



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 44

Commissioner: Honourable Justice Richard LeBlanc

Thursday

30 May 2019

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc
presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right.

All right, good morning.

Ms. Mullaley, you remain – I think you were
under oath yesterday?

MS. MULLALEY: Yes.

THE COMMISSIONER: You remain under
oath at this time.

Mr. Simmons, when you're ready.

MR. SIMMONS: Thank you, Commissioner.

Good morning, Ms. Mullaley.

I just have one other topic I wanted to ask you a
couple of questions on concerning commercial
sensitivity. Because you were asked some
questions about that, about Nalcor efforts to
protect the commercial sensitivity of information
and how that played into the work of EY and the
work of the Oversight Committee. And this
came up in the context of Exhibit 03337. So,
Madam Clerk, if we can go to that, please. And,
Ms. Mullaley, it is at volume 2, tab 41 of your
binder.

You will probably recall this. This in an email –
internal email exchange between Mr. Steele and
Mr. Noble at Ernst & Young, and this is
September 29, 2015. You were brought to the
reference here about the 10 of 11 claims for
commercial sensitivity and how that played out.

So, first of all, I just want to take a look at
what's happening in the message. And if we
look at the bottom of page 1 the email chain
starts with a message from Mr. Steele to Mr.
Noble, and the subject is: "2 report option."

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: Which you told us about.

And if we go to the top of page 2, Mr. Steele has
written: "Attached is the report (for OC), most
current version (final draft). Could you work
from this one to establish a second report (for
public consumption), recognizing some of the
sensitivities (commercial) raised by Nalcor?"
Which seems consistent with what you've told
us already.

MS. MULLALEY: That's correct.

MR. SIMMONS: Yeah.

MS. MULLALEY: Yeah.

MR. SIMMONS: And then if we go back to
page 1, there's a reply from Mr. Noble to Mr.
Steele, and you were brought to this. And I just
want to read two of the paragraphs here for you.

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: The second paragraph says:
"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."

And then the couple of paragraphs down: "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."

So am I correct in reading this as being that the
items – 11 items have been identified as
potentially commercially sensitive by Nalcor;
EY doesn't have all the reasons and they need to
go back and get the reasons to evaluate it? Yes,
is –

MS. MULLALEY: Yes.

MR. SIMMONS: – that's a correct reading of
it?

MS. MULLALEY: I agree, yes.

MR. SIMMONS: Okay.

So do you know how that played out? Did this
become an item of dispute where EY were

arguing with Nalcor over whether items were commercially sensitive or not?

MS. MULLALEY: I guess my recollection on that is that we had sent the reports out. There are some further emails as time in between. So what I can't confirm for you – to be honest with you – is if there was any further – a lot of further discussions between Nalcor and EY when they worked through the reports. I believe there were – you know, Ernst & Young just separated the reports, understanding the concerns, particularly around the Astaldi – being able to identify Astaldi.

MR. SIMMONS: Right.

MS. MULLALEY: I'm not sure exactly how much back and forth conversations there were afterwards, only, I know the two reports came in to us and we, you know, called, I guess, back to Nalcor to understand that the commercial sensitivities had been addressed, and we had talked to EY and they seemed to be satisfied.

MR. SIMMONS: Okay.

MS. MULLALEY: So the report was released at (inaudible) –

MR. SIMMONS: So it all got worked out.

So this had sort of been presented yesterday to you as if Nalcor had made all these claims and Ernst & Young rejected them, rejected 10 out of 11, and I'm not reading the email that way.

MS. MULLALEY: No, I believe the – I believe, again, without having the document up – I think the 10 of 11 probably were some of the items that were highlighted in the report to us very late in that September phase and that I had sent the report out to Dave to kind of look at. I'm assuming that's where the 10 of 11 are coming out of, yeah.

MR. SIMMONS: All right. Okay.

So Nalcor, of course, was building the project – dealing with many contractors.

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: It was recognized, I think, at – by the government and by the Oversight Committee that there were genuine commercial issues of commercial sensitivity that needed to be recognized and needed to be addressed, correct?

MS. MULLALEY: Yeah. It certainly acknowledged there would be commercial sensitivities aspects –

MR. SIMMONS: Right.

MS. MULLALEY: – around the project, yeah.

MR. SIMMONS: Right.

MS. MULLALEY: It's the discussion on them, I guess –

MR. SIMMONS: Right.

MS. MULLALEY: – when they are and when they aren't, yeah.

MR. SIMMONS: So this was a part of the regular process of ensuring that there were not adverse effects on the project through increased costs as a result of releasing information that could give contractors advantages.

MS. MULLALEY: That's correct. And we would've done the same thing for our reports, we would've also tried to look at –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – in that Nalcor review for any concerns around commercial sensitivity.

MR. SIMMONS: So although there might be differences from time to time about whether something was commercially sensitive or not, was there any objection on – from the Oversight Committee or from government, to your knowledge, to the concept of Nalcor trying to police what was released for those reasons?

MS. MULLALEY: Well, I think we knew there was a legitimate –

MR. SIMMONS: Mm-hmm.

MS. MULLALEY: – aspect for commercial sensitivity. I think it was just understanding sometimes when the lens was being applied, whether it was appropriately being –

MR. SIMMONS: Right.

MS. MULLALEY: – applied and then there might have been some discussions at certain points and agreement to disclose something or not disclose something. But the overarching premise that there would be a concept of commercial sensitive, I acknowledge that, yes.

MR. SIMMONS: Good.

And for things like the Oversight Committee reports and Ernst & Young's reports to the Oversight Committee –

MS. MULLALEY: Mm-hmm.

MR. SIMMONS: – clearly there's going to be some discussion between Nalcor about what's commercially sensitive and not, but ultimately the decision about what gets released publicly is the government's, correct?

MS. MULLALEY: Yes.

MR. SIMMONS: Yes, okay.

Thank you very much.

I don't have any other questions.

THE COMMISSIONER: Thank you, Mr. Simmons.

The Concerned Citizens Coalition.

MR. BUDDEN: Thank you.

Good morning, Ms. Mullaley.

My name is Geoff Budden, I'm the lawyer for the Concerned Citizens Coalition. And, as you may know, the Coalition is a group of individuals who, for a number of years, have been following the project and have been critiques of the project, and quite frankly, one of them would be a predecessor of yours, as clerk, Mr. David Vardy.

So I'd like to start off just with a few questions about the – I guess the role of the public service as you would see it. So I guess – and I'm asking you, obviously, from your positions, the fact you spent 25 years, by my calculation, at least that long, as a public servant – a senior public servant for most of that time. So that's all correct, isn't it?

MS. MULLALEY: That's correct.

MR. BUDDEN: Okay.

So would you agree that the – I guess the – I assume the responsibilities of a senior public servant would include to bring concerns and issues to the minister's attention, to inform and educate the minister where necessary and not just passively carry out what instructions the minister may give you?

MS. MULLALEY: No, I would totally agree with that, the advice giving role and, again, it goes back to the informed decision-making that you bring all information, and alternatives and considerations forward.

MR. BUDDEN: Okay.

And that would include if the minister or the ministry was embarking on what you regarded as a problematic course of action, you would have the duty to respectfully advise the minister of those concerns?

MS. MULLALEY: Yeah, so they would certainly not involve personal opinions, but they would involve, you know, I guess, any information you would have from that perspective. And yeah, you bring all information, all sides, all information, pros, cons of all and to bring to – ability to reach an informed decision.

MR. BUDDEN: Sure, information perhaps that hadn't been considered, points of view that seemed to have been overlooked, that kind of thing?

MS. MULLALEY: Sure.

MR. BUDDEN: Sure. Okay.

And I'm talking here, I suppose, of a minister and a – or a deputy minister and a ministry – and a minister, but this would hold equally true, I'm sure, if you're talking collective groups, such as the Oversight Committee or the Cabinet Secretariat.

MS. MULLALEY: To bring it forward to a ministry or ...?

MR. BUDDEN: The same kind of relationship, the same kind of duties and responsibilities.

MS. MULLALEY: Oh, yes. Yeah.

MR. BUDDEN: Yeah.

Have you been following the Inquiry? I guess you have to some degree. But perhaps tell us to what degree you've been following this Inquiry.

MS. MULLALEY: I have been to a certain degree. Not everyday or – you know, but in general, reading the papers and different elements like that.

MR. BUDDEN: Sure. Yeah.

MS. MULLALEY: Yeah.

MR. BUDDEN: Have you – and again, we'll cover some of this – but just as a general observation, has anything you've read or seen left you with concerns about the way the public service of Newfoundland carried out its duties and responsibilities with respect to the Muskrat Falls Project?

MS. MULLALEY: Well, I would say to you, I guess, again in hindsight of understanding all the information that has been before us now through the Commission. You know, I think, when I look back on a lot of the – what we would have at the time perceived as a – certainly independent cold eyes review and other elements, if you probably could've known that, you certainly probably would've made sure that there was – that there were truly independent analysis on it that were fulsome and they were looking at what government thought they had been looking at.

MR. BUDDEN: Okay.

MS. MULLALEY: I would say that.

MR. BUDDEN: I guess I'm taking it a little further. Can you think of instances of what you've seen or heard where you think that if there was a mistake there, somebody should have advised the minister of this information or at least advised the minister: Look, you should inquire in this direction? That kind of thing. Does anything come to your mind?

MS. MULLALEY: I can't really think of anything in particular, right now.

MR. BUDDEN: Okay, fair enough.

Perhaps, Madam Clerk, we could bring up Exhibit 02697, and it's page 5 that I'm interested in.

THE COMMISSIONER: 02697. Okay, that's not in your material, so that will come up on the screen.

MR. BUDDEN: And this has to do with – this particular passage – the role of the Oversight Committee. And so you can perhaps scroll down to the paragraph that begins: The role of the committee.

MS. MULLALEY: Mm-hmm.

MR. BUDDEN: So if you could scroll down please, Madam Clerk. Page 5. Yes, please. Yeah, that's it.

The bullet there that begins, the role of the committee – I'll read it to you and then my question is – so think of this: Is this a full and complete description of the committee's role as you understand it?

So what we have here: "The role of the committee is to review information provided by external auditors, the independent engineer and Nalcor; provide updates and discuss issues with relevant departments; meet regularly with Nalcor officials; report to Cabinet, which will provide direction to appropriate ministers as required; and provide quarterly updates to the public on project costs, scheduling, and project performance."

Is that the role, I guess, that you felt that you guys were tasked with?

MS. MULLALEY: Yes, it was. And, you know, the mandate certainly was around the (inaudible) going, comparing to the baseline, but it wasn't about the baseline.

MR. BUDDEN: Okay. And can you think of any – was the role altered or expanded in any fashion that would change the meaning of what we see here?

MS. MULLALEY: You know, generally that would be the statement, yeah.

MR. BUDDEN: Sure.

Did you understand your role to be, sort of, an ongoing review of the fundamental business case of Muskrat Falls to – well, you saw that as being outside the scope of what you were tasked with?

MS. MULLALEY: Yeah, I – again, when the committee came along, you know, the business case obviously had gone forward before Cabinet and was sanctioned, and then the financial close came along as well with the similar numbers. So the policy direction was to move forward with the project. Our role, clearly, was to monitor how the project was performing against the approved baseline.

MR. BUDDEN: Sure. And, of course, the committee was only struck after financial close. I realize that.

MS. MULLALEY: Yes.

MR. BUDDEN: Okay.

You covered this yesterday, but perhaps just to – for clarification for my purposes: Did the committee play any role at all, whatsoever, in the termination of Mr. Ed Martin?

MS. MULLALEY: On what perspective?

MR. BUDDEN: Did the committee play any role whatsoever in the termination of Edmund Martin?

MS. MULLALEY: No.

MR. BUDDEN: Okay.

Did you, yourself, play any role whatsoever in that termination?

MS. MULLALEY: No.

MR. BUDDEN: Okay.

You know Mr. Todd Stanley of course?

MS. MULLALEY: Yes, I do.

MR. BUDDEN: Okay.

You probably know – I'm sure you know that Mr. Stanley testified here at the Inquiry –

MS. MULLALEY: Mm-hmm.

MR. BUDDEN: – and also gave a statement to the Inquiry that was admitted into evidence, and it's at Exhibit 00790. Madam Clerk, perhaps you could call that up and bring us to page 19.

And what I'm going to do, Ms. Mullaley, is there's a couple of – it's a fairly long interview, but a couple of quotes there that I'm gonna put to you for your agreement or disagreement or however you feel that –

MR. RALPH: Excuse me, Commissioner.

I see that Mr. Stanley's lawyer is not here. But I understand the purpose of putting the transcript in was to sort of look at the contradictions that he had made – or that were suggested by Mr. Learmonth between his statement and what he said under testimony. Not to use it – perhaps there are things that are in this statement that aren't included in his testimony; I'm not sure if that's an appropriate use of his statement.

MR. BUDDEN: Can I speak to that, please?

THE COMMISSIONER: Sure.

MR. BUDDEN: Mr. Stanley, under – he gave sworn evidence in his statement as to certain things, his certain perceptions of the relationship between government and Nalcor. I believe it captures rather nicely one particular view, which – and it is up to you, of course, whether to accept that view or to accept how it evolves

somewhat in his evidence. But I think it captures rather nicely a particular view, and I'm wondering if this witness, who was there essentially in the same time frame, would agree or disagree.

For example, I'm gonna put the runaway train quote to Ms. Mullaley, and I think it would be interesting to see what – and informative, to what degree she would adopt what Mr. Stanley has had to say.

THE COMMISSIONER: Hmm.

MR. RALPH: I think that's fair enough, Commissioner.

THE COMMISSIONER: Right.

Yeah, I don't see anything wrong with this. The purpose of having Mr. Stanley's statement, of course, was – that was requested by counsel and for my review, and obviously I will be reviewing that in assessing Mr. Stanley's evidence.

I don't see any reason why you would be prevented from questioning on what he said at his interview. I think he had – he indicated he did say things at his interview he – I think he described it as being, perhaps, a little but more flowery than it should've been. But (inaudible) –

MR. BUDDEN: He didn't repudiate it.

THE COMMISSIONER: No.

UNIDENTIFIED MALE SPEAKER: Mmm.

THE COMMISSIONER: So I think it's fair enough that you can go ahead and –

MR. BUDDEN: Thank you.

THE COMMISSIONER: – examine –

MR. BUDDEN: And I'm reading – it's a fairly long passage, but I think it's important so I'm gonna read it to you. And if you're following along, you can scroll down beginning at: There was an aspect that Nalcor. So it's just a tiny bit off the screen – yeah, beginning there.

So Mr. Stanley said: "There was an aspect that Nalcor was – there were concerns at Natural

Resources – concerns in government that there was insufficient oversight or insight into what Nalcor was doing, mostly on the control – on a host of fronts over time. Most of the work that Nalcor did from ... on the Lower Churchill – from, I don't know, 2009 to 2012 or '13, Nalcor was, you know, sort of reporting directly to the Premier's office and intervening departments found out later what was going on.

"So the normal"

And then Mr. Learmonth says: "That was during what period?"

"MR. STANLEY: I'd say, like, 2009 to 2013, but even past that.

"MR. LEARMONTH: Yes.

"MR. STANLEY: So you could have circumstances where Nalcor do – come into government and make a presentation on the eighth floor, go get the instructions and approvals, go back and then they'd call the government departments and tell them what they were doing. And the government departments would find out through Nalcor what had been approved on the eighth floor, and may not necessarily think the eighth floor had all the information in front of them that they should have when they made that decision and not agree with the decision.

"So the whole issue of how Nalcor's operating versus how government was operating, and the level of control or insight or – that was a constant issue at lower levels of government than I – than like, sort of, the Premier's office. I'm not sure I'm putting that well.

"There was constantly discussion going on that Nalcor was basically a fiefdom. And we don't know – always know what was going on over there, you know, at the operational level."

So those are the concerns as Mr. Stanley expressed them in his interview. So I may pick at a couple of different parts of that. But just generally, is that a concern you would've expressed – or you would've felt, in these terms?

MS. MULLALEY: From my time there in 2013 on – I can say, no. This was not my experience at all. In fact, it was the opposite.

And, you know, maybe it would've been – I can't speak to prior to that. You know, I do know, obviously, that – you know, that then Premier Kathy Dunderdale and Ed Martin had worked together for many years when she was minister. But I will say, when I came in there – and the then Premier Dunderdale was still there – you know, I did not see this. And I can very, very emphatically say, from then on, any other premier, this did not happen.

There were not meetings that happened in the Premier's office if I wasn't there. The – and the minister of Natural Resources wasn't there, and Charles Bown wasn't there. And I can be very confident in that. It's not – that's not how it operated, so this – when I read this about coming in the back doors and officials not being involved, that emphatically did not happen. I can say that for sure when I was there from 2013 on.

And in fact – you know, there is, again, another email on file that will, sort of, collaborate that to a degree. And that I know Ed and I had been talking and he wanted an opportunity to have some more regular meetings, because again, I think there was a concept that, you know, again, that Premier Dunderdale, who had been there quite a while, in roles – you know, understood a lot of the initiatives that were happening at Nalcor, understandably, and that some of the strategic issues and other initiatives that were under way.

And then when you had the then Premier Marshall come in that – you know, that understanding of the various strategic directions wasn't there, and then pursuing – following that, I guess, Premier Davis came in. So, you know, I will say, emphatically, this did not happen. It –

MR. BUDDEN: Okay.

MS. MULLALEY: – didn't happen like that.

MR. BUDDEN: Did you not testify yesterday as to an instance where Mr. Martin, essentially, walked out of a meeting and more or less walked out of your meeting into – directly into a meeting with the premier?

Did I not understand that?

MS. MULLALEY: He phoned him, I think, to have a discussion about it. But not, like, for decisions like that, no.

MR. BUDDEN: Okay.

So you could have – I mean, I'll go back to Mr. Stanley. So you could have circumstances where Nalcor came into government and made a presentation on the eighth floor, and then – so forth. So you certainly did experience something like that when Nalcor were going directly to the eighth floor?

MS. MULLALEY: And only the – for the phone call – you're talking about when Ed –

MR. BUDDEN: Yeah.

MS. MULLALEY: – went in that time? Yes –

MR. BUDDEN: Okay.

MS. MULLALEY: – but I would be made aware of it, from that (inaudible) – but that wasn't around a particular strategic decision that way.

I will say, the comfort level – the premier and the ministers always wanted the officials in the room, from that perspective. So I can just say, I know, based on experience, that that didn't happen. Just –

MR. BUDDEN: Okay.

So – and let's go back to the very first sentence: "... there were concerns at Natural Resources – concerns in government that there was insufficient oversight or insight into what Nalcor was doing, mostly on the control" And then he goes on a bit.

You would take issue that there were concerns in government, that there was insufficient oversight or insight into what Nalcor is doing. You disagree with that?

MS. MULLALEY: What I would say here, in this aspect – again, just based on my experience – sometimes what would happen was that something would happen and something may be

– Nalcor may be getting ready to release a particular statement on something happening, and government wouldn't be given the heads-up. So there was some of that, again, you know – or being, maybe, caught off guard by something that was happening, and they hadn't realized that, right? Didn't mean –

MR. BUDDEN: So you would –

MS. MULLALEY: Didn't mean –

MR. BUDDEN: – partially agree with what he says here?

MS. MULLALEY: Here, yeah. So I have experience that, you know – but again, it might've been on a particular issue and you find out last minute that Nalcor is going out to announce something or other. You know, so sometimes it was being caught off guard a little, I would say. So when I see that, I can recognize a little element of that, for sure.

And, again, I think that email I'm referring to where Ed was wanting to try to get some regular meetings, and Ed and I discussed, you know, you almost need to come in with a plan on all your key decision points for all – not just the Muskrat Falls. There are a lot of things going on, obviously, and we were trying to build a framework in where decisions needed to be made. But you – 'cause you cannot come into government, ninth hour, and expect – you know? So we were trying to build that kind of process there, right? But – yeah, so there might've been a few surprises. I can understand some of that language.

MR. BUDDEN: Okay.

So you would agree – your evidence here today is you would agree that at least the first part of what Mr. Stanley has said, the part I just read out about the – sorry, I've lost my page. I've gone ahead a bit to my next quote.

So you would agree, just for clarity, that there were concerns in government that there was insufficient oversight or insight into what Nalcor was doing? There's some truth in that.

MS. MULLALEY: Yeah, the insight of it. Yeah.

MR. BUDDEN: Sure. Okay.

Let's move on two more pages. And this is a – it was a quote that got a fair bit of attention, and it's – this would be page 21, Madam Clerk.

And if we scroll down a bit to just – yeah – “**MR. STANLEY:** He, I think, viewed them as being, as a number of people in government did as you're getting into 2000 – I can't remember when he was there, 2011, '12, I think.” He's talking about Jerome Kennedy here. “You know, they were sort of viewed as being a ... bit of a runaway train that we didn't have any control over.” He's talking about Nalcor.

Is that a view that you would ascribe to? That Nalcor, in this period of time – well 2011, 2012 there, but let's carry it into your time, 2013 – was Nalcor, indeed, a bit of a runaway train that the government had little control over?

MS. MULLALEY: I wasn't there in 2012-13 for – so I really can't comment on that.

MR. BUDDEN: You were there by the – late summer of 2013.

MS. MULLALEY: Late August, yeah –

MR. BUDDEN: Yes.

MS. MULLALEY: – 2013.

MR. BUDDEN: So let's talk about your period of time.

MS. MULLALEY: Yeah.

MR. BUDDEN: During your period of time would you regard that as accurate language, that Nalcor was viewed as a bit of a runaway train that we –

MS. MULLALEY: Mmm.

MR. BUDDEN: – meaning the government didn't have any – did have – didn't have any control over?

MS. MULLALEY: I don't know if I can agree with that. I mean, I guess my feeling would be that – again, I'm speaking to when I came in in August. I mean, it was – there was a lot of fast-

forward movement to financial close. Obviously, like, as you know, Astaldi was on a notice to proceed and, you know, things are moving very quickly. So everyone was moving very quickly to the financial close, trying to ensure all the due diligence was happening with all the papers and financing aspects and everything else. But I can't speak that I necessarily felt it was a runaway train.

MR. BUDDEN: Yeah, I mean –

MS. MULLALEY: That, you know –

MR. BUDDEN: – by runaway train –

MS. MULLALEY: – there was always a plan around what we needed to do and they were acting quickly towards everything. But I – you know, I felt there was process and structures around it. I can't say I felt it was a runaway train, no.

MR. BUDDEN: Okay. And by runaway train we can presume a train where there's essentially no driver, the train has its own – the train in this case being Nalcor – has its own course, its own momentum.

MS. MULLALEY: Yeah.

MR. BUDDEN: And you would – I presume you are rejecting that?

MS. MULLALEY: Yeah, I don't feel that way. I felt there was structure and process coming in on that side of it, and we went through that structure and process, so ...

MR. BUDDEN: Okay.

Were Nalcor, or someone from Nalcor, always present at Oversight Committee meetings?

MS. MULLALEY: Yes.

MR. BUDDEN: Okay.

MS. MULLALEY: Yeah.

MR. BUDDEN: And that's somebody –

MS. MULLALEY: There might've been the first one or two – if it wasn't – yeah, there might

have been one or two when we were first starting off. But very seldom did we not have – yeah, Nalcor –

MR. BUDDEN: Okay.

MS. MULLALEY: – were always there.

MR. BUDDEN: Would that not serve to perhaps inhibit or limit discussion? I mean, if you got somebody from Nalcor right in the room, you're – just let me finish, please – you're assessing – EY is saying: Look, we can't get information out of Nalcor. Might that not inhibit the discussion of this Oversight Committee when the subject of your oversight is sitting right there with you?

MS. MULLALEY: No, not at all. They weren't in all the meetings. They came in to do updates. But a very common practice of ours was to – I mean, we were reviewing reports along – all the way. And generally we had – as a committee and in discussions with EY, we would actually draft particular questions we wanted addressed at the meeting. So they would come in with a presentation, an update and then they would answer the particular questions we had posted in previous – in getting prepared for the meeting. So – and that would not stymie any discussion, I can tell you, in the room.

MR. BUDDEN: Sure, okay.

You testified yesterday to the effect – and I wrote it down, I think I got most of it – that you saw your role or – in the lead up to financial close as, at least in part, ensuring we had a team in place to work side by side with Nalcor to ensure financial close happened. You remember saying that?

MS. MULLALEY: That's true, yeah.

MR. BUDDEN: Okay.

And I guess my question for you – and we've heard evidence, hours of evidence really, about what Nalcor did or did not inform you and your secretariat in this lead up to financial close. I guess my question to you, what's been sort of striking me all along is: Surely, there was a proactive obligation on your part, on the part of

the public service, to make appropriate inquiries of Nalcor. Would you agree with that?

MS. MULLALEY: I would agree with that, yes.

MR. BUDDEN: Okay.

MS. MULLALEY: And I would agree that how we did that is through the Finance officials and reaching over into Nalcor, specifically advising them that the minister was going into Cabinet to do the update on the project and seek the money for the financing, and they sent him the \$6.2 billion.

MR. BUDDEN: Are there emails – because I can't think of any I've seen that are this explicit. But, I mean, you guys were obviously, at the time, fairly tight and the emails were all: Dear Paul, you know, dear Julia and so on. I mean, it seemed like a cordial (inaudible) people who'd reach each other in a moment.

What I don't see here is something like you saying: Paul, you are confirming or you can confirm to me that the numbers from DG3 – which after all were a year before – these numbers are still accurate. Am I missing that kind of thing? Is it there?

MS. MULLALEY: No – I mean, in hindsight I wish I had, I guess. But that's not the role – I mean, I had the team on this and we had our Finance officials and we had our deputy minister of Finance on it, and that's who we relied on. So as they were moving through this process, I guess, and then getting the information to give to the minister to come to Cabinet, you know, there would be – it wouldn't be on my mind that Nalcor is sending something over, I guess, that's not accurate. But yeah, could I have phoned and say: What you're sending over to the minister of Finance to bring to Cabinet, the 6.2, are you absolutely confirming that's accurate? I could've done that, you know –

MR. BUDDEN: Do you think you should've done that?

MS. MULLALEY: Well, again, from my perspective, in my role, you know, it was – we had a whole financial team on it. We knew we had to get an update in to Cabinet. And that was

the process we used. We used a process where our financial team – and then they went over to Nalcor to get an update and the update came back. So, all I can say, at the time that seemed like a sensible process to use. That you were relying on the numbers that Nalcor was sending over.

MR. BUDDEN: I'm not quite done with that, because what strikes me, almost as a matter of common sense – I mean, if you're buying a bungalow in the East End of St. John's and you go to the bank and the bank says: Well, this appraisal is nine months old, you need another one. And here you guys are on the biggest megaproject in Newfoundland history –

MS. MULLALEY: Mm-hmm.

MR. BUDDEN: – you have numbers that you know are a year old. The DG3 numbers, by this point, are a year old; some of them are a fair bit older than that.

MS. MULLALEY: Right.

MR. BUDDEN: At DG3, the process wasn't complete. That was well known. The information was coming in. And yet those numbers seem to have not been explicitly challenged in a proactive way. And I guess I'm looking at you –

MS. MULLALEY: Mm-hmm.

MR. BUDDEN: – 'cause you're on the stand –

MS. MULLALEY: Mm-hmm.

MR. BUDDEN: – you ultimately were the clerk. I would suggest the buck stops with you – the public service part of the buck.

MS. MULLALEY: Mm-hmm.

MR. BUDDEN: And I'm suggesting to you that that was a failure on your part, and on the part of those immediately answerable to you, to not be more proactive. To not explicitly say: Look, are these current numbers? Are you sure? You didn't do that, did you?

MS. MULLALEY: Not to the 'explicitly' of going into Ed and saying you – please sign on

the line that the numbers you're sending over are accurate. No, I did not do that. You know, again, you know, we have a multitude of departments and – coming in with papers all the time. You know, deputies are accountable, heads of organizations are accountable, and again, you're – back to the reference of your car, I mean, you know, this number of the 6.2 had gone through – again, what we know now is different, but at the time, the context we were living in, we felt that that had been a robust number.

You know, the context of someone sending you over a number that's not what the number is, is very different. It's not that, you know, you don't have officials working on that number side by side on them. They were working through that; the financing was working through it; the Government of Canada was working through it; the independent engineer was working through it. I guess from the perspective –

MR. BUDDEN: The independent engineer is working through those numbers by that point?

MS. MULLALEY: Well, from our point of view, again, the independent engineer was doing that report and had to give a final number, right, in the report, so all those numbers were coming from all those different sources.

Yeah, do I wish I had gone back and thought to say to Ed: Ed, you know, are you absolutely sure? Can you come over? Can you bring me through the numbers? I mean, that would be –

MR. BUDDEN: Or even –

MS. MULLALEY: – a little bit of a different role because, again, that's where your Finance officials are coming in, right. It's like every department, your deputy is accountable and they bring up the advice to you. You're not double-checking all the work that every single deputy is doing in government, that's not –

MR. BUDDEN: Okay, well let's –

MS. MULLALEY: – the role. But the question is –

MR. BUDDEN: Yeah.

MS. MULLALEY: – the question is and ultimately it is my – was my role to question. And we did question, we talk about the numbers and it was important for the minister to come over and give an update on the project. And that is what he did. And in that update he brought in the 6.2 number, that's all I can say.

MR. BUDDEN: And you yourself did not notice, or did not occur to you, this was a stale number and you never thought to challenge it in saying: Look, a lot has happened in the past year, has the number moved? You never did that.

MS. MULLALEY: I never challenged the particular number. No, I did not. I just – like I said, we had Finance officials on it and –

MR. BUDDEN: Okay, well let's –

MS. MULLALEY: Yeah.

MR. BUDDEN: – break it into two parts. Was it a fail on the part of the public service not to do that, not to say: Look, is this number still good, still current? Do you accept that that was a fail, not to explicitly do that?

MS. MULLALEY: I think that it should've been done. And I do know some questions like that were posed back by the finance team, you know, and they're in emails as well, the same typical type of questions that you're talking about and that should've gotten answered and I saw them in the emails through this disclosure through Natural Resources. Yeah.

MR. BUDDEN: And do you take any personal responsibility for that fail?

MS. MULLALEY: I would say to you that I feel accountable and I – if I had my time back, understanding everything here now, yeah, I mean, you know, I had wished I had probably sat down with Ed, gone through it, understood what had changed and questioned, sure.

MR. BUDDEN: Okay. Fair enough.

The – and again, I only have a couple of more questions. But again, we're in the lead up to financial close, a period of time where, as you

have testified, you're working hand in hand with Nalcor. There's a lot going on here.

MS. MULLALEY: Sure.

MR. BUDDEN: And I won't – I'm not going to revisit the contingency numbers and the over – the cost overruns because we've had discussions of what you guys knew or shouldn't have known, so let's leave that.

But what I would think you would've known was that in July of 2003 – 2013, Hydro-Québec had commenced a lawsuit, which if successful would've undermined or at least challenged, I would suggest, much of the business case for the project. Emera had – the UARB had rejected Emera's application on the term sheet.

MS. MULLALEY: Mm-hmm.

MR. BUDDEN: You're nodding so you're aware of that. You were aware of that?

MS. MULLALEY: Mm-hmm.

MR. BUDDEN: And Emera had made a further application that ultimately had been accepted, so there'd been a lot going on there I would suggest. Did any of that cause you or your people, the senior civil service, to suggest to government, look, these are fairly fundamental changes. We have not yet gone through financial close, which is a further, perhaps, ultimate level of financial commitment. We really should step back and revisit the whole thing in light of these developments. Was that advice ever given?

MS. MULLALEY: Again, a lot of that was a little bit before my time. So I – there was nothing advised to me during, I guess, transition time when I walked in there, only that I was still aware that, you know, the final approval still had to go through Nova Scotia. So we were monitoring that from that perspective, but that's all I can say on that front. Yeah.

MR. BUDDEN: So I guess the answer to the question – did these events or any combination of these events lead the – yourself or the public service to advise the government to step back – the answer would be no.

MS. MULLALEY: No, I think they were still moving for waiting until to see the final decision from –

MR. BUDDEN: Sure.

MS. MULLALEY: – the Nova Scotia side.

MR. BUDDEN: Going to move into a somewhat different area now. Madam Clerk, will you bring up P-00043, please, and I just have a question or two on this. And perhaps we can just go – we'll stop at the first page just so we can establish what the document is. And, again, this is probably not in your materials, Ms. Mullaley, so ...

So this is the exhibit. It's – I think the title is fairly self-explanatory: Commitment Letter to Assist Financing of Phase One of the Lower Churchill Project. So this would predate your time by a little bit. Are you familiar with this document?

MS. MULLALEY: Mm-hmm.

MR. BUDDEN: Okay.

MS. MULLALEY: That looks like a Cabinet paper.

MR. BUDDEN: Sure.

Perhaps we could go to page 12, Madam Clerk. There's a chart here and it's the heading of the chart that I am interested in first. The heading is: **"ANNEX B – CHART SHOWING FREE CASH FLOW FROM THE MUSKRAT FALLS PLANT, LABRADOR TRANSMISSION ASSETS, AND LABRADOR-ISLAND LINK."**

They all have acronyms which we'll get to but it's the free cash flow that I'm interested in. What in this context would you ascribe – what meaning would you ascribe to free cash flow? And there's a – if you want to scroll down a little further, Madam Clerk, there's – I believe, there's more information. No, I'm sorry that's another document so just go back to this one. Free cash flow – it's the free I'm really interested in.

MS. MULLALEY: Yeah, I mean, I guess I would – and I don't know if that's right or wrong, but I guess when I'm seeing free cash flow from Muskrat Falls plant, it would be assuming there must be some, you know, export sales or something like – that's the cash – some cash coming from the outset.

MR. BUDDEN: Okay.

Can you think of any context where free cash is an appropriate term when one is talking, I guess, megaproject development? It's the word free I'm sort of focused on there. A little odd, isn't it?

MS. MULLALEY: Yeah, all I can think is they're – they must be looking at it as a surplus. You know, it must be around export sales is all I can see.

MR. BUDDEN: Okay because certainly – surely if we're talking financing, there is no such thing as free cash when it comes to building something, is there?

MS. MULLALEY: No.

MR. BUDDEN: I mean, it's either cash you're borrowing or cash you have on hand. You're diverting from some other purpose.

MS. MULLALEY: Right.

MR. BUDDEN: Okay.

The – and obviously any free cash would have to – in order to be truly free would have to be net of any financing costs, wouldn't it?

MS. MULLALEY: It would have to be unencumbered yeah.

MR. BUDDEN: Okay.

If we can scroll down a little further, I think there's some bullet points here on that page. Okay. Okay, we'll skip a little past that, please.

Perhaps, Madam Clerk, we can go to 01559. And this, again, is one you probably don't have in your book.

THE COMMISSIONER: Right, it's on the screen.

MR. BUDDEN: Yeah, this will be on the screen as well.

And what this is, it's a – just let's set it up. It predates your time. It basically explains the Power Purchase Agreement which, obviously, you're familiar with: "A report supporting the purchase price of Muskrat Falls energy by Hydro from Nalcor."

And scroll down to the bottom of page 1 there, please, Madam Clerk. And there's a little quote there I'd like to put to you and I think this captures all – the last sentence: "This is accomplished essentially by requiring that the equity investor 'wait' for its return over the project life. It should be noted that the equity investor is not" forgiving "any return for waiting; it still earns its rate of return on the entire investment over the course of the terms of the PPA."

And I guess it's the use of the word, wait, there that I find a little puzzling, especially where it's set up in quotes like that. But, again, it would be a fundamental principle of financing that if you're waiting on repayment during the period of time you're waiting, you are in fact – there would be, presumably, interest accruing or other financing costs that the waiter would be incurring. That just follows through logic and common sense, doesn't it?

MS. MULLALEY: I'd almost have to read this in context to be honest with you.

MR. BUDDEN: Fair enough but you would agree as a general principle that if you had lent money to somebody and you're waiting on –

MS. MULLALEY: Yes.

MR. BUDDEN: – a return that you are either collecting interest or you're forgoing interest, it's one or the other.

MS. MULLALEY: Yes, generally. Yeah.

MR. BUDDEN: Sure.

And perhaps, Madam Clerk, you could now move along to Exhibit 01561. And this is one you certainly should be familiar with; it's a September 2017 report of the Oversight Committee. And it's page 11, in particular, that I would like to go to. And my purpose in all these questions is really about the financing and the calculation of that.

Perhaps, just because this is –

MS. MULLALEY: Sorry, what date is this?

MR. BUDDEN: This is September of 2017.

MS. MULLALEY: Yeah, so I wouldn't have been there then.

MR. BUDDEN: Pardon?

MS. MULLALEY: I wouldn't have been there at that time. I left September 2016.

MR. BUDDEN: Yes, that's right, but – well, you're right, you wouldn't necessarily be familiar with it –

MS. MULLALEY: No.

MR. BUDDEN: – but you're certainly familiar to the process.

MS. MULLALEY: Yes. Yes, Sir.

MR. BUDDEN: So perhaps you could read this into the record for us, please, Ms. Mullaley. Just the whole thing, if you would. I know there's a bit there but I'd appreciate–

MS. MULLALEY: The chart?

MR. BUDDEN: Yes, please, that from the heading on down.

MS. MULLALEY: Okay so: "Financing & Other Costs:

"Financing & Other Costs include interest on debt financing ... Allowance for Funds Used During Construction as well as other costs, which are amounts required for pre-funded financing reserve accounts, financial closing related costs and some pre-commissioning costs.

"These amounts are capitalized and/or funded during the construction period and form part of the 'all-in' cost of the project at in-service.

"The pre-funded financing reserves are set aside at in-service as part of the financing arrangements, but refunded over the debt repayment period.

"The June 2017 estimate of Financing & Other Costs is \$2.6 billion."

MR. BUDDEN: Okay. And perhaps, Madam Clerk, bring us down to page 12, which is the following page. And perhaps you can just read that to us as well.

MS. MULLALEY: "IDC is the interest that will accrue on funds borrowed to construct the project.

"A total of \$7.9 billion has been borrowed and has been guaranteed by the Government of Canada through two separate Federal Loan Guarantees" And the dates: December 13, \$5 billion, average effective interest rate, 3.8 per cent; May 2017, \$2.9 billion, 2.9 per cent.

"The total amount of IDC is estimated to be \$1.4 billion."

MR. BUDDEN: Okay, so just keep that 1.4 in mind. And that, obviously, is – you know, it would be the largest component. If the number that we discussed earlier is \$2.6 billion, then it's self-evident \$1.4 billion is the largest component of the \$2.6 billion. That would follow, wouldn't it?

MS. MULLALEY: Yes, is – it was in the other number you mean.

MR. BUDDEN: Yes, that's right.

Page 13, please, Madam Clerk, just moving along. And perhaps you could just walk us through this. This is relatively complex stuff, so you could just walk us through and any explanations, okay?

MS. MULLALEY: Allowance for funds used during construction, this is – that's "the return that will accrue on equity invested to fund project construction.

“LITL uses a utility cost of service model for cost recovery and will accrue AFUDC. The cost recovery profile under this model goes from high in the early years to low in the later years.

“The June 2017 Project Budget Update includes estimated AFUDC on LITL equity of \$440 million, which is currently accruing at a rate of 8.5%.”

MR. BUDDEN: I’m just going to stop you there for a second.

MS. MULLALEY: Yeah.

MR. BUDDEN: So the LITL – which is the link, as we’ve established; some people call it the DC line I believe but – essentially, it carries power from Muskrat Falls to Soldiers Pond. And that is the one that is in part subject to the arrangement with Emera. But you would agree that as far as that is concerned, AFUDC is calculated and it is \$440 million as of this date, June of 2017. So that is self-evident from that document, isn’t it?

MS. MULLALEY: Yes, I would say.

MR. BUDDEN: Yeah. Perhaps you can carry on to read the next paragraph.

MS. MULLALEY: “The MF/LTA cost recovery is based on an increasing price and increasing volume of electricity, and is therefore lower in the early years and higher in the later years. Within that cost recovery an 8.4% Internal Rate of Return (IRR) on equity invested is generated over the term of the power purchase agreement with NLH, but AFUDC does not accrue.”

MR. BUDDEN: Okay so in that instance where the other elements of the project, being the power generating facilities at Muskrat Falls and the power line from Churchill Falls down to Muskrat Falls, it says quite clearly there that AFUDC does not accrue.

MS. MULLALEY: Yes.

MR. BUDDEN: That is what it says, isn’t it?

MS. MULLALEY: That’s what it says, yeah.

MR. BUDDEN: That another method of financing is discussed there and the – and we go back a little bit to the second paragraph – the second bullet point there, and it’s talk of the cost recovery profile going from high in the early years to low in the later years. That, I would suggest, is fairly conventional financing, isn’t it? You pay down – you know, it’s front-end loaded as financing typically is.

MS. MULLALEY: Yeah.

MR. BUDDEN: Whether you’re buying a house or whether you’re, you know, doing something on a much larger scale, that is the typical way projects are financed, aren’t they?

MS. MULLALEY: Yes.

MR. BUDDEN: Yeah.

MS. MULLALEY: To my knowledge.

MR. BUDDEN: What is described, I would suggest, in the fourth bullet point, which is the generating and Labrador elements of the – solely Labrador elements of transmission are not done in that conventional way. They’re not – the financing there isn’t being calculated in that conventional way, I would suggest, but rather they’re back-end loaded. Would you agree with me with that?

MS. MULLALEY: It appears to be that way of what I’m reading, but I really don’t understand the structure of this, so ...

MR. BUDDEN: Okay. It’s an unusual structure, isn’t it?

MS. MULLALEY: Again, without context I really can’t answer that. I don’t know if there’s a particular purpose. I really don’t know.

MR. BUDDEN: Okay but you would agree with me – and you’re obviously familiar with public financing – you would agree with me it’s an unusual structure for a public –

MR. FITZGERALD: Commissioner, the witness has said she’s not familiar with the structure of the document; she doesn’t understand it, she’d need more context. Mr. Budden here is now trying to get her to say: Do

you agree it's unusual, do you agree that it's obscure?

In fairness to the witness, she's already said that she hasn't reviewed the documents and I don't think it's fair to put that to the witness.

MR. BUDDEN: That wasn't at all what –

MR. FITZGERALD: The question has been answered.

MR. BUDDEN: – I was doing, with respect.

MR. FITZGERALD: The question has been answered.

THE COMMISSIONER: Right, so –

MR. BUDDEN: That wasn't at all what I was doing.

THE COMMISSIONER: So here's the way I see this. Ms. Mullaley is a – you know, has special training; she's a chartered accountant. You know, she's had a lot of dealings in government finance and I think it's fair to ask her a question related to whether it's – you know, I think she's answered that she can't specifically speak to the Muskrat Falls Project.

MR. BUDDEN: She did.

THE COMMISSIONER: But I think – generally speaking, I think the question that you asked is a fair question and I think I'm permitting her to answer that question.

So, generally speaking, ask your question.

MR. BUDDEN: Yes, I'm saying that based on your knowledge and your general experience in government, culminating now as being the – you know, your particular position as Auditor, would you agree that that is an unusual way to finance a public project based on what you see here?

MS. MULLALEY: Yeah, and it's typically as you've described, it's just that I don't know if there's a specific nuance in this one that would have merit for being the different way. I guess that's all I'm saying but, generally, yes.

MR. BUDDEN: Okay.

And this one is, obviously, back-end loaded and – so what we have here, really, within the same broad project is two separate and distinct ways of calculating the financing of that project. You'd agree with me there?

MS. MULLALEY: Yes, it appears to be so.

MR. BUDDEN: One of which accrues AFUDC, which I would suggest is standard, and one of which does not. Are you with me so far?

MS. MULLALEY: Yes, I am. Yeah.

MR. BUDDEN: Okay.

Perhaps, we can – okay, well, put it this way: Would you agree, I guess, that the adoption of the cost of service – because that's what it is – of the Labrador-Island Link, as is demonstrated in the first three bullet points, essentially means that Emera will recover their 8.5 per cent. That would be recovered, their return on equity, as soon as it is earned. That's what that essentially means, doesn't it?

MS. MULLALEY: I think so, yes.

MR. BUDDEN: Okay.

However, that isn't the case on its face from that final arrangement, is it, the arrangement for the Labrador assets?

MS. MULLALEY: Yeah. It appears that way.

MR. BUDDEN: Okay.

I would suggest to you then, it follows, you know, almost inevitability that the exclusion of AFUDC from the generation assets and the Labrador Transmission Assets means that the \$2.6 billion financing figure that we earlier discussed and the other – and related costs, which are part of the \$12.7 billion project cost, would be significantly understated by the exclusion of AFUDC from the Labrador assets. Would you agree with me there?

MS. MULLALEY: I really – I can't say.

MR. BUDDEN: Okay.

MS. MULLALEY: Intuitively, look, I know what you're saying, but I just find it hard to conclude without really working through this.

MR. BUDDEN: Okay, well, put it this way: Would you agree that the exclusion of AFUDC ordinarily would result in a significant understating of financing costs?

MS. MULLALEY: Perhaps, yes.

MR. BUDDEN: Okay.

And perhaps we can go to 01557, which is another exhibit. I'm not sure if you have the tab on this or not. You don't. So if we could go – yes, and this is, actually – is a response to an ATIPPA request by one of my clients. And it's the first page here that I would like to bring you through and this is really about where I'll end.

Scroll down a tiny bit further, please. So what we have here is the – again, these are the June 2017 numbers which have been broken down. And we see there – well, take a moment to familiarize yourself with the chart.

MS. MULLALEY: Mm-hmm.

MR. BUDDEN: Okay, have you had a look at it?

MS. MULLALEY: Yes.

MR. BUDDEN: And we look at the very note at the bottom: "*Equity figures above include \$0.4B*" – \$400 million – "*of AFUDC on*" the "*LIL equity contributed by Nalcor/NL and Emera.*"

So that again confirms that the equity figure of the LIL does include \$0.4 billion for the AFUDC – explicitly states it. And although it does not explicitly state it from the other documents we've seen, I would suggest from inference from what is said here, that AFUDC is not explicitly – or is not included in the equity for the Muskrat Falls and LTA, which we see there, the 7.6.

MS. MULLALEY: Yeah, I can –

MR. BUDDEN: You would agree with me?

MS. MULLALEY: – follow your logic there.

MR. BUDDEN: Okay.

And I would suggest, given the relative sizes of the numbers, we see the LIL component is 5.1 and the Muskrat Falls LTA component, the Labrador assets, is 7.6. If one is looking at AFUDC of \$400 million on 5.1, surely the AFUDC on the Muskrat Falls LTA assets, if we were to calculate it, given that 7.6 is at least half again as much as 5.1 – we surely must be looking at well over, say, \$600 million in AFUDC. That would seem to follow logically from this chart.

MS. MULLALEY: (Inaudible.)

MR. BUDDEN: So it therefore follows, I would suggest, that that \$12.7-billion number, by the exclusion of AFUDC, which by ordinary principle should be included – that number should be higher than that, perhaps into the range of \$13.5 billion or more. Would you agree with that?

MS. MULLALEY: I can follow your logic, yes.

MR. BUDDEN: Okay and can you think of any reason what I'm saying is incorrect?

MS. MULLALEY: No but, again, I'm not one – I like to work numbers through and everything myself, to be adamant about it, so I can follow your logic.

MR. BUDDEN: Okay.

So at the end of the day we have a project that of June of 2017 isn't a \$12.7-billion project, it's a project somewhere in the \$13.5 million range. That's what appears to be the case –

MS. MULLALEY: Yeah –

MR. BUDDEN: – doesn't it?

MS. MULLALEY: Yes, when you add those elements in.

MR. BUDDEN: Okay.

To your knowledge, was the Cabinet ever advised of – to your knowledge – that a

consequence of the method of financing that was employed and used here would be to reduce the project cost? As it is here, it's a reduction of perhaps \$800 billion. Are you aware of the Cabinet ever being advised of the consequence of its unorthodox financing scheme would be the understatement of project cost?

MS. MULLALEY: I don't recall any discussion on the financing scheme. I mean, everybody understood the financing costs per se; there's always a financing cost element of that that everyone understood what it was. But the nuance here, as what you're saying, no, I don't recall a discussion on that.

MR. BUDDEN: Okay and, certainly, no discussion of that nature, no advising of Cabinet of that nature would've taken place at financial close.

MS. MULLALEY: No.

MR. BUDDEN: Okay.

MS. MULLALEY: No, again, just knowing the interest number at the time. Yeah.

MR. BUDDEN: Okay.

Thank you, Ms. Mullaley, I have nothing further.

THE COMMISSIONER: Thank you, Mr. Budden.

Edmund Martin.

MR. SMITH: Good morning.

MS. MULLALEY: Thank you.

MR. SMITH: Harold Smith for Edmund Martin.

I'm going to start off with Exhibit 03874.

THE COMMISSIONER: Okay, 03874. That would be at tab 57, book 2.

MR. SMITH: You're the author, I believe, of this Exhibit. Is that correct?

MS. MULLALEY: That's correct.

MR. SMITH: And could you describe the circumstances that gave rise to you writing this particular memo?

MS. MULLALEY: So not the memo itself but what –?

MR. SMITH: What caused you to write the memo?

MS. MULLALEY: What caused me to write the memo? Well, in essence, I guess, this was a situation where, you know, I had gotten this call and there was a –

MR. SMITH: What call? I'm sorry.

MS. MULLALEY: A call from Ed Martin.

MR. SMITH: Yes.

MS. MULLALEY: And as I explained to – one evening, when I was leaving work, I had this call from Ed. And Emera – or Astaldi was in town and they were working towards, it seemed like, a closure of an agreement to try to, you know, maintain Astaldi on site at the time and continue work with them. And it was a pretty big quantum and at the time, you know, I knew that there had been no approval for any kind of quantum and that we had just had a new government in and I didn't know who was in the loop, so –

MR. SMITH: I'm sorry; I'm having trouble hearing you.

MS. MULLALEY: I'm sorry.

MR. SMITH: I don't know why, but perhaps you could move the microphone up –

MS. MULLALEY: Sure.

MR. SMITH: – a little towards the centre there.

MS. MULLALEY: Is this better?

MR. SMITH: Yes. Thank you.

MS. MULLALEY: Okay.

And so, really, what we – I was trying to do here was – a new government had just come in, there

was a lot of concern around the project and the project costs and, you know, Ed was in trying to, I guess, negotiate a deal with Astaldi at the time.

The concern that – was that as he was going to go – you know, the minister and the Premier, no one had sort of been in the full loop on where we were at what time with Astaldi and/or any quantum, so the concern became that. So we were addressing it in government at the time and, again, it's a fairly new government; this was a pretty critical area for them. This would be a part of the project that they would now own and it was important for all of us.

As I said before, it's very typical, when you come in to government and – you know, I would've worked with Ed on offshore oil negotiations, different things, but we always had to go in to Cabinet to get an approval for a mandate to sit down at the table to negotiate in good faith. We always had to get that.

So the concern was, was that it was happening and no one's aware of it and no one was aware of how the quantum was being calculated, and no one was aware of whether a payment should be made to Astaldi at all. So –

MR. SMITH: What was the quantum that – the range of quantum that was –

MS. MULLALEY: It was –

MR. SMITH: – being discussed?

MS. MULLALEY: It was several hundred million. I think I put it in this memo, actually, if you want to go down a little bit. That, sort of, I think was there.

MR. SMITH: \$250-300 million –

MS. MULLALEY: Correct.

MR. SMITH: – in the middle paragraph?

MS. MULLALEY: Yeah.

MR. SMITH: Is that the number?

MS. MULLALEY: Yeah, so it was sort of that context. And that may not have been a last one, but that was one they felt that, you know – but

that was the quantum. So, again, that was a pretty significant quantum to a project where we had all kinds of concerns and, particularly, with Astaldi. There were a lot of concerns on this is Astaldi's fault, this is not, you know, Nalcor's. And they're the ones hitting the labour (inaudible); they were the ones that didn't get organized, you know, so why should we be paying them?

So there was a whole discussion around that, but it was really important to get a structure in place to move forward. So the government – we were all talking, we were talking with Ed. This was put in place as advice, but it was also put in place to help put structure around how we needed to move forward to try –

MR. SMITH: Now –

MS. MULLALEY: – to resolve this issue.

MR. SMITH: – we haven't seen very many letters from the clerk to the Premier.

MS. MULLALEY: No.

MR. SMITH: Is this a common approach to –?

MS. MULLALEY: I would not say it's common, actually. You know, from time to time there would be, but I would say, generally, advice to the Premier comes in forms of the Cabinet papers, comes in forms of direction notes but, mostly, comes in form of meeting and verbal discussions with various officials in the room from the relevant departments.

MR. SMITH: From your understanding of ATIPPA, would this letter be subject to ATIPPA?

MS. MULLALEY: Absolutely.

MR. SMITH: It would?

MS. MULLALEY: It would be.

MR. SMITH: And it's not common for the clerk –

MS. MULLALEY: Mmm.

MR. SMITH: – to write these kinds of letters to the Premier. Is that correct?

MS. MULLALEY: No, it's not.

MR. SMITH: It's not normally by oral or verbal communications, correct?

MS. MULLALEY: It is. It is, but it was a pretty significant issue at the time.

MR. SMITH: And so the \$250, \$300 million, is that the suggestion that Mr. Martin had as – where he thought he could get a settlement with –

MS. MULLALEY: Yes.

MR. SMITH: – Astaldi?

MS. MULLALEY: And he would've had a – there was a presentation deck that went along with this that would've sort of had those kinds of quantum in it as well.

MR. SMITH: And this was in January of 2016?

MS. MULLALEY: This was in January 2016. Now, I will caution, I don't necessarily think this was what was thought to be a final Astaldi settlement; this was one to keep them here right now to help address what was being purported as their solvency concerns.

MR. SMITH: And were you ever informed as to what Astaldi's offer or position was at this time?

MS. MULLALEY: I can't recall. I think they might have been a little higher. I can't recall the exact number but I believe Astaldi was looking – and, again, I'm guessing at this so I probably shouldn't be guessing, but it was higher than these numbers.

MR. SMITH: I'm going to suggest that there will be evidence that suggests that Astaldi was prepared to settle for five and a quarter – 500 and a quarter. Is that – would that number –

MS. MULLALEY: I would've said –

MR. SMITH: – shock you?

MS. MULLALEY: No, I would've said 450 at the time. Yeah.

MR. SMITH: And, ultimately, there was a settlement with Astaldi. Is that correct?

MS. MULLALEY: That's correct.

MR. SMITH: And do you know what the value of that settlement was?

MS. MULLALEY: I can't recall exactly right now. I know there was, I think, 151 first and then there was a more significant one later.

MR. SMITH: Yeah. And more significant means how much?

MS. MULLALEY: I can't recall the number. I was – again, I wasn't there when the final settlement happened. I would've read it in the releases or something.

MR. SMITH: Okay.

I believe the Inquiry has heard it's around 750.

MS. MULLALEY: Yeah.

MR. SMITH: Does that make sense?

MS. MULLALEY: Yeah, it does, but as I said –

MR. SMITH: Oh –

MS. MULLALEY: – as I said to you before, this was never thought to be a be-all and end-all settlement either. This was to keep them here. Yeah.

MR. SMITH: Okay.

And did the construction season have any play in terms of your discussions with Mr. Martin? Did he express any concerns about getting this put in place before the construction season?

MS. MULLALEY: I think this one – there was some discussion on that, but to be honest with you, the discussion was much more focused around the solvency issues and the concern that they would go bankrupt.

There was a lot of stuff going on, as you know, with their parent company and we were monitoring calls and we were on calls and various things with respect to the financial statements and shareholders. So, at that time, it was very much focused on solvency issues and we got to get out so that they have enough money to stay.

MR. SMITH: We got to move on to a different matter, if I can. And I'm going to address the internal issue, internal – I've got, issue – but internal plans of EY that have been disclosed in their emails, okay?

And I thought I heard you say yesterday that a number of the internal commentaries were surprising to you because either they had not started the work, okay, or that there was, in your understanding, no real foundation for the comment on the basis that they couldn't – they hadn't started.

MS. MULLALEY: Yes, those early emails. Yeah.

MR. SMITH: Yeah.

MS. MULLALEY: Back in November, before they got into the field, yeah.

MR. SMITH: So had you come to any conclusion after you discovered this – any conclusion as to why EY were internally discussing matters which they couldn't possibly know at that point because they hadn't even started the work? Have you any (inaudible) clue as to why they were doing that?

MS. MULLALEY: I don't know. Again, as I've said yesterday, I'm not sure the basis of the comments at that time. I can only – I mean, really, it'd be more Ernst & Young's to answer that question, but I surmise that they were associated with this project through us and they were concerned of their reputational risk. And I would say that, you know, they probably perhaps heard things out in the public and some public discourse over that.

So, you know, I think that's perhaps what it was, but I just don't – I don't know the basis for some of those comments.

MR. SMITH: But, Ms. Mullaley, they were very up front and told you, look, we were concerned about possible represent – excuse me – reputational damage; however, when we look at a number of the emails internally of EY, okay, they are being critical of Nalcor and its processes and procedures.

MS. MULLALEY: Mm-hmm.

MR. SMITH: And having not had yet an opportunity to go into Nalcor to do investigation of Nalcor. Now, that's a different situation then telling you up front, we're worried about our reputational situation.

MS. MULLALEY: Yeah and I don't –

MR. SMITH: And my problem is why would you anticipate they would make these kinds of comments internally among themselves?

MS. MULLALEY: I don't know. And like I said, the early emails in November, I really – I didn't know the basis for them, as I said yesterday.

MR. SMITH: Okay.

MS. MULLALEY: I – you know, I can guess at them, like I was probably just trying to do –

MR. SMITH: Yeah.

MS. MULLALEY: – but I don't know the basis. But, certainly, after that time frame, you know, when they moved into the field in January, you know – yeah, so some of the comments that they make on the controls and that –

MR. SMITH: Okay.

MS. MULLALEY: – you know, were accurate.

MR. SMITH: Can I have 03372, please?

THE COMMISSIONER: Okay, that would be tab – 03372 –

MR. SMITH: Sorry, I –

THE COMMISSIONER: I don't believe that's one of the exhibits here so that will be on your screen.

MR. SMITH: No, it's not listed.

Okay, I draw your attention, if I could, to the very first paragraph of this internal EY email. I think Mr. Kennedy, Steele, Leather, Hickey and Calver are all EY people. That's my understanding, correct?

MS. MULLALEY: Yes, they are.

MR. SMITH: Right. And I draw your attention to – well, we'll pick it up at – where it starts, okay?

MS. MULLALEY: Mm-hmm.

MR. SMITH: "Hi everyone. I thought it would be useful to lay out some thoughts for the call tomorrow. If for no other reason, I reread all of the material this afternoon and tried to crystalize some key messages we may want to get across." Now, this is May 1, 2016, okay?

"Before that and from an EY perspective" the "only" – and it's emphasized – "THE BIG GOAL is positioning us for further on-going work to support the project and Nalcor going forward. As Paul, David and I discussed on Tuesday in St John's, Nalcor is potentially a \$10m plus per year client" – \$10 million, I should say – "over the next 10-15 years. We have an opportunity with a brand new CEO, to make ourselves the strategic advisor for them as Nalcor focuses on unlocking resource based value for the Province."

Now, that's their big goal expressed after –

MS. MULLALEY: Yes.

MR. SMITH: – Mr. Marshall took over –

MS. MULLALEY: Yes.

MR. SMITH: – Nalcor.

MS. MULLALEY: Mm-hmm.

MR. SMITH: Okay? Did you see any elements of that goal prior to May or when – after or prior to Mr. Marshall taking over?

MS. MULLALEY: Only like I said yesterday, I mean I – you know, there were certainly – in the beginning, I think, you know, as we first started to developing scopes and specific pieces of work we wanted done, that sometimes they started to go outside of those scopes now. Again, they always seemed to have the interconnections and there were interconnections, but when we were trying to get a specific piece of work done, sometimes they were tending to go out of the scope somewhat. I don't know if I ever took it as a business reason at the time. I just – I was just trying to keep them focused on the piece of work we asked them to do for us, right?

Yeah. I mean, I look at this and I see this. Yeah. You know, I mean obviously they're – they've been working on this project for a couple of years now. I think they did bring some very good strong expertise, that the people they brought to the table – and I will say – were very, very good. And I guess they seized an opportunity there that they would be well positioned for additional work. And it's a business, so I understand, from a business perspective, those types of things but –

MR. SMITH: Right.

MS. MULLALEY: Yeah.

MR. SMITH: But, again, we have internal commentary –

MS. MULLALEY: Mm-hmm.

MR. SMITH: – based upon no foundation. In other words, they had no foundation for the internal commentary.

MS. MULLALEY: No, but I don't –

MR. SMITH: And yet –

MS. MULLALEY: – I don't think they're saying anything in this particular one –

MR. SMITH: Not in this particular one.

MS. MULLALEY: – at all.

MR. SMITH: But in other emails we've seen, internal emails, we've seen that. You identified that –

MS. MULLALEY: Yes.

MR. SMITH: – yesterday.

MS. MULLALEY: Yes.

MR. SMITH: And so we have EY going to government or working for government and starting off at 25,000. The next project was more than that, I think. At some point in time it's 250,000 and then, ultimately, it got to a million or so.

Now, in several instances in early contracts, reports from EY also said, as I understand it, okay, that we need to do this, we need to have that, we need to get into this area and we have to go into cost scheduling, for example, when that's not what the scope of work was. So it appears that there clearly was a method to moving their involvement in the project to greater and greater lengths as time went on. Correct?

MS. MULLALEY: Yes. Yes.

MR. SMITH: And it's also true that you, as the gatekeeper for government – with all due respect, okay, in relation to the retention of EY, okay – were trying to keep them focused on the scope of work that they were given. Is that correct?

MS. MULLALEY: Yes, that's correct in the context I had at that time.

MR. SMITH: Yes.

Now, would you look at exhibit – oh, sorry, I don't want to make a mistake here – yeah, 03381.

THE COMMISSIONER: 03381. That would be in tab 73 in book 2.

MR. SMITH: You see this?

MS. MULLALEY: Yes, I do.

MR. SMITH: You referred to this yesterday in your examination about it being a bottleneck.

MS. MULLALEY: Mm-hmm.

MR. SMITH: Now, looking at what we've seen as the big goal, what we've seen as the progression from 25, through 250, through a million and change, okay, and your insistence that they stick to their scope of work, does that give you greater insight into why they viewed you as a bottleneck?

MS. MULLALEY: I don't know. Like I said, you know, everyone has their opinions and it's difficult for me to know exactly why.

When I think of bottleneck, it is someone who's, you know, not answering, not responding, you know, or you're extending a period of time unnecessarily. And all I could reflect on that, again, is yesterday's. I never recall a time that David was looking for something that we weren't very responsive on all of this, so I don't know.

MR. SMITH: But bottleneck can also be a restriction –

MS. MULLALEY: Perhaps.

MR. SMITH: – on their goal –

MS. MULLALEY: Perhaps.

MR. SMITH: – of getting more –

MS. MULLALEY: (Inaudible.)

MR. SMITH: – integrated into the project, okay? And is there a danger when you go into that situation – is there not a danger that the commentary is not necessarily fair?

MS. MULLALEY: Well, I would say this: I would say they're still a professional firm and I think, you know, any product of their work, I never had a doubt on. I wasn't concerned with the quality of the work at all. You know, it was a balancing relationship with all of the relations that were happening, you know.

And, yes, in early days, like I said, when we had them in there, or even before they weren't in

there, I guess really it was around that November time frame when they were making different comments in their internal emails that I guess I looked at – because I couldn't understand a basis of concern for that. And, yes, when they got in the field, the next sort of phase, you know, yeah, they were going out scopes always trying to go back to costs and baselines, where we were trying to focus on something else, for sure. Yeah.

MR. SMITH: Okay.

I have some difficulty, I'll be honest with you – some difficulty with a suggestion that someone who is that driven for the business, if you will – the banana at the end of the line, okay, being \$10 million per year over a 15-year period, that's their driven point – that sometimes looking at a particular situation might be effectively adjusted towards their ultimate or bid goal. In other words, they may have two options in terms of making a call on a particular situation, but one of them supports their bigger goal, as expressed internally, and one does not, okay?

How can that – you know, it can still be professional if they have two options, but if one of those options is coloured or chosen by reason of the bigger goal, isn't that less than desirable?

MS. MULLALEY: You know, when I look at all this, I think all I would say to you is I still – you know, I trusted and had faith in their work. I thought they did some really good work.

You know, ideally, if I knew everything we knew now, we probably, and could've, had them in earlier. I mean we were very methodical how we did it. And, again, we saw – you know, the conditions at that time, we believed the base was solid and we were monitoring forward and we got them in in the fall.

I don't necessarily have any issues with the work that they did at all. I mean, again, it was more around seeing some of the surprise in the internal emails of how they were addressing some of those early comments without maybe some basis, but, you know, I didn't have any particular issue. Like I said, I think their work was very good and they raised a lot of, you

know, good concerns and risks on the project for us.

MR. SMITH: But how could you be confident in work when you've read emails, internal emails, about criticisms of Nalcor and the project, when they hadn't even started the work? How can you be confident that the driver for EY wasn't future work, as opposed to necessarily being fair in their assessment of what was going on?

MS. MULLALEY: Well, I mean, I think, again, they might've had some personal opinions based on what they're hearing – they may have all of that. But I would say to you that standards for these things are very important, and in any work they undertake they have to abide by ethical, legal and there are very strict standard, professional standards when you're doing such – these types of jobs.

So I'm not going to stand here and believe that they compromised those in the work that they presented. I believe that the work that they presented followed those standards.

MR. SMITH: During your direct examination this morning – or yesterday – Mr. Learmonth postulated that Mr. Martin had resigned and then the board quickly terminated him so he could have access to his contract. Do you share that view?

MS. MULLALEY: Do I share the view ...?

MR. SMITH: The view that Mr. Learmonth projected yesterday, that Mr. Martin was – resigned –

MS. MULLALEY: Mm-hmm.

MR. SMITH: – okay, or quit and – but the board of Nalcor quickly fired him so he could access his benefits under his employment agreement. Do you share that view?

MS. MULLALEY: Well, I guess I would share, you know, the view in the end of it – and the Office of the Auditor General did a follow-up review on that – is that, you know, basically, when he was dismissed – and I guess it was constructive dismissal and he was entitled to, you know, the benefits of the contract which –

MR. SMITH: Mmm.

MS. MULLALEY: – was effected by the board. So when everything happened and he left the Premier's office and he went back to the building, I mean he was – had been, I guess – there was a constructive dismissal concept there. And, you know, you would execute the contract and he'd have to leave, so –

MR. SMITH: So you are aware of the Auditor General's report. Is that correct?

MS. MULLALEY: Mm-hmm.

MR. SMITH: And that the findings were, in the Auditor General's report, that he was constructively dismissed. Is that correct?

MS. MULLALEY: That concept, yeah.

MR. SMITH: Okay.

MS. MULLALEY: And he was –

MR. SMITH: And you have no reason to challenge the Auditor General in that assessment?

MS. MULLALEY: No.

MR. SMITH: No.

Now, one more thing: I noted that your transcript – you portrayed your knowledge as not as definitive as it seems to be in this – in your evidence, okay? When I say that, I mean I don't remember – I have no recollection of that, et cetera. And yet, here, you're much more definitive and it appears from your evidence yesterday that after your interview under oath, you took it upon yourself to conduct some additional investigations. Is that correct?

MS. MULLALEY: That's correct, but I don't think there's anything in any testimony you're going to see that is different from what I've been (inaudible) here.

MR. SMITH: I'm not suggesting that it's in conflict I'm merely saying –

MS. MULLALEY: No.

MR. SMITH: – that it's – the position you took in your interview appears to be less definitive than it is today.

MS. MULLALEY: No, I don't agree with that. I feel what I said –

MR. FITZGERALD: Commissioner?

MS. MULLALEY: – if you're talking about the 6.5 –

THE COMMISSIONER: Excuse me just for a second, if I could.

Mr. Fitzgerald.

MR. FITZGERALD: Yeah and maybe the witness was about to go there. It's a very vague question about being definitive about – I mean I think if Mr. Smith is going to say you weren't as definitive in your interview, he should actually talk about what he's actually referring to and put that to the witness. Because, you know, it's a hundred-page transcript or 70-page transcript, there could be any number of things he's referring to, just in fairness to the witness, that's all.

MS. MULLALEY: The only thing I can imagine you're referring to is the 6.5 because that's the only thing that I did additional work on. And for that reason – and it was for – and I'll tell you the reason is because I never – and I've never wavered off that, that I do not have a personal recollection on the 6.5.

MR. SMITH: Right.

MS. MULLALEY: But what concerned me is then when I saw emails through the staff that I could see some of that, and it would be normal process for me to know that. So I'm testing my personal recollection and I'm saying I do not remember, but I'm seeing that there.

Another way I can check to see if something jogs my memory is to go back, because I don't remember. I don't remember in Cabinet, I don't remember a discussion on it – I don't remember. The way I could confirm my memory was to go, with permission here – and went over. And I went through every Cabinet record, every MC, every email I had and there was nothing that

went to Cabinet that it had 6.5 in it. So that confirmed my belief that I do not have a personal recollection and – but it wasn't different.

MR. SMITH: Right.

So, once again, you still don't remember –

MS. MULLALEY: No, I don't.

MR. SMITH: – whether there was 6.5 told to you or not told to you. And you're relying, essentially, on the documents that you have reviewed following your interview in April. Is that correct?

MS. MULLALEY: No, I am relying on my memory.

MR. SMITH: Yeah.

MS. MULLALEY: Everything else backs up my memory.

MR. SMITH: Okay.

MS. MULLALEY: And I still feel very strong in that if there was a 6.5, there would have been some sort of discussion around the disclosure part. And I'm confident we did not have any discussion around: Wow, should we or shouldn't we disclose that.

MR. SMITH: Yeah.

MS. MULLALEY: That discussion I never remember either.

MR. SMITH: Well, that's what makes me confused because we've had numerous witnesses testifying – ministers, deputy ministers, et cetera, testify that when a piece of knowledge of that importance – and I think Mr. Bown was the one that suggested this – of that importance, an increase of \$300 million, that would be – once he knew it, would be transferred to the minister.

MS. MULLALEY: And that's right. That's what –

MR. SMITH: And that's –

MS. MULLALEY: – should happen.

MR. SMITH: Like, that's almost, as they say in some circles, you can take to the bank.

MS. MULLALEY: That's correct.

MR. SMITH: That senior civil servants would ensure that their minister was aware at – you know, if no one else, but certainly the minister would be made aware.

MS. MULLALEY: I agree with that.

MR. SMITH: Okay.

And we've heard situations where Mr. Bown, for example, as deputy minister of Natural Resources, became aware. He didn't – he indicates he wasn't aware – I think, in fairness to him, he wasn't aware at financial close, but he was aware, okay, in the time frame between January and March of –

MS. MULLALEY: Yes, so was I.

MR. SMITH: – the following year –

MS. MULLALEY: Yes.

MR. SMITH: – as were you, okay?

MS. MULLALEY: Mm-hmm.

MR. SMITH: Now, Mr. Bown indicated that, in answer to my question he did, in fact, tell the minister; however, the minister, he suggests, forgot, okay? Is it possible you forgot?

MS. MULLALEY: It's always a possibility but I have a very good memory. But it is always a possibility.

But that's why I went to try to find something that could jog my memory, do anything that, you know, may refute what my mind was telling me. If I could have found it, well, I guess I wouldn't – I didn't remember it. But, you know, there's always that possibility, it's five years ago. But it's just that I don't remember and, actually, I seem to be remembering being a little surprised when I found out about it.

So that's – you know, I don't know. I – you know, I wish I knew and I wish I – I wish I knew, I wish it had all come to government, because that's what would've made sense, you know. So I scratch and I scratch and I go back to try to find anything that shows that it did so I could say: Okay, gosh, I guess it did and I don't remember.

But I don't remember and I can't find anything else. And it doesn't make any sense because those types of things, if it goes in to Cabinet, I can tell you wholeheartedly, I'm there – I'm there. Anything that goes in to Cabinet has to have a Minute of Council – it has to. So if there was a discussion of the 6.5, it was either on the deck or, you know, anything that comes in has to have a minute.

So I looked at every single minute along with legal counsel from Nalcor, and every paper that went in – everything. There was not a 6.5 in there. So, unless someone was in the room and just said it, you know, but that's none – nobody – none of the ministers' memory. It's nowhere to be found.

So I don't know how that would get conveyed, that's the problem. I wish I could find out and I wish I could find evidence and say my memory is wrong, but that's all I can tell you, is the truth, and I cannot remember it and I can't find anything about it.

MR. SMITH: And I assume, Ms. Mullaley, that you understand our confusion, because if it's standard operating procedure for a senior –

MS. MULLALEY: Yes.

MR. SMITH: – departmental deputy or assistant deputy to uncover or discover or be told something, it is told to the minister, at the very least –

MS. MULLALEY: Yes.

MR. SMITH: – and probably also to you.

MS. MULLALEY: Yes, I agree with that.

MR. SMITH: Okay.

So you have, in this situation, not one deputy that may have –

MS. MULLALEY: Mm-hmm.

MR. SMITH: – you know, overlooked telling you or telling his minister – which would be Mr. Marshall at that time – but you have three people that did not bring that information to you. What's the likelihood of that?

MS. MULLALEY: Again, all I can say is it's a common process but it depends. You will have to – and I'm sure there'll be an opportunity to ask each of those individuals whether they felt that was the number or whether they felt it was just a number put in for purposes of calculating the COREA. I don't know. I can't speak to – for those individuals. They'll be here and I guess you'll – to testify them.

But, yes, I agree, normal process would, you know. And, again, it's one of those things as, you know, I wish I could see it everywhere because it would've made a lot of sense that everybody knew. That's practically – it would've made a lot of sense and it seems like it's what should've been and in normal course, would have been. And, you know, this would be a non-issue in that way.

But all I can say is I can't remember and I'm not going to lie about that and pretend that I did remember and pretend it came in because I can't say that. I don't know.

MR. SMITH: Can you think of any other example of a major piece of information – and we've all accepted the fact that this is a major piece of information, \$300 million increase –

MS. MULLALEY: Mm-hmm.

MR. SMITH: – in the capital cost.

MS. MULLALEY: Yeah.

MR. SMITH: Any other situation where three ministers – sorry, deputy ministers or assistant deputy ministers knew and didn't tell their minister or you? Can you think of any other circumstance?

MS. MULLALEY: Not three.

MR. SMITH: No.

MS. MULLALEY: I can see – think of one –

MR. SMITH: Yeah.

MS. MULLALEY: – but, you know, sometimes that happens.

MR. SMITH: Okay.

Can I have Exhibit 03473, please?

THE COMMISSIONER: And that would be at – in the financial close book, tab 11.

MR. SMITH: Do you recognize the memo, the handwritten memo?

MS. MULLALEY: I do now through the Commission, yes.

MR. SMITH: Okay.

And who's Jamie?

MS. MULLALEY: I have no idea.

MR. SMITH: No idea? Okay.

Do you know where this memo originated?

MS. MULLALEY: I understand it to be from Finance.

MR. SMITH: From Finance?

MS. MULLALEY: That's where my understanding, yes.

MR. SMITH: Okay.

Is there a Jamie in Finance?

MS. MULLALEY: Not that I'm aware of but ...

MR. SMITH: Okay. What about Heather MacLean?

MS. MULLALEY: Yeah, Heather would – yes, Heather would have been the – in this time frame she would have been the communications director down in Natural Resources.

MR. SMITH: And this memo very specifically talks about the plus-\$300 million in capital cost –

MS. MULLALEY: Yes, I see that.

MR. SMITH: – financing cost reduction, 100, okay, so this was known. Now, unfortunately, it's not dated. Do you have any idea when this was created?

MS. MULLALEY: No. No, I asked the same question, if it was dated, but there's no date on it.

MR. SMITH: Now, in relation to your – after you become knowledgeable, for example, of the Grant Thornton report –

MS. MULLALEY: Mm-hmm.

MR. SMITH: – did you take any effort or make any effort in relation to the Grant Thornton report to verify the information that you relied upon to criticize what you were being told?

MS. MULLALEY: To go and find and audit Grant Thornton's report?

MR. SMITH: No.

MS. MULLALEY: No, I did not.

MR. SMITH: Not to audit it, to ask questions of Nalcor about it.

MS. MULLALEY: I would not go to Nalcor and as before the Commission of Inquiry and go into Nalcor to find out that. That would not have been appropriate.

MR. SMITH: And did you discuss any of your evidence with other people?

MS. MULLALEY: No.

MR. SMITH: No? Okay, I just thought I'd ask that, not impugning your character, rather to just –

MS. MULLALEY: Lawyer.

MR. SMITH: – fill the gap that seemed to be missing. It's a common question by Commission counsel and I didn't –

MS. MULLALEY: Oh, no.

MR. SMITH: – I noticed it wasn't asked of you, so I thought I'd ask.

MS. MULLALEY: No, but I would not have thought I would've had to take a Grant Thornton report or forensic audit report and do any work on it to come here. I would – again, I would think that what's in there is accepted as (inaudible) so ...

MR. SMITH: Well, let me put it this way: The Grant Thornton report, we're referencing numbers that you had not heard of. Correct?

MS. MULLALEY: No, that's right. That's right –

MR. SMITH: That's right.

MS. MULLALEY: No, that is –

MR. SMITH: That is right, isn't it? So you hadn't –

MS. MULLALEY: Yes.

MR. SMITH: – heard of them, you hadn't been discussing numbers of – that Grant Thornton came out, but you never thought of it possible or reasonable to go and ask Nalcor: Well, why? Why are these numbers there?

MS. MULLALEY: No, I think that's the job of the Commission.

MR. SMITH: Okay. Thank you, Sir – Ma'am.

THE COMMISSIONER: Okay, thank you, Mr. Smith.

Kathy Dunderdale.

MR. HEWITT: Good morning, Ms. Mullaley.

MS. MULLALEY: Good morning.

MR. HEWITT: My name is Justin Hewitt and I represent former Premier Kathy Dunderdale. I

just have a few follow-up questions for you in respect of the \$6.5-billion issue.

MS. MULLALEY: Sure.

MR. HEWITT: So, yesterday, I heard you refer to the financial close team. Is that correct? Can you just tell me who the members of that team would have been?

MS. MULLALEY: Yes, so from my memory we would have had Todd Stanley on it, probably Randy Pelletier, their Justice lawyers. We would have had Paul Morris on it from Natural Resources. We would've had Donna Brewer on it, Paul Myrden on it and I believe Peter Au might have been on it as well.

MR. HEWITT: So there are all senior public servants?

MS. MULLALEY: Correct, yeah. Yeah.

MR. HEWITT: And all of whom are, presumably, quite well aware of the authorization and reporting structures –

MS. MULLALEY: Yes.

MR. HEWITT: – in government.

MS. MULLALEY: Yes, yeah.

MR. HEWITT: Right.

And so in your experience working with these individuals, did you ever know them to not follow the typical procedures?

MS. MULLALEY: No.

MR. HEWITT: Right. Okay.

And so – excuse me – the financial close team, was this just an ad hoc committee of civil servants or was it more formally mandated?

MS. MULLALEY: No, it was more of, you know, these were the key people, you know, your key executives in your departments that were obviously working on this. So you would have your Natural Resources and your Finance and your Justice, they were the three key. You

know, Environment would've been – as part of some elements of it as well.

MR. HEWITT: Right.

MS. MULLALEY: But they would just be your, basically – most of them – all your assistant deputy ministers who are very familiar with the project and, you know, and the skill set with the – you know, in Finance. So that's sort of generally the team. And you might've put them on different people to support as you do, but it was kind of a, what I would call an ad hoc. They weren't given a formal mandate or, you know, anything in writing or –

MR. HEWITT: Right.

MS. MULLALEY: – appointments, it was more that you're just pulling that and that's your kind of team, yeah.

MR. HEWITT: Okay, so it's my assumption, but perhaps you can fill it in, that the formal mandate of the financial close team would be to represent the Government of Newfoundland and Labrador in closing the financial loan guarantee transaction.

MS. MULLALEY: Yeah, absolutely.

MR. HEWITT: Is that correct?

MS. MULLALEY: That is correct, yeah.

MR. HEWITT: Okay.

And so was there – would it have been common for that team to report to you, or would you only expect them to report to you on significant issues that came up?

MS. MULLALEY: More significant issues but, yeah.

MR. HEWITT: And presumably it would've also reported to the deputy minister of Finance – and others have asked you questions on that –

MS. MULLALEY: Mm-hmm.

MR. HEWITT: – but is that correct?

MS. MULLALEY: That's correct.

MR. HEWITT: Right.

MS. MULLALEY: And we would have meetings, you know, where we had spreadsheets of, you know, what had to be closed and which papers had to come in. So it was more of a – yeah but, yes.

MR. HEWITT: So there's been a lot of discussion on the fact that it would appear from some email correspondence that at least certain members of that team were aware of a \$300-million capital cost increase, potentially. They'll have an opportunity to speak on that –

MS. MULLALEY: Yeah, exactly how I would interpret that.

MR. HEWITT: – and give their position, but that's –

MS. MULLALEY: Absolutely.

MR. HEWITT: – what it would appear.

MS. MULLALEY: It does, yes.

MR. HEWITT: And it's very clear – we know your evidence that you were not made aware of that. That's your position.

MS. MULLALEY: I have no recollection of – I wish I had.

MR. HEWITT: Right.

So I guess what I want to ask you then: Is it that it's your understanding or it's your position that this financial close team would've been authorized to essentially close the financial loan guarantee at \$6.2-billion capital cost, but in reality it appears that they closed it at \$6.5 billion?

MS. MULLALEY: Yeah, I guess you can say that if the premier of the day hadn't been aware.

MR. HEWITT: So if the premier was aware that would be sufficient authorization?

MS. MULLALEY: Well, usually if she's aware she would bring it back to the colleagues and it would loop back and close the loop, I guess –

MR. HEWITT: Right.

MS. MULLALEY: – on that, right? Yeah.

MR. HEWITT: So in your experience of working with these public civil servants, would you know them to make such a decision without seeking the proper authorization?

MS. MULLALEY: No, it's not. That's what I say it's not a common thing, common – you know, it would all circle back, yeah.

MR. HEWITT: Right.

And so yesterday you mentioned that – and it was in response to questions about a Q & A document –

MS. MULLALEY: Mm-hmm.

MR. HEWITT: – that you were referred to about – and one of the key messages was that government was aware in –

MS. MULLALEY: That's correct.

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

MS. MULLALEY: Yeah.

MR. HEWITT: Now, you said that – I believe you said something to the effect that you were aware then – when you became aware in March or July of 2014 that you understood then that Donna Brewer might have known at the time of financial close and that's why you didn't give – you didn't push back on that key message. Is that correct?

MS. MULLALEY: Well, we were at the – we were at our committee meetings developing the Q's and A's and it just – it was a sense in the room that a number of them knew about it, like, there was no – yeah, that they were in the financial documents at close. We knew that afterwards anyway they were in the financial documents at close and everybody seemed to be – had an awareness that, yes, that we had all known and approved it at financial close. So, like I said, at the time I don't think we really did any more on it. It was more factual than anything else at the time, right?

MR. HEWITT: And you didn't think to question that at the time, notwithstanding the fact that you didn't know at the time of financial –

MS. MULLALEY: I didn't –

MR. HEWITT: – close.

MS. MULLALEY: – know but, you know, they seemed to all know. And, like I said, I knew I was gone for a couple of days at that time, so I – you know, no, I didn't go back to explore it any further at the time. No.

MR. HEWITT: Okay.

Thank you, Ms. Mullaley.

THE COMMISSIONER: Thank you, Mr. Hewitt.

Former Provincial Government Officials '03-'15.

MR. J. KING: Good morning, Ms. Mullaley.

MS. MULLALEY: Good morning.

MR. J. KING: Justin King on behalf of the group of former provincial government officials between the years 2003 and 2015.

Just a couple of questions for you, first, in relation to the decision to not release the EY report at the end of 2015.

MS. MULLALEY: Mm-hmm.

MR. J. KING: So in your interview – this was, I guess, your second interview on April 15 –

MS. MULLALEY: Yes.

MR. J. KING: – you made efforts to state that this decision had nothing to do with the upcoming election. I'll just read you a –

MS. MULLALEY: Yes.

MR. J. KING: – quick passage.

MS. MULLALEY: Okay.

MR. J. KING: So you said: But it wasn't – it wasn't because – I guess I'm just saying, I want to go on the record, there was no discussion around the election or it wasn't that kind of concept at all. It was – we were trying to get all these reports released and it was a concept of commercial sensitivity.

MS. MULLALEY: Yes.

MR. J. KING: Do you recall making that statement in –

MS. MULLALEY: I –

MR. J. KING: – your interview?

MS. MULLALEY: – absolutely do, yeah.

MR. J. KING: And do you stand by that today?

MS. MULLALEY: I absolutely do. I was there. I was there for the full conversation. I mean – and, you know, again, to back this up, this had already been approved by Cabinet. It had been in the room, I had provided a presentation and asked for release of the report and it was – there was no debate, there was no discussion in the room, it was approved.

They also saw – I mean, there – again, there were concerns around the project at the time and the quantification, or lack of us understanding where the number was going, so it had gotten approved, so it was not like that. It was outside the Cabinet room when that discussion happened, and the sole, sole discussion around it was all around the commercial sensitivity and particularly around Astaldi.

MR. J. KING: Particularly Astaldi, yeah.

MS. MULLALEY: Yeah, so I promise you that I was there. There was not one word of anything like that.

MR. J. KING: And was there also a concern expressed at the time that this commercial sensitivity issue, particularly as it relates to Astaldi, could have a direct impact on the project cost itself?

MS. MULLALEY: Yeah, so I think Mr. Martin was trying to explain that, you know, while they

were having discussions with Astaldi and – but, you know, you could clearly tell from the report that would be released, because no matter how you try to couch it, you could identify the contractor, right?

MR. J. KING: Mm-hmm.

MS. MULLALEY: So I think the concern was there could be even further repercussions because you're putting out something where you're identifying, you know, the contractor and the criticism –

MR. J. KING: Right.

MS. MULLALEY: – around some of that, right? Yeah.

MR. J. KING: I mean, obviously, the eventual decision was to break it into two reports.

MS. MULLALEY: Correct. Yeah.

MR. J. KING: And was this decision made by Cabinet?

MS. MULLALEY: That was a decision that, I guess, we ended up agreeing to coming out of that discussion –

MR. J. KING: Mmm.

MS. MULLALEY: – is that one option was to break it in two and that that made sense and let's go off and do that and then we could release it.

MR. J. KING: Okay.

Madam Clerk, can we go to P-03451?

THE COMMISSIONER: 03451.

MR. J. KING: So we looked at this yesterday with – in your direct –

THE COMMISSIONER: So that would be book 2, tab 51.

MR. J. KING: Sorry.

So this is just the press release in relation to the executive summary.

MS. MULLALEY: Mm-hmm.

MR. J. KING: If we could scroll down to the bottom of page 1. So the last paragraph there it says: The executive report summary is available. And then it says: "The full report will be released following a review of commercial sensitivities."

MS. MULLALEY: Right.

MR. J. KING: So do you recall in December 2015 that you were still working to find a solution to that commercial sensitivity issue?

MS. MULLALEY: Yes, we must have been in order to not release both of them. Yeah.

MR. J. KING: Okay.

And I guess in that period, did you see this as a legitimate concern?

MS. MULLALEY: Well, at the time, you mean, of the discussion?

MR. J. KING: At the time, yeah.

MS. MULLALEY: Yeah, I mean I guess I would say – and I remember saying to the premier at the time – it's really difficult for me trying to figure out if something is commercially sensitive and the impact on it. I mean, again, you know, I'm not a lawyer, I look at those things sometimes and I don't know.

But it was – you know, Mr. Martin at the time was certainly very firm that it was a big concern from a commercially sensitive point of view. And you know the report was going out and I guess the concept was for us to err on the side of caution, that we better split this in two and get this one out and work through the sensitivities on the other one.

MR. J. KING: Okay. And I think –

MS. MULLALEY: The key thing was to get the recommendations out, as I said yesterday.

MR. J. KING: Right.

MS. MULLALEY: That was core. You know, the number of contracts and all that, that was

additional information, but was really key for us, was to get the recommendations out.

MR. J. KING: Okay. And I think the best evidence that we have is that the full report was released sometime in late March, early April. I don't think we have an exact date, but that appears to be the best evidence.

MS. MULLALEY: Mm-hmm.

MR. J. KING: So, is it safe to assume between that period December and we will say, March, April, that this was still a legitimate concern, this commercial sensitivity issue that was being worked?

MS. MULLALEY: I guess they were working through it, yeah.

MR. J. KING: Do you recall any discussion with the Oversight Committee in terms of that issue or was that –

MS. MULLALEY: Well, I do remember –

MR. J. KING: – internally with them?

MS. MULLALEY: Yeah, I do remember some discussions between us and Nalcor and in the end, I mean, you know, that would be a compare document. I really – I'm not even sure how much ever in the full report got taken out.

MR. J. KING: Okay.

Madam Clerk, could we go to P-02024?

THE COMMISSIONER: 02024.

MR. J. KING: I don't think this would be in –

THE COMMISSIONER: That's at financial close –

MR. J. KING: Oh sorry.

THE COMMISSIONER: – tab 8.

MR. J. KING: So Mr. – this arises from your cross-examination this morning. Mr. Budden asked you some questions about the financial close period and the involvement of the civil service.

MS. MULLALEY: Mm-hmm.

MR. J. KING: And you mentioned that the minister of Finance would have provided an update around that time. And you also mentioned that you had reviewed some documents, I guess, in preparing for the Inquiry that relate to Finance officials seeking information. So this is an exhibit – if we can scroll down. So this is an email November 1, 2013. And if we scroll down the bottom of the first page, sorry.

MS. MULLALEY: Mm-hmm.

MR. J. KING: So this is an email from Paul Myrden to Nalcor and he says: “Minister Marshall has asked to be provided with the following financial information” Would this be one of the exhibits that you were referring to that you would’ve referred?

MS. MULLALEY: Yeah because I guess these were the numbers then that he based on to come in to Cabinet.

MR. J. KING: Okay.

And Mr. Budden suggested that Finance was presenting, I think he called it, stale information. So if we look at this email, does this email suggest to you that the minister was attempting to present the most recent information that was available?

MS. MULLALEY: Oh yes. I mean, you know, he was asking those questions. That’s what I was saying. And there’s other emails that asked those similar types of questions, right?

MR. J. KING: Yeah.

MS. MULLALEY: I believe the other set was sent by Paul Morris over to Nalcor, so I mean, you know, everybody is sort of asking. When you’re asking for, you know, these types of things here, the details and the most recent update on expected project costs by component in the budget, why – you know. So, yeah, I mean, people were asking. Yes.

MR. J. KING: And when this information was presented to you later, did you have any reason

to doubt the accuracy of that information that was being presented?

MS. MULLALEY: No, I guess I took it at face value but, again, in hindsight now, do I wish that I had sat down to really – you know. Yeah, I do wish that –

MR. J. KING: Mmm.

MS. MULLALEY: – but at the time I did not have that sort of sense of belief. I believed in the numbers that were coming over and the financial officials who had been involved for a number of months with the banks and financing, you know, just – and the IE. I guess it wasn’t something I further questioned. And, yeah, sure, do I wish I did now? Yeah but –

MR. J. KING: Thank you. That’s all my questions.

MS. MULLALEY: – hindsight’s always 20/20.

THE COMMISSIONER: Just before you do step down –

MR. J. KING: Sure. Yeah.

THE COMMISSIONER: – you referred to this email as November 1 but, actually, I think the email you were referring to is the one below that which was October 18, 2013?

MR. J. KING: Yeah, exactly.

Yes, exactly. Yeah, so the start of the chain is in November, but the email from Paul Myrden occurs in mid-October, I believe.

THE COMMISSIONER: All right.

MR. J. KING: Thank you, Ms. Mullaley.

THE COMMISSIONER: Thank you.

All right, Robert Thompson is not here.

Consumer Advocate – maybe what we’ll do is take our break now because we started at 9. So we’ll take 10 minutes now.

CLERK: All rise.

Recess

CLERK: Please be seated.

THE COMMISSIONER: All right. Consumer Advocate.

MR. HOGAN: Thank you, Commissioner.

Good morning, Ms. Mullaley. My name is John Hogan, counsel for the Consumer Advocate.

So a lot of my questions were asked, but I'm just gonna have a bit of follow-up on some of them, for some more specificity.

MS. MULLALEY: Okay.

MR. HOGAN: But first of all, I just want to ask you about the Oversight Committee, which we know was established post-financial close. And Michael Kennedy from EY was here, and gave evidence that the earlier an oversight committee is set up, the better – which is pretty logical, I guess – and he said it would preferably be done before sanction. So I just – I wondered if you have any comment on that.

MS. MULLALEY: No. I mean, I think that that would be a good practice, yeah, sure.

MR. HOGAN: Okay. And, was there any discussion at all about setting up such an oversight committee prior to the one that was established?

MS. MULLALEY: There was a – like, certainly, a concept got that born back in 2012, to set up an oversight committee, and that's when we were doing legislation to exempt it from the PUB. So, there's was an MC back in 2012 actually, you know, requiring the Department of Natural Resources, and Finance, and Justice, to develop – it was called a cost accountability protocol at the time, and it was around, you know, monitoring the cost and the reasonableness of the cost – that was more the context of it.

And there was work underway – well, really, when I came back in 2013 – because, again, I knew I had drafted that MC, so when I came back we opened that up and we started to work on it between Natural Resources and Finance.

But it wasn't before sanction. That would have been literally in – heading into late 2013.

MR. HOGAN: So what's your recollection of why it never proceeded in 2012?

MS. MULLALEY: I can't speak to that. I wasn't there, yeah.

MR. HOGAN: No. Can we please look at P-00807, please?

Which I don't think – you might have it but I –

THE COMMISSIONER: It's on the screen.

MR. HOGAN: So if we could just scroll to page 2, I think.

So this is in 2011, as you can see.

So it's a Decision/Direction Note from Ministers Marshall and Skinner. Are you familiar with this?

MS. MULLALEY: The note itself?

MR. HOGAN: Yes.

MS. MULLALEY: I haven't read that one but I believe I might understand the context of it.

MR. HOGAN: Sorry?

MS. MULLALEY: I said have never read the full note or anything like that, but I believe I understand the context of it.

MR. HOGAN: Okay, well what's your understanding of the context?

MS. MULLALEY: That they were basically recommending a full, independent review. Is that –

MR. HOGAN: Okay.

MS. MULLALEY: – the one?

MR. HOGAN: And so you wouldn't have had anything to do with this in 2011?

MS. MULLALEY: Um –

MR. HOGAN: Or would you have?

MS. MULLALEY: What date is it? I probably –

MR. HOGAN: The email was May 2011.

MS. MULLALEY: So if you just scroll –

MR. HOGAN: You can see when it was signed, sure.

MS. MULLALEY: – down to the bottom.

MR. HOGAN: There you go, May 10.

MS. MULLALEY: Yeah.

So probably not. I wasn't Cabinet secretary at the time, so decision notes would have come through my area. I don't know if that was ever formally processed as a note through the system, though, or not.

MR. HOGAN: Okay.

Do you have any recollection of – we know that the matter was eventually referred to the PUB after this note. And I think Mr. Marshall said that he believes that the decision to send it to the PUB flowed from this direction note. Can you confirm whether that's accurate or not?

