



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 49

Commissioner: Honourable Justice Richard LeBlanc

Thursday

6 June 2019

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc
presiding as Commissioner.

Please be seated.

THE COMMISSIONER: Good morning.

MR. P. HARRINGTON: Good morning.

THE COMMISSIONER: All right.

You remain affirmed at this time, Sir.

And we'll begin with the Province of
Newfoundland and Labrador. Oh, I'm sorry –

MS. MUZYCHKA: Before we commence,
there's one other exhibit I'd like to have entered,
please.

THE COMMISSIONER: Okay, just one
second now.

Go ahead.

MS. MUZYCHKA: P-04035.

THE COMMISSIONER: Okay, that will be
marked then as numbered.

MS. MUZYCHKA: Thank you.

THE COMMISSIONER: All right.

The Province of Newfoundland and Labrador.

MR. RALPH: Thank you, Commissioner.

Good morning, Mr. Harrington.

My name is Peter Ralph and I'm counsel for the
Government of Newfoundland and Labrador.

CLERK: Can you turn on your microphone?

MR. RALPH: Sorry.

And my name is Peter Ralph. I'm counsel for
the Government of Newfoundland and Labrador.

And I have – (inaudible) have many questions
for you. They focus around the – I guess, the
concept of final forecast cost and government
oversight.

MR. P. HARRINGTON: Okay.

MR. RALPH: Now, the final forecast cost, is
that a number that's updated every month?

MR. P. HARRINGTON: So I need to explain
just a little bit there –

MR. RALPH: Go ahead.

MR. P. HARRINGTON: – if I may.

The final forecast cost is based against the
approved AFE. So that's the, you know, 6.2, 6.9
or –

MR. RALPH: Mm-hmm.

MR. P. HARRINGTON: – (inaudible) those
progressions.

MR. RALPH: Yes.

MR. P. HARRINGTON: So that was what the
project controls group and the project
management team would review on a monthly
basis. So, you know, we're not allowed to spend
anything that exceeds the FFC.

MR. RALPH: Yes.

MR. P. HARRINGTON: Right?

There is a separate meeting with a smaller group
of people, right, which, you know, myself,
Gilbert Bennett, project controls and some of the
senior managers may attend that, but not
everybody, where we do – I mentioned
yesterday as the crystal ball gazing.

MR. RALPH: Yes.

MR. P. HARRINGTON: You know, and then
– you know, then you're looking at what could
happen, right, outside of that FFC and then it
would be called a management outlook, and
when we rolled it up to Mr. Bennett and Mr.
Martin it would be called – and we weren't
really very strict on terminology, I'll be honest

on that – it was called an indicative final forecast cost.

MR. RALPH: Indicative final forecast cost?

MR. P. HARRINGTON: Yes. Yeah.

MR. RALPH: Okay. (Inaudible) called –

MR. P. HARRINGTON: And I know it's a bit tangly –

MR. RALPH: – final forecast cost. I haven't seen the indicative.

MR. P. HARRINGTON: Yeah, so if you look in some of the decks –

MR. RALPH: Yes, okay.

MR. P. HARRINGTON: – you'll see indicative in there and –

MR. RALPH: Right.

MR. P. HARRINGTON: – sometimes, you know, we were sloppy. Sometimes we didn't call it indicative. But the fact that we were – you know, we were reporting costs that were not in accordance with the approved AFE at that point in time –

MR. RALPH: Yes.

MR. P. HARRINGTON: – these were crystal ball things –

MR. RALPH: Sure.

MR. P. HARRINGTON: – that's why we called it indicative.

MR. RALPH: So, I guess, my question was: Is it done every month?

MR. P. HARRINGTON: Yes.

MR. RALPH: Okay.

MR. P. HARRINGTON: Well, yes, we – not every month, but generally every month.

MR. RALPH: Okay.

MR. P. HARRINGTON: There may have been odd months that, you know, we missed for whatever reason, but generally it was monthly.

MR. RALPH: Fair enough.

And is it done at a particular time of the month?

MR. P. HARRINGTON: The first final forecast cost review is done generally around – at or around the – I think it's the 10th of the month and –

MR. RALPH: Yes.

MR. P. HARRINGTON: – you're looking back a little bit.

MR. RALPH: Right.

MR. P. HARRINGTON: Yes.

MR. RALPH: So, I mean, is there a definition of this concept or this number within the materials, to your knowledge?

MR. P. HARRINGTON: I don't think there's an absolute definition of it, no –

MR. RALPH: (Inaudible.)

MR. P. HARRINGTON: – I wouldn't say so, Mr. Ralph.

MR. RALPH: Now, I understand you have some involvement with the Oversight Committee. Is that correct?

MR. P. HARRINGTON: I had – my recollection – in 2014 there were a number of kind of – in 2014 the Oversight Committee was forming and getting its – you know, getting its kind of mandate together and, you know, talking backwards and forwards. And we had, if I can recall, three or four meetings with the Oversight Committee, but we didn't actually present anything at that point in time because of that forming period.

In 2015 I think we had six meetings with the Oversight Committee – that I attended at least – and in those there were presentations made and, you know, questions answered. In 2016 I think – and my involvement with the Oversight

Committee ended around the bifurcation, which was mid-2016. I think there was another five meetings with the Oversight Committee where presentations were made, questions were answered. Then I know – I may have attended one Oversight Committee after that point in time, mid-2016, because perhaps Mr. Gilbert Bennett was away on vacation or sick or something like that.

MR. RALPH: Right.

So you have some familiarity with the contents of the reports that Nalcor provides to the Oversight Committee (inaudible) do its job.

MR. P. HARRINGTON: Yes.

MR. RALPH: And, to your knowledge, is that number – the final forecast cost – is that number in the materials given to the Oversight Committee?

MR. P. HARRINGTON: It would be the final forecast cost based upon the approved AFE.

MR. RALPH: Based upon the approved AFE. So you've mentioned the indicative –

MR. P. HARRINGTON: Yeah.

MR. RALPH: – final forecast cost –

MR. P. HARRINGTON: Yeah.

MR. RALPH: – and obviously, that's higher –

MR. P. HARRINGTON: Yeah.

MR. RALPH: – than the AFE.

MR. P. HARRINGTON: Yeah.

MR. RALPH: So does that number go –

MR. P. HARRINGTON: No.

MR. RALPH: – to the Oversight Committee?

MR. P. HARRINGTON: No, that went to executive.

MR. RALPH: Right. But you – you know that that number is not immaterial if it goes to the Oversight Committee.

MR. P. HARRINGTON: That's correct, and so did my VP, yeah.

MR. RALPH: But, you know, it's interesting because the – and maybe we can go to Exhibit P-04002 and go to page 16 – or, I'm sorry, 18.

THE COMMISSIONER: That's going to be on your screen. That's not –

MR. RALPH: Okay.

THE COMMISSIONER: – going to be in your book.

MR. RALPH: (Inaudible) go to page 1 just so you can identify the document – the next page.

So, as I understand it, this would be a document prepared by Nalcor with regard to the generation part of the project –

MR. P. HARRINGTON: Correct.

MR. RALPH: – for the Oversight Committee.

MR. P. HARRINGTON: That is correct.

MR. RALPH: If we go to page 18 the contents are redacted except at the top there we've got "Cost Risk & Contingency Draw."

MR. P. HARRINGTON: Right.

MR. RALPH: And, as I understand it – there's a number of things happening there. Firstly, I guess, risks that are identified – but the potential cost is contained within AFE – is there –

MR. P. HARRINGTON: Right.

MR. RALPH: Is that right?

MR. P. HARRINGTON: I don't – I –

MR. RALPH: Are you familiar with the document?

MR. P. HARRINGTON: I don't – I don't attend the – this particular – I didn't attend this

particular meeting, so I'm looking at page 18, I'm looking at the heading but I –

MR. RALPH: Fair enough.

MR. P. HARRINGTON: It's a little –

MR. RALPH: I'll tell you – I can tell you what's there.

MR. P. HARRINGTON: Okay, you tell me.

MR. RALPH: So there's three things happening here. Firstly, Nalcor has identified risks and the potential, but cost is covered by the current AFE. So I guess it's covered by contingency.

MR. P. HARRINGTON: And that's – I would call that above the line, right?

MR. RALPH: Right.

MR. P. HARRINGTON: Right.

MR. RALPH: And then, secondly, it identifies risks that aren't covered by –

MR. P. HARRINGTON: Below the line.

MR. RALPH: – the current AFE. Right, and some of those risks are quantified and some are not.

MR. P. HARRINGTON: Some of them are ranges.

MR. RALPH: Yeah, some are ranges.

MR. P. HARRINGTON: Yes.

MR. RALPH: Correct.

And, I guess, another thing that this does, it also describe or indicate to the Oversight Committee where Nalcor has drawn down on contingencies.

MR. P. HARRINGTON: Yes, and the contingency draw was – has been a consistent thing, I think, all the way through.

MR. RALPH: Right.

MR. P. HARRINGTON: Yeah.

MR. RALPH: So, I want to put it to you, so we're not getting the final forecast cost but we're getting something similar.

MR. P. HARRINGTON: You're getting – yeah.

MR. RALPH: Is that right?

MR. P. HARRINGTON: Exactly, yeah.

MR. RALPH: Now I'd like to go to Exhibit 02024.

THE COMMISSIONER: Just one second now.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

THE COMMISSIONER: I'll just check that one, 02024. Again, that's not going to be on your – in your book, it'll be on your screen.

MR. P. HARRINGTON: Okay.

MR. RALPH: It's a very short document. So if you want some time to look it over, feel free, but I can describe it for you.

MR. P. HARRINGTON: So this is –

MR. RALPH: So –

MR. P. HARRINGTON: – from –

MR. RALPH: – yeah, so the first email in time would be Paul Myrden –

MR. P. HARRINGTON: Yeah.

MR. RALPH: – writing to some finance officials at Nalcor and also, some government officials are cc'd. And he's asking for some information.

MR. P. HARRINGTON: Right.

MR. RALPH: And he says: "Hi guys

"Minister Marshall has asked to be provided with the following financial information."

MR. P. HARRINGTON: And this is in 2017?

MR. RALPH: I'm sorry, this is – it's dated October 18, 2013.

MR. P. HARRINGTON: Okay.

MR. RALPH: So some time between the close of the federal loan guarantee.

MR. P. HARRINGTON: Right.

MR. RALPH: And sentence 1 here – clause 1 says: "A breakdown of budgeted project costs by component showing total project costs along with the portion which is the responsibility of Nalcor / NL."

MR. P. HARRINGTON: Mm-hmm.

MR. RALPH: Now "budgeted" suggests to me that it's been approved and that it's – basically, he's asking for the AFE. Would you agree with that? Is that how that appears?

MR. P. HARRINGTON: I don't know how –

MR. RALPH: Okay, but fair enough.

MR. P. HARRINGTON: – yeah.

MR. RALPH: That's what I'm suggesting, that's how it looks to me.

MR. P. HARRINGTON: Okay.

MR. RALPH: And I think when we go to number 5, and I think it will make more sense. So if we go to number 5, it says: "The most recent update on expected total project costs by component vs. budget" So again, that seems to me, he's asking for risks that aren't covered within the AFE.

MR. P. HARRINGTON: The most recent update on expected – I don't –

MR. RALPH: He's not asking for the budget, he's not asking for the AFE, I would suggest.

MR. P. HARRINGTON: – when, you know, when you have the word "risks", right, so I don't know whether he's – I don't know what his intent was with that. The most recent approved update, you know, including risks – I think that's a little jump for me.

MR. RALPH: Okay.

But I think it's fair to say, look – he's saying, you know – if the current expectation is that the project is gonna cost more than \$6.2 billion, please let us know.

MR. P. HARRINGTON: Okay.

MR. RALPH: Is that fair enough?

MR. P. HARRINGTON: Yeah, I won't argue with that.

MR. RALPH: And so, then Mr. Auburn Warren, in an email – and it's at the top there, and this would be November 1, 2013, he says: "Good afternoon Paul,

"As discussed please find attached summary for your review."

And if we go to page 2 –

MR. P. HARRINGTON: Page 2 ... I'm flying blind here a little bit in this –

MR. RALPH: Pardon?

MR. P. HARRINGTON: – I'm flying blind here.

MR. RALPH: That's fine, you wanna take – if we take more time, I'm certain we can do that.

MR. P. HARRINGTON: Yeah, but it's a big spreadsheet, yeah. Okay, go ahead.

MR. RALPH: Okay. So the column furthest over on the right, we've got Total and it says 6.202. Can you see that number?

MR. P. HARRINGTON: On the right – okay, yeah.

MR. RALPH: And if I can go furthest on the left, it says that is the Construction capital expenditures.

MR. P. HARRINGTON: Right.

MR. RALPH: So basically, DG3 budget.

MR. P. HARRINGTON: Yeah. That's what it looks like.

MR. RALPH: Now if we could go to Exhibit P-03779 –

MR. P. HARRINGTON: 03779 ...

MR. RALPH: I don't know, I –

MR. P. HARRINGTON: Binder 2 –

MR. RALPH: – (inaudible).

MR. P. HARRINGTON: – tab 99?

MR. RALPH: What's there, is it okay.

MR. P. HARRINGTON: Getting proficient at this.

MR. RALPH: Hopefully you won't need those skills again.

MR. P. HARRINGTON: Yes.

MR. RALPH: So we go to page 3, so this document, I think you've been through this, so it's a document prepared by Nalcor –

MR. P. HARRINGTON: Tanya Power.

MR. RALPH: – at the request of the Inquiry counsel.

MR. P. HARRINGTON: Yeah, yeah, that's correct.

MR. RALPH: And, it's basically a summary of all the final forecast costs over a certain period of time.

MR. P. HARRINGTON: That's right.

MR. RALPH: And so if we go to page 3 –

MR. P. HARRINGTON: It's the management outlook which is the indicative final forecast costs. I'm – yeah, not splitting hairs, but that's what this is.

MR. RALPH: That's fine, that's okay.

MR. P. HARRINGTON: Yeah.

MR. RALPH: So on page 3, we've got October.

MR. P. HARRINGTON: 2013.

MR. RALPH: And it says 6.8, FFC is equal to 6.8.

MR. P. HARRINGTON: That would be one of the decks that we presented to the executive, yes.

MR. RALPH: Right.

MR. P. HARRINGTON: Yeah, but that would include the crystal-ball view on life.

MR. RALPH: No question. But, I guess I would suggest to you, I mean, that is the type of information that government would like to have had at that time, would be some of the crystal-ball information.

MR. P. HARRINGTON: Well, my – (inaudible) my kind of chain of command ended at the VP and the CEO.

MR. RALPH: So, just a moment ago, I put it to you that certainly Mr. Myrden, he wanted to know if there were gonna be – if there were likely gonna be costs above the original AFE.

MR. P. HARRINGTON: Oh, yes. I saw that –

MR. RALPH: Right?

MR. P. HARRINGTON: – in the email, yes.

MR. RALPH: And, certainly, the information that Mr. Myrden has provided doesn't answer his question.

Would you agree?

MR. P. HARRINGTON: Well, I guess Mr. Myrden – well, the information he was provided may not have met exactly what he was asking for, correct? Because there was another number.

MR. RALPH: So – and I guess it's interesting. So why, at that point, wouldn't government get that 6.8?

MR. P. HARRINGTON: I can't answer that question. It's – I'm not involved in that communication.

MR. RALPH: Fair enough.

MR. P. HARRINGTON: My job was to provide to my – you know, the people I report to, what we saw –

MR. RALPH: Yes.

MR. P. HARRINGTON: – at that point in time.

MR. RALPH: Yes.

MR. P. HARRINGTON: And it changes.

MR. RALPH: Yes.

MR. P. HARRINGTON: It's not firm at that point in time, so that's the limit of my –

MR. RALPH: Yeah. But I say – so but it seems to me Mr. Myrden –

MR. P. HARRINGTON: – jurisdiction.

MR. RALPH: – Mr. Myrden is asking for what the committee gets right now. He wasn't explicitly stating it. But what he wants to know is what risks are out there that are not covered in the AFE.

MR. P. HARRINGTON: Yeah, well –

MR. RALPH: And he doesn't get that.

MR. P. HARRINGTON: He doesn't get that from what he got.

MR. RALPH: From what Mr. Warren gives him.

Do you agree with that?

MR. P. HARRINGTON: Well, he didn't get, perhaps, what he expected to get.

MR. RALPH: Well, (inaudible).

MR. P. HARRINGTON: Yes.

MR. RALPH: So, now, let's go to another Exhibit, P-02114.

MR. P. HARRINGTON: I don't have that one.

THE COMMISSIONER: No, that's not in your book.

MR. RALPH: We can go through this very slowly.

MR. P. HARRINGTON: Good.

MR. RALPH: Now, I don't know if you've – if you're familiar with this email. This has been the subject of, you know, a considerable amount of questioning at the Inquiry.

MR. P. HARRINGTON: No, I haven't been following everything, to be honest.

MR. RALPH: So, Mr. Meaney is asking Meghan Felt, who I understand was in charge, I guess, of the data room, and he's emailing her and asking her to put a document in the data room.

MR. P. HARRINGTON: Okay.

MR. RALPH: And he's, yeah, indicates there who he wants to have access: Canada, Cassels Brock, Blair Franklin, the independent engineer, but don't provide it to Newfoundland, BLG and Faskens at that time. And that – really, the fact that Newfoundland is not getting it at that time is not the point of my questioning.

If we can go now to the next page. So this document is dated November the 19th at – 2013 – and it says the current FFC. And at the bottom there it says the current FFC is 6 million – or 6 billion, 500 million – 6.531.

MR. P. HARRINGTON: I would call that the current indicative FFC at that point in time, right? Because the FFC is – you know, strictly speaking, it was always based upon the current AFE.

MR. RALPH: Okay, so in terms of – if I'm reading this document –

MR. P. HARRINGTON: Okay.

MR. RALPH: – I guess I should –

MR. P. HARRINGTON: (Inaudible.)

MR. RALPH: – it would be helpful to me if I knew the difference –

MR. P. HARRINGTON: Yeah.

MR. RALPH: – when I’m reading this number, wouldn’t it?

MR. P. HARRINGTON: Yeah.

MR. RALPH: And so, again, perhaps you can explain the difference of what it would mean in terms of the amount?

MR. P. HARRINGTON: Well, the indicative final forecast cost is the crystal-ball view.

MR. RALPH: Yes.

MR. P. HARRINGTON: At that point in time.

MR. RALPH: Yes. So this is the crystal ball?

MR. P. HARRINGTON: Yes.

MR. RALPH: So if you’re not using the crystal ball, presumably you’re lower.

MR. P. HARRINGTON: Yeah, you’re at 6.2, ’cause that’s the AFE.

MR. RALPH: Okay. Perhaps we can go to – back to P-03779, page 3.

MR. P. HARRINGTON: Page (inaudible) 03779.

MR. RALPH: And if we can scroll down just a bit – that’s good, oh, come back a bit.

THE COMMISSIONER: Okay, so that one’s going to be on your screen as well.

MR. P. HARRINGTON: Oh, haven’t got that one, yeah.

MR. RALPH: So there doesn’t appear to be an FFC for November.

MR. P. HARRINGTON: There may not have been – an FFC for, sorry, November? No, you’re right, ’cause that’s –

MR. RALPH: So if –

MR. P. HARRINGTON: – that’s when we presented the decks, I think, yeah. Oh, you mean on a monthly basis. Yes, yes. I – yeah, I guess she was looking for – at the time, she was looking to find supporting documentation that would back up a presentation that was being made to the executive. So that might be a slight difference –

MR. RALPH: Okay.

MR. P. HARRINGTON: – Mr. Ralph.

MR. RALPH: ’Cause in October 2013 we’ve got an FFC of 6 –

MR. P. HARRINGTON: Eight.

MR. RALPH: – 6.8, and it says date modified November 19, 2013, which matches the date of the previous document that James Meaney wanted to put in the data room.

MR. P. HARRINGTON: Right.

MR. RALPH: Is that just coincidence?

MR. P. HARRINGTON: (Inaudible.)

MR. RALPH: Or is there some connection between that number and the number that Mr. Meaney put in his document?

MR. P. HARRINGTON: I don’t know how that worked out with Mr. Meaney. I’m, you know, I’m –

MR. RALPH: So you said you thought it was the indicative financial forecast –

MR. P. HARRINGTON: Yes.

MR. RALPH: – but you don’t know what it is?

MR. P. HARRINGTON: I don’t know. You’re right. Yeah. Yeah.

MR. RALPH: So, you have no idea –

MR. P. HARRINGTON: I'm a bit lost as to how all of these – 'cause I wasn't involved in any of this, Mr. Ralph.

MR. RALPH: So I know in your interview you talked that this is just a number that was being used for COREA account. Do you remember that?

MR. P. HARRINGTON: Which one?

MR. RALPH: In your interview from February the 10th. I guess you've had so many.

MR. P. HARRINGTON: Yeah. I may have done, yes. Yeah.

MR. RALPH: So, I guess if Mr. Meaney is going to use an FFC, would he have to go through you?

MR. P. HARRINGTON: No, you'd go to project controls.

MR. RALPH: You could get it – project controls.

MR. P. HARRINGTON: Right.

MR. RALPH: But. Okay. So he couldn't do it himself? He'd have to go to someone in Nalcor?

MR. P. HARRINGTON: No. He'd have to go to – yeah. Because that's where that – they're the keepers of the numbers, project controls.

MR. RALPH: Right. So in October and modified November, the FFC is 6.8, and we've got Mr. Meaney saying it's 6.531. But you have no sense of where that number comes from?

MR. P. HARRINGTON: The 6.531?

MR. RALPH: Yes.

MR. P. HARRINGTON: That might've been an earlier view on life.

MR. RALPH: An earlier what?

MR. P. HARRINGTON: An earlier FFC or IFFC: indicative final forecast cost. I have – we haven't been able to find an exact, you know,

spreadsheet that backs up the 6.531 as far as I've known.

MR. RALPH: So there's no spreadsheet that indicates how that number was derived?

MR. P. HARRINGTON: But there must have been one. I mean –

MR. RALPH: Well, I know –

MR. P. HARRINGTON: – you don't get an exact number of 6.531 just by grabbing it out of the air.

MR. RALPH: Hopefully not.

MR. P. HARRINGTON: I wouldn't have thought –

MR. RALPH: Hopefully not.

MR. P. HARRINGTON: No. I would've thought not. Yeah.

MR. RALPH: So you're a part of that search? You were looking for –

MR. P. HARRINGTON: No –

MR. RALPH: – you just said –

MR. P. HARRINGTON: – I was –

MR. RALPH: – I think we were looking for –

MR. P. HARRINGTON: (Inaudible.)

MR. RALPH: – we were looking for – sorry, just let me finish. Let me finish. I think you said you were looking for a spreadsheet that would explain that 6.531 number.

MR. P. HARRINGTON: I wasn't but I think Mrs. – Ms. Power was looking for one. And that's the reason for this letter or memo. And as far as I'm reading through this –

MR. RALPH: Yes.

MR. P. HARRINGTON: – when I read through it, I didn't find a 6.531 backup.

MR. RALPH: So, I mean, is there – do you have a sense of how this number could've been derived?

MR. P. HARRINGTON: (Inaudible.)

MR. RALPH: Like, what's contained within that number?

MR. P. HARRINGTON: Well, without having access to a spreadsheet which shows that, I can't really answer your question, Mr. Ralph.

MR. RALPH: Fine, fair enough.

MR. P. HARRINGTON: Yeah.

MR. RALPH: But it seems to me it's fair enough to conclude that it's not the final forecast cost.

MR. P. HARRINGTON: We're in terminology again. So run the question again, please?

MR. RALPH: Okay, not in this memo we received from Nalcor –

MR. P. HARRINGTON: Yes.

MR. RALPH: – the FFC in October was 6.8, and it was modified the same day on November 19, 2013. And we've got this document from Mr. Meaney saying it's 6.531. So I don't know how 6.531 can be the FFC.

MR. P. HARRINGTON: I don't know either. It could've been – no, I'm not going to speculate (inaudible) –

MR. RALPH: Can you just finish that sentence, please?

MR. P. HARRINGTON: It could've been that he was using a number that was, you know –

MR. RALPH: Much earlier?

MR. P. HARRINGTON: – much earlier. And he hadn't got this particular number so – and that – but that's – I'm guessing there and I shouldn't do that.

MR. SIMMONS: Commissioner, I may be speaking out of turn here, but one of the exhibits

that the witness was referred to is P-02114, which is the November 19 message for posting the document in the data room. There's actually two copies of that in evidence. There's another copy at P-02217, which has an additional schedule attached to it that wasn't in the one that the witness has been referred to. And since Mr. Harrington's being asked to sort of comment on documents that he hasn't dealt with himself, it might be useful if he went to 02217, also.

MR. RALPH: Commissioner, certainly my friend can question Mr. Harrington on that. I don't know why we'd go there now.

THE COMMISSIONER: Fair enough, and I'm sure Mr. Simmons will deal with that. Thank you.

MR. RALPH: The last document I want to take you to is P-02690.

THE COMMISSIONER: Again, that's going to be on your screen.

MR. P. HARRINGTON: Okay, I don't have that one.

MR. RALPH: So the first email here is from Derrick Sturge to Donna Brewer. It's the – it's March 11, 2014, and you likely haven't seen this before.

MR. P. HARRINGTON: I haven't seen it. Wasn't involved either.

MR. RALPH: Fair enough.

MR. P. HARRINGTON: Yeah.

MR. RALPH: So he's sending a document to Donna Brewer –

MR. P. HARRINGTON: Mm-hmm.

MR. RALPH: – and – do you know who Donna Brewer is?

MR. P. HARRINGTON: I think I've met – she was on the Oversight Committee at one time?

MR. RALPH: Yeah, she was also deputy minister of Finance –

MR. P. HARRINGTON: Okay.

MR. RALPH: – at the time.

MR. P. HARRINGTON: All right, yes.

MR. RALPH: Right.

So if we scroll down – oh, a bit further – go back up a bit. Yeah, right here.

So it says here: “Auburn

“Could you update the attached and return.

“I would like to provide to Minister Johnson.

“House reopens Wednesday March 12, 2014. Thx.”

And we go down a bit further, right here, and here we’ve got that email we discussed before from Paul Myrden from October 18, when Mr. Warren sent a document and said that the construction capital cost was 6.202. Do you remember talking about that just a few minutes ago?

MR. P. HARRINGTON: So this is that 2013 in my – wasn’t the other one 2014?

MR. RALPH: This was 2014, that’s right.

It’s a bit confusing. So what’s happening here is – so Mr. Myrden gets that document in October – or the 1st of November, I think, 2013.

MR. P. HARRINGTON: Right.

MR. RALPH: And then what Ms. Brewer does, I believe, is sends that same document that Mr. Myrden received and asks Nalcor to update that document.

MR. P. HARRINGTON: Okay.

MR. RALPH: That’s how it appears to me.

MR. P. HARRINGTON: Yeah, yeah, I’m –

MR. RALPH: And I’m not gonna mislead you on that.

MR. P. HARRINGTON: I’m a bit lost here.

MR. RALPH: I could be wrong, but I won’t be misleading you.

MR. P. HARRINGTON: (Inaudible.)

MR. RALPH: So if we can go to the next page. And now – page 3, on the left-hand column, we’ve got Total Project Budget. It’s about five lines down.

MR. P. HARRINGTON: Yes.

MR. RALPH: And if we go – furthest column over, the right-hand column, we’ve got 6,531.8.

MR. P. HARRINGTON: Yes.

MR. RALPH: Now, again, if we could go to P-03779, page 4. Down a bit further.

So the FFC, according to this in March, is \$7 billion – \$7.2 billion. Is that correct?

MR. P. HARRINGTON: That’s what it says, yes.

MR. RALPH: I suspect I know what your answer is, but – so, the 6.531 number, again, any sense of where that comes from?

MR. P. HARRINGTON: I’m – I can’t answer that question, Mr. Ralph. I don’t know because I wasn’t involved in it. So where they got it from, I couldn’t speculate. I really don’t know. I’m – what my role here is what you see in here, which is to present this information up the line.

MR. RALPH: Yes.

MR. P. HARRINGTON: But my – you know, I stop, where I’ve said before, at VP and CEO level. I provide them with that information. I don’t know what happens thereafter. I don’t speak to the politicians, other than the occasional, you know, Oversight Committee meeting.

MR. RALPH: I’m just going to read you part of your transcript. It’s from February 10 at page 17.

MR. P. HARRINGTON: Okay.

MR. RALPH: And Mr. Learmonth is asking you questions and I – because I just want to ask

you, Mr. Harrington, this \$7-billion final cost estimate, or whatever, at – in July of 2013, and it was – Mr. Simmons says: final forecast cost.

Mr. Learmonth said: Final – did you or, to your knowledge, anyone else at Nalcor communicate this information to the independent engineer?

Mr. P. Harrington: At that point in time? I don't know to be honest.

Mr. Learmonth: Yes.

Mr. P. Harrington: I can't recall.

Mr. Learmonth: Because I think the figure used by the independent engineer, the last figure – yeah – was \$6.5 billion.

Mr. Harrington: 6.5 was established, I think, quite clearly, as a threshold – Mr. Harrington – for overruns.

Mr. Learmonth: Yeah, but the \$7 billion.

It wasn't a final forecast cost. I don't – I'm just trying to piece it back in my mind. It was established at the threshold that COREA would then be calculated against.

MR. P. HARRINGTON: The 6.5 –

MR. RALPH: The \$6.5 billion.

MR. P. HARRINGTON: Yeah, yeah, yeah.

MR. RALPH: Yeah. So you recall this discussion?

MR. P. HARRINGTON: Yes, yes.

MR. RALPH: So that was your understanding?

MR. P. HARRINGTON: The 6.531 was the threshold for identifying COREA overruns – that was in the project finance agreement.

MR. RALPH: Yes. And was it actually a reflection of the overruns that existed at the time?

MR. P. HARRINGTON: At what time?

MR. RALPH: Well, when we first see that number –

MR. P. HARRINGTON: So, see, when the 6.531 was nailed down, I guess, at the time it was the best knowledge they had at that time.

MR. RALPH: Okay, well, this is a bit different than what you said earlier, because basically you said you had no idea where that number came from.

MR. P. HARRINGTON: (Inaudible.)

MR. RALPH: Now you're telling me that it's the best number they can come up with.

MR. P. HARRINGTON: Well, it was –

MR. RALPH: (Inaudible.)

MR. P. HARRINGTON: (Inaudible) I mentioned before, I said it might have been an earlier view on life. I did say that, Mr. Ralph.

MR. RALPH: Absolutely, you did say that. To be fair, you did say that.

MR. P. HARRINGTON: Yeah. So I'm –

MR. RALPH: But (inaudible) –

MR. P. HARRINGTON: – I'm, you know – I'm dealing with things here that are – as I mentioned before and I'm repeating myself – I know that – you know, I don't know what happens past a certain level.

MR. RALPH: Yes.

MR. P. HARRINGTON: I really don't. My focus is on the project and the project team. You know, and I don't have – and I've mentioned this in my, you know, in my interviews – I don't have spare capacity to be dealing with what happens thereafter. My focus is getting the job –

MR. RALPH: Fair enough, Mr. Harrington. I appreciate that you're very busy.

I just have a couple of more questions for you. But – so, as I take it, you understood that number, which was –

MR. P. HARRINGTON: Which number now?

MR. RALPH: 6.51.

MR. P. HARRINGTON: Okay.

MR. RALPH: 6.531.

MR. P. HARRINGTON: Yeah.

MR. RALPH: You understood that number to be established for the basis of overruns. And you can't tell me or the Commissioner if that actually reflected genuine or real overruns.

MR. P. HARRINGTON: I cannot say for certain because I don't have a spreadsheet that backs it up.

MR. RALPH: That's fine.

Thank you very much, Mr. Harrington.

MR. P. HARRINGTON: Okay, you're welcome.

Good morning.

MR. BUDDEN: Good morning, Sir.

THE COMMISSIONER: (Inaudible.) All right.

Concerned Citizens Coalition.

MR. BUDDEN: Yes, thank you.

Mr. Harrington, as you recall, no doubt, from Phase 1 and from our brief conversation yesterday, my name is Geoff Budden; I'm the counsel for the Concerned Citizens Coalition –

MR. P. HARRINGTON: (Inaudible.)

MR. BUDDEN: – which – good morning.

MR. P. HARRINGTON: Good morning; nice to see you again.

MR. BUDDEN: Likewise.

MR. P. HARRINGTON: Yes.

MR. BUDDEN: The Coalition is a group of individuals who, for many years, have been observers and critics of the project.

So I have a number of questions for you today, Mr. Harrington, and I'd like to start with Exhibit P-01962 and that is the letter, Mr. Harrington, that you wrote Mr. Stan Marshall three years ago today, actually – June 6, 2016.

MR. P. HARRINGTON: D-Day.

THE COMMISSIONER: That's going to be on –

MR. BUDDEN: Yes, it is.

THE COMMISSIONER: That's going to be on tab 72.

MR. BUDDEN: So I have a few questions about this and, perhaps, Madam Clerk, we can scroll down to paragraph three. And we covered this yesterday. I do have some follow-up – but let's start – just for completeness, if you could just read that into the record for us, Mr. Harrington.

MR. P. HARRINGTON: The project team – that one?

MR. BUDDEN: If you would, please.

MR. P. HARRINGTON: Yeah.

“The Project team is fully committed to the Project. We appreciate that both you and the new Government have an opinion regarding the economics of the Project and the Sanction decision. We fully respect your right and need to express that opinion. I would like to note, however, that the Project team's role at Sanction was to produce a range of cost and schedule estimates based on the risks. It was decided to impose a very aggressive approach to cost and schedule. While it is not my place or intention to comment on the rationale for those decisions, the Project Management Team is now taking criticism for those earlier decisions and that seems to me to be somewhat unfair. The Project Management team's job is to follow the instructions directions provided at Sanction. I would like to assure you that the remaining Project risks are well defined and are being

actively managed. Construction and manufacturing is proceeding at all sites and across the globe and we have overcome many challenges and continue to do so every day.”

MR. BUDDEN: Sure. Okay.

I have several questions. My first one is did you, Sir, as project director of the Muskrat Falls, Lower Churchill Project, did you personally believe, as of the time of sanction, that the project cost and schedule estimates were more likely than not to be achieved?

MR. P. HARRINGTON: Were more likely than not?

MR. BUDDEN: Yep.

MR. P. HARRINGTON: They were aggressive, and it was a P50 number. So it's a – P50 can go either way. That's what P50 means, right?

MR. BUDDEN: I'm asking you, I guess, your opinion based on what you've said here and your other evidence. Did you believe that that schedule and that cost estimate as of December 26, 2012, were more likely than not to be achieved, or were they less likely than not to be achieved?

MR. P. HARRINGTON: I believed it was achievable.

MR. BUDDEN: That's not exactly what I asked.

MR. P. HARRINGTON: Well it's right in the middle.

MR. BUDDEN: Okay, well, so you're saying that you thought that they're as equally likely to be achieved as it was not to be achieved?

MR. P. HARRINGTON: As there were risks identified.

MR. BUDDEN: Okay, but, to answer my question – I'm trying to get at, I mean, I – everybody's testified, sure, all kinds of things are achievable – you know, all kinds of remote things are achievable. What I'm wondering is your assessment as to whether you believed it

was more likely than not that this cost and schedule were achievable – the one put forward at sanction.

MR. P. HARRINGTON: Well, if – again, I've answered the question. I said that it was achievable and it had a P50. It had just as much chance of – to being achieved as it was of not being achieved. There were risks out there, and they were clearly identified in the DG3 risk analysis.

MR. BUDDEN: So your evidence – it was as likely to be achieved as not to be achieved. That was –

MR. P. HARRINGTON: Yes, I think.

MR. BUDDEN: – your honest belief.

MR. P. HARRINGTON: Yeah, that it was achievable and the other things that you've just said.

MR. BUDDEN: Okay, so, just to be clear, you believed yourself – not anybody else – you, yourself, as project director, believed in December 2016, that this cost and schedule –

MR. P. HARRINGTON: December the 16.

MR. BUDDEN: – no, my bad, December '12 –

MR. P. HARRINGTON: December '12.

MR. BUDDEN: – the time of sanction.

MR. P. HARRINGTON: Yes.

MR. BUDDEN: You believed in December '12 that the cost and schedule that were put forward at sanction were as likely to be achieved as not to be achieved?

MR. P. HARRINGTON: Correct, that's a P50.

MR. BUDDEN: Okay.

The – who, Mister Harrington – actually, let's just go to page 2, my next quote. And I'll read this one to you 'cause it's fairly stand alone.

It's that first full paragraph, and you speak there, this sentence, that – the ones that are underlined,

I'll read those: "However" – and again this is your letter – "However the direction that was provided to the Project Team was to set a very aggressive schedule with a First Power target that was recognized as being in the P5 to" 10 "range. The" – this is the sentence I'm really focused on – "The unlikely probability of achieving these cost and schedule targets was well known."

Unlikely probability of achieving these cost and schedule targets was well known.

I would suggest, by context, you meant well known at the time of sanction, or if not, what did you mean?

MR. P. HARRINGTON: I have to think now. The unlikely probability – yeah, so, that's a – an unlikely probability is a P50 unlikely probability. So, it's –

MR. BUDDEN: Never mind the P50; just the plain language of the sentence.

MR. P. HARRINGTON: But I can't –

MR. BUDDEN: The unlikely probability of achieving these cost and schedule was well known.

MR. P. HARRINGTON: Yeah, because that's what it was.

MR. BUDDEN: It was an unlikely probability –

MR. P. HARRINGTON: It's the red-meat syndrome that was, you know, in play here that – I would be given a P50 cost to work with, and then there was a management reserve kept in reserve.

MR. BUDDEN: You asserted in correspondence to your boss three years ago today –

MR. P. HARRINGTON: Yeah.

MR. BUDDEN: – four years after sanction or three and a half years after sanction, quote: "The unlikely probability of achieving these cost and schedule targets was well known."

That's what you meant at the time, I presume?

MR. P. HARRINGTON: Yeah, what's what I said and that was a, you know – I was acting or writing on behalf of the team here. I was trying to defend the team, to be perfectly honest, and, you know, I felt as though he needed to know that there were risks associated with that cost and schedule that he may not have been aware of. You know, he was a new person, new CEO, so ...

MR. BUDDEN: And, specifically, he needed to know, quote: "The unlikely probability of achieving these cost and schedule targets was well known."

MR. P. HARRINGTON: Yeah, that's what I wrote, and I had the benefit of hindsight, at that point in time, of total cost.

MR. BUDDEN: Sure.

But you're reflecting back on the past; you're not saying are well known now. From the context, it's obvious, I would suggest, you're talking about as of sanction.

MR. P. HARRINGTON: But in 2016, you know, you couldn't say are well known, because –

MR. BUDDEN: You did.

MR. P. HARRINGTON: Yeah, I know, but I didn't say are well known; I said was well known.

MR. BUDDEN: Was well known. Oh, better still. Was well known at the time of sanction, presumably.

MR. P. HARRINGTON: Yeah, well that's – but – anyway.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: (Inaudible.)

MR. BUDDEN: How to reconcile that what you said, like two minutes ago, that you personally believed it was achievable?

MR. P. HARRINGTON: Yeah.

MR. BUDDEN: More likely than not.

MR. P. HARRINGTON: I did. You know, I did, but it was also – that was – so, there’s two things here, Mr. Budden. You asked me my personal opinion –

MR. BUDDEN: Yeah.

MR. P. HARRINGTON: – right? So, I provided my personal opinion. But I was also showing him that there were different opinions. There was the – as I mentioned yesterday at the bookends, we had the planners and SNC and their senior planners saying it could be achieved, and there was – you know, there was possibilities of achieving that. Then we had the Westney view on life, which was a different view on life. You ask me my personal opinion –

MR. BUDDEN: Yeah.

MR. P. HARRINGTON: – and I’ve provided it.

MR. BUDDEN: Fair enough.

But you’re also acknowledging here in this correspondence to your CEO, “The unlikely probability of achieving these cost and schedule targets was well known.”

MR. P. HARRINGTON: So I’m speaking on behalf of the team there.

MR. BUDDEN: So that was the deal with the team.

MR. P. HARRINGTON: Yes.

MR. BUDDEN: That was an unlikely probability.

MR. P. HARRINGTON: Yeah, many of the people in the team were – you know, realized that it was a very aggressive schedule and things happened which, unfortunately, threw us off the schedule, Mr. Budden.

MR. BUDDEN: We know that; that’s why we’re here.

MR. P. HARRINGTON: Yes.

MR. BUDDEN: But I’m more concerned about – with your words, what you said – what you meant by them.

But let’s go back to the previous page; I want to pursue that a bit. A very simple question, really a name names question: who was it that, quote, “decided to impose a very aggressive approach to cost and schedule”?

MR. P. HARRINGTON: Who?

MR. BUDDEN: Who?

MR. P. HARRINGTON: Yeah, it came from our CEO.

MR. BUDDEN: Mr. Ed Martin?

MR. P. HARRINGTON: That’s correct, yes.

MR. BUDDEN: So if we were to –

MR. P. HARRINGTON: I think he’s been quite straightforward about that, that he wanted to set an aggressive cost and schedule.

MR. BUDDEN: And, well, what you say here was that “It was decided” – by Mr. Martin, we’ll fill in now – “to impose a very aggressive approach to cost and schedule. While it is not my place or intention to comment on the rational for those decisions, the Project Management Team is now taking criticism for those earlier decisions and that seems to me to be somewhat unfair.”

Why is it unfair?

MR. P. HARRINGTON: Well, speaking on behalf of the team, right? It’s unfair because some of the criticism that was labelled – levelled at the team was, you know, pretty personal.

MR. BUDDEN: Leave that aside for a second – that’s a separate issue. But they’re asked – they’re taking criticism for the – those earlier decisions. They’re taking criticisms for Mr. Martin’s decision, and you believed that at the time to be unfair.

MR. P. HARRINGTON: Yup.

MR. BUDDEN: I'm just asking you now, why did you believe that to be unfair? It's not a complicated question.

MR. P. HARRINGTON: Because the criticism was becoming quite personal, Mr. Budden.

MR. BUDDEN: So it's not the fact of the criticism; you thought it was –

MR. P. HARRINGTON: No.

MR. BUDDEN: – or it was –

MR. P. HARRINGTON: No, we can take criticism. We're – you know, we're seasoned professionals, we know what we're doing, and we can take it on the chin. But, you know, what I was expressing here was some of this criticism – yeah, and even seasoned professionals can sometimes – you know, it can go a little bit too far sometimes and, you know –

MR. BUDDEN: And I'm not –

MR. P. HARRINGTON: – when it's not – when it's –

MR. BUDDEN: I'm not – the issue isn't whether or not the criticism is hurtful, and no doubt it was, but let's park that for a minute –

MR. P. HARRINGTON: But it's –

MR. BUDDEN: – it's the unfairness –

MR. P. HARRINGTON: You didn't let me finish. Could –

MR. BUDDEN: My apologies.

MR. P. HARRINGTON: Yeah.

MR. BUDDEN: You're quite –

MR. P. HARRINGTON: Can I –

MR. BUDDEN: – correct.

MR. P. HARRINGTON: – finish?

I'm the project director. I'm concerned about the well-being of all of my team members. So when some of my team members are coming to me

and telling me that they're going to leave the project because they just can't take the criticism anymore, or when people come to say me – tell me that they're going to move house because they can't take the criticism coming from their neighbour anymore, or that when somebody says they're going to leave the project because their child is getting criticism for what their parents are doing, at school, that's what I'm meaning here.

This is – you know, yeah, we're all big guys; we all know what we're doing and this, that and the other. But when it starts, you know, going over to family and friends and that, that's what I'm taking – that's what I'm saying here. This is, you know – yeah, we understand and we fully understand that, you know, the decisions that were made and the work that we're doing it is – you know, it's in the public arena and, you know, it – yeah, we should be able to take the criticism, but it's just that when it goes to those extremes.

I'm – you know, I do care about my team. I do care very sincerely about my team. And I was trying to raise that here. So, that's what I'm saying, Mr. Budden.

