



## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Phase 2

Volume 52

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*Commissioner: Honourable Justice Richard LeBlanc*

Wednesday

12 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:** (Inaudible) morning.

All right, Mr. Learmonth?

**MR. LEARMONTH:** Thank you.

The witness today is Edmund – Ed Martin.

Before Mr. Martin is sworn or affirmed, I'd like to enter the following exhibits into the record: P-04053, P-04065 to P-04072, and P-04080 to 04087.

**THE COMMISSIONER:** All right, then those will be marked as entered.

And Mr. Martin, you can stand, please, if you would, and I believe you were sworn (inaudible).

**MR. E. MARTIN:** Sworn.

**THE COMMISSIONER:** So, if you could just take the Bible in your hand, please?

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

**MR. E. MARTIN:** I do.

**CLERK:** Please state your name?

**MR. E. MARTIN:** Ed Martin.

**CLERK:** Thank you.

**MR. LEARMONTH:** Yes.

**THE COMMISSIONER:** All right.

Mr. Learmonth?

**MR. LEARMONTH:** Yes.

Mr. Martin, you're a resident of St. John's, are you?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Yeah.

And what is your present occupation?

**MR. E. MARTIN:** I'm retired. I look after some investments that I have in various places.

**MR. LEARMONTH:** But you're not – so you're retired and –

**MR. E. MARTIN:** Yes, I am.

**MR. LEARMONTH:** – engaged in some other activities. Is that right?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Yeah. All right.

Now, I wanna ask you that on the last page of many of Nalcor's presentations that were prepared before your departure in April 20, 2016, Nalcor's core values are recorded, and I just – we'll just look at one, for example, in tab 26, binder 1.

You're looking at the last page which is Exhibit P-02549, page 13. We've got a presentation of the core values, and this appears in many of the presentations that Nalcor prepared while you were the CEO. Now, the core values are stated to be Teamwork, Open Communications, Honesty and Trust, Respect and Dignity, Safety, and Leadership. Now, with respect to open –

**MR. E. MARTIN:** I think there's Accountability there as well.

**MR. LEARMONTH:** Accountability, yeah, but the two I wanna refer to are open communications, and honesty and trust.

Now, is it your position that throughout your tenure at Nalcor, which ended on April 20, 2013, you, personally, adhered to and were guided by those core values and principles, in your communications to the public and to the Government of Newfoundland and Labrador?

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** Yes, okay. Thank you.

Mr. Martin, we've heard a lot of evidence about the Astaldi contract, including the bid process, why Astaldi was selected and so on. At this point, I'm not gonna review all the evidence about Astaldi, but I do have one question that I think, so far, has not been covered in any detail, with respect to the Astaldi contract.

As I understand it, the Astaldi contract stipulates that Nalcor was required to pay Astaldi for every hour worked up to the LMax and that payment for these hours worked was not tied, in any way, to achieving specific concrete-poured milestones. You agree with that?

**MR. E. MARTIN:** Yes, I do.

**MR. LEARMONTH:** Okay. So, for example, under the contract with Astaldi, Nalcor is required to pay Astaldi even for building the ICS and tearing it down. Do you agree?

**MR. E. MARTIN:** I can't comment on that one.

**MR. LEARMONTH:** Okay. But you agree with the main principle that I've stated to you.

**MR. E. MARTIN:** Yes, I do.

**MR. LEARMONTH:** Okay. Now, in retrospect, have you come to realize that this was a big mistake?

**MR. E. MARTIN:** No.

**MR. LEARMONTH:** No? Why not?

**MR. E. MARTIN:** I put myself back in the day, with respect to that contract, and I will preface it by also saying that I – at my particular role, I was not heavily involved in terms of the structure of the contract and how it was administered, but I did have an understanding of that particular topic. And, in my recollection, at the time, it was felt that Astaldi could be effective in making sure that the labour productivity was pushed and proved to the extent possible. And we felt, at the time, that because we saw an opportunity there to structure the contract so that they could potentially gain

additional compensation themselves by virtue of improving productivity, it was that principle and structured around that is why they were – why it was landed on to structure in terms of getting paid, you know, with respect to labour hours.

**MR. LEARMONTH:** But why not tie it to milestones like it's the normal process in building contracts that a contractor is paid up to a certain limited – for certain phases of construction – to use a very simple example, if you're building a house, you'll pay a contractor so much for completing the excavation and the foundation and then another amount for the – you know, the – constructing the walls and so on.

Why was there a departure from that normal type of procedure whereby milestones payment is tied to milestones, not hours worked? The reason I say that is we know that in the first year, that's 2014, Astaldi ran up very large labour payments, a large number of hours with little or no work completed. And I'm suggesting to you that if there had been something built into the contract, something at all that would have limited the amount of hours paid to milestones, then you would have recognized very early in the game that Astaldi was not performing well and you would have had an early opportunity to terminate them.

So I don't understand why you don't, even in retrospect, consider that to be a serious error in the construction of the contract.

**MR. E. MARTIN:** I think you're asking me to comment on that – this one, are you?

**MR. LEARMONTH:** Pardon?

**MR. E. MARTIN:** You're asking – is that, is –

**MR. LEARMONTH:** Yeah, if you could, can you comment –

**MR. E. MARTIN:** I just want to make sure I had a specific question that I was answering.

So the context – if you're asking me to comment on the context – the first thing I would say is that you mentioned there's different ways of doing that, based upon maybe concrete laid or progress, and I agree with that unquestionably.

You said it was normal, you know, to do it that way. You know, I don't think normal is the right word. I think there's other ways to do it and I agree with that.

The reason, as I mentioned just previously to that, was the expectation is that there was a possibility to improve productivity by structuring it that way. So it was done with the best of intentions.

**MR. LEARMONTH:** Yes but –

**MR. E. MARTIN:** And with respect to understanding the progress of Astaldi during that period of time, you know, it would not make any difference, hours or otherwise. You can measure the progress in terms of whether it was positive or negative under either scenario.

**MR. LEARMONTH:** All right.

If we turn to tab 40, binder 2 of your documents, that's P-03086.

**MR. E. MARTIN:** Pardon me, the tab again, please?

**MR. LEARMONTH:** Excuse me. It's tab 40, binder 2.

**MR. E. MARTIN:** I have it.

**MR. LEARMONTH:** You have that. Okay.

And that's – this is a note – this is a record of notes made by Kelvin Parsons who was the then-chief of staff for Premier Ball, with respect to a meeting with that – the minute – the various people had with representatives of EY on February 25, 2016.

Now, if we go to page 4 and we go down to the third – if we go down to the bottom and the third bullet up, this is what is recorded: "EY indicated that the agreement with Astaldi stipulates that Nalcor pays Astaldi for every hour worked, and payments are not tied to achieving concrete poured milestones."

**MR. E. MARTIN:** Excuse me, I'm sorry to interrupt you, Mr. Learmonth, but –

**MR. LEARMONTH:** Page 4.

**MR. E. MARTIN:** I'm on the third bullet point?

**MR. LEARMONTH:** From the bottom.

**MR. E. MARTIN:** Pardon me?

**MR. LEARMONTH:** Up from the bottom.

**MR. E. MARTIN:** From the bottom, I apologize.

**MR. LEARMONTH:** Okay.

Okay, I'll re-read that –

**MR. E. MARTIN:** I understand.

**MR. LEARMONTH:** – since you weren't following it.

"EY indicated that the agreement with Astaldi stipulates that Nalcor pays Astaldi for every hour worked, and payments are not tied to achieving concrete poured milestones. Nalcor officials described this specific contract provision as 'one regret they have'. So, Astaldi has been paid for every hour worked, even for building the failed dome and" tearing "it down."

Now, you said that you don't have any regret. Do you know who the Nalcor officials would have been that had regret?

**MR. E. MARTIN:** No, I don't, and I was not interviewed on this topic by EY either.

**MR. LEARMONTH:** Okay.

But did it ever come to your attention that some people, presumably on the project management team, expressed this regret as being one regret they have?

**MR. E. MARTIN:** They did not. On the contrary, I remember several conversations with Mr. Lance Clarke, who was one of the key architects of this, where we discussed the – this very topic. And that's where I received the majority of my information in terms of understanding how and why it was structured the way it was.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** And he did not have that opinion.

**MR. LEARMONTH:** So this was what Mr. David Leather of EY – representative of EY from Manchester, England, said in a meeting, was recorded. These notes were verified as being accurate, as far as she knew, by Julia Mullaley. And you don't understand the basis for that comment?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Yeah.

And you'd have no idea who made it?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** And you never – until I showed it to you today, you never knew that that sentiment had been expressed to David Leather, according to this record?

**MR. E. MARTIN:** No, I read these notes when they were provided to me earlier by the Commission.

**MR. LEARMONTH:** Yeah.

And were you surprised when you read that?

**MR. E. MARTIN:** I never really reacted either way. It was just a piece of data, a piece of information.

**MR. LEARMONTH:** It was what?

**MR. E. MARTIN:** Just a piece of information. You asked me if I was surprised. I can't say I was –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – surprised, no.

**MR. LEARMONTH:** Yeah, okay.

But do you agree that if you had tied performance to milestones that it would've given Nalcor a better opportunity, especially in the first year when performance was very slow, to consider terminating Astaldi since it would

appear that money was being paid for labour and nothing was being achieved?

Don't you think that would've given Nalcor a good opportunity very early in the game to focus and do a full assessment in the sense that if, after six months, there's very little progress and you've paid out all this money, wouldn't that be sort of a startling revelation? You'd have to say, what's going on here?

**MR. E. MARTIN:** A couple of answers to that. Once again, I don't believe how the payments were made, the structure of the payments being made, would've made a difference in understanding where they were in progress. You know, you'd have to be blind. So I think that's not a good point.

But with respect to – in hindsight, I think you're asking, with respect to the cash side of things, it was done for the right reasons, but in retrospect the less cash that could've been paid out that year –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – would've been more helpful to Nalcor from a leverage perspective. I agree with that.

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** Yeah, I agree with that –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – in retrospect, but I – you know, once again, I want to be clear that at the time it was done for the right reasons with the expectation that it was going to be helpful.

**MR. LEARMONTH:** Yeah.

But, Mr. Martin, I'm not questioning at all that the – the point that Nalcor entered into these terms in good faith believing that they were correct. I'm not suggesting that there was some, you know, plan to make a mess of the contract. I'm just saying, with the benefit of hindsight that we now have, that there are ways that it possibly could've been implemented that would've improved the leverage of Nalcor.

And the reason I say that is the more labour hours – I want to see if you agree with this – the more labour hours that you pay – Nalcor pays for and with little progress, then it gives a lot of leverage. In the end, it's just building momentum of leverage for the contractor because they're being paid for doing nothing and it's known that at some point they're going to run out of money. Do you agree with what –?

**MR. E. MARTIN:** As I said, I agree that the more cash that has been paid out to a contractor – and when you're trying to do something with them with less progress than required – that would help the contractor. So I agree with that, number one.

Number two, I appreciate your clarification on, you know, the intent of the question, because that helps me a great deal in terms of the hindsight kind of thing. And just to build on that –

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** – and I'd just like to also make the point – not that I think you're doing anything different, but looking back on it, if, you know, if the labour payment process had yielded the productivity we were looking for, it would have been a very successful piece of work to do it that way.

**MR. LEARMONTH:** If. But –

**MR. E. MARTIN:** Absolutely if – that's what I'm saying

**MR. LEARMONTH:** – unfortunately, it didn't.

**MR. E. MARTIN:** I agree.

**MR. LEARMONTH:** Yeah. Okay. Thank you.

In terms of the productivity, do you agree that the Integrated Cover System which was contained in the bid was a – sort of the foundation for the contract? That this ICS would prevent – would allow Astaldi to continue working in the winter, that that was a very important part of their bid?

**MR. E. MARTIN:** You've phrased it two ways there, Mr. Learmonth. You said the foundation –

the foundation – and then you said an important element.

**MR. LEARMONTH:** Okay, I'll say a foundation and an important –

**MR. E. MARTIN:** Yeah, I appreciate that.

So I think it was one of the things. There's a myriad though.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** But, yes, you know, from – that was one of the elements of many that would have, you know, giving us – given us some feeling that, you know, productivity of the labour force – it could help the productivity of the labour force.

**MR. LEARMONTH:** Yes.

We've heard considerable evidence on the Astaldi contract, that they expected very early in the game – they expected to begin work or have the contract signed – Mr. Palumbo said in June and although –

**MR. E. MARTIN:** Mister who? Pardon me?

**MR. LEARMONTH:** Mauro Palumbo.

**MR. E. MARTIN:** Oh, is he with the Astaldi – one of the Astaldi reps.

**MR. LEARMONTH:** Astaldi people, yeah.

And he said June 1, then it went to July and on, and so on. And, you know, the sense was that where the contract was not signed until November 29 – although there were Limited Notices to Proceed – that they were deprived of almost a full construction year because by the time they started on November 29, they were into the winter and that their ability to construct or do the final plans and construction of the Integrated Cover System would have to wait.

Now, I realize that Astaldi signed the contract, you know, with that date – with the dates it specified and I realize that there was a release. But did you not know on November 29 that the fact that the contract was signed at such a late date as opposed to June or July, that that put a

lot of pressure on the schedule – because of the weather.

**MR. E. MARTIN:** At the time, you know, the information that I had – once again, I was not in the depths of managing the contract – but it would be the type of thing that I would ask and try to ascertain. And the pieces of information that, you know, I'm recollecting is that, as you mentioned – and it's no small thing, Astaldi signed the contract. I mean they're, you know, a significant contractor and there was significant dialogue, you know, amongst the project team and Astaldi about that point.

In any event, I forget the exact date. I think it was in the fall – September, October or – I'm not sure the exact date that they would have access to the site in any event because of site prep. So, I think that was a determining factor that, you know, regardless of that situation they would not have been in on the site until – and I need to check this – but around the October time frame to get going. So –

**MR. LEARMONTH:** I think it was September –

**MR. E. MARTIN:** Yeah.

**MR. LEARMONTH:** – I think one of your representatives, I believe it was Mr. Harrington said that because of the excavation contract they wouldn't have had access to it, I believe he said until September at the earliest.

**MR. E. MARTIN:** So, that's what Mr. Harrington said, that would be the correct time frame.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** So, from that perspective we have a, you know, a large contractor, I was – who had a good reputation. Access to the site wouldn't be granted until around that time in any event. They signed the contract. A lot of the effort at that point would go into planning, preparations, getting people ramped up, getting the organization set, preparing, you know, whether to be getting vehicles in place or other infrastructure; and all or those types of things would be what you would be focused on.

So, to head into a November-December time frame with a Limited Notice to Proceed, understanding the situation, you know, from my vantage point at the time, I was assured that that would work and I had no reason to doubt that.

**MR. LEARMONTH:** Okay. So, I guess you proceeded on the basis that they signed the contract, they gave a release, and if they're good with it then you had every confidence that the schedule could be met?

**MR. E. MARTIN:** That would be about 70 per cent of the answer and the other 30 per cent, you know, I checked to see to make sure in my own mind that it could work. And I was assured it could for the reasons I mentioned; that it was certainly attainable.

**MR. LEARMONTH:** Thank you. But just moving a little – quite a bit forward that, as you know there was a change in government in – around mid-December, I think it was December 14 following the November 30, 2015 election. And the Progressive Conservative government was defeated and the Liberal government under the leadership of Dwight Ball was placed into power. Do you agree with those dates?

**MR. E. MARTIN:** Yes, I do.

**MR. LEARMONTH:** Okay. And I understand that shortly after he became Premier that the – his government, actually Mr. Ball, directed his officials to get as much information they could about the Astaldi situation which was becoming a problem at that time, is that correct?

**MR. E. MARTIN:** I'm not aware of that request to his officials.

**MR. LEARMONTH:** Okay, but you did prepare a presentation – well first of all, did you meet with – together with Ken Marshall and possibly Derrick Sturge with the premier on – in December 2015?

**MR. E. MARTIN:** Yes, at least twice I remember, maybe more. One –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – was there was a transition team meeting that he attended.

**MR. LEARMONTH:** Yes. There are a number of elected politicians, including Cabinet ministers and also government officials at that meeting –

**MR. E. MARTIN:** Yes –

**MR. LEARMONTH:** – correct?

**MR. E. MARTIN:** – and some external people as well who were not in the government, but I believe – I think they were associated with that particular political party –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – and so we – there was that interaction. I think there was more but I just can't remember exactly, but there was another interaction that myself and Mr. Marshall, Mr. Ken Marshall, had with Mr. Ball in the December time frame at Confederation Building in his office.

**MR. LEARMONTH:** All right, and at this time, was your assessment, you know, acting as CEO of Nalcor, that the Nalcor claim or exposure was in the range of \$300 to \$500 million?

**MR. E. MARTIN:** That sounds correct.

**MR. LEARMONTH:** Okay, and at some point in December following the meeting I referred to or another meeting, did you advise the government that you were about to go to the negotiating table with Astaldi?

**MR. E. MARTIN:** Yeah, that's not the exact sequence. Maybe I should just give a full –

**MR. LEARMONTH:** Well, why don't you give –?

**MR. E. MARTIN:** Yeah, well I'll fill in a couple of points –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – if it's okay, that – see if it –

**MR. LEARMONTH:** No, that's good, yeah.

**MR. E. MARTIN:** – matches up with your information.

**MR. LEARMONTH:** Please do that, yeah.

**MR. E. MARTIN:** I understand.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** So yeah, the Astaldi situation had been obviously developing over the 2015 time period, and I've seen some testimony here and other documentation that that's well understood.

Government – the government changed, we did the transition session and laid out there some of the issues that were apparent with not – maybe not to them but were apparent to us with respect to Astaldi. The meeting with Mr. Ball and Mr. Marshal – that was, you know, a combination meeting, I can recollect. There was two topics at least discussed there; one was the approach and the interaction framework with Ernst & Young, and that was directly linked to, in our minds, how we're going to approach the Astaldi negotiations.

And directly to your point about the Astaldi negotiations at that meeting, we discussed with Mr. Ball the fact that we were going into negotiations at that point – you know, not that day, but it was coming. So, that's when I would've indicated that negotiations were imminent, and we would've talked about those numbers to say, you know, here's some ranges. But in fairness, I think I was also clear that we, obviously, didn't know exactly where things would end up, and that's when I would've, you know, indicated I was going into negotiations.

Then a series of events happened and negotiations had commenced. And at that point, I had a feeling that there may be an opportunity to settle this. And I remember thinking to myself – about 10 days, two weeks. I can't give you a time frame, but that would be my norm – I passed a message up along to the government that that's where I felt this could be in terms of settlement. And I wanted to just let them know, to give them a heads-up that if there's, you know, preparations that were required, obviously, there would be a lot of, you know, public discourse about this. So, that was my



indication to them that the potential to settle was coming.

Is that an answer to your question?

**MR. LEARMONTH:** Yep.

**MR. E. MARTIN:** Maybe a bit too long, but ...

**MR. LEARMONTH:** Yeah – no, that’s fine. Take the time to state your position as long as you want. There’s no rush. We got lots of time.

Okay. Now, when you went to the negotiating table with Astaldi, which would’ve been sometime, I take it, in late December or early January. Would that be correct?

**MR. E. MARTIN:** Yeah. It would’ve been, you know –

**MR. LEARMONTH:** January 2016.

**MR. E. MARTIN:** It would’ve been passed the Christmas season for sure.

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** And I can’t remember –

**MR. LEARMONTH:** Yeah, yeah.

**MR. E. MARTIN:** – the exact date, but in that time frame.

**MR. LEARMONTH:** Yes.

Now, was it your understanding that based on your communications with the premier and other government officials, that you had a mandate to negotiate and that you had a settlement authority of \$500 million?

**MR. E. MARTIN:** That’s correct. I felt absolutely that way.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** But that being said, you know, for something of that nature, I would’ve also been expecting, in my own mind, to make sure that, at the end of the day, the board and the government were aligned with that.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** But at the table, I would’ve felt empowered to deal.

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – likely, I would have kept people informed, again, as we got close. I would’ve known I could’ve closed – if I closed. But, yes, I felt I had the authority but I’m giving you my process that I normally went through regardless of the government that was in place, would be, you know – I would get to a point to keep folks informed, but I wouldn’t be settling unless I knew that, you know, people were aligned.

**MR. LEARMONTH:** But even though you had authority, you’d – and this is a very understandable point that – just to be 100 per cent sure there was no misunderstanding, that you wouldn’t have made the commitment at the negotiating table before – without first calling government to say look, here’s where we are. I’m gonna settle for 500, you know, whatever the figure was. I just want to make sure that’s all right. Is that generally what you’re talking about?

**MR. E. MARTIN:** Yes, it is.

**MR. LEARMONTH:** Okay, thank you.

Now, if we go to – okay, well, at tab 37, exhibit – it’s in binder 2, Mr. Martin – Exhibit P-03571.

**THE COMMISSIONER:** What tab was that again?

**MR. LEARMONTH:** That’s tab 37.

**THE COMMISSIONER:** Thirty-seven.

**MR. LEARMONTH:** Do you see that, Mr. Martin?

**MR. E. MARTIN:** Yes, I have that.

**MR. LEARMONTH:** Yeah.

So this is the – at the bottom of page 1, January 22, 2016: “Charles and Julia, I have to make a few modifications – found a couple of places need changing.” And at the top, your email says that – and this is to Julia Mullaley and Charles Bown: “Here is the version for the Premier. I had to modify Option 1B – I had the wrong numbers in there, just noticed on a quality check.”

Now – and I guess – and what’s enclosed is this Muskrat Falls Update beginning at page 3 of the exhibit, January 2016. And it’s a presentation on the Astaldi situation to government. Is that correct?

**MR. E. MARTIN:** That’s correct.

**MR. LEARMONTH:** And did you – this is a draft Cabinet presentation, but was this the form of the – was this the final version as well, as far as you know? It’s all we could find, yeah.

If you go to page 1, maybe you just want to flip through it.

**MR. E. MARTIN:** I can’t say for certain but I think it would be reasonable to assume that.

**MR. LEARMONTH:** All right, thank you.

Now, at page 16 of this document – so this was what you wanted to – you wanted to give this to government just to establish where things lay at that point in time. Is that correct? Or what was the purpose of it, I should ask, really – of preparing this? And at whose request was it prepared?

**MR. E. MARTIN:** I’m trying to recall. But I think if I give you my thoughts, it’ll be close enough in terms of – I can’t remember if at this point, I had been asked to stop negotiations and I was going in to – you know, to try to explain things, you know, get things going after that or was this before I settled? But I think it’s probably the former.

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** But I just lost track of some of the dates there, okay.

**MR. LEARMONTH:** All right. All right, that’s fine.

Now, if we go to page 16 of this document. It says Astaldi’s cost issue and schedule – Astaldi cost – “Additional cost to Astaldi over” the “contract bid to complete (as estimated by Astaldi) is \$600 - \$650 million, not including profit. (this range could be higher, 600 - \$800 million).”

So I take it at this point, you are just stating what Astaldi’s position is. Is that correct?

**MR. E. MARTIN:** That is correct, yeah.

**MR. LEARMONTH:** And –

**MR. E. MARTIN:** Not to split hairs, I’m not sure that was their position. This would be what their – no, I take that back. This would be their position. What’s not in here is the profit piece, so I don’t know what they would be seeking for that, but this would be information that they would have indicated to us, yes.

**MR. LEARMONTH:** I take it it would either be information that you – that they provided or that – that was your assessment of their position. Is that correct? Or maybe a combination of both.

**MR. E. MARTIN:** Yeah, that’s a good description. I think a combination because it says “as estimated by Astaldi,” but we would have laid some thinking over that as well, so I think –

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** – the combination comment is a –

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** – good one.

**MR. LEARMONTH:** Okay.

And then the last – the next phrase is detailed – on page 16: “Detailed discussions between Project Team and Contractor has identified a

schedule delay impact of 12-18 month to powerhouse completion, provided we continue to work collaboratively.”

So can one assume from reading this that at that point, sometime in January 2016 – well, the email is dated January 22 – that it was understood by you that there would be a 12- to 18-month delay?

**MR. E. MARTIN:** That’s correct, yes.

**MR. LEARMONTH:** On page 24, there’s – some items are blacked out, but anyway, page 24. And I think this is the – “Option 2 – Continue with Astaldi as is, with assistance.” I – am I correct that this is the option that you favoured?

**MR. E. MARTIN:** That’s correct.

**MR. LEARMONTH:** Okay, so we have Outcome: “Estimated net addition cost to project \$430-575 million; Assumes a net amount of cost assistance from Project to Astaldi in \$250” – okay. “Estimated schedule increase: 12-18 months.” So, the 12 to 18 months together with the \$250 to \$300 million would result in a figure of 430 to 575. Have I got that right?

**MR. E. MARTIN:** I apologize, could you repeat that, please?

**MR. LEARMONTH:** Okay, well, if there is a schedule – if there is an increase in schedule, that would be an increase in cost?

**MR. E. MARTIN:** Yeah.

**MR. LEARMONTH:** Right?

**MR. E. MARTIN:** Yes, that’s correct.

**MR. LEARMONTH:** In itself. And also it would have a – in cost because of the – you know, time is money and also the fact that – the knock-on effect with other contracts. Is that correct?

**MR. E. MARTIN:** It’s correct.

**MR. LEARMONTH:** Okay. So, is the \$430 to \$575-million figure a combination of the \$250 to \$300-million range together with something put

in there for the estimated – an additional cost by virtue of the fact that the contract would be delayed 12 to 18 months?

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** Okay. That would be correct, right?

And then you put at the bottom: “Note, not certain ... this will close a deal with Astaldi.”

Of course, you weren’t – you can never be sure.

**MR. E. MARTIN:** How could you, you know?

**MR. LEARMONTH:** You can never be sure at that stage.

Now, so – did you present this personally to Cabinet or to government? What was done with this? I know this is – it says in the email at the beginning of this Exhibit that it was for the Premier but did you attend a Cabinet meeting or a meeting with the Premier, either alone or with officials, to discuss this?

**MR. E. MARTIN:** Yes. I can’t remember what the forum was. You asked if I’d presented. I can’t remember but two things if – I probably did. If I didn’t, I would have certainly expressed 100 per cent support for whoever did present.

**MR. LEARMONTH:** Okay.

Now the next document I want to consider is in binder 3, tab 66, Exhibit P-03874. Do you have that, Mr. Martin?

**MR. E. MARTIN:** I do.

**MR. LEARMONTH:** All right. Now, this is a letter that – from July – January 25, 2016. So, that’s like four days after you sent your presentation to government. And Ms. Mullaley is referring, obviously, to the Astaldi negotiations, and in paragraph 2 on page 1 of Exhibit P-03874, Ms. Mullaley states: A draft presentation was provided on Thursday, January 21 – revised January 22 – I think that that was the exhibit that I referred to earlier, it appears to be. January 22 – outlining Astaldi’s performance to date, Astaldi’s [sp. Nalcor’s] actions to

address performance issues and Nalcor's position that while their contractual position is strong and issues are the result of Astaldi's actions –

**MR. E. MARTIN:** Excuse me, Mr. Learmonth, I'm starting to drop –

**MR. LEARMONTH:** Second paragraph.

**MR. E. MARTIN:** I'm there. I'm sorry to interrupt you again, but I was still back on your last comment about –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – with reference to presentation that –

**MR. LEARMONTH:** Oh, yeah.

**MR. E. MARTIN:** So, are you – were you saying then – are you saying – are you asking that the draft presentation, Thursday, January 21, was the one we just looked at?

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** I can't confirm that.

**MR. LEARMONTH:** Yeah. It lines up date-wise –

**MR. E. MARTIN:** Okay, but I just can't –

**MR. E. MARTIN:** – but I'm not – no, I can't, you know –

**MR. E. MARTIN:** Okay, I understand.

**MR. LEARMONTH:** – if you have any information to the contrary, then let me know, but the dates do –

**MR. E. MARTIN:** Yeah.

**MR. LEARMONTH:** – correspond.

**MR. E. MARTIN:** I understand what you're saying. I just haven't had the chance to go back and forth, and I was –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – still thinking about that when you continued to speak, so I apologize for interrupting.

**MR. LEARMONTH:** You – Mr. Martin, you can interrupt me as often as you want. I wanna make sure we get a clear statement of your position on that. So, you can interrupt me at will.

But, anyway, it's dated January 22, and the earlier Exhibit, P-03571, the draft was January 22, so unless there was another one, it's possible. It's likely that's it, but I can't say for sure. Anyway.

“A draft presentation was provided on Thursday, January 21, 2016 (revised Friday, January 22, 2016) outlining Astaldi performance to date, Nalcor's actions to address performance issues and Nalcor's position” – whether – “their contractual position is strong and issues are the result of Astaldi's actions, the implications of not supporting Astaldi could result in a very large exposure to the Project. The presentation further outlined the options considered with a recommendation that Nalcor work with Astaldi to reach a negotiated settlement which would require providing at least an additional \$250-300M .... This recommendation was largely to address reported solvency concerns with Astaldi and ensure earliest completion of the project, estimated at 12-18 month ....” This does not – et cetera.

Next paragraph: “As discussed over the last several days, there has been no independent analysis of the information provided by Nalcor and the level of information provided is not sufficient to render an informed decision. Given the significant policy and financial implications of this decision, a much deeper understanding of the issue and the due diligence undertaken by Nalcor in reaching its recommendation is required” et cetera.

And then, it goes on to make a recommendation that the government – and, you can turn the page if you want – that the government retain some kind of an expert to have a look into this.

Now, were you advised of this in – you know, sometime after your – the January 22 presentation that government felt that your presentation was insufficient, that it didn't provide sufficient detail, et cetera. Were you advised of that position?

**MR. E. MARTIN:** I can't not recall being advised of that.

**MR. LEARMONTH:** Okay. So, what happened then after – okay, so you weren't aware that – I guess you didn't become aware of this until you read it in the documents that we provided to you. Is that right?

**MR. E. MARTIN:** I didn't become aware of this letter.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** I'd never seen that before.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** But –

**MR. LEARMONTH:** But – but –

**MR. E. MARTIN:** – but, obviously, things had moved on where the government engaged –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – EY and such, so –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – you know, obviously I knew that they wanted more –

**MR. LEARMONTH:** Yeah, no but what –

**MR. E. MARTIN:** – information.

**MR. LEARMONTH:** – I mean, and I wanna make – I wanna make sure I understand what you're saying that – did you say that you weren't aware that government believed that your presentation did not – was not adequate, that more detail was required? Did they – did

government tell you that at any time after January 22, 2016?

**MR. E. MARTIN:** They did not tell me that specifically, that I cannot recall. At this particular time, January the 25th, and in the – after the presentation, immediately after the presentation and the days following, no.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** But I'd have to, you know, I'd have to obviously, you know, understand that when they proceeded down to get EY involved and stuff, they wanted more information, I'd have to think in my mind that they didn't think that we had provided enough, I will say that.

**MR. LEARMONTH:** Yeah, okay.

So how did things progress after January 25, 2016 with respect to the Astaldi negotiations?

**MR. E. MARTIN:** Well, I think I briefly alluded to it a few moments ago, but following my advisement to the government that I was getting close to potentially settling, some time shortly thereafter, I was instructed to cease and desist negotiations.

**MR. LEARMONTH:** Okay. Would that have been in late January or early February?

**MR. E. MARTIN:** I think around that time frame, Mr. Learmonth, I really haven't got the dates that close in my mind, but it was certainly during the time I was in negotiations with Astaldi.

**MR. LEARMONTH:** And, do you know who communicated those instructions to you?

**MR. E. MARTIN:** I can't remember –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – but – and it may be a very important point to you, so I don't mean to say it's not, but from my perspective – from my perspective, it's not that salient because I knew where it was coming from.

**MR. LEARMONTH:** Right, okay. That's a fair answer.

So, you did cease negotiations at that point.

**MR. E. MARTIN:** Absolutely.

**MR. LEARMONTH:** Yeah, because whatever authority you had had been taken away at that point.

So, what happened then with respect to Astaldi? What was the next sequence of events as you recall?

**MR. E. MARTIN:** Well, you talking – at the moment and then onwards or –?

**MR. LEARMONTH:** Yeah, what I'm saying is it, okay, you – you're told by someone in government, with authority, that – cease negotiations, so you ceased negotiations.

Now as time progressed, what happened after that?

**MR. E. MARTIN:** Right. So we ceased negotiations, I had to, you know, remove myself from the table. It was a – it was a surprising – to Astaldi, I would think that would be a fair comment, although they'd have to pick the word themselves. There was some rapid discussion around that moment where they wanted to engage, you know, aggressively, and they made some statements to me then about, you know, why don't we consider this framework. And I basically jotted that down but explained that, no, you know, we just had to remove ourselves from the table and – I can't actually remember the reason I gave them but, in any event, there –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – was no further discussion.

Following that, I can't give you a step-by-step sequence but, in general, what transpired after that was the government wanted more information. They wanted to bring EY in – and did – to delve into, you know, our information and such, and that continued for a period of time.

Negotiations with Astaldi were not progressing at all. They just stopped. From the project team's perspective, my instructions to them were to do whatever you can, you know, within the

framework of where we are to keep progressing the job. And I said to them: You know, consider yourself, to the extent possible, in what I called a sort of a shielded position. I said: Don't involve your minds in this situation, focus on executing the project to the extent possible. And that went on for a period of months.

**MR. LEARMONTH:** Okay.

So at this point, let's say in about – I would say – December, January and – December 2015, January and February 2016 – was Astaldi continuing to work on the project or were they out of cash and laid down their tools? What was the status of the work on the project during this period?

**MR. E. MARTIN:** I'll give you a couple of points again. You know, just in the – with the caveat that I was not involved in day-to-day operations, so when I was pulled in, it was normally at a fairly high level. But certain things I remember was, yes, they were continuing to the extent possible to work. They had cash problems.

That became a problem that I believe – I can't remember the dates that I was pulled back into with respect to, you know, trying to help them address their cash problems to the extent that we were not impacted on the project.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** And there was discussions around that, and I believe that we provided them some type of relief while still maintaining the strength of the contract that we had with them.

**MR. LEARMONTH:** Yes. Okay.

So would relief – would that be in – I guess that would be in the form of cash.

**MR. E. MARTIN:** I believe so. I'd need to check the records again but that would be the intent.

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** And what I can't really remember is – right now, is how we structured it with relief from liquidated damages, or was it –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – an actual cash advance or some combination. I’m thinking a combination but I can’t remember the terms of it.

But normally what happened is the project team who were, obviously – you know, had the background and information with respect to this, would propose, you know, what they thought would be the best way forward with the least impact on the company and the province. And I would go through that with them in detail and when agreed, I would assist them on what they had to do.

**MR. LEARMONTH:** Yeah.

And this is when we – we had an earlier discussion about the leverage, this is the type of leverage I’m talking about that – I think it’s subject to some formal legal interpretation I’m not aware of – that Nalcor’s position with Astaldi under the contract was very strong, wasn’t it?

**MR. E. MARTIN:** It was.

**MR. LEARMONTH:** That they were paid up to the LMax and if they had – if they incurred labour costs above the LMax, it was on them. Correct?

**MR. E. MARTIN:** That’s correct.

**MR. LEARMONTH:** Under the contract.

So the – I take it that any financial assistance that was provided to Astaldi, over and above their contractual rights, would be provided because they were out of cash. Is that right? Or the parent would not put more money into the project.

**MR. E. MARTIN:** You’ve introduced a couple of concepts there that I’d like to address: One is the concept of the leverage with respect to cash, and then –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – the concept of providing them cash because they’re out of cash. And, you know, I’m concerned about touching that

commercial sensitivity here because I don’t know how my comments would impact the ongoing –

**MR. LEARMONTH:** Okay, well, if –

**MR. E. MARTIN:** – arbitration, so I have some really important thoughts on that is my issue, though.

**THE COMMISSIONER:** Right, so –

**MR. LEARMONTH:** Is that –

**THE COMMISSIONER:** – I’ve already –

**MR. LEARMONTH:** Is that a concern? Because we don’t want to get in –

**THE COMMISSIONER:** Excuse me just for a second.

So I’ve already made a determination here that I don’t want to have evidence that is provided at this Inquiry that would impact the result of what’s ongoing right at the moment. So I’m not sure – you’re thinking that answering that question might impact those –?

**MR. E. MARTIN:** So, Mr. Commissioner, it would, like – I would be explaining –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – internal thoughts on how we would be –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – trading and maintaining leverage.

**MR. LEARMONTH:** Okay, I’m going to withdrawal that question.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** Because I don’t want to – it may or may not, but I don’t want to take any chances that it would affect the –

**MR. E. MARTIN:** Appreciate that, but the other issue, Mr. Commissioner, is that there’s information that I would like to share that is

important. So maybe we could – I don't want to suggest anything, but ...

**MR. LEARMONTH:** Well, what we could do, perhaps, is on the break we can discuss that with Mr. Simmons and see – unless Mr. Simmons has a yes-or-no answer right now, and I'm not trying to (inaudible) upon you.

**MR. SIMMONS:** It may be useful to discuss it on the break, yeah.

**MR. LEARMONTH:** Okay, we'll just park that issue for the time being. Yeah, all right.

All right, so by the time you left in April 20 the situation with Astaldi was – had not been resolved, is that correct?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** But on a – at – before April 20, as far as you knew, that they were continuing to do some work on the project?

**MR. E. MARTIN:** Yeah, some work.

**MR. LEARMONTH:** Okay, okay.

**MR. E. MARTIN:** The project team would obviously be better to outline that.

**MR. LEARMONTH:** Okay, very good.

Now, I want to – the next topic is the – we've heard evidence about this problem that arose with the condition precedent. Just so that you understand what I'm referring to, that in December 2012, as I understand it, a sanction agreement was signed between Emera and Nalcor. And as a result of the signing of that sanction agreement, it's my understanding that Nalcor was of the view that the condition precedent with the federal government had been met.

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** That's correct. And then we know that in – by an email, March 12 actually, from legal counsel from – for Canada, Alison Manzer, that the position was stated that since the UARB approval was required that

Canada wasn't signing off on the condition precedent. Is that your understanding?

I can just – so you'll –

**MR. E. MARTIN:** I believe so. My –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** My hesitation –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – excuse me for that – is I'm not exactly sure –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – was it Canada or someone else said it –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – but that happened, but you're right.

**MR. LEARMONTH:** Okay, well, I will give you some assistance and time to look at that if you want to. It's not in the book but if you could – we could bring up Exhibit P-02703, this might provide the clarification you require before –

**MR. E. MARTIN:** And I don't mean to delay things. I mean, I think –

**MR. LEARMONTH:** No, no.

**MR. E. MARTIN:** I think the salient point –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – and I agree with that, is that there was an issue, so ...

**MR. LEARMONTH:** Yeah.

So if we go down to the – but this – yeah, P-02703, if we go down to the bottom of page 1, this is an email from – right at the bottom – from Alison Manzer. Do you see?

**MR. E. MARTIN:** Yes, I do.



**MR. LEARMONTH:** She was the lawyer for Cassels Brock which was the –

**MR. E. MARTIN:** Yes, I know who she is.

**MR. LEARMONTH:** Okay.

So then we turn to page 2 of this exhibit. As you see it says, “continued to struggle with the resolutions and the Sanction Agreement as to whether we have sanction or only a conditional sanction which does not meet the requirement of the condition precedent until the condition is met. We have not been able to conclude that the sanction as presented meets the condition as it remains conditional on the UARB results.”

And then, Ms. Manzer continues, “If the Nova Scotia UARB does not issue a ruling that is an approval, or issues a ruling that is outside of the agreed parameters set out in the Sanction Agreement, Emera will not be obliged to proceed on the basis it has approved by the form of sanction.” So is that – does that accord with your recollection about the –

**MR. E. MARTIN:** Yes. So, they’re very helpful.

**MR. LEARMONTH:** – the problem?

**MR. E. MARTIN:** Thank you for that.

So I understand that the federal government introduced this concept. The second additional point that we may not have to answer here again, because that’s probably not the salient point, but it’s the Emera and the board of Emera, I think. I – you know, I would’ve expected that they would’ve moved ahead with the sanction at the time with the board. That’s probably what is not – what I’m not seeing here and what, at the time, bothered me more.

**MR. LEARMONTH:** Yeah.

Well, in any event, the understanding that Nalcor had upon the signing of the sanction agreement in December of 2017, that that was – would meet the condition precedent. You got different information to the contrary in March 2013, is that correct?

**MR. E. MARTIN:** That’s correct.

**MR. LEARMONTH:** All right.

Now, at the time – and we know that Ms. Dunderdale – Premier Dunderdale at the time, said it would – now she was very angry, I think that was her term, very upset or very angry, and it led to a meeting in the Confederation Building where this issue was addressed. And as I said, she was not happy because she was of the understanding that there was compliance with the condition precedent and then she finds this out. Do you remember that meeting?

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** Yeah.

And, had Nalcor, to your knowledge, been the – provided the information to Premier Dunderdale that the condition precedent had been met in December?

**MR. E. MARTIN:** Yes, we would’ve. As far as what other information the government would’ve received from their internal departments, such as Justice and Natural Resources, I don’t know.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** But from Nalcor’s perspective, yes.

**MR. LEARMONTH:** Yeah, okay.

And one question that I’d like your answer to is that it seems to me that in December 2012, after the sanction agreement had been signed, that the reasonable and prudent course of action would’ve been for Nalcor to send the sanction agreement to the federal government and say, this is what we’ve signed, please confirm that the condition precedent has been met by virtue of this agreement.

Now, I suggest to you that would be a reasonable and prudent business practice to follow – to get something in writing instead of just relying on your own interpretation of the sanction agreement.

Do you agree that it would have been reasonable and prudent to that at the time?

**MR. E. MARTIN:** The first answer to that is, once again, I want to talk about what – the events of the day and in hindsight, obviously. And the events of the day is that we did this agreement and between ourselves and Emera and with respect to both the Nova Scotia Newfoundland governments and the federal government who had seen this and, you know, and had been fully apprised of it. We felt very comfortable that it was there. It was complete. People had seen it and had not objected to it in any way. Everyone knew what the purpose of it was –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – and felt very comfortable moving ahead. You know, I just wanted to paint the frame again in the context we were living in – it was a very powerful, very well-structured, deeply discussed document. There was no information not shared. So, I think it was – it was reasonable and prudent to move ahead on that basis. In hindsight – having seen this letter – sure –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – you know –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – I would have, you know – I mean, how could you not after being –

**MR. LEARMONTH:** No.

**MR. E. MARTIN:** – three months into this thing? So, I'd have to say that as well, but I, you know, I do believe that what we – when we proceeded at the time – the Maritime Link was going ahead.

**MR. LEARMONTH:** Yeah.

But – and I don't question what you're saying but what I am pushing is this point – that in business transactions – that the course of action that I proposed would be the normal way – that if a condition precedent is up to the approval of one party, then you send the document to them to get their approval. That's not an extremely conservative measure. That's a normal practice, I expect – I believe. And I just wonder why you

didn't do that because it would have avoided a lot of problems.

**MR. E. MARTIN:** I think I've explained that – that we, you know, maybe some additional flavour on that – I think from a – the feeling of having the Maritime Link move ahead. I think, you know, it would – it may be helpful as well to put yourself in the moment of the day where Emera in Nova Scotia, you know, had a huge stake in ensuring the Maritime Link went ahead.

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** You know, from Emera's perspective, they're a private company, so the return and rates of return they would garner from the Maritime Link were very significant – accretive to their stock value. As part of that arrangement and part of the overall arrangements, they also were taking on a financing piece of the LIL, which was also a very, very significant, you know, investment for them, accretive to their stock value.

The Nova Scotia Government – they had passed, you know, very powerful legislation with respect to their emissions requirements from a greenhouse gas and other, you know, perspectives in terms of clean energy. And they, you know, were in a situation where they – to meet those requirements would be difficult based upon, you know, what they were heading down the road on.

And, you know, and when you put that together, I was comfortable – and when we spoke of all those things and getting the assurances of the governments, what we were involved in is that – and as I mentioned, with respect to the Federal Government knowing exactly what was going on, knowing what we were trying to achieve, we just felt very comfortable that the Maritime Link was going ahead for sure, and I believed it then and I believe it now.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** So that's some more information with respect to that. I've already mentioned what I thought, in retrospect, why not.

**MR. LEARMONTH:** Yeah. Yeah.

**MR. E. MARTIN:** But I just wanted to be clear that this Maritime Link was gonna happen.

**MR. LEARMONTH:** Yeah. But isn't – just to end this discussion – at the time that the sanction agreement was signed in December 2012, the situation of Emera and Nova Scotia was different than the situation for Nalcor and the Province of Newfoundland and Labrador, because based on the sanction agreement, the Government of Newfoundland and Labrador sanctioned the Muskrat Falls Project.

And it wouldn't have done so without this condition precedent in their opinion being fulfilled. Emera hadn't even filed their application to the UARB; it didn't do so until January 2013. So, my point is that the importance – the significance – of meeting the condition precedent was much greater for the Province of Newfoundland and Labrador than it was for Emera.

And I'm suggesting for that reason, either the Province of Newfoundland or Nalcor should have got this written letter. It would be more incumbent on the Province of Newfoundland and Labrador and Nalcor to do so than Emera. Do you agree with that?

**MR. E. MARTIN:** I don't believe that. No.

**MR. LEARMONTH:** You don't? Why –

**MR. E. MARTIN:** I don't.

**MR. LEARMONTH:** – not? Because, you see, Premier Dunderdale said that – words to the effect that she'd be done politically if – this was a political issue for her, that she had announced sanction, her government had announced sanction, and then there's a condition precedent that was unfulfilled, and that was the reason she was so angry. The situation in Nova Scotia was completely different; they hadn't even filed their application.

You don't seen any distinction there?

**MR. E. MARTIN:** I don't believe it, no, I don't believe – I mean, no, I've already stated that, you know, with respect to, we had a sanction agreement. It was to be sanctioned, the agreement was with Emera.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** I believe there's public announcements to that effect. It was a sanction agreement to sanction.

In that agreement, as well, there was an anticipation that there could be potential issues at the UARB, so all that was discussed.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And there were sections in that contract that went down to say if this didn't happen with the UARB this is where we would go, if this – so it was all discussed and it was all agreed to, and with respect to the sanction agreement, we – from my perspective, it was done.

**MR. LEARMONTH:** Yeah, but it wasn't done, that's the problem we're getting at.

**MR. E. MARTIN:** Obviously.

**MR. LEARMONTH:** Yeah, yeah.

**MR. E. MARTIN:** Obviously.

**MR. LEARMONTH:** Okay, okay.

Anyways, have you been given a reasonable opportunity to provide your answer to that? Do you wanna say anything more?