MS. MULLALEY: I can't, but there – if that's true, there should be a record on that. Usually there is a – for any decision note, there is a decision that gets emailed back out at – in minimum usually to the departments.

MR. HOGAN: So if the PUB reference is linked to this note, there should be a –

MS. MULLALEY: Usually there is.

MR. HOGAN: An MC?

MS. MULLALEY: No, not necessarily an MC but it would be a direction back to the minister of the department, the deputy minister.

MR. HOGAN: Sort of a reply to say we accept your –

MS. MULLALEY: Yeah.

MR. HOGAN: – note or (inaudible).

MS. MULLALEY: Usually there – whatever the premier's decision was on that, usually is recorded somewhere and directed back out to the department.

MR. HOGAN: Okay. Departments, in this case, I guess, would it be?

MS. MULLALEY: Yeah. Usually to the deputies.

MR. HOGAN: I just wanna ask you sort of a general question about oversight. Did you – looking back now or even at the time, we know that the PUB came back and said that they weren't able to reach a conclusion –

MS. MULLALEY: Okay.

MR. HOGAN: – did that give you any concern with regards to oversight on the project, given that had been referred to the PUB and the PUB came back without a decision?

MS. MULLALEY: I mean, yeah, I guess understandably that – again, I wasn't involved in any of those discussions in government, but you know, I can understand from a public point of view for sure on what, you know, what the PUB could bring to that, so.

MR. HOGAN: You could understand the public concern, is that what you're (inaudible)?

MS. MULLALEY: I could understand the public concern about not having that completed, yeah, by the PUB.

MR. HOGAN: Okay.

But that decision was made, obviously, not to go back to the PUB?

MS. MULLALEY: Right.

MR. HOGAN: So Mr. Budden also asked you about an obligation to ask for certainty on the 6.2 number at financial close. It's one thing not to be told it's 6.5 and another thing to be asked about the 6.2.

MS. MULLALEY: Mm-hmm.

MR. HOGAN: So I guess I have two questions on that. One is, given that you know that the PUB didn't complete a review of that, I mean, would – that would've given a further detailed look into the 6.2 number, is that correct?

MS. MULLALEY: Yes, if they had done that – yes.

MR. HOGAN: So when the 6.2 number was brought to you at financial close, knowing that the PUB hadn't done a review, what was your thinking: well, how do we drill down and look at the 6.2 number knowing that the PUB review hadn't been completed?

MS. MULLALEY: All I can guess is – tell you – give you the context of the day again on that; is that, you know, the project had been sanctioned, this was moving forward, there were no big stop-the-bus moments that had come in. It was government policy direction that officials were implementing, and faithfully implementing to get to the financial close, and the project for all intents and purpose – you know, there were contractors like Astaldi already on notice, there was a lot of money being spent. But I think it was implementation of government policy.

MR. HOGAN: When you say government policy, are you referring to the Energy Plan?

MS. MULLALEY: Well, not just the energy but – the Energy Plan as well but, I mean, it was government policy that the project had been sanctioned and moving forward. So as government officials, you are faithfully implementing that policy direction and – up to the point, I guess, when this came in and it was sanctioned, I guess that's where there wasn't any big – what I was saying, big stop-the-bus moments that changed from project sanction to when they were continuing on for financial close.

MR. HOGAN: Okay.

You also talked to Mr. Budden about how you were comfortable, or maybe – you might not have used those words but the financial team – your financial team had the 6.2 number. There was no reason to doubt it at – during financial close, correct?

MS. MULLALEY: Yeah, it certainly appears to be in an email. Like, I said, I can't – I don't know, I can't interpret what they thought that was. And maybe they have a different explanation for that but, I mean, you know, it's evident that it's in the emails. Yes.

MR. HOGAN: So my question is: Do you recall what questions were asked by Cabinet Members – Cabinet ministers at that time regarding how sure Nalcor was of that 6.2 number?

MS. MULLALEY: I think there would have been, like I said earlier, presentations that came in on the financing side. But, of course, at that time the minister of Finance would have been briefed, it was \$6.2 billion. I can't recall a very specific question in the room, but I think that that would be the context relayed, was it – that it was whatever the \$6.2 billion was, right? So, I guess, you know, I don't recall any big discussion around –

MR. HOGAN: No big questions asked.

MS. MULLALEY: – any differences or anything, I think it was a presentation of the information. Generally, the ministers were well aware of the project and where it was and, you know, Mr. Martin had been on a number of times before that to present on the project. So I guess the concept was that it was the 6.2 as they understood it to be.

MR. HOGAN: No changes, obviously. And that was about as far as the discussion went on that number.

MS. MULLALEY: Yeah, I – and I can't, to be honest with you, recollect specific questions of that day.

MR. HOGAN: Okay.

Now, Mr. Smith asked you about this a little bit. Yesterday, you said it would have been standard process for you to have been made aware of the 6.5 number. Today, when you were talking to Mr. Smith you said it would have been in the normal course.

MS. MULLALEY: Yeah, it is. Yeah.

MR. HOGAN: Yesterday, you also said you were angry and shocked about seeing the 6.5 number and as well the 7.0 number from the summer of (inaudible).

MS. MULLALEY: Well, the seven point number is what I was really referring to but, yes.

MR. HOGAN: So, you didn't know, or you say from what you can remember you certainly didn't know that number.

MS. MULLALEY: Not the 6.5. No, I don't feel I did. Like, I have no recollection on it. But what I was speaking about yesterday really was more to the point on the \$7 billion being there in July when we were walking in – not so much the 6.2 to 6.5, that's a bit of a different issue as well.

But the fact that I saw the \$7 billion in the report in July and we're walking in with a different number, that's what – and on further, you know, the numbers right across the chart, because there were many times where we were asking, as was Cabinet, as I said yesterday, you know, those – that second set of numbers up there had never been disclosed. And I know we talked a little bit about yesterday whether – or I guess the question being whether those end numbers are correct in the GT report. And, again, that's a different issue again.

MR. HOGAN: No. My question is if – I mean, we know Nalcor had the 6.5 number at financial close.

MS. MULLALEY: Yeah.

MR. HOGAN: It didn't make its way up to you –

MS. MULLALEY: As far as I can tell. Like –

MR. HOGAN: – despite standard processes saying you should have known. So, knowing what you know now, can you pinpoint where the standard process failed?

MS. MULLALEY: The only things that I can think in my mind is if it – for some reason, again, that the officials – and there was some discussion, I believe, around whether it was more they thought it was a process of developing the mechanisms for the COREA and

that the 6.5 was being used as a number, but it wasn't an overage, you know. So if they didn't think that it was actual part of the project cost, perhaps it wouldn't have.

MR. HOGAN: What about if – so I guess I'm wondering, is it – does it fall there or does it fall at Nalcor for not disclosing it perhaps in the presentation at the Cabinet meeting, or does it fall on both parties?

MS. MULLALEY: Yeah. You know, I think there's accountability all around. You know, I – you know, I definitely believe it has to be make sure Nalcor provides a number; that's key because that's the source. There's accountability on our officials to understand that and, like I said, there's accountability on myself as well. So there is accountability on all avenues, yeah.

MR. HOGAN: So if Nalcor didn't disclose that number to Cabinet, 6.5, and you said there is accountability for that, how do you think they came to the point where they felt that they – that number did not have to be reported to Cabinet? Where did that thinking come from? Was that developed over time?

MS. MULLALEY: Well –

MR. HOGAN: Was that specific to this issue?

MS. MULLALEY: Yeah, I mean, I don't know if they felt – you know, if they felt they provided to government in – and they – I guess, they – there's a possibility, obviously, they thought that then officials provided it to government so they didn't have, right, so ...

MR. HOGAN: Okay. But from your recollection, certainly it wasn't disclosed at the Cabinet meeting?

MS. MULLALEY: There's nothing I can remember and, again, I've gone through all the Cabinet records to find anything at all. You know, I was hoping to find them, actually, you know. I was hoping so that – but I – again, I – all I can say is I can't remember. I can't lie to say I do remember just for the convenience of it.

You know, I can't remember, I can't find anything. I wish I could, because it would make a lot more sense if we all knew, which would be

normal process. But I – all I can say, honestly, is I can't recall.

MR. HOGAN: Okay, one question on the EY report. So it was my understanding Cabinet approved its release prior to the election and then –

MS. MULLALEY: That's true.

MR. HOGAN: – Nalcor, I don't know, stepped in or – what happened then? Nalcor said, no, you should not release it and advised Cabinet further? Is that the timeline?

MS. MULLALEY: Yes, so the EY report went into Cabinet room. That was – and it did get approved for release.

MR. HOGAN: With commercial sensitivity redacted, I assume?

MS. MULLALEY: No –

MR. HOGAN: No?

MS. MULLALEY: – it was the full report.

MR. HOGAN: Full report.

MS. MULLALEY: Yeah, there was only one report, right, that –

MR. HOGAN: Yeah.

MS. MULLALEY: – originally, and that was the full report that Cabinet was given – the full report. And that was the report that was intended to be released with our September oversight report. So it did get the approval by Cabinet, but I guess what happened afterwards there was concern expressed.

So myself and Ed and the premier and, I think the chief of staff, met outside the Cabinet room while we were breaking on another issue; we just met. And that was when the discussion happened that there's a – from Ed that there was (inaudible) significant concern from a commercial sensitivity and Astaldi and the possible impact.

MR. HOGAN: Well, just one second.

MS. MULLALEY: Yeah.

MR. HOGAN: So it was communicated to Mr. Martin that Cabinet is going to release this?

MS. MULLALEY: Oh, Ed knew.

MR. HOGAN: Yeah.

MS. MULLALEY: Ed was aware –

MR. HOGAN: Okay.

MS. MULLALEY: – yes.

MR. HOGAN: And then Mr. Martin (inaudible) and then you –

MS. MULLALEY: Yes, so he stepped out – we stepped out of Cabinet room, on the sidelines –

MR. HOGAN: Okay.

MS. MULLALEY: – of the Cabinet room to talk about the fact that, you know, the risks in releasing the EY report, yes. And as I've said before, I mean, it was a discussion around the commercial sensitivity and discussions with Astaldi and it could have a big impact on projects costs.

So, you know, from that perspective, I guess, there's a concern expressed and felt that, you know, that we had to do something to take that into consideration, and that's where we decided to split into two reports.

MR. HOGAN: Okay. And the decision was ultimately made by who not to release it at that point in time – at all?

MS. MULLALEY: Well, it would've been the premier.

MR. HOGAN: The premier.

MS. MULLALEY: Yeah.

MR. HOGAN: Okay.

MS. MULLALEY: And then we just were – when we went back into the Cabinet room, we just would've explained the situation.

MR. HOGAN: And after Cabinet had made that decision to release it, and then everyone goes back in the room and suggests, no, was there any pushback from Cabinet on that?

MS. MULLALEY: I think they just understood that there was, again, generally, the summary of the discussion of commercial sensitivities, and that we were going to look for an option where we could put it out, but not put it out to harm the project. That was the decision.

MR. HOGAN: But, ultimately – I think Mr. Learmonth was getting to this yesterday – is that Nalcor ultimately made – it was ultimately Nalcor's recommendation not to release the report that was adopted by the premier at that point in time.

MS. MULLALEY: That's correct.

MR. HOGAN: Thank you.

If we could please look at P-03086, please, page – well, let's just bring it up first.

THE COMMISSIONER: 03086. That would be at tab 60, book 2.

MR. HOGAN: So you looked at these yesterday. These are notes from Mr. Kelvin Parsons.

MS. MULLALEY: Yes.

MR. HOGAN: If we can just turn to page 3, please.

Scroll down to the second bullet, so I'll just read it out. Someone did ask you about this yesterday.

MS. MULLALEY: Mm-hmm.

MR. HOGAN: Scroll up, please?

Sorry, yeah: "EY told us there is no sense of responsibility at Nalcor for MF cost escalation. The focus is on completing the project regardless of the cost, with government being there to provide unlimited funds. Nalcor's view is the cost increases are 'unfortunate' but the long-term benefits surpass the cost increases."

So my question is – and it's also in relation to what you said that it was a policy decision for the government to proceed with the project at sanction – was there no stop to the project then at that point in time, and was this Nalcor's view?

MS. MULLALEY: I think it was more than Nalcor's view. I think that, you know – and there's probably lots of documents on file as well. Once you pass the financial close –

MR. HOGAN: This was at – okay, sorry –

MS. MULLALEY: This –

MR. HOGAN: – go ahead. You continue.

MS. MULLALEY: This is in January 2016 here now, right? Yeah. So I guess the – you know, 'cause there would've been discussions around that. There would've been legal opinions around that. The issue, I think, was that once that crossed over – and you probably know the arrangements that are there, that, you know, if we didn't finish the project government could step in and finish the project at the costs anyway.

So, you know, I think that that's some aspect of it. So, I don't know if you had a specific question on the role?

MR. HOGAN: Well, I guess, my specific question: Was that Nalcor's view that the project was going to be completed regardless? I guess my question was, was that the view since sanction?

MS. MULLALEY: Well, I think everybody probably clearly understood, it was – you know, that it was an agreement that once you went into it you were in it.

MR. HOGAN: At sanction?

MS. MULLALEY: Well, I – financial close technically, I guess, right.

MR. HOGAN: My question then is about sanction, I guess.

MS. MULLALEY: You know, at sanction you still had time, yeah. At sanction you absolutely

had time. You still had time to step back and look at things.

MR. HOGAN: You did have time, and we've been through that with lots of witnesses. So my question is – and just think about what you said, though, earlier when I was asking you questions. You said that it was a policy decision of the government to –

MS. MULLALEY: Yeah.

MR. HOGAN: – proceed once sanction was reached.

So was it – was that Nalcor's belief, that once sanction was done this project was gonna be completed regardless of the cost?

MS. MULLALEY: I think they still knew there were some aspects that had to move through, including what was happening in Nova Scotia, and then finalizing the agreements with the Government of Canada. But once financial close, you know, that kind of put it into a situation where you had to go.

So they – no, I guess from the perspective of they knew government would – they were the backstopper at that point of anything that would happen, but it was never government's intent, for sure, to have unlimited funds and/or someone that – you know, we're not still trying to mitigate, to the best degree possible, anything that was happening. And I'm not saying that mitigation didn't happen. I think mitigation – or there were mitigation aspects to try to, you know, to address risk, but, obviously there were a lot of risks, obviously, that translated into huge costs on the project.

MR. HOGAN: Okay. Thank you.

I just want to turn to Cabinet meetings. We don't have very many notes from any Cabinet ministers at all from Cabinet meetings. Maybe some notes on –

MS. MULLALEY: That would be common.

MR. HOGAN: Pardon me?

MS. MULLALEY: That's probably normal. Yeah.

MR. HOGAN: That doesn't surprise you?

MS. MULLALEY: No, 'cause everything's on their laptop when they bring it in. So they don't (inaudible).

MR. HOGAN: So, what do you mean? Like, they would be taking notes on their laptops, or they would just have the presentations on their laptops?

MS. MULLALEY: Yeah, everything is on their laptops. Yeah.

MR. HOGAN: Okay.

MS. MULLALEY: Well, they probably don't take a lot of –

MR. HOGAN: They probably don't take a lot of notes.

MS. MULLALEY: No.

MR. HOGAN: So, is that peculiar to or specific to the Muskrat Falls Cabinet meetings or Cabinet meetings in general?

MS. MULLALEY: No, just in general. Yeah, just in general. Yeah.

MR. HOGAN: And why –

MS. MULLALEY: Some still like paper copies and will print stuff out, but generally they use the computers and all the papers are set up on that.

MR. HOGAN: Okay.

And was that standard protocol or direction from anyone not to take very many notes –

MS. MULLALEY: No, no. They're free to take whatever notes they want. Some do, some don't. I'm just saying overall, you know, they're very familiar and used to using the computers.

MR. HOGAN: Because we don't have a record. We don't have an historical record of really what ministers were thinking at – during these Cabinet meetings.

MS. MULLALEY: Mm-hmm.

MR. HOGAN: Which Commissioner has raised it as an issue, so I'm asking it. And you said yesterday ministers were concerned. And that's in quotes.

MS. MULLALEY: Yeah. Yeah, for sure.

MR. HOGAN: But we have no way to really determine the level of their concern with this project and the questions that were asked.

MS. MULLALEY: I know, yeah.

MR. HOGAN: So, as clerk at these meetings, did you ever think about giving direction to taking – to ministers to take notes or did you ever think about giving direction that minutes should be taken of the Cabinet meetings?

MS. MULLALEY: Well, I took minutes of the Cabinet meetings.

MR. HOGAN: You did.

MS. MULLALEY: I did, yes.

MR. HOGAN: Which we don't have.

MS. MULLALEY: Yes, yeah. They – I mean, the minutes I take would translate into Minutes in Council and orders-in-council. But I would say the minutes would often have – if there was a, you know, a nuance in the room or if something further or, you know, you might want to explore, they would be there as well, yeah.

MR. HOGAN: Okay.

If we could please turn to P-03874. So this is something Mr. Smith took you to this morning.

THE COMMISSIONER: Okay, that's tab 57.

MR. HOGAN: Commissioner, I don't have that sheet for the tabs, sorry.

THE COMMISSIONER: No, no. No problem, that's why I'm just mentioning it.

MR. HOGAN: Yeah.

So I assume you recall this, it was not very long ago you looked at it. The sentence I'm curious about is about – in the first paragraph, three or

four lines down. It says: "In general, standard process requires negotiating mandates for issues of this significance to be approved by Government in advance of entering good faith negotiations."

I haven't seen any written negotiating mandates. Do you know if they exist?

MS. MULLALEY: For this project?

MR. HOGAN: Anything related to this project.

MS. MULLALEY: If they did, they would be long before my time.

MR. HOGAN: But during your time, there was no written mandates to Nalcor from Cabinet or the premier regarding any negotiations on this project?

MS. MULLALEY: Not of this type. Certainly mandate letters or maybe – you know, but that's more strategic directions, right? The –

MR. HOGAN: Can you give me an example of when you would've seen a mandate letter?

MS. MULLALEY: Mandate letters?

MR. HOGAN: Well, in – it requires negotiating mandates. How would they (inaudible)?

MS. MULLALEY: Oh. Well, what I'm talking about here, I guess, in negotiating mandates – and this is a fairly common process in government. So if we – if a department was doing anything, it might be on – you know, again, offshore oil I'll speak to 'cause I was on some of those. Like, you know, we would have to come in to Cabinet with, you know, all the principles that we were looking to get; what kind of percentage equity we wanted, what kind of percentage, you know, of royalty rate. Like, you know, you do all that.

You have quantums; you know where you're going and you have to sort of have that laid out before you ever go to the table and, you know, there's lots of other examples I could say to you where there would be things happening in government where you're negotiating, particularly in certain departments that are negotiating deals with certain places or things

we were doing, say, for, you know, Corner Brook Pulp and Paper.

Whatever it was, you can't go to tables, right – you cannot go to tables in good faith negotiations with parties unless you have that –

MR. HOGAN: Authority.

MS. MULLALEY: – approval and authority. And in this case I didn't feel that was the case, nor obviously did the premier of the day.

So, it's that concept. It was a significant amount of money, and the concept was we didn't know if this was the only option here as well, or whether any money should be paid to Astaldi. So that was a sense of, you know, we need to pull this in and we need to get an understanding of this. We need to analyze, make sure all the options are – have been considered and that continuing to negotiate with Astaldi would be the recommended action, and then what quantum and how would you define that quantum?

So, that's what the – entering good (inaudible) faith negotiations would mean in that case.

MR. HOGAN: So, I'm just gonna pick out a specific example.

The excess energy agreement, which you're familiar with?

MS. MULLALEY: Pardon me?

MR. HOGAN: Excess energy agreement.

MS. MULLALEY: Yeah.

MR. HOGAN: So, would that have been something that would've required a negotiating mandate direction from government to Nalcor?

MS. MULLALEY: I – I can't recall. I think that would've all been part of the – of papers, probably.

MR. HOGAN: Of papers?

MS. MULLALEY: Of Cabinet papers, I would think.

MR. HOGAN: So you would think there would've been some sort of direction in there –

MS. MULLALEY: Yeah, I can't – I mean, I can't recall. Maybe if I knew more or saw more about it, but – but generally, yeah. I mean, any policy direction has to get approved, right?

MR. HOGAN: Quantum is different than policy, you agree with that?

MS. MULLALEY: Oh, definitely, but you have to have the policy first, but the quantum has to be verified and analyzed to go along with that, right?

MR. HOGAN: Yeah.

THE COMMISSIONER: Are you gonna move on from that?

MR. HOGAN: Yes.

THE COMMISSIONER: 'Cause I just have a couple of questions –

MR. HOGAN: Go ahead.

THE COMMISSIONER: – that I'd just like to ask.

So, you wrote this letter on January 25, 2016, to the Premier, and he accepted your recommendation that they – that there would need to be some sort of approval process from Cabinet.

Were you still there by the time they actually went and did the negotiations, and was there an approval process put in place through Cabinet as you had suggested?

MS. MULLALEY: For the Astaldi?

THE COMMISSIONER: Yeah, for Astaldi, because after – as I understand it, subsequent to this there would have been – well, Mr. Martin was gone and Mr. Marshall was in. Was Mr. Marshall given some sort of a mandate with regards to what he could do with Astaldi?

MS. MULLALEY: Yeah, so I – again, from – and I did leave in the middle of all that but I can say, I guess, from my point forward there was

Ernst & Young was put on as part of reviewing the negotiating strategy for the Astaldi agreement, the bridging agreement and Westney was involved. So if – you know, a number of ministers and the premier and others went over to some meetings in the Nalcor building with Westney. So the concept, I guess – and that was brought back to ministers.

We worked through all the options and conclusions, and using Westney's advice as well and EY's advice, to actually come to a conclusion that the action that was actually being requested to move forward to continue to negotiate with Astaldi and keep them there was the best option and there would have been some quantum around that. So that would have unfolded. After that for the later full bridge agreement I guess it was called later, and I was not there then, so I can't speak to that part.

THE COMMISSIONER: So that would have been the initial \$150 million or whatever.

MS. MULLALEY: Yeah, yeah, I think that's exactly right.

THE COMMISSIONER: So there would have been a mandate and there would have been a number that would have been discussed –

MS. MULLALEY: Yes.

THE COMMISSIONER: – so then people going to the table knew what they had, right.

MS. MULLALEY: Right, they knew that government was quite comfortable, that they felt that this was the right action to be taken and they knew a quantum.

THE COMMISSIONER: So you weren't there after when the larger amount of settlement was there.

MS. MULLALEY: No.

THE COMMISSIONER: So you have no idea if that was –

MS. MULLALEY: No, I don't know what process that went through.

THE COMMISSIONER: Anyway, sorry to interrupt.

MR. HOGAN: No, I'm actually not quite ready to move on but for mandate issues, so I'm going to ask you some issues around that regarding the ICS, the dome.

And I'll read from the transcript, maybe I just want to get your comments on it. So this is what you said in your interview: It's public money and I guess it is in the context of trying to understand, you know, on these decisions where the mandate rests. And I think there were some other points in along the way that – like, the dome was another one of those where I think Cabinet, nor anyone, knew that decision.

And they were – had been quite upset at that decision and they were trying to understand, you know, I guess on a governance perspective, who has the authority to make those types of decisions. And I think that was the discretion of Nalcor that in their role as the Crown corporation or the board of directors they had it, but when you see a dome that added a lot of money to a contract and Cabinet hadn't been aware of that, it causes issues right? So I think these would be those types of issues. So now I'm wondering: When does the authority have to be discussed and delegated? Because it sounds like it wasn't discussed with regards to the dome –

MS. MULLALEY: No.

MR. HOGAN: – and it sounds like Cabinet was upset about it.

MS. MULLALEY: Yes, they were. They were quite upset about the dome.

I think it was one of those meetings where – getting back to even some questions yesterday on the governance side is always an interesting one. So I think with the concept of the dome – and this was a meeting on – when they were coming in to do an update on the 6.99 – we were moving to the 6.99 and they were showing the difference in what was – what caused those. And the dome was part of – going up from, actually, the 6.2 up to 6.99.

And when ministers saw how much that cost, they – I guess they were saying, well, where – was that something new in the – like, so that – it was portrayed as something new that was brought in. It was in the Astaldi bid, I understand. And, you know, I guess they had a moment of, well, how can you just go over and approve a couple of million – a couple of hundred-million dollars in a dome, and I guess they're connecting back to the 6.5, now it's 6.9 and this is part of the increase.

So I think they just found that the – that they thought, wow, something like that shouldn't we know about? Like, shouldn't we know and understand what the implication is and why you're doing it? And I think on Nalcor's side – and, again, from a governance perspective, you know, it was, well, you know, we have a budget, we're managing the project, we are the project managers. So those are the things we're – we don't come back to government with, you know, exactly what we're doing and exactly who's awarding and, you know.

So it was that kind of a discussion at the time, you know, a debate on we don't want to hear about those constant surprises. If something is there that's going to increase the costs a lot, we should know about them and we should know why. And that was –

MR. HOGAN: What was the resolution?

MS. MULLALEY: – the discussion.

MR. HOGAN: Like, I mean, there's probably no bright line, is there?

MS. MULLALEY: I think the discussion was we don't want to see these kinds of surprises. Don't come in and don't go surprising us like that. We don't want to see that.

MR. HOGAN: Well, it's too late for the dome surprise.

MS. MULLALEY: Right.

And, hence, I think coming out of that email, you'll see another email that was up on the screen yesterday, I think, where Ed was trying to get some regular meetings starting to happen. So – and, I think part of that was, really, to try not

to get any surprises, to see what was happening along the way and everywhere in the organization, but to understand, to try to mitigate that from happening.

MR. HOGAN: Okay.

If we could turn to P-03571, please.

THE COMMISSIONER: 03571.

MR. HOGAN: Tab 56.

THE COMMISSIONER: Okay, that would be at tab 56.

MR. HOGAN: So, again, you were shown this yesterday. If we could look – I just want to look at page 24, actually, please. So this is a Cabinet presentation.

MS. MULLALEY: Yeah.

MR. HOGAN: And you were brought to this page, I think, yesterday too, which were some options to deal with Astaldi.

MS. MULLALEY: Right.

MR. HOGAN: Do you recall this?

MS. MULLALEY: Right.

MR. HOGAN: So on this page, obviously, is just Option 2, which has a \$430-\$575-million cost consequence. So my question is: When these additional costs are being put forward, I guess specifically in relation to Astaldi, what sort of a – what analysis, if any, was done on the cost to the ratepayer for these increases, or any?

MS. MULLALEY: I'm not sure. I – again, I'd have to pause and think about that. I think at this stage they were – I mean, every cost costs the ratepayer, right? So I mean I think this here was for purposes of mitigating the risks and mitigating the cost, so I would say that.

MR. HOGAN: What was on people's minds was obviously keeping the costs down, but there was no analysis done on kilowatt hours cost.

MS. MULLALEY: I don't think so. I – again, in what I was involved with this was more

around trying to understand what absolutely had to get done here, what was the risk to the project, and what was minimum amount of cost and what was the right thing to do in the various options, right? And I guess by mitigating, the most you were doing you were mitigating costs in total, but to calculate that as what that would mean, I don't think that would have been done.

MR. HOGAN: Okay, if we could please turn to – so you don't think it was done. So you can't recall it being done.

MS. MULLALEY: No, I – again, I think this was very much focused around getting the least-cost option here for what had to get done. And I guess by default you are trying to minimize the costs to the ratepayer, right? But there was no, like, oh this is going to cost this amount and what extra is that. Like, I don't believe that type of analysis happened.

MR. HOGAN: Okay.

If we could turn to P-03505, please, which you also looked at yesterday, communication Q and A's –

MS. MULLALEY: Mm-hmm.

MR. HOGAN: – at page 8, please.

THE COMMISSIONER: Tab 13.

MR. HOGAN: So I guess you've been back and forth on this. You didn't know the 6.5 number at this point in time, but now it's in the communication –

MS. MULLALEY: Oh, I know.

MR. HOGAN: – Q and A –

MS. MULLALEY: We know about it, yeah.

MR. HOGAN: – so we won't get into that again.

MS. MULLALEY: Yeah.

MR. HOGAN: So the question is: “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?”

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

So despite the fact that obviously you didn't know the number was 6.5 billion at the time, my question is: How can this answer be put in here? And I'm assuming no analysis was done on the 6.5 number regarding – well, regarding stability of rates.

MS. MULLALEY: I think they were using it, though, in the context of the quantum that had always been out there between Muskrat Falls and the next least-cost alternative, which was a lot more than the (inaudible) –

MR. HOGAN: Well, do you know what the increase in the CWP would've been at \$6.5 billion?

MS. MULLALEY: Not off hand, no.

MR. HOGAN: Well, do you know if that analysis was done?

MS. MULLALEY: It probably was, but I don't know. I can't say that for sure. I don't know.

MR. HOGAN: Just a couple more questions; looking at my notes here.

I just want to ask you about 2014. So we know that there were certainly issues with Astaldi in 2014.

MS. MULLALEY: Yes.

MR. HOGAN: You recall that?

MS. MULLALEY: Yes.

MR. HOGAN: I also suggest to you – or I'll give you some facts.

So Premier Dunderdale left in January 2014, left the Premier's office.

MS. MULLALEY: Right.

MR. HOGAN: Premier Marshall was sworn in as an interim premier.

MS. MULLALEY: Right.

MR. HOGAN: He actually did leave the Premier's office very briefly, if that's correct, and came back. He expected to leave the Premier's office and Frank Coleman was going to become the premier.

MS. MULLALEY: Oh, yes, but he never left, yeah.

MR. HOGAN: Okay. He expected to leave the office though. Is that fair to say?

MS. MULLALEY: He was expecting to leave, yes, but –

MR. HOGAN: Stayed on for longer than he expected.

MS. MULLALEY: Yes, he did, yeah.

MR. HOGAN: And then, obviously, Premier Davis was sworn in towards the end of 2014?

MS. MULLALEY: Correct.

MR. HOGAN: Okay.

Now, we've heard evidence from ministers during that time who were shuffled in and out of Cabinet ministries regularly and, obviously, they spoke to the fact that it does take some time to get up to speed. So all of that is going on in 2014 within government, within Cabinet and within the Premier's office; over here there's issues going on with Astaldi in 2014, getting off to slow start. We've also heard evidence that, potentially, if the slow start hadn't been an issue with Astaldi maybe everything would've been okay with them.

So my question is: Did the movement and constant shuffling and sort of chaos, I'll put it, within government in 2014 affect the oversight of Nalcor at that point in time?

MS. MULLALEY: I don't believe so. No, I don't believe so. Even if you have some ministers, you know, coming and going a bit, there were some, still, long-held ones like in

Natural Resources, Minister Dalley had stayed there and been there, the premier was there for quite some time and, you know, as Premier Marshall, he had a lot of involvement in the finance side of it. He had had – he was also the minister of Natural Resources.

So most of your key ministers and the premier, and that, were quite familiar with this file and what was happening. So I don't think that shifting necessarily impacted that.

MR. HOGAN: Okay.

If we could look at P-02412, please.

THE COMMISSIONER: Okay, that's tab 79.

MR. HOGAN: So, again, you were showed this yesterday. I think this is Mr. Meaney's Update Chronology. I just want to ask you about the February 13, 2015, note, the second line: the attendees.

So we've heard from all of these individuals to date, except for B. Crawley. Can you tell me who B. Crawley is?

MS. MULLALEY: I would suspect that's Brian Crawley.

MR. HOGAN: Okay. And what was his role in this at – in February 2015?

MS. MULLALEY: Well, he was at Nalcor. I really didn't have any specific dealings, actually, with Brian Crawley at all.

MR. HOGAN: Okay.

MS. MULLALEY: So –

MR. HOGAN: He was important enough to be involved with this meeting, I assume.

MS. MULLALEY: Well, this was an internal meeting here, right?

MR. HOGAN: But he did work in government at one point in time?

MS. MULLALEY: Yes, he did.

MR. HOGAN: And did you work with Mr. Crawley?

MS. MULLALEY: I knew him. I would've, yes, been deputy clerk at the time –

MR. HOGAN: Okay.

MS. MULLALEY: – so I would've worked with him (inaudible) some time.

MR. HOGAN: And what was his role?

MS. MULLALEY: He was the chief of staff at the time.

MR. HOGAN: Okay.

And so do you have any knowledge of how he moved from government to Nalcor?

MS. MULLALEY: No.

MR. HOGAN: All right.

That's all the questions I have.

Thank you.

THE COMMISSIONER: Thank you.

Innu Nation. Not present.

Nunatsiavut Government [sp. NunatuKavut Community Council].

MR. RYAN: Good morning, Ms. Mullaley.

MS. MULLALEY: Good morning.

MR. RYAN: My name is Victor Ryan. I'm counsel for NunatuKavut Community Council. I just have one or two questions for you.

I wanted to ask you about the scope of the Oversight Committee as it's laid out in the Terms of Reference. And that's at P-02049. But I don't intend to take you in any great detail through the – sort of, like, the three scopes: project cost and schedule, project meeting cost and schedule objectives and cost and schedule risks.

My question to you is more so: Did you or any of the original or founding members of the Oversight Committee have any input into determining what the scope of the Oversight Committee would be?

MS. MULLALEY: Yes, yes, we would've.

MR. RYAN: Okay.

And I'm assuming also that government had a role in determining what the scope of the Oversight Committee was as well.

MS. MULLALEY: Yeah, I mean, the scope was – we were guided by the scope by Ernst & Young when they came in to help guide this and we would've brought it through – it would've gone to Cabinet for approval, so from that perspective, yes, yeah (inaudible).

MR. RYAN: Okay.

So the Oversight Committee, in and of itself, helped create the Terms of Reference which were then approved by Cabinet –

MS. MULLALEY: Correct.

MR. RYAN: – and then once approved, the Oversight Committee could do the work as laid out –

MS. MULLALEY: Correct, yes.

MR. RYAN: – in the Terms of Reference.

MS. MULLALEY: Yes, that's right.

MR. RYAN: So the third, I guess, point in the mandate and the Terms of Reference is: "The cost and schedule risks are being reasonably anticipated and managed"

But then just below the third number in the list, it says: "The Committee's mandate does not include participation in the management of the Project. Oversight of health, safety and environment, quality, regulatory compliance and benefits tracking are specifically excluded from the Committee's scope."

And so, in my reading, there's a bit of an inconsistency there, which is to say that issues regarding safety and environment, quality, regulatory compliance are cost and schedule risks. And so reviewing the documents in the disclosure to the Inquiry, it doesn't seem to me that the Oversight Committee conducted any oversight, at all, into issues such as methylmercury levels in the reservoir and the level of clearing of the reservoir before it was filled.

Is that accurate? Did the Oversight Committee ever look at that issue?

MS. MULLALEY: No, not specifically to that. And I guess from the perspective of any risks – any risks that started translating into potential cost and schedule would certainly have to come into play then for monitoring purpose, but no, not for that specifically, like ...

MR. RYAN: I guess, Ms. Mullaley, who would make the determination –

MS. MULLALEY: Mm-hmm.

MR. RYAN: – when an issue, I guess, morphs from an environmental or regulatory compliance issue that is within the purview of Nalcor to, I guess, reaching such a sufficient level or condition precedent that it now becomes a cost or schedule risk that falls under the Terms of Reference of the Oversight Committee?

MS. MULLALEY: Probably twofold. I guess one way is through Nalcor, and I guess if – you know, if they're translating into costs and schedule, specifically – if that's what you're referring to – they should be starting to be tracked on their own alert systems for potential costs and we would see them that way.

But I would also say through the government process, of course, through either – the Department of Environment would be another avenue that I would think those types of issues would come up through and then there'd be a process in government to work through those issues on that, and they might interconnect over to the project for sure, but – so I think it could be a combination of both.

MR. RYAN: Okay.

So, take, just for instance, the issue of the clearing of the reservoir, which is very important to my client, I'm – or perhaps I'll ask this question: Did you, while you were at the Oversight Committee, consider the issue of whether to partially or fully clear the reservoir to be a cost or scheduled risk to the project?

MS. MULLALEY: No, not from this particular oversight aspect, but I believe, you know, the issue sort of, I guess, was under discussion in government, certainly, and I think, depending on government direction, that would have come up out from that that could have impacted the costs and schedule and we would be aware of that, if that had happened.

MR. RYAN: Was the Oversight Committee able to, sort of make a determination that something was a schedule or cost risk, in and of itself, thus bringing it into the scope of the terms of reference, or would that have had to have come from either government or Nalcor or both?

MS. MULLALEY: I think it should have probably come from both. I guess, if you asked me based on assessment if we understood enough what was happening in some of these areas, I guess you also potentially could identify it as a cost and talk to Nalcor or government about it, right. But, generally, the – whatever government decision on that is probably flowing down from either Nalcor or government.

MR. RYAN: Okay.

I guess, I'm just asking, Ms. Mullaley, because there's been some documents and evidence that point to Nalcor's view that any additional clearing, over and above what was considered in the environmental assessment process –

MS. MULLALEY: Mm-hmm.

MR. RYAN: – would trigger further environmental assessment processes, which obviously take money and take time.

THE COMMISSIONER: Sorry about that.

MR. RYAN: It's fine.

So Nalcor's of this view that, oh, if we have to clear the reservoir any more than what's already been agreed to –

MS. MULLALEY: Mm-hmm.

MR. RYAN: – extra costs, extra schedule delay, potentially.

So, given that view, it seems to me that the issue of the clearing of the reservoir and to what level clearing would take place would certainly fall squarely within point 3 in the Oversight Committee Terms of Reference. However, the Oversight Committee did not conduct any oversight on this issue. And so I'm just wondering: Why is that?

It sounds like from your answers that unless Nalcor and the government came to the Oversight Committee and indicated that clearing of the reservoir was an issue under your terms of reference, you wouldn't consider it.

MS. MULLALEY: Well, not – I guess what I would say is like, there's risk logs in Nalcor, so as part of the work that we're doing, we're always looking at these risk logs. So, if it's being identified in Nalcor as a risk, it will – it would be something we were monitoring as part of this because we monitor all those risks anyway.

So it's not like Nalcor officially has to come to us because they're all captured in the risk log. I guess it depends on if – I don't know – you know, from a government decision point of view, what has been decided to do on that. So I guess – but if it's carried as a risk, we will see that.

MR. RYAN: Okay.

And then the inverse of that is if it's not, sort of, captured accurately in the risk logs that you were being provided, unless the Oversight Committee takes additional steps, you're not gonna conduct oversight of that because you can't, you know, you don't see it. You're not uncovering it in your review of the risk logs.

MS. MULLALEY: And/or, you know, from a government perspective, I mean, you know, I'd say to you there's lots of interfaces here, I mean,

I don't know how it's structured now, but I certainly would've been the chair of the Lower Churchill Management committee as well and those types of issues would be discussed at that committee, no doubt. So there might be an awareness of the types of those issues.

So I wouldn't say point blank, no, but I would think it is something that you would be kind of trying to understand where a government response is on to it – on it and to understand the potential for the costs and schedule.

MR. RALPH: Commissioner, if I could (inaudible).

I know in the last Oversight Committee report in December, it addressed the risks – some – many risks, one of which was the reservoir. And I understand Mr. Carter will be here next week and he can also address the –

MS. MULLALEY: Yeah.

MR. RALPH: – those risks that the committee is dealing with, one of which is the methylmercury issue.

MS. MULLALEY: Yes, because I did leave there, like I said, in September of '16, so it's been a couple of years.

MR. RYAN: Yes. And that's fine, and I'm sure Mr. Carter will give answers to what he can.

I suppose the purpose of these questions is, as far as I understand, Ms. Mullaley, you were part of the Oversight Committee at its inception.

MS. MULLALEY: Mm-hmm, that's correct.

MR. RYAN: And so I think the original perception of the Oversight Committee's Terms of Reference has an affect beyond just your tenure and in the documents that, certainly, I've reviewed thus far before the Inquiry, there was no oversight during your tenure of this issue. And so just trying to figure out why, if the Oversight Committee didn't consider it a part of its mandate, if it didn't consider it at all. So maybe –

MS. MULLALEY: I think there was an awareness on monitoring that and , like I said,

with the interconnections of the different committees, it's just, you know, I guess, the Oversight Committee didn't have a mandate to decide an action on that one, right. So you were monitoring from a government response point of view.

MR. RYAN: But the committee have a mandate to decide action on anything?

MS. MULLALEY: This was, I guess, a committee that was monitoring the costs and schedule and the risks, but, you know, it didn't have authority to have a policy decision on something –

MR. RYAN: Yes, that makes sense.

MS. MULLALEY: – on that perspective, right.

MR. RYAN: But I would put it to you that the issue of how much to clear the reservoir was a schedule and cost risk.

MS. MULLALEY: That's accurate, yeah.

MR. RYAN: And so did – during your tenure on the Oversight Committee was the issue ever raised? Did the Oversight Committee consider – ?

MS. MULLALEY: I would say we knew where the issue was and then of course it, you know, it advanced later on, past my tenure there.

MR. RYAN: Hmm.

MS. MULLALEY: So, I guess I would say, you know, we were aware of that, but you were monitoring, I guess, say Nalcor or a government response on that, right, to, you know –

MR. RYAN: Was there a specific decision to refrain from monitoring it until a further date, or was the Oversight Committee just merely keeping abreast, understanding that the issue exists?

MS. MULLALEY: Yes, I think, at that point in time, it would have been until they understood a government response to it.

MR. RYAN: But you can't recall an actual decision point of: No, we will not go further on this.

MS. MULLALEY: No, no, no.

MR. RYAN: Okay.

Thank you, those are my questions.

THE COMMISSIONER: Okay, thank you.

Grand Riverkeeper Labrador and Labrador Land Protectors.

MS. URQUHART: Good morning, Ms. Mullaley.

I don't have much for you, as my friend has just covered most of the issues that I wanted to canvas, but I'm Caitlin Urquhart and I'm representing Grand Riverkeeper Labrador and Labrador Land Protectors. You may be familiar with them as some citizens' organizations based out of Labrador, who are dedicated to protecting the ecology of the Grand River.

You mentioned in your comments just a moment ago that you're also the chair of the Lower Churchill Management committee [sp. Corporation] and, obviously, in your position as clerk, I just wonder if you could elaborate a little bit on some of the discussions that you would've heard around the issues of environmental regulatory compliance, so not necessarily in any particular role, but just generally during that time.

MS. MULLALEY: I guess, at that time, the – I can describe the role, I guess, of the committee without getting, like you say, into any specific issues, and this was a committee that had a huge number of departments around the table and so it would've been, you know, your departments of environments, Municipal Affairs would've been there, Fisheries, you know, there's a huge amount of – because of – many departments were interconnected with anything that was –

MS. URQUHART: That's for the management committee, just –

MS. MULLALEY: Pardon me?

MS. URQUHART: To clarify, that's for the management –

MS. MULLALEY: (Inaudible) –

MS. URQUHART: – committee, not the Oversight Committee.

MS. MULLALEY: Yes, that's right.

MS. URQUHART: Okay.

MS. MULLALEY: Yeah, no. I think that's what you're asking?

MS. URQUHART: Yes, yeah –

MS. MULLALEY: Yeah, okay.

MS. URQUHART: – no, I just want it confirmed for the record.

MS. MULLALEY: So yeah, Nalcor would be there and – so the whole point of it, I guess, was to try to ensure everybody understood the issues of the day, of what was impacting what because many departments, as you know, policies interconnect with all – each other, and so you have environmental policies and then you have the permitting policies.

So, you know, it was trying to understand, with the project moving forward, how all of this interconnected and, you know, and we had Justice at the table, so Justice was always there, and everybody gave an update, a round-table update, so it was just trying to monitor what actions, you know, were underway, and even on – you know, we had a representative there from Labrador and we would understand what was happening on the ground in Labrador.

So, it was one of those committees that we had on a monthly basis just to try to understand and make sure there was some open communication and we clearly understood what was happening. So that was sort of the point, it was kind of like an ad hoc committee but it was felt like we needed something like that to ensure that open communication.

MS. URQUHART: And so when did that committee – when was that struck?

MS. MULLALEY: Oh boy, that I can't tell you 'cause it was there before I was clerk, but I did sit in on some when I was deputy clerk, too. So, I'm not sure. It would predate me for sure, so I'm not absolutely positive.

MS. URQUHART: And so while it was informal, were – would there have been records of those meetings?

MS. MULLALEY: Again, people would take notes. That is one of the things that is in my books because I always had detailed notes on that particular committee, because there are often action items coming out of that particular one, so I would say yes.

MS. URQUHART: Okay.

And so from your recollection from those meetings, what types of issues were coming out from the environmental perspective or the Labrador perspective?

MS. MULLALEY: Well again, you know, I think that, you know, I don't know if I'll recall anything in particular, but you know, I do recall of course we had the Department of Environment in the room and we had Nalcor in the room. And again, we had the Labrador and Aboriginal Affair representative in the room as well. And I mean, I don't know if I really can recall the very specific incidents of something like that.

But it would be if – but it was particularly around the – a lot of it to do with the project, obviously. Like if the project – and, you know, I mean methylmercury was one of the topics, you know, that would've been talked about in there and what was happening with that. Particularly in early years, the whole environmental assessment would've been an issue that would've been talked and talked through that committee a lot, and follow-up actions, so those are some of the types of things I would say.

MS. URQUHART: Okay.

And so – but could – so I'm expecting a clearing of the reservoir and that would've been part of the discussions as well?

MS. MULLALEY: Yeah, we certainly would've had some discussions on that, yeah.

MS. URQUHART: And was there any sort of monitoring of, I would say, the pulse of Labrador in that in terms of – I know there were letters going back and forth from my organization or the organization, sorry, that I represent as well as others around some of these issues. Was there – would there have been discussions of, sort of that type of nature?

MS. MULLALEY: I believe there was. I believe, generally, we would get an update fairly – where things were. But a lot of that probably would've resided more in the department that was sort of responsible for, you know, the environment – that you'd probably see more of that there. But around the table, you certainly probably would've understood what was – generally what was happening, yeah.

MS. URQUHART: Okay.

And so in terms of – from your understanding or your recollection with respect to monitoring of compliance – so at the point that you came on as clerk –

MS. MULLALEY: Mm-hmm.

MS. URQUHART: – the project had already been released from environmental assessment, right?

MS. MULLALEY: Yes.

MS. URQUHART: So that's already been done, and at that point they're in the process of constructing and so there's various different components –

MS. MULLALEY: Mm-hmm.

MS. URQUHART: – and commitments that would've been made on Nalcor's part.

MS. MULLALEY: Right.

MS. URQUHART: So were there updates regularly on whether or not there was compliance or their monitoring was going on, what they were doing to ensure those were –?

MS. MULLALEY: Yeah, there – I mean, there were varied discussions around that. Like again, I would say sometimes in the departments there might be more. But there were discussions around that and, you know, and there were discussions if Nalcor was looking for a particular permit and, of course, environment was in the room and we might know about some concerns, so some of those conversations would happen at the same time, right?

MS. URQUHART: Yeah.

MS. MULLALEY: Yeah.

MS. URQUHART: So my understanding is that throughout that period, there remained some outstanding issues in terms of compliance, one of them being the human health risk assessment piece which Nalcor had put forward and had been rejected –

MS. MULLALEY: Planned for, yeah.

MS. URQUHART: – and there were some –

MS. MULLALEY: Yes.

MS. URQUHART: – sort of back and forth. Were you privy to discussions around that in the course of this?

MS. MULLALEY: Again, sometimes it blends and blurs a little bit because I do know I had some discussions on that, but it was outside of that committee, again, I think that was (inaudible) –

MS. URQUHART: No, I'm not speaking specifically about this committee but just –

MS. MULLALEY: Yeah.

MS. URQUHART: – generally your work on – as a government representative, as somebody who worked as an employee with the –

MS. MULLALEY: Yeah, yeah.

MS. URQUHART: – government in any capacity, not necessarily specifically with this –

MS. MULLALEY: Yeah, like I definitely do recall, you know, reading some notes and, you

know, different aspects on that. But, again, I would be testing my memory right now to say much more on that. But I absolutely – I could say that, yeah, you know, I certainly read materials on that and certainly sometimes there were high-level discussions on that committee.

But generally it would be more into a department that you're referring to the more structured and policy aspects of some of that, that it was more – our committee was more of an information-sharing committee to try to get our understanding on where everything was. And if there was something happening, you know, that may be impacting progress on the project or something else, you know. So it was that – more of that type of a committee.

MS. URQUHART: And so would something, say, as important as human health risk assessment, would that be the type of issue that would need to go through the Decision Note and that type –

MS. MULLALEY: Yes, usually –

MS. URQUHART: – of a process?

MS. MULLALEY: – that would be, yeah.

MS. URQUHART: So we should be able to locate some sort of –

MS. MULLALEY: I would think you can, yeah.

MS. URQUHART: – paper in (inaudible).

MS. MULLALEY: Yeah, and I think that would probably be the Department of Health.

MS. URQUHART: Okay.

And in terms of the meetings for the Lower Churchill Management committee (sp. Corporation), there would also be records of those meetings, like, PowerPoints or something of that nature?

MS. MULLALEY: Yeah, there generally wouldn't be PowerPoints, actually. They were generally just everyone, you know, who was on the committee came in and it was a round-table discussion and people took their own notes in

their notebooks. And, like I said, I know, like, I do know that's one standing committee note that I did have in mine.

MS. URQUHART: And so those would have been in your black books that we can't –

MS. MULLALEY: Yes.

MS. URQUHART: – locate, unfortunately. Okay. Just to clarify.

Oh, and in terms of the other issue that was – remained outstanding during your tenure was habitat and, obviously, species like caribou are a significant concern to folks in Labrador. I'm wondering if there were discussions around habitat compensation plans and what was being done on that during that time.

MS. MULLALEY: Again, to maybe blend them and blur a little bit on the different roles here, you know, I think I certainly – and I mean I know Nalcor had various plans that they had to complete for all of these requirements. So, you know, I remember seeing some of those plans.

And, again, in the Lower Churchill meetings it was probably more of an update on where that plan was and that sort of thing, given an update of where it was and any concerns that were being expressed. But, again, some of the other side of it may be more embedded into the department, in that case, probably of Environment, right – Municipal Affairs and Environment, right, so ...

MS. URQUHART: And so off the top of your head you don't recall any of those concerns that would have been raised specifically?

MS. MULLALEY: No, I think I recall concerns, per se, but I just can't say, like, how – you know, how that moved along after that.

MS. URQUHART: And, again, this would have been the type of thing that would have to go through a decision note and that type of process. So we should be able to locate something.

MS. MULLALEY: Yeah, I mean there certainly – should absolutely be documents on it in government, yeah.

MS. URQUHART: And in terms of just, generally, the sense around these tables, the various pieces that you are involved in, we had – you know, there is – in the Joint Review Panel report they indicated that they were unable to obtain documents from Nalcor, and, you know, there were some challenges in that respect.

I'm wondering whether that sentiment, whether you saw that. When these folks were trying to get compliance, whether they ever mentioned having difficulty in getting updates or getting information they were looking for.

MS. MULLALEY: I can't say I have a memory on that.

MS. URQUHART: Okay.

MS. MULLALEY: I'm sorry.

MS. URQUHART: That's okay.

Thank you.

MS. MULLALEY: Thank you.

THE COMMISSIONER: Thank you very much.

Astaldi Canada, Inc.

MR. BURGESS: No questions.

THE COMMISSIONER: No questions. Thank you.

Former Nalcor Board Members.

MS. BUIS: Good afternoon, Ms. Mullaley, Amanda Buis on behalf of the former Nalcor board members.

There is evidence before the Commission that the former Nalcor board had requested of government additional experienced board members. Did you have any knowledge of this request by the former Nalcor board?

MS. MULLALEY: My knowledge in that area would be that I do know that Ed Martin had been working on an initiative and Robinson Surrence [sp. Robertson Surrence] had been involved with that. And so I do know he came in

several times to give an update on where that particular initiative was and I think the – oh, from our – you know, my perspective, I guess, in government understanding that there was a desire to build and to do some initiatives on, you know, experience and skill sets and compensation and governance from the board perspective. So I did see a couple of presentations that had the initiative in it and moving forward, for sure.

The other aspect I could say is that, you know, when I was deputy clerk and/or clerk, at times I may get a call from Nalcor where they were looking for and requiring a particular board member and, you know, we would facilitate that process. But I – personally, again, there wasn't anything that I can recall that getting emails in to me to say, you know, there's a big deficiency or anything here. But I certainly knew that Ed was working on an initiative and he had given a couple of updates to government on that.

MS. BUIS: Were you aware of a deficiency?

MS. MULLALEY: I don't know if I was aware of deficiency only to the point, I guess, when Ed was saying that they were looking at the whole, you know, mix on the board and the skill set and experience on the board and wanting to move forward with that initiative and they were working. So government recognized that and agreed that that was a good thing and he was just bringing in some updates along the way.

MS. BUIS: And while we – while you were in that position, were there any new appointees to the board?

MS. MULLALEY: Pardon me?

MS. BUIS: While you were in the position of executive clerk, was there any new appointees to the board?

MS. MULLALEY: As – when I was clerk I don't – I know when I was deputy clerk I did some, I did a couple, and there were a couple of members who were independent appointments that I had to work with Peter Hickman on. But I don't really recall any off the top of head but I don't know.

MS. BUIS: Okay, thank you.

MS. MULLALEY: But the appointments did come through my office so there would be a record of that.

MS. BUIS: Okay, thank you.

That's all I have for you.

MS. MULLALEY: You're welcome.

THE COMMISSIONER: Thank you.

All right, Newfoundland and Labrador Building and Trades Council.

MS. QUINLAN: No questions, Commissioner.

THE COMMISSIONER: Thank you.

Dwight Ball, Siobhan Coady.

MR. O'FLAHERTY: No questions, Commissioner.

THE COMMISSIONER: Okay.

ANDRITZ Hydro Canada – not present.

Grid Solutions Canada – not present.

Barnard-Pennecon – not present.

Julia Mullaley, Charles Bown.

MR. FITZGERALD: Thank you, Commissioner.

I just have a follow-up series of questions. One exhibit that was tendered to the witness by Mr. Simmons, P-01831, if we could please bring that up?

THE COMMISSIONER: Okay. And that's going to be –

MR. FITZGERALD: I don't believe it's in –

THE COMMISSIONER: – on your screen. It's on the screen.

MR. FITZGERALD: Thank you.

And we could just go to – this is a “**May 23 2014 Briefing deck presented by Project team to CEO \$7.27 to \$7.5B range.**”

If we can go to page 8, please, and if we scroll down just a little bit we have a management outlook for project duration: \$7.50 billion. And if we can go to page 9, please? Thank you. We have AFE and outlook recommendation and management outlook for project duration: \$7.501 million.

And if we can just go to page 15, the font on this is very small, but this a series of numbers – I'm just directing this to the witness. And on the bottom we have management outlook: \$7.5 billion. That seems to come from the management reserve and the AFE once they're added. And this is a breakdown, I think, from where Nalcor is getting their 7.5 recommendation.

Now, I guess, during your cross-examination by Mr. Simmons, it appeared that you had a little bit more to say about this document. And I would like to know what your comments are on this, bearing that this is May of 2014 and there's a 7.5 number in existence and you had no knowledge of it.

MS. MULLALEY: Yeah, so I guess as I was saying yesterday as we were talking about this – and I think the point that Mr. Simmons was trying to make was that I think we could all concur that the AFE was 6.99. That was what was brought into government before the release of the report, so that's what government's expectations are.

So I know we started talking about the management reserves yesterday and, you know, I see that, you know, they say the management reserves – and I guess, generally, you know, in this type of business, you know, management reserves would be there for, you know, potentially – as risks happen that hadn't been identified, then you reach into the management reserves.

So I guess my point I go back to yesterday is, you know, coming into government and then going to the public in good faith on the 6.99 number, and then seeing these documents – and this is – I don't know whose document this is

because – but you’re talking about, you know, did you see any source documents from the GT report? No, I haven’t. And, I, you know, I don’t know what my obligation on that is.

But, anyway, regardless, I guess, as you’re showing me parts of this yesterday as a source document from where it’s coming from, I guess, I still – I look at these management reserves and, I mean, I look at the one for short term, in particular, and, I mean, you know, I guess, it’s hard to imagine that you have a management short-term reserve without really kind of knowing that something seems to be happening of a short term, on the long term.

But, nonetheless, I guess, I get back to this principle for me anyway, as a government official, in that the authority for all of this comes from government. And the authority, right now, is 6.99. So, having these other numbers out there, in management reserves, whether they’re short or whether they’re long, they had not been approved by government. They have – and I don’t even know where source of funding would come to have for – you know, to fund these outside government.

So, I guess, the point I was trying to make yesterday is that this 6.99 should either, you know, include your reserves, or if there are management reserves that need to be maintained because you can’t anticipate something, that’s where, to me, again, I understand sometimes, there might be the commercial sensitivity. But, as a government, you’re approving whatever you’re approving.

Your management reserves, to me, cannot lie outside of that, unless government understands what that is because you’re a corporation that gets your funding and approval from government for that.

So, I guess, that’s all I was trying to clarify yesterday, as I do understand the nuances and management reserves, you know, and if you’re in a separate, private corporation, you know, how you structure those reserves and who has access into the reserves and, you know, that is fine.

And, I mean, even that can work here in a public project too. But you can’t tell government, tell

the public, that you have 6.99 and somewhere else you’re still carrying management reserves. There’s still numbers there. But there is no approval, there’s no authority, in my view, and no source of funding.

So, you know, I don’t know if it’s a nuance or not, but, you know, if there’s anything over here being recorded that’s possible management reserves, I just – I find that a difficult thing because government has not approved it and that is what government approved.

So, you should, you know, your management reserves should be in there, and, again, if there’s a commercial sensitivity, you can talk to that through government and government can feel if it’s in the interest of the province to still know the full thing, knowing that there’s a reserve in there or not. But the opportunity doesn’t seem to ever have that because it’s a 6.99 and then these other numbers, whether they’re management reserves or not are over here in Nalcor’s records.

So I think what I am trying to say is that discussion has to broaden to understand government, your shareholder, representing the people of the province, have to understand that. So, I just want to add that clarity.

MR. FITZGERALD: Thank you, and if I can just take you briefly back to page 9. And this is – it’s entitled AFE and Outlook Recommendation, and at the bottom there is management outlook for project duration, \$7.501 million.

Would you expect, in the circumstances of the project, that if Nalcor was aware that the cost for the project duration was going to be aware that the project was \$7.5 billion, and this seems to be an internal recommendation, that this should have been brought forward to government?

MS. MULLALEY: I think government needs to understand this because what you’re saying is this is what you are considering to be your outlook. And, again, I appreciate management reserves may not always be used, you know, they’re there for the purpose that if you have unidentified risks that happen, which I would can say can be quite common on a project of this nature., when you have those then you can go into the management reserve, right?

But, I guess, intuitively for me, and, I guess, I'm just saying this from my perspective working in government and so on, is just that, you know, this here to me is as an outside is a 7.5 and whether you use it all or not, but you can't ask for authority for 6.99. And that's what government believes, and, again, I was there, I know what Cabinet and everyone believes. They believe, when you say 6.99, that is the project.

They're not understanding that there's reserve numbers over here and that when risk actually happen and you have to use those reserves, that means another reset, that means another re-baselining, right. So I think you need to understand that the project to me is that and all reserves are – any of your reserves are in there, and that's the project. The commercial sensitivity stuff needs to be discussed, but that's the project. Again, that's just my opinion.

MR. FITZGERALD: And just to clarify, you've made this point, but there's no commercial sensitivity between Cabinet and Nalcor –

MS. MULLALEY: There's no commercial sensitivity.

MR. FITZGERALD: – is there?

MS. MULLALEY: No.

MR. FITZGERALD: They could've disclosed this.

MS. MULLALEY: No.

MR. FITZGERALD: Thank you. Those are my questions.

Thank you, Commissioner.

MS. MULLALEY: Thank you.

THE COMMISSIONER: All right.

Redirect.

MR. LEARMONTH: Just following up on Mr. Fitzgerald's points about management reserve, which were based on the cross-examination of Mr. Simmons. I just wanted to go over some documents that are relevant to this management

reserve, because I think the point is that the management reserve is a fiction. There never was a management reserve.

MS. MULLALEY: That's usually your strategic line.

MR. LEARMONTH: There never was. To suggest that something is a reserve, suggests that it has to be set aside. It was never part of the budget so it's just a fiction. It's just a name. It's another name for contingent equity, and I want to show you – this is what I'm trying to establish. I want to take you through a few documents to, I think, demonstrate that.

The first one is exhibit P-00504, it's not in your books but if we could bring that up on the screen.

Okay, now, this was an Independent Project Review – I know government never got this – but Independent Project Review for Decision Gate 3, Final Report, August 31, 2012.

MS. MULLALEY: Mm-hmm.

MR. LEARMONTH: Now, if you turn to page 41 of this document, please.

If you look at the bottom, these are their findings and observations of this Independent Project Review. It says: "The IPR Team concurs with the expectations set by the LCP Project Execution and Risk Management Plans that adequate provisions for Management Reserve and Schedule Reserve be included in the Project Sanction costs and schedules."

MS. MULLALEY: Agree.

MR. LEARMONTH: Now, this recommendation was not followed by the executive, the management, because there was nothing in the \$6.2 DG3 numbers for it.

MS. MULLALEY: Yes.

MR. LEARMONTH: So that's the starting point for this discussion is that there was a recommendation –

MS. MULLALEY: Mm-hmm, yeah.

MR. LEARMONTH: – and it was disregarded.

MS. MULLALEY: Yeah. And I agree that should be in the whole budget.

MR. LEARMONTH: Yeah.

Second, to show the position that Nalcor took with respect to this recommendation, I'd like you to go to exhibit P-00507.

THE COMMISSIONER: Again, on your screen.

MR. LEARMONTH: And what this is, is the response of Nalcor to the document I just referred to, and if you go to page 41 of this document, you'll see down at the bottom that instead of the wording that I just referred you to, this is what Nalcor wanted, wanted it changed to this. "The IPR" – right at the bottom – "The IPR Team concurs with the expectations set by the LCP Project Execution and Risk and Management Plans that adequate provisions for Management Reserve and Schedule Reserve be recognized in the Project Sanction decision making process." Do you see the difference – how this is watered down?

Now, the Independent Project Review received this and rejected it and they stood by their reaction.

Okay, the next point on this management reserve discussion that I'd like to draw to your attention is the first Grant Thornton report, which is Exhibit P-00014. If we can go to page 1 first to identify the document. Yeah, that's the document. And then let's go to page 9.

Now beginning at line 7 I'm going to read this out – excuse me, line 4. "Nalcor excluded approximately \$500 million of strategic risk exposure from the capital cost estimate for the CPW calculation. We have been informed by Nalcor's Project Team, that strategic risk exposure was to be funded through contingent equity from GNL."

So you understand that point?

MS. MULLALEY: Yes.

MR. LEARMONTH: Yeah. So the government was going to fund this.

Now I'd also ask you to turn to – this is in your book, it's tab 60, volume 2 and it's Exhibit P-03086.

MS. MULLALEY: Yup.

MR. LEARMONTH: If we turn to page 2, the third paragraph from the bottom. And this is just to confirm what the Grant Thornton said and this was the – these were the comments of EY at the February 25 –

MS. MULLALEY: Yup.

MR. LEARMONTH: – meeting –

MS. MULLALEY: Yup.

MR. LEARMONTH: – three-hour plus meeting after the Cabinet meeting. It says here, "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."

Okay. Do you understand how that's connected to the earlier documents I'm talking about?

MS. MULLALEY: Oh, yes. Yup.

MR. LEARMONTH: Yup.

Now let's go to the document that you referred to – Mr. Simmons referred you to, and your counsel referred you to today. If we go to page 8 –

THE COMMISSIONER: So that Exhibit number is?

MR. LEARMONTH: – P-01831, page 8.

Now we heard some talk or discussion that management reserve is such that it's usually something that isn't expect to be spent: you heard that, didn't you?

MS. MULLALEY: Yeah.

MR. LEARMONTH: Okay. Now, please consider that statement, the fact that on the line, “Mgt. reserve for short term requirements.”

If something is a requirement, I suggest that it’s expected to be spent.

MS. MULLALEY: Well, that’s my point, too.

MR. LEARMONTH: Yeah.

MS. MULLALEY: Yes.

MR. LEARMONTH: And then we go down to the point, “Mgt. reserve for long term requirements \$0.23 B” – two-hundred and thirty –

MS. MULLALEY: I agree, that looks like it’s needed as well.

MR. LEARMONTH: Yeah.

So if it’s – something is a requirement, I suggest to you that there’s an expectation –

MS. MULLALEY: Yes.

MR. LEARMONTH: – that it’s gonna be spent. So this discussion about something being in management reserve is – doesn’t really apply.

MS. MULLALEY: No.

MR. LEARMONTH: It may have been a thought or an allusion, but this seems to be fairly real as a reasonable cost estimate. Do you agree?

MS. MULLALEY: I do, and I would have expected the 7.5 to come in.

MR. LEARMONTH: Yeah.

And I suggest to you that it was because Nalcor never included management reserve in the budget. This is money that is being paid by the taxpayers. It’s not like Nalcor has this in this management reserve and they just draw it out. It’s something that Nalcor will have to go to government to get funding for because it’s contingent equity. There’s no management reserve fund. It’s a fiction.

MS. MULLALEY: Absolutely.

MR. LEARMONTH: Do you agree with what I just said?

MS. MULLALEY: I absolutely agree, and I guess that’s – what I was trying to say, because I felt – yesterday I was trying to be – the point that was trying to be made is that 6.99 was the right number that we gave to government, but, in my view, I guess I didn’t get to finish that discussion yesterday, and I disagree with that because I feel it is the 7.5. If that’s everything here, the discussion is you that should’ve come in on the 7.5, not the 6.99. So this is an illusion that this 0.28 and 0.23 over here aren’t real or, you know, you’re waiting for something.

Again, there is no authority, no ability – you don’t have that authority. Right now, all you had authority for was 6.99 and the concept that that was okay because this other stuff wasn’t real, to me was not accurate; and I felt that the 7.5 was the number.

MR. LEARMONTH: Yeah.

And, once again, to go back on something I think you’ve said more than once, that in this situation, if Nalcor thought that – well, it says in two places on the document I just referred to: it’s required, required, so that’s a fairly strong word, but if Nalcor thought that, you know, it might be required, you know, we’re going to try and mitigate this, but at this point –

MS. MULLALEY: It doesn’t matter.

MR. LEARMONTH: – this is a figure that our project controls people have come up with, it didn’t come out of the air; it was calculated.

So, wouldn’t it be expected that, as a – that Nalcor would come in to government with this document and say: Now, look, we want you to know that this 6.99 is a figure; however, there’s another figure at 7.5; we think that these figures are going to be required for the short term and the long term but we’re going to do our best to control it, but we wanted you to know.

Isn’t that the approach that it – wouldn’t that be a reasonable expectation, that Nalcor would conduct –

MS. MULLALEY: Yes.

MR. LEARMONTH: – itself that way?

MS. MULLALEY: Yes, and I turn that right back to the discussion I've been having.

When you walk in a Cabinet room and you're presenting and you're showing the ministers that this is your new revised budget for Muskrat at 6.99, and people are asking, is that it, are you sure? You know, are you sure, is this it, come on, is this it? Yes, you know, and mitigating, mitigate, and I guess the concept then is, you know, should not the 7.5 have been disclosed –

MR. LEARMONTH: Yeah.

MS. MULLALEY: – and had the discussion around it, because really, that's what this is.

MR. LEARMONTH: Yeah.

So that at the same time that you're being told that 6.99 is probably it, or something, accompanied by some general statement, perhaps, that, well there's always risk –

MS. MULLALEY: Always risks.

MR. LEARMONTH: – and all that, oh yeah.

MS. MULLALEY: Contingency –

MR. LEARMONTH: But –

MS. MULLALEY: – is aggressive.

MR. LEARMONTH: Yeah, but the point is that at the same time that Cabinet is being told this, there's a document in existence –

MS. MULLALEY: Yes.

MR. LEARMONTH: – at Nalcor, which provides the type of clarification that Cabinet would've expected to –

MS. MULLALEY: Right.

MR. LEARMONTH: – receive, is that correct?

MS. MULLALEY: Yes, Cabinet and myself as chair of the Oversight Committee that was asking, and I think that gets back to my original concept yesterday, of being shocked and angered

at understanding that this stuff existed and it wasn't being discussed, even when people were asking those questions.

MR. LEARMONTH: Okay.

Thank you.

MS. MULLALEY: Thank you.

THE COMMISSIONER: All right, thank you Ms. Mullaley.

You can step down, and we'll adjourn now until 2 o'clock and we'll start with Mr. O'Brien.

Is Mr. O'Brien here now? Did he – did he think he was gonna start this morning?

MR. SIMMONS: We had him on standby, but it's 12:30, so –

THE COMMISSIONER: Okay.

MR. SIMMONS: – we would've been breaking for lunch anyway.

THE COMMISSIONER: All right, so we'll adjourn then until 2.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: Okay.

Just in case anybody is looking for their keys, there appears to be a set of keys on my (inaudible).

CLERK: (Inaudible.)

THE COMMISSIONER: All right.

Ms. Muzychka.

MS. MUZYCHKA: Good afternoon, Commissioner.

Our next witness is Mr. Scott O'Brien, and Mr. O'Brien will be sworn.

THE COMMISSIONER: All right.

And he will be sworn?

MS. MUZYCHKA: Yes.

MR. O'BRIEN: Yes, please.

THE COMMISSIONER: Okay.

Could you stand, Sir, please, and just take the Bible in your hand.

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

MR. O'BRIEN: I do.

CLERK: Please state your name.

MR. O'BRIEN: Scott O'Brien.

CLERK: Thank you.

THE COMMISSIONER: Okay, Mr. O'Brien, you can be seated there now and –

MR. O'BRIEN: Thank you.

THE COMMISSIONER: – the microphone is on. That's good.

Okay.

MS. MUZYCHKA: Okay.

Before I start with Mr. O'Brien, I should enter new exhibits. We have P-03846 to P-03850, P-03861 to P-03873 and P-03941 to P-03957.

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

MS. MUZYCHKA: Thank you.

All right, Mr. O'Brien, we'll begin by asking you some general questions about your background.

MR. O'BRIEN: Sure.

MS. MUZYCHKA: What is your current occupation?

MR. O'BRIEN: I'm currently the project manager for Muskrat Falls Generation for the Lower Churchill Project.

MS. MUZYCHKA: And how long have you been in that position?

MR. O'BRIEN: Since 2012.

MS. MUZYCHKA: Okay.

And can you – we'll turn to P-03862, which is at tab 3, page 53. Page 53 – oh sorry, wrong exhibit.

THE COMMISSIONER: 03862, page 53 is correct.

MS. MUZYCHKA: It is correct. Okay.

THE COMMISSIONER: Yeah.

MS. MUZYCHKA: At tab 3.

THE COMMISSIONER: And are you on page – and you said page 53, right?

MS. MUZYCHKA: Yes.

THE COMMISSIONER: Okay.

MR. O'BRIEN: Okay.

THE COMMISSIONER: So page 53, Sir.

MR. O'BRIEN: Thank you.

MS. MUZYCHKA: Okay. And this would be your résumé, Mr. O'Brien?

MR. O'BRIEN: This was my résumé as submitted to Nalcor when I applied to work on the Lower Churchill Project in 2011.

MS. MUZYCHKA: Okay. So it would be current to 2011 prior to you accepting a position with the Lower Churchill Project.

MR. O'BRIEN: That's correct.

MS. MUZYCHKA: Okay.

You might want to speak up a little bit, Mr. O'Brien. You're soft spoken, so it may not get picked up –

MR. O'BRIEN: I'm sorry. Is that better?

MS. MUZYCHKA: Yes, it is.

MR. O'BRIEN: If I start to drift, please let me know.

MS. MUZYCHKA: Okay. Hopefully – did you just move the microphone closer to you?

MR. O'BRIEN: I can.

MS. MUZYCHKA: No, no, don't touch it because the technical people will be all over me, so ...

MR. O'BRIEN: Uh-oh, I think I've already moved it.

MS. MUZYCHKA: I just wanted to make sure that you are being picked up. Okay.

All right, so let's begin with your educational background. So it appears that you've got a Bachelor of Engineering in civil.

MR. O'BRIEN: I do. I'm a – I graduated from Memorial with a Bachelor of Engineering in civil engineering and completed a master's degree in ocean engineering with a primary focus in marine geotechnics, or geotechnical engineering in – also at Memorial.

MS. MUZYCHKA: And this would've been – you completed your education in 1998?

MR. O'BRIEN: I completed my master's degree in 1997 and went to work in 1997, but graduated in the 1998 convocation.

MS. MUZYCHKA: Okay.

So basically you started working as an engineer in 1998?

MR. O'BRIEN: Seven.

MS. MUZYCHKA: '97, okay. And –

MR. O'BRIEN: I completed – sorry, I completed my bachelor's degree in 1996, and my master's degree in 1997.

MS. MUZYCHKA: Right. So the master's program was an additional year?

MR. O'BRIEN: Yes.

MS. MUZYCHKA: Okay.

So then your résumé indicates that you started working with Hibernia?

MR. O'BRIEN: I did.

MS. MUZYCHKA: Okay. Well, let's – take me through your work experience at –

MR. O'BRIEN: Sure.

So after I graduated from university I did spend a short period working on the Hibernia project as a – in the weight control group prior to the GBS tow out, but went back to school in the fall of '96 to complete my master's degree.

MS. MUZYCHKA: Okay.

MR. O'BRIEN: Then in '97, in the fall when I finished the master's program, I went to work on the Terra Nova project prior to its sanction, and held a variety of roles, really, within and around the Terra Nova project through about 2003.

So, within that period, I worked in the subsea group with responsibility for oversight – the owner's oversight of the contractors who were performing the construction work on Terra Nova, and then I moved into a lead engineering role in a marine operations organization on the Terra Nova project where I became the project manager for the second phase of capital expansion at Terra Nova.

MS. MUZYCHKA: What year would that have been?

MR. O'BRIEN: That would've been in 2001.

MS. MUZYCHKA: Okay.

MR. O'BRIEN: So in 2001, after completion of the initial construction of the Terra Nova

project, underneath the Terra Nova Alliance, Petro-Canada set about a second capital expansion project to expand the Terra Nova field, and I was the project manager for the subsea components of that project with oversight of manufacturing activities as well as a construction program in the field in the summer of 2001.

In 2002, I moved into a forensic investigative role for a short period and working through some challenges the project was having prior to start-up and looked at a series of issues in relation to infield operation and led a team there in evaluating alternative solutions, manufacturing and field-installation programs.

Thereafter, once the Terra Nova field was operational, I became a part of an engineering and technology group that Petro-Canada was establishing, with a focus on managing major projects on the East Coast and development of a set of management systems to support large-scale project development.

MS. MUZYCHKA: And what year was that?

MR. O'BRIEN: That was 2002 through 2004.

MS. MUZYCHKA: Okay, so the role, that forensic role you described earlier, was that somehow in between the engineering lead subsea connector project group work?

MR. O'BRIEN: I'm sorry, that was the engineering lead –

MS. MUZYCHKA: That was –

MR. O'BRIEN: – sub –

MS. MUZYCHKA: – it.

MR. O'BRIEN: – subsea connector – am I walking too fast through my experience or –

MS. MUZYCHKA: No.

MR. O'BRIEN: – is this okay?

MS. MUZYCHKA: I just wanted you to make sure that you –

MR. O'BRIEN: Sure.

MS. MUZYCHKA: – highlight the dates so that we can follow.

MR. O'BRIEN: Sure, so from – through 2002 through 2004, we – at Petro-Canada, we developed a major projects group and developed a management system for building large-scale and megaprojects on the East Coast of Canada.

In that process, we went through the first two decision gates for a major project or, in fact, a megaproject for Petro-Canada, but we were unsuccessful in getting the project through the sanction gate because of some challenges we were having with the reservoir characteristics at that time. It was called the Far East project – far –

MS. MUZYCHKA: It was –

MR. O'BRIEN: – east only in the context of the field. It was five kilometres away from the existing field.

MS. MUZYCHKA: You were involved in the planning stages for that?

MR. O'BRIEN: Yes.

MS. MUZYCHKA: Didn't actually get into any construction or –

MR. O'BRIEN: We took it through the first two gates in the gated decision process, but didn't bring it all the way to sanction because the reservoir characteristics changed the economics for the project. And it was unsuccessful in passing the sanction gate decision at that time. So, we had run it through a full front-end engineering effort but stopped at the sanction decision gate and didn't actually manufacture or proceed to construction.

MS. MUZYCHKA: Okay, continue then. From there you went ...?

MR. O'BRIEN: So in – from there I undertook a repair campaign again at Terra Nova and working through a series of field issues to –

MS. MUZYCHKA: So this was in the same time period with –

MR. O'BRIEN: During this period, yes.

MS. MUZYCHKA: During this period, yes.

MR. O'BRIEN: Yes.

A problem very much akin to what's happened to Husky offshore most recently with large-scale pipeline failures was also prevalent on the Terra Nova project in 2002, 2003. And I was the project manager responsible for repairing and investigating that program.

In 2004, I became the facilities lead – the subsea facilities lead for Petro-Canada's engineering and technology group and was responsible there for a series of large-scale manufacturing programs that Petro-Canada was undertaking initially with respect to supply of mechanical equipment for the east coast of Canada, but we adapted those projects to work on a world scale for Petro-Canada with the possibility that we could supply equipment for all of their assets worldwide.

MS. MUZYCHKA: This involved manufacturing of equipment, subsea equipment.

MR. O'BRIEN: Yes, manufacturing of equipment.

MS. MUZYCHKA: Okay.

MR. O'BRIEN: So we were building subsea mechanical equipment, control system equipment, equipment very much akin to, you know, the large-scale – or manufacturing processes very much akin to the large-scale turbine and generator-type manufacturing that we've done here on this project with dedicated factories located in far-flung places and quality management systems that we needed to implement in order to ensure that the manufacturing processes and programs. And the output was consistent with the expectations for us at that time.

MS. MUZYCHKA: Okay.

MR. O'BRIEN: So, from there I moved into a role as project manager in an offshore repair campaign for Petro-Canada and effecting a series of repairs offshore in 2005, 2006. The Terra Nova FPSO was moved off station and undertook a refit in the Netherlands. While that was happening, we also had to do a retrofit

offshore on a variety of aspects of the subsea equipment, and so we undertook that during that same period.

After – or in 2006, I was asked by Husky to join the North Amethyst project, which was a megaproject that Husky was developing offshore here in a – tie-back to the SeaRose FPSO.

So, I was the manager responsible for the pipeline manufacture and all of the offshore installation campaign in support of that project.

MS. MUZYCHKA: And that, you've indicated, had a project value of \$350 million?

MR. O'BRIEN: It was a \$1.5-billion megaproject. The contracts that I was personally responsible for at that time had a value of about \$350 million.

After that, in 2009, when we finished the construction and the tie-back to the SeaRose FPSO, I was asked by Chevron to join their facilities group in St. John's and provide specific support to them in relation to their role on the Hebron Project, which was in the early stages of engineering and manufacturing, and also to help them to develop a series of project management systems to manage their interest in projects – in fact, joint-venture projects – worldwide. So, I spent about a year and a half with them prior to applying to come to work on the Lower Churchill Project.

MS. MUZYCHKA: Okay.

In relation to the work that you did with Husky and with Chevron, were you involved in managing a large group of individuals? Or was it a smaller team? Were you more in the planning stages of the various projects? Can you elaborate?

MR. O'BRIEN: Sure.

At Chevron, I was part of a small facilities group, who had responsibility for managing the joint venture aspects of the project, interfacing with their counterparts at Exxon and didn't manage a large team within that organization.

At Husky, I did have responsibility for a significant number of people and for the major

contracts. So, we would have – much like this project, it's a matrix organization that we established for execution of the project, so we had quality management, engineering, safety management, environmental management, project controls, et cetera within the matrix. And then directly within the team, we had 15 to 20 people in support of the manufacturing and execution campaigns for that project.

MS. MUZYCHKA: Okay.

Do you have any project management courses or training?

MR. O'BRIEN: I have done management and leadership training through Petro-Canada and was part of their management and leadership development program. I don't remember the specific dates but it was certainly for – probably participated in that program for a couple of years while I was working for Petro-Canada.

MS. MUZYCHKA: You don't have any formal certifications though, like PMT –

MR. O'BRIEN: No, I've not done the –

MS. MUZYCHKA: – PM –

MR. O'BRIEN: I've not done the project management certification, the PM book of knowledge, but I'm certainly amply familiar with the contents and the processes outlined within PMBOK.

Through my work at Chevron, Chevron maintains its own project management system called CPDEP, which is similar in nature to the gated processes that are described in the PM book of knowledge. When I was at Petro-Canada, the management systems that we developed there as part of the engineering and technology group designed for megaproject construction, were also a gated process that were modelled along the lines of the PM book of knowledge.

MS. MUZYCHKA: Okay.

Is it fair to say that your management experience started in and about 2005, 2006, when you took on the role of project manager with Terra Nova or Petro-Canada?

MR. O'BRIEN: No, that's not a fair assessment.

MS. MUZYCHKA: Okay.

MR. O'BRIEN: In 1999 and 2000 I was a member of an owner's oversight team and part of a management organization overseeing the contractors' work in support of the installation program for and the manufacturing programs for the Terra Nova project.

In 1997 through 1999, as part of the technical integration group on Terra Nova, I was responsible for interfacing and integrating an integrated management team and worked there in a variety of capacities in facilitating resolution of management and technical and commercial and other issues, as part of a broader integrated management team.

MS. MUZYCHKA: But you certainly would not have had the degree of managerial responsibility two years after your graduation from university as you would have had, say, working with Petro-Canada in 2006 or even in your current position.

MR. O'BRIEN: In 2001 I was the project manager directly responsible for the construction of Terra Nova's capex two program and was the nominated project manager with a team of people reporting to me and responsibility for delivery of that program. I would say that through my career through – you know, as is typical of any management professional, my scopes of work and scopes of responsibility have changed and grown in the various roles that I've undertaken. But I was certainly actively involved in management organizations and in management teams and managing projects very early in my career.

MS. MUZYCHKA: Okay.

Do you have any hydroelectric experience?

MR. O'BRIEN: No, I do not. In the current role that I have at Muskrat Falls it's not a part of my core function to have specific hydroelectric background. We do have a large team of people and have a substantial set of people with hydroelectric backgrounds in the roles where those backgrounds are critical.

Our design team, for example, is staffed with people with substantial experience in the core areas of hydroelectric requirements to support the roles that they have, but within the management organization the necessity for hydroelectric experience is really not there, not required.

MS. MUZYCHKA: Okay.

Now, you joined Nalcor, you said, in 2011.

MR. O'BRIEN: That's correct.

MS. MUZYCHKA: How did you come to know of this position or how did you come to apply?

MR. O'BRIEN: I was asked to apply for the position.

MS. MUZYCHKA: Who asked you?

MR. O'BRIEN: Ron Power asked me. Ron and I worked together at Petro Canada on the Terra Nova project and he suggested that there were a number of roles available on the Lower Churchill Project and I should submit a résumé.

MS. MUZYCHKA: So did you submit a résumé for a specific position?

MR. O'BRIEN: No, I did not. I was offered the position of area manager for intake and powerhouse, which I accepted and I took from 2011 until 2012 when I took on my current role as project manager for generation, but there were a number of possible roles that I was – that I saw and I submitted a CV for any or all of them.

MS. MUZYCHKA: Did you know anybody else at the – in the Lower Churchill Project other than Ron Power?

MR. O'BRIEN: Of course.

MS. MUZYCHKA: Who did you know?

MR. O'BRIEN: The construction business in Newfoundland, and indeed on a world scale, is a very small one. And I had worked with a number of the individuals on the project in the past. I knew Lance Clarke. I knew Paul

Harrington. I knew Jason Kean. I knew Ed Martin when he was at Petro-Canada as the joint ventures manager there.

MS. MUZYCHKA: Okay.

If we turn to Exhibit P-03781, at tab 39, please, this is an email from Ron Power to Pat Hussey, Lance Clarke, Jason Kean and somebody Barnes.

MR. O'BRIEN: Bob.

MS. MUZYCHKA: Sorry?

MR. O'BRIEN: Sorry, it's Bob Barnes.

MS. MUZYCHKA: Bob Barnes, okay.

MR. O'BRIEN: Bob was Nalcor's engineering manager.

MS. MUZYCHKA: Okay.

MR. O'BRIEN: He's since retired.

MS. MUZYCHKA: Yes.

And he notes: "These are going 'on the street' today." And these appear to be a number of job descriptions dated January 24, 2011.

And so if we turn to page 8, would that be the position you had applied for or did you just apply generally for any and all positions?

MR. O'BRIEN: As I said, I was forwarded a copy of these role descriptions and I put my résumé in to Nalcor for any or all of these positions.

MS. MUZYCHKA: And you received the area manager one.

MR. O'BRIEN: The – for intake and powerhouse which is actually on page 10.

MS. MUZYCHKA: Yes. Okay.

And the experience that was being sought for the position appears to be between 15 and 20 years. It's at page 11.

MR. O'BRIEN: Okay.

MS. MUZYCHKA: "... in a senior position on major projects." Do you see that there under Experience?

MR. O'BRIEN: Yes, I do.

MS. MUZYCHKA: Okay.

So we turn back to tab 3 of your binder. It's Exhibit P-03862.

Now, these – there's a number of résumés here, but these tend to – appear to be more for the dams and spillway position. Is there much difference between the dams and spillway and the position that you had submitted – or you had been awarded?

MR. O'BRIEN: All of these roles were an owner's oversight role in support of managing the EPCM consultant at this time. I'm not seeing these. I was hired in April of 2011 to work on the project. I can't speak to Nalcor's internal processes, prior to that, with respect to their review of my résumé –

MS. MUZYCHKA: Okay.

MR. O'BRIEN: – or my hiring or the context in which they would have considered me at that time.

MS. MUZYCHKA: No, I understand that. I do.

I just want to sort of take you through a couple of these résumés. If we look on page 3, we have an applicant with over 27 years' experience.

MR. O'BRIEN: I've never seen these résumés before –

MS. MUZYCHKA: I understand.

MR. O'BRIEN: – nor was I privy to any evaluation that Nalcor may have done with respect to these résumés prior to my hiring. I really can't comment about these résumés or their content or the capabilities of the individuals that may be referenced.

MS. MUZYCHKA: Fair enough.

All right. Well, I won't question you on those résumés.

THE COMMISSIONER: So are these – are you trying to point out that these are résumés that – where did we get these? Did these come from Nalcor or did they come from –?

MS. MUZYCHKA: These came from Nalcor Energy. This was an email to Ron Power, individuals that would be considered or who had applied –

THE COMMISSIONER: All right.

MS. MUZYCHKA: – for these various jobs.

THE COMMISSIONER: Okay, so these are the – these would have been in response to the jobs that were –

MS. MUZYCHKA: Exactly.

THE COMMISSIONER: Okay.

MS. MUZYCHKA: And so I was just gonna simply point out that the number of the applications who were contained within this particular tab had experience ranging from 20 to 50 years' of experience. And, I believe, Mr. O'Brien, your résumé is included in this bundle as well at page 53.

MR. O'BRIEN: It may well be. I was not hired for this role, though.

MS. MUZYCHKA: No, I understand, but these were, as you've indicated, these were, positions involving owner's oversight. So, they were all fairly similar in terms of qualifications and managerial experience.

MR. O'BRIEN: I can't speak at all to the content of these CVs. This was an internal Nalcor process, prior to my hiring and arrival on the project.

MS. MUZYCHKA: Who interviewed you for the position?

MR. O'BRIEN: Ron Power would've interviewed me for the position.

MS. MUZYCHKA: All right.

So, how long did you remain in the position, that you were initially hired for, before you moved into project manager of generation?

MR. OBRIEN: I joined the project in April of 2011 and stayed in that role into 2012. I wouldn't be able to tell you the exact date of the transition. I'm sure it's in the record, but as part of the transition into the integrated team, where we integrated Nalcor's owner's team with SNC and the inputs from others, Hatch and others, I was asked to move into the role of project manager for generation. At that time, SNC did not have a candidate in the position of PM for generation and I was asked to take on that role.

MS. MUZYCHKA: Okay.

When you first joined Nalcor, was the project – was it an EPCM team with SNC-Lavalin, at that time, or had it already evolved into an integrated management team?

MR. OBRIEN: No, at that time, it was an EPCM team. My first day on the project was actually the kick-off of the EPCM contract with SNC.

MS. MUZYCHKA: Okay.

Now, you are not an employee of Nalcor, correct?

MR. OBRIEN: No, I'm an independent consultant.

MS. MUZYCHKA: You're an independent consultant?

MR. OBRIEN: Yes.

MS. MUZYCHKA: Okay.

And so did you form a company in order to accept the position on the project?

MR. OBRIEN: I already had a company that had been formed, as I was a consultant to Chevron as well.

MS. MUZYCHKA: All right.

So, you have a company, I believe, called SRO Consulting Services Inc.?

MR. OBRIEN: That's correct.

MS. MUZYCHKA: And who's the company owned by?

MR. OBRIEN: My wife and I are directors of the company.

MS. MUZYCHKA: And are there any other employees other than yourself?

MR. OBRIEN: No.

MS. MUZYCHKA: Now, just for reference, at Exhibit P-03949, which is at tab 48, is a copy of the contract between SRO Consulting Services Inc. and Nalcor. I don't need to go through it all, and then there are various renewals. So, I take it this contract is what we would describe as an evergreen contract and it renews automatically each year.

MR. O'BRIEN: That's my understanding.

MS. MUZYCHKA: Okay.

And that there are amendments periodically as your day rate gets changed?

MR. O'BRIEN: That's –

MS. MUZYCHKA: Or any other terms?

MR. O'BRIEN: – that's correct.

MS. MUZYCHKA: But it's primarily your – the changes that have occurred over the years have been in relation to your day pay?

MR. O'BRIEN: That's correct.

MS. MUZYCHKA: And so what is your current day rate?

MR. O'BRIEN: It's about \$1,590 per day.

MS. MUZYCHKA: Can you describe the duties of project manager of generation? What is – what are the responsibilities of your role?

MR. O'BRIEN: I think our construction management plan provides a specific role description for the project manager, as well as for the other roles within the generation

management organization. I think in a nutshell, the project manager's role is to steward delivery of the project and to, you know, at its core, support and ensure that the team, which is delivering the project, has all of the necessary resources and supports required to deliver the project and to ensure that any encumbrances facing that team are addressed so that the team can be successful in delivery.

You know, there are a suite of detailed expectations for the project manager that are contained within that management plan. We can review those if you'd like?

MS. MUZYCHKA: Sure. I guess I'm more interested in a general overview –

MR. O'BRIEN: Mm-hmm.

MS. MUZYCHKA: – as to what you do on a day-to-day basis and how you execute your job, than just the printed version of –

MR. O'BRIEN: Understood.

MS. MUZYCHKA: – your roles and responsibilities. So if you can explain to the Commissioner what it is that you do on a day-to-day basis and how – what – how you fit into this large project.

MR. O'BRIEN: So, it is a very large project and I'm just one cog in that large wheel, really. There are a lot of people within the generation organization who are working every day to ensure that we deliver this project.

At peak, we – in generation alone, we were about 130 people on site and about 60 in the home office. We're less than that now. We're about 110 in the site organization and just over 50 within the home-office organization.

Muskrat Falls is set up in a –

THE COMMISSIONER: Excuse me, Sir, I just missed your – the last number. You said at peak it was 130 on site and 60 in the home office. What was it on the – when it's – today, what is it today?

MR. O'BRIEN: Today, Sir, it's about 110 at site –

THE COMMISSIONER: Yeah.

MR. O'BRIEN: – and just over 50 in the home office organization. The team has been shrinking as the various scopes – so it rises and falls with the various scopes of work, and now, as we're closing down our civil campaign and really moving into the mechanical, electrical scopes, commissioning and start-up, that team is evolving and shrinking a little as the scopes of work are shrinking.

MS. MUZYCHKA: Okay.

So if you can indicate the nature of the work that you do and where your main job responsibilities lie in terms of physical location.

MR. O'BRIEN: Sure.

So as I've said, our construction management plan really outlines the approaches with respect to the organizational structure and the approaches that we've taken at Muskrat Falls with respect to execution. The team is a matrix-style organization, which is very typical for a megaproject execution, with direct responsibility within the project management team for management of the operational aspects of the work, management of the contractors and their scopes of work that they're undertaking on our behalf and the oversight of those contractor organizations, as well as oversight of the construction work at the site.

Within the matrix are all of the broader aspects of the work: the quality management team, the environmental management team, first and foremost the safety management team and the supports that they provide in ensuring the implementation of the contractors' safety management systems. Our controls team sits within that matrix; our finance and accounting teams sit within that matrix as well.

My role, as the project manager in the home office, is to steward the work of all of those groups in support of the delivery of Muskrat Falls. A significant component of that is absolutely the work that happens at the Muskrat Falls site and the 110 people who are working there every day to oversee the work that our contractors are undertaking. We have a large construction management organization there at

the site, as well as representatives from all of those functional groups: the quality management team, safety management team, environmental management team, all supporting – and the contracts management team, not to forget them – working in support of the construction organization, in the oversight of the work that the contractors are undertaking.

And again, my role is – really, is to steward all of those chess pieces and, as they're necessary, to support the delivery of the project as a whole.

MS. MUZYCHKA: And who do you report to?

MR. O'BRIEN: I – right now, I report to Paul Harrington as the project director. Our organization within the home office has adjusted a little over the years as well. Earlier in the project, I reported to Ron Power as a project general manager when he had responsibility for each of the three projects under Muskrat Falls. Ron is now deputy director, and I report directly to Paul as the project director.

MS. MUZYCHKA: Right. And so your responsibilities, I guess, fall under what's called Component 1, generation facility?

MR. O'BRIEN: That's correct.

MS. MUZYCHKA: And whereas Ron Power was overseeing responsibility for the three components?

MR. O'BRIEN: He was. Prior to Stan Marshall's arrival and what's been called the bifurcation of the projects, Ron was the project general manager who had responsibility for each of the three components that we're building: The generation component, of which I'm the project manager; the HVDC component; and the transmission component.

MS. MUZYCHKA: Right, so you don't have anything to do with the latter two components?

MR. O'BRIEN: Nothing at all.

MS. MUZYCHKA: Okay.

And who reports to you? How does that work? How many people?

MR. O'BRIEN: Within my organization? So we have, as I've said, about 110 people in the site team right now and 50 – just over 50 in the home office organization. Not all of those people are my direct reports because of the matrix nature of the organization. Certainly, a large number of those people report up through the matrix and in to the project director, and they provide support in to my project organization.

Within my project management team, the structure is an area manager concept. So have area managers who report directly to me, and those area managers are responsible for specific aspects of Muskrat Falls generation. And then the construction management team at site and the contracts management team at site also report in to me.

MS. MUZYCHKA: And has that been the way consistently since your taking on the role in 2012?

MR. O'BRIEN: Yeah, we've made some adjustments from time to time to the approaches within the organization but, generally, yes.

MS. MUZYCHKA: Okay.

Now, I just want to change gears for a moment and ask you – have you had any conversations or spoken with any witnesses regarding their Inquiry testimony or their interviews?

MR. O'BRIEN: No, I haven't.

MS. MUZYCHKA: We've heard from Ken McClintock that you had discussions with him before and after his interviews.

MR. O'BRIEN: I did not speak to Ken McClintock, no.

MS. MUZYCHKA: It wasn't with you.

MR. O'BRIEN: No.

MS. MUZYCHKA: Okay.

There was a text exchange. It's at, your book, tab 38.

Just bring up P-03732.

THE COMMISSIONER: What tab is that again, sorry?

MS. MUZYCHKA: Tab 38.

THE COMMISSIONER: Thank you.

MS. MUZYCHKA: And just turn to page 3.

This is a text message exchange that we went over with Mr. Power when he was here last week. I just wanted to ask you about the exchange, which starts at the bottom of page 2, where Mr. Power sends you an excerpt from Mr. McClintock's interview notes. And you state – I believe it's the blue bubble on the next page – "That's the first I've ... heard that."

MR. O'BRIEN: Yes.

MS. MUZYCHKA: Do you see that?

MR. O'BRIEN: Yes, I do.

MS. MUZYCHKA: And then the next line, Mr. Power writes, "we need to talk to Ken tomorrow."

Did you and Mr. Power have a discussion about Mr. McClintock's evidence?

MR. O'BRIEN: So, I should point out that we've been asked by counsel to review the transcripts of various witnesses to provide support to Nalcor in respect of witness testimony and in order to establish one commercial sensitivity, but, more importantly, to help provide support with respect to factual evidence. Any conversations that I have had in relation to this would have been with counsel and with Mr. Power and others. I have signed an undertaking for the Commission in respect of this same thing. What I've not done is spoken to Mr. McClintock, as I've already testified.

MS. MUZYCHKA: Okay.

So, the discussions you would have had in relation to Mr. McClintock, or any other witness's interview evidence that you would have reviewed, would have been in connection with – in the context of commercial sensitivity review and instruction to counsel. Is that correct?

MR. O'BRIEN: As requested by counsel, yes.

MS. MUZYCHKA: Now, the Commission received a number of slide decks and papers – a series, if you will – that was put together by Nalcor's project management team. I believe you are aware of what documents I'm referring to?

MR. O'BRIEN: I am aware of them. The five volumes as they've come to be called.

MS. MUZYCHKA: Five volume set. And they include your name, as well as Jason Kean's, Paul Harrington, Ron Power. Did you have a role in the preparation of those documents?

MR. O'BRIEN: No, I did not have a role in the preparation of those documents. I was aware of them. I was aware of their preparation, but I was not one of the preparing persons of those documents.

MS. MUZYCHKA: But you've seen them and you don't –?

MR. O'BRIEN: I have seen them, yes. I haven't read them in detail, no.

MS. MUZYCHKA: Were you asked to review them for content or anything of that nature?

MR. O'BRIEN: I may have been, but I haven't reviewed them for content.

MS. MUZYCHKA: Okay.

Do you have any concerns about any of the information that's contained in those volumes?

MR. O'BRIEN: I haven't read the volumes in detail, as I've suggested. And I can't comment on any specific content within them.

MS. MUZYCHKA: Right.

Now, getting into the construction getting underway in Muskrat Falls. We've heard that there was a delay in getting camp facilities ready, and there were also a number of issues at Muskrat Falls including capacity and maintenance and those sorts of issues. So we'll talk about each one of those in turn.

Camp construction, I understand it was delayed by approximately a year. Is that correct?

MR. O'BRIEN: The delivery of the primary camp was delayed, that is correct. There were mitigating strategies put in place in order to address that. A temporary camp, as we called it, was purchased from Manitoba Hydro and was installed at the Muskrat Falls site during the time of bulk excavation. The bulk excavation contractor was staying in the base in Goose Bay up to that point, which was always part of the plan, that they would house themselves within the community.

As the challenges manifested with the delivery of the primary camp, we saw a need to mitigate the risk of lack of accommodation for the larger workforce that was coming and purchased a temporary camp, which we then installed at Muskrat Falls in 2013; bulk excavation contractor then moved into that camp for the remainder of their work until they demobilized at the end of 2013.

MS. MUZYCHKA: Okay.

So the delay, was that associated with the delay in sanction of the project, initially? Did that affect the planning at all?

MR. O'BRIEN: The delay, with respect to the delivery of camp, was a result of a number of things; but, predominantly, it resulted in challenges with respect to the manufacturing process. There were a number of manufacturing facilities involved in Quebec, in Florida, in Indiana. There may have been one other.

There were bankruptcies within the modular – there was a downturn, I believe, in the industry at the time and there were some bankruptcies in these modular facility manufacturing locations, and some of the accommodations – construction had to be moved to other facilities and that led to delays with respect to delivery. But because we had purchased a temporary camp and had in excess of 300 beds available in that facility, we were able to mitigate any risk with respect to the construction effort of the contractors who were working on the site at that time.

We opened the main camp – I think the first meal was in May of 2014 in the kitchen-dining room complex.

MS. MUZYCHKA: May – sorry? May 2014 was when you opened the full camp?

MR. O'BRIEN: When we opened the primary camp for the first time. It was a staged opening. We opened dormitories as they became available and opened a kitchen and recreation complex, obviously. But opened the dormitories as they became available in order to stay ahead of the growing workforce that was moving in to Muskrat, predominantly with Astaldi at that time.

MS. MUZYCHKA: Right.

So, I guess in terms of the mitigation efforts, as you indicated, you housed some of the workers within Goose Bay?

MR. O'BRIEN: Yeah. At the time the camp was opening, some of the management team were housed in Goose Bay, at the discretion of the various contractors who were working there. Astaldi, for example, chose to house their management team in Goose Bay rather than have them stay in the camp.

During the delay of the primary camp manufacturer, the mitigation effort was through the use of the temporary camp. So there was no need – we always stayed ahead of the workforce on boarding. So there was no impact or hiccup with respect to the workforce at that time.

MS. MUZYCHKA: At that time, being –?

MR. O'BRIEN: 2014.

MS. MUZYCHKA: 2014.

Were there times, though, during peak periods that there were problems in terms of providing accommodations?

MR. O'BRIEN: Astaldi's workforce grew far beyond anything that they had provided to us during the bid phase. The volume of people that they brought to the site well exceeded their projections, and the durations associated with

those volumes of people on site well exceeded the durations that were projected at the time.

The camp was manufactured and well exceeded the durations that Astaldi had bid. That led to a risk that we would be unable to house the workforce in its entirety at the site. Because, as you can appreciate, once Astaldi's workforce grew beyond the projections and their duration extended beyond the timelines that they had established, all of a sudden other contractors that were supposed to be moving in as Astaldi was winding down, still needed to move in but Astaldi hadn't wound down. We undertook a number of efforts to mitigate that risk. We maintained the 300 beds inside the temporary camp and housed workers there during the winter slowdown in 2016 – 2015, 2016.

We also purchased an additional camp from Vale and installed that camp at the site over the winter months. That added another, approximately, 500-bed capacity to our facility. We built bunk beds within the rooms, within the primary camp, and offered the workers a premium if they would like to share a room with one of their colleagues. And we offered premiums to allow workers to stay in the community in lieu of staying in camp if they so chose. Those premiums were already built into the collective agreement as a provision within that agreement.

MS. MUZYCHKA: What –

MR. O'BRIEN: And the combination of those factors, or those mitigating factors I'll say, provided us with the ability to accommodate the workforce that was needed at the site.

MS. MUZYCHKA: Did the quantity of beds for accommodation exceed what had been budgeted by Astaldi and the other contractors? I guess you would've had some sort of a spreadsheet keeping track of what the demand was going to be at various times.

MR. O'BRIEN: We did. We had projections that were produced during the design phase that were used to size the original camp. Those were validated against the bid estimates that were provided by the various contractors and the timelines that they had established for their workforce requirements.

And we asked each of the contractors to provide short- and long-term projections to us so we could understand what the requirements were and understand if there were any pinch points and any risks that may needed – may have needed to be addressed. And it was an assessment – not all of the contractors, and Astaldi in particular, wasn't very good at long-term projection. And even their short-term projections, they never quite got it right, but ...

We used those projections and our assessment of them as part of the process in determining the need for the additional camp space that we installed in that winter to make sure that when we ramped up through the summer period that we had sufficient beds available.

MS. MUZYCHKA: Was there sufficient time between when a contractor was to advise you as to their worker accommodation needs to allow you to ensure that the appropriate facilities were available?

MR. O'BRIEN: We did ask all of the contractors to give us ample notice and there were notice periods that we had established through correspondence to them all with respect to what those expectations were. We asked for one week, three week and then I think even further projections from them every week to make sure we understood what the expectations were.

There's also a reservation process. So the camp contractor maintains – and they like to call it the largest hotel in Newfoundland – maintains a reservation system just like a hotel reservation system, where the individual contractors put in their registration requirements for the rooms that they need on an upcoming basis.

There were hiccups. Not all of the contractors were good at that registration process and, you know, inevitably there was a time or two when someone would show up and say, I need a room, only to find out that a reservation hadn't been made. But on the whole, if you look at the number of reservations and the scale of the facility, we were able to mitigate those risks, I think, quite well.

MS. MUZYCHKA: By mitigating the risks, I guess, that means that you were able to put in

alternate measures to ensure that workers got on site?

MR. O'BRIEN: That's correct.

MS. MUZYCHKA: But there were costs associated with those mitigation efforts.

MR. O'BRIEN: Absolutely.

MS. MUZYCHKA: And do you have a sense as to what those costs were over and above what may have been budgeted?

MR. O'BRIEN: I don't have those numbers to hand, but it's certainly in the documentation that's been provided, the cost of both the additional camp facilities as well as the extension. As you can appreciate, it wasn't just about providing the physical infrastructure associated with the new camps all of a sudden, if there are more bed nights, you need to have more people available to clean those rooms, to provide that food.

And the cost of all of those services grows. It grows not only with the number of people that were there, but then the duration grew as well, because Astaldi had people on site much longer than planned. And with that growth in duration comes a substantial increase in cost as well.

MS. MUZYCHKA: Okay. So you don't have the sense as to what those numbers would be. That would be somebody else, would it?

MR. O'BRIEN: No, I can generally speak to the cost impacts associated with the Astaldi delays, and included within that would be the cost of camp and other service provisions, but the specific camp numbers, I don't have them to hand.

MS. MUZYCHKA: Okay.

Did – was there ever a situation that came to your attention where workers turned up on site and had to be sent home because there was nowhere to go?

MR. O'BRIEN: So I just spoke to that and there were absolutely a few situations here and there where contractors weren't adept at the reservation system or hadn't applied for rooms

in advance. And when they would show up and say, we'd like a room today, absent reservations, it's hard to accommodate.

We did our best to accommodate them. The camp contractor did their best to accommodate them where possible and they maintained, actually, a small subset of spare rooms as additional capacity, just in case, for situations like that. But I'm sure there was a time or two when there may have been a worker show up who didn't have space available for those reasons.

MS. MUZYCHKA: But they would've been sent to a hotel or a private accommodation or ...?

MR. O'BRIEN: We did utilize the hotel space that was available in Goose Bay as well. A number of the contractors also leased out houses for their workforce management – houses – and houses to maintain spare capacity. And the Labrador Inn in Goose Bay was used extensively; both Hotel North One and North Two were used extensively to accommodate workers and management personnel through that period.

MS. MUZYCHKA: Okay.

I just want to talk a little now about SNC-Lavalin and their position as the EPCM contractor. You indicated that when you came to the job, initially it was, in fact, the kickoff of the contract award to SNC. Correct?

MR. O'BRIEN: That's correct.

MS. MUZYCHKA: So within a year it seemed, or a year and a half, things had evolved to the point where things were moving towards an integrated management team. Would that be –?

MR. O'BRIEN: That's correct.

MS. MUZYCHKA: So can you speak to your observations as to the problems that were being experienced? We've heard that there were some issues with SNC's failure to deliver on certain things. I'm just trying to get a sense as to your observations with respect to SNC's role.

MR. O'BRIEN: SNC struggled through the period from initial kickoff through the implementation of the integrated management team in a whole host of areas. Provision of personnel to support the work was a challenge, on the generation team in particular. There were significant gaps in the management team in the project management roles necessary to support the work. There were gaps in other places in project controls, for example, contracts management, gaps in the site organization and the personnel that were necessary to support that work.

SNC also struggled with respect to their deliverables, both in the context of the management systems that were to be brought to bear to manage the project in their capacity as EPCM, as well as with respect to their engineering deliverables and organizing themselves to ensure that those deliverables would meet the timelines required for the RFPs.

Within my own role, that was a – that last point was a particular challenge, and we spent a significant effort in building additional team around SNC to help organize them in their engineering effort; fundamental deliverables like a document register, which in the project management world is sort of PM 101, it's the first thing you need to do when you're establishing the requirements for the deliverables.

What you need to produce is establish a register to identify exactly what deliverables you're providing. SNC couldn't even come to the place where they understood the requirements for things like that, and so we had to go about righting those issues, fixing them and making sure that we got to the place where we could actually put the RFPs out on the street.

There were gaps within the procurement process through that period as well, gaps between their engineering team's understanding the procurement and construction processes and how they were influenced – or how they interfaced, sorry. It was a very challenging time for the project and we struggled a lot in terms of getting over the line, on a number of those issues.

MS. MUZYCHKA: Were there discussions that you were involved with, and the management team as well as SNC's team, as to these deficiencies or gaps in personnel and so on?

MR. O'BRIEN: Oh, in my role, I would've been reporting upwards to Ron and to Paul, with respect to what those gaps were, challenges that we were having with respect to engineering, with respect to the construction team, with respect to the management deliverables that we needed to support the execution of the work. That would've been the extent of my engagement there.

MS. MUZYCHKA: Okay. So you would not have been involved in the planning aspect of de-scoping SNC into an IMT?

MR. O'BRIEN: No, that wasn't part of my role.

MS. MUZYCHKA: Okay. Do you know who was involved, whose role that was?

MR. O'BRIEN: I think that question is best asked of Paul.

MS. MUZYCHKA: Certainly he would've been the director, probably?

MR. O'BRIEN: As project director, he certainly would've been part of that process.

MS. MUZYCHKA: Okay. All right.

And you had testified earlier that your position came about as a result of filling a gap where SNC had not provided for a suitable person to be the project manager –

MR. O'BRIEN: That's –

MS. MUZYCHKA: – for generation?

MR. O'BRIEN: – that's correct.

MS. MUZYCHKA: Okay.

I mean, aside from the obvious change in your position that you would not have had, presumably, if SNC had remained the EPCM contractor, was there any other change in your role, as Nalcor moved into the integrated management team process?

MR. O'BRIEN: No, that was the change in my role, to move into the role of project manager for generation.

MS. MUZYCHKA: Okay.

MR. O'BRIEN: The shift to an integrated team is a significant one.

MS. MUZYCHKA: Yes.

MR. O'BRIEN: You know, the organization started in an owner's oversight with an EPM consultant. The growth and merger of those teams, and the onboarding of people from a host of other organizations into that larger integrated environment was a challenging task.

MS. MUZYCHKA: All right. And for you, I guess this would've represented a fairly large jump in your responsibility from when you first came to Nalcor?

MR. O'BRIEN: Yes.

MS. MUZYCHKA: And was that the most responsibility that you'd had up to that point?

MR. O'BRIEN: Yes.

MS. MUZYCHKA: You were in charge of a fairly significant portion of the Lower Churchill Project.

MR. O'BRIEN: That's correct.

MS. MUZYCHKA: And managing a large amount of money, I guess, and workforce as well as all of the technical aspects.

MR. O'BRIEN: That's correct, but if you, you know, if you look at my career and the things that I've done in other places, those aspects of project management are consistent across any number of the roles that I've had. And you spoke to, earlier, the concepts of the PM Book of Knowledge – that PMBOK exists for a reason because those concepts of project management transcend across a whole variety of roles and projects of different types.

MS. MUZYCHKA: Right.

But there is definitely an issue with respect to scale. You know, managing a small group doesn't necessarily equip you to, you know, moving into managing a much larger group or a megaproject on that sort of scale.

MR. O'BRIEN: So remember that my roles, from graduation onward, were always in and around management structures and management teams within a megaproject environment. I've worked on six other megaprojects, from Hibernia through White Rose to Hebron, Terra Nova, the White Rose Expansion Project, and all of the roles that I've held in the past have been in relation to management within a megaproject organization.

MS. MUZYCHKA: Right, but not necessarily with that same degree of responsibility but with similar principles, is what you're saying.

MR. O'BRIEN: Yeah, that's correct.

MS. MUZYCHKA: Okay.

Mr. Normand Béchar, you heard his testimony or read parts of his testimony?

MR. O'BRIEN: Yes.

MS. MUZYCHKA: You're familiar with his role in the project?

MR. O'BRIEN: Yes, I am.

MS. MUZYCHKA: He was – what position? He was with SNC-Lavalin.

MR. O'BRIEN: Norman Béchar was a project director for SNC-Lavalin.

MS. MUZYCHKA: So he would've held the same level of position as, say, Paul Harrington?

MR. O'BRIEN: He was the equivalent to Ron Power, at that time.

MS. MUZYCHKA: Okay.

And who had the position of project manager when you came on the site – or on the project?

MR. O'BRIEN: Francois Couturier was the project manager for C1 for SNC at that time.

MS. MUZYCHKA: How would that have worked between yourself and the project manager at that point? Would you have been a report to him, before you transitioned into the role?

MR. O'BRIEN: To who? I'm sorry.

MS. MUZYCHKA: To the project manager – you're the project manager of generation –

MR. O'BRIEN: Yes.

MS. MUZYCHKA: – and so I asked you who had your position prior to you taking that position?

MR. O'BRIEN: I was part of the owner's oversight team, reporting to Ron Power as the area manager for the intake and powerhouse, at that time. I reported to Ron.

MS. MUZYCHKA: You wouldn't have had any involvement with the person in which role you eventually transitioned into?

MR. O'BRIEN: I interfaced with that person on a regular basis – on a daily basis, in fact – working with him in identifying the requirements, the deliverables, the technical challenges, any number of things.

MS. MUZYCHKA: Okay. Was Gervais Savard in the position you hold now?

MR. O'BRIEN: No.

MS. MUZYCHKA: No? Never?

MR. O'BRIEN: No. Gervais Savard was a proposed construction manager – well, he was a construction manager for SNC, for a period.

MS. MUZYCHKA: Okay. And that would be a different position than the general manager?

MR. O'BRIEN: Pardon?

MS. MUZYCHKA: That would be a different position than the general manager.

MR. O'BRIEN: As construction manager, Gervais Savard would have reported to the project manager for SNC.

MS. MUZYCHKA: Okay.

His – Mr. Savard's position was located on site, that's where he worked from?

MR. O'BRIEN: He did.

MS. MUZYCHKA: And I –

MR. O'BRIEN: As does our current construction manager.

MS. MUZYCHKA: Okay.

Now, there was a number of things that Mr. Béchard had said that I'll give you an opportunity to respond to. And, in terms of the management of your position, he questioned your skills. In fact, I think he said you lack the necessary skills to do Component 1 manager's job and that you hadn't been able to build a strong team around you – he questioned your leadership.

He also referenced some poor staffing choices that had been made on site, and he referenced examples of where you had staffed Muskrat Falls' site with St. John's people that had design knowledge as opposed to people who had the skills to verify the particular work. And then he talked about your moving people to – from St. John's who had been hired specifically to work in St. John's and you had told them they needed to move to Happy Valley-Goose Bay.

Do you want – have any comment in relation to his observations there?

MR. O'BRIEN: So I think Mr. Béchard was in charge of an organization that was struggling to perform, and struggled to perform through his entire tenure at Muskrat Falls. Mr. Béchard has already spoken in his testimony to their efforts to undermine the owner's organization throughout the development of the integrated management team. Mr. Béchard was also the head of an organization that, after contract award, endeavoured to grow the number of person-hours associated with their contract, twofold, and all the costs associated with same.

With respect to his comments about me, personally, I find that unprofessional and I think it speaks to Mr. Béchard's character more than it

does mine, and I'd prefer not to enter into an area of mudslinging.

MS. MUZYCHKA: Okay.

Mr. Bécharde also questioned, not specifically a personally comment about you, but questioned the lack of senior people in the mix that had hydro experience working on the site, which he felt was lacking.

Do you agree with that?

MR. O'BRIEN: As I said at the outset, we have a team of people that has extensive hydro experience in the area where those individuals need to have hydro experience. There are very specific aspects of this job that require knowledge of hydro power projects. For example, our design team members who are responsible for designing the water passages and the spaces that the water flows through need to be well versed in those aspects of the work and we wouldn't ask individuals who didn't have those requisite skill sets to participate in that process. Similarly, the team who were responsible for the manufacturing and the installation of the turbine and generator sets, bring with them very specific experience to turbine and generator sets, their manufacture, their installation and their troubleshooting, and we wouldn't ask people who weren't well versed in those aspects of the work to be a part of that.

With respect to the overall management team, there are team members who do have very significant hydro power experience and there are team members where those skill sets – while management skill sets in their specific areas are required, hydro power skill sets are not. The construction program, for example, during Mr. Bécharde's tenure was road construction and pad construction in order to build a pad to place the camp on. And I'd suggest to you that the people who were at site at that time were road constructors and people who were well versed in earthmoving and civil construction activities. Even the SNC personnel, who were participants in the site at that time, were people who were well versed in civil construction and building roads, because that – those were the skill sets that were required at that time.

MS. MUZYCHKA: Okay. So that would seem to be more focused on the individual components of each job, but from an overview or a larger view, wouldn't you say that it was important to have people with hydroelectric skills –

MR. O'BRIEN: What's –

MS. MUZYCHKA: – or knowledge to –?

MR. O'BRIEN: What's important is that we have people with project management skills to manage the project. The hydro skills were deployed in all the areas that the hydro skill sets needed to be employed. We can go all the way back to Dr. Flyvbjerg and his commentary with respect to the project management organization and the utilization of people with diverse backgrounds as best suited to manage megaprojects. You need people in areas with skill sets that are specific to the areas where the skill sets are needed.

I need people – or we need people who have experience designing water passages, designing the water passages. We need people who are experienced building roads, building the roads. Those are the way the skill sets get deployed. In megaprojects – it's very normal, it's very typical in any megaproject for a very broad and diverse set of skills to be brought to bear because of the scale of the project.

MS. MUZYCHKA: Okay. So you didn't feel that you were, in any way, hampered by not having hydro experience and that the team around you had the applicable skill set for the various parts of the project that they were working on from time to time?

MR. O'BRIEN: I do believe that. We have a great team of people who are working on Muskrat Falls and working very hard to deliver a great project, and they have the skill sets in the areas that they need to have them. There's 160 of them right now within the Component 1 team working every day to deliver all of the aspects of this project.

MS. MUZYCHKA: Was it ever brought to your attention, with respect to any interpersonal issues that you may have had with your counterparts, with contractors or within your

own team, as to your management style? Were you aware of any issues that may have impacted overall on the management of the project?

MR. O'BRIEN: No, I'm not aware of any interpersonal issues that would impact the delivery of the project.

MS. MUZYCHKA: Okay.

So I understand, you know, there's – when you're working with a diverse group of individuals that there is going to be conflict from time to time. I'm just thinking back on Mr. Don Delarosbil's testimony where he had indicated that there were some difficult moments and difficulties in trying to execute the project smoothly, just based on some interpersonal issues.

Do you recall having issues with Mr. Delarosbil?

MR. O'BRIEN: It's important to remember that Astaldi currently has an open claim for about \$800 million against the province. And anything that they say is affected or influenced by that claim and their desire to maximize their opportunities to recover against it. Astaldi was a problem contractor at Muskrat Falls. Astaldi failed to perform in 2014 and into 2015. We were able to turn them around, as Keith Dodson has testified, and help them to deliver through 2017 and into 2018. And they ran out of money and were unable to complete, and they've launched a large claim as a result of that.

It is very typical for any contractor to talk about the owner's interference and the owner's participation in a contractor's performance as influential in their claims. And if you look at – and I think there are exhibits with respect to Astaldi's JIC in 2016, those issues were raised there and refuted and addressed at that time. Astaldi was never encumbered in their delivery of the work by the team at Muskrat Falls, in fact, they were supported in enabling them to deliver.

MS. MUZYCHKA: Okay.

On the Astaldi point, you were involved in overseeing the bid evaluation team's work for the CH0007, correct?

MR. O'BRIEN: I was involved in that process, yes. It was managed by SNC as the EPCM consultant at that time. But I was part of that owner's oversight organization then, yes.

MS. MUZYCHKA: And so you would've had a chance to review the various evaluations that were put forth, and would you have had the opportunity to provide input?

MR. O'BRIEN: I did not provide input into the bid evaluation effort. The bid evaluation process, as it was deployed at Muskrat Falls, isolated the bid evaluation team. They undertook, as a team, to evaluate both commercially and technically each of the bidders and they would report the outcomes back to a steering team. I was not a part of that bid team and so I wouldn't have been privy to the analysis that they were doing, as they were doing it.

MS. MUZYCHKA: Okay. But you were aware that the fact that Astaldi was proposing the use of the integrated cover system, was a significant part of the technical evaluation?

MR. O'BRIEN: I wouldn't be able to tell you at what point I became aware of the ICS, but I'm certainly aware that Astaldi was awarded the contract on the basis of the utilization of an ICS.

MS. MUZYCHKA: Okay.

Were you aware of any other projects in Canada where an ICS had been successfully utilized?

MR. O'BRIEN: I was advised by SNC that there – that they had specific experience in utilization of ICS structures or ICS-type structures in other places in Canada and then the SNC team, would did the evaluation, were big proponents of the utilization of the ICS with Astaldi on that basis. I'm also aware that one of the other bidders – sorry – proposed the use of an ICS-type structure as well.

MS. MUZYCHKA: It wasn't the same type of structure, though, was it?

MR. O'BRIEN: Similar, to my understanding.

MS. MUZYCHKA: It might have been smaller.

MR. O'BRIEN: I can't speak to the specific size but it was similar, is my understanding.

MS. MUZYCHKA: Okay.

Were there any concerns raised by the evaluation team, to your knowledge, regarding the workability, constructability or any other issues with the ICS?

MR. O'BRIEN: Not to my knowledge.

MS. MUZYCHKA: Nobody had any concerns or there was nothing flagged for the management team?

MR. O'BRIEN: Not to my knowledge.

MS. MUZYCHKA: In hindsight, ought the evaluation team had been alert to the possible challenges in constructing such a structure in Labrador in the winter?

MR. O'BRIEN: I don't think I can speak to hindsight in the context of the award. The award team made a recommendation with respect to the approaches and the utilization of the ICS. As part of the contract signing, Astaldi agreed to the timelines, the milestones associated with the agreement, agreed that they could deliver in accordance with those milestones and waived any commercial claim they had in relation to them as part of that. Astaldi also signed off an acceptance form, documenting their understanding and acceptance of the site and its as-is condition. I think that's really what we have to look at.

MS. MUZYCHKA: Okay.

Hindsight being what it is, can we turn to Exhibit 03715? That's at tab 15 of your book.

And that's an email from you to Ron Power and it's forwarding an email from John Mulcahy to you, November 19, 2014. Do you recall receiving that?

MR. O'BRIEN: I don't recall specifically receiving that email, but I have read it since.

MS. MUZYCHKA: No, but the contents of it is what I was referring to.

MR. O'BRIEN: Yeah, I don't specifically recall receiving this.

The timelines here would have been in the last throes of the ICS, when Astaldi was contemplating removal of the ICS and we were looking at its limitations with respect to the overall execution of the project.

MS. MUZYCHKA: Yeah, I think that there's some sense that it may have been a mistake in terms of how it all worked out.

And you sent that on to Ron Power. Presumably, it's for his information.

MR. O'BRIEN: Yes, and Ron sent it to other members of the leadership team.

The individuals within the email, Mauro Abbafati was a construction manager with Astaldi, at the time, who appears, from this mail, to have spoken to John Mulcahy about the struggle they had with the ICS.

MS. MUZYCHKA: Right.

MR. O'BRIEN: I can't speak to what was happening within Astaldi at that time.

MS. MUZYCHKA: Was that ever a concern for you as the manager – project manager for that part of the component, that the –

MR. O'BRIEN: Was what a concern, I'm sorry?

MS. MUZYCHKA: The concern of the difficulties that were encountered by Astaldi in erecting the ICS.

MR. O'BRIEN: During the erection of the ICS?

MS. MUZYCHKA: Yes. Did you have any concerns before and – or did they appear after?

MR. O'BRIEN: If you look to the project record, Astaldi struggled from the outset, immediately after the issuance of the LNTP – Limited Notice to Proceed – in respect of the deliverables that they had, even within that Limited Notice to Proceed.

We set about very quickly working with them to help them understand the deliverables that they would need in order to mobilize to the site. From there, Astaldi struggled with respect to maintaining the dewatering system on the site, with respect to performing the survey work that they were obligated to perform in order to build the ICS and then they struggled with Proco, their installation contractor. They struggled with the design complexity of the ICS, they struggled with the deployment of cranes within the ICS, they struggled with covering systems for the ICS.

All of those issues were addressed in real time, and we worked with Astaldi to try to overcome the challenges that they were having.

There were absolutely struggles in their performance and delivery of the ICS, and our efforts, at that time, were about helping them to overcome them.

MS. MUZYCHKA: Okay.

Let's just got to the Limited Notice to Proceed, and that's at volume – or, sorry, tab 33 of your book of documents there. It's Exhibit P-02139. And we see that it was made on 24th of September, 2013. And if we turn to page 6 of that document, it sets out the: Description of the Initial Work.

Do you see it there?

MR. O'BRIEN: Yes, I do.

MS. MUZYCHKA: Okay. And so the initial work appears to have included the items that start in the middle of the page at paragraph 1: "Design and Permits; Detailed design of the Integrated cover system ...; ... design of the Site Installations ...; ... design of electrical, drainage and industrial water system ..." and so on, as they're all listed. Preparing a construction schedule, obtaining permits, et cetera.

How much of this scope was Astaldi able to accomplish in the period that was set out in the Limited Notice to Proceed?

MR. O'BRIEN: How much were they able or how much did they accomplish?

MS. MUZYCHKA: Sorry?

MR. O'BRIEN: I said, how much were they able or how much did they accomplish? They're two very different things.

MS. MUZYCHKA: How much did they accomplish?

MR. O'BRIEN: They accomplished little-to-none of the items that were listed in the LNTP.

MS. MUZYCHKA: And how did Nalcor respond? Were there any penalties for not completing the scope of work?

MR. O'BRIEN: We responded by engaging with Astaldi in detailed task forces on these various topics to support them in achieving these deliverables.

MS. MUZYCHKA: And by the time the –

MR. O'BRIEN: I guess, at that time – I'm sorry, if I could – by that time there were a series of discussions that were happening. We were working, within my team, down and into the project to ensure that these various things were addressed and that the right steps were being taken to deliver the requirements to support the execution of the project.

At the same time, the leadership was meeting to review Astaldi's commitment, Astaldi's ability to provide the necessary resources and supports to deliver.

MS. MUZYCHKA: But, at this point, the main contract had not even been awarded; you know, November, October, September. And I gather from what you are saying, I mean, they certainly weren't proceeding at any great fashion.

The contract gets awarded then in November – the full contract. Was there a concern there that this might not be the best idea or was the thought that it may be better to proceed with the contract to obtain the commitment of the contractor?

MR. O'BRIEN: I can't speak to what was happening at the executive level with respect to the negotiation and discussion with Astaldi. What I can tell you is that we remain concerned

about Astaldi's ability to deliver on all fronts throughout the initial portions of their work.

If you look at – the JIC is another good example of the correspondence through that period. Astaldi struggled in a whole host of areas with respect to the safety management, quality management, construction management, organizational ability, resources to support the work, documentation and the list is exhaustive, genuinely, with respect to the challenges that occurred.

As a project team, we facilitated, supported, set up task forces, actions plans, engaged them with respect to what the needs were, how they needed to move things forward, culminating even in the redeployment of resources that had been within the Lower Churchill Project's team. We assisted Astaldi in moving those individuals over to support them in a broader reorganization of their site team to facilitate the delivery.

MS. MUZYCHKA: Were you on site to see what was happening? Did you yourself have personal involvement in this? I am talking about the early phase now, you know, from the limited notice to proceed to the end of the year, we'll say.

MR. O'BRIEN: I was on site from time to time through this period. I was also working with the task forces in order to ensure that all of these things were brought forward and addressed.

MS. MUZYCHKA: All right.

I am going to turn to tab 2 –

THE COMMISSIONER: Just before we do that, is this a good spot maybe to take our afternoon break?

MS. MUZYCHKA: Sure.

THE COMMISSIONER: Okay.

So, let's take 10 minutes then now.

CLERK: All rise.

Recess

CLERK: Please be seated.

THE COMMISSIONER: Okay, Ms. Muzychka.

MS. MUZYCHKA: Thank you, Commissioner.

Okay, I'd like to turn to Exhibit P-03707 and that's at tab 2 of your book of documents. If we go to page 2, this is an email chain that was written on November 7, 2013, and it's an email from Paul Harrington whereby he's providing Mr. Martin with an update on how things are going on site.

And Mr. Martin writes back with four very to-the-point questions: "Still the right contractor? ... Can these things be fixed in time? ... Anything else we need to be doing? ... Anything" else "I can do?" So I mean it's clear that Nalcor has recognized the difficulties we've talked about just before the break with respect to Astaldi's inauspicious start. And Mr. Harrington writes back and says: "They are still the right contractor, they can pick up speed, we are doing all we can."

And then that's forwarded on to yourself, as well as other individuals on the project management team. So was there a concern – I mean, on the part of the project management team – as to Astaldi's ability to deliver? Clearly, Mr. Martin was concerned.

MR. O'BRIEN: So as I've said, I can't speak to the conversation that was happening at the executive level, but what I have offered in my previous commentary is that we were working – as Paul pointed out in this mail: "Nalcor continues to be supportive of Astaldi's efforts in early works under the LNTP and remains committed to collaboration. Nalcor's team members continue to meet with Astaldi at the working level on all aspects; safety requirements and risk assessment, environment and regulatory requirements, execution planning, etc."

So it's that effort that I've spoken to and that I was working with the C1 team, the Muskrat Falls generation team, both at site and in a home office.

MS. MUZYCHKA: Were there specific concerns? Was your opinion sought out as the manager of that part of the work?

MR. O'BRIEN: I was – would've been participant in discussions with Ron Power and with Paul Harrington at that time, with respect to the challenges that we were facing and the work that we were doing in order to support moving Astaldi forward.

MS. MUZYCHKA: Was there concern that there were any schedule impacts from the delay arising out of the Limited Notice to Proceed?

MR. O'BRIEN: I think the best way to answer that question is that Astaldi signed a waiver assuring that they would meet the milestone schedule that had been established and waiving any commercial vehicle in relation to that as part of that waiver.

MS. MUZYCHKA: Fair enough but if they were going to be delayed regardless, if it was not realistic, then the project would be put behind.

MR. O'BRIEN: Astaldi was still assuring us at that time that they would be able to achieve the delivery schedule that had been laid out underneath the agreement.

MS. MUZYCHKA: And did you have confidence in those assertions?

MR. O'BRIEN: Astaldi was still assuring us and they committed to it commercially and contractually.

THE COMMISSIONER: So just answer the question though. I know what they did, but how did you feel about it?

MR. O'BRIEN: At that time, there were a lot of challenges with Astaldi. We flagged those challenges; we were working through those challenges. They were a collaborative contractor.

Did we have any reason to believe that Astaldi would not be able to meet the deliverables? I don't think that we did and, again, Astaldi committed to it on a commercial and contractual basis.

MS. MUZYCHKA: That's correct but there is the still bigger picture here, Mr. O'Brien, where it was clear that they hadn't accomplished much of anything, as you indicated, prior to the

contract even being awarded to them. And yet, the decision was made to go ahead to award the contract, and you're telling me you did that on the strength of their assertions and contractual obligations.

I mean, from a practical perspective, did you truly believe that the schedule was not going to be impacted by the start of this project, using Astaldi?

MR. O'BRIEN: You know, at that time we were working with Astaldi to meet the deliverables needs. We were working with them to identify and close the gaps that we saw with respect to their approaches. They were collaborative, they were working with us and, yeah, they were continuing to assure us that they could achieve them. I wasn't personally a participant in the discussion or the resolution of the contractual issues and the signing of the agreement. That was done at an executive level.

MS. MUZYCHKA: So you're telling us that you didn't have concerns then? Is that what I'm reading from your evidence?

MR. O'BRIEN: I think Astaldi's been a challenge from the outset and they continue to be a challenge even after contract award. They were working with us and we believed we could – that they could deliver their requirements, and they were assuring us at the executive level that they could deliver those requirements. We were seeing progress at the working level that supported that assertion from the senior – their senior leadership.

MS. MUZYCHKA: Now, you did know at the time of the start of this project in late 2013 that the schedule that was set for this project was very aggressive.

MR. O'BRIEN: I think it's been acknowledged that the schedule was an aggressive schedule.

MS. MUZYCHKA: Right. And, I mean, the only way you could accomplish the schedule based on a P3 or 5 rating is that nothing could go wrong. Is that a fair statement? Or as Mr. Power put it, everything had to go exactly as planned?

MR. O'BRIEN: I can't speak to Mr. Power's comments. The schedule was aggressive. We

had established aggressive targets for delivery of the project and, yeah, I think that's well acknowledged.

MS. MUZYCHKA: Do you think there was room in that schedule for the loss of an entire construction season?

MR. O'BRIEN: Well, there's never room in a schedule for the loss of an entire construction season.

MS. MUZYCHKA: Okay, but that would've been fairly evident by the time the contract was awarded in late November.

MR. O'BRIEN: No, I don't think that that's a fair assessment. The efforts underneath the LNTP were about readiness. Astaldi didn't mobilize to site until November of 2013, after the contract award. The purpose of the LNTP was to undertake those things that were required in advance of the mobilization.

So, I don't think you can characterize a situation, where in November of 2013, before they'd even mobilized the site, that we'd have lost an entire construction season. But Astaldi's failure to deliver an ICS in 2014 resulted in the loss of an entire construction season and their efforts post-mobilization, in allowing the powerhouse excavation to fill up with water and freeze, in not completing the survey works that they were obligated to complete and the challenges they had with Proco, their ICS contractor, those things, you know, in aggregate, which result – and amongst other things which resulted in the failure to deliver an ICS, resulted in the loss of a construction season, yes. But at November 2013, no, we couldn't have said that.

MS. MUZYCHKA: Okay.

I understand that Astaldi's experience was largely based in South America. Is that your understanding?

MR. O'BRIEN: Astaldi was a – is a – was/is a worldwide contractor with experience in – around the world, South America included, but not exclusively South America, no.

MS. MUZYCHKA: Okay.

Did you experience any issues with Astaldi's limited experience in the Canadian regulatory environment? Do you think that they were aware and understood the issues that they would have to face in terms of health, safety, environmental, the type of unionized environment, those sorts of issues? Did you find that those were a challenge for Astaldi?

MR. O'BRIEN: There were. Astaldi, as they bid this work, was bringing to bear on the project a team of people who had a substantial experience in Canadian cold-climate construction and those people didn't arrive. And when those people didn't arrive, Astaldi struggled in back-filling those positions with individuals who had experience in this kind of an environment. They did deploy people from their South American organization.

They went through a series of project managers. Initially, they had deployed their project director in the project manager's role and then went through a series of other project managers through 2014, and by the end of 2014, had brought in an individual who was working with us in a robust way in resolution of the challenges that they were experiencing.

So, yes, they did struggle with respect to all aspects of the work through 2014.

MS. MUZYCHKA: And is it fair to say that they had difficulty managing their labour and productivity and it –

MR. O'BRIEN: Very much so.

In a 2014 environment, Astaldi really struggled to utilize the tools that were put in place through the collective agreement to enable them to manage their workforce and things as simple as personnel requisitions to the union halls for hiring craft personnel were really not well managed.

They did agree with us to bring in a productivity consultant to look at the way that they were managing the work at site and to develop a set of recommendations to help them improve the situation, that was done in 2014 and then again in 2015. But that consultant – and I think the report is in the binders here –

MS. MUZYCHKA: Is that the Ibbs reports?

MR. O'BRIEN: Ibbs reports, yes, thank you.

That consultant made, I think 29 or 30 individual recommendations for areas of improvement in the way that Astaldi was managing the workforce. Astaldi actually implemented none of them at that time.

But, you know, through the last, or penultimate, project manager they brought in, a man named Giacomo Orsatti, they started to recognize the deficiencies and proceeded at the end of 2014 with a reorganization of their construction management team and a mass layoff and a rehiring to bring people to bear on the project in a more controlled way.

That was really the start of the execution turnaround in the field and the ramping up of the production with Astaldi that we were able to achieve through 2015, '16 and '17.

MS. MUZYCHKA: Would you say that the arrival of Don Delarosbil in 2015 also heralded a turnaround in Astaldi's performance? It appears he may have been a manager that had extensive experience and –

MR. O'BRIEN: That – so Don was absolutely a part of the turnaround process. In – at the end of 2014, we were working with Astaldi to look at a revised construction organization, both structurally as well as with respect to the individuals necessary to support the work, and, as I've said and I think others have testified, two individuals were moved, I'll say, we actually released them and Astaldi hired them, but under an agreement – moved over to Astaldi's organization and they helped to reshape Astaldi's construction organization.

They brought Don Delarosbil into the organization as a part of that, and by early 2015, I think Don arrived at the end of May of 2015, through the month of May of 2014, we had already ramped up production to contract levels with Astaldi and then that continued into June as Don was brought onboard. And then Don, as PM, carried that through 2015, '16 and '17.

MS. MUZYCHKA: I thought that production levels were fairly low in 2014. Did you just say

that production levels had reached contract level?

MR. O'BRIEN: 2015, I'm sorry. Did I say 2014?

MS. MUZYCHKA: I believe so.

MR. O'BRIEN: Oh, my apologies. I meant 2015. Astaldi's production was not high in 2014.

It was the spring of 2015 when, with the reshaping of the organization, the onboarding of the construction superintendents, the rehiring of the craft personnel in a more controlled way, by May of 2015, we were achieving significant production levels with Astaldi and that continued in June of 2015.

Don's arrival was at the end of May of 2015 and, as PM, he carried that forward through '16 and '17 as well.

MS. MUZYCHKA: Now, would Mr. Delarosbil have been, like, your counterpart in the production of that part of the facility?

MR. O'BRIEN: No, we had an organization at site who was responsible for the day-to-day management of the project.

There was a – Peter Tsekouras was the construction manager at that time who would've been Don's counterpart. Through the execution of the project, as the project manager for Muskrat Falls generation, I wasn't necessarily counterpart – despite the title project manager, I wasn't necessarily counterpart for any of the contract project managers. And we did have an organization, as I've said, both in the home office and at the site, who were working day-to-day with the contractors in support of the execution efforts.

So, for Astaldi's contract, there was a construction management team, and a construction manager who is directly responsible for the – Astaldi's scope at the site, who were working with their counterparts with Astaldi on a day-to-day basis.

In addition to that, we had a support organization in the home office, a civil coordination manager and a team with that civil

coordination manager, who would work and support the site team in supporting the on-going construction effort.

MS. MUZYCHKA: Okay.

MR. O'BRIEN: What I was – as the project manager – was the signatory on the letters that were issued to all of the contractors at Muskrat Falls generation. That was a concerted decision by the leadership organization in order to ensure that we maintain consistency in the approaches across all of the contracts, and to make sure that we addressed the broader project issues in the correspondence that we were issuing to any individual contracts.

And that approach was taken across the Lower Churchill Project. It wasn't exclusive to the Muskrat Falls generation; it applied to the multiple contractors that existed within the HVDC work or within the transmission work.

MS. MUZYCHKA: But there were any issues observed on-site by, say, Peter Tsekouras, he would revert to you, and then you would be the person to make a decision on how to address the particular concerns?

MR. O'BRIEN: No, that's not correct, either. It was a very large organization that – as I said earlier, Muskrat Falls is not about me; it's a very large team of people, within the owner's organization who are responsible for the day-to-day management of the work. So, if you think about that site team and the 130 people that are working there, that group is responsible for the day-to-day interaction with Astaldi, for dealing with the issues with Astaldi – and the other contractors – on a day-to-day basis.

There are teams within that group who are dedicated to each contract. There are contract management groups, contract administrators who are responsible for those individual contracts. There are quality team members who are responsible for the quality oversight. There's a full engineering team at the site who's responsible for working through the engineering issues with the contractor. There's a safety management team –

MS. MUZYCHKA: I understand –

MR. O'BRIEN: – at the site who works through all the safety management issues. I'm sorry, but those groups have individual responsibility within their scopes of work to deliver the project and to make the decisions that they need to make with respect to the day-to-day operation and delivery of the project.

MS. MUZYCHKA: Right.

But I understand that their authority is limited.

MR. O'BRIEN: The site team is fully empowered to deliver the project.

MS. MUZYCHKA: And by fully empowered, you mean what exactly?

MR. O'BRIEN: To deliver the project.

MS. MUZYCHKA: They can make decisions on changes, on –

MR. O'BRIEN: So the site team makes decisions with respect to all of the day-to-day activities in relation to the delivery of the project. They're responsible for the delivery holistically, of all aspects of the work, all of the quality, safety, environment, engineering, execution, construction decisions necessary to support delivery.

And from a commercial perspective, they're responsible for working through any commercial and contractual issues with respect to the contractor. What's been talked about with respect to control and limitation within the project relates only to management of change and at Muskrat Falls, there was – and not exclusive to generation – globally across each of the three components of Muskrat Falls, there's a very robust and tightly controlled change management process.

And that process is put in place in order to ensure that costs are controlled with respect to delivery of the project, and that any changes that a contractor might like to make reflect broadly and reflect the needs across the project as whole, and to ensure that any of those changes are seen transparently through the entire organization.

Change in any contract like this is very complex and may require inputs from a whole variety of

sources. You know, when Astaldi was contracted to deliver the intake and powerhouse and transition dams for Muskrat Falls, they were provided with a set of specifications and a detailed set of drawings that described very prescriptively each of the things that they had to deliver.

If Astaldi wants to deviate from those requirements, then those deviations, those changes, need to be assessed, and those assessments include everything from understanding the impact with respect to the quality of the asset that we're handing over to the people of this province, or to the longevity of the asset, to the potential for the concrete to crack, to the performance of the asset and how that may impact the operator, to how that change may influence the transmission system or the turbine generator system – any number of things could come to bear in relation to a change that a contractor may like to make.

And so that process of – that change management process, and the suite of procedures that exist within it, were established very early in the project in order to ensure that all those aspects were addressed, and at the same time that there was control with respect to the overall cost for the delivery of the project.

MS. MUZYCHKA: That may be so, but we've heard a lot of testimony from various witnesses – contractors, you know, people from various companies that – and even from your own people – who felt constrained by their inability to make decisions with sufficient authority or financial authority.

As I understand, you know, in – even with the individuals on site who had authority, albeit not as great as you would have or Mr. Power, most decisions still had to come back to St. John's home office for determination.

MR. O'BRIEN: I think there's a very – there's three distinct things in what you've just offered, and the first one is with respect to decisions, and the answer is no, decisions did not need to come back to the home office. The site teams are fully empowered to deliver and to make the decisions that they need to make in order to deliver the project in accordance with their day-to-day operational needs, in accordance to the

requirements that are outlined in the contracts, the specifications, the drawing sets, and they make all of the decisions that are necessary to support execution and delivery.

MS. MUZYCHKA: What would their site authority be, for the manager on site?

MR. O'BRIEN: If you can bear with me a minute, because there are different things that are being – the decision process is very different from the change process –

MS. MUZYCHKA: Okay.

MR. O'BRIEN: – and what – we can't – you can't mix the two. The financial authority here relates – as described by the contractors – relates to the change process and a desire by the contractor to have authority shift to the site with respect to the modifications and the changes that the contractor may like to make in relation to project delivery. And the change management process that was established by the leadership for this project limits the authority with respect to change to levels that allow execution to take place on a day-to-day basis at the field level, but any significant modifications, or changes, or deviations the contractor may wish to make have to be vetted through that process and include the inputs from the engineering team from the other project teams, as necessary from environment – whoever may be necessary along that line, in order to ensure that the deviation doesn't impact something much broader.

That's the decision process that the contractors are referring to. It's not with respect to day-to-day operation and day-to-day decision-making. Those decisions have always and are always fully available at the site level.

MS. MUZYCHKA: Okay.

Well, then, at the site level, what authority does a site construction manager have?

MR. O'BRIEN: \$250 thousand for change.

MS. MUZYCHKA: And what about – yeah, what's the limit of your authority?

MR. O'BRIEN: \$2 million.

MS. MUZYCHKA: We did hear from Mr. Delarosbil – and again, you know, he’s speaking from the perspective of a contractor on site that there were times when decisions could’ve been made on site that were not large decisions, but still had to revert to home office for determination. And it sometimes led to delays and missed opportunities. What are your views on that?

MR. O’BRIEN: As I said earlier, Astaldi’s commentary in this Inquiry is related, very specifically, to Astaldi’s desire to capitalize on the \$800 million claim that they have against the people of Newfoundland. The contractor’s lament, as I’ve taken to call it, is that the owner is not empowering me or supporting me in the way that I need. Every contractor says that on every project I’ve ever worked on.

There’s no evidence to support the statements that are being made by Mr. Delarosbil. There are specific processes outlined in the Astaldi contract and in each of the contracts that are issued for Muskrat Falls that address the ways in which we deal with a contractor. So, if you can imagine a contractor is working to deliver all of the things that he needs to, to build Muskrat Falls, he may need to make queries with respect to how things are being done. The contractor may wish to make changes to what’s been prescribed and what he is contractually committed to deliver, or the contractor may wish to seek a concession where the contractor has not done something that they’re supposed to do and they’re asking permission of the owner to allow that to be accepted for long term.

There are timelines associated – so, each of those processes was established at the Muskrat Falls site. And the communication with the contractor, in addition to our daily meetings and our weekly meetings, our commercial meetings where we met them and reviewed all of the commercial things that were outstanding, our environment meetings, our safety meetings, our engineering meetings, we had a regular communication on all of those fronts.

In addition to that, there’s that process set. So if a contractor wishes for the owner to accept something that they’ve done that doesn’t meet the requirements of the drawings, they would submit a concession. That concession would

document what the contractor wishes to be accepted, what they’ve done that deviates from the requirements of the drawings, and outlines the impact with respect to that.

That request is then vetted by the appropriate team members in any of those aspects of the work that I’ve outlined and a response would be provided to the contractor. We monitor – and one of our exhibits here looks to the timelines associated with response to the contractor. The contractual targets for response for any of those requests is 21 days, and we consistently responded to Astaldi and to all of our contractors in timelines that were dramatically shorter than that. Our average response time was about six days on major concessions or on significant queries.

In order to further support the contractors what we established with Astaldi, in particular, because of the scale of their work, was a dedicated team who were available 24 hours a day, seven days a week with cell phones in holsters to respond to critical and urgent issues. And that team would meet, as requested by Astaldi, whenever necessary, to look at urgent or critical issues and how we could resolve them.

So again, the commentary with respect to we’re being impacted in relation to our overall performance is really not substantiated in the documentation set or the effort that was undertaken in order to support them. Astaldi brought the same issue up in 2016, in their JIC at that time, and at that time we offered a similar response to them with respect to the processes that were in place to address this stuff.

MS. MUZYCHKA: Why don’t we have a look at the construction management plan –

MR. O’BRIEN: Sure.

MS. MUZYCHKA: – ‘cause there is some references there to what you’re addressing. It’s at tab 75 of your book, I believe. It’s probably in the –

MR. O’BRIEN: My tab 75 is empty.

THE COMMISSIONER: So is mine.

MS. MUZYCHKA: It's in the project management team (inaudible).

THE COMMISSIONER: Okay. One of your project management binders. Which one?

MS. MUZYCHKA: Let me just double-check that; it might be the wrong reference.

THE COMMISSIONER: Do you know what the exhibit number is?

MS. MUZYCHKA: 03275.

THE COMMISSIONER: Okay, just one second now, 03275.

MR. O'BRIEN: Do you know which binder that's in?

THE COMMISSIONER: Okay, so it's in – no, we're just –

MR. O'BRIEN: I'm sorry.

THE COMMISSIONER: – we're still looking. It's not on my list, either, so I don't have that on my list.

MS. MUZYCHKA: Maybe it's not in as part of our documents.

THE COMMISSIONER: It's up on the screen in any event.

MS. MUZYCHKA: It's up on the screen, so we can look at it there.

CLERK: It says volume 1, tab 37 (inaudible).

MR. O'BRIEN: Here in binder of 1 of 4?

CLERK: Tab (inaudible).

MR. O'BRIEN: Tab?

THE COMMISSIONER: 1 of 1 (inaudible).

MS. MUZYCHKA: Oh, there it is.

MR. O'BRIEN: Oh, in mine. Tab 37.

MS. MUZYCHKA: It is. Thank you, Madam Clerk. Yeah.

THE COMMISSIONER: 03275, okay.

MS. MUZYCHKA: So this is the construction management plan. It's dated May 2012. Is that the one that you were referring to?

MR. O'BRIEN: No, it isn't.

MS. MUZYCHKA: It's not?

MR. O'BRIEN: This is a construction management plan that was prepared as part of a construction management approach with SNC as EPCM consultant. There is a more recent construction management plan prepared specifically to address construction management at Muskrat Falls generation in an integrated team environment.

MS. MUZYCHKA: Okay.

MR. O'BRIEN: So this document is not current.

MS. MUZYCHKA: All right, I will review that before tomorrow.

All right. Is there a requirement for you, as the manager, with the \$2 million of authority to spend any specific amount of time on site?

MR. O'BRIEN: So my \$2 million of authority extends not only to the activities that take place at site, as the project manager for Muskrat Falls I do spend time on site on a periodic basis. I also spend time in other locations as necessary in order to support the work at all of the sites where the Muskrat Falls Generation Project is taking place.

MS. MUZYCHKA: Okay.

So, I take it, then, it's your discretion – you make that determination as to whether you need to be on site or not.

MR. O'BRIEN: My travel to site is undertaken as necessary.

MS. MUZYCHKA: Tab 6.

Okay, if we turn to tab 6 of the project management team binder, exhibit –

THE COMMISSIONER: Binder 1 of 4.

MS. MUZYCHKA: It's exhibit number 03637.

On that document – this is – this was created by the Inquiry analyzing the amount of time that you spent – or went to site between 2012 and 2018.

MR. O'BRIEN: Can you provide the tab number? I'm sorry.

THE COMMISSIONER: Tab 6.

MS. MUZYCHKA: Tab 6.

MR. O'BRIEN: Tab 6. Thank you.

MS. MUZYCHKA: And so our review of the time that you spent on site shows that in 2012, that you were on site 12 days. In 2013, you spent 13 days on site. In 2014, you were on site for 33 days. And then in 2015, it dropped to 14 days. 2016, it dropped – or it increased to 19 days, and in 2017, you were on site for 19 days. And for the first three months of 2018, which is as far as we've gotten information-wise, you were on site five days.

And when you go, it appears you spend maybe one, two days at a time. Is that a fair assessment?

MR. O'BRIEN: Sure.

MS. MUZYCHKA: Okay.

Nalcor's counsel has reviewed this. There's nothing specific about this that you take exception with, do you?

MR. O'BRIEN: No, this is reflective of my travel to site. What it isn't reflective of is my travel.

MS. MUZYCHKA: Okay.

MR. O'BRIEN: And if you look at my travel in total, I've taken more than double the number of trips that are reflected here. As project manager, I've needed to be in other locations to support the various aspects of the work that are taking place elsewhere in the world for Muskrat Falls.

MS. MUZYCHKA: All right. And I understand that an exhibit has been provided to us – 03948. That's in your binder. I'm not sure what tab it is.

THE COMMISSIONER: 03948 would be at tab 47 of your binder.

MR. O'BRIEN: Thank you.

So this tab represents the travel that I've taken to other locales in support of the Muskrat Falls work. And you can see that in each of those years, in addition to the number of trips that I take to site, I've travelled to a number of other locations where our work is ongoing in relation to Muskrat Falls, or in support of Muskrat Falls, in my role as project manager.

MS. MUZYCHKA: Okay.

So are you saying that the travel requirements prevent you from spending more time on site?

MR. O'BRIEN: No, I'm saying that the travel requirements of a project manager extend beyond just the site. There's a very large team of people who are fully empowered to deliver the project at the site, and the site is led by a construction manager and a site manager, who have responsibility for delivery and management of the site team and the work of the contractors.

My role as project manager is to support that team but also to support the other aspects of the works that are taking place in other parts of the world in relation to the project in addition to managing and stewarding the work that's taking place in the home office in St. John's.

MS. MUZYCHKA: Okay.

MR. O'BRIEN: I'm not the site manager –

MS. MUZYCHKA: No.

MR. O'BRIEN: – nor am I the construction manager. They have very specific roles that are outlined in the construction management plan that we spoke of.

MS. MUZYCHKA: So it looks like you spend, on average, between 10 and 20 days – 40 days some months – or some years – 2017, 2018

seemed to be heavier travel years. That sound about right to you?

MR. O'BRIEN: Sorry, can you repeat that?

MS. MUZYCHKA: The travel time that you have listed for your managerial responsibilities seem to – certainly, in the first few years, from 2012 to 2016, would average between 10 and 19 days per month. Just adding them up: 2012 was 13 days; 2013, 10 days; 2014, 14 days; 2015, 19 days. But when we look at the last two years, 2017 and 2018, we're looking at between 42 and 45 days.

To what do you attribute the increase in the travel? Is it to visit the contractors? I mean, I'm seeing things like Bozeman, Montana; Vienna, Austria; New York; Minneapolis. Are those places where the contractors' offices are located?

MR. O'BRIEN: Again, my role as project manager is to support the work wherever it takes place.

The travel to Montreal is in response to ANDRITZ, who's based there, as well as SNC. I've been to visit Supermétal, Astaldi's subcontractor, in Quebec City, been to visit Astaldi. Work in Austria with ANDRITZ in support of the gates package. Bozeman, Montana, is the home office for Barnard-Pennecon. Legal counsel in Halifax. The building trades in Ottawa.

It's whatever is necessary to support the ongoing work at Muskrat Falls in addition to the travel that I've undertaken to Goose Bay to support the site team and to participate in meetings and efforts there.

MS. MUZYCHKA: Okay.

So your role with respect to the day-to-day operations of Muskrat Falls would appear to be limited or is it – just – describe the scope of your involvement because you obviously spend a lot of time travelling, and when you're not travelling, you're in the home office and not on site seeing what's happening there from day to day with your own eyes.

MR. O'BRIEN: Remember that Muskrat Falls takes place on a worldwide basis. There are sites – manufacturing sites, engineering sites, construction sites all over the world. It's not just what's happening in Goose Bay or near Goose Bay at the Muskrat Falls construction site.

My role, as I've said, is to support all of that work, wherever that needs to be. So I support the site team. I speak to the site team on a daily basis. Just because I'm in the home office doesn't mean that I'm not able to communicate on a regular basis with the site team in order to understand the supports that they need, in order to understand the day-to-day activity and how they're progressing with respect to the work they're undertaking and the decisions they're taking with respect to moving the project forward, with respect to the challenges they're having with the particular contractors.

It's the first thing I do in the morning and the last thing I do every evening, seven days a week, is to communicate with my site team and understand where they are and what they need in order to continue to deliver. In addition to that, you know, there are regular teleconferences, there's video conferences and there's the face-to-face activity per what you can see with respect to my travel.

MS. MUZYCHKA: Now I'm sure you've heard throughout the course of the Inquiry hearings, from the various witnesses, that the project team with the ability to make decisions were not on site. And while there were individuals on site, they just didn't have the ability to make the decisions. We've heard evidence of people within your own team leaving, and – I just want to hear from you as to whether or not those kinds of concerns came back to you as the project manager for Component 1?

Were you aware that there was a sense of difficulty with decision-making, moving forward, delays in having to have to revert to St. John's, not having people who are able to make decisions on – in a real-time basis as things were happening?

MR. O'BRIEN: So I think I have spoken to that in that, in – the 110 people that are in the site team and that 130-odd people that we had in the

site team, at peak, they're fully empowered to make the decisions necessary to support the execution of the work.

I think there are two discreet things that you've asked in that question. The first is with respect to the contractors, and as I've said, the contractors' primary goal in extracting more money from the owner is in establishing the owner's supports or lack of supports in relation to the contractor's delivery.

Astaldi's brought that forward in their JIC, others have brought that forward as part of claim. It's not substantiated in terms of the approaches that were taken at the site, in terms of the robust processes that we had in place for dealing with the contractors. It's not substantiated in the structured formal and informal discussions that we undertook every day and every week, with each of these contractors across all of their major issues.

None of the contractors that have executed a work at Muskrat Falls have been encumbered in relation to the owner's team performance. The process set that we have is robust, the metrics that we've put in place to insure that we maintain those robust processes, the off-line availability, the addressing of urgent issues, all of those things speak to an owner's team that was engaged and supportive and enabling contractors to deliver.

MS. MUZYCHKA: Did you hear Mr. Delarosbil's evidence with respect to his frustrations in terms of site authority? He indicated he stopped attending project meetings every week because nobody had any authority. He also described challenges that – there were opportunities that were missed because there was nobody on site, and he may have referred to you, but it may not necessarily have been you, in your role on site, but somebody who could make the decisions like you could make the decisions, to see things as they were happening. You know, he said sometimes things would come up and you could see an opportunity to change things that may save some money or make something more efficient, you know, 'cause things – there is a lot of moving parts.

But, having to go to the manager, site manager, and then that manager would have to revert to

St. John's and wait for a decision, by the time that happened, you know, the opportunity was lost. And he cited some examples.

Were you aware of that?

MR. O'BRIEN: Can you offer the examples to me? I'm not aware of any.

MS. MUZYCHKA: Okay.

MR. O'BRIEN: I will tell you – and, forgive me if I sound like a broken record, but Mr. Delarosbil is a very commercially astute manager. Prior to joining Astaldi, he worked for an organization that is, historically, very, very commercially focused, and he brought that focus to Muskrat Falls.

Mr. Delarosbil did attend to weekly meetings with his counterparty, the area manager who is responsible for – or the area construction manager, sorry, who is responsible for Astaldi's delivery. And Mr. Delarosbil has an open claim against the people of the Province of Newfoundland, for \$800 million. And offering commentary in relation to the owner's performance absolutely supports the effort that he's undertaking through that and the effort that he's undertaken in the past, with respect to seeking compensation in the absence of additional scope.

MS. MUZYCHKA: So you're suggesting that his evidence in that regard is tainted by the fact he's got an outstanding claim – or his company does?

MR. O'BRIEN: Of course, it is.

MS. MUZYCHKA: All right. Well, let's look at PMT binder 1 at tab 1.

THE COMMISSIONER: I'm just looking at my watch here now.

MS. MUZYCHKA: Oh.

THE COMMISSIONER: It is 4:30. How much longer do you have to go?

MS. MUZYCHKA: Perhaps an hour.

THE COMMISSIONER: Okay.

MS. MUZYCHKA: We can pick it up.

THE COMMISSIONER: Just wondering what – whether there’s an appetite to stay for another hour, or should we – do we think we can finish this tomorrow. (Inaudible) I do wanna finish Mr. O’Brien tomorrow. Should I take a break just to take stock and see how long everybody’s going to be, and we can figure it out from there?

MS. MUZYCHKA: I’m saying an hour, Commissioner, but it – you know, I may – I have to regroup. Maybe if I had the opportunity to do that overnight, I could pare it down a little bit.

THE COMMISSIONER: Okay. Let me take 5 minutes just to get a feel from everybody as to what they think, and I’m prepared to do whatever they want.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Okay.

So I understand that we have – we will have lots of time tomorrow by the sounds of things.

So we’ll break now and come back tomorrow morning at 9:30.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.