



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 43

Commissioner: Honourable Justice Richard LeBlanc

Wednesday

29 May 2019

CLERK (Mulrooney): This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc
presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right.

All right. Good morning.

Mr. Learmonth?

MR. LEARMONTH: Yes, the witness for today is Julia Mullaley.

Before Ms. Mullaley is sworn or affirmed, we'd like to have the following exhibits entered into evidence: P-03823 to P-03840, P-03851 to P-03859, P-03874, P-03938 and P-03939.

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

Ms. Mullaley, if you could stand, please? Do you wish to sworn or do you wish to affirm?

MS. MULLALEY: Sworn.

THE COMMISSIONER: Sworn? Just take the Bible there, please.

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

MS. MULLALEY: I do.

CLERK: Please state your name.

MS. MULLALEY: Julia Mullaley.

CLERK: Thank you.

THE COMMISSIONER: If you could just spell your last name, please?

MS. MULLALEY: M-U-L-L-A-L-E-Y.

THE COMMISSIONER: Thank you.

Mr. –?

MR. LEARMONTH: Okay.

Ms. Mullaley, you live in St. John's, do you?

MS. MULLALEY: Mount Pearl.

MR. LEARMONTH: Mount Pearl.

And what is your present position?

MS. MULLALEY: I'm Auditor General of Newfoundland and Labrador.

MR. LEARMONTH: And how long have you held that position?

MS. MULLALEY: I was appointed there in December 2017.

MR. LEARMONTH: Yeah, and that's a 10-year appointment, is it?

MS. MULLALEY: It is.

MR. LEARMONTH: Yes.

Could you give us a summary of your education after high school?

MS. MULLALEY: Yes, sure.

I went to Memorial University, and I graduated with a Bachelor of Commerce, co-operative, degree. And then I went on to do my chartered accountant designation.

MR. LEARMONTH: Okay, and when did you receive your chartered accountancy designation?

MS. MULLALEY: 1991.

MR. LEARMONTH: And did you go to work after you got that designation?

MS. MULLALEY: Yes, I was actually working full-time as –

MR. LEARMONTH: For whom were –

MS. MULLALEY: – (inaudible).

MR. LEARMONTH: – you employed?

MS. MULLALEY: It would have been – it's Grant Thornton, nowadays –

MR. LEARMONTH: Yes –

MS. MULLALEY: – it used to be (inaudible) –

MR. LEARMONTH: – the predecessor –

MS. MULLALEY: – at the time.

MR. LEARMONTH: – firm of Grant Thornton.

MS. MULLALEY: Yes, correct.

MR. LEARMONTH: You worked in private practice until when?

MS. MULLALEY: I joined government in 1993.

MR. LEARMONTH: And what position did you take when you joined in 1993?

MS. MULLALEY: I was actually – had a position in the Office of the Auditor General.

MR. LEARMONTH: Yes. And what was your progression after that?

MS. MULLALEY: I was in the Office of the Auditor General for probably 10 years. So, I was at the executive level there when I left. Then I would have moved into the Department of Finance, I guess, at the time, in the Budgeting Division. That would've brought me up to 2005. Did you want me to continue on with that?

MR. LEARMONTH: Yes, please.

MS. MULLALEY: Yeah.

So in 2005, I was appointed in to an executive position in Cabinet Secretariat, and I was there for several years. Then I went to Natural Resources as an ADM down in the Royalties and Benefits down in the offshore oil area for several years. Involved in some of the offshore oil negotiations and so on and so forth at that time. I did then go the Department of Business as assistant deputy minister there, as well.

Then after Business, I went into – back into Cabinet Secretariat as deputy clerk. And I was deputy clerk there for several years, and then I moved into several roles in the deputy minister level. I was in Department of Municipal Affairs; I was in the Department of Advanced Education and Skills at the time. And then I was asked to take the position of clerk in August of 2013.

MR. LEARMONTH: Okay, so you succeeded Robert Thompson, as clerk, in August 2013?

MS. MULLALEY: Yes, that's correct.

MR. LEARMONTH: And you continued on in that position until September 2016?

MS. MULLALEY: Correct.

MR. LEARMONTH: And in September of 2016, you became the chairperson and chief executive officer of Newfoundland and Labrador Housing?

MS. MULLALEY: That's correct.

MR. LEARMONTH: And you continued in that position until you were appointed to the position of Auditor General?

MS. MULLALEY: That's correct.

MR. LEARMONTH: Okay.

So, you were clerk from August 2013 to September 2016, so that covers the – we'll say, the financial close phase –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – for the Muskrat Falls Project. Now, that's the top position in government. What – in general terms, what control, if any, does the clerk exercise over the documentation and submissions that go to Cabinet for consideration?

MS. MULLALEY: So I guess a key role is the Cabinet paper submission and analysis process. So, any obviously major policy decisions have to come to Cabinet for, you know, for review, and that part of that process is actually analyzing those papers, so those papers would be analyzed. They – we do bring them forth to Cabinet

committees, subcommittees of Cabinet, and then we make recommendations, and – as well – and, you know – from the analysis side, and then they will go on to Cabinet for decision-making. So, that’s probably one of the key roles in the Cabinet paper submission process.

You know, there are some others. There’s a – which probably people are familiar with now as a decision-note process. So, there’s another process, as well. They’re, generally, obviously, more minor decisions or clarification on a decision. And, in general, it’s like an advisory role as well.

MR. LEARMONTH: But before a submission goes to Cabinet –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – it comes through –

MS. MULLALEY: It has to –

MR. LEARMONTH: – Cabinet?

MS. MULLALEY: Yes. It has to come –

MR. LEARMONTH: So, you would have –

MS. MULLALEY: – through Cabinet Secretariat.

MR. LEARMONTH: – you would review all the submissions to Cabinet?

MS. MULLALEY: That’s correct, yes.

MR. LEARMONTH: Yeah.

And, the agenda? You’d be aware of the agenda?

MS. MULLALEY: Yes, we would set the agenda.

MR. LEARMONTH: And would you be present, personally, at all Cabinet meetings?

MS. MULLALEY: Yes.

MR. LEARMONTH: You would?

MS. MULLALEY: Yes.

MR. LEARMONTH: Okay. And, would you – or did you, during your tenure as clerk from August 2013 to September 2016, during that period when you attended Cabinet meetings, did you keep written records – your own – in your own notebooks?

MS. MULLALEY: For specific Cabinet meetings, there’s actually a specific pad in the Cabinet room, a Cabinet meeting note – paper – pad, so those are what I would have made notations on for, you know, the attendance of the ministers, the numbers of the Cabinet papers, the decisions of the Cabinet papers. So, yes, I would’ve had those.

MR. LEARMONTH: Would you have records of issues that you considered of importance that were discussed at any given Cabinet meeting?

MS. MULLALEY: Generally, if it was a Cabinet meeting, I would’ve had it on that particular paper, but certainly, you know, I would also have, you know, what’s well known as black books, and they were – generally, I had them everywhere I went, but they were more so outside the Cabinet room. They were for every other meeting I would’ve been at, that aspect of it. But, for the Cabinet meeting itself, they generally would’ve been on the note –

MR. LEARMONTH: All right.

MS. MULLALEY: – pads.

MR. LEARMONTH: Now, when you left government in September 2016, what did you do with your black books?

MS. MULLALEY: So, just the day before I was leaving, I had three books – I can remember – I had three books, and then there was this stack of papers that I’m talking about now that I would’ve maintained in my drawer. So, I would’ve handed them, at the time – and I remember right where I was standing – and I handed them to our head of our Information Management Division at the time –

MR. LEARMONTH: Now, who was that?

MS. MULLALEY: That would be Nina Goudie.

MR. LEARMONTH: Yes.

MS. MULLALEY: She's, I think, since retired, but she would've been there. And we actually had just a little bit of discussion around not the notebooks per se, but the notepads that I'm talking about. And we – I remember having that discussion just around transitory records because we're debating whether those sheets – and we're pretty comfortable that the notepads themselves, not the black books now, but the notepads were transitory because, of course, they all translate into Minutes of Council and orders-in-council.

But, you know, I just didn't make the decision. At the time I just was leaving, I know they were not my personal records so I just said well, I'll leave it with you and you can decide. So that's what I would've done with them at the time.

MR. LEARMONTH: But that discussion about the transitory records did not apply to your black books, is that correct?

MS. MULLALEY: Not in my view, anyway.

MR. LEARMONTH: Yeah.

MS. MULLALEY: I was specifically speaking about the notepads, whether that might have been interpreted a different way. But, you know, I was specifically speaking about the Cabinet records.

MR. LEARMONTH: Now this – and I just want to make sure that we've – you know, as soon as we hear from witnesses that say that I would've done this or I think I might have done this and a lot of very – variations which are actually hedges on whether –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – the person is saying they did something or not. Do you have a personal recollection of having this discussion with Nina Goudie with your books?

MS. MULLALEY: Oh absolutely, definitively.

MR. LEARMONTH: You recall it –

MS. MULLALEY: Definitively.

MR. LEARMONTH: – 100 per cent clarity?

MS. MULLALEY: I remember where I was standing definitively, yeah.

MR. LEARMONTH: All right, thank you.

Now, during the course of this Inquiry, the location of these notebooks, yours and Charles Bown's in particular, has come up as an issue. And do you recall being requested by your counsel on my recommendation that you see what you could do to find these books?

MS. MULLALEY: Yes, that's correct. So the first time I went to look for them, of course, I was coming for an interview on the issue on the \$6.5 billion and I hadn't received materials yet so I was – I had presumed, I guess, that my notebooks had already been turned over. So we did go looking for them over there and I worked with Peter Ralph, I guess, I contacted Peter Ralph and he was – contacted Cabinet Secretariat to try to find those records. But I understood that they could not find them.

MR. LEARMONTH: Okay.

So did you push them in your attempt to search for them?

MS. MULLALEY: Yes, we did go back again afterwards and I asked if I could come over to see it and look, I guess, because, you know, obviously having worked there, I know the layout of the offices, in particular around the area where we would call the vault. Where there's a lot of files I thought they would – might be in there. So I just, I guess, offered to come over and, you know, see if I could search. But I did have a call back and, I mean, you know, what was relayed to me was all the areas they searched, everything they done, and, you know, I was satisfied with that.

MR. LEARMONTH: Okay, so you're – do you believe that there's anything more that you could do in an effort to obtain the location of the missing three notebooks?

MS. MULLALEY: Not based on where the staff told me they looked.

I mean, they looked down in storage where we had an area there, they looked through all the vault area where all the files are, looked in Nina's office, because of course Nina is retired now. So, you know, I don't know where else to look, I guess, and I guess that's one of the aspects they were asking. I don't know where else to look for them, and based on what – where they've said that they've looked and what they've done, I really have no idea where else for them to look.

MR. LEARMONTH: Yes, and when you turned in these three black notebooks, was it your expectation that they would be preserved and saved?

MS. MULLALEY: The notebooks, yes.

MR. LEARMONTH: Yeah.

MS. MULLALEY: You know, the papers, no, probably.

MR. LEARMONTH: No.

MS. MULLALEY: Again, the conversation we were having was transitory but, you know, I would say to you in Cabinet Secretariat, you know, the records retention, all those – that's a very critical aspect of the operations and, you know, even when ministers leave, anything pertaining to Cabinet has to get returned to Cabinet Secretariat with – you know, Cabinet Secretariat is the official record holder of the Cabinet papers, so – so for me, working in that environment, I was very conscious of that and my expectation, I guess, handing those over – 'cause I did not consider them personal records, they were my records when – in my role of clerk. So I would not have taken them with me.

So I guess my expectation, I guess, yes, it would've been preserved because somebody – and I guess I wasn't even necessarily thinking of anything like this at that time, but just for clarity if someone may have had to look back. I mean there were regular meetings I had in there, like on the Lower Churchill committee, so there were regular meeting notes I had all the time that, you know, I thought someone might just need to refer back to it. That sort of was, you know, my objective, I guess, at the time.

MR. LEARMONTH: Yes.

And is it correct that on numerous occasions you would've met with Premier Dunderdale and Edmund Martin and perhaps other senior civil servants to discuss the Lower Churchill Project, the Muskrat Falls –

MS. MULLALEY: Oh –

MR. LEARMONTH: – Project?

MS. MULLALEY: – yeah, absolutely, yeah.

MR. LEARMONTH: And based on your practices, do you believe that your notebooks would contain some information as to what was discussed at these meetings with Edmund Martin?

MS. MULLALEY: They may have. They certainly may have. I mean, again, I had that black book everywhere I went. I generally would make notes in it; who was in attendance and, you know, any critical points.

Sometimes, you know, there would be presentations, if there were presentations brought into the room, which was a fairly common practice as well. If we were reviewing an issue, I often had the practice of actually writing notes on the presentation, you know, 'cause the note might have been pertinent to a particular page. So I might not have written as much in the book at that time. It probably would have been more on the presentation. But if there wasn't a presentation, the book is what I would've wrote in, yes.

MR. LEARMONTH: Yes.

Well, if you took the – this notebook with you all the time, as you said, and you had it – you know, let's say you had a meeting with the premier and Edmund Martin and perhaps others –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – would it be reasonable for someone to expect that you would have made a notation of the – of what was said at that meeting?

MS. MULLALEY: Yeah, yeah.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: All right.

I know you can't say for sure, because you don't have the notebooks, but I'm just asking for what your practices –

MS. MULLALEY: That's right.

MR. LEARMONTH: – would've been and what you believe you would have done in relation to note taking at these meetings.

Thank you.

Now, at tab 82 of binder 2 of the books in front of you, Ms. Mullaley, there's an Exhibit P-03939, tab 82.

MS. MULLALEY: Tab 82.

MR. LEARMONTH: Do you have it?

MS. MULLALEY: Yes, I do.

MR. LEARMONTH: So this was a letter, it was prepared by the Government of Newfoundland and Labrador, Executive Council, May 27, 2019. It was sent in response to the Commissioner's request made to Peter Ralph to provide a written account of what searches were carried out to locate your notebooks. And I understand, just as an aside, that we will be getting a similar letter with respect to the Charles Bown books also.

But, anyway, there's one – this is self-explanatory. It appears from reading this that there was an extensive search carried out. But there's something on page 2 that I would ask you to consider. The first full – not the three dots, but below, on May 10, 2019, do you see that paragraph?

MS. MULLALEY: Yes, I do.

MR. LEARMONTH: It says – and, by the way, this is signed by Iris Power, director, Information Management.

It says: "On May 10, 2019 a further request was received, through Ms. Mullaley's solicitor, Andy Fitzgerald, for access to storage locations in order to conduct a search for the notebooks. It was determined that access to our storage locations could not be granted due to security reasons." And then: "At this time another search was conducted as outlined below."

Now, based on this, it appears that you, personally – and perhaps with your solicitor – wanted to do your own physical search. Is that correct?

MS. MULLALEY: Yes. And I offered to come over because I – again, I know the area and I just thought – you know, I just would like to satisfy myself, I guess, that they're not in the particular room I was thinking of –

MR. LEARMONTH: Yeah, and at this time you're the Auditor General of the province, right?

MS. MULLALEY: Yes.

MR. LEARMONTH: So on May 10, 2019. So what security reasons would stand in the way –

MS. MULLALEY: Well –

MR. LEARMONTH: – of you gaining access to perform your own search?

MS. MULLALEY: Well, I would say, what I would expect it to be is probably Cabinet records. So the Auditor General does not – one of the only ones, actually, in Canada that does not have access to Cabinet records. So I would – I'm surmising that's why, because that room would have, you know –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – a lot of the Cabinet records in them. So I would think that's what that would be.

MR. LEARMONTH: Yeah, but that could be dealt with easily by you going in with someone –

MS. MULLALEY: Oh, yeah.

MR. LEARMONTH: Yeah. But were you told on May 10 that the reason you were –

MS. MULLALEY: No, not at all.

MR. LEARMONTH: – denied access was that you didn't have security clearance?

MS. MULLALEY: No, that's the first time I saw that.

MR. LEARMONTH: Yeah.

MS. MULLALEY: I think when – the conversation I would've had with Iris at the time was more around that they've done the exhaustive search. So she just brought me through the steps that they did and everywhere they went. And I guess I was satisfied from the perspective that I, you know – I could not think of any other room or anywhere else to go either, so I was satisfied.

MR. LEARMONTH: So there's no further searching on the horizon from your point of view –

MS. MULLALEY: No.

MR. LEARMONTH: – for the books? They're presumed lost and destroyed.

Okay, I want to ask you some questions about –

THE COMMISSIONER: Just before we move on from that.

So if you had been permitted to go in and look where you thought it might – where would you have wanted to go?

MS. MULLALEY: There was – there's a particular – it's called a file and vault room. I think they might – I actually think I saw the – yeah, it's where all the shelving units are. So we have all the records in there. And sometimes I know, just myself, like – 'cause, you know, there are mobile units, you can move them, and there's little shelves and stuff. So sometimes I thought: Well, maybe they got put somewhere in between there. And I did understand – I think that somebody else's had gotten found in that area. I'm looking down to Peter – but I believe something got found there.

So, I guess, that would've probably been the only other area I would've thought besides in Nina's office. They looked in TRIM, so it wasn't like they were copied into TRIM, and into – you know, photocopied and scanned into TRIM. But it's not a big area, I guess, it's not a – you know, it's so – I – you know, in Nina's office, they looked in the storage downstairs. But that was the one area I think I thought maybe it was –

THE COMMISSIONER: Right.

MS. MULLALEY: – put on a shelf or something.

THE COMMISSIONER: So these notes are very important to me and I'm not prepared to give up yet. So if you were granted permission to go into that room, with others there to ensure that you're not looking at what you shouldn't be looking at, could you do that at noon today?

MS. MULLALEY: Sure, I could, yeah.

THE COMMISSIONER: So, Mr. Ralph, I want Ms. Mullaley to go into whatever that file room, vault room is and I want her to have an opportunity to physically search herself. And I'm not asking that she be given access to documents that she shouldn't see or whatever, and I think that can be easily monitored by Ms. Power or anybody else that wants to be there. But I want her to physically go in there, because I want every effort made to try to see if we can locate those notes.

MR. RALPH: That's fine, Commissioner. I suspect those arrangements were already being made.

THE COMMISSIONER: Okay. All right.

MR. LEARMONTH: Now, Ms. Mullaley, I want to ask you some questions about this \$6,531,000,000 cost – project cost estimate. I'm sure you've heard information –

MS. MULLALEY: Yes.

MR. LEARMONTH: – of that. I interviewed you specifically –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – as to your knowledge about this, and your transcript has been provided to counsel. I'm not going to take you through all the documents, others may want to do so, but I want to get right to the point.

You were the clerk, the top civil servant on – at the time of financial close. Is that correct?

MS. MULLALEY: That's correct.

MR. LEARMONTH: And when I say financial close, I'm referring to any time up to December 13. The reason for that is that the documents were signed on November 29; the bonds were priced on December 10; the funds were advanced to December 13. So I'll use the outside –

MS. MULLALEY: Sure.

MR. LEARMONTH: – date of December 13 when I ask you about your knowledge up until the time of financial close.

Did you know that there was an actual increase in the budget for the Muskrat Falls Project from \$6.2 billion, which is the DG3 number, to 6.531 at the time of financial close?

MS. MULLALEY: So, no, I have no personal recollection, at all, of knowing that number at any time around that financial close area. I, you know, I definitely was aware of the number, but when I search everything I can in my memory banks, it was more around in the March, April time frame, it was around the budget discussions.

But as I said before, I think what really bothered me was I was seeing, you know, the emails through the disclosure documents and I was seeing reference to the \$6.5 billion in some emails where some of our senior officials in Finance, particularly, and Natural Resources were copied on, and I could see that. So that was the team we had in place for financial close. And what I would say to you is that, again, generally, if senior officials like that know the number, it's very standard process that I would know the number and the ministers would know the number, the premier. That would be standard. So it bothered me when I could see them in the email, but I can't recollect it, and I have a good

memory. I can't – you know, I just cannot remember that. So I guess it bothered me to the point where I did ask –

MR. LEARMONTH: Yes.

MS. MULLALEY: – as you know, I asked for permission if I could go over and look at the Cabinet records. Again, I was very familiar with the Cabinet process. I knew what the Cabinet records would look like. I knew we had specific sections in the Cabinet paper called financial considerations. I know their Cabinet Secretariat analysis. The gist of it is I felt I wanted to satisfy myself that it just wasn't something I couldn't remember.

So I did do that, and I sat down again with legal counsel from government and we went through the screen, we went through all the MCs – I'll open the Cabinet papers, we looked everywhere right from, really, starting in October when some of the first papers were coming in, right through to the end of November.

So that's what we had looked at and there was nothing. There was absolutely no number of the 6.5 anywhere in any presentations and there were a number of presentations and, you know, including the CEO Stan – Ed Martin, sorry, was there as well doing presentations. So none of the presentations, none of the information had anything to do with that.

So, I also went through my emails. I asked request to get access to my emails. I did go through my emails and there was nothing there. The other thing I would say is as of late as, I think the note was dated December 2-29, there was a note that went into Cabinet Secretariat talking about this specific COREA provision. You know, because it was a late change in the agreements and some of the language had to get changed.

And even in that note, it did not have any reference to the 6.5. So I guess, through all of that, I could not find any, I guess from my point, refuting evidence to what I could recall. So I guess to answer – it's a long-answer question, but I guess my point is I have no personal recollection of it whatsoever and I can't find anything in any document which would just, to me, again be very unusual.

But it does bother me that I can see that and senior officials – 'cause usually that would come up.

MR. LEARMONTH: Yes.

MS. MULLALEY: So that's where my records – that's when, you know, the record I was looking for was my black books to see if I had put anything in them. But as you know, I can't find that. But no, I have no personal recollection of a 6.5 number.

MR. LEARMONTH: Okay.

But am I correct that something like that, if you had become aware of an increase of over \$300 million which is a lot of money – maybe not too large in terms of being a percentage of the 6.2 billion, but still it's \$300 million of public money.

MS. MULLALEY: Absolutely.

MR. LEARMONTH: If that had come to your attention based on your habits and your practices – and you're an accountant. If you had become aware of that, is it reasonable for us to believe that it would've registered and you would've done something?

MS. MULLALEY: Yeah, it would have been – it would be more than – yeah – absolutely. I mean, you know, I've had years in working with – in the Cabinet, say, in central agencies, whether it was, you know, Cabinet Secretariat, in the budgeting division. I've had lots of years of working in central agencies. And part of that key is that facilitating and advising role and working with ministers and premiers and sensitivities around a lot of things. If I knew that I would – that would absolutely register for me that that would have to be a discussion point.

It doesn't mean I would have changed anything.

MR. LEARMONTH: No, no.

MS. MULLALEY: But it certainly would have been at least a discussion point particularly, I guess, if it had impacted what government would have had to put in, you know, in equity, right away. So, that would already start impacting our budgets and stuff. So, yeah, I

mean, that would be very much reasonable expectation as you asked.

MR. LEARMONTH: Yes.

And we know from reviewing the documents that this figure of \$6.531 billion was used in the financial close documents.

MS. MULLALEY: Yes. I understand they were. Yeah.

MR. LEARMONTH: It was there.

MS. MULLALEY: Yeah.

MR. LEARMONTH: And what I would like to know and I think everyone would like to know is – how is it possible that an increase of over \$300 million could be included in these documents and there be no – apart from it being included in the documents and perhaps some civil servants knowing about it, that it wouldn't have to be registered or logged in the financial, you know, papers of the government?

MS. MULLALEY: Yeah.

MR. LEARMONTH: How is that possible?

MS. MULLALEY: Yeah. So, I would say how it was possible is that we were not signatories to those particular ones that had the numbers in them. There are a lot of papers coming through the Cabinet process, of course, and on the financial ones, you know, they would have come forth by the minister of Finance at the time.

They all had six – you know – the concept was the 6.2 and the documents show that. In fact, at the time, the minister was coming forward to present – it was before the number 6.5 was ever found in any of those emails, before the email – I don't have the document number here but I think you'd know what I'm referring to – in the one that said don't tell Newfoundland yet.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Right. So, but the papers, the finance's side, had come through before that time. So, anything financial-wise was based on the 6.2 that had come in –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – and been discussed. Then I – what would happen, of course, is there's a lot of closing issues happening but those particular documents, as far as I understand, they were not (inaudible) documents that governments were signatory to. They were Nalcor and outside other – you know, outside counsel and financing and so on.

MR. LEARMONTH: Yeah.

MS. MULLALEY: But the ones that were inside, that we facilitated the signing, like were the equity support agreements, the land use agreements.

MR. LEARMONTH: Yeah.

MS. MULLALEY: They're a lot of intergovernmental agreement. So, I can see how that could happen because those agreements with the numbers in it would not have come in.

MR. LEARMONTH: But it shouldn't happen. You can see how it happened but it shouldn't happen. That's more of a question because here's what I'm thinking: If the government of the province is taking on an increased obligation of \$300 million, even for bond ratings and so on like that, shouldn't this be logged and documented, not in May 2000 or March 2014, it was, but at the time – I mean, shouldn't that be something that Cabinet is made aware of because it's an exposure to the province?

MS. MULLALEY: Well, I think Cabinet would have been made aware the agreement itself, right?

MR. LEARMONTH: Yeah.

MS. MULLALEY: But Cabinet would have been advised – all the materials coming forward to Cabinet, in my view, were premised on the 6.2 –

MR. LEARMONTH: Yes.

MS. MULLALEY: – right?

So there was no discussion and, again, I guess I say there are a lot of opportunities for those

types of discussions but the 6.2 what was – is what was brought forth. So when that number is bringing forth – unless someone, you know, brings a different number in, it won't get discussed again. It was considered to be 6.2.

It should have. Yes, I agree with that. It should have come back in. But from a process perspective, the financing arrangements were earlier in the process, they had come in, gotten approved by Cabinet and then they were – the other papers were coming in more towards financial close, which were the land use agreements and, you know, a number of other sets of agreements but – and that particular agreement, the signatories on it, I guess, we wouldn't have kept even in government, they would have been a Nalcor record.

MR. LEARMONTH: Yeah.

But doesn't this present a problem. Like I'm – let's say I'm a credit agency and I'm assessing the credit worthiness of the province –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – to give a rating and I find out that there's an obligation of \$300 million that was taken on by the Province of Newfoundland and it wasn't logged until the budget in March 2014. That might make me a little bit nervous. Is my sense of this reasonable in your view?

MS. MULLALEY: Well, what I would say though, just to clarify, is that the baseline itself got set at 6.5 so there was no requirement for government to put in the difference, right, at that point.

MR. LEARMONTH: All right.

MS. MULLALEY: The baseline for the project got set and the federal government accepted –

MR. LEARMONTH: Right.

MS. MULLALEY: – the 6.5 so it – that was the benchmark. So there was no need to put in any money at that point in time, it wasn't until, you know, later as the project started to unfold that there was actually considered cost overruns, so cost overruns started after 6.5.

MR. LEARMONTH: Yeah.

But my point is that the government is exposed to a – this is a hard number we find out, now –

MS. MULLALEY: 6.5, yes.

MR. LEARMONTH: – this isn't just – it's not a cushion –

MS. MULLALEY: That's correct.

MR. LEARMONTH: – for the purpose of, you know, the COREA, this is an actual estimate –

MS. MULLALEY: That's the baseline number, yeah.

MR. LEARMONTH: Oh, it can be that the government – and the government is on the hook for that, because there's a contingent equity (inaudible) –

MS. MULLALEY: Yes, anything over and above that, yeah.

MR. LEARMONTH: And you're saying that even though the government is on the hook for this real number, there's no problem with it not being entered as a liability for the government at the time it was disclosed to the government in December 2013?

MS. MULLALEY: Well, I guess, the contingent equity, though, doesn't start until after the 6.5, right, so it's when it goes over the 6.5 is –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – when the COREA account would start working.

MR. LEARMONTH: Yeah.

MS. MULLALEY: So at that time –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – it wasn't, yeah.

MR. LEARMONTH: But it's still an obligation –

MS. MULLALEY: It's –

MR. LEARMONTH: – it's real money that the government is gonna have to come up with –

MS. MULLALEY: Oh, yes, yeah.

MR. LEARMONTH: – 300 – yeah. Well, anyway –

THE COMMISSIONER: Just if I can – I'm just trying to understand the answer to this.

So my understanding is it went to 6.531, was the number.

MS. MULLALEY: Yeah.

THE COMMISSIONER: And what appears to be – what I'm being advised is that the 6.531 was not just a number that was put in there just to be a bit of a – well, I think Mr. Learmonth used the word "cushion" –

MS. MULLALEY: Hmm.

THE COMMISSIONER: – so that more contingent equity would start to flow or would be needed after the 6.5 was actually expended. But there was a commitment to 6.531 by the government. So there were – so as opposed to the Cabinet's prior approval of \$6.2 billion, now we have a number of \$6.531 billion.

MS. MULLALEY: Yes.

THE COMMISSIONER: So how do we account for – how does government account for the additional \$300 million, notwithstanding the fact it's not gonna require contingent equity right away?

MS. MULLALEY: Mmm.

THE COMMISSIONER: How does the government record the need to account for that \$300 million? That's the question I'm trying to figure out.

MS. MULLALEY: Yeah.

I mean, from an accounting point of view you're – yeah, I mean, it's – the commitments are as you enter in contracts, right, so they will build

up over time. But yeah, I guess the core of it is no matter what, that – yeah, that 6.5 was the final number at financial close. That's not a question, for sure, that's a fact that it was 6.5.

MR. LEARMONTH: Yeah.

MS. MULLALEY: And all I can say to you, I guess, is at the time – you know, I know the premier indicates that she advised it was 6.5. I just can't – I don't have a personal recollection of it. And I don't have any records to show that it went into a Cabinet discussion at all. So on that premise, that's all I can say, is that, you know, the belief, from my perspective on the financial close was that it was at 6.2.

MR. LEARMONTH: Yeah.

THE COMMISSIONER: So just to follow up a little bit.

So let's say we have a Crown corporation that is making a financial commitment of \$300 million. Would not normally that financial commitment have to come to government for approval?

MS. MULLALEY: Yes.

THE COMMISSIONER: Okay.

So I'm just – again, I'm just trying to figure this out.

MS. MULLALEY: Mmm.

THE COMMISSIONER: Why would not – why would that \$300 million not need to come back to Cabinet?

MS. MULLALEY: I would say to you it should've. The whole thing should've come back. I'm just trying to explain I can't see how –

THE COMMISSIONER: Okay.

MS. MULLALEY: – it came back.

THE COMMISSIONER: I see.

MS. MULLALEY: Not that it shouldn't have. Absolutely. The premise of all of this is that that 6.5 should've always been in place and well

known by everybody. I'm not disputing that. In fact, that should have happened.

MR. LEARMONTH: All right.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Now, you mentioned the premier said she knew about it; although, if you look at her transcript, I'm not 100 per cent certain that she knew exactly when. She gave –

MS. MULLALEY: Yeah, I (inaudible), yeah.

MR. LEARMONTH: – different versions of that in her – I haven't studied her transcript, but – and it may be that she said that – clearly, that she knew about it before financial close.

Assuming that's the case, that Premier Dunderdale knew about this 6.531 before financial close, would it be your expectation that she would've informed you and the other members of Cabinet?

MS. MULLALEY: Oh, yes. I mean, absolutely. Again, the premier, if she knew something, she would absolutely have informed Cabinet. There's no doubt in my mind.

MR. LEARMONTH: And you?

MS. MULLALEY: Well, yeah, it should've been, really, probably the other way. Usually I'd find out about –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – it and inform the premier. But, yeah, I mean, we would all know. Yeah.

MR. LEARMONTH: Okay.

Well, based on your understanding of how Premier Dunderdale operated, if you weren't aware of it before financial close, can one draw the conclusion that you would believe that Premier Dunderdale was not aware of it before financial close?

MS. MULLALEY: Yeah, that would generally be my premise.

But what I would say to you is that, you know, sometimes, you know, there certainly was an ability for Ed to call over to the premier of the day and have discussions. So I can't say for sure if something like that didn't happen. I was actually out of the office for a period of time near November 21 to the 26 – out of the country, actually. And maybe, you know, they had had a discussion at that time. So I just have no recollection of being in any kind of a meeting.

So there was an avenue for it to happen, I guess. But I certainly don't have any awareness of it and I can't see anything to (inaudible) – and that's the difference, right? So I have all – you know, we have all the Cabinet records, so there's no record of anything to – going to Cabinet. And, you know, based on your previous question if, you know, Kathy Dunderdale knew at the time, she would certainly have informed Cabinet. That's not something she would not have informed her Cabinet of.

MR. LEARMONTH: Yes.

Because you may be aware that Thomas Marshall, Derrick Dalley and Paul Davis have all said that they have no recollection, whatever, about being informed of this number before financial close, and Charles Bown said the same thing.

Do you have any basis or personal knowledge that would allow you to challenge what Mr. Marshall, Mr. Dalley, and Mr. Davis and Mr. Bown have said about their lack of knowledge?

MS. MULLALEY: No. I mean, you know, it's always hard when you're looking back so many years and trying to remember things. But, you know, I think the sensitivity of the project was pretty high.

MR. LEARMONTH: Yeah.

MS. MULLALEY: In everybody's mind it was a significant policy decision, it was significant financial implications. So I just don't think if people knew it that you wouldn't remember it, you know? 'Cause like, I remember knowing about it, but I remember sort of – my memory is like I remember being a little surprised by it. And I think it was – again, I think it was through the budget I kind of became aware of it.

MR. LEARMONTH: Yeah.

MS. MULLALEY: But I don't – I think those things would probably register as why I am saying that.

MR. LEARMONTH: Yeah.

MS. MULLALEY: I think the sensitivity of everything – I think those things would register with people.

MR. LEARMONTH: But you – so you're acknowledging you became aware of it in March 2014?

MS. MULLALEY: I definitely –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – again, I definitely knew about the 6.5.

MR. LEARMONTH: Yeah.

MS. MULLALEY: I cannot pinpoint, but I'm pretty positive actually I found out about it through Donna Brewer and I'm pretty sure it was in the budget process, so that would've been February, March.

MR. LEARMONTH: Well, can you reconcile one problem that some may have: Thomas Marshall was the minister of –

MS. MULLALEY: Finance.

MR. LEARMONTH: – Finance –

MS. MULLALEY: Correct.

MR. LEARMONTH: – at the time of financial close.

MS. MULLALEY: Correct, yeah.

MR. LEARMONTH: And Kathy Dunderdale was the premier.

MS. MULLALEY: Correct.

MR. LEARMONTH: Please help me understand this: If Premier Dunderdale knew,

how is it possible that premier – that the minister of Finance, Thomas Marshall, didn't know?

MS. MULLALEY: The only possibility, again, would be picking up the phone to call the premier. That's the only way she would know –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – outside of that process.

MR. LEARMONTH: Yeah. But didn't you say that you thought that if she did receive that information, that's Premier Dunderdale, that she would've –

MS. MULLALEY: Oh, I do believe that, yeah.

MR. LEARMONTH: – definitely passed it on?

MS. MULLALEY: Yeah, absolutely.

MR. LEARMONTH: Well, if you're absolutely certain of that, does it not follow logically from what you're saying that Premier Dunderdale, who didn't communicate this to Thomas Marshall, if you accept that, that she didn't know about it at the time of financial close –?

MS. MULLALEY: Yeah, that's likely the scenario, but –

MR. LEARMONTH: Okay.

MS. MULLALEY: Mmm.

MR. LEARMONTH: Now, with respect to the 6.5, I want you to turn up – this is not in your books, but it's the Muskrat Falls Project Oversight Committee report of – it's exhibit – and it'll come up on your screen.

MS. MULLALEY: Okay.

MR. LEARMONTH: Yeah. Exhibit P-02051. Do you see that?

THE COMMISSIONER: Not there yet, but it's coming.

MS. MULLALEY: Yes.

MR. LEARMONTH: All right. So if we go to page 13 of the Oversight, this Oversight Committee report – and you were the chair of the Oversight Committee, correct?

MS. MULLALEY: That's correct, yeah.

MR. LEARMONTH: The first paragraph on page 13, under the heading Muskrat Falls Project Budget and Schedule: "In December, 2012, at the time of Project sanction, the capital –"

THE COMMISSIONER: Excuse me just for a second, we're not there. Page 13, please.

MR. LEARMONTH: Yeah.

THE COMMISSIONER: Top of the page?

MR. LEARMONTH: Right at the top. There you go, that's fine. Thank you. Muskrat Falls Project Budget and Schedule

"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" – that's the independent engineer –

MS. MULLALEY: Right.

MR. LEARMONTH: – "the DG3 capital cost estimate was revised to \$6.543 billion."

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: Now, that doesn't accord or line up with the evidence you're giving. Can you give some explanation as to –?

MS. MULLALEY: Oh yeah, absolutely.

So, I mean, at this point in time – this is July, right? This is our first report we're issuing in July, and by July, we absolutely knew the number was 6.543, and in fact, you know, we – what we were monitoring against – like, the reports and that, that number is still – that 6.543,

from what I understand, that's still the baseline of the project. And so even in the construction reports, which – we would've seen a few of those starting out in our oversight role 'cause we were already accessing some data here. So that was just a known fact. That was a very known fact at that time.

And for the Oversight Committee, actually, then we realized the number had never been public before. So you'll see, in the presentation I gave to Cabinet, I actually asked for permission to release that publicly as part of the direction. And that's what we did. So right now, to answer your question, it was factual information; we well knew it at this point, and we thought it was very important to put out publicly.

MR. LEARMONTH: Yeah, but this suggests that government knew about it at the time of financial close.

MS. MULLALEY: Well, I think it's just a – when I'm reading it, I guess it's a factual statement in December upon completion –

MR. LEARMONTH: Yeah, yeah.

MS. MULLALEY: – 6.543.

MR. LEARMONTH: But you, Ms. Julia Mullaley, did not know about it. Is that correct?

MS. MULLALEY: Not at financial close. I –

MR. LEARMONTH: No.

MS. MULLALEY: – certainly knew about it in July.

MR. LEARMONTH: Yes.

MS. MULLALEY: Yes, yes, yeah.

MR. LEARMONTH: Okay, that's fair enough.

MS. MULLALEY: Yeah.

MR. LEARMONTH: All right.

I'd like you to turn to tab 78 of volume 2 of your book of documents. That's the Grant Thornton report, Exhibit P-01677. The Grant Thornton

report dated December 7, 2018. If we could turn to page 12.

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: Ms. Mullaley, you've – you're familiar with this report generally, are you?

MS. MULLALEY: Yes, I've read through it –

MR. LEARMONTH: Okay.

MS. MULLALEY: – several times with interest.

MR. LEARMONTH: Now, if we go to page 12, lines 1 to 10, Exhibit P-01677, I'm just gonna read it.

MS. MULLALEY: (Inaudible.)

MR. LEARMONTH: “As indicated above, 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 ... overage. The amount of this overage exceeded the DG3 tactical contingency amount (\$368 million) 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 is April 2013, and the contingency is gone.

MS. MULLALEY: Yeah.

MR. LEARMONTH: And Nalcor knew that. You can assume that this statement is correct.

MS. MULLALEY: Yes.

MR. LEARMONTH: When did you first find out that information?

MS. MULLALEY: I found it first out through reading this report, actually. And, you know, if I may, you know, this particular aspect, that knowing that the \$7 billion – and I’ll even, if I may, turn to page 19 of this document because –

MR. LEARMONTH: Okay, well we can go through that –

MS. MULLALEY: – this – okay.

MR. LEARMONTH: – before you give – okay, let’s just – you just –

MS. MULLALEY: Yeah, sure.

MR. LEARMONTH: – keep that information.

MS. MULLALEY: So I guess from EY, we’ll say this report had a lot of information in it, but there are a couple of – two particular points that really, I guess, shock me and, to a degree, very much angered me. And this one on the \$7 billion is one of those.

MR. LEARMONTH: Okay. Well, let’s turn to page 19.

MS. MULLALEY: Okay.

MR. LEARMONTH: We’ll just hold the question as far as this contingency being exhausted until later, but let’s turn to page 19, under line 13.

MS. MULLALEY: Yes. (Inaudible) –

MR. LEARMONTH: July 2013: “PMT” – project management team – “Comments 2018; ‘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’ – that’s the forecast final cost – “to be ~\$7.0B which is 12% beyond the DG3....’

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

Now, this – when did you first find out about this information?

MS. MULLALEY: In this report when I read it.

MR. LEARMONTH: Okay.

MS. MULLALEY: And that’s when I said – this shocked me and it angered me, actually.

MR. LEARMONTH: Why did this information anger you?

MS. MULLALEY: Well, because, I mean, you’re – a minute ago, we were talking about 6.5, but when I saw that in July – that this was actually looking at \$7 billion – I can’t imagine, as a public servant, here, knowing that information and not bringing that in. And this was in July. So, you know, you still had – you were still – I mean, you were pushing hard for financial close, but you still had time to come in and have the – a real discussion around the merits of this, the challenges around this. And this is where some real solid analysis should have happened, I believe.

I know it’s all in hindsight, but for knowing that someone actually knew that number was there and not come in – let alone 6.5, it was \$7 billion. That that didn’t come in and get discussed and debated, that is not right.

So, it did upset me. And I’d say to you – as I walked through that chart that you have there, the other thing I would say is that as an Oversight Committee and as premiers and ministers in the board room when updates on these projects would happen, you know, I think we certainly had a sense of a lot of the risks that were happening and particularly around Astaldi. We were having lots of discussions, and we talked time and time again about how were those risks translating into cost and schedules. And we were always told that, look, we’re mitigating – we’re mitigating; we’re addressing it. Yes,

there's pressures. It's still in control. The schedule is on control. The cost is in control.

So, I say that because these are not only Oversight Committee, but these are questions that are being asked by Cabinet ministers and premiers of the day. And it's being said that it's still under control when I can look at the numbers and know that there is a different set of numbers there. That's what angers me, I guess, is that I feel like this – almost second set of numbers are here that no one ever knew about. And – but those questions were being asked, but they weren't honestly being answered. So I guess that's why I would say I was angered from the perspective of I felt that that was not honesty and people were not being told information that they should've been told for that purpose and pointedly being asked about –

MR. LEARMONTH: All right.

And if we just turn the page to page 20, once again we have August 2013 because they – Nalcor at this time was doing an update every month. So August 2013 final – so it changes to 6.9 – exposure of mitigation would be 6.8, you know, a little less but –

MS. MULLALEY: Yeah.

MR. LEARMONTH: Then September 2013, generally the same, some adjustments but – so it's not just one report, is it?

MS. MULLALEY: No. And I mean, I guess, you know, being intimately – like having the knowledge that I had on some of these things and seeing – even as you walk through the table there on page 19 and you see, you know, June 2014, 7.5 – sure you did a reset. They came in to Cabinet and they did a re-baselining exercise in June of 2014 at \$6.999 billion. That's what they came in with. There was analysis, there was discussion, there was all kinds of – and they came in at 6.99, and yet when you look at this they're carrying a number of 7.5.

So not only back in July, not only back in financial close, but as you continue to reset the project, coming in and being asked these questions about – and this is a good budget, yes this is a good budget, this is a good budget. And yet I see numbers that are different from that.

That's what angers me, because that was not what was being brought forth at the time.

MR. LEARMONTH: And did – you were present in Cabinet and –

MS. MULLALEY: Yes, I was.

MR. LEARMONTH: – presumably at other meetings –

MS. MULLALEY: Yes.

MR. LEARMONTH: – with Mr. Martin. Did Mr. Martin have a tendency, if not a habit, to always present a rosy picture?

MS. MULLALEY: Yeah, I would say, you know, Ed would certainly talk about risks, there was no doubt there were risks, and he talked about risks. But there was a confidence in holding the project schedule and cost. It was around the mitigation – a lot of discussions were: Yes, there's lots of pressures, but we're mitigating. We're on top of this, were mitigating, mitigating, were on top it, we're – the schedule and the costs are fine. That was the concept. Pressures, contingency is aggressive; he did always talked about the contingency was aggressive. But the sense that it relayed was a sense in the confidence on the costs and schedule.

MR. LEARMONTH: So would his presentations, to your recollection – I know you don't have your notebooks – but to your recollection, always end with we're facing pressures and so on, but everything is under control?

MS. MULLALEY: Yes, definitely.

MR. LEARMONTH: Yeah. And –

MS. MULLALEY: Mmm.

MR. LEARMONTH: – when you read the Grant Thornton report – page 19 and 20 and page 12 – when you know that the contingency was known to be blown at April 2013, what do you say about the quality and honesty of the presentations that the Cabinet and you in meetings with the premier and Mr. Martin was

perceiving? How would you characterize the presentations they have just referred to?

MS. MULLALEY: I would characterize them as not honest and not open, obviously, because the numbers that were there being carried in this report are different than what was being reported in to Cabinet. And I can't understand how that can happen. Like, that's just – that is – I just, I can't understand that concept. That's not a concept that should happen.

And, you know, and again I just get back to it wasn't that, you know, they were coming in. But people were concerned. Ministers were concerned. The premier was concerned. There were concerns around this project and, you know, escalating concerns all along the way. So I guess what I'm saying is these are people who are point-blank asking questions about the risks and how are they translating into costs and schedules and how's it going to impact that? And then being told that: Yes, there's pressures but we're going to mitigate, we're not – you know, we're holding the line, there's nothing to change here yet. That's pretty significant.

MR. LEARMONTH: Yeah.

But based on this information, is it going too far to say that in these meetings the Cabinet members were conned?

MS. MULLALEY: I guess the – to me the information was not honest. Like, you know if you knew that it was 7.5 but you're in there doing a re-baselining at 6.99 – that is not being honest with government.

MR. LEARMONTH: All right.

MS. MULLALEY: You're their shareholder, right? You know, the other thing is, about a lot of this stuff, is it's put up in the vein of commercial sensitivity. There's no such thing as commercial sensitivity between a – your own corporation and government. That can't exist. There is commercial sensitivity, yes, when you have to release things publicly and there has to be discussions about them and so on. But there's no commercial sensitivity between a government entity and the shareholder, a hundred per cent shareholder, which is government. That can't exist or shouldn't exist.

MR. LEARMONTH: Especially when the presentations are to Cabinet.

MS. MULLALEY: Absolutely.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Absolutely.

MR. LEARMONTH: So you agree that the issue of if it's used as a reason for not providing honest information to Cabinet, if someone suggests that it's for reasons of commercial sensitivity, would you agree that that's nonsense?

MS. MULLALEY: Absolutely. That's nonsensical.

MR. LEARMONTH: Yeah.

MS. MULLALEY: It's just –

MR. LEARMONTH: And isn't the approach one would expect in a situation like this where there's a – let's take the July 2013. Wouldn't one reasonably expect if there was an honest disclosure policy for Mr. Martin or whoever was giving it, to come in and say: Look, here is the report, we're – we have problems, we're trying to mitigate it but these are the best figures we have right now; we don't want you to release these numbers because of the commercial sensitivity, but we certainly want you to know? And then leave it to Cabinet to decide whether there's merit to the assertion that releasing it would –?

MS. MULLALEY: Absolutely.

MR. LEARMONTH: Yeah.

MS. MULLALEY: And lawyers and – yeah, absolutely. Yeah.

MR. LEARMONTH: Yeah, yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: That would be your expectation, would it?

MS. MULLALEY: Absolutely, yeah.

MR. LEARMONTH: Okay.

And do you agree that – there's been some suggestion that they only – you know, the only thing that was released was the AFEs. But doesn't it stand to reason that the first AFE was for 6.2 and that was in, we'll say – oh, let's say that was the figure at financial close in December 2012. Now, by July 2013 –

THE COMMISSIONER: Sanction. You mean sanction?

MR. LEARMONTH: Sanction, right.

THE COMMISSIONER: Right.

MR. LEARMONTH: Sorry, I said financial close.

So the figure at the time of sanction was 6.2.

MS. MULLALEY: (Inaudible.)

MR. LEARMONTH: And then July 2013 after the contracts start – the bids are out, turn out to be very low, and the contracts coming in. What would be more reliable: the estimate in July 2013 or the estimate in December 2012?

MS. MULLALEY: Yeah, I mean, it was the July estimate, yeah, the –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – yeah, I mean the – yeah.

MR. LEARMONTH: That's probably too obvious a question to ask. But I just – the point is that the more you carry on –

MS. MULLALEY: Absolutely.

MR. LEARMONTH: – the more information you have.

MS. MULLALEY: Absolutely. And more contracts were being awarded all the time –

MR. LEARMONTH: Okay.

MS. MULLALEY: – and I think the 6.99, really, was a catch-up almost for, you know, the

– the GT report where you see the overage on the contracts. That was that catch-up.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Okay.

Ms. Mullaley, did you ever see or even become aware of the existence of the July 2013 report of the independent engineer?

MS. MULLALEY: July?

MR. LEARMONTH: Yes, there was a draft report –

MS. MULLALEY: Oh, no.

MR. LEARMONTH: – that apparently government received in July 2013. You – do you –

MS. MULLALEY: '13?

MR. LEARMONTH: '13.

MS. MULLALEY: No. No.

MR. LEARMONTH: Before financial close?

MS. MULLALEY: No.

MR. LEARMONTH: No.

MS. MULLALEY: No. That would be –

MR. LEARMONTH: Well, that wouldn't fall under your –

MS. MULLALEY: – before my time. But no, the only one – I mean, around the financial – anything that – that one there was a November – the interim one, I think it was 29th, maybe, of November. The interim one we were quite familiar with, but –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – no, nothing – nothing – before that.

MR. LEARMONTH: Okay.

THE COMMISSIONER: Just to – just so I can understand that, so you were familiar with interim engineer’s – independent engineer’s report in November 2013, November 29, 2013?

MS. MULLALEY: That’s the – that was the date of that report, yes.

THE COMMISSIONER: Yeah. That didn’t – I’m not so sure if that was released on November 29 or –

MR. LEARMONTH: No.

THE COMMISSIONER: – if you’re talking about the second report, I think we need to clarify this.

MR. LEARMONTH: It wasn’t, no. Okay, well, I’ll just give the facts as I understand them.

There are a number of draft reports prepared by the independent engineer –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – including the following: one in July 2013, which –

MS. MULLALEY: Did not seal.

MR. LEARMONTH: – which, apparently, was seen by – which was seen by Charles Bown. There was another one on October 15, which government did not receive. There was another one on November 15, which government didn’t receive. There was one on November 27, which government didn’t receive. And, the one that’s dated November 29 –

MS. MULLALEY: That’s the one I mean.

MR. LEARMONTH: – neither government nor Nalcor received that until well after financial close.

MS. MULLALEY: Yes, that’s right.

MR. LEARMONTH: Yeah.

MS. MULLALEY: But, that’s the report I’m referring to.

MR. LEARMONTH: Okay. Very good. All right.

Now, we’ll just turn to your – some of these documents I want to take you through, Ms. Mullaley. This is at tab 2 in volume 1. First, Exhibit P-02329.

MS. MULLALEY: So, tab 2?

MR. LEARMONTH: Yes, tab 2 –

MS. MULLALEY: That’s okay.

MR. LEARMONTH: – Exhibit P-02329. Do you have that?

MS. MULLALEY: Yes, I do.

MR. LEARMONTH: If you just turn to page 3, this is an email – well, it starts, actually, at the bottom of page 2 – from Alison Manzer, who worked for Cassels Brock law firm and was the external legal counsel for the – for Canada, in terms of the financial close. So, at the top of page 3, you see this email dated November 21, 2013, second line: “Just off a call – Canada is VERY concerned and believes that NL should be as well – how much of this does NL know if they are fully informed as to the issues” – related this – “eases ... a bit.”

So, Canada was very concerned that the province become aware, which is fairly obvious –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – an obvious concern.

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: And then, Mr. James Meaney, on page 1 of this document, P-02329, says: “NL are aware of the forecasted capital cost increases.”

I just wanna confirm, you weren’t aware of them, were you?

MS. MULLALEY: Absolutely not.

MR. LEARMONTH: And you were the clerk.

Tab 3, Exhibit P-03545. Now this is an email, at the top, from Paul Myrden, who was in the Department of Finance, I believe he was manager of debt – director of Debt Management or something. And Donna Brewer's on this.

And from the bottom, it's an email from Xeno Martis, who I believe is at Fasken and was legal counsel for Nalcor.

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: If we turn to page 2, and this is an email to Auburn Warren of the finance department of Nalcor. Turn to page 2, and paragraph 1: "On the cost overruns issue, Nalcor would agree to have funded cost overruns based on the Project budget as at financial closing (\$6.5B capital cost estimate and not the \$6.2B DG3 estimate) using substantially your definition of cost overruns."

Now I know you're not on this email, but doesn't that information suggest that the 6.5 is not a cushion or a theoretical number but rather a real number?

MS. MULLALEY: Yeah, I would think so. And I mean there was a couple like this that I'd seen in previous – and that's why I say, you know, it does appear to me, certainly, that that 6.5 number – there was an awareness of that with our financial close team. I mean, that's what it appears to me and that's why I say – like, that would be Donna, Paul, Paul Morris, you know, we – Todd Stanley, we had a financial close team.

So that's why I see – I do see these 6.5 numbers and that's why, I guess, it bothers me to the degree, like, I can't – I have no personal recollection of, but it bothers me in the sense that normally, again, I go back to if senior officials knew like that, typical process, standard process would be that I would know and that the ministers know. And, so I don't know what or how this could have broke down, but normally, if it's in these – if they know, we know. And I struggle with that and that's why, like – I don't have a personal recollection, but I recognize – it seems that we would have known.

MR. LEARMONTH: Yeah. The government – some people in the government.

MS. MULLALEY: Yes, absolutely.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Okay.

Tab 4, Exhibit P-03823. This is a certification, sworn document and this deals with the – some of the minutes and orders-in-council that were issued –

MS. MULLALEY: That's correct.

MR. LEARMONTH: – in order to allow financial close to be completed. Is that correct?

MS. MULLALEY: That's correct.

MR. LEARMONTH: Okay.

If we look, for example, to page 17, this is a Minute of Council: "Under the authority of section 18 of the Energy Corporation Act, the Lieutenant Governor in Council is pleased to delegate to the Minister of Finance, the authority to approve: ... The terms of the binding financing"

So this is authority that was given on November 29, I think, pursuant to an order – an earlier order-in-council for the Minister of Finance to issue the – to sign the documentation.

And, so why – why was there a certification made by you, on page 1? What was the purpose of that?

MS. MULLALEY: Oh, so – of course, this is a – the series of Cabinet papers that are required to go to Cabinet for financial close, so a number of those would have the Minute in Councils, the Cabinet authorization. The order-in-council, of course, is based in legislation, would require the LGIC.

So, what we're doing here is, as part of a lot of the condition precedents in the closing agreements, they would've required copies of this. So these would've been the ones that were key that all the various parties required that government had committed to, right. So these

were all part of the necessary condition precedents of close –

MR. LEARMONTH: Okay.

MS. MULLALEY: – so I was certifying.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. LEARMONTH: And probably, possibly for the benefit – maybe Canada wanted to see these or –

MS. MULLALEY: There were a variety of them.

MR. LEARMONTH: Yes.

MS. MULLALEY: Yeah, absolutely. Yeah.

MR. LEARMONTH: Lenders and –

MS. MULLALEY: Yes.

MR. LEARMONTH: – so on.

MS. MULLALEY: Absolutely.

MR. LEARMONTH: Yeah.

MS. MULLALEY: So there were – this was basically showing government's commitments and, you know, there was some intergovernmental – the land use and – yeah, so these were all condition precedents for closing agreements.

MR. LEARMONTH: Okay. Tab 5 is a presentation, that's Exhibit P-02691, is a presentation to Cabinet, March 13, 2014 on the –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – the oversight, leading to the formation of the Oversight Committee, which I believe was announced publicly by then Premier Marshall on February 27 or February 28, 2014.

MS. MULLALEY: In March?

MR. LEARMONTH: No, it was announced in February, I think. There was a public announcement that there was going to be –

MS. MULLALEY: Oh, that he was going to do one.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Yeah.

Now, I wanna pause for a second before we go into this exhibit.

You know, we – presumably, the Commission has, you know, provided some documents then – but which will assist people in understanding exactly what went on with – in terms of the relationship between government and Nalcor. But you were there, at the time, in the top position.

Can you give us some sense of the type of relationship that the Province of Newfoundland had with Nalcor in terms of trust, reliability and so on, so that we can put that, you know, against the information that we have now?

MS. MULLALEY: Yeah. Yeah, I would say, again, just based on the context of that day, not thinking about anything now –

MR. LEARMONTH: Mmm.

MS. MULLALEY: – but at this time frame – no, Kathy Dunderdale would have been left at this point, but I – you know, around that financial close time when I would've come in, you know, there had – there would've certainly been a long-standing relationship, you know, between Natural Resources and Nalcor, and the then Premier Dunderdale and Ed, and then the new one's – and a new premier's coming in. So I think at, you know, at that particular stage, there was a lot of trust and confidence, you know, in Nalcor and in the leadership and so on and so forth, if that's what's you're asking. I think that that sort of existed very much at that.

So then you move on, I guess, but there are new players coming in, and so Tom Marshall takes over as premier here. I think, you know, there's

a lot of – you know, there’s some public discourse going on, and I think it was important to set up the Oversight Committee. But I will say this particular oversight concept existed and was being developed before this. This was developed – the concept got developed back in 2012.

MR. LEARMONTH: Yes, there is that order-in-council that we saw.

MS. MULLALEY: Yes, and that’s where it got developed to do that. And – but –

MR. LEARMONTH: We were told –

MS. MULLALEY: – it changed a little bit after this, yeah.

MR. LEARMONTH: Yeah, but Charles Bown indicated that even though there was this order-in-council in 2012, that it just sort of – nothing happened with it.

MS. MULLALEY: No, when I –

MR. LEARMONTH: There was preliminary work –

MS. MULLALEY: – that’s true –

MR. LEARMONTH: – but it just sort of –

MS. MULLALEY: – ‘cause when I came back in 2013 as clerk – ‘cause I had drafted that minute, actually, back in 2012. So when I came back in, I recalled that I had drafted that, and I – we drafted it at the time because this is when the project was going to be exempted from PUB, and we felt there had to be some mechanism put in to review the reasonability of the cost and schedule – the time and costs, in particular, I guess.

So yeah – but when I came back in as clerk, I was aware of that, and I knew the intent behind it. So I met with Charles and Donna, and we started developing this protocol at the time.

MR. LEARMONTH: Yes.

MS. MULLALEY: But it changed, I guess (inaudible).

MR. LEARMONTH: Yes, and this, tab – page 13 of the exhibit, P-02691. This is the – March 13, 2014 – this is –

MS. MULLALEY: Correct, this is the one that –

MR. LEARMONTH: – this is the one that –

MS. MULLALEY: – is being set –

MR. LEARMONTH: – would’ve –

MS. MULLALEY: – up.

MR. LEARMONTH: – actually set it up.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Okay.

So I take there was a need recognized to have outside external advice from an expert firm like EY. Is that correct?

MS. MULLALEY: Yeah, I mean, we all felt that, sure.

MR. LEARMONTH: Yeah.

MS. MULLALEY: I mean, I don’t think anybody would say, sitting on the Oversight Committee as officials, that we had that type of expertise.

MR. LEARMONTH: No.

MS. MULLALEY: No.

MR. LEARMONTH: Because this was highly specialized work.

MS. MULLALEY: Absolutely.

MR. LEARMONTH: Is that correct?

MS. MULLALEY: Absolutely.

MR. LEARMONTH: Yeah. Okay.

Tab 6, Ms. Mullaley, Exhibit P-03286. Now, this is April 10, 2014. So that’s shortly after the Oversight Committee was –

MS. MULLALEY: Yes, yeah.

MR. LEARMONTH: – was formed. And we know that the first assignment – I’m not going to go into all the details; Michael Kennedy gave it – but the first assignment was – I think the maximum amount of it was for \$25,000 – was just to help develop the terms of reference or the constitution of the –

MS. MULLALEY: Yeah, yeah.

MR. LEARMONTH: – (inaudible).

MS. MULLALEY: It was really about what types of, you know, what types of reports –

MR. LEARMONTH: Yes.

MS. MULLALEY: – what critical reports that we should be looking for and receiving and – yeah.

MR. LEARMONTH: Yes.

And so if we go to exhibit – tab 6, Exhibit P-03286, and we go to page 2 of this exhibit. It’s an email from Richard Noble. He was the – he did a lot of work on this for EY. Is that correct?

MS. MULLALEY: Yes. That’s correct.

MR. LEARMONTH: He was from Toronto, I think.

MS. MULLALEY: He was part of the first phase.

MR. LEARMONTH: You dealt with him, did you?

MS. MULLALEY: Yes, we did.

MR. LEARMONTH: And it’s an internal email. It refers to a meeting – “2 meetings today accompanying our client (Gov of NL, various A/DMs) in their discussions with Nalcor” – et cetera – “concerning information requested to support their DM level Oversight Committee of the program.”

Were you at either or both of these two meetings?

MS. MULLALEY: No. No, I wasn’t. No.

MR. LEARMONTH: You weren’t.

MS. MULLALEY: It was mostly our Finance officials and Natural Resources, if I recall.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: It says – this is April 10. “The meetings were understandably quite tense. The Nalcor team had received the government’s detailed data request... and rebuffed the request stating that it was more than required by other interested parties, but also was ‘superficial’ and at other times ‘too detailed, intrusive and requiring additional work’... and at ... times ‘we already use that information.’

“At the end of the first session, our client felt defended by EY but also a tad insulted by Nalcor’s Proj Dir who had dismissed inconsistently their requests.”

Now, you may not have been aware of this – these two meetings – you may not have been present, but you were aware of them, were you?

MS. MULLALEY: Oh yes. I would have been aware of them. I would have been briefed on them, for sure.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: And then we turn to page 1 of this Exhibit P-03286.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Mr. Noble writes to other members of the EY team, not to anyone in government.

MS. MULLALEY: Yeah.

MR. LEARMONTH: “Thanks for the support.

“Nalcor’s resistance is bedded partly in an understandable desire to minimize the effort required to support the oversight... and also to reduce the potential for unwarranted red-flags and noise from what they view as ‘yet another third party reviewer.’

“Nalcor’s Program Director Paul Harrington” – and I think he’s referred to in the earlier email – “appears to be a seasoned program leader which in this scale of program requires technical depth, local charisma but also a hard edge with the occasional need to be an adept ‘street fighter’. His dismissiveness bordering on rudeness to the Government and thinly veiled attempt at manipulation of the wording of the consensus from the meeting are not unusual tactics in one cadre of big ticket Programme Directors who seek to demonstrate both their credentials and Kahunas.”

Now, this indicates, I would suggest, a troubled relationship between the Oversight Committee and at least Mr. Harrington at this time. Do you agree?

MS. MULLALEY: Yeah, I think, you know, I would characterize it as – no, they did not want any oversight committee in place. They did not want that added oversight or burden, probably, how they felt on it, no, for sure. You know, and I think as we were trying to – I think that they had a sense that they could provide us with certain data, and it was really critical for us that we were getting the right data so as we moved along with someone like an EY, that we would be having the right types of reporting set and structured already and all agreed upon.

We didn’t want to get into an argument of what we wanted, when we want it. We wanted to establish it early. So, yeah, there was some friction around even trying to agree to that initial list of what we would’ve wanted to see on a regular basis.

MR. LEARMONTH: Right, but this is – goes a little further than, you know, polite disagreement.

This, you know, Mr. Noble says that – referring to Mr. Harrington – “His dismissiveness

bordering on rudeness to ... Government and thinly veiled attempt at manipulation of the wording of the consensus” That’s a fairly strong statement, isn’t it?

MS. MULLALEY: Yeah, they are. Yeah.

Again, I wasn’t at the meetings, but, you know, I had a sense – I guess all I could say is my memory of the debriefings is that we were getting some push-back on the level of detail.

MR. LEARMONTH: Did you have dealings with Mr. Harrington during your course as chair of the Oversight –

MS. MULLALEY: Oh all –

MR. LEARMONTH: – Committee?

MS. MULLALEY: – the time, yup.

MR. LEARMONTH: And did you –

MS. MULLALEY: Yeah, absolutely.

MR. LEARMONTH: – ever experience any rudeness or ...?

MS. MULLALEY: There could be at times, yes.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Did you find that unusual or unexpected?

MS. MULLALEY: I guess it’s never what you hope for, you know, when you have those types of relationship, but, you know, again, you know, I would say along the way there were mostly cordial, but I would also say that we had some really difficult meetings as well, you know.

MR. LEARMONTH: Yeah.

But, I mean, government – please explain this for us – government is the shareholder –

MS. MULLALEY: Yes.

MR. LEARMONTH: – and the Crown corporation is Nalcor. Isn't this a situation where Nalcor would simply and very bluntly, if required –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – just tell Nalcor: Look, this is the way we're doing it, and we don't listen to any of your push-back, this is the way it's being done? That – I think many would expect that government would take a very firm hand and not put up with any rudeness from Mr. Harrington or anyone.

Can you comment on what I've just said, please?

MS. MULLALEY: Yeah, I do understand that. I guess it – it's a – it was a complex relationship, I guess I could say.

MR. LEARMONTH: Yeah.

MS. MULLALEY: But, you know, if – I can't say if we weren't looking for something, that we didn't get it. I mean, you know, if we wanted something, we felt the support of government and we felt we could demand it, and inevitably it would always be given to us. But the pushing and the shoving certainly happened, you know, there's no doubt about that. It was a lot of dynamics happening on all sides.

MR. LEARMONTH: And weren't there occasions when Mr. Martin – at least one occasion when Mr. Martin – when you had a meeting with Mr. Martin – I think it was in late 2015 when Mr. Martin also demonstrated an unusual degree of rudeness towards you personally?

MS. MULLALEY: Yes, there was a meeting and that was –

MR. LEARMONTH: Can you explain – just explain that meeting.

MS. MULLALEY: Yeah. So this would've been in December of 2014, and we were – had just recently, I guess, had appointed Ernst & Young as the – you know, as our advisor to the council. And basically what we were working on them with was a statement of work where we wanted to go in and do this aspect of the file.

We were there, we were relying fairly heavily on a couple of very key reports that were coming out of the systems that we had identified – as did EY at the time – were critical reports. And what we wanted to know as a committee was that, you know, the – were all the contracts rolling up accurately and properly into that database, were the methodology of the weightings – all that stuff.

We wanted to really focus on the accuracy of those reports that we were relying on and putting out publicly. That was the aspect of the review. And we had agreed to do that right at – we were actually working on the scope of work and we were going to go into Nalcor early January – that was the plan. So I called Ed over –

MR. LEARMONTH: Ed Martin.

MS. MULLALEY: – yeah, sorry – Ed Martin over in the office; I asked him if he'd come over and meet with me. And one of the objections, I guess, is we were just getting ready to release a report in December. Just before Christmas we released the report for the period ended September, so there were some issues we were still working through and I wanted to talk to him about a few of those.

So it was myself and Charles Bown was at that meeting as well. So I took that opportunity to tell him about the Ernst & Young was coming in to do this particular audit for us and he was quite upset by that.

MR. LEARMONTH: Mr. Martin was?

MS. MULLALEY: Mr. Martin was quite upset by that. And, you know, I think he always – some of the issues around that I think he felt that, you know, there was so much review, so many independent – there's so much that it was taking focus off the staff, the core staff that were trying to make this work. That was a lot of I guess what I'd heard in often these cases.

But, nonetheless, he was very upset and then we talked – he talked about, you know, why can't our internal auditors do that? They – you know, they should be able to do it. And I just said: Ed, that's not on. This – we're not having internal audit do this. We have a consultant here, they are independent, true independent, you know,

engineering for us and they bring a lot of the necessary experience to this.

We're seeing some things – because we were seeing Astaldi was slipping further. Through our work that we had just done, we had found out that the manufacturing contracts were not (inaudible) in to their IPS, which we original thought they would have been and they weren't. So we needed EY to come in.

Anyway, long story short he got very upset and he walked out of the meeting. Charles Bown followed him (inaudible).

MR. LEARMONTH: He walked – he stood up and walked out of the meeting?

MS. MULLALEY: He walked out. He was very angry and he just said: I can't talk anymore about this, I need to leave. So he left and that's what happened on that particular night.

So I will say to you the next day I had a call from the premier's office and Ed had been in to talk to them. And the call was from Joe Browne at the time. He was chief of staff in the premier's office. And he was, I guess, relaying a conversation that Ed was over, had the conversation, very concerned that Ernst & Young was coming in –

MR. LEARMONTH: Had a conversation with Ed Martin?

MS. MULLALEY: Yes.

MR. LEARMONTH: Yeah, okay.

MS. MULLALEY: And very concerned and he felt that if we wanted something done, we – you know, their internal audit department can do it. And so he was asking me, Joe was saying, like, is that practical, is that something we can accommodate, is it? And I said, not on, there's no way, I'm not doing it. I cannot be a chair of this committee – we, you know – doing this. This is critical work for our committee, it's critical work for you as a government. We need to get in there and we need Ernst & Young, not – we cannot do that with internal audit.

And then I even offered a compromise. I said, you know, we can have your internal audit work

with them. It can help build capacity, do other things, they can work alongside them, but they are not doing that review. And they were supportive of that. They said, no, totally get it, totally understand, proceed and we proceeded. And then they came in, in the new year but, yes, that was one of those discussions at a – as a (inaudible).

MR. LEARMONTH: But he was angry to the point – Mr. Martin was angry to the point that he stood up and walked out.

MS. MULLALEY: He did, yeah.

MR. LEARMONTH: And then called the premier?

MS. MULLALEY: He went in to see the premier the next morning, yeah.

MR. LEARMONTH: Okay.

Now, if we go to – before – actually, before I come back to this document, at this time or at any time was there ever consideration given to referring the Nalcor problem to the Auditor General? In other words, asking the Auditor General to go in and do an audit, and if necessary, retain expert help? Was that ever considered?

MS. MULLALEY: No, I don't – there – later on maybe there was a bit more of a discussion about it. I think again, not knowing the information we know put back where we were at the time, and there was still a belief in all the reviews that had been done – you know, those independent reviews that were done at the time by MHI and Navigant. You know, so the base they – I don't think that anybody really was questioning the base too much, it was the moving forward part, right, and monitoring against the ...

So I think there was comfort still that we had the Ernst & Young here. Ernst & Young was going to go in; they were going to do these reviews. There was always, I guess, a point to see where – what the results would come out of that review. And as we know later – quite later – the findings that came out of that review were pretty startling and very concerning.

But at any time, I guess, government always felt the AG could go in to do that audit and they would've had to hire expertise to do that. But I wouldn't say to you that there was discussions like that happening; like, we should get the AG to go in. That that sort of wasn't really happening, noting that the AG had the mandate to do that, if he so chose.

MR. LEARMONTH: So would it be fair to say – just getting back to your earlier point – that when you had this discussion with Joe Browne, you put your foot down and indicated that this – it was essential that EY go in there?

MS. MULLALEY: Oh absolutely. I mean, like, we couldn't afford – as an Oversight Committee we could not have our own – what we felt, and we all agreed to, that we needed. Again, I go back to, I'm not going to pretend that all of our committee members had that. We did not have that type of expertise, right?

MR. LEARMONTH: Yeah.

MS. MULLALEY: That was key. That was a very key pin and that was a discussion I had with then-Premier Marshall at the time, that if we were going to do this Oversight Committee we needed this type of resource. And they were very – it was very difficult budget times back then, but they felt that that was correct as well and they gave us a budget for that.

So this premise that we would always have access to this was key for us – it was absolutely key. So then to be, I guess, even debating that we weren't bringing in this key resource and we were going to rely on internal audit, that just wasn't on for me. Like, that just made no sense and I couldn't – I wouldn't have been able to move forward in that vein.

MR. LEARMONTH: Yeah.

MS. MULLALEY: So it was really important. And it wasn't just important for me, it was important for government, you know. And that was a discussion; again, I didn't have any pushback, that that – at that point, the premier's office was full supportive. They understood.

MR. LEARMONTH: And that was Premier Davis, was it?

MS. MULLALEY: That's correct.

MR. LEARMONTH: Yeah.

MS. MULLALEY: And they said absolutely not, go in, so ...

MR. LEARMONTH: Okay.

Isn't that a point, I suppose, that if the Oversight Committee is going to rely on Nalcor's internal documents and accounting and reviews, I mean, isn't the Oversight Committee basically a paper tiger?

MS. MULLALEY: Yes, if that was the case, you know. And I'm not – I just wanna clarify, it's not that you can't use internal audit, 'cause we'd – we, you know –

MR. LEARMONTH: Yes.

MS. MULLALEY: – internal audit was a source of assurance for us as well. And, you know, in fact, we prioritize some of their reports that we ask them to do up front for us, and they had, you know, they had gotten, sort of, like an accreditation concept with their assurance framework. I mean, you know, you can rely on their work. We, as an Oversight Committee, tried to look at lots of different sources of assurance, internal audit was one of them. But it wasn't an – this piece of work we were doing now was not an internal audit piece –

MR. LEARMONTH: Right.

MS. MULLALEY: – of work.

MR. LEARMONTH: So the internal audit work can supplement the work of the experts.

MS. MULLALEY: Absolutely.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Absolutely, and like –

MR. LEARMONTH: So this –

MS. MULLALEY: – I said, we – when we first went in there, we met with them, we looked at their assurance framework, we looked if we could rely on them. And I think even, you know,

the GT that did the forensic audit for here looked at that, relied on them. Emera did some work, relied on them.

So it's not that you can't. That's a very common –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – principle in the auditing world, yeah.

MR. LEARMONTH: All right.

Now finally, I'll get to this tab 8-document, P-03851. This is the –

MS. MULLALEY: I'm sorry, which tab was that?

MR. LEARMONTH: It's tab 8 –

MS. MULLALEY: Eight, okay.

MR. LEARMONTH: – in volume 1, P-03851.

Now this is a – an – is an email from Karen O'Neill to Gilbert Bennett, Ed Martin, Charles Bown –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – and it refers: "Hi Charles, here is the presentation that Ed delivered to the Premier last week and that he'll use tomorrow morning. Ed and Gilbert will do the briefing ... 8:30."

Now, if you turn to page 23, so this was the first – this was the first revision to the AFE.

MS. MULLALEY: Yeah, that was 6.9.

MR. LEARMONTH: So if you turn to page 23, you'll see that the – in the blue and the – right –

MS. MULLALEY: Okay.

MR. LEARMONTH: – side: June 2014 Capital Cost Estimate 6.990, and there's an AFE done for this.

Now, based on your reading of the Grant Thornton report, what do you think of this figure?

MS. MULLALEY: Well again, it's not – it does not align to what they are holding and (inaudible) the – and, again, what I –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – would say is that –

MR. LEARMONTH: Right.

MS. MULLALEY: – you know, a different –

MR. LEARMONTH: Now –

MS. MULLALEY: – set of numbers.

MR. LEARMONTH: Yeah. And once –

MS. MULLALEY: And they're –

MR. LEARMONTH: – again –

MS. MULLALEY: – carrying in a higher set of numbers, right?

MR. LEARMONTH: Yeah. Well, you know, I think you can see the pattern that all – the numbers are always lower than the internal documents. Isn't that –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – right?

MS. MULLALEY: And so this is the discussion. When you have these meetings, I guess I would interject with, like – you know, here you are, and they're there, and this would've come to Cabinet as well, and the questions always posed on: Is there a risk in this, is it gonna go higher, like, what's the risk, what's the – you know, is this gonna go higher?

MR. LEARMONTH: Yeah.

MS. MULLALEY: Is it gonna go higher? And then – and you're carrying a bigger number right now, and you're not disclosing it? Like ...

MR. LEARMONTH: But when you would have that discussion, is it gonna go – what type of –

MS. MULLALEY: No –

MR. LEARMONTH: – assurance, if any –

MS. MULLALEY: – no –

MR. LEARMONTH: – would you seek?

MS. MULLALEY: – absolutely not, there's no discussion of this other number. This discussion is: Yeah, we feel good about this number; we got the contracts; we're further along in engineering; mitigating, mitigating; this is – you know, this is good, this is looking good.

MR. LEARMONTH: Okay.

So that's just – I wanna ask you to repeat what you said earlier about the lack of honesty in this.

MS. MULLALEY: Yeah, so I mean I think – and that's what, again, that upsets me most, knowing that I've been in here and you're trusting some of this stuff that you're seeing, but the questions are being asked not just by me, not by the Oversight Committee, but by premiers and ministers, it's all being asked.

So to say that it's good and then there's this another number in the background here somewhere, that's not being talked about, is not in good faith. It's –

MR. LEARMONTH: Okay.

MS. MULLALEY: – just ...

MR. LEARMONTH: Okay.

This is a – the next, at tab 11, is Exhibit P-03293. This is a comment from David Steele to Craig Martin. And Craig Martin was the executive director of the Oversight Committee from the time it was set up, up until some time in 2015. Is that correct?

MS. MULLALEY: That's correct, yeah.

MR. LEARMONTH: Yeah.

MS. MULLALEY: And he's still on the Oversight Committee.

MR. LEARMONTH: But not as executive director.

MS. MULLALEY: No.

MR. LEARMONTH: Paul Carter is the executive –

MS. MULLALEY: That's correct.

MR. LEARMONTH: – director, okay. But anyway, so this is to Craig Martin, and this has to do with the first report?

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: And was the first report – okay, at this time –

MS. MULLALEY: Right, yeah.

MR. LEARMONTH: – there had been another engagement by EY for a review of protocols. Is that correct?

MS. MULLALEY: No, not yet. This particular one, this is in July?

MR. LEARMONTH: Oh, July 26, I'm –

MS. MULLALEY: This –

MR. LEARMONTH: – sorry –

MS. MULLALEY: – is –

MR. LEARMONTH: – yeah.

MS. MULLALEY: This is our –

MR. LEARMONTH: Go ahead.

MS. MULLALEY: – this is the one where they were helping us determine what level of reports we should get, what types of reports we should get –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – how often we should get them, like – so this is that, yeah.

MR. LEARMONTH: This is the first phase of their work.

MS. MULLALEY: Correct.

MR. LEARMONTH: The one that I referred to earlier, with a maximum –

MS. MULLALEY: Correct.

MR. LEARMONTH: – budget of \$25,000.

MS. MULLALEY: Yeah.

MR. LEARMONTH: All right.

Next, please go to tab 13. This is Exhibit P-035 – P-03505.

Now this is an email from Milly Brown, and I think she was (inaudible) the director of communications in the Office of the Premier at the time.

MS. MULLALEY: That's correct.

MR. LEARMONTH: It's dated July 30, 2014, to –

MS. MULLALEY: That's correct.

MR. LEARMONTH: – you, Charles Bown and Donna Brewer, who was deputy minister of Finance. Is that correct?

MS. MULLALEY: That's correct.

MR. LEARMONTH: Okay.

Now, this – do you acknowledge that this was received by you?

MS. MULLALEY: Absolutely.

MR. LEARMONTH: Okay.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Now there's some wording on this that is – I'd like to take you to. Well, if we go – it says – there's no explanatory letter, except it says on page 2 of this: Oversight Committee, July 30, Key messages and QAs, Overarching message.

Now, do you know who prepared this document?

MS. MULLALEY: This looks like internal. This would've been Milly, I would think, and Natural Resources would've prepared – so this is just – this is us getting ready to issue that first report.

MR. LEARMONTH: Okay.

MS. MULLALEY: So any time you're doing that, there's a protocol 'cause you're developing key questions and answers on the reports that are being released. So that's what this would be.

MR. LEARMONTH: Okay.

So, is – this is – like, what's the purpose of it? If it's prepared by Natural Resources, would it be done with Nalcor or just by Natural Resources?

MS. MULLALEY: Generally, it would be – it would be developed by Natural Resources. They would likely consult with NR for different things, maybe factual things, they'd run something by them. So generally, they would see them and have comment on them, and then – you know, then they work through our communication – they come from a department into – Cabinet Secretariat, I guess, would have its own also communication group –

MR. LEARMONTH: Mmm.

MS. MULLALEY: – and they work closely with the premier's office communication –

MR. LEARMONTH: Okay.

MS. MULLALEY: – group. So, I guess this is very normal. Any time you're releasing a report, you would have a set of these messages. So these messages are more for ministers, premier, whoever is doing the announcement.

MR. LEARMONTH: So would this be released to the public or just available –

MS. MULLALEY: No, this –

MR. LEARMONTH: – to the politicians? No.

MS. MULLALEY: – these are internal.

MR. LEARMONTH: Okay, they're sort of to – like draft –

MS. MULLALEY: Prepare.

MR. LEARMONTH: – answers, yes?

MS. MULLALEY: Yeah, so your – so the ministers are prepared for media, for – you know, so they're – that's a very common thing, obviously – you know, that – to brief everyone up and feel ...

MR. LEARMONTH: Okay.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Page 7 –

MS. MULLALEY: (Inaudible.)

MR. LEARMONTH: – of P-03505.

“Questions and answers:

“You always claimed there was enough oversight, yet you have assembled this committee. Is this an admission that Nalcor wasn't providing enough oversight?”

Then says: “Nalcor, as the people's company, is managing the project with all due diligence and best practices of a world class corporation in charge of a mega project.”

Did you believe that at the time, that that statement was true?

MS. MULLALEY: This was when, July 2014?

MR. LEARMONTH: Yeah.

MS. MULLALEY: I mean these are communication messages, you know? There's always a positive spin on them, I would say to you. But –

MR. LEARMONTH: But at –

MS. MULLALEY: – you know, again –

MR. LEARMONTH: – at the time –

MS. MULLALEY: – I guess I would say in July, I mean, I still do believe there was a lot of faith and trust in Nalcor.

MR. LEARMONTH: Yeah.

And you believe they were a world-class corporation?

MS. MULLALEY: Yeah. I, you know –

MR. LEARMONTH: You did?

MS. MULLALEY: I mean it's – you know, I think, yeah, when they're talking about that, they're saying comparable energy corporations that are struck like that and, yeah, I think, you know, I – you know.

MR. LEARMONTH: Page 8 of this Exhibit P-03505, is a question: **“Why didn't you reveal ... the number was \$6.5 billion?”** This is at financial close.

“Since major contract packages were being finalized, releasing costs at that time could have been harmful to Nalcor's negotiating position ... 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 always indicated ... it would update the capital cost estimates once the major contracts had been let.”

Now – so once again, why didn't you reveal the number? I guess your position is that you didn't know about it; others may have, but you didn't know about it, is that right?

MS. MULLALEY: No, that's correct, and actually I recall when we were doing these – when these messages were being developed, I think we actually ended up having to go back out to try to find out why, and I think there's an email in the exhibits somewhere on even trying to understand what was included in it and why it didn't go out, and that was some of the answers we were getting back, I think, from –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – Nalcor at the time.

MR. LEARMONTH: But –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – when we go to – okay, let’s just turn to page 13 of that exhibit.

The second question: “**When did Government know about the \$6.5 million?**” – well, that’s a typographical – it should be billion, obviously – “We became aware of the \$6.5 ... during finalization of the federal loan guarantee.”

Why did the government not release – so it’s the same question, but I just have this question: that if you didn’t know about it –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – at the time, why are you not sort of putting your foot down and saying, well, I didn’t know about this. Where is this information coming from?

MS. MULLALEY: Well, I guess at the time this is like, July, so we all know about it, and you know, I think that there was some – we had members on our Oversight Committee; we had, you know, Donna Brewer, Paul Myrden, Paul Morris, so the ones that were involved, again, in the financial close and that you saw that 6.5 –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – numbers in a lot of the emails, they generally seemed to be aware of it. So I guess it didn’t – it just struck me, like, gosh, I – or how come I didn’t know about that, or did I know and I just can’t remember, but –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – there was a general awareness around – in the room that that was –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – there, so I don’t think we really debated and discussed it too much.

MR. LEARMONTH: No.

MS. MULLALEY: It was just that it seemed like it was a known fact, these are communication materials and –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – that just got integrated in (inaudible).

MR. LEARMONTH: Because by that time you would’ve know about it.

MS. MULLALEY: Oh, absolutely.

MR. LEARMONTH: Yeah, yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Okay.

MS. MULLALEY: Yeah –

MR. LEARMONTH: Fair enough.

MS. MULLALEY: – absolutely, and that’s – again, that 6.5, and why you’re seeing it here is that – actually, I recall reviewing the first set that came across my desk, and to me we weren’t answering the question about the 6.5, and this report was the very first time the 6.5 was going out to the public, so the public hadn’t seen that 6.5 before we released this report.

So I felt it was a gap; you got to have some questions about the 6.5. So we talked to Nalcor and –

MR. LEARMONTH: (Inaudible.)

MS. MULLALEY: – and these got developed, but I mean there was an awareness, for sure, at this time that that existed and they were in – the numbers were in the agreement, so...

MR. LEARMONTH: Okay.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Tab 15 is a letter – Exhibit P-03853, July 31, 2014 letter to Derrick Sturge, vice-president of finance and chief financial officer of Nalcor, and this is sent by you, it’s signed by you on page 2.

MS. MULLALEY: Sorry, what –

MR. LEARMONTH: Why –

MS. MULLALEY: – tab

MR. LEARMONTH: – did you –

MS. MULLALEY: – is –

MR. LEARMONTH: – send –

MS. MULLALEY: – that?

MR. LEARMONTH: – this letter? Tab 14.

MS. MULLALEY: Fourteen, okay, sorry.

Yes, there we go then.

Sorry, did you ask me a question there?

MR. LEARMONTH: Yeah, why did you send –

MS. MULLALEY: Oh I'm –

MR. LEARMONTH: – this –

MS. MULLALEY: – sorry.

MR. LEARMONTH: – letter? Yeah.

MS. MULLALEY: So, there was a couple of reasons it was very important.

So, again, you talk about sources of assurance, other things you could rely on. So they have an external auditor – Deloitte were their auditor – and one of the things I wanted to do here was – well, there were two things: one was that at this point we recognized that, you know, the Muskrat Falls Project was just a project, but it was in the broader Nalcor group and there was no specific – you could never – you couldn't go anywhere to see – and see financial information specific to that in the statements, it was one of the broader companies.

So we thought for transparency and openness – which is one of the things we were thinking about developing all of this, was putting as much information as we could out there for the public. So we felt it was important that they do the

separate set of statements on the project itself, so that's what we asked them to do. So that was number one, the combined financial statement part.

So then if you move to the next page, the other thing – and again, I was very conscious of this 'cause we had contemplated this way back in 2012. So, we wanted them to go into – yeah, as a normal auditor, you know, you do the – you have a set of standards that you have to abide by and you're – it's risk-based and – but out of all of that process you test systems and you get a sample size.

And we were saying that's all good, you do that, but on top of that we need you to focus on the Muskrat Falls Project, so we want you to do even more samples on that one specifically for us. So, we built some procedures with them to do that. And then furthermore, we wanted them to look at the overhead, because, again, you know, overhead in all of our organizations, it gets charged out to different lines of business, and so we knew overhead would be getting charged to the project as well, and we knew again, of course, that none of this was being looked at by the PUB.

So we wanted the external auditors to go in and understand the methodology behind the overhead calculations and to test-check to make sure that that was a – the policy made sense and that they were actually only charging the proper overhead to the Muskrat Falls Project.

MR. LEARMONTH: Okay, but that wouldn't –

MS. MULLALEY: So that's –

MR. LEARMONTH: – be –

MS. MULLALEY: – what the purpose of it was.

MR. LEARMONTH: No, but that wouldn't be similar to what EY was eventually engaged to do.

MS. MULLALEY: No, no.

MR. LEARMONTH: No.

MS. MULLALEY: No, this was, again, we – again, when I talked with –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – sources of assurance, there were many; there were their external auditors, there were their internal auditors, there was an independent engineer, AG, you know, there's a – sources. One of our principles was to try to leverage whatever we could do.

So when we know Deloitte's going in there to do their standard audit, we said okay, we want you – while you're in there, we want you to do some more testing; so there were some very specific things we wanted. It still gives us some assurance; it gives us assurance that, on the overhead side, when they're charging it to the Muskrat Falls –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – they were charging it properly, 'cause again, that project's not going through PUB so there could be a risk that you were charging a lot more into it, right?

MR. LEARMONTH: Right.

MS. MULLALEY: So we wanted to test-check that, so it was – it's just some principles we were using –

MR. LEARMONTH: Yes.

MS. MULLALEY: – for any source of assurance. It's like the IE. An IE was a source, we felt it was really important to get a reliance agreement on – with them so we could access their reports, we could meet with them, we could call them, we could ask them questions, so – every source of assurance we looked at, we tried to see where we could build on that to help us and build confidence in what we were doing as well.

This – so this was an example of what we did with the external auditor.

MR. LEARMONTH: You mentioned the independent engineer; and to your knowledge, did the province – Government of Newfoundland and Labrador put reliance on the

work of the independent engineer at the time of financial close?

MS. MULLALEY: At the time of financial close – well, I guess to the degree that they knew Canada had the independent engineer –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – and they had to confirm the number, and they were heavily involved, obviously, in reviewing the aspects of the project, so I would say yeah, I would think –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – that that was, but they weren't our independent engineer at –

MR. LEARMONTH: No.

MS. MULLALEY: – the time.

MR. LEARMONTH: But Mr. Argirov testified that –

MS. MULLALEY: Yeah, I heard.

MR. LEARMONTH: – that Canada only did a high-level review, and I don't think the Government of Newfoundland understood that at the time of financial close.

MS. MULLALEY: No, and – even when you read a lot of the documents about the mandate and what he does, it seemed to be a lot more.

MR. LEARMONTH: Yeah. But he said that it was a high level and they weren't – was that surprising to –

MS. MULLALEY: Yeah it was, yeah.

MR. LEARMONTH: – to hear –

MS. MULLALEY: Yeah –

MR. LEARMONTH: – that from –

MS. MULLALEY: – absolutely.

MR. LEARMONTH: – Mr. Argirov?

MS. MULLALEY: Yeah.

MR. LEARMONTH: And I think you mentioned the MHI report, but –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – you’re aware now, I take it, that the MHI report did not include a review of risk?

MS. MULLALEY: Yeah, again, through all the documentations I reviewed, yeah, I saw a lot of that. I think, yeah, I did, and –

MR. LEARMONTH: Did that –

MS. MULLALEY: – it –

MR. LEARMONTH: – surprise –

MS. MULLALEY: – was not –

MR. LEARMONTH: – you?

MS. MULLALEY: It did, all of it did. All of the independent reviews did because I can tell you again, most of it was before my time –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – but I can only tell you in the context and environment we were working in, this was felt like this had been through the wringer and all kinds of independent reviews and cold eyes – and that was just the feeling. I’m just speaking to –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – the feeling and that it was felt that the due diligence hadn’t [sp. had] been done. That was absolutely the feeling.

MR. LEARMONTH: The feeling, but now you know the truth.

MS. MULLALEY: Well yeah, absolutely, when you see all this information coming out, I – this is a totally different view.

MR. LEARMONTH: Yes.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Okay.

All right, tab 15, Exhibit P-03300.

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: This is from Richard Noble, an email from Richard Noble to Emiliano Mancini and others –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – and it’s referring to the report of the Oversight Committee. The second paragraph, or first paragraph there: “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.’”

That’s a fairly strong critique, do you agree?

MS. MULLALEY: Hmm –

MR. LEARMONTH: Not with – do you agree that it’s a strong critique?

MS. MULLALEY: Yeah. I’ll say this –

MR. LEARMONTH: Okay.

MS. MULLALEY: I’ll say with the benefit of all the documents now through the Commission and all the events that unfolded over the last five or six years, I would agree with all of those comments.

MR. LEARMONTH: You would?

MS. MULLALEY: Now.

MR. LEARMONTH: Yeah.

MS. MULLALEY: But I would say, I take exception – I’m going to say why. This is in November, so the problem I have with some of this language is two things. This sort of stuff was never said to us. Like – and that’s going to be a theme for me, is that I see these things in the Ernst & Young emails and, again, I’m shocked at a lot of it because I’m going: Why wouldn’t someone pick up the phone? Why wouldn’t someone call? My door is open; we

have that relationship. None of this is coming out to me.

The two things that came back to me on this one at the time, was: I don't like my name being included in the report. Because I had it in telling – the way we had it established was that Ernst & Young had helped us to develop the reporting protocols. They didn't like their name in the report, so I removed it.

MR. LEARMONTH: Yeah.

MS. MULLALEY: The second thing was that they felt it was important to talk about the review that we were all working on, getting ready to go, and I did that. But this type of stuff, never. And I guess the second thing I wanted to say about it is this is in November, Ernst & Young had not been in the field yet. They had not gone in to the corporation to do any work for us at this point. They helped us develop reporting, what types of reports, all this sort of stuff.

MR. LEARMONTH: Right.

MS. MULLALEY: We asked them to go on site in November. They went on site, but they have not been in to the corporation yet. So when I see language like the data is shaky, process and controls haven't been vetted, baselines not stable. I can, you know, keep going on. I don't know at that time what the basis for those comments would be. They had not even been in to the corporation yet.

MR. LEARMONTH: Right.

MS. MULLALEY: So, I just put that out there.

Again, I agree with the comments now knowing everything, but I think having these comments at this time when they hadn't even been in to the corporation concerns me when I look at them, because how could you have those kind of comments if you haven't started any work yet.

MR. LEARMONTH: And, in any event, these concerns were not communicated to you at the time were they?

MS. MULLALEY: No, absolutely not.

MR. LEARMONTH: No.

MS. MULLALEY: Not like that.

MR. LEARMONTH: Okay.

Well, there's a few more we have to deal with it. Tab 16, this is December 4, 2014 – once again from Richard Noble.

MS. MULLALEY: Yeah.

MR. LEARMONTH: And this is a reference report. "Yep ... the report is basically a shoddy lash-up restating Management's half baked and possibly dubious data ... we really should avoid our name on it.

"OC has '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 also think Nalcor will kick like a mule ... there's a while till we're on-site yet methinks."

MR. SMITH: Could you disclose what exhibit that is?

MR. LEARMONTH: P-03303, sorry.

So there's that comment. And, once again, was that something that – well, that acknowledges that they weren't on site, but does that comment – would you characterize it the same way –

MS. MULLALEY: I mean, again, this wasn't relayed. The two comments I had already said. The only thing was: please, take our name out because someone might think we've been in there doing a lot of work –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – and we haven't been. So, yes, I took it out.

MR. LEARMONTH: Yeah.

MS. MULLALEY: And please put in what we're going to do, though, because it would be good to know that that's in there.

MR. LEARMONTH: Yeah.

MS. MULLALEY: But this wasn't there. So, again, you know, I don't – I don't know how to reply to some of it.

MR. LEARMONTH: Okay, that's fine. I think we get your drift from your answer to the earlier documents. So it's the same concern, on your part, applies to this document.

But then at the bottom it says – this is Mr. David Steele, the fourth to last line from the bottom of this page 1 of P-03303.

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: "If we can't get out ahead of this in the new year and perform such a review, it is only a matter of time ... that Nalcor will make the announcement that there is another 1B added to the cost estimate. And we will be there looking like idiots ... the advisors to the OC who didn't catch anything."

I guess that deals with the other concern that you said you addressed, that – well, I think in –

MS. MULLALEY: Oh, we were working on –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – this review, but it's interesting. I guess if you read this last paragraph, what you see is – this is Craig coming in to – Craig, our executive director, is relaying concerns that we have.

"... Craig was providing to me just now ... pointing to significant labor issues and progress issues. They are not going to make up ground over the winter months give the units haven't been constructed, and if anything," will further slip through.

So we are, as the advisor – we are advising Dave what we're seeing –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – because they haven't been in yet, but we're advising us and concerns.

MR. LEARMONTH: Yeah.

MS. MULLALEY: And so Dave is now concerned, saying: Wow, if we can't get out ahead of this and start doing a review we're going to start looking like idiots, right.

But this review was already formulated.

MR. LEARMONTH: Yeah.

MS. MULLALEY: We were working on it 'cause it was critical for us. This is where we were seeing things and, as I said earlier, we saw the manufacturing contracts weren't in to the IPS that we were monitoring. Astaldi was slipping further.

So this particular review was really critical for us, which we started right after Christmas.

MR. LEARMONTH: But do you agree that the concern that David Steele expressed in that email is legitimate in the sense that if, for example, the Oversight Committee –

MS. MULLALEY: Oh, yeah.

MR. LEARMONTH: – report is suggesting that EY is onboard and doing work and so on, when they weren't –

MS. MULLALEY: Yeah. No, yeah. I would, but we didn't say that.

MR. LEARMONTH: – then they would have a reputational – a concern about reputational risk.

MS. MULLALEY: I absolutely didn't –

MR. LEARMONTH: Should something –

MS. MULLALEY: – I took it out, but it was –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – very specific to a sentence that said they helped develop the reporting protocols, which they did. That was a factual statement; they just didn't like it in there.

MR. LEARMONTH: Yeah.

The next document is at tab 17, it's P-01991.

THE COMMISSIONER: Is this – before we get into that, is this probably a good spot to break, to take our morning break?

MR. LEARMONTH: That's fine.

THE COMMISSIONER: Okay. Let's take 10 minutes.

UNIDENTIFIED MALE SPEAKER:

Commissioner, I can advise you that arrangements have been made for Ms. Mullaley to go in and search Confederation Building at lunchtime.

THE COMMISSIONER: Okay, and if so – you'll be back this afternoon anyway, I suspect so. You'll be able to let us know what you find, if anything.

MS. MULLALEY: Sure.

THE COMMISSIONER: All right. So –

MS. MULLALEY: We'll come now, you mean?

UNIDENTIFIED MALE SPEAKER: Oh, no, at lunchtime.

MS. MULLALEY: Okay.

THE COMMISSIONER: Okay. So we'll just adjourn now for 10 minutes.

MS. MULLALEY: Okay.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

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

MR. LEARMONTH: There's a new exhibit to be entered, P-03940, please.

THE COMMISSIONER: All right, P-03940 will be entered now.

MR. LEARMONTH: Yes.

Ms. Mullaley, if you could turn to tab 17, Exhibit P-01991. Why was this document prepared? Can you give us some explanation for that?

MS. MULLALEY: Oh this would have been the – yeah, so every quarter when we were producing a report for Cabinet that ultimately went public – so this would be a standard presentation that I would have provided.

MR. LEARMONTH: Okay so who would have prepared this?

MS. MULLALEY: I would have.

MR. LEARMONTH: You would have, so –

MS. MULLALEY: Well, my team and I, yeah.

MR. LEARMONTH: So you would have – you and your team would have obviously believed that the information in this was true at the time.

MS. MULLALEY: Oh yes, this was coming in from the Oversight Committee. This was an Oversight Committee report.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: But if we look at page 2 of the report there's a couple of points there that I'd like you to comment. It says: "The Project cost and schedule are well-managed; The Project is meeting the cost and schedule objectives; The cost and schedule risks are being reasonably anticipated and managed." Now, I understand that you believe that to be true now –

MS. MULLALEY: Well, no.

MR. LEARMONTH: – or then.

MS. MULLALEY: I don't mean – this is – sorry, I just think it's the way it's being read. This is a mandate statement.

MR. LEARMONTH: Okay.

MS. MULLALEY: This is just –

MR. LEARMONTH: Okay, of course

MS. MULLALEY: This is just reminding the ministers the mandate –

MR. LEARMONTH: Okay, yes.

MS. MULLALEY: – of the committee is to –

MR. LEARMONTH: I misread that.

MS. MULLALEY: Right, it's for oversight over these things. This is not a statement of fact here.

MR. LEARMONTH: Okay, I was wrong on that.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Thank you for correcting me.

So this would just be a general report. What would be the purpose of this report?

MS. MULLALEY: So this was when the Oversight Committee was set up we had committed to quarterly reports. So we would go in and I would present to Cabinet as chair of the Oversight Committee, as this is our assessment, I guess, of the last quarter. And this would give them an overview of what we were – what risks we were seeing, where the numbers were. And, basically, this is what we would at – and you could probably see slides in here, we would ask for a direction and permission to release and then the public report would get released.

MR. LEARMONTH: Okay, thank you.

MS. MULLALEY: And that was standard and I just would add, every time there was a presentation like this, every quarter, I would go in and present on it and, then, following me Ed Martin would come in. I thought it was very important to have Ed also come in after they had received this information from the Oversight Committee and we would raise some of the risks and sort of things.

So Ed would always come in with a follow-up presentation, so the key to that was that he would be available to Cabinet ministers to

answer questions and to talk about the project as well. So there's always one like this simultaneously from Ed.

MR. LEARMONTH: Okay.

And, once again, in addressing Cabinet, Mr. Martin would always be very well spoken as he is confident and assuring that everything was fine. Is that right?

MS. MULLALEY: Yes. I mean certainly he'd point out various risks and talk about, you know, the aggressive contingency and those things, and where Astaldi was. So I don't want an impression he wasn't talking about risk, but the number and the – the cost and the schedule were okay. Yeah.

MR. LEARMONTH: Based – that's what he was saying? Yeah.

But were you aware at the time that in December 2014 – were you aware that prior to signing the contract with Astaldi on November 29, that, Nalcor had received from Westney, an assessment – a risk assessment – quantitative risk assessment, indicating that the schedule was a P1, later elevated to a P3 meaning, so 3 per cent. Did you know about that?

MS. MULLALEY: Absolutely not. I saw it in these materials.

MR. LEARMONTH: And when did you – when you found out about the existence of that report, I think Mr. Martin has said that, you know, they were mitigating. But anyway, when you found out that – the existence of that report and what it said, did you have any reaction?

MS. MULLALEY: Again, you know, I guess I just go back that those are – they're all such key documents when you're developing public policy and, you know, those are such key inputs into trying to develop that policy. And, again, our role as public officials is to bring forth the best possible information, all the information to inform a decision.

And that's our role and the pros and the cons, but our role is to bring it all forward. So, I guess, when you have what I would say, key pieces of information that are very core to informing

discussions and – then, again, you’re not doing when really the due diligence process is a public service in bringing forth all the information for that deliberation.

MR. LEARMONTH: Yeah.

MS. MULLALEY: You know, the decision is Cabinet, but our role is to bring all the information forward.

MR. LEARMONTH: Yeah.

And, once again, would you agree that since we know that this report existed from Westney that, as a minimum, Mr. Martin should’ve come in to Cabinet and shown the report and explained why he felt that a much better result would be obtained?

MS. MULLALEY: Yeah.

MR. LEARMONTH: In other words, disclose it and perhaps try to –

MS. MULLALEY: Yeah, so you have informed debate about it.

MR. LEARMONTH: Yes.

MS. MULLALEY: But when you don’t bring things in, when you don’t, you lose the opportunity for that informed debate. And that’s the whole purpose of bringing in the information, to have – you have to be – everybody has to be well informed.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Again, decisions can be taken then, but if you’re taking decisions in absence of key information and not having discussion, then you lose that opportunity.

MR. LEARMONTH: Okay.

And isn’t this – the importance of this accentuated by the fact that the government is there to protect the taxpayers.

MS. MULLALEY: That’s correct – absolutely correctly.

MR. LEARMONTH: This is public money.

MS. MULLALEY: That’s correct, it’s big public policy.

MR. LEARMONTH: Yes.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Well, just so you’ll know that the government wasn’t the only entity that wasn’t given this report. The board of directors weren’t given this report that I referred to either. So it was just kept as a secret document within Nalcor.

Tab 18, please, Exhibit P-03306.

If you turn to page 2 first, this is a memo, I guess, from David Steele of EY to someone else, and this is a reference I think we talked about earlier about – in the second-to-last paragraph on page 2 of P-03306.

It says: “The Draft report contained a detailed terms of reference of the committee. EY knows that the committee has not developed processes, nor conducted the effort, to effectively meet the stated terms of reference. However, it is presented in the report, preceding the detailed report results, thereby posing a risk that a reader could falsely interpret that the terms of reference have been fully addressed and form the basis for the information in the report. We also note that the use of EY’s name as the advisor who worked with the Committee to develop the terms of reference could be falsely interpreted as EY has continued to work with the Committee.”

Now, we had talked about that before, but I just wanted to show that this indicates, on page 3, that this issue was raised by EY, communicated to you, and you obviously agreed with the reasonableness of the request –

MS. MULLALEY: Yeah, absolutely.

MR. LEARMONTH: – and that you did delete their name to a way that was satisfactory to them. Is that correct?

MS. MULLALEY: That is correct.

MR. LEARMONTH: Okay.

Tab 19, Exhibit P-03309. This is from Richard Noble to David Steele. Once again, the second-to-last paragraph says: "... the challenge remains that if the Nalcor project in the future announces significant cost and schedule overruns which were not caught by OC due to limitations in the work performed, both OC and EY will likely suffer reputational damage irrespective of any caveats appearing in the report."

Now, this is January 20, 2015, so this concern by EY of the potential for there being reputational risks seems to continue on into 2015. Is that correct?

MS. MULLALEY: Yeah, so this is – you'll recall I was saying in the latter part of 2014, we were working on a scope of work to bring them in to do that critical –

MR. LEARMONTH: Yes.

MS. MULLALEY: – so this is us now. They're in here, and we're working through a scope of work with them.

MR. LEARMONTH: Yes.

MS. MULLALEY: This is what this is about, yeah.

MR. LEARMONTH: Okay.

Then if we –

MS. MULLALEY: And I would say – yeah, so again, just for clarity, because this comes up probably in other memos, the agreement when we brought Ernst & Young in, we were wanting them to very much focus on those key reports we were relying on and, you know, whether everything was rolling up to those properly and the controls around that. But the baseline was not what we were asking them to review at this time. That – so it was very clear; it was agreed to in a scope of work. But a lot of what you'll see in some of their emails, I think, is they always had difficulty not being able to get at that baseline, even in this first review. But it was specifically outside the scope at –

MR. LEARMONTH: Okay.

MS. MULLALEY: – this juncture.

MR. LEARMONTH: But nevertheless, even though it was outside the scope, EY kept on bringing it up –

MS. MULLALEY: Yes.

MR. LEARMONTH: – obviously wanting –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – it to be in –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – the scope?

MS. MULLALEY: Yeah. So it would –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – it was directly out of the scope – assigned scope of work, but when they got in, I guess they started getting at the contingencies, and they started to get at other things that kind of started – it kind of got out of scope again. And that was part of some of the relationship over to Nalcor and EY as well, is that we'd agreed to a scope of work, but when the work started, it would start creeping –

MR. LEARMONTH: So.

MS. MULLALEY: – outside the scope very quickly.

MR. LEARMONTH: Yeah. So.

MS. MULLALEY: But there's – some of the concerns you're seeing in the emails that they talk about is that when they say limitations and that. But that wasn't the scope that you were going in on.

MR. LEARMONTH: Yeah.

MS. MULLALEY: But now, all of a sudden, they're calling it a limitation, right?

MR. LEARMONTH: So am I correct that the scope that they kept on referring to at this time was something that was relevant to the report that they were retained to do in January 2016 –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – but not at this point?

MS. MULLALEY: Correct.

MR. LEARMONTH: So, from your perspective, am I correct in believing that you're saying that they were ahead of themselves a little bit?

MS. MULLALEY: Well, I think they – I think Ernst & Young always wanted to probably go in and do a full review of the costs and schedule, right? I mean, I – you know, to say frankly.

MR. LEARMONTH: Okay.

MS. MULLALEY: I think that that was the scenario, yeah.

MR. LEARMONTH: Yeah.

The – and once again, on tab 20, Exhibit P-03310, in the third paragraph. This is again from Mr. Noble.

MS. MULLALEY: Mmm.

MR. LEARMONTH: He says: "We have never... repeat never... been refused access to change logs and risk registers and related process information in any major project review I have conducted over the last 16 years. And this includes reports on projects whose sensitivity and results materially impacted their Market Capitalization in the many \$billions."

MS. MULLALEY: Yeah.

MR. LEARMONTH: Is this – would your – the comment you made in relation to the earlier document apply here, that –?

MS. MULLALEY: Yeah, and, I mean, I don't have the document, but I know it's in the records somewhere, I believe it, 'cause you can see the flip side. Like, this is what you're seeing here, but when you see the flip side when Craig replies back to them, the issue here is not that they were being refused access to the change – like, again, how do I explain it? We were saying we are relying on these key outputs that are coming out of these reports. We want you to test

what is the – everything else that's coming out, the outputs from different things – if they're coming in to these reports correctly, accurately. Are all the contracts rolling up? That's what we were focused on.

But – so they had access to the change logs and risk registers for the purpose of whatever the output was coming out of them, is it flowing in properly to the reports that we're relying on? That's what we were trying to test, but they were trying to say, okay, but we want to go in and look at the risk registers and see if the risks are being properly – right? So it's just – it sounds like a nuance, but it was an important one I guess in the scheme of when we went in and agreed to do a certain piece of work.

So it's not really accurate to say they were provided – refused access to change logs. They were not, but we wanted them to take the outputs and test to see if they were going into our reports correctly, not go back to see if the risks were being properly quantified, right? So it – so –

MR. LEARMONTH: Right.

MS. MULLALEY: – there is a difference. So some of the language, I guess I would just have to say there's a little bit caveat, from my perspective, when I look at it. And if you see the flip side of being responded back, and then it would seem like it was okay.

MR. LEARMONTH: Yeah.

But why – at this point I'll ask you this question: rather than deal with this staged review – in other words, the first one we won't count, but this one, which was a review of the processes and stuff like that, and the second one was the real report.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Why not – if government is interested – and I realize you have to take your direction from Cabinet on this. I'm not suggesting it's your decision. But if Cabinet really wants to get to the bottom of this, why wouldn't Cabinet move in 2015 by forgetting about this – what I'll call an intermediate step –

and say, look, go and do the job? Why this intermediate step?

MS. MULLALEY: Yeah, I hear that, and I guess, again, I have to couch it with knowing all the information we know today, we should have had them in there a lot earlier.

MR. LEARMONTH: Mm-hmm.

MS. MULLALEY: That's – again, I got to bring you back to the context of where we were at that time.

MR. LEARMONTH: Right.

MS. MULLALEY: So we had just been appointed in April. We had just done a piece of work – the first order of business was to – so again, I should say there was no concept from government that that base, that 6.99 that was there now – nobody had a concept that the base was flawed, right? So there's no reason or belief to bring in someone at that juncture to do a full cost review. It was felt that had just been done. This is only a couple of months later, right? So there was no rationale or reason or compelling reason to bring anybody in right away.

We were focused on what kind of reports do we need? What kind of depth do we need? What should we be doing? That was a very quick, you know, aspect in – up to July. We got those. We started getting the data in the fall – early fall.

By the time we actually had all the data and all the reports coming in, it was early fall. We still had no reason to believe that anything was off kilter here. We –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – knew Astaldi was slow. We saw that, right. We started seeing some – we were concerned we weren't seeing the manufacturing reports coming in. But there was no stop-the-bus moment, this thing is falling apart. That wasn't happening at that time.

So, the next thing we wanna know is, look, we are coming out with a report, we're taking these numbers from Nalcor and we're relaying them to the public. We want to know the output from those reports is accurate. That's what we asked

them to go and do, not a full-blown cost and schedule review. We wanted to understand the metrics we were monitoring. Were they good metrics? That was that job.

So it was very methodical, I would say, and reasonable in my view, at that time, in the environment we were in, right.

MR. LEARMONTH: Okay.

MS. MULLALEY: And that was a really critical review.

And when we got that review done, that's when we clearly understood that they were not quantifying the risks. They were not quantifying the risks forward into the forecast. Are – you know, so that's where we knew that another review had to be done.

MR. LEARMONTH: So would it be fair to say, at this time, that you, as a member of the Oversight Committee, had an honest but, in retrospect, mistaken belief that everything was fine with the project?

MS. MULLALEY: We wouldn't – I don't – wouldn't say fine. But there were no huge, glaring – we were very closely monitoring Astaldi at the time and some other risks, but Astaldi was clearly the –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – big risk and was from day one.

MR. LEARMONTH: So you believe – you had an honest belief that there was nothing seriously wrong with the way the project was working out? Yeah.

MS. MULLALEY: Yeah. I mean, we – again, you had antennas around Astaldi and what did that mean, but, yeah.

MR. LEARMONTH: Yeah.

Okay, tab 21, Exhibit P-03311. This is a Muskrat Falls Oversight Engagement Risk Profile Discussion, January 23, 2015.

MS. MULLALEY: Yeah.

MR. LEARMONTH: I take it this is an internal document from –

MS. MULLALEY: It is, yeah.

MR. LEARMONTH: – from EY.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Do you agree with that?

MS. MULLALEY: It is an internal document.

MR. LEARMONTH: If we go to page 6, Muskrat Falls Oversight Risks and implications.

“Without access to Scope and Risk processes or access to related Scope and Risk registers, it is not possible to perform a scope of work that meets the objective of giving the OC comfort over the completeness and accuracy of cost and schedule information reported to them by Nalcor.”

There’s a number of options. And then lower down is “Overall risks to consider: We are associated to the OC and their mandate; we currently believe they are placing undue reliance on the information provided by Nalcor; they do not appear to be willing or able to negotiate a full mandate to meet their purposes.”

That’s an internal document and –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – that – what do you have to say about that?

MS. MULLALEY: Well, again, you know, I would say, what they’re talking about here, they generally wanted to go in and do a full – they wanted to get back at the baseline. Again, in hindsight, seeing everything, yeah, but, at that time, that was not what they were engaged to do, but they really wanted to go back and do some initial work around the baselining.

The other thing I would say to you is this project control stuff they’re talking about. So, at this time, we had prioritized two pieces – there were at least two that the internal audit was doing on this exact topic. So what we had said to EY was they’re underway now. Those two reviews, by

the internal audit division, are almost completed. What are our – what we would like you to do is when they are completed, we would like you to review them, and if there are gaps in them, we’re going to get those gaps addressed through your next piece of work.

So, they knew that. They knew that the internal audit piece was ongoing and they knew the baseline was out. So, if, again, if you flipped the emails back to us, this stuff is not coming up like that. This stuff is coming up on, yes, no, as long as, you know, we’ve agreed that when this internal audit reviews are done, we can look at this, we’ll assess the risks.

So, again, you seem like you have alignment, but when I see these sorts of things, you know, all I can say is it’s sort of not what was coming through for us. And, like I said, I think Craig Martin would have those same types of emails where it seems like, yeah, we’re okay. We can do this and move on. And, I mean, that’s what they did do. They did review the internal audit at the time.

So, you know, that’s all I can say to you is that, you know, there was a very specific piece we wanted and we wanted to get the work done and we want to understand results so we could move on with the next piece. But this was slow in moving, sometimes, because we’d agree to a scope and then it’d be outside the scope. And then you’d try to pull back in scope and it would go outside of scope. Right?

So, you know, it was a little bit of that toing and froing. A lot of these internal things were not still –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – resonating.

MR. LEARMONTH: But, once again, if you had known the extent of the problem, you probably would have accelerated but –

MS. MULLALEY: Yeah. I mean, I think if, you know, the events really – if we know now in history a lot of the events that unfolded, unfolded afterwards, certainly, you know.

So, again, like, even if an EY came in at the point, we probably would have known much better, obviously, in the cost and schedule of the project, right?

MR. LEARMONTH: Yeah.

MS. MULLALEY: But, yeah, I mean, hindsight is 20/20 and, you know, if we knew all this, I think government should have done a full review before you ever went to financial close –

MR. LEARMONTH: Right.

MS. MULLALEY: – in reality.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Right?

MR. LEARMONTH: Sure. Yeah.

MS. MULLALEY: But once you pass that, once you had that belief in that and the belief that the baseline was okay and, you know, that's where you were, you are not bring in anyone to do a full cost and schedule.

I mean, you got to remember, too, I guess, is this crossed the green line and went, every day, it was cost, right? Every day it cost money. So, you know, to do an independent review, you know, I think, to that point, it should've been done before any financial close ever happened –

MR. LEARMONTH: Right.

MS. MULLALEY: – in reality.

MR. LEARMONTH: Yeah.

And then, the last page, page 6 of Exhibit P-03311, they're – once again, they're focusing on their reputational risks.

MS. MULLALEY: Yes. Yeah.

MR. LEARMONTH: So, I guess that continued.

All right.

MS. MULLALEY: I can – if I can say something, though, on this one, too.

MR. LEARMONTH: Please, take the time to say whatever you wish, Ms. Mullaley.

MS. MULLALEY: Yeah.

So, I'm just going to refer you, because I saw this as you were flicking through here on page 2. Because, again, this – these are internal documents, we didn't see that, but it's just interesting sometimes when I see, you know, so this –

MR. LEARMONTH: What page are you on now?

MS. MULLALEY: It's on page 2 of that same document. Sorry, page 3.

MR. LEARMONTH: Yes. All right.

MS. MULLALEY: Yeah, just under the number 2. So, you can see: Since our initial engagement.

MR. LEARMONTH: Yes.

MS. MULLALEY: So “Since our initial engagement report” – of – “June ... when we recommended the list of items” So, they're talking about our reporting structure now that we have agreed to, they helped us to develop.

“... when we recommended the list of items related to # 1 ... the OC have not been able to obtain such information.” So, that's not factual. I mean, we obtained the information from those reporting protocols.

“They have been restricted to summary reports” And, again, I would say – and they go on to say “... prepared for external stakeholders.” And that's absolutely not factual. I mean, we had progress reports, and they're like 100-plus pages that go to the senior executive. We have, you know, we do have the IPS, which, again, goes to the project management team. Yes, and there are key reports that we're looking at for the internal – the independent engineer, but to say we've restricted some reports prepared for external stakeholders. That's incorrect.

So, I would just say, some of this I look at and I'd take a grain of salt, because I would absolutely argue that's not accurate.

MR. LEARMONTH: Okay. Do you want to go through it in more detail –

MS. MULLALEY: No, no.

MR. LEARMONTH: – to identify other –?

MS. MULLALEY: I'm just trying to say to you that, you know, when I say all these internal documents and all these – so what they may be relaying internally, and sometimes there's inaccuracy with it, but you'll always see a flipside, like the letter to us or from us where everybody was agreed with that.

You will find a letter, you know, where they agreed to these oversight protocols, but, anyway, so I just point out, in early days, when they weren't in doing a lot of work, sometimes I see these statements and I'm just a little surprised by them, again. And that's not –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – what I'm hearing back from them, so ...

MR. LEARMONTH: So there was a lack of connection between what EY was saying internally and what EY was discussing –

MS. MULLALEY: Yeah, I believe. And I believe –

MR. LEARMONTH: – with you?

MS. MULLALEY: – some of it, when I read things like that, is there – that's not accurate.

MR. LEARMONTH: Okay.

MS. MULLALEY: And/or, you know, they have the comments like we mentioned this morning, in very early days before they were even in there, so ...

MR. LEARMONTH: Right.

MS. MULLALEY: So anyway – no, but that's fine. That's all I wanted to say.

MR. LEARMONTH: All right, tab 22 is Exhibit P-03557. This is from Mr. Paul Harrington to Charles Bown. Now, at the time,

Mr. Bown was the deputy minister of Natural Resources and was also on the Oversight Committee. So I guess – I don't know whether this was sent to him as a member of the Oversight Committee or in his capacity as deputy minister. Would you be able to shed any light on that? Oh maybe both?

MS. MULLALEY: I would think more – I think that it's in dual probably – dual role. But, generally, likely because Charles normally would be the stakeholder relation in government, right?

MR. LEARMONTH: Yeah.

But he says: "Charles,

"Mark and Jim met with Craig today – I am rather concerned with what they reported back to me and wanted to let you know since we chatted about that earlier"

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: "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 they need to have EY conduct an 'independent review' which IA" – that's 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 in that Audit." Can you –

MS. MULLALEY: Yeah, I mean –

MR. LEARMONTH: – provide a comment on that?

MS. MULLALEY: Yeah. So I think what's happening here, you heard me say this morning about the –

MR. LEARMONTH: Yes.

MS. MULLALEY: – meeting we had when Ed walked out and the premier’s office called me the next day. I think this is reflection of the position Ed would’ve had that internal audit was doing this work. And maybe – I don’t know if he had that impression after he left and maybe that’s what he relayed to Paul on it. So when we came in afterwards with full support from the premier’s office and (inaudible) –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – say no or no, not – I mean EY is doing this, not your internal audit. So I think it’s just going back to, I guess, really substantiate that that was the discussion that had happened between –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – the Premier and Ed and them. But that’s not the direction –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – that we went and/or received.

MR. LEARMONTH: In fact, it was the opposite.

MS. MULLALEY: It was the opposite.

MR. LEARMONTH: So if Mr. Harrington’s understanding of discussions held at the Ed/Premier level, if this letter is a true reflection –

MS. MULLALEY: Right.

MR. LEARMONTH: – then he was badly mistaken. Is that Correct?

MS. MULLALEY: Yeah, yeah.

MR. LEARMONTH: Okay.

MS. MULLALEY: Yeah.

MR. LEARMONTH: It wasn’t offside, it was onside. Correct?

MS. MULLALEY: Yeah.

Mr. LEARMONTH: Tab 23, Exhibit P-03316; once again this is an email from David Steele to Craig Martin. And in paragraph 3 – it’s a fairly long email but paragraph 3 says: “We believe there is an inherent limitation to the scope of the review as currently contemplated. In order for the Oversight Committee to meet its objectives of assessing the completeness and accuracy of cost and schedule information” et cetera.

Now, we’ve heard what you said about this sort of disconnect between what EY thought that should be done and what they were asked to being done by the Oversight Committee.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Is this a further reflection of that disconnect?

MS. MULLALEY: Yeah, it is. So it’s what they wanted to do versus what the scope was. And I mean, again, they signed – when we explained what we wanted done, the scope statement, you know, everybody signed on it.

So I think, they – you know, again, the Nalcor internal audit were doing two other pieces of work. So we understood that, you know, these would be key for any search review, but I guess what we were trying to say is, look, those reviews are almost finished now.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Let them finish; we’re going to give them to you to review. If there’s gaps – and you can see that kind of language here. If there’s gaps or weaknesses in what the work was done or concerns, we’re going to be able to let you build it in and we’re going to go at it again. We’re going to take that and try to work it into the next course because we had contemplated a different kind of review, again, after this one.

But that was the aspect of that and that did happen, we did – they did review the internal audit reports afterwards and so on, but I think they signed off it. Yes, they understood those were happening and they’d wait and we’d look at it, but it just didn’t go away, I guess, is the issue.

MR. LEARMONTH: So would it be fair to characterize it – your understanding of what’s going on here is this, that there was a specific scope given to EY –

MS. MULLALEY: Right.

MR. LEARMONTH: – but EY was unconsciously or whatever sort of trying to advance and expand the scope because they wanted to do the deep dive –

MS. MULLALEY: Correct.

MR. LEARMONTH: – right away.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Is that a fair way to put it?

MS. MULLALEY: Yeah. Yeah, I feel that is. And, you know, I would say, though, I believe, like, all these things are interconnected, right?

MR. LEARMONTH: Right.

MS. MULLALEY: So I don’t want to leave the impression that they absolutely did not need to look at that area. I mean they’re all interconnected processes, but what we were saying is, yes, but the baseline and the risk quantification we know, we want you to look at that, too. But this piece of work, we’re just anxious to get this done because these are the numbers that we continue to put out to the public.

We want assurance that the numbers we’re picking up from this particular report – because that’s what we were doing. We don’t want a delay on waiting to try to figure that out for months, we want to know: Can we rely on these numbers? Are those numbers – the process is working.

MR. LEARMONTH: Yeah.

MS. MULLALEY: That’s what we want to know. We can deal with lots more but that’s what we want to focus on right now.

MR. LEARMONTH: All right.

Tab 24, Exhibit P-03328, on page 2 an email from David Steele to Richard Noble. It says: “Richard,

“When speaking to Craig he mentioned concerns” – about – “were being expressed from Nalcor about EY going outside the scope of the” statement of work or scope of work.

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: “Specifically that we are asking for items that involved the ‘Plan.’ He says, we shouldn’t be assessing the Plan ... we should be focused on assessing cost and schedule” action “and forecast information.

“Two items he noted were: Contingency – by asking questions like ‘how was this developed,’ there is an implication that we were getting at ‘Plan.’” Next, re-baselining, et cetera.

MS. MULLALEY: Yes.

MR. LEARMONTH: Is this a further indication of –?

MS. MULLALEY: It is. Again, this is – you’re reading this in May, we’ve been having this argument since January. We’re not asking you to review the costs, we’re not asking you to review the contingency, we’re asking you to do this. And yet here in May we’re still – they’re still in there, I guess, you know, working on the contingency.

So, again, not that it wasn’t important to us, it was important to us, we were just trying to get a piece of work done that we wanted done –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – and felt was critical. The concept of the base and the concept of contingency and all that was important. And that was sort of, you know, our next thing of all these gaps that we were having and what was happening. But we were really focused on those – the numbers that were coming out to the public and could we rely on those reports?

But this is what caused some of those frustrations, I would say –

MR. LEARMONTH: Yes.

MS. MULLALEY: – because every time we thought you had a – worked and it was – then you’d get a call from Nalcor saying, look, they’re over here asking us how do you – how we develop the base and how we develop the contingency. And we’re like, okay, David, why are you in? I thought we agreed that we’re going to look at this. I know they’re all interconnected, I get that, but can we – you know, it’s just the focus. We’re trying to get this piece of work done.

So I would say it like that, you know. But I get, you know, if – I also understand their concerns, right? You know, I think they had concerns and they wanted to –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – do more and they wanted to get in at the base. I get that but it’s just this wasn’t what the scope was at this time.

MR. LEARMONTH: Yes.

MS. MULLALEY: Yeah.

MR. LEARMONTH: So, Nalcor’s position that EY was outside its scope –

MS. MULLALEY: Yes.

MR. LEARMONTH: – was true.

MS. MULLALEY: Yes and –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – that was a lot of –

MR. LEARMONTH: This time.

MS. MULLALEY: Like I said –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – there were a lot of – it was a very, very difficult relationship and it was a different – difficult –

MR. LEARMONTH: Okay.

MS. MULLALEY: – relationship to balance between them.

MR. LEARMONTH: Okay.

Well, there’s a couple of more. Exhibit – tab 25, Exhibit P-03319, once again, Richard Noble: “The progress this week was encouraging.” This is dated March 14. And “On the subject of limitations I’m afraid it’s” the “‘same old same old’ repeat of Groundhog Day.”

So this is just a further example of the disconnect between the Oversight Committee and EY as to what their scope of work was at the time. Is that correct?

MS. MULLALEY: Yup. It is.

Again, I’ll also point something out here because you have (inaudible). If you continue to read down there in that paragraph, you know, “Our advice is based on our experience, the scope of the IA’s work as outlined in their ... plan did not appear to be adequate ...” to fulfill reliance. “It was also executed by an inexperienced group.”

So again, this is Ernst & Young in. They haven’t reviewed the work of the internal audit. You have an internal audit group that GT forensic auditors looked, at relied on, Emera relied on. You know, they have an insurance framer, they’re in there, they’re accredited, and there’s been no review of their work –

MR. LEARMONTH: Yup.

MS. MULLALEY: – by Ernst & Young, and he is calling him an inexperienced group. Again, it just gets – some of these emails you have to take with a grain of salt, ‘cause I don’t know. Richard may know –

MR. LEARMONTH: Yup.

MS. MULLALEY: – but I don’t understand the basis of some of the comments –

MR. LEARMONTH: Yes.

MS. MULLALEY: – that got made.

MR. LEARMONTH: Yeah.

MS. MULLALEY: So I just point that out.

MR. LEARMONTH: But this seems to go on, like, for a long time; and the issue is fairly simple, in my opinion, that it's simply that we have asked you to do this work –

MS. MULLALEY: Yes. Yes.

MR. LEARMONTH: – what you're digging at here, is outside the scope –

MS. MULLALEY: Yup, it can be connected –

MR. LEARMONTH: Just –

MS. MULLALEY: – can be interrelated, but –

MR. LEARMONTH: – just stick –

MS. MULLALEY: – that's not what we're asking.

MR. LEARMONTH: – yeah, but just stick within what we've asked you to do –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – and we'll deal with the rest later?

MS. MULLALEY: Yes. Yes.

MR. LEARMONTH: Like, it doesn't seem to be a difficult –

MS. MULLALEY: No.

MR. LEARMONTH: – point to convey, but –

MS. MULLALEY: And it drags on the report then too, right –

MR. LEARMONTH: Yup.

MS. MULLALEY: – so I mean the work you want to get done and want to get done quickly, starts getting dragged out a bit –

MR. LEARMONTH: Right.

MS. MULLALEY: – but these are the things that start – these are the things that are causing

the frustrations and the relationship negativity, I think between groups over there, as well, right –

MR. LEARMONTH: Yup.

MS. MULLALEY: – like, there is a lot of that happening.

MR. LEARMONTH: Yeah. So, there was some, certainly, legitimacy to Nalcor's position at this stage. Is that the way you see it?

MS. MULLALEY: Yup, there were a lot of frustrations in areas that I guess we clearly talked to about Nalcor when we were going in. And, you know, there is a commitment of – 'cause there's a lot of commitment on people's times too, when you are going into the organization. So, you know, you're up front saying this is what we're doing now, everybody agrees, but then you go off and all kinds of other stuff is starting to happen around the peripheral, right? So you can see how that can cause frustration.

MR. LEARMONTH: Well, it – I mean, any kind of oversight review is disruptive –

MS. MS. MULLALEY: Absolutely –

MR. LEARMONTH: –to the company –

MS. MULLALEY: Yup.

MR. LEARMONTH: – so it's understandable –

MULLALEY: Yup.

MR. LEARMONTH: – there's going to be a certain –

MS. MULLALEY: Yup.

MR. LEARMONTH: – amount of push-back or whatever, correct?

MS. MULLALEY: And it's needed. It's very necessary –

MR. LEARMONTH: Yup.

MS. MULLALEY: – we need to be in there, but when – then you agree to something, so

everybody is on the same wavelength of what we're doing –

MR. LEARMONTH: Yup.

MS. MULLALEY: – and then it gets all over the place. It causes frustration –

MR. LEARMONTH: Yup.

MS. MULLALEY: – and it caused frustrations.

MR. LEARMONTH: Okay, tab 26, Exhibit P-03558.

This is an email from Mr. Paul Harrington to Craig Martin, 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.”

If these dates are correct, that means Mr. Harrington was in Europe for almost seven months?

MS. MULLALEY: Oh, my gosh, I – no, in March?

MR. LEARMONTH: Well, he says on March 27, I wish to –

MS. MULLALEY: Oh.

MR. LEARMONTH: – inform that I'm currently in Europe, will not return to –

MS. MULLALEY: No, I'm sorry, I think he's picking up – you know what I think he's doing? I think he's picking up an old email, is he? No, I don't think he was gone near that long. This down below, I'm just looking at the trail below, sorry, I'm trying to pick out. So this is October 8. I can't, that's not even making any.

MR. LEARMONTH: On my reading of it, it looks like seven months, but there may be some explanation that Mr. Harrington can provide. Or maybe you can if you go through it.

MS. MULLALEY: Yeah, I'm just – I'm trying to read down, but I'm looking at the dates of October and then the title is March. Oh, this is Craig writing to Paul on October 14, okay.

MR. SIMMONS: Commissioner, if I might –

MS. MULLALEY: (Inaudible) I don't know.

MR. SIMMONS: – this is probably something Mr. Harrington can clear up –

MR. LEARMONTH: Yeah.

MR. SIMMONS: – but it looks like this is some sort of technological problem with dating here, because the bottom message was sent on October 8, 2014, and the content of the –

MR. LEARMONTH: Yeah.

MR. SIMMONS: – reply is talking about a meeting on October 15, so that part seems to fit, but the dating on the top message somehow seems completely inconsistent with that.

MS. MULLALEY: It does yeah.

MR. LEARMONTH: Well, anyway, Mr. Harrington – it seems – I doubt if he was in Europe for seven months.

MS. MULLALEY: No, I mean, no, he was at –

MR. SIMMONS: (Inaudible) say for sure he wasn't.

MS. MULLALEY: – our meetings every –

MR. LEARMONTH: Okay.

MS. MULLALEY: – he was in –you know, I have a record, like, he was at our meetings every month, right (inaudible).

MR. LEARMONTH: Okay, well we'll ask –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – Mr. Harrington to clarify that.

THE COMMISSIONER: You know, maybe this is a situation where, because it looks like the

initial letter went October the 8th, 2014, and his reference then to not returning 'til the 15th of October probably makes a lot more sense. How this email was actually dated –

MS. MULLALEY: Yeah.

THE COMMISSIONER: – as being sent March 27, 2015 is something I'm not sure I can answer, but –

MS. MULLALEY: No.

THE COMMISSIONER: – and I'm not even sure Mr. Harrington will be able to answer it, but, you know, it doesn't seem to coincide (inaudible) –

MS. MULLALEY: No.

THE COMMISSIONER: – it doesn't seem like he was away that long.

MR. LEARMONTH: (Inaudible.)

MS. MULLALEY: But I can say he was definitely at our monthly –

MR. LEARMONTH: Yes.

MS. MULLALEY: – meetings.

MR. LEARMONTH: Okay, well, he wasn't on a seven-month holiday in Europe anyway. We'll assume that and let him provide –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – the details.

All right, at tab 27.

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: Exhibit P-03449. This is a briefing note on the 2015 budget process.

MS. MULLALEY: That's correct.

MR. LEARMONTH: If we go to page – for the Oversight Committee – if we go to page (inaudible) we can see there's a budget of \$500,000 for each of the first two years.

MS. MULLALEY: Yes.

MR. LEARMONTH: And that included salaries and other items. So, with this budget –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – if you were – if the Oversight Committee was limited to this budget, obviously, the Oversight Committee did not have the authority to hire EY to do the final report. Is that correct?

MS. MULLALEY: Um –

MR. LEARMONTH: 'Cause that was a million dollars –

MS. MULLALEY: I would say this to you, I guess – this was a budget that we had – with – based on some work we would want to be done. But I certainly wouldn't envision is as a barrier. I fully believe, wholeheartedly, that if we had felt the real need to do something and, you know, it was in government's interest to have particular review done, I believe the support would have been there and we would have been able to get the money. I don't think that would have been a deterrent at all.

MR. LEARMONTH: Okay. Thank you. But you didn't feel the need, so you didn't make the request for a greater budget (inaudible).

MS. MULLALEY: I mean, this – we were starting out the year. This was developed back in 2014, I would think, was it?

MR. LEARMONTH: Right.

MS. MULLALEY: Yeah. Yeah. For our 15 year. Yeah.

So, again, you know, this was just a development – what we thought we might need to spend so it could be put in the budget. But, clearly, an understanding there – you know, if something major had come up, that – definitely, I am confident that would have not have been a deterrent.

MR. LEARMONTH: Yeah. But at the time you didn't think there was anything major on the horizon.

MS. MULLALEY: Yeah. I mean, this – yeah. This was developed –

MR. LEARMONTH: Okay.

MS. MULLALEY: – back in, I'd say, April of '14 or something.

MR. LEARMONTH: All right. Tab 28 – Exhibit P-03826.

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: This is notes from the meeting with you and Craig Martin on May 6 and there were a number of representatives of –

MS. MULLALEY: In May. Yeah.

MR. LEARMONTH: – of EY. Can you describe the purpose of calling this meeting?

MS. MULLALEY: So, this would have probably been – yeah – so this is the review they're in doing for us on the project cost controls at critical project for us. So, this is a status update. So, they're meeting with us – providing a status update on where the project is right now.

MR. LEARMONTH: Okay. So, are you in agreement at this stage as to what the scope of work is?

MS. MULLALEY: Yeah. So, I think – yeah – we are – yeah. That would have been signed, I think, long before that. But this – so, this is an update – so, that when you look at the bottom of the first page it talks about limitations. This is the scope. So, the scope was excluded. So, this review did not assess how the costs and schedule baselines is what – as I said – that was scoped out, right?

The focus of the review has been on the cost and schedule forecasting and reporting. So, that's what we were focused on – the forecasting side, but not the baseline side. Right?

So, that was – they're saying limitations. That, specifically, was out of their scope and similar to B. If you look at B – so, B was – the scope did not include a review of these two processes, only because the internal audit was in there doing that

exact same work and we wanted to find out what the results would be.

So from the review – so afterwards, they did review the reports and from their perspective they did find gaps to look at in this particular one. And so that was a process we had agreed to work with them on to develop some other work they were gonna do for us in those areas. And then some – they were showing us now some of the preliminary and positive findings from their review, and as you continue to move down the page, they're really highlighting here some of our concerns. So this is an update meeting on what they're seeing here.

MR. LEARMONTH: All right.

Tab 31, Exhibit P-03828, this is a – this refers to a meeting – proposed meeting, the premier's boardroom, and its subject: "Ed Martin - Muskrat Falls Update."

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: You were on this. Did you attend this meeting or – well, first –

MS. MULLALEY: Yes, yes.

MR. LEARMONTH: – was the meeting held?

MS. MULLALEY: Yes, it –

MR. LEARMONTH: Do you remember that meeting?

MS. MULLALEY: Oh definitely, yeah.

MR. LEARMONTH: Okay, and it was –

MS. MULLALEY: There was a presentation. This would've been the update we would've given the premier on the 7.65, I guess, now at this point.

MR. LEARMONTH: 7.65?

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: That was – it's August, yeah.

MS. MULLALEY: So this is heading – this is in August.

MR. LEARMONTH: Okay.

MS. MULLALEY: So our process, again, normally, like, you know, we would've met with Ed. So we would've been briefing – and you'll see the minister should be here as well on this list – I'm trying to find him. Oh yeah, yeah, yeah.

So this would be Mr. Martin coming in to do a full – so there would've been a presentation attached to this where they – he would be briefing the premier on: We're getting ready to go do another rebaselining now, right, we're going out to the 7.65 number. That report was issued, you'd recall, in September, the very next month. So this is the first – this is a formal briefing for the premier on where that number is going to be.

MR. LEARMONTH: Now, there's a – I just want you – before we get into this meeting. There was a reference in one of the documents we received – that's in the book and we'll (inaudible) – from James Meaney, suggesting that in a March 2015 meeting Mr. Martin and those present – or Mr. Martin mentioned to some degree that there was gonna be an increase to 7.5 or 7.6. And I think we discussed this at your interview –

MS. MULLALEY: We did.

MR. LEARMONTH: – and the purpose of the meeting was to deal with distribution assets.

MS. MULLALEY: Yeah, so when I saw it in the document, again, it was just – because – and I'll tell you why I remember this again. I remembered the meeting – I very clearly remember the meeting in June of 2015 and I remember leading up to that meeting we were really pushing – 'cause we knew from based on what we saw, where the contracts were, we knew that, you know, it was not possible not to have another rebaselining, and we were pushing on numbers. That was June and I remembered it was around a holiday actually, and I knew it was the latter part of June.

We met down in – and I found the date – I called Craig Martin actually because I – of course, I don't have my calendar anymore from back then. And I said: Craig, can you look in your calendar and see if there's a date in towards the end of June? Can you recall the meeting? And he recalls it and Charles recalls it. So Minister Wiseman at the time, who was Finance, and Minister Dalley, who was Natural Resources, and myself and Craig and Charles met down – because it was a holiday, and –

MR. LEARMONTH: This was in March, right?

MS. MULLALEY: No, this was in June. That's why I'm saying –

MR. LEARMONTH: June.

MS. MULLALEY: – that's why I know that March was not right.

MR. LEARMONTH: Okay.

MS. MULLALEY: The June one, we met with them, and we had been meeting for a few days to try to get a sense of where this budget was going. That was the first time they formally sat down with government, was that day on June 22, '15, and brought us through what looked like a potential 7.65. It was still – even in June, this was like, hot off the press concept; we're still working through a few things; we're not quite sure if that's, you know, settling there, but this is so – and it really is depending on Astaldi's performance for the summer. So, you know, we're gonna know – over the summer months we're really gonna know where this is going to go.

That was June 22. So when I saw a note back in March saying that they told government 7.5, I said: That didn't happen. No way. Like (inaudible). So I – what I did then is I can't – I don't understand that. So then I went to find Derrick Sturge's note to try to find a matching date, and I found one. And the title of it is distribution assets. And then I remembered that meeting very clearly. It was a totally different topic in government.

And – but there I could see – and there was a presentation for distribution assets, but I could

see some comments around the project. And so what I recall on that is again, it would've been in for a totally different meeting, but every time you come in – it doesn't matter if you're coming in on (inaudible), it doesn't matter what you're coming in on, you're talking about the project. So when they came in, we had some discussion around the projects. I remember hearing discussion around the pressures and all this stuff. But there – in my recollection, again, there was never: Oh, by the way, our project is 7.5 now.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Because we were putting reports out. Like, that would not have happened. Like, that just wouldn't have happened.

MR. LEARMONTH: So it's the same type of presentation that you referred to earlier that Mr. Martin would have a habit of making that cost pressures were mitigated, (inaudible) –

MS. MULLALEY: Yeah, so it was more of a discussion. And I think one of the contracts, the North Spur, had come over –

MR. LEARMONTH: Okay.

MS. MULLALEY: – really over. So, you know, we were discussing pressures on a lot of that. But I guess all I'm saying is like, the concept that a seven – a firm 7.5 number was put in front of government in March, that did not make any sense to me.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Because I know when it was put forth. It was in June.

MR. LEARMONTH: Yeah. Well, actually, just for the record, Mr. Derrick Sturge's recollection is the same as yours. If you look at page –

MS. MULLALEY: (Inaudible) I'm glad.

MR. LEARMONTH: – about that March meeting –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – if you look at his – well, his transcript, for those that are interested, March 27, page 73, he says that he has no –

MS. MULLALEY: No, that's –

MR. LEARMONTH: – recollection –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – of the 7.5 being mentioned. And he refers to a practice that Mr. Martin had of – like, coming into a meeting for one topic, distribution, and then before just saying: Oh, by the way, before we start I just wanted to tell you some information about this and that.

MS. MULLALEY: That's correct. And I think every meeting went like that. And, you know, from my side it was more, you know, like as soon as Ed would sit down it was like: Hi Ed, how's the project going, what's on the go? Like, you know, it was a genuine – you know, you had that opportunity to have that one-on-one discussion. So no matter what you were in on. But I just want to clarify in my mind that was not – 7.5 was not provided in March at all.

MR. LEARMONTH: In March, yeah.

MS. MULLALEY: I know when it was provided. It was in June. And even then it was kind of hot off the press, we're still working through the summer, stay tuned. And we worked together over the summer; hence the report. And this is the report that culminated –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – in a – to bring you right back to the screen, I guess – that is the presentation that culminated at that time.

MR. LEARMONTH: Okay. At what point did you know about the 7.65?

MS. MULLALEY: The meeting was on June 22.

MR. LEARMONTH: Yeah.

MS. MULLALEY: That's sort of when we knew. But again, it was kind of the concept of:

This is where we think this is looking – like, it’s going, but we need the summer, we need to see how Astaldi makes out over the summer, so we’ll work through the summer but by, you know, the summer time we’re going to have some firm numbers here. So we knew it was heading up, we just weren’t sure exactly where it was landing, right. So – but we would’ve known that around that time frame.

MR. LEARMONTH: Was there concern expressed by those present –

MS. MULLALEY: Oh, yes.

MR. LEARMONTH: – on the part of government?

MS. MULLALEY: Look, there was always concern. Every Cabinet this came in there was concern. And it felt like a cut by a thousand deaths to be honest with you. And everybody was always saying: What is the number? Right, there’s no – I mean, there is a lot of frustration in government and at the Cabinet tables with this. There’s no doubt about that.

MR. LEARMONTH: Yeah. Because if we look at exhibit – at tab 33, Exhibit P-03565. This is September 16, 2015.

MS. MULLALEY: Yes.

MR. LEARMONTH: And if you look on – maybe you can help me with this. But if you go to page 13, there’s still a reference to 6.990.

MS. MULLALEY: No, so I can give context to it again.

MR. LEARMONTH: Please do.

MS. MULLALEY: So this report is being provided to the Oversight Committee, ’cause they’re on our schedule, they come in once a month to us, right?

MR. LEARMONTH: Right.

MS. MULLALEY: So they’re coming in September 16, but it was kind of a foolish meeting, because here we are as an Oversight Committee, we know where it is. We’re putting a report out the following week, but this what

comes in. So we’re kind of sitting there, but I guess the concept at the time was we can only present what’s approved. There’s no new AFE approved yet; the board hasn’t approved it; government – ’cause it hadn’t gone into Cabinet yet either, right?

MR. LEARMONTH: Yeah.

MS. MULLALEY: So I think the concept was we had a lot of discussion – because everyone in the room knew it was at 7.65, so we had some discussion what was happening, but, for the record, I guess, this is what was provided because they didn’t actually have authority to change the numbers in the deck.

MR. LEARMONTH: Well, fair enough. But why even prepare a deck, then, when the information –

MS. MULLALEY: I don’t know.

MR. LEARMONTH: – is completely misleading?

MS. MULLALEY: Yeah. Yeah.

MR. LEARMONTH: In other words, here is a deck –

MS. MULLALEY: I know.

MR. LEARMONTH: – the information – or some of the information in it is false, and you all know it’s false, but we’re –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – gonna prepare it anyway.

MS. MULLALEY: I can’t answer it. I just know – I mean, they came in with –

MR. LEARMONTH: Do you see the point though?

MS. MULLALEY: – the deck, everyone – oh, I do. I mean, I think we all felt a little silly sitting there, and I don’t even know how much time we actually spent on it, but I think, from their perspective, they felt, you know, that they were

required to a deck every month, but they did not have the authority, at that time, to change them.

So, we're here, but we talked really around their actual numbers, right? 'Cause we all knew what the actual numbers were.

MR. LEARMONTH: But why not do a deck and leave out any reference –

MS. MULLALEY: I don't – I –

MR. LEARMONTH: – to cost, rather than put an incorrect statement in?

MS. MULLALEY: I don't know. I mean –

MR. LEARMONTH: You can't answer?

MS. MULLALEY: – that – well, no, I didn't – that this – they – Nalcor prepared this presentation, right?

MR. LEARMONTH: I know. But I'm just asking –

MS. MULLALEY: Yeah. But I don't know. It –

MR. LEARMONTH: Yeah

MS. MULLALEY: – but – yeah.

MR. LEARMONTH: And most of it is just pictures and so on, right –

MS. MULLALEY: It is.

MR. LEARMONTH: – anyway. Yeah.

MS. MULLALEY: Yeah. But I know that's like – that's why they had the numbers the same, because they didn't have the authority to change them.

MR. LEARMONTH: Okay.

MS. MULLALEY: Yeah.

MR. LEARMONTH: So it must have been very amusing – or, well, it wouldn't be amusing, but it must have been very concerning that you're sitting there, you're getting a slide deck,

and you know that the information is false, but you can't really say anything about it?

MS. MULLALEY: No. We were all talking about it.

MR. LEARMONTH: Okay.

MS. MULLALEY: That's what I'm saying, the presentation was there –

MR. LEARMONTH: Okay.

MS. MULLALEY: – because when we saw it came up – but I guess it probably was amusing. I don't know, you know, but we didn't spend any time on it, the deck itself, because we knew the difference. But what we used the time for was to talk about where the project was and what was happening. Because again, everybody was aware that it had been –

MR. LEARMONTH: Okay.

MS. MULLALEY: – being re-baselined. Yeah.

MR. LEARMONTH: And tab – page 79 of Exhibit P-03565. This is the –

MS. MULLALEY: Sorry, what tab was that?

MR. LEARMONTH: The same tab.

MS. MULLALEY: Oh.

MR. LEARMONTH: Tab 33.

MS. MULLALEY: Okay.

MR. LEARMONTH: If you head to page 79, this is the – I don't know – it's the motto, or the – whatever you want to call it, governing principals of Nalcor. Now, based on what you know now, what do you think about this open communication and honesty and trust as being their motto?

MS. MULLALEY: I think –

MR. LEARMONTH: Based on what you know now.

MS. MULLALEY: I think it speaks for itself in what I've been saying today. You know, the

open communication, like, and accountability is – well, I could look at a lot of them, I guess. There are a lot of values, and, I guess, the core concern, again, you know, is that there was a lot of information out there that they had that should've been shared with government.

Again, I understand that it might've had commercial sensitivity, and it might've been – had to have discussions on certain aspects of it, but, you know, the government was making the decisions of the day, and the only way you can do that is in an informed manner. And when you don't have the information, you are not being provided with that information, you know, how – you know, you're impairing, I guess, decision-making ability sometimes by doing that, aren't you?

MR. LEARMONTH: Yeah.

MS. MULLALEY: And it's not what I'd ever expect from anybody in the public service at any level, but particularly at these types of levels.

MR. LEARMONTH: But would you agree with that the way that – based on what you know now – that these descriptions of open communications, honesty and trust and accountability were words but weren't really conformed to – or transferred into action?

MS. MULLALEY: I mean, if you're speaking of the specific project, I mean –

MR. LEARMONTH: Yeah –

MS. MULLALEY: – I think –

MR. LEARMONTH: – just this project.

MS. MULLALEY: – this is – just as a whole, as a corporation, you know, I can't speak –

MR. LEARMONTH: Oh, just this project.

MS. MULLALEY: – so much to that. But, from a value perspective of what we're seeing here, obviously there's a lot of concern around accountability and open communication and honesty, trust, all of that. I mean, you know – even teamwork, you know, in that sense. But, yeah, I think – you know, as I stand back and I reflect on all of this and, you know – and I'm

never gonna say this was effective oversight, like, you know, I'll probably get a chance to talk about it afterwards, but, I mean, you can't have effective oversight – yeah, it could have been – perhaps it could have been effective oversight if the – you know, it was set up – if you had been working with Nalcor, and they were open and honest in providing us all the numbers, and providing us that, it possibly could have worked.

MR. LEARMONTH: Yes.

MS. MULLALEY: But in absence of that, it never could work. You really did need to have a true, independent body overlap.

MR. LEARMONTH: It never had a chance at succeeding without –

MS. MULLALEY: No. It can – how –

MR. LEARMONTH: – those points. Is that right?

MS. MULLALEY: – can you succeed when you're not being provided the information? I mean, that – and I think that's my frustration, because I lived through this. And, you know, again, it's not that we had our heads in the sand. We generally knew what was happening on the project, and we did have a lot better insight into this project once the committee was set than before, because I was there before that. We were getting a lot more information; we could understand about the contracts; we had access, you know, to the independent engineer; we were on site visits. So we were – we had a lot more information, and I believe we were asking a lot of the right questions.

The problem we always had was that we're saying how does this risk that we're seeing – and, I know you're saying you're mitigating it – but how is this risk translating into the cost and schedule, and that's where we never could get an answer. But in fact, if I look at the second set of numbers, really, to that degree at that point, that's how they were being quantified into the – to – you know, to it.

But by – I think that fundamentally was what we could never get at was how the risks that were unfolding were being quantified and moved forward into a cost and schedule. We couldn't

get at that. We could not get at that. So I think that is truly when you needed, you know ...

MR. LEARMONTH: All right.

THE COMMISSIONER: So, Mr. Learmonth, I think we're gonna break here now, if that's okay with you, because I wanna give Ms. Mullaley enough time on her lunch break to get to the Confederation Building and do her search.

So we'll come back at 2 o'clock this afternoon, but we may have to sit a little late this afternoon. And I'm also gonna check to see just how much time we're gonna need for Scott O'Brien so I can see if we need any spill tomorrow.

So we'll just adjourn now until 2 o'clock.

CLERK: All rise.

Recess

CLERK: All rise

This Commission of Inquiry is now open.

Please be seated.

THE COMMISSIONER: All right, Mr. Learmonth.

MR. LEARMONTH: Yes, thank you.

Please to turn to exhibit – tab 34, binder 1, Exhibit P-03334. If you go to page 3 of that exhibit, Ms. Mullaley, this is a document – well, it says it's the – I guess the final report or suggests it's the final report, but it really isn't, is it, because there was another one dated October 31?

MS. MULLALEY: Oh yes, this –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – is the draft report on that review that Ernst & Young is doing for us at this time.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Well, it – I don't – correct me if I'm wrong but I don't know if it's a – it doesn't suggest that it's a draft. I mean it looks like –

MS. MULLALEY: It's just the draft watermark across this.

MR. LEARMONTH: Oh okay, of course, yeah.

Anyway, on August 31 – and this is the findings of the process – cost and schedule management processes and controls, correct?

MS. MULLALEY: Correct.

MR. LEARMONTH: And if you go to page 6 of this document, you can see the summary of the key findings and this is under the heading of executive summary.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Now, you're an experienced Auditor. What was your reaction to seeing these observations one to seven? I mean, did it indicate –

MS. MULLALEY: Just let me scan here.

MR. LEARMONTH: – a problem or did it indicate everything was fine, just something along those lines, if you could, and the degree to which it was a problem if it was.

MS. MULLALEY: Just a – I'll just quickly read here now. Yeah. Yeah, this is the summary report.

Yeah, so I guess overall, you know, when we received this report – and, obviously, we were having discussions during the time – I think the biggest concerns for us was, again, getting right back to that point on the risks were not being – basically the costs and associated scheduling packs were not being brought forward into the records.

MR. LEARMONTH: Okay.

MS. MULLALEY: So that's the really biggest one and the other one really was the contingency. There was some aspect of

contingency. I think we moved through this as well.

MR. LEARMONTH: Yeah.

All right, tab 37.

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: This is a – from Heather MacLean. This seems to be a promotional media tour of the Muskrat Falls Project. Is that correct?

MS. MULLALEY: Yes, so this, I guess – when I'm looking at the date on this – this is we're getting ready to release the – a report in the next day, I think. So there's another report going out, so this would, yeah, be the communications planning around that.

MR. LEARMONTH: But you didn't release the report.

MS. MULLALEY: Pardon me?

MR. LEARMONTH: The report wasn't released until after the election.

MS. MULLALEY: No, but this one here was there – there was an oversight report released. It just pulled out the part on EY report.

MR. LEARMONTH: Okay but the EY report, I know there's a later version dated October 31 –

MS. MULLALEY: Right.

MR. LEARMONTH: – and it was split into two, but can you confirm that no part of the draft report –

MS. MULLALEY: That's correct.

MR. LEARMONTH: – that we saw was released until after the November 30 election?

MS. MULLALEY: That's absolutely correct. That's correct.

MR. LEARMONTH: Okay.

MS. MULLALEY: So what was being prepared here was the release of the oversight report.

There was still another oversight report that got released.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah, but it excluded the Ernst & Young review.

MR. LEARMONTH: Yeah.

The – if we go on page – Exhibit P-03829 and this is for a media trip to Muskrat Falls, right? This has to do with a media trip if you look on page 2 of 03829?

MS. MULLALEY: Yes. Yeah, it's correct. Yeah.

MR. LEARMONTH: But why would – at this time why would government want to have a media tour or provide a media tour?

MS. MULLALEY: Yeah.

So the decision, I guess, in the communication planning that was – Ed was going to do the – because, again, what the report I'm referring to now is there's an oversight report and the project was being re-baselined here, right? This was September 2015; it was being re-baselined at the time to 7.65.

So the communication strategy – this is what you're seeing here before us – this was a strategy where Mr. Martin was going to go up on site at Muskrat Falls, and I believe that did happen if I remember. And the media would have been invited up there. And he was going to do a tour of the site and then there was going to be an update on the cost and schedule. So this is the planning for that.

MR. LEARMONTH: Okay but – okay, if you go to turn to page 10, Muskrat Falls Project Update, September 27, 2015. This is after the revision of the AFE, the 7.65 was announced, correct?

MS. MULLALEY: That's when it was announced.

MR. LEARMONTH: Okay. Now, who prepared this Muskrat Falls Project Update,

Question & Answer? Was that government or was it Nalcor or a combination?

MS. MULLALEY: This one here looks like it would have been Nalcor produced.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Because we say that – in paragraph – the last paragraph 1, in terms of Astaldi and schedule: “We know ... this is ... manageable situation and it is being properly addressed and managed by our project teams. We will continue to ensure they stay on track.”

Would that be the typical kind of comment that you’d get from Mr. Martin?

MS. MULLALEY: Yes, yeah.

MR. LEARMONTH: Yeah. It’s all consistent, isn’t it?

And then we go into – is it consistent?

MS. MULLALEY: Yes, that’s correct.

MR. LEARMONTH: Yeah.

Now, then we go to paragraph 2: “**Muskrat Falls accounts for almost half of the total project budget and ... remains behind schedule. How can you be sure taxpayers are protected from overruns and delays?**”

“Overall construction on the project is progressing well and the majority of the work is on track. The ability to bring power to the island remains on track for 2017, and Churchill Falls recall power and market purchase of power will be available ... to displace Holyrood in 2017 and beyond. We will not have any issue meeting the province’s power needs in 2017 and beyond. We are working right now to access the impact on schedule.”

Now, at this time, September 25, 2015 –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – there’s still a statement that first power is –

MS. MULLALEY: Yeah, I think it might be a little bit of a nuance because it’s –

MR. LEARMONTH: For power – power, yeah.

MS. MULLALEY: Yeah, yeah, so –

MR. LEARMONTH: 2017. Now –

MS. MULLALEY: Correct, so what that would have – yeah.

MR. LEARMONTH: So we’re starting off with that P3 schedule that I referred you to before at the time of sanction. Then you’ve got Nalcor, you know, I think conceding that in the first year, 2014, very, very little was accomplished by Nalcor.

So on what rational basis can it be said with any degree of honesty at all, that power – that 2017 is still an achievable date to bring power to the Island?

MS. MULLALEY: Yeah, so I don’t think this was actually first power –

MR. SIMMONS: Commissioner, if I could – Commissioner, if I could just interrupt and –

THE COMMISSIONER: Sure.

MR. SIMMONS: – and maybe the witness is going to answer the question. I don’t read this as saying that power will be available from the Muskrat Falls generation site. This is talking about bringing in Churchill Falls recall power and market purchase power.

MS. MULLALEY: That’s correct.

MR. LEARMONTH: Well, it says: “Overall construction on the project is progressing well and the majority of the work is on track. The ability to bring power to the island remains on track for 2017, and Churchill Falls recall power and market purchase ... will be available via Muskrat Falls to displace Holyrood in” – it doesn’t say that. I don’t agree with your interpretation.

MS. MULLALEY: I mean –

THE COMMISSIONER: Okay let's – just wait now, let the witness maybe answer –

MS. MULLALEY: Yeah.

THE COMMISSIONER: – and then we can try to figure out –

MS. MULLALEY: So if I may, yeah, the actual report – if you see the report that was released that accompanies this, it clearly says the first – the target for the first power is changed, it's not going to be 2017, if I recall correctly.

And it also further talks about – essentially, it's messaging on the re-baselining at this point that the – some of the – the Muskrat Falls generating targets are also being reassessed. So in the report that goes out and in the conferences that follow, it was clear that the first power target got changed. So this is this nuance. Like, bringing the power to the Island, it wasn't through the Muskrat Falls.

MR. LEARMONTH: Okay.

The – on page 12 of this report – excuse me, page – bottom of page 11, *COSTS/RATES*.

“Since the Muskrat Falls Project was sanctioned, we've seen cost estimates increase from \$6.2 billion, to \$6.99 billion and now another \$700 million to \$7.65 billion. Can we expect to see these additional \$500 million plus increases for the remaining years of construction?”

Now the answer is: “The capital cost increases that this project faces are no different from those experienced by the other large projects recently completed and still underway in the province and indeed across Canada. Cost of contracts, labour, escalating costs have been a consistent and ongoing issue. We are not immune to that.

“To date we have overcome some significant challenges and we are well into the construction phase of the project. Engineering and procurement is essentially completed. A significant percentage of materials is ordered and on the ground. With this in place this means the market risk that caused most of these increases are largely behind us.”

Now, based on what you know now, do you feel that was an honest statement?

MS. MULLALEY: No, I think, you know – particularly I guess as we know now, the Astaldi contract and also the Valard to a large degree, certainly a lot of the risks were not behind us and we saw that transpire in later – later years.

MR. LEARMONTH: So you would agree it wasn't an accurate statement, or an honest statement?

MS. MULLALEY: I mean, I think this is, again, communication materials to have for ministers to – for – to be able to speak to it.

MR. LEARMONTH: Yeah.

MS. MULLALEY: But, yeah, I mean if you look back now at the thing, we know that a lot of the significant risks specifically with Astaldi were not behind us at this point.

MR. LEARMONTH: But, I mean, whether it's a communication document or not, it should – I suggest that it should be –

MS. MULLALEY: Yes.

MR. LEARMONTH: – accurate.

MS. MULLALEY: It still should be accurate, yes.

MR. LEARMONTH: You know, to say it's a communication doesn't give one licence to –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – exaggerate the truth, does it?

MS. MULLALEY: No, it doesn't.

MR. LEARMONTH: No.

MS. MULLALEY: I think when you talk about market risks, again, I think some of the – you know, there's I guess some elements to the procurement side where the procurement was, you know, the contracts had been awarded. I mean, the market risk in earlier days was even more heightened because some of the contracts

hadn't been issued and awarded. We saw a lot of, you know, consequences because of the market. At this point in time, that's kind of coming down from that side. So the market risk, but the execution risk was very high.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah. So, I guess when I – I guess I'm looking at statement market risk, that's probably a little bit more accurate. But overarching, execution risk was extremely high.

MR. LEARMONTH: Yeah.

That's not reflected in that statement is it?

MS. MULLALEY: No.

MR. LEARMONTH: No.

MS. MULLALEY: No. No.

MR. LEARMONTH: Tab 41, I think we're in book 2 now, or binder 2. This is Exhibit P-03337.

Now, before we get into this, do you recall that – and we'll get into some documents further on this – that the report that was submitted on project controls and processes, Nalcor took objection to me in saying it shouldn't be released because there was commercially sensitive information in it. Do you recall that?

MS. MULLALEY: Oh, I absolutely recall that, yes.

MR. LEARMONTH: And ultimately government, Nalcor's position prevailed and –

MS. MULLALEY: Right.

MR. LEARMONTH: – the report was cut into two parts. One for public consumption and one was not for public consumption at the time. Correct?

MS. MULLALEY: Correct.

MR. LEARMONTH: And neither of those two parts of the report was released until after the election. Correct?

MS. MULLALEY: That's correct.

MR. LEARMONTH: Okay.

And do you also recall that when Nalcor claimed commercial sensitivity to – on 11 items in the report, 11 reasons that EY with their expertise reviewed it and said only one out of the 11 has any merit in terms of, you know, commercial sensitivity. Do you recall that?

MS. MULLALEY: Mmm. I think I have some recollection, and that would be, I guess, when this issue came up I asked Ernst & Young to look at the report, because that was the issue that Nalcor was raising and I wanted to have Ernst & Young's point of view on that.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Did you have any concerns about the repeated or regular use of Nalcor of this claim to commercial sensitivity, generally?

MS. MULLALEY: Again, you know, I would say it came up quite often. It was hard for me, you know, to try to really apply the lens. Did I personally feel that perhaps it was there more than needed to be? Probably, but I wasn't a lawyer. I really couldn't judge that, and that was a difficult position sometimes. But that's where we would either try to talk to Justice or you would use Ernst & Young to look at –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – trying to understand, I guess, the Nalcor position on it. But, again, I guess the commercial sensitivity again should be restricted to things of that nature and then there should be discussions around, I think, what you heard me saying this morning.

I think the commercial sensitivity – there should not be any commercial sensitivity lens, at least between Nalcor and government.

MR. LEARMONTH: Yeah.

MS. MULLALEY: You know –

MR. LEARMONTH: But you had deferred to EY's –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – expertise on that subject?

MS. MULLALEY: Yeah. I mean, certainly on those, you know – again, I think we would still circle back with Nalcor because, again, we're still trying to understand and kind of facilitate a consensus on what that would mean. So you certainly would still want to understand Nalcor's position on it, but I think when you can pinpoint the issues and then talk about them it becomes a little clearer.

MR. LEARMONTH: Yeah.

So if we look at tab 41, Exhibit P-03337 – this is after the report that I just referred to, the processing controls report had been submitted to government.

September 29, 2015, Richard Noble says: "Sorry David ... But we first need to qualify the commercial sensitivity with Nalcor."

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: "We don't know what Nalcor's thinking is for a majority (10/11) of items requested to be removed by Nalcor and identified commercially sensitive ... we can hypothesize... but it is not clear why they see them as such.

"Their removal would substantially alter the quality of the content... if we don't understand their alleged point of" – view of – "sensitivity we will also get into a back and forth updates and reedits.

"Keen to help... but we need Nalcor to qualify why/in what way they see the sensitivity in order for us to do the right thing in the report."

That's from Richard Steele [sp. Noble].

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: So, given that response, did that give you concern as to the merits of –

MS. MULLALEY: I don't actually know if I saw –

MR. LEARMONTH: Pardon?

MS. MULLALEY: I don't actually know if I saw, like, the –

MR. LEARMONTH: Oh, okay.

MS. MULLALEY: – that in writing before. Like, again, that's an internal one, I think.

MR. LEARMONTH: But you knew that that was an issue, did you?

MS. MULLALEY: But – yes, I knew some of the sensitivities because we were getting them in our drafts, right? So, I guess, what I did was I sent it to David Steele and asked him to look through it to see from their perspective on the sensitivity side.

MR. LEARMONTH: Uh-huh.

MS. MULLALEY: What we ended up doing was we did – we did split the report, and I think the majority of the commercial sensitivity was around, you know, the Astaldi contract again and –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – Nalcor felt that you could very easily identify – in the full report you could identify Astaldi, even though you weren't saying Astaldi.

So, in essence, how we had to try to achieve that was to split it in two reports where one was an executive summary where you could – the findings of the report were still there and intact. It was more the contracts that had been looked at and –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – so you couldn't identify the information.

MR. LEARMONTH: Yeah. But if – the opinion – in the opinion of EY, 10 out of 11 points were, we'll say, questionable. Isn't it true that Nalcor's position prevailed in terms of what was going to be put into one report and what was going to be put in their other one? One for public release and one for –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – confidential purposes.

MS. MULLALEY: Yeah. I guess I thought, ultimately, that both of them were released at the time, but I think there's one that went out in – I think both of them are published.

MR. LEARMONTH: Not – the executive summary, as far as I know, was released in December 21, 2016.

MS. MULLALEY: Okay.

MR. LEARMONTH: And the other one not until –

MS. MULLALEY: Later

MR. LEARMONTH: – much later.

MS. MULLALEY: Yeah.

MR. LEARMONTH: 2015, I should say, yeah.

Anyway, Mr. Carter will give evidence on that.

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: But I think I'm correct on that.

Now, if we go to tab 43, which is Exhibit P-03339.

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: And this is one your talking about the two reports is an option.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Right?

MS. MULLALEY: Yes.

MR. LEARMONTH: And you eventually settled on that and thereby accepted the position put forward by Nalcor on the commercial sensitivity. Is that correct?

MS. MULLALEY: I can't – I got to remember back, because I don't really recall, like, I seen the 11 there, but I don't recall anything – Ernst Young being – like, I don't recall like a debate afterwards when we worked through the reports.

I think everybody was sort of satisfied that – the key things for us again were the fact that the findings were there. Like, the findings on the concerns that were being raised were intact in that report, right. That was our key thing, the fact that you didn't have a backup to a specific contract that you reviewed was less of a concern, I guess. Our main thing was that the findings and the relevance to them, that's what got out.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: But the Oversight Committee's supposed to be communicating with the public. And I'm just wondering, if, as is suggested in these documents, EY was questioning whether 10 of the 11 points of commercial sensitivity had merit, why it was that government accepted, appears to have accepted, Nalcor's position over that of EY, and instructed EY to create two reports and not one.

MS. MULLALEY: I think the instruction to create two to one came upfront first anyway, as a – I mean, I don't even, like, I just know when I got out of the Cabinet room and we knew the sensitivity, I asked David to structure the two reports and see what that would look like and we would work through some of the –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – sensitivity.

So I don't think it was a piece where we worked through the sensitivities and then determined one, right. I think the reports were developed and were, I guess, considered okay from that perspective on both sides. I don't think we felt like we were hiding something in the report that was being released.

And, again, to me, the findings of the report, which was what was key, not necessarily what particular contract that they had reviewed, that was the key thing. And, again, I think, you know, just – I don't even – because I thought that the two had been put out afterwards. But, again, I don't know the time periods, but –

MR. LEARMONTH: No, I think you're – just to make sure I've made myself –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – clear on this, here's my understanding, and this is based on –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – Paul Carter –

MS. MULLALEY: Yeah, and he would know.

MR. LEARMONTH: – information.

MS. MULLALEY: Yeah.

MR. LEARMONTH: That the executive summary –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – of this report, was released to the public, together with Nalcor's response –

MS. MULLALEY: Yes.

MR. LEARMONTH: – on December 21, 2016 –

MS. MULLALEY: Definitely remember that.

MR. LEARMONTH: – after the election.

MS. MULLALEY: Yes, yeah.

MR. LEARMONTH: And that the full report was released or posted on the Oversight Committee's website on March 30, 2016.

MS. MULLALEY: Okay, yeah.

MR. LEARMONTH: That's the most likely date.

MS. MULLALEY: Yeah.

MR. LEARMONTH: If it wasn't March 30 –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – 2016, it was some time between March 30 and –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – April 12, 2016.

MS. MULLALEY: Yeah, I – yeah, okay.

MR. LEARMONTH: Okay.

MS. MULLALEY: I got that.

MR. LEARMONTH: No, but my point is that, and I don't wanna belabour it, but my point is that it appears that the position taken by Ernst & Young that 10 of the 11 –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – points for – on commercial sensitivity that was put forward by Nalcor, that EY's position on that –

MS. MULLALEY: Yeah, yeah –

MR. LEARMONTH: – was –

MS. MULLALEY: – I understand what you're saying, yeah.

MR. LEARMONTH: – was not accepted –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – and rather –

MS. MULLALEY: Yeah, and –

MR. LEARMONTH: – EY was instructed to split it into two reports. Is that correct?

MS. MULLALEY: That's correct, but I guess what I'm saying to you, I'm not sure where the 11 – I know it's in the EY email, but I guess what I'm saying to you is when we worked through those aspects, I don't recall anyone saying – disagreeing that something wasn't in,

you know, that was of high sensitivity or not of high sensitivity. I think the concept was everyone ended up concurring.

So I guess I'm trying to bring it back 'cause I don't remember any big discussion around 10 of 11, I don't even know if I ever saw that until I saw that in the email.

MR. LEARMONTH: Mmm.

MS. MULLALEY: The concept here was, take a look at it, if there's – if you have concerns around – that they can identify Astaldi – don't forget, they were going through negotiations with Astaldi. Is there – if there – if you can identify that contractor because of the way it is, can we reword it? Do we have to have all the names and the contracts that we reviewed in a – from a relevance perspective? I don't remember anybody debating, I'm just trying to say to you, there was no meeting that came in to say –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – we don't believe nine of those should, and that's wrong, and that's not the way it happened. They were asked to do it into two, and they did it into the two, and it came back in two.

MR. LEARMONTH: Yeah.

MS. MULLALEY: We went back in for a response, but there was no underpinning concerns that Nalcor was raising that EY was disagreeing with, I guess, at the time, if I can say that.

MR. LEARMONTH: Well, you know, I just refer you to tab 41 once again.

MS. MULLALEY: Yup. I know.

MR. LEARMONTH: Mr. Steele's comments, we don't know what Nalcor's thinking is for the majority, 10, 11, of these items.

MS. MULLALEY: Hmm.

MR. LEARMONTH: And that's September 29.

MS. MULLALEY: And I don't even know if they went back afterwards.

MR. LEARMONTH: Yeah, well –

MS. MULLALEY: Like, I don't even know if they circled back afterwards. I know they went into the reports, but I don't know if they ended up –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – ever going back to Nalcor.

MR. LEARMONTH: But in any event, I suppose it didn't make any difference to EY, as long as their findings were reflected –

MS. MULLALEY: Well –

MR. LEARMONTH: – whether it was in one report or two.

MS. MULLALEY: Yup.

MR. LEARMONTH: They would provide them to government.

MS. MULLALEY: Yup.

MR. LEARMONTH: It wasn't EY's decision whether to release –

MS. MULLALEY: No.

MR. LEARMONTH: – one or both of them to government that –

MS. MULLALEY: Right.

MR. LEARMONTH: – that was government. So, as long as their findings were provided to government, I presume EY said: It's up to you to decide.

MS. MULLALEY: That's true. That's true.

But I just want to make clear that there was no back and forth on argument over 10 or nine or, I don't even know if that happened afterwards. I just know we asked them to take a look at it, asked them to see if they could split it in two. They did.

MR. LEARMONTH: Yeah.

MS. MULLALEY: So I just want to – don't want to leave an impression that there was some exercise we went through where, in the end, there was a list over here that Nalcor was disagreeing with and EY was saying yes –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – and then we sided –

MR. LEARMONTH: No, no.

MS. MULLALEY: That process didn't happen.

MR. LEARMONTH: I am not suggesting that there was a struggle.

MS. MULLALEY: Okay.

MR. LEARMONTH: What I am suggesting is that from EY's point of view, as long as their findings in the first report that can be spilt into two or there, as long as government got what they had worked on –

MS. MULLALEY: And that was key to us. Absolutely.

MR. LEARMONTH: – it wouldn't have been any problem for EY to split it.

MS. MULLALEY: No.

MR. LEARMONTH: Because they have given everything to government. What's released to government is up to government, not EY.

MS. MULLALEY: That's right.

MR. LEARMONTH: Okay.

MS. MULLALEY: And I think the recommendation was really key for EY and key for us, as well, which was there.

MR. LEARMONTH: Yeah.

So, this report that I refer to, the August 31, this eventually was split into two.

MS. MULLALEY: Yes.

MR. LEARMONTH: And there was one report dated October 30, 2015, correct? So it took a long time to get this resolved, right.

MS. MULLALEY: It did.

MR. LEARMONTH: Why so long?

MS. MULLALEY: Well, you mean between September and October?

MR. LEARMONTH: Between the August report and the end of October report?

MS. MULLALEY: Well, the August report, I think, when it went in in draft, if I'm not mistaken, it would have gone over to Nalcor for review and validation. You know, so, that would've take some time, I guess. And then, you know, we were waiting.

It became apart of our submission then in – I think we brought it to Cabinet, September 21, just before our release of our project. So, you know, from August it was validating and then we had it and it was ready and then we brought it in, in our meeting, our Cabinet meetings in September.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: We'll go to tab 44, Exhibit P-03422. This is a letter from EY to Craig Martin, September 29, 2015, putting the report into two, right? The executive summary report –

MS. MULLALEY: Right.

MR. LEARMONTH: –and the detailed supplementary report.

MS. MULLALEY: Yes.

MR. LEARMONTH: And the detailed supplementary report is on page 3 of Exhibit P-03422. Correct?

MS. MULLALEY: Yes, that's correct.

MR. LEARMONTH: And then at tab 45, which is Exhibit 03582.

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: This is the summary report, the abbreviated one that was eventually released to the public on or about December 21, 2016.

MS. MULLALEY: That's correct, yes. Yeah.

MR. LEARMONTH: Is that correct?

MS. MULLALEY: Yes. Yeah.

MR. LEARMONTH: Okay, thank you.

Tab – so, the provincial election was November 30, 2015. There was a change of government, and the new government was sworn in on or about December 15 or 16, 2016.

MS. MULLALEY: That's correct.

MR. LEARMONTH: That correct?

MS. MULLALEY: Yeah.

MR. LEARMONTH: Okay. If we turn to tab 46 –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – and that's Exhibit P-03340. This is December 16, 2015, from Paul Hickey. He's a local representative – or he was at the time – of EY and various other people, including Michael Kennedy and Richard Noble of EY. Is that correct?

And Mr. Hickey says: "I just got off the phone with the Premier. He has asked Julia to talk to David about a full review of Muskrat. He needs solid information" Next paragraph, "Ed Martin, CEO ... has said he will resist the full review."

Now, what can you tell me about this resistance or alleged resistance by Ed Martin for a full review?

MS. MULLALEY: Again, I'm, you know, certainly reading this, but I do believe that the concern, which I heard expressed in meetings after that by Mr. Martin, was, again, the concept that, you know, this was a really critical time for

the project. They had a lot of issues with Astaldi; their folks were very busy trying to manage this project, and it was just not the right time for a review; it was going to chew up a lot of resources. You know, that would be my sense of what I kind of heard around that, and I would sense that would be the resistance to the full review.

MR. LEARMONTH: So that was what he said? He did – yeah.

All right, tab – and you were aware that he was resisting – Mr. Martin – were you? At this time?

MS. MULLALEY: I, you know, I – yes, I did hear those comments that I just mentioned: that this is not the right time; it's going to take key resources – you know, all of our key resources are focused on the project execution; this is going to be a big disruption, and so I – yes, I did hear those types of statements.

MR. LEARMONTH: But did you know at this time that a review was definitely needed?

MS. MULLALEY: Yeah, I mean, I think everybody understood that. I mean, for sure, and it was just going from a timing perspective and Nalcor was heading into a full QRA assessment, and, I mean, I think this is the opportunity to absolutely go in because they are resetting, again, and this did not work before – you know, from the perspective of it kept getting reset, reset, reset – and so the confidence, I guess, in the numbers was not there. And so this was being a full QRA which had not been done since, I believe, 2012. So it was very essential that someone else was in there and did an independent analysis. When that was being fully re-baselined, government wanted to have confidence that this was the right number.

MR. LEARMONTH: And it didn't have that confidence in January – 10th of December, 2015. Is that correct?

MS. MULLALEY: No. And I would say, you know, even – you know, there was lots of frustration in the Cabinet rooms with – before that even – heading into this 7.65. Again, I will say to you that this – and, I believe I've said it this morning – this constant re-baselining was a very big concern, and, you know, you feel it

would be the last one and then another one would come along. So, there was a lot of concern around where was this going to end and what was the right number and why couldn't we get a grasp on what the right number was. So, there were lots of those concerns around, for sure.

MR. LEARMONTH: Okay. And, that's why, I take it, a decision was made to go into this –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – major review?

MS. MULLALEY: I mean, it was the – it was a whole QRA being completed. That would be the right time, for sure. You're going in, and you need to know that this QRA is gonna come out with the – you know, the right number.

MR. LEARMONTH: Did you – are you aware that Michael Kennedy and other people at EY were surprised that there hadn't been a QRA done since 2012?

MS. MULLALEY: Yes.

MR. LEARMONTH: And Mr. Kennedy testified that there's no fixed rule – his – not a rule of thumb, but a guideline would be every six months and that if a project was experiencing no trouble, if everything was fine, then you could relax that six months. But if there were concerns that were apparent, then you would have to even, perhaps, accelerate it – if not stick by the six months, then even accelerate it.

MS. MULLALEY: Yeah.

MR. LEARMONTH: You're aware of that?

MS. MULLALEY: That would make sense. Yeah.

MR. LEARMONTH: Yeah? Yeah.

Okay. Now, if we go to tab 47, which is Exhibit P-03423. This touches on the QRA that – the second – it says from Richard Noble to David Steele and others – Michael Kennedy, Kirsten Tisdale and Paul Hickey – December 18, 2015, the second paragraph: "I believe there to be no action/changes required as a result of the

management responses from Nalcor. They acknowledged some of our findings and tried to soften others with wordy and at times tangential explanations... My favourite being" – so, this is one of the things that Nalcor put in their response to the report: "The approaches" – quote – "The approaches to contingency development contemplated by E&Y were undertaken at project sanction in ... 2012. Our current approach, which we believe to be appropriate and prudent at this stage of project development, is to continue to engage in direct discussion on emerging risks and cost pressures and take management action when they have emerged."

Now, can you tell me what that means?

MS. MULLALEY: Yeah, so this is – I'm just trying to tie it to the reports. This is, again, the report that we asked for on the project costs and controls, correct?

MR. LEARMONTH: Yeah.

MS. MULLALEY: That's the end of December.

MR. LEARMONTH: But he's referring to Nalcor's response to it.

MS. MULLALEY: Yes, yes.

MR. LEARMONTH: Yeah, and this is what they said, he said –

MS. MULLALEY: Yeah, "My favourite" – and this is the response, yeah.

MR. LEARMONTH: Yeah. He says that: "... and tried to soften others with wordy and at times tangential explanations... My favourite being"

MS. MULLALEY: Okay so –

MR. LEARMONTH: So I think there's a little sarcasm here.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Yeah. But, I mean, is that ...

MS. MULLALEY: Yeah.

MR. LEARMONTH: Well, if you want to answer, fine, but I can give you another option. Mr. Steele's interpretation of that is – quote – “We did it once... but haven't updated the quantitative contingency assessment in 3 years and are now managing by the seat of our pants... and living with the results....” Do you take –

MS. MULLALEY: Yeah, I mean –

MR. LEARMONTH: – exception to that comment?

MS. MULLALEY: No, I don't. I mean, again, you go back and you look – yeah, as you said, you do something back in December 2012, and yet you continue to have a lot of these baseline resets; well, something is not working. You know, something's not working if you're having to continue to do these baseline – and I think now, where we have a lot of the information, we know why they weren't working is because of various reasons including certain risks that were never captured in the baseline in the first place. So I think it became clear that the baseline had not – was not stable to start out with right.

So, I mean, I think you're here and at a critical stage where you're doing – you know, you have to do another – a whole QRA here. You have to –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – be able to do that.

MR. LEARMONTH: But that doesn't necessarily mean that that was something that was intentional to delay this by Nalcor – on the part of Nalcor – delay it. It could be just a lack of comprehension of proper processes. Isn't that a possibility, too?

MS. MULLALEY: Yeah.

MR. LEARMONTH: Do you agree?

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: Yes, okay.

And then the next paragraph says: “Bottom line... they blew their contingency allowances which were clearly inadequate and have the

substantial overruns on cost and schedule as a result...hmmm... a reassessment is perhaps warranted now, wouldn't you think.”

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: So I guess there's a little sarcasm in there.

MS. MULLALEY: Yeah, I mean, I think –

MR. LEARMONTH: But the point is –

MS. MULLALEY: I think by the time that, you know, we had these reports in – and, I mean, you know, this – well, at this point, it was December. We knew the project was going into a full QRA at that point. We knew that the schedules had to be reset. So, yeah, I mean, this whole aspect on the contingency and the baseline, I mean, this had to be a full reset now.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: And then at tab 48, Exhibit P-03584. This is a – Nalcor's response to review the EY report –

MS. MULLALEY: Yes.

MR. LEARMONTH: – commissioned by the Oversight Committee.

MS. MULLALEY: That's correct.

MR. LEARMONTH: It's dated December 18. I think that Nalcor's response was filed at the same time as the report was?

MS. MULLALEY: It was.

MR. LEARMONTH: Yeah, without comment by the Oversight Committee. In other words, there's some emails suggesting why didn't the Oversight Committee – rather than just put out the two reports, one from Nalcor and one from EY, why the Oversight Committee didn't decide which of the EY report was correct and which – and the parts of the Nalcor response that were correct? Sort of a suggestion of sort of sitting on the fence.

MS. MULLALEY: Yeah. I mean, I think it's normal protocol. And I would say even in the reports that I do as an Auditor General, you always have an opportunity for the respondent to put out a response. It's their response. But we fully believed in the EY review and the report and the recommendation – you know, to implement that.

MR. LEARMONTH: Yeah. Okay then.

Tab 49, Exhibit P-03832. This is from you – an email from you to a number of people in government – say: “As discussed in our most recent meeting, please find attached the final EY report on the Project Cost and Schedule Management Processes and Controls and the Nalcor response. The intent is to release both to the public tomorrow. Please advise if there” – is – “any further question or comments”

And I think if you turn the page to page 3, you'll see that this was just the first part of the report, it wasn't the full part. Is that correct?

MS. MULLALEY: Yeah, this is the one that was going out, probably, yeah.

MR. LEARMONTH: The public.

MS. MULLALEY: Yeah.

MR. LEARMONTH: And the other one didn't – I think that's what I said earlier, that they were released –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – on December 21 –

MS. MULLALEY: Yeah, yeah. I believe that is –

MR. LEARMONTH: – together with the –

MS. MULLALEY: – that's correct, yeah.

MR. LEARMONTH: – response which is beginning on page 9 –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – of Exhibit P-03832.

Yeah, and if we go to tab 50, which is P-03450, this was the – one of the two releases. This is the release saying that “The Honourable Dwight Ball ... together with the Honourable Siobhan Coady ... will make an announcement today (... December 21) regarding a review of the Muskrat Falls Project.”

And if we turn to the – tab 51, which is Exhibit P-03451, you can see this is a review – this is the announcement of the release of the project cost and schedule management processes and controls. Correct?

MS. MULLALEY: Correct.

MR. LEARMONTH: Okay.

And then another document at tab 52, P-03452, Responsible Management of the Province's Investment, Government Opens Books on Muskrat Falls Project.

Now, is this – can you confirm that this is the announcement that, after some delay, government is gonna do a serious review of the guts of the matter?

MS. MULLALEY: That's correct.

MR. LEARMONTH: Yeah.

MS. MULLALEY: You're going in to look at: when the QRA is being done; are those cost and schedules – are they reasonable, yeah.

MR. LEARMONTH: And this is what EY has been itching for, all along.

MS. MULLALEY: Yes.

MR. LEARMONTH: Isn't that right?

MS. MULLALEY: That's correct.

MR. LEARMONTH: Yeah.

Tab 54 is the contract with – P-03833, this is, I believe, the statement of work of the contract with EY, January 14, 2016. If we look at the scope details at the bottom of page 2 and the top of – and carrying on to page 3, this is the detailed statement of exactly –

MS. MULLALEY: That's correct.

MR. LEARMONTH: – what they're going to do.

MS. MULLALEY: That's correct.

MR. LEARMONTH: And I believe the price of that or the cost of that was – if we look on page 7, there was – the target fee was \$1 million with a range of \$750,000 to \$1,250,000. Correct?

MS. MULLALEY: Yes, that's right.

MR. LEARMONTH: Yeah.

Now tab 55, Exhibit P-03346. First, Ms. Mullaley, do you agree that EY really jumped to attention after this contract was signed? That they brought in people from all over the world – well, not all over the world, but from England and Vancouver and some –

MS. MULLALEY: Yes, yeah.

MR. LEARMONTH: – from Australia –

MS. MULLALEY: Absolutely.

MR. LEARMONTH: – and Toronto.

MS. MULLALEY: They certainly brought a –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – great team to our (inaudible).

MR. LEARMONTH: And Mr. Kennedy, when he was here testifying, he said that they had – he came down here from Vancouver, was here for a week or 10 days or something like that, and they met with Nalcor executives.

MS. MULLALEY: Correct.

MR. LEARMONTH: And after he returned to Vancouver, he sent an email, on January 21, to David Leather and David Steele, copied to Kirsten Tisdale, "RE: Call from Julia." And this was following these meetings.

MS. MULLALEY: Correct.

MR. LEARMONTH: And he said, "Hi David. I know we talked a little earlier just when I got back to YVR" – that's Vancouver. "Just thinking a bit more, I feel pretty queasy about where we are at given the call to Julia from Nalcor and continued absence of data, which are again indicative of the culture and lack of transparency over there. None of this consistent with normal practice in major capital projects, let alone best practice. Thieu Hue who mentioned to me yesterday that we are 400k" – dollars – "into this upto this week. Are we at the point of a straight forward discussion with Julia?"

So, you know, he's – that's a quite a strong statement, don't you believe?

MS. MULLALEY: Yes, sure.

MR. LEARMONTH: Yeah. And he's saying we've – we spent \$400,000 already –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – the suggestion, I think, being that we haven't really accomplished anything.

MS. MULLALEY: Mmm.

MR. LEARMONTH: And there's concerns about – culture and lack of transparency.

Now, did – was this communicated to you, this concern –

MS. MULLALEY: I –

MR. LEARMONTH: – by the senior people at EY?

MS. MULLALEY: – I think what's happening here, 'cause this is a protocol, I guess, Dave and I had, and I think they always tried to deal with the issues themselves, you know, they would do that. But when they wanted to escalate, they would call me. And I think that's what "Are we to the point of a straight forward discussion with Julia," I – my sense here is this is probably – and I would've received some calls after this of – escalating it up.

So they would call me to do that, and then I would call over to Ed at the time and would – we would try to, obviously say, you know, this – we’d release the date or whatever, because the problem was there were still issues with trying to get data as much as they could. And sometimes they felt they weren’t getting access to data in the data room. So when they had those issues, they would escalate it.

And then you do see, again, there are other emails that they check back, and when that happened, when I called Ed, they would be okay. Again, that – you know, things would happen.

You know, I look down at the bottom, and again, this is some of the issues when you said “given the call to Julia from Nalcor,” and I just feel I – again, I wanna point it out, down on the bottom here.

MR. LEARMONTH: Go ahead.

MS. MULLALEY: So this is the call that I got from Nalcor, you can see it recorded down below here, you know: “Received a call from Julia. She was questioned by Nalcor today why EY was requesting Project Briefings made to the Premier and the Nalcor Board.”

So, you know, again – you know, Ernst & Young was charged to go in and do a full cost and schedule –

MR. LEARMONTH: Right.

MS. MULLALEY: – review. And I get a call saying they’re in here asking for all of the presentations that we gave to former Premier Davis.

MR. LEARMONTH: Right.

MS. MULLALEY: So that – you know, I guess what I would say on that is you try to (inaudible), called David to say: David, you know, this is causing some concerns over Nalcor, like, why – what would that have to do – a presentation that was given to Premier Davis before he left office, what does that have to do with anything, to try to get a cost and schedule here?

So you can see there are still questions being asked where it just doesn’t seem – like, you’re trying to understand the gist of those questions. So I think it starts, again, setting tones, since people are starting to work together. But nonetheless, I just – I wanted that – point that out.

But the email upfront that you referenced to me, this is one where they would – as soon as they – if they were having problems getting access to data or anything, they would call me; I would call Ed.

MR. LEARMONTH: Yeah.

MS. MULLALEY: And you’ll see some follow-up emails and things would work, you know, the protocols –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – would start working, right?

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: But if you’re – you know, you’ve signed a contract that’s going to cost, probably, at least a million dollars. The taxpayers are paying this. Your experts are looking for information that they feel is necessary for them to do their job. Why would you put any limits at all on –

MS. MULLALEY: Well, we – there were no limits put on it.

MR. LEARMONTH: – the – just wait ’til I finish, please.

Why would you put any limits? Why wouldn’t you say to Nalcor: Look, we’re hiring EY on behalf of the public, the public is paying for this and give them whatever they want, and end of discussion?

MS. MULLALEY: They were. You know, obviously, like, those things happen.

But what I’m saying to you is sometimes when you get those calls it was, you know – to call

and to talk to David about, you know, there – I guess, there were a lot of – you know, again, it was that type of relationship when they got over there. But it did improve. It improved a lot, actually, after this. But at the time when you – when you're walking in and doing a full re-cost and schedule rebaseline and just asking specific information, I guess it just gets people's you know – in Nalcor it was getting their back up and trying to understand why they were looking for that particular – not that they shouldn't be looking for anything they wanted. I don't – I'm not saying that. But it's trying to understand sometimes the nuances that were going around and all these relationships that were happening.

So I'm just trying to be open with you on some of that. But there was never a time – like, I mean, I think as you work through any of the emails, once they got in there in January, they got access to the data and they were working away very much in that. The problem then became the Astaldi contract and some of the negotiations that were happening and they weren't happening fast enough so that they weren't able to actually complete this piece of work in the end, right? They had to go and do a reasonability on the budget at the time because the QRA was a lot slower, I guess, getting done.

MR. LEARMONTH: Yeah.

But anyway, that's your answer and that's fine. But I just want to leave you with one thought, that –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – I think – a thought that some people might have is that: I don't understand this. You're providing oversight, it's public money. You tell Nalcor, very bluntly, we don't want any push back at all. Whatever they want – do. And we're sick of listening to you.

MS. MULLALEY: Yes.

MR. LEARMONTH: That – I think some people would say that's what should've been done here. Not this – I wouldn't say it's tiptoeing around, but this recognition that you have to be sensitive with Nalcor, I suggest that's a problem.

MS. MULLALEY: Yeah. And I don't think, you know – well, I agreed to a degree that there might've been some sensitivity around – that's sort of – when Ernst & Young went in with this review, I mean, I don't – I can tell you, I don't think there was anything blocked or not at all, and when it did they would call. I mean, you could ask Ernst & Young that. Again, sometimes they weren't getting things quick enough and then calls would have to be made, but there was never ever a concept here of blocking them from getting stuff.

MR. LEARMONTH: Yeah.

Well anyway, we'll leave it that point.

Tab 56, which is Exhibit P-03571. Now, this is a draft Cabinet presentation that Ed Martin is sending to you –

MS. MULLALEY: Yes.

MR. LEARMONTH: – and this is – has to do with – January 2016, this is when the – after the EY report has been – or been requested, that they've been given their mandate.

MS. MULLALEY: Yeah.

MR. LEARMONTH: And if we go to – this is Muskrat Falls Update, January 2016. If we go to page 7 of Exhibit P-03571, page 7, I should say.

MS. MULLALEY: Okay, yeah.

MR. LEARMONTH: So this seems to be some documentation on Astaldi. Is that correct?

MS. MULLALEY: Yes.

MR. LEARMONTH: Okay. So you hadn't received much in the way of documentation on Astaldi up to this point. Is that correct? When I say you, I mean the government or the Oversight Committee.

MS. MULLALEY: Yeah. I mean, this is one of those contracts that wasn't accepted for a long – quite a long time because they were having so many issues, I guess, with the contractor and it – yeah, it hadn't been accepted into the data room at that point, right?

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah.

MR. LEARMONTH: And none of the – up to this point, none of the Astaldi exposure was reflected in the cost estimates that you saw. Is that right?

MS. MULLALEY: Maybe a little bit into the 7.65 but not to what was building up (inaudible).

MR. LEARMONTH: Yeah.

On page 16, it says: “**Astaldi’s Cost Issues + Schedule Impact**

“Additional cost to Astaldi over contract bid to complete (as estimated by Astaldi) is \$600 - \$650 million”

MS. MULLALEY: Yeah, that wasn’t in the 7.6 –

MR. LEARMONTH: That was Astaldi’s numbers so that’s not –

MS. MULLALEY: Yeah.

MR. LEARMONTH: So is – at this point – oh, then we go to page 24 of this document.

After considering option 1 – “Option 2 - Continue with Astaldi as is, with assistance;

“... Estimated net additional cost ... \$430-\$575 million”

So these are estimates that Nalcor is providing you as to how much it’s gonna do to – take to –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – resolve the Astaldi conflict. Is that right?

Now, this point is government – in January 2016 is government being requested to authorize Nalcor to settle with Astaldi? What instructions is government given?

MS. MULLALEY: Yeah, so I guess this goes back to probably the memo I gave you on file.

So what happened here is in December I had gotten a call from Ed and they were in some discussions with Astaldi at the time. And they were looking to settle, I guess, a number with them. And the concern became, of course, that – you know, again, lots of concerns on the project, but concerns on any additional costs. So I guess the conversation Ed and I had was like, you know, who is aware of this? Is the minister aware? Is the Premier aware? And so on and so forth.

So, in essence, no one was really aware. Everyone was aware that there were discussions happening but not the concept that this was going to be (inaudible) meeting this weekend kind of concept. So we had to circle around that and we had to bring it in and so then there was a process put around this whole aspect because, you know, as is outlined in the memo this – you know, you can’t go to tables and do the good faith negotiations unless you have that mandate from government, and generally that includes some sort of a quantum. And in this case that wasn’t done. So, you know, the government is coming in, it’s doing a whole new review and now we’re – you know, you’re having – we’re having – we have to put a process around this. This is more money, this is public taxpayers’ money and there’s no independent assessment or analysis of this and this has to get looked at.

So this was a process that was started and this is where Ernst & Young was also brought in to do. You know, and you’ll see some of those comments in my memo that I produced to you.

MR. LEARMONTH: Yeah.

MS. MULLALEY: But this is what was happening internally. Again, lots of concern around we’re not just going to sign off a number, we need to know what it is, we need to know it’s the right number, we need to know that we have to pay it in the first place. So this was – a plan was kind of put in place to start –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – putting in the analysis and bringing it forth. So this deck, what you’re showing here now, is Ed would have put that together for –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – our first briefing on this issue.

MR. LEARMONTH: But in a nutshell, is what you're saying that Nalcor wanted authority to pay hundreds of millions of dollars to Astaldi but hadn't given any plan or strategy or background documents to government in support of this request? Is that what the issue was?

MS. MULLALEY: Yes, that's correct.

MR. LEARMONTH: Okay.

So if we go to tab 57, which is P-03874, is this the letter that on January 25, 2016 –

MS. MULLALEY: Yes.

MR. LEARMONTH: – you wrote to the Premier reflecting your concerns?

MS. MULLALEY: Yes, and these were, you know, the concerns of government of the day, right, of the Premier and others as well. So this is outlining those concerns and trying to bring some structure and process around that.

MR. LEARMONTH: All right.

And so you were firmly in support of a position that before we consider this we want to see some documentation –

MS. MULLALEY: Absolutely.

MR. LEARMONTH: – from Nalcor, not just –

MS. MULLALEY: I mean, that –

MR. LEARMONTH: – a note –

MS. MULLALEY: Again, that is very typical. I mean, I would say I was, you know, involved with offshore oil negotiations before in government, and you cannot – and, again, repeat – you can't go to a table in good faith negotiations unless you have a mandate. And you don't get a mandate until you come in and there's a clear understanding of the cost, the pros, the cons and, you know, some sense of

principles that you go with some sort of – and then you can go in good faith negotiations.

MR. LEARMONTH: Mmm.

MS. MULLALEY: So the problem here was there were numbers and I think people – again, don't get me wrong, people knew that there were issues with Astaldi in that some sort of negotiations probably were happening – had to happen with Astaldi, but the numbers themselves had never been discussed like that. There had been no documentation coming in, there had been no – nothing had come in.

So the problem was you can't give approval just to go off and sign something in a matter of days without that analysis being done.

MR. LEARMONTH: And –

MS. MULLALEY: So this was just putting a process around that.

MR. LEARMONTH: Yeah and isn't it true that – and this is reflected on page 2 of your January 25, 2016, letter, P-03874, that you recommended to government – well, to the Premier that EY be retained –

MS. MULLALEY: Yes.

MR. LEARMONTH: – by government to –

MS. MULLALEY: Yes.

MR. LEARMONTH: – give government some background on the Astaldi? Because you weren't –

MS. MULLALEY: Yes, so they were in there –

MR. LEARMONTH: – getting the information –

MS. MULLALEY: – doing this project now –

MR. LEARMONTH: Yeah. Yeah.

MS. MULLALEY: – and then, so we –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – dovetailed –

MR. LEARMONTH: It's another job.

MS. MULLALEY: – them in to that.

MR. LEARMONTH: Yeah.

MS. MULLALEY: And to review the negotiating strategy, you know, we all – including the ministers, everyone – became pretty involved with this and we attended meetings with –

MR. LEARMONTH: And I think the EY people did quite a lot of work on this.

MS. MULLALEY: They did.

MR. LEARMONTH: And –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – as we'll see later, I don't think they were overly impressed with Nalcor's approach. Is that a fair comment?

MS. MULLALEY: Yeah. The presentation that they certainly brought in, they felt that, you know, they had certain recommendations for the negotiating strategy for sure.

MR. LEARMONTH: All right.

Now, tab 58, this is P-03429. Now, this is an internal – no, this was a document that was sent to you on February 12, 2016, by David Steele.

MS. MULLALEY: Yes.

MR. LEARMONTH: And do you remember seeing and reviewing this?

MS. MULLALEY: Yes.

MR. LEARMONTH: Okay.

Mr. Steele said – or EY says – on page 3, Interim Status Summary, scope: "EY, to date, has had no visibility Nalcor's" – much beyond Nalcor's – "analysis and potential outcomes to the Astaldi discussions" –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – "which currently presents the most material cost and schedule risk to the Project, and potentially has significant knock-on consequences.

"Nalcor has continued to re-baseline its forecasts and this is not scheduled to be completed until the end of March.

"A relatively stable and current baseline is a key condition for success" and so on.

So –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – this points out, also, at the bottom of page 3: "Therefore, we recommend that we conduct a review of the reasonableness of the" – September 25 – "September 2015 AFE2 cost and schedule forecast ..." potentially "identifying opportunities to address any material/critical risks."

So this reflects the concern of EY on these points. Is that right?

MS. MULLALEY: Yeah. So I guess what's happening here now is, of course, they've already been engaged to go in and there was a public commitment to release a report in March and it was more than this. I guess at the time, the intention was that the QRA was going to be completed and Nalcor was going to have a new cost and schedule and that Ernst & Young was going to be able to look at that for government to determine if that looked reasonable.

What was happening here, unfortunately, is that they could not do their work in that time frame because the QRA was still ongoing in Nalcor and the Astaldi discussions, as you know now, went quite long – a lot longer. So the project couldn't be re-baselined at this point. So what he's flagging here is, you know, this is the concept. We have a commitment out to the public where we're going to come out with this, so David and I – guess we started rethinking and talking with government and so on and so forth.

Generally, what we felt was an option was to do at least an interim report. So you could do an interim report and it would go – basically, what

you'd be doing is going back to the 7.65 base now and going in and looking at that and at least putting a report out on, you know, the reasonableness of that, where were the risks so that at least we could identify where the risks were, would we – and we would know about them and maybe there'd be some ability to mitigate those risks.

With a commitment, I guess, once that interim report –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – would go out, that once the re-baselining was completed, Ernst & Young would come back in again and review the final. So this is the first of those presentations you see where we're trying to come to a solution that – and we end up saying, well, at least let's do an interim report.

MR. LEARMONTH: Okay.

So am I correct that, at this point, the concerns about Nalcor are increasing inside government?

MS. MULLALEY: Well, like this here, what you're reading here, really, is the fact that they can't get any visibility into it because they're still in the middle of discussions. So they can't – yeah, they're not getting access into the visibility of Astaldi so, yeah, there is concern in government that – because we thought we would be in and out and be able to do this in March and yet they're still not being able to get access to the Astaldi contracts at this point.

So from – if the question is around that comment, yeah, there's a lot of concern from that perspective.

MR. LEARMONTH: On what basis could Nalcor deny you access to the Astaldi contracts?

MS. MULLALEY: It's not denying access. I think they had access to the contract. It – what it is, is Nalcor's analysis and the outcome of the Astaldi. So what the time was – at the time Nalcor was working with Westney at the time and they were again at – you know, certainly at the direction of government, developing options around the Astaldi.

And, you know, there are a number of options here, whether you can remove them fully from the project, whether you – you know, there was a variety of them. So Nalcor, under the direction of government at the time, was going through this other process on options, trying to understand what the best option was and the consequences of that.

But when that – as that analysis was going on, EY had the contract, but I guess what they're saying is they don't have – still have full visibility into the Nalcor's analysis and the outcomes. Hence, then, they got involved with the – government put them on as part of the negotiating strategy to review that as well, so that they could get that insight into the analysis and the options. So that came as well.

MR. LEARMONTH: And eventually the government wanted – the Premier wanted EY to be at the negotiating table with Astaldi. Is that correct?

MS. MULLALEY: That –

MR. LEARMONTH: And Nalcor refused?

MS. MULLALEY: – was in conversation.

MR. LEARMONTH: And Nalcor refused?

MS. MULLALEY: I can't recall specifically or not.

MR. LEARMONTH: Well, would you agree that the Premier wanted –

MS. MULLALEY: I do recall that discussion –

MR. LEARMONTH: – to be at the table?

MS. MULLALEY: – of having them at the table, yeah.

MR. LEARMONTH: And do you agree that Nalcor – or EY – was not at the table when the discussions were made with –?

MS. MULLALEY: Yeah, and I can't even – I can't confirm that.

MR. LEARMONTH: You can't? Okay.

MS. MULLALEY: I don't know. Yeah.

MR. LEARMONTH: Very good.

Tab 60, Exhibit P-03086; this is February 26, 2016, Kelvin Parsons, who I think was chief of staff to Premier –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – Dwight Ball –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – made notes on a meeting, February 26 meeting, with a number of individuals. And this was his record of the meeting and I believe you were present. If you turn to P-03086, page 2 –

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: – “Speaking Notes from Feb 25th Meeting with EY:

“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, TM and JM attended.”

So JM is you, is that right?

MS. MULLALEY: That’s correct.

MR. LEARMONTH: And you were at that meeting?

MS. MULLALEY: I was.

MR. LEARMONTH: Do you remember the meeting?

MS. MULLALEY: Absolutely.

MR. LEARMONTH: And the TM, I think, is Tim Murphy from the –

MS. MULLALEY: It was.

MR. LEARMONTH: – Premier’s office –

MS. MULLALEY: Yes.

MR. LEARMONTH: – and KP is Kelvin Parsons.

MS. MULLALEY: That’s correct.

MR. LEARMONTH: Have you read this record of the meeting?

MS. MULLALEY: Yes, and I mean I’ve seen this before. Yeah.

MR. LEARMONTH: Yeah. And does it –

MS. MULLALEY: Yeah.

MR. LEARMONTH: Do you – I know it’s not a transcript, but do you believe that this is an accurate reflection of what was said at the meeting?

MS. MULLALEY: Yes.

MR. LEARMONTH: Okay. And Michael Kennedy was there too. I’m just going to go through –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – some of these points: “The lead EY rep was David Leather, who in a past life was CFO for the London Olympics which had a budget of 9 billion Euros. That project came in on time and on budget.” I’m not sure if that’s right, but anyway.

“EY’s key conclusion from their work...is the current cost estimate of \$7.65 Billion is not reasonable, particularly as it relates to the Astaldi situation. EY’s estimate is the problem with Astaldi is in the range of \$600-\$800 million. Nalcor has been referring to a \$650 million ...”

So you remember that discussion?

MS. MULLALEY: Yes, absolutely – yeah.

MR. LEARMONTH: Yeah.

And then the next point is, “One of EY’s key findings is when the MF project was initially set up, there was no Management Reserve put in place. This Reserve is normal for major capital projects and is a finite pot of funds available for

unforeseen technical and management risks that arise above the project level.”

So at this point, were you aware that there was – ?

MS. MULLALEY: No, this is how we became aware of it actually –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – through this review, yeah.

MR. LEARMONTH: Yeah.

Because there was no – once again, Astaldi in that report I referred to, recommended a 497 million management reserve.

THE COMMISSIONER: Westney.

MR. LEARMONTH: Westney.

MS. MULLALEY: Westney, yeah.

MR. LEARMONTH: And it wasn’t included in the 6.2 billion.

MS. MULLALEY: That’s what I understand, yeah.

MR. LEARMONTH: And government wasn’t made aware of it?

MS. MULLALEY: No, absolutely not.

MR. LEARMONTH: Is that a problem for you?

MS. MULLALEY: That’s a problem, yes.

MR. LEARMONTH: Why?

MS. MULLALEY: Well, again, because if you – you know, if you don’t understand – again, it just comes down to, you know, when you’re doing public policy and you’re green-lighting a project, you need to know what that is. Again, it could be strategic, it could be tactical. But you still need to understand because that’s where your risk is, I guess. That is your outside – your risk what you’re estimating, and certainly you need to be able to base your decision on that.

So if you’re not putting in numbers that are – in my view, I guess these would be real numbers – I mean, that’s not appropriate. ’Cause again, it gets right back to what I’m saying today. You have to have all the information in front of you to make a decision. When you choose not to put pieces in front of you, you’re in – you’re losing that opportunity and not only losing it, I guess, you’re not providing – and that’s what you’re – that’s your role. Your role is to put everything forth, and when you don’t do that, that’s not good public policy.

MR. LEARMONTH: That’s a lack of disclosure isn’t it?

MS. MULLALEY: Yes.

MR. LEARMONTH: Yeah.

And then next it says, “Not only was there no Management Reserve included in the budget, Nalcor’s view is the amount of money available for the MF project is unlimited given that Nalcor believes Government will provide whatever funding is required. That has been the practice and experience until now.”

We were told that that information came from James Meaney. What do you have to say about that?

MS. MULLALEY: You know, I guess I – the – I would agree. I mean, I think that the concept is that you knew you had a government backing you, and, you know, I know that, you know, well, they tried to – there’s a concept – obviously they were trying to mitigate cost. I think there was a belief that government was there as the backstop.

MR. LEARMONTH: Yeah.

But government didn’t know what it was backstopping if it –

MS. MULLALEY: No –

MR. LEARMONTH: – wasn’t told –

MS. MULLALEY: – and that gets –

MR. LEARMONTH: – of the –

MS. MULLALEY: – back to the whole point. You need to have all that information, that’s what you make your decisions on.

MR. LEARMONTH: Okay.

Now as I said, I’m not gonna go through all these points, but I wanna turn to page 3 and the fourth dot down: “EY described a culture of ‘we know best’ on the MF project at the senior levels (CEO and direct reports). EY added that the mid-management level and down in Nalcor are extremely competent....”

Did you detect a ‘we know best’ attitude at Nalcor at this time?

MS. MULLALEY: I would say yes.

MR. LEARMONTH: You did. You agree with that?

MS. MULLALEY: I agree.

MR. LEARMONTH: Okay. And there are some other comments about – were you involved – or I should say: when did you become aware that the role of SNC-Lavalin had been downgraded from that of an EPCM contractor to being part of an integrated management team?

MS. MULLALEY: Oh, my gosh. I think I knew that one fairly early ‘cause it had happened – I can’t recall the date, but I think that happened before I even came in to the clerk’s role, I believe.

MR. LEARMONTH: Okay.

Did – was government informed before this change was instituted, to your knowledge?

MS. MULLALEY: I don’t think I was there. I – I’m – I apologize, I’m just trying to get the time frame. I don’t know if you have anything that –

MR. LEARMONTH: No.

MS. MULLALEY: – says that. I’m thinking it’s –

MR. LEARMONTH: No, well I don’t have any information –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – that suggests –

MS. MULLALEY: Well anyway, I guess all –

MR. LEARMONTH: – that government has made –

MS. MULLALEY: – I can say to you is no, I don’t recall anything ever – but it might’ve been because it’s before my time there, I don’t – I can’t – I don’t have that time frame in my memory.

MR. LEARMONTH: And it also says that – one, further down, “EY” – on page 3 – “also looked at the issue of the change in strategy not to have SNC Lavalin as the EPCM This change in strategy to not have a world-class EPCM contractor manage but rather turn project delivery over to an Integrated Project Management Team, was not fully thought out, in EY’s opinion.”

And then they say that there was no documentation on that.

MS. MULLALEY: Mmm.

MR. LEARMONTH: No.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Anyway, we go on, on page 4, and there’s a full discussion of the Astaldi problem.

On page 4, third dot down – second: “Specific to the Astaldi issue: EY is real surprised that discussions with Astaldi to resolve the \$600-\$800 million issue are still at a high level, even though the problem has been evident for 18 months.”

Is that a – was that an item of concern when – to you when you learned of it?

MS. MULLALEY: Yeah, it was.

Again, you know, I guess we knew that they were – the Astaldi was an issue that they were monitoring and, you know, actively mitigating, but yeah, I think that – that even the concept of

where this quantum would come from or even if it was a quantum, again I guess the concept of being evident for 18 months I don't – I guess that surprised me from the perspective of imagining if there was a quantum around for 18 months.

MR. LEARMONTH: Yeah.

MS. MULLALEY: But, I think when I read it first it was more around that they – you know, if they were having problems with Astaldi and, you know, that's been a long problem, but this – the \$600-\$800 million I wouldn't have thought would have been that long –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – before that, yeah.

MR. LEARMONTH: But what – you know, there's been a lot of talk in this Inquiry about mitigation, but what mitigation was done? It's one thing to say you're going to mitigate and mitigation plans are in place –

MS. MULLALEY: I agree.

Yeah.

MR. LEARMONTH: What mitigation was done on the Astaldi question, to your knowledge?

MS. MULLALEY: Well –

MR. LEARMONTH: Or, what mitigation was reported to you?

MS. MULLALEY: I mean, I can only go back on some memory. I think it had a lot to do with the team that was put in place up there and they certainly had to move a lot of the team and bring in a lot of people who had capital – management and capital experience here in Canada and around here. So, I think they did end up having to move a lot of people in. That was certainly one.

I know they developed, you know, 120-day plan with them to try to bring some of this back on schedule. There was some other elements on the batch plants up there. Some of it's a little bit more foggy, but I mean, you know, some of

those aspects are happening, but I think the real thing is the – you know, that the domes became a real issue and then the domes were in the way and so that became a very big issue and it just didn't – it was no longer realistic for the, I guess, the concrete placement rate, you know, and that really was evidence in the schedule starting to slip a lot.

So, because of all that and because of the construct of the contract, as you know, the labour max was coming up and so this became the issue. They were getting ready to hit labour max and, you know, they – a real risk and I would say that's a high risk they were going to walk off-site without some sort of a negotiated deal.

So – and I think what EY is getting at here is they've known about this for quite some time, but when they started to review the documents for, you know, the premier and the ministers were looking at on – to try to understand the quantum they found they were just still so high level and they were surprised at that because if they knew about this for so long, you'd think this would be at a much more refined place right now. And that's sort of where that comment is coming from.

MR. LEARMONTH: Yeah, and then, these comments also – and on page 5, the second dot and the third: "When we asked why Nalcor would be pressing for permission from the government to get a mandate to settle with Astaldi prior to March 8-9, EY indicated these dates were likely being used as a pressure tactic by Nalcor on government (rather than by Astaldi on Nalcor)."

How did you react to that information?

MS. MULLALEY: Yeah, I would say that I know when this first starting happening there was a very significant concern around the solvency aspect of Astaldi and things that were happening, and they were close. So I felt that, that was sort of being the premise of having to get a settlement in place, you know, with this issue and their statements were coming out.

And so I believe that sort of was, you know, a stand of Nalcor at the time in trying to say that we need to get this settled quickly. And Nalcor

was basically – or, sorry, Ernst & Young was basically not agreeing with that position, that they felt that was – yes, there was some solvency issues, but they did not feel that it needed to get resolved.

MR. LEARMONTH: Yeah.

MS. MULLALEY: And it felt like it was a pressure tactic to try to move this through without the, I guess, robust analysis we were trying to put in place at this time.

MR. LEARMONTH: But it must have been unsettling to receive that –

MS. MULLALEY: Pardon me?

MR. LEARMONTH: It must have been unsettling for you to receive that information that Nalcor – it was a pressure tactic by Nalcor on government?

MS. MULLALEY: From what perspective?

MR. LEARMONTH: Well, you're – they're a Crown corporation –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – and they're trying to pressure government with a tactic.

MS. MULLALEY: Yeah, that's how they – that – I guess that's how they felt, but I mean government wasn't really feeling they were trying to pressure government. But, you know, the government of the day at the time, they were not feeling they had to answer tomorrow at all and, in fact, they didn't agree with that.

I think what he's reflecting here is that's how he's feeling it's being brought forward – it's got to get settled, got to get settled.

MR. LEARMONTH: Yeah.

MS. MULLALEY: But government was taking every bit of time and I can tell you that first-hand they were not moving on this until they had a hundred per cent confidence that this was the right thing to do to even to negotiate something with Astaldi, because they weren't even convinced that was the right thing to do. They

needed to go through that process, which was the right thing, to understand what was all the options.

So, again, I would say to you, you know, Westney was brought on and EY was put into that process and we attended presentations, ministers attended presentations to get, you know, a lot of understanding on it. So they did not feel pressured by that at all.

MR. LEARMONTH: Okay.

MS. MULLALEY: No.

MR. LEARMONTH: But I mean you mentioned Westney but on page 4, the third dot down, records that "EY seriously questioned the Nalcor approach of hiring a consultant to convince itself that Astaldi was in financial trouble. They described this as a type of covert, private eye approach. So far, Nalcor has provided a report on Nalcor letterhead but refused to identify for EY who did this work on their behalf" to allow EY to follow-up. So that's, once again, refusal to release information to EY. Correct?

MS. MULLALEY: Yeah. So from that perspective, again, Ernst & Young was brought in and Nalcor was directed they were going to be a part of that negotiating – they were reviewing the negotiating strategy and they started attending those meetings as well, right? So, again, you're seeing, you know –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – I think the pressures are there but I think government is responding to those.

MR. LEARMONTH: Yeah but what I'm getting at here is that, once again, Nalcor is refusing to provide information to EY. How did that go over with you?

MS. MULLALEY: Yeah, I mean it didn't – I mean that's the point, I think, at this juncture here. You know, when anything like that came up, it – you know, they were directed back and it happened. You know, EY was inserted in there and that was it.

MR. LEARMONTH: Well, anyway on page 5 a concluding comment, just – the second-to-last paragraph from the bottom. The last sentence, I guess this summarizes things: “EY has little faith in Nalcor’s ability alone to negotiate the type of agreement that is required (because money isn’t an issue for Nalcor).”

Do you agree with that comment?

MS. MULLALEY: Yeah, I guess, again, from a perspective that – yeah, that was a strong aspect that, you know, you were going to go off and negotiate something without bringing it in and having all the robust analysis around it to even know it was the right option so, yes, from that perspective.

MR. LEARMONTH: Yeah.

MS. MULLALEY: So it was after this that EY got into the negotiations. Yeah.

MR. LEARMONTH: Yeah. And if we go to tab 64, Exhibit P-03858, and turn to page 3, this is Muskrat Falls Project, Comments on Nalcor’s Negotiating Strategy. If we go through page 4 and 5, you can see that the – in the opinion of EY, the negotiation strategy was not very good. Do you agree?

MS. MULLALEY: Yes.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah, I think, you know, certainly, there was a sense that they were too driven to close. They – you know, they wanted to close the deal. They wanted to, you know – yeah. And from that perspective there’s always a lot of risk.

MR. LEARMONTH: Yeah. But if you go to page 4 of Exhibit P-03858 –

MS. MULLALEY: What tab is that, sorry?

MR. LEARMONTH: Excuse me, that’s tab 64.

MS. MULLALEY: Sixty-four, okay.

MR. LEARMONTH: Halfway down that page it says: “To date, Nalcor has placed significant

emphasis on Astaldi Group’s liquidity as a critical factor influencing the timing and” –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – “quantum of a negotiated settlement with Astaldi.

“The financial results of Astaldi announced on 9 March 2016 show an improved cash position, with €153 million of cash generated through working capital management initiatives in the 3 months ended”

At December 31 “Astaldi had €611 million cash on hand and could have an estimated line of credit available of approximately €200 million ...

“Astaldi could take further steps to improve cash flows” So isn’t this an indication that EY is saying Astaldi’s not in quite as bad shape as Nalcor is suggesting and if that’s the case, wouldn’t that increase the bargaining position of Nalcor because –

MS. MULLALEY: Yes, absolutely.

MR. LEARMONTH: – because I think –

MS. MULLALEY: Yeah, yeah.

MR. LEARMONTH: – Astaldi was sort of coming saying, look, we have no more money –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – and our parent has no more money –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – so what are you going to do for us. Isn’t that –?

MS. MULLALEY: Yeah and, you know, again, there was some – certainly there were solvency issues around and I know the statements were coming out, so there was a lot of, you know, pressure to that, but I think what Ernst & Young is saying is they don’t feel that that pressure is there. And, you know, they – Astaldi, themselves, could do things further to –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – you know, so, you know, do not feel pressed to close here. You need to take the time to get this right to understand what the right steps are. Yeah.

MR. LEARMONTH: Yeah, because Nalcor wanted to resolve this situation –

MS. MULLALEY: Yes, so they wanted –

MR. LEARMONTH: – in short order.

MS. MULLALEY: – to close.

MR. LEARMONTH: Is that right?

MS. MULLALEY: Yes, absolutely. Yeah.

MR. LEARMONTH: So the restraint recommended by EY was the approach that was taken. Is that true?

MS. MULLALEY: Yes. Yeah.

MR. LEARMONTH: Okay, page – tab 65, this is Exhibit P-03835. Now, this is just some – I guess at this time there was some – if we go to page 2 there was some thought given to cancelling the project or delaying it, is that right, if you go to page 2?

MS. MULLALEY: Yeah, I do. I think this is more of a – again, I think this is in March? No, April. Yeah, this was in April of 2016 and I think this was just there were some – again, I think we might even have been heading into budget at this point and there was some – again, some public discourse out there. So this was more of providing information. Government wanted information to understand, you know, what were the reasons that you couldn't delay or cancel the project?

So they just wanted to get the understanding out there and the ministers' understanding out there on the practicalities of really why you could not delay and cancel the project at this point in time. So this was just them asking for some information on that.

MR. LEARMONTH: Right.

Now, tab 67, Exhibit P-03836. It's from David Steele to you on April 22. I think this was the day that Mr. Martin was relived, was he? Was it?

MS. MULLALEY: Close on it, I think. Maybe the day after –

MR. LEARMONTH: I think he –

MS. MULLALEY: – it was the 21st or –

MR. LEARMONTH: Yeah –

MS. MULLALEY: – 20th.

MR. LEARMONTH: – didn't he initially say he was resigning for personal reasons and then for some reason the board of directors terminated him without cause, therefore triggering compensation?

MS. MULLALEY: Yes.

MR. LEARMONTH: Is that your understanding –

MS. MULLALEY: Yeah, so I think –

MR. LEARMONTH: – generally?

MS. MULLALEY: – that happened just before the Friday –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – if I'm not mistaken.

MR. LEARMONTH: Okay. So in this document, Exhibit P-03836. If we turn to pages – first page 3. This is a report April 2016 of next steps prepared by EY.

MS. MULLALEY: Right.

MR. LEARMONTH: It says, page 3: "EY's original scope of work was to assess the reasonableness of the Project's cost and schedule ... Due to unexpected lack of availability of up-to-date forecast data for Astaldi, Valard and Alstom, GNL requested EY produce an Interim Report to assess the reasonableness of the" report, and then "EY can complete a final report"

So there was information that was requested on Valard and Alstom, in addition to Astaldi, that wasn't forth coming?

MS. MULLALEY: Yes, but, again, just for context, you remember they had to release the interim report because the re-baselining exercise was happening, right. So, because the re-baselining exercise was happening, you just couldn't have full information.

So government did release, I think it was – they weren't expecting the Valard one, the LIL and LTA to be done until, I believe, it might have been May, at that time, to be fully re-baselined.

So the issue is not necessarily that, they just – they can't get the information because it's not fully re-baselined. So once it was re-baselined, so for the LIL and LTA, I believe it was May, and then Astaldi was – no date put on it –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – because that was still ongoing. So, that's what you're seeing here is he's just testing backing now because they're supposed to go again for another one.

MR. LEARMONTH: But it seems to be pretty late in the game, I mean the project is getting fairly mature now and doesn't that cause you concern that they didn't have that information available?

MS. MULLALEY: Well, I think it causes everyone concern. I mean, obviously, you want the QRA and the re-baselining to happen as soon as possible, absolutely. You know, I guess I would say that, but all I can tell you is factually what was happening was that that process was still unfolding over there and you know, Stan Marshall would have been over there then, and, you know, so they were starting – they were working through a re-baselining.

So, I'm not sure what more I can say but all I can say is that's what was happening, and the problem we had then was that because they were still working through that process, Ernst & Young couldn't finalize their work on any of it because it wasn't there to finish reviewing.

MR. LEARMONTH: Right.

MS. MULLALEY: Yeah.

MR. LEARMONTH: Tab 68, Exhibit P-03837. This is June 13, so Mr. Martin is gone, and this is an email from Mr. Harrington, June 13. Do I understand the tone of Mr. Harrington's comments, at this stage, seem much more cordial?

MS. MULLALEY: What he's asking me?

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yeah, I mean –

MR. LEARMONTH: The tone of his presentation to you seems to have changed.

MS. MULLALEY: Yeah, I guess what he's saying to me here for sure is, like, even though he's not promoting another review, he knew that there was a public commitment to come back in to look at the re-baselining.

MR. LEARMONTH: Yeah.

MS. MULLALEY: So he's saying, the IE's coming down. If they're gonna come in, it'd be great if they came in now and we do it all the one time, right?

MR. LEARMONTH: No, but I'm just saying, is this a contrast to the indications we had earlier where he was alleged to have been rude and walked out of meetings and stuff like that? It seems to be a different tone.

MS. MULLALEY: Oh.

MR. LEARMONTH: Do you agree?

MS. MULLALEY: Yeah. I mean, you know, I can put up – pull up different ones from Paul and it would be similar, but I guess, yes, I know what you're saying. He's not pushing back on any review here.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Sure, yeah.

MR. LEARMONTH: Yeah.

And then if we go to tab 69, which is Exhibit P-03576. Once again, Mr. Marshall is here now and if you look at page 14, 15 and 16, don't you observe that, once again, the tone and – the tone is changed, that there seems to be more transparency and openness? I'd ask you to comment on that.

MS. MULLALEY: Yes, it would, although, I can't remember this deck. But, I – yes.

MR. LEARMONTH: You agree?

MS. MULLALEY: Yes.

MR. LEARMONTH: Okay.

Okay, then if we go to tab 76, which is P-03384. I guess at this point you're leaving government – well, you're leaving your position and you're being – you're going to the Housing Corporation. Is that right?

MS. MULLALEY: That's correct.

MR. LEARMONTH: September –

MS. MULLALEY: What tab is that, sorry?

MR. LEARMONTH: That's tab 76.

MS. MULLALEY: Seventy-six.

MR. LEARMONTH: Now, tab 77 – oh, excuse me, I should identify, tab 76 is Exhibit P-03384. Yeah. So that's – you're indicating you're at Housing – the Housing Corporation now.

MS. MULLALEY: That's right.

MR. LEARMONTH: But there is an email here that – after your departure from your position as clerk, and it's at tab 77, Exhibit P-03430.

This is an email from Michael Kennedy to Paul Hickey, David Steele, Tim Calver and Kirsten Tisdale. And he refers to a meeting, he says: "These are my notes from this afternoon's meeting with Paul Carter" – who at the point – that point is the executive director of the Oversight Committee. Correct?

MS. MULLALEY: Yes.

MR. LEARMONTH: "Bern Coffey" – and Bern Coffey replaced you as clerk, right?

MS. MULLALEY: Right.

MR. LEARMONTH: "When I arrived Paul said I have a surprise for you, the Clerk is going to join us" So that's Mr. Coffey. And it says: "In rough chronological order: Bern introduced himself and said he is still coming to terms with the role since appointment on Sept 21st. He mentioned he was one of the most vocal opponents of the project and a member of the 2041 group. Curiously he went back to the EY report of Oct 15, as a starting point. He summarised that report as saying to him: Nalcor doesn't know what it is doing, has lacking" – progress – "for forecast going forward, is hiding the extent of the problem."

Now during the transition, did Mr. Coffey express the same concerns to you about Nalcor?

MS. MULLALEY: No, not to that degree, no.

MR. LEARMONTH: Well, to what degree did he?

MS. MULLALEY: No, I – we didn't really have – we had a discussion more on the project and what was happening. It was more transition versus any personal (inaudible).

MR. LEARMONTH: So he never mentioned that to you?

MS. MULLALEY: No.

MR. LEARMONTH: No.

MS. MULLALEY: No, but that's the – I can see why he's saying that, though. That was that report that was done on the project cost controls which would be accurate, yeah.

MR. LEARMONTH: Then we go one, two, three, the fourth down – dot down. "He then talked about the Oversight Cttee" – and they're referring to Mr. Coffey – "and said Julia told him on walking out the door, that the Cttee was not effective and had to be rethought. They are in the process of thinking through what that could look like."

Now – so the reference I believe is to you.

MS. MULLALEY: Yes, it is.

MR. LEARMONTH: And what do you have to say about that comment?

MS. MULLALEY: I don't think it's accurate, the way it's written. So I'm going to say first, I'm not gonna, you know – on whether it was effective or not, but that's not what we had talked about. I think, very clear in my mind, what Bern and I had talked about, I had gave him some copies of the Ernst & Young reports that were there and I spoke to him more about transition on what we were doing in government.

So there – it was more around the recommendations on the Oversight Committee, because on that end in Nalcor there were some – still some governance issues we were working through.

But specific to the Oversight Committee, at the time what we had been in discussion with and moving forward with was to add some independent members to the committee. So that's – it was all on the governance side and what – so the effectiveness and the (inaudible) thought was around adding those independent members on the committee, more of the next steps on that.

MR. LEARMONTH: So you don't believe that's an accurate reflection of what you said?

MS. MULLALEY: No, no. I didn't say it that way. But I'm –

MR. LEARMONTH: All right.

MS. MULLALEY: – not – I guess I don't want to say I'm concluding that it was effective or not effective. I have – you know, that's – we've talked a little bit about that today, because I don't think it could be effective. But in that vein, what it was, was talking about – it was – it had to be rethought and we were working right then to try to look at putting some independent members on the committee, yeah.

MR. LEARMONTH: All right.

Next exhibit, and I'm getting to the end, 79 – tab 79, P-02412. This is a document that was provided to the Commission by James Meaney. It says draft, March 19, but he confirmed that he believed it was an accurate statement, as did Derrick Sturge, with some qualifications. But, anyway, I referred to this generally this morning and if you look at the second last entry on page 1 –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – about that March 9/10 meeting.

MS. MULLALEY: Yes.

MR. LEARMONTH: It says: "Meetings with GNL, which included discussion on \$7.5B cost estimate."

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: I just wanted to indicate, that's the reference I was making, and I think you –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – said that there was no discussion –

MS. MULLALEY: No.

MR. LEARMONTH: – of the 7.5.

MS. MULLALEY: No, and we were – talked about pressures again in general on the project, but it was a separate meeting altogether; so that, to say we were at 7.5, that did not happen.

MR. LEARMONTH: Yeah, okay, and as I told you, Mr. Sturge confirms –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – your recollection that there was no mention of that.

There's just two other documents I want you to take a peek at. The – tab 32 –

MS. MULLALEY: Thirty-two?

MR. LEARMONTH: – in – the other volume I have here, in financial close.

CLERK: Okay.

MS. MULLALEY: Okay, sure.

MR. LEARMONTH: This is Exhibit P-02217. This is from Mr. Meaney to Meghan Felt, who I understand worked at McInnes Cooper, Nalcor's legal counsel. It's dated November 19 –

MS. MULLALEY: Yes.

MR. LEARMONTH: – 2013.

“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 and MWH. Do not provide access to NL ...”

Then if you turn the page, you'll see this is the reconciliation of the LCP DG3 estimate versus current estimate, and on the right column, it shows the 6.531?

MS. MULLALEY: Yes.

MR. LEARMONTH: Yeah.

Now, you already told us that you weren't aware of –

MS. MULLALEY: No, I have no –

MR. LEARMONTH: – that figure.

MS. MULLALEY: – personal recollection –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – of it, no.

MR. LEARMONTH: But what do you say about this statement that GNL is not to be – was not to be given access at that time?

MS. MULLALEY: Well, I got to – like, I don't understand it, I guess.

This is your shareholder, this is who you're in the middle of – this is whose – you know, the taxpayers' money, this is who the decision-maker is, this is – you have a whole team around you that you've had government officials embedded in your – I can't even comprehend any reason why that would not be – I can't comprehend it, I can't.

MR. LEARMONTH: (Inaudible.)

Okay, the last exhibit I want you to refer to, it's not in your book but this is Exhibit – it'll come up on the screen – P-02290, and this is a letter from, on page 2, from Alison Manzer of Cassels Brock.

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: Have you seen this document before?

MS. MULLALEY: I'm not sure.

MR. LEARMONTH: Well at the time, Nalcor –

MS. MULLALEY: No, it doesn't look familiar.

MR. LEARMONTH: – Nalcor was not providing accurate information to the independent engineer. James Meaney, in cross – in examination, acknowledged that. They weren't – they were going – even though, generally – even though Nalcor knew that their costs were escalating they were sticking with the 6.99 –

MS. MULLALEY: Yes.

MR. LEARMONTH: – and they got caught by independent engineer and they had to go to a meeting in Ottawa and then after that it was – so were you aware that this issue arose with Canada about not –

MS. MULLALEY: I might have heard (inaudible) –

MR. LEARMONTH: – Nalcor not providing accurate information on the monthly cost estimates?

MS. MULLALEY: Yeah. I do believe I might have heard it on the (inaudible) because I know when we did our report we always sent a copy to NRCan and to the independent engineer and I think they – that’s when they became aware of it, if I remember –

MR. LEARMONTH: Yeah. But this was a serious issue –

MS. MULLALEY: (Inaudible) yes.

MR. LEARMONTH: – and if you look –

MS. MULLALEY: Yes.

MR. LEARMONTH: – well it’s the same problem you had, right?

MS. MULLALEY: Yes.

MR. LEARMONTH: Yeah, the government had. So on – ‘cause on page 4, Ms. Manzer says, second to last – third last paragraph:

“While we recognize this is an extensive agenda, we require that a meeting be set to review these matters on an as soon as possible basis, timely resolution of the matter is necessary to ensure that the cost overrun process, and funding, is suitably undertaken ...”

So, it’s a fairly strong wording that unless you get this situation under control –

MS. MULLALEY: Yeah.

MR. LEARMONTH: – consideration be given to cutting off funding. And that’s a very serious matter isn’t it?

MS. MULLALEY: Yes, absolutely.

MR. LEARMONTH: Those are my questions, thank you.

Thank you Ms. Mullaley.

THE COMMISSIONER: All right we’re going to take our break here now – this is gone a little longer than I anticipated this afternoon, and what I’m going to do is, I know we have some spill-time tomorrow morning, but only a couple of hours. So maybe during the break we could

get a feel for how long everybody is going to be in examination of Ms. Mullaley, so I can get a little bit of a feel for this.

We may – I know Commission counsel have a meeting tonight at 5 o’clock, which is an important one, but we may have to look at how we’re going to manage this to make sure we get through everything this week that we have scheduled so we’ll take 10 minutes and maybe Mr. Learmonth and Ms. Muzychka could chat with everyone just to sort of get a feel for this, so I can see where this is going and when we might be starting tomorrow and when we might be finishing.

MR. SMITH: Mr. Commissioner, I’m wondering if we could be informed, the rest of the counsel as to the search results at lunchtime?

THE COMMISSIONER: Oh yes, that’s a good point. Were you able to locate your notes with your searches?

MS. MULLALEY: No unfortunately, I was not.

THE COMMISSIONER: So you got access to where you need to get access to –

MS. MULLALEY: I did, yes.

THE COMMISSIONER: – and your notes were not there.

MS. MULLALEY: Yes.

THE COMMISSIONER: Okay so that’s the results of that. I’m glad you raised that, Mr. Smith.

All right, we’ll adjourn for 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Okay. Just to give the witness and the public and the counsel an idea of where we’re going here. So, I understand

discussions that Commission counsel had indicates that we have about four hours of examination by other counsel, so my plan is we're going to go this afternoon until around 10 to 5 or so, and then we'll start at 9 o'clock tomorrow. And that should give us enough time to get through Ms. Mullaley.

So, I'm hopeful people – counsel will sort of maintain their estimates for time. And my understanding is that for Mr. O'Brien, we may have to sit a little late tomorrow evening, but we should be able to finish him by Friday, according to – what – the expectations. So, we'll begin cross-examination now.

And the Province of Newfoundland and Labrador.

MR. RALPH: Good afternoon, Ms. Mullaley. As you know, my name is Peter Ralph, and I represent the Government of Newfoundland and Labrador.

And perhaps I'll just ask a couple of questions about your search at lunchtime. You were taken, I guess, to the places that you wanted to go?

MS. MULLALEY: Yes, I was. Yeah.

MR. RALPH: And you were accompanied, I believe, by the deputy clerk of the Executive Council and the director of Information Management?

MS. MULLALEY: That's correct.

MR. RALPH: And your lawyer, I think, was with you, as well?

MS. MULLALEY: Yes. Yeah.

MR. RALPH: So, are you satisfied now that – with the searches that have been done and the efforts to find your notebooks?

MS. MULLALEY: Yeah. I mean, I am satisfied. I'm disappointed, but I am satisfied.

MR. RALPH: Fair enough.

Now, as a clerk of the Executive Council, is it fair to say you'd have primary responsibility for

the system of maintenance of records within Cabinet Secretariat?

MS. MULLALEY: That's true, yeah.

MR. RALPH: And would you agree that the description that that system, certainly during your tenure and perhaps now, was robust and comprehensive?

MS. MULLALEY: It is, it is. I absolutely agree with that.

MR. RALPH: And is it fair to say that the system, as it existed during your tenure and now, provided timely and accurate collection of – and storage of records?

MS. MULLALEY: Yes.

MR. RALPH: And I guess there's no reason to believe that that system has deteriorated since your departure?

MS. MULLALEY: No, I mean, you know, I think the notebooks are a little different nuance in a lot of those systems, right? But no, no.

MR. RALPH: Now, with regard to that, I understand you gave the notebooks to Nina Goudie.

MS. MULLALEY: Yes, I did.

MR. RALPH: And she at the time – she's now retired – but at the time, she was director of Information Management?

MS. MULLALEY: That's correct.

MR. RALPH: And how long had you worked with Ms. Goudie?

MS. MULLALEY: I worked with Nina, well, for a couple of years while she was there, and I actually worked with Nina before that as well in the Office of the Auditor General.

MR. RALPH: And how would you describe her professionalism generally and in particular –

MS. MULLALEY: Very good. I – Nina is extremely a very great IM manager.

MR. RALPH: And I guess with – in particular, with regard to her role as director of Information Management, I mean, I think it's fair to say that she was quite a stickler with regard to –

MS. MULLALEY: She was.

MR. RALPH: – process –

MS. MULLALEY: Yeah, absolutely.

MR. RALPH: – and Cabinet Secretariat.

MS. MULLALEY: Absolutely, I can't disagree with any of that. That's why I was very surprised, I think, yeah.

MR. RALPH: Yes.

MS. MULLALEY: Yeah.

MR. RALPH: And the – my last question: do you have any reason to believe, Ms. Mullaley, that someone could've destroyed those notebooks or hidden the notebooks to prevent you or the Commission to have access to those notebooks?

MS. MULLALEY: No, I don't believe there's anything untoward here at all to be quite honest with you. I mean, the only – like I said, the conversation I had with Nina at the time with the books, and particularly with the Cabinet records, we were talking about transitory records. I don't even know – you know, I think you would know that there's not even really a policy, necessarily, on the black books.

I just felt personally, myself, that, you know, they were not my personal records, and so I don't take them like that, so I felt that they were a part of Cabinet Secretariat records and – you know, and I guess I left it for the discretion. But that concept of transition records weren't –

MR. RALPH: Transitory –

MS. MULLALEY: – even –

MR. RALPH: – yes.

MS. MULLALEY: – even spoke about at the time when Nina and I were talking –

MR. RALPH: Yes.

MS. MULLALEY: – about them, so, yeah.

MR. RALPH: Thank you very much.

MS. MULLALEY: Welcome.

THE COMMISSIONER: All right.

Nalcor Energy.

MR. SIMMONS: Thank you, Commissioner, and good afternoon, Ms. Mullaley.

MS. MULLALEY: Good afternoon.

MR. SIMMONS: Dan Simmons, for Nalcor Energy.

You were within government when the Energy Plan was developed, and I think you were probably in the Department of Natural Resources at that time, were you?

MS. MULLALEY: No, I was not, actually.

MR. SIMMONS: Okay.

MS. MULLALEY: I came there afterwards, so I came just after the plan.

MR. SIMMONS: Yeah.

MS. MULLALEY: Yeah.

MR. SIMMONS: So after the plan had been developed and had been announced and was a formal policy document of government –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – I guess, you were then in what position in the Department of Natural Resources?

MS. MULLALEY: In Natural Resources, I was assistant deputy minister of the Royalty and Benefits, so a lot on the offshore.

MR. SIMMONS: Okay.

And so you, in that position, would have had dealings, I expect, with Nalcor Energy, since its

portfolio of responsibility included the offshore oil projects –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – and investments as well as looking at the development of the Lower Churchill Project?

MS. MULLALEY: That's correct.

MR. SIMMONS: Right, okay.

So can you describe for me what your conception or understanding was of what Nalcor Energy was meant to be when it was created following the adoption of the Energy Plan?

MS. MULLALEY: I guess, certainly, it was meant to be the delivery arm of government's policy directions, per se.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: And, you know, that included all elements of the Energy Plan.

MR. SIMMONS: Okay.

Can you give us any reason why it was elected to do that through a separate corporation rather than just have the Department of Natural Resources do it as an ordinary government department?

MS. MULLALEY: You know, I think that that wouldn't be uncommon to structure a corporation to do that. You know, there is a still a strong governance perspective that belongs with that. Of course, you're still accountable –

MR. SIMMONS: Certainly.

MS. MULLALEY: – to the – to government and to the ministers, but often it can be put out there to have focus on things, to – you know, sometimes there's different legislation, and some of that legislation, of course, was incorporated for the corporation in order for procurement and other avenues like that.

MR. SIMMONS: Mm-hmm.

Because Nalcor Energy was meant to participate, I'm going to suggest, in some private-sector activities –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – offshore oil being one of them –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – did that mean that it was the policy of government that Nalcor had to operate at a greater length from government than an ordinary department would and that it would have to have more autonomy from government than an ordinary department would?

MS. MULLALEY: I don't know if I really agree with that – I guess, you know, no matter how you're setting your corporations up, they're still ultimately accountable to the minister –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – from that perspective. So, you know, I think the autonomy side is certainly, maybe from a governance perspective, it's often brought because to bear focus on certain issues and to execute delivery of things like the Energy Plan.

MR. SIMMONS: Mm-hmm. Okay.

We're – I'm kind of back in Phase 1 of the Inquiry at this point a little bit, but you –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – have held some very senior positions in government and have touched on this, so that's why I'm interested in it.

In a government department, the lines of accountability would seem to be fairly clear for the civil servants who work in it. Everyone has a boss that they report to, and that finds –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – its way up through the civil service system, ultimately to, I guess –

MS. MULLALEY: That's correct, yeah.

MR. SIMMONS: – to the position that you held. Yeah.

For Nalcor as a Crown corporation –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – am I correct that there was no government document or policy or statement that set out what those lines of reporting explicitly were to be between Nalcor and the province?

MS. MULLALEY: Well, you have your *Transparency and Accountability Act* –

MR. SIMMONS: Yes.

MS. MULLALEY: – that would certainly have the accountability into a minister at all times –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – even full Crown agencies for sure. But certainly there would be a board of directors in corporations, which is a different, obviously, governance of the corporation itself.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: But the – yeah, some of that legislation would make it accountable to ministers.

MR. SIMMONS: Right.

And particularly when you were in the position of clerk of the council and as chair of the Oversight Committee, the types of interactions you were having with Nalcor were –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – outside of the umbrella of the transparency legislation and outside of the relationship that the board of directors had with government, correct?

MS. MULLALEY: Yes.

MR. SIMMONS: They weren't governed by either of those?

MS. MULLALEY: No.

MR. SIMMONS: No.

MS. MULLALEY: No.

MR. SIMMONS: So, what was there, say, from – at the outset of when Nalcor was created that government had in place that would allow people to know in advance what that communication relationship was supposed to be? Who talked to whom about what and when? Is there anything that gave guidance?

MS. MULLALEY: I can't – I'm trying to – you know, I can't see anything specific, I guess, of course, again, in just the general accountabilities of legislation.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: But, you know, you do have a board of directors, there's no doubt of that. But again, you know you still have that connect backing from accountabilities perspective to government. When it comes to a lot of committee structures like we're doing here, I mean, the connecting and how we made that connecting was that on behalf of the Oversight Committee, we felt we needed a shareholder's letter. And – government is the shareholder of Nalcor. And we wrote a letter, and it was signed by the minister and the premier as shareholders. And it directed Nalcor to report, basically –

Yeah, (inaudible) –

MS. MULLALEY: – to the Oversight Committee and to the provide all of these reporting protocols.

So, I think through that mechanism, that would be considered certainly an acceptable form as a letter – as a shareholder.

MR. SIMMONS: Yeah. When did that happen?

MS. MULLALEY: That happened in – from an Oversight Committee when we put in – it happened in July.

MR. SIMMONS: July of ...?

MS. MULLALEY: 2014.

MR. SIMMONS: In July of 2014.

MS. MULLALEY: Yeah.

MR. SIMMONS: So, would it be fair to say that aside from the transparency act requirements and the relationship of the board to government, the type of reporting and communication that would happen between people within Nalcor and people within government either had to be worked out informally or settled on a more ad hoc basis such as the letter you referred to regarding the Oversight Committee?

MS. MULLALEY: Yes, and I would say that's accurate.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: But I would say with very significant policy decision like that there would be expectations that there would be open channel of communication. I don't think you'd have to put that in writing or anything, but –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – yeah.

MR. SIMMONS: Okay. Certainly.

You mentioned this morning that – I think you'd said in passing that between November 21 and 26 of 2013, you were out of the country.

MS. MULLALEY: I was. Yeah.

MR. SIMMONS: Now, I don't want to know anything personal vacations or anything like that. But for that time period, were you in a position where you were in regular communication –

MS. MULLALEY: Yes.

MR. SIMMONS: – with your office, email and all that –

MS. MULLALEY: Yeah. Absolutely.

MR. SIMMONS: – sort of thing?

MS. MULLALEY: Yeah.

MR. SIMMONS: So you were in touch –

MS. MULLALEY: Yes.

MR. SIMMONS: – during that time period?

MS. MULLALEY: Yeah.

MR. SIMMONS: Right.

So if there were things happening that you needed to be informed of or involved in, you would've expected you would've been kept informed –

MS. MULLALEY: Absolutely.

MR. SIMMONS: – during that time –

MS. MULLALEY: Yeah.

MR. SIMMONS: – period. Okay.

MS. MULLALEY: I just wasn't there for a meeting, and that's all I was trying to say this morning in case some meeting happened and I wasn't there, but, yes, I was available –

MR. SIMMONS: Yeah.

MS. MULLALEY: – at all times. Yeah.

MR. SIMMONS: And then, what kind of role did you personally play in the arrangements that were being made for financial close? Now, we'll assume financial close happened on, I think, it was 29th of –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – November, when a lot of the documents were signed. As Mr. Learmonth correctly points out, that triggered a process that continued –

MS. MULLALEY: Right.

MR. SIMMONS: – to December 13, before the money was in hand –

MS. MULLALEY: Right.

MR. SIMMONS: – was raised and in hand. So, in the month or months prior –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – to the 29th of November, what was your role in relation to the financial close?

MS. MULLALEY: So, I guess the key role was, you know, ensuring that we had team in place that was working side by side, obviously, with Nalcor. We had people from Justice and Natural Resources, Finance and others on this, and, you know, there were a number of still policy decisions that had to move through. But everybody, obviously was focused on financial close and what we needed to do get there. But having said that, we were certainly working.

I came in late August, so it was only a couple of months, but we were very focused on ensuring that all the Cabinet papers were moving forward. And, of course, Cabinet papers come through Cabinet Secretariat office, and so we would have ensured and met with Todd Stanley, met with Charles Bown, particularly, and developed a full list of, you know, what are the policy directions we're seeking, what do we need here, and we determined what Cabinet papers had to come in to make sure that we had all the necessary policy direction heading into financial close. We would have been sort of – I would have been just facilitating a touch point at all times, and Todd would send me an update on where things were and from that perspective.

You know, so we were really working towards financial close, making sure we had all the policy papers in place, making sure Cabinet was all, you know, informed and had everything being brought forward for decision-making purposes. In essence, that's sort of what we were –

MR. SIMMONS: Okay, so –

MS. MULLALEY: – (inaudible).

MR. SIMMONS: – I'm thinking more about your own personal involvement.

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: In relation to the Department of Finance, we know people in Finance played a fairly active role –

MS. MULLALEY: Right.

MR. SIMMONS: – here. And they, I think, would have reported up through the deputy minister, who I believe was Ms. Brewer –

MS. MULLALEY: That's correct, yeah.

MR. SIMMONS: – at that point.

MS. MULLALEY: Yeah.

MR. SIMMONS: So her reporting, did that go, then, directly to her minister? Or did that somehow come through you to Cabinet when she was reporting –

MS. MULLALEY: It's –

MR. SIMMONS: – on things that –

MS. MULLALEY: It's two ways, really.

MR. SIMMONS: – were her responsibility.

MS. MULLALEY: You definitely always report to your minister.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: But you always have a dotted relationship to the clerk as well, 'cause as clerk it's, I guess the – you know, the deputies all have a reporting relationship into the clerk as well. So generally issues – she would absolutely inform her minister. But if they were issues of significance of any matter, like I would – I'm alluding to, you know, the 6.5, I guess –

MR. SIMMONS: Sure.

MS. MULLALEY: – is where you're going – that that would be an expectation as well, yeah.

MR. SIMMONS: Okay, so, for an issue like that, would the process be that the deputy minister in Finance would report to the minister, and the minister would bring it to the premier or the Cabinet table? Or would there be an expectation that you would have that the deputy minister in Finance would bring it directly to you because of your position as clerk of council?

MS. MULLALEY: It can happen both ways, and that's very common as well. I mean, ministers, obviously, you know, have that reporting relationship with the premier as well, right? So it can happen all ways, but you'd make sure that it happened. I guess that's the point.

If I found out, I would double-check to make sure that the premier knew and the minister knew. If the minister knows, you know, Donna has to tell me – again, there's always that check and balance in here –

MR. SIMMONS: Yeah.

MS. MULLALEY: – right? So there should never be a time when a minister knows and the premier doesn't know, and, like I said before, when the premier knows, she will tell her – the Cabinet, right, if it's that – this kind of issue.

But there's always those checks and balances, but can happen either way.

MR. SIMMONS: Okay, so when you say it can happen either way, does that mean that the deputy can rely on her minister to communicate the information over without having to also inform you –

MS. MULLALEY: No.

MR. SIMMONS: – as clerk of the council?

MS. MULLALEY: No.

MR. SIMMONS: No, you should be informed in any case –

MS. MULLALEY: Yes. Absolutely.

MR. SIMMONS: – as clerk of the council.

MS. MULLALEY: Yeah. Because that prevents something from not getting relayed from the minister. So when if the minister knows –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – and I know –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – then it's just one of those things that you –

MR. SIMMONS: Okay.

MS. MULLALEY: – can catch. Yeah.

MR. SIMMONS: Now, would the same apply to the Department of Natural Resources –

MS. MULLALEY: Yes.

MR. SIMMONS: – and to the deputy of Natural Resources?

MS. MULLALEY: Yes.

MR. SIMMONS: Okay.

I always lose track of who was in what position when. Was it Mr. Bown who was –

MS. MULLALEY: He was.

MR. SIMMONS: – in that position then?

MS. MULLALEY: That's correct.

MR. SIMMONS: So, you would have the same expectation –

MS. MULLALEY: Absolutely.

MR. SIMMONS: – of him, that any important information he knew would not only go to his minister but would come to you –

MS. MULLALEY: Absolutely.

MR. SIMMONS: – so you could –

MS. MULLALEY: Absolutely.

MR. SIMMONS: – ensure that the premier was aware.

MS. MULLALEY: Yes.

MR. SIMMONS: All that's yes to all those. Okay.

I'm not going to ask you very much about your notebooks, but I do have to ask – you'd said, I think, that you were – before you came to what

you described as the 6.5 billion interview, which I guess is the second interview that you had with Commission counsel – you wanted to find your notebooks.

MS. MULLALEY: Yeah. Well, what happened was when I was being interviewed, I think even the first time, I –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – I was – I guess not really being overly familiar with this process, I was expecting materials to come to me –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – because I hadn't inquired about anything at this point, but I hadn't received anything. So I called to see if I could get my copies of my notebooks, because I just wondered if they – obviously, there was some notation in them, so that was a source for me. But when I went to call, that's when I found out that –

MR. SIMMONS: Well –

MS. MULLALEY: – they were not found.

MR. SIMMONS: Well, you may have answered the next question I was going to ask then, but I'll go there anyway. So, knowing that you were going to be questioned about whether you were aware of –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – the \$6.5 billion, why, then, did you think you needed your notebooks? Was it as a refresher for your memory? Was it to see if you had some notation –

MS. MULLALEY: No.

MR. SIMMONS: – regarding that?

MS. MULLALEY: Yeah, it was.

MR. SIMMONS: What was your purpose –

MS. MULLALEY: So –

MR. SIMMONS: – in needing the notebooks?

MS. MULLALEY: Yeah. So I can answer that. So, my memory will tell me that I did not know that before –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – and I – again, I have this memory of Donna telling me around budget time. So that was my memory on it.

MR. SIMMONS: Yes.

MS. MULLALEY: The concern I had is some of the documents that were provided to me – before I was called over for the first interview – I could see the 6.5.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: So then I was questioning it. So I was saying, I'm seeing it here – if it's in the senior officials, senior officials on it – and, again, as I said this morning, normal process would be if the senior officials know about it, normal protocol is I would know about it.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: The premier would know about it.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: So, I guess when I was in that situation saying – I don't recall that, but I'm seeing it here. I thought there was a couple of sources that could help either confirm my memory or not. And what I did was look for my notebooks – which, as you know, I can't locate.

The second thing, though, I did – with the permission here – is I did go over to Cabinet Secretariat, and because I know the Cabinet papers, I know what sections to look in, and we looked. We looked through every Cabinet paper. We looked through every presentation. We looked through every note that went up to Cabinet Secretariat. I looked everywhere. Because if it had gone into Cabinet –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – I should have seen the 6.5 in some document, some presentation, something –

MR. SIMMONS: Sure.

MS. MULLALEY: – and I couldn't find it. So I guess that was collaborating my memory, but I just – I guess the notebooks would have just been another source to confirm, and I guess that's what I could say.

And the latest note, even the very latest note that we could find that went in the very end of November 29, when even then it was clear that people knew about this –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – that note came up to Cabinet Secretariat and talked about the mechanism change for the COREA, to amend it, because we had to do that, and there was still no mention of the 6.5 –

MR. SIMMONS: And that note came from where?

MS. MULLALEY: It came from Justice.

MR. SIMMONS: Mm-hmm. Okay.

MS. MULLALEY: Yeah.

MR. SIMMONS: Can we look briefly at Exhibit P-03545, please, Madam Clerk. This is a message you've been shown before, and it comes from that same time period.

THE COMMISSIONER: What was the exhibit number again, Mr. –

MR. SIMMONS: 3545.

THE COMMISSIONER: 3545 would be tab 3 in your book –

MS. MULLALEY: Yes (inaudible).

MR. SIMMONS: One –

MS. MULLALEY: Yeah. So these are some of the ones I saw.

MR. SIMMONS: Right. So, this is one that Mr. Learmonth brought you to –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – and on the second page, this is where it mentions \$6.5 billion –

MS. MULLALEY: Yes. Yeah.

MR. SIMMONS: – we don't need to go there.

MS. MULLALEY: Yeah.

MR. SIMMONS: But on the – I think this is the one. And you'll see on the top, the message goes there from Mr. Myrden to Ms. Brewer. Now, you knew who Mr. Myrden was?

MS. MULLALEY: Oh, yes. Yeah.

MR. SIMMONS: Yes. He was in the Department of Finance –

MS. MULLALEY: Yes, that's correct.

MR. SIMMONS: – and he was reporting it through. So, it seemed pretty clear that Mr. Myrden would have been aware.

MS. MULLALEY: Yeah.

MR. SIMMONS: And just below that, the message that's being forward was also copied to Mr. Paul Morris, who I believe was within the Department of Natural Resources.

MS. MULLALEY: That's correct.

MR. SIMMONS: Right.

So, from your review there, it certainly appears that at least three of these senior people were aware of this. Now, I note that this is November 22 –

MS. MULLALEY: Yes.

MR. SIMMONS: – which is when you said you were away.

MS. MULLALEY: Yes.

MR. SIMMONS: And I was just wondering if that might have been in any way contributed to the fact that it wasn't brought to your attention.

MS. MULLALEY: No, because if – you know, a very common way of doing that is to email me.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: Right. So, you know, there are no emails. And that was another thing I did go through.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: I got access to my emails over in Cabinet Secretariat as well. But, no, I absolutely believe not. Because, again, if there's something important happening people are going to email me.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: They're going to call me, you know, and – no.

MR. SIMMONS: Okay.

You'd been asked about the project finance agreements. Mr. Learmonth had pointed out that the project finance agreements, which were – those particular documents weren't signed by government.

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: But if you look at them, the numbers are in there that add up to 6.5 –

MS. MULLALEY: Yes, I understand they are. Yeah.

MR. SIMMONS: – .531.

Even though government didn't sign those, were you aware that the agreements were delivered to government, that government had copies of those at financial close? Is that something you would have known about?

MS. MULLALEY: I wouldn't have known necessarily, no. No.

MR. SIMMONS: Can we go to Exhibit P-03505, please.

THE COMMISSIONER: Thirty-five – sorry?

MR. SIMMONS: Oh, yes.

THE COMMISSIONER: Which was your exhibit number, sorry?

MR. SIMMONS: Sorry. It's P-03505.

THE COMMISSIONER: Okay.

MR. SIMMONS: Book 1, tab 13, I think.

THE COMMISSIONER: Tab 13.

MR. SIMMONS: Learmonth says – find my copy.

So this is an email which sent the questions and answers –

THE COMMISSIONER: Mm-hmm.

MR. SIMMONS: – Q and As that you'd been referred to earlier.

MS. MULLALEY: Correct.

MR. SIMMONS: It's from Milly Brown, and these were ones that you identified I think as prepared by government.

MS. MULLALEY: They look like that to me. They look the style –

MR. SIMMONS: Yes.

MS. MULLALEY: – and that's what it looks like.

MR. SIMMONS: And Ms. Brown is in the Office of the Premier?

MS. MULLALEY: That's correct.

MR. SIMMONS: Right. So, would it – can we assume that these were prepared or collected, or in the Premier's office?

MS. MULLALEY: No, no, no, they don't prepare them.

MR. SIMMONS: Okay.

MS. MULLALEY: No, they would be prepared by Natural Resources. Departments prepare them.

MR. SIMMONS: Yes.

MS. MULLALEY: They're given to the Premier's office when they're all ready –

MR. SIMMONS: Yes.

MS. MULLALEY: – you know, for – but, no, they're always prepared by departments, and this would be prepared by Natural Resources.

MR. SIMMONS: Okay. And in this case the message went to you and to Mr. Bown –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – and to Ms. Brewer.

MS. MULLALEY: That's correct.

MR. SIMMONS: And we know Ms. Brewer was previously aware of the 6.5 number and that Mr. Bown was very much involved in financial close.

MS. MULLALEY: Close, yeah.

MR. SIMMONS: So, they were involved in this. This is July 30, 2014.

MS. MULLALEY: That's correct.

MR. SIMMONS: Now, if we just go – just go to page 2 so we can see what we're looking at here. I think that'll bring us to one of the first pages.

So these types of communications, are these being prepared to give to the premier, to ministers –

MS. MULLALEY: Yes.

MR. SIMMONS: – public servants? Who do we – who do we know?

MS. MULLALEY: They are meant for ministers –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – and it depends for the premier, if the premier is, you know, expected to speak on something. But they always get the Q and As.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: So, in essence, this would be, I would think, you know, premier and – because this is July, right? Yeah.

MR. SIMMONS: Yes.

MS. MULLALEY: So we actually did a news conference that time when we released this report. Both the premier and the Minister of Natural Resources did a news down in the lobby.

MR. SIMMONS: Right.

MS. MULLALEY: So –

MR. SIMMONS: So these would be prepared knowing that the premier and the ministers were going to rely on them to make statements –

MS. MULLALEY: Yes, yeah.

MR. SIMMONS: – to the public.

MS. MULLALEY: Yeah.

MR. SIMMONS: Is that the reason they were sent to you, Mr. Bown and Ms. Brewer so that you could review them to ensure that everything stated in there was accurate and that the premier –

MS. MULLALEY: Yes.

MR. SIMMONS: – and the ministers could rely upon it?

MS. MULLALEY: Yes, we do look at that for that purpose.

MR. SIMMONS: Yeah, okay.

And if we go to page 8 that you were brought to before, there were four questions here.

MS. MULLALEY: Yeah.

MR. SIMMONS: And it starts on top saying: “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?”

And then it says: Why didn’t you reveal the number of \$6.5 –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – when did government know about 6.5 and was the government aware of this before Nalcor’s recent cost update announcement?

MS. MULLALEY: Yeah.

MR. SIMMONS: So can you tell me what kind of due diligence was done either by you or to your knowledge by Mr. Bown and Ms. Brewer –

MS. MULLALEY: Yeah.

MR. SIMMONS: – to ensure that these statements that were being given to the premier were accurate and correct?

MS. MULLALEY: Well, part of it would be sharing it with Nalcor. And I think there are some emails with this perspective on it because I think the Oversight Committee was actually trying to find out about this since – the information and why it wasn’t released. And I believe we were also asking questions around: Why did the cost go up because we were expecting that question as well.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: Which, again, solidified the concept of a – I guess we hadn’t really known why it had gone from the 6.2 to 6.5. So we actually sent an email over to Nalcor in preparing these to try to get that answer. And then I guess finishing up, similar to this morning, as I said, this was after the fact. This was July. We were all aware of the 6.5 number. It was the baseline, we were putting it out.

The report had it going out the next day and we had to answer to that. And there were a number of members on our committee, the ones you just mentioned: Donna Brewer, Paul Myrden, Paul

Morris and they seemed to have their sense of awareness of the 6.5.

MR. SIMMONS: Okay.

MS. MULLALEY: So I don’t – at that time, we just never went back to question it anymore or anything else. It was government – whether it was officials, government seemed to know about the 6.5.

MR. SIMMONS: Would you agree with me that the – when you read the answers to those four questions, there’s very clear statements there that government, in the broad sense –

MS. MULLALEY: Yeah.

MR. SIMMONS: – was aware at financial close that the capital cost of the project was being forecast around 6.5 billion?

MS. MULLALEY: Yeah.

MR. SIMMONS: It’s a very clear statement to that effect –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – isn’t it? Yeah.

And it’s also clear when you read that, that government, knowing that, chose not to disclose it because here there’s got to be an explanation given as to why that wasn’t done.

MS. MULLALEY: Yeah and I think, you know, for me, that’s another thing that really stumps me because, again, even as I test my memory bank all the time for this, I really do, and I just cannot recall it. But I’m sure I would recall if there was a discussion on not disclosing it, and I can tell you that –

MR. SIMMONS: Right.

MS. MULLALEY: – like, that discussion never happened. I was never part of a discussion that said we can’t disclose this. I – and so those are the things that always come back to – seems to me to resonate that –

MR. SIMMONS: Well, this came to you –

MS. MULLALEY: – you know.

MR. SIMMONS: – to be reviewed for accuracy.

MS. MULLALEY: Yes.

MR. SIMMONS: So when you read it in 2014 –

MS. MULLALEY: Yeah.

MR. SIMMONS: – when you read this –

MS. MULLALEY: Yeah.

MR. SIMMONS: – did you have any doubt about whether you should approve of this or whether you should raise –

MS. MULLALEY: Not in July.

MR. SIMMONS: – those reservations?

MS. MULLALEY: This stuff happened; it was factual in July.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: What I'm trying to say, we went back out to Nalcor to try to get some information about –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – why the release was and we tried to get some information about how come it went up 6.5 in the – when we were preparing this.

MR. SIMMONS: But –

MS. MULLALEY: But I guess my – what I want to raise in the aspect of the disclosure of it, again, it's just another thing where I – like, I would expect if the number had gone to 6.25 to 6.5 and then there was another decision – yet another decision not to disclose the number, surely God we would have debated and discussed that. But that – again, I have no recollection of that so it – I don't have a recollection of 6.5, I don't have a recollection of any decision or discussion around not disclosing something.

MR. SIMMONS: Well, this –

MS. MULLALEY: And not disclosing something is – usually you got to –

MR. SIMMONS: Yeah.

MS. MULLALEY: – think about that pretty hard, right?

MR. SIMMONS: That's right. That's right. But these answers say government knew at financial close.

MS. MULLALEY: Yes, they do.

MR. SIMMONS: Didn't disclose.

MS. MULLALEY: That's right.

MR. SIMMONS: Disclose it later.

MS. MULLALEY: That's correct.

MR. SIMMONS: Here's the reason why. They said all that. Now, you'd have a clear recollection if there was a concern. Do you have any recollection when these Q & A's were prepared of having any concern about any of these statements?

MS. MULLALEY: Only in the fact that, again, this was retrospect, this was all in July it – this was – we were putting this out in July and the senior officials on the committee seemed to be aware of the 6.5. And then, in fact, I mean, we knew they were in the final documents, we knew the numbers were in the documents so, no.

MR. SIMMONS: So is the answer – the answers – okay, so the answer is no –

MS. MULLALEY: You know, I mean –

MR. SIMMONS: – you didn't have a concern.

MS. MULLALEY: – it was factual at that point.

MR. SIMMONS: And in fairness in what you're saying, I gather you relied on the people who were more closely involved in order, perhaps, to give you the assurance –

MS. MULLALEY: Yes, we did.

MR. SIMMONS: – that these statements were correct.

MS. MULLALEY: And, you know, you have to remember the time frame. This was July, the former Premier Dunderdale wasn't even here at that point.

MR. SIMMONS: Right. Okay.

Certainly, Ms. Brewer, who was on this list –

MS. MULLALEY: Yeah.

MR. SIMMONS: – should have been someone who would have known if these –

MS. MULLALEY: Yeah.

MR. SIMMONS: – statements were accurate or not.

MS. MULLALEY: Yeah and I think that's what I said, that the members on the Oversight Committee seemed certainly to be aware. I was aware of the 6.5 by July or earlier.

MR. SIMMONS: Yeah. Okay.

On a different topic, can we go to Exhibit P-02217, please?

THE COMMISSIONER: 02217. Okay, that would be financial close book, tab 32.

MR. SIMMONS: Mr. Learmonth brought you to this near the close of his examination. This is the email on November 19, 2013 –

MS. MULLALEY: Yes.

MR. SIMMONS: – that transmitted the reconciliation of the DG3 number and the financial close number to the data room.

MS. MULLALEY: Correct.

MR. SIMMONS: And I'm – I want to go to the second page, which is the actual reconciliation, please, and if we can scroll down a little.

THE COMMISSIONER: Yeah.

MR. SIMMONS: Oh, that's good. That's good there.

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: So I know you didn't see this at the time. Did you see it at any point subsequently before your involvement in the Inquiry?

MS. MULLALEY: No, not that – this particular exhibit?

MR. SIMMONS: Yes.

MS. MULLALEY: No, like –

MR. SIMMONS: This reconciliation –

MS. MULLALEY: – the 6.531 I'd be familiar with or –

MR. SIMMONS: Yes.

MS. MULLALEY: – close to it. That was the baseline that goes in the construction reports.

MR. SIMMONS: Right, okay.

MS. MULLALEY: Yeah.

MR. SIMMONS: So one thing I'd point out to you here, if you look at the column that's headed current FFC –

MS. MULLALEY: Correct.

MR. SIMMONS: – and the bottom number there is –

MS. MULLALEY: Yeah.

MR. SIMMONS: – \$6.531 million.

MS. MULLALEY: Right.

MR. SIMMONS: And you'll note that there is a number there for contingency. Do you see that?

MS. MULLALEY: Yes, I do.

MR. SIMMONS: Okay.

So – and would I be correct in concluding from this that the 6.531 did include what was being presented then as a current amount of contingency that remained in, I'll call it the budget, if the budget is 6.531.

MS. MULLALEY: Sure, yeah, absolutely.

MR. SIMMONS: Sure.

MS. MULLALEY: Yeah.

MR. SIMMONS: So if you accept what's presented here –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – and we know the 6.531 was communicated to someone in government so that they were aware that that was a forecast number – that forecast number appeared to include some contingency.

MS. MULLALEY: Yes.

MR. SIMMONS: Yes. Okay.

Now, you were referred to the Grant Thornton report – I think it's at P-01677, we don't need to go there right now – into the section of the report where the statement is made that Nalcor should've been aware that the contingency was exhausted at time of financial close. Do you recall that, seeing that in the Grant –

MS. MULLALEY: Yeah.

MR. SIMMONS: – Thornton report?

MS. MULLALEY: I do. Not only financial close, I – yeah, I do.

MR. SIMMONS: Yeah, okay.

And I know you expressed concern at learning that, when you learned of that statement in the Grant Thornton report.

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: Now, what we have here is a number that we know was communicated to government at financial close. And it does appear to include some existing contingency

because it's higher than the DG3 number. So at that point –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – would it appear that, in fact, there was still some contingency within the number that was being worked on financial close?

MS. MULLALEY: Not enough.

MR. SIMMONS: But there was some.

MS. MULLALEY: There was some, yes.

MR. SIMMONS: It was not exhausted.

MS. MULLALEY: But there wasn't enough of what Nalcor knew at that time.

MR. SIMMONS: And if we go to page 3 of this document, please – you might have to shrink that down a little bit.

So this is something called a Material Contracts Cost Summary, and it's –

MS. MULLALEY: (Inaudible.)

MR. SIMMONS: – referred to on the previous sheet. I'm not gonna get into a lot of detail with you on it. Is this something that looks familiar to you at all?

MS. MULLALEY: Yes, it is.

MR. SIMMONS: It is?

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: Okay.

And would you recognize this as being data concerning the original estimated costs for the material contracts and where the forecasts stood for each of those contracts at the time of financial close?

MS. MULLALEY: Yeah, without looking at in detail, I'll take your word. Yeah.

MR. SIMMONS: Okay.

And if you scroll a little bit to the left, Madam Clerk, please. Okay, we stop there.

We see that the first contract there is CH0007 Construction of Intakes & Powerhouse, Spillway and –

MS. MULLALEY: Yeah.

MR. SIMMONS: – Transition Dams.

And you'd recognize that as what we referred to as "the Astaldi contract."

MS. MULLALEY: Correct, yeah.

MR. SIMMONS: Okay.

And then if you follow along, you'll see there's a DG3 Base Estimate there, of some \$687 million.

MS. MULLALEY: Yes.

MR. SIMMONS: And if you go further along to Final Forecast Cost or FFC –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – you'll see that it's \$1,024,000,000.

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: So, it would appear that at the time of financial close, the increase in the forecast cost of the Astaldi contract was being taken into account in the determination of that 6.531 number. Does that appear to be the case?

MS. MULLALEY: Yeah, I can see your 1 billion there, yeah.

MR. SIMMONS: Okay. Thank you.

MS. MULLALEY: Sorry, you are saying that this total down here, the E, adds up to the 651?

MR. SIMMONS: Well, if we – if you scroll down – if we scroll down, we might see at the bottom there, there's a number there on the bottom, of –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – 6.531.

MS. MULLALEY: Okay.

MR. SIMMONS: Yeah, okay.

Now maybe we will go to the Grant Thornton report, please, at P-01677.

THE COMMISSIONER: That would be at tab 2 in your book.

MR. SIMMONS: Oh, yes.

THE COMMISSIONER: Or at tab 76, rather, in your book – or 78, rather, in your book. Sorry.

Tab 78 –

MS. MULLALEY: In the financial –

THE COMMISSIONER: – in book 2.

MS. MULLALEY: – close book?

MR. SIMMONS: Book 2, tab 78.

THE COMMISSIONER: No, in your book, book 2.

MR. SIMMONS: And we'll go to page 21.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. SIMMONS: So Mr. Learmonth brought you to this page, also. And this is a table –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – that was prepared by Grant Thornton.

MS. MULLALEY: That's correct.

MR. SIMMONS: You were referred to the row for March 14 – sorry, March 2014 and for May 2014 –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – as providing projections in the March '14 case for 7.517 million and in May, for 7.5 billion –

MS. MULLALEY: Yes.

MR. SIMMONS: – if you see those?

And you had, I think, stated that where these preceded the AFE that was approved in June of 2014, and the AFE was only for 6.99 –

MS. MULLALEY: That's correct.

MR. SIMMONS: – billion, right?

Did you look at any of the source materials that were used for these two entries from March '14 and May '14? Or did you look only at what's reported here in the Grant Thornton report?

MS. MULLALEY: I looked at the Grant Thornton report.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: But for source documents, you mean, that support the report?

MR. SIMMONS: Yes.

MS. MULLALEY: No, I did not look at that –

MR. SIMMONS: Okay. Right, so –

MS. MULLALEY: – I'm relying on the Grant Thornton report.

MR. SIMMONS: – so you've relied on just what we see in these two rows here, for your conclusion that there was a problem with what was being reported when the AFE for \$6.99 billion was approved in June of 2014.

MS. MULLALEY: Yes.

MR. SIMMONS: Correct? Okay.

Now, we're going to hear from Mr. Harrington, who – Mr. Harrington played a role in preparing the summaries that were given to Grant Thornton –

MS. MULLALEY: Okay.

MR. SIMMONS: – that they use to prepare their report. And we're gonna hear from Mr. Harrington, and Commission counsel are aware

of this from interview, that the March 2014 entry is misdated and it should be March 2015. So I'm gonna ask you to assume that that entry – that there was not a forecast –

MS. MULLALEY: Okay.

MR. SIMMONS: – of \$7.5 billion in March of 2014.

And for May of 2014, I'd like to go to –

MS. MULLALEY: So what about the April one?

MR. SIMMONS: Sorry?

MS. MULLALEY: What about April 2013?

MR. SIMMONS: Okay. Well, we've got –

MS. MULLALEY: July, sorry. July.

MR. SIMMONS: – July, August. I'm gonna bring you down now, I'm gonna bring you, next, to May. So I asked you about March and now about May. And I need to find the reference, Commissioner. I'm guessing 01871.

Can we have Exhibit 01871, please?

THE COMMISSIONER: Okay, that's not gonna be in your materials. That'll be on the screen.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

THE COMMISSIONER: 01871. That's –

MR. SIMMONS: I can find it, I think, Commissioner. Apologies, I thought I had it written in my notes here. It appears I don't – 01831.

THE COMMISSIONER: (Inaudible), okay, that'll be on your screen.

MR. SIMMONS: Okay, so this – you wouldn't have seen this before. This is the material that was prepared and submitted to Grant Thornton. And if we go to page 6, please.

This is a presentation called AFE Revision Request and Management Outlook, it's dated May 23, 2014. I'm gonna ask you to assume that this is the source –

MS. MULLALEY: Okay.

MR. SIMMONS: – material that –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – Grant Thornton had available for that entry. And, if we got to page 8, please. So, this page breaks down some numbers –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – and they do add up at the bottom, to \$7.5 billion.

MS. MULLALEY: Okay.

MR. SIMMONS: But, if you look at them here, it starts with:

“Contracts with firm bid price” – \$6.3 billion.

“Contracts without firm bid price (best estimate) \$0.64B;

“Subtotal \$6.99B.”

Now, that does correspond with the amount of the authorization for expenditure that was approved –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – a month later. Correct?

MS. MULLALEY: Yes.

MR. SIMMONS: It does. And –

MS. MULLALEY: And it doesn't include the strategic risk, I guess, either, right?

MR. SIMMONS: Right. And, then when you follow down, you see that there are two items there for strategic – actually, for Management reserve for short-term requirements and Management reserve for long-term requirements. And it's only if the management

reserve is considered as part of the budget, that you get to the \$7.5 billion. Do you see that?

MS. MULLALEY: I do see that.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: But, what is the purpose for the management reserve?

MR. SIMMONS: Okay.

And, if you look at the footnotes at the bottom, there's a footnote there, number 2, which applies to the contracts with firm bid price, and it says: “Includes \$224 M of contingency.”

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: So, would you agree with me that the \$6.99-billion figure, actually includes contingency? According to this presentation, contingency is being included –

MS. MULLALEY: Yeah, well then I'd have to see –

MR. SIMMONS: – within this \$6.99. Do you see that?

MS. MULLALEY: I see what you're saying –

MR. SIMMONS: I know you haven't seen –

MS. MULLALEY: – I know I haven't –

MR. SIMMONS: – yeah, I know you haven't seen any of this before –

MS. MULLALEY: – but, yeah –

MR. SIMMONS: – yeah.

MS. MULLALEY: – I'm assuming –

MR. SIMMONS: Yeah.

MS. MULLALEY: – what you're saying is the \$224-million contingency is up in the 6.35.

MR. SIMMONS: Yes.

MS. MULLALEY: Yes?

MR. SIMMONS: So, that's included within the 6.99, which is the –

MS. MULLALEY: Right.

MR. SIMMONS: – AFE amount. Now, we've heard evidence that the contingency is an amount that's included as money that's expected to be spent, and that the management reserve is an amount that can be held separately in reserve but not money that's expected to be sent – spent; it's a reserve, it's something extra. Now, you may not be familiar with that.

MS. MULLALEY: Mmm.

MR. SIMMONS: We've heard evidence along those lines. And, if we were to apply that kind of analysis here, would you – I'll suggest that the appropriate number, from this assessment, that would go into an authorization for an expenditure, which is approval to spend money, is the 6.99. That's the amount of the contracts that are known to have firm bids that are getting – firm, 'cause they're best estimates with some contingency. So there'd be a match between the 6.99 here and authorization for expenditures 6.99. Does that have an air of reasonableness about it?

MS. MULLALEY: I guess only to the degree that – it depends what kind of, you know, it depends how the contingency's built up in the 6.35 in the first place and it depends what risks are around. And, I guess I'm trying to understand why you would have a management reserve for short and long term, what is that supposed to represent?

MR. SIMMONS: Okay. So, it's a more complicated question. There's a bit more to it than just comparing the 7.5-billion number here on this presentation that was included in the Grant Thornton report, to the AFE for 6.99. Would you, at least, agree with me that this – there's a bit more to it than –

MS. MULLALEY: Oh, you need to understand it more. Yeah.

MR. SIMMONS: – the superficial comparison. Pardon me?

MS. MULLALEY: I would like to understand it more, I guess, from that perspective, yeah.

MR. SIMMONS: Right.

MS. MULLALEY: Right. You can't conclude anything on it.

MR. SIMMONS: Okay. Thank you.

Can we go to Exhibit P-03565, please?

THE COMMISSIONER: Sixty-five.

MR. SIMMONS: Um.

THE COMMISSIONER: That would be at tab 33 in book 1.

MS. MULLALEY: Am I allowed to ask a question or – or not?

MR. SIMMONS: I'm sorry. But that's – if this –

MS. MULLALEY: If it's not procedure, okay.

MR. SIMMONS: – is something you want to add, your own counsel will give you an opportunity, I'm sure, at the end. But I want to try –

MS. MULLALEY: All right.

MR. SIMMONS: – and work –

MS. MULLALEY: Sorry.

MR. SIMMONS: – through a few things here now.

So, moving on to this one. This is the Oversight Committee report from September of 2015.

MS. MULLALEY: Okay, yeah.

MR. SIMMONS: And I just wanna confirm some evidence that you gave here earlier. You were brought to page 13 – so, if we can go there, please?

So, this – this now is September 2015. This is – this is just about the time that the –

MS. MULLALEY: Yeah.

MR. SIMMONS: – authorization for expenditures –

MS. MULLALEY: That's correct.

MR. SIMMONS: – was going to be increased to 7.65 billion. So, you recall that?

MS. MULLALEY: Yes.

MR. SIMMONS: And it's been – you were aware that there had been some express notice, in June of that year, that they were looking at 7.5 billion. You described –

MS. MULLALEY: Yes. I mean, we were putting out our –

MR. SIMMONS: Right.

MS. MULLALEY: – report the next week. Yes.

MR. SIMMONS: Yeah. And, if you back-check before that, there was a general awareness that there was pressure on cost.

MS. MULLALEY: Yes.

MR. SIMMONS: Acknowledged that, okay. And you made the comment, in direct examination, that at this point, even though the number here on the cost summary report is 6.99 billion –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – which was the current AFE in place –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – you said everyone knew the forecast had increased, is what I took –

MS. MULLALEY: We knew –

MR. SIMMONS: – you to say.

MS. MULLALEY: – we were going out with a report a couple of days after this. This was –

MR. SIMMONS: Yes.

MS. MULLALEY: – already – it might have even been – what's the date on this one?

MR. SIMMONS: If we go the front, I think it's September 12, maybe.

MS. MULLALEY: Yeah. So, I guess –

THE COMMISSIONER: September 16.

MR. SIMMONS: Sixteen.

MS. MULLALEY: – what I was saying there is that there was a general awareness, we were heading into Cabinet –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – and you were heading into the board, and we were getting ready to release another oversight report that was at 7.65.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: That's what I was saying today.

MR. SIMMONS: Right. And if we back up, we could say the same thing in June, that everyone was – or would you say the same thing in June, that everyone was aware that the project was going to cost more than \$6.99 billion?

MS. MULLALEY: Yeah, the latter part of June –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – when – on June 22, Ed –

MR. SIMMONS: Yes.

MS. MULLALEY: – Ed met with a minister – the two ministers, and there was a discussion on the numbers being pressured –

MR. SIMMONS: Right.

MS. MULLALEY: – and looking like it might head in that direction, wanting to find out how the rest of the summer went with Astaldi. So it wasn't a fully baked number –

MR. SIMMONS: No.

MS. MULLALEY: – it was a concept of that that was – it sort of looked like it was gonna go in that direction.

MR. SIMMONS: Yeah.

MS. MULLALEY: Yeah.

MR. SIMMONS: And you had a concept, in June, of 7.5 billion – worked out to be a little bit more.

MS. MULLALEY: Yes.

MR. SIMMONS: Yeah.

So if we're to say, putting aside the precise number –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – if we're to back up in time from June, how far back would you go to say that people in government were aware that –

MS. MULLALEY: They –

MR. SIMMONS: – there was –

MS. MULLALEY: – weren't.

MR. SIMMONS: – going – hmm? Wait for my question.

That there was going to be a higher number than 6.99, whether it was 7.5 or something else?

MS. MULLALEY: They weren't. They – I mean, any time – again, any time we were in meetings, on any meetings that –

MR. SIMMONS: Mmm.

MS. MULLALEY: – I mean I sat in on them, the discussion was around pressures, the discussion was around mitigation, and the discussion was that we're, you know, the cost and schedule we feel we're holding right now. We can hold it, we're meeting it, we're mitigating – that was sort of the message.

There was always a message around pressures, no doubt, contingency's aggressive, I would – always heard that, that was – that's legitimate,

that, you know, contingency was aggressive. But I can't say to you that anybody was saying, you know, that that it was 7.5 or 7.7 any time before – the first hard number we got, that wasn't exactly finalized, was on June 22.

MR. SIMMONS: Thank you.

And if we go to page 15 of this report, please, a couple of slides over, there is a graph here showing final forecast cost summary, and the red line, I think, reflects the AFE amounts?

MS. MULLALEY: Yes, looks like –

MR. SIMMONS: Yeah.

MS. MULLALEY: – that.

MR. SIMMONS: And if you look at the legend on the top there –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – for that red line, it says: Final Forecast Cost excluding Potential Trends.

So what would you understand “potential trends” to be?

MS. MULLALEY: I don't know. I mean, I guess this would be, you know, considering if you're trending up or down, and at which point, when you – but when this got brought in, we knew it was trending up.

MR. SIMMONS: Mm-hmm. Right, okay.

So there is – although two slides over the 6.99-billion figure is there, if you look at this slide, it's clear from that slide that the 6.99 does not include trends that have been – have been identified.

MS. MULLALEY: Not at this point because we knew – at this point when this deck came in, we knew it was at 7.65.

MR. SIMMONS: Okay.

I have a few questions for you regarding Ernst & Young. And can we go to Exhibit P-03300, please?

And that is book 1, tab 15 for your binders. I'm not going to go through too many of these messages, but I'm just gonna use this one as an example.

MS. MULLALEY: Sure.

MR. SIMMONS: So, earlier today –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – you looked at a lot of internal Ernst & Young messages –

MS. MULLALEY: Yep.

MR. SIMMONS: – involving Mr. Steele and Mr. Noble and Mr. Leather and maybe some other people.

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: And the copies we have are internal, they're not sent to you. Were any of these messages ever forwarded to you –

MS. MULLALEY: No.

MR. SIMMONS: – or passed on to you?

MS. MULLALEY: No, and we didn't see this type of discussion. And I don't wanna say that we, you know, never discussed concerns, because sometimes – again, around the scoping concerns, we understood, you know, that they wanted to go back to the baseline, so we understood the concerns. But this – what you're seeing in the email threads in that, that's sort of not what we're seeing. And, in fact, in some of these things, you know, when concerns are expressed, when –

MR. SIMMONS: Mmm.

MS. MULLALEY: – you actually see the response coming back, it's – it seems like it's settled. And Craig Martin, who is probably testifying next week, I believe, would have some of those. But generally, no.

MR. SIMMONS: So you're in a good position to compare what you're seeing in these internal EY emails –

MS. MULLALEY: Yeah.

MR. SIMMONS: – to the communication that EY had with government.

MS. MULLALEY: That's correct –

MR. SIMMONS: Correct?

MS. MULLALEY: – yes.

MR. SIMMONS: You are.

MS. MULLALEY: Yeah, yeah.

MR. SIMMONS: Would I be correct to say that there's some disconnect between the tone and tenor of what we see them talking about between themselves and what they chose to communicate to government?

MS. MULLALEY: Yes.

MR. SIMMONS: Okay. Can –

MS. MULLALEY: You know, again, having said that, I mean, you know, I know they always wanted to be able to – they felt the right way, I guess – probably from the oversight perspective – was to look at the baseline, right?

MR. SIMMONS: Sorry. Pardon me?

MS. MULLALEY: I said, I think that, you know, from their perspective, you know, I think that the baseline was really important. Yeah.

MR. SIMMONS: Okay. So would there be any reason why you would think EY should not have been – if they – if the people working on the team, you know, felt that – from this internal discussion – that this accurately reflected their views on the assignments that they had, is there any reason why they shouldn't have been reporting it to you, in those same terms? Why they should have been tempering it?

MS. MULLALEY: Why they shouldn't have been –

MR. SIMMONS: Mmm.

MS. MULLALEY: – reporting the same –

MR. SIMMONS: Mmm.

MS. MULLALEY: – types of things? No, you know – again, you know, David Steele and I, again, had a working relationship and working on lots of different files. I mean –

MR. SIMMONS: Mmm.

MS. MULLALEY: – certainly at any time, you know, he could call and – and, again, I don't wanna leave the impression that we weren't talking about, you know, risks and concerns, but not this type, when you see the data's shaky and they have it – again, in hindsight, when we look, I would agree with the language here, but at that point in time in November, they hadn't gone in.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: So I guess when I saw it I was just surprised by some of the comments but, again, when you apply what we know now back to it, I would concur.

MR. SIMMONS: When you read these messages, does it give you any concern at all about the attitude or approach that Ernst & Young might have brought to this assignment and to their dealings with Nalcor, when they're talking to each other in these terms?

MS. MULLALEY: I think – as I said today, I think, you know, from the perspective that I know Ernst & Young, you know, wanted to get at the cost and schedule and the baseline, and intuitively, I guess, if you're looking at a project, that's – you know, intuitively, you're looking at that.

I think probably it caused some friction, certainly, internally when they went in to Nalcor. And if we had all sat down – and we did, we all sat down on a scope of work, and then they go outside the scope of work, it did cause friction and it caused friction in the relationships.

MR. SIMMONS: We had a larger set of messages put in evidence when Mr. Kennedy was on the stand here, and I'll give you my observation from some of it –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – and just ask you to comment on it. But when you read through there are instances on the way through there, internal discussions, that appear to be what I'll call business-development oriented towards trying to ensure that they had the maximum opportunity to be engaged as much as possible to provide as many services as possible which would, of course, increase, ultimately, the amount that they would –

MS. MULLALEY: Sure.

MR. SIMMONS: – have to be paid. In the course of your involvement or in reading these messages, could you give me any comment on whether you observed anything of that (inaudible)?

MS. MULLALEY: I mean, I did observe some in various emails that were in my binder, but they're business, you know.

MR. SIMMONS: So did you have any concern that because of the nature of the assignments given to Ernst & Young, where they were being asked to evaluate whether there were deficiencies in a number of aspects –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – the way the projects were run, that there could potentially be any conflict from that assignment and perhaps a desire to be more involved more closely in the project because of deficiencies that were identified?

MS. MULLALEY: Just – do you mind repeating that a little bit again?

MR. SIMMONS: Yeah, I'm just trying to figure it out as I went along too –

MS. MULLALEY: Okay.

MR. SIMMONS: – so I'm not surprised you – that you didn't get it. Did you have any concern –

MS. MULLALEY: Yes.

MR. SIMMONS: – that Ernst & Young were in a position where they started out with one review, they went to another review, then went

to another review and they were being asked to look at how Nalcor was managing the project in general terms? So it was – their task was to see if it was being well managed or if there was room for improvement, perhaps if outside help would be of benefit –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – and they were in a position and obviously interested in providing the outside help. Now, I'm not saying that they were ill motivated or anything –

MS. MULLALEY: No.

MR. SIMMONS: – but I'm just asking if you had any concern that there might've been some conflict between the tasks they were given and what their ambitions were for involvement in the project?

MS. MULLALEY: I don't think so. I mean –

MR. SIMMONS: Mmm.

MS. MULLALEY: – you know, like I said, you know, a business is always, you know, looking for business. But I never felt, I guess, that – you know, I can only speak from the oversight perspective again that, you know, I think that for them it – you know, they were our advisor and I think that, you know, it was important if they were going to be the advisors, certainly, we were working on key pieces of work and their names would be associated with it and their names are automatically associated with the project.

So I think it was their desire to get in and look at the baseline and other elements that when, again, we were probably trying to do a very specific piece of work that caused some of that friction. But, you know, I did see certain elements of what you're talking about in –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – probably latter emails more so –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – but ...

MR. SIMMONS: Okay. Can we go to Exhibit P-03381, please, binder 2, tab 73.

This is August 22, 2016, this is another internal message. In this case, at the top it's from Mr. Steele to Mr. Hickey.

MS. MULLALEY: Yes.

MR. SIMMONS: And if we scroll down, please – okay, stop there.

MS. MULLALEY: Yeah. Yeah.

MR. SIMMONS: So Mr. Steele sends a message to Mr. Calver. Who is Mr. Calver?

MS. MULLALEY: He's with EY as well.

MR. SIMMONS: Okay, all right.

And he says: "As an update... there is none from Julia. Government just announced a DM" – and I guess that would be deputy minister – "shake up last week, and" –

MS. MULLALEY: Correct.

MR. SIMMONS: – "it monopolized her time and effort... a very tough week in Government. Double edge, Julia survived as Clerk. While she has been a bottle neck in the past, I believe we should feel good about this."

So I'm just wondering about his comment about you being a bottleneck, and if you –

MS. MULLALEY: Yeah.

MR. SIMMONS: – have any insight into why he would've felt that you had been a bottleneck in the process?

MS. MULLALEY: The only thing I – I mean I saw that, this email, and I guess the only thing I could say is that I don't ever – the two issues, I guess, I would feel that there is some aspects to that is, this is August 22, they came in in January, as you know, to do the review. They finished that review in March and then from March on there is a series of emails to me every – very, you know, so often where they're asking about the next steps to get back in, you know.

And, you know, there were discussions we were having in government, but I – you know, I had no direction on doing anything with that at this time. So I think Dave was probably feeling I wasn't responding to the multitude of emails I was getting on that aspect. I can see that.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: And I can see a little bit on the – of course, because he didn't have the sight into the report that was pulled in September at that time, and I think, you know, we were, you know, trying to get that back out and get that, you know, so there may be delay. But, other than that, I can't ever say to you hand on heart David Steele ever called me, that I didn't return his call or that if he ever came – like, we met quite often. Again, like I said, we were working on lots of files, so I can't recognize the comment in anything else.

MR. SIMMONS: And it's certainly nothing he ever complained about to you?

MS. MULLALEY: No, and like I said there's – it's not a thing that he'd call and I wouldn't return his call or he wouldn't come. That's not the relationship we had, I – so I can't speak to it. David would have to speak to that. Perhaps he has, you know, some different insight, but that's all I can say on that. I don't ever recall holding anything up.

MR. SIMMONS: Can we go to Exhibit P-03837, please, and it is volume 2, tab 68. This is a message you were brought to earlier.

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: And it's from June of 2016. It's a message from Mr. Harrington to you directly. And you've identified this as being one where Mr. Harrington had become aware that Ernst & Young might be required to do a review of the QRA –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – the risk assessment that was underway.

MS. MULLALEY: That's correct.

MR. SIMMONS: And it seems that he was kind of getting ahead of that and looking for an efficient way to make that happen, if it was going to happen by trying to double it up with what the –

MS. MULLALEY: That's correct.

MR. SIMMONS: – independent engineer was doing. Do you see that?

Now, you were referred to this message as – with the question whether this was a new Paul Harrington following the change in leadership at Nalcor, I think. So, first of all, I want to ask you: Mr. Harrington's role was as project director –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – of the project.

MS. MULLALEY: Yeah.

MR. SIMMONS: So how did you see and understand what his role was, what his objectives were in discharging it?

MS. MULLALEY: Well, obviously, the project was his main aspect and he was managing and moving that project forward. I mean, we met with Paul quite often. We met with Paul at least once a month, if not more.

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: You know, obviously, he is a critical player in the execution of the project.

MR. SIMMONS: Okay.

Would you agree with me that part of his role – would you have understood that a part of his role is he provides leadership to the project management team –

MS. MULLALEY: Yes. Oh yes. Yeah.

MR. SIMMONS: – and to the team of people –

MS. MULLALEY: Yeah. Sure, yeah.

MR. SIMMONS: – right, who are the ones tasked with actually getting the work done –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – building the project?

MS. MULLALEY: Sure, yeah, absolutely.

MR. SIMMONS: Would you have gathered from your interactions with him that he was protective over trying to ensure that they had the resources and the time available that they needed to do – that they needed to do that job, to get the project done?

MS. MULLALEY: Do you mean his staff?

MR. SIMMONS: Yes.

MS. MULLALEY: You know, I would say to you – I really didn't hear a lot of comments around – but I would say to you particularly Ed, but Paul to a degree as well. I think that – like I said before – I think they always found all of these reviews very time consuming from a resource perspective when they were focused on the project. I heard that time and time again. So – but I, you know – as language around – protective around resources and that, but I can only equate to that.

MR. SIMMONS: I'll use a football analogy: I'm going to suggest a part of Mr. Harrington's role was to run interference for the people who were building the project and to try and keep the distractions away from them –

MS. MULLALEY: Sure.

MR. SIMMONS: – so that they could do their primary job.

MS. MULLALEY: Yeah.

MR. SIMMONS: Yeah. Okay.

Now, you've been fairly clear that you did observe that Ernst & Young tended to have scope creep, they tended to – when they were given a particular scope, they tended to move outside of it and I think you even said that would happen fairly quickly.

You're nodding. Say yes.

MS. MULLALEY: Yes, that's true. I mean, again, I always understood the interconnections between what they were trying to do –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – and the rationale, why we could go further, but again, at certain times we were trying to get a certain aspect done, yes –

MR. SIMMONS: Right.

MS. MULLALEY: – there was always that discussion around the scope creep. Yeah.

MR. SIMMONS: Right.

So I presume then that it didn't surprise you if Mr. Harrington, in his role as project director, was alert to whether outside consultants were exceeding their scope so that he could do what he had to do, which was to try to keep the project team focused on the primary task.

MS. MULLALEY: Yes, I understand that.

MR. SIMMONS: You can understand that.

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: So when he received messages – or when he complained about Ernst & Young is going in an area they're not supposed to be going in.

MS. MULLALEY: Hmm.

MR. SIMMONS: That wasn't really a surprise, that he would take that position.

MS. MULLALEY: Well, I would say, yes to a degree, but sometimes we would see things that we didn't agree was scope creep and that –

MR. SIMMONS: Sure.

MS. MULLALEY: – wasn't on, right? So there's a little bit of both. There was some elements of it and there was some elements where I would say to you that they felt they didn't need this type of information or they didn't do that, where we disagreed with Paul.

MR. SIMMONS: And –

MS. MULLALEY: So there was a little bit of both.

MR. SIMMONS: And people don't agree on everything all the time.

MS. MULLALEY: No. Sure.

MR. SIMMONS: And there are many occasions where people will have differences. Someone will raise an issue; it gets worked out –

MS. MULLALEY: Hmm.

MR. SIMMONS: – one way or another. And so when these sorts of issues or differences were raised by anyone from Nalcor – I'll stick with –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – Mr. Harrington –

MS. MULLALEY: Yeah.

MR. SIMMONS: – did these things always get worked out?

MS. MULLALEY: I would say they got worked out. Whether they got worked out probably to satisfaction, sometimes to – you know, where Ernst & Young was trying to go. You know, I don't know. The timing sometimes, I think their information requests were frustrating sometimes, you know, the length of time it took to respond to information –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – they were frustrating for EY for sure, yeah.

MR. SIMMONS: Commissioner, I notice it's 10 to 5.

THE COMMISSIONER: Yeah, I think we should break here –

MR. SIMMONS: Yeah.

THE COMMISSIONER: – if this is a good time for you?

MR. SIMMONS: Yes, it is.

Thank you.

THE COMMISSIONER: Okay.

So we'll come back tomorrow morning – we're going to start at 9 o'clock tomorrow morning. So we're adjourned until 9 o'clock tomorrow.

And, Ms. Mullaley, unfortunately even though you're scheduled for a day –

MS. MULLALEY: Okay.

THE COMMISSIONER: – you're going to have to come back tomorrow morning, but I do think we'll finish you in the morning.

All right, good.

MS. MULLALEY: Thank you.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.