actually sit at the table with Nalcor and Hydro to ensure that the interest of the ratepayer are being protected in those discussions. And there were fundamental changes that were made as a result of that.

MR. LEARMONTH: Well, you know, I'll move it a little forward. I mean, are you suggesting that changes were made that protected the ratepayers of this province, given the burden that the ratepayers are going to face with the –

MR. BOWN: Some of the terms –

MR. LEARMONTH: – in bearing full cost?

MR. BOWN: Some of the terms and conditions were changed, yes.

MR. LEARMONTH: Which ones that were of any importance were changed?

MR. BOWN: I don't recall them specifically now and I wasn't at the table with them.

MR. LEARMONTH: Yeah.

MR. BOWN: But the risk that Hydro was facing that the number of years that they would have had to sign a contract, there was opportunities now early in the early years of the project for Hydro to actually earn money, bank money, so there were a number of changes that were made to improve the contract structure for Hydro.

MR. LEARMONTH: Oh, for Hydro, but I'm not talking about Hydro. I'm talking about the ratepayers and, as I see it, I'd like to know how the situation could ever have been any worse than it is right now for the ratepayers because the ratepayers have to pay the full cost.

MR. BOWN: And that hasn't changed – that didn't change.

MR. LEARMONTH: That didn't change.

MR. BOWN: No.

MR. LEARMONTH: So for the ratepayers, there's been no change.

MR. BOWN: No.

MR. LEARMONTH: Okay.

MR. BOWN: The risk profile has changed.

MR. LEARMONTH: But that doesn't save the ratepayers from paying the full cost of this project.

MR. BOWN: If they're additional costs that Hydro has to incur because of the contract –

MR. LEARMONTH: Yeah.

MR. BOWN: – then that would get transferred to the ratepayers. So yes –

MR. LEARMONTH: Yes.

MR. BOWN: – there would – reducing the risks reduces the overall impact.

MR. LEARMONTH: Anyway, this exhibit there's a – starting on page 4 of Exhibit P-03440, is a summary of a meeting with Natural Resources, Robert Noseworthy, and it comes in to – there's reference also to the work of power advocate – Power Advisory, sorry.

And then there's a memorandum in Exhibit P-03440, to Paul Scott, Newfoundland and Labrador Department of Natural Resources. So there's a fairly extensive document. I'm not gonna go through it. Some other counsel may want to get into it a little deeper.

Tab 4, Exhibit P-01128: Direction Note; Department of Natural Resources. This is dated November 27, 2012, prepared by – if we turn to page 4 at the bottom left-hand side, prepared by Natural Resources, Justice and approved by ministerial approval. Does that mean that there was ministerial approval? Or does it mean there wasn't because there's nothing written –?

MR. BOWN: That's right. If it was approved by the minister, the minister's name would be –

MR. LEARMONTH: So it was?

MR. BOWN: This – no, this is a draft note.

MR. LEARMONTH: Oh, it's a draft. So there's no indication that this was approved by the minister?

MR. BOWN: Right.

MR. LEARMONTH: Just a draft.

MR. BOWN: Just a draft note.

MR. LEARMONTH: Okay.

MR. BOWN: All notes that went to the minister had the minister's name on them.

MR. LEARMONTH: Well, it wasn't approved by the minister. Was it rejected by the ministers?

MR. BOWN: No.

MR. LEARMONTH: Well, what's the status of it? If someone took the time –

MR. BOWN: Oh, sorry. If the minister was approving it and sending it on, the minister would've seen the note. Sorry, I misled you. If the minister was sending this on to somebody else, then his initials would be on the bottom.

MR. LEARMONTH: Yeah.

So the absence of ministers' initials in the place where I indicated, indicates that the minister did – the ministers did not approve it. Is that correct?

MR. BOWN: No, he didn't – not that he didn't approve it. He didn't say send this on to the premier's office or send it on to another (inaudible).

MR. LEARMONTH: Okay.

Well, let me get this straight. This was prepared by staff in the Department of Natural Resources.

MR. BOWN: Yeah.

MR. LEARMONTH: And then it's given to the minister. And if the minister approves the document, then the minister initials it or signs it, and then it goes forward, correct?

MR. BOWN: But if it's not going to go forward, the minister doesn't initial it.

MR. LEARMONTH: Yeah.

So, okay –

MR. BOWN: That doesn't mean that it's not approved.

MR. LEARMONTH: Well, I don't understand what you're talking about. I mean, if it's approved – okay, well, what's the benefit of the minister not – like, what's done with it if the minister doesn't give his or her approval to it? Just sits there?

MR. BOWN: No, I think I've misled you, and I'd like to get this correct.

MR. LEARMONTH: Well, can you straighten that –

MR. BOWN: (Inaudible.)

MR. LEARMONTH: – out?

MR. BOWN: No, just – this was a misunderstanding – my own misunderstanding. This is a draft note.

MR. LEARMONTH: Yeah.

MR. BOWN: At the – at that moment, because it follows on on tab 5 that I shared it with the clerk, and we discussed it, and I said that I hadn't shared it with the minister at that time.

MR. LEARMONTH: Okay, so just carry on then.

Do you wanna go to tab 5?

MR. BOWN: Sure.

MR. LEARMONTH: And that's Exhibit P-0112 –

MR. BOWN: Yeah.

MR. LEARMONTH: – 9.

MR. BOWN: So the committee had prepared the note, and we discussed this, actually, in Phase 1 –

MR. LEARMONTH: Okay, but I wanna go over it again.

MR. BOWN: – absolutely – and I shared it with the clerk, and I guess it's (inaudible) – he said it was reasonably good shape at this stage, not the best time to bring it forward, keep working on it.

MR. LEARMONTH: Right.

So that's sort of a lukewarm endorsement, is it?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

So, why wasn't it a good time to bring it forward?

MR. BOWN: I can't answer. "Unfortunately it may be too much to rush such a decision." I don't know –

MR. LEARMONTH: Yeah.

MR. BOWN: – the context behind that.

MR. LEARMONTH: Okay, well what ever came of it anyway, of this initiative?

MR. BOWN: This continued on into the following year –

MR. LEARMONTH: Yeah.

MR. BOWN: – and then there was – there are other exhibits. I don't know if they're here or not, but there are ones that I reviewed where – actually, this was redrafted by the Department of Finance; the Department of Finance took the lead, and the current format or kind of feel of a senior officials' committee took form –

MR. LEARMONTH: Okay.

MR. BOWN: – and that's ultimately what led into the current form of the oversight agreement.

MR. LEARMONTH: Okay, well –

MR. BOWN: Oversight –

MR. LEARMONTH: – let’s –

MR. BOWN: – Committee, sorry.

MR. LEARMONTH: – let’s shorten this.

This discussion started with a review of the minute in council, Exhibit P-03439, tab 2 of your book of documents, correct?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

That was the starting point for this initiative. What’s the end point? What happened?

MR. BOWN: The end point was the creation of the Oversight Committee.

MR. LEARMONTH: In 2014?

MR. BOWN: Yes.

MR. LEARMONTH: Well, you’re serious, are you?

MR. BOWN: Yes.

MR. LEARMONTH: Well, why would it take that long to establish an Oversight Committee?

MR. BOWN: Can’t speak specifically to what the delay was, but there was ongoing work between the three departments, and it clearly got delayed based on all the other activities that they were working on.

MR. LEARMONTH: Two years’ delay?

MR. BOWN: (Inaudible) – two years working on it.

MR. LEARMONTH: Well, you see, if this had been followed – I put to you that if government – I realize that you could only move at the pace that’s dictated by your political superiors. I’m suggesting to you that – per your comment – if government was serious on April 26, 2012, in establishing an oversight committee, then it would’ve been established a lot sooner than two years after this initiative, and it would’ve been

established to review – perhaps to review the budget cost before sanction.

So, do you agree that if government had wanted to – you know, was serious about this, that it could’ve expedited the process rather than let it drag on for two years?

MR. BOWN: I guess, at the time, it was a prioritization. We had very few people doing many things, and unfortunately, this was the one that was impacted the most, as staff were dealing with the negotiations and the contracts.

MR. LEARMONTH: Yeah. Well, it isn’t unfortunate, isn’t it, because – I know this is speculative, but I’ll say it anyway – that if people of the calibre of EY had been given the opportunity to review the cost estimates before sanction, do you not agree, given their high level of expertise, that there would’ve been some very interesting or reliable information produced by them?

MR. BOWN: It’s likely that – if they were, yeah.

MR. LEARMONTH: Okay.

Now, tab 7, Exhibit P-03442. Is this – this is a – May 15, 2013. Is this simply a checklist for work undertaken by government on the federal loan guarantee?

MR. BOWN: Yes, and it’s indicative of all the work that was being – taken place by very few people.

MR. LEARMONTH: Okay.

Next, tab 9 is Exhibit P-03444. Now, this is an email from you to Tracy English, Diana Quinton, Paul Morris, Tina Williams, Dawn Dalley and Karen O’Neill.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Comments on 20 Questions response, Sunday, October 27, 2013.

And if we turn to page 2 of this Exhibit P-03444, right in the middle it says: “Below are a series of responses to the editorial entitled, *20 questions for the premier*, that appeared in the

weekend edition of the Telegram on Saturday, October 16. The Provincial Government and Nalcor remain committed to openness and transparency on the Muskrat Falls Project, and we welcome the interest of Newfoundlanders and Labradorians regarding the Muskrat Falls project.”

Now, who wrote that?

MR. BOWN: I couldn’t tell you who wrote that.

MR. LEARMONTH: Was it you?

MR. BOWN: No, my comments are in red.

MR. LEARMONTH: Okay, your comments are in red.

MR. BOWN: And my comments relate to, as you would’ve seen in the past, I felt that many of the questions that were answered – these would’ve been done by communications people, mostly, and that my responses were: I don’t think you’re answering the questions. I think you need to add more.

The person who wrote the question, obviously did so because they wanted an answer and we need to draw it out. Also, there were some baseline facts and messages that weren’t part of their responses and I suggested that that be included as well.

MR. LEARMONTH: Okay did –

MR. BOWN: It was all around trying to ensure that the responses we were sending back were appropriate.

MR. LEARMONTH: Okay.

So were your – at the time you wrote these comments there in red, did you believe that they were true?

MR. BOWN: I wouldn’t write anything I didn’t believe.

MR. LEARMONTH: Okay, fine.

Go to page 6. Now, remember this is October 27, 2013.

Question: **“Overall, are the bids that Nalcor is receiving in line with its expectations?”**

Answer: “Yes, they are generally in line with our expectations.”

Your comment: “Should note that this result has come about because of the tremendous amount of work on engineering and budgeting that has already gone into the project.

“Tone is important here; people should immediately recognize why this approach is appropriate.

“When is the first ‘open briefing’?”

Now, now that you’ve had the benefit of reading the Grant Thornton reports – and you’re laughing, I understand why –

MR. BOWN: Yeah.

MR. LEARMONTH: – would you have written this if you had known about those reports?

MR. BOWN: Of course not.

MR. LEARMONTH: No. That’s a ridiculous question, I guess.

MR. BOWN: Absolutely.

MR. LEARMONTH: Yeah. It’s obvious you wouldn’t.

MR. BOWN: No.

MR. LEARMONTH: No, because it’s not true, is it?

MR. BOWN: No.

MR. LEARMONTH: No.

Page 7: **“13. Is the project on budget?”**

“We are early in the construction of the project with not even a year of construction completed at this time. However, at this early stage, with the contracts that have been awarded and the work completed to date, we are generally where we anticipated the spending of the project to be in relation to the budget.”

Well, do you agree that's – based on the contents of the Grant Thornton report, that's simply false?

MR. BOWN: Correct. And that's why I highlighted the – I don't know if you could even have said that then.

MR. LEARMONTH: Yeah.

MR. BOWN: And it doesn't make sense.

MR. LEARMONTH: No.

Now we go to page 9, and this is just before financial close, right?

“20. Why is there so much we're not allowed to know?”

Answer: “Never before in the history of this province has a project undergone such scrutiny, and never before has such detailed information been publicly available – testament to the project's openness and transparency.”

MR. BOWN: That was our in-the-can communications line.

MR. LEARMONTH: And you believed it to be true at the time?

MR. BOWN: At the time, yes.

MR. LEARMONTH: What about right now?

MR. BOWN: Well, I've seen many things over the past year that I didn't see at that time, so, no.

MR. LEARMONTH: No, you wouldn't agree with it being correct at this point, would you?

MR. BOWN: No, based on the context of information that's being shared with the government.

MR. LEARMONTH: Yeah. Okay.

Okay, some documents here on the – I'm not going to get into because I think we've covered them in the review of the financial close documents.

Oh, this was – here's a document, number – tab 16 that I want to refer to. It's P-02691.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Muskrat Falls Cost Accountability and Project Oversight, presentation to Cabinet, March 13, 2014. Who prepared this – which individual or individuals prepared this?

MR. BOWN: This would have been done with the clerk because this is the launching of the Oversight Committee.

MR. LEARMONTH: Yeah.

So then we go to page 2, there's this: “Existing Project Oversight – Independent Engineer.” Well, we've already talked about that so I'll leave that alone.

Then on page 3: “Existing Project Oversight – Nalcor,” internal audit committee; external auditors. Well, they didn't – Mr. Meaney has confirmed that they didn't provide any work on the cost estimates for Muskrat Falls at all. Were you aware of that at the time?

MR. BOWN: Say that again, sorry.

MR. LEARMONTH: Okay.

On page 3 there's a reference to “Existing Project Oversight – Nalcor ... External auditors – provides independent audit opinion on financial statements”

MR. BOWN: Yeah.

MR. LEARMONTH: But Mr. Meaney made it very clear that that does not include a review of the project cost estimates.

MR. BOWN: Right.

MR. LEARMONTH: So what's the benefit of having this in here in terms of oversight?

MR. BOWN: That's – well, sorry, I can't answer. I don't know.

MR. LEARMONTH: No.

MR. BOWN: I do know that one of the first things that was done – second things that was done at the Oversight Committee was to have the external auditor do an audit of the project, of its expenditures, not of the costs.

MR. LEARMONTH: Right.

Okay, at page 6 of that exhibit it talks about the “Role of the Oversight Committee,” et cetera, and then “Required Information: Current estimates of total project costs and comparison to budget/DG3 with explanations for all material deviations,” a number of things – costs, and that’s probably pretty well written.

So if this was required information in March 2014 why was it another 20 months or around before EY was engaged to get this information?

MR. BOWN: I don’t know the answer to your question.

MR. LEARMONTH: Pardon?

MR. BOWN: I don’t know the answer to your question.

MR. LEARMONTH: You don’t? Okay.

Now, tab 18, is a Briefing – it’s Exhibit P-03449, Briefing Note, 2015-16 Budget Process. So this is for the Oversight Committee.

MR. BOWN: Correct.

MR. LEARMONTH: And in the middle of that page: Proposed effective implementation to April 2015. So I guess this is for the second year, is it?

MR. BOWN: ’15-’16, yes.

MR. LEARMONTH: That’s the second year. There is something later on for the first year but –

MR. BOWN: ’14-’15.

MR. LEARMONTH: – the budget was the same, right, 500?

MR. BOWN: Five hundred.

MR. LEARMONTH: Yeah.

MR. BOWN: This was prepared by the Department of Finance.

MR. LEARMONTH: Yeah, but was – and it refers to: Brief description, funds re-profiled: \$500,000. So that means that’s that same budget as there was for the first year, right?

MR. BOWN: Correct.

MR. LEARMONTH: Okay.

And then on page 2 it says: “**Target Group/Issue:** ... Public confidence in the oversight of the Lower Churchill project expenditures,” et cetera.

Budget Proposal, now the Budget Proposal here, well, it’s \$500,000, and if we look on page 3, we’ll see a comparison between the budget allocation for fiscal 2014-15 and fiscal 2015-16.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: So, you know, I think – wouldn’t you agree that in order to engage a team like EY, with their international experience, that if you’re only budgeting \$342,000, then it’s unrealistic to expect to be able to get a proper job done for that. Do you agree?

MR. BOWN: This is just the base budget for the Oversight Committee. For the EY, special approval was granted – special budget amount was granted for EY.

MR. LEARMONTH: Yeah.

But did – but the – we know that after there was a change of government in two thousand and – well, the election was November 30, 2015, government change, I think, was December 16. That on or after December 16, we know that, under a contract that was, I think, signed in January 2016 – no, I said December 15, yeah –

MR. BOWN: Yeah.

MR. LEARMONTH: – there was a contract, the main contract for the deep-dive audit of EY was signed in January 2016. Now, obviously,

with a target price of \$1 million in a range of \$750,000 to \$1,250,000, obviously that wouldn't come out of the –

MR. BOWN: No.

MR. LEARMONTH: – budget.

MR. BOWN: That didn't come out of the budget. There was another appropriation found for that.

MR. LEARMONTH: Right.

But the – can I assume, or can we assume that the work undertaken by EY prior to January 2016 was – came out of the budget? This \$500,000 budget?

MR. BOWN: No, I think one of those pieces cost more than the \$342,000. I stand to be corrected. I think we had other funds.

MR. LEARMONTH: But you don't know, do you?

MR. BOWN: Not at the moment, I'm sorry.

MR. LEARMONTH: Because it says: Professional Services?

MR. BOWN: Right.

And that's a notional allocation, but if we're into a piece of work that cost more than that, we would have funds reallocated.

MR. LEARMONTH: Yeah.

But do you know whether the amounts for Professional Services indicated on page 3 of Exhibit P-03449 were applied towards the services undertaken by EY before January 2016?

MR. BOWN: Yes.

MR. LEARMONTH: Do you know or was that a separate appropriation?

MR. BOWN: Oh no, you would – what you would do, is, you would take money from another allocation and move it into this budget allocation.

MR. LEARMONTH: Okay.

MR. BOWN: So the Professional Services number would go up.

MR. LEARMONTH: Okay.

Well, let me give you an example. We know that the first contract in March 2014, that EY signed, was for the – it was for a maximum of \$25,000. Correct?

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Would that amount have come out of the budget or would it have been a special appropriation?

MR. BOWN: It would have come out of the budget.

MR. LEARMONTH: Okay.

So at what point would it not come out of the budget?

MR. BOWN: No, it always comes out of the budget. If the amount of the work – cost of the work is more than –

MR. LEARMONTH: Yeah.

MR. BOWN: – the amounts in the budget, the budget is supplemented.

MR. LEARMONTH: Okay.

Prior to January 2016, was the budget of the Oversight Committee supplemented?

MR. BOWN: I don't remember the cost of the second piece of work.

MR. LEARMONTH: You don't know. Can you find out?

MR. BOWN: Yeah, process and controls.

MR. LEARMONTH: Okay.

Tab 19, Exhibit P-03450, announcement of the Executive Council on December 21, 2015. That's just after the change of government. Correct?

MR. BOWN: Yes.

MR. LEARMONTH: Okay. And it's an announcement that the Premier and the Minister of Natural Resources, Ms. Coady, will make an announcement on December 21. Correct?

MR. BOWN: Yes.

MR. LEARMONTH: And if we go to tab 20, this is a Natural Resources release dated December 21, that's referred to in the earlier document. "Today, the Muskrat Falls Oversight Committee released a review of cost and schedule management processes and controls related to ... Muskrat Falls Project. The review, undertaken by EY ... and Nalcor's response, is available at" – such and such.

So the – do you agree that the executive summary of the process and controls review, which was the second contract with (inaudible), that that was not released until December 21, 2015 –

MR. BOWN: Yes.

MR. LEARMONTH: – and that when it was released, it was just the executive summary? It wasn't the full report because, at the request of Nalcor and with the concurrence of government, EY had prepared a report and government wanted it broken down into two. So there were two reports, one of which was released to the government and one of which was not released.

MR. BOWN: Yes.

MR. LEARMONTH: And that the reason for this splitting of the report was Nalcor's position that there was commercial sensitivity that could do harm and that argument, yeah, and that – the evidence is that Richard Noble of EY said: Of the 11 points – of the 11 claims to commercial sensitivity, only one had merit.

Are you aware of that?

MR. BOWN: Not his exact point, no.

MR. LEARMONTH: Well, do you know why the position of Nalcor prevailed over the position of the experts at EY, on this question of commercial sensitivity?

MR. BOWN: No, I wasn't part of that discussion.

MR. LEARMONTH: You weren't, but you were on the Oversight Committee.

MR. BOWN: Oh, yes.

MR. LEARMONTH: So you know what I'm talking about, about the splitting of the reports.

Did you agree to have those reports split or was that –?

MR. BOWN: It wasn't my decision to make.

MR. LEARMONTH: Whose decision was it to make?

MR. BOWN: Ultimately, that was the – that was left with the minister and the premier.

MR. LEARMONTH: Okay.

MR. BOWN: That's not the chair of the Oversight Committee's decision.

MR. LEARMONTH: Okay.

So I mean, let's face it, the committee is set up as an independent committee, but, really, it's directed by Cabinet.

MR. BOWN: That's in its mandate too, yes.

MR. LEARMONTH: Yeah, that's what it is.

MR. BOWN: Yes.

MR. LEARMONTH: But it's not independent of government?

MR. BOWN: No.

MR. LEARMONTH: No.

MR. BOWN: No. No illusion of that.

MR. LEARMONTH: Never was.

MR. BOWN: No.

MR. LEARMONTH: But what's it independent of?

MR. BOWN: Nalcor.

MR. LEARMONTH: Nalcor.

Okay, tab 21 is Exhibit P-03452, it's a December 21, 2015 release from the Executive Council and Natural Resources. And this is the announcement by Premier Dwight Ball together with Minister Coady that "the Provincial Government will undertake an independent review of the cost, schedule and associated risks for the Muskrat Falls Project."

So finally, something is being done, I would suggest. Do you agree with that?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

Finally, there's a decision made, okay: We're really going to get into this.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: And you can't give me any information, I take it, based on your earlier answers, as to why this initiative wasn't taken much earlier.

MR. BOWN: No.

MR. LEARMONTH: The government didn't want it or it would have. Is that correct?

MR. BOWN: It's a question for the government.

MR. LEARMONTH: Yeah.

What did – I mean, how would the communications flow from Cabinet or – you know, to the Oversight Committee? I know Ms. Mullaley was the clerk. So if you wanted to do something the Oversight Committee did, it would have to go to Cabinet for approval, right?

MR. BOWN: Not necessarily.

MR. LEARMONTH: If it involved the expenditure of money, it would.

MR. BOWN: Not necessarily.

MR. LEARMONTH: Well, okay, then fill be in on that, I'm misinformed.

MR. BOWN: No, no. If it was an expenditure of money and it was within our budget, then, yes, we could go ahead and do it –

MR. LEARMONTH: Yeah.

MR. BOWN: – or within the appropriate allocation.

MR. LEARMONTH: Okay, but I'm not talking – but if it's for an appropriation.

MR. BOWN: If there was an appropriation, part of the budget process, then, yes –

MR. LEARMONTH: Yeah.

MR. BOWN: – it goes to Cabinet.

MR. LEARMONTH: Yeah.

So if you're outside your budget, like you would be in having this – the – this review done, which cost – well, the target price was a million dollars, you'd have to go to government to get an appropriation for it.

MR. BOWN: Absolutely.

MR. LEARMONTH: So in that sense it was up to government as to when they would take that initiative, is that correct?

MR. BOWN: That's correct.

MR. LEARMONTH: Okay. Thank you.

Tab 22, which is Exhibit P-03086. When did you first see this document? This is – on page 2 these are these speaking notes from the February 25 meeting with Ernst & Young.

And at top of page 2 it says: "Following yesterday's Cabinet Meeting, we had a 3+ hour meeting with EY to get their thoughts on the Astaldi issue, and on the Muskrat Falls project more generally. The Premier, Min Coady, KP" – that's Kelvin Parsons who prepared this minute, TM which we believe is Tim Murphy –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – the premier’s staff and JM, Julia Mullaley, attended. Were you familiar with this meeting?

MR. BOWN: No.

MR. LEARMONTH: Before you saw this exhibit?

MR. BOWN: No.

MR. LEARMONTH: But your minister was there. Wouldn’t your minister have –?

MR. BOWN: Well, I wasn’t aware of the outcome of the – I knew that the meeting took place but not about the outcome.

MR. LEARMONTH: Well – but you’re the deputy minister so wouldn’t there be some communication to you or updating since it had to do with Muskrat Falls?

MR. BOWN: Yeah. Not necessarily.

MR. LEARMONTH: No?

MR. BOWN: Nope.

MR. LEARMONTH: So you didn’t know about this –

MR. BOWN: No.

MR. LEARMONTH: – meeting?

MR. BOWN: First time I read these notes was when I received it in my documentation.

MR. LEARMONTH: Okay. Well, I guess I won’t ask you anything about it.

Tab 23, April 14, 2016, Finance release, 2016 Budget Speech. Now, at this time there’s – I believe Cathy Bennett is the minister of Finance, correct?

MR. BOWN: Correct.

MR. LEARMONTH: Yeah.

Now at this point are you sensing – or did you have a sense that government was getting very

concerned about what was going on in the Muskrat Falls Project?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. And what was the source of the concern?

MR. BOWN: I don’t think I could isolate the source of the concern. I think it was a new government that was starting on a project that was already having some difficulties.

MR. LEARMONTH: But did – do you agree that government was fully justified in having concern at this point?

MR. BOWN: The costs were increasing, yes.

MR. LEARMONTH: Yeah. So you agreed that government should get on with this?

MR. BOWN: (Inaudible.)

MR. LEARMONTH: With the EY review and everything?

MR. BOWN: I had no issue with the EY review.

MR. LEARMONTH: Yeah. Well, did you think it was justified? I don’t –

MR. BOWN: Yes.

MR. LEARMONTH: You think it was justified?

MR. BOWN: Yes.

MR. LEARMONTH: Yes.

MR. BOWN: That’d be consistent with my earlier views.

MR. LEARMONTH: Okay.

Okay, now we’ll go to tab 24. This is an email from you to Julia Mullaley and Todd Stanley, October 16, 2016. And this is the EY report.

MR. BOWN: Yes.

MR. LEARMONTH: Or it's a summary of the EY report, right?

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Did you prepare this?

MR. BOWN: Some of this I did. Some of that was done with the clerk.

MR. LEARMONTH: Okay.

MR. BOWN: I didn't present this.

MR. LEARMONTH: No. Well, who wrote it?

MR. BOWN: Well, I think it was a team effort. Some of our team did some of it. The Oversight Committee, Craig Martin, would've prepared the first portion. Our team, with Craig Martin – probably mostly Craig Martin, I'd say – suggest –

MR. LEARMONTH: Yeah.

MR. BOWN: – did this presentation.

MR. LEARMONTH: Okay so this was a presentation for Cabinet?

MR. BOWN: Caucus.

MR. LEARMONTH: Pardon?

MR. BOWN: Caucus.

MR. LEARMONTH: Caucus. Did you present this?

MR. BOWN: No, I did not.

MR. LEARMONTH: Okay, well, if we look at page 11 of this document, it says: "First power will not be achieved for December 2017. Other Project Milestone dates are impacted and remain under review."

I mean, is this the first time you realized that the first power would not be achieved until – on – in, you know, December 2017?

MR. BOWN: Correct.

MR. LEARMONTH: That's the first time you knew?

MR. BOWN: I think so. What's the date of this again?

MR. LEARMONTH: Yeah.

But I'll put these –

MR. BOWN: Yeah.

MR. LEARMONTH: – points to you: Were you not aware that the Astaldi contract in – that one of the main benefits that was identified in the Astaldi bid was this ICS, the Integrated Cover system?

MR. BOWN: Correct.

MR. LEARMONTH: And are – and, originally, the plan was to have the contract signed, I think, as early as June. And that if the contract had been signed in June, then there would've been a construction season when Astaldi –

MR. BOWN: Mmm.

MR. LEARMONTH: – would've been able to get a bit organized –

MR. BOWN: Right.

MR. LEARMONTH: – to perhaps construct the Integrated Cover system by the end of the year or early into 2014?

MR. BOWN: Right.

MR. LEARMONTH: You're aware of that, are you?

MR. BOWN: Yes, it didn't get started until –

MR. LEARMONTH: And that –

MR. BOWN: – November.

MR. LEARMONTH: – the contract wasn't signed until November 29.

MR. BOWN: Correct.

MR. LEARMONTH: And that had the impact, according to Don Delarosbil and – which I think is confirmed generally by others that starting a project in the winter, you know, introduces a situation where you're not just losing a few months, you're using a whole construction season?

MR. BOWN: Yes.

MR. LEARMONTH: You're familiar with that, right?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. So if you're aware of those facts I'll put a proposition to you that some may hold. That on November 29, when this contract was signed with Astaldi, any reasonable person would've known that the schedule was shot right at that point, given the late signing of the contract.

MR. BOWN: So what we were advised – and, you know, we would continue to ask whenever there was a meeting of some sort in the premier's office or the minister's office, albeit on Muskrat Falls or not: How are things going? How are costs? How is schedule? It's – it was, you know, we're still on target, we're still on schedule.

MR. LEARMONTH: So Nalcor would continually advise you – give you comfort that everything was fine. Is that right?

MR. BOWN: Yes. Facing some pressures but, you know, we got – working on some mitigating options and approaches and –

MR. LEARMONTH: Nothing concrete.

MR. BOWN: No, pardon the pun.

MR. LEARMONTH: Just confident assurances from Mr. Martin.

MR. BOWN: Confidence assurance, absolutely.

MR. LEARMONTH: Yeah.

MR. BOWN: Until such time that there was an update and a change.

MR. LEARMONTH: Yeah, okay.

Tab 25, Exhibit P-03455; this is a reference to a protest at the Muskrat Falls site, June 9, 2016.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: P-03455.

What role, if any, did the Government of Newfoundland play in managing or dealing with the protests on site? Was that something that you – the government was involved in or was that left –

MR. BOWN: Yeah.

MR. LEARMONTH: – entirely to Nalcor?

MR. BOWN: That was left entirely to Nalcor, but Justice also played a role because, again, they manage the contract with the RCMP. So the RCMP would be seeking advice from the Department of Justice.

MR. LEARMONTH: But you –

MR. BOWN: We had nothing to do – other than, as you see here, information comes in, it comes to me and I immediately forward it to our team.

MR. LEARMONTH: Okay.

But that – but it's just – that's just –

MR. BOWN: Yeah, normal protocol.

MR. LEARMONTH: Well, you want to keep up to date, but you don't –

MR. BOWN: Yeah.

MR. LEARMONTH: – take – do any action. Is that right?

MR. BOWN: Correct.

MR. LEARMONTH: Okay.

Tab 28 is an email from you to Minister Coady, Diana Quinton, Megan Sheppard and Walter Parsons, dated October 17, 2016.

THE COMMISSIONER: What tab is that –?

MR. LEARMONTH: It says Muskrat Falls concerns –

THE COMMISSIONER: Sorry, Mr. Learmonth.

MR. LEARMONTH: P-03458.

THE COMMISSIONER: 03458.

MR. LEARMONTH: Tab 28.

MR. BOWN: Twenty-eight, oh, I'm in the wrong one.

MR. LEARMONTH: Twenty-eight in mine – “Muskrat Falls concerns need to be addressed now, says President Lampe.”

MR. BOWN: Yes.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Okay.

And this has to do with the Nunatsiavut president and about immediate flooding in Muskrat Falls reservoir. The long-standing concern over methylmercury is identified here. And we know that eventually there was an IEAC and there were recommendations and that.

MR. BOWN: Yes.

MR. LEARMONTH: And to my knowledge that issue is not resolved. Is that a fair way to put it, about the methylmercury issue?

MR. BOWN: Is it resolved now?

MR. LEARMONTH: Yeah.

MR. BOWN: No.

MR. LEARMONTH: No. Okay.

Tab 29, this is a letter – P-03459. This is a letter from minister – excuse me, the MHA Perry Trimper, the District of Lake Melville, about a workshop. At the bottom of page 3 it says – well, no, there's a workshop (inaudible) and I

think a mediator or co-ordinator, Wayne Thistle, is appointed. Did you know anything about this?

MR. BOWN: No. No.

MR. LEARMONTH: Okay.

It refers to the Independent Expert Advisory Committee and so on. It has to do with issues such as the methylmercury.

MR. BOWN: Yeah. So this would've been a colleague, Colleen Janes, who was, at the time, deputy minister of Environment and they had the sole stewardship of the methylmercury file.

MR. LEARMONTH: Okay –

MR. BOWN: So what she was doing was just sending me information so that I could pass it along to Minister Coady.

MR. LEARMONTH: All right.

So you weren't – you were just the receiver –

MR. BOWN: I was just receiving.

MR. LEARMONTH: – of information.

MR. BOWN: Yeah.

MR. LEARMONTH: And the Department of Environment was –

MR. BOWN: And still is.

MR. LEARMONTH: – still is responsible?

MR. BOWN: Yes.

MR. LEARMONTH: Not Natural Resources in any way –

MR. BOWN: No, no.

MR. LEARMONTH: – except to receive up-to-date updates?

MR. BOWN: Yes.

So the experts in water quality management they – sorry, rest in the – right now in Municipal Affairs and Environment.

MR. LEARMONTH: All right.

Next, at tab 30, is Exhibit P-03460. It's an email from you to Bernard Coffey, who at that point is – October 21, 2016 – he is the clerk of Executive Council, replacing Julia Mullaley, who has gone to Newfoundland and Labrador Housing. Is that correct?

MR. BOWN: That's correct.

MR. LEARMONTH: Okay.

So can you tell me about what involvement you had in this document and explain what it is?

MR. BOWN: With the help of others – these were some questions that were posed by the Government of Canada. And this was my response and I was – with the help of others – collective response – and I was passing them along to the clerk for review and then engagement with the Premier's office.

MR. LEARMONTH: Okay. That was your only role in that?

MR. BOWN: Yeah, this document?

MR. LEARMONTH: Yes.

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

MR. BOWN: In terms of the FLG2 file.

MR. LEARMONTH: Yeah.

MR. BOWN: I was, I guess, lead for the government in negotiating that one.

MR. LEARMONTH: But you didn't negotiate the FLG, did you?

MR. BOWN: FLG2.

MR. LEARMONTH: You did?

MR. BOWN: Yes.

MR. LEARMONTH: Okay. Who – were you the lead person or part of a team?

MR. BOWN: Oh, part of a team. Yeah. There was Justice, Finance, myself in the major projects role –

MR. LEARMONTH: Yeah.

MR. BOWN: – and then there was Nalcor and they had their team as well.

MR. LEARMONTH: Yeah. Because if we go to tab 32. This is Exhibit P-03462.

MR. BOWN: Yes.

MR. LEARMONTH: It's the December 6, 2016, release. It says: "**Charles Bown to lead Major Projects and Initiatives Unit from *The Way Forward*.**"

What's *The Way Forward*?

MR. BOWN: That's the government's policy platform.

MR. LEARMONTH: Okay.

And so were you – was this – the establishment of this position for you, was that prompted by the need to have someone working full-time on the federal loan guarantee 2?

MR. BOWN: No, it was –

MR. LEARMONTH: I mean, it's tied – it's around the same time, isn't it?

MR. BOWN: Oh, absolutely.

MR. LEARMONTH: Yeah.

MR. BOWN: No. It was an opportunity for a change for me from Natural Resources, but to carry some files with me from Natural Resources.

MR. LEARMONTH: Okay.

Tab 33, is Exhibit P-03463, and this is a copy of the federal loan guarantee. Is that correct?

MR. BOWN: Yes. Correct.

MR. LEARMONTH: Or a draft of it?

MR. BOWN: Well, it's the –

MR. LEARMONTH: That's the final agreement.

MR. BOWN: It's the final agreement.

MR. LEARMONTH: Well, how long did it take you to negotiate that? You know, what period of time did it – were negotiations undertaken?

MR. BOWN: Six to eight months. Six to eight months. It wasn't long.

MR. LEARMONTH: Sixteen months?

MR. BOWN: Six to eight months.

MR. LEARMONTH: Six to eight months.

MR. BOWN: It wasn't long.

MR. LEARMONTH: Okay. And Finance would've been involved in that also, would it?

MR. BOWN: Absolutely.

MR. LEARMONTH: Okay.

Tab 37 – who in Finance?

MR. BOWN: Craig Martin.

MR. LEARMONTH: Craig Martin?

MR. BOWN: Craig had moved from the Oversight Committee to being the assistance deputy minister at Finance.

MR. LEARMONTH: And Craig Martin was replaced by Paul Carter, right?

MR. BOWN: At the Oversight Committee, yes.

MR. LEARMONTH: Yeah, okay.

At tab 37 [sp. P-03542], this is an email from Ed Martin to you, November 27, 2013 – oh, excuse me, October 27, 2013.

MR. BOWN: Yes.

MR. LEARMONTH: And he says: In response to the following questions – or, well – “11. Overall, are the bids that Nalcor is receiving in line with its expectations?”

And the answer is: “... The value of the Muskrat Falls and Maritime Link project is a combination of costs and overall revenue to the province. Costs are primarily comprised of capital, operating and financing costs. Some of these elements are lower than budget, some are similar, and some are higher. Overall at this point, we are generally on budget collectively.” Now, I'll just stop there.

Did you believe that at that time?

MR. BOWN: At the time, yes.

MR. LEARMONTH: Do you think it's a true statement now based on what you know?

MR. BOWN: Oh, heavens no.

MR. LEARMONTH: Pardon?

MR. BOWN: No.

MR. LEARMONTH: No, okay.

“Financing costs continue to be quite favorable in this historically low interest rate period, however it is also obvious there are selective capital cost pressures particularly on work performed in NL. That being said, these capital cost pressures are being experienced throughout NL and Canada in general, and would be similar to alternative options. These are early days on the project, and although difficult to project final costs, we continue to aggressively manage the cost profile. Project schedule is primarily driven at this point by how best to manage people resources, ensuring that we level the required people resources to match labor availability. The intent is to minimize the cost of labor by scheduling labor resources in a manner to avoid over-subscription of people when we need them the most. In addition, it is critical that we organize the work on site in such a fashion that laborers have the ability to be at the height of their productivity when we are the busiest. Success in these endeavors will create the highest probability of cost control and ultimate project success.”

From a – we’re turning to page 2 – “From a revenue perspective, budgeted revenue is conservative, and we continue to see upside potential as external markets are tending to improve. Overall net value to the province is currently trending positive, but frankly, it is early days, cost and revenue projections will continue to change. That being said, the overall value of this project is clearly very favorable to the Province, and will continue to be so over the long term.”

Now, I’m not gonna ask you to tell me what all of that means. I don’t know myself. But is – would you characterize this as different from the communications that Ed Martin would usually give you or similar and to – if similar, to what degree?

MR. BOWN: It’s very consistent.

MR. LEARMONTH: It is?

MR. BOWN: Yes. But as I alluded to earlier that, you know, there were some pressures but costs were being managed and that’s the message here.

MR. LEARMONTH: So you do confirm that this is the typical type of language that –

MR. BOWN: Yes.

MR. LEARMONTH: – Mr. Martin would use when he was bringing you up to date on the project?

MR. BOWN: Yes.

MR. LEARMONTH: But how do – like, how can you figure out what he means when he goes on with this stuff?

MR. BOWN: I don’t think I can answer that.

MR. LEARMONTH: Well, you know –

MR. BOWN: I don’t understand the question well enough.

MR. LEARMONTH: I mean, it’s fairly vague, isn’t it?

MR. BOWN: To a degree it is vague.

MR. LEARMONTH: Yeah. But –

MR. BOWN: He’s the CEO. He’s telling us this current state of play.

MR. LEARMONTH: Yeah.

So what – why is this exchange taking place between you and Mr. Martin on October 27, 2013? That’s about a month before financial close.

MR. BOWN: I don’t understand the context, the timing. It happened around the same time that Minister Marshall was seeking information, so it may have been part –

MR. LEARMONTH: Mr. – what?

MR. BOWN: Minister Marshall was seeking information, so it may have been –

MR. LEARMONTH: Oh, Minister Marshall. Yeah.

MR. BOWN: – I’m speculating. I’m speculating now.

MR. LEARMONTH: Okay.

MR. BOWN: It may have come from a series of questions that was asked of Ed.

MR. LEARMONTH: Okay.

And then if we go to Exhibit –

MR. BOWN: I think there’s another one there in a similar type fashion.

MR. LEARMONTH: Yeah.

MR. BOWN: Yeah, okay, the next one.

MR. LEARMONTH: Yeah.

Which one are you referring to?

MR. BOWN: Sorry, I apologize. I went to tab 38.

MR. LEARMONTH: Okay, yeah, tab 38. So this is November 3, Ed Martin to Charles Bown at the top. Well, before we go to that, we’ll go to

page 3 of this exhibit, P-03543. So this is an email, November 3.

Ed Martin wrote to Paul Harrington: How about this. Is the project on schedule?

“1. The work completed to date has been generally on schedule, with some work somewhat ahead of schedule and some work somewhat behind schedule. This is typical of project execution of a project of this nature and mitigation activities are in place.

“... In spite of delay in achieving sanction last year, the first Project Key Milestone has been met” – in – “bulk excavation of the powerhouse and spillway complete and” – upon – “the completion of the cofferdams required before” the “winter of 2013/2014 ... In addition many of the key long lead items such as the sub sea cable manufacturing and turbine and generator manufacturing are on schedule.”

So, once again, is that typical of the –

MR. BOWN: Yes.

MR. LEARMONTH: – Mr. Martin’s language or ...?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

And then if we go to page 4: “From an overall project perspective, power 2017 remains an achievable target, however, this date will continue to be assessed as we undertake efforts to most efficiently plan the work to ensure labour availability and productivity is maximized. As we work with the main contractors, we will find the optimum level of resources at any given time, and in instances where a schedule adjustment makes sense from a cost and resourcing perspective, we will continue to adjust the schedule. We will always be driven by best value for the project.”

Same question: Is that ...?

MR. BOWN: Yeah, that’s typical.

MR. LEARMONTH: That’s typical?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

And when I say it’s typical, it’s typical in any written communications and also in the oral presentations. Is that correct?

MR. BOWN: Correct.

MR. LEARMONTH: Yeah. And you – at the time, you believed them.

MR. BOWN: We were confident.

MR. LEARMONTH: You were confident. Yeah.

MR. BOWN: No, no, he’s very confident as well.

MR. LEARMONTH: Yeah, but he – because he was confident you accepted it.

MR. BOWN: Absolutely.

MR. LEARMONTH: Yeah, okay.

Then on page 1 of this exhibit, P-03543, Ed Martin writes to you on November 3 and says: “In the meantime, tell them no need to get into this info, this is typical project stuff. Hard dates are not success or failure – success or failure depends on flexibility and common sense – dates will change as we balance cost and value with schedule – what is best value for the project is best value for the Province – it will evolve – that’s good business. Holding all to one date is nonsense, what’s the best value?”

What’s your interpretation of this?

MR. BOWN: Ministers were asking – clearly asking – some very good questions that they should have been asking. Then, I guess, to some degree, he took offence to the type of detail was being requested.

MR. LEARMONTH: He took offence to –

MR. BOWN: That’s the way I read this –

MR. LEARMONTH: – the government asking for detail?

MR. BOWN: Yeah. I didn't pass – as I said in my testimony, I would have provided the answers but I would not have passed this along, not to ministers.

MR. LEARMONTH: Did he tell you why he'd take offence, given the fact the government was –

MR. BOWN: No.

MR. LEARMONTH: – there for the taxpayers?

MR. BOWN: No. Again, I'm assuming, I'm being subjective.

MR. LEARMONTH: Okay.

MR. BOWN: Just reading into the language.

MR. LEARMONTH: Okay.

Then tab 42, Exhibit P-03547. It's an email from Ed Martin to a number of people at Nalcor and you.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: On page 4, this starts with an email from James McLeod, Thursday, February 20. And Mr. McLeod then reported with *The Telegram*. It says: "I'm working on a story from an ATIPPA request I just got back. I was a little surprised to learn that the department hasn't had any communications with the Muskrat Falls independent engineer, and hasn't received any reports."

And then he goes on to say – skipping one paragraph it says: "If Natural Resources isn't dealing with the independent engineer, I'm wondering if there's anybody in the department who's tasked with providing oversight and analysis on what Nalcor is doing while the project is under construction. If not, does Nalcor just have free reign?"

With the benefit of the knowledge you have now, don't you think that's a good question?

MR. BOWN: This comes right at the time that we were concluding our establishment of the Oversight Committee. This is February –

MR. LEARMONTH: Yeah.

MR. BOWN: – 2014 and we set it up in March –

MR. LEARMONTH: Yeah.

MR. BOWN: – April, so this comes right at the end.

MR. LEARMONTH: Yeah.

But I think around this time, Mr. Derrick Dalley, who said that – his comments that I'm going to make were sort of a bad day. He didn't express – was saying things like we didn't need –

MR. BOWN: Yeah.

MR. LEARMONTH: – to hear from the independent engineer. We had Nalcor –

MR. BOWN: Yeah.

MR. LEARMONTH: – world class.

MR. BOWN: I think he regretted those comments.

MR. LEARMONTH: Yeah, okay.

Well, he did indicate there was – I think he called it a bad day or –

MR. BOWN: Yeah.

MR. LEARMONTH: – a bad choice of words.

MR. BOWN: Because we were a long ways down the road of putting the Oversight Committee in place.

MR. LEARMONTH: Yeah, okay.

Yeah and this – I thought I'd finished on that financial question but, no, that's – we did cover that, tab 43. We'll skip over that.

THE COMMISSIONER: Just, again, I think maybe we'll take – we've gone an hour now so I'm mindful, again, of my promise. We'll take 10 more minutes now for a break this morning if we can.

MR. LEARMONTH: That would be perfect because I'm – there's two volumes – well, there's three actually. I've finished – I will have finished two out of three by – in 10 minutes.

THE COMMISSIONER: Okay.

So let's take 10 minutes then at this –

MR. LEARMONTH: Oh, you want to do it now?

THE COMMISSIONER: Yeah, we'll take our break now.

MR. LEARMONTH: Oh, okay.

THE COMMISSIONER: Yeah.

MR. LEARMONTH: Fine, yeah.

THE COMMISSIONER: And then we'll come back and go until about 20 to 1 or so.

CLERK: All rise.

Recess

CLERK: All rise.

THE COMMISSIONER: Okay.

CLERK: Please be seated.

THE COMMISSIONER: All right, just before we begin, Mr. Learmonth, if I can, you've alerted me to the fact that counsel have – some counsel have approached you with regards to how we're handling the rest of Mr. Bown's testimony. So it's – you know, it won't come as a surprise that we're going to finish Mr. Bown tomorrow. So the thing is, is that if – I understand some of you have indicated to Mr. Learmonth that you're not ready to proceed with your examination of Mr. Bown.

I'm okay with not going in order if we – if everybody agrees, but one thing that I would ask is that if I'm going to be dealing with a request that, you know, you get more time or whatever, it's on the assumption that we're going to finish tomorrow.

So I would need to know from each one of you how long you intend to be with Mr. Bown. And if I see that we can do it in a day, that's fine. If we cannot do it in a day, then we're going to be starting this afternoon. And, hopefully, if we can – if you all agree, we can change the order a bit for those that are ready. If you're not in agreement, well, then I'll have to enforce my list as I already have it.

But I do want to try to co-operate with counsel. If you guys all – you know, if all of you feel you can do it in one day, I just want to know we can do it in a day, if the intention is, is that we finish with Mr. Bown this afternoon and we do cross-examination tomorrow. So I'm going to leave it in your hands to basically maybe have a discussion between yourselves as to whether that's possible, and also the issue of whether you're prepared to not go in order – the order that we've already practised all the way along.

Mr. Coffey?

MR. COFFEY: Oh yeah, Commissioner, I've just – I must have just missed your opening. I just – I couldn't hear you.

THE COMMISSIONER: Oh, I'm sorry.

MR. COFFEY: I apologize, but – for that, but are you – is the suggestion we won't – if Mr. Learmonth will finish his examination and we won't start right away or ...?

THE COMMISSIONER: Well, here's the suggestion that I was –

MR. COFFEY: Okay, if you would.

THE COMMISSIONER: Mr. Learmonth approached me and indicated to me that he had – some counsel had spoken to him suggesting that after he finishes with Mr. Bown that we either not proceed in the order that we have because some counsel are not going – are not ready for Mr. Bown or, alternatively, that we hold over until tomorrow morning and cross-examine tomorrow morning.

So I don't want to repeat what I just said but we're going to finish Mr. Bown, but don't worry. So can I leave it in your hands and then when we come back this afternoon we can talk

about how that goes, or did you want an answer on this now? I know you were one of the counsel that referred to this, Mr. Simmons.

MR. SIMMONS: Yeah, thank you, Commissioner.

And we did – I did raise this issue, as well, with Mr. Learmonth and we're not looking for any particular resolution now, but I wanted to flag it. And from my own perspective, we had anticipated that Mr. Bown's examination would probably have taken up the full day.

And as you may appreciate the work we're doing, there are a lot of other things going on in the background, dealing with other witnesses and other things we have to do for the Commission in order to keep things moving. And from my own perspective, I think I would probably be more efficient and perhaps shorter with some time to prepare after having heard Mr. Bown's evidence than if we have to go straight into this afternoon. And, normally, without government asking any questions, we're typically the first in line.

THE COMMISSIONER: Yeah.

MR. SIMMONS: So – and I understand your concern and with conversations I've had with several counsel, not everybody, it does seem to us that it would be possible to finish all the cross-examination tomorrow. And that would certainly be a benefit to us, but we can have the further discussion over the break as you suggest.

THE COMMISSIONER: Yeah and I want to see your estimates because I'll be needing to hold you to them tomorrow. So maybe you and counsel and Mr. Learmonth and Ms. Muzychka can meet with you after we finish this morning, just to try to get this figured out, and then tell me what you want to do. And I'll be easy as long as it's – as long as we finish by tomorrow, okay?

All right, Mr. Learmonth.

MR. LEARMONTH: Thank you.

Next we'll turn to tab 45, Mr. Bown. Now, this is a – it starts off an email from Victor Young who's a –

THE COMMISSIONER: 03549.

MR. LEARMONTH: 03549, a retired a prominent businessman and civil – formerly a civil servant. He's writing Ed Martin on April 16, 2014, and the email is forwarded to you. I'm just going to read it out.

Mr. Young says – subject: Long time no contact. He says: "Hi Ed. You certainly have me confused and I know I am missing something. You are quoted as saying 'It's not prudent to show any type of information when you're in deep negotiations, and that's just protecting the people of the province'. What exactly does this mean? How is it protecting the people of the Province by not allowing them to understand how this crucial project's costs are escalating? How come every major company traded on global stock exchanges that have suffered through major cost increases (oil and gas and mining and utilities) have not figured out that it is apparently in the best" interests "of shareholders to keep cost overruns secret? How come 'full and timely' disclosure rules require public companies to act against shareholder interests if in fact your assertions regarding protecting the interests of the people are legitimate?"

"I have been asked over and over again in emails and phone calls in the last 24 hours how all of this makes any kind of sense. At this point, I have no answers. Please help me understand how all of this works."

So you can tell there's some mild sarcasm, not impolite. But, you know, I guess the point being made here is self-evident from reading this that, you know, Mr. Young is saying public companies have to disclose, but in your situation when it's a province-owned Crown corporation –

MR. BOWN: Right.

MR. LEARMONTH: – you don't have to –

MR. BOWN: Yeah.

MR. LEARMONTH: – disclose. Do you have any answer to that? I mean, the email was sent to you. Did you have any discussion with –?

MR. BOWN: No.

MR. LEARMONTH: Yeah.

Do you agree, as the person that was responsible for representing the Department of Natural Resources (inaudible), that this is a good point that Mr. Young is making?

MR. BOWN: I understand the point that he's making.

MR. LEARMONTH: A good point, isn't it?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah. And there's one other – on this topic there's one other subject I want to get into. The – in terms of communicating information, do you agree to me that there's at least two levels? One level is that Nalcor can communicate the information to Cabinet by keeping it up to date, and then leave it to Cabinet to decide whether to put it out in public. Correct? Just because Nalcor provides information to the Cabinet, which is not subject to ATIPPA or anything like that –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – that doesn't mean the government has to make it public. Correct?

MR. BOWN: Correct.

MR. LEARMONTH: Yeah. So do you agree that the argument that I have to – I can't give information to government because it will become public is a fallacy?

MR. BOWN: Maybe the concern –

MR. LEARMONTH: Yeah.

MR. BOWN: – because, I guess, you're relying on the absolute Cabinet confidentiality, yes.

MR. LEARMONTH: Yeah.

And, well, regardless, I mean, whether he – whether it's a concern or not, is there any basis not to communicate everything to Cabinet?

MR. BOWN: No.

MR. LEARMONTH: And if Cabinet leaks it or something like that, which I'm not suggesting they do, well, that's Cabinet's fault.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. LEARMONTH: Yeah.

So, do you agree that Mr. Young, in this email, has hit the nail on the head?

MR. BOWN: He's raised a very interesting, valid point.

MR. LEARMONTH: Okay.

Thank you.

But you didn't get back to Mr. Martin about this?

MR. BOWN: No.

MR. LEARMONTH: Do you have any idea why he sent you the email? Did you ever discuss it with him?

MR. BOWN: No, and this wouldn't be the first time. He – I think there was a couple in years previous that he sent to me as well.

MR. LEARMONTH: Okay.

Now, we have a – at tab 47, an email from you to Ed Martin, Dawn Dalley, Karen O'Neill, Julia Mullaley, Paula Burt: Muskrat Falls presentation. This is June 24. So this is – on page 2 it identifies the Muskrat Falls Project Value and Cost Update.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: June 25, 2014.

Turn to page 9, please.

Now, under the heading Project Progress, at the bottom: "Commenced work on all major sites as per construction plan and project construction progressing as per schedule."

MR. BOWN: Yes.

MR. LEARMONTH: Now, we know that this is halfway through 2014. We know from the evidence, which I think is acknowledged by Nalcor – in fact in a later communication Mr. Martin described the start of Nalcor as being exceeding low – slow.

MR. BOWN: Yeah.

MR. LEARMONTH: So, do you know the basis upon which –

THE COMMISSIONER: No, I think that was –

MR. LEARMONTH: – well, first of all –

THE COMMISSIONER: – we have reference to –

MR. LEARMONTH: – this is Exhibit P–

THE COMMISSIONER: Excuse me just for a second.

I don't think it was Nalcor that said – that acknowledged that they had proceeded slowly.

MR. LEARMONTH: No.

THE COMMISSIONER: They were saying that Astaldi (inaudible) –

MR. LEARMONTH: Yes, oh yeah I misstated that then. Yeah.

THE COMMISSIONER: Right.

MR. LEARMONTH: Anyway, this Exhibit is P-03551.

Thank you for correcting me on that.

So, with a P3 – or P1, P3 schedule at the beginning and then Nalcor, we'll say, slow off the mark after November 29 –

THE COMMISSIONER: Astaldi.

MR. LEARMONTH: Astaldi.

Do you understand how there could be any sense to this comment?

MR. BOWN: Based on what we know now?

MR. LEARMONTH: Yeah.

MR. BOWN: No.

MR. LEARMONTH: No.

MR. BOWN: No, it's not accurate.

MR. LEARMONTH: No.

And well, this is further – on page 10 it says commissioning and start-up of first power, 2017.

I guess your answer would be the same as the earlier answer. Is that correct?

MR. BOWN: Yeah, correct.

MR. LEARMONTH: Page 18. This is: Key Changes Since Sanction.

And in the middle of that page, it says –

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. LEARMONTH: – “Financing costs - decrease of additional ~ \$300 million on NPV basis.”

What does this mean, to your knowledge?

MR. BOWN: That would be the value – that would be the – of the federal loan guarantee.

MR. LEARMONTH: But where did this – have you ever seen any basis for this calculation?

MR. BOWN: Yeah I believe I have in the past, about a \$1 billion nominal, \$300 million in present value.

MR. LEARMONTH: Yeah.

Oh so that's what it is, a million dollars, like –

MR. BOWN: A billion dollars –

MR. LEARMONTH: – over time and then –

MR. BOWN: – yeah –

MR. LEARMONTH: So –

MR. BOWN: – three –

MR. LEARMONTH: – what – in earlier cost estimates we didn't see this sort of balancing, you know, inputs, but now we seem to see it more often than not, is that correct?

MR. BOWN: Yeah, because you'd see it – it's not a capital cost concern; it's a ratepayer benefit.

MR. LEARMONTH: Yeah, yeah.

And that's – ties in with Mr. Martin's fondness for the term the value of the project as opposed to the capital cost?

MR. BOWN: Yes.

MR. LEARMONTH: And on page 28 it says Internal Approach: "Best practice project management processes"; "Internal audit"; "Internal quality control"; et cetera.

Now, based on your reading of the reports of EY, do you agree that there's considerable conflict between the opinion of EY and the opinion of Nalcor as stated on this page 28?

MR. BOWN: Well, clearly EY identified several concerns with project management processes.

MR. LEARMONTH: Yeah, and cost estimates also, right?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

Okay, tab 48. This is Exhibit P-03552. This is from Karen O'Neill of Nalcor, dated June 24, 2014: "Draft speaking notes and public presentation on MF value/cost".

So this is – are Mr. Martin's speaking notes, correct?

MR. BOWN: Yeah.

MR. LEARMONTH: Okay, and this is at the time that the – Mr. Martin is informing

government that the cost estimate has gone up to 6.99 billion, is that right?

MR. BOWN: That's correct.

MR. LEARMONTH: Okay.

So this is what Mr. Martin apparently said – or what his speaking notes say; I should say that. Page 12 – page 2: "We are employing best practices in project and contract management to ensure project costs and schedule are effectively managed for the benefit of the people of the province."

And then at the bottom of that page: "In addition, construction is underway at all work fronts for the project; financing is completed; labour agreements are in place; and we've received environmental release ... This significant progress mitigates future construction and cost risks on all components of the project."

Is that – once again, is that sort of the typical way that Mr. Martin expressed himself to you?

MR. BOWN: Sure, once you have certain elements behind you, you reduce your risk going forward.

MR. LEARMONTH: Yeah.

And then: "We are aggressively managing project costs and we have minimized cost changes to the project since sanction." Would that be another – sort of a typical way that Mr. –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Yeah.

MR. BOWN: You're correct.

MR. LEARMONTH: And later on in the middle of that: "However, we are within the reasonable range on costs and expenditures of where we expected to be at this time."

Would that be a typical statement from him?

MR. BOWN: Sure.

MR. LEARMONTH: Okay.

Then on page 4: “The cost changes in capital costs are offset by savings we’ve negotiated in our financing costs, as well as an increase in revenue from our market agreements from the sale of our export energy. Both of these are having positive impacts on project costs.”

Isn’t that a mixing of items?

MR. BOWN: Yeah, that’s a mixing of two different elements.

MR. LEARMONTH: Yeah, I mean –

MR. BOWN: One is the actual capital cost of the project and the other’s the cost to the ratepayer.

MR. LEARMONTH: But am I correct that there’s a trend for Mr. Martin for – at this time forward to sort of blend everything together?

MR. BOWN: It’s about the value of the project.

MR. LEARMONTH: Yeah. Value, yeah.

All right. Now we’ve seen this – well, we see it here. We’ll see it elsewhere – that he says in that (inaudible): “... as well as an increase in revenue from our market agreements from the sale of our export energy.”

Do you know what market agreements were then in place for the sale of export energy?

MR. BOWN: I can’t recall what was in place at that time.

MR. LEARMONTH: Well, I mean, we know that there was the excess –

MR. BOWN: That’s right.

MR. LEARMONTH: – energy agreement, but that’s not an agreement to sell.

MR. BOWN: I think that’s what’s being characterized here as the –

MR. LEARMONTH: But that’s not an agreement to sell, that’s a commitment to offer.

MR. BOWN: Yeah.

MR. LEARMONTH: Correct? But you think that’s what’s being referred to here?

MR. BOWN: I think that’s what’s being referred to there.

MR. LEARMONTH: Are you aware of any other, we’ll say –

MR. BOWN: No.

MR. LEARMONTH: – quotation mark – agreements – that Nalcor had at the time?

MR. BOWN: Not for power sales. No.

MR. LEARMONTH: Well, how much – did you ever – were you ever advised of, like, how much the revenue would be from the sale of export energy?

MR. BOWN: Yes, I think I did see that at one point. I don’t recall it now, but it’s average energy. It’s – when it’s – when there’s a call, if Nalcor has it to sell, of what the offsetting price is in New England markets.

MR. LEARMONTH: Yeah.

MR. BOWN: It was – were estimates I’ve seen because it’s not a fixed amount, it’s a variable amount as well.

MR. LEARMONTH: Oh, because the – it’s a market price.

MR. BOWN: Absolutely.

MR. LEARMONTH: But –

MR. BOWN: And also it’s based on average energy, as well (inaudible).

MR. LEARMONTH: Yeah, but have you ever seen any document that says: Okay, we – these are our projections, you know, we have to give so much to Nova Scotia, what’s leftover is –

MR. BOWN: I think you see it in some of the rate mitigation on tables that were done. They put in export sales. Now, I think that’s – no, I think that’s a combination of these sales and what they had future forecasted but not based on any agreements.

MR. LEARMONTH: Yeah.

Okay and then on page 5, second-to-last paragraph: “The Government of NL will ensure that NLers benefit from the value that this project is returning to our province. The Government will use a portion of revenue from our export sales that were not included in the project economics to offset the anticipated 6-7% rate impact to electricity consumer in NL. As a result, electricity consumers can expect to have minimal changes in their electricity rates over the next 15 years – the same as what was forecasted at sanctioned.”

Do you have any comment on that statement? It was made June 24, or the speaking notes were.

MR. BOWN: Well, based on the view at the time, that was likely, but it’s not today.

MR. LEARMONTH: No. And the – once again, you don’t know how much of the revenue – like, it refers, again, to revenue from export sales, but you don’t know –

MR. BOWN: No.

MR. LEARMONTH: – how much money that was projected to be, do you?

MR. BOWN: Not off the top of my head but it’s in some of the – I think, in some of the exhibits there, there are actual slides on rate mitigation and it includes a value for export sales.

MR. LEARMONTH: Yeah. But that would be a decision of the government as to whether the – Nalcor would be directed to offset.

MR. BOWN: Yes.

MR. LEARMONTH: That’s not something that’s in place at this time, is it? I mean, Nalcor, as far as I know – and I would certainly defer to you on this. There was no obligation on Nalcor to put money into the cost of Muskrat Falls that would be obtained from profits on sale of excess energy. Am I correct in that?

MR. BOWN: If it’s a government commitment.

MR. LEARMONTH: Yeah.

But that – it’s not – when was this government commitment made?

MR. BOWN: Premier Marshall made that commitment that –

MR. LEARMONTH: Okay.

MR. BOWN: – quite some time ago and the current government is currently working on rate mitigation options as well, which includes export sales.

MR. LEARMONTH: But is there legislation in place for that?

MR. BOWN: No.

MR. LEARMONTH: It’s just an expression of intention by government?

MR. BOWN: It’s a policy initiative –

MR. LEARMONTH: Yeah.

MR. BOWN: – policy direction.

MR. LEARMONTH: But it’s not –

MR. BOWN: You don’t need legislation for that.

MR. LEARMONTH: You don’t need legislation. Okay.

Now we’re in to tab – or binder 2, Exhibit – or excuse me, tab 50 is Exhibit P-03554 from Gilbert Bennett to Charles Bown, you: “Re: Risk.” This is July 24, 2014. So the Oversight Committee is up and running now or it’s up anyway, right?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

So if we turn to page 2, it’s an email from you, Charles Bown to Gilbert Bennett: “I’m hunting. Julia wants to stay within the framework of existing reports; nothing new.” Well, actually it starts lower.

MR. BOWN: Right.

MR. LEARMONTH: Your email to him is: “How do pcn’s compare to the risk register.” And then he says: They don’t, they’re two different issues, which is – you know that’s correct now, right?

MR. BOWN: Yes.

MR. LEARMONTH: They’re two separate, nothing to do with each other. And then you say: “I’m hunting. Julia wants to stay within the framework of existing reports; nothing new.”

Now, this gets back to a topic – I’m not going to dwell on it – but, you know, this has to do with the utility of using existing reports – an Oversight Committee using existing reports from Nalcor. As I pointed out to you when I referred to those emails, that – and I think you’ve agreed, that the value of that is, to be generous, very limited. Do you agree?

MR. BOWN: If the information isn’t correct.

MR. LEARMONTH: Yeah.

MR. BOWN: Yeah.

MR. LEARMONTH: But an Oversight Committee is not struck, as far as I know it, to simply ask for and regurgitate information received from the entity over whom the Oversight Committee is providing oversight.

MR. BOWN: But if you’re asking for the base level of information, then you have the ability – you’re receiving raw data, then you should be seeing exactly what they’re seeing.

MR. LEARMONTH: If it’s true.

MR. BOWN: If it’s true.

MR. LEARMONTH: Yeah, okay.

MR. BOWN: Yeah. That’s the intent.

MR. LEARMONTH: Yeah but that’s the critical point, isn’t it?

MR. BOWN: Correct.

MR. LEARMONTH: Yeah.

And then at the – on page 1 he says – you say: “Compromise offer ...

“We’ll agree to Level 3 and you agree to risk register.

“We can start a conversation on better approaches to reporting risk that we can implement later.” So why is the Oversight Committee like, you know, compromising on the information they get?

MR. BOWN: As I had noted in my testimony, I was being cute with Gilbert, trying to get something from him that I was having trouble getting. At the time, we were asking for PCNs and we’re probably down at a – or DANs, and we were down at a level too low.

We didn’t understand them – the difference between PCNs, DANs, risk register, et cetera. So what I was doing is being cute and saying, listen, you give me something on the PCNs and give me the risk register.

MR. LEARMONTH: Yeah. Well –

MR. BOWN: It’s what we wanted.

MR. LEARMONTH: I suggest to you that the Oversight Committee shouldn’t be negotiating with –

MR. BOWN: I understand.

MR. LEARMONTH: – Nalcor on the provision of information.

MR. BOWN: This was early days, early set-up. We were trying to (inaudible) –

MR. LEARMONTH: Yeah.

MR. BOWN: – build a relationship and get the information that we needed.

MR. LEARMONTH: Okay but nevertheless, you had retained on a limited basis, EY, right?

MR. BOWN: Yes.

MR. LEARMONTH: So why wouldn’t you go to them to get this information?

MR. BOWN: EY?

MR. LEARMONTH: Well to, you know, ask them about what's the difference between a PCN and a –

MR. BOWN: I know. I don't know if we still had EY on contract at that time.

MR. LEARMONTH: Okay.

MR. BOWN: I think they were finished.

MR. LEARMONTH: Okay.

Well, they signed a contract that continued their work, right?

MR. BOWN: Yeah but they did a discrete piece of work and then they went away and came back again.

MR. LEARMONTH: Okay, anyway, next tab 51, Exhibit P-03555. It says: "Charles,

"We flagged the trend to the Board at financial close with the same level of detail as provided to the Province at the time.

"The deck used" by "the Board is attached ..." Mr. Bennett says.

But if I go through this report, were you aware of the evidence given by Derrick Sturge that in anticipation of a meeting with the board of directors of Nalcor scheduled for November 14 or 15, they were true, that he prepared a deck which showed the \$300-million cost increase.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: And there was one other page. But then, Mr. Martin, in an email that's an exhibit, directed him to take out those slides, one of which dealt with the \$300 million. Did you see that information? He said remove it because you wanted –

MR. BOWN: No, I became aware of it after.

MR. LEARMONTH: Yeah, because he wanted to give – do a verbal presentation to the board of directors.

Anyway, if you look at page 26 of this exhibit, it says: "Key Changes from DG3." And there's the \$300 million, you see?

MR. BOWN: Mm-hmm.

MR. LEARMONTH: Now, if Mr. Bennett is telling you this is the same thing, we flagged the trend to the Board at financial – the deck used with the Board is attached, well then, I would question the correctness of that information. Do you see my point?

MR. BOWN: I understand your point.

MR. LEARMONTH: Do you agree?

MR. BOWN: I agree.

MR. LEARMONTH: Yeah.

Tab 52, Exhibit P-03556.

And this is a email from Karen – on page 2, it starts – it's an email, December 12, 2014. So we're getting towards the end of that awful first year for Astaldi. Do you agree?

MR. BOWN: Yes.

MR. LEARMONTH: December 12, 2014, Karen O'Neill copying James Meaney, Paul Harrington, Gilbert Bennett, re Questions and Answers updated: "Hi Craig, here are the updated questions and answers for the schedule section."

So Craig is – this is for the Oversight Committee, right?

MR. BOWN: Right.

MR. LEARMONTH: "Please let myself or Jim know if you have any additional questions/comments" – et cetera. And then the questions: "Notes: questions a and b have been separated out with answers provided by Nalcor for both; question e has been revised to reflect the original wording with an answer provided by Nalcor."

So Nalcor is giving answers to the Oversight Committee, right?

MR. BOWN: Mm-hmm. Yes.

MR. LEARMONTH: Question, on the top of page 3 of Exhibit P-03556: **“What has caused the slippage in schedule for the Powerhouse & Intake and the Spillway & Gates?”** Answer: “Nalcor is aggressively managing the cost and schedule of the project. Overall, the Muskrat Falls Project remains on schedule and construction progress for the Muskrat Falls generating facility is generally where we anticipated it to be at this point. The slippage in project schedule is largely due to a slower than anticipated mobilization and start up by Astaldi Canada. Nalcor is working closely with the contractor and measures have been put in place between Nalcor and Astaldi to address issues affecting progress.”

Now, this is a year into the Astaldi contract. I won't go over the ground I've gone over before, but I suggest this is preposterous. Do you agree?

MR. BOWN: Absolutely and –

MR. LEARMONTH: Do you agree?

MR. BOWN: Yes, and my response –

MR. LEARMONTH: Yeah.

MR. BOWN: – later on in the email –

MR. LEARMONTH: Yeah.

MR. BOWN: – points to that.

MR. LEARMONTH: And **“b) Does the progress schedule slippage on the Powerhouse & Intake and the Spillway & Gates impact the Milestone Schedule or Project Budget?”** Answer: “Based on the completed work to date for these projects, there are currently no impacts on the milestone schedule and first power remains on target for late 2017.”

MR. BOWN: (Inaudible.)

MR. LEARMONTH: Once again, do you agree that's preposterous?

MR. BOWN: Not accurate.

MR. LEARMONTH: Yes?

MR. BOWN: Not accurate.

MR. LEARMONTH: Yeah. No, do you agree that it is not only inaccurate, but it's preposterous?

MR. BOWN: Today, yes.

MR. LEARMONTH: Yeah.

“e) Why were the incurred costs of \$1.07 billion higher than the planned costs of \$1.065 billion while at the same time the components of the Generating Facility are behind planned schedule?”

“Nalcor is aggressively managing the cost and schedule of the project. There is less than a 2 per cent” – or it should be there is, I guess – “less than a 2 per cent variance in actual versus planned construction progress and less than a 1 per cent variance on incurred versus planned costs. At this stage of project construction we do not consider these variances to be significant but we continue to aggressively monitor both of these items.”

Is that an answer?

MR. BOWN: No.

MR. LEARMONTH: Not an answer.

MR. BOWN: No.

MR. LEARMONTH: Is this, once again, typical of the kind of language that Ed Martin used in his communications with you?

MR. BOWN: This wasn't drafted by Ed Martin. This would have been drafted by others in their team.

MR. LEARMONTH: Yeah.

MR. BOWN: So that's a message that we saw company wide.

MR. LEARMONTH: Yeah.

MR. BOWN: But, no, those answers did not – those responses did not answer the questions.

MR. LEARMONTH: No. But what did you do about it?

MR. BOWN: So –

MR. LEARMONTH: What did the Oversight Committee do about it? What action was taken?

MR. BOWN: So it was sent to me, and I sent it – the response back to Dawn. I said “the responses don’t really answer the questions,” which for me is strong. And she says: “Ok. Let me talk to Gilbert.” Basically this doesn’t do it. The purpose of these questions was never going to be in the oversight report. That wasn’t going to cut it.

MR. LEARMONTH: No. You wouldn’t put that in a report –

MR. BOWN: No.

MR. LEARMONTH: – would you?

MR. BOWN: No. And that’s why I went back and said it doesn’t answer the questions.

MR. LEARMONTH: You couldn’t put that in a report.

MR. BOWN: Wouldn’t.

MR. LEARMONTH: You wouldn’t, no.

MR. BOWN: No.

MR. LEARMONTH: Tab 53, email from Paul Harrington to you, February 4, 2015. Charles – did you have many contacts with Mr. Harrington?

MR. BOWN: No.

MR. LEARMONTH: You know why he is writing you here?

MR. BOWN: Because I’m the deputy minister of Natural Resources.

MR. LEARMONTH: But is this the first contact you’ve had with him?

MR. BOWN: No, he would see me at Oversight Committee meetings when he attended.

MR. LEARMONTH: Yeah. Didn’t you say in your interview that you only heard from Mr. Harrington when he was complaining about something?

MR. BOWN: When he was emailing me, absolutely.

MR. LEARMONTH: Yeah. That’s what you said in your interview.

MR. BOWN: And that’s – exactly.

MR. LEARMONTH: It’s true.

MR. BOWN: And if you go through my – the evidence here, it’s accurate.

MR. LEARMONTH: Yup.

Anyway this email, Exhibit P-03557 at tab 53. So it’s – he’s – Mr. Harrington is writing you: “Charles; Mark and Jim” – that’s probably Mark Bradbury and Jim Meaney?

MR. BOWN: Yup.

MR. LEARMONTH: “... met with Craig today – I am rather concerned about what they reported back to me and wanted to let you know since we chatted about that earlier

“here are some of the things that are concerning... this is what Jim advised....

“**Approach** – Jim asked Craig very point blank what is the OC’s desired approach? He advised that they need to have EY conduct an ‘independent review’ which IA could certainly ...” – that’s Internal Audit, right?

MR. BOWN: Yes.

MR. LEARMONTH: Internal audit “could certainly be part of, but having Nalcor IA lead and EY piggyback off that would not work.

“I think this may be offside with discussions held at the Ed/Premier level on this matter back before Xmas. I understood it was agreed that Internal audit from Nalcor would lead and EY would join” them in an audit.

Now, were you aware of any discussions held between Ed Martin and the premier before, say, Christmas in 2014?

MR. BOWN: No, I wouldn't have, but it wasn't our intent to have Internal Audit do something and then have EY piggyback.

MR. LEARMONTH: Yeah, it never was.

MR. BOWN: No.

MR. LEARMONTH: Well, it wouldn't be a very meaningful process, would it?

MR. BOWN: No. It was not unusual for Ed and the premier to have conversations.

MR. LEARMONTH: Not unusual.

MR. BOWN: No.

MR. LEARMONTH: No. I understand that if the premier has conversations and makes a commitment, there's not much the Oversight Committee can do.

MR. BOWN: Yeah.

MR. LEARMONTH: I mean I acknowledge that.

MR. BOWN: Correct.

MR. LEARMONTH: Yeah.

Okay, "**Timing** – E&Y are talking about a 6 to 12 week effort to carry out the cost and schedule task – That seems excessive to me and if that was carried forward will be a further drain on project resources."

Then "**Duplication of effort** – I understand that OC are talking about a Change Management and Risk Review also – Internal Audit have just completed a full audit of the process and are now moving into a compliance audit – so I question the value of E&Y duplicating effort."

Now, you're aware of the fairly serious concerns that EY made about this subject, right?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

So, do you agree Mr. Harrington is trying to push you off?

MR. BOWN: Absolutely.

MR. LEARMONTH: Absolutely?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

MR. BOWN: We didn't change.

MR. LEARMONTH: Yeah.

Now, the next document is page 54, tab 54, it's Exhibit P-03558. This is from Paul Harrington to Craig Martin, the executive director of the Oversight Committee copied to you and Gilbert Bennett: Craig – March 27, 2015.

"Craig

"I wish to inform you that I am currently in Europe and will not return to Canada before 15th October, consequently I will not be able to attend the proposed OC meeting, I am uncertain as to whether Gilbert will be back in the office on the 14th October, if neither Gilbert, James Meaney or myself are available I believe it would be advisable to reschedule the meeting."

So is that – that means he's going to be in Europe for about seven months? He's writing it March 27.

MR. BOWN: Yeah.

MR. LEARMONTH: And he's going to be in Europe until October 15?

MR. BOWN: Yeah, I can't speak to what he was doing in Europe.

MR. LEARMONTH: Well, who would be running the project if this is correct?

MR. BOWN: I can't tell you. I can't answer that.

MR. LEARMONTH: Okay.

So, obviously, there's not much interest in Nalcor at this point in attending the meeting. Would you agree?

MR. BOWN: No.

MR. LEARMONTH: Do you agree with me?

MR. BOWN: I agree with you.

MR. LEARMONTH: Yeah.

Tab 55, Exhibit P-03559, it's an email from Ed Martin to you, Sunday, April 26. And below that is an email from Ed Martin to a number of people. He's forwarding you something that he sent internally.

He said: "Attached is the final presentation I shared with the Minister yesterday. I am copying it to all of you to ensure" that "we all have the copy used for future reference and updates" et cetera. So that would be then Minister Dalley, would it?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

So what's the – what's your take on this presentation? It's a big long deck.

MR. BOWN: Yeah.

I'll give you the context. There was some internal discussion ongoing at that time. It really shows up – what's at the beginning is it's not (inaudible) it's what appears at the end really addresses the purpose of the meeting, which was to – there was concern amongst the ministers around the Cabinet table that Nalcor was getting too big, that they had too many lawyers, too many communications staff – too many, too many, too many.

And they were called to a meeting – Ed was called to a meeting. This took place at our office of Natural Resources. Minister of Finance was there to address the concerns that the ministers had about the cost of running Nalcor.

MR. LEARMONTH: And this was Minister Dalley, was it?

MR. BOWN: Yes.

And, oh, gosh, Minister Wiseman.

MR. LEARMONTH: Ross Wiseman?

MR. BOWN: Yes.

MR. LEARMONTH: Were you present?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

MR. BOWN: And Julia was present as well.

MR. LEARMONTH: Julia Mullaley.

Page 3, there's a statement that says: "Nalcor reducing/deferring \$5-7 million costs in response to Shareholder revenue shortfall." So is that what you're saying, that government had a revenue shortfall and this is a statement that Nalcor is, well, deferring \$5 to \$7 million, I guess, to address the problem. Is that correct?

MR. BOWN: I guess so.

The approach is that in order to build the project, the government is providing equity, so the more retained earnings that they have themselves or lower costs –

MR. LEARMONTH: Right.

MR. BOWN: – the easier it is on the taxpayer.

MR. LEARMONTH: Okay. Tab 56, Exhibit P-03560; this has to do with the removal of the ICS over bays 3 and 4.

Before May 25, 2015 – the dates of these emails in P-03560 – what, if any, information do you have, from any source, as to the status of the ICS or plans to tear it down?

MR. BOWN: Well, we had – in the Oversight Committee meetings, we had received the status on the work that had been done on the ICS and how far they were going to go, but this is in response to a question I would have received either from the minister or from the Premier's office or from somebody else who had been contacted by somebody from the site, saying that

they were taking down the units, and we hadn't been advised of that.

MR. LEARMONTH: Yeah. But, by this time, this has – Gilbert Bennett says, “Is Astaldi removing the unfinished part of the ICS over bays 3 and 4?”

And then, the reply – that's from you – and then the answer is, “The ICS has been removed from over units 3 and 4...”

But it was removed over units – the plan was to remove it over units 1 and 2 also, right? The decision had been made at that time, although the removal had not been –

MR. BOWN: No, I think – that's right, the decision had been made to remove it, but we weren't aware that the – actually, the work had taken place, the work was started –

MR. LEARMONTH: (Inaudible.)

MR. BOWN: – generally, what happens – when anything happens at the site, somebody picks up a phone and calls the media or calls their MHA or somebody, and it gets its way around. So I'm just responding – hunting down a response to a question.

MR. LEARMONTH: But, you didn't know about this, did you?

MR. BOWN: No.

MR. LEARMONTH: And, you have to know about it in case you get inquiries from the media –

MR. BOWN: Absolutely.

MR. LEARMONTH: – I take it, is that –?

MR. BOWN: Yep.

MR. LEARMONTH: So, you weren't too happy about not having information on it?

MR. BOWN: Absolutely.

MR. LEARMONTH: Yep?

MR. BOWN: Yeah.

MR. LEARMONTH: Absolutely you were not happy?

MR. BOWN: Absolutely was –

MR. LEARMONTH: Yeah.

MR. BOWN: – not happy.

MR. LEARMONTH: Yeah.

Tab 57 – this is from Ed Martin to you – it's dated June 24, 2015 – Cabinet presentation for tomorrow. Now, what is the – why was this Cabinet presentation made – to your recollection?

MR. BOWN: June – this was the cost update, wasn't it?

MR. LEARMONTH: June 25, 2015.

MR. BOWN: Then this is the cost update.

MR. LEARMONTH: Yep.

MR. BOWN: If I remember.

MR. LEARMONTH: But we know that there was a revised AFE up to \$7.65 billion –

MR. BOWN: Yeah.

MR. LEARMONTH: – in September. So, what's the – you can go through it, but –

MR. BOWN: It's only pictures.

MR. LEARMONTH: Yeah.

MR. BOWN: I guess he was asked –

MR. LEARMONTH: So it's mostly pictures and –

MR. BOWN: Yeah. I guess he was asked to come in and give a status of where things were.

MR. LEARMONTH: Yeah.

But, you know, internal documents that we have, including the information from the Grant Thornton report and a document that was submitted by Jim – James Meaney which

chronicled the development of these cost increases from February 2015 up until October 2015, I mean, Nalcor – it was obvious that they were aware that the cost had gone up substantially from AFE – revised AFE 2 at 6.99. That's documented.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: But on June 25, 2015 – and correct me if I'm wrong – I can't see any mention of this in this communication, can you?

MR. BOWN: No, it's just a project status.

MR. LEARMONTH: Yeah.

But they knew at that point and they didn't mention it?

MR. BOWN: No.

MR. LEARMONTH: No.

So Mr. Martin would've presented that to the Cabinet?

MR. BOWN: Correct.

MR. LEARMONTH: So what's the benefit of this? When you read through it, tell me what this brings to the discussion, adds to the discussion?

MR. BOWN: It provided Cabinet with an update of what the current status of the construction of the project was.

MR. LEARMONTH: But wouldn't you expect that an update on cost would be a fundamental part of that presentation if it was done in the best of faith?

MR. BOWN: If he had an update on cost to provide, yes.

MR. LEARMONTH: Yeah, well, they had lots of updates on cost.

MR. BOWN: Well, they didn't provide it.

MR. LEARMONTH: No.

Tab 58 is an email from Karen O'Neill to Charles Bown and Gilbert Bennett. Can you tell me what this email indicates?

MR. BOWN: I think this is – they were doing a tour with the media that they were going to come to the Oversight Committee and provide us with a cost update.

MR. LEARMONTH: Okay.

MR. BOWN: So, what's the schedule for that, and to make sure that it was booked.

MR. LEARMONTH: Okay.

Tab –

MR. BOWN: Again, it was to ensure that we stepped back to ensure that the – they made a presentation to the Oversight Committee about the cost update.

MR. LEARMONTH: Okay.

Well, was the Oversight Committee informed before September 2015 that the 6.99 cost estimate, which was announced in June 2014, was no longer accurate?

MR. BOWN: I don't believe so.

MR. LEARMONTH: You don't believe so. No.

MR. BOWN: No.

THE COMMISSIONER: I think maybe we'll take our break now for the lunch period at this stage.

MR. LEARMONTH: Okay.

THE COMMISSIONER: All right, so back at 2 o'clock then.

CLERK: All rise.

Recess

CLERK: All rise

This Commission of Inquiry is in session.

Please be seated.

THE COMMISSIONER: All right.

All right, Mr. Learmonth.

MR. LEARMONTH: Thank you.

Okay, tab 59, this is Exhibit P-03563. This has to do with – once again, protests. It's an email from Karen O'Neill to you dated August 13, 2015. If you go to page 2, it talks about: "Protesters got past the blockades and set up on the NS site" et cetera. Once again, was your involvement – government's involvement in this issue limited to receiving information so that you'd know where everything stood?

MR. BOWN: Exactly. That's correct.

MR. LEARMONTH: Okay. Thank you.

Tab 60, page 3. This is an LCP rate implementation plan dated September 11, 2015, correct?

MR. BOWN: Correct.

MR. LEARMONTH: Okay.

So this is September 11. What is the purpose of this document? Was it requested by government or what can you tell me about this?

MR. BOWN: When the project cost changed, clearly it changed what the electricity rate was going to be. Nalcor and – government requested Nalcor took on approaches to how it would mitigate electricity rates based on forecasted increase in costs.

MR. LEARMONTH: Okay but where does the – where is the cost increase to 7.65 referred to in this document? Can you show me?

MR. BOWN: Page 5: "These projections reflect capital cost estimate of \$7.6 billion"

MR. LEARMONTH: \$7.6 billion, okay. So this is at the time of the second revision to the AFE, right?

MR. BOWN: Yeah.

MR. LEARMONTH: And so this was something requested by government to give commentary on how this would affect the rates?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

MR. BOWN: And just to follow up on a question that you raised earlier on page 16, there's illustrative mitigation options that lays out potential revenue streams. So I'll note at the bottom you'll see MF export sales. So you're just looking for just what those numbers would look like.

MR. LEARMONTH: Yeah.

So they're just projections of –

MR. BOWN: They are just projections on sales, it's not contracts.

MR. LEARMONTH: Right.

Okay, tab 61. This is a project – it's Exhibit P-03565. It's a Project Update for the Oversight Committee on September 16.

MR. BOWN: Yes.

MR. LEARMONTH: So this is – is there any reference in this document to the increase in the –

MR. BOWN: I don't believe so.

MR. LEARMONTH: – AFE? Because I see on page 13 there's still 6.990.

MR. BOWN: Yes. Yeah, there's no reference here.

MR. LEARMONTH: How can this be that on September 11 they're talking about 7.6, right?

MR. BOWN: Mm-hmm.

MR. LEARMONTH: And then in this document, as far as I know, September 16, 5 days later, the Oversight Committee, they don't mention that.

MR. BOWN: (Inaudible.)

MR. LEARMONTH: Unless you can –

MR. BOWN: I don't have an answer to that.

MR. LEARMONTH: Do you see what I'm getting at?

MR. BOWN: I understand exactly what you're getting at.

MR. LEARMONTH: It's strange, isn't it?

MR. BOWN: Yes.

MR. LEARMONTH: So they're telling the government one thing and not passing it on to the Oversight Committee. I find that – some may find that ...

And I think we dealt with this. What's the point in this project update, P-03565, of all these photographs? It seems to be an endless stream of photographs. What's the point of this?

MR. BOWN: There was no – again, I think from their view they were showing us all the progress that was taking place on the project. We asked lots and lots and lots of questions but, really, this is not what we wanted and we told them that we don't want to see pictures, we want to see actual statements in presentations about the –

MR. LEARMONTH: Yeah.

MR. BOWN: – progress and issues.

MR. LEARMONTH: You're interested in the cost and schedule –

MR. BOWN: Correct.

MR. LEARMONTH: – not –

MR. BOWN: And risk.

MR. LEARMONTH: Yeah. And so you told them to stop sending these photographs?

MR. BOWN: Yes, we did. It took some time –

MR. LEARMONTH: Right.

MR. BOWN: – but we did get there –

MR. LEARMONTH: You did get there.

MR. BOWN: – because what we do have now are very detailed reports from the project.

MR. LEARMONTH: Right.

Tab 62, Exhibit P-03566, this is an email from Mr. Harrington –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – concerning the EY report and the issue of commercial sensitivity. Now, this wasn't – this was just the second report, just on process and controls –

MR. BOWN: Correct.

MR. LEARMONTH: – and so it wasn't the deep dive.

MR. BOWN: No.

MR. LEARMONTH: And you recall – or you may recall that Mr. Richard Noble, one of these experts at EY, said, look, there's 11 issues here that Nalcor has identified. He thought only one was valid.

MR. BOWN: Yeah.

MR. LEARMONTH: So did you – did the Oversight Committee – I take it that the Oversight Committee accepted the position put forward by Nalcor over that of EY on the commercial sensitivity because the report that had been prepared then was spilt into two, right?

MR. BOWN: Yes.

MR. LEARMONTH: We talked about that this morning.

MR. BOWN: I think that was the arrangement that was settled on.

MR. LEARMONTH: Yeah.

So who made that decision? Was it the Oversight Committee to accept Nalcor's position as opposed to EY's?

MR. BOWN: No, that would have been made with the minister and the premier and the premier's office.

MR. LEARMONTH: Okay, so that was something that the Oversight Committee had no control over.

MR. BOWN: No, but in a case like that, you bring forward the issue.

MR. LEARMONTH: Yeah.

You bring forward the issue, but –

MR. BOWN: Look forward and here are potential solutions.

MR. LEARMONTH: Yeah.

Page – tab 64, Exhibit P-03568. So this is the updated version to reflect the estimated impact of the final AFE. Well, unfortunately, it wasn't the final but that's September 28, 2015, is that correct? That's the 7.65?

MR. BOWN: Yes.

MR. LEARMONTH: Tab 65, Exhibit P-03569, December 20, 2015. This is from Paul Harrington: "LCP are now committed to providing a monthly call to the IE and Canada plus their advisors." Now, this was following that – the trouble that Nalcor got into with the independent engineer and Alison Manzer in October 2015. Are you aware of that?

MR. BOWN: Or September 2015 when I didn't give them –

MR. LEARMONTH: Yeah.

MR. BOWN: – an update – didn't advise them that the costs were going to change.

MR. LEARMONTH: Well, what happened is, as I recall the evidence, is that Nalcor continued to use the 6.99 AFE in their reports and then they dropped this 7.65 –

MR. BOWN: Right.

MR. LEARMONTH: – and I'm summarizing – and Ms. Manzer and Nik Argirov said: What's going on here? There's no way that you –

MR. BOWN: Yeah.

MR. LEARMONTH: – just found out about this information now. When we look at our monthly reports, there's no reference to this, why are you dropping it on us now? And there's a very potent letter that Ms. Manzer sent –

MR. BOWN: Yeah.

MR. LEARMONTH: – them telling Nalcor you'd better clean up your act or we will even consider stopping funding. You're aware of that, are you?

MR. BOWN: Yes.

MR. LEARMONTH: Yeah.

And did you – how did you become aware of that?

MR. BOWN: I only became aware of that during the review of materials for this. I was aware that in September they were unhappy with Nalcor that they didn't notify them of the capital cost update, but the October I wasn't aware of.

MR. LEARMONTH: Yeah.

And, finally, Mr. Meaney, when questioned on this, acknowledged that the information that had been sent to Nalcor, to the independent engineer, say, at least from March 2015 up to September was – his words – not truthful. Were you aware of that?

MR. BOWN: No.

MR. LEARMONTH: No. Okay.

Tab 65 – 66, Exhibit P-03570, from Gilbert Bennett to you. He says: "Thanks. I need a holding statement for EY, as they are starting to complain about not having access to data. Can I let them know I am seeking clarification from the Province on this issue?"

So, this is after EY is – has assembled a team of international experts – people from the UK, one man from Australia, someone from Vancouver, their top people – to do this review and they’re having trouble getting information from Nalcor.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: And I’m putting that mildly.

Do you recall having any involvement in the resolution of that problem?

MR. BOWN: No, in this case Gilbert raised the matter with me. Julia had the one-on-one contact with EY during the management of the contract so I was just making the – making her aware, as I noted to Gilbert.

MR. LEARMONTH: Okay.

By the way, what’s a holding statement? Is that a stall tactic?

MR. BOWN: I have no idea what a holding statement is.

MR. LEARMONTH: He says: “Thanks. I need a holding statement for EY, as they are starting to complain about not having access to data. Can I let them know I am seeking clarification from the Province on this issue?”

MR. BOWN: It didn’t mean anything.

MR. LEARMONTH: Yeah but was he seeking clarification from the province at this time?

MR. BOWN: I think he was looking for direction on whether he should provide board minutes.

MR. LEARMONTH: Yeah.

MR. BOWN: I don’t think they wanted to.

MR. LEARMONTH: Because there was – in January there’s a lot of resistance put forward by Nalcor –

MR. BOWN: Right.

MR. LEARMONTH: – to the information that was sought by EY. Correct?

MR. BOWN: Correct.

MR. LEARMONTH: Next – tab 67, Exhibit P-03571, January 2016 presentation. Ed Martin writes to Julia Mullaley, copied to you, draft Cabinet presentation: “Here is the version for the Premier. I had to modify Option 1B – I had the wrong numbers in there, just noticed on a quality check.”

Now, were you involved in the strategy or approach to resolving the issue with Astaldi?

MR. BOWN: No.

MR. LEARMONTH: No involvement whatsoever?

MR. BOWN: No, not – the options for addressing Astaldi were coming from Nalcor.

MR. LEARMONTH: Say that again, please.

MR. BOWN: The preparation of strategies or the identification of strategies for dealing with Astaldi came from Nalcor.

MR. LEARMONTH: Yeah, well, they also came from EY.

MR. BOWN: Yes.

MR. LEARMONTH: They did a large amount of work and you’re aware that Westney did reports also, right?

MR. BOWN: You’re correct.

MR. LEARMONTH: But just say it in general terms, EY was not impressed with the way that Nalcor was going about resolving the problem in the sense that they didn’t have a plan at the beginning and they were –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – quite critical of the approach being taken. Were you aware of that?

MR. BOWN: Yes and this is clearly Mr. Martin bringing to the new government how they're going to deal with Astaldi.

MR. LEARMONTH: Okay.

And then we see of this document, P-03571 at tab 67, if you go to page 7, I think I referred earlier to the fact that Mr. Martin had characterized the start – and this is from Mr. Martin by the way –

MR. BOWN: Yeah.

MR. LEARMONTH: – the start of Astaldi in 2014 as being exceedingly slow.

MR. BOWN: Yes.

MR. LEARMONTH: Okay, so you weren't involved in Astaldi – actually, just turn to page 16. It says: Astaldi's cost issue and schedule impact, additional costs and so on and \$600, \$800 million would be the claim. Now, but you didn't have anything to do with this, is that right, so I won't –

MR. BOWN: No. No.

MR. LEARMONTH: – I won't ask you about it.

Now, if we turn to tab 68, Exhibit P-03572, this is an email from Ed Martin to you, MF bullet points. Page 2: "Why Muskrat Falls should not be stopped or delayed?"

So I guess at this time there was some level of pressure put on government by some parties to shut down the project?

MR. BOWN: Yes, there was.

MR. LEARMONTH: Yeah. And what – did you understand the logic of that position?

MR. BOWN: From the arguments that were being made?

MR. LEARMONTH: Yes.

MR. BOWN: That if you stop now then you won't spend any more. That way you will –

MR. LEARMONTH: Yeah.

MR. BOWN: – you will stop the bleeding.

MR. LEARMONTH: Yeah, you'll stop the bleeding, but what do you have?

MR. BOWN: Well, you have an incomplete asset –

MR. LEARMONTH: Yeah.

MR. BOWN: – who generates no revenue.

MR. LEARMONTH: Okay.

Anyway, that was considered by – I'm sure there's different points of view on that, but that was considered by government and rejected, correct?

MR. BOWN: Yes, this was done at government's request.

MR. LEARMONTH: Yeah.

And, then again, further consideration of that issue can be found at tab 69, Exhibit P-03573, another email from Ed Martin to Charles Bown.

MR. BOWN: Yes.

MR. LEARMONTH: February 8: "Will have to add one tomorrow re our commitments to Emera and Nova Scotia. In general if we down tools, we are liable" for "them for their losses under their LIL investment. Re Nova Scotia block we would have to provide it in another similar fashion or pay applicable damages to get them in same position. I need to check this wording."

And that seems to be a correct statement.

MR. BOWN: That is correct.

MR. LEARMONTH: Is it correct?

MR. BOWN: Yeah.

MR. LEARMONTH: Tab 70, Exhibit P-03574, from Ed Martin to you, copied to Derrick Sturge, February 24, 2016: "I sent you the wrong deck in the previous ... please insert this

one instead for number 1 – it has some important additions and perspectives.”

Who asked for this corporate governance model?

MR. BOWN: As I recall, this was –

MR. LEARMONTH: This is on page 3, yeah.

MR. BOWN: Yeah, as I recall, this was requested by Minister Coady. She was interested in corporate governance at Nalcor.

MR. LEARMONTH: Okay.

It says – on page 5, second paragraph, it says: “Nalcor has made significant progress in formalizing and improving the quality of its corporate governance and public accountability activities over the past 7-8 years.” Can you give me some examples of that or whether you believe that’s true?

MR. BOWN: I can’t give you specific examples, no.

MR. LEARMONTH: Do you think that’s a true statement?

MR. BOWN: Without having understanding of what they identify as those, I wouldn’t be able to.

MR. LEARMONTH: Okay.

And then it says: “The company is now moving to the next phase of its development and the time is right to consider the improvements required to bring the corporate governance and accountability model to the next level.

“Key Benefits: Provide confidence to key stakeholders that a strong corporate governance model exists to provide oversight of Nalcor and its subsidiaries on behalf of the Shareholder.”

Now, at this time, February 24, 2016, EY is doing its review.

MR. BOWN: Yeah.

MR. LEARMONTH: And can you reconcile the difficulty that EY had in getting documents with this statement?

MR. BOWN: No.

MR. LEARMONTH: No. Okay.

Next, turn to page 15 of that document, Exhibit P-03574. It says: “In late 2014 Nalcor engaged Knightsbridge –Robertson Surette ... to develop a matrix of the required skill sets that should be considered in making director appointments.”

So what’s on the go here? This is 2016 and they’re referring to a 2014 report. Can I conclude that the report – the Knightsbridge Robertson Surette report had not been acted on?

MR. BOWN: Had not been acted on.

MR. LEARMONTH: Why not?

MR. BOWN: I have no understanding of why Nalcor did not do that. They were making Minister Coady aware of it and I recall that they provided her a copy with it.

MR. LEARMONTH: Okay. You have no idea why they didn’t follow up.

MR. BOWN: Why they didn’t follow through.

MR. LEARMONTH: Now, here you got – my point is that you got a 2016 document referring to a 2014 –

MR. BOWN: Yeah.

MR. LEARMONTH: – report that hadn’t been acted on.

MR. BOWN: Yeah.

MR. LEARMONTH: It doesn’t really make sense I would suggest.

Anyway, tab 71; this is from Auburn Warren – Exhibit P-03575, Auburn Warren to you. Now, this was – Mr. Martin had been terminated by this point, is that correct?

MR. BOWN: That’s correct.

MR. LEARMONTH: I think it was on – the board terminated him on August – excuse me, April 22, 2016, is that correct?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

And what is this document?

MR. BOWN: This is the rate – I just got to go back a page. This is the – just the rate analysis based on new costs.

MR. LEARMONTH: Okay.

Tab 72, Exhibit P-03576, Lower Churchill Project, Briefing the Oversight Committee. Now, if you turn to page 11 – and I just want to pause there a moment – did I recall correctly that you found the – for being a member of the Oversight Committee and you were at this time, right?

MR. BOWN: Yes.

MR. LEARMONTH: That the communications and the flow of information from Nalcor to the Oversight Committee improved when Stanley Marshall was appointed CEO?

MR. BOWN: I believe I characterized it to you in my testimony that it was coincident with the bifurcation of the project.

MR. LEARMONTH: Yeah.

MR. BOWN: John MacIsaac brought in a completely different team. From the SOBI project they had a different way of doing things, a way of doing their own internal reporting. That created a little bit of competitive tension between them and the Muskrat Falls team.

MR. LEARMONTH: Yeah.

MR. BOWN: And we were the better for it because we would continue to ask for more and better information than that.

MR. LEARMONTH: And –

MR. BOWN: That's how it evolved.

MR. LEARMONTH: And Mr. MacIsaac was helpful in that regard in providing information, is that correct?

MR. BOWN: Correct.

MR. LEARMONTH: And that was a change for the better as far as you were concerned?

MR. BOWN: Absolutely.

MR. LEARMONTH: Tab 73, Exhibit P-03577, if we go to page 3, this is a document dated August 2, 2016. What is this Interim Agreement with Astaldi, Speaking Points/Questions & Answers? Whose speaking points are these for?

MR. BOWN: These came from Nalcor.

MR. LEARMONTH: Okay but who's the speaker? Who's going to be speaking?

MR. BOWN: Well, I would assume it's Mr. – well, Stan Marshall.

MR. LEARMONTH: Oh, okay, so this is just a courtesy notice to government –

MR. BOWN: Yes.

MR. LEARMONTH: – that, look, I'm going to be making this press –

MR. BOWN: Yeah. So if the government is asked a question, they know full well what Mr. Marshall has said.

MR. LEARMONTH: Okay, so that's –

MR. BOWN: Standard.

MR. LEARMONTH: That's a good courtesy.

MR. BOWN: Yes, it is.

MR. LEARMONTH: Yeah.

Tab 74, Exhibit P-03578, Information Note, Department of Natural Resources, September 23 – it's actually dated September 27, 2016.

MR. BOWN: Yeah, it's –

MR. LEARMONTH: It refers to background and current – “The September 23 meeting in Ottawa was intended to provide additional information to the federal ... to help officials to brief federal ministers on available options to assist the project and the Province.”

Analysis: Serge Dupont, deputy clerk – can you give me some clarification about what’s going on here? I do note on page 3 that it was prepared by Walter Parsons and you.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: And it was given ministerial approval dated September 27, 2016. Could you provide some clarification as to what this document tells you?

MR. BOWN: This is a summary of the first meeting we had with the Government of Canada on a request for federal loan guarantee 2.

MR. LEARMONTH: Okay.

And the federal loan guarantee 2 was necessary because of the cost overruns, right?

MR. BOWN: Correct. If not – if we didn’t receive that, we would have had to fund the remaining – well, it worked out to be 2.9. We would have to put an additional \$2.9 billion in equity in the project.

MR. LEARMONTH: Yeah.

And isn’t it true at this time that would’ve been a big challenge for the province?

MR. BOWN: It would have been impossible.

MR. LEARMONTH: Impossible. So if – the federal – using the word impossible, applying it –

MR. BOWN: Impossible in the context that our credit rating would be impacted very negatively –

MR. LEARMONTH: Yeah.

MR. BOWN: – and the cost of borrowing would be higher.

MR. LEARMONTH: Yeah. Well – yeah, so you could have got the money –

MR. BOWN: Absolutely.

MR. LEARMONTH: – but at very high rates to confirm the risk, because the province was not in great shape at the time fiscally, correct?

MR. BOWN: Yeah. Correct.

MR. LEARMONTH: But it was almost a, we got to get this.

MR. BOWN: We had to get it.

MR. LEARMONTH: Yeah.

And Canada was cordial in their treatment of the request?

MR. BOWN: Not too bad.

MR. LEARMONTH: Not too bad.

MR. BOWN: Yeah.

MR. LEARMONTH: Yeah. But I think there is a fee paid for it. The federal –

MR. BOWN: A guarantee –

MR. LEARMONTH: The first federal loan guarantee there are no fees charged by Canada, but in the second federal loan guarantee is it not correct that there’s a 0.5 per cent annual charge?

MR. BOWN: Correct. But the original loan guarantee was the exception, not the rule.

MR. LEARMONTH: Right.

MR. BOWN: Generally, there are always guaranteed fees on federal loan guarantees.

MR. LEARMONTH: Yeah, well, I guess, regardless of that, even if there was a 0.5 per cent, it was better to get it than –

MR. BOWN: It was better to get it than not get it.

MR. LEARMONTH: It wouldn’t be wise to say, well, we’re not paying your fee; we’ll go

out in the market because that would've been a different situation.

MR. BOWN: Yes.

MR. LEARMONTH: Yeah, okay.

At tab 76 is Exhibit P-03580. What is this a draft of? August – well, we've actually gone through that, I don't have to. It might be even a duplicate.

I just read that. Exhibit 78 – tab 78, Exhibit P-03581, that's just your contract of employment –

MR. BOWN: Yes.

MR. LEARMONTH: – as the chief executive, Major Initiatives Unit, right?

MR. BOWN: Yes.

MR. LEARMONTH: And even though it's a contract – I think we've heard evidence on this before – that's the way it's set up, but you're just a – you're in a continuation of your employment, right? It's not like –

MR. BOWN: Yeah, yeah, that's all. This is setting me up –

MR. LEARMONTH: You didn't resign and then get a contract –

MR. BOWN: No, I did not resign.

MR. LEARMONTH: No, no. Yeah. That's just the way they set it up?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

MR. BOWN: Ease of administration.

MR. LEARMONTH: Okay.

Tab 80, Exhibit P-03590, says August 24, 2016, document prepared by Paul Carter. Well, anyway, you've already told us that you don't really –

MR. BOWN: Can I – I'd like to help you if I – it came to me on Sunday that there are two Paul

Carters in the Government of Newfoundland and Labrador.

MR. LEARMONTH: Oh, is there?

MR. BOWN: Yes. There are two, and there's Paul Carter at the Department of Environment, who is responsible for environmental assessment and this particular function here. And then there's the Paul Carter who you know –

MR. LEARMONTH: Okay.

MR. BOWN: – as the Executive Director. So, I was wondering why these documents were here, and then when I saw the P. Carter at the bottom, I said, oh, it's likely that you're mistaking that it's the Paul Carter that you are aware of.

MR. LEARMONTH: Yeah. I was going to ask you whether he changed departments – no, I'm just kidding. I didn't know; I thought there was only one.

Okay. But anyway, so this is the Paul Carter that I don't know. This is the one in the department of the environment.

MR. BOWN: He's the Paul Carter you don't know.

MR. LEARMONTH: Okay. And you don't know anything about methylmercury, or very limited –

MR. BOWN: No.

MR. LEARMONTH: – so we'll leave that. Likewise, tab 81 has to do with methylmercury, we'll leave that.

Yeah, I wanted to ask you some questions about this Redress Agreement for, to do with the Innu for the Upper Churchill, whereby there was a payment of – an agreement to pay the Innu – to recognize, I should say, their obvious entitlement to compensation.

MR. BOWN: Mm-hmm.

MR. LEARMONTH: And that was reflected in a payment of \$2 million a year, with interest at 2.5 per cent. I'm referring to page 3 –

MR. BOWN: Yeah.

MR. LEARMONTH: – of this, P-03595 – \$2 million, terminating on August 31, 2015.

MR. BOWN: Yeah.

MR. LEARMONTH: Did you have anything to do with this –

MR. BOWN: No.

MR. LEARMONTH: – with this consideration? Because I know government, in the documents we have there was some question about how it was going to be structured.

MR. BOWN: Right, and –

MR. LEARMONTH: Okay. Who was going to pay for it?

MR. BOWN: Who was going to pay for it? And, actually, this was the province of – small p – of Mr. Martin and Justice Burrage who did all this –

MR. LEARMONTH: Yeah.

MR. BOWN: – arrangement.

MR. LEARMONTH: And, ultimately, am I correct that the government took it on, took this commitment on and paid Nalcor up-front with a discount, of course, for advance payment, and that – am I correct in suggesting that the reason that the project – that the government paid for it and that it was not charged as a project cost was that it was an obligation that the province owed to the Innu Nation, regardless of whether Muskrat Falls proceeded or not?

MR. BOWN: Absolutely.

MR. LEARMONTH: But it's a –

MR. BOWN: You are correct.

MR. LEARMONTH: Is that – is that a good way to –

MR. BOWN: That is a very neat way to sum it up.

MR. LEARMONTH: Okay.

All right. I want – before I end, I want to come back to a topic that I, in retrospect, glanced over this morning, and I didn't intend to, and that would be binder one of two, tab 3. Do you see that document, Exhibit P-03440?

MR. BOWN: Yes.

MR. LEARMONTH: This had to do with the engagement of Robert Noseworthy and Power Advisory. Okay, if we go to page 2 of this document, towards the end, Oversight: "Mr. Noseworthy agrees that the Project can't be regulated under the current PUB system, but there has to be significant and meaningful independent oversight of the costs related to the project given the level of expenditures.

"With the ratepayer being required to cover all costs incurred on the project, it is incumbent on the province to ensure that costs are independently reviewed and released to the public in a report.

"Mr. Noseworthy questions the difficulty of distinguishing the Project from the rest of NL's transmission system. He also questions how long the Project can be distinguished from the rest of NL's transmission system? For the full 50 years?"

So, I guess the question that some may have on this is, we know that the full costs of the Muskrat Falls Project are to be borne by the ratepayers and that the Public Utilities Board has no jurisdiction to question those costs. Is that correct?

MR. BOWN: That is correct.

MR. LEARMONTH: But how are those costs determined?

MR. BOWN: The construction costs are determined based on the actual build.

MR. LEARMONTH: Okay, but who verifies them?

MR. BOWN: I guess there is no verification for the moment. We're at the current capital cost,

and that is what the capital cost is; it's the operating costs that are yet to be decided.

MR. LEARMONTH: Yeah, but there is a lot of soft – I don't know if they're soft costs or whatever they are. There's a lot of costs that are not – that, you know, that can be assigned to a project that really have nothing to do with the construction. You know, you've seen this yourself that, for example – you know, 20 per cent of the 10 vice presidents' cost is charged to the project, and 50 per cent of this and 50 – so, who decides on the appropriateness of the costs that are charged to the project?

I mean, I think that's an important question, because if I'm a ratepayer, I don't want to get hosed. I mean, if we have to pay for the cost of this project, fine, but I don't want to be paying my little share of expenses that really shouldn't be assigned to the project and going into the rate base. So, who makes a decision as to whether the cost that Nalcor or Hydro is assigning to this project are fair and just?

MR. BOWN: That's an outstanding question at the moment, and that's a question best put to the premier or the minister. I'm not able to answer right now.

MR. LEARMONTH: Okay. But it has been identified by the province as an issue?

MR. BOWN: Yes.

MR. LEARMONTH: Okay.

MR. BOWN: That's about as far as I could go.

MR. LEARMONTH: Yeah.

And I know in the – I think it's in the power purchase agreement. Don't ask me what section, but there's some provision whereby if Hydro – my understanding is if Hydro wants to question the costs than it can take Nalcor to arbitration –

MR. BOWN: Mm-hmm.

MR. LEARMONTH: – which is – it doesn't really make a lot of sense because Nalcor has the decision whether they want to go to arbitration or not because they control Hydro.

MR. BOWN: Yeah.

MR. LEARMONTH: So that – on the face of it and in the absence of an explanation that I haven't seen, that seems to be a wholly inadequate process.

MR. BOWN: Correct.

MR. LEARMONTH: Do you agree?

MR. BOWN: I agree.

MR. LEARMONTH: You agree.

MR. BOWN: That was then.

MR. LEARMONTH: Yeah.

MR. BOWN: That was then.

MR. LEARMONTH: Okay.

So that's under, will we say active consideration, that issue?

MR. BOWN: I think that's a best question –

MR. LEARMONTH: Yeah.

MR. BOWN: – left for (inaudible).

MR. LEARMONTH: And is that something – I'm not going to tie you down, but just based on your deep experience in government. That's something that would probably have to either be – it would probably have to be legislated. Is that right? The mechanism for identifying and verifying those costs. Is that correct?

THE COMMISSIONER: Just before you answer – Mr. Fitzgerald.

MR. FITZGERALD: Yeah, and I've been – I haven't got up today and that's fine, but I just want to make a point that Mr. Bown is still an employee of the Crown and getting into current day policy and what the government might be thinking may put him in a difficult position. I do know the Premier's going to be called and Minister Coady's going to be called. And in terms of how the government is going about some of those things, that might be a better question for them.

In particular, Mr. Bown is no longer the deputy minister of Natural Resources. He's in a different department. I just want to be careful on that.

THE COMMISSIONER: Well, let me just say this, whether it's an issue for the government as to what the present policy is or whatever, is of little matter to me with regards to what Mr. Bown can answer. I mean, government called this Inquiry. And, as a result of that, I think that, you know, unless there's somebody here from the government who's going to tell me that it's not appropriate to ask a public servant a question and get an answer, I'm not so sure that in the circumstances I'm gonna sit back and just accept the fact that the person is not going to answer.

I mean, this is – this question that's being asked right at the moment is a question that I've been looking at significantly for the last couple of weeks and it's one that concerns me greatly.

So I am interested in this particular topic and I'm hopeful I'm gonna get some direction or some indication as to how this is going to work, at some point in time, from somebody who's drafted these agreements. So whether it's Mr. Bown or whether it's going to be the Premier or the minister or somebody from Nalcor, we'll wait and see.

But I understand your point, but I just want to say: I can't agree, for the moment, that just because you're a public servant and you happen to be serving the present administration, that you can't answer a question about the policy.

And this is an issue that falls squarely, I think, within the mandate of the Inquiry because under one of the provisions, one of the things I have to look at is the – how you relate between the taxpayer and the ratepayer, and, obviously, this is – this touches on this significantly.

So, let me ask, Mr. Bown, this: So do you know – first of all, has the government taken any steps to address what you appear to – what you have indicated is an adequate process with regards to cost identification?

MR. BOWN: That is under consideration.

THE COMMISSIONER: So it's under consideration, but it's not been done.

MR. BOWN: I'm not actively involved in that anymore.

THE COMMISSIONER: Okay. Are you aware if there is anything actually been done, other than the fact that it's under consideration?

MR. BOWN: No.

THE COMMISSIONER: Okay. All right.

MR. LEARMONTH: So –

THE COMMISSIONER: So let me just – can I – I'm sorry, Mr. Learmonth, just let me just go a little bit further here.

So, back in – when this information that was prepared, this was back in 2012, before sanction, what consideration was given by government? At that time, I mean, you were definitely the deputy minister at that stage, what consideration was being given by government to ensure that there is a proper costing to be used as the base for the PPA and for the ratepayers to pay?

MR. BOWN: I don't think that it was adequately fleshed out.

THE COMMISSIONER: It wasn't adequately – all right.

MR. LEARMONTH: Because that's exactly what Mr. Noseworthy's getting at in that –

MR. BOWN: Yes.

MR. LEARMONTH: – passage I referred to. So – no consideration was given that – as far as you're aware?

MR. BOWN: No.

MR. LEARMONTH: Yeah. Do you know why not?

MR. BOWN: No.

MR. LEARMONTH: Don't know.

Okay. Those are my questions.

Thank you very much, Mr. Bown.

MR. BOWN: Thank you.

THE COMMISSIONER: Okay. So I'm assuming there's been some discussion and all I know is that there's been some sort of an understanding. I'm not exactly sure what it is, so somebody needs to fill me in.

MR. SIMMONS: Well, Commissioner, I initiated the discussion, so I understand we have a couple volunteers. Mr. Coffey and Mr. O'Flaherty have some questions they're willing to ask out of sequence.

THE COMMISSIONER: Okay.

MR. SIMMONS: So, I would suggest we see how far that takes us today –

THE COMMISSIONER: Okay.

MR. SIMMONS: – and then make a determination then.

THE COMMISSIONER: Okay.

Should I check with the Province of Newfoundland and Labrador, first? Are you going to be asking any questions?

MR. RALPH: No questions.

THE COMMISSIONER: Okay. All right.

So, Mr. Thompson – or sorry, Mr. Coffey or Mr. O'Flaherty, which one of you wish to go first?

MR. COFFEY: Commissioner –

THE COMMISSIONER: Go first.

MR. COFFEY: –first – first, I just wanted to check, I've – as I understand it, Mr. O'Flaherty is gonna go first. I did the canvass with Ms. Best whether I – she wished to or not – I – so you might ask her first. I'm prepared to go right after Mr. O'Flaherty, if it's okay.

THE COMMISSIONER: Okay. Ms. Best?

MS. E. BEST: I'm not sure.

THE COMMISSIONER: So, you wanna go first?

MS. E. BEST: (Inaudible.)

MR. COFFEY: Yeah.

THE COMMISSIONER: Okay.

MR. COFFEY: Ms. Best has (inaudible) for tomorrow. So, I wanted to make sure she gets (inaudible) –

THE COMMISSIONER: Oh, I see. So, let's go with Mr. O'Flaherty first then, and Ms. Best we'll get you up next.

MS. E. BEST: Yeah, (inaudible).

THE COMMISSIONER: Okay.

So, Dwight Ball, Siobhan Coady.

MR. O'FLAHERTY: I don't know if I feel like a gentleman now, Mr. Bown, to have jumped ahead there, but I have some brief questions for you on behalf of my clients, Dwight Ball and Siobhan Coady.

MR. BOWN: Okay.

MR. O'FLAHERTY: You provided some evidence, earlier today, concerning the timeline around the approval and establishment of the Oversight Committee. Correct?

MR. BOWN: Right.

MR. O'FLAHERTY: And the Oversight Committee was a committee, as conceived by Cabinet, of senior bureaucrats to provide an oversight function for the Muskrat Falls Project. Flowing, I take it, from the recommendations that Mr. Learmonth just brought you to, from Mr. Noteworthy and others, that the ratepayers were required to cover all the costs incurred on the project, and it was, therefore, incumbent on the province to ensure that the costs were independently reviewed and released in a report. Correct?

MR. BOWN: You are correct.

MR. O'FLAHERTY: So, and I understand – just in terms – briefly, the timeline – the Cabinet approved by a MC in 2012, I believe in April 2012, the establishment of such an Oversight Committee?

MR. BOWN: Correct.

MR. O'FLAHERTY: And that this Oversight Committee was subsequently established in February of 2014. Correct?

MR. BOWN: Right.

MR. O'FLAHERTY: And my understanding of your evidence, and please correct me if I'm wrong, is that the Oversight Committee was to act on the instructions and directions of Cabinet.

MR. BOWN: Yes.

MR. O'FLAHERTY: Correct?

MR. BOWN: Yes.

MR. O'FLAHERTY: So that while the Oversight Committee was independent of Nalcor Energy, it is fair to say it did not have independent authority delegated to it by either Cabinet or by the legislature as to when it would, for example, conduct a full review of the Muskrat Falls Project?

MR. BOWN: No.

MR. O'FLAHERTY: So, that final direction would have to come from the Cabinet. Correct?

MR. BOWN: Or the Premier acting on behalf of Cabinet.

MR. O'FLAHERTY: Okay.

And I'll just also ask you to confirm your – if it's your understanding that following the establishment, in February 2014, of an Oversight Committee, that advice was received from Ernst & Young to the effect that there should be a working committee of subject matter experts who would be provided to those senior bureaucrats to support the Oversight Committee in that role.

MR. BOWN: Mm-hmm. Yes.

MR. O'FLAHERTY: And the advice received from Ernst & Young also identified the areas relevant to the management and delivery of major capital products that would be of assistance to the Oversight Committee. Correct?

MR. BOWN: That's correct.

MR. O'FLAHERTY: And I understand that Ernst & Young's recommendations were not specifically accepted by the Government of Newfoundland at that time and until perhaps March, I believe, of 2017 the Oversight Committee operated without that type of working committee function. Am I correct on that?

MR. BOWN: March of 2017?

MR. O'FLAHERTY: I'm not talking about using consultants like Ernst & Young in between but, I mean, to having any other sort of working committee that worked directly with the Oversight Committee. Was there –?

MR. BOWN: Oh, you're correct.

MR. O'FLAHERTY: I'm correct on –

MR. BOWN: Yes.

MR. O'FLAHERTY: – those dates. So, okay.

So, just so we understand in terms of – you know, from a legal perspective, was there any legislative or regulatory approval or step that was necessary before – after the Committee was set up, before Cabinet or the Premier could proceed to order, for example, a full program review?

MR. BOWN: None.

MR. O'FLAHERTY: No.

So with that timeline in mind, I wanna ask some questions about the oversight steps that were actually taken in December 2015 because I think – I think that might be helpful to get an understanding of what had happened at that time and the time frame.

So, I believe that on – if we could bring up, Madam Clerk, an exhibit which shows there was

a telephone call between Mr. Ball – that’s P-03440 – 03340, I’m sorry.

THE COMMISSIONER: Okay, so that would be 03340.

Is that an exhibit that we already have here now?

MR. O’FLAHERTY: Yes.

This is the exhibit, this was in the evidence this week ...

THE COMMISSIONER: Oh, yeah. It’s tab 3.

MR. O’FLAHERTY: Right.

THE COMMISSIONER: I’m sorry. Book number 1, tab 3 of your binder, is it?

MR. O’FLAHERTY: So could you – Sir, you take a moment and grab the exhibit there, Mr. Bown. I won’t – I’m just gonna get the time frame here.

So, I understand –

MR. BOWN: I don’t – book 1, tabs 3, right?

THE COMMISSIONER: Yes, that’s actually –

MR. BOWN: I don’t think I have it.

THE COMMISSIONER: – 3340 is actually the one we were just dealing with on the issue of the PPA and the cost in the Noteworthy report. Is that the one you’re referring to?

MR. O’FLAHERTY: No, it isn’t.

THE COMMISSIONER: No, okay.

MR. O’FLAHERTY: No, it isn’t. It’s an exhibit that deals with the timing of when the Oversight Committee is proceeding to set up the program review as – when that takes place in –

THE COMMISSIONER: Okay.

MR. O’FLAHERTY: – terms of the timeline.

THE COMMISSIONER: So do you have that – perhaps your number is incorrect then?

UNIDENTIFIED MALE SPEAKER: EY document.

MR. O’FLAHERTY: It’s a document, P-03340 that was entered into evidence on Monday this week. I’m –

THE COMMISSIONER: Well, it’s –

MR. O’FLAHERTY: I’m just bringing you to, Mr. Bown, the time frame.

THE COMMISSIONER: Just –

MR. O’FLAHERTY: There’s some reference here to a few –

THE COMMISSIONER: Okay, just one second now.

MR. O’FLAHERTY: Yeah.

THE COMMISSIONER: So, three – there’s only one P-03340.

MR. O’FLAHERTY: Right.

THE COMMISSIONER: It’s the one that’s up on the screen right at the moment.

MR. O’FLAHERTY: Yes.

THE COMMISSIONER: It’s the one that we were also dealing with, I think, a few minutes ago.

MR. O’FLAHERTY: No, no.

THE COMMISSIONER: It isn’t, okay.

All right.

MR. O’FLAHERTY: Okay.

THE COMMISSIONER: Go ahead.

MR. BOWN: No – Commissioner, 03440.

THE COMMISSIONER: 03440.

MR. O’FLAHERTY: Yeah, so I was dealing with 3440. That’s correct.

Thank you, Mr. Bown.

THE COMMISSIONER: Oh, it's 03440.
Okay, sorry.

MR. O'FLAHERTY: So could you –

THE COMMISSIONER: Yes.

MR. O'FLAHERTY: Madam Clerk, could you move down, please, to the comments here? Right here, yeah. This is it.

So this email – we've heard evidence about this email was the record of a telephone conversation had been received from the Premier on December 16, 2015, by Mr. Paul Hickey of Ernst & Young. And the timeline is that this is a Wednesday and on the 14th of December 2015, on the Monday, Mr. Ball had assumed the office of Premier, and Minister Coady or Siobhan Coady had assumed the office of Minister of Natural Resources, okay?

MR. BOWN: Yes.

MR. O'FLAHERTY: This indicates that on October 16 of 2015, Mr. Ball called Mr. Hickey of Ernst & Young and stated that the Premier had asked Julia – and I believe we can accept that that's Julia Mullaley –

MR. BOWN: Yes.

MR. O'FLAHERTY: – who was the clerk at that point, correct?

MR. BOWN: Correct.

MR. O'FLAHERTY: And she was also the chair of the Oversight Committee, correct?

MR. BOWN: Correct.

MR. O'FLAHERTY: To talk to David about a full review of Muskrat.

So based on your knowledge at that time, had the clerk been directed by – on or by December 16, 2015, to engage Ernst & Young to perform the full review of Muskrat?

MR. BOWN: Yes.

MR. O'FLAHERTY: And the email then goes on to state that: "The Energy Minister Sioban

Coady is fully briefed re his ask to us and is fully supportive."

Was that your understanding, that the minister was fully briefed as of the Wednesday?

MR. BOWN: She was fully aware of what the Premier's ask was.

MR. O'FLAHERTY: Okay, so that's – two days after the Premier and the minister assume office, there is a direction given to the clerk to initiate the full program review.

MR. BOWN: You are correct.

MR. O'FLAHERTY: That's correct. I have that timeline right?

MR. BOWN: Yes.

MR. O'FLAHERTY: And if I could bring up the next document, P-03451.

THE COMMISSIONER: Tab 20.

MR. O'FLAHERTY: And this is an – it's on the – the department noted is Natural Resources, but I understand that this is the report from the second engagement of EY which has dealt with the controls – the project controls review. Correct?

MR. BOWN: Yes.

MR. O'FLAHERTY: And that was the project controls review that was first recommended in December of 2014. Correct?

MR. BOWN: Correct.

MR. O'FLAHERTY: And that piece of work started in March of 2015. Correct?

MR. BOWN: Mm-hmm.

MR. O'FLAHERTY: And we know from looking at the record of the documents that the final bifurcated report, in two reports, is actually published on October 29, 2015. Correct?

MR. BOWN: Yes.

MR. O'FLAHERTY: So by this point in time this report had not been released to the public, had it?

MR. BOWN: No.

MR. O'FLAHERTY: This particular release indicates that the same day that they're going to announce a program review they release this report. Correct? Government does.

MR. BOWN: There's two releases that day.

MR. O'FLAHERTY: Okay.

And that's the report that we talked about, the second engagement. Correct?

MR. BOWN: Yes.

MR. O'FLAHERTY: And then the next document is P-03452. So this is another release on the same day and I won't – I know we're under a little bit of time pressure here, but the first one was at 2:15 p.m. and this one is at 2:30 p.m. Do you remember this day, when these were being –

MR. BOWN: This was all –

MR. O'FLAHERTY: –the releases were coming up?

MR. BOWN: – prepared to go out concurrently.

MR. O'FLAHERTY: Okay. Thank you.

So this one here deals with an announcement by Executive Council and Natural Resources issuing a release entitled, "Government Opens Books on Muskrat Falls Project." So I take it as the deputy minister and as member of the Oversight Committee, you would have been aware that the program review of – the full program review by an independent body had now been ordered by government.

MR. BOWN: In the intervening days we had prepared a scope of work.

MR. O'FLAHERTY: And you had prepared the scope of work in those intervening days.

MR. BOWN: Yes.

MR. O'FLAHERTY: So the government comes into office on Monday the 14th and by the 21st, the next Monday, you have a scope of work, a decision and an announcement. Correct?

MR. BOWN: Yes.

MR. O'FLAHERTY: Thank you.

Now, so the question then becomes the issue of what are the reasons. What are the reasons why it is that it takes so long to get us to this stage? And we can see that there's no regulatory or legislative provision that prevents this is there?

MR. BOWN: No.

MR. O'FLAHERTY: No.

So in terms of that question, I'd like to go back now to P-03340, which we had up a moment ago. Sorry, Madam Clerk, this is the one from on Monday. Okay, here we go.

So this is a statement here which is attributed to – by Ernst & Young to the Premier of Newfoundland and Labrador, Mr. Ball, which says: "Ed Martin, CEO of Nalcor has said he will resist the full review."

So my question for you is that were you aware by December 15 – sorry by December 16 of 2015, that the premier was of the view that Ed Martin of Nalcor would oppose the full project review by EY?

MR. BOWN: I can't say the 16th; it could be the 17th because this was sent at 7:48 in the night.

MR. O'FLAHERTY: Okay.

MR. BOWN: But it may have been on that day, it may have been the day following.

MR. O'FLAHERTY: Was that something that you knew of though, that ...?

MR. BOWN: Yes.

MR. O'FLAHERTY: Okay.

And my question for you then is: Was that a view that was consistent with the mid-December

2015 understanding of the senior bureaucrats on the Oversight Committee of Government of Newfoundland and Labrador that Mr. Martin of Nalcor would oppose a full project review by Ernst & Young.

MR. BOWN: The entire committee knew?

MR. O'FLAHERTY: The senior bureaucrats, did they know that –

MR. BOWN: I can only speak for myself on that one and the clerk, who I spoke to. I can't – I don't know if the clerk spoke to anybody else.

MR. O'FLAHERTY: Okay.

MR. BOWN: We didn't have a broad meeting on it.

MR. O'FLAHERTY: And my question may be a bit unclear, so I'm going to try to make it more clear for you, Mr. Bown. We've seen a document here which says the Premier had this view.

MR. BOWN: Yes.

MR. O'FLAHERTY: Two days after he became Premier he understood, for whatever reason – and he'll testify – that Mr. Martin has said he will resist a full review. Was that consistent with the view of you as a senior bureaucrat? Independent of what the Premier may have known did you share that view in mid-December 2015 that it was likely that Mr. Martin of Nalcor would resist a full review by Ernst & Young?

MR. BOWN: I understand your question now. The answer is, yes.

MR. O'FLAHERTY: The answer is, yes. And, in fact, we looked this morning at an email, 03357, back in February of the previous year – or, sorry, the same year in February 2015 – in which Mr. Harrington of Nalcor is opposing the second engagement by EY.

MR. BOWN: Yes.

MR. O'FLAHERTY: Correct?

MR. BOWN: You are correct.

MR. O'FLAHERTY: So this is consistent that Mr. Harrington's opposition of the review at that point in time which was a project controls review that was being opposed by the project management team. Correct?

MR. BOWN: Yes.

MR. O'FLAHERTY: Which would be completely consistent with December 2015 with Mr. Martin of Nalcor opposing a full review by Ernst & Young, correct?

MR. BOWN: You are correct.

MR. O'FLAHERTY: Those are my questions.

Thank you for your patience.

MR. BOWN: You're very welcome.

Thank you.

THE COMMISSIONER: All right, Kathy Dunderdale.

MS. E. BEST: Thank you.

Good afternoon, Mr. Bown.

I'm Erin Best. I'm counsel for Kathy Dunderdale.

MR. BOWN: Good afternoon.

MS. E. BEST: Good afternoon.

I'm going to start off by asking you a few questions about the \$6.531-billion number that we've heard quite a lot about. So – and I may refer to it as the 6.5 number.

MR. BOWN: Go ahead.

MS. E. BEST: That's what I'm talking about.

Okay. So this morning you were asked, I believe, if you knew about the 6.5 number prior to December 13, 2013, and I believe your answer basically was I don't recall.

MR. BOWN: And I haven't uncovered anything of my own records to –

MS. E. BEST: Right.

MR. BOWN: – note that I did.

MS. E. BEST: Okay, exactly.

So you're not saying definitively, certainly, that you weren't aware of the number. You just don't recall or else you haven't found anything in your records?

MR. BOWN: That would be accurate.

MS. E. BEST: Pardon me?

MR. BOWN: That would be accurate to the statement that I made.

MS. E. BEST: Okay, good, thank you.

And then I believe it was said – and I couldn't quite hear your answer to this, but I believe it was said something along the lines of – the question was: You were given full access to all of your emails and government documents and you couldn't find anything. I think that was the question. And I believe your answer was – because I wrote this part down – was: I looked at everything that was mailed out to me –

MR. BOWN: No, no, no.

MS. E. BEST: – and I couldn't find anything.

MR. BOWN: You didn't hear me correct.

MS. E. BEST: Okay, good.

MR. BOWN: Everything that was made available to me.

MS. E. BEST: Made available to you.

MR. BOWN: Yes.

MS. E. BEST: Okay.

MR. BOWN: Sorry if you could not hear me.

MS. E. BEST: Yeah, it sounds like I didn't.

Okay so what was made available to you?

MR. BOWN: I had full access to all my emails, my inbox, sent box, Cabinet papers, you name it. There was nothing that I didn't have access to.

MS. E. BEST: Okay. Thank you.

MR. BOWN: And by and large, the majority of that currently exists within the Commission registry.

MS. E. BEST: Right.

So when you were reviewing those documents – Madam Clerk, if you could please pull up P-03504. So I presume you came across this one?

THE COMMISSIONER: Tab 48.

MR. BOWN: Yes.

MS. E. BEST: Oh, sorry about that.

MR. BOWN: And we discussed this one this morning.

MS. E. BEST: Yes, that's correct.

So I presume you came across this one?

MR. BOWN: Yes.

MS. E. BEST: Okay, so if we scroll down to page 2 – and I mean this is a section that we've already gone over –

MR. BOWN: Absolutely.

MS. E. BEST: – but it says there – oh actually – so I'm just looking for the question about when you knew about the \$6.5-billion figure. I thought it was on page 2.

MR. BOWN: I think it's at the top.

MS. E. BEST: At the top. Thank you. Oh.

MR. BOWN: No.

MS. E. BEST: No, if you could scroll down please, Madam Clerk.

There you go.

MR. BOWN: Okay.

MS. E. BEST: Right there. Thank you.

So when did you know about the \$6.5-million figure? The provincial government became aware of it during finalization of the federal loan guarantee in December 2013.

So when you came across this document, wouldn't that have indicated to you that you did know in December 2013? I mean why would you think that you didn't know if you came across this? And if I came across this I would think – that would indicate to me that I probably did know.

MR. BOWN: No, it didn't cause that because in all – I guess I – the way I characterized it this morning was that there is a pattern. That when there is a significant piece of information to share – and you've seen it through all the records – that if there's a change, there's always a presentation, there's meetings, there's documents that are shared. And through nothing that I've seen –

MS. E. BEST: Okay, I'm going to interrupt you there because it seems to me that – what my client's evidence was, I believe, was that she was told verbally. And so you're going back to the documents, but that has really very little to do with what you might've been told verbally.

MR. BOWN: I don't –

MS. E. BEST: Would you agree?

MR. BOWN: I don't recall being made aware of it.

MS. E. BEST: You don't recall.

MR. BOWN: And there were documents that we could see in the records that were being shared with the government of Canada.

MS. E. BEST: Okay so –

MR. BOWN: So there were documents.

MS. E. BEST: Yeah but that's getting off track a little bit, so – but you didn't have the documents but that doesn't mean that you weren't aware verbally – you weren't told verbally, right?

MR. BOWN: I don't recall being told.

MS. E. BEST: You don't recall. Okay.

MR. BOWN: No.

MS. E. BEST: It doesn't really answer my question though because, still, when you're going back through the documents to prepare for the Inquiry and you find this one and it states there that you stated, previously, that you knew about it in December 2013, how did you make that leap to go from: Yes, I've already said publicly that I and the rest of the committee knew about it in December 2013, but even though I don't recall anything different, I'm going to say now I probably wasn't aware of it.

MR. BOWN: But this doesn't say that I said it.

MS. E. BEST: No but you approved this wording.

MR. BOWN: As a package, as a whole – as I said this morning, this is a communications document.

MS. E. BEST: But this is –

MR. BOWN: It was –

MS. E. BEST: – an important communication, right?

MR. BOWN: Sure. It was a retrospective look seven months after the fact, the benefit of hindsight –

MS. E. BEST: So you think it's more likely that you approved something in this report that was wrong and inaccurate than that your memory might be off with respect to what – the date you recall being told –

MR. BOWN: I've tried to –

MS. E. BEST: – verbally.

MR. BOWN: – very hard, knowing that this was an important question. I have tried and I have not been able to – either my own recollection or through searching my documents – to say categorically that I knew 6.5.

MS. E. BEST: Okay.

I keep going back to this because this seems to me to indicate categorically but – so if this doesn't indicate to you categorically, then what would have? Just that presentation deck from Nalcor with the 6.5 number in it, you were looking for that, if you didn't find that, then nobody knew. Is that what you're saying?

MR. BOWN: Email, I went through Mr. Sturge's meeting notes, his diary – his notes. I didn't see it.

MS. E. BEST: But now his notes speak to cost overruns in November –

MR. BOWN: But there was – we were speaking –

MS. E. BEST: – of 2013 and there are emails that speak to cost overruns in November 2013, right?

MR. BOWN: And they were squarely in the context of the negotiations that we were having with the Government of Canada on how to bring in the text from the term sheet –

MS. E. BEST: So –

MR. BOWN: – that related to cost overruns and COREA into the agreements.

MS. E. BEST: And here's my problem with that. You recall that specifically –

MR. BOWN: No, I don't recall specifically. It's the notes that are helping me recall.

MS. E. BEST: Okay but this note doesn't help you recall?

MR. BOWN: No. No.

MS. E. BEST: Okay.

Tell me again why you don't trust what you have written down here? Why you don't believe that to be true?

MR. BOWN: Because I haven't seen it being transmitted to me.

MS. E. BEST: From Nalcor.

MR. BOWN: Yes.

MS. E. BEST: In writing by way of a presentation.

MR. BOWN: An email or presentations or meeting notes.

MS. E. BEST: Okay.

MR. BOWN: Sorry.

MS. E. BEST: Oh, that's – you don't need to apologize. I –

MR. BOWN: I'm trying.

MS. E. BEST: I thank you for your evidence.

Madam Clerk, if you could please pull up P-02535.

THE COMMISSIONER: Okay, that'll be tab 33 in your financial close book.

MS. E. BEST: Thank you, Commissioner.

MR. BOWN: I know this one.

MS. E. BEST: You know it? Great.

MR. BOWN: Yeah.

MS. E. BEST: So – and you've already said this morning that the Charles that's being referred to there is you?

MR. BOWN: Yes.

MS. E. BEST: Okay.

So I'm going to ask you the same question. You would've come across this email in your search, I presume –

MR. BOWN: And I saw reference in to –

MS. E. BEST: – in the search of the documents.

MR. BOWN: – Mr. Sturge's notes as well.

MS. E. BEST: Right.

So this says: To walk Donna Brewer – I think we need – “... the other thing we need to do based on direction from Ed and Charles” – you – “from last week is to walk Donna Brewer and Paul Myrden through the LCP cost update data.”

So, this didn’t jog your memory when you were going through your notes?

MR. BOWN: If you go back even further into the train of this, this was participated by an email from Paul Morris in the context that what these changes that are being requested to go into the ESG, are they going to have any impacts on the project cost? And from there it’s my request to Derrick, if there’s going to be an update in costs, you got to inform the Department of Finance. This is Derrick’s own words.

MS. E. BEST: So, I’m glad you went there because that’s where I was going to go next as well, because I believe this morning you said if there’s going to be a cost change you needed to tell Brewer and Myrden. So, I don’t get that. So, wouldn’t you want to know? Wouldn’t you need to know? Wouldn’t it be your job to brief your minister? Can you explain that to me?

MR. BOWN: Yeah, but we didn’t receive any information.

I agree with you. We would have asked. Given this information –

MS. E. BEST: So, where are the –

MR. BOWN: – we didn’t get the information.

MS. E. BEST: – emails where you ask?

MR. BOWN: Oh. Well, I didn’t uncover any of those.

MS. E. BEST: You didn’t cover them?

MR. BOWN: Uncover.

MS. E. BEST: You didn’t uncover them.

MR. BOWN: No.

MS. E. BEST: So, does that mean that you didn’t ask?

MR. BOWN: No.

MS. E. BEST: It means you don’t recall.

MR. BOWN: It means I don’t recall.

MS. E. BEST: Okay.

Do you think you asked?

MR. BOWN: I’m sure I did. We’re coming up to an important decision.

MS. E. BEST: Right. Because wouldn’t an overrun be key to you? Wouldn’t you be very interested in that?

MR. BOWN: What was – yes, the answer is yes.

MS. E. BEST: Thank you.

Okay.

MR. BOWN: What we were working on then was completing the agreements necessary to get through the financial close.

MS. E. BEST: Well, I get that, but if there was even an insinuation of an overrun, I would have thought it would be your job to ask how much that overrun is or was. Do you agree?

MR. BOWN: Yeah. And that email actually did go out from Paul Morris, but I don’t recall asking him. I’m sure I did.

MS. E. BEST: Okay. And so, do you have any details with respect to what you found out?

MR. BOWN: No.

MS. E. BEST: You don’t recall?

MR. BOWN: No.

MS. E. BEST: Did you search for that email as well?

MR. BOWN: Absolutely.

MS. E. BEST: And you did not find anything?

MR. BOWN: No.

MS. E. BEST: Do you think that's because the email wasn't there, or do you think you had some sort of inability to search everything or –?

MR. BOWN: No, I was able to search everything.

MS. E. BEST: Okay.

MR. BOWN: I had good access.

MS. E. BEST: Okay.

So you think then that that was verbally communicated and not by email?

MR. BOWN: Likely, but I don't recall.

MS. E. BEST: Okay.

I mean, there are really only two answers, right. If you said that you searched everything, I mean to say likely is very wishy-washy, unless there's something that you're not telling me.

MR. BOWN: Oh, heavens no.

MS. E. BEST: Okay.

MR. BOWN: I would never do that.

MS. E. BEST: Okay.

MR. BOWN: No, I don't recall receiving a verbal briefing on that.

MS. E. BEST: Okay.

And I guess the fact that you don't recall, I don't understand either, because wouldn't it have been a significant event?

MR. BOWN: Yes, that if I was advised there was a cost update that was something I would've recalled. So, actually, yes, you're making my point that if it was (inaudible).

MS. E. BEST: No, no. I think, actually, my point is that if you were – if you asked, right? So if we're following the logic here, if you asked then you likely would've been told, or else if you weren't told that that's a problem that we would think you would also recall, right?

MR. BOWN: Right.

MS. E. BEST: But you don't recall asking?

MR. BOWN: No, I don't, but I'm sure I did.

MS. E. BEST: But there's no evidence to that effect?

MR. BOWN: No.

MS. E. BEST: Okay.

Madam Clerk, if you could please go to P-03494.

THE COMMISSIONER: That would be tab 38 at financial close binder.

MR. BOWN: Yes.

MS. E. BEST: Thank you.

MR. BOWN: I recall this.

MS. E. BEST: So this was November 22. And we see Donna Brewer, Paul Myrden –

MR. BOWN: Yeah.

MS. E. BEST: – Paul Morris, all involved in this email chain. And if we can scroll down, please, Madam Clerk. So, just to right here. So, actually, we did raise this –

MR. BOWN: Yes.

MS. E. BEST: – this morning. Again, it came up, and I believe the comment was that it seems here that the 6.5 number is a – sorry – a firm number, not a theoretical number.

MR. BOWN: Yes.

MS. E. BEST: So, do you recall if this was reported to you as being a firm number? This is November 22 –

MR. BOWN: Yeah, no.

MS. E. BEST: – 2013.

MR. BOWN: No, I don't recall. And at this time – you just have to just step back for a

moment – the Department of Finance was dealing strongly with the equity side, the financing side. We had a legal team that was working on concluding the agreements and ensuring that what was in the term sheet was actually in the agreements, and I was working almost exclusively with the Government of Canada and the Government of Nova Scotia and Emera to ensure that their elements of the project –

MS. E. BEST: Okay.

MR. BOWN: – were getting done. So we're coming –

MS. E. BEST: That's not –

MR. BOWN: – down to crunch time.

MS. E. BEST: That's not quite where I'm going with it.

So November 22; so what you said already is that if there was an indication of an overrun you would've asked about it. And it's quite clear that on November 22, Paul Myrden, Donna Brewer and Paul Morris all knew about the 6.5 number.

MR. BOWN: Mm-hmm.

MS. E. BEST: So, either they would've given you a response or else if they didn't respond to your ask, then –

MR. BOWN: Well, I likely didn't reach out to them about this, that's why.

MS. E. BEST: Okay. So that's a change in your evidence there because I thought you said you would've asked –

MR. BOWN: Nalcor.

MS. E. BEST: – but now you're saying –

MR. BOWN: I would've asked Nalcor.

MS. E. BEST: Okay.

MR. BOWN: I'm just differentiating, that's all.

MS. E. BEST: Okay. Thank you for that clarification.

So you would've asked Nalcor, but what about asking Donna, Paul and Paul? I guess I should say Brewer, Morris and Myrden.

MR. BOWN: I probably didn't.

MS. E. BEST: Probably didn't ask them?

MR. BOWN: No.

MS. E. BEST: Why not?

MR. BOWN: I can't answer that. I don't know.

MS. E. BEST: So, just to get it straight. You say you would've asked Nalcor but that you don't recall receiving any answer, but you probably didn't ask Brewer, Morris or Myrden?

MR. BOWN: Yeah. Otherwise I would have known.

MS. E. BEST: Pardon me?

MR. BOWN: Otherwise I would have known.

MS. E. BEST: Right.

And following from that, what then – what in the world were you reporting to your minister in this context? Where there were some indications of possible overruns; you would have asked Nalcor; you may or may not have received an answer; you didn't ask Brewer, Morris and Myrden for some reason. How were you presenting all of that to your minister?

MR. BOWN: At that time we were – my goodness, it was such a flurry. There wouldn't have been anything to provide him because I didn't have anything to provide.

MS. E. BEST: Okay. So maybe that makes sense on that day, November 22 or 23 –

MR. BOWN: Yeah.

MS. E. BEST: – but extending the time frame to the following week, the following week, the following week, what – how were you reporting this situation to your minister?

MR. BOWN: If I didn't have the information then he wouldn't have had it.

MS. E. BEST: Pardon me?

MR. BOWN: If I didn't have the information –

MS. E. BEST: Yeah.

MR. BOWN: – he wouldn't have had it either.

MS. E. BEST: But if you had a problem getting the information, wouldn't that be something you would report up?

MR. BOWN: Correct.

MS. E. BEST: Yes?

MR. BOWN: Yes.

MS. E. BEST: Okay. So was that reported to your minister?

MR. BOWN: I don't recall that.

MS. E. BEST: Okay.

MR. BOWN: I don't recall. I'm sorry I'm not being as helpful as you'd like.

MS. E. BEST: I –

MR. BOWN: I'm sorry I'm not being as helpful as you'd like. I –

MS. E. BEST: Okay. No, that's –

MR. BOWN: Mmm.

MS. E. BEST: – all right, no need to apologize, but I'm surprised to hear some of that and – so let's – Madam Clerk, if we could, please, go to 03498.

THE COMMISSIONER: Tab 42?

MR. BOWN: Okay.

MS. E. BEST: Okay. So if we can scroll down, please, Madam Clerk. That should do it. Thank you.

So this document also came up this morning –

MR. BOWN: Yes.

MS. E. BEST: – and I think one thing that came out of it was, obviously, you knew the 6.5 number was a real cost estimate by now.

MR. BOWN: Absolutely, we were out into budgets then and equity requests, so yes.

MS. E. BEST: So, this is – the date of this is March 10, 2014.

MR. BOWN: Yes.

MS. E. BEST: Okay. And Kathy Dunderdale has left government at this time, by the way, right?

MR. BOWN: Yes.

MS. E. BEST: Yeah.

So, you were asked, I believe, this morning what your reaction was to learning about the 6.5 number because, obviously, at this point, you had – you knew it at this point, sometime by March 10 or before, and I think you said you didn't recall, right?

MR. BOWN: That's right. Sometime between the December date and March.

MS. E. BEST: Okay.

Or the November date and March?

MR. BOWN: Hmm.

MS. E. BEST: I mean, what's the difference if you can't recall, you can't recall, you can't recall, right?

MR. BOWN: I understand, I understand your point.

MS. E. BEST: Would you agree with me?

MR. BOWN: Sometime prior to March 10.

MS. E. BEST: Right. And so, I guess that kind of leads to the next logical question which is that if you have no idea when it was because you don't remember anything about learning the 6.5 number, do you?

MR. BOWN: I don't have a clear recollection, no.

MS. E. BEST: Do you remember anything about when, where, how you learned the 6.5 number?

MR. BOWN: No, I do not.

MS. E. BEST: We just know that by March 10 you knew it.

MR. BOWN: Yes.

MS. E. BEST: Okay.

So if you can't recall anything having to do with when, where or how, then you don't actually know, as we've already, I think, gotten. You don't, actually, know whether you learned it before December 13 or not. Like, you have no solid basis as to – any recollection of learning it, do you?

MR. BOWN: Yes, so go back to our earlier discussion, there was nothing in my written record –

MS. E. BEST: Right, yeah.

MR. BOWN: – other than – if it was verbal, I don't recall.

MS. E. BEST: Yeah. But I mean, and just – I guess I'm belabouring it now, but it made no impression on you, learning this number.

MR. BOWN: I don't recall that whether it had a significant impact on me on this particular day.

MS. E. BEST: Okay.

So, obviously by March 10, 2014, you do know it. So what did you do then? Did you brief your minister on it then?

MR. BOWN: Whenever I became aware of it, the minister would have been briefed on it, yes.

MS. E. BEST: So, at least by March 10, 2014.

MR. BOWN: At least by.

MS. E. BEST: And we had a new premier then –

MR. BOWN: Mm-hmm.

MS. E. BEST: – and do you recall briefing the premier, with respect to that number?

MR. BOWN: I don't recall briefing the premier, no.

MS. E. BEST: I can't make out what you're saying.

MR. BOWN: I don't – sorry, I apologize for speaking low.

MS. E. BEST: That's okay.

MR. BOWN: I don't recall briefing the premier, no.

MS. E. BEST: Okay, but you –

MR. BOWN: Generally, the cost updates came by way of the CEO. So the CEO would generally brief the premier any cost update.

MS. E. BEST: Okay.

But you would have been present at that briefing –

MR. BOWN: Yes.

MS. E. BEST: – I assume. And if you were in a situation where you knew the number but the premier had not been briefed by way of a cost update, then –?

MR. BOWN: Would I do that?

MS. E. BEST: Yes.

MR. BOWN: Absolutely.

MS. E. BEST: Yes. Thank you.

MR. BOWN: I've done it in the past.

MS. E. BEST: So do you recall, with respect to Brewer, Myrden and Morris – I mean, they were all under your purview. Is that right?

MR. BOWN: Only Morris.

MS. E. BEST: Pardon me?

MR. BOWN: Only Morris.

MS. E. BEST: Only Morris, okay. So, I mean, if you didn't find out the number until – you know, shortly before March 10, which I don't think we've established, but –

MR. BOWN: No.

MS. E. BEST: – if that were to be the case and – would you have addressed that issue with Mr. Morris? The fact that he and other civil servants knew but it wasn't reported to you? Would that have been a problem?

MR. BOWN: Yes, of course.

MS. E. BEST: And did you find any record of that?

MR. BOWN: No.

MS. E. BEST: Do you recall that happening?

MR. BOWN: No.

MS. E. BEST: No, you don't?

MR. BOWN: No, I don't.

MS. E. BEST: Thank you.

Madam Clerk, if we could, please, go to P-02547.

THE COMMISSIONER: Okay, I don't think that's in either one of your books.

MS. E. BEST: Oh, no, I don't think so. Sorry.

This is an article in the *Financial Post* dated April 15, 2014. And if you could, please, scroll down, Madam Clerk. We see here that there's – it seems to be an interview with Ed Martin.

MR. BOWN: Mm-hmm. I see.

MS. E. BEST: And – oh, if we can keep it on that page, please.

So, "Nalcor Energy CEO Ed Martin said Tuesday" – that – "the province's \$6.2-billion share of the project is under pressure due to labour, supplies and other costs. But Martin said he won't give a new cost update while major contracts for the dam and powerhouse in Labrador are still being negotiated."

Doesn't that indicate to you that there may be a new cost update that is required? That there, probably, is a new estimate?

MR. BOWN: No. That would be consistent with comments that Ed would have made that they're receiving bids; some up, some down. The – they're negotiating with bidders so they don't have a cost update.

MS. E. BEST: Okay.

You would have been aware of this article at the time that it came out, would you?

MR. BOWN: I think so, at the time. I don't –

MS. E. BEST: And that's something that government does –

MR. BOWN: Yeah.

MS. E. BEST: – is track these types of articles – especially a major national paper, right?

MR. BOWN: Yeah.

MS. E. BEST: So, I mean, would this have triggered a –

UNIDENTIFIED MALE SPEAKER: Excuse me, (inaudible).

THE COMMISSIONER: Sorry. Mic – could you do me a favour and just click that mic?

MS. E. BEST: Oh, yes. Yeah.

MR. FITZGERALD: Sorry. Okay.

I just want to be clear here. This is April 15, 2014. I don't know if Ms. Best is making the point that this is 2013 or this is 2014?

Okay. So the point you're making is that Ed Martin was leading the *National Post* to believe

that it was \$6.2 billion in April 2014, just so I'm clear?

MS. E. BEST: No, I think the point here is that he says that the \$6.2-billion estimate, it seems to indicate that it's under pressure, that there is a new cost update beyond that but that he's not giving it. I'm just – I'll put my question into context which is: I'm confused how the minister and perhaps the premier at this point, you know, weren't aware of the 6.5 figure, in light of this article.

MR. BOWN: No –

MS. E. BEST: Which would have, at least, I would suggest, cause people to – like yourself, to question and maybe you would have fielded questions with them, regarding this article.

MR. BOWN: This would indicate that there is likely a cost update coming, but that there isn't a cost update right now. That's the –

MS. E. BEST: Mm-hmm.

MR. BOWN: – way I read that.

MS. E. BEST: Mmm.

MR. BOWN: That's the way I interpret it.

MS. E. BEST: Mmm. Okay.

Do you recall if you were asked about it?

MR. BOWN: I don't know, that's a long time ago.

MS. E. BEST: Okay.

Financial close, who briefed the premier on that?

MR. BOWN: Mr. Martin.

MS. E. BEST: Did you participate in that briefing?

MR. BOWN: I don't know if there was actually a briefing about financial close, other than – because I recall being in the premier's office, we were signing documents. I don't believe that we actually had a final close briefing with Mr. Martin, no.

MS. E. BEST: Maybe not a final close briefing with Mr. Martin but what about between Natural Resources and the premier's office?

MR. BOWN: Well, I was with the premier as we were signing the equity support agreement, the IGA –

MS. E. BEST: But wouldn't someone from government have read those documents, before the premier – before they were signed?

MR. BOWN: We had used BLG to review the agreements.

MS. E. BEST: Okay.

And so, wouldn't you have been involved with that?

MR. BOWN: No. We had Department of Justice to take care of those agreements.

MS. E. BEST: So you didn't feel that –

MR. BOWN: I didn't read all the agreements.

MS. E. BEST: – you did not read the agreements.

MR. BOWN: No, Department of Justice was there to advise minister of Finance.

MS. E. BEST: Okay, even though Natural Resources was the lead on the project?

MR. BOWN: Yes. But I'm not a lawyer and I couldn't give the legal advice.

MS. E. BEST: Okay, I accept that. But wouldn't it have been part of your role to not only check but double-check the facts associated with financial close?

MR. BOWN: No.

MS. E. BEST: And brief the premier.

MR. BOWN: We had received – a letter from Nalcor, from their chief legal counsel, saying that the agreements were in – were in alignment or are consistent with the terms sheet, and we had a letter from BLG, as our own outside counsel, to do the same so that the terms and

conditions of the agreements – and we also had our own in-house lawyers looking at the documents as well.

MS. E. BEST: Okay. And during any of those briefings, did anyone mention 6.5 number?

MR. BOWN: I don't recall that.

MS. E. BEST: Does it surprise you now that that would've been missing – to suggest that that might've been missing from the whole conversation, does that seem unusual to you?

MR. BOWN: It didn't at the time, I guess.

MS. E. BEST: Well you – I thought you said you don't recall?

MR. BOWN: No, I said: I guess.

MS. E. BEST: Yeah, but you don't recall if the 6.5 number came up?

MR. BOWN: No.

MS. E. BEST: Right? So it may have.

And so then my question was: If it didn't, wouldn't that be unusual?

MR. BOWN: Um.

MS. E. BEST: It's certainly a question I'm asking in hindsight, so I apologize –

MR. BOWN: Sure –

MS. E. BEST: – about that but –

MR. BOWN: – and I'm – and this one I can't answer in hindsight, really.

MS. E. BEST: The data room, I'm unclear as to – I understand that there's been some indication that you had access to that document in the data room on November 21, 2013, and I understand your evidence to be that you didn't know that that document was there.

MR. BOWN: No.

MS. E. BEST: So, what did you know was there? Tell me about what you knew about the data room.

MR. BOWN: I didn't access the data room.

MS. E. BEST: Why not?

MR. BOWN: Well, we had other staff who were doing that.

MS. E. BEST: Who?

MR. BOWN: Paul Morris had access to it.

MS. E. BEST: Yeah. And was he tasked to –

MR. BOWN: Keep on –

MS. E. BEST: – report to you?

MR. BOWN: – keep on top of that and – sure. I think that's the – how I got a copy of the independent engineer's report.

MS. E. BEST: When you say Mr. – you said other staff had access, was it only Mr. Morris?

MR. BOWN: I think it was only Mr. Morris. Yeah.

MS. E. BEST: How do you know that?

MR. BOWN: Because the intent was to keep the group who had access very small. The objective –

MS. E. BEST: To one person?

MR. BOWN: Well, it may have been one or two more. I don't recall.

MS. E. BEST: Why would that be?

MR. BOWN: Just to limit the people who were pulling information out. That wasn't ours; that was Nalcor.

MS. E. BEST: So, Nalcor told you to not give access to the data room to more than one or two people?

MR. BOWN: Access wasn't granted by me. It was granted by Nalcor.

MS. E. BEST: Did you challenge that?

MR. BOWN: No.

MS. E. BEST: Why not?

MR. BOWN: I don't recall challenging that. If we had people who were getting information, they were the ones who were working on it. That was sufficient.

MS. E. BEST: Okay.

I just really have one question left and it has to do with the Oversight Committee. It's just a clarification more than a question.

MR. BOWN: Okay.

MS. E. BEST: So, the Oversight Committee, that was created in February or March, 2014?

MR. BOWN: Correct.

MS. E. BEST: Right. This morning you were talking about the splitting of the EY report, the decision to split it up, and we're also – I believe you said – I didn't quite catch it so you can tell me if I'm wrong, but I believe you said something how the premier's office would speak directly with Nalcor about how – had spoken directly with Nalcor about how Nalcor was going to participate in the EY review, you know, how – whether they were gonna lead it or whether they were gonna provide information.

MS. E. BEST: Do you recall saying something along those lines –

MR. BOWN: I don't think I said –

MS. E. BEST: – this morning?

MR. BOWN: – no, I don't think I said exactly that.

MS. E. BEST: Okay. What did you say?

MR. BOWN: Can you put it back in context again 'cause it –

MS. E. BEST: Yeah.

MR. BOWN: – I'm confusing two specific questions that I would recall from this morning.

MS. E. BEST: Okay, but my – I'll tell you, first of all, the question that I'm gonna ask at the end of this –

MR. BOWN: Okay.

MS. E. BEST: – which is just to clarify the timing and who was premier at the time.

MR. BOWN: Okay.

MS. E. BEST: Okay?

Because I just wanted to clarify that, according to the – my timeline, it doesn't seem that it could've been Premier Dunderdale?

MR. BOWN: You are –

MS. E. BEST: You can –

MR. BOWN: You are correct.

MS. E. BEST: I'm correct, okay.

MR. BOWN: Yes.

MS. E. BEST: So that with respect to the issue of deciding to split the EY report, that wouldn't have been Premier Dunderdale.

MR. BOWN: You are correct.

MS. E. BEST: And with respect to whoever at the premier's office was speaking directly to Nalcor about their participation in any of the EY investigations or reports, or reviews I should call them, that wouldn't have been Premier Dunderdale either, would it?

MR. BOWN: She left in December, was it?

MS. E. BEST: January –

MR. BOWN: January.

MS. E. BEST: – 2014.

MR. BOWN: Yeah, no.

MS. E. BEST: Okay.

Thank you. Those are my questions.

MR. BOWN: Thank you.

THE COMMISSIONER: It – next, we’ll deal with Robert Thompson, but I think we’ll take our afternoon break first. So, take 10 minutes?

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right, Robert Thompson.

MR. COFFEY: Thank you, Commissioner.

Commissioner, Mr. Bown, Bernard Coffey for Robert Thompson.

This morning I believe, at one point, in relation to the MC of April 26, 2012, in the direction to develop some type of oversight mechanism for the project you made a comment, when Mr. Learmonth asked you about what was done about it and why a delay occurred. You said – and I think I have the wording correctly – we had very few people doing many things.

MR. BOWN: That’s correct.

MR. COFFEY: Could you expand upon that a little bit for the Commissioner?

MR. BOWN: Sure. We had probably – in order to accomplish the same things that Nalcor – and I’m not complaining about Nalcor – to accomplish the same thing that Nalcor was doing in respect to financial analysis, legal analysis, market, et cetera, we had at best 2½ persons at Natural Resources, we probably had two at Finance who could devote the time to it, and that’s part time, to resources. And we had 2½ – two at counsel and then we outsourced to BLG to help us with the massive volume of legal work that was going on as well at that time.

So we were stretched really, really thin being able to do just the basic work inside the department, because you got to remember we

weren’t just doing Muskrat Falls, we had all the other work of the department to do as well. We had limited – I’ll add again, we had limited financial resources to hire professional services.

MR. COFFEY: Now, I’m going to, if I could, address with you a topic that has been covered extensively throughout this Inquiry and that’s the topic – it’s referred to as risk. And I believe on December 5, 2018, when Mr. Learmonth was questioning you, you responded – and I’m just going to read a little excerpt from your transcript.

You said – and this is, Commissioner, for the record, is at page 104 of the transcript of that day. You said: “I think the issue that’s being discussed here, really is around the notion of strategic risk and – so did we receive that? No, I don’t recall seeing anything on DG3 on strategic risk.

“**MR. LEARMONTH:** And do you recall ever having any discussion with anyone about strategic risk at DG3?

“**MR. BOWN:** No, we discussed risk as risk; a generic term.”

MR. BOWN: Right.

MR. COFFEY: Okay.

MR. BOWN: I recall that.

MR. COFFEY: Could you tell the Commissioner, please, what your understanding was, you know, at the time the DG3 process was going on – and subsequently, really – as to how risk fit into all this? I mean, what was your understanding of what – why was risk considered and how did it fit into what was going on?

MR. BOWN: In the context of (inaudible)?

MR. COFFEY: In the context of, for example, capital cost estimates. Did risk play any part in the calculation of the capital cost estimate, from your perspective?

MR. BOWN: We were advised that they did a very detailed breakdown of costs. They attached the appropriate contingencies and risks to each –

you know, they broke it down to a very low level. That was the information we were given. They had broken it down many, many, many levels, attached the appropriate contingency, attached a risk profile to that as well, and then built all that up and that was what they called best class, or best in class.

MR. COFFEY: So it was your understanding that the notion of risk – or risks – related to the determination of the amount of contingency.

MR. BOWN: Yes.

MR. COFFEY: And was it also your understanding that one would have to determine or assign a value to, you know, any particular contingency and, perhaps, add them all up to get a total contingency. In order to do that you would have to consider risk.

MR. BOWN: Correct. That's (inaudible) normal practice.

MR. COFFEY: And, therefore – and but you needed a contingency determined in order to do a capital cost estimate.

MR. BOWN: Yes. It wouldn't be complete without it.

MR. COFFEY: That's exactly the point. You couldn't do a capital costs estimate without determining the contingency that should be assigned to it –

MR. BOWN: Absolutely.

MR. COFFEY: – or included in it.

MR. BOWN: That's the norm.

MR. COFFEY: And that would require, as well, a consideration of risk.

MR. BOWN: Yes.

MR. COFFEY: Now, in terms of cost overruns – and you have been asked about this today – you know, I'm going to – and a lot of what's gone on – it goes on here and to be fair to people, I think one has to try and put oneself back in the time in which you knew. And you've made the point a number of times –

MR. BOWN: (Inaudible.)

MR. COFFEY: – you know, what you knew at the time or understood at the time. At the time of DG3 and then in the following year leading up to financial close, cost overrun – what was your understanding of what a cost overrun – for you, what did that represent?

MR. BOWN: Personally, for what I –

MR. COFFEY: Yes.

MR. BOWN: – was doing, the focus of my exercise, cost overrun dealt with how we – we had worked the previous year and a bit doing the term sheet, and we were tasked in a very short order pulled together all of the elements that are in the term sheet into the proper agreements and make sure all the conditions precedent were done. Cost overrun for me meant how we write that into those agreements. That was my focus.

MR. COFFEY: Okay.

And in terms of if there were cost overruns, how they would be dealt with, is it – and like having legal language as to how it would be –

MR. BOWN: Yes.

MR. COFFEY: – dealt with within the term sheet and –

MR. BOWN: Right.

MR. COFFEY: – the COREA clauses eventually were the result.

MR. BOWN: Yes.

MR. COFFEY: And – but from your perspective, I mean, what would constitute, from your view back at the time, constitute a cost overrun?

MR. BOWN: A change in the AFE.

MR. COFFEY: Okay and it would be the AFE, would it?

MR. BOWN: Yes.

MR. COFFEY: A change in that.

MR. BOWN: Yes. Because that's the way that the legal language is crafted, and that's the way that the term sheet was identified, that it had to be a change in the AFE before there was an actual cost overrun.

MR. COFFEY: Now, there are, I think, four exhibits I'm going to ask that the witness be referred to, Commissioner. And the reason I'm doing so I think will become apparent in light of the tenor of my questions. Exhibit – and we looked at this in Phase 1, but there's a point to where I'm going with this, Commissioner, so I'd ask you to bear with me.

Exhibit P-00817.

THE COMMISSIONER: That's not going to be in your book.

MR. COFFEY: That's not in the thing; it'll come up on the screen there (inaudible).

Thank you, Commissioner.

Now, this is an email from Mr. Crawley, on page 1, to Mr. Harrington. It's dated – or sent August 7, 2012, at 11:46:49 a.m. And you'll notice here there's an attachment: "DG3 Estimate Update to MHI 17-June-2012."

MR. BOWN: Mm-hmm.

MR. COFFEY: It's a PowerPoint presentation.

And Mr. Crawley writes: "Paul" – that's Mr. Harrington – "are you ok with this going to Charles? It is what we provided to MHI. We should also bring Gilbert into the loop. Brian." Okay? And this is the one where if we go to – if we just scroll down, please, to – yes, the – keep going, please. There it is, yeah.

This is the DG3 Estimate Overview, Presentation to MHI, 17-Jun-2012. And go down one more, please, another page. And this – I'm going to stop you there, thank you. This is: "Cost Estimate is comprised of 3 Primary Components" and definitions as per AACE recommendation number 10S-90. So the buildup here of the project cost estimate, is that your – was that your understanding, what it was comprised of?

MR. BOWN: Yes.

MR. COFFEY: Okay.

And if we could go then finally to – in this document to – yes, page 18. Sorry, page 14 – I apologize. And this is the one, you'll notice here it says – the heading is: "External/Strategic Risks Beyond Estimate Contingency."

See that?

MR. BOWN: Yes.

MR. COFFEY: Now, if we could – that is in this document. Now, if we could go to Exhibit P-00818, please. And this is the same day, August 7, 2012, at 12:30:51 hours, which is less than 45 minutes later. It's an email from Mr. Harrington to Mr. Crawley, back to him. Its subject is "Re: for NR" and the earlier one was "for NR." And the attachment is – the name – it's named: DG3 Estimate Update 7, Aug 2012.

MR. BOWN: Mm-hmm.

MR. COFFEY: And this is the one where Mr. Harrington says to Mr. Crawley: "I have taken slide 12 out of the deck you sent me – I do not believe we actually shared this with MHI." And that's the one where that slide 12 is gone –

MR. BOWN: (Inaudible.)

MR. COFFEY: – the strategic risk is gone. And that's consistent, is it not, with your evidence in Phase 1 and just now, that strategic risk wasn't something that you dealt with?

MR. BOWN: No.

MR. COFFEY: You'll notice as well here that the name of the actual slide deck has changed from the earlier one that dealt with – it was named as a slide deck in June given to MHI. Now, presumably, Mr. Harrington has named it: DG3 Estimate Update 7, Aug 2012.

MR. BOWN: Okay.

MR. COFFEY: See that?

MR. BOWN: Mm-hmm.

MR. COFFEY: If we could go then, please, to Exhibit P-01190.

MR. BOWN: Okay.

MR. COFFEY: This is a – the first page is the – an email from Mr. Harrington to Mr. Crawley, Bennett and Ms. Dalley, a copy to Jason Kean. Its subject is: “Deck for use with NS, NL, Feds,” Wednesday, August 8, 2012, 10:35 a.m. – in other words, the next day, okay, from the last exhibit. And the attachment is: Reasons for cost growth – NL, NS, Feds, PowerPoint presentation.

And he writes: “I have worked on the deck that Jason developed to explain the cost growth since DG2 and have had to add a few slides and take ... a few points” out “that could trigger a reaction from NS, NL or the Feds – Ed is always asking how we can explain how we could not predict the DG3 costs – so I have tried to answer that question – Comments, I may need to run with this at short notice.

“Regards Paul.”

You’ll notice there that the – it’s called – the attachment is: Reasons for cost growth – NL, NS, Feds.”

MR. BOWN: Mm-hmm.

MR. COFFEY: And then if you go to the next page, please, Madam Clerk, it’s the DG3 Estimate Overview, 8 August 2012. And go to the next page, please. And although not entirely, a lot of this replicates what is in the deck we saw from the day before.

MR. BOWN: Yes.

MR. COFFEY: Could you go then, please, to Exhibit P-01191.

Now, this is a number of days later. It’s an email from Mr. Harrington to yourself, Monday, August 13, 2012. And there’s an attachment, it’s called: Reasons for improved estimate accuracy from DG2 to DG3 Preliminary Draft rev Aug 13 rev 2 no video – NL, NS, Feds, PowerPoint.

And this is the one was sent to you apparently. It says: “Charles

“As requested, attached is a preliminary draft of the deck we are working on – It is work in progress and is not the final version, if you forward to others please ensure that they understand that it will change once we have a chance to meet internally and go through line by line.

“Regards Paul.”

Next page, please.

And this is a DG3 estimate overview and there’s a caution on the top right-hand side about a preliminary draft and it’s dated 13 August 2012.

MR. BOWN: Mm-hmm.

MR. COFFEY: Now, you would’ve received this, correct?

MR. BOWN: Yes.

MR. COFFEY: If we could go, please, to page 7.

This here – and just scroll down – yeah, on the left-hand side at the bottom, Mr. Bown, that column is – what’s the title on it – DG2, on the left-hand side at the bottom.

MR. BOWN: Estimate including estimate contingency and escalation.

MR. COFFEY: Okay.

And then the middle black column is entitled what?

MR. BOWN: DG3 base estimate before contingency and escalation.

MR. COFFEY: And then there’s an amount for estimate contingency, estimate escalation allowance and DG3 in-service.

MR. BOWN: Yes.

MR. COFFEY: So this was your understanding of how the capital cost estimate was developed for DG3.

MR. BOWN: Correct.

MR. COFFEY: And in terms of even after DG3, after sanction, was it your understanding that this is the way things would progress?

MR. BOWN: This was the methodology.

MR. COFFEY: Just one second please, Commissioner. There we are.

If we could look at, please, page 32. Here there's a slide deck – a slide entitled: Contingency Recommendations. And it refers to Westney having been engaged to conduct a risk estimate – assessment, I'm sorry – in late May, early June with project team, and the key findings are set out there.

MR. LEARMONTH: Can I just ask – this is all DG – this is all Phase 1.

MR. COFFEY: Yeah.

MR. LEARMONTH: I don't see the connection. We've been spending a lot of time on topics which I don't understand are relevant to Phase 2.

MR. COFFEY: Well, if I could address that, Commissioner?

THE COMMISSIONER: All right.

MR. COFFEY: Well, other than mentioning as an aside that Mr. Learmonth, himself, has a number of times gone back into Phase 1, he's explicitly said he's doing so. But leaving that aside, the – I want to canvass so the Commissioner understands what this witness – and, you know, and inferentially perhaps others, who were employees of the provincial government – understood at DG3 and, subsequently, in terms of costs, risk. Here – I was about to go to the next slide – is tactical risk and there's been much made of – in fact, even this morning.

THE COMMISSIONER: Let's stop talking about that.

MR. COFFEY: Yeah.

THE COMMISSIONER: Let's get at it and try to do it as quickly as we can.

MR. COFFEY: Yes, exactly. I'm not going to be very long, Commissioner. I'm not, you know.

THE COMMISSIONER: Go ahead.

MR. COFFEY: If we go to page 33, please, it's the next page.

Stop there. Thank you.

Now, here, Mr. Bown, this is entitled: Tactical Risk Analysis Results (Westney).

MR. BOWN: Yes.

MR. COFFEY: The phrase, tactical risk, did that mean anything to you?

MR. BOWN: No.

MR. COFFEY: The – my point being this, that the fact that there was an adjective modifying the noun, risk – like, they actually have tactical. Didn't –

MR. BOWN: Risk is risk.

MR. COFFEY: Risk was ...

And then in the context of – and we've discussed this before, including this morning – or including today. As the associate deputy – assistant deputy minister, associate deputy minister, deputy minister and then subsequently as, you know, the head of major projects, did you see it as your role to, in effect, engage in the sort of Inquiry that's going on here? Like, in terms of Nalcor, in terms of –

MR. BOWN: Did I see this coming?

MR. COFFEY: No, not see this Inquiry, see your role, in those various roles, as your relation – your duty to deal with Nalcor in the way that, you know, for example, is in here being examined, in terms of cross-examining Nalcor – looking at anything they sent as skeptical –

MR. BOWN: No.

MR. COFFEY: – skeptically?

MR. BOWN: No. Not with a jaundiced eye. No.

MR. COFFEY: Thank you, Commissioner.

THE COMMISSIONER: Thank you.

MR. COFFEY: I believe I'm the last for the day, although I stand to be ...

THE COMMISSIONER: All right, is there anyone else who is prepared to go today?

Okay, so can I get a bit of an estimate as to how long we're going to be so I know what time we're going to start tomorrow morning?

So, Nalcor Energy.

MR. SIMMONS: Commissioner, I – based on what's happened this afternoon, I don't expect to be any more than an hour.

THE COMMISSIONER: Okay.

Concerned Citizens Coalition.

MR. BUDDEN: I'm thinking about a half hour, Mr. Commissioner.

THE COMMISSIONER: Okay.

Edmund Martin.

MR. SMITH: About 20 minutes to a half hour.

THE COMMISSIONER: Federal – Former Provincial Government Officials.

MR. J. KING: I'd say about the same, 20 to 30 minutes –

THE COMMISSIONER: So –

MR. J. KLING: Twenty – sorry, my mic's not on – 20 to 30 minutes.

THE COMMISSIONER: Okay.

Consumer Advocate.

MR. PEDDIGREW: Commissioner, between, I'd say, half an hour and 45 minutes.

THE COMMISSIONER: Innu Nation.

MR. LUK: Mr. Commissioner, based on the direct examination we have no questions.

THE COMMISSIONER: Okay.

Nunatsiavut Government here? No.

NunatuKavut.

MR. STEWART: About 10 minutes, Commissioner.

THE COMMISSIONER: Okay.

Conseil des Innu de Ekuanitshit – not here.

Grand Riverkeeper/Labrador Land Protectors.

MS. URQUHART: I would expect about 15 to 20 minutes, Commissioner.

THE COMMISSIONER: All right, Former Nalcor Board Members.

MS. G. BEST: I don't anticipate having any questions.

THE COMMISSIONER: Okay.

The Trades Council and – Building and Construction Trades Council – not here. Okay.

Which leaves you, Mr. Fitzgerald, so let me just see where I am. So we should have lots of time tomorrow then, to finish. So we'll start at 9:30 tomorrow morning.

I understand, Mr. Fitzgerald, you had a – you have something on tomorrow that – did you want me to start earlier or did you ...?

MR. FITZGERALD: No, that's fine, Commissioner. I've made arrangements.

THE COMMISSIONER: Okay.

MR. FITZGERALD: Thank you, though.

THE COMMISSIONER: All right, so we'll come back then, tomorrow morning at 9:30.

UNIDENTIFIED MALE SPEAKER: Okay. Thank you.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.