MR. BUDDEN: Okay.

I'd suggest, with respect, Mr. Harrington, that's not at all what you're saying.

MR. P. HARRINGTON: (Inaudible.)

MR. BUDDEN: What you're saying is the project team is taking criticism for those earlier decisions – Mr. Martin's decisions – and if we go to the next page – if we could, Madam Clerk, just to tie this together – for those decisions when "The unlikely probability of achieving those decisions was well known."

So I'd suggest the plain reading of this – it's your words not ours – but, I mean, you're an articulate man; you wrote well here. I had no trouble, I thought, discerning what you meant, and I'd suggest what you clearly meant was: Look, Mr. Martin imposed something on us. We knew it was unworkable, and here we are taking heat. You're the new CEO; you should know this. You should know that we – the project management team, who, as you said yesterday,

thought that you were on the way out the door – you should know that we are taking heat for decisions that, in fact, were made by Mr. Martin.

You were speaking up for your team, and I would suggest to you that's what you're saying, wasn't it?

MR. P. HARRINGTON: Well –

MR. BUDDEN: You're protecting your team.

MR. P. HARRINGTON: – you're putting a twist on it there that – and you're saying that this is what I meant.

I know what I meant when I wrote this, Mr. Budden. I genuinely –

MR. BUDDEN: Your words speak –

MR. P. HARRINGTON: – know –

MR. BUDDEN: – for themselves, Mr. Harrington.

MR. P. HARRINGTON: You can pick this sentence and that sentence and then connect them together, but I know what I meant here. I really did. And I'm speaking honestly and genuinely.

MR. BUDDEN: I would suggest you're not, but we can move on.

MR. P. HARRINGTON: Well, that's fine. You're entitled to your opinion.

MR. BUDDEN: Did you personally advise Mr. Martin that the members of your project team were concerned – they thought – about the unlikely probability of achieving the cost and schedule targets? Did you personally advise Mr. Martin –

MR. P. HARRINGTON: I don't –

MR. BUDDEN: – about that reality.

MR. P. HARRINGTON: You know, I think it was clearly understood by Mr. Martin what he was – you know, what he was asking us to try and deliver. And that's why they were called, you know, targets.

MR. BUDDEN: Okay. So you –

MR. P. HARRINGTON: When you aim for a target, you perhaps don't always hit it.

MR. BUDDEN: That's not quite the answer to my question. I guess you're saying here – if I understood your evidence of the last few minutes, you spoke of the unlikely probability of achieving these costs and schedule targets, that certain members of your project team believe that to be so –

MR. P. HARRINGTON: Yes.

MR. BUDDEN: – and my question was that – because I'm going to ask Mr. Martin this in a few days – did you plainly communicate that to Mr. Martin, that members of your project team felt that way?

MR. P. HARRINGTON: Well, I mean, you can ask that of Mr. Martin, and I think he clearly understood it.

MR. BUDDEN: Okay. And I guess I'm asking it of you before I move on, did you – in your mind, do you believe you plainly communicated –

MR. P. HARRINGTON: Yes.

MR. BUDDEN: – that to Mr. Martin?

MR. P. HARRINGTON: Yes.

MR. BUDDEN: Thank you, perfect.

The – so we have a bid here – or rather a number at sanction – a \$6.2-billion number. And I guess my next question or series of questions is the project management team is now going forward with a number that, itself, had some questions about its unlikely probability. Now, how did that impact the contract awarding process? Is my question clear?

MR. P. HARRINGTON: Not really.

MR. BUDDEN: Fair enough. Sometimes they won't be; stop me and ask me. That's your right to ask clarity.

MR. P. HARRINGTON: That's right.

MR. BUDDEN: I guess I'll put real world context on it. We're going into the CH0007 contract or whatever that contract ultimately got awarded to Astaldi was.

MR. P. HARRINGTON: Right.

MR. BUDDEN: You know the one I mean, obviously. I would suggest to you that knowing that \$6.2-billion number was out there – or 6.5 or whatever it was evolving into – knowing what enormous pressure there would be to maintain that number and that schedule, did that not in turn put terrific pressure on the project management team to go with a lower bid, such as Astaldi, rather than the significantly higher bids such as the two from the Canadian bidders?

MR. P. HARRINGTON: I'd say no, because the team – it was an SNC technical team that were assigned to that and they, you know, they were probably quite disconnected from, you know, the details that we were looking at.

So, they reviewed it over a long period of time. And, yes, you are correct that it was, you know, the best bid that we got from a cost perspective, but it was also the high – they scored the highest technically, as well. So, the technical – so they were the winners on both technical and commercial, Mr. Budden.

So, I don't think that that caused any undue influence upon the recommendation that came from the SNC qualified engineers to, you know, mark them like that.

MR. BUDDEN: I'm going to digress. I was going to get to this later but we might – since you've raised it. You refer to it as the SNC team, as did Mr. Scott O'Brien in his evidence.

MR. P. HARRINGTON: Yeah.

MR. BUDDEN: I think he even went a little further and said that the bid evaluation was done by SNC but I'm confused by that because –

MR. P. HARRINGTON: Hmm.

MR. BUDDEN: – from my reading – and that of my clients – and looking at the bid evaluation plan and other evidence. It would appear from us that Nalcor played a significant role in that

process. Nalcor individuals were on the bid evaluation team. It ultimately went up the line, of course, and was approved up through the –

MR. P. HARRINGTON: Yeah.

MR. BUDDEN: So, it's not quite correct, I'd suggest, to call it the SNC team. It was really a joint team, wasn't it?

MR. P. HARRINGTON: So, it was on joint paper. But –

MR. BUDDEN: Pardon?

MR. P. HARRINGTON: – if you look at the individual – it was on joint paper.

MR. BUDDEN: Yes.

MR. P. HARRINGTON: So – yeah – so if you look at the individuals who went and visited the sites and did most of the work on the technical aspects, they were SNC.

MR. BUDDEN: Nalcor people signed off on the bid evaluation plan. I've seen the names.

MR. P. HARRINGTON: Sure, but what I'm saying is people can sign off, but the people who do the work, right – who go and do the analysis, visit the sites – they were primarily SNC. I'm not saying that, you know, that Nalcor people weren't overseeing them, but it was – you know, it – we relied upon SNC at that point in time.

MR. BUDDEN: You did but you also – I mean, I assume people don't sign those things without giving them a fair bit of thought.

MR. P. HARRINGTON: Oh. You're absolutely right.

MR. BUDDEN: So, if Nalcor – senior Nalcor PMT individuals signed off on that process, presumably they believed in it.

MR. P. HARRINGTON: Yeah. No one's abdicating responsibility here.

MR. BUDDEN: Okay. Well, good. So to turn that around, Nalcor, the PMT, also had responsibility for that bid evaluation process.

MR. P. HARRINGTON: Well, their names are on there.

MR. BUDDEN: Right. Gotcha.

And so, you're saying that even though there was that awareness, which you've forthrightly acknowledged, of the – sort of the enormous pressure to maintain a problematic cost number –

MR. P. HARRINGTON: I didn't say enormous pressure.

MR. BUDDEN: Okay, there was some pressure.

MR. P. HARRINGTON: Well, you said pressure, I –

MR. BUDDEN: I did. And did you agree with me or disagree with me?

MR. P. HARRINGTON: Well, I – you didn't even say I – you didn't even give me a chance. You just said enormous pressure –

MR. BUDDEN: Okay.

MR. P. HARRINGTON: – then you said pressure.

MR. BUDDEN: Scratch that.

MR. P. HARRINGTON: Okay.

MR. BUDDEN: Okay. How would you describe it? I thought you said – in your evidence a couple of moments ago, you acknowledged that there was pressure on the project management team to go with a lower number.

MR. P. HARRINGTON: I may have done, but I don't think I did but –

MR. BUDDEN: Okay, and maybe I'm wrong. So, let me start again, let's scratch all that.

MR. P. HARRINGTON: Okay.

MR. BUDDEN: Did the project management team feel pressure to try to maintain this number which they regarded as unlikely – the probability of which being unlikely.

MR. P. HARRINGTON: No, they would – they were just doing their job. They – there was no pressure applied to them and there was no intrinsic pressure.

MR. BUDDEN: So the fact that Astaldi came in at a billion dollars, essentially, lower than the Canadian bidders was a –

MR. P. HARRINGTON: I think you're a little bit off there.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: I don't have the numbers.

MR. BUDDEN: It may not have been a billion but it was hundreds of millions – the high hundreds of millions, I can prove.

MR. P. HARRINGTON: I can't remember the exact – so, you know, but I know it wasn't a billion.

MR. BUDDEN: Okay. I'd suggest it was close to a billion, but in any case –

MR. P. HARRINGTON: No, I don't think it was both of – but anyway.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: Yeah.

MR. BUDDEN: But in – my point is that your evidence, your sworn evidence is that wasn't a factor in –

MR. P. HARRINGTON: No.

MR. BUDDEN: – okay.

Was it not a concern to the project management team that – and again, this is ground that's been well ploughed, so I'm gonna have just a question or so. But it wasn't a concern at all that Astaldi had no northern experience, as these other companies did?

MR. P. HARRINGTON: So, it was a factor, it was considered. And what provided an offset against that was the team that was proposed, led

by Mr. Chryssolor plus his superintendents and supervisors that were on that organization chart.

I didn't hear Mr. Power's testimony, but I know that Mr. Power looked into those individuals and they had the Canadian northern Quebec experience that was considered and offset the fact that perhaps Astaldi, corporately, may have not. They brought people to the table who did.

MR. BUDDEN: Okay, and that's fair enough.

MR. P. HARRINGTON: And I met with Mr. Chryssolor and some of his people and, yes, they certainly were impressive.

MR. BUDDEN: So, they were the real thing?

MR. P. HARRINGTON: They were, yes.

MR. BUDDEN: But they never showed up.

MR. P. HARRINGTON: Well, Mr. Chryssolor did show up, but, unfortunately, he had a medical condition. And sometimes if you lose the leader, you lose the followers.

MR. BUDDEN: Okay.

The – and that wasn't something that perhaps might've been anticipated and made a term of the contract that Astaldi actually has a contractual commitment to produce a team or a leadership or a – an element within its project, that has that experience.

MR. P. HARRINGTON: So, answer your question: I think it's difficult to predict that someone's gonna have a medical condition. But, you know, it's incumbent upon Astaldi that if – when Mr. Chryssolor left, that they would replace him with someone of a similar calibre, and that's a given, I mean –

MR. BUDDEN: Okay.

MR. P. HARRINGTON: – yeah.

MR. BUDDEN: All right.

MR. P. HARRINGTON: Can you penalize someone for that? Well, sometimes people would take the penalty. And it's –

MR. BUDDEN: Well, we'll talk about –

MR. P. HARRINGTON: – a two-edge sword, right?

MR. BUDDEN: – we'll get to talk about penalties, but it's gonna be a few minutes yet.

MR. P. HARRINGTON: Oh. Oh, good.

MR. BUDDEN: Okay.

The – continuing with Astaldi, yesterday Ms. Muzychka spent some time with you, and her starting point was Mr. Martin's email to you, of a – November 7, 2013.

MR. P. HARRINGTON: Do we have an exhibit?

MR. BUDDEN: Well, we can call it up, but I think what I'm about to tell you will suffice. It's the one that the subject line was: Still the right contractor.

MR. P. HARRINGTON: Oh.

MR. BUDDEN: So, he sent you that email and, though, then the –

MR. P. HARRINGTON: That was in – sorry to interrupt, but I just wanted to – I couldn't – 'cause I don't have it in front of me, what date was that, again?

MR. BUDDEN: November 7, 2013.

MR. P. HARRINGTON: So, is in the LNTP –

MR. BUDDEN: Correct –

MR. P. HARRINGTON: – phase.

MR. BUDDEN: – near the end of it but it was still within it.

MR. P. HARRINGTON: Yes, okay.

MR. BUDDEN: And, there was an exchange then between yourself and Ms. Muzychka, that reads as follows.

You said: No commitment had been made but, you know, you don't give up on someone, you

know, from the get-go. Well, I wouldn't. And I asked him, meaning Mr. Martin, I asked him here: Could you include the key messages I highlighted? So I wanted him to contact the CEO of Astaldi and light a fire underneath him. So, you know, I felt as though that's all that was needed at that point in time, was for them to wake up and get on with it.

Ms. Muzychka said: Okay, but – and then she goes on – but had – and this is from yesterday's testimony: But had there been some concerns and red flags in terms of the difficulty they had in mobilizing and really what could be – I think Mr. Power and Mr. O'Brien both said that they – meaning Astaldi – had done little, if anything, by the time November rolled around.

And you said: I wouldn't call it a red flag, I would call it a yellow flag.

And, I guess my question to you – and I get it, it's a neat point there that a yellow point as I – a yellow flag as I understand it is a caution flag – proceed with caution. A red flag is stop, so that's what I took from that.

And I guess my question to you is, if you've got your CEO questioning whether they're still the right contractor; you've got your senior people on the ground reporting: look, they've done little if anything – if that's not a red flag, what at that point would have been a red flag?

MR. P. HARRINGTON: That's a bit of a hypothetical question.

MR. BUDDEN: Well, not really. I mean the facts are not hypothetical; these are actual facts. This is the situation you found yourself in, in November 2013, and Ms. Muzychka characterized this as a red flag, and you said: no, it's a yellow flag.

MR. P. HARRINGTON: Well, it was a – so I viewed what I was hearing, was this was cause for concern, it wasn't cause for immediate alarm, press the red button, shut everything down, right.

MR. BUDDEN: Okay, yeah.

MR. P. HARRINGTON: That's what I'm saying, and I couldn't give you right now just

sitting here today what that red button box would be.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: Yeah.

MR. BUDDEN: Yeah. Fair enough.

And again, like, this is truly a hindsight question, I don't put a lot of weight in the answer, but worse of course was to follow with Astaldi. Should, perhaps in retrospect, in hindsight, that have been viewed as a red flag; the fact that little or nothing had been done – they didn't seem that interested as of November 2013?

MR. P. HARRINGTON: Umm.

MR. BUDDEN: And again, this is not a question I put a lot of weight to, but I'm just trying to get a sense of your thinking.

MR. P. HARRINGTON: Well, let me put it like this, my thinking – or not necessarily just my thinking, but you know, the thinking that we shared was that we had just gone through possibly a process that's ended up selecting this particular contractor, and it took over a year. So to say, okay, well they're having a, you know, a bit of a slow start, kick them off.

I think that's premature to do that; I think it wouldn't be prudent to do that, you know, that would be my view.

MR. BUDDEN: Okay. Fair enough. And you stand behind the judgment call you made as of that time.

MR. P. HARRINGTON: Yeah.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: Absolutely. Yeah. I think it was – you know, I think if we didn't give people a chance to get going, right, then you just – I think –

MR. BUDDEN: Okay, no –

MR. P. HARRINGTON: – it wouldn't be right.

MR. BUDDEN: – that’s – fair enough.

You made a comment yesterday – and an interesting one, it – I’ve been thinking about it ever since –

MR. P. HARRINGTON: Is this my transcript, by the way?

MR. BUDDEN: What’s that?

MR. P. HARRINGTON: Is that my transcript?

MR. BUDDEN: That’s – I just cut a page out of it, but the whole transcript was put up last night – it’s a draft transcript but –

MR. P. HARRINGTON: Oh. That was quick.

MR. BUDDEN: – I thought it most helpful to put your words right to you. They’re circulated internally –

MR. P. HARRINGTON: Okay.

MR. BUDDEN: – just to give us a bit of help in preparing – sometimes are.

You made a comment yesterday and it – really, I was thinking about it throughout the evening. It was something along the lines of that the Lower Churchill Project has had more than its share of black swan events. And I guess I got a couple of questions out of that.

MR. P. HARRINGTON: Okay.

MR. BUDDEN: Firstly, is it your belief – your personal belief that but for these black swan events, the Churchill Falls Project would’ve come in on time and on schedule?

MR. P. HARRINGTON: I think there was always a possibility that the 6.2 would’ve increased, right, and I think what we saw there was the contracting community coming back in the first year, 18 months, when the big contracts were being laid that – it showed that the estimate that had been performed, that we relied upon to get us to 6.2 and the ranging of the risks and things, that wasn’t being – that was – the contractors had a different view. And it’s not just one contractor, it was, you know –

MR. BUDDEN: Yeah.

MR. P. HARRINGTON: – many contractors. So I think we were always going to be faced unfortunately, with that. But would that take us to, you know, where we ended up? No.

MR. BUDDEN: Yeah.

MR. P. HARRINGTON: Yeah, you know, I think what that took us to is from 6.2 to perhaps 7 – slightly over 7. But it was, you know, the Astaldi situation which would take us another 1.5 billion and, you know –

MR. BUDDEN: Sure.

MR. P. HARRINGTON: – and that’s where you go – and those are the black swans and, you know...

MR. BUDDEN: With Astaldi, yesterday you mentioned that Astaldi had run into problems in Venezuela, they’d run into problems in Turkey, and again, I don’t – I didn’t read it in the – that’s my recollection of your evidence and from that I took – and stop me if I’m wrong – that Astaldi, because of these foreign misadventures, had gotten themselves into financial problems. And here’s the key part, that that was a truly black swan event, meaning that it could not reasonably be anticipated that Astaldi would run into problems that might affect its performance on the Lower Churchill. Is that a fair characterization of your thinking?

MR. P. HARRINGTON: What I’d like to – perhaps I can slightly say – what I was trying to say is that the black swan event is how could a – the financial collapse of the Venezuelan economy affect a hydro project in Newfoundland and Labrador? So there’s the, you know, that’s what it means by black swan. It’s outside of any control that you have, right, at all. What it did, it – and in combination with – and I quoted the failure to sell a concession of a bridge in Turkey over the Bosphorus.

MR. BUDDEN: Yeah.

MR. P. HARRINGTON: And, again, that was an economic situation in Turkey that caused that. Again, that’s that – of – you know, left-field event that affected us. I mean, and so, that

brought Astaldi's financial situation to a critical point – to such a point that they could no longer deliver in accordance with the project that they'd contracted to do.

MR. BUDDEN: Okay. A couple of points there, and I don't want to delve into the economic –

MR. P. HARRINGTON: I'm not an economic specialist, by the way.

MR. BUDDEN: No, nor am I, and we're not about to sort out Venezuela and Turkey here in the next five minutes but –

MR. P. HARRINGTON: Well – I hope not.

MR. BUDDEN: – just to tie it together – your – my understanding of your evidence is that these were events that Astaldi – which after all was a company with worldwide interests, a lot of it in less-developed, less-stable parts of the world – that it was a totally unforeseen event by Nalcor, that its primary contractor might end up over-extended in another jurisdiction.

MR. P. HARRINGTON: It's a hundred-year-old company and it's one of the top hydro construction builders in the world. You know, I think they have a history, right? And I don't think – I don't think it was in the ability of anyone to predict that those things would – there was an economic or financial strength analysis done.

MR. BUDDEN: (Inaudible.)

MR. P. HARRINGTON: Yeah. There was.

MR. BUDDEN: Yeah.

MR. P. HARRINGTON: Yeah. And so, if you ask me, personally, then, you know, in – if the province was to consider doing anything of this nature again then, you know, you've gotta be aware of these things. Right?

MR. BUDDEN: Did that not – did that analysis not identify, as a concern, that Astaldi had all these interests in all these other countries – that it was extended –?

MR. P. HARRINGTON: Basically, the insight I got into that was it's either okay or it's not

okay. Right? And that wouldn't come to me. That would come to the CEO – from the –

MR. BUDDEN: Okay.

MR. P. HARRINGTON: –CFO.

MR. BUDDEN: All right. So, that'd be more a question for Mr. Martin, perhaps.

MR. P. HARRINGTON: Perhaps. Yes.

MR. BUDDEN: Okay. All right. That's a black swan you've mentioned, and no doubt a significant event whether – whether it's a black swan or not it's a major issue, granted. Just give us a couple of other black swans. I'm just trying to get my insight into your thinking here.

MR. P. HARRINGTON: Okay.

Who would've thought that GE, one of the biggest companies in the world, would be falling from grace, as they have done recently, from the takeover of Alstom? And the takeover of Alstom, we thought that that was going to be a very positive step; in fact, as it turned out, it wasn't.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: And we're dealing with – and the project's dealing – it's not my area, by the way – but they are dealing with software issues with GE that, you know, who would've thought that? I mean, that's one.

Then we had the DarkNL. DarkNL is another, you know, impact on the project; couldn't possibly know that that was going to happen. Well, I certainly didn't. And the, you know, the follow-up from Liberty and the changing, you know, what was considered acceptable before was a – under frequency-type situation – is no longer acceptable in this current world that we live, and there's impacts there.

MR. BUDDEN: (Inaudible.)

MR. P. HARRINGTON: The SNC situation, you know, early on, who would've thought that, you know, we'd – they'd be embroiled in a corruption –

MR. BUDDEN: Okay, we'll –

MR. P. HARRINGTON: – and their CEO would be –

MR. BUDDEN: We'll get to that, as well.

MR. P. HARRINGTON: – their CEO would be, you know, arrested. And all of the project management that we were dealing with, at that point in time, were either sacked, arrested or just moved on, right? And it was a vacuum for a long period of time.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: So those are –

MR. BUDDEN: Mr. Bécharde wasn't –

MR. P. HARRINGTON: – those are the ones I can think of off –

MR. BUDDEN: Mr. Bécharde wasn't sacked or arrested or moved on.

MR. P. HARRINGTON: But he didn't negotiate the contract with us.

MR. BUDDEN: Okay, all right.

With Valard –

MR. P. HARRINGTON: And Mr. Bécharde –

MR. BUDDEN: – (inaudible) –

MR. P. HARRINGTON: – okay.

MR. BUDDEN: I'm sorry, you – I interrupted you.

MR. P. HARRINGTON: No, I interrupted you. I apologise.

MR. BUDDEN: Okay.

Valard, were there any black swans there?

MR. P. HARRINGTON: Other than the impact that DarkNL might've had on, you know, their scope and the reliability became a strong focus, you know –

MR. BUDDEN: Okay. So you wouldn't attribute any project problems consequent to the lack of geotechnical workup as a black swan?

MR. P. HARRINGTON: No. And I listened to testimony on that and, you know, I think the – what I was told and this is what I understood – is that the cost of doing the type of geotechnical – you know, every tower that was being proposed would've involved, especially in Labrador, so much – and forgetting the environmental roadblock that was there – the cost of it would – was prohibitive for the benefit that it was going to provide you with.

So the benefit would've been – I can't remember all the numbers right now, but the cost to do it versus the benefit it provided, it wasn't there. It wasn't a good decision. Never mind the fact that you wouldn't be allowed to do it because the only way that you could get into the hinterland of Labrador is to be pushing roads through.

MR. BUDDEN: Okay.

So, just to tie all that together, you've acknowledged – if I understood you quite forthrightly – that even without any extraordinary events the project would've come in somewhere over – perhaps a little over \$7 billion.

MR. P. HARRINGTON: I recognize that – we recognized that once we started getting the bids in, right?

MR. BUDDEN: Sure.

MR. P. HARRINGTON: Yeah.

MR. BUDDEN: And that the rest of the cost overrun was essentially consequent to black swan events that could not have been reasonably anticipated, could not have been appropriately dealt with through a larger contingency allowance; these were just unknown unknowns, as the terminology goes. Is that fair?

MR. P. HARRINGTON: I think that's a fair –

MR. BUDDEN: Okay.

MR. P. HARRINGTON: – statement.

MR. BUDDEN: I want to talk a little bit about your relationship with the independent engineer, which obviously is an entity, as we know, a corporate entity, but who – for whom the representative was Mr. Argirov.

And, Madam Clerk, perhaps we could start by calling up 02212 – 02212. And this is – what this is, it's just – while you're getting set up – is the –

THE COMMISSIONER: Oh, thank you very much.

So that would be at tab 15 in the PMT 1 binder.

MR. P. HARRINGTON: I'm getting that.

MR. BUDDEN: And perhaps you could scroll down when you get there, Mr. Harrington – or Madam Clerk could scroll down. Mr. Harrington you could turn to more at the bottom of the first page. And –

MR. P. HARRINGTON: Bottom on the first.

MR. BUDDEN: Yeah. And what I'm looking at here is where you've written James Meaney – and it's a funny email thread because it's been forwarded and people are cc'd and so forth.

But what I get from this is that in late November of 2013 you wrote to Mr. Meaney, copied to Mr. Clarke, quote: "Well if he was added he can be removed - I do not believe he adds any value so when we get through the IE report we should get Loucks and Rey removed from the team. Rey because of his poor organization and general performance and Loucks" – or I think that's how to pronounce his name – "because he is argumentative and antagonistic towards Nalcor."

And I'd suggest to you – and I mean no disrespect by this – but isn't it rather presumptuous for the subject of an oversight review to be, basically, attempting to dictate who will be conducting that review?

MR. P. HARRINGTON: It was our contract.

MR. BUDDEN: You saw it as your right within the contract to determine –

MR. P. HARRINGTON: Yeah. I didn't say that. I was writing to Jim Meaney to say, these guys – and, I believe, Canada agreed that there needed to be a change. So, you know, this was an internal email and I thought Mr. Loucks wasn't adding any value. I've stated that very categorically there. He was, you know – he just wasn't a good fit for us and he was argumentative and Canada would've had to, you know, ultimately decide that. But, you know, I think they also saw that it wasn't working with that individual.

MR. BUDDEN: But again you saw it as appropriate within the terms of the contract and within the general concept of oversight for you to be making representations that certain of the oversight individuals be removed from the team. You thought that was appropriate.

MR. P. HARRINGTON: No, I didn't send this to Canada. I didn't send this to the IE. I sent it to Jim Meaney. It was an internal email saying I thought these guys are not helping us.

MR. BUDDEN: So you didn't –

MR. P. HARRINGTON: They're not adding value, rather than not helping us –

MR. BUDDEN: Did you or did you not wish for your views here to be communicated to the IE?

I mean, I know it was internal but – well, let's scroll back a tiny bit up. I would suggest that it's plainly obvious from this thread that your wish was that pressure be put on the IE to remove these people.

MR. P. HARRINGTON: Again, you're using the word "pressure." I –

MR. BUDDEN: What would you use?

MR. P. HARRINGTON: I wouldn't use any word like "pressure" because this is what – an internal observation that's saying that this – these individuals – as I've mentioned here – I don't think Mr. Loucks was adding value. He appeared from nowhere. And unfortunately, Mr. Rey Hokenson, he was, generally, observed that he had problems with organization and keeping up with things.

MR. BUDDEN: (Inaudible.)

MR. P. HARRINGTON: And that wasn't my observation. That was others, right?

MR. BUDDEN: Madam Clerk, perhaps we'll call up 02299. And this is the email – again, this was reviewed yesterday. It was you – it was one you sent to Mr. Argirov.

MR. P. HARRINGTON: 02299?

MR. BUDDEN: You got it, yeah. Actually, oddly enough it's the same –

THE COMMISSIONER: PMT – tab 23.

MR. BUDDEN: Yeah, it was the very same day – there years ago today – that you wrote Mr. Marshall.

MR. P. HARRINGTON: Busy day.

MR. BUDDEN: And we can go back to the very bottom of that, please, Madam Clerk, 'cause it's – like all these things, it's somewhat sequential. And we start with you – and a tiny bit more, I believe. Yeah, not quite that far. Yeah, there we go.

This is you writing Mr. Argirov. Subject: "I thought common sense would prevail but I was wrong."

"It seems the splitting up of the project team into Generation and LTA/LIL is back with a vengeance. I am very concerned that there will be senior folks leave. You have stood up for the project team and I appreciate that but I am not sure that our new CEO cares about the team I don't expect you to do anything more a simply wanted to let you know."

And then you scroll – scroll back, Madam Clerk, I just wanna follow this thread – and then there's a bit more, and then we go to what your final comment is: "Nik; I am fighting hard to keep the team together here. So I could not call you. I have decided to draft a letter to Stan Marshall which goes on record with my concerns. Basically that the organization change being pushed forward will increase cost and schedule risks unnecessarily and instead it should be a more normal and gradual turnover to Ops." And,

again, I say for emphasis, "... will increase cost and schedule risks unnecessarily" – that's me there.

And then you give some details there which I'll skip past, and then the "way I ... keep" this "team reporting to me together and able to finish the project.

"The alternative in my opinion is chaos and people quitting."

So and perhaps you can scroll just a little more, Madam Clerk. There's – the shame on Nalcor comment, I think, is in this thread. That's (inaudible) –

MR. P. HARRINGTON: No, it's a different one.

MR. BUDDEN: It's a different one, is it? Okay –

MR. P. HARRINGTON: Yeah.

MR. BUDDEN: – can you help me and put me to it?

MR. P. HARRINGTON: No.

MR. BUDDEN: Does anybody know what exhibit that is?

MR. P. HARRINGTON: So the other one was at least two years – is it two years later, I think?

MR. BUDDEN: Two years – yes, it was. You're quite right. It's 2018.

Well, let's stay with this one first. We'll get to that.

MR. P. HARRINGTON: All right. I did help you, yeah.

MR. BUDDEN: Pardon?

MR. P. HARRINGTON: I did help you.

MR. BUDDEN: You did, thank you.

The – I guess my concern here, Mr. Harrington, is you're writing this email, which is rather critical of your own CEO, which anticipates that

these changes will increase cost and schedule risks. You're communicating this to, not just an outside person, but to somebody who's charged with oversight.

I would suggest to you that that would seem to be contrary to your contractual obligation to always act in the best interests of Nalcor. What do you have to say about that?

MR. P. HARRINGTON: Well, I disagree with you.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: I don't think I was criticizing my CEO. Can we go down –?

MR. BUDDEN: You don't think you were criticizing your CEO?

MR. P. HARRINGTON: No. Can we go down to where it is, please? Madam Clerk, can you ...?

"I am not sure that our new CEO cares about the team." I didn't know him. I didn't know him. I don't think that's – he's a new entity to me. I haven't met with him. I didn't know the CEO and I didn't know whether he – at that point in time, Mr. Budden – and I mentioned this earlier – is that, you know, we were all – the project team generally were very – you know, high anxiety would be the description, because we had just seen the departure of our CEO; we had just seen the resignation of the board. We had just heard that, you know, the – that SNC-Lavalin were making attempts to take back the project that – which they had, you know, failed us on earlier. So I didn't know whether we were all going to be shown out the door any – next (inaudible).

MR. BUDDEN: I guess – I see all that –

MR. P. HARRINGTON: So I don't see that as a criticism of our CEO.

MR. BUDDEN: I can understand why you might feel those things, but what I am quite surprised here is that you would see fit to communicate these especially given your concern and many, many, many other places about commercial sensitivity. And here you are

communicating to somebody outside of Nalcor, to an oversight agency, that you anticipated there were going to be schedule increases because of the move your CEO was contemplating.

I mean, here on the one hand, not too long removed in time from this, you didn't want another oversight agency to get all kinds of information because of commercial sensitivity and here you are sort of – you know, sort of crying on the shoulder of this other oversight guy. And I suggest to you, how can that possibly be in the best interest of Nalcor to have its project manager acting like this towards an oversight agency? Do you –

MR. P. HARRINGTON: (Inaudible.)

MR. BUDDEN: – I mean, it's – you're out of the heat of the moment, now; can you not see in retrospect this being problematic, or do you –

MR. P. HARRINGTON: No.

MR. BUDDEN: – think its totally defensible?

MR. P. HARRINGTON: It's totally defensible because the independent engineer has an obligation, right, to review risks.

MR. BUDDEN: As did EY.

MR. P. HARRINGTON: Well, yeah, I'm not disputing that.

MR. BUDDEN: Okay. So (inaudible) –

MR. P. HARRINGTON: It was in their scope of work, yes.

MR. BUDDEN: The independent has an engineer to review this, so that impose on you some sort of obligation to run to him like this?

MR. P. HARRINGTON: I didn't run to him. I mean, you're using kind of words that – this is not running to anybody. He was asking how are things going over there, right? 'Cause he was concerned also – I mean, he was reading the newspapers – what's happening to the team? Canada was concerned.

MR. BUDDEN: They're concerned, and so you say things like this: "I am not sure that our new CEO cares about the team." Is that going to ratchet up their concern or is that going to mollify their concern?

MR. P. HARRINGTON: No, I'm just saying I'm not sure that our new CEO cares about the team, that's it.

MR. BUDDEN: All right.

MR. P. HARRINGTON: 'Cause I don't know.

MR. BUDDEN: Let's flip back to 01962, just for a moment. That's your letter you wrote the very same day to Mr. Marshall.

MR. P. HARRINGTON: Yeah.

MR. BUDDEN: Second page, you say: "I fully understand" – near the bottom. "I fully understand" –

MR. P. HARRINGTON: Yeah.

MR. BUDDEN: – "and support your desire to focus work in a different way."

So you're saying, on the one hand, that you fully understand and support Mr. Marshall's desire to focus work in a different way, and that follows a very specific discussion of his proposal for the reorganization. But yet on another hand while you – on one hand, you're saying to him you fully support him; on the other hand, you're writing this letter to Nik – to the independent engineer. Do you not see a certain degree of hypocrisy in what you're saying to him and what you're saying behind his back?

MR. P. HARRINGTON: Not at all. Because I – if you follow on – I mean, you can pick a sentence, but if you follow on: "I do have concerns with the timing" and the implementation of "the organizational changes and suggest we do" it "in a more gradual manner. I respectfully request you consider my concerns regarding the timing of such a change in the Integrated Project Management organization."

And I do mention that I believe the cost and schedule would be affected by this, so I was saying the same thing. So that's not hypocritical.

MR. BUDDEN: Well, okay. Well, that's what you – that's your evidence.

Perhaps, 02343, Madam Clerk. This is one which, as you helpfully pointed out, was indeed a couple of years later – almost exactly a year ago. And this is where a –

MR. P. HARRINGTON: Can I get there, please.

MR. BUDDEN: Of course.

MR. P. HARRINGTON: And it's –

THE COMMISSIONER: Tab 73.

MR. P. HARRINGTON: Okay (inaudible) –

THE COMMISSIONER: Of your book.

MR. P. HARRINGTON: All right.

MR. BUDDEN: "Shame on Nalcor." And, again, this one, again, was written two years later. Again, you're writing to the independent engineer. Is this appropriate language to direct to an outside person, to an oversight agency no less? Is this appropriate?

MR. P. HARRINGTON: I thought it was appropriate.

MR. BUDDEN: Do you still?

MR. P. HARRINGTON: Yes, I do. I stand by it.

MR. BUDDEN: Okay, fair enough.

All right. So you had a good relationship with this gentleman, Mr. Argirov?

MR. P. HARRINGTON: Argirov.

MR. BUDDEN: Yes. You and he had a good relationship?

MR. P. HARRINGTON: I had a professional relationship with this individual, yes.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: I respected his long history in hydro projects, and, you know, he had worked in Newfoundland and Labrador before. He knew a lot of the team. He was highly respected, and I got a high regard for his qualifications, his experience and –

MR. BUDDEN: And also he allowed you to have some input into the makeup of the oversight team itself. Or he allowed Nalcor.

MR. P. HARRINGTON: Pardon?

MR. BUDDEN: He allowed Nalcor to have – as we've established – to have some input into the makeup of the team, in the sense that individuals you didn't want on the team ended up off the team.

MR. P. HARRINGTON: That was the decision of Canada, not me or Nalcor.

MR. BUDDEN: Okay.

The – I'd suggest to you – and this goes right back into Phase 1 – but I'd suggest there's a pattern beginning with Mr. Owen and Mr. Westney, who both spoke about you really dealing with them in terms they'd never been dealt with before in their long career, in terms of attempting to interfere in their written report. And I would suggest that your relationship really from that point forward with oversight agencies has been quite fraught with conflict. We've heard evidence from them; we've heard evidence from EY and so forth – (inaudible) for the independent engineer.

I would suggest to you that you have been, over the life of this project, extremely resistant to oversight and have really acted quite aggressively to avoid oversight. I'm putting it to you in fairness for you to agree or disagree and comment.

MR. P. HARRINGTON: Well, I disagree.

MR. BUDDEN: Okay.

Do you believe the manner in which you, throughout, dealt with oversight agencies has

been the normal and standard business practice within this field of business?

MR. P. HARRINGTON: So I'll go back to the statement that you made and I'd just like to correct it. I did not try to interfere with Mr. Westney and Mr. Owen. I provided comments back to them and I had done that consistently. And as I've explained before, and as other people have testified here, that it is perfectly normal in our industry to receive a draft – either scope of work or a draft report and to receive or request from Nalcor or myself or whoever for comments back. And those comments are provided and even the – Mike Kennedy from EY said this is perfectly normal. This is the way that we do business day-in, day-out here. It's going on today.

The Oversight Committee will submit a draft report to Nalcor for review, and comments will be provided back. And it's always up to the author to either accept or reject those things. If they are accepted, fine; if they are rejected, that's where it ends. There's no pressure placed on anybody. That's the way we do these things in these projects.

MR. BUDDEN: Okay. The Commissioner has heard evidence and he'll decide, obviously, what weight to give to the evidence of various people, but I did want to put that to you for your comment. Thank you for it.

MR. P. HARRINGTON: You're welcome.

MR. BUDDEN: I'm going to jump around a bit now.

You spoke yesterday when they were talking about the – how different individuals came to be on the team, and you spoke of Mr. O'Brien's leadership skills – Scott O'Brien. You described him as professional. You no doubt are also aware, I assume, that the evidence of other parties here – Mr. Béchar, Mr. Delarosbil, Mr. Ed Knox, Mr. Mark Turpin – they describe incidents and behaviours which – even though Mr. O'Brien denied them, he did say that if they had happened – and I'm – this is my take on his evidence – if they had happened as alleged, they would've been inappropriate. So he did deny them, though, flat out.

Having heard that evidence, has your faith in his leadership skills, his appropriateness to hold the position he's held, has that been impacted at all?

MR. P. HARRINGTON: Not at all.

MR. BUDDEN: Okay. So you don't – you also do not accept the evidence of those other persons?

MR. P. HARRINGTON: So I'd answer that in a slightly broader sense. The Lower Churchill Project has what is called a respectful workplace procedure. That respectful workplace has been developed by the project team, endorsed by myself and all the senior leadership. That provides a mechanism for people who feel as though they have been a subject of some disrespect or lack of respect to document that situation. So once I heard these allegations of bullying – I think was the term –

MR. BUDDEN: That's fair.

MR. P. HARRINGTON: – that was used, and it's a broad – it's an easy term, I mean. So I checked with our human resources team if any complaints had been made against Mr. O'Brien over the many years that he's been on the project, and there's not a single one. Not a single one.

So, I think if – you have to – I think the Commissioner and the people listening here have to look at all the evidence here. You have people who perhaps have, you know, have been – some axe to grind against Mr. O'Brien. It may have been on a – may be – they may be supporting some kind of contractual kind of dispute that they find that that might assist their case. So that's one side of the coin.

We gotta look at Mr. O'Brien's evidence of him, himself, denying all these things. I look at what's written evidence, which would be, you know, a – some kind of written complaint against Mr. O'Brien from a respectful workplace, and there are none. And then I look at, you know, how I view him. I –

MR. BUDDEN: Okay.

MR. P. HARRINGTON: – view him as someone who has to make hard decisions

sometimes, and those hard decisions require someone to be firm but fair. I find him to be diligent and demanding. In some cases, he has to be. But I find overall that he is totally professional and highly competent.

MR. BUDDEN: Okay, 'cause I would suggest to you – we've heard from well over a hundred witnesses by now; we've heard all kinds of things about all kinds of people. I do not believe, from the evidence, similar allegations really have emerged against other members of the project management team. It seems to – these allegations seem to focus on Mr. O'Brien.

So I would suggest that really that's – I guess to integrate in my previous question, does that not concern you, that the focus here does seem – the conflict does seem to be focused on one individual?

MR. P. HARRINGTON: Well, he's the guy who has to make all of the hard decisions. He's the project manager for a \$5.5-billion project. And, you know, he's not in a popularity contest, and sometimes he has to make decisions, hold people's feet to the fire, make sure that he's fulfilling the obligations of a project manager to ensure that the contractors are delivering to that which they had been contracted to do for the benefit of the project and the people of the province.

So, yes, it's some – it's a tough business that we're in, right? It is and sometimes he has to make hard decisions. And those may not always be, you know, welcomed with open arms by the contractors or people he's had to let go or whatever. So this is – you know, I don't find that unusual. I just know from my own eyes, as I've observed Mr. O'Brien – as I say again, I summarize: firm but fair, highly professional, totally competent.

MR. BUDDEN: Okay.

We heard evidence yesterday that at the time of his hiring, he had not achieved, at that point in his career, the minimum 15 years practicing engineering. His lack of – you don't see his lack of experience as perhaps contributing to any conflict that may be there?

MR. P. HARRINGTON: No, I don't.

MR. BUDDEN: Okay.

On that topic, there's also evidence – I don't intend to review it in detail because I'd like to move along – but Ms. Muzychka introduced evidence of a number of CVs, many of which are from people with decades of experience, several decades anyway, like yourself. And perhaps in many cases more directly related to a hydroelectric construction project.

Notwithstanding that, virtually all of the project management team at the senior level – I'm thinking yourself, even beyond you, Mr. Martin, below you, Mr. Kean, Mr. O'Brien, Mr. Power and others. We've heard the names. Almost – much of the team comes out of the oil patch, and we've heard of some of the hiring arrangements. I think yourself – you were hired at, you know, at the – you're invited into an interview at The Guv'nor, if I recall correctly from months ago. Other people in – talked of being approached.

And I guess where I'm coming – I'm focusing all that on a question. From the outside looking in, it would appear that the hiring was more coming out of sort of an existing network of contacts within the oil industry and that all the CVs and so forth was really almost a sideshow. The real hiring action took place within an established oil industry network. What do you have to say about that?

MR. P. HARRINGTON: I don't agree to the comment of sideshow. The processes that had been followed to hire people, I believe, had been followed rigorously. It's been audited by our Internal Audit and by – I think Grant Thornton actually carried out a review as well. And that may be coming in the next coming weeks. You may get a presentation on that. So I don't agree with what you've said and I think it's, you know, it's something that others may think that way. They're very entitled to that opinion, but the process that was followed for hiring people, I think, was done in the best manner possible.

MR. BUDDEN: And it didn't project – or it didn't reflect a predisposition towards hiring people, known to those already there, coming out of the oil patch?

MR. P. HARRINGTON: I don't believe so, no.

MR. BUDDEN: Okay.

So it's just a coincidence, really, that so many of the senior project management team came out of that background.

MR. P. HARRINGTON: Well, you've also gotta look at, you know, where are the people – the people in this province, we haven't built a hydro project for so many years, right? It's megaproject experience that you were looking for. Megaproject experience is oil and gas right now for the last 10 to 15 years (inaudible). So, you know, I think you can join those dots up.

MR. BUDDEN: Okay.

In your February interview with Commission counsel, you identified a certain report –

MR. P. HARRINGTON: February – which year?

MR. BUDDEN: This year, sorry –

MR. P. HARRINGTON: Okay.

MR. BUDDEN: – the one just a couple of months ago. And I can go to the quote, but I think – I don't think it'd be necessary.

In that interview, you identified certain reports a little more contemporary, as you put it, than monthly reports. And I think they might have been the red-green analysis or something. It was not – they weren't the monthly reports. They were more –

MR. P. HARRINGTON: Okay.

MR. BUDDEN: – contemporary. You –

MR. P. HARRINGTON: Yeah, yeah.

MR. BUDDEN: – know the ones I mean.

MR. P. HARRINGTON: Yeah.

MR. BUDDEN: Yeah.

And when – in your answer, perhaps, you can describe them more carefully. And also that another QRA was completed subsequent to April 30, 2018. Were all these reports and that

QRA – were they – did they make it to the hands of the Oversight Committee, as far as you know? Did the Oversight Committee have the best information that the project team itself had?

MR. P. HARRINGTON: I wasn't – I don't go into the Oversight Committee anymore. But I –

MR. BUDDEN: Okay.

MR. P. HARRINGTON: – believe that those – I think they're called traffic light – yeah –

MR. BUDDEN: Yeah.

MR. P. HARRINGTON: – they may have been summarized and provided to the Oversight Committee or placed in the data room. And certainly the monthly reports would include those traffic-light-type graphics. And the monthly report always goes into the – and it has been for – from the year dot –

MR. BUDDEN: Okay.

MR. P. HARRINGTON: – going into the Oversight Committee's data room.

MR. BUDDEN: Okay.

The latest – in April 2018, we heard Mr. Marshall's numbers – I think it was 10.1. From your interview, a number of risks had been identified primarily, as you've indicated, with GE, with the potential solution to methylmercury if that solution is ultimately implemented. Those have been costed, I presume, or have they?

MR. P. HARRINGTON: So the –

MR. SIMMONS: So, Commissioner, questions regarding costing of items that are potentially the subject of dispute or contractual discussions with GE, for example, are areas that there's commercial sensitivity around, so we have to tread carefully in what evidence is given about any quantification of that.

MR. BUDDEN: Fair enough and I –

THE COMMISSIONER: Excuse me just for a second. I also think that we, unless – and I'm not – I don't know what's out there, but I think we'd

also need to be concerned about reserves or contingencies that are set aside, for instance, with regards to the removal of more soil or –

MR. BUDDEN: Okay.

THE COMMISSIONER: – alternatively, clearing because those would be contracts that would have to be issued and that may well lead to contractors finding out things that they shouldn't know.

MR. BUDDEN: Okay. So perhaps that –

THE COMMISSIONER: So, just be a little –

MR. BUDDEN: – whole line of questioning I should –

THE COMMISSIONER: – but just be a little careful about –

MR. BUDDEN: Okay.

THE COMMISSIONER: – quantification is the main issue. Otherwise –

MR. BUDDEN: Sure. I think another counsel here is planning to pursue it anyway so I'll move on.

MR. P. HARRINGTON: Are we having a break at any time?

THE COMMISSIONER: Yes, we will be. Is this a good spot for you, Mr. Budden?

MR. BUDDEN: Yeah. Sure. I have a few more minutes. Not too, too long I hope.

THE COMMISSIONER: Okay. Well, let's take our break now. It's quarter to 11, and we'll take 10 minutes this morning here.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

MS. MUZYCHKA: Excuse me, Commissioner, before we get started there are two more exhibits I'd like to have entered.

THE COMMISSIONER: Okay.

MS. MUZYCHKA: P-04041 and P-04042.

THE COMMISSIONER: All right, those will be entered as numbered as well.

MS. MUZYCHKA: Thank you.

THE COMMISSIONER: Okay.

Mr. Budden.

MR. BUDDEN: Yes.

Madam Clerk, could we perhaps bring up exhibit – perhaps I'll go back to where I was just before we broke. And as you know, Mr. Harrington, because we – you and I just went through it – you gave an interview to Commission counsel in February of – this year, February 2019.

And at one point – and I've got a quote here from you, and you say we've been – this is you: We've been remised with providing Stan Marshall and get into a stage where we need to make sure he's armed with all the data. I was surprised when Stan said there'd be no changes to \$10.1 billion at the AGM when we had not completed the QRA yet.

And do you remember saying that in your interview?

MR. P. HARRINGTON: Yes, I do.

MR. BUDDEN: Yes. And then on the next page – I'm skipping a bit, which I don't think is necessary for our purposes.

But the – you say: And the strategic risks are, you know, were identified in that QRA. So the 10.1 did not include certain things such as, you know, the Inquiry counsel costs – at the time we didn't talk about reservoir – complete clearing of all the soil, but capping. And capping, you know, if you did – if you do it in – you know, at a certain time, the right time to do it was last

year; if we do it this year we'll delay the project by a year.

And Ms. O'Brien said: You know, even capping it will delay a year.

And you said: Yeah, very possibly depending upon, you know, how much, you know, you do and when.

So, from that, I take it that the \$10.1-billion number, obviously there's no allowance in that for any cost associated with capping.

MR. P. HARRINGTON: And other things, yes.

MR. BUDDEN: Yes, and there may be other things, yet, outside of the couple of things we've discussed here, but which – because of commercial sensitivity – we won't get into.

MR. P. HARRINGTON: Okay.

MR. BUDDEN: Okay.

Madam Clerk, could you please bring up Exhibit 01769? And it's a fairly long exhibit and it will be the last and major focus of my questioning. I have a couple of more minor things.

MR. P. HARRINGTON: Could you say –?

MR. BUDDEN: 01769, which I suspect you may have in front of you but I don't have the –

MR. P. HARRINGTON: (Inaudible), tab 51.

THE COMMISSIONER: PMT, tab 51.

MR. P. HARRINGTON: Okay.

MR. BUDDEN: And I'm going to run through with you some of what I ran through with Mr. Power, and so if you saw his evidence some of this will be familiar.

What this is, as I understand it, Mr. Harrington, essentially was the – was Nalcor's – was the project management team's explanation to this Commission of some of the things they thought were important for the commission to understand about the cost and schedule issues. That's a fair description?

MR. P. HARRINGTON: My book seems to be –

THE COMMISSIONER: So it would be book 2 in the PMT –

MR. P. HARRINGTON: Oh, PMT, sorry. Right, I'll get there.

Right, I'm there.

MR. BUDDEN: No problem.

MR. P. HARRINGTON: Thank you.

MR. BUDDEN: My understanding is that this, essentially, is a project management team – excuse me – project management team – Nalcor's response or explanation to this Commission as to the reasoning behind some of the cost and schedule overruns.

MR. P. HARRINGTON: Well –

MR. BUDDEN: If not that, then perhaps you can tell me what it is.

MR. P. HARRINGTON: So the – as I think I mentioned yesterday and previously that these were put together – I commissioned them because, you know, it's very difficult for anyone to see a line of sight through millions of pieces of paper. And so I commissioned this to help both our own legal counsel, Grant Thornton found it beneficial and useful, and I really hope that they – the Commission itself find it –

MR. BUDDEN: Mm-hmm, okay.

MR. P. HARRINGTON: – useful, and other people.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: So it was – it wasn't in response to anything. It was kind of proactively –

MR. BUDDEN: Okay.

MR. P. HARRINGTON: – prepare –

MR. BUDDEN: Anticipating, fair enough.

MR. P. HARRINGTON: Yes.

MR. BUDDEN: Page 16, please, Madam Clerk, and it's the third sentence – I guess the third bullet that I'm interested in. And I think that's the third bullet – yes.

When we look down – that's again discussing the – a certain time frame, but the sentence that interests me: "It was also a period when the SNC-Lavalin (SLI) corruption scandals occurred and forced LCMC to change from the Engineering, Procurement and Construction Management (EP+CM) model to an integrated team."

So that's what the quote says. So is this true? Was it the corruption scandals that forced this change to an integrated team?

MR. P. HARRINGTON: Well, I can best explain that – you know, I think this is a – like a summary level. But it was a period when there were obvious issues with SNC at their – you know, the corporate office. And what was happening there is we were seeing at this end of that SNC organization – they were unable to provide the numbers of people that we required. They could not provide us with the processes and procedures that were required and even the systems that were required to, you know, suggest document control and various other things. They did have some systems and we still use them today, but they were falling short of what was required.

The fact that home office was falling apart, right, obviously meant that they weren't getting home office support at that period of time. It was manifesting itself at our end as all of those deficiencies that –

MR. BUDDEN: Okay.

MR. P. HARRINGTON: – clearly indicate – so that's what that's trying to say.

MR. BUDDEN: Okay. Standing alone, that sentence is pretty stark, isn't it?

MR. P. HARRINGTON: Well, I think you've always got to read things in context, yeah.

MR. BUDDEN: Okay.

The – so, there was no – there’s no suggestion that there was any corruption involving SNC and its dealings with Nalcor or with the Muskrat Falls Project.

MR. P. HARRINGTON: Oh, no.

MR. BUDDEN: There’s no allegation of that.

MR. P. HARRINGTON: If you’ve drawn that conclusion, then that’s a –

MR. BUDDEN: (Inaudible.)

MR. P. HARRINGTON: – misunderstanding.

MR. BUDDEN: I’m reading the sentence, and what I – I guess, my follow-up question – while there’s talk here of corruption, so the obvious follow-up question is: There’s no allegation of corruption –

MR. P. HARRINGTON: No.

MR. BUDDEN: – to do with this project?

MR. P. HARRINGTON: Absolutely not.

MR. BUDDEN: Okay.

So, even though – if I understand your answer, even though there’s no – it doesn’t say here that SNC were not delivering the right people into the right place in the right way – in fact, this is what it’s saying because the failures to deliver the right people was the secondary cause – secondary consequence of the corruption scandal.

Is that what you’re saying?

MR. P. HARRINGTON: Yeah, and the whole office – you know, the CEO was quitting – was later arrested. All of the people that we negotiated the contract with were either moved on, being sacked by SNC. So, there was – it was quite a challenging situation for SNC and ourselves. I mean, you know, no one wants that situation at all, but we had to deal with it.

MR. BUDDEN: So, they were, essentially, distracted. They weren’t there to deal with the problem, so you were forced to move on into the integrated team.

MR. P. HARRINGTON: That was part of it. You know –

MR. BUDDEN: Okay.

MR. P. HARRINGTON: – part of that the, you know, fact that they weren’t delivering that which they, you know, were contracted to deliver, and we could see that the project schedule was in jeopardy.

MR. BUDDEN: Okay.

Were the problems manifesting themselves in other ways? Were there concerns here that this was or could potentially impact the quality of the engineering?

MR. P. HARRINGTON: That is one area where I think SNC are extremely solid, and they’ve been solid for all these many years and still are. They’re engineering capabilities were excellent then and they’re excellent now.

MR. BUDDEN: So, even though they were chaotic, disorganized, home office was in turmoil, you couldn’t rely on them to deliver the right people, the engineering you still had confidence in.

MR. P. HARRINGTON: And many of the engineering people who were based in Montreal at that point in time –and the Hydro division was extremely solid; it still is. It’s the other parts of the project management aspects that just weren’t there.

MR. BUDDEN: Okay.

Let’s move on to page 38, Madam Clerk? And there’s a heading there, “*Effect on Muskrat Falls Project.*”

MR. P. HARRINGTON: Thirty-eight.

MR. BUDDEN: Here we go.

I’ll read it, just to keep us moving: “The Project was highly exposed due to SLI’s” – SNC Lavalin’s – “lack of performance. As such Nalcor initiated an independent review in March 2012 of SLI’s corporate practices and systems. The review found that these processes and

systems had not been implemented within the Project.

“The Project’s readiness for DG3 was being hampered by SLI’s performance.

“Dealing with SLI’s performance was a significant distraction for Nalcor Management, and before the switch to the Integrated Project Delivery Team ... Model, team effectiveness was poor.”

So I’m gonna unpack that a little bit. This independent review, who did it? Was it a written review? Was it a presentation? What were – can you tell us more?

MR. P. HARRINGTON: It’s an exhibit.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: And it was carried out by Mr. Derek Owen; a VP from the mines and metals division from SNC, whose name escapes me I’m afraid; a senior construction – you know, civil construction individual from the States – I forget his name, but it’s – all of that is in evidence somewhere.

MR. BUDDEN: Mm-hmm.

MR. P. HARRINGTON: And they came in and – it was called a cold eyes review. I was hearing, you know, all of these complaints coming from the team that, you know, we’re not getting this, we’re not getting that, and they’re not delivering this and they’re not delivering that. And I wanted to, you know, be sure. I wanted to get – you know, make sure that it wasn’t just a – you know, a superficial thing; that it was deep.

MR. BUDDEN: And that report had a recommendation?

MR. P. HARRINGTON: A recommendation? I think it was in – you know, intrinsic in it that – the fact that you’re not going to get there with these guys.

MR. BUDDEN: Okay. So, do I take it from that that it recommended – did it specifically recommend the transition to an integrated approach?

MR. P. HARRINGTON: No. No. I mean, it didn’t specifically. But, I mean, that was the obvious – you know, that was our, really, only choice.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: And what that meant was we had to go out and bring in other, you know, companies such as Hatch, Stantec agency personnel to fill the gaps. And – no easy task. And –

MR. BUDDEN: Mm-hmm.

MR. P. HARRINGTON: – but it was done, and it was done gradually.

MR. BUDDEN: Right.

MR. P. HARRINGTON: Right. You know, we – I think you heard from Mr. Pat Hussey that he – you know, he was dealing with people who had blank looks on their faces when he was talking about the most fundamental aspects of a megaproject. So you know, Pat – Mr. Hussey rather – took control over that situation. We took the best of all of those people that we could. He’d got it back on the tracks and here we are. You know, he managed to get all of those things done in a proper manner – interfacing with engineering properly.

But that’s just one example. You could say the same thing about all of the functions of project management: quality; project controls; safety; engineering was solid – I’ve mentioned that before but, you know, integration, risk – all of those areas that are fundamental to an effective project management team were gradually – and we thought, you know, accepted by the likes of Mr. Normand Béchard – working with us to actually get this thing turned around and make sure that we were getting the deliverables of the quality that we needed to be able to move to the next phase of the project.

MR. BUDDEN: Okay.

Next page, please, Madam Clerk, if you would. There’s a fairly dense paragraph here, but I think it’s an important one. Perhaps you could read it for us, and I have a handful of follow-up

questions. If you wouldn't mind reading this into the record.

MR. P. HARRINGTON: Can I look at the preamble to it, because I—

MR. BUDDEN: Yeah, sure. Just to acquaint yourself. Sure.

MR. P. HARRINGTON: "Nalcor's Board of Directors responded as follows:"

So, this is what they were saying.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: "It is important that there be some owner personnel involved in large construction projects to ensure there is a smooth transition from construction to the long-term operation of the facility. The owner's team presently includes approximately 50 Nalcor employees and approximately 80 contracted resources. The total number of personnel working on the Project in the" area "of owner's team, Engineering and Project/Construction Management is approximately 500, with the balance of 370 personnel being contracted resources. In our view, this 90-10 split represents a typical and appropriate division between owner employees and contractors; it is in keeping with best practices for large construction projects. Based on information reported by international organizations with expertise in the management of large projects, it is our understanding that budgets for Project/Construction Management and the owner's team combined typically run between 9 to 11% of total costs. The costs associated with these groups for the LCP are currently running at 9.5% of total costs, but are forecasted to decline to 7% by Project completion."

MR. BUDDEN: Okay.

MR. P. HARRINGTON: And that was a letter to Premier Ball from the Nalcor board of directors' chair, Mr. Paddick, dated 2nd of October, 2017.

MR. BUDDEN: Sure. So it was approximately 20 months or so ago. That — feeds nicely into

one of my questions. The last sentence: "*The costs associated with these for the LCP are currently running at 9.5% of total costs, but are forecasted to decline to 7% by Project completion.*"

Are — is the project on track for that decline, or do you have any idea?

MR. P. HARRINGTON: I couldn't answer. I don't know, I (inaudible).

MR. BUDDEN: Okay, fair enough. It's a fairly arcane point.

Just two other follow-up questions, the — they refer there to best practices, quote: "*Based on information reported by international*" — okay, the previous sentence, actually: "*In our view, this 90-10 split represents a typical and appropriate division between owner employees and contractors; it is in keeping with best practices for large construction projects.*"

Is that something that squares with your understanding, your experience, your sense of the literature?

MR. P. HARRINGTON: Yeah, I think there was some — I seem to remember there was some — a reference as well, but — yeah, it does, to be honest.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: Yes.

MR. BUDDEN: The — I guess the final question: If the normal range is between 9 and 11 per cent, would not 7 per cent, being outside that range, perhaps be too low? Is it getting too lean at a certain point?

MR. P. HARRINGTON: No, I think we're keeping costs down, you know, the — we're making sure that there's been no increases in any rates for the last four years.

MR. BUDDEN: Okay, gonna ask you a handful of questions now about, I guess, Astaldi's financial instability, which we talked about in a — as to how it got there, but, of course, the reality was they appear to have been financially

unstable in 2014 and thereabouts and perhaps after that.

MR. P. HARRINGTON: I think I wouldn't say 2014; I think it was 2015, 2016 when –

MR. BUDDEN: Fair enough, okay.

MR. P. HARRINGTON: – yeah, when – 2016, more than 2015.

MR. BUDDEN: All right. So but in time they became – as the project went on, there's –

MR. P. HARRINGTON: And –

MR. BUDDEN: – other problems.

MR. P. HARRINGTON: – and, if I may, and it was, I think, in 2016 that we – when we were coming up to the bridging agreement and we were told to stand down any negotiations with – it was with Astaldi until, you know – well, we waited six months until Mr. Marshall came back. So at that point in time, we were closely analyzing their cash flow issues, we did a deep dive into all of their – you know, their concessions across the world and how they might be able to, you know, come up with the money to finish the job.

So that was 2016, so I'm just getting my own mind here, so –

MR. BUDDEN: Okay, sure.

MR. P. HARRINGTON: – (inaudible).

MR. BUDDEN: That surprised me a bit, and perhaps you can clear it up, but we've – it's an exhibit here somewhere but I've just got my notes here now. Nalcor's Business and Financial Report for 2014 speaks, at page 87 [sp. 85], it says as follows:

“As” of “December 31, 2014, long-term receivables” included “\$36.9 million ... related to long-term advances to suppliers in relation to construction of the Lower Churchill Project. Of the \$36.9 million, \$33.2 million relates to the Muskrat Falls hydroelectric plant and is secured by a \$33.2 million letter of credit from a Canadian Schedule 1 Chartered bank.”

So I guess are these essentially –

MR. P. HARRINGTON: So, what were you reading from there? Sorry.

MR. BUDDEN: I'm reading from the financial report. You don't have it in front of you but these are the –

MR. P. HARRINGTON: (Inaudible.)

MR. BUDDEN: – from Nalcor's own financial report.

MR. P. HARRINGTON: Okay.

MR. BUDDEN: So they seem to suggest that money was being advanced – now if I'm reading it correctly, and I may not be –

MR. P. HARRINGTON: Yeah.

MR. BUDDEN: – they seem to suggest that significant money is being advanced to Astaldi as early as 2014.

MR. P. HARRINGTON: We advanced \$100 million to Astaldi right from the beginning.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: And they asked for that to be replenished as we went forward, so it was kind of a topping-up.

MR. BUDDEN: Okay. Was that anticipated in the contract?

MR. P. HARRINGTON: The \$100 million?

MR. BUDDEN: Yeah.

MR. P. HARRINGTON: Yes.

MR. BUDDEN: Okay.

So there was nothing out of the ordinary course of what was contemplated in the contract, nothing at all?

MR. P. HARRINGTON: Not that I'm aware of, no.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: I – yeah.

MR. BUDDEN: 'Cause I asked the same question of Scott O'Brien. He wasn't sure, but he thought that you –

MR. P. HARRINGTON: Yeah.

MR. BUDDEN: – would be the appropriate person to ask about –

MR. P. HARRINGTON: Mmm.

MR. BUDDEN: – cash advances to Astaldi.

MR. P. HARRINGTON: I'm – I – I'm pretty sure it was – that it was, you know, just a part of the contract that the \$100 million would be a kind of – yes, I'm pretty sure it was in there, yeah.

MR. BUDDEN: Okay.

Did the contract provide for penalties if Astaldi missed targets?

MR. P. HARRINGTON: \$75 million with unliquidated damages for milestone – failure to meet milestones.

MR. BUDDEN: Okay. And if I'm getting into fraught areas here, somebody, I'm sure, will let me know, but were those penalties ever assessed? Were they waived? What happened?

MR. P. HARRINGTON: Well, the bridging agreement and the completion agreement, there was a – you know, a resetting of things, and probably – it's probably best if I stop there, from a –

MR. BUDDEN: Okay. Well, fair enough.

This – the last thing, really, the – there were some comments made by you and by other project management team members, that at the time Mr. Martin left Nalcor and Mr. Marshall came in –

MR. P. HARRINGTON: Mmm.

MR. BUDDEN: – that SNC made a move and it was characterized in various unflattering ways, but, essentially, SNC made a move to – I think

the perception was they wanted to expand their role and diminish or eliminate much of the project management team. That was – you recall testifying to that effect?

MR. P. HARRINGTON: Absolutely. And –

MR. BUDDEN: Okay.

MR. P. HARRINGTON: – there is some exhibit which shows –

MR. BUDDEN: Yeah.

MR. P. HARRINGTON: – exactly what they intended.

MR. BUDDEN: Okay.

I was – I mean, I can understand why you might want to be replaced, why the other project management team members wouldn't. But, surely a CEO – with a new CEO coming into a project that was in trouble, way over budget, way over schedule, the subject of great public debate, great political debate – surely, a CEO would want to assess all his options. So what's out of hand with SNC coming forward and saying: Look, we've built dams, we can build this dam, take us on?

MR. P. HARRINGTON: I don't say that there's anything wrong with it.

MR. BUDDEN: Okay. And there's certainly nothing wrong with Mr. Marshall assessing all his options, one of which was to get rid of you guys.

MR. P. HARRINGTON: Absolutely, and he stuck with us.

MR. BUDDEN: Okay.

MR. P. HARRINGTON: And he's been a great supporter of the team there afterwards, and I really applaud him for that.

MR. BUDDEN: Okay.

Great supporter of the team but you're still saying: Shame on Nalcor.

MR. P. HARRINGTON: Well, I can have my opinions and I have said before, I – you know, I’m no shrinking violet. I’ll say what I mean when I think it’s appropriate and I’ve said as such to Stan. I did as – I told him. I thought that was, really, not a very nice thing to do to some of the people who were still around, who’d taken that project from a blank piece of paper and, you know, just an empty field and at – you know, I care about my team.

MR. BUDDEN: And one point of clarification, this is my last point (inaudible) with regard to the independent engineer. You did understand that the independent engineer wasn’t working for Nalcor.

MR. P. HARRINGTON: Yes.

MR. BUDDEN: The independent – yes.

MR. P. HARRINGTON: I did, yeah.

MR. BUDDEN: So any time you say to the – anything you said to the contrary, was just you misspeaking a little bit?

MR. P. HARRINGTON: Yeah. But we did have a contract with him, but it was assigned, I think, eventually to the Canada – so there’s – there was a shift.

MR. BUDDEN: Okay. But ultimately, he was overseeing you. He wasn’t working for you.

MR. P. HARRINGTON: That’s correct, but we may have had a contract with him. It’s a bizarre situation, I admit.

MR. BUDDEN: All right.

Thank you, Mr. Harrington.

MR. P. HARRINGTON: Thank you, Mr. Budden.

THE COMMISSIONER: Thank you.

Kathy Dunderdale’s not present.

Edmund Martin?

MR. SMITH: Mr. Harrington, Harold Smith for Edmund Martin.

I have a few questions arising from your evidence – particularly this morning. Could Madam Clerk put up 02229, please?

THE COMMISSIONER: 02229. Okay. That’s going to be on your screen.

MR. SMITH: Okay. You recognize this email that you sent on November 21, 2013?

MR. P. HARRINGTON: I’m just glancing at it –

MR. SMITH: Yeah. Sure.

MR. P. HARRINGTON: – at the moment, Mr. Smith.

Okay.

MR. SMITH: Okay. So, looking at that, and particularly in the section entitled or headed – cost – to Mr. Meaney. Okay, this is the 21st of November, I believe, 2013 – just before financial close. Okay?

Wasn’t it you that put the number 6.531 to the financial team?

MR. P. HARRINGTON: It looks – you’ve reminded me of that, Mr. Smith. Yes.

MR. SMITH: Okay. So, in terms of 6.531 – it wasn’t an issue of someone above you creating it –

MR. P. HARRINGTON: No.

MR. SMITH: – it is in fact you.

MR. P. HARRINGTON: Yeah. Absolutely.

MR. SMITH: Now –

MR. P. HARRINGTON: And I do say it’s a simplified but practical approach at the bottom. So –

MR. SMITH: Pardon?

MR. P. HARRINGTON: Yeah. I’m – yeah. It’s me.

MR. SMITH: I didn’t hear you. I’m sorry.

MR. P. HARRINGTON: I said – it was a simplified but practical approach –

MR. SMITH: Okay.

MR. P. HARRINGTON: – to use a cost increase of 5 per cent.

MR. SMITH: Okay. And now, do you know what the cost increase was in relation to some of the other crystal ball numbers that you saw?

MR. P. HARRINGTON: At the same time?

MR. SMITH: Yeah.

MR. P. HARRINGTON: I'd have to go back to those other ones but –

MR. SMITH: Okay. I'm afraid I don't have the reference, so –

MR. P. HARRINGTON: No.

MR. SMITH: I can't – I can't help you.

THE COMMISSIONER: 03346 maybe?

MR. SMITH: That's the –

THE COMMISSIONER: Tanya Power – is that what –

MR. SMITH: Yeah. The one with the listing from the various –

THE COMMISSIONER: Just let me just see if I can find it now. Somebody else could help me here. I thought it was 03346. No – 03779. So P-377 –

MR. SMITH: Madam Clerk, 03779? Yeah.

THE COMMISSIONER: I think that may be it, Mr. Smith.

MR. SMITH: Okay.

UNIDENTIFIED FEMALE SPEAKER:
(Inaudible.)

MR. SMITH: Yeah, I think that's the one you're referring to, Mr. Harrington?

MR. P. HARRINGTON: Yeah.

MR. SMITH: Okay.

And do you – can you tell from that whether or not it was using 5 per cent or some higher number?

MR. P. HARRINGTON: Some higher number, yeah.

MR. SMITH: Yeah.

I think if we do the calculation right it works out to 12 per cent.

MR. P. HARRINGTON: Right.

MR. SMITH: Okay.

Now I'd like to address another area, and that's the schedule at sanction. And am I to understand your evidence is that Mr. Martin and the executive, or Mr. Martin and Mr. Bennett, et cetera –

MR. P. HARRINGTON: Mm-hmm.

MR. SMITH: – actually set the schedule?

MR. P. HARRINGTON: No.

MR. SMITH: Okay.

The schedule that was set was created where?

MR. P. HARRINGTON: By SNC and our team.

MR. SMITH: And your team.

And in relation – I think you said yesterday, in relation to that schedule, okay, which was created by planners and people that –

MR. P. HARRINGTON: Yeah.

MR. SMITH: – do that sort of thing. That schedule went up to Mr. Martin and Mr. Bennett from the team –

MR. P. HARRINGTON: From the team.

MR. SMITH: – the project management team.

MR. P. HARRINGTON: Yes.

MR. SMITH: Okay.

Equally, when one looks at the schedule and trying to verify the schedule, what was Astaldi's view as to whether the schedule could be met?

MR. P. HARRINGTON: In?

MR. SMITH: In 2013.

MR. P. HARRINGTON: They were committing to it.

MR. SMITH: They were committed. And how were they committed, do you recall?

MR. P. HARRINGTON: They were committed to the tune of – they would be able to meet the milestones that would get you to the first power and full power dates and the river diversion, with the liquidated damages of \$75 million should they fail.

MR. SMITH: Should they fail.

Now do you know if Mr. Martin himself participated in the development of the schedule?

MR. P. HARRINGTON: No, he didn't.

MR. SMITH: And did you, as a project management team, express an opinion as to whether the schedule could be met?

MR. P. HARRINGTON: We thought it was achievable. Aggressive but achievable. And we also had the – you know, the information from Westney that was communicated.

MR. SMITH: And the origin, if you will, of the independent engineer's view of a schedule. Did you – what did you gather from his understanding?

MR. P. HARRINGTON: The independent engineer thought it was in the range that – from his experience.

MR. SMITH: That it could be achieved.

MR. P. HARRINGTON: That could be achieved, yes.

MR. SMITH: Okay.

The origins of the P50 cost estimate – do you know where the origins of P50 come from on the cost estimate for the project in around this time, 2013?

MR. P. HARRINGTON: So the – I'm trying to understand your question, Mr. Smith.

MR. SMITH: Okay, well for example, the cost estimate you indicated on a couple of occasions was a P50 –

MR. P. HARRINGTON: Right.

MR. SMITH: – which meant it could go either way.

MR. P. HARRINGTON: Yes.

MR. SMITH: It's sort of the middle.

MR. P. HARRINGTON: Yeah.

MR. SMITH: And where's the origins of that?

MR. P. HARRINGTON: That came from the Westney reports.

MR. SMITH: Okay. And did Mr. Martin have anything to do with doing the estimating or –?

MR. P. HARRINGTON: No.

MR. SMITH: No.

MR. P. HARRINGTON: None at all.

MR. SMITH: None at all.

MR. P. HARRINGTON: None at all.

MR. SMITH: So if Mr. Martin suggested a P50 and the schedule that was suggested by SNC –

MR. P. HARRINGTON: Mm-hmm.

MR. SMITH: – these are just recommendations that went to Mr. Martin?

MR. P. HARRINGTON: That's correct, yes.

MR. SMITH: Okay.

You talked about some of the – I – we’ve heard called management outlook numbers. You’ve called them indicative FFCs. Is that – I think that’s the same thing, is it not?

MR. P. HARRINGTON: Yes, yes.

MR. SMITH: Okay. And you had described them as crystal ball.

MR. P. HARRINGTON: Right.

MR. SMITH: Okay. And I want you to, sort of, give us your understanding of what you mean by there being a crystal ball type of number?

MR. P. HARRINGTON: Right. You know, it’s – the process that you would use is you would get the – your best knowledge of people who were around the table who had – you know, could look at what they were seeing as fixed and firm numbers, and then say, well look, if – say we’ve got five of 25 contracts and we’ve got bids and those five contracts are indicating this 5 per cent or whatever increase, well, if we project that forward, what would be the result if we did that?

And if we did that, what might happen? Could it be here, could it be there? Could it be less, could it be more? So there’d be a toing and froing between people who’ve got the most knowledge in that area, and then – we’d then present that, say look, this is where it could go, but we’re mitigating.

We can go for a rebate; we can do value engineering; we’ve got a chance of bringing that number down, because it’s a notional number. It doesn’t – it’s not fixed and firm, it’s not hammered down, and even that, you know, that number that we get from the bids, they can go up and down – well, they usually go down when you do value engineering. So it’s a dynamic thing, so that’s why it’s crystal balling, because you’re looking into the future, what might happen.

MR. SMITH: So there are factors within the crystal ball FFC, if you will, or the indicative FFC, which are not backed up by actual real numbers.

MR. P. HARRINGTON: No, no.

MR. SMITH: So the –

MR. P. HARRINGTON: It’s notional.

MR. SMITH: – it’s notional, okay.

And the outcomes of that forecast, if you will – let’s call it a forecast, an FFC is a forecast.

MR. P. HARRINGTON: Yeah.

MR. SMITH: The outcome of that forecast, does that happen, like, in minutes, days, weeks, months?

MR. P. HARRINGTON: Which? You mean when will it be realized?

MR. SMITH: Yeah, when you’ve actually finally have something that you can –

MR. P. HARRINGTON: How long is a piece of string is another way of putting it.

MR. SMITH: – yeah.

MR. P. HARRINGTON: You know, it depends on when that contract may be – go out to bid. It may be six months from now; it may be a year from now. So, you know, you are, look – stretching out into the future using your best knowledge that you’ve got at the time.

MR. SMITH: So these numbers really aren’t reliable?

MR. P. HARRINGTON: You couldn’t take them to the bank.

MR. SMITH: No.

MR. P. HARRINGTON: No.

MR. SMITH: You could not take them to the bank.

MR. P. HARRINGTON: No.

MR. SMITH: Thank you, Sir. That’s all the questions I have.

THE COMMISSIONER: All right, thank you.

As I've said, Kathy Dunderdale is not present. Former Provincial Government Officials '03 to '15.

MR. T. WILLIAMS: Good morning, Mr. Harrington.

MR. P. HARRINGTON: Good morning.

MR. T. WILLIAMS: My name is Tom Williams and I know we met when your – at your first appearance. I represent the group known as Elected Government Officials from 2003 to 2015 with the exception of former Premier Dunderdale. And I only have one line of questioning for you and it arises from Mr. Ralph's cross-examination this morning and just one of the comments that you had made there.

In reference to one of the issues that he had raised, you used the comment: Well, I would report up in the chain of command – I think was the quotation.

MR. P. HARRINGTON: Hmm.

MR. T. WILLIAMS: So, I'm just wondering – could you tell me what that chain of command is. I know your title, obviously, is project director. So when, then, you report – can you elaborate on who you report to and how far it goes up, please?

MR. P. HARRINGTON: So, I'll start with who reports to me, if I may. Because it's my focus as a project team; so the project general manager and all of his reports report to me, and so does the functional managers, project controls – all of the people who are actually doing the job, right?

Then I report to my VP and now EVP, which would be Gilbert Bennett.

MR. T. WILLIAMS: Okay.

MR. P. HARRINGTON: And yeah so, I would reside at Torbay Road – which is where our engineering office is and project management's offices are. Mr. Bennett would reside on the 6th floor of Nalcor's offices at Hydro Place. And he, in turn, would report to Mr. Martin.

MR. T. WILLIAMS: Okay.

MR. P. HARRINGTON: So, my – as I said, I used the term chain of command – I would report to Mr. Bennett and then Mr. Bennett would speak to Mr. Martin, and then sometimes I would report to both of them at the same time just for the sake of efficiency.

MR. T. WILLIAMS: Okay.

So, in your title and position, did you have any authority to deal directly with elected government officials in terms of project issues?

MR. P. HARRINGTON: Not –

MR. T. WILLIAMS: No.

MR. P. HARRINGTON: – before, you know, I may have – I presented to the Oversight Committee but I usually presented with my VP – Mr. Gilbert Bennett.

MR. T. WILLIAMS: And my understanding is that that would be your only involvement in terms of elected officials – would have been through the Oversight Committee. Is that correct?

MR. P. HARRINGTON: Yes and that was – didn't even start until the – late 2014.

MR. T. WILLIAMS: Okay. So, during the period of, we'll say 2003 to late 2014, which is nearly 2015 – you would not have had occasion to meet with any elected government officials –

MR. P. HARRINGTON: No.

MR. T. WILLIAMS: – with respect to any issues.

MR. P. HARRINGTON: No. I didn't, you know. Mr. Bennett met with the deputy ministers on a – I think it was a bi-weekly basis.

MR. T. WILLIAMS: Okay. So, any suggestions with respect to knowledge that any elected government officials may have had in relation to issues pertaining to costs, schedules, or risk assessment would not have been conveyed by you.

MR. P. HARRINGTON: That's correct.

MR. T. WILLIAMS: So, any assertions or any suggestions that you may have that government officials may have known, would only be from what you've gained from third parties who would have been responsible for dealing with those officials.

MR. P. HARRINGTON: That's correct.

MR. T. WILLIAMS: Okay. Thank you. That's all the questions I have. Thank you.

MR. P. HARRINGTON: Thank you.

THE COMMISSIONER: Thank you. Julia Mullaley/Charles Bown.

MR. FITZGERALD: No questions. Thank you.

THE COMMISSIONER: Robert Thompson is not present.

Consumer Advocate?

MR. P. HARRINGTON: Morning.

MR. HOGAN: Good morning, Mr. Harrington. My name is John Hogan, I'm counsel for the Consumer Advocate.

MR. P. HARRINGTON: John.

MR. HOGAN: Mr. Budden covered some of my topics, so that'll save everybody some time today. But I do want to go back to some questions about Astaldi.

MR. P. HARRINGTON: Okay.

MR. HOGAN: And specifically in 2013. So we've heard your evidence about the progress made on the LNTP, the Limited Notice To Proceed and then proceeded to execute the contract with Astaldi regardless of that. My question is: was there a concern that if Astaldi was not going to be the contractor because of the issues with the Limited Notice To Proceed – was there a concern that this would delay the project?

MR. P. HARRINGTON: Was there a concern?

MR. HOGAN: So you're in 2013 Astaldi is up there, they're not doing what they're supposed to be doing, Mr. O'Brien said they did very little –

MR. P. HARRINGTON: Yeah

MR. HOGAN: – with the Limited Notice To Proceed. You and Mr. O'Brien and other people have said regardless of that –

MR. P. HARRINGTON: Yeah.

MR. HOGAN: – we made the decision to proceed with Astaldi.

MR. P. HARRINGTON: Yeah.

MR. HOGAN: People are going to argue that that was probably a bad idea but that's for other people to argue. My question is, was there any discussions or concern that if we do get rid of Astaldi now, before executing the contract with them, it's going to cause a delay in proceeding with the project?

MR. P. HARRINGTON: I don't think it was that. I think it was the opposite. I think what we were saying is, Astaldi you've seen that, you know, you've lost – you haven't taken advantage of the LNTP as you perhaps should have done. Can you still make the milestones and can you still achieve the contract that you, you know, that you've agreed to and they came back and said yes and signed a waiver to say that yes, they would still commit to meeting the milestones and that the liquidated damages of \$75 million still applied for the dates that we agreed upon.

MR. HOGAN: Were there any specific discussions to say, look, let's move on from Astaldi and bring in a new contractor, which then might involve time to analyze a new bid or the old bids that had already been there. Did that discussion happen and say, look, let's not do that because it's going to waste too much time. We need to get the project moving.

MR. P. HARRINGTON: I don't recall any such discussions.

MR. HOGAN: Okay.

Can we please turn to P-03707 and this is an email you were brought to yesterday.

THE COMMISSIONER: So that would be at tab – 03707 – tab 71 in your book 2.

MR. P. HARRINGTON: Thank you, Commissioner.

MR. HOGAN: So I'm – you can have a look. I'm sure you probably recall it, but ...

MR. P. HARRINGTON: Okay, this one. Yes.

MR. HOGAN: Yeah. So I just wanna look at page 2. So keep in mind that when these issues are going on with Astaldi and the Limited Notice to Proceed in the fall of 2013, we're coming up on financial close, correct?

MR. P. HARRINGTON: Correct.

MR. HOGAN: I guess schedule financial close. And Mr. Martin writes you with his concerns about Astaldi – these four sort of jot notes. And the question number 2, he says, "Can these things be fixed in time?" And this is November 2013.

So my question is, in time for what?

MR. P. HARRINGTON: "Can these things be fixed in time?" In time to meet the milestones.

MR. HOGAN: What milestones, though?

MR. P. HARRINGTON: The contract milestones.

MR. HOGAN: There's no contract yet, right?

MR. P. HARRINGTON: Yeah, but the contract – you know, what he's talking about – can you achieve the milestones that we'd been negotiating with them over a period of time.

MR. HOGAN: Okay, now, to be fair, you didn't write this, so it'll probably be put – I'll put it to Mr. Martin, but that –

MR. P. HARRINGTON: I'm guessing, so –

MR. HOGAN: So what your interpretation of that is the long-term contract milestones.

MR. P. HARRINGTON: Yeah. Yeah.

MR. HOGAN: Okay.

MR. P. HARRINGTON: That nothing that was being done or not being done now would compromise those.

MR. HOGAN: And I'll put it to you, would an interpretation be that can these things with – that are going on right now with the Limited Notice to Proceed be fixed in time, and in time being to make sure we can get it – a contract signed with Astaldi before financial close?

MR. P. HARRINGTON: Well – then you would have to ask Mr. Martin.

MR. HOGAN: Okay. Will do. Thank you.

Want to turn to the issue, now, of commercial sensitivity, which the Commission has been – I don't want – not gonna use the word struggling but going back and forth with – on this issue for the whole time of the Inquiry. And obviously it was an issue of concern to you throughout the project. Is that fair to say?

MR. P. HARRINGTON: It is.

MR. HOGAN: So how is – how was, during the lifetime of the project, the issue of commercial sensitivity decided?

MR. P. HARRINGTON: Well, (inaudible) it was just an opinion, right –

MR. HOGAN: Okay.

MR. P. HARRINGTON: – so, ultimately, it wouldn't be one person's decision. So if there was – let's use the example of –

MR. HOGAN: I know it's a very vague, broad question, so we can drill down –

MR. P. HARRINGTON: Well, I'm used to them now.

MR. HOGAN: Go ahead.

Go ahead.

MR. P. HARRINGTON: So if, you know, if – I'll give you an example –

MR. HOGAN: Yeah.

MR. P. HARRINGTON: – if we received a report, right, that was sent – let's say from, you know, EY for the sake of argument – that came over via government to Nalcor for review. That would go to a central person be it, you know, Gilbert Bennett for the sake of argument again. Gilbert would then distribute it to people or Jim Meaney and say, is – please review this and identify areas of what you think are comments of commercial sensitivity, right? So it can be a combination of, you know, things that you think are wrong, and, perhaps, you know – or inappropriate and things which are commercially sensitive. So, then, we would make those identifications and think, you know, right at the moment we may be in across the table with Astaldi, or Astaldi may be going for some funding arrangements, or whatever. And coming out with some information, right at that point in time, which may be, you know, subjective, could affect their share price, for example, then we'd flag that, say, could be commercially sensitive. That would be, you know, gathered by Mr. Bennett, and then he would pass it over to the government, and then that would go to the authors. And then it was up to the authors to accept or reject it.

MR. HOGAN: So, this –

MR. P. HARRINGTON: That's the process.

MR. HOGAN: – is done on an ad hoc basis as the issues are raised?

MR. P. HARRINGTON: That's – yeah, and it can change. You know, something that's commercially sensitive today might not be commercially sensitive in a week's time because you've settled an – you know, you've settled something or the issue that you were concerned about has now – is behind you.

So, it's – you can't just set – you know.

MR. HOGAN: So, there is no policy that says this – that you used when you did this analysis?

MR. P. HARRINGTON: Subjective.

MR. HOGAN: Subjective.

MR. P. HARRINGTON: Yes.

MR. HOGAN: Okay. And it's – so, what might be commercially sensitive to you may or may not be to Mr. Bennett, Mr. Martin, et cetera?

MR. P. HARRINGTON: Correct, and they can say no or yes, or I think there's even more that you should be doing. So, it's a collective thing.

MR. HOGAN: So, let's talk about the EY – one of the EY reports, I guess. And you – if we can bring up, please, 03650?

THE COMMISSIONER: 03650. So that's at tab – PMT binder 1 at tab 40.

MR. HOGAN: So, again, you would've seen this email over the last couple of days.

If we can turn to page 3, please? The bottom. This is an email from you, I think I'm following the chain properly, to Dawn Dalley, Gilbert Bennett, Ed Martin?

Can we scroll down a little bit more, please?

So, this is your words here: "The attached word file is my review of the E&Y report using the lens of Commercially Sensitive- regarding Astaldi."

So, my question is –

MR. P. HARRINGTON: Could I just –?

MR. HOGAN: This is your subjective lens, obviously.

MR. P. HARRINGTON: Yeah.

MR. HOGAN: Okay. Go ahead.

MR. P. HARRINGTON: I think I'm looking at the wrong one.

MR. HOGAN: 03650?

MR. P. HARRINGTON: Yes. I was looking – it's 41, (inaudible).

Yes, I've got the right one now, so –

MR. HOGAN: Okay. Yeah, go ahead.

MR. P. HARRINGTON: Go ahead.

MR. HOGAN: So, you're looking through this through your subjective lens of what's commercially sensitive, correct?

MR. P. HARRINGTON: Because we're knee-deep in discussions of a commercial nature with Astaldi, so again, that's the contemporary nature of the commercial sensitivity.

MR. HOGAN: So my question is – I guess we can be specific to this – is who's directing you to review for commercially sensitive information? Where is that direction coming from? And who's delegating that responsibility to you?

MR. P. HARRINGTON: That would be coming from Gilbert Bennett and Dawn Dalley.

MR. HOGAN: Is that on that email chain?

MR. P. HARRINGTON: Maybe not, but, I mean, that's the only way I'd get hold of this.

MR. HOGAN: So, Mr. Harrington, I just – I'll put it in a different context, and you can explain to me. Because the way I look at it is it's you taking a responsibility to determine what's commercially sensitive through your lens. I'm – that's okay.

MR. P. HARRINGTON: That's okay.

MR. HOGAN: The rest of the emails, you've – you send it to Dawn and say – Dawn Dalley – “I cannot stress enough the damage releasing this report can do” It's “a critical issue to me.”

And –

MR. P. HARRINGTON: Yeah.

MR. HOGAN: – then you forward it to Mr. Bennett and say: It's “a very serious issue,” we need to put a halt to EY, we're gonna “be screwed,” it's “a battle we have to win,” this is “foolishness.”

I don't see anyone from the government on this email chain, so I'm just wondering why you're so focused on being – on – why you're so focused on this commercially sensitive issue when I see it as the government who would control that issue, not you, not the project director. And if I'm wrong on that, you can explain it to me. But this certainly looks like you're angling to keep materials and information redacted.

MR. P. HARRINGTON: But at the time, right, the CEO of Nalcor had the veto on commercial sensitivity, not the government.

MR. HOGAN: Based on – where is that information?

MR. P. HARRINGTON: That's in the energy control act [sp. *Energy Corporation Act*].

MR. HOGAN: Okay.

THE COMMISSIONER: And that relates to ATIPPA, right?

MR. P. HARRINGTON: I believe so but I could – I mean, I don't know exactly.

MR. HOGAN: So again if this –

MR. P. HARRINGTON: That was my understanding, Commissioner, that –

THE COMMISSIONER: Right, so under the energy control act, there are provisions for the CEO to be able to have an absolute veto with regards to commercially sensitive information, but that is with regards to ATIPPA requests.

MR. P. HARRINGTON: Yeah, and that's – the thing – what I was worried about here is that that –

THE COMMISSIONER: Okay, no –

MR. P. HARRINGTON: – report –

THE COMMISSIONER: – I don't mean to – I think I know where Mr. Hogan is going so –

MR. HOGAN: No, you can go ahead if you –

THE COMMISSIONER: – I didn't mean to interrupt you there. But I just – I think that – I think you have to look at what that act says and what the meaning of it is, and you have to take that into account.

MR. HOGAN: So I'll just ask it again, I mean, and if – this is a specific example that struck me as why you're so involved in determining what's commercially sensitive.

MR. P. HARRINGTON: (Inaudible.)

MR. HOGAN: Why is it your issue to determine when – I see it as a government issue and/or now you're saying a CEO issue?

MR. P. HARRINGTON: Because I was – well, I was asked to provide comments.

MR. HOGAN: Yeah, but go to – you report to Dawn Dalley about this. You don't get – I don't see an answer from Dawn and then it seems like you go to Mr. Bennett about it.

MR. P. HARRINGTON: But you may not have the full thread. I don't know.

MR. HOGAN: Okay. So what do you recollect about it then?

MR. P. HARRINGTON: When was this written? This – I don't – I can't recall all of the emails that might've proceeded this or conversations, indeed, that may have proceeded it. Or, Paul, go have a look at this and tell me what you think is commercially sensitive.

MR. HOGAN: So let's put it this way, do you –

MR. P. HARRINGTON: I wouldn't do it without being asked to do it.

MR. HOGAN: Well, that was going to be my question. Do you see as part of your role is to protect what's commercially sensitive? Or are you only doing it on instructions of someone from above?

MR. P. HARRINGTON: Generally – well, only from instructions from above.

MR. HOGAN: We heard evidence from Julia Mullaley that an EY report went to Cabinet in the fall of 2015.

MR. P. HARRINGTON: (Inaudible), sorry. But I'm just looking at the next exhibit.

No, it doesn't matter. But – go ahead.

MR. HOGAN: So we heard evidence from Ms. Mullaley that an – one of the – an EY report went to Cabinet in the fall of 2015. Cabinet had agreed to release it publicly. Are you familiar with this issue? Do you recall it?

MR. P. HARRINGTON: I'm aware of it, yeah.

MR. HOGAN: And then Ms. Mullaley said that there would've been a meeting outside of Cabinet where – I'm pretty sure she said Mr. Martin said: Look, there's commercially sensitive information in here.

MR. P. HARRINGTON: Yeah.

MR. HOGAN: It went back to Cabinet and then Cabinet made the decision not to release the report. Are you familiar with this?

MR. P. HARRINGTON: Or to split the report.

MR. HOGAN: Yes. Are you familiar with this?

MR. P. HARRINGTON: Yes.

MR. HOGAN: So were you involved in that? Were you at that meeting?

MR. P. HARRINGTON: No.

MR. HOGAN: You weren't there.

MR. P. HARRINGTON: No.

MR. HOGAN: So you had no involvement in that?

MR. P. HARRINGTON: No.

MR. HOGAN: Okay.

If we could please turn to P-04040; this is an email Mr. Collins took you to late yesterday afternoon.

THE COMMISSIONER: Tab 106 in your book.

MR. P. HARRINGTON: 106. Oh, the new ones.

MR. HOGAN: If we can scroll down, sorry, about halfway down the page – it starts with Gilbert – right there, okay.

So this is your email to Mr. Bennett, May 19, 2010. And the part I'm interested in, it says – it's the third line: "The drive behind this Muskrat Stand-alone case was to get the cap costs down as low as possible because we were advised that the LCC case did not work."

So my first question is: When did this drive behind this stand-alone case start?

MR. P. HARRINGTON: As I mentioned yesterday, the first time this was presented to me was yesterday –

MR. HOGAN: Yeah.

MR. P. HARRINGTON: – and so – and I mentioned yesterday that this is nine years ago. And –

MR. HOGAN: So even in – let's – maybe if you can just step back –

MR. P. HARRINGTON: Could I finish?

MR. HOGAN: – when did you first become involved with the Lower Churchill Project?

MR. P. HARRINGTON: Could I finish?

MR. HOGAN: Yeah, sorry.

MR. P. HARRINGTON: Yeah.

I – so, as I was explaining – my train of thought is gone now. But, you know, it was nine years ago. I only saw this again yesterday. I can't remember all of them. I mean, I don't know how many cases we looked at for – you know, at different points in time and whatever. So my knowledge and my – I can't add much to this. I really can't because it's so long ago.

MR. HOGAN: So we'll try it this way: When did you start on the Lower Churchill Project?

MR. P. HARRINGTON: 2006.

MR. HOGAN: And that would've included Gull Island?

MR. P. HARRINGTON: Gull Island and a completely different scenario with three HVDC converter stations. You know, there's been so many evolutions of different cases over time, and then we'd be asked to go and do an estimate for this and give us a view on that and then is there any – are there any technical issues that we should be – so this is one example of that type of thinking at the time. Whether that's a fixed thing or whether that ended up as anything – again, I can't really help you there.

MR. HOGAN: So forget about this email then. Can you recall when a drive – and this is your words – for a Muskrat stand-alone case started?

MR. P. HARRINGTON: When did we look –

MR. HOGAN: Can you recall that?

MR. P. HARRINGTON: – for Muskrat – well, I can't remember the exact date, but it was shortly after the route through Quebec was found to be not viable. I can't remember the date, I'm sorry, Mr. Hogan.

MR. HOGAN: Okay. It was – actually it was nine days before this email.

MR. P. HARRINGTON: Was it?

MR. HOGAN: Yes.

MR. P. HARRINGTON: Okay. (Inaudible) knew.

MR. HOGAN: So – what's that?

MR. P. HARRINGTON: You already knew.

MR. HOGAN: I knew, yeah.

MR. P. HARRINGTON: Yes.

MR. HOGAN: So my second question then is: Was this stand-alone project only for – was it for

domestic purposes or was it for domestic and export purposes? Do you recall that?

MR. P. HARRINGTON: Well, because you had connection to Churchill Falls there would always be an element of export.

MR. HOGAN: There'd always be an element. But you recall when the project was initially announced it was because it was the cheapest option for domestic purposes.

MR. P. HARRINGTON: That's correct.

MR. HOGAN: The evidence we have was that it was being looked at for export purposes in the event that we couldn't get through Quebec.

MR. P. HARRINGTON: I could – you know –

MR. HOGAN: And if you don't know the answer, you don't know.

MR. P. HARRINGTON: I –

MR. HOGAN: Can you recall when the Muskrat stand-alone domestic case first started?

MR. P. HARRINGTON: No.

MR. HOGAN: No?

MR. P. HARRINGTON: No.

MR. HOGAN: Okay.

If we could please look at P-01962 again; this was your letter to Mr. Marshall in June of 2016.

MR. P. HARRINGTON: Oh –

THE COMMISSIONER: That's tab 72 in your book.

MR. P. HARRINGTON: It's almost worn out.

THE COMMISSIONER: Tab 72.

MR. P. HARRINGTON: Yes.

MR. HOGAN: So Mr. Budden took you through this. I'm not going to spend too much time on it except for I will point out again this sentence, "The unlikely probability of achieving

these cost and schedule targets was well known."

Now, you're responsible for bringing the project in – for completing the project, correct?

MR. P. HARRINGTON: I am.

MR. HOGAN: So were you responsible and did you take on the responsibility in 2012 to bring it in on time and on budget?

MR. P. HARRINGTON: I did my (inaudible), yes.

MR. HOGAN: Yeah, but it was your responsibility, wasn't it?

MR. P. HARRINGTON: Yes.

MR. HOGAN: Okay.

So my question is: Why are you raising the issue now – sounding like it was never going to happen? Why didn't you raise it as a caveat in 2012?

MR. P. HARRINGTON: As I mentioned previously, the context that I prepared this letter was one of a project team that was looking over their shoulder – shall we say that – because they thought: This is it, we're gone, we're going. And the amount of anxiety – I was defending the project. I was using a bit of hindsight here. I always will try and defend the project team.

MR. HOGAN: So do you think the public should've known that the project director in 2012 thought it was unlikely that the project would come in on time and on budget?

MR. P. HARRINGTON: I didn't say that. In 2012 – in 2012 I thought the project was achievable. I thought the costs were achievable, right –

MR. HOGAN: I guess we're getting into semantics, which Mr. Budden got into with – it's the unlikely probability of achieving these cost and schedule targets.

MR. P. HARRINGTON: This is 2016, this is hindsight, right?

MR. HOGAN: In 2012 it was unlikely, wasn't it?

MR. P. HARRINGTON: No. I told you we had a P50 and we had risks, so –

THE COMMISSIONER: But just to –

MR. P. HARRINGTON: So –

THE COMMISSIONER: – just on that, if you look at the previous sentence, Mr. Harrington, it says that the – it was an “aggressive schedule with a First Power target that was recognized as being” a “P5 to P10.” It's not P50. You're saying that it was recognized then as being a P5 to a P10.

MR. P. HARRINGTON: Yes.

THE COMMISSIONER: So P5 to P10 is not P50.

MR. P. HARRINGTON: But it was the – as I mentioned – Commissioner, as I mentioned before, we had a view point from Westney of a low probability based upon not achieving those weather window – weather windows. But we also had a detailed schedule of thousands of line items from experienced personnel, planning personnel, who said the – that the – it was achievable. It was not achievable if you didn't make these critical milestones. We made two out of three of them. The third one was because of Astaldi, not because of labour productivity or whatever.

That – so, that – I've stated that previously.

MR. HOGAN: Who did you think in – who did you think would shoulder the blame from the public if and when the project didn't come in on time and on budget?

MR. P. HARRINGTON: Who do you think –?

MR. HOGAN: Who did you think was gonna shoulder the blame? Because you don't seem to want to take the responsibility here, which is why you're writing Mr. Marshall.

MR. P. HARRINGTON: No, I'm trying to protect the team here; I'm not trying to abdicate any responsibility, Mr. Hogan.

MR. HOGAN: So you are taking responsibility –

MR. P. HARRINGTON: Well, yes –

MR. HOGAN: – as project director.

MR. P. HARRINGTON: – I'm responsible. I'm the project director.

MR. HOGAN: So when you said to Mr. Budden to – and you said it again, you're speaking on behalf of the team – who at the team did you consult before writing this letter to Mr. Marshall?

MR. P. HARRINGTON: Who was I – it was a – in evidence, I think there's been some drafts that were submitted before and some emails. I can't remember accurately all of the people who were involved, but there was a significant number of people.

MR. HOGAN: If we could please to turn to P-04039.

THE COMMISSIONER: That would be at tab 105, same book.

MR. HOGAN: And so, the next couple of questions I have and the next couple of topics – I'm just getting clarification. You may have answered it yesterday.

But this is the back and forth with EY regarding the NDA and the COI. You recall all that evidence you gave yesterday.

MR. P. HARRINGTON: That's right.

MR. HOGAN: So where was government in all of this at this point in time?

MR. P. HARRINGTON: The government was the client for EY.

MR. HOGAN: Exactly.

So my question again – and it sort of goes to the commercial sensitivity issue – why are you involved with sorting all this out with EY? If government says, we're hiring this consultant to do oversight, why is it your concern what's –

about any conflicts or any issues like that? Isn't that governments issue to deal with?

MR. P. HARRINGTON: No, the – my legal counsel told me that we needed an NDA, and it's perfectly normal business.

MR. HOGAN: I understand that. I – the quote you said yesterday was the project team doesn't set policy, we just reflect the policy that's provided to us. So I sort of see this as the government saying, look, we're hiring EY, whatever they want you deal with it. And if there's a problem with it, then maybe you put it up the line to Mr. Bennett. But you're going back and forth with EY. I guess I'm sort of missing the chain of command here.

MR. P. HARRINGTON: I'm not going back and forth with EY; I'm going back and forth with Charles Bown, Steve Pellerin and Gilbert Bennett.

And they're telling me, not me telling them: "This has to be cleared before we can proceed. We must have confirmation that none exist..."

"G" – that's Gilbert Bennett.

MR. HOGAN: But it's you and Lance pulling Mr. Kennedy aside to talk about it in item number 2.

MR. P. HARRINGTON: Yeah, because we were told that we had to have this.

MR. HOGAN: Oh, by government?

MR. P. HARRINGTON: Well, our legal counsel.

MR. HOGAN: For who?

MR. P. HARRINGTON: For Nalcor.

MR. HOGAN: For Nalcor.

MR. P. HARRINGTON: Yes.

MR. HOGAN: Okay.

So where's the government instructions though that – like, where's their involvement in all this?

And there might be an answer to it. I just don't see it in this email chain.

MR. P. HARRINGTON: Well it may – I don't see it either, right? But government were involved in it and, as you say, (inaudible) – Mr. Bown ...

You know, if we go on and provide information to outside parties, it's perfectly normal to have a nondisclosure agreement and, in this case, because we knew that EY were also having contractual work with Astaldi. So we needed to get that ring-fence agreement in place. So, it's not me being difficult or obstructive; it's me saying: Well, what do we need in place here? What are the prerequisites before we can start releasing data?

MR. HOGAN: Again, my point is simply: I don't see it as your responsibility; I see it as the government's responsibility.

MR. P. HARRINGTON: Well, okay. Well, we differ in that.

MR. HOGAN: Yeah. Thanks.

The SNC report that came – the risk report that you became aware of in May of 2013.

MR. P. HARRINGTON: Right.

MR. HOGAN: And then fast-forward to 2017 when you retained Westney to do an analysis of it, correct?

MR. P. HARRINGTON: That's correct.

MR. HOGAN: And, I don't know if this was asked and answered yesterday, I could – so I'll ask it again: Why wasn't the analysis done and the comparison done in May of 2013?

MR. P. HARRINGTON: Because we didn't get the report.

MR. HOGAN: Okay, but you could have gotten the report, right?

MR. P. HARRINGTON: They didn't give us the report.

MR. HOGAN: You asked not to have it though, correct?

MR. P. HARRINGTON: I should have preferred not to have it, because it was internal, confidential, and not finished and not approved.

MR. HOGAN: But if you had have had the report, you had asked for it and you received it, an analysis could've been done in 2013 to compare –

MR. P. HARRINGTON: Could've, should've –

MR. HOGAN: Okay.

MR. P. HARRINGTON: – maybe, I don't know, but it wasn't done.

MR. HOGAN: So it was only because the report went public in 2017, you made the decision to do the analysis.

MR. P. HARRINGTON: Because there was – you know, there was some criticism of the team saying –

MR. HOGAN: Yeah.

MR. P. HARRINGTON: – we were not diligent in our duties with regard to risk, and that's a pretty serious –

MR. HOGAN: Public criticism at that point in time.

MR. P. HARRINGTON: Pardon?

MR. HOGAN: Public criticism at that point in time.

MR. P. HARRINGTON: Well it was media criticism, I think, and from the minister.

MR. HOGAN: Okay.

Thank you, Mr. Harrington. That's all the questions I have.

MR. P. HARRINGTON: Thank you, Mr. Hogan.

THE COMMISSIONER: All right.

Innu Nation, Nunatsiavut, NunatuKavut.

MR. COOKE: Good morning, Mr. Harrington.

MR. P. HARRINGTON: Afternoon, actually.

MR. COOKE: Oh, afternoon, indeed.

My name is Jason Cooke. I'm the lawyer for NunatuKavut Community Council.

MR. P. HARRINGTON: Pleased to meet you, Mr. Cooke.

MR. COOKE: Likewise.

Gonna start with some questions about the reservoir and reservoir cleaning.

MR. P. HARRINGTON: Okay.

MR. COOKE: Clearing, I should say.

And you're obviously aware that there were concerns raised by a number of groups around methylmercury –

MR. P. HARRINGTON: Yeah, yeah.

MR. COOKE: – issues relating to –

MR. P. HARRINGTON: Yeah, yeah.

MR. COOKE: – the reservoir and the amount of clearing related to –

MR. P. HARRINGTON: I'm aware of a lot of those things.

MR. COOKE: Mm-hmm.

MR. P. HARRINGTON: I'm not the prime contact with those things. So, you know, those issues are being dealt more with by Mr. Gilbert Bennett.

MR. COOKE: Okay.

MR. P. HARRINGTON: Yeah, so I may be – not be able to answer all of your questions fully, and I just wanted to be up front about that.

MR. COOKE: Fair enough, so just let me know if there's areas that you think would be more appropriate to explore with Mr. Bennett, for –

MR. P. HARRINGTON: Yeah, sure.

MR. COOKE: – example, and –

MR. P. HARRINGTON: Yes.

MR. COOKE: – if you can just note that, that would be great.

MR. P. HARRINGTON: Right.

MR. COOKE: But in any case, as project director, obviously issues of reservoir clearing are directly impacting your role and your team's role, correct?

MR. P. HARRINGTON: That's, yeah, it's an important feature and, you know, sometimes we have to delegate or spilt, you know. We can't look everything all at the same time, so in – there are occasions like in this case where Mr. Gilbert Bennett has taken the lead with that one, and he keeps me informed and I keep him informed of other things.

MR. COOKE: And, you were aware that there were some either groups or individuals advocating for additional clearing and soil removal than what was –

MR. P. HARRINGTON: Yes.

MR. COOKE: – proposed by Nalcor.

MR. P. HARRINGTON: I am aware of that, yes.

MR. COOKE: And, it's fair to say that if there were additional clearing and soil removal, that would have impact on cost. Correct?

MR. P. HARRINGTON: That's correct.

MR. COOKE: And also, likely on scheduling and timing?

MR. P. HARRINGTON: Absolutely. On schedule, yes.

MR. COOKE: And, were you aware at all that perhaps if their additional clearing or soil removal was to occur, that that may trigger new environmental assessments?

MR. P. HARRINGTON: Yes. I was aware that that was a possibility.

MR. COOKE: Mmm. And again, in terms of costs and scheduling, if there was an additional environmental process, that would – the process itself would create additional cost. Correct?

MR. P. HARRINGTON: Correct.

MR. COOKE: And would likely have an impact on the schedule?

MR. P. HARRINGTON: Depending upon the level of environmental assessment that may be applied, it – you know, there are different types, as you know, yes.

MR. COOKE: Fair enough. But it was certainly a possibility that it could create delay from the schedule, as a result of the process.

MR. P. HARRINGTON: Yes, depending upon when you applied.

MR. COOKE: I'm going to take you to a document, P-03460.

MR. P. HARRINGTON: 03460.

THE COMMISSIONER: That is going to be on –

MR. P. HARRINGTON: Two, 97.

THE COMMISSIONER: That's in tab 97, yeah. Your book.

MR. P. HARRINGTON: Ninety-seven, I think it is –

THE COMMISSIONER: Yes.

MR. P. HARRINGTON: – Commissioner?

MR. COOKE: And this is a – it looks like it's a October 2016 document from Government of Newfoundland and Labrador, sent by Mr. Bown to Mr. Coffey. You see that on the first page –

MR. P. HARRINGTON: Yes.

MR. COOKE: – page 1? And I’m just going to take you to page 5 for a moment, Mr. Harrington.

MR. P. HARRINGTON: Okay.

MR. COOKE: I don’t expect – have you reviewed this document –

MR. P. HARRINGTON: Never seen –

MR. COOKE: – previous –?

MR. P. HARRINGTON: – it before.

MR. COOKE: Okay. So why don’t we go through it together, then –

MR. P. HARRINGTON: Okay.

MR. COOKE: – and then I’m going to have a few questions for you. So if you’re on page 5, there’s item number 7.

MR. P. HARRINGTON: Yes.

MR. COOKE: And these are – the numbered questions are described as discussion questions at the beginning of this – of this memo. And number 7 says the following: **“The Nunatsiavut Government has been demanding that NL require Nalcor to fully clear the reservoir of timber, brush and topsoil to limit the production of methylmercury. I understand that undertaking such a reservoir clearing regime would be costly and would have further impacts on the project schedule. From Canada’s standpoint, this is a matter of provincial jurisdiction. That said, given Canada’s interest in the projects, how do you perceive the legal risk of proceeding with the current plan of partial clearing?”**

And then I’m just going to go to the response. So, I think what the evidence has suggested, Mr. Harrington, is that these are questions that were put to the Government of Newfoundland and Labrador by Canada.

MR. P. HARRINGTON: Oh, okay. Yeah.

MR. COOKE: And so the response is as follows: “The reservoir clearing plan adopted for Muskrat Falls is consistent with the proponent’s ‘partial clearing’ plan (approximately 75% of timber) described in the environmental assessment for the project.”

And then it goes on and talks about what full clearing, as described in the Joint Review Panel report, involves. I just want to take you to the last paragraph, for the moment, that starts with “Soil stripping” Right at the bottom of page 5, Mr. Harrington.

MR. P. HARRINGTON: Yes.

MR. COOKE: Okay. And it says: “Soil stripping is therefore not a part of the current project.” And that was your understanding of what the – what the current project included. Correct?

MR. P. HARRINGTON: Yes.

MR. COOKE: Okay. And it says: “Given the potential for impacts on fish and fish habitat from further clearing and soil stripping, Nalcor is of the view that a federal EA trigger exists related to these impacts and a subsequent section 35 Fisheries Act authorization.” It goes on to say: “Nalcor also notes that any new reservoir clearing/stripping undertaking may trigger federal EA provisions through the operation of the federal loan guarantee. Provincial triggers would also apply.”

Were you aware of this? Were you aware of the fact that that – that the further clearing could trigger these new environmental assessments?

MR. P. HARRINGTON: I think I mentioned that earlier.

MR. COOKE: Yeah. And so I – the related question to that is: When did you become aware, to the best of your knowledge?

MR. P. HARRINGTON: I couldn’t say with any great certainty.

MR. COOKE: Okay.

In terms of costing contingencies, and we've looked at a lot of risk assessment documents – and maybe I'll just take you to one at P-04018.

MR. P. HARRINGTON: It's 91.

THE COMMISSIONER: Tab 91?

MR. P. HARRINGTON: Yes.

MR. COOKE: And this is a document prepared by Nalcor?

MR. P. HARRINGTON: Westney, actually.

MR. COOKE: By Westney. And I think in prior evidence, it was suggested that this was some – prepared some time in late May of 2012.

MR. P. HARRINGTON: Yes, I believe you're right.

MR. COOKE: Okay. And at whose behest was this document prepared?

MR. P. HARRINGTON: Whose behest? It was part of the requirement to get to DG3, so I don't think it was one person. It was a deliverable that was identified.

MR. COOKE: And I'm just gonna take you on that document. When you look at A – on the left, it has A and a small i.

MR. P. HARRINGTON: A.i - Reservoir Clearing.

MR. COOKE: Yes. And so that has, under DG3, \$143.2 million. Correct?

MR. P. HARRINGTON: Correct.

MR. COOKE: And then it gives a risk range with a low and a high.

MR. P. HARRINGTON: That's right, yeah.

MR. COOKE: And so the low is \$130 million. Correct?

MR. P. HARRINGTON: Correct.

MR. COOKE: Yeah. And the high, \$165 million.

MR. P. HARRINGTON: That's correct.

MR. COOKE: Okay. And that was consistent with your understanding of the risk range at the time.

MR. P. HARRINGTON: And if that was the DG3 estimate, then that's right. Yeah.

MR. COOKE: So my question is: Did those – that risk range, those estimates, did that include the possibility of further clearing and the possible costs that – well, we know that there will be additional costs that would arise from such?

MR. P. HARRINGTON: No, it would be as accordance with the agreement that was in place, the expectation of – I think it was called the-ring-around-the-bathtub approach towards removal of trees. And that was in the environmental assessment, I seem to remember.

MR. COOKE: Okay.

MR. P. HARRINGTON: Yeah. So it would be just for that which was contemplated at the time.

MR. COOKE: Okay.

So the – any – if there was additional clearing and with that additional environmental assessment processes, they wouldn't be included in this risk range.

MR. P. HARRINGTON: That's right.

MR. COOKE: I have a few questions about the North Spur, but I want to back up a little bit because you've given a lot of evidence about the independent engineer. And I want to get your understanding of the role of the independent engineer and I guess it – in terms of its role vis-à-vis you. Because, frankly, I think we've seen some evidence which would suggest that a relationship between you and the independent engineer, which would seem to go against the very nature of the fact the engineer is independent. And I think when we say independent, I always had thought it meant independent from Nalcor. Is that consistent with your understanding?

MR. P. HARRINGTON: I think the independent engineer – he has his independent views on matters and he provides those to Canada.

MR. COOKE: And who did you understand the client was of the independent engineer?

MR. P. HARRINGTON: The client is Canada.

MR. COOKE: Okay.

And so with that, in terms of the North Spur in particular –

MR. P. HARRINGTON: Yes.

MR. COOKE: – do you recall any interactions you had with the independent engineer regarding the North Spur? I know that’s a general question; there’s probably lots of occasions.

MR. P. HARRINGTON: There probably is.

MR. COOKE: Yeah.

MR. P. HARRINGTON: The North Spur – and I’m not backing away from my responsibilities here, but, again, the North Spur and the dealings on the North Spur was a task that Mr. Gilbert Bennett took on to make sure that – you know, because there were dealings with government and other individuals. So Gilbert took the lead on that, right?

MR. COOKE: Okay, I just want to understand that a bit better. So – because I’d always – you as project director, the North Spur was an aspect of the project that you were directing.

MR. P. HARRINGTON: Right.

MR. COOKE: Okay. So when you’re saying Mr. Bennett took – I can’t remember the word you used. I don’t know if –

MR. P. HARRINGTON: Took the lead.

MR. COOKE: Took the lead, okay.

MR. P. HARRINGTON: Yeah.

MR. COOKE: Okay, what – can you elaborate on that?

MR. P. HARRINGTON: Well, he was dealing with a lot of the engineering aspects of the North Spur.

MR. COOKE: Okay.

MR. P. HARRINGTON: I was responsible for actually getting the construction work done.

MR. COOKE: Okay, so –

MR. P. HARRINGTON: I think it’s the best way to describe it. Is that –?

MR. COOKE: Yeah, yes.

MR. P. HARRINGTON: Yeah, okay.

MR. COOKE: Thank you.

I’m just gonna take you to a document at – it’s P-03704.

THE COMMISSIONER: That one’s gonna be in tab 65.

MR. P. HARRINGTON: Go ahead.

MR. COOKE: So, Mr. Harrington, this is an email from you dated September 3, 2013, correct?

MR. P. HARRINGTON: Yes.

MR. COOKE: And it seems that it’s addressed to Ron Power.

MR. P. HARRINGTON: Right.

MR. COOKE: And Ron Power, at the time, was the project general manager, correct?

MR. P. HARRINGTON: Yep.

MR. COOKE: And I think you had indicated this before, but did you happen to observe Mr. Power’s evidence at the Inquiry?

MR. P. HARRINGTON: No, I didn’t.

MR. COOKE: Okay.

MR. P. HARRINGTON: No, I didn’t.

MR. COOKE: So, this is the document – I asked Mr. Power some questions – and I’m going – now I’m going to, kind of, get the other side of it because –

MR. P. HARRINGTON: All right.

MR. COOKE: – it started with you.

And so just to start with you – the topic line is the “North Spur.” And you say – well, can you just read the first paragraph of your email?

MR. P. HARRINGTON: “We keep getting the North Spur vulnerability issue thrown in our faces at every turn by the unqualified naysayers and doubters.”

MR. COOKE: Okay.

So, first question is, who were the unqualified naysayers and doubters that you identify in your –?

MR. P. HARRINGTON: All those people who were criticizing the vulnerability of the North Spur.

MR. COOKE: Mm-hmm.

MR. P. HARRINGTON: I can’t remember all their names, to be honest.

MR. COOKE: Sure.

MR. P. HARRINGTON: Yeah.

MR. COOKE: So, essentially, anyone who was raising concerns about the stability and vulnerability of the North Spur?

MR. P. HARRINGTON: Yes.

MR. COOKE: Okay.

And when you say – you use the term “thrown in our faces,” and I just wanted you to explain what you meant by that.

MR. P. HARRINGTON: It just kept coming up all the time. And – but what I was asking here to do was make sure that we had a comprehensive set of documentation that would hopefully address the issues firmly and squarely,

and that’s what I was asking him to do: Is there such a thing? Can that report be put together? And that was what I was asking to do because I felt as though, you know, from my own point of view, I needed to have a good idea of – all of these things are – were well taken care of. Even though Mr. Bennett was taking the lead, I was interested as well.

MR. COOKE: And you mentioned the word comprehensive, but in your message, what your specific request is for – and you can see it on the second line of the second paragraph – is for “... a brief/concise technical report” dealing “with the North Spur stability” –

MR. P. HARRINGTON: Yes.

MR. COOKE: – the work you’ve carried out, the experts you’ve hired “... and confirmation that the engineered solution we have settled on dealing with the North Spur will meet the requirements of CDA and good engineering practice.”

MR. P. HARRINGTON: Yeah. So what I was looking for is some kind of – something for my own so I knew as well. Some kind of concise kind of summary.

MR. COOKE: Yeah. And the context you get from the first part of the second paragraph is that this is something – this wasn’t the first time you had asked for this.

MR. P. HARRINGTON: Yeah. I just – yeah, I was trying to get some clarity, but I just kept getting enormous amounts of detail.

MR. COOKE: And do you know why you didn’t get it by this time?

MR. P. HARRINGTON: No.

MR. COOKE: And what you’re actually looking for is – and you say this at the end of your – the last paragraph there is you’re really looking for a report that a professional engineer is going to stamp.

MR. P. HARRINGTON: Yeah. So the – you know, I had some confidence in it.

MR. COOKE: Yeah. So everyone can have confidence in it. That's the purpose of getting a P.Eng stamp on a document or plan, correct?

MR. P. HARRINGTON: That is correct.

MR. COOKE: Okay. So I'm going to take you now to Mr. Power's response. Because I had read that your request seemed pretty clear and straightforward in terms of what you were looking for. Mr. Power, however, in his response, rather than going to your request right away, starts with – he strongly recommends “an independent design review.” You see that on the –

MR. P. HARRINGTON: Yes.

MR. COOKE: – in his response. And he further says that he's “becoming less and less confident in SLI design competence.”

MR. P. HARRINGTON: Mm-hmm. Correct.

MR. COOKE: And then he further notes that “The specification writing efforts for the North Spur scope” – and I think that – again, that would come from SNC, right?

MR. P. HARRINGTON: Yes. I believe so.

MR. COOKE: Okay. And he say's they're “... lacking at present.”

MR. P. HARRINGTON: Yes.

MR. COOKE: So, pretty strong language from Mr. Power, would you agree?

MR. P. HARRINGTON: Yes. He's no shrinking violet either.

MR. COOKE: No. No, he's not. And but – and he's your 2IC, your second-in-command, almost.

MR. P. HARRINGTON: At the time, he wasn't.

MR. COOKE: Okay.

MR. P. HARRINGTON: He was the project general manager.

MR. COOKE: Okay.

MR. P. HARRINGTON: Right. He is now.

MR. COOKE: Okay.

MR. P. HARRINGTON: He's my 2IC.

MR. COOKE: Yeah. Yeah. So – but he reported directly to you?

MR. P. HARRINGTON: I can't remember how the – probably –

MR. COOKE: Okay.

MR. P. HARRINGTON: – I won't – if he didn't, then it'll be one step removed or –

MR. COOKE: Yeah.

MR. P. HARRINGTON: – in that general area. Yeah.

MR. COOKE: And Mr. Power is a professional engineer.

MR. P. HARRINGTON: He is indeed.

MR. COOKE: Experienced one.

MR. P. HARRINGTON: Very experienced.

MR. COOKE: Someone you worked with then and work with now.

MR. P. HARRINGTON: Yes.

MR. COOKE: Someone whose opinions you obviously respect and value.

MR. P. HARRINGTON: I do.

MR. COOKE: Okay.

So, with that, you get a message where he's raising what I would say are serious concerns. Would you agree with that?

MR. P. HARRINGTON: Yes, you know, they do appear that way, yeah.

MR. COOKE: I mean, where he's saying that he's strongly recommending an independent review –

MR. P. HARRINGTON: Right.

MR. COOKE: – right? He's actually expressing a lack of confidence in their design competency.

MR. P. HARRINGTON: Mmm.

Did you go through this with him? I mean –

MR. COOKE: I did –

MR. P. HARRINGTON: Okay.

MR. COOKE: – yeah, but now I'd like to – I'm less – and Mr. Power did give evidence on it. But what I'm really interested in, Mr. Harrington, is you get this message. You get it from your project general manager. They're raising some pretty serious issues including a design competency of SNC-Lavalin, strongly recommending an independent design review.

So my question for you is, what did you do with this?

MR. P. HARRINGTON: Well, I didn't. The last sentence states, "Scott and Robert will put the arrangements in place."

MR. COOKE: Okay.

So was there any further action that you did vis-à-vis the concerns raised by Mr. Power?

MR. P. HARRINGTON: So other than I assumed that these were proceeding for an independent review.

MR. COOKE: And did that independent review occur?

MR. P. HARRINGTON: I don't recall.

MR. COOKE: Okay.

I'll just take you to another document – P-03784.

MR. P. HARRINGTON: Say again the number?

MR. COOKE: P-03784.

MR. P. HARRINGTON: Three-seven ...?

MR. COOKE: Eight-four.

MR. P. HARRINGTON: Eight-four, sorry. Twenty-eight, yeah.

MR. COOKE: And this is a series of emails. I think they're all dated, Mr. Harrington, from – I think the earliest ones are from November 21, but the majority of them are from November 22, okay? So let's go backwards to the earliest in time if we can. Can I take you to page 4?

And just on the bottom of page 4 is a – and I guess the top of page 5. I don't know if we can –

MR. P. HARRINGTON: Yes, I can see it.

MR. COOKE: – capture –

MR. P. HARRINGTON: Yeah –

MR. COOKE: – both –

MR. P. HARRINGTON: – no, I'm –

MR. COOKE: – of them.

MR. P. HARRINGTON: I'm (inaudible) –

MR. COOKE: Do you have it?

MR. P. HARRINGTON: Yeah.

MR. COOKE: Great.

And, it's an email from James Meaney to Nik Argirov, and it says: "Hi Nik; Please find attached for discussion on" a "call this afternoon Nalcor's 'key' comments on the draft IE report dated Nov 15," 2016 [sp. 2013]. "As we will discuss further on the call, we will also be following up shortly with more detailed comments blacklined into the draft report. We'll speak with you shortly."

Now, I think Commission counsel asked you some questions but on – generally with the independent engineer, but you didn't see any problem with being given a draft report by the

independent engineer to weigh in on. You didn't see that as problematic at all?

MR. P. HARRINGTON: No, the independent engineer submits draft reports all the time. He does it today.

MR. COOKE: Okay.

MR. P. HARRINGTON: So I have mentioned in my testimony that it's perfectly normal, common practice to do so.

MR. COOKE: Right, and you don't have any concerns that that could potentially create an impression of a lack of independence by the independent engineer?

MR. P. HARRINGTON: I don't because I think it's common practice.

MR. COOKE: Okay, fair enough.

Can I take you to page 3, Mr. Harrington, which is the email – kind of at the point where you weigh in on the email exchange?

MR. P. HARRINGTON: Yes.

MR. COOKE: Do you need a moment to review the email or ...?

MR. P. HARRINGTON: I wouldn't mind, yes.

MR. COOKE: Sure, yeah, take your time.

MR. P. HARRINGTON: Okay, proceed.

MR. COOKE: Okay.

So, when I read this email, a few things – clearly you're of the view that the independent engineer report, I guess, was not as unequivocal as you would like on the reasonability or robustness of the stabilization design and plans?

MR. P. HARRINGTON: What I was concerned about is that they had some open-ended questions, and I wanted to get our experts, including Zak – and he's a very senior person with Hatch – to make sure that rather than go toing and froing with comments backwards and forwards, that they speak to them directly, and to

resolve any open questions to the satisfaction of the independent engineer.

MR. COOKE: So what was your issue with the fact that the questions could be open-ended?

MR. P. HARRINGTON: Well, if it's an open-ended question, then, you know, they – we should answer them. I mean, it's as simple as that. We shouldn't be having questions that could be answered easily and should be closed.

MR. COOKE: But you say in the message – you say, "We have no time for any open ended questions or promises to get back with data."

MR. P. HARRINGTON: That's what I mean – so I think I tried to explain it – is rather than them send a report, and then, you know, it sits two weeks on somebody's desks, and eventually they get back with some comments and then there's comments backwards and forwards, backwards and forwards, I wanted them – as I've said here very clearly – I wanted them to take it as a direct expert-to-expert communication on the phone so that we weren't wasting time with drafts going backwards and forwards.

MR. COOKE: And when you say you wanted – in terms of time – you say at the end of the message you want the "experts all lined up, geared up and ready to put this issue to bed today at 10.00" a.m. Pacific Time.

MR. P. HARRINGTON: Yes.

MR. COOKE: Yeah. Which is –

MR. P. HARRINGTON: "so please get our experts ... lined up, geared up and ready to put this issue" – so I wanted them to start the discussion. Where the discussion would end up, it's not my, you know – it's not my area of expertise, but I just wanted them to make sure that we weren't wasting time going backwards and forwards, backwards and forwards, which tends to happen.

MR. COOKE: Okay. So when I read this, I see the issue being put to bed is the issue of any outstanding questions from the independent engineer.

MR. P. HARRINGTON: Yes,

MR. COOKE: Okay. And so you agree?

MR. P. HARRINGTON: Yeah. Yeah. I agree with that, yeah. I mean, I don't want to have open-ended questions if it's possible.

MR. COOKE: Yeah, but sometimes open-ended questions may be necessary for the independent engineer –

MR. P. HARRINGTON: Not if we can answer them.

MR. COOKE: Well – sorry, Sir, I interrupted you.

MR. P. HARRINGTON: Not if we can already answer them – if there are already answers there, right?

So, if there's an open-ended question that we don't have an answer for, that's fine. But I knew, from what I was being told, a lot of these issues we already have an answer for. And that might satisfy the independent engineer.

MR. COOKE: And I take it the timing – from reading your message again – it seems to me that there's a certain timing – I don't know if pressure is the right word – connected to the federal loan guarantee.

MR. P. HARRINGTON: Yes.

MR. COOKE: Okay. And you say in there: “we need to have a positive IE report by” the “end of next week otherwise the Federal Loan Guarantee will slip further out and you know what that does to Nalcor's appetite to sign big ticket contracts – we will be delayed.”

MR. P. HARRINGTON: Yeah. So positive by that mean – would – you know, if we can answer open end – if we can answer any questions they've got, then we should do.

MR. COOKE: I don't know if I read “positive IE report” quite the same way.

MR. P. HARRINGTON: Okay.

MR. COOKE: I mean positive seems to me that you're looking for a favourable report from the independent expert.

MR. P. HARRINGTON: No, I can't influence the independent engineer to provide a favourable report, I'm no expert in that.

MR. COOKE: And you further say, “... we need to instill in our expert team the clear message that we have a robust design, and anything else planned to be done is just enhancement and will not change the design.”

So when you say “our expert team”, who are you referring to there?

MR. P. HARRINGTON: SNC, Hatch and other experts that we pull together.

MR. COOKE: One other document I'd just like to take you to, Mr. Harrington, is P-03705 and I'm not sure it's in your binder.

MR. P. HARRINGTON: 03705.

THE COMMISSIONER: No, that one's not in the binder.

MR. P. HARRINGTON: You're right.

THE COMMISSIONER: So it will be in the screen.

MR. COOKE: And maybe we'll just go to page 3 first, Madam Clerk, if we could. Maybe page 2. Yes.

So this is a letter from Normand Bécharde to Ron Power, dated November 25, 2013.

MR. P. HARRINGTON: Mm-hmm.

MR. COOKE: Are you familiar with this letter?

MR. P. HARRINGTON: No.

MR. COOKE: Okay. And what the letter, if I can summarize it, is really on who should do – whether a third party should do certain modelling in regards to North Spur stabilization.

MR. P. HARRINGTON: Yes.

MR. COOKE: Okay?

And SNC-Lavalin, in this letter, is saying that if a third party is involved, they should be involved with the – I guess collaborating with the existing team rather than just have a complete third-party removal from that process.

MR. P. HARRINGTON: Yes.

MR. COOKE: Is that consistent with your recollection?

MR. P. HARRINGTON: Oh, I'm down – just scanning it.

MR. COOKE: Sure, yeah. And if you need time, take your time, please.

MR. P. HARRINGTON: But I am not disagreeing with what you're suggesting here.

MR. COOKE: Okay.

MR. P. HARRINGTON: It would appear that way, yes.

MR. COOKE: Okay.

And I'm less – my questions are less about the letter itself and more about the email that you received enclosing the letter, which is at page 1.

MR. P. HARRINGTON: From Ron Power?

MR. COOKE: Yeah. It's from Ron to a number of recipients, including yourself and Mr. O'Brien, Mr. Clarke, Mr. Kean, Mr. Bennett and Mr. Hewitt.

MR. P. HARRINGTON: Yes.

MR. COOKE: And you can see, in closing, that Mr. Power directs comments to different recipients. The first part is to Scott O'Brien. But what I wanted to ask you about was the one that says: "**Lance / Paul**" – and I'll just read it to you and then I have a couple of questions for you, so Mr. Power states – "this design-related missive" – and we're assuming he's talking about the attached letter – "from SLI has certain undertones that I do not like. It reflects the 'attitude' that I am sensing lately from Normand and Bernard Gagne related to the notion that SLI

are exemplary designers. I plan on writing some formal letters very soon documenting the design deficiencies that I have seen and am continuing to see with SLI."

MR. P. HARRINGTON: Mm-hmm. Okay.

MR. COOKE: So you received this email in November 2013. Do you have any idea on what Mr. Power is referring to in terms of the certain undertones that he seems to take issue with?

MR. P. HARRINGTON: At the time – so this, the reason why Lance and Paul are copied here is because we would meet with SNC at the steering committee level. And Bernard Gagne was the company representative, the senior guy from SNC at the time.

So I presume you asked Mr. Power about this. So I – that's about as much as I can add there, that what Mr. Power was talking about is that we – you know, at the steering committee level, we would talk about high-level issues. And if we were sensing, you know, some kind of attitude coming from Normand Béchard and Bernard Gagne, then we'd address it with them, say, well – you know, without going into perhaps this specific thing. And if there are design deficiencies or performance issues that Mr. Power was identifying, then we elevate that to that high level.

MR. COOKE: Okay. And likewise, he says, you know, the attitude related to the notion that SLI are exemplary designers, that suggests to me – and tell me if you disagree reading it – that he is not necessarily of the view that SLI are exemplary designers. Is that a fair read?

MR. P. HARRINGTON: Yeah, at the – you know, you got to imagine that this the time when we were going through all of our struggles with SNC at the time.

MR. COOKE: Yeah.

MR. P. HARRINGTON: And, you know, sometimes, yeah, things are written. And I thought the SNC, generally, were very good designers.

MR. COOKE: Okay. So, you wouldn't agree with that –

MR. P. HARRINTON: Yeah, (inaudible) –

MR. COOKE: – suggestion from Mr. Power?

MR. P. HARRINTON: – 'cause there may be other examples where there weren't, but there was more of a tension between ourselves and SNC at that point in time, and this might – I don't know, but this might be one example of how that tension is –

MR. COOKE: Yeah.

MR. P. HARRINTON: – manifesting itself.

MR. COOKE: Yeah. Yeah, but Mr. Power goes a lot further at the next sentence.

MR. P. HARRINTON: Does he?

MR. COOKE: Oh, yes. He says –

MR. P. HARRINTON: Yes.

MR. COOKE: – he plans on writing some formal letters, whatever that – I am not sure exactly what that means – very soon documenting the design deficiencies that he has seen and is continuing to see with SLI.

MR. P. HARRINTON: And, yeah, that's an ongoing, continuous improvement cycle that he is identifying and, you know, we have an obligation to – if we see deficiencies that we need to document, then there will be a formal letter written saying such and such a thing.

MR. COOKE: Didn't it cause you some – so again, Mr. Power is the project general manager, he's a professional engineer and he's telling you that, in his view, there's design deficiencies from your design engineer, and, further, that he's gonna go a step beyond and document those.

MR. P. HARRINTON: No, that's the right thing to do. Yeah.

MR. COOKE: And, to your knowledge, did he?

MR. P. HARRINTON: I presume he did.

MR. COOKE: Okay. Do you recall getting any letters yourself, documenting these concerns?

MR. P. HARRINTON: I would generally not be because I don't think I was the company representative at the time. The company representative would sign the letters, some may be copied on them.

MR. COOKE: Yeah.

MR. P. HARRINTON: But you'd agree that if the – an item like design deficiencies would be something that by (inaudible) necessity would have to be on a project director's radar.

MR. COOKE: If – but design deficiencies can be relatively small things as well. And it's a performance issue as well. So, they – we were flagging with the SNC, at the time, that there were deficiencies in certain areas, in many areas. And engineering was one of the better areas, to be perfectly honest. As I mentioned before, the other functions were not in good shape, right?

MR. COOKE: So, are you aware of any specific follow-up from the points raised by Mr. Power in this email?

MR. P. HARRINGTON: No. I can't – I don't. Perhaps you can ask Mr. Bennett.

MR. COOKE: Okay, I will. Thank you.

MR. P. HARRINGTON: Thank you.

THE COMMISSIONER: Thank you.

Okay, we'll take our break here now and we'll come back.

I just want to address one thing before we break.

As a result of the questioning and answering by certain witnesses over the last couple of weeks, and notwithstanding the limited scope that I have with regards to the issue – environmental issues, I have asked Commission counsel to get a – some people from the Department of Environment, in particular, provincial department, here so that answers can be given because there's been a lot of indication that it's not my department, it's somebody else's department or whatever.

So the plan is, is that that's – that evidence is actually going to be tucked into what we already

have as a busy schedule, and I've got it set right now, in my mind at least, on the 20th of June. So, I just wanted, you know, some of the parties or the parties to recognize that I have decided, in fairness, that I need to hear from some of the environmental people with the government. And I understand that discussions are under way now to make sure that happens.

So, with that, we'll break now and we'll return at 2 o'clock today.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: All right.

Grand Riverkeeper Labrador and Labrador Land Protectors – not here. All right.

Astaldi Canada Inc.

MR. BURGESS: Thank you, Commissioner.

Good afternoon, Mr. Harrington. Paul Burgess on behalf of Astaldi Canada Inc.

MR. P. HARRINGTON: Good afternoon.

MR. BURGESS: Mr. Harrington, first I just want to ask you – and in certain areas where I have questions, I'm going to ask you what your role was because I'm not certain what your roles might be –

MR. P. HARRINGTON: Yeah.

MR. BURGESS: – because I understand you're the project director at a higher level. But let me start with the Limited Notices to Proceed with Astaldi.

MR. P. HARRINGTON: Right.

MR. BURGESS: Were those documents that you would've been involved with or is that just reported to you with respect to the LNTPs?

MR. P. HARRINGTON: The preparation of them I wasn't being involved with, but I did have some communication with Mr. Triassi at the time.

MR. BURGESS: Okay.

And so you would probably – I didn't look to see who signed the LNTPs. Was that brought up to the CEO level or would you have signed the LNTPs? Do you recall?

MR. P. HARRINGTON: I can't recall –

MR. BURGESS: Okay.

MR. P. HARRINGTON: – to be perfectly honest with you.

MR. BURGESS: And it's not material.

I do think, though, that you had alluded in your earlier evidence that with respect to the LNTPs – and I'm dealing with Astaldi now – there were certain restrictions that they would have. It wouldn't – would you agree – and we've heard earlier evidence from Astaldi, which I think was agreed to by certain members of Nalcor – an LNTF wouldn't give Astaldi the ability to enter into long-term contractual arrangements. Correct?

MR. P. HARRINGTON: That would be correct, unless they had some kind of, you know, off-ramp.

MR. BURGESS: Right.

MR. P. HARRINGTON: You know, subject to the final contract being awarded

MR. BURGESS: Right.

MR. P. HARRINGTON: And that's –

MR. BURGESS: So almost like an LNTF themselves.

MR. P. HARRINGTON: Exactly, yes.

MR. BURGESS: Okay, fair enough.

And I think you, in your evidence, acknowledged that there may have been some

concern on Astaldi's part during the LNTP period that Nalcor didn't have the financial disclosure and that would've – may have caused them some concerns.

MR. P. HARRINGTON: You mean the federal loan guarantee.

MR. BURGESS: The federal loan guarantee, correct.

MR. P. HARRINGTON: Yes, yes.

MR. BURGESS: Yeah, okay.

You've also given your evidence – and you're very familiar with megaprojects. Would you agree and acknowledge that with megaprojects it's not unusual at the start of a megaproject and a major contract that sometimes there are slow starts at start.

MR. P. HARRINGTON: Yes, that is correct.

MR. BURGESS: Okay.

There was a kickoff meeting, Mr. Harrington, that occurred in St. John's on December 19, 2013. And perhaps, Madam Clerk, if we can get up P-03143 – and for the purposes of the Commissioner and Mr. Harrington I believe all of the documents, exhibits I'm going to refer to, none of them are in your book so they'll all be on your screen.

MR. P. HARRINGTON: Okay. All right.

MR. BURGESS: To the best of my knowledge, I've cross-checked and that seems to be the case.

And on the screen you will see, Mr. Harrington – and that's Exhibit P-03143. And what I'm going to ask you to do is if you could just turn in, first of all, to page 3, or Madam Clerk if you could scroll down to page 3. And this is a kickoff meeting at the Delta Hotel on December 19, 2013, from 8:30, it says, to 4:30.

And I'm just going to bring you to page 4 then. And at the very top these are some notes that attribute some comments from yourself and it goes through others. Do you recall that kickoff meeting, by the way?

MR. P. HARRINGTON: Yes, I do.

MR. BURGESS: Okay.

And you see that it attributes the comments to you that you say "We are on a mission. On the project for 8 years. Can only do it by working together. We are honest sincere people and we are fair. This is the single biggest contract on this project and we have got to make it work." And that "This project is the future of the province – carries a heavy burden."

Do you remember making those comments, Sir?

MR. P. HARRINGTON: I do.

MR. BURGESS: Okay.

And would you –

MR. P. HARRINGTON: And it might not be, you know, word for word but the general.

MR. BURGESS: Right. Fair enough, but that's the sentiment (inaudible).

MR. P. HARRINGTON: Yeah, I was trying to be inspirational.

MR. BURGESS: Right.

And that was just a couple of weeks after the contract was signed between Nalcor and Astaldi. Correct?

MR. P. HARRINGTON: That's correct.

MR. BURGESS: And that would have been, as I understand it and from what the notes say, it was a very amicable meeting. Would you agree with that, Sir?

MR. P. HARRINGTON: Yes, we were all (inaudible).

MR. BURGESS: Right.

And at this point in time – so around the time, November 29, 2013, Mr. Harrington, just to refresh your memory – was the date that the contract was signed between Nalcor and Astaldi. We've heard the evidence from Astaldi that they signed the contract, it was a delayed start, and I

don't think there's any – I don't think that's in dispute. But there was a feeling of good faith and working together and, as Mr. Ron Power testified, much of a collaborative approach to this. Would you agree with that?

MR. P. HARRINGTON: I would agree that was our intent with all contracts and this was no exception.

MR. BURGESS: Okay, thank you.

Now I want to ask you some questions about the on-site authority. And by that you've heard evidence and I – you're probably familiar with it –

MR. P. HARRINGTON: I think I missed the first part –

MR. BURGESS: Okay.

MR. P. HARRINGTON: – sorry.

MR. BURGESS: Sorry.

I'm going to ask you some questions about the on-site authority.

MR. P. HARRINGTON: Okay.

MR. BURGESS: And there's been a lot of questions asked of you and other people – we've heard a lot of evidence on this – and that there was concerns being expressed by contractors and former Nalcor employees about sufficient authority on site.

MR. P. HARRINGTON: Yes.

MR. BURGESS: Okay?

Now, we heard from Mr. O'Brien. Did you follow the testimony of Mr. O'Brien and Mr. Power or ...?

MR. P. HARRINGTON: I was in Vancouver the week – that week, so ...

MR. BURGESS: Okay. So, no, I take it.

MR. P. HARRINGTON: No. Well, I must admit I picked up bits in media and –

MR. BURGESS: Okay.

MR. P. HARRINGTON: – this and that and the other.

MR. BURGESS: But Mr. O'Brien explained to us the process. The – we talked about the authority limits of \$250,000 for the on-site construction manager, Mr. O'Brien having a limit of \$2 million.

MR. P. HARRINGTON: Yes.

MR. BURGESS: And he explained the process by which if there was a change on site, there was a process that it went through and it went back to what he called home office, which was St. John's.

MR. P. HARRINGTON: Right.

MR. BURGESS: Okay?

And he talked about it would maybe go to some other folks within home office, but ultimately up to at least \$2 million he would be able to sign off and would be the one to sign off.

MR. P. HARRINGTON: That's right.

MR. BURGESS: Okay.

And that process – we talked about that process a bit and I don't think he was certain – but who established the process or the limits for the on-site authority?

MR. P. HARRINGTON: Who established the limits?

MR. BURGESS: Or not the limits but the – that whole process.

MR. P. HARRINGTON: Oh, for the on – of the whole process, okay.

MR. BURGESS: Yeah, so –

MR. P. HARRINGTON: So –

MR. BURGESS: – generally, there was this process and we heard a lot about it, and I don't intend to take –

MR. P. HARRINGTON: Yeah.

MR. BURGESS: – you through that unless you want to, but –

MR. P. HARRINGTON: No, no.

MR. BURGESS: – there was a process.

MR. P. HARRINGTON: So the financial – that’s – I think that’s what we’re talking about, the financial approval matrix starts at the CEO. So there’s – the CEO has full authority for the full amount of the approved AFE. He then delegates to his vice-president, CFO and whoever else he wants to delegate to with regards to the Lower Churchill Project, and I think in this case, he delegated to Mr. Sturge and Mr. Bennett.

They, in turn, delegate to me. I, in turn, delegate to Ron Power; and Ron Power, in turn, delegates to Scott O’Brien and Scott O’Brien, in turn, delegates to the site.

MR. BURGESS: Okay, thank you.

MR. P. HARRINGTON: So it’s a cascading –

MR. BURGESS: Right.

MR. P. HARRINGTON: – delegation. So whoever delegates, delegates the amount that they would delegate to that – to their subordinate, if you want to call it that.

MR. BURGESS: Right.

But what I would like to focus on is – and thank you for that – but what I wanna focus on is the process by which on site, we heard at a certain level the Nalcor folks on site had up to 25,000. Beyond that, it went to the site manager. And then there had to be that, I’ll say, a call to St. John’s office –

MR. P. HARRINGTON: Right.

MR. BURGESS: – and a discussion and approval as to – and I’m talking about changes now – so –

MR. P. HARRINGTON: Yes.

MR. BURGESS: – if there was a change –

MR. P. HARRINGTON: Yes.

MR. BURGESS: – it seemed like most changes had to go up for Mr. O’Brien or higher to approve.

MR. P. HARRINGTON: If they were engineering-type changes that required the engineer of record, that was one thing. If there was an environmental impact, if there was a safety impact that required, you know, the uniform application across all sites.

MR. BURGESS: Right.

MR. P. HARRINGTON: Right.

MR. BURGESS: But we’ve heard a lot of evidence, and you’ve been questioned a lot about, the criticisms that were levelled by both contractors and former Nalcor employees like Mr. Tranquilla, Mr. Cottrell –

MR. P. HARRINGTON: Right.

MR. BURGESS: – Mr. Mulcahy –

MR. P. HARRINGTON: Mmm.

MR. BURGESS: – and the list goes on – that process that they were critical of, generally – that was established, it seems, at the outset of the project. Is that correct?

MR. P. HARRINGTON: Yes.

MR. BURGESS: And who established that process? Were you involved in that or was that there before your time?

MR. P. HARRINGTON: No, that was put in place by the finance group.

MR. BURGESS: Okay.

Would you have had input as the project director on that process?

MR. P. HARRINGTON: When it got to me and I was given a certain amount, then I would then delegate to somebody else. So that was my input.

MR. BURGESS: Right.

So with the criticisms that we've heard – and I take it you would have heard the criticisms during the project with respect to the on-site authority. Is that correct?

MR. P. HARRINGTON: I was reflecting on that and, you know, it – I think it's come to the fore more in this Inquiry. I may have heard one or two but I didn't hear from all of those people that you've just mentioned, right.

MR. BURGESS: Okay. But did you hear some criticisms like, for example, there was a letter tendered from Astaldi – Mr. Delarosbil – to Mr. O'Brien. There was a face-to-face meeting –

MR. P. HARRINGTON: Yes.

MR. BURGESS: – that he had during the time – forget during the Inquiry –

MR. P. HARRINGTON: Yeah. Yeah.

MR. BURGESS: –but at the time that was happening. Would that be an issue that would have been brought to your attention?

MR. P. HARRINGTON: It would have come to me. I would have been aware of it.

MR. BURGESS: Right.

MR. P. HARRINGTON: Right.

MR. BURGESS: So, if someone wanted to change the process – let's forget – we'll talk a little later about if it should have changed – but if that process were to be changed, who would have had the authority to change that process?

MR. P. HARRINGTON: It'd have to go to the finance group who put it together in the first place.

MR. BURGESS: Okay. And would you have any input or approval (inaudible).

MR. P. HARRINGTON: Is it – yeah – they would obviously talk to me about it –

MR. BURGESS: Hmm.

MR. P. HARRINGTON: – if it was altering my area of responsibility –

MR. BURGESS: Right,

MR. P. HARRINGTON: – ultimately.

MR. BURGESS: And did you ever think of reviewing or changing – because of the issues that were being raised – did you ever consider changing the process?

MR. P. HARRINGTON: I didn't see a reason to change the process. I didn't think that the process that we had required changing.

MR. BURGESS: Okay. But did you see at the time that Mr. Tranquilla resigned – and there was others in 2014, Mr. Cottrell –

MR. P. HARRINGTON: Sure.

MR. BURGESS: – and so on. Did you give it any thought about changing at that time, or did you dismiss it and say no, we don't need to change.

MR. P. HARRINGTON: I think the latter.

MR. BURGESS: Right.

MR. P. HARRINGTON: Okay.

MR. BURGESS: Now, at one point I thought – make sure I understood your evidence correctly. You testified before this Inquiry that you thought that model was fine and you – if I understood you correctly you said – well, the percentage of change orders was low and that would evidence an effective model. Is that what I understood?

MR. P. HARRINGTON: Yes.

MR. BURGESS: Okay. But could it not also mean that because it wasn't working – there weren't many change orders – and I'm not just talking about change orders, 'cause the evidence we heard was –

MR. P. HARRINGTON: Hmm.

MR. BURGESS: – from some of the contractors is – we weren't necessarily looking

for more money to do more work but there could have been changes that could have been implemented that might have been cost effective from both sides.

So, would you not agree that the fact that there was a low number of – or percentage of change orders may not necessarily reflect that the model that you had was working.

MR. P. HARRINGTON: It could be the case. Yes.

MR. BURGESS: Okay.

You also testified, when you were being asked questions about – well, you don't want to change horses mid-stream, I think I –

MR. P. HARRINGTON: Yes.

MR. BURGESS: – was your quote. But isn't that a bit of a rigid approach – that if you have a process in place and you've – if you determined that it wasn't working or could be more effective, wouldn't it be appropriate to change?

MR. P. HARRINGTON: If I thought it wasn't working, but I thought it was working.

MR. BURGESS: Yes.

MR. P. HARRINGTON: Right.

MR. BURGESS: Okay. Because, for example, you change from an EPCM to an integrated management team.

MR. P. HARRINGTON: That's correct.

MR. BURGESS: Right. Right.

I want to talk to you now, Mr. Harrington, about the integrated project schedule. And when Mr. O'Brien was giving evidence, he testified that there was an integrated project schedule and as I understood what he said initially in his evidence, was that it was shared with contractors and that was a long-standing process to share the integrated project schedule with all the contractors.

Would you agree or disagree?

MR. P. HARRINGTON: Well if he said that, I'm sure he's correct.

MR. BURGESS: Okay. But would you be – again, I'm trying to get at the level of your authority –

MR. P. HARRINGTON: Yeah.

MR. BURGESS: – and day-to-day involvement. Would that be something you would be aware of –

MR. P. HARRINGTON: No.

MR. BURGESS: – or that's –

MR. P. HARRINGTON: That – that's –

MR. BURGESS: – too low?

MR. P. HARRINGTON: – that's working level.

MR. BURGESS: Okay. And he did say, though, after I asked him some questions and showed some documents, that there was a time period he – for which Astaldi wasn't being shared the integrated project schedule.

MR. P. HARRINGTON: Mm-hmm.

MR. BURGESS: And then he acknowledged that, as I understood his evidence, and said that that wasn't done with Astaldi up until 2016 when the completion agreement was there because of commercial sensitivity.

MR. P. HARRINGTON: I guess he said that.

MR. BURGESS: Right.

MR. P. HARRINGTON: Yeah.

MR. BURGESS: So but – were you aware that during the period at least up until 2016 or the completion agreement, that Astaldi was not being the – the integrated project schedule was not being shared with Astaldi?

MR. P. HARRINGTON: Well the integrated project schedule wouldn't have changed. As Astaldi were maintaining the milestones – or they were telling us they were.

MR. BURGESS: Right. But the issue was the sharing of the integrated project schedule, and Astaldi said we never saw it. We asked for it and there was letters and Nalcor said we're not going to give it to you.

MR. P. HARRINGTON: Well I – I'm not aware of that. Right?

MR. BURGESS: Okay. And that was my question, you're not aware of that.

MR. P. HARRINGTON: No. I'm – I'm not aware of it.

MR. BURGESS: But one of the things that Mr. O'Brien did indicate, that the reason for up until 2016 not sharing it with Astaldi was that it was commercially sensitive giving to the ongoing negotiations – and I assume he meant with the bridge agreement and the completion agreement. And you're familiar with the bridge agreement and the completion agreement, correct?

MR. P. HARRINGTON: I am. Yes. Yes.

MR. BURGESS: So that was what I understood him to say. Can you think of any reason why – I mean, you were aware of the issues with Astaldi at the time in 20 – at all points in time, the major issues I take it, correct?

MR. P. HARRINGTON: Yes.

MR. BURGESS: Can you think of any reason prior to 2016 why it would be commercially sensitive to withhold the integrated project schedule from Astaldi?

MR. P. HARRINGTON: Because it was really the other way around. We weren't getting schedules from Astaldi that we could incorporate into the integrated project schedule, in my recollection.

MR. BURGESS: Okay. But if the issue was you had the integrated project schedule –

MR. P. HARRINGTON: Right.

MR. BURGESS: – let's assume for a second for this purpose, and if that assumption is wrong then this question falls by the wayside.

MR. P. HARRINGTON: Yes.

MR. BURGESS: But if you had an integrated project schedule, can you think of what commercially sensitive reason it would've – there would've been not to share it with Astaldi prior to the completion agreement being entered into?

MR. P. HARRINGTON: I can't think of one off the top of my head.

MR. BURGESS: Thank you.

So going back, then, to the Bridge Agreement and the completion agreement, were you involved in that – I'll call it that process?

MR. P. HARRINGTON: To a degree, yes.

MR. BURGESS: And to what degree would you have been involved?

MR. P. HARRINGTON: I was actively involved, I would say, yeah.

MR. BURGESS: And while I'm aware – and we're all aware of certain sensitivity because of the ongoing arbitration and other litigation. I just want to stay at a very high level and I'm sure if I stray too far, Nalcor's legal counsel or the Commissioner will jump in or you'll raise it. So there's – I – I'm not – I'm going to stay very high level on this.

MR. P. HARRINGTON: Yeah.

MR. BURGESS: But around the 2014, 2015 and 2016 time, when there's ongoing discussions between Astaldi and Nalcor with respect to these – what ultimately ends up to these agreements, correct?

MR. P. HARRINGTON: Yes.

MR. BURGESS: And around that time, Astaldi has presented a claim to Nalcor. It's the justification for more payment, the JIC often –

MR. P. HARRINGTON: Yes.

MR. BURGESS: – referred to.

MR. P. HARRINGTON: I think it is.

MR. BURGESS: So you're aware of that.

MR. P. HARRINGTON: Yes.

MR. BURGESS: And there's about \$800 million claimed by Astaldi.

MR. P. HARRINGTON: That's right.

MR. BURGESS: And they're saying basically it's a claim because it's not their fault. It's an extra cost incurred and it's not their fault, they should get paid, generally. Would you – is that your understanding?

MR. P. HARRINGTON: Yes.

MR. BURGESS: Yes.

And there's other things and Nalcor is coming back and saying, no, Astaldi, we don't agree with you but, ultimately, we see those agreements entered into and it's – we've heard evidence that – and I'm sure we'll hear more – that it's because Nalcor made an assessment, analyzed it, had advice and it was more cost effective to keep Astaldi there and pay this extra money, right?

MR. P. HARRINGTON: I think that was – looked at the best solution.

MR. BURGESS: Right, but my point is this: There's a bit of give and take in the two positions. There's opposing positions from Astaldi and Nalcor as to whether the payment is owed or not owed by Nalcor, generally. Would you agree with me on that?

MR. P. HARRINGTON: I wouldn't like to stray into that – into making a comment on the validity of the JIC and then in this forum.

MR. BURGESS: No, no, I'm not asking about the validity.

MR. P. HARRINGTON: You said –

MR. BURGESS: But there's a claim –

MR. P. HARRINGTON: Yeah, but you said there's some things on both sides, so that would suggest to me, I could be wrong, that there was some merit in the JIC. The (inaudible) –

MR. BURGESS: No, I'm not trying to put that principle forward. What I'm –

MR. P. HARRINGTON: Okay.

MR. BURGESS: All I'm trying to do, so that the Commissioner and the public understand – because we've heard a lot of Nalcor's side to say, well, we didn't have to give them anything, but in order to let them finish the contract, we had to give them this money. Now, we'll hear from others, I'm sure, as it gets higher up the chain perhaps on that.

MR. P. HARRINGTON: Mmm.

MR. BURGESS: But all I'm pointing out is there was a claim by Astaldi for additional money –

MR. P. HARRINGTON: There was a response.

MR. BURGESS: – and there was a response and I'm not getting into the validity.

MR. P. HARRINGTON: Okay.

MR. BURGESS: Right?

MR. P. HARRINGTON: Right.

MR. BURGESS: But you will acknowledge that there was a claim by Astaldi for about \$800 million.

MR. P. HARRINGTON: Yes.

MR. BURGESS: Okay.

And if I can just – and this – again, the Bridge Agreement and the completion agreement, are you – you're familiar with those documents?

MR. P. HARRINGTON: I am but, you know, some of the details will be a little bit obscure now.

MR. BURGESS: Well, I'm going to put this to you and it may be more for the benefit – we may get more evidence on it later, but it's probably more for the benefit of the Commissioner right now.

If we could, Madam Clerk, bring up Exhibit P-03028. And this is the copy of the Bridge Agreement, Commissioner, and Mr. Harrington and it's Exhibit P-03028. It's not in your binder.

MR. P. HARRINGTON: Okay.

MR. BURGESS: So you're going to have to look at your screen, but I just want to point out if we could go – scroll down on the first page to the third whereas. And for a lot of this the documents, Mr. Harrington, may speak for themselves, but I just want to point out to the Commissioner. And it says there in the third whereas: “**AND WHEREAS** the Parties do not agree as to the reason(s) and liability for the said additional cost”

So you see that?

MR. P. HARRINGTON: I do.

MR. BURGESS: Okay.

And you were asked a question earlier and, again, I think – I'm just going to point it out and I think the document speaks for itself. I want to bring up the completion agreement and that is P-03029. Again, Mr. Harrington, it will come up on the screen.

And just scroll in, Madam Clerk, if you could, to page 3, just so we – for context we see the – this is the Completion Contract effective as of December 1, 2016. That's what we've been talking about as the completion agreement, correct?

MR. P. HARRINGTON: Yes, yes.

MR. BURGESS: Okay.

And if we could go to page 11, Madam Clerk, and I just want to point out because it was a question you were asked earlier today about the liquidated damages and the milestones. And at paragraph 32, in particular, it says under Liquidated Damages: “Company waives its right to assess or claim liquidated damages for any Milestones which have not been achieved by the dates specified in the Agreement (“Agreement LDs”) which have accrued to December 1, 2016.”

MR. P. HARRINGTON: That's right.

MR. BURGESS: Okay?

So there's nothing – I mean, to me, or is it your understanding not a legal interpretation, I'm not trying to go down that road, but what Nalcor is saying is: We might have had a right to have liquidated damages prior to this, but we're waiving it.

MR. P. HARRINGTON: That's what it says

MR. BURGESS: Yes, okay.

Commissioner, as well, I would like to state for the record as well – and unless you tell me otherwise, in previous questions and, certainly, with Mr. Harrington and my attention for others, I'm staying away from the termination. That is a very – that is an issue before the arbitration and I don't want the Commissioner or anyone to think that it's accepted on the termination. I've stayed away from it because I think it is sensitive and I –

THE COMMISSIONER: No, I understand.

MR. BURGESS: – want that noted.

Mr. Harrington, you talked about the turnaround of Astaldi's performance in 2015. Did I understand you correctly that there was a turnaround?

MR. P. HARRINGTON: Yes.

MR. BURGESS: And you mentioned some of the reasons for that. And there was a couple of individuals that you indicated that used to work with Nalcor and they were brought over to the Astaldi organization. Correct?

MR. P. HARRINGTON: That's correct.

MR. BURGESS: And but I never heard you mention – we've heard his name many times and he's actually testified – Mr. Delarosbil, who was the project manager for Astaldi. Were you familiar with Mr. Delarosbil?

MR. P. HARRINGTON: Yes.

MR. BURGESS: Yeah. Would you agree with me that he's a well-respected and experienced project manager?

MR. P. HARRINGTON: I would say so, yes.

MR. BURGESS: Would you acknowledge that – because we've heard it from others, and I just want to see if you agree or disagree – that there has been a lot of credit, at least stated by others, that Mr. Delarosbil had a major effect and impact on the turnaround? Would you agree with that?

MR. P. HARRINGTON: Now, I'm not sure when – you will know – when Mr. Delarosbil actually joined the project.

MR. BURGESS: It was about May of 2015, but – and if you don't know the answer –

MR. P. HARRINGTON: No.

MR. BURGESS: – fine.

MR. P. HARRINGTON: So the turnaround, right, the effect – the organizational shift was already in place then, so Mr. Delarosbil came and got the benefit of some of that. So, yes, he contributed there afterwards, but I think the heavy lifting was already underway.

MR. BURGESS: Okay.

MR. P. HARRINGTON: Yeah.

MR. BURGESS: All right, let me turn now to some evidence regarding Mr. Scott O'Brien. And you, in your earlier evidence, had indicated that Nalcor has a respectful workplace procedure.

MR. P. HARRINGTON: Yes.

MR. BURGESS: I understood that correctly?

MR. P. HARRINGTON: That's correct.

MR. BURGESS: And you had indicated that – I think you checked the records – there was no complaints filed against Mr. O'Brien?

MR. P. HARRINGTON: That's correct.

MR. BURGESS: We've had letters filed, I won't go to them – but there's been letters filed by Astaldi or sent to Astaldi from Mr. Delarosbil to Mr. O'Brien that would raise the conduct as to bullying, intimidating, things of that nature.

MR. P. HARRINGTON: Mmm.

MR. BURGESS: Were you aware of those allegations, in particular, from Astaldi?

MR. P. HARRINGTON: No.

MR. BURGESS: Okay.

If you were aware of those letters or if someone within Nalcor becomes aware of those types of complaints or allegations, would that not on – of its own, trigger the process with respect to a respectful workplace procedure?

MR. P. HARRINGTON: No, the individual has to raise it.

MR. BURGESS: Okay.

I have no further questions.

Thank you, Mr. Harrington.

MR. P. HARRINGTON: Thank you.

THE COMMISSIONER: All right.

I see you've arrived, Ms. Urquhart. Late, but not too late, so you can go ahead and examine.

MS. URQUHART: My apologies, Commissioner.

Good afternoon. My name is Caitlin Urquhart, and I represent the Labrador Land Protectors and Grand Riverkeeper Labrador. So –

MR. P. HARRINGTON: Good afternoon.

MR. URQUHART: – you'll know them as citizens' organizations in Labrador that are dedicated to protecting the ecological integrity of the Grand River.

And, so I have a few questions – some ground that we've covered – I will – you know, other folks have addressed.

So, Madam Clerk, if we can, please, start with P-00130 –

MR. P. HARRINGTON: What –

MS. URQUHART: – at page 162?

MR. P. HARRINGTON: What was the number again, please?

THE COMMISSIONER: 00130.

MS. URQUHART: P-00130.

THE COMMISSIONER: That's tab –

MS. URQUHART: I don't believe that'll be in your – oh, I believe –

THE COMMISSIONER: Yes, it is.

MS. URQUHART: – it is.

THE COMMISSIONER: It's tab 84.

MR. P. HARRINGTON: Tab 84.

MS. URQUHART: I'm sorry. I don't have the list.

THE COMMISSIONER: Though, it may not be the whole document.

MS. URQUHART: 162, please?

MR. P. HARRINGTON: I only have two pages.

THE COMMISSIONER: Yeah, I know.

MR. P. HARRINGTON: Yeah.

THE COMMISSIONER: Just look at it on the screen.

MR. P. HARRINGTON: Yeah.

MS. URQUHART: And, so, this is – I guess it says revised 2012. This is the Nalcor risk report here. And so, it indicates here, "Largest risk exposure remains in North Spur – geotechnical program planned for spring 2013 – exposure covered under Tactical Risk."

So, I understand, based on the evidence, and you were significantly involved in, sort of, the risk and management and assessment process, but this is just a cost risk that we're talking about here.

MR. P. HARRINGTON: That's right.

MS. URQUHART: It doesn't take into account the significant risk to property and human life in that.

MR. P. HARRINGTON: That's right, because – yes. Go ahead.

MS. URQUHART: Okay.

Madam Clerk, if we can, please, go to 03172.

THE COMMISSIONER: 03172. That would be at PMT binder 60.

MR. P. HARRINGTON: PMT – sorry, Commissioner.

THE COMMISSIONER: PM2 – PMT binder 2, tab 60.

MR. P. HARRINGTON: Thank you, Commissioner.

MS. URQUHART: And, Madam Clerk, if we can, please, go to page 9.

So this is the assessment that you had asked Westney to do relating to that – relating to the SNC risk report. And under the category of very high risk as determined by SNC, one of the very high risks was insufficient geotechnical – sort of midway through down the page – "Insufficient geotechnical information for north spur area."

MR. P. HARRINGTON: Mm-hmm.

MS. URQUHART: And you were asked previously by Commission counsel about, you know, what you understood those – that to mean, and I just want to confirm that this table – or well, confirm your understanding that – of this table and the purpose of it and what specifically those numbers would relate to. So this is what you requested from Westney, saying we've seen the SNC risk report –

MR. P. HARRINGTON: Right.

MS. URQUHART: – can you compare it against our – I’m assuming, against our risk report and –

MR. P. HARRINGTON: Yeah.

MS. URQUHART: – make sure that we covered everything off.

MR. P. HARRINGTON: They were both SNC risk reports at the same time, but one was project and one was done on the side, as it were. So this means that – included means it was included in the project risk report.

MS. URQUHART: So then Nalcor’s –

MR. P. HARRINGTON: Yes.

MS. URQUHART: – risk report.

MR. P. HARRINGTON: Yes.

MS. URQUHART: Yeah.

Okay, and so your understanding – and I’m just trying to actually – for the benefit of the Commission, my understanding is that that KR 23 actually correlates to the document we were just looking at, the 2012 risk report, and those two are – that’s what those numbers relate to.

MR. P. HARRINGTON: That’s – well, we’ve already heard evidence, and Mr. Jason Kean has said that these cross-references were sometimes not entirely accurate.

MS. URQUHART: Okay, I – we weren’t – didn’t have standing for Jason Kean, so I’m not sure what exactly he said, but I’m just –

MR. P. HARRINGTON: Okay.

MS. URQUHART: – as I say, for the benefit of –

MR. P. HARRINGTON: Yes.

MS. URQUHART: – the Commission and just –

MR. P. HARRINGTON: I just want it for clarity.

MS. URQUHART: – and for background. Just that that was – so that risk was known both within Nalcor and SNC, at that time in 2012, 2013, to be a very high risk for the project.

MR. P. HARRINGTON: Yes.

MS. URQUHART: From a cost perspective.

MR. P. HARRINGTON: Whether it was very high in the other register, I’m not sure, but it was very high as far as SNC had identified it.

MS. URQUHART: Okay.

If you like, Madam Clerk, we can go back to P-00130, and it says right there: “Largest risk exposure remains in North Spur.”

So I would put to you that this is –

MR. P. HARRINGTON: Yes.

MS. URQUHART: – identified as the largest –

MR. P. HARRINGTON: No argument.

MS. URQUHART: – risk in geotechnical – okay.

All right, we can move on, Madam Clerk, please, to 01986.

MR. P. HARRINGTON: 01986. 275.

MS. URQUHART: Oh sorry, yes. (Inaudible.)

And you have –

MR. P. HARRINGTON: Excuse me a second, just – I need to –

MS. URQUHART: – Mm-hmm.

MR. P. HARRINGTON: – so many books here. 75, correct.

MS. URQUHART: And my colleague, Mr. Cooke, took you through, actually, some of the correspondence relating to this report, which

was, I guess, just prior to the federal loan guarantee, in which the original iteration was not – was, as you put it, on the fence about the North Spur issue. In this iteration –

MR. P. HARRINGTON: – certain – I don't think that I said that the whole report was on the fence; I just said that certain elements of it were.

MS. URQUHART: You said specifically relating to the North Spur.

MR. P. HARRINGTON: Certain elements.

MS. URQUHART: If you like I can pull that –

MR. P. HARRINGTON: Yeah, sure.

MS. URQUHART: – that back up. I don't recall off the top of my head, 'cause I had crossed it off my list of exhibits to look at – was it that one? (Inaudible) –

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MS. URQUHART: The email talking about the North Spur. The meeting with Nik Argirov.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MS. URQUHART: We can return to that –

MR. P. HARRINGTON: Okay –

MS. URQUHART: – in the meantime I think that issue was canvassed –

MR. P. HARRINGTON: – (inaudible). I have a different viewpoint –

MS. URQUHART: – but if you would like to talk about it again, we can do that. But, in the meantime, Madam Clerk, if you can please go to page 27 – the final report as it was provided, and if you can please scroll down.

So, here, it indicates the “Geotechnical design work continues at the time of writing and the final ... report has not ... been issued.”

It goes on to indicate that Hatch recommends additional investigations and analysis “to further

enhance the design parameters for the sensitive clays and the overall seepage analysis assessment of the spur,” and that the independent engineer agrees with Hatch's recommendation on that.

And, Madam Clerk, if you can please go to page 209.

So, you don't recall receiving this final report?

MR. P. HARRINGTON: I may have seen it, yes.

MS. URQUHART: And if you'll scroll down a little bit, please.

So of the final recommendations the – one of the three, number 2 here, says: “When available, Nalcor is requested to furnish to the IE for review the complete analysis of the North Spur including the” –

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MS. URQUHART: – (inaudible) – “laboratory test reports that determine the strength of the soils under the loadings that it will sustain during the life of the project.”

Do you recall that recommendation?

MR. P. HARRINGTON: No, not specifically, until you just pointed it out now.

MS. URQUHART: Okay.

And so at this time there were – do you recall who was on the lineup for the independent engineer? Who were the parties that MWH – that were working on this as the independent engineer?

MR. P. HARRINGTON: John – I can't remember his name just off the top of my head – but he would report to Nik Argirov.

MS. URQUHART: Okay.

MR. P. HARRINGTON: And – no, it's gone, sorry.

MS. URQUHART: Okay. John, Nik, okay.

So I brought you just to this passage just to sort of remind you or see if it brought out any – do you have a recollection of – you know, obviously in 2012 we’re indicating that North Spur is a big risk; further studies were then recommended, both by Hatch and the independent engineer, and that accords with your recollection at the time?

MR. P. HARRINGTON: Yes, so I’m sure these things were done.

MS. URQUHART: And, Madam Clerk, if we can please go to 02212, which will be PMT 1, tab 15 for you. And we have looked at this already, and I just had a quick question.

And this is the email in which you indicated that Rey and Loucks, who were part of the lineup, should be removed. And I was just wondering, so –

MR. P. HARRINGTON: Neither of them were civil.

MS. URQUHART: I’m not asking about their behaviour. I’m asking whether or not they remained on the lineup –

MR. P. HARRINGTON: No.

MS. URQUHART: – thereafter.

MR. P. HARRINGTON: Canada revised the team.

MS. URQUHART: Canada revised the team. And so who remained on the team at that point?

MR. P. HARRINGTON: Well, it was a number of people. Nik Argirov was the lead.

MS. URQUHART: Okay.

MR. P. HARRINGTON: And I don’t know all the other names. But there were – I mean, he brought on planning specialists, specialists for – you know, geotechnical people, which would be the North Spur type people.

MS. URQUHART: So, following this report, those two people were no longer on the team (inaudible)?

MR. P. HARRINGTON: No, Loucks was a planner and Rey was – I wasn’t sure exactly what Rey’s background was, but it’s nothing – he wasn’t civil –

MS. URQUHART: Madam Clerk, if we can please go to –

MR. P. HARRINGTON: – or geotechnical.

MS. URQUHART: Sorry.

MR. P. HARRINGTON: Sorry.

MS. URQUHART: No, that’s okay. You’re welcome to finish your statement. Sorry, I thought you were finished there.

03784.

THE COMMISSIONER: 03784. Okay, this one is going to be on your screen as well.

MR. P. HARRINGTON: Oh, yes, P-03784, 268.

MS. URQUHART: Yes, sorry, tab 28. So this is the email that we were just discussing.

So, Madam Clerk, if you will scroll down, please, to the meat of this. Continue –

MR. P. HARRINGTON: (Inaudible.)

MS. URQUHART: – to the first email I believe it is.

A little bit higher up, actually, sorry.

MR. P. HARRINGTON: I’ll just stay with the screen.

MS. URQUHART: Mm-hmm.

There we go, that’s the one, and – perfect. Oh, if you’ll scroll down a little, just – that one’s perfect.

So will you just read the first line – the first sentence there, please?

MR. P. HARRINGTON: “The IE report did not come out and clearly state that the stabilization ... and plans we have for the N

Spur are reasonable and/or robust --- they are sitting on the fence.”

MS. URQUHART: Excellent, thank you.

MR. P. HARRINGTON: (Inaudible.)

MS. URQUHART: Madam Clerk, if you’ll please go to P-19 – sorry, 01992. And that is not, I don’t believe – that will be on the screen.

MR. P. HARRINGTON: Okay.

MS. URQUHART: And this is the Oversight Committee’s report for the period ending September 2014, as you can see here. And page 37, please.

So this is almost a year later and the independent engineer – and if you’ll scroll down, I believe it’s the bottom of the page here. Perfect.

So it indicates that the independent engineer “agrees with the plan that further geotechnical observations will be made as the remedial works progress and as new geotechnical monitoring is performed. These observations will be calibrated against the expectations of the various analysis reports. Designs will be amended if any significant surprises or discrepancies are encountered.”

So this was the expectation at that point of the independent engineer, and does that accord with your recollection?

MR. P. HARRINGTON: That’s what it says, so – and that’s fine.

MS. URQUHART: All right.

And so who would’ve been in charge or who would’ve been the lead on ensuring that that monitoring and design work was undertaken?

MR. P. HARRINGTON: It would be the engineering manager and the geotechnical specialists.

MS. URQUHART: And are those within Nalcor or ...?

MR. P. HARRINGTON: That would be Greg Snyder –

MS. URQUHART: Mm-hmm.

MR. P. HARRINGTON: – who was the engineering manager. He’s an SNC employee. And Régis Bouchard I think would be the geotechnical person. I think both of these people attended some kind of event in Goose Bay at one time on the North Spur.

MS. URQUHART: And what type of event would that have been?

MR. P. HARRINGTON: Pardon?

MS. URQUHART: What type of event would that have been?

MR. P. HARRINGTON: I think he was trying to, you know, present the work that had been done on the North Spur.

MS. URQUHART: Mm-hmm.

MR. P. HARRINGTON: It was a couple of years ago.

MS. URQUHART: And so when you say present the work being done, I take that to mean that it is – it’s not a consultative process but rather a process in which information is being provided out. Is that correct?

MR. P. HARRINGTON: Yeah, yeah.

MS. URQUHART: Okay.

Madam Clerk, if we can please go to 02267.

THE COMMISSIONER: That would be tab 32.

MS. URQUHART: And this is an email – oh, sorry, I’ll give you a moment to get to it.

MR. P. HARRINGTON: Okay.

MS. URQUHART: So this is an email from the independent engineer on December 4, 2014, and it was sent to yourself and Mr. Bennett – and, Madam Clerk, if you’ll please scroll down.

Would you mind just reading those – what you can see on the screen there, please, into the record?

MR. P. HARRINGTON: So this is from – I’m just trying to –

MS. URQUHART: Yeah.

MR. P. HARRINGTON: – from Nik Argirov to myself, Bennett, Krupski from Canada, Alison Manzer, Cassels Brock: “Just FYI.

“This is what I have to deal with. Looks like the opponents have a long reach. They even try to influence the independent engineer internally. Ingenious!

“Good old Jim... they are using him well. My question to you is who funds the Cabot Martin ‘enterprise’? Makes me wonder if Hydro Quebec have something to say about it”

MS. URQUHART: (Inaudible), thank you.

And if you will continue on there.

MR. P. HARRINGTON: You want me to carry on?

MS. URQUHART: Yes, please.

MR. P. HARRINGTON: Okay.

“Also, you should perhaps give Dr. Bernander a retainer. Hire him on some kind of advisory capacity so instead of criticism he might provide a constructive idea. He might be just fishing for that.

“Well Cabot will lose his fire power and probably be upset about it but hey....”

MS. URQUHART: So, on reading that now, I guess – I’ll give you a moment just to respond to that.

Do you have any thoughts, any – does that appear appropriate to you?

MR. P. HARRINGTON: Well, I don’t really have an opinion on it either way, to be honest. It’s sort of things that sometimes you pass – you know, you look at your email and you pass it on. There’s no real interest, right?

MS. URQUHART: Did you respond to that email?

MR. P. HARRINGTON: No.

MS. URQUHART: Do you recall having a reaction to that at all?

MR. P. HARRINGTON: Not really, no.

MS. URQUHART: So, I mean, he’s positing here that, perhaps, Jim Gordon, who is an engineer who has been critical of the project and the way in which the North Spur has been addressed by the project team, is somehow being manipulated or had – is somehow involved in – with Hydro-Québec?

Like, is this something that was a common theme? I mean, some sort of attitude that was – existed around the project team at all?

MR. P. HARRINGTON: I mean, I – no, not really, no. That’s – yeah, I think it was – I think the best person to ask is Mr. Argirov.

MS. URQUHART: But I’m asking you what your reaction was when you saw this.

MR. P. HARRINGTON: I glanced at this, didn’t give it a lot of time. Just moved on.

MS. URQUHART: Would Jim Gordon have been one of the naysayers – unqualified naysayers and doubters that you were talking about, previously, in one of the other emails that we talked about?

MR. P. HARRINGTON: I don’t think so, no, because Mr. Gordon – he’s a well-respected individual.

MS. URQUHART: And why would the independent engineer be suggesting that you retain a critic as a means of getting them onside?

MR. P. HARRINGTON: I think that was in jest.

MS. URQUHART: Okay.

MR. P. HARRINGTON: I took that to be in jest. I took the whole thing to be not really all that serious. I think he was just – yeah, I think it was in jest.

MS. URQUHART: Blowing off steam, something like that.

MR. P. HARRINGTON: Okay.

MS. URQUHART: Madam Clerk, if you can, please, go to 03884?

And so you understand – oh, sorry, I will – I didn't look at it to make sure –

MR. P. HARRINGTON: I don't have that one.

MS. URQUHART: – (inaudible).

I think it'll just – it'll be up on your screen there.

So you understand the very serious nature of the potential consequences of the failure of the North Spur and why –

MR. P. HARRINGTON: Yeah.

MS. URQUHART: – this issue is important to the people of Labrador?

MR. P. HARRINGTON: Absolutely, there's no doubt about that.

MS. URQUHART: And so that would be an area that you would pay particular attention to given the severe risks that are associated with it?

MR. P. HARRINGTON: As I mentioned earlier, Mr. Gilbert Bennett was the lead on this. I was associated with it; I've kept in touch with it, but, you know, Mr. Bennett handled just about all of these issues.

MS. URQUHART: Okay.

So this is the independent engineer report, and, Madam Clerk, if you'll please scroll down to page number 13 – the bottom of the page. So there was essentially a meeting to discuss the fact "that very little information was being documented or mapped by site staff about geological features." Sorry, and I should note that this is under the heading of North Spur. So

this is in relation specifically – thank you – to the North Spur.

And it goes on to say there were no as-builts and there weren't, sort of, a continuous tracking and mapping of the sites and the geological features as they were being discovered on site. So this is – again, this is a concern that was raised in 2014, and it appears it continues to go unresolved in 2016. Would you have been at that meeting in Montreal?

MR. P. HARRINGTON: No.

MS. URQUHART: Would you have been made aware of this issue?

MR. P. HARRINGTON: No, not particularly.

MS. URQUHART: Okay, that was all. Thank you.

MR. P. HARRINGTON: Thank you.

THE COMMISSIONER: All right, Former Nalcor Board Members.

MS. G. BEST: Good afternoon, Mr. Harrington. My name is Glenda Best, and I represent the Former Nalcor Board Members 2004 to 2016.

MR. P. HARRINGTON: Good afternoon.

MS. G. BEST: And I just have a couple of short questions for you.

MR. P. HARRINGTON: Okay.

MS. G. BEST: When you were discussing in your testimony the chain of command for Nalcor, you made no reference to the board of directors. Did you consider the board of directors at all to have input or responsibility for the decisions that were being made by the corporation?

MR. P. HARRINGTON: What I was trying to describe was my chain of command and where I got to.

MS. G. BEST: Mm-hmm.

MR. P. HARRINGTON: You know, I realize afterwards that, as you quite rightly pointed out, the CEO reports to the board of directors.

MS. G. BEST: Correct.

MR. P. HARRINGTON: So I just – but I stopped at – where I stop, where my information flow went to. I very – I can count on, perhaps, one hand the amount of board meetings I was asked to attend in – when Mr. Gilbert Bennett wasn't available.

MS. G. BEST: So was that the only occasion that you attended board meetings?

MR. P. HARRINGTON: That was generally. There may have been one or two where I was invited for some special thing, but it was the exception and not the rule.

MS. G. BEST: Okay. And what about presentation decks that were provided to the board? Did you have a responsibility for the preparation of any of those?

MR. P. HARRINGTON: I had – I would be asked to provide certain information –

MS. G. BEST: Mm-hmm.

MR. P. HARRINGTON: – to someone who was presenting those.

MS. G. BEST: Okay. So you didn't prepare the decks themselves, the presentation?

MR. P. HARRINGTON: I might have prepared some slides, but not necessarily all of them.

MS. G. BEST: Okay.

MR. P. HARRINGTON: So I didn't know the final product that went to the board. That would be Mr. Bennett or some other person who was actually presenting.

MS. G. BEST: That was what I was going to ask you is if you had prepared anything, would the information that you be – that you provided to Mr. Bennett or to Mr. Martin be vetted by them before it went to the board?

MR. P. HARRINGTON: Yes.

MS. G. BEST: Okay. Thank you. That's all the questions that I have.

MR. P. HARRINGTON: Thank you.

THE COMMISSIONER: Thank you.

Newfoundland and Labrador Building and Construction Trades Council/Resource Development Trades Council.

MS. QUINLAN: No questions, Commissioner. Thank you.

THE COMMISSIONER: Thank you.

Dwight Ball, Siobhan Coady.

MR. O'FLAHERTY: Good afternoon, Mr. Harrington.

MR. P. HARRINGTON: Good afternoon.

MR. O'FLAHERTY: My clients are Dwight Ball and Siobhan Coady, and they are respectively the Premier of Newfoundland and the Minister of Natural Resources, who are the two members of Cabinet with greatest responsibility for oversight and governance of the Muskrat Falls Project. I intend to cover three topics with you, Mr. Harrington.

And just to review certain topics – sorry, certain documents in the context of those three topics. And I'd like to do that in the most effective and efficient way possible this afternoon. The first topic I want to explore with you is the Oversight Committee starting with the decision of the government in December 2015 to strengthen existing oversight on the Muskrat Falls Project, okay?

Were you aware that Mr. Ball in December of 2015 had already made it clear that the government – before it had been elected, that one of the policies of the government would be to strengthen existing oversight on the Muskrat Falls Project?

MR. P. HARRINGTON: Yes, I think I was.

MR. O'FLAHERTY: So, immediately then after the government changed, the new government made the decision, as the elected Government of Newfoundland and Labrador, correct, to strengthen that oversight?

MR. P. HARRINGTON: I believe so. Yes. Hmm.

MR. O'FLAHERTY: And which was and remains the sole shareholder of the company that you work for, Mr. Harrington, correct?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: And it's also the entity that stands good for the completion guarantee for the full cost of completion of the project, correct?

MR. P. HARRINGTON: That is correct.

MR. O'FLAHERTY: Could we have Exhibit P-03452, Madam Clerk, please?

THE COMMISSIONER: Two – that would be at –?

MR. O'FLAHERTY: That would be the December 21, 2015 press release.

THE COMMISSIONER: Right. So, you're gonna have to look at that your screen.

MR. O'FLAHERTY: It'll be on your screen.

MR. P. HARRINGTON: All right.

MR. O'FLAHERTY: You can take a moment and have a look at this; you may not be familiar with it or haven't seen it in a while.

MR. P. HARRINGTON: I haven't seen it in a while. No.

MR. O'FLAHERTY: Okay. Thank you.

So, for the sake of the readability of the transcript, please read for us what the Premier was quoted as saying in bold, please.

MR. P. HARRINGTON: “Given cost overruns, schedule changes and baseline

updates on the Muskrat Falls Project, it is prudent for the Provincial Government to review the project's cost and schedule to determine if there are any critical risks moving forward. Ernst & Young will undertake a comprehensive, independent review and identify opportunities for corrective action, if necessary. This type of due diligence is not uncommon in major capital projects and we are moving ahead with the work immediately.”

MR. O'FLAHERTY: Thank you, Mr. Harrington.

And now, please read what my client Siobhan Coady was quoted as saying. It's just brief there.

MR. P. HARRINGTON: Is that –? Okay. Thank you.

“We have a mandate to open the books on the Muskrat Falls Project and starting with the review announced today, that is exactly what we intend to do. This review will confirm the funding and time required to complete the project. We need to ensure any risks from a financial perspective are reflected in our 2016-17 budget and the multi-year fiscal framework. We have advised Nalcor of the planned review, they have committed to full cooperation, and recognize the value of such a review.”

MR. O'FLAHERTY: Thank you, Mr. Harrington. So, according to what Minister Coady said on December 21, 2015 – that government was initiating a full review of Muskrat Falls Project immediately, correct?

MR. P. HARRINGTON: Correct.

MR. O'FLAHERTY: So, you would have had an opportunity, I take it, to review the scope and objectives that were set out in attachments to this document.

MR. P. HARRINGTON: This – I – was there some attachments to this?

MR. O'FLAHERTY: Well, there's a – overview is available, it says there, and this – the point, I take it, is, is that Nalcor were made

aware of this, it says that in the quote, doesn't it, you just read?

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: Okay, so you would've had an opportunity to look at the scope and objectives, you knew what was going on.

MR. P. HARRINGTON: I think that came to the CEO –

MR. O'FLAHERTY: Right.

MR. P. HARRINGTON: – and, you know, if it was available online, then we'd have a look at it –

MR. O'FLAHERTY: Right.

MR. P. HARRINGTON: – but not to comment on it.

MR. O'FLAHERTY: But it was important to you, though, at that time. You've told us over and over again that oversight was an important issue for you, with resourcing on the PMT, correct?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: Right.

So you knew about this at the end of December of 2015, didn't you?

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: Right.

So whether or not you or Mr. Gilbert Bennett or Mr. Ed Martin felt on December 21, 2015 that there was either sufficient oversight or duplication or too much oversight on the project, it was the absolute right of the Government of Newfoundland and Labrador to take steps to strengthen oversight on the project, correct?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: And it was the absolute right of the elected government to order a full review of the Muskrat Falls Project by an outside consultant, correct?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: Right.

And so, it was their absolute right, and they say there they had a mandate to do it, to open the books on the Muskrat Falls Project, correct?

MR. P. HARRINGTON: Correct.

MR. O'FLAHERTY: And Nalcor was told that.

MR. P. HARRINGTON: That's right.

MR. O'FLAHERTY: And as Mr. Bowen, I don't know if you saw Mr. Bown – sorry, I pronounced his name incorrectly there – he confirmed that, to his knowledge, there was no statutory or regulatory step required before government proceeded immediately on December 21.

Did you hear him say that?

MR. P. HARRINGTON: No, I didn't.

MR. O'FLAHERTY: Okay. Are you aware if there was any statutory or regulatory step that needed to be taken?

MR. P. HARRINGTON: Well, I didn't know of any.

MR. O'FLAHERTY: Right, okay.

So, then I put it to you then, Sir, that it was the responsibility of Nalcor and you, as the project director of this important project, to participate and support this review, correct?

MR. P. HARRINGTON: And we did.

MR. O'FLAHERTY: Just answer my question –

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: – though. That was your responsibility –

MR. P. HARRINGTON: That's right.

MR. O'FLAHERTY: – correct?

And furthermore, it was, to use your phrase in your letter to Stan Marshall some months later, it was well-known by the project management team, including you at that time, Mr. Harrington, that there was a huge level of concern in the public to understand what the actual state of the cost and schedule was, wasn't there?

MR. P. HARRINGTON: That's right.

MR. O'FLAHERTY: Right. And the reason for that is because there was an overhang, a view in the public that there would be a massive increase in electricity pricing in the province, correct?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: Right.

And so giving the people of this province was what this review – giving them that information and those answers, that's what this review was about, wasn't it?

MR. P. HARRINGTON: Well, the review was exactly as it's stated here.

MR. O'FLAHERTY: Well, there –

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: – you go, okay. But you knew all those things on December 21, 2015, didn't you?

MR. P. HARRINGTON: I was aware of them, yes.

MR. O'FLAHERTY: Right.

So, now we heard your evidence, I believe it was yesterday morning when we talked about this review, blaming Ernst & Young, the consultant named there, for being ill-prepared when they came to St. John's to begin their work on and after January 11, 2016.

You recall giving that evidence?

MR. P. HARRINGTON: I recall responding to an email I saw from Mr. Mike Kennedy where he indicated that Nalcor were the reason for the delays in getting access to information, that's what I was responding to.

MR. O'FLAHERTY: Do you recall giving the evidence yesterday blaming EY for being ill-prepared when they came to St. John's?

MR. P. HARRINGTON: Yes, because –

MR. O'FLAHERTY: Okay.

MR. P. HARRINGTON: – I was –

MR. O'FLAHERTY: Thank you.

MR. P. HARRINGTON: – I was responding –

MR. O'FLAHERTY: So –

MR. P. HARRINGTON: – to that.

MR. O'FLAHERTY: – here's what you said, Mr. Harrington: The statement of work hadn't been agreed upon. They arrived on January 10; it took until January 18 before they had an agreed scope or what they call statement of work –

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: – an approved non-disclosure agreement. The non-disclosure agreement hadn't been put in place before they arrived.

MR. P. HARRINGTON: That's right.

MR. O'FLAHERTY: The non-disclosure agreement was challenged by EY. They hadn't put it in place beforehand, so we needed that NDA. Okay?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: Right. And that's what you said yesterday?

MR. P. HARRINGTON: That's what I said yesterday.

MR. O'FLAHERTY: So I'm going to break that down in a minute or so, Mr. Harrington, but I wanna start up at 10,000 feet, okay, before I do, by asking you first: Who or what gave you the right to impose any conditions upon the timing, the way that this process would start or the participation of Nalcor in providing documents to the government-ordered review?

MR. P. HARRINGTON: I was told by our legal counsel that we needed to get an NDA in place, and a – also, a ring fence on the conflict of interest. That was – that’s what my legal advice was at the time.

MR. O’FLAHERTY: So either you have the right or you don’t have the right, okay, ’cause I’m asking you about authority, now.

MR. P. HARRINGTON: Well –

MR. O’FLAHERTY: That’s what I’m asking you, Mr. Harrington. So just listen –

MR. P. HARRINGTON: – so –

MR. O’FLAHERTY: – to my question.

MR. P. HARRINGTON: – right.

MR. O’FLAHERTY: Who told you or gave you the right to impose any conditions upon documentary disclosure to this review, at that time?

MR. P. HARRINGTON: I was told by Mr. Gilbert Bennett that I had to get all of those things in place.

MR. O’FLAHERTY: Well, as I understood the exhibit that I looked at, you recommended to Mr. Bennett that there be an NDA and he gave you that authority.

MR. P. HARRINGTON: So, I guess I pointed out that is an NDA required, and he agreed.

MR. O’FLAHERTY: Right. So it was you that started this process and he agreed with it. Correct?

MR. P. HARRINGTON: Well, yes, I would –

MR. O’FLAHERTY: Right.

MR. P. HARRINGTON: – check with my, you know –

MR. O’FLAHERTY: Right.

MR. P. HARRINGTON: – my immediate report.

MR. O’FLAHERTY: So I put –

MR. P. HARRINGTON: Do I need an NDA before I release this information? Do I need certain prerequisites to be –

MR. O’FLAHERTY: Mm-hmm.

MR. P. HARRINGTON: – cleared? The answer was: Yes.

And also, I believe Charles Bown was copied on that email as well.

So I assumed that it was – that was required, that was the case. And, in fact, all of those things happened. So if they weren’t required, why did they – why were they actually produced?

MR. O’FLAHERTY: Well, we’re going to get to that in a second, though. I wanna start, though, with the authority issue, okay?

So I’m going to put it to you, Mr. Harrington, that neither you nor Mr. Bennett, who will testify here, nor Mr. Martin had any authority to demand an NDA from any independent body appointed by government, which already had a full suite of confidentiality provisions in place. That was none of your business to get involved in that, Mr. Harrington.

MR. P. HARRINGTON: Well, someone should have told me it’s none of your business.

MR. O’FLAHERTY: Well –

MR. P. HARRINGTON: They didn’t.

MR. O’FLAHERTY: The consultant that was engaged by the owner, Mr. Harrington, had its own broad confidentiality agreements in place with the owner since 2014 or 2015, correct?

MR. P. HARRINGTON: I don’t know.

MR. O’FLAHERTY: You didn’t know that they had an agreement in place with government?

MR. P. HARRINGTON: I did not know that.

MR. O’FLAHERTY: Okay.

Had you ever previously asked that there be an NDA in place?

MR. P. HARRINGTON: With who?

MR. O'FLAHERTY: Ernst & Young.

MR. P. HARRINGTON: I haven't, no.

MR. O'FLAHERTY: No, you didn't. You asked for it in January of 2016. Correct?

MR. P. HARRINGTON: I asked do we need one. I was told –

MR. O'FLAHERTY: Right.

MR. P. HARRINGTON: – yes, you need one.

MR. O'FLAHERTY: Right.

Well, again, Mr. Harrington, I guess it seems like we're agreeing with this. You – we are agreeing, you and I, you didn't have any right to demand that. You recommended it; you were told by your legal counsel to get one and by your boss to get one. But you didn't have any right to demand it, did you?

MR. P. HARRINGTON: I didn't demand anything.

MR. O'FLAHERTY: Okay.

Now, let's go to NDA P-040 – the NDA at P-04041. It's a new exhibit, Madam Clerk.

MR. P. HARRINGTON: Is this the NDA that –?

THE COMMISSIONER: That's tab 107.

MR. O'FLAHERTY: This is the NDA.

THE COMMISSIONER: Tab 107.

MR. O'FLAHERTY: And the evidence will be, Mr. Commissioner, that this was entered into by both parties by January 18, 2016.

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: This is – oh, I'm sorry, it'll be 04042, then. I'm sorry about that, Madam

Clerk. This is the statement of work; I'll come to that.

Could you go to Clause 2.1, please?

THE COMMISSIONER: That's tab 108.

MR. O'FLAHERTY: Thank you.

Just read that clause for us, please, into the record?

MR. P. HARRINGTON: "Nalcor agrees, subject to the terms and conditions of this Agreement, to disclose to E&Y certain Confidential Information. Nalcor shall have full discretion in determining what Confidential Information" will "be disclosed to E&Y hereunder."

MR. O'FLAHERTY: So this is an agreement that was entered into on or about – well, on January the 18th, 2016. Was that provision ever relied upon by Nalcor to withhold documents from the review process?

MR. P. HARRINGTON: Not as far as I know.

MR. O'FLAHERTY: It was not. In fact, because that wording there seems to say that Nalcor would have the discretion to determine what information was going to be disclosed to EY, doesn't it?

MR. P. HARRINGTON: Well, it does. Those are the words.

MR. O'FLAHERTY: That's what it says –

MR. P. HARRINGTON: That's what it says.

MR. O'FLAHERTY: – and that would be directly contrary to the idea that you're having an independent review by an independent body, correct?

MR. P. HARRINGTON: Yes, maybe.

MR. O'FLAHERTY: Right.

MR. P. HARRINGTON: But that's what they agreed to.

MR. O'FLAHERTY: All right.

So in terms of – you also gave some evidence, Mr. Harrington, about a ring-fence procedure, which I would like to clarify. Could you go to Exhibit P-04041, please, which is the SOW? Thank you, Madam Clerk.

MR. P. HARRINGTON: Just before we move, who signed that one? I –

MR. O'FLAHERTY: Gilbert Bennett signed it –

MR. P. HARRINGTON: Okay.

MR. O'FLAHERTY: — and David Steele signed it for –

MR. P. HARRINGTON: So this was an –

MR. O'FLAHERTY: – Ernst & Young.

MR. P. HARRINGTON: – agreed NDA?

MR. O'FLAHERTY: Correct.

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: Now, you gave some evidence about a ring fence that was put in place. If I could – if you could scroll down the document, Madam Clerk. I'd like to give you an opportunity – I have some clarification that I'd like to ask you about with this. If you could keep going, it's at the end of the document, Madam Clerk. Sorry, I don't have the page number.

Yeah, if you can just go back up then. So, what we're looking at here is an appendix to the agreement between – “Appendix A - Ring-Fence Procedures Memo.” Now – and this may be simply you having, perhaps, just spoken out of turn on this, but I understood your evidence to be that the ring-fence procedure was something that Nalcor insisted that be put in place?

MR. P. HARRINGTON: No, I think it was – we identified that there was a potential conflict of interest because of work that EY were carrying out with Astaldi, and it was then agreed with government, to ensure that there was no conflict with any of the other major contractors. And that would be via Charles Bown.

MR. O'FLAHERTY: Yeah, but that's not an agreement that you entered into – Nalcor entered into; this is an agreement between Ernst & Young and the Government of Newfoundland and Labrador, correct?

MR. P. HARRINGTON: I don't know who signed this document.

MR. O'FLAHERTY: Well, this is isn't a signed procedure; this is – outlines what the procedure is as between them.

MR. P. HARRINGTON: Okay.

MR. O'FLAHERTY: This is part of the statement of work for government where they hired Ernst & Young, correct?

MR. P. HARRINGTON: That looks – yes.

MR. O'FLAHERTY: Right. So, really what we're looking at here is a procedure put in place between Ernst & Young and government which arises out of the issue that you raised on the 12th of January, which was that Astaldi – some tax work was being done, you understood, by Ernst & Young, so you raised that issue with Ernst & Young when they arrived here in St. John's?

MR. P. HARRINGTON: Yeah, and we said we needed to get –

MR. O'FLAHERTY: Right.

MR. P. HARRINGTON: – this resolved.

MR. O'FLAHERTY: But just as a factual matter, this is not something that Nalcor either requested or was involved in; this is between Ernst & Young and the government, correct?

MR. P. HARRINGTON: I haven't seen the whole document and I can't remember all of the details, but I don't know who signed it this at the bottom or whether there was countersign by anybody or whether there was a – from this – was a procedure with Nalcor. I really can't remember, Sir.

MR. O'FLAHERTY: Well, what concern is it of – if this is part of the contract between Ernst & Young and the government, what concern is it of yours anyway?

MR. P. HARRINGTON: Well, you're right.

MR. O'FLAHERTY: Right.

So, then, it's my understanding, then, that the NDA, as I've told you, was signed by Mr. Bennett and Mr. Steele on the 18th. And I'd understood you to be implying yesterday that the delay – the problems with – what was being complained about by Mr. Kennedy were referred to in his email with the delay in providing documents, you were suggesting that that was Ernst & Young's fault for being disorganized or unprepared when they arrived, correct?

MR. P. HARRINGTON: Yeah –

MR. O'FLAHERTY: Right.

MR. P. HARRINGTON: – that's correct.

MR. O'FLAHERTY: So we'll see in a moment, in fact, Mr. Harrington, that your team was requested to provide the critical documents necessary for this review in December of 2015, correct?

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: Right. So you already knew – and this goes to the point raised by my learned friend Ms. Muzychka yesterday. You already knew in December what the critical documents were and you waited until Ernst & Young showed up on January 12, had people on the ground here in St. John's before you even raised this issue.

MR. P. HARRINGTON: Which issue?

MR. O'FLAHERTY: The issue of what you said was a tax issue and the requirement for an NDA.

MR. P. HARRINGTON: We were made aware of it when they arrived. I was made aware of it by the Finance team.

MR. O'FLAHERTY: Mr. Harrington, I'm not understanding your evidence here. I thought you told us yesterday –

MR. P. HARRINGTON: (Inaudible.)

MR. O'FLAHERTY: – in answer to questions from my learned friend, that you decided to wait until Ernst & Young were here to tell them about it. And she asked you – she fairly put to you –

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: – but doesn't that create a situation where you have people waiting around here without work to do?

MR. P. HARRINGTON: Well, I didn't – I'll have to back up a little bit.

MR. O'FLAHERTY: Mm-hmm.

MR. P. HARRINGTON: They arrived. All of this information became available. We were told we couldn't provide the information to them until we had an NDA signed.

MR. O'FLAHERTY: Well, Mr. Harrington, let's just reel it back a little bit. Your email said that on the 10th of January, you asked for the authority to look for an NDA. You didn't ask Ernst & Young about an NDA; you went to your boss and asked about an NDA, correct?

MR. P. HARRINGTON: Do I need an NDA to release this information?

MR. O'FLAHERTY: Right.

MR. P. HARRINGTON: That's right.

MR. O'FLAHERTY: My question, Sir, is this: You knew, in late December of 2015, what the critical information was that Ernst & Young required to conduct their review, and it says in the record that you knew they were coming here in that time frame in January of 2016, correct?

MR. P. HARRINGTON: I wasn't here over Christmas.

MR. O'FLAHERTY: Oh. And you were the only person who knew about what was happening with the document request?

MR. P. HARRINGTON: Gilbert Bennett would have known and –

MR. O'FLAHERTY: Mmm.

MR. P. HARRINGTON: – some other people, but I was out – I was in the UK.

MR. O’FLAHERTY: So what I want to know –

MR. P. HARRINGTON: I didn’t get back until, I think, shortly before then.

MR. O’FLAHERTY: You know what, Mr. Harrington, I’m going to take you now to – why don’t we just go right to that document, P-03355, Madam Clerk.

MR. P. HARRINGTON: Three ...

MR. O’FLAHERTY: This is a document dated January 29, 2016.

MR. P. HARRINGTON: Could you help me out again?

THE COMMISSIONER: Yeah, it’s on your screen.

MR. P. HARRINGTON: Oh.

MR. O’FLAHERTY: Can I go to page 5 please Madam Clerk?

Take a moment and have a look at this, Mr. Harrington. That’s just the page here. Please read the first bullet for us?

MR. P. HARRINGTON: “A significant volume of data has been received and we discuss outstanding data requests with Nalcor each day.”

MR. O’FLAHERTY: The next bullet please?

MR. P. HARRINGTON: “There have been a number of obstacles to timely receipt of data: NDA signing, competing priorities at Nalcor, delayed requests for clarification/justification, document release process.”

MR. O’FLAHERTY: Next one?

MR. P. HARRINGTON: “The greatest delays have related to the most critical data requests.”

MR. O’FLAHERTY: And the first – and the first one in the box there refers to “Contractor Progress Reports,” correct?

MR. P. HARRINGTON: That’s correct.

MR. O’FLAHERTY: The date they were requested, Sir?

MR. P. HARRINGTON: That’s correct.

MR. O’FLAHERTY: What was the date they were requested, Sir?

MR. P. HARRINGTON: Oh, before scope of work signing on 23rd of December.

MR. O’FLAHERTY: Right, and the next one, “Contract performance metrics.”

MR. P. HARRINGTON: Twenty-third of December.

MR. O’FLAHERTY: Right, and these ones here, it says the date received for contractor progress reports: “Ongoing. Release of latest reports only approved” January 26, correct?

MR. P. HARRINGTON: That’s correct.

MR. O’FLAHERTY: And the bottom for the contract performance metrics: “Not yet received. Further clarification sought by Nalcor this week,” correct?

MR. P. HARRINGTON: Correct.

MR. O’FLAHERTY: If we could scroll down to the next bullet please?

Please read the next bullet please?

MR. P. HARRINGTON: “The above delays have impacted efficiency and effectiveness these past two weeks because we could not perform certain data analysis required and they impaired our ability to prepare for deep dive sessions with Nalcor.

“This results in a risk that additional follow on meetings with Nalcor will be required on certain major contracts.

“This is not allowed for in delivery schedule timing, but may be a moot point based” upon “the options to be considered in relation to Risk 2 presented in this deck.”

MR. O'FLAHERTY: So, do you have an explanation, Mr. Harrington, as to why it was that these documents were not provided for over a month?

MR. P. HARRINGTON: They weren't available – from the contractor.

So –

MR. O'FLAHERTY: They weren't available.

MR. P. HARRINGTON: – let me explain.

The document request didn't come through me, I didn't have to – I was not a bottleneck here. They went through to Mr. Stephen Pellerin who was the contact person; he diligently sought out the information. If it was –

MR. O'FLAHERTY: Mmm.

MR. P. HARRINGTON: – available from the contractors, it would go into the data room.

Some of these contractors don't provide you with a monthly report – the progress reports he talks to here – on a very, you know, regular basis, and especially over the Christmas period they have a tendency to shut down. Contractors generally, construction contractors, will shut down over the Christmas period, they will get back up again around about the 10th of January or whatever, and then they would eventually give us the cost – contractor progress reports.

So there's not a matter here of holding anything back. It was a matter of Mr. Stephen Pellerin would go looking for that information. If it was available he'd put it into the data room.

MR. O'FLAHERTY: So your explanation then – it's the contractor's fault that the documents weren't provided.

MR. P. HARRINGTON: If the document wasn't provided and we didn't have it, how could we provide it?

MR. O'FLAHERTY: Right. And it's not your responsibility to track that down and to engage in that. That was somebody else's responsibility.

MR. P. HARRINGTON: That's further down the line. Yes.

MR. O'FLAHERTY: Right. Okay.

Okay. I listened to your evidence about a document yesterday and, Mr. Harrington, which you purported to interpret the statement of work between Ernst & Young and the Government of Newfoundland and Labrador as excluding Astaldi from the review that we're talking about. Do you remember that?

MR. P. HARRINGTON: That was my understanding.

MR. O'FLAHERTY: That was your understanding.

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: Right. Why don't we bring up the statement of work, please? That would be 04042, Madam Clerk, if my memory serves me.

THE COMMISSIONER: That'll be tab 108.

MR. O'FLAHERTY: I got it wrong. It's 04041. Sorry about that.

THE COMMISSIONER: Okay, so that's tab 107.

MR. O'FLAHERTY: Now, this was viva voce evidence you gave yesterday but I'd understood – and please correct me if I don't have your comments right on this – that you had based your interpretation on comments that you attributed to my client at a meeting you attended when he was there in his capacity as Premier of Newfoundland and Labrador. Correct?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: Was any instruction given in that meeting to restrict this statement of work in the manner you have suggested?

MR. P. HARRINGTON: The only thing I can quote is there's a – I have notes from that meeting and that's my recollection of the meeting and I don't have the exhibit here but those notes that I took – I took to say that right

at that moment – right at that point in time – there was a high sensitivity to the Astaldi ongoing negotiations and that there was a certain date that – that we should hold off the deep dive or whatever EY were going to do – until such time as that was cleared.

MR. O’FLAHERTY: So, in other words, then there’d be no review according to your interpretation of the cost and schedule performance of Astaldi, until some point in time into the future. That was your interpretation, was it?

MR. P. HARRINGTON: That was my understanding and my interpretation.

MR. O’FLAHERTY: Oh, I see, okay.

Did you – my question was – did you hear any instruction given at the meeting to restrict this statement of work in the manner that you have just described?

MR. P. HARRINGTON: Not explicitly.

MR. O’FLAHERTY: No. Did you request any clarification from my client or my client’s staff before acting on your interpretation?

MR. P. HARRINGTON: No, I wouldn’t – I wouldn’t do that.

MR. O’FLAHERTY: No.

MR. P. HARRINGTON: I would go through my VP.

MR. O’FLAHERTY: Well, it’s out – the answer then is no – is it?

MR. P. HARRINGTON: That’s correct.

MR. O’FLAHERTY: That wasn’t done either. So let’s go then to page 4, please. These are the limitations on the statement of work. Can you just look those over, Mr. Harrington, and tell me if you see anything in those limitations there that says that the Astaldi cost and schedule performance documentation is outside the scope of this review mandated by the government?

MR. P. HARRINGTON: I don’t.

MR. O’FLAHERTY: No.

But you were prepared to put that interpretation on it based upon what you say somebody said at a meeting, correct?

MR. P. HARRINGTON: What I recorded in the meeting.

MR. O’FLAHERTY: Okay.

So, Mr. Harrington, what I want you to do now – ‘cause I don’t want to in any way be unfair to somebody and not ask you the question directly to your face – the question I’m asking you is, why should the Commissioner accept any other conclusion other than what you were doing, what I just showed here, from late December until the end of January 2015, was simply a continuation of what you had been doing from 2014 right up until December 2015, during the oversight process?

MR. P. HARRINGTON: Well, what’s the question?

MR. O’FLAHERTY: Which is, opposing and delaying the Oversight Committee.

MR. P. HARRINGTON: No. I was not opposing and delaying anything –

MR. O’FLAHERTY: I’m sorry. My question was too long. Let me give you another opportunity, okay? Why should the Commissioner – ‘cause I’ve shown you the evidence here, and you’ve said that’s not what you’re doing – but why should the Commissioner accept any other inference, except that that is exactly what you were doing: delaying and obstructing this work?

MR. P. HARRINGTON: Well, that’s up to the Commissioner to decide.

MR. O’FLAHERTY: That’s your answer? Okay.

MR. P. HARRINGTON: That’s my answer.

MR. O’FLAHERTY: Let’s have a quick look back then at these interactions. Exhibit 03283 please?

I want to go back now to 2014. I'm not going to go into detail on this; this ground has been covered before. But I want to get on the record your answers to this. Page 3 of this document please –

THE COMMISSIONER: Excuse me. Just – can you give me the document number again, please?

MR. O'FLAHERTY: 03283.

THE COMMISSIONER: Okay. This one will be on your screen.

MR. P. HARRINGTON: Okay.

MR. O'FLAHERTY: So this is a document dated March the 21st, could I have – March 21, 2014 this is the completed draft of the first initial engagement by Ernst & Young, which was to assist with the terms of reference for the Oversight Committee, Sir. Okay?

You aware of that?

MR. P. HARRINGTON: No. I wasn't aware of this.

MR. O'FLAHERTY: You weren't aware of this. Okay.

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: Did you know – go to page 3, please? I'm sorry, page 3 of the document. Yeah. This – if you keep going.

Okay. Okay. Right there. That's good. Yeah. If you just come back a little bit, Madam Clerk? Sorry. Mm-hmm. Thank you.

In the last paragraph, it says "We understand that the Government's objective is to provide reliable and transparent oversight on the cost and schedule performance of the LCP and to establish an effective communication channel to Cabinet and the general public."

Were you aware of that Mr. Harrington? That was the objective of the Oversight Committee.

MR. P. HARRINGTON: I think that was their mandate. Yes.

MR. O'FLAHERTY: That was their mandate. Right. And we'll see in the same exhibit certain recommendations were made to the government's Oversight Committee, and that's with respect to a list of the cost and schedule documentation. If – Madam Clerk, if could you keep scrolling? I'm sorry, I don't have the document right to hand. If you keep going? Mm-hmm.

Keep going? Right here.

So the next couple of pages are going to be documentation, which is a list of cost and schedule documentation which project management consultants at an outside agency, Ernst & Young, advised the Oversight Committee should be made available to them. Okay?

MR. P. HARRINGTON: (Inaudible.)

MR. O'FLAHERTY: Did you know that those recommendations had been made to the Oversight Committee?

If you can keep scrolling, Madam Clerk.

You can see the – these are specific documents here, that they're recommending that the Oversight Committee needs to review to perform their mandate. Did you know that?

MR. P. HARRINGTON: I – I can't remember this one, no.

MR. O'FLAHERTY: Didn't know that. Okay.

MR. P. HARRINGTON: No.

MR. O'FLAHERTY: So again though, Mr. Harrington, this was a formal decision of government, right? In March of 2014 to establish – and at that stage to at least strengthen oversight on the committee again, wasn't it?

MR. P. HARRINGTON: So this exhibit is – this is an EY exhibit, right?

MR. O'FLAHERTY: Right. These – this is a recommendations provided –

MR. P. HARRINGTON: A recommendation. Right.

MR. O'FLAHERTY: Right.

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: And these were the documents that they recommended. As you can see here – this is a good page, page 13 – do you see the list? “Project risk register.

“Change order log.

“Claims log.”

Do you see those?

MR. P. HARRINGTON: That would be then put into the data room.

MR. O'FLAHERTY: But – but – okay. But, Mr. Harrington, this is gonna be the point: they weren't put into the data room.

MR. P. HARRINGTON: What do you mean they weren't put in? That's a part – all part of the monthly report that's provided.

MR. O'FLAHERTY: Okay. We'll carry on then.

Could we have the next Exhibit please, 03286? April 10, 2014.

THE COMMISSIONER: Six – that one is in tab 77 of book 2.

MR. O'FLAHERTY: So this is an email, April 10, which follows on a meeting that apparently you were there and I know you've seen this email in other evidence.

If we could scroll down 'til we get to – sorry, if we can go – if we keep going again? I'm sorry. I'm looking – no, if we go back up again, I'm sorry about that.

I wanna go to the quote which says – or the statement which says Nalcor's team has “received the government's detailed data request ... and rebuffed the request”

So that must be on bottom of the page. Keep going. There we go. Do you see where it says, “The Nalcor team,” Sir, in the middle of the page? Right there.

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: Now, I'm not interested in getting drawn into who behaved in what way in the meeting. That isn't the purpose of my question. What I am asking you is this: Did Nalcor rebuff the request at that time, as reflected in this particular email?

MR. P. HARRINGTON: The – I wasn't at that meeting so I don't know. The CFO –

MR. O'FLAHERTY: No, you were at the meeting, Mr. Harrington.

MR. P. HARRINGTON: See, two meetings –

MR. O'FLAHERTY: Mm-hmm.

MR. P. HARRINGTON: – our client, in their discussions with Nalcor, CFO, director of IA, VP program, Dir program.

MR. O'FLAHERTY: Right. So just go –

MR. P. HARRINGTON: I can't remember this meeting, if I was there.

MR. O'FLAHERTY: But, Mr. Harrington, this is the one that you were commenting on with Richard Noble. If you just look at the next paragraph it says: “At the end of the first session, our client felt defended by EY but also a tad insulted by Nalcor's Proj Dir who had dismissed inconsistently their requests.”

Do you recall your evidence on this now?

MR. P. HARRINGTON: No. I see this now, yes.

MR. O'FLAHERTY: Okay.

So I'm not – as I've said to you, and I tend to speak a bit quickly so I apologize. My point –

MR. P. HARRINGTON: Yeah, I was trying to catch up with you here.

MR. O'FLAHERTY: Yeah, no problem.

My point, Mr. Harrington, is this: I don't want to get into who said what, you know, and how they behaved. That's not the point. The point is

Nalcor team had received the government's detailed data request, okay? That's what the document says.

MR. P. HARRINGTON: So what date is this?

MR. O'FLAHERTY: April 10.

MR. P. HARRINGTON: So this is not the –

MR. O'FLAHERTY: 2014.

MR. P. HARRINGTON: This is not the 2016 one, this is the –

MR. O'FLAHERTY: Right, right.

MR. P. HARRINGTON: Yeah, okay.

MR. O'FLAHERTY: It was right at the beginning.

MR. P. HARRINGTON: Yeah, yeah.

MR. O'FLAHERTY: We know that in 2016 the claim – I'm sorry, the claim – the risk register documents, all those were provided, okay? This is 2014.

MR. P. HARRINGTON: Right.

MR. O'FLAHERTY: Okay.

MR. P. HARRINGTON: I'm with you now.

MR. O'FLAHERTY: Now you're with me. All right.

Sorry, I did go too quickly.

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: So back in 2014 you went to a meeting, you reviewed a list of data requests and it says that you rebuffed the request. Is that an accurate reflection of what happened?

MR. P. HARRINGTON: It doesn't say I rebuffed the request.

MR. O'FLAHERTY: Okay. That's fair enough.

MR. P. HARRINGTON: It says –

MR. O'FLAHERTY: That Nalcor rebuffed the request.

MR. P. HARRINGTON: And I was a junior member of that Nalcor group.

MR. O'FLAHERTY: So if you don't know the answer then, you can say you don't know the answer.

MR. P. HARRINGTON: I don't.

MR. O'FLAHERTY: Okay. That's fine.

Let's then go now to 03289, please. That'll be on your screen as well.

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: Now, this is now June of 2014. And we know from the evidence, Mr. Harrington, from Mr. Martin, that it was only in September of 2014 that any regular flow of documents began from Nalcor to the Oversight Committee.

Okay? Are you with me?

MR. P. HARRINGTON: I'm trying to catch up with you.

MR. O'FLAHERTY: Okay.

MR. P. HARRINGTON: So I don't have – I'm only seeing little bits of this so –

MR. O'FLAHERTY: Yeah, so am I. It says of the – I'm not going to ask you. I wanted – we're going to scroll down to what we're looking at in a sec. Can you go to page 4, please, Madam Clerk?

Now you'll see here these are actual lists of documents on your left that were requested, okay? And your company came back with what's called an LCP compliance checklist.

MR. P. HARRINGTON: Okay.

MR. O'FLAHERTY: All right? And what you came back with did not include any of these

specific documents. See how it says not explicitly included? You see that?

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: Okay.

And if we could go to page 6 – and this might help you now – Page 6, there we go. Here's ones that we're going to see come up again: Project risk register, change order log. Do you see that?

MR. P. HARRINGTON: Right.

MR. O'FLAHERTY: Not explicitly included. Do you see those, Sir?

MR. P. HARRINGTON: I do.

MR. O'FLAHERTY: Right.

So my point is that isn't it true, Mr. Harrington, that in June of 2014 Nalcor was not agreeing to provide documents such as these project risk register change order logs to the government-mandated Oversight Committee for Muskrat Falls?

MR. P. HARRINGTON: I don't know. I'm not familiar with this document and I don't know who completed this other side, but the – so I'm a little bit lost here. I'm not sure exactly who prepared this answer.

MR. O'FLAHERTY: No, it's not an answer. This is a compare and contrast document.

MR. P. HARRINGTON: Yeah but I don't know who prepared it.

MR. O'FLAHERTY: Ernst & Young prepared it.

MR. P. HARRINGTON: But where's the –

MR. O'FLAHERTY: They were working for the government and the government said here's an LCP compliance checklist.

MR. P. HARRINGTON: Can we – can I please go –

MR. O'FLAHERTY: You should take your time.

MR. P. HARRINGTON: Come up –

MR. O'FLAHERTY: Let's go right back up, yeah.

MR. P. HARRINGTON: – to the top because I'm trying to get my coordinates here. Of the – so this was something that was prepared by EY.

MR. O'FLAHERTY: Correct.

MR. P. HARRINGTON: Can we just slow – slowly (inaudible) down. It's a preliminary draft comparison and they – Nalcor LCP:

“As we note in the document it has been constructed in preparation for meetings with Nalcor ...

“It must be stressed that it is ‘**preliminary**’ and ‘**draft**’ – so it's a work in progress – “and has been developed to assist specifically” the meeting. “We remain confident that much of the information does exist even if not explicitly called out in the LCP Compliance Checklist response.

“The reader should also note that for thoroughness, efficiency, clarity and as part of helping set up an effective working relationship between Government of Newfoundland and Labrador and Nalcor, we will have to review the information to confirm content and format even where explicitly listed as compliant. This is a ‘normal course of business’... for the set up for this type of oversight.”

“Looking forward to ‘sleeves rolled up’ meetings on Tuesday and to working through this effectively with the Government” and you – and Nalcor. So I think this is a work in progress. That's what I read it to be. I don't think it's the end.

MR. O'FLAHERTY: I didn't suggest it was the end. I said by June of 2014 –

MR. P. HARRINGTON: This is the status.

MR. O'FLAHERTY: This is the state of the nation in June of 2014, isn't it?

MR. P. HARRINGTON: Yeah, yeah.

MR. O'FLAHERTY: Right.

MR. P. HARRINGTON: Sorry, I'm just trying –

MR. O'FLAHERTY: Thank you.

MR. P. HARRINGTON: – to get up to speed with you.

MR. O'FLAHERTY: Right, no problem. And I do tend to speak quickly but my point, again – and I'm reflecting back on what I've listened to over the days and days of the evidence that deal with the Oversight Committee.

MR. P. HARRINGTON: Mmm.

MR. O'FLAHERTY: And what I'm failing to understand, Mr. Harrington – and you can help me with it – is what authority or what right – now we're not even dealing with an NDA – what right would Nalcor have to be able to say: We won't give you this or that or thus to the Government of Newfoundland, which owns the project and which is responsible for all of the costs of completion of the project?

MR. P. HARRINGTON: And I don't read that from this. I'm – because this is work in progress. They're going to work with us and we're going to provide that information.

MR. O'FLAHERTY: Do you understand the timing of this? Do you – of what I've just shown you, Mr. Harrington?

MR. P. HARRINGTON: This is June 2014. This is –

MR. O'FLAHERTY: Right.

MR. P. HARRINGTON: – when the Oversight Committee was just getting rocking and rolling.

MR. O'FLAHERTY: No, the Oversight Committee was established in March of 2014.

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: Right? They went to a meeting with you in April of 2014 and you rebuffed their request.

MR. P. HARRINGTON: I didn't.

MR. O'FLAHERTY: Well, that's what the record says, Mr. Harrington.

MR. P. HARRINGTON: No, it says Nalcor did. You're making this personal.

MR. O'FLAHERTY: Oh, I'm sorry. I'm sorry; I bleed you over into Nalcor. I'm sorry, I didn't mean to personalize this but Nalcor said you're not getting the documents.

MR. P. HARRINGTON: Perhaps they needed greater clarity exactly what they were asking for.

MR. O'FLAHERTY: I –

MR. P. HARRINGTON: I can't remember that meeting.

MR. O'FLAHERTY: I don't want to tie this up any longer. What I'm asking you is: What authority or right does your company have to be able to behave in this manner? Just explain it to us.

MR. SIMMONS: Commissioner, if I can –

THE COMMISSIONER: Excuse me for a second.

MR. SIMMONS: Yeah. The line of questioning is based on the presumption that there was a refusal – an acknowledged refusal to provide documents and I don't hear that coming out of the evidence that Mr. Harrington is being given.

The question is: Where was the right to refuse, when I don't think it's been established that there's been a refusal through this period or arising out of the documents that the witness has been referred to.

MR. O'FLAHERTY: I can rephrase, Mr. Commissioner.

I would put it to you, Mr. Harrington, that these documents demonstrate that Nalcor is refusing to provide these specific documents over the time period March 2014 to June 2014. Do you agree, Sir?

MR. P. HARRINGTON: I don't agree.

MR. O'FLAHERTY: You don't agree.

MR. P. HARRINGTON: Because I don't know for sure.

MR. O'FLAHERTY: Okay.

Do you have an explanation as to why, or on what basis, Nalcor – well, if you don't know anything about it, then you don't have an explanation then, do you?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: All right, so you don't know. Okay. I'll have to pursue that with somebody else.

Now, so let's go, then, forward to P-03304, Mr. Harrington.

MR. P. HARRINGTON: 03304.

MR. O'FLAHERTY: Yeah.

So 03304 –

MR. P. HARRINGTON: Don't have that one either, do I?

THE COMMISSIONER: On your –

MR. O'FLAHERTY: No, it's gonna come up on your screen again.

MR. P. HARRINGTON: It's all – it's slide, you know, – so when it comes up on the screen it takes me a little bit of time to get the context; if you'd bear with me a little bit –

MR. O'FLAHERTY: Mm-hmm.

MR. P. HARRINGTON: – before you jump into the questions, if you don't mind.

MR. O'FLAHERTY: Yeah, sure.

MR. P. HARRINGTON: David –

MR. O'FLAHERTY: Why don't I bring you to the page that I'm gonna be asking you about –

MR. P. HARRINGTON: Well –

MR. O'FLAHERTY: – so that'll help you.

MR. P. HARRINGTON: Well, actually, I'd rather – can we scroll through it so I know who it's – could you go down? Because I need to know who it's from and when it was written. December 5, 2014, from David Steele to Craig Martin, okay.

This “is a new version, with a few edits from Richard on the Project Management Manual. Nothing has changed substantially. Thank you.”

Okay.

MR. O'FLAHERTY: Do you recall the project controls review, Sir?

MR. P. HARRINGTON: This is the review that was carried out in 2014.

MR. O'FLAHERTY: Well, no, it was carried out in 2015.

MR. P. HARRINGTON: Sorry, yeah, you're right, absolutely, yes.

MR. O'FLAHERTY: You recall that?

MR. P. HARRINGTON: I do.

MR. O'FLAHERTY: Okay.

So the context of my question, and I'll try to go as slowly as possible, is that a recommended scope of work was provided by a consultant to the Government of Newfoundland and Labrador to conduct a project controls review, okay?

MR. P. HARRINGTON: (Inaudible), if we could –

MR. O'FLAHERTY: And this is –

MR. P. HARRINGTON: – scroll, please?

MR. O'FLAHERTY: – the fifth version of that document.

MR. P. HARRINGTON: Right.

MR. O'FLAHERTY: And we'll just look at the page that – you can just take your time here.

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: This is the page here. See the scope there?

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: Just take a moment and have a look at it.

MR. P. HARRINGTON: Yeah.

Yes.

MR. O'FLAHERTY: Now, is this now ringing a bell with you?

MR. P. HARRINGTON: It does.

MR. O'FLAHERTY: Right.

So what had happened was the – Ernst & Young were recommending the scope to be – assessing the appropriateness of the Muskrat Falls project management processes relating to four things, which I've heard referred to as four legs of a stool: "Schedule management, reporting and control; Cost management, reporting and control; Risk management, reporting and control; Scope management, reporting and control."

Correct?

MR. P. HARRINGTON: Correct.

MR. O'FLAHERTY: Right.

Now, we're not gonna – we don't need to go through all of the documents, but by looking at this can you remember now that in fact what happened was when the scope of work – we heard Craig Martin testify to this – when it was finalized, it was only schedule management reporting and control, and cost management reporting and control, correct?

MR. P. HARRINGTON: I believe so.

MR. O'FLAHERTY: Right.

And do you also recall, Sir, that what had happened was Nalcor, and maybe you – but you can tell us – were involved in making

representations that suggested that it was not necessary to do risk management reporting, management and control, and scope management reporting and control?

MR. P. HARRINGTON: I'd draw your attention to the paragraph right underneath the four bullet points, saying that EY – "We will work with Nalcor Internal Audit during the planning phase of this engagement to identify opportunity to leverage work performed by Internal Audit (avoid duplication) and contemplate opportunities for Internal Audit to participate or leverage off the work" So from –

MR. O'FLAHERTY: So you're getting into the reasons why Nalcor did that. I want to start with: Did Nalcor make representations to the government's Oversight Committee to indicate that it wasn't appropriate or necessary that the project controls review include risk management reporting and control and scope management reporting and control? It's a simple question.

MR. P. HARRINGTON: Yes, for that very reason.

MR. O'FLAHERTY: Yes, for the reason cited.

Thank you. Okay.

And then from that point forward I had understood there were challenges about whether or not Ernst & Young were inside scope, outside scope. And that was constantly being questioned, as you said, a to and fro between you and Ernst & Young – or not you – Nalcor and Ernst & Young, correct?

MR. P. HARRINGTON: Thank you. Yes. There was – there were – not only Nalcor, Ernst & Young, but the Oversight Committee also and Ernst & Young.

MR. O'FLAHERTY: But, perhaps, you could just answer my question though. That's what happened, wasn't it –

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: – after that? Okay.

So a scope of work is recommended to the government's Oversight Committee. Nalcor intervenes and says it should be a smaller, narrower scope, correct?

MR. P. HARRINGTON: To avoid duplication, as I pointed out.

MR. O'FLAHERTY: Right, and there may be other reasons.

MR. P. HARRINGTON: (Inaudible) agreed on that.

MR. O'FLAHERTY: Whatever other reasons you had –

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: – and then, subsequently, there was all kinds of conflict that arose out of that, correct?

MR. P. HARRINGTON: Because people kept going outside of the agreed scope.

MR. O'FLAHERTY: Right. But if you had left it alone in the first place, Mr. Harrington, that wouldn't have happened, would it?

MR. P. HARRINGTON: So you've personalized it, again.

MR. O'FLAHERTY: Well, Mr. Harrington, if Nalcor had –

MR. P. HARRINGTON: (Inaudible.)

MR. O'FLAHERTY: – not intervened in the first place we wouldn't be talking about this today, would we?

MR. P. HARRINGTON: Probably not.

MR. O'FLAHERTY: No.

Thank you.

So, then again, Mr. Harrington, during that same review in May of 2015, while the Oversight Committee was doing the work on the limited scope – and we've reviewed this yesterday and, again, I don't – this isn't about your behaviour or one thing or another – but you felt

comfortable to be able to come to a scheduled meeting of this Oversight Committee and simply get up and walk out when it wasn't set up the way that you thought the meeting should be set up.

MR. P. HARRINGTON: Because I was called to a meeting –

MR. O'FLAHERTY: Mm-hmm.

MR. P. HARRINGTON: – that was to provide me, as project director, with the – an update of where they were.

MR. O'FLAHERTY: Well, let's assume for a moment there was a miscommunication, I'll assume that –

MR. P. HARRINGTON: Well, could I –

MR. O'FLAHERTY: – but that's –

MR. P. HARRINGTON: – could I finish?

MR. O'FLAHERTY: – were you comfortable with doing that?

MR. P. HARRINGTON: Could I finish?

MR. O'FLAHERTY: Yeah.

MR. P. HARRINGTON: Please? All right.

So I went to the meeting. I was – and, you know, there was the executive director and a number of people were there. As soon as we went in I started getting: We are going to ask you now, for this interview, all of these questions.

MR. O'FLAHERTY: Mm-hmm.

MR. P. HARRINGTON: But that wasn't my meeting call, the meeting call that I received was for an update. So, consequently, I said, well, I'm not prepared right at the moment to answer a whole bunch of questions.

MR. O'FLAHERTY: Mm-hmm.

MR. P. HARRINGTON: And so, you know, I was – I'm a very busy guy at that point in time. So consequently, I said: Look, this – I can't answer these things right now. Give me the list

of questions that you need to be answered. I'll schedule another meeting with you. And I held that meeting a couple weeks later, answered all of their questions very thoroughly.

MR. O'FLAHERTY: Okay, thank you. Mr. Harrington, you've given your reasons, again, why you did what you did. I'm just – what I'm more focused on is the fact that you had, or felt you had, either the right or the comfort level to be able to do that, didn't you, in May of 2015?

MR. P. HARRINGTON: Because I wasn't prepared for it, yes.

MR. O'FLAHERTY: Okay. But who gave you that? Who was it who (inaudible) –

MR. P. HARRINGTON: I'm the project director.

MR. O'FLAHERTY: I understand that, Mr. Harrington, but did somebody tell you that that was okay to do that?

MR. P. HARRINGTON: No, I just – that was my judgement.

MR. O'FLAHERTY: So, that's simply your own personality, the way you deal with things?

MR. P. HARRINGTON: That's – if I'm called to a meeting to – which has a specific scope of work –

MR. O'FLAHERTY: Mm-hmm.

MR. P. HARRINGTON: – and I get to the meeting, and it's not that scope of work, I'm not prepared for that meeting.

MR. O'FLAHERTY: Okay.

MR. P. HARRINGTON: That's not an efficient way to do business.

MR. O'FLAHERTY: So, then, let's just move ahead, then, to September of 2015. And we looked at an email, and we don't need to go to it because we're trying to move through this. But this was the email where you had gone to Gilbert Bennet and said that you felt very strongly that the report from EY shouldn't – first of all – on

the project controls – should not be in writing; it should be verbal, correct?

MR. P. HARRINGTON: That's correct. That's all on evidence.

MR. O'FLAHERTY: Right.

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: And, secondly, you felt that it shouldn't be released to the public –

MR. P. HARRINGTON: Yes, that's correct.

MR. O'FLAHERTY: – of Newfoundland and Labrador.

MR. P. HARRINGTON: Because of commercial sensitivities with Astaldi.

MR. O'FLAHERTY: And – okay. But there were two versions of the report – just let me finish, Mr. Harrington. There were two versions of the report, which were – a version which had the commercially sensitive items that Nalcor identified taken out, correct?

MR. P. HARRINGTON: Well, that was after the fact.

MR. O'FLAHERTY: No, it was in September of 2015.

MR. P. HARRINGTON: So, we had one report, and then eventually, because of concerns about commercial sensitivity, it was split into two.

MR. O'FLAHERTY: Well, Mr. Harrington the record will show that on September 29, 2015, there were two reports.

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: Okay? One with commercial sensitive information out, and one with the so-called commercially sensitive information in.

MR. P. HARRINGTON: Right.

MR. O'FLAHERTY: Right. But, again, my point is, Mr. Harrington, that you felt

comfortable enough in your position that you could prevent this – you could go to your boss and say we need to shut this down.

MR. P. HARRINGTON: Yeah, that was my opinion.

MR. O'FLAHERTY: So that the people of Newfoundland and Labrador couldn't find out what was going on with this project.

MR. P. HARRINGTON: Not if it threatened the Astaldi situation, which was in a very sensitive –

MR. O'FLAHERTY: (Inaudible.)

MR. P. HARRINGTON: – commercial situation. That was my opinion. I expressed that to my immediate superior. My immediate superior could say yes or no.

MR. O'FLAHERTY: Well – but there's another possibility, Mr. Harrington, and that's because you and the other members of the Nalcor executive didn't want the members of the public to find out exactly the state of the project, correct?

MR. P. HARRINGTON: No. That's not correct.

MR. O'FLAHERTY: That's not true, is it?

MR. P. HARRINGTON: That's – we were trying to protect the people of this province from a very serious situation with Astaldi. And if you want to exacerbate that situation, that was the right way to go about it.

MR. O'FLAHERTY: I'm going to move on now, Mr. Harrington. The next topic I have some questions about –

THE COMMISSIONER: Just – just one second –

MR. O'FLAHERTY: – relates to your –

THE COMMISSIONER: – excuse me –

MR. O'FLAHERTY: – evidence about the –

THE COMMISSIONER: – excuse me –

MR. O'FLAHERTY: Yeah.

THE COMMISSIONER: – just for a second. I'm just noticing that it's a quarter to 4 and –

MR. O'FLAHERTY: I'm sorry.

THE COMMISSIONER: – I think we should have a break. The witness has been on the stand for almost two hours. So we'll take our 10 minutes now and continue on after.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Okay, Mr. O'Flaherty.

MR. O'FLAHERTY: Thank you, Mr. Commissioner.

Mr. Harrington, the next topic I have some questions about relate to evidence you gave about responsibility for issues on the project and, in particular, the absence of responsibilities of the project management team for certain decisions.

So I'd like, Madam Clerk, if you could bring up Exhibit 01962, please, which is a letter written by you to Stan Marshall, dated June 6, 2016, Mr. Harrington.

MR. P. HARRINGTON: Oh, this one. Yes.

MR. O'FLAHERTY: And that's on the screen there now. You're well familiar with this or did you need to take a moment on this?

MR. P. HARRINGTON: I'd like to get it –

THE COMMISSIONER: Seventy-two, tab 72.

MR. P. HARRINGTON: If you don't mind. Yes.

MR. O'FLAHERTY: Okay, thank you, Mr. Harrington.

And this has been – you’ve been questioned about this, so I – which – and some of your answers are quite helpful and so I won’t have to cover all of the questions I had. But this is the letter you said was written on behalf of the team, including you, which was responsible for the management and delivery of the Muskrat Falls Project. Correct?

MR. P. HARRINGTON: That’s correct.

MR. O’FLAHERTY: And so my – the first statement I want to focus on is on page 1 – and you’ve been brought to this before – where it says: “It was decided to impose a very aggressive approach to cost and schedule. While it is not my place or intention to comment on the rational for those decisions, the Project Management Team is now taking criticism for those earlier decisions and that seems to me to be somewhat unfair.”

Those were your words. Correct?

MR. P. HARRINGTON: That’s correct.

MR. O’FLAHERTY: So I think you’ve already agreed, Mr. Harrington, the clear implication of those words you wrote on June 6, 2016, to Mr. Marshall is you’re telling him that the project management team did not make the decision to impose a very aggressive approach to cost and schedule. Correct?

MR. P. HARRINGTON: That’s correct. We just reflected –

MR. O’FLAHERTY: Right.

MR. P. HARRINGTON: – what we were given.

MR. O’FLAHERTY: Right. And your logic therefore was that it would be unfair for the project management team to now take criticism for those earlier decisions. Correct?

MR. P. HARRINGTON: Yes.

MR. O’FLAHERTY: Right.

MR. P. HARRINGTON: That’s what I said.

MR. O’FLAHERTY: So – and now in subsequent – and the project management team, of course, includes you, doesn’t it?

MR. P. HARRINGTON: That – yeah, it does.

MR. O’FLAHERTY: Right. And you have told us, in your evidence, that Mr. Martin is the person who made those decisions. Correct?

MR. P. HARRINGTON: Yes.

MR. O’FLAHERTY: So then it follows then on the same logic that what you were saying then, is that if there is any criticism to be borne, it is to be borne by the person who made the decision who is Mr. Martin. Correct?

MR. P. HARRINGTON: That’s – you’re jumping to a conclusion there but – and asking me to be correct. But what I was trying to express here, right, is that the project, you know – the cost and schedule, the risks associated were well known as we went off on the – started off on this project. As things started, you know, going awry we were getting, you know, personal attacks and it’s the personal attacks that I was concerned about with the project team.

MR. O’FLAHERTY: Okay.

So just – perhaps my question wasn’t clear because I think we’d agreed that your logic was – it was unfair for the project management team to be criticized and, as you say, had personal attacks with respects to decisions they didn’t make. Correct?

MR. P. HARRINGTON: Yes.

MR. O’FLAHERTY: Right.

MR. P. HARRINGTON: That’s right.

MR. O’FLAHERTY: So the logic then, obviously, or what flows from that, isn’t it, that the person who makes the decision must take responsibility, isn’t it?

MR. P. HARRINGTON: Or the group of people who make the decision.

MR. O’FLAHERTY: Right.

MR. P. HARRINGTON: So, it's not –

MR. O'FLAHERTY: But you said it wasn't you or your team.

MR. P. HARRINGTON: That's right, so it's up the line.

MR. O'FLAHERTY: Right.

And so you told us here today under oath – and please correct me if I didn't understand your evidence – that it was Mr. Martin who made the decision.

MR. P. HARRINGTON: He set the policy.

MR. O'FLAHERTY: Right.

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: So he made the decision, correct?

MR. P. HARRINGTON: That's right.

MR. O'FLAHERTY: Right.

So then he bears the responsibility, correct?

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: Thank you.

So – and you told us that the project management team were involved in writing this letter, correct?

MR. P. HARRINGTON: That is correct.

MR. O'FLAHERTY: So they then must feel the same way that you do, that the responsibility doesn't rest with them, it rests with Mr. Martin, correct?

MR. P. HARRINGTON: I wouldn't like to speak for them.

MR. O'FLAHERTY: You wouldn't like to speak to them.

MR. P. HARRINGTON: Not for all the project team.

MR. O'FLAHERTY: Okay.

So – all right, that's fair enough.

Now you've also – just go to page 2 then. You've already told other counsel, referencing the words – and this is the words about: "The unlikely probability of achieving these cost and schedule targets was well known." You saw that, right?

MR. P. HARRINGTON: That's part of the risk analysis, yes.

MR. O'FLAHERTY: Yeah.

But you said in evidence – and please, again, correct me if I'm wrong – my understanding of what I marked down was: The unlikely probability of achieving these cost and schedule targets was well known to the Nalcor project management team. Correct? Not to third parties, not to these other bookends, but –

MR. P. HARRINGTON: No, I'm talking within Nalcor.

MR. O'FLAHERTY: Yeah.

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: You're talking about the project management team.

MR. P. HARRINGTON: Well –

MR. O'FLAHERTY: And you've already told –

MR. P. HARRINGTON: Also –

MR. O'FLAHERTY: Sorry to interrupt you. Go ahead, Sir.

MR. P. HARRINGTON: Yeah. So it's not just the project management team, it's the Nalcor organization.

MR. O'FLAHERTY: Well, that's fair enough but –

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: But what –

MR. P. HARRINGTON: I'm just –

MR. O'FLAHERTY: I'm asking you about–

MR. P. HARRINGTON: I'm not splitting –

MR. O'FLAHERTY: – the team.

MR. P. HARRINGTON: – hairs. I'm just –

MR. O'FLAHERTY: Yeah.

MR. P. HARRINGTON: – trying to
(inaudible).

MR. O'FLAHERTY: The team knew that,
right?

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: This is what you're
telling the boss.

MR. P. HARRINGTON: Yeah, yeah.

MR. O'FLAHERTY: Right. You're saying that
we shouldn't be blamed for this, right, because
this was well known that this was likely to
happen. If something – if there's an unlikely
probability of achieving, then there's a likely
probability you're not going to achieve, isn't
there?

MR. P. HARRINGTON: Well, that's the P50
argument again. Right.

MR. O'FLAHERTY: Yeah but Mr.
Commissioner took you today to point out – you
didn't say P50, you said P5 or P10.

MR. P. HARRINGTON: On cost it was P50
and on – and I had described it as the two
bookends: We had the planning people and the
people who were used to building these things
telling us it's achievable; and then we had
Westney, who were saying that if you didn't
make these certain weather windows, then you
would lose a year, simple as that.

MR. O'FLAHERTY: Okay.

So, I mean, you're the one talking about
responsibility in this letter. And I want to put to
you, Mr. Harrington, the clear implication of the

letter that you wrote to Mr. Marshall was that
the unlikely probability of achieving these cost
and schedule targets was well known to the
project management team at sanction. Correct?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: Right.

Now, let's go back to page 1, and we're almost
finished with this exhibit now. So we go to the
first paragraph, and you say, "I am writing to
you in my current capacity and duty as the
Lower Churchill Project Director," correct?

MR. P. HARRINGTON: That's right.

MR. O'FLAHERTY: So you felt, then, on June
the 6th of 2016, that you had the duty as the
project director to clearly and directly inform
Mr. Marshall of these facts, correct?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: So it follows, then,
doesn't it, Mr. Harrington, that you must have
had the same duty or perhaps even a greater duty
to inform, as project or program director – or,
sorry, project director – to inform Mr. Martin of
how the project management team felt at
sanction, correct?

MR. P. HARRINGTON: We were all quite
clear that this was a tough target.

MR. O'FLAHERTY: I understand, Sir –

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: – so my question is you
had that duty to tell him, didn't you?

MR. P. HARRINGTON: And he was told.

MR. O'FLAHERTY: Say again?

MR. P. HARRINGTON: He was told.

MR. O'FLAHERTY: Yup. Let's just move it –
let's move the questions along in this order: Did
you have the duty to tell him?

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: Yes. And you say you did tell him?

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: You told him clearly and directly at sanction that this – that there was, as you've said, unlikely probability of achieving the cost and schedule target?

MR. P. HARRINGTON: We provided the risk – the detailed risk analysis was provided to him.

MR. O'FLAHERTY: I'm not talking about giving him a document from which he could gather or he could read or one thing or another; I'm talking about something – this is clear – what you say to Mr. Marshall is not read this document and we're all going to read it the same way. You say specifically to Mr. Marshall that at sanction, the unlikely probability of achieving cost and schedule was well-known to the project management team correct?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: All right. Did you say that to Mr. Martin at the time of sanction?

MR. P. HARRINGTON: Yes, we discussed these things.

MR. O'FLAHERTY: Thank you.

So can you show the Commissioner any evidence, anything in the record at the time of sanction, to support your evidence that you told Mr. Martin or anybody in the executive – the C-suite as you call it – about this?

MR. P. HARRINGTON: I didn't call it the C-suite.

MR. O'FLAHERTY: That's a term (inaudible).

MR. P. HARRINGTON: Okay.

MR. O'FLAHERTY: Can you point to any evidence in the record about that?

MR. P. HARRINGTON: We provided a detailed – well, we went through the risk analysis –

MR. O'FLAHERTY: Mm-hmm.

MR. P. HARRINGTON: – with the executive.

MR. O'FLAHERTY: Okay.

MR. P. HARRINGTON: And Mr. Martin is very well versed on risk analysis and how the probability curve is developed. He – I mean, he comes from the oil and gas industry where that is, you know, common practice so ...

MR. O'FLAHERTY: Okay.

MR. P. HARRINGTON: I mean, this – it doesn't require me to point these things out to him because they're crystal clear to him.

MR. O'FLAHERTY: So I take it, then, your answer is, no, you cannot point to anywhere in the record before the Commissioner, any letter or email, where you told Mr. Martin –

MR. P. HARRINGTON: Not (inaudible) –

MR. O'FLAHERTY: Just let me finish my question, Sir –

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: – where you told Mr. Martin as clearly and directly as you did to Mr. Marshall that there was an unlikely probability of achieving these cost and schedule targets that he had set.

MR. P. HARRINGTON: I have nothing that speaks specifically to that, correct.

MR. O'FLAHERTY: And you certainly did not tell the Oversight Committee of the Government of Newfoundland and Labrador at any time that there was an unlikely probability of achieving these cost and schedule targets at the time of sanction, did you?

MR. P. HARRINGTON: The Oversight Committee wasn't in place.

MR. O'FLAHERTY: Just answer my question.

MR. P. HARRINGTON: Well, how could I tell something to the Oversight –

MR. O'FLAHERTY: In 2014 and following, did you tell them, Mr. Harrington –

MR. P. HARRINGTON: You asked me sanction, and I just told you it wasn't in place at sanction.

MR. O'FLAHERTY: Well, I'm sorry if I – I'm sorry if my question wasn't clear. I'll go back.

You certainly did not tell the Oversight Committee of the Government of Newfoundland and Labrador from 2014 until 2016 that at the time of sanction, the project management team of Nalcor well knew that there was an unlikely probability of achieving cost and schedule targets.

MR. P. HARRINGTON: Well, they didn't ask, and I didn't tell them because that issue never came up. We were deep into it by then. 2014 was when they were put in place; 2015 was when we started meeting with them. And that's when we were presenting these cost overruns and schedule pressures and the AFEs were changing then. So –

MR. O'FLAHERTY: I understand, Mr. Harrington. I think your answer is quite clear. You didn't tell them, did you?

MR. P. HARRINGTON: They didn't ask.

MR. O'FLAHERTY: They didn't ask, okay.

Well, let's have a look at what you did tell them. Let's go to Exhibit P-03361, Madam Clerk.

MR. P. HARRINGTON: 03361.

MR. O'FLAHERTY: 03361.

THE COMMISSIONER: And it's going to be on your screen.

MR. O'FLAHERTY: And this is a – this is an email chain which attaches documents that were received from Nalcor. And I'm going to show you these documents now. We'll have a look at them. Can we go to page 5?

MR. P. HARRINGTON: Can I just – can we hold it a second?

MR. O'FLAHERTY: Well, I'm just going to ask you if you recognize it first, okay?

MR. P. HARRINGTON: Well, that's what I'm trying to –

MR. O'FLAHERTY: Just one second, Mr. Harrington. I'll take you through it. I've done this before. Page 5. And I'm going to show you something I think you wrote, okay? It might help you.

Do you want to just keep going, Madam Clerk, if you don't mind? Let's just see if this is your handwriting, Mr. Harrington. Because it may not be, and you can clarify that for me

We're almost there. We're going to come down to a handwritten document – this one.

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: Is that your handwriting?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: Okay. So what we're looking at, Mr. Harrington – and then we'll go back to the email and you can have a look at the email chain – is – this is a detailed response provided by Nalcor in two parts: first, a typed and formatted document and, secondly, a marked-up draft interim report. Is this ringing a bell, Mr. Harrington?

MR. P. HARRINGTON: Yes, it is.

MR. O'FLAHERTY: Okay. And who prepared the typed and formatted document we just scrolled through before that?

MR. P. HARRINGTON: You'd have to go –

MR. O'FLAHERTY: Okay, we will. We know that you're the one that wrote the comments, correct, on the markup draft –

MR. P. HARRINGTON: Yes. I'm not sure who did –

MR. O'FLAHERTY: That's all right. We can go back and we can just see – you may be able to just tell me it was the project management

team or who provided it, but we will have a look through the emails.

So, what you'll see is an email from Tim Calver to you –

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: – on the 28th of February, which says, "Please find attached a draft copy of the EY interim report." It says: "I can be at the Nalcor offices tomorrow, so am available to discuss this and receive your comments on any factual errors or misstatements," correct?

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: That's what he has asked you to provide comments on, right?

MR. P. HARRINGTON: That's right.

MR. O'FLAHERTY: Okay. And I don't need to read the rest of it to you, but you can see that there are just about to issue the interim report as a draft to GNL and to Nalcor. And just before we move on, I just want to contextualize this a little bit. We've heard some evidence that – from other witnesses in the Oversight Committee that indicated that there was a commitment made by Ernst & Young to provide visibility to Nalcor of documentation which was going to be shared with its client, the government, prior to the government seeing that, correct?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: Right. And that was a commitment which was felt to be important for the collaborative and co-operative approach on the project, correct?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: Right. And at one point in time – and the context is not particularly important – Nalcor felt that that commitment had not been absolutely honoured by Ernst & Young. And that drew a short, sharp rebuke, didn't it, Mr. Harrington?

MR. P. HARRINGTON: There was a – yeah, we were – there was a presentation made which

contained some errors that we weren't given that opportunity.

MR. O'FLAHERTY: Right. So this was a matter of some importance to Nalcor, was it?

MR. P. HARRINGTON: Well –

MR. O'FLAHERTY: (Inaudible.)

MR. P. HARRINGTON: – we felt as though there was a reneging on an agreement.

MR. O'FLAHERTY: I understand that. But the overall agreement or commitment was important to Nalcor that it be honoured, correct?

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: Right. And so there were various meetings and document exchanges, and, in fact, EY were embedded inside your office, correct?

MR. P. HARRINGTON: We had 35 meetings, and –

MR. O'FLAHERTY: (Inaudible.)

MR. P. HARRINGTON: – I tied – I had 50 of my project team working with the EY team over the –

MR. O'FLAHERTY: Right.

MR. P. HARRINGTON: – period of time that they were there. I provided them with hundreds – well, I didn't provide them, it was Steve Pellerin who was the provider –

MR. O'FLAHERTY: Mm-hmm.

MR. P. HARRINGTON: – of documentation.

MR. O'FLAHERTY: So –

MR. P. HARRINGTON: So, that's just context.

MR. O'FLAHERTY: – I've got the context correct, though, right?

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: That by the time we get to this date, on February the 28th, there had been ongoing cooperative and collaborative effort to provide Nalcor with visibility on documentation that was going to be shared with government, before government saw it. Correct?

MR. P. HARRINGTON: And vice versa.

MR. O'FLAHERTY: Fair enough. But –

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: – but I'm more focused on the fact that these are comments you are making on the document, right?

MR. P. HARRINGTON: Yes, because I was asked to provide –

MR. O'FLAHERTY: I understand. I understand. So – so certainly, the Commissioner can be satisfied that whatever conclusions or findings that Ernst & Young were gonna reach in this review which ends on April the 8th of 2016, those would've been known to you and to the senior executives, Mr. Ed Martin and your direct report, Mr. Gilbert Bennett. They would've been known to you before those findings were made and, in fact, on a real time basis. Correct?

MR. P. HARRINGTON: That's correct. Yes.

MR. O'FLAHERTY: Right. And there's nothing wrong with that. As it was testified to, this is a normal auditing process to let the audited body know what's going on so there'll be openness and transparency. Correct?

MR. P. HARRINGTON: Correct.

MR. O'FLAHERTY: Right. So let's now go to the document. Can we go up – up the – I'm going to show you now the – if we can go to the typewritten document first, the typed and formatted document. And I realize it doesn't have a signature on it, but you might, by looking at it – this – here, this here. Perhaps we can just go back, General Comments, we'll start there. There we go.

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: So can you recall now who prepared this and who had input into this document?

MR. P. HARRINGTON: I may have been the author of it, with input from some of the team. Yeah.

MR. O'FLAHERTY: Okay. Input from some of the team. Was there also input by the executives, that is Mr. Bennett and Mr. Martin, before the response was sent?

MR. P. HARRINGTON: (Inaudible.)

MR. O'FLAHERTY: Or does this only represent the work of the project management team?

MR. P. HARRINGTON: I think Gilbert Bennett was involved in this as well.

MR. O'FLAHERTY: Okay. Thank you.

Let's look at the document, page 5, please. Ah, there we go. This point here, Page 4 Executive Summary 1.3, please? Can you just read that for us, what the comment says there, the statement?

MR. P. HARRINGTON: "The statement that the September 2015 Forecast 'is not reasonable' is not quite accurate. It was reasonable at the time it was prepared with the information available to Nalcor. Please consider the following.... 'The overall conclusion of the Review is that the September 2015 ... is no longer considered reasonable because of events that have occurred since that date.' Also, it would be helpful to further provide context to point 1.3 by including point 1.4 text into 1.3 as follows."

MR. O'FLAHERTY: Yeah. You don't have to read all that, Mr. Harrington.

MR. P. HARRINGTON: Okay.

MR. O'FLAHERTY: Thanks, but that's the point you're making there is that you're requesting an insertion which would suggest that the cost and schedule forecast of seven – the cost schedule forecast of \$7.653 billion and the first power schedule forecast were actually reasonable in September 2015, but that

subsequent events made them not reasonable. Correct?

MR. P. HARRINGTON: Yes, correct.

MR. O'FLAHERTY: Right.

Okay. And the purpose of that insertion was, in fact, to suggest, was it not, that the reason it was no longer reasonable, either on cost or schedule, was because of intervening events with respect to Astaldi, in particular. Correct?

MR. P. HARRINGTON: That is correct.

MR. O'FLAHERTY: Right. And I understood from your evidence, that you've testified that your team knew exactly what was happening with Astaldi. And I wrote your quote yesterday: I don't think we could've had more vigilance on Astaldi; we were on them from the get-go. Correct?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: Right. So you made this suggestion.

Let's go now to – let's also go to – further into the report. Your handwritten comments, please? Page 9. There we go, down here now. If we can just scroll down – these are your comments, correct?

So, you've written in 1.3 here, you wrote down: "The overall conclusion of the Review is that the September 2015 Forecast is no longer considered reasonable. Nalcor has identified ... cost" and "schedule risks since ... 2015 including those noted below. Nalcor is currently undertaking" – et cetera, et cetera. Okay?

MR. P. HARRINGTON: I believe that's the same as the typed thing, but I could be wrong.

MR. O'FLAHERTY: Yeah, but that's fine. But this is actually your words that you wrote. You –

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: – might have typed the other one, you don't recall, but we –

MR. P. HARRINGTON: Yes.

MR. O'FLAHERTY: – know that you wrote this, right?

MR. P. HARRINGTON: I know that (inaudible) –

MR. O'FLAHERTY: Okay. So you wanted to insert the words since September 2015 to suggest that Nalcor had identified and documented these cost and schedule risks in the time frame after September 2015. Correct?

MR. O'FLAHERTY: And we were currently doing a QRA.

MR. O'FLAHERTY: Right, but I'm correct on how I'm reading that, isn't it, since 2015?

MR. P. HARRINGTON: Since 2015.

MR. O'FLAHERTY: Right.

So let's move on now to page 16, MFG civil works, section 5.9. I think this is pretty clear – right, here we go. "The impact of these issues to both cost and schedule were not known in the September" – sorry – "were not known and therefore not quantified in the September 2015 Forecast...." Correct?

MR. P. HARRINGTON: I'm not seeing that. Perhaps, do – can you – is it scrolled up or –?

MR. O'FLAHERTY: Do you see it now?

MR. P. HARRINGTON: Oh, yeah.

MR. O'FLAHERTY: Yeah.

MR. P. HARRINGTON: I see it now, yeah.

MR. O'FLAHERTY: There's your writing there, you see that?

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: Right.

So again, it's the same point you're making, that Nalcor's project management team or Nalcor, generally, did not know about the impact of these issues.

MR. P. HARRINGTON: We didn't know the – 'cause we hadn't worked out, in the bridging agreement, the schedule for 2015 –

MR. O'FLAHERTY: Mm-hmm.

MR. P. HARRINGTON: – yeah – 2016 and we obviously haven't nailed down the overall agreement with Astaldi at that point in time. So –

MR. O'FLAHERTY: No –

MR. P. HARRINGTON: – we –

MR. O'FLAHERTY: – and –

MR. P. HARRINGTON: – we –

MR. O'FLAHERTY: – okay, you go ahead, Sir.

MR. P. HARRINGTON: – we're not quantified, right. So we knew there was an issue, but we didn't know where we were going to end up at that point in time.

MR. O'FLAHERTY: Yeah, but that's not really the point of my line of questioning, Mr. Harrington.

MR. P. HARRINGTON: Okay.

MR. O'FLAHERTY: The point is, is that what you attempted to do was to suggest that you only found out about the information, the impacts, since September of 2015 and, in fact, the proper conclusion was that the cost and schedule forecast in September of 2015 was reasonable at that time. Correct?

MR. P. HARRINGTON: I don't draw that conclusion.

MR. O'FLAHERTY: You don't draw that conclusion that you're suggesting that it was reasonable at that time? Let's go back to –

MR. P. HARRINGTON: At the time –

MR. O'FLAHERTY: – let's go back – just one second now, let's go back to page 5. Right there, page 5: "Page 4 Executive Summary point 1.3 – The statement that the September 2015 Forecast

'is not reasonable', is not quite accurate. It was reasonable at the time it was prepared with the information available to Nalcor."

That speaks for itself, Mr. Harrington, doesn't it?

MR. P. HARRINGTON: Yeah.

MR. O'FLAHERTY: That's what you were recommending that Ernst & Young put in their report.

MR. P. HARRINGTON: I was suggesting that that was my view on it. And as Ernst & Young have –

MR. O'FLAHERTY: Right.

MR. P. HARRINGTON: – stated themselves, they take comments or they leave them.

MR. O'FLAHERTY: That's fine.

MR. P. HARRINGTON: And they left it.

MR. O'FLAHERTY: That's fine, Mr. Harrington.

So, let's move on then. When the report came out, of course, that insertion in that position was rejected by Ernst & Young, wasn't it?

MR. P. HARRINGTON: That's their – we've said numerous times that that's the prerogative of the author.

MR. O'FLAHERTY: Well, let's go to the answer, though.

MR. P. HARRINGTON: We –

MR. O'FLAHERTY: The answer is, they rejected it. Correct?

MR. P. HARRINGTON: That is correct, yes.

MR. O'FLAHERTY: Okay. Let's go to the transcript of May 13, 2011, Madam Clerk, please. Transcript of Michael Kennedy on – of the evidence of Mr. Kennedy, May 13. You can't do that, can you?

THE COMMISSIONER: No.

MR. O'FLAHERTY: Oh, I'm sorry. So, Mr. Kennedy testified here at the Inquiry, on that very point and Mr. Kennedy said that the conclusion that was reached – and what that meant in the report was that it was not reasonable at that time.

MR. SIMMONS: Excuse me, Commissioner.

I've been listening all the way through this and I know Mr. O'Flaherty is here as counsel for party with – two parties with standing, Premier Ball and Minister Coady.

Ernst & Young, while they have the representation when Mr. Kennedy was on the stand, do not have standing. And it seems we maybe straying into an area where the line of questioning is oriented towards representing the interests of Ernst & Young in some of these issues as opposed to the interests of Mr. O'Flaherty's client.

MR. O'FLAHERTY: Thank you.

Mr. Commissioner, I don't feel that way. I think it's in the interest of both my clients and the people of Newfoundland and Labrador to understand precisely what was going on when these changes were being suggested. And the responsibility for what had happened was trying – was attempted to be put squarely on the shoulders of Astaldi, and, in fact, Ernst & Young rejected that view. And I want to ask this gentleman about it because he attempted to make them – or, sorry, to put that in the report.

THE COMMISSIONER: I'm not quite certain I understand exactly what the objection was to the question, to be quite frank, but ask your question. If I think there's anything wrong with it, or Mr. Simmons, if you could be more specific on a question that's asked, then raise it with me and then I can consider it. Because right now I haven't heard anything to suggest that Mr. O'Flaherty is outside of his representation of Mr. Ball and Ms. Coady. I mean, I have to give him some degree of latitude here with regard to the questions. I don't want to limit him to any significant degree.

So, go ahead.

MR. O'FLAHERTY: Thank you very much, Mr. Commissioner.

So you understand my question then, Mr. Harrington, do you?

MR. P. HARRINGTON: Yeah, I've – can you repeat it please?

MR. O'FLAHERTY: Okay.

So, Mr. Harrington, at the time when you wrote these words, and you've just – you told us earlier, just a moment ago, you didn't say – or you weren't trying to get him to say it was reasonable at the time, but you now acknowledge that's what the words say, right? It was reasonable at the time it was prepared.

MR. P. HARRINGTON: That was my view.

MR. O'FLAHERTY: Yeah, I understand.

That was your view in February of 2016, correct?

MR. P. HARRINGTON: Looking back at what I knew in September of 2015, that was the best information that we had at that time.

MR. O'FLAHERTY: Right.

But – so the best information that you had at that time – I'm not talking about September 2015. What I'm suggesting to you, Mr. Harrington, is that this is an obvious attempt to shift the blame on to Astaldi and other contractors for the unreasonableness of the cost and schedule forecast, isn't it?

MR. P. HARRINGTON: No, I don't see it that way.

MR. O'FLAHERTY: You don't see it that way, okay.

Thank you. Let's just move ahead then.

So, as I said to you earlier, Mr. Kennedy came here and testified. He was asked about this particular point but my learned friend, Mr. Learmonth, he asked him what does that mean. Does that mean that the schedule and cost

forecast in September '15 were unreasonable at that time? And he said yes, that's what it means.

MR. P. HARRINGTON: Well, that was his view.

MR. O'FLAHERTY: Right.

And that's what the report concluded, correct?

MR. P. HARRINGTON: That's what they wrote, yes.

MR. O'FLAHERTY: Right.

Okay, thank you.

So now let's move it forward, because I want to finish off with responsibility on where we started, in a way on this topic, and that's June of 2015. Back to 01962.

MR. P. HARRINGTON: 01962 – 272, okay.

MR. O'FLAHERTY: Oh, and I would say one more thing, just for the benefit of the record – and Mr. Kennedy was not challenged on that evidence by Nalcor's counsel at that time.

So, now we're back to your letter to Stan Marshall, September – June of 2016, Sir.

Now in this letter here, of course, you don't say in this letter that the September 2015 cost and schedule forecast was reasonable at the time it was prepared in September 2015. But it's no longer reasonable at the time of the report. That's absent in this letter, isn't it?

MR. P. HARRINGTON: You're quite right.

MR. O'FLAHERTY: Okay.

So by that point in time I take it, then, your view then was not the same as it was. You had accepted the view of Ernst & Young, had you, that it was unreasonable?

MR. P. HARRINGTON: No.

MR. O'FLAHERTY: Okay.

But you don't mention that.

MR. P. HARRINGTON: Well, no.

MR. O'FLAHERTY: No.

Instead, what you did was you wrote to say that, as I've said to you earlier and you've acknowledged, that insofar as there was any criticism for the cost and schedule issue that's – issues that are raised here in this letter, they were Mr. Martin's fault. Correct?

MR. P. HARRINGTON: I don't like to point fingers at Mr. Martin on this one, but, you know, my evidence is as suggested.

MR. O'FLAHERTY: So what you said yesterday, you brought us to Winston Churchill and you said, criticism is easy, achievement is hard. Correct?

MR. P. HARRINGTON: That's correct.

MR. O'FLAHERTY: Right.

And so, Mr. Harrington, I think the record will show, when we look back over your evidence, that you have so far – by my recollection, anyway – you have levelled criticisms at Mr. Martin. Correct?

MR. P. HARRINGTON: I haven't levelled criticism. You have.

MR. O'FLAHERTY: Okay.

Ernst & Young. Correct?

MR. P. HARRINGTON: I haven't levelled criticism at Ernst & Young. I've tried to tell the facts as I saw them against Ernst & Young.

MR. O'FLAHERTY: Astaldi. Correct?

MR. P. HARRINGTON: Astaldi have a high responsibility here.

MR. O'FLAHERTY: SNC-Lavalin. Correct?

MR. P. HARRINGTON: SNC-Lavalin.

MR. O'FLAHERTY: Right.

Certain members of the on-site teams who were up in Labrador. Correct?

MR. P. HARRINGTON: No, never.

MR. O'FLAHERTY: No.

Contractors were blaming Mr. O'Brien unfairly for issues of harassment. You've criticized that.

MR. P. HARRINGTON: I didn't criticize them. I corrected it.

MR. O'FLAHERTY: Okay. You – that's a correction. Okay.

And then you say that this Commission itself will result in some costs and schedule overrun.

MR. P. HARRINGTON: I was asked what my personal opinion was for – I provided it to the Commissioner. I didn't come here with the intent of saying that. I was asked that question and I gave my honest opinion.

MR. O'FLAHERTY: I understand. But I'll give you another Churchill quote. You might be familiar with this one: the price of greatness is responsibility. You familiar with that one?

MR. P. HARRINGTON: No.

MR. O'FLAHERTY: Okay.

So what responsibility – 'cause I haven't heard you say that the project management team has any responsibility with respect to the cost and schedule overruns.

MR. P. HARRINGTON: We have a responsibility for those things that we can control. I can honestly say that the project team have worked diligently to mitigate, as best they can, the situations that they were dealing with. There's no doubt that we bear a responsibility, but we also bear a responsibility for all of the positive things that have occurred as well. It's positive and negative, Sir.

MR. O'FLAHERTY: So – I understand that, but what I'm asking you is you've outline who is responsible, these other parties that you've levelled the criticisms or corrections at. What responsibility does the project management team bear with respect to the fact that where we are here today, as I understand, \$10.1 billion.

MR. P. HARRINGTON: So, that is up to others to judge and tell me, see.

MR. O'FLAHERTY: It's not very Churchillian of us, though, is it?

Thank you, Mr. Harrington.

THE COMMISSIONER: All right.

Nalcor Energy.

MR. SIMMONS: Thank you, Commissioner.

And good afternoon, Mr. Harrington.

MR. P. HARRINGTON: Good afternoon, Sir.

MR. SIMMONS: I'll try to get you out of here as quickly as possible, given the time.

I'm going to start, actually, with some issues that were raised by Mr. Ralph in his examination earlier today.

So can we go, please, to Exhibit P-02217?

MR. P. HARRINGTON: 02217.

MR. SIMMONS: Ah, it's not in your book, I don't think. It will come up on your screen. You were actually shown – there's two copies of this email in evidence. You were brought to the other copy that has one page attached to it and this one has two pages.

MR. P. HARRINGTON: Okay.

MR. SIMMONS: So this is from November 19, 2013; it's from Mr. Meaney. This is the one that posts the reconciliation of the costs at commercial close to the data room –

MR. P. HARRINGTON: Okay.

MR. SIMMONS: – that sounds familiar.

MR. P. HARRINGTON: Right.

MR. SIMMONS: And if we go down, please, to page 2. You were brought to this page before –

MR. P. HARRINGTON: Yeah.

MR. SIMMONS: – if we scroll down a little bit and stop.

MR. P. HARRINGTON: Yup.

MR. SIMMONS: We can see this is where there's a reconciliation of the capital cost for the project at sanction of about \$6.2 billion and what's described as current FFC at financial close of \$6.531 billion.

MR. P. HARRINGTON: Right.

MR. SIMMONS: And you were asked some questions about whether you knew how the \$6.531 was calculated, whether there was a spreadsheet. Do you recall that?

MR. P. HARRINGTON: Yes.

MR. SIMMONS: Okay.

So if we go to page 3, please. And you may have to shrink it down a little bit, you can – okay, stop there, please.

So this third page is a document called a, "Material Contracts Cost Summary." And I don't know if this looks familiar to you or not, or if you've seen this before.

MR. P. HARRINGTON: I may have seen it before, Sir.

MR. SIMMONS: Okay.

And this was posted to the data room along with the document that we just saw beforehand.

MR. P. HARRINGTON: Okay.

MR. SIMMONS: And if you look down on the left there, the columns have contract package numbers such as CH0007, then there's a title of major contract packages, the first one being: Construction of Intakes & Powerhouse, Spillway and Transition Dams. And if you look down generally, you'll see these are the major work packages for the project.

Do you recognize those?

MR. P. HARRINGTON: That's correct, yes, yes.

MR. SIMMONS: And the next two columns have Actual Award Date and Expected Award Date. And from that, we can see that at this time some of the contracts were awarded, some weren't awarded yet.

MR. P. HARRINGTON: That's right.

MR. SIMMONS: You see that? And then the next column says Procurement Status, and it says what the status of that contract package is, such as the first one, the contract that – eventually awarded to Astaldi, says: LNTP Signed.

MR. P. HARRINGTON: Yes.

MR. SIMMONS: And on – for other ones where there's not a contract award date it says things like Bids - Evaluation Continues.

MR. P. HARRINGTON: That's correct.

MR. SIMMONS: Okay.

And if you go over several columns, as we go through, the DG3 Base Estimate is there, there's various changes there, and it comes over to a column labelled E: Final Forecast Cost. You see that?

MR. P. HARRINGTON: Yes.

MR. SIMMONS: Okay.

So let's go down, scroll down please to the bottom of the table, and if you see at the bottom there's a figure there, \$6.531 billion –

MR. P. HARRINGTON: That's right.

MR. SIMMONS: – and there are a number of major contracts listed there. I think the (inaudible) probably 19, and if we can scroll a bit to the left, please, so we can see the left-hand side of the chart? Okay, stop there – actually 17 different work packages listed, and then the last one says BALANCE OF SCOPE, and if you follow along, the budgeted amount for balance of scope is \$2.2 billion.

So would that balance of scope be the other contracts other –

MR. P. HARRINGTON: The rest.

MR. SIMMONS: – than the 17 –

MR. P. HARRINGTON: Yeah.

MR. SIMMONS: – major ones?

MR. P. HARRINGTON: Yeah, yeah.

MR. SIMMONS: Okay. So it's a figure in there for that.

So does this give you any indication of what sort of work had to be done in order to come up with the 6.531 figure?

MR. P. HARRINGTON: Yeah, that looks like the source data.

MR. SIMMONS: Okay, all right.

This was – this email, posting this to the data room, was on November 19, 2013. We can see that on the first page. And I want to bring you now to a document that Mr. Smith brought you to, which is P-02229, please.

Now this is a message from you to Mr. Meaney, copied to Mr. Clarke, Mr. Bennett and Ed Bush: Way Forward. This is November 21, 2013, so this is two days later.

MR. P. HARRINGTON: Right.

MR. SIMMONS: You see that? And when we scroll down a bit please, we can – a little bit more, we can stop there – you were brought to this section in this paragraph that starts: “Cost” –

MR. P. HARRINGTON: Right.

MR. SIMMONS: – and says: “We know we have” approximately “2/3rds of the total Project estimate And in this there's some discussion of the \$6.351 billion. There's also mention of \$2.2 billion left to firm up with contracts and POs, which seems to correspond to that table.

Do you know if you had the table we looked at a moment ago and the information in it available to you when you wrote this email?

MR. P. HARRINGTON: More than likely.

MR. SIMMONS: Okay.

Because you'd been asked if you had been the person who developed the 6.531 –

MR. P. HARRINGTON: Yes.

MR. SIMMONS: – figure. Does this refresh any recollection –

MR. P. HARRINGTON: Yeah. This (inaudible) –

MR. SIMMONS: – as to how that came about?

MR. P. HARRINGTON: When Mr. Smith presented me with this, I must admit I was caught flat-footed.

MR. SIMMONS: Hmm.

MR. P. HARRINGTON: And now that you've provided – because I knew there must – I mean, you don't come up with a number like 6.531 just without it being broken down properly. So what you've just shown me refreshed my memory on where that number came from. What I was doing here is just providing some kind of summary level to someone.

MR. SIMMONS: Right. Okay.

So we can go back to page 2 for a moment, please. I'm sorry, back to Exhibit 02217, again, and page 2 – page 3. So I've got just a few follow-up questions for you on the management outlooks that you were asked about –

MR. P. HARRINGTON: Okay.

MR. SIMMONS: – and that you described. So, let me just summarize what I understand the process was that led to the development of those and you can tell me if I've got it right or wrong or fill it in for me.

MR. P. HARRINGTON: Right.

MR. SIMMONS: Project controls is the department or function within the Lower Churchill Project that tracks costs and other performance data, prepares reports for use by the rest of the team, generally – correct?

MR. P. HARRINGTON: That is correct.

MR. SIMMONS: Okay.

And part of their function was to prepare monthly reports that would be reviewed by members of the project management team to track cost on the project.

MR. P. HARRINGTON: That's correct.

MR. SIMMONS: Right.

And I think we heard described by Ms. Tanya Power, and you referred to it too, that early in the project there would be two meetings – one with a large group of the project team to review the data.

MR. P. HARRINGTON: Yes.

MR. SIMMONS: And a second meeting with a smaller group that would be for some other purpose.

MR. P. HARRINGTON: Yes.

MR. SIMMONS: And what was the purpose of having the meeting with the smaller group?

MR. P. HARRINGTON: Because we were talking about bids –

MR. SIMMONS: Hmm.

MR. P. HARRINGTON: – that were, you know – we keep a very tight control over commercial information coming in and when you get bids coming in –

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: – it's tightly controlled.

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: So the group of people who were involved in the second meeting –

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: – would be looking at that type of commercially sensitive information.

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: Even within our team we had commercially sensitive information.

MR. SIMMONS: Okay.

So the reports that were described as the management outlooks and the ones that were listed by Ms. Power in her report that she did for the Commission, did those come out of the first meeting with the larger group or the second meeting with the smaller group?

MR. P. HARRINGTON: Could you repeat the question again? Sorry, I missed it.

MR. SIMMONS: The management outlook reports –

MR. P. HARRINGTON: Oh, the management outlook were generally the second meeting.

MR. SIMMONS: Out of the second meeting, okay.

And to what extent would the management outlook reports take into account, if they do, the crystal-ball gazing that the group would do to see where trends might be going in the future?

MR. P. HARRINGTON: That's exactly it – you've got it correct there. That the meeting. It was a crystal-ball meeting.

MR. SIMMONS: Okay.

So if there's a difference between this summary of material contracts document that we have on the screen now, which has \$6.531 billion as the final forecast cost, and the numbers that were in management outlooks prepared by that time, can you give us any insight as to why they might not be exactly the same number?

MR. P. HARRINGTON: Because there was more, you know, there was more detail put into that number to say we were projecting it forward –

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: – looking at more information so that there –

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: – was, you know, this was probably fixed and firm here –

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: – to a degree and then there was the unknowns, if you want to call it, the more vague things that we would apply the crystal-ball thinking to.

MR. SIMMONS: Mm-hmm.

And what do you mean by fixed and firm?

MR. P. HARRINGTON: Well we had, you know, bids coming in.

MR. SIMMONS: Yeah. Okay.

MR. P. HARRINGTON: And so we had a good, you know, a pretty good basis to know that these are within a certain range.

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: They're gonna be within here.

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: Then you would say, okay, well what if other things –

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: – other project – contracts that we don't have –

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: – what if we applied the same kind of trends.

MR. SIMMONS: Mm-hmm. Okay.

And when you engaged in that kind of analysis on a monthly basis, if in one month you made an analysis and said, well, we think future contracts might be escalated 5 per cent or 4 per cent,

would that become a fixed number then or would that be subject to change –

MR. P. HARRINGTON: Subject –

MR. SIMMONS: – month by month?

MR. P. HARRINGTON: – to change.

MR. SIMMONS: Okay. Thank you.

You were asked a number of – I'm going to be bouncing around a little bit between topics.

MR. P. HARRINGTON: Okay.

MR. SIMMONS: You were asked a number of questions about geotechnical work on the North Spur and I'm not gonna try and track you through the whole sequence of that 'cause I know it wasn't a real focus for your involvement. But I want to take you to a couple of documents, please. And the first is P-00130.

THE COMMISSIONER: Tab 84.

MR. SIMMONS: It'll be on your screen –

THE COMMISSIONER: It's only gonna be one page, so you should probably look at this one on your screen.

MR. SIMMONS: Yeah, I think –

MR. P. HARRINGTON: Okay.

MR. SIMMONS: – we'll go to the same page on the screen when it comes up. Just scroll down a little, please, so we can see the title. So this was what we call the DG3 QRA. It's the Project Cost and Schedule Risk Analysis at Decision Gate 3. And it has a number of appendices attached to it.

MR. P. HARRINGTON: Correct.

MR. SIMMONS: If we go to page 162, please, this is a page from a risk register – Key Risk Status Report.

MR. P. HARRINGTON: Correct, yes.

MR. SIMMONS: And if we go to the bottom of 161, we'll see the start of what's called R23. So that would be risk 23?

MR. P. HARRINGTON: Right.

MR. SIMMONS: Yeah. Ms. Urquhart brought you to this.

And the risk is identified as being "Site conditions worse than geotechnical baseline."

MR. P. HARRINGTON: Mm-hmm.

MR. SIMMONS: And if we go across to the last column, there's comments there on risks for geotechnical concerns at different parts of the project.

MR. P. HARRINGTON: That's right.

MR. SIMMONS: And you were specifically brought, on page 162, to the third bullet down on that list, and it's been anticipated by the clerk already. "Largest risk exposure remains in North Spur," and then it says, "geotechnical program planned for spring 2013."

MR. P. HARRINGTON: (Inaudible.)

MR. SIMMONS: So at the – and – so at the time this – and if we look at the top corner of this document, it says – the date on it appears to be September 16, 2012.

MR. P. HARRINGTON: That's right.

MR. SIMMONS: So my question is, on risk reports such as this, are these updated periodically from time to time? Are these changing assessments of what the risk – and are they used to record the steps that are being taken to mitigate those risks?

MR. P. HARRINGTON: That is correct, yes.

MR. SIMMONS: Okay.

So although it says the largest risk exposure for geotechnical risk remained in the North Spur, can you tell me, or do you know, whether there was a geotechnical program, then, carried out in the spring of 2013 and further work done?

MR. P. HARRINGTON: As far as I am aware, there was, yes.

MR. SIMMONS: Okay.

So in a similar vein, can we go, please, to Exhibit P-03704? You were also brought to this. This is an email message from –

THE COMMISSIONER: Tab 65.

MR. SIMMONS: – Mr. Power on September 3, 2013, to you.

MR. P. HARRINGTON: Yes, yeah.

MR. SIMMONS: And I think this is generally the one where he was – where there's discussion here of doing some additional assessment or some independent review of the design work on the North Spur. Does that ring a bell?

MR. P. HARRINGTON: That does, yes.

MR. SIMMONS: Okay.

And we'll jump, now, to the next exhibit, P-03705. You were also brought to this. This is a message from over two months later, November 26, 2013.

MR. P. HARRINGTON: Right.

MR. SIMMONS: And it's probably in your binder. But if I recall correctly, this one refers to work being done by Hatch, regarding the North Spur.

MR. P. HARRINGTON: That's correct, yes.

MR. SIMMONS: So my question for you is, between these two, do you know if, in fact, there was someone other than the designer of the North Spur work engaged to conduct an outside or independent review of the work that was being done?

MR. P. HARRINGTON: Yes.

MR. SIMMONS: And who was it?

MR. P. HARRINGTON: Hatch.

MR. SIMMONS: And has Hatch continued to be involved and retained in order to do assessment work on the North Spur both concerning the design of the work that was done and the outcomes of the work and the assessment of it?

MR. P. HARRINGTON: They do and they do the dam safety as well. And that's done regularly.

MR. SIMMONS: Okay.

You'd been asked a number of questions by various counsel regarding Astaldi and its performance and, in particular, the period early on in their work that was governed by the Limited Notice to Proceed, the LNTP.

MR. P. HARRINGTON: That's right.

MR. SIMMONS: And it was identified to you that Astaldi had failed to perform the complete scope of work that was set out in the LNTP. You recall that?

MR. P. HARRINGTON: That's right.

MR. SIMMONS: Right. And one of the things you said yesterday was that – you'd said that there was a hesitancy from Astaldi to jump in with both feet.

MR. P. HARRINGTON: That's right.

MR. SIMMONS: So my question is, by the time we reach the end of November when the contract is going to be entered into with Astaldi for performance of the work, what was either your view or the view of the team, if you can speak for them, concerning why Astaldi had not fully performed the scope of work on the LNTP? And I'm going to ask was it, on the one hand, that they were incapable or was it, on the other hand, or the other extreme, that they had elected or chosen not to commit themselves to the full scope of work? Where did the team see it at that time?

MR. P. HARRINGTON: I think it's probably in the middle –

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: – like it usually is. You know, some people thought, well, they're just – you know, they're just – they're not up to it.

MR. SIMMONS: Mm-hmm

MR. P. HARRINGTON: But on the other side of the coin, there's people saying, well, look, they're just hesitant because they don't see – are we going to get the federal loan guarantee? Is this a go or a no-go?

So it was a combination of things –

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: – Mr. Simmons.

MR. SIMMONS: Okay.

And in a similar vein, some of the questions that you were asked – and I think this was by Commission counsel – included the statement that by the time the – and I understood it to be suggesting, maybe I'm wrong, that by the time the contract was awarded to Astaldi, that a construction season had already been lost – either because it had been originally planned to award the contract in July of 2013 and it didn't get awarded until November, or perhaps because of some of the non-completion of work under the LNTP.

And I want to ask you if would agree with that statement that by that time a construction season had already been lost?

MR. P. HARRINGTON: No. Because they couldn't start work until really later the year of 2013 because the bulk excavation hadn't been finished.

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: So consequently, I wouldn't necessarily agree a hundred per cent that a whole season had been lost.

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: Some period of time, but not one construction season because construction seasons are pretty much within, you

know, the decent months that we have after winter and before winter strikes again.

MR. SIMMONS: Okay. And the bulk excavation work, had that been awarded prior to financial close?

MR. P. HARRINGTON: It had.

MR. SIMMONS: Yeah. Was that part of the early works that were done in order to have the site available?

MR. P. HARRINGTON: Yes, it was –

MR. SIMMONS: At the time of financial –

MR. P. HARRINGTON: – to de-risk the project from a critical-path activity –

MR. SIMMONS: Right.

MR. P. HARRINGTON: – that had been identified by Westney as part of that very low probability analysis.

MR. SIMMONS: So although the award of the contract to Astaldi had been planned for – hoped to be done in July and didn't happen 'til November, was there any delay in the timing of the planned completion of the bulk excavation work?

MR. P. HARRINGTON: No.

MR. SIMMONS: Question for you about quantitative risk analysis and QRAs. And there's been discussion about the fact that a QRA was done in 2012 prior to sanction.

MR. P. HARRINGTON: That's right.

MR. SIMMONS: To assess risks associated with the – to quantify risks associated with the project.

MR. P. HARRINGTON: Mm-hmm.

MR. SIMMONS: And the next one wasn't done formally until 2016.

MR. P. HARRINGTON: That's correct.

MR. SIMMONS: So, the first question is – and I think we've heard this from others already – aside from performing a quantitative risk analysis, there are separate processes that track risks for the purpose of execution of the work, correct?

MR. P. HARRINGTON: Absolutely, at all levels. And it's continuous.

MR. SIMMONS: Right. And is performing a – is – quantifying the potential cost of risks should they materialize, is that something that needs to be done in order to execute the work, oversee the execution of the work and do the oversight and management that's necessary to –

MR. P. HARRINGTON: No.

MR. SIMMONS: – complete the job?

MR. P. HARRINGTON: It's not necessary for that because that's the ongoing process –

MR. SIMMONS: Yes.

MR. P. HARRINGTON: – that you have.

MR. SIMMONS: Yes.

MR. P. HARRINGTON: It's not a routine thing that you do.

MR. SIMMONS: Right.

MR. P. HARRINGTON: Yeah.

MR. SIMMONS: And as part of the routine risk work, does that include being alert to the identification of new risks so that they can be added to the risk registers?

MR. P. HARRINGTON: That is a continuous process.

MR. SIMMONS: Just bear with me a moment. You were asked some question by Mr. Burgess regarding the integrated project schedule or the IPS?

MR. P. HARRINGTON: Yes.

MR. SIMMONS: And we've heard evidence previously that the – I'll summarize what I think

the IPS is and correct me if I've got this wrong. The IPS is an overall schedule for the whole project that integrate significant milestones, or interfaces from the different work packages and contracts that have to be fitted together to achieve the completion.

MR. P. HARRINGTON: So, yes that's exactly right. It's not contract based –

MR. SIMMONS: Yes.

MR. P. HARRINGTON: – it's almost asset based –

MR. SIMMONS: Okay.

MR. P. HARRINGTON: – if you want to look at it that way.

MR. SIMMONS: So, it's not a schedule for the performing of each little piece of the work?

MR. P. HARRINGTON: It's not a contract schedule.

MR. SIMMONS: Okay. And for a contractor like Astaldi, the Astaldi contract would have built into it and specified in it certain milestones and interfaces.

MR. P. HARRINGTON: That's correct.

MR. SIMMONS: And what are milestones?

MR. P. HARRINGTON: Milestones are things like pit free –

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: – that you would then mean that could be handed over to the next contractor, which would be in this case ANDRITZ –

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: – for installation of the turbine and generator sets.

MR. SIMMONS: Okay. And interfaces?

MR. P. HARRINGTON: Same thing, because in – even in that, using the pit free –

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: – interface or the milestone – there are sub-milestones which allows Astaldi to get to a certain point and then ANDRITZ would come in and install some embedded parts –

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: – they would hand it back to Astaldi again and then Astaldi would finish off the remaining concrete –

MR. SIMMONS: Mm-hmm.

MR. P. HARRINGTON: – and get to the final – sorry – pit-free situation.

MR. SIMMONS: Right.

MR. P. HARRINGTON: So, it's toing and froing.

MR. SIMMONS: Right. So, the milestones in – and we're talking about the Astaldi contract – are the milestones in the Astaldi contract are dates upon which Astaldi is contractually committed to complete certain portions of the work?

MR. P. HARRINGTON: That's correct.

MR. SIMMONS: And the interface dates are dates they have to move the work to a point where it can either be handed off to another contractor, or received from another contractor.

MR. P. HARRINGTON: That is correct.

MR. SIMMONS: Right. So, what would Astaldi need from the integrated project schedule to allow it to plan its work, that's not already specified in its own contract in those milestones and interfaces?

MR. P. HARRINGTON: They would need nothing more.

MR. SIMMONS: Okay. Thank you very much, Mr. Harrington. Unless there's anything in particular that you feel that you need to add at this point or anything that you'd like to say after

all the questioning or are you just happy to leave?

MR. P. HARRINGTON: I'm good. Thank you.

MR. SIMMONS: Okay. I know there will be redirect coming up.

MR. P. HARRINGTON: Yes.

MR. SIMMONS: I'll just give you this opportunity now.

MR. P. HARRINGTON: No I – no I'm – yeah. It's been a long day.

MR. SIMMONS: Thank you very much.

THE COMMISSIONER: All right. Redirect, Ms. Muzychka.

MS. MUZYCHKA: I have a number of questions for you, Mr. Harrington, and if I could ask Madam Clerk to bring up P-01962, please?

MR. P. HARRINGTON: Right.

MS. MUZYCHKA: This is the letter that you wrote to Mr. Marshall.

MR. P. HARRINGTON: Okay.

MS. MUZYCHKA: We spent some time on today, already.

CLERK: 1962?

MS. MUZYCHKA: Yes, please. I forget the tab that that's –

THE COMMISSIONER: Tab 72.

MS. MUZYCHKA: 72. Thank you.

So, we go to page 2. All right, and we're looking at the underlined line there, Mr. Harrington.

MR. P. HARRINGTON: Yes.

MS. MUZYCHKA: The "aggressive schedule with a First Power target that was recognized as being in the P5 to P10 range."

MR. P. HARRINGTON: That's right.

MS. MUZYCHKA: What does that mean if a schedule is on a P5 to P10 range, to you? What do you understand that to be?

MR. P. HARRINGTON: It means there's certain – well, the P5, P10 range means it was a low probability.

MS. MUZYCHKA: Low probability – so 5 to 10 per cent probability. Is that –

MR. P. HARRINGTON: That's correct. Yeah. Yeah.

MS. MUZYCHKA: – the way you'd read that?

MR. P. HARRINGTON: Based upon the work that was done by Westney.

MS. MUZYCHKA: Okay. 'Cause you had made some statements earlier that the schedule was on a 50 – P50 basis but in actual fact –

MR. P. HARRINGTON: If I conveyed that then that was in error.

MS. MUZYCHKA: Right. So, in actual fact – I mean the P5, 10 can't be anything other than the very low probability. Correct?

MR. P. HARRINGTON: That's right. Based upon the Westney analysis missing one or more of those milestones

MS. MUZYCHKA: I don't believe you said that it was based on Westney. Sorry.

MR. P. HARRINGTON: This – you've got the Westney analysis – that's what I was referring to here.

THE COMMISSIONER: (Inaudible) Westney.

MS. MUZYCHKA: Right. But in this letter that I'm pointing out to you, Mr. Harrington, there's no reference to Westney said. It was clear that this came from you. You made that statement to Mr. Marshall. You were drawing his attention that we understood the project schedule was in a P5 to 10 range.

MR. P. HARRINGTON: Yeah. But I was basing that on the Westney analysis.

MS. MUZYCHKA: So, your belief was based on that, but that was a belief that you personally held – you and the team.

MR. P. HARRINGTON: Yes.

MS. MUZYCHKA: Okay. And that's what I wanted to make clear. So – that you all understood that you had very low probability of –

MR. P. HARRINGTON: And we were pushing for that target as best we could.

MS. MUZYCHKA: Okay.

I understand that you had also provided a copy of your draft to other witness – other members of the project management team.

MR. P. HARRINGTON: There is an email thread on that.

MS. MUZYCHKA: There is. So if I could ask Madam Clerk to bring up P-03166?

Okay if we scroll down a bit, you'll see your email.

THE COMMISSIONER: That's on the screen.

MS. MUZYCHKA: There it is, just up there, June 4. Two days before you wrote your letter, you state that you've drafted a letter to Stan Marshall that you'd like to send, the latest Monday, June 6.

MR. P. HARRINGTON: Mmm.

MS. MUZYCHKA: I'd "appreciate your feedback and suggestions to the text and any contributions you would suggest."

MR. P. HARRINGTON: Right.

MS. MUZYCHKA: And go to the top – excuse me – you can see that the email is directed to Lance Clarke, Jason Kean, Ron Power, Brian Crawley, Scott O'Brien, Darren DeBourke and Greg Fleming.

Is that correct?

MR. P. HARRINGTON: Correct.

MS. MUZYCHKA: And these are members of the project management team?

MR. P. HARRINGTON: That is.

MS. MUZYCHKA: And we know from other emails that we have – we won't go through them all now, but there were emails received from various individuals with their input as to what should be in – or any suggestions or edits to your letter to Mr. Marshall, correct?

MR. P. HARRINGTON: That's right.

MS. MUZYCHKA: Okay.

So it's safe –

MR. P. HARRINGTON: Hmm.

MS. MUZYCHKA: – to say then that nobody took issue with the statement that you made with respect to the feeling of the team that this was a 5 to 10 probability, very low probability of achieving cost and schedule, correct?

MR. P. HARRINGTON: That's correct.

MS. MUZYCHKA: Okay.

Now, so this was – this recognition that the schedule was of a low probability – that was recognized by yourself, the PMT?

MR. P. HARRINGTON: It was achievable, right, the –

MS. MUZYCHKA: Right, but I mean you understood that to be – I guess anything is achievable, but how probable is that to be, and I'd suggest to you that you agreed it was a very low probability.

MR. P. HARRINGTON: Yes.

MS. MUZYCHKA: Okay.

MR. P. HARRINGTON: I can't disagree with that.

MS. MUZYCHKA: And was this also understood by the executive?

MR. P. HARRINGTON: Well, it was presented to them in the QRA.

MS. MUZYCHKA: Okay, so they had also understood it was a very low probability.

MR. P. HARRINGTON: That's right.

MS. MUZYCHKA: And that would've come through you, in your role as the project director.

MR. P. HARRINGTON: That's correct.

MS. MUZYCHKA: Okay.

Now I want to – excuse me – take you back to a statement that you made yesterday, and also today, about describing certain events which happened with the project as a black swan, correct?

MR. P. HARRINGTON: That's correct.

MS. MUZYCHKA: And you were asked this morning to identify what the black swans were, because I believe you said yesterday that the project had more than its fair share of black swans.

MR. P. HARRINGTON: In my opinion, yes.

MS. MUZYCHKA: Okay.

Now, I have to confess, I wasn't totally familiar with the term black swan in this context. And when I looked it up it was defined as: An unpredictable and unforeseen event, typically one with extreme consequences. Is that a fair statement?

MR. P. HARRINGTON: Yeah, that's my understanding as well.

MS. MUZYCHKA: Okay.

So you mentioned this morning that Astaldi was a black swan.

MR. P. HARRINGTON: I did.

MS. MUZYCHKA: Okay, but we know that the key factor – or we know from – the problems with Astaldi started from the get-go with the poor start through the LNTP or LNTP and then also developed into some problems with productivity. And, in fact, productivity – labour productivity, in terms of laying or pouring cement and so on, was a big problem in terms of the Astaldi performance. Correct?

MR. P. HARRINGTON: It was – you know, the concrete placement, their organizational structure, their lack of, you know, good project management –

MS. MUZYCHKA: Okay.

MR. P. HARRINGTON: – all of that contributed to, you know, the way that they slipped off schedule and were incurring costs –

MS. MUZYCHKA: Okay.

MR. P. HARRINGTON: – that were untenable.

MS. MUZYCHKA: Now, I want to direct you to P-03172 and it's in the project management binder 2.

THE COMMISSIONER: Tab 86.

MS. MUZYCHKA: Tab 86 and, in particular, if I could bring up page 26. Now, this is the SNC risk document, but I think it's – your evidence yesterday was the SNC hadn't uncovered any new risks. Is that correct?

MR. P. HARRINGTON: That was my understanding, yes.

MS. MUZYCHKA: Okay.

So if we look at – and it's a little difficult to read, but if we look at page 26 and the second risk title on that page, it reads: "Concrete works slippage from baseline schedule." Do you see that?

MR. P. HARRINGTON: Yeah.

MS. MUZYCHKA: And it talks about: "Powerhouse and spillway concrete works are planned on a three year duration (2 winter

seasons) with a very aggressive schedule providing little float, which might result in additional delays (possible 6 months) and costs.”

MR. P. HARRINGTON: Right.

MS. MUZYCHKA: And then there is some actions for mitigation and so on.

MR. P. HARRINGTON: Yes.

MS. MUZYCHKA: So that was a risk that was recognized. Do you agree?

MR. P. HARRINGTON: We all agreed on that.

MS. MUZYCHKA: Okay.

And then let’s turn to page 36. And if you look to the bottom of – is that page 26? Thirty-six, I’m sorry. Okay, just scroll up. There you go.

At the bottom of the table, can you read there? It says, risk title: “Bankruptcy of major LCP contractors or suppliers.”

MR. P. HARRINGTON: Yes.

MS. MUZYCHKA: Okay.

And it – the description is: “Bankruptcy of any significant supplier or contractor could compromise the success of any of the affected scopes and ultimately the LCP.”

MR. P. HARRINGTON: That’s correct.

MS. MUZYCHKA: Okay.

And that was a risk that was recognized by Nalcor as well, correct?

MR. P. HARRINGTON: That’s correct and if you look at the actions, the mitigating actions there – all of those things we did.

MS. MUZYCHKA: Okay. Fair enough.

But the point is, Mr. Harrington, these items are risks which were identified and known by yourself and also identified by SNC in their report. So how can it be said that the failure of Astaldi could be characterized as a, quote,

unpredictable and unforeseen event, which would be the definition of a black swan.

MR. P. HARRINGTON: Because they were a hundred-year company and they were a top hydro construction company; one of the top five or six in the world. So, you know, having a bankruptcy of a supplier, right, is one thing but, you know, we – you take the mitigation actions here of: Proceed, due diligence before awarding contract, request a letter of credit, act quickly. We did all of those things.

MS. MUZYCHKA: That’s fair but the problem is, Mr. Harrington, is that these things are identified as risks. And the question that you have to do – or the things that one has to do is determine whether or not they are reasonably foreseeable. And I put to you that they are because they were identified.

MR. P. HARRINGTON: Well, no –

MS. MUZYCHKA: It’s a question of how probable they were and whether or not there was a sufficient contingency in place to allow for what would happen in the event of.

MR. P. HARRINGTON: Well, I don’t –

MS. MUZYCHKA: And so I don’t think it can be truly defined as unpredictable and unforeseen when, in fact, those events were in fact identified, and it’s just a question of how much probability was assigned to each in the course of your evaluation of the risks.

MR. P. HARRINGTON: I still consider the situation that happened with Astaldi as a black swan.

MS. MUZYCHKA: Even the productivity?

MR. P. HARRINGTON: The – what I’m talking about is their failure to mobilize properly; failure – a top builder here – failure to provide the project management that you would normally expect; the failure of the ICS, which was a key feature of their construction build, leading to the delays that we saw.

The bankruptcy came later. The bankruptcy occurred last year but the damage had been done earlier than that. So we’re not talking about

bankruptcy here, we're talking about the performance of a contractor which is beyond the pale.

MS. MUZYCHKA: Right, but do you also recall that there were cautions given to Nalcor back before the project was awarded by the independent engineer assigning –

MR. P. HARRINGTON: But that's –

MS. MUZYCHKA: – some extreme caution. I'm just putting it to you, Mr. Harrington –

MR. P. HARRINGTON: Yeah.

MS. MUZYCHKA: – that there were a number of things that were available to Nalcor that –

MR. P. HARRINGTON: Yeah.

MS. MUZYCHKA: – could have pointed to these things happening that would, I suggest, take it out of the unpredictable and unforeseen category. That's –

MR. P. HARRINGTON: I –

MS. MUZYCHKA: That's my point.

MR. P. HARRINGTON: That's your point but I can't agree with that.

MS. MUZYCHKA: You don't agree.

MR. P. HARRINGTON: I just don't agree with it.

MS. MUZYCHKA: Okay.

I want to ask you about the project controls group. You mentioned just now that there was the project controls group meeting and then there's a smaller meeting in which you discussed things in the crystal ball –

MR. P. HARRINGTON: Yes. Yeah.

MS. MUZYCHKA: – gazing we'll call it.

MR. P. HARRINGTON: Yes.

MS. MUZYCHKA: Is there a financial – or a finance person who is on the smaller committee?

MR. P. HARRINGTON: Not initially, but I think later on Jim Meaney attends that one.

MS. MUZYCHKA: And what do you mean by not initially? At what point –?

MR. P. HARRINGTON: Perhaps not in 2013-'14, but perhaps, I think – because they were heavily focused then on, you know, the federal loan guarantee and things like that. So I think – I could be wrong but it was those early days, those early years, no, but when Mr. Meaney was, you know, available he would attend those meetings.

MS. MUZYCHKA: Okay. Is he there now on a regular basis?

MR. P. HARRINGTON: Yes.

MS. MUZYCHKA: So that's –

MR. P. HARRINGTON: He signs – does he sign? I think he signs off on the sheet.

MS. MUZYCHKA: All right.

I have a number of follow-up questions on the independent engineer and the Rey and Loucks issues.

MR. P. HARRINGTON: Yes.

MS. MUZYCHKA: You mentioned in your testimony that the reason why you wanted Rey removed was because of his poor organizational performance and you had other more personal issues with Mr. Loucks. Correct?

MR. P. HARRINGTON: Not me personal issues.

MS. MUZYCHKA: No but issues respecting his personality as opposed to his competence.

MR. P. HARRINGTON: He was clashing with the project team.

MS. MUZYCHKA: Okay.

Well, I just want to draw your attention to a number of exhibits and we won't take too much time to go through them. If we could bring up P-02189.

MR. P. HARRINGTON: Do I have it?

MS. MUZYCHKA: No, these will just –

MR. P. HARRINGTON: Oh.

MS. MUZYCHKA: – come up on your screen.

MR. P. HARRINGTON: James Meaney, Charles Newman.

MS. MUZYCHKA: If we could scroll down to the bottom, just so that we could get the –

MR. P. HARRINGTON: Can I just look? I don't – who's Charles Newman? I don't know who Charles Newman is but –

MS. MUZYCHKA: Okay, well, we'll get to all of that in a moment.

MR. P. HARRINGTON: Okay.

MS. MUZYCHKA: All right

Okay, we can just stop there for a moment. Well, actually, we can just scroll up to the first email. It's on page 3. Right there, okay.

So this starts with an email from Reynold Hokenson, Monday, October 14, 2013, and it's addressed to Charles Newman, Alison Manzer, Suhuyini Abudulai, I believe, copied to others, Nalcor Energy. All right?

And this is an email in which he writes Charles and says: Hi Charles, I find in the LNTP number so and so. If we go on down it says: "... MWH would like to request a copy to be provided to us for review." And he's referring to – I should've started earlier: "MWH does not have a copy of the minutes of the Minutes of Meeting of September 14, 2013, which would give more details as to the credit of \$40 Million dollars; MWH would like to request a copy to be provided to us for review. If for some reason this cannot be provided ... we at least would like an explanation of this 'credit,' please."

And then it just continues onwards. It's referred to Jim – Charles Newman forwards it to Jim Meaney to respond to and then it goes to Lance and others. And the question gets answered such

that the minutes, which were on page 5, are identified.

MR. P. HARRINGTON: Okay.

MS. MUZYCHKA: It's just the minutes of a meeting between Astaldi and Nalcor, 14th September 2013, that took place in London, correct?

MR. P. HARRINGTON: So far I'm following you.

MS. MUZYCHKA: Okay, I'm just – you know, there's nothing hidden in terms of the message, I'm just trying to highlight the type of information that Mr. Hokenson was requesting.

MR. P. HARRINGTON: Oh, okay.

MS. MUZYCHKA: Okay.

And so if we look down at the memorandum – or the minutes of meeting, you can see that there is a number of things in relation to – if we just scroll down to the numbered items, yeah. Astaldi is looking for, you know, different things with respect to labour and Limited Notice to Proceed issues and so on. Okay?

It doesn't look too contentious, does it?

You don't need to read through it all, Mr. Harrington.

MR. P. HARRINGTON: Okay.

MS. MUZYCHKA: It's just – it's not an issue of, you know –

MR. P. HARRINGTON: Okay.

MS. MUZYCHKA: – contention being asked by the independent engineer. Or would you consider that to be an issue? It didn't seem to be from the responses that –

MR. P. HARRINGTON: I don't see – I don't see this as a problem, no.

MS. MUZYCHKA: No, fair enough.

All right, and then let's pull up P-02192. All right, and if we turn to page 2.

And we see this is another email from Reynold Hokenson, and he's writing Charles Newman again on October 24, 2013. And he writes: "Hi All,

"As part of our review, we would like the Schedule that Astaldi furnished with the proposal and that will be part of the Contract. When can MWH expect to receive this Schedule? We are currently working with the P6 CPM furnished recently by Nalcor and would like this information ASAP, please."

Do you see that?

MR. P. HARRINGTON: Yes.

MS. MUZYCHKA: Any issue with that information?

MR. P. HARRINGTON: I don't – if we had it, yes, then it would be available.

MS. MUZYCHKA: Okay.

And if we go to the top of the exhibit, page 1, you'll see that there's a response that says: "We are currently looking at fine tuning Astaldi's construction approaches. It's best to provide this contractual documentation on contract execution in a couple of weeks."

Don't seem to be any issue with that?

MR. P. HARRINGTON: I don't think so.

MS. MUZYCHKA: No, okay.

We can pull up Exhibit P-02243. Okay. And this – if we can go down to page – sorry – go to page 4. And this is another email from Reynold Hokenson, and it's dated February 18, 2014.

And he's looking for – he's writing Charles and James. He's looking – he's "included a brief memo concerning the Bulk Excavation Contractor's (s) Monthly Progress Reports ... that indicates that the claims that have been mentioned in the Construction Report apparently are still pending and appear to potentially be increasing. We were told at our meeting in St. John's that the claims were frivolous, but apparently this is not the case.

"MWH would like to learn more about the claims, but in particular the large claim involving surface preparation and placing mudslabs in the powerhouse and spillway area. We anticipate that this information can be furnished prior to the IE's issuance of the certificates for the third draw and that the December 2013 Contractor's Monthly Progress Report for CH0006 will be furnished soon."

And then we see – scroll up a little bit to page 3 – that this email is forwarded to James Meaney – or he's responding to it. I'm not sure how he gets it. He's probably copied on it originally.

MR. P. HARRINGTON: Mmm.

MS. MUZYCHKA: So he's – he questions the request. Alison Manzer also responds. We can see her response – just come back up again, please. Right there. And she just writes: "Rey is hit and miss re emails – and addressing – I am getting ..." him "to say how do we get a good assessment and when is the team changing"

I think her response is more in the failing to keep Mr. Argirov on the response list, correct?

MR. P. HARRINGTON: "Rey is hit and miss re emails – and addressing – I am getting to Nik to say how do we get a good assessment and when is the team changing"

So I think Alison Manzer was talking about the need to change the team.

MS. MUZYCHKA: Is that right?

MR. P. HARRINGTON: Yes, the IE team.

MS. MUZYCHKA: Okay.

MR. P. HARRINGTON: Because she had – as far as I can recollect – issues with some of the personnel as well.

MS. MUZYCHKA: Okay. But she's not saying that it's – she doesn't have a particular reason.

MR. P. HARRINGTON: Well, she doesn't say it there but, you know, perhaps –

MS. MUZYCHKA: Okay.

MR. P. HARRINGTON: – just –

MS. MUZYCHKA: Well, ultimately, if we go to the top at page 1 you respond with a comment and then you say in the third or fourth paragraph that “Rey has overstepped his scope of work here” And then –

MR. P. HARRINGTON: Yeah, that wasn’t in – that wasn’t in their scope of work at that point in time.

MS. MUZYCHKA: Okay.

So I just wanted to pull up some of these emails from Mr. Hokenson to indicate that you had made some comments about his poor organization and performance and that’s why you wanted him removed. But it seems that he was asking for a lot of information relating to Astaldi and key issues with respect to cost and –

MR. P. HARRINGTON: They –

MS. MUZYCHKA: – that sort of thing. Was that considered a problem?

MR. P. HARRINGTON: No. It was – Mr. Hokenson was provided with lots of information but he was finding it difficult to keep up.

MS. MUZYCHKA: Okay.

MR. P. HARRINGTON: He had problems remembering things.

MS. MUZYCHKA: All right.

MR. P. HARRINGTON: I don’t want to go further than that.

MS. MUZYCHKA: Okay, all right.

The last question for you – or questions, Mr. Harrington – I just wanted to revisit the issue of Dovre and NSB that we talked about yesterday morning.

MR. P. HARRINGTON: Okay.

MS. MUZYCHKA: Okay.

I just wonder if you can confirm that your son was an operations coordinator working for

Dovre Group from November 2010 to February 2013.

MR. P. HARRINGTON: Yes.

MS. MUZYCHKA: And that his duties included candidate recruitment and retention.

MR. P. HARRINGTON: Yes.

MS. MUZYCHKA: Okay. And can you confirm that your son has been an operations manager with NSB Energy from February 2013 to present?

MR. P. HARRINGTON: Yes.

MS. MUZYCHKA: And that in his role – in that role – he has provided senior project teams to multiple megaprojects and takes an active role on the bidding and negotiation of major recruitment contracts.

MR. P. HARRINGTON: Yes.

MS. MUZYCHKA: Okay.

Thank you.

MR. P. HARRINGTON: Thank you.

MS. MUZYCHKA: I have nothing further.

THE COMMISSIONER: All right.

Thank you very much, Mr. Harrington. It has been a long couple of days and I appreciate your time.

So we’ll adjourn now.

It’s been a busy, long week for everyone, so thankfully we have tomorrow to get a breather. Next week we have left Friday open. I am not anticipating we’re not going to be sitting Friday. I am kind of thinking we are going to need to sit on Friday next week, but it will all depend on how it goes. So I just wanna mention that but – at this stage of the game.

But we’re adjourned now until Monday morning at 9:30.

CLERK: All rise.

This Commission of Inquiry is concluded for today.