**MR. E. MARTIN:** Well, I'd say – well, I, you know, I'd like to say a lot more but probably, I've answered the questions to the extent possible with – in respect to the questions.

**MR. LEARMONTH:** Mm-hmm.

**MR. E. MARTIN:** I don't think I'm being asked to go on further and just give a bunch of information with respect to the Link. I'll probably wait until the questions come.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And it may be more effective, you know, if it's –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – okay with you, that –

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** – after a certain series of questions, I might have more to say, but maybe I'll take the questions first?

**MR. LEARMONTH:** Okay, you take the questions first and, you know, at the end of the questions, if you have something that you wanna say that's relevant to the Terms of Reference, then by all means, you'll be given an opportunity to say it.

**MR. E. MARTIN:** That's very helpful and –

**MR. LEARMONTH:** Okay, thank you.

**MR. E. MARTIN:** – let's do that. I'm – I agree with that.

**MR. LEARMONTH:** Okay, thank you.

Now we've heard a lot of evidence about this red-meat syndrome, and your counsel has brought it up a number of times. I just wanna go over that with you.

And the starting point for my discussion is the point that the management reserve, as it's been called, to cover a strategic risk –

**MR. E. MARTIN:** Mr. Learmonth, if I could request, and I know it may be a bit early break-wise, but if you're starting a new topic, is it possible to just take a –

**THE COMMISSIONER:** Sure.

**MR. E. MARTIN:** – five-minute break, please?

**THE COMMISSIONER:** Yeah.

**MR. LEARMONTH:** For sure.

**THE COMMISSIONER:** Okay, so we'll take five – well, yeah, let's take five minutes, we'll take another break a little later on this morning.

**MR. LEARMONTH:** Yeah.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** All right.

Mr. Learmonth, when you're ready.

**MR. LEARMONTH:** Yeah.

There's another exhibit that I want to put in; it's P-04088.

Thanks.

**THE COMMISSIONER:** P-04088. All right, that will be entered as well.

**MR. LEARMONTH:** Okay.

Now, when we left I was – I brought it up there, this red-meat syndrome and I just wanted to get – provide a little bit of background information.

In the independent project review, which was done in August of 2012, there was a recommendation that the management reserve – provision for management reserve and schedule reserve be included in the project sanction cost and schedules, correct? Do you agree with that?

**MR. E. MARTIN:** I believe so.

**MR. LEARMONTH:** Yeah, do you want the reference? Would you like to see –?

**MR. E. MARTIN:** It may be helpful.

**MR. LEARMONTH:** Oh, okay.

**MR. E. MARTIN:** Please.

**MR. LEARMONTH:** That's no problem.

If you look at Exhibit P-00504; it's not in your book. But if you go to page 41 of that document – well, go to the first page first. Okay, and then go to page 41, please. Right down at the bottom.

If you see the last paragraph – I'll just read it out: "The IPR Team concurs with the expectations set by the LCP Project Execution

and Risk Management Plans that adequate provisions for Management Reserve and Schedule Reserve be included in the Project Sanction costs and schedules.”

That’s the reference I was referring to.

**MR. E. MARTIN:** I see, yes.

**MR. LEARMONTH:** Yeah, okay.

**MR. E. MARTIN:** Yeah, is there –

**MR. LEARMONTH:** Now, as it turned out that there was – the decision was made to not put anything in the project estimate – the DG3 estimate for management reserve and strategic reserve. Is that correct?

**MR. E. MARTIN:** Specifically in the – which – and the reason I’m asking this question – I’ll probably make a point in a second – but I wanna make sure I’m being direct with you. You’re saying in the –

**MR. LEARMONTH:** DG3 numbers.

**MR. E. MARTIN:** – in the DG3 numbers – maybe I should clarify first. That may help us.

It says here – and this is what I focus on – “that adequate provisions for Management Reserve ... be included in the Project Sanction costs and schedules.”

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** As far as putting the management reserve into the base numbers, you know, either in the 6.2 or in the CPW analysis or into a bank account – no. That’s clear.

But as far as providing adequate provision for management reserve, absolutely, yes. We did that.

**MR. LEARMONTH:** Well, it wasn’t included in the DG3 numbers of 6.2. There was a tactical contingency amount of 368, but do you agree that there was – that was the only contingency that was included in the 6.2 DG3 number?

**MR. E. MARTIN:** I do not, but I don’t want to be disagreeing with you on this – that particular

– and I think we’re talking about a couple of concepts here.

One – and the one I’m talking about is: Did we make adequate provisions for management reserve and schedule reserve? From a dollars and cents perspective, the answer is yes.

**MR. LEARMONTH:** That’s in the tactical.

**MR. E. MARTIN:** No, that’s – and maybe I’ll go on to explain so that may help us, as well, understand my perspective.

Is that from a management reserve perspective, they’re expected – so not to be given to the project team to expend, making sure that you’re covering off on things that you, you know – are unexpected, you can’t anticipate but could arise. From that perspective – from a company and a shareholder, in particular, in this case – you have to understand that you can fund that if it occurs. You have the ability to fund that if it occurs.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And I had these discussions with the board and the shareholder. I did not call it a management reserve. That wasn’t the method – that wasn’t the mindset I was in at the time. I was into describing the concept to make sure there was no lack of clarity.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** The concept.

So from that perspective, it was clear – the discussions were clear that what did we have as a reserve, as a place where we could access funds if things happened that were outside of the bounds of, we’ll say, the 6.2 and those types of things? Those discussions were had, clearly, and it was covered off in things such as the ability to use the revenue from excess sales, the ability to use the revenue for water rentals and the ability to use the return on equity. That was included within the project because these were cash items that were either not included in the economics in terms of the excess sales, or if they were included in the economics, the ratepayer was paying for it and paying it to the government; essentially to the province itself.

**MR. LEARMONTH:** Mm-hmm.

**MR. E. MARTIN:** And those numbers were clearly outlined. It was described in terms of don't – not don't – our suggestion was don't include the excess sales in the economics because that gives you a buffer that a future government may want to do something with for whatever reason. And the same with the other amounts I had mentioned. I'll stop there.

That's why I was comfortable and am comfortable that we did discuss and there were adequate provisions for management reserve and schedule reserves, point (a). Now, point (b), you're specifically, I think, asking: Was the management reserve number included in the AFE or the 6.2 or in the CPW number? No.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** It was not.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** But provisions were made and the fact that was not in the CPW, for instance, was the very point I'm making about excess sales, for instance. It was outside of that process. So –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – I'll stop there.

I hope I clarified that for you, Mr. Learmonth, and say –

**MR. LEARMONTH:** Well, you did when you acknowledged that there was nothing in the 6.2 to cover management reserve.

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Okay, you acknowledge that?

**MR. E. MARTIN:** Absolutely.

**MR. LEARMONTH:** And just for further – you know, that the project – the IPR report recommended that it be included.

**MR. E. MARTIN:** Well, once again, not to be disagreeable, the way I read this that adequate provisions for management reserve and schedule reserve be included in the project sanction cost and schedules. I take your point that you're reading this to be included in the 6.2 and such, or in the CPW. I got that.

**MR. LEARMONTH:** Yeah and –

**MR. E. MARTIN:** That's not the way I read this.

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** From my perspective, I read it to make sure that provisions were made. And as far as included in project sanction cost and schedules, it would be included to the extent that I discussed this and clarified this with the board of directors and the government.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** So that's the distinction I make there, but I see the point you're trying to make and I'm trying to be as clear as I can. It wasn't in the 6.2 but provision was absolutely made.

**MR. LEARMONTH:** But not in the budget.

**MR. E. MARTIN:** You know, I believe – maybe we're splitting hairs here, but I – as I mentioned –

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** – in the 6.2 and the CPW analysis it was not included.

**MR. LEARMONTH:** It was not. Okay, fair enough.

And just to – I don't want to dwell too long on this point, but you remember that Derek Owen was the – I think the chair of the IPR committee, is that correct, or –?

**MR. E. MARTIN:** I believe so.

**MR. LEARMONTH:** And he – you knew him for a long time from the oil industry. Is that –?

**MR. E. MARTIN:** Yes, yes, I did.

**MR. LEARMONTH:** And you selected him, did you?

**MR. E. MARTIN:** No, I didn't.

**MR. LEARMONTH:** Okay.

But, anyway, you approved his –?

**MR. E. MARTIN:** No, I didn't. I just wasn't involved with him, Mr. Learmonth.

**MR. LEARMONTH:** Oh you weren't involved.

But, anyway, just to go a little further with this point, when he testified at the Commission, Derek Owen, on October 18, 2016, in response to a question from –

**THE COMMISSIONER:** 2018 that was.

**MR. LEARMONTH:** 2018 and this is on page 43 of his transcript – in response to a question from your counsel, Mr. Smith, Mr. Smith says, “there's really no real purpose of putting it into the sanction number is there?”

And Mr. Owen says: “It depends – I understand where you're coming from. It depends very much how the total cost of the project is actually going to be funded, and I have to admit that maybe – a project of this nature, maybe this will be handled a little differently with the projects” I've been “used to. With the projects I'm used to the management reserve is part of the approved cost of the project and stays that way.” That's what he said.

And then later, he says – on page 43 he says: “Correct. Now, as I've said, there may well be – and I don't know ... there may be a difference. As you've just mentioned, in private sector oil projects, management reserve is included in the money, that the proponent goes to the co-venturers, the other participants, and requests funding for the total cost of the project, including contingency and management reserve.”

So Mr. Owen is suggesting that it should've been added to the 6.2. If you take a reasonable

interpretation of what he said, the anything for management – the amounts for management reserve and schedule should've been added to the 6.2. Do you agree?

**MR. E. MARTIN:** Added to the 6.2? No, I do not agree. A couple of – I think you're asking me to comment on that now. Is that correct?

**MR. LEARMONTH:** Feel free to do so.

**MR. E. MARTIN:** So you made the point about Mr. Owen and having his experience in the oil industry. Probably a suggested framework might be in the private sector. And I agree with that and his comments that he made there. I wouldn't disagree with those in particular either, but this is not the private sector and this not a publicly traded company.

And I come back to the point, as I made earlier that, you know, I think you asked the question: Should it have been in the budget? And I – in your previous question I was trying – I was making two separate points. I forgot one to make and maybe it might be helpful, as well, from my perspective and, you know, whether people agree with it or not, is not the point. But here is where my mind was – and I refer you back to – I don't have the reference number here, it's the total net benefits analysis it's called.

**MR. LEARMONTH:** Is it Exhibit P-02206?

**MR. E. MARTIN:** I'm not sure. But in any event, to jog our memories on it, it's the one where it lays out the comparison of both projects, which ends up having in favour of Muskrat Falls, including everything, we'll say, a \$7-billion preference for Muskrat Falls. And I'm only saying – I'm not trying to pump the \$7 billion, I'm just trying to see if we can find that on a ...

In any event, before I bog down here, that analysis was shared with the government. And in that analysis, you walk through that, it clearly identifies these significant pools of available cash over time that would be able to be used and, were specified, to be used as the management reserve. Although, Commissioner, I didn't say management reserve to them, I was explaining that this happened, this happened, this happened, you didn't know.

But I had that clear discussion with them, so when I talk budget, in terms of included in the budget, Mr. Learmonth, it was in that framework I am talking about. Yes, I feel it was totally included in the budget from an overall perspective, from the Province of Newfoundland and Labrador's perspective. You asked was it included in the 6.2, the budget at the (inaudible). No, it was not.

**MR. LEARMONTH:** Okay. Well –

**MR. E. MARTIN:** I'm clear on that but, once again, just to make that distinction.

**MR. LEARMONTH:** Okay. Who did you have these discussions about? You said you made it clear. To whom did you make it clear in government?

**MR. E. MARTIN:** A myriad of people, but I think the crux was the premier for sure and the –

**MR. LEARMONTH:** That would've been Premier Dunderdale?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Was there anything in writing to confirm this communication?

**MR. E. MARTIN:** I believe there's documentation. I'm not following the documentation that the Commission – numbers-wise as much as I could, but there's – I think I saw documentation that I did present that to the premier, I think it was in the October 2012 time frame – September October 2012 time frame.

I – but – what I presented was the total net benefits analysis, but I'm telling you there is where we would have had that discussion amongst many.

**MR. LEARMONTH:** But –

**MR. E. MARTIN:** And I think I've also heard – and I've listened to significant portions of this – not all – and that was it was a piece of information that I digested a couple of times, that many of the folks that I dealt with indicated that Mr. Martin, whether they liked it or not, always tended to open up significant

presentations with a discussion of overall benefits of the project.

So from that perspective there's many, many documentations of that through many, many presentations where I maintain that focus from day zero, because from my perspective, this project – you know, different from a private sector single, stand-alone project, I learned through this process that this was a project that was sanctioned with respect to a need for power and a comparison. And that is what I sanctioned, the project, based upon the instructions from the province and from then, until now, that was – has been my frame with respect to how this particular project was sanctioned, funded, et cetera.

**MR. LEARMONTH:** Yeah.

But when the project was sanctioned, the public – the people of Newfoundland and Labrador understood that the cost would be \$6.2 billion. There was no explanation provided along the lines that you just discussed. How is the public to know that there's a fairly complicated, you know, series of arguments and figures that you took into account in deciding not to put anything for management reserve or strategic reserve into the cost that was communicated to the public? How would people know?

**MR. E. MARTIN:** Well, let's break down the – I think you have several questions in there; at least you've raised several questions in my mind. I think your opening statement was the people of the province believe this was sanctioned for 6.2 and never heard anything else. I don't believe that. You know –

**MR. LEARMONTH:** Okay, well, at the time of the – sorry to interrupt you, but at the time that the project was announced, what information, in addition to the 6.2 figure, was provided to the government that would allow people to understanding that stand that it could be higher than 6.2?

**MR. E. MARTIN:** I have some examples because I wasn't prepared to answer this question with respect to documentations and such. But, you know, I can recall discussions around the difference between the comparison of the two – power was required; there was



alternatives, there was talk about, you know, the difference between these two. Numbers were talked about; this particular one was selected. You know, I'm not gonna carry on and on. There was the various Navigant reports, the MHI reports, the PUB situation. All through that process, I could lay out a myriad – a myriad – of places where this was discussed, presented publicly and those types of things.

So I don't know what the public was thinking but I would say that there was a tremendous amount of information, other than the 6.2, out there as to why we would sanction that project.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** I think that's my – you know, my main point about that. I'll leave that there.

**MR. LEARMONTH:** And you – was it your expectation at the time of sanction that the public would realize that there were other factors in terms of cost in addition to the 6.2 announcement?

**MR. E. MARTIN:** I absolutely believe so, yes. You know, there's things like the excess sales, you know, the possibility – I mean, that was – it was – I remember discussing that wasn't included. You know, once you got a (inaudible) – you know, I could probably collect stuff – and I don't want to hold things up here, Mr. Commissioner, but there was – those things, you know, were discussed. So I can't definitively say – I can't definitively agree with you that they only knew about the 6.2.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** I don't believe that's true.

**MR. LEARMONTH:** Okay.

So maybe I'll end this part of this question this way. If a reasonably well-informed member of the public came to you today and said: The time of the sanction announcement on December 17, 2012, I understood that the total cost of this project was going to be \$6.2 billion. What would you say to that – such a reasonably well-informed person? What would you say to them? To that person.

**MR. E. MARTIN:** Well, I'm not going to go through it because it'd take too long, but I would say the same thing. I would explain to that person about, you know, what else was – you know, what else was included.

Point number two, you know, I receive that question sometimes even now. But I receive a tremendous amount of comments and questions as well, that people come to me and say, you know: Ed, just letting you know, we do understand the long-term benefits of this, we do understand there's excess sales, we do understand there's other things because we remember you talking about it. So I hear that as well, Mr. Learmonth.

So, definitively, I can't say, you know, that the public would think only one way. But I'm comfortable – very comfortable that, you know, we put the information out there.

**MR. LEARMONTH:** Okay.

Okay, is that your – do you want to say anything more on that topic?

**MR. E. MARTIN:** I do but I think the Commissioner – I don't want to speak for you, but we got to move on here, I think. I could go on about that forever because I am passionate about it and –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – I believe in it. But I am going to stop there, so, yes, I've said enough.

**MR. LEARMONTH:** All right, thank you.

Now, this red-meat syndrome, can you give your interpretation about what this red-meat syndrome implies or what it connotes?

**MR. E. MARTIN:** It's the – I will admit it's the first time – during these proceedings – I'd heard the term red-meat –

**MR. LEARMONTH:** But the principle, anyway.

**MR. E. MARTIN:** I understand. I'd also just like to note that I don't think it is a helpful term. It is not one I would use.

But in any event, my understanding of what it is intended to do or intended to convey is that if you provide, you know, funds that are un-earmarked or, you know, not earmarked for a particular expenditure as such to either a project team who is executing a project or make it – you know, present an awareness of that to people who can stand to profit from a project from a financial perspective – nothing wrong with that; they would – they’re making profits – that the concept of making that available increases exponentially the expectation that it will be spent.

**MR. LEARMONTH:** Okay. So, like, contractors, if they knew that there was a contingency, would increase their bids because they knew that there was more money available in the budget. Is that an aspect of what you are saying?

**MR. E. MARTIN:** That’s a portion of it. That’s one type of manifestation of it, yes.

**MR. LEARMONTH:** Okay. Because Dr. Flyvbjerg, you know, in – I know that he mentioned this term but in the end, he said that this is all a fallacy. And I want to read from September – the evidence he gave in Happy Valley-Goose Bay on September 17, 2018, about this red-meat syndrome. And this is what Dr. Flyvbjerg said.

The question was: “Now, you mentioned the red-meat syndrome earlier. Could you just go over what you refer to in using that term, and the possible ways to protect against this syndrome materializing?” He says “Yep.” This is what he says: “The red-meat syndrome is the assumption that contingencies are going to be spent just because they are just, like, lions that will devour red meat just because it’s there. So it’s a point of view from, a I guess, proponents of projects on how builders, contractors are viewing contingencies. And we find that it is more concern, actually, for less-mature project proponents than very mature project proponents.

“So people who are usually doing megaprojects and do it all the time, they have learned how to deal with contingencies and have sufficient contingencies and actually don’t want to start without sufficient contingencies. Whereas, less

mature proponents will be afraid of contingencies because they are afraid they won’t be able to manage the contingencies. And, therefore, they say we’re better off not having the contingencies because that will force us to keep the cost down, and if we get the contingencies, we” might actually “end up with a project that is more expensive than it would have been if we didn’t have the contingencies. That’s the logic from this.”

And then, the question that was put to him in follow-up: “What do you think of that logic?”

**“DR. FLYVBJERG:** I think it’s fallacy, and I think that it stems from weak program management. Strong program managers know how to manage their contingencies and have a set-up where they can do it.

“And the way it’s done is you make it difficult to get access to the contingencies and you have strong management that know how to manage both the tendering process and manage the – whoever – builders or contractors are winning the tender.”

The question: “So the fear of building in a contingency is not something that you would expect in an experienced, seasoned project manager? Is that correct?”

**“DR. FLYVBJERG:** Yes.”

Now, do you have any comment on what I just read to you from the evidence of Dr. Flyvbjerg?

**MR. E. MARTIN:** Yes, I do.

**MR. LEARMONTH:** Okay. Please state it.

**MR. E. MARTIN:** First point is I don’t have a copy of that in front of me. And I don’t need one, but I –

**MR. LEARMONTH:** I can give it to you if you want.

**MR. E. MARTIN:** I don’t need –

**MR. LEARMONTH:** You sure?

**MR. E. MARTIN:** I'm sure. And I'll tell you why.

**MR. LEARMONTH:** You don't want it?

**MR. E. MARTIN:** I don't want it.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** I'm going to tell you why, because I believe – I listened to Dr. Flyvbjerg's testimony and I would only spend time here flipping through the document to pluck out other phrases that I can't quote from memory, that also talked about public sector projects and how – you know, maybe there's some differences there – and other things.

But – so that's – I just wanted to make that point, that I – you know, I think we'd need a – I would like to – or we need a – we would need a fulsome, you know, review of that document and other experts that have spoken on this topic to put together something to say here's some other thoughts.

But having said that, I don't really need to; I just wanted to make that point.

The second point is with respect to the project management team perspective versus contracts – the project management team first. I've been involved in major projects all my life and – with no disrespect to anyone, you know, who's involved or in – as an academic – or within projects. I'm not trying to be disrespectful. But it has been my experience, having been in – deep in the project management team, being in executive levels, managing the project team. You know, the project team mentality that I have experienced over the past 35 years is you give me an AFE, you give me a number and I'll work within that number. And that's what they'll do.

They don't come back for approvals, they – and I have immense respect for these people, they're trying to get things done, but that sometimes opens the door to change decisions or maybe working to get contractors an amount to settle them down because they want to do a certain thing, and they go ahead and do that. And in

some cases that's fine, in other cases I believe that it's outside of the expected authority of the project management team. So my experience has been is that you have to be very careful in what you do there, experienced project managers or not.

Point number three is with respect to the contracting community and – who I have immense respect for. And I – you know, I would never want it thought that it was some improper methodology for them to make money; that's what they exist for and they're very good at it. But I will say this as well – and this is my own perspective, Commissioner – is that I've – you know, I've worked around quite a bit, you know, throughout Canada and globally over the years and, you know – and in projects, major project centres. It's extensive work in Paris and London and Houston, et cetera, Calgary, Halifax with the drilling situation there as well and, certainly, St. John's.

And in St. John's I have, you know, personal perspective of the amount of information that flows throughout this community in a form and a speed and an astounding way that people, you know, know what's going on in the most remotest things that you'd never think they'd have a clue about. It was astounding to me when I came home and started to work, and it is what it is.

But as compared to my experience, you know, in working elsewhere, I think I felt, personally, there was a, you know, an additional level of control and confidentiality in the things that would – and this is my perspective only – would be very, very prudent to overlay in this community. And most of the major contractors all had local contractors, as they should, building with them.

And I'll just say again, that that was my experience, that the amount of information that flows through this community is just – I find very different than other major centres I've worked in.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** So from that perspective was another reason that I always felt it was

important to do the things we did around things such as this concept and other things.

**MR. LEARMONTH:** So do you agree or disagree with Dr. Flyvbjerg's comments that experienced project managers deal with this situation differently from less mature project managers? Do you agree with that or not?

**MR. E. MARTIN:** I don't want to say both but I would say on a spectrum – in larger centres and in private sector, you know, I think it's easier. In centres such as this, I think it's extremely hard. And so – and from my perspective, the way I'm working here is the way I've worked throughout my career with respect to major projects, and with an extra – unquestionably an extra level of focus here.

**MR. LEARMONTH:** Yeah. Okay.

But if you add something in to it, if you – okay, we know that the publicly announced figure at DG3 was \$6.2 billion. If the next month or two months later, say, there's a public announcement that it had gone up to 6.8, are you suggesting that that would put the contractors in a favourable position that they would smell money and that they would make their bids higher? Is that the concern you're identifying?

**MR. E. MARTIN:** That's one concern, yes.

**MR. LEARMONTH:** Okay, any other concern?

**MR. E. MARTIN:** Well, I just went through, you know, the project management team, you know, the contracting community, you know, those types of things.

**MR. LEARMONTH:** Yeah.

Because, once again, Mr. Owen, who is a very experienced man – is that correct?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Yeah.

When he testified on October 18, in answer to a question from your counsel, Mr. Smith – and the question was this: "And, as a result, there's some concern about putting a level of

management risk – or sorry, management reserve – into the actual numbers."

And he said: "I read that. I don't fully subscribe to it and I'll explain why, if I may."

He says: Sure – Mr. Smith says: "Sure.

**"MR. OWEN:** Because I think it's important that the way that the cost estimates are built up, it will be almost impossible for any contractor to know, relative to his scope of work, exactly what the owner's estimate is for that work. Because the owner estimates the work and puts allowances into that number to reflect what the owner believes the contract value is likely to be.

"In addition to that, as I mentioned yesterday, below the line at the bottom there is an overall contingency. That contingency is a risk-based contingency and is made up of individual sums of money to address risks that have come out of ... quantitative risk analysis. So even if there was a contingency in there of a hundred million" dollars, "there's no way that a contractor will ever know what proportion of that hundred million is applicable to his work.

"So ... really – the way that risk is handled and the way contingency is handled and the way that the estimate is built up, I don't subscribe to the fact that if ... money is in the sanction, then the individual contractors know how much money they've got ready to go at."

So I guess the point is that – well, anyway, do you have any comment on that passage that I just read from Mr. Owen's evidence here at the Commission on September 17 – excuse me, on October 18, 2018.

**MR. E. MARTIN:** Yes, I do.

**MR. LEARMONTH:** Okay. Please go ahead.

**MR. E. MARTIN:** So the first point is you mentioned about Mr. Owen experienced, yes, in the private sector. I've known him for many years, so no disputing that.

With respect to – and two points with respect to the ability of the contracting community to understand what's happening. Once again – and maybe three points; point (a) is that the private

sector – and I can tell you I’ve learned this, that the mindset in the private sector – people in the private sector, where I come from, have no fundamental understanding of what happens, from a public perspective, on these types of things.

I was there for 10 years. After two or three years I’ve learned it immensely and I became very attuned to it, but I also realized at the time that, wow, this is different. So from Mr. Owen’s perspective, I wouldn’t discount what he’s saying from a private sector perspective, but I – you know, I would also caveat that, that the public – this type of project in this type of atmosphere is different.

The second thing is, you know, because it is under such public scrutiny and there’s so many interrelationships and such that are there, even the – for my mind – this is me, for my mind even, you know, the understanding that – and everybody knew what bids were coming in, it’s just common knowledge on the street. And everyone knew, you know, that they were being evaluated.

So the ability to come out and say we’re going from X to Y, and then a week later award a major contract – one of the largest contracts ever been awarded in Newfoundland and Labrador, ever – to think that people don’t know that, contractors don’t know that and leave the impression early in the game that, relax folks, throw in the bids, they’re going to up the ante, they’re going to just pay for it, to me that was a bad message to send. And I think in this particular instance, particularly in this community with the large contracts and the scrutiny, it was very clear in terms of what message you were sending.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** That’s – so that’s – you know, that’s that particular point.

**MR. LEARMONTH:** So you don’t agree with what Mr. Owen has said there in the transcript that I just read to you?

**MR. E. MARTIN:** Not in the context of this job.

**MR. LEARMONTH:** Not in the context of ...?

**MR. E. MARTIN:** Of this job. Of this –

**MR. LEARMONTH:** Of this job.

**MR. E. MARTIN:** – project.

**MR. LEARMONTH:** Okay.

Okay, I have another question. Did I interrupt you?

**MR. E. MARTIN:** You did, and I lost –

**MR. LEARMONTH:** Okay, can –

**MR. E. MARTIN:** – my train of thought. So carry on; it may come back to me.

**MR. LEARMONTH:** Okay.

So I guess the point that Mr. Owen is making, as I understand it, is that – I’ll give you an example to put to you the way I interpret his – what he just said. If you have a – okay, let’s take a project of \$6 billion, and let’s say you only have six contracts. I mean, I know there’s a lot more. But let’s say you have six of a billion dollars each – just a hypothetical.

Okay, I’m bidding on one of the six. I know that there has been an increase in the budget, but how do I know that that increase applies in whole or in part or in any way to the contract I’m bidding on, as opposed to the other contracts? How would a contractor know that?

**MR. E. MARTIN:** I’m not saying he would know that specifically, Mr. Learmonth. I was – I’m just – at the risk of repeating myself, you know, I mentioned that it was – your people know what are happening, the contractors know what are happening. You’re creating that environment early in the contracting game. I don’t think that’s the right thing to do. I just don’t.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** I think you need to get down to a certain point where the majority of the contracts are let and then I think it’s much easier to get out and, you know, start laying out a much

closer relationship publicly and to the contractors about exactly where things are in terms of any gaps or whatever. That's just my belief.

**MR. LEARMONTH:** All right, that's fine.

**MR. E. MARTIN:** But if you're asking me if I disagreed with Mr. Owen on that, as I said, (inaudible) this job – I disagree.

**MR. LEARMONTH:** You disagree.

**MR. E. MARTIN:** Just to be clear.

**MR. LEARMONTH:** All right.

And just one further final point on that, getting back to that example I gave about the, you know, \$6-billion contracts and then there's an increase, if I'm – an increase announced, okay? If I'm – there's bid packages, competitive bid packages coming in for one of the four billion – one of the billion-dollar packages. I'm a bidder, so are you suggesting that I'm going to say – and I don't know what the other bidders think, there's no collusion, or there shouldn't be. I don't know what they're thinking.

So am I going to take a gamble and say: Oh, the increase applies to my contract? When I know that the competitive bidders may not make that assumption, because – do you see the point? Like, how would one individual bidder know what the other bidders are going to do? And that's the purpose of the competitive process, right? Do you see the point?

**MR. E. MARTIN:** Yeah, I see the point, but I have a comment on that point.

**MR. LEARMONTH:** Oh, please make it.

**MR. E. MARTIN:** Thank you.

The comment is this, is that it's never that clear. With respect to collusion among contractors, I would never suggest that.

**MR. LEARMONTH:** No.

**MR. E. MARTIN:** That being said, as I said, these individuals are very, very bright and very good at what they do.

A lot of the competitive process is getting more than three bidders – more than two, for sure. One bidder is very unhelpful. Two bidders is not good. You get three or more – you know, you're usually trying to get in that four-bid (inaudible). And even then you have to be careful, Mr. Learmonth, because you may have four bids, but on a qualification, a lot of my experience has been you might really have only one or two that are capable of doing this type of job. And in that context, you know, there are possibilities for contractors to say: Well, let's get together. That's not collusion in that context. It's let's bid this together or, you know, let's form this type of alliance or do those types of things. All those things are out there.

**MR. LEARMONTH:** Mm-hmm.

**MR. E. MARTIN:** And I believe that the knowledge and creating an atmosphere in a community such as this with a project of this magnitude, with the information that's flowing – to create an atmosphere that we just react to increased bids by adding money, I think creating that atmosphere is incorrect. That's it.

**MR. LEARMONTH:** Okay.

So you – well – but before we leave that topic, you talk about, you know, what you're describing as sort of a unique situation in this province. Is that what you're saying, that everyone knows everything?

**MR. E. MARTIN:** I think, once again, I don't want that – your – this is not a criticism. I'm just trying to say, maybe from my perspective –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – I'm not talking in absolutes.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** Like that's not the only reason. I'm laying out a spectrum of things.

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** Would I do this if I went to – back into the private sector and took on another project in another area, would I do this?

I would have the same attitude. I would have the same approach. The intensity would likely be less. But to be honest, I would do that; I've done it and I'll do it again – and I would do it again.

**MR. LEARMONTH:** All right.

**MR. E. MARTIN:** And that's, once again – I'm not saying, you can choose how you look at it. That's being honest where I come from.

**MR. LEARMONTH:** Right, but that reminds me of another point that may, in an indirect way, have some relevance here.

When you talk about the – you know, that in St. John's and the province, you know, information flows freely and so on. But we know, for example, that up until November 6, the chief financial officer, together with Jim Meaney and Mr. Auburn Warren and Rob Hull – and there is another gentlemen, I forget his name now – they didn't even know that there had been an increase in the project estimate from the 6.2, because that information was contained, controlled by you, and these people in your same office didn't even know about it.

So if your structures in the project for the construction management team and the executive are tight enough so that the chief financial officer and others, including Mr. Meaney, don't even know about project cost increases, how is it that information on bid prices could be expected to be leaked out into the general community?

**MR. E. MARTIN:** Wow, you know, I got to – you know, now I got to get into a bit of a long-winded answer. I mean, you've covered a lot of ground there that I don't agree with, right?

**MR. LEARMONTH:** Okay, we'll take your time to –

**MR. E. MARTIN:** And I'm trying to – just let me mark down a few things, (inaudible) recording of that.

But in any event, let's just talk about the bid process first, you know, and how locked down that is, and whether it be chief financial officer or it be chief executive officer, whether it be someone, you know, who works in the

mailroom. They're not getting close to that bid review. That is nailed down so tight, I have no access to it – none, whatsoever.

And I won't belabour it again, but I think – no, actually, I think you've heard the process here, Commissioner, so I won't beat it to death. You know, there's a technical group, there's a commercial group; they're all locked down, they're in lockdown rooms. There's a whole process goes – they don't even talk. Those two groups are not allowed to talk when they're evaluating the same contract, and it goes on and on and on. If you need more I'll give it to you, but it's a total lockdown. Not only do I remove myself because I want to, I'm not allowed in it, that's the process we set up. So that process goes on.

And then as far as coming up with the final cost number, yes, that does happen. So after that is done, coming up with the cost numbers does happen within the project team. And it's not a matter of exclusion. I mean, it's part of the risk analysis, it's part of managing the project, that you have to create an atmosphere within the project team that they have a group of people that can sit down and go all over the map themselves as to what's happening without being in a mindset that others in the organization, who are not directly related to managing the project, are listening or outside or anywhere. They have to create – you have to create that form that they can just go all over the place and think about this stuff. That's healthy.

Once the number starts to get solidified though, rapidly it gets dispersed. So that's just a different process than I think you were laying out there. And once that number has been landed on, where it's reasonably dependable, then the idea of thinking that we – it wouldn't be shared within a company to the executive team that's – once again, you know, I'm not being disrespectful to you – but that, from my perspective, is entirely incorrect to think that. You know, the people you mentioned there – the integrity of those people is unquestioned. There would be no issue within the company, at that level, with respect to the integrity of sharing information. I just wanted to make that point. So, I'll stop there because that's the –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – that’s the flavour I wanted. So, I think that’s the process more or less followed in terms of it rather than suggesting, which is – which would be entirely correct if you were – that anyone within the organization, when shared the information, would leak it. That wouldn’t happen.

**MR. LEARMONTH:** No, no. I’m not suggesting. I’m just saying that the fact is that the financial team did not know about very relevant information that was controlled by you and the project management team on forecast final cost before November the 6th. They didn’t even know about it.

**MR. E. MARTIN:** You know, I’ve been involved in these things for –

**MR. LEARMONTH:** And they have given evidence on that.

**MR. E. MARTIN:** – (inaudible) and that – you know, that’s not unusual to –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – from my perspective.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** You know, that information is contained within the project – as I mentioned, earlier in my career, I was both a member of the project management team in a senior role and I was also in – CFO of a company that was overseeing a project. And in both roles, it was the same as I would see here now.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** It was no different.

**MR. LEARMONTH:** Okay. Okay. Is that – do you have anything further to say on that point?

**MR. E. MARTIN:** No. I don’t.

**MR. LEARMONTH:** Okay. Thank you.

Mr. Martin, at the time of sanction, I understand that you had confidence in the DG3 project cost estimate of \$6.2 billion and the schedule for first

power from Muskrat Falls in 2017. Is that correct?

**MR. E. MARTIN:** That’s correct.

**MR. LEARMONTH:** And you communicated your confidence in those figures to government, correct?

**MR. E. MARTIN:** That’s correct.

**MR. LEARMONTH:** All right.

Now, at the time of sanction in December 2012, were you aware that Paul Harrington and other members of the project management team did not share your confidence in this \$6.2-billion estimate and the schedule?

**MR. E. MARTIN:** No.

**MR. LEARMONTH:** You didn’t know that?

**MR. E. MARTIN:** I believe they did.

**MR. LEARMONTH:** You believe they did share it?

**MR. E. MARTIN:** Yes, I do. Yes, I do.

**MR. LEARMONTH:** Yeah. Well, okay, just give me – for example, were you aware that Ron Power, who testified here, was of the view that the – this estimate – the 6.2 was too aggressive – very aggressive? He gave evidence on – using those words to this –

**MR. E. MARTIN:** (Inaudible.)

**MR. LEARMONTH:** – (inaudible).

**MR. E. MARTIN:** Once again, a couple of points there. No, so now (inaudible) Mr. Power – I wouldn’t be dealing with Mr. Power on this. You know, this would be Mr. Bennett and Mr. Harrington – is the number one point. The second point is with respect to the terms very aggressive: that means a lot of things to a lot of people. But I’ll stop there because I had not discussed that with Mr. Power before and I really don’t understand exactly what he meant by that so ...

**MR. LEARMONTH:** Okay.



But were concerns – were the concerns that the estimate was too low and the contingency was too low communicated by Mr. Power and other members of the project management team before sanction?

**MR. E. MARTIN:** Not to me.

**MR. LEARMONTH:** Never?

**MR. E. MARTIN:** It's the same answer. You've asked me – excuse me. It's the same answer, no.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** It was noted and clearly understood that it was a P50 estimate. It was explained clearly to me that the project team had high confidence in the estimate. In terms – for example, in terms of – they felt that SNC-Lavalin prepared, I think it was 70 per cent of the estimate. The project team did the other 30, but the 70 per cent was the hard-core numbers of the actual, you know, hard assets. They expressed that they had reviews done of that. They felt it was a very high-quality estimate. And I could go on, Commissioner, but there's many, many things I could lay out there that was expressed to me clearly.

And then with respect to the addition of contingency, it was clear it was P50 as far as they were concerned. And they did a risk analysis on that perspective – did a risk analysis and plucked – they selected a P50 number from that risk analysis, which – they told me the risk analysis was very, very good. And in the context it was a P50 number, they expressed confidence in that schedule. That's what was conveyed to me.

**MR. LEARMONTH:** All right. 'Cause I just want to put to you some evidence that Mr. Power gave in response to the Commissioner's question at the end of his testimony.

The Commissioner said: "... financial close basically settles on ... the federal loan guarantee, the financing that you're going to have available. So if members of the project management team knew that the contingency was exhausted, that the budget was not significant enough or high enough ... why

would – is it prudent to proceed, than to rush or to push the issue of financial close, knowing that the money you're getting is not going to be enough likely to complete the project? Did anyone give that some thought?" was the Commissioner's question to Mr. Power.

**MR. E. MARTIN:** And I think I heard you say, is it – are we – we're in financial close in that question, or are we in –

**MR. LEARMONTH:** No, no –

**MR. E. MARTIN:** – sanction?

**MR. LEARMONTH:** – sanction.

**MR. E. MARTIN:** Excuse me, I (inaudible).

**MR. LEARMONTH:** Okay, financial close. Yeah.

**MR. E. MARTIN:** I'm just trying to get clear on that because I was talking – I got it now, go ahead.

**MR. LEARMONTH:** Okay. That reality you're talking about, that was communicated up through the top – you're correct, it was financial close, this question. Thank you for correcting me.

That reality you're talking about, that was communicated up to the top of Nalcor house, he said. And, Mr. – the Commissioner says, "so you're saying the project management team did communicate your concerns about this up to senior management?"

Yes, Power replied. "But we know nothing happened," LeBlanc said. "So we know the decision was made to carry on," Power said.

Okay, same question about – at financial close were you aware that the project management team or some members of the project management team believed that the budget was inadequate, the contingencies were too low?

**MR. E. MARTIN:** And the answer is, no, but I really need to clarify something here, Commissioner, you know, rather than build up to it. I didn't say no or yes.

**MR. LEARMONTH:** Take the time.

**MR. E. MARTIN:** Thank you.

One of the benefit of reading that or hearing it – but some of the questions that I think would be relevant there was – and I don’t know this – was Mr. Power thinking the 6.2? Because he would not be privy, you know, to where we landed at financial close, necessarily, in terms of what was going out (inaudible) he was deep in the project. That would be one point.

And the, you know, the second point, what was conveyed to me was, you know, I think it’s in writing with respect to the – we landed on the 6.532 I think it was. And there’s a document out there – I don’t think we need to pull it up now, it’ll probably come up later – but there’s a document, I believe it was a summary from Mr. Harrington to one of the financial close people or Nalcor people that laid out the rationale for the 6.5 and what it was based on, and that’s what was communicated to me.

So I don’t want to suggest that, you know, Mr. Power wasn’t – you know, I don’t know what he said, but I – he’s a very – he’s a tremendously high-quality individual and just because he may not have communicated it me or to the team, I don’t know what his context was. The team is generally, my understanding, highly aligned within themselves, so I really wouldn’t make comment, other than that would probably be better asked to Gilbert and Paul and Mr. Power and others.

**MR. LEARMONTH:** Okay.

Now, I’d like you to turn to binder 3, tab 61, Exhibit P-01962. Do you have that?

**MR. E. MARTIN:** I have it here.

**MR. LEARMONTH:** Okay.

So this is a letter to Stan Marshall from Paul Harrington, June 6, 2016.

The third paragraph – in the third paragraph, Mr. Harrington, who had actually circulated drafts of this to various members of the project management team – anyway, this is the final version that was sent to Stan Marshall.

Paragraph 3: “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 ... 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 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 ... the globe and we have overcome many challenges ....”

Now, in this paragraph, don’t you agree that Mr. Harrington is saying that the decision to proceed was imposed on the project management team with a very aggressive schedule? That’s what he says, right?

**MR. E. MARTIN:** I agree that’s what he says. I don’t agree with that.

**MR. LEARMONTH:** Oh, you don’t?

**MR. E. MARTIN:** I agree that that’s what he saying here –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – it’s in writing.

**MR. LEARMONTH:** Yeah, yeah.

So why don’t you agree with that?

**MR. E. MARTIN:** So there’s – it’s – Mr. Commissioner, it’s going to be a long answer, and I think you mentioned earlier – I just don’t want to put words in your mouth about you were going to take that break, you mentioned, at 11:30?

**THE COMMISSIONER:** Yes, we can do it now if you'd like.

**MR. E. MARTIN:** Is that – I mean I just wanted to – is that okay with you?

**THE COMMISSIONER:** Yeah, or we can – it's up to yourself because the break is more for your – you know, for you. Did you want to answer it first or did you want to take the break now? I'm easy.

**MR. E. MARTIN:** I'd like to take a break now, please.

**THE COMMISSIONER:** Okay.

Let's take our break and we'll come back then in about five minutes or so.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

**THE COMMISSIONER:** All right.

**CLERK:** Please be seated.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** Now, Mr. Martin we are at tab 61 of binder 3 and we're on page 2 of Exhibit P-01962. And I am reading from the –

**THE COMMISSIONER:** Well, I think Mr. Martin wanted to come back and answer the question.

**MR. LEARMONTH:** Oh, yes. Sorry, go ahead.

**MR. E. MARTIN:** Is that (inaudible) –

**MR. LEARMONTH:** Yeah, on the third paragraph on page 1, you wanted to expand on that. Go ahead, please

**MR. E. MARTIN:** That's right. And you were asking me, I believe, the comment on the indication here by Mr. Harrington that "It was a decided to impose," I think was one emphasis that you had, "a very aggressive" schedule – "approach to cost and schedule." And then he

went on to talk about the other comments. So I think my response covers off, you know, cost and schedule in two separate topics: cost first, then schedule. And then I'll deal with, up front, the impose and very aggressive terminology.

On an impose perspective, I as the chief person in the room would have the accountability to say that's what we're going with. I take a little exception to the word impose because it was much more a collaborative, you know, effort. I wasn't involved in preparing the schedule, preparing the cost estimate, which is normal. And we had a good understanding amongst everyone there of what the parameters were. So, I just think impose is an improper context, Mr. Commissioner. I think, yes, I am accountable for saying that's what we are going with, absolutely.

Very aggressive, that would be once again a matter of scale. I think we always talk about – with respect to schedule, we talked about aggressive, but not very aggressive. And on cost, we didn't talk in terms of aggression with respect to cost. We talked in terms of the quality of the base estimate and the P50 range for the project team. It was never a discussion around aggressive.

Okay, so, in that context – you know, and once again, as far as indifference of those feelings with Mr. Harrington, I have the utmost respect for Mr. Harrington and Mr. Bennett. You know, I – you'll have to ask them anything over and above what's going on here. So, I don't want to leave any impression that, you know, I am commenting on where their heads are. I just believe you'll have to ask them. All I can tell you is what I know.

With respect to the cost piece – and I don't have the references, but if we need them, I think I can find them. But I've heard it – you know, as we went through the Commission efforts here with respect to the opinions that the project team expressed and the quality of the base estimate. And there is many documents, many discussions around that. And I was convinced by the project team, and my own questions and answers, that the base estimate, at the time, was really good. Once again, I am using really – it was good, it was solid. And that may be a better way to put it. I was comfortable with what they were telling me, and that was based upon, as I mentioned

earlier, they talked about the SNC-Lavalin experience. They talked about people who had reviewed the base estimate. The comments came back in, it was – you know, it was a well-constructed – et cetera. And those references are within the – within even the Commission's documentation.

I mentioned earlier, as well, a P50 approach was taken with respect to the risk – the selection of the point on the risk curve. And we had some discussion around that, but that was – that wasn't as deep a discussion, frankly, because that was what the – most of the team were used to.

So – but I chose it, make no mistake. But it wasn't a situation, though, that I was being argued against strenuously, that that was really, really, very – no, that wasn't the case. But, once again, make no mistake, I was the one who said that's what we're gonna use.

And that was for the project team. So I don't know about the very aggressive with respect to that. That's what I know.

**MR. LEARMONTH:** But that's what he said, is he said –

**MR. E. MARTIN:** So –

**MR. LEARMONTH:** – “it was decided to impose a very aggressive approach to cost and schedule.”

**MR. E. MARTIN:** Yeah, so you'll have to ask, you know, Mr. Harrington for clarification. That's not what I, you know, was in my estimation was not told, that it was very aggressive. I just explained what the cost program was and then, from my own perspective, separate from the project team – you know, as I mentioned earlier with respect to the board and the shareholder and the government, there was – although not termed a management reserve, from my perspective or clarification, there was additional funds to be used there from that perspective. Okay.

On the schedule side of things, what was I told. Well, I think, you know, it's been well documented and I'm gonna describe that in just a minute, Mr. Commissioner. But I have given it

some thought, actually – obviously – 'cause I did see this letter for the first time just the other day.

And so I did a little bit of research and I found, you know, a document – a couple of documents, actually. One was the document that was prepared by the project management team in the last several months, I think, about the – you know, how the project schedule was landed on. And I can't recall that number, but I, you know – and we can refer back to it, but I know I asked my counsel to remember it for me. So if we need it, I think we can pull it up. And –

**MR. SMITH:** I think he's looking at 01846, Mr. Commissioner.

**THE COMMISSIONER:** Thank you.

**MR. E. MARTIN:** But it's the document prepared by the project team. And the second document I looked at was the DG3 cost and risk schedule analysis. And that's an earlier number – it's a much lower number, I think, in the context of the exhibits.

And when I looked at both of those and read through them, I felt that's a good summary of what I was told. And I support that. And I was gonna go on and explain that, Mr. Commissioner, and try to (inaudible) it rather than read through the document here.

So from a schedule perspective, you know, the first thing that was explained to me was that the schedule was prepared by a very competent individual and individuals with SNC-Lavalin with a tremendous amount of experience and they had confidence it was a good schedule. And then from that schedule, it was based on a July first power of 2017. And it was expressed – it was a very good schedule.

The second thing that they did was continue to work that, and they took the opportunity as we got into that sanction year to do what was explained to me as a stress-test risk analysis. You know, they called it a time analysis, I think it was. And I said – I didn't say – I'll just explain it. The purpose of that, as was explained to me, was not – it was not a full QRA risking the schedule, drawing curves and picking a P-factor, because they explained to me that would

entail a much broader exercise where you not only thought where things could go in the wrong direction but also in the right direction and it would also entail working it with mitigation efforts and those types of things. They said that's not what we're doing. And I said, fine. I said, what are you doing?

And, you know, and it was explained to me that the purpose of that exercise was to stress the schedule, they called it. But my understanding was – is that they were taking, you know, a non-mitigated, high-level look at the schedule and really working it over to see what are the three to four to five things that could pop out that are really extremely critical to mitigate and stay on top of, because if they were missed or slipped, then we got ourselves, you know, a significant problem. I said, well, that's great. That was my view. I said, keep doing it.

So that's what they did, and that is where the – this concept of this P1, P3 schedule came up. And it's been a subject to much chagrin for my part in terms of the presentation of it. And I'll tell you why: It's because the exercise that they were undertaking, you know, it should yield a low-probability situation because you're trying to expose that so you know the key pieces that are driving it to that. It is not – this is my perspective (inaudible) – it's not a P1, P3 schedule. You know, I just can't go there because that was not what was being done, fundamentally.

And then I said, you know – well, maybe I could explain it further or try to explain it a little further for the Commissioner, to say why I'm even more so comfortable with this. You know, if they had not totally stressed the schedule, for instance, is that in a broader sense they would have also ran the numbers with respect to – instead of a six-day work week that was in the schedule, they had allowed a – they had allowed an allowance of a day off – they would've imposed in a broader sense – they would've put a seven-day one in. And that was explained to me that there would be about an eight-month float would be built in. If you went at seven days – they explained to me that would give us another eight months, equivalent on the schedule. And I said, well, that's helpful.

But they said it's not in the P1, the P2. That's not what we're doing there. That's a risk schedule. So this – they told me this is not a P1 schedule. Because I think it got raised at some – Mr. Owen, I think, said once it's low (inaudible). I said (inaudible) what are you talking about? This is where they got into this. And I said, okay, I appreciate that. So we move on from there and we did allow the schedule to move out to first power of December 1. So the – this stress analysis was done on the July 1 schedule, but we ended up going to the – you know, six months added on. So I understood then, well, that's another additional six months as this thing evolved that was not incorporated into this stress analysis, Mr. Commissioner.

So I looked at those factors and come back to – and there was – it was tested by others. I can't exactly remember who. But it was tested externally to say, yes. And that was, say, pre-sanction. So when I hear that someone says this was sanctioned on the P1 schedule, I could lose my mind, because that's incorrect according to what was explained to me. And they said – and it only went to a P3 schedule, and I say that's even more – anyway, I'll stop there. I've been finding it extremely frustrating because that's not the case.

Okay, we move on from sanction and I'm constantly testing and this is – this would be hindsight – so I'm in – if I'm in 2014, now, it is hindsight, Mr. Commissioner, for – or sorry, if I'm in 2013, it is hindsight for 2012. I got that. But why would I have said, you know, these are important points that continue to relieve my mind on the schedule at the time? The IE report came out I think in 2013, the final one, and in there it was explained to me that, albeit at the lower end of the scale, it was within what the IE felt was a reasonable time frame.

In addition to that – and this is – to me this is a very salient point as well. We had major contractors signing on to this schedule and I can't remember them all, but as I read through this document – that I looked at again – you know, it was clear in there and that they explained to me – Astaldi is signing on for this, with the provision of \$75 million of liquidated damages, a parent company guarantee and other – you know, and other forms of financial commitment in terms of – I think it was \$150- to

\$200-million. And they said they – they're going with the schedule they said, and as we expected they would.

And I believe ANDRITZ – who makes sense to me because they would be inserting the – you know, the turbines into the plant, they'd have to be on board for the schedule, too, and they signed on for it. So, from that perspective, I was conformable that the schedule was achievable. Now, did they tell me it had – it was aggressive? Yes, and I think that was borne out by the IE's, you know, placement and other things. So I can agree it was an aggressive schedule, Mr. Commissioner. And did I impose that? Impose is the wrong word. Did I – was I the one who said do it based on that? Yes, I did. But it was based on that information.

And I'm going to stop there, but it's explained very well in my mind in the document that Mr. – that's on the screen – you know, the one that you put up earlier, the 18 whatever it was. And the other thing, it was explained in a similar fashion in certain – in sections of the DG3 analysis on paper.

One final point that I don't understand and, you know, I believe is very important, is I read through the – I picked up some reference of this in the Grant Thornton report, the phase 2 report, and this I do not understand. In the Grant Thornton phase 2 report there is a section in there that said they looked at this 18 – whatever it was 46 – 01846 document and they said they put no weight on it. And I think there were several reasons, and one was it was based on hindsight. And then I go and I look at the DG3 documentation with respect to cost and schedule, and the same similar types of discussions – the references are in there, so I just didn't get that.

And if – you know, if Grant Thornton discounted this and didn't use it, I don't know why. I don't agree with it. It'll be someone else's choice. But, I find it immensely frustrating, because that has formed the basis in my mind of people saying it's a P1, P3 schedule, which is absolutely incorrect.

**MR. LEARMONTH:** Yeah, but that's what the Westney September 2012 report said. And when the project management team – in particular, Jason Kean – went back to Westney with some

new information, Westney agreed to elevate it from P1 to P3. So that document was in existence. It was prepared by your trusted advisors that you had – that you continued to retain after receiving the strategic risk management reserve report.

So I understand your comments, but I don't think we can lose sight of the fact that this report from Westney existed before sanction.

**MR. E. MARTIN:** Mr. Learmonth, I – one comment I do agree with is that we cannot lose sight of that report –

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** – because it's essential to understand what it is. And I just will – you know, the only reason I'm repeating myself, Mr. Commissioner, is because Mr. Learmonth, rightly so, has made the point again.

But this – I'll say the P1 – that exercise, as explained to me and supported in these documents that I just referenced, is a stress case; it's not a full risk analysis. You'll see terms in there such as: unmitigated items, unmitigated schedule. You'll see terms in there such – and I believe stress is in there, if not that, a clear description of what they were trying to achieve there. And that's how it was explained to me; I believe it's explained like that in here.

And, Mr. Learmonth, I agree, we can't lose sight of that document. It's a useful document. Don't get me wrong. It served its purpose.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** It nailed out and confirmed that these sorts of – these three or four things are what we totally need to focus on and – yeah, and that's what the project team did. They jumped on that. And there was a series of mitigation activities – very, very detailed and direct – at those four items and it helped us.

Now, I know, subsequent, we had other issues, but not because of that. So I just wanted to reiterate that one more time that, you know, this – the way explained to me and documented in these documents was not a P1, P3 schedule as we've been using the term.

**MR. LEARMONTH:** All right.

So just getting back to this exhibit on – exhibit – tab 61, binder 3, Exhibit P-01962 – page 2, the second – well, the first paragraph more or less restates the – one of the themes in the earlier paragraphs that: “They are now starting to feel abandoned and also feel that they are being painted as scapegoats for the decisions that were made outside their control.”

So that’s, you know, what Mr. Harrington saw fit to write, and he circulated drafts of this to the project management team. I know it’s only signed by Mr. Harrington, but it was circulated for comment to some of the other management team. So that’s a very plain statement, isn’t it?

**MR. E. MARTIN:** It’s a statement. Obviously, I wasn’t there.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** You know, I was nowhere around this. I can’t –

**MR. LEARMONTH:** He felt abandoned.

**MR. E. MARTIN:** I can’t really speak it to. And I mean, as I said, I have the utmost respect for these people –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – and I think you really need to – you know, you need to square that with them. I can’t –

**MR. LEARMONTH:** We did. When Mr. Harrington –

**MR. E. MARTIN:** I would’ve loved – excuse me for interrupting. Go ahead.

**MR. LEARMONTH:** No, no. Did you want to say something? No?

**MR. E. MARTIN:** No, no. Because I think it’s a point (inaudible) –

**MR. LEARMONTH:** Maybe we’re interrupting each other.

**MR. E. MARTIN:** – I don’t think it’s a useful point.

**MR. LEARMONTH:** Yeah, no. But anyway, Mr. Harrington is saying that the project management team are being painted as scapegoats, basically, for a decision that was not made by them. Now, the decisions were made by you and possibly Mr. Bennett.

So this is a very clear indication that they’re – you know, I don’t know if the word is blaming – but they’re attributing the reason for this aggressive schedule and cost estimate as something that was imposed on you and that that has converted them into scapegoats. In other words, they’re taking the fall for something that was not their responsibility. That’s what they’re saying.

And you object to that, do you? Or you disagree that that’s a fair characterization?

**MR. E. MARTIN:** I’ll just repeat –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – my answer is that: am I accountable, myself and Mr. Bennett, in terms of the executive? Yes. Are you looking at me as the final accountable to say that’s what we’re going to do? The answer is yes, absolutely.

As far as impose, I mentioned earlier that the context of that term doesn’t fit me or it doesn’t fit the situation. It was a collaborative effort. I wasn’t involved in preparing those estimates or schedules. They brought the schedules to me, and that’s normal, okay, I mean obviously. And we would go through those, and I would – I will submit that I am a collaborative leader, you know, I think that you tested that with people, I believe, that they would confirm that. I am open with them, I take their advice, I hear what they have to say, we go back and forth. I always tell them if – you know, if really this is something you can’t live with, you got to tell me; ‘cause I would clarify that then: when I’m pushing you folks on anything, that’s my job, but I would also say at the end of the day we have that relationship, folks, that if you can’t do it you got to tell me. Because my view was and my principal was if reasonably intelligent people with reasonable backgrounds were in the same

room and there was a disagreement in that room but – on the way forward; I used to say to them: well, we got to resolve that, because we're all reasonably intelligent people and we're all reasonably experienced, so if there's a disconnect, I would say: we got to talk it through, because it doesn't come to follow. And that's the approach I took. So it would be very collaborative; so no, I did not impose it in that context.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** As far as – and I'm not going to get into the whole cost and schedule thing, you know, I've already – what I heard and within the final analysis in that context: sure the call is mine to say that's the way we're going.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** But it was recommended.

**MR. LEARMONTH:** But, you know –

**MR. E. MARTIN:** Recommended on the P50 –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – that would have been more of mine, because the project team would have been looking for, you know, more money and other things –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – but there was good discussion that they were okay with that. But that would be more of a situation where I would say: no, that's where we're going with there. But on the schedule and the cost, I mean, I was convinced – but my call on the final analysis, yes.

**MR. LEARMONTH:** Yeah.

But what you're saying now, I think you'll agree, paints a completely different picture from the picture that is painted in the paragraphs that I referred to to date in P-01962, do you agree? You talk about collaborative, which is not consistent with Mr. Harrington saying that the decision was imposed on them. It's a very contradictory type of situation, isn't it? The

contradiction between what you're saying and what Mr. Harrington is saying, do you agree?

**MR. E. MARTIN:** No, I – as I mentioned earlier, these people, Mr. Harrington, Mr. Bennett, you know, and most of the staff, I have the utmost respect for them. So one of the things that this Commission, you know, has, I guess – I'm trying to find the right word, prevented or whatever – in a sense, we're not allowed to talk to each other about the testimony. But I know enough about these people – like, if I had my druthers – which I understand why, Mr. Commissioner; don't get me wrong – but, if I had my druthers – before I answer that question – I can't.

I'd have to go and sit with Mr. Harrington and these people and say, guys, talk to me and help me understand, and then I could give you an opinion.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** I can't do that until I get their input, because, you know –

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** – I just – that's just the way it is.

**MR. LEARMONTH:** Yeah. But, I – well –

**MR. E. MARTIN:** I'm not – I didn't mean to say it that way –

**MR. LEARMONTH:** No.

**MR. E. MARTIN:** – but, in any event, I'd just like to ask them before I just – am I missing something. I don't think I am. I mean, it's all documented here, what was told –

**MR. LEARMONTH:** Yeah. That's what I mean.

**MR. E. MARTIN:** Yeah.

**MR. LEARMONTH:** So, I understand what you're saying about you'd like to talk to them, but I'm basing what I – the question I put to you, on the clear and unequivocal wording that Mr. Harrington chose to put in this letter.



And I'm asking you whether that – what I consider to be clear and unequivocal language is compatible or can coexist with the collaborative atmosphere that you just described in terms of the cost and schedule discussions. Can they coexist?

**MR. E. MARTIN:** The words don't match up. I agree with that.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** But I, once again, will say that I would – you know, I really believe it's important in situations like this to talk to those people, because I know – I know that – you know, I like to know what they're thinking.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** But, obviously – I think it's obvious thought, the words – I guess that's what I'm saying. To me – I agree it's obvious that the words here –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – and, I imagine up to what I'm saying. But that being said, I have explained that context, you know –

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** – talk about – I don't want to go again – I talk about imposed, and I put very aggressive. I talked about the tone –

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** – this here is not what I'm feeling, Mr. Commissioner, but –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – I've basically – that – not to cut you off, but, like, that's my evidence, if you know what I mean. Like –

**MR. LEARMONTH:** No, and we want your evidence.

**MR. E. MARTIN:** Yeah. So, I'm gonna –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – I'm gonna be probably repeating myself a bit after that, unless you wanna take another – come at it from another angle, maybe.

**MR. LEARMONTH:** Okay.

Well, the next paragraph, just to continue on, on page 2 of P-01962:

“For example, with regards to the project schedule at Project Sanction, the quantitative risk analysis (QRA) that was carried out on the Project schedule resulted in a P75 of 79 months from Project Sanction to get to First Power. The recently completed QRA resulted in the same result, a P75 of 79 months from Project Sanction to First Power. 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 P10 range.”

I mean – you know, I don't know if we're gonna quibble over the difference between a P1 and P3 and P5 and P10, but that's a very low probability. It means – you know what it means. It means there's a 5 to 10 per cent chance that this target can be met.

And then the next sentence is: “The unlikely probability of achieving these cost and schedule targets” were “well known.” Now, when Mr. Harrington was questioned on this, he at one point tried to say, well, it's a P5 to P10 if we look at the Westney report as a source document, but he talked about these bookends, the other references, the other estimates prepared by SNC-Lavalin and he said: I was just referring to the Westney report.

But then in – at the end of his evidence, in a question put by Commission counsel in redirect, he said that he stood by that. That's what he meant; it was a 5 to 10 per cent. He retreated from the qualifications that he put earlier, I would submit.

So, in the end, if my interpretation is correct – and I believe it to be – he's saying that the project management team was told to set a very aggressive schedule that they – that was

recognized by them as being in the P5 to P10 range, and “The unlikely probability of achieving these cost and schedule targets was well known.”

What do you have to say to those comments?

**MR. E. MARTIN:** What I have to say to those comments is, you know, if you have a spectrum, at one end of the spectrum on the left-hand side is what was told to me and on the right-hand side is what’s in this letter.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** In that spectrum –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – the information that Mr. Harrington was giving – the first information you mentioned during – upcoming to today’s – would be closer to what I was told. And the information that he – his last comments on your redirect would be the furthest from what I was told.

**MR. LEARMONTH:** Yeah. Well, he said it.

**MR. E. MARTIN:** I’m just – that’s my answer.

**MR. LEARMONTH:** Yeah. Okay.

So it’s – does it surprise you that he writes that, “the direction that was provided to the Project” management “Team was to set a very aggressive schedule with a First Power target that was recognized as being in the P5 to P10 range.” Does that surprise you?

**MR. E. MARTIN:** I don’t believe that was told to me.

**MR. LEARMONTH:** You don’t believe it was.

**MR. E. MARTIN:** No, I explained what was told to me and that’s not –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – what was expressed to me.

**MR. LEARMONTH:** So that – given the collaboration that you described earlier, this

must be a big surprise to you to read the extracts from this letter that I’ve put to you, is it?

**MR. E. MARTIN:** You know, I don’t – I’m not that type of person, you know, surprised and not surprised. You know, I mean I’m just – this is not what was told to me, period.

**MR. LEARMONTH:** Okay. Yeah.

All right.

Now, some questions I want you – I want to put to you about some, what I would call, creative accounting attempts that were floated around, principally by you, as I understand Mr. Sturge’s evidence, in 2015 and, particularly, the latter part.

And the background for this is, my understanding – which I’ll put to you to see whether it’s correct or not – that in 2015 there was a drive initiated by you, based in part by the Astaldi problem, to drive down the capital costs of the project; that you were motivated strongly to come up with accounting measures that would reduce the capital cost budget of the project.

Do you understand what I’m – the background I’m putting to you?

**MR. E. MARTIN:** Some of – I have comments on it, so –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – if I say –

**MR. LEARMONTH:** No, make your comments.

**MR. E. MARTIN:** As I say, I understand. I’m not agreeing with them entirely, but this process did happen.

**MR. LEARMONTH:** Yes.

Okay, well, what are you not agreeing with –

**MR. E. MARTIN:** So –

**MR. LEARMONTH:** – in what I said?

**MR. E. MARTIN:** Pardon me?

**MR. LEARMONTH:** Has anything that I've said to date on this subject –?

**MR. E. MARTIN:** Yeah, I think when you said initiated by me, by Ed.

**MR. LEARMONTH:** Okay.

That's what I did say, yeah.

**MR. E. MARTIN:** Yeah, I can't remember. I recall it might've been initiated by some of the project member teams, but if it was, I would've supported it. I – you know, but I just can't remember initiating it.

But I – once again, I don't think that's the salient point, Mr. Commissioner. I was – I would've certainly reviewed it and been interested in wanting to know the outcome of that.

**MR. LEARMONTH:** Okay.

But is it true that you were looking at ways to drive down the budget of the project?

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** Your –

**MR. E. MARTIN:** Of course.

**MR. LEARMONTH:** Okay.

And why was that?

**MR. E. MARTIN:** Why were we trying to drive down the cost of the budget – of the – why were we trying to drive –

**MR. LEARMONTH:** Budget.

**MR. E. MARTIN:** – down the cost?

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** I think that's a – isn't that normal? But maybe I'm missing your question here.

**MR. LEARMONTH:** Well, no, it's – no, well, I'll get to that point. It is normal if –

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** – there are legitimate ways to do it, but I'm suggesting to you that – and I'll put these points to you that many of the ways that were proposed, I believe, by you were ranged from too silly to talk about to preposterous, according to Mr. Sturge.

**MR. E. MARTIN:** Can I get that spectrum again? Too silly –

**MR. LEARMONTH:** Many were too silly to talk about.

**MR. E. MARTIN:** To talk about.

**MR. LEARMONTH:** And he also used the word, preposterous, to describe one of the –

**MR. E. MARTIN:** Okay, I got it.

**MR. LEARMONTH:** – other examples.

**MR. E. MARTIN:** I got it.

**MR. LEARMONTH:** Okay?

**MR. E. MARTIN:** I got it.

**MR. LEARMONTH:** Too silly – okay.

**MR. E. MARTIN:** I got it.

**MR. LEARMONTH:** Those are the words of Mr. Sturge, they're not mine.

**MR. E. MARTIN:** Right.

**MR. LEARMONTH:** Okay, well, let's just get into this.

**MR. E. MARTIN:** But also, you know – I'm sorry, you go ahead. I'm sure we'll get to it.

**MR. LEARMONTH:** Okay, the first item is foreign exchange, forex. And if we look at tab 26, binder 1 –

**MR. E. MARTIN:** I'm a – I'm just – Mr. Learmonth –

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** – I do have to backtrack for one second, please.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** Mr. Commissioner, this probably sounds a bit odd, but I mean I need to address that point, I think, first, because the way Twitter and everything goes these days, like, you know, the horse is out of the barn, in a hurry. So if we can just back up with respect to silly to preposterous, and also what was being proposed, I think the most important word there was – or most important concept here is that, once again, this is not – this is a normal process. You're looking for all ways to drive the control costs.

This was not meant to be anything nefarious by any means and it can't be, because anything you are doing here has to be approved by external auditors.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** So, to me, someone comes to me and says: We'd like to look at some of these things, like to talk about some of this, we're not sure how this could impact it, are we doing correctly, it could have an impact on the project cost, you know I'm going to say, go ahead.

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** But that is much emphasis as I would put on it, because it is driven and controlled by the external auditors, not the internal auditors. And the external auditors are driven by the accounting standards that are published and it's very crystal clear what can happen. And whether they're silly or preposterous or good or bad, it really doesn't make any difference.

I wasn't purposing them at that point; I was not involved in the purposing of these things. In that context, people would've come up with some ideas and they would have been brainstorming, I'm sure, but I can assure you, Mr. Commissioner, I wasn't sitting in a room writing down ideas and throwing them over the wall. I would say, guys, go after it, and gals go over it, see what's there, check it out. If it works, it works, great, and if it doesn't, it doesn't, move on. That's the context that we were in.

And one of the things that did interest me and I did not know the answer to – which I thought was a reasonable thing to look at – was – and this is what triggered me to have an interest in it – was one of them was the transmission connection from Upper Churchill, and at the time, we had still had Gull in mind. And, you know, the question arose, a lot of these investments that we're making will benefit Gull, as well as, Muskrat.

You know, it would be the same kind of concept, Mr. Commissioner, is that if you built a cabin and it's the only cabin on the lake and you got to pay for power in, that's unfortunate, but if there's another cabin built next door and another one going down and you start to split to that cost, then that's what happens, you split that cost. That's a good thing. And you'd say, okay, well, the cost to my cabin, it might be – it might be a thousand dollars plus \$1,100 for that. But, really, I know there's a cabin coming up next to me and I might go down to \$1,150 in my analysis, something like that. I said, okay, well, look at it. That would be the extent of my involvement.

So as we go through these – so I think it was a very valid process. I've been through it before in the private sector to test these things from a cost-allocation perspective. It was not anything different. It was totally not nefarious. And, in any event, whatever we did was going to be – had to be signed off by the external auditors, guided by international accounting principles.

So I thought it was a good process. I wanted to get that out before we started going through each item here. And I may or may not be able to address each item because I wasn't coming up with them at the time, but please proceed.

**MR. LEARMONTH:** Okay.

So if we go to the exhibit I just referred to, at tab 25 –

**MR. E. MARTIN:** (Inaudible.)

**MR. LEARMONTH:** Tab 26, sorry.

**MR. E. MARTIN:** Twenty-six?

**MR. LEARMONTH:** Yeah –

**MR. E. MARTIN:** But what binder, please?

**MR. LEARMONTH:** Okay, that's tab – binder 1.

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** P-02549 and it's – if you go to page 9. Now, before we – do you know who prepared this document?

**MR. E. MARTIN:** No.

Now, Mr. Learmonth, can I ask a clarification question, please? You started to go down the path of those various items. Are we still on the same topic or are we changed topics?

**MR. LEARMONTH:** Oh yeah, no, no, we're on the same topic.

**MR. E. MARTIN:** Okay, thank you. Yeah.

**MR. LEARMONTH:** But I just want to know, like, before – I referred to page 9 but I just want to step back a little bit and say if you go back to page 1 of this document –

**MR. E. MARTIN:** I'd say project – the project management team would've –

**MR. LEARMONTH:** So –

**MR. E. MARTIN:** – prepared this.

**MR. LEARMONTH:** So it would've been the project –

**MR. E. MARTIN:** I believe.

**MR. LEARMONTH:** – management team?

Okay and then if we go to page 9, if you see that the 41 – third from the bottom: “~\$41M Forex exposure is not a Project Cost.” You see that?

**MR. E. MARTIN:** Yes, I do.

**MR. LEARMONTH:** So there was a suggestion that this should be taken out of the budget. Is that right –

**MR. E. MARTIN:** Right.

**MR. LEARMONTH:** – or –?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Okay.

Now, when Mr. Sturge testified on March 27, he said that that suggestion was, quote, “too silly to talk about,” that you would remove the forex from the project cost. Were you aware of Mr. Sturge's evidence on that?

**MR. E. MARTIN:** Not until now.

**MR. LEARMONTH:** You weren't. That's what he said, quote, “too silly to talk about.”

**MR. E. MARTIN:** I heard you the first time, thank you.

**MR. LEARMONTH:** Yeah. So does that surprise you?

**MR. E. MARTIN:** In some ways, yes, in some ways, no, Mr. Commissioner. First, I'll say that the project team is preparing this and I know when I was in the private sector – and I'll reference Hibernia in particular with Mobil Oil – that the foreign exchange was not included in the project budget – in the – not in the budget that was administered by the project management team. And the reason for that was, in Mobil's case, they were obviously a global company – ExxonMobil now – and they managed their foreign exchange, you know, out of head office.

So the head office, you know, at the time in Virginia and other places, they were the ones who determined how they were going to manage foreign exchange across multiple projects worldwide. So it was agreed and understood there that the actual project management team on the ground here in St. John's or whether they're over in Statfjord or wherever they were, that foreign exchange was not part of the budget.

And I would – that's why part of me is not surprised because project management team would be thinking that way. That's their background. And Mr. Sturge, you know, possibly not having been involved in that kind of context before, may have been thinking that way. So maybe that's the disconnect, but I know

regardless of all of that, you know, at Nalcor we were thinking the costs were all in obviously, because we were down to just several projects in one area. So that's all I have to say about that. So maybe that's the disconnect there.

**MR. LEARMONTH:** Yeah, but there's no – like, in this situation, you're talking about the – it wasn't included in the project budget for the offshore oil projects. Is that what you're saying? That it may have been included in the – in another budget and attributed as a project cost, correct?

**MR. E. MARTIN:** Well, no, that's not the way it is. I guess – once again, I'm just trying to (inaudible) the context here. There's nothing nefarious here with the project team. They would just – like, if you're in the ExxonMobil or Mobil mindset, the project management team is out there building it. The thought of having foreign exchange – like, that just wasn't the way it was. It was all handled at head office.

But at head office – I mean, from Mobil – global, from Mobil overall, yes, foreign exchange was part of that project. Doing an analysis on the project at head office level, you would have to include foreign exchange exposure. You would have to, yes. But the project management team was so far away from that that they would just say: Well, I can't – that's not my baby. I can't control that, you know. It's not in my budget. And that's the way they understood it. All I'm trying to explain, Commissioner, that's probably the confusion there.

**MR. LEARMONTH:** Well, all right.

**MR. E. MARTIN:** The project management team was not – they would not be in a mindset of foreign exchange exposure being in the actual construction budget that their managing because they wouldn't have any control over it, that's all.

**MR. LEARMONTH:** Well, did you tell Mr. Sturge that?

**MR. E. MARTIN:** Tell Mr. Sturge what?

**MR. LEARMONTH:** What you just said.

**MR. E. MARTIN:** Well, I –

**MR. LEARMONTH:** Because he said they're too silly to talk about – the point is too silly to talk about.

**MR. E. MARTIN:** I guess, Mr. Learmonth, he didn't say that to me so I had no reason to explain it otherwise. But I never – I don't think this even got me. I don't even know where that went. I mean, you know, it didn't happen. It's the bottom line it didn't happen. So, like, there was no real need to, you know, go on about it at the time.

And I don't think any of these things happened. It was my recollection is that it was asked, they were vetted, it got cleaned up. The external auditors – I don't even think they had to be consulted, they just moved on. And, to me, it was another point of process in the project for a short period of time – good exercise, move on. Like, it's really – didn't strike me at any point after that, other than when it came up here at the Commission.

**MR. LEARMONTH:** Right.

Okay, then we'll – now, let's talk about the suggestion to reallocate the cost of the LTA from Muskrat Falls to Gull Island.

**MR. E. MARTIN:** Right.

**MR. LEARMONTH:** Now, in 2015, we'll say, you said as a reference point, Gull Island – there was no plan whatsoever to develop Gull Island. Is that – and there still isn't, is that correct?

**MR. E. MARTIN:** That's not entirely correct, no.

**MR. LEARMONTH:** Okay, well, tell me how it's not entirely correct.

**MR. E. MARTIN:** Well, the decision hadn't been made not to do it, number one.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** Number two, I know we had discussions just prior to before I left, and probably into – I can't exactly – when I was there – around the environmental approvals and the environmental approval for the – is for the Lower Churchill for both Gull and Muskrat.

And we had talked about the project team had approached us about – and I believe the government but, anyway, that’s not point. The point is they – I was certainly approached about expending some money at Gull to start site development to ensure we maintain the environmental approval.

So, yeah, it was being discussed, you know, for sure. But, once again, on a spectrum, it wasn’t moved – I grant you, it wasn’t moved far enough along, but it was not off the table by any means, Mr. Learmonth, by any means.

**MR. LEARMONTH:** Well, I suppose it’s never off the table, right?

**MR. E. MARTIN:** That’s it, but it’s more than that, I would say. We were, you know –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** We had done a lot of work on it, you know.

**MR. LEARMONTH:** Okay.

But, anyway, if we go to tab 63, Exhibit P-02562 and we turn to page –

**MR. E. MARTIN:** What binder again, I’m sorry?

**MR. LEARMONTH:** That’s binder 3.

**MR. E. MARTIN:** Binder 3, tab ...?

**MR. LEARMONTH:** Tab 63.

**MR. E. MARTIN:** I have it.

**MR. LEARMONTH:** And if we go to page 3.

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** This is a document: “Re-allocation of LTA costs from MF CAPEX to Gull CAPEX, November 25 2015.” You’re familiar with this document, are you?

**MR. E. MARTIN:** No, but I’m certainly familiar with the concept.

**MR. LEARMONTH:** Yeah.

But I mean this document was provided to you in our disclosure.

**MR. E. MARTIN:** Oh, from that perspective, I didn’t look at this one. But, once again, I understand the concept here, so ...

**MR. LEARMONTH:** Okay.

So if we go to page 8, it says, Summary: “At DG3 all LTA transmission costs were allocated to MF Project – current AFE is \$878M.

“However when Gull comes on stream there would be a reallocation of LTA costs to Gull Project in addition to the new build of transmission and switchyards required for Gull.

“Using the length of the transmission line From CF to Gull and allocating those costs to Gull and allocating to MF the costs of the transmission line from Gull to MF, this results in a 76% allocation of LTA transmission costs to Gull and” a “24 ... allocation to MF. The CF switchyard costs would be attributed to Gull Project ... Result is \$634M to Gull Project and \$244M to MF.

And then it says, Advantages: Legitimate reduction in LCP phases and so on. Now, you’re familiar with this recommendation, were you?

**MR. E. MARTIN:** Recommendation, is there one? I didn’t see a recommendation there, Sir.

**MR. LEARMONTH:** Well, what’s the point of making this – it’s a recommendation, obviously, to do this.

**MR. E. MARTIN:** I –

**MR. LEARMONTH:** Well, why was it –

**MR. E. MARTIN:** I think it’s just –

**MR. LEARMONTH:** Why was it prepared?

**MR. E. MARTIN:** I think it’s just a file dump of information, isn’t it?

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** I can’t see a recommendation here. But, in any event, I think

you're – did you want me to comment on it or what are you asking?

**MR. LEARMONTH:** Yeah, well, let me just – do you want to comment on it now? Go ahead.

**MR. E. MARTIN:** You know, I guess it's the same comments. It was an interesting exercise. If it was legitimate to transfer those costs, you know, to another facility that would likely be built, would be good. It's the same analysis I used as building the cabin. It was deemed that it couldn't work in this scenario for a whole bunch of reasons, including accounting reasons. That was the end of it, didn't happen.

**MR. LEARMONTH:** Yeah but it was proposed.

**MR. E. MARTIN:** And if it wasn't proposed, I would be unhappy. Like, you know, these are things that are – have to be explored. So if I had a project management team or a finance group and they weren't turning over every stone on this stuff, that's when I would be unhappy. I think this is a – I thought it was a good exercise, a good suggestion, turned over every stone, that's a good job and keep moving, but I definitely would think they would have to do it.

**MR. LEARMONTH:** Yeah.

Well, on this point – and I'm using this phrase again because I'm quoting from Mr. Sturge's evidence – he said that this proposal was, quote, "too silly to talk about." And he went further and agreed that it was preposterous from an accounting and transparency perspective.

So, you know, preposterous is a word that he agreed is an apt description of this. That's quite further – quite a bit advanced from too silly to talk about, perhaps, or maybe it's the same thing.

But what I'm putting to you is that if one accepts Mr. Sturge, who is an experienced, seasoned accountant and a CFO, my question to you is: Why would these proposals that, on the surface, appear to be, I suggest, silly and preposterous – why were these being given serious consideration in attempt to drive down the cost of the Muskrat Falls Project?

And I'm thinking of that, too, from the words that Mr. Sturge said, that it was preposterous, not only from an accounting perspective, but from a transparency perspective. Can you answer?

**MR. E. MARTIN:** Pardon me?

**MR. LEARMONTH:** Can you – do you have any comment on what – the proposal I just put to you?

**MR. E. MARTIN:** Again, I think it's the same answer. I don't live in the world of, you know, superlatives and preposterous natures and such – so be it. Bottom line didn't – you know, he's saying, you know, in a powerful way that this doesn't adhere to accounting principles and that's all I need to hear. Good.

As far as proposing it, you know, you have a group of people who are not, you know, qualified chartered accountants – CPAs are what they call them now – you know, they're not in that world. They're tasked with turning over every stone and this project sounded good to them, potentially, because they've done it before and they've been involved before in things that are allocated.

If you look at, once again, would it be the offshore or any industry where there's an allocation of costs between projects, it's certainly a concept that is across the board out there. I'm trying to use a – I'm trying to think of an example. I mean, the oil business is an easy one for me but, say, I mean – you know, once again, if you – even, Commissioner, you have – you share a garage at two cabins, you know, you're going to pay half the cost.

So it's not a – this is not a new concept. And for the project management team not skilled in necessarily understanding the accounting ins and outs, and being involved in situations before where there may have been two or three Statfjord platforms that were sharing certain costs, I think it's a pretty reasonable request (a); (b) as I said, if they weren't turning over every stone, I would be unhappy.

**MR. LEARMONTH:** Yeah.



**MR. E. MARTIN:** I think they did a good job and I think Mr. Sturge, you know, was helpful in seeing if these things could happen. I think by his terminology he obviously didn't think they could. I wasn't aware of that terminology at the time, but the answer I heard was, no, it couldn't happen. I was satisfied to move on. I didn't give it much more thought than that, to tell you the truth.

**MR. LEARMONTH:** Yeah. And –

**MR. E. MARTIN:** And any suggestion of nefariousness I think would be entirely, you know, incorrect. And I'm not saying you're saying that, but I just want to say that just in case someone is interpreting that from any of these comments.

**MR. LEARMONTH:** No, I never used that –

**MR. E. MARTIN:** And I agree with that.

**MR. LEARMONTH:** – yeah. I'm quoting from Mr. Sturge.

**MR. E. MARTIN:** Absolutely.

**MR. LEARMONTH:** These are not my words.

**MR. E. MARTIN:** So I guess, you know, I just want to make that point.

**MR. LEARMONTH:** Okay.

And the next point – well, I just want – before we go to the third item of five on this topic of accounting maneuvers, you appear to be distancing yourself personally from these initiatives. You seem to be suggesting this was the project management team, not you. Have I got that right?

**MR. E. MARTIN:** Mr. Learmonth, I'm the CEO –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – you know, it all flows up to me and –

**MR. LEARMONTH:** Mm-hmm.

**MR. E. MARTIN:** – you know, and I – you know, I don't shy away from that. So distancing myself, that's – I think that's an improper characterization. I was not involved in it. This is like – I won't get into my role, but I tell you, I'm not involved in this stuff day to day. I'm nowhere near this stuff day to day. If someone brings a suggestion to me and say: What do you think, Ed? And I say: That seems pretty good, handle it.

I mean, if I could just, you know, paint the picture of me sitting down and going through this kind of stuff with accountants and cost people and allocation experts and calling in people and accountants and experts. I was nowhere – I would be so far away from that that, you know, I may not have even asked about this after the fact, someone may have brought it up to me. I just wanna make that point.

**MR. LEARMONTH:** All right.

Now the third point that Mr. Sturge said in an interview – a pre-hearing interview and he confirmed this on his – in his evidence in March 29, that: In the fall of 2015, there is – you're looking for a \$50-million initial budget for TTO, transfer to operations, and we were thinking that should be a project cost, and the project guys were saying that's not in our AFE. He said: I don't think Ed wanted to put it in the AFE and we didn't go for it and Stan Marshall put it in the AFE in June 2016.

Now is it correct that this \$50-million budget for – initial budget for TTO was something that you didn't think should be in the AFE?

**MR. E. MARTIN:** (Inaudible.)

**MR. LEARMONTH:** And it also, just to –

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** – and Mr. Sturge said that you thought that it should be a cost for Hydro?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Yeah.

But Mr. Marshall, when he came in, put it in the AFE. Were you aware of that?

**MR. E. MARTIN:** No.

**MR. LEARMONTH:** No, okay.

Fourth is export –

**MR. E. MARTIN:** But on that – you know, just once again, make sure we’re not – you know, to understand the concept here is that the world I am coming out of used to have the commissioning is in the project and – you know, operational start-up and everything else was with the operating company, so that was the frame that I was in. But, in any event, no, I was not aware of that –

**MR. LEARMONTH:** Yeah, all right.

**MR. E. MARTIN:** – what happened after my departure.

**MR. LEARMONTH:** Okay. Next was export revenue, is this – there was a consideration according to Mr. Sturge in 2015 that export revenues should be part of the – should be applied –

**MR. E. MARTIN:** It – (inaudible).

**MR. LEARMONTH:** – to the point of reducing project cost –

**MR. E. MARTIN:** Sorry.

**MR. LEARMONTH:** – export revenues.

**MR. E. MARTIN:** Is there a document that I could look at?

**MR. LEARMONTH:** No, this is based on the evidence of Mr. Sturge.

**MR. E. MARTIN:** ‘Cause often times when you get down to this level, you know, some of the context of a few sentences, before or after that, make a difference, but –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – I, you know –

**MR. LEARMONTH:** Well, I can – I’d be happy to give you the references to the pages in the transcript where Mr. Sturge made these comments. Would you like to know what they are so you could test them?

**MR. E. MARTIN:** I’m more –

**MR. LEARMONTH:** Well, you may want to test the accuracy of the information I am putting to you.

**MR. E. MARTIN:** I think – fair point, Mr. Learmonth. Why don’t you read it again and I’ll try to move ahead with it?

**MR. LEARMONTH:** Okay. Well, I’m gonna just give this to you, for your benefit, so you can have a look at it and just see if I am mischaracterizing anything. It’s the evidence that Mr. Sturge gave on March 27, 2019, at page 79, 80, 81, okay –

**MR. E. MARTIN:** Sure.

**MR. LEARMONTH:** – so you can take time to look at.

**MR. E. MARTIN:** And it’s your –

**MR. LEARMONTH:** Yeah. Okay.

**MR. E. MARTIN:** – am I allowed to ask you a question about a file referenced here?

**MR. LEARMONTH:** Sure, go ahead.

**MR. E. MARTIN:** To you knowledge, is there a document like this referring to that one –

**MR. LEARMONTH:** No.

**MR. E. MARTIN:** – that I can refer to?

**MR. LEARMONTH:** No.

**MR. E. MARTIN:** Okay.

**MR. LEARMONTH:** I haven’t found one but I am going on Mr. – he may not – he is the CFO, right, so anyway. Whether his evidence is accepted on this, is not for me to decide. Or whether your evidence – is not for me to decide.

I am just putting to you sworn evidence that the CFO, your company put to the Commission.

**MR. E. MARTIN:** In understand. I was just wondering was there another PowerPoint presentation.

**MR. LEARMONTH:** Okay.

The last item in this – on this topic is taken from – it has to do with Astaldi. And I’m gonna read this out to you, what Mr. Sturge said on page 81 of his transcript. He says: “There was some discussion around the concept and it was, I think, along the lines of: if the resolution with Astaldi could be that we would pay Astaldi a period – a series of payments in the operation stage based on the performance of the plant, type thing. So if the plant performed really well, they’d get paid and if that could be the resolution of the Astaldi issue, then would that cost be capitalized or would ... it be” an “operating cost? There was discussion going on.”

Do you remember that?

**MR. E. MARTIN:** Yes, I remember some –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – of that, yes.

**MR. LEARMONTH:** Okay.

Then I said, following that passage, to Mr. Sturge, I said: “But that’s – I suggest to you that’s ridiculous. Do you agree?”

And he said: “It seemed to me to be ridiculous but – you know, because it was obviously just a – the timing of payments; but that discussion did go on,” yes – “yeah.”

Then I said: “So Mr. Martin was driving this was he? This discussion?”

And Mr. Sturge said: “He would have been asking them the questions, you know, and I think, as I said in my interview nobody put a gun to our head and said do these things.”

So, he seems to suggest that you’re involved in this then. Were you involved in this – in floating

this proposal to take costs, project costs, incurred by Astaldi and taking it out of the budget and putting it into operating costs? Because that’s what Mr. Sturge said was proposed and that you had a hand in making that suggestion.

**MR. E. MARTIN:** You’re asking me –

**MR. LEARMONTH:** Do you recall that?

**MR. E. MARTIN:** You’re asking me: Was I involved?

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** Absolutely.

**MR. LEARMONTH:** Okay, well –

**MR. E. MARTIN:** Absolutely.

**MR. LEARMONTH:** – what were you thinking?

**MR. E. MARTIN:** I’ll tell you what I was thinking, and I appreciate the opportunity to – ’cause I wasn’t thinking it was taken like that. And I don’t think – I’m just gonna plow ahead; I don’t think it’s commercially sensitive, either. I think we were also – at the same time, we were dealing with Astaldi. So, back up a little bit more, you put yourself in my position. I mean –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – you know, my position, nothing comes to me that is a yes or a no. Like, you know, that’s handled elsewhere. The only thing I see on 24 hours a day in that job is things that are probably 55-45 decisions. I mean, things that, you know, I’m gonna handle that. It goes up the ladder; decisions are made all the way, and when they can’t get there, I’m probably – then I’m dragged back in to deal with it. And that’s the job.

So we’re sitting here and, you know, we have Astaldi. And I’m saying to myself, with others, let’s think about – let’s brainstorm; let’s be creative here. What do we want? We want the job to be completed as close to budget and schedule as we can. That means we got to keep – you know, we decided that we’re going to make

the effort to keep Astaldi for all the reasons that we talked about. They got a cash-flow problem. You know, we're probably not in a really happy mindset about, you know, tossing the, you know – tossing, I mean, I shouldn't – you know, I'm just – I'm being flippant. I shouldn't be because it's too much – large sums of money over the table, you know, to keep them going. We ended up having to do that.

But, you know, what I was trying to do with the team was to think of other ways that we could finance that. And if we could get Astaldi to complete, we didn't have to put money out, it was in a finance arrangement where some of this could be, you know, moved into the future, and Astaldi would be financing it now themselves and us sort of paying it down in the future. That was, sort of, the concept that was going on there. In addition to, you know, the impacts on the project.

So, I guess – I just wanted to frame that out to say – you know, I see that as the right thing to do. I mean, you have to be turning over these things. That's our job at the executive level – to try to think of creative things to get to the end that we're trying to achieve – make it as close to – if not a win-win – then something that everyone can live with and that was one option we talked about.

That's the extent of it.

**MR. LEARMONTH:** Yeah. But, you know, you say it was a, you know, a good thought or a good process. Mr. Sturge thought it was ridiculous. I'm – I want to ask you whether – instead of this being like, a good thought – whether it's an irrational, desperate attempt to drive down the budget at a time when you knew that the Astaldi situation was going to make the budget explode?

**MR. E. MARTIN:** That's a falsehood.

**MR. LEARMONTH:** That's – you don't – so, you deny that that's the case?

**MR. E. MARTIN:** Yes. I do.

**MR. LEARMONTH:** All right. Thank you.

**MR. E. MARTIN:** Mr. Commissioner, what I will add is that – I wasn't blind to bringing the cost down, either. I just think the way – I wouldn't want the impression left by the way the – the way I heard the question to be that, you know, it was anything as negative as – someone may take from your question. Not saying you did it.

**MR. LEARMONTH:** No. No. But –

**MR. E. MARTIN:** But yes, I had cost in mind –

**MR. LEARMONTH:** No.

**MR. E. MARTIN:** – I mean – on balance – you know, we got the whole thing. I was sitting there and we're trying to find our way through in many areas.

**MR. LEARMONTH:** But – but –

**MR. E. MARTIN:** But no – it was not, you know – what you just said is a falsehood.

**MR. LEARMONTH:** All right. But – you see that someone from the outside without an accounting background or – as Mr. Sturge had – I suggest to you that a reasonably well-informed person would look at this proposal and say – what is going on? Like, what is – what are they thinking when they propose something as ridiculous as this. Do you understand that point?

**MR. E. MARTIN:** I –

**MR. LEARMONTH:** You may not agree with it, but do you understand the point I'm making?

**MR. E. MARTIN:** I – I – no – I struggle to understand – I don't think –

**MR. LEARMONTH:** You don't think –

**MR. E. MARTIN:** – I don't think it's characterized that way at all. And I'll –

**MR. LEARMONTH:** All right

**MR. E. MARTIN:** – I'll go back to Mr. Sturge for a moment. I'm – you know, I look at Mr. Sturge and his team with respect to the financing arrangements, Mr. Commissioner, that were – they handled the – you know, they were leading

for me – the federal loan guarantee. I'd have to commend them. You know, they were – they were turning over every stone there as well and coming up with brainstormed ideas. You know, how could this be handled? How could that be handled? You know, constantly testing every which way.

Part of that yielded the program of, for instance, doing the LIL on cost-of-service versus doing Muskrat Falls on, you know, on a different type of financing arrangement. And that's different, but there's good reason for it. It was a great idea after we sussed it out, and it worked for a lot of good reasons.

To me, that's the same mindset that what the project management team – these other things were happening in conjunction with the cost, with Astaldi. You have to have a form where, you know, the executive team and – are being, you know, original, driving stuff, trying to find the right way through.

I find it extremely difficult to see why people could not understand that. Not only understand it, why they wouldn't expect it. That's our job.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** I think we should take our noon break. I'm just looking at my watch here. I didn't realize it was quarter to –

**MR. LEARMONTH:** Okay, that's fine.

**THE COMMISSIONER:** So, we'll come back at 2 o'clock this afternoon.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

This Commission of Inquiry is now in session.

Please be seated.

**THE COMMISSIONER:** All right.

Mr. Learmonth.

**MR. LEARMONTH:** Thank you.

Mr. Martin, I want to ask you a few questions about your communications and contact with the Oversight Committee, which was established in March 2014.

First, can you tell me what your reaction was to the formation of the Oversight Committee and the fact that the Oversight Committee retained EY to do work on Nalcor? Did you – can you give me some general statement as to your reaction to having learned this news?

**MR. E. MARTIN:** On the formation of the Oversight Committee, it was a change in terms of how things were going to proceed. I can't remember, exactly, the dialogue around it, but I spoke to government officials and the premier and minister of the day, I believe, to lay out some of my thinking as to, you know, as to the change and how it could impact things.

And once we landed on that dialogue – or following that dialogue, it is what it is and we moved ahead to set things up or, you know, have our people do what they could do to work with them. And from an EY perspective – what's the question again? I guess, what was our – what was my feeling about having –?

**MR. LEARMONTH:** Yeah, what was your reaction? You knew that EY had been retained by the Oversight Committee. They did – the first report was just on process and controls, and then there was a thorough analysis of cost and schedule which was done in early 2016 and, well, a final one after you left, on whether the recommendations of the January 2016 retainer had been implemented. So you were only there for the – two of those.

**MR. E. MARTIN:** Right, right.

**MR. LEARMONTH:** Yeah. No, but I mean I understand – everyone understands – that oversight, you know, takes away from the resources of Nalcor and it was busy. We understand all that but did you – were you opposed to the Oversight Committee retaining EY to review internal documents of Nalcor?

**MR. E. MARTIN:** Yeah, my initial reaction was – you know, you say oppose, it's – you know, I struggle to see the value in it. And I guess to step back a little bit, Commissioner,

you know, Nalcor, at the time of its inception and at the time that I was hired, it was clear from the outset, as explained to me through Premier Williams, Premier Dunderdale, as we pursued that onward is that the purpose of Nalcor was to be an integral part of government. It was to be, you know, not, you know, at arm's length, it was to be the arm attached to the government. It was to be part of the body that was government.

And as such, I was expected to get the necessary people, experience, resources around us to be able to prepare and have the government prepared to potentially deal with very large corporations, whether it be in the oil and gas world, obviously, the potential of the Lower Churchill, you know, to commence the restructure of the current companies there with respect to aging assets and other types of, you know, undertakings which were premised on the fact, as outlined in the Energy Plan, that we had huge significant natural resources. And, you know, we wanted to change the course of how we handled things and move ahead with respect to potentially developing these – and in conjunction, and with, in some cases, very large corporations.

And the – Nalcor was put in place to do that on behalf of government and to have the people and processes there to gather information, assess information, analyze it, bring forward, you know, to the government – you know, board being part of Nalcor, through government, information and analysis and recommendations of a decision quality. It was not structured to, you know, have – it was not structured to be arm's length, it was not structured to have, you know, various different consultants come in and test every document and test our analysis. That was the antithesis of what we were created for.

So, in that context and – oh yes, one other point is that – so we structured ourselves that way and we resourced ourselves that way and we proceeded to do that. And it – you know, and that's how things unfolded, clearly, in the initial years. And I look at, you know, our dealings with acquiring the Hebron asset, Hibernia South, White Rose, doing the Emera deals, royalty structures and a multitude of other things – that's how it unfolded, that we were expected to bring forward decision-level criterion

information based on solid process and resources in that context.

We had – you know, specifically then, as we get into Muskrat Falls, now we're in execution mode of Muskrat Falls and we're extremely busy, naturally, and proceeding down a particular path. So if you look at bringing in an Oversight Committee, in some ways that was – you know, that was, could've been – could be helpful.

I mean, you know, we had a new premier. He was the first of – I don't know if it was first of five that I dealt with, but I think it was clear that the understanding and depth on the Muskrat Falls side of things, amongst others, of the premiers past – Premier Dunderdale, who had a deep understanding though, as well as Premier Williams and others – that there was a difference of understanding, no question. So I thought to myself an Oversight Committee might be useful to, you know, to assist in that.

From an EY perspective, that caused me – I was more troubled by that, once again, because of the way we were structured and set up in the heart of executing the project and the – you know, starting down the path of creating another entity, and potentially another entity, to monitor an entity that was set up to do exactly that, I could see that could become problematic, particularly, in the middle of a large project where those types of governance changes and leadership and such changes, you know, are known to be a risk.

**MR. LEARMONTH:** Okay.

So you didn't think that the Oversight Committee added any value?

**MR. E. MARTIN:** I didn't say that.

**MR. LEARMONTH:** You used the word, didn't add any value, in some context.

**MR. E. MARTIN:** Well, if it's with respect to the Oversight Committee, you know, I misspoke. I can't remember saying that. Ernst & Young would be another issue.

**MR. LEARMONTH:** Okay.

Well, how would you characterize the fact that the Oversight Committee retained EY – Ernst & Young?

**MR. E. MARTIN:** I just described that to say I – you know, I had – I was more troubled by that because of the implications of a change in how we were structured –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – and how we would interface with our shareholder, and that was going to cause a – you know, obviously, I could see that was going to cause potential problems.

**MR. LEARMONTH:** Yeah.

And for the EY report to do a review of process and controls, I understand you had a meeting with Julia Mullaley and Charles Bown in December 2014? Do you remember?

**MR. E. MARTIN:** I can't remember that date, specifically, but I'm sure we did.

**MR. LEARMONTH:** Okay. Well, according to the evidence of –

**MR. E. MARTIN:** Yeah. Okay. I understand.

**MR. LEARMONTH:** – Ms. Mullaley, that in December 2014, you were called to a meeting at the Confederation Building with Ms. Mullaley and Charles Bown and you were advised at this meeting that EY had been retained or was about to be retained to do a process and controls report – not the detailed one, but the first one that you were aware of.

And apparently, according to Ms. Mullaley, you objected to that and said you wanted the oversight to rely on an internal audit rather than bring in EY. Is that correct?

**MR. E. MARTIN:** That's correct. Yeah, that's the way the structure was set up, and Internal Audit, as part of their plan, was reviewing, you know, portions of the Muskrat operations as they went, with the intent that they would, obviously, cover it all at the time.

So, my concern was a duplication, you know, additional reviews and such, which – we've

certainly had demonstrated that reviews were not problematic to do them because there was a multitude of them. But at some point, you know, we have to, in my view, make, you know, the point that at some point, we got to, you know, get the work done as well.

**MR. LEARMONTH:** Yeah.

But, surely, you recognize the right of the government on behalf of the people of the province to retain EY or whatever other experts there are to do an internal review of the Muskrat Falls Project.

You obviously recognize that, do you?

**MR. E. MARTIN:** Surely.

**MR. LEARMONTH:** Yeah. You just didn't agree with it?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** Did you say EY or the oversight –?

**MR. LEARMONTH:** EY.

**MR. E. MARTIN:** EY. That's correct.

**MR. LEARMONTH:** Yeah.

And at this meeting I referred to, according to Ms. Mullaley, when she told you that, no, that the Oversight Committee was not going to rely on the internal audit, that they were going to deal with EY, that you became very upset and very angry and walked out of the meeting.

Is that your recollection?

**MR. E. MARTIN:** No.

**MR. LEARMONTH:** Okay. So do you have a recollection how that meeting ended?

**MR. E. MARTIN:** Certainly, just as a general rule, I'm not a type of person that gets wound up like that. Those terms would be somewhat alien, you know, in terms of if it's painting the picture

that I was, you know, getting mad and, you know, getting – pounding –

**MR. LEARMONTH:** Well, very angry she said.

**MR. E. MARTIN:** So I wouldn't characterize it like that. I mean – and, you know, Ms. Mullaley and Mr. Bown and myself, we were good work acquaintances, respected them. I think a more – from my perspective, a more reasonable interpretation would be, you know, if I didn't necessarily agree with the way it was unfolding after a certain point, I don't have a lot of patience going around in circles on the same topic, so I probably would have said: I understand but, you know, I don't agree. And I likely would have indicated that I'm going to talk to the – probably talk to the minister and the premier about it.

But that's – I wouldn't have stormed out. I wouldn't have been angry with them about.

**MR. LEARMONTH:** Well, you know, once again, I'm relying on the evidence for the purpose of this question that was provided by Ms. Mullaley and when – her evidence was that when she, I guess, said that the internal audit would be insufficient, that EY would be retained, that you became very upset and very angry and walked out of the meeting. Do you agree with that?

**MR. E. MARTIN:** No. Just my – again, I probably said no and I just described what I felt would be a more appropriate description –

**MR. LEARMONTH:** Okay, so –

**MR. E. MARTIN:** – that's my evidence.

**MR. LEARMONTH:** So you disagree with that. So how did that meeting end? On a cordial note?

**MR. E. MARTIN:** By cordial, you mean I would've – we would have said goodbye, yes.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** If that's cordial. I mean, I wouldn't be sitting down wasting time, you

know, continuing on a conversation, no, but I would say cordial, sure.

**MR. LEARMONTH:** Okay. Well, your recollection is different from Ms. Mullaley's then.

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Fair enough. Yeah. Just wanted to get your take on it.

And after that meeting, is it correct that you contacted the premier's office, either Joe Browne or the premier directly, complaining about this – the fact that the oversight wanted to retain EY to do a process and controls report and you tried to persuade either the premier or Joe Browne or someone in that office to, you know, rescind the decision of Ms. Mullaley?

**MR. E. MARTIN:** You know, it's not a complaint situation. I definitely would have contacted them. I would have laid out the same thoughts I just laid out here a moment ago about why I didn't think that would be, you know, something that, I thought, was of the highest value. But to me that's essential I do that. You know, not to express that kind of sentiment with respect to a project of this magnitude. If I disagreed with a path being taken, and it had been decided by the premier or the minister, I feel it's my obligation if I don't agree with that to express it, explain it, make sure whoever's in that role is understanding the rationale for my thinking.

And I would – that would be a very consistent thing that I would do, because I always felt that the worse thing to do would be not to inform someone of whatever risks I had in my mind. And I was quite open about that. So I did it and I think it's the right thing to do. Once the decision is made, move on.

**MR. LEARMONTH:** All right. And Ms. Mullaley's position was – remained unchanged, correct? There was no – your effort to get the decision reversed was unsuccessful? Is that correct?

**MR. E. MARTIN:** Well, they went ahead.

**MR. LEARMONTH:** Yes.



**MR. E. MARTIN:** Yeah.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** Yeah.

**MR. LEARMONTH:** Now, at any time during – while you were in – CEO, did you instruct anyone at Nalcor to refuse to provide minutes of directors' meetings to EY representatives?

**MR. E. MARTIN:** Not that I can recall, no.

**MR. LEARMONTH:** You have no recollection of that?

**MR. E. MARTIN:** No.

**MR. LEARMONTH:** Yeah. Is that something that you would be consulted on if – you know, based on your experience if there was a request made by EY for a copies of directors – minutes of directors' meetings, would that flow as high as your level?

**MR. E. MARTIN:** That would depend, Mr. Learmonth, just in context again. Once that decision is made on EY and such like that, I'm – you know, I'm pretty much out of the picture on that then. You know, then I talked to the, you know, folks involved. We went back and forth on this, well, you know, I understand that but here we are. I can handle it, you know, make it happen.

My involvement after that would be very limited. And in terms of the minutes, for instance, if there was a conflict there and it couldn't be resolved, I mean, normally the last bastion that the government – they'd come to me and say, what about this?

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And I'd deal with it, but I can't remember doing that in this case.

**MR. LEARMONTH:** Okay. You can't – you have no –

**MR. E. MARTIN:** I can't remember that –

**MR. LEARMONTH:** – recollection?

**MR. E. MARTIN:** – in this case. I'm not saying I didn't but I certainly can't remember it. And –

**MR. LEARMONTH:** Can't remember it, okay.

Do you have any recollection of there being a request made by EY to get copies of the – certain minutes of the boards of directors? Do you have any recollection of that subject at all?

**MR. E. MARTIN:** I don't. But once again I – you know, it wouldn't have been on my radar screen tremendously at that point. Once that was dealt with, I mean, I would not be in the middle of it; I would be on to something else. It was just handled, you know, in that part of the organization.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** I wouldn't be directly involved in dealing with the Ernst & Young by any means or any other type of contractor at that point.

**MR. LEARMONTH:** Yeah.

Now, when EY was retained after the change of government in – where the decision was made to retain EY to do the deep analysis, which began in January 2016. You know which one I'm talking about, do you?

**MR. E. MARTIN:** Yes, I do.

**MR. LEARMONTH:** Okay.

Did you advise Premier Ball, or someone in Premier Ball's office, that you would resist the involvement of EY in this endeavour?

**MR. E. MARTIN:** Yes, I think I mentioned earlier today we had a conversation with Premier Ball, Ken Marshall and myself in the Premier's office in late December – the time frame, I can't remember the date. And, you know, expressed, you know, my concerns about that. And he wanted to proceed, and we talked over the framework of how that would unfold, and we moved on.

And in essence, the framework, you know, I explained to him about – from a – the same concepts I had before regarding, you know, how

Nalcor was structured to advise the government. Advise that, you know, one of the larger issues, you know, (inaudible) plus the resourcing issues around all of that. Then there was another topic about how Astaldi would fit into this arrangement, and I expressed my view that, you know, whatever we do internally – and by internally I meant all of us together. Astaldi – it's important for a large contractor like Astaldi to see one single point accountable person from a negotiation perspective.

It's critical from my experience, and my advice was – is that they have to see one person who is at the table with ultimate authority. And I said, even if that's not entirely the case, that's what they have to see. Other than that, you cloud accountability there and open up distinct channels on a large negotiation like that, it's going to cause you a tremendous amount of additional cash in my perspective.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And so subsequent to that, I think the arrangement we landed on EY would come in and start the process, and we would move ahead with that. But Astaldi would be outside of that review because, two things: one, there was not much to review from a, you know, deep dive of the cost and schedule, because we had to get to where we were going on that; that was the purpose of the negotiation.

And the second thing, I didn't want the folks in that negotiation – you know, provided we kept moving – to be distracted. And also wanted to make sure that Astaldi, however we structured, wasn't seeing that there was additional parties coming into the negotiation that could cloud accountability.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** And that's the approach I believe we agreed on.

**MR. LEARMONTH:** Yeah, but surely at this point in December 2015, when it was known to Nalcor and also to government that the Astaldi problem was worsening – the Astaldi situation was worsening. By that time there had already been revisions to the AFE, the project had

jumped in June 2014 to 6.99 and then 7.65 in September 2015.

And then layered on top of that, the Astaldi problem – surely you can see that the government was on solid ground, and it was entirely justified to question what was going on at Nalcor. Don't you think that the –

**MR. E. MARTIN:** Absolutely.

**MR. LEARMONTH:** – government –

**MR. E. MARTIN:** Absolutely.

**MR. LEARMONTH:** Yeah. Okay.

**MR. E. MARTIN:** Sure. They owned us, outright.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** Obviously.

**MR. LEARMONTH:** Yeah. Okay. Thank you.

Now I want to talk about some matters related to AFEs and final forecast costs.

Was it your understanding during your tenure at Nalcor that the AFE was for the cost until the end of the construction – it was an authorization for expenditure and a projection of costs 'til the end of construction?

**MR. E. MARTIN:** Sorry, I missed – could you repeat that, please?

**MR. LEARMONTH:** Well an AFE was –

**MR. E. MARTIN:** Right.

**MR. LEARMONTH:** – obviously an authorization for expenditure, so you couldn't spend the money unless you had an AFE for the amount that you were spending.

**MR. E. MARTIN:** That's correct, yes.

**MR. LEARMONTH:** And in addition, the AFE was to include the estimated cost 'til completion or the in-service date of the project.

**MR. E. MARTIN:** That's absolutely correct, and you mentioned FFC earlier than that, too, and just wanted to make the point that it's an approval for expenditure as to what is to the end of the project. And that means that you wouldn't give more than the approval for – than – and – than what you understood the costs may end up being.

**MR. LEARMONTH:** Yeah, 'til the end of construction.

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Okay. Thank you.

Now in terms of communication with the Government of Newfoundland and Labrador on cost and schedule, we've had evidence that that's something that you had absolute control over, that no one else on the Nalcor team was to give any new information to government on those subjects. Is that correct?

**MR. E. MARTIN:** On cost and schedule?

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** That's correct. Until we had, you know, a new number that was there –

**MR. LEARMONTH:** Oh yeah.

**MR. E. MARTIN:** – we'd make sure it was communicated and then, obviously, you know, wide open after that in terms of detail and such that was documented –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – for that.

**MR. LEARMONTH:** That's correct – you had absolute control over that until –

**MR. E. MARTIN:** Yes I did, absolutely.

**MR. LEARMONTH:** Yeah, all right.

And, you've told us in your interview that when you did have meetings with government or telephone conversations with government to discuss schedule and costs and any changes and

so on that you did not make any notes or records of these meetings? Is that true?

**MR. E. MARTIN:** That is correct.

**MR. LEARMONTH:** Okay. Why not?

**MR. E. MARTIN:** That just wasn't part of my work practices. I just never did.

**MR. LEARMONTH:** But if you're talking about serious issues such as possibly increase in costs and delays and schedule – wouldn't important topics such as that warrant a written record?

**MR. E. MARTIN:** Again, that just wasn't part of my work processes over my career. I didn't do that.

**MR. LEARMONTH:** You didn't do it. So, you have no notes or records of these communications? Correct?

**MR. E. MARTIN:** Correct.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** Now there's – you said communications – there's –

**MR. LEARMONTH:** Well there are –

**MR. E. MARTIN:** Obviously we've seen slide decks and –

**MR. LEARMONTH:** Yeah. There are slide decks. I know that.

**MR. E. MARTIN:** I mean – stuff like that, you know.

**MR. LEARMONTH:** We have those documents.

**MR. E. MARTIN:** Yeah. Absolutely.

**MR. LEARMONTH:** I'm talking about them –

**MR. E. MARTIN:** Absolutely –

**MR. LEARMONTH:** – in addition to those.

**MR. E. MARTIN:** That – that, you know, that would be the documentation.

**MR. LEARMONTH:** Yeah.

Could you please turn to binder 1, tab 2, Exhibit P-02510? This is a – on page 2 – this is a “Final Forecast Cost Update – Presentation to Executive Management – July 22, 2013”

Are you familiar with this document?

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** Yeah. And what was your understanding of the – you know, the criteria for a final forecast cost evaluation? I mean, what factors were taken into account? What was the process to prepare these documents? And what use were these documents put to?

**MR. E. MARTIN:** The purpose of – you know, of this type of forecast final cost – as I mentioned earlier – nobody – I certainly wouldn’t be – but many would not be involved in planning, bid processing, bid reviews – those types of things.

The project team – I think they had a couple of sessions that they had. One session was, you know, designed for a open, you know, discussion amongst, you know, some smaller group of people where they could, in a controlled environment, confidentially look at where everything was, you know, stress things, see what could happen and start, you know, trying to think up some cases of where things could go.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** And to my – and to me that was, you know, part of their risk management process where, you know, they needed a form to identify those things. And, you know, even though there was no indication that it would happen, you want to be able to – as you would do on any type of stress analysis from a risk perspective, find the two, three, four key areas that you want to make sure you have people working on before something could occur so you could mitigate it.

**MR. LEARMONTH:** Yeah. So these were based on the best information that was available, and it was ascribed as an indicative-level review, correct?

**MR. E. MARTIN:** That’s correct.

**MR. LEARMONTH:** Okay.

So this is July 2013, before financial close, and on page 4 of this document it says: “We are forecasting the FFC to be ~\$7.0B which is 12% beyond the DG3.”

And later on – and there’s reasons given for this increase. And later on there’s a statement on page 8 that: “Potential reduction in FFC by ~\$200 million.” You know, that was a potential.

So this indicated from – well, if you use the 6.5, this indicated a significant increase from the 6.5 figure that was used at financial close, correct? \$500 million, half a billion dollars, with a possible mitigation of \$200 million to bring it down to 6.8.

**MR. E. MARTIN:** That’s – yeah, that’s the math there, 300 or 500 –

**MR. LEARMONTH:** So that’s a significant increase. Do you agree?

**MR. E. MARTIN:** Absolutely.

**MR. LEARMONTH:** Yeah.

And if we go to binder 1, tab – excuse me – tab 3. This is Exhibit P-01828. This is a reference to the same report but in a different form. Do you agree with that? You can just look through that exhibit. It’s the same ...

**MR. E. MARTIN:** You just – you want me to look through the first page, you’re saying?

**MR. LEARMONTH:** Well, no, just flip through it. I understand that this is a different format, but the information is substantially the same as in the exhibit that I just referred to.

**MR. E. MARTIN:** Okay.

**MR. LEARMONTH:** Do you agree with that? Take the time to check before you agree or disagree.

**MR. E. MARTIN:** Okay, I understand this.

**MR. LEARMONTH:** Yeah.

So it's – is what I said correct, that it's the same data?

**MR. E. MARTIN:** Yeah, it certainly seems directly related to it, yes.

**MR. LEARMONTH:** Yeah, okay. Just in a different format I think.

Anyway, did you know that when the Astaldi bid came in that the \$368 million – and that was in April 2013 – that the \$368-million tactical contingency had – was exhausted?

**MR. E. MARTIN:** Not exactly at that time, I wouldn't say. I don't know the timing, but as things unfolded and we got closer to July, yes.

**MR. LEARMONTH:** Okay.

So at the time that this report was prepared you would've known that the contingency was exhausted?

**MR. E. MARTIN:** Yeah, that's – yeah. Yes, that's correct.

**MR. LEARMONTH:** Okay, so at this point we're just talking about 6.2, right?

**MR. E. MARTIN:** 6.2, that's correct, yeah.

**MR. LEARMONTH:** Yeah, okay.

Well, I referred earlier, (inaudible) corrected the 6.5, it was 6.2. So the increase here –

**MR. E. MARTIN:** Yeah.

**MR. LEARMONTH:** – was \$800 million with a possible reduction to \$600 million, correct?

**MR. E. MARTIN:** I would make one caveat there as well though. It would be – you know, if the Astaldi contract and other things continued

on and ended up where they initially had been bid then I would know that the contingency would've been used up. But that being said, there was – indicated to me there was work ongoing and mitigation efforts under way, including the Astaldi contract, and I would not have had a final number at that point.

**MR. LEARMONTH:** Okay.

It wasn't final but you could see the writing on the wall that the estimate was too low, couldn't you? I mean, you got four bids in, the two lower I think were Salini and Astaldi, both of which were higher, and then you had the other two, which were much higher. So it should've indicated to you that there was something wrong with your estimate. Do you agree?

**MR. E. MARTIN:** As I said, I – you know, I knew that the bids come in – that bid had come in higher and I knew that they were working on dealing with that and mitigating it and I did not have a final number.

**MR. LEARMONTH:** But there were other bids that were higher too, correct, at that time that was known to Nalcor?

**MR. E. MARTIN:** Yes, there was –

**MR. LEARMONTH:** Or other packages?

**MR. E. MARTIN:** – and there was some – my understanding is – that were coming in lower. I also had the understanding that the materials work was coming in about the same, and the team was giving me, you know, this information periodically as we moved into July. And they certainly, you know, didn't indicate that this was locked down in any way.

**MR. LEARMONTH:** Okay. But there was a trend that substantial – a substantial amount of contracts were coming in over and above the budgeted amount. Isn't that true at this time?

**MR. E. MARTIN:** I guess – yes, there was –

**MR. LEARMONTH:** Okay. And did you –

**MR. E. MARTIN:** – some –

**MR. LEARMONTH:** Sorry?

**MR. E. MARTIN:** I was trying to say, yes, there were some, as you said.

**MR. LEARMONTH:** Okay.

Now, did you report this development to government in – or at any time – in July 2013 or at any time after July 2013?

**MR. E. MARTIN:** My communications would not have had numbers attached to them, but I certainly was indicating in discussions that – I've already used the term here before – I used cost pressures. You know, there's some bids that are up, some are down, but I certainly gave them no numbers.

**MR. LEARMONTH:** Well, why not?

**MR. E. MARTIN:** Well, that was – you know, that's where I felt my duty was. Was the fact that I had to go forward with – when I went forward with numbers, they had to be reliable. I had to have vetted them. I had to be comfortable that – you know, that I understood what those numbers were. They would be used, as I released them, for decision-making purposes. And until I was comfortable that we had – and I understood the basis for these numbers and that there was a reasonable amount – a reasonable amount – of certainty around them, I wouldn't release them because I was responsible to make sure that we had decision-level type quality numbers that I could support.

**MR. LEARMONTH:** (Inaudible.)

**MR. E. MARTIN:** What was a – that was a – you know, a framework, as I mentioned earlier, that I had been in for years at that point and that's the world we lived in.

**MR. LEARMONTH:** Yeah, and that's consistent with what Ms. Mullaley said was that, generally, you're – and Mr. Bown that –

**MR. E. MARTIN:** Mm-hmm.

**MR. LEARMONTH:** – you never give numbers, except if it was an AFE, you'd come in with a general description that they were – I think the word was cost pressures, that there were – you're trying to mitigate. Some things were up, some things were down, but in the final

analysis, you were – you always expressed confidence that everything would be fine. That's what Ms. Mullaley and Mr. Bown said, and that's what Minister Kennedy said in relation to the DG3 numbers.

So there's quite a lot of people, and probably more than I indicated – Mr. Marshall, too – that said that you were always confident that everything would be fine. You pointed out yes, cost pressures; some things up, some things down – but it was a general conversation, without any mention of numbers. Is that an accurate characterization of the way that you communicated possible cost changes to the Government of Newfoundland and Labrador?

**MR. E. MARTIN:** Not entirely. I think the biggest phrase, I think, would be – something that would never have happened, is I would say everything would be fine –

**MR. LEARMONTH:** Well, that was the impression –

**MR. E. MARTIN:** I would –

**MR. LEARMONTH:** – you said –

**MR. E. MARTIN:** – well, I thought you said that that's what I said, so I want to make that clear, that that is absolutely not correct, 'cause that's – if that was pointed out, I would say that the correct statement would be, is that I would always end up making the statement that I cannot guarantee where these numbers –

**MR. LEARMONTH:** Right

**MR. E. MARTIN:** – will finally land. I just can't do that. I would say, and lay out, you know, the reasons that I had reasonable confidence in what I was presenting, because by that time when I would present them I would have reasonable confidence based on the information I had, and I would talk about things such as the extent of engineering, how many contracts were – what was left to come, you know, those types of things.

Where the materials – you know, where the materials cost had landed, you know, what, you know, the contractors were telling us about the schedule, and laid out all those types of

rationales and say that's why I think, you know, this is where – we're comfortable with, yes. And I would express some confidence in that number, yes.

But when asked or not asked – but when asked in the context of so is this is it, for sure? Is everything, will everything be fine? The answer was: I can't answer. There's no way I can say that. Many things could happen; there's cost pressures all over – I've been clear on that – in some cases there's schedule pressure. I'm just telling you, this is the snapshot that I have right now; so that would be how I would describe it.

**MR. LEARMONTH:** Well, in terms of this July 2013 report, given the big jump that it was foreseeing or anticipating, why wouldn't you go in to government and, you know, say: here is a document, I want you to have a look at it; it shows an increase – well, have them look at it, it's not very difficult to understand, I mean, it's pretty straightforward what's going on in this document, information – but why not go in to government and explain it to them, and if you thought that there was much you could do in terms of mitigating, be under the 6.8 – explain it to them, but – at least so they'd be in a position to know what the most recent information is. Why wouldn't you do that?

**MR. E. MARTIN:** Because I wasn't comfortable with the numbers and until I'm comfortable with the numbers, I'm not going forward to abdicate my responsibility.

My job was to come forward with information that was – at a reasonable level of accuracy. And that meant I was bound to stress these numbers, to push back on them, to have other sessions to go around to see where this thing could go. And I think in the final analysis from what had occurred, you know, from my perspective I got to a point, finally, where I was comfortable.

And one thing I will mention that I found somewhat unhelpful is that in the Grant Thornton report where they lay out these progressions from July into August, you know, that – if you look at that sequence, it went from 6.8 to 6.9, and then it was – I think it was 6-something to 6.9 – then it was 6.7 to 6.95.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** And numbers were – what was not there was the actual final forecast cost that we used, which was 6.5 to 6.6. And if you look at that progression coming down from there, when I got to 6.5, 6.6 and got explained to me, after all of my questions of what was in there, and it's well documented – we can pull it up in a second as to what was in there – and I said to myself, okay, I'm at a point now where I can say, I got it, you know, we're not going any lower than that, you know, it looks like on the high side we're covered. You guys have worked all this out and the document is there.

And if I look at that sequence, as soon as I understood that, away we went. And as quick as I could get in the hands of government, we did, and we started pursuing it.

**MR. LEARMONTH:** Yeah –

**MR. E. MARTIN:** At the same time in that time frame – and I will also anchor to the fact then I'll go back to what I said earlier is that – although others may have a different opinion – but this decision was made on the cost to the ratepayer. So –

**MR. LEARMONTH:** Mm-hmm.

**MR. E. MARTIN:** – when I'm reporting, you know, a reasonable bound of information to the government that I have some reasonable certainty that I can support and go for, then in my chair, I'm sitting there – I have to give them an analysis of what the overall cost to the ratepayer is because that's how we made the decision on this project in the first place.

So at the same time we were trying to get the financing, you know, cost implications sorted out, we were trying to get the excess sales thing sorted out, we were – that required the Emera arrangements to come to some, you know, form of closure and required a certain amount of work with the – in the markets with the federal loan guarantee to get that.

All those things were coming together at a very intense time, and I said – I got to a point then in that October-November time frame, I said, okay, I am comfortable now that I have a picture that is reasonably confident, you know, from a

project decision perspective, to go forward with. And I did.

And I think, you know, that would lend some –

**MR. LEARMONTH:** When did you do that?

**MR. E. MARTIN:** – credence to my view on this forecast final cost. You read the document that summarized where the project team, you know, said where we were. That's a pretty solid document to say, okay that looks pretty solid and I said, okay I can't go any further than that. And that progression sort of came down as a – you know, to a point where I was comfortable.

I think the – so that's the process. So as far as sharing forecast final cost at the early stage with a board or a shareholder, that wasn't the mandate that I believed I was given. That is not the mandate I believe that I should pursue. And I felt that part of my role in the company was in perspective of bringing forward, as soon as we possibly could, what a picture we had some comfort in and I had some comfort in. And that's what I did.

**MR. LEARMONTH:** Well as you point out that, you know, there's a lot of different views and I'll get into that – on that topic. But I put it to you very plainly, when you got this July 2014 forecast, that you should've gone into the Confederation Building right away and given them a copy and described your reaction to it. Because in July 2013 this was indicating an \$800 million increase over the sanction amount.

The government would have had an opportunity to either review the matter more deeply before financial close; but they should've been given the option to see this information together with the other forecast final cost in September and October, before – and I suggest to you that you failed in your duty to disclose this information to government so they could make a reasoned decision as to whether they wanted to continue on with the project.

**MR. E. MARTIN:** So I disagree with that –

**MR. LEARMONTH:** Maybe they could've asked for a quantitative risk assessment –

**MR. E. MARTIN:** – I disagree with that but –

**MR. LEARMONTH:** – Well.

**MR. E. MARTIN:** – but I think – I think the key phrase you said there, you know, give them that information so they can make a decision on it.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** That's exactly the point. The information was not in a format to make a decision on. And to go in with the wrong numbers either way and then without the full picture, then you're testing the waters to make a decision not based upon the full –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – strength of information that you had there.

**MR. LEARMONTH:** No, but you –

**MR. E. MARTIN:** – so I felt compelled to put together as I did – as I mentioned over several years – to put together a package that was reasonably accurate so I knew if they made a decision on it, I could say comfortably, after the fact, that yeah you had the right information generally.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** At this stage, I didn't believe that that was the right information. I didn't know. I wanted to know more. And as I've said, by the time I got the package together, that particular piece had significantly changed on advice from the team, and plus I had the other pieces of information that I needed. So I had to put that package together in a way that, you know, that decisions could be made, as you discussed, and that's what I did.

**MR. LEARMONTH:** Well, I know that's what you did but I'm putting to you that you did the wrong thing, that you should've given this information to the government with an explanation if you wanted to provide it, so that the government that was funding this project, on behalf of the taxpayers, would be in a position to make a decision as to whether they wanted to either cancel this project or reassess the project.



And you denied the government the opportunity to do that by your failure to disclose.

**MR. E. MARTIN:** Well, I said earlier, Mr. Learmonth, I don't agree with that supposition.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And I don't agree with it because the very reason we were working on getting those numbers in the proper place, in total, was to give them information they could make a decision on.

**MR. LEARMONTH:** Well, but you –

**MR. E. MARTIN:** And that's the role I was in. And, you know, I'm not saying it's easy, I'm not saying it's hard, but that's the role I was in. That's why we were put there. And I worked diligently to put together, as rapidly as possible, and with as much diligence, a package that I felt was suitable for decision-making.

**MR. LEARMONTH:** Well, you know, you say diligent. This report was available sometime in July; financial close was not until, we'll say, November 29. I don't think you were diligent because there was definitely a trend that had developed which came to your attention as early as July and you just made the decision, on your own, that you weren't going to share this information with the government or with the board of directors.

**MR. E. MARTIN:** So, Mr. Learmonth, you know I'd look at it from another perspective. Where the number ended up that we had some reasonable certainty on that I was advised by, by the team, which was 6.5, it was different than 7. It was different than 6.8, it was different than 6.9, 6.95, 6.7, you know.

So, on balance, you have to weigh, when you're in that role, to say at – you know, what level of information – yes, do you go forward with. But I was tasked – and that was the norm that had been established over many years. I was tasked with – myself and the company – to do exactly that because I was asked at the time to do it because in that particular area, the government resources did not have, you know, the expertise to do it, that's why we're brought there.

And I was – you know, compiled as a government department, an arm of the government to do exactly what I did. We did the exact same – and, you know, you mentioned about some people, you know, said they – you know, they didn't think that was proper not to share that number. But it's interesting; many of those people were the exact same people that I dealt with, when we were dealing the Hebron deal and associated royalties, the White Rose deal, the Hibernia South deal, the Emera deal. In total, those deals had an impact on the province of \$40 billion in that day.

**MR. LEARMONTH:** Mm-hmm.

**MR. E. MARTIN:** And in those days, at the same time, I was instructed to go and get decision-level data, they said. And I said, you know, don't be bringing things back here and laying them on the table – all pieces of information – I was told this. That we have to sit there and look around – we don't know what to do with it. They said that's what you're in place for, consolidate that data for us, give us ranges, give us that kind of stuff.

But I was asked to assess all of that data from the get-go in 2005 and come forward with a reasonable package for them to decide on. And any time I went in with – on another kind of arrangement with reserve numbers, ranges, they'd say, look, will you just go and figure it out, that's what you're there for, and then come in and explain it to us.

That's the mode I was in here, working as rapidly as I could to get that done. And that's what I presented, was the information on an overall perspective that I felt was of the quality that I could stand by and doing it in time to make sure folks knew where they stood, because it was a – yes, it was a busy time, but I got it done.

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** And that's what –

**MR. LEARMONTH:** – you know –

**MR. E. MARTIN:** And that was the framework.

**MR. LEARMONTH:** Okay, well, you know, you took your time because we know that – and there's some confusing evidence about this – that when you did come up with the 6.5, you did not provide anything in writing to the government. You may – you say – may say you met with someone, although the evidence is very weak on that.

So I don't understand what you're saying, that you need to do your due diligence and you didn't have it figured out until November. I mean, this is July to November. It was –

**MR. E. MARTIN:** From July to November it went from, as you mentioned, 6.8 to 7 to 6.5 to 6. These undertakings are extremely intense and take an extreme amount of resources.

And for a project team to produce the level of – when you see one of these decks, the work that goes into consolidating and analyzing and working those things is absolutely massive. These things are not turned around in a day.

**MR. LEARMONTH:** Yeah but you had them.

**MR. E. MARTIN:** But I'm saying –

**MR. LEARMONTH:** You had them.

**MR. E. MARTIN:** I'll tell you now –

**MR. LEARMONTH:** You didn't have to prepare them for government.

**MR. E. MARTIN:** Do you have another question –

**MR. LEARMONTH:** They were already prepared.

**MR. E. MARTIN:** – or will I finish?

**MR. LEARMONTH:** Pardon?

**MR. E. MARTIN:** Do you have another question or did you want me to finish my point?

**MR. LEARMONTH:** Well, I'm just saying to you that you're talking about preparing documents and how much time it takes and so on. These documents were already prepared. It

wouldn't have taken any additional effort to supply them to government.

**MR. E. MARTIN:** So let me lead off on that and go – but to go back to where I was to try to explain that before you ask the next question. As I said, it takes a huge amount of work to put these – this information together. And what I'm talking about was the initial point you made. You said it took three to four months or three months to go from there to there. That's exactly what I was saying, is that you have one go around with some information provided.

To go and work that and come up with a further analysis and stuff, it takes a huge amount of work. That produces another document. And my point is that goes on and it just doesn't happen overnight, the preparation of that series of documents. That's one point.

The second point you've made a couple of times is the, you know, speed of going to government. You know, I will say that this was, you know, an initial exercise that needed a large amount of work. I got there as soon as I possibly could. Three months is not – is – you know, three months is fast in some of these types of analysis, but if I go on and continue on into 2014, I – you look at in May, I believe, I was provided with another deck with respect to the 6.99 and some forecast – and some management reserve types of things there.

**MR. LEARMONTH:** No, we'll talk about that later. I'm talking about now.

**MR. E. MARTIN:** But I'm making a point in the time, Mr. Learmonth, is that one month later we had an AFE, and then I go into 2015 and I was presented with another deck that showed 7.5. And within a month, I was into the premier's office and going over that 7.5.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** Huge amount of effort. And then, by the time they got the 7.65, I think it was less than a month by the time we got that number, and we were in doing an AFE with the premier in the minister's office.

So I just wanted to make that point that there was a tremendous focus on getting the numbers

into the government's hands and the board's hands, but that still required elements of work to make sure I was comfortable with it, and that's what I had to do.

**MR. LEARMONTH:** Yeah, well, I'm talking about before financial close; we can talk about the other matters later. And I'm putting to you that it was incumbent on you to provide this information, whether it was in July, August or September. Sometime before financial close, you had an obligation to provide these documents that were prepared. There was no effort needed to prepare additional documents, they're already prepared, just take them in and explain it to government so they will know.

And you seem to – you don't accept that. Is that what you're saying? You don't accept the reason why you should do that, that I'm giving you?

**MR. E. MARTIN:** Yeah –

**MR. LEARMONTH:** Complete disclosure.

**MR. E. MARTIN:** No, I think – again, as I said, what I was tasked with presenting, based upon a long history of working with the government, was bringing forward a reasonably accurate decision package that I was comfortable with that was vetted and stressed, and I could say this is what I see is the reasonable full picture. That's what I did.

**MR. LEARMONTH:** Yeah.

Well, you weren't very good at it, were you? Because the 6.5 in December quickly became the 6.99 in June, which was actually – should have been 7.5. So, I'm saying – asking you, do you agree that you took a lot of time, but you weren't very good at coming up with the estimates were you?

**MR. E. MARTIN:** Well, I'd like to comment on that but I'm, you know – Mr. Commissioner, I'm, you know – I was going to say, you know, I'd like to stay – I mean, I jumped ahead and got – you know, suggested that was – let's stick back here. I mean – and maybe I'll – excuse me – maybe I'll just say it – you know.

Mr. Learmonth, you know, if you – let me – if you want to start going to those areas in terms of the timing, let's do that as well. But I –

**MR. LEARMONTH:** No, we will.

**MR. E. MARTIN:** – feel if you're going to restrict me –

**MR. LEARMONTH:** But we have to do one thing at time.

**MR. E. MARTIN:** – to that area, please help me.

**MR. LEARMONTH:** Well, what –

**MR. E. MARTIN:** (Inaudible.)

**MR. LEARMONTH:** – I'm trying to do is to focus you on the question and I'm dealing with before financial close. We'll have lots of time to talk about after financial close. I'm talking about the duty, that I suggest you had, to communicate all relevant information, whether it was in a final form or not, to the government before financial close so that government could make an informed decision on what it wanted to do with this project. And you seem to be saying that you don't recognize that that was an obligation that you had on you. Is that what you're saying?

**MR. E. MARTIN:** I had an obligation to give them a package that was structured in such a manner it was useful for their decision-making.

**MR. LEARMONTH:** When did you give them that package?

**MR. E. MARTIN:** That was – you know, the information was in the October-November time frame – was when I informed the government. And then you also made a comment a bit earlier –

**MR. LEARMONTH:** But who did you inform on October and November?

**MR. E. MARTIN:** And you also made a comment a bit earlier that –

**MR. LEARMONTH:** Who?

**MR. E. MARTIN:** – when you said I didn’t do a very good job of it.

**MR. LEARMONTH:** Well, you – I’m saying –

**MR. E. MARTIN:** And in terms of – I think that’s where I wanted to come back to and say, you know, at the time, it was a huge amount of work put into it, a huge amount of effort from many, many people. As to where things ended up, obviously, they ended up other than that. But I didn’t want to leave the comment sitting out there that you said you didn’t do a very good job of it.

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** At the time, and not in hindsight, Mr. Commissioner, we were putting everything into it, all resources into it. And we felt that we had done a good job at that point.

**MR. LEARMONTH:** I accept that you may have felt you were doing a good job, but when we look at the continual escalation in the AFEs, the results are that you’re – you were off by a considerable amount in every revision to the AFE. And it’s for that reason why I’m saying that you weren’t doing a good job. I’m not questioning your intentions; I’m saying that the results show that your AFEs were not very well reasoned. They weren’t based on good information. Do you agree with that?

**MR. E. MARTIN:** No. They were based upon the best information that we had at the time, the best analysis we had at the time and what we had in our hands.

**MR. LEARMONTH:** All right.

Now, the reason that I’m emphasizing this – these – this period before financial close is that if government had seen these documents, these FFCs for, I think it’s July, August and September – there’s three of them – that they would’ve been in a position to reassess this project. And I base that on evidence that was given by Mr. Dodson of Westney on this subject in addition to what I consider to be common sense that you would disclose it.

But Mr. Dodson said, when he testified on February 25, 2019, when he was asked about

what happens when bids start coming in above the estimates – that’s what he was asked.

Question:

**“MS. O’BRIEN:** – you were talking about another – further evaluation of risk,” and this is after bids come in that are higher, “can you just explain – give me a little more detail – what you were referring to there?”

**“MR. DODSON:** Well, it’s sort of the ultimate risk assessment.” He’s referring to the bids coming in above the estimates. “Someone bids this, and in this case there was – to me, the design was to be complete and there was a request for what we call a (inaudible) complete – a guarantee up to the level of the contract. So the price that is submitted by a bidder under those circumstances should be very indicative of the final cost.

**“MS. O’BRIEN:** Okay.” And then she says: “And if you get a situation where bids are coming in on average higher than the estimate amount, you know, what would you expect the owner to do at that time in terms of their assessment of the risk?”

**“MR. DODSON:** Cancel the project and reassess.

**“MS. O’BRIEN:** Pardon?

**“MR. DODSON:** Typically, they cancel the project and reassess.”

And then later:

**“MR. DODSON:** All right, one more try.” “Thank you,” Ms. O’Brien said, “The answer I heard from you, and please correct me if I’m wrong, was that typically they would cancel the project and reassess, is that – did I hear –?”

**“MR. DODSON:** Yes, yes.

**“MS. O’BRIEN:** Okay.

“So you can do another QRA-type analysis at that” time – “stage to re-evaluate your risk, at the very least?”

Mr. Dodson says: “Well, when they get bids that are higher than the sanctioned price, well then they typically cancel the bid, sometimes they pay the bidders, you know, something for their effort, and they reassess the project.”

Now, Mr. Dodson is an experienced man. He works for Westney, was a trusted advisor for Nalcor, and still is. He’s describing the very situation that happened here, that bids were coming in higher than the estimates, and what he says is what the normal practice to be, which is to cancel the project or cancel the bids and reassess. And what I am saying to you is that, that was an option that the government would have had if it had seen the July, August and September forecast final cost, but because they didn’t, they were denied of that opportunity. Now, do you have any comment on that?

**MR. E. MARTIN:** Absolutely.

**MR. LEARMONTH:** Please.

**MR. E. MARTIN:** Point number one, you mentioned about, you know, just blindly shutting the project down or Mr. Dodson – you suggested he said that. That has not been, you know, my experience. I use the case in point Hebron, you know, which is a fairly recent project. They certainly – you know, there were evident cost issues that occurred there. Look at – well, I’ve heard about Vale Inco and other things. So I am not sure where Mr. Dodson is coming up with that. I’ve seen other projects with, you know, multi-billion dollar international companies with LNG projects throughout the world, Australia and other places. I hadn’t seen them do that although the costs you know in a lot of cases grew based on bid analysis. So right – I just can’t ‘blanketly’ support Mr. Dodson because it doesn’t make sense to me. That’s all.

**MR. LEARMONTH:** So you think it is a nonsensical statement?

**MR. E. MARTIN:** I said it didn’t make sense to me. That is different than –

**MR. LEARMONTH:** Okay, doesn’t make sense.

**MR. E. MARTIN:** That is two different things. That didn’t make sense to me, what he said.

**MR. LEARMONTH:** Okay, so you disagreed with –

**MR. E. MARTIN:** That is point number one.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** The second point is that – and I am not – I don’t want to pick on Mr. Dodson or anybody, but once again I’ll go back again to the point I made, is that, this project was sanctioned on a cost to the ratepayer basis, and until the assessment of financing charges and, as I mentioned, excess sales and capital and other things are accounted for and brought into the picture, you know, it’s a more multi-faceted picture then was being presented there. All of those things had to be brought together to be able to make a reasonable decision, and that’s what we did.

**MR. LEARMONTH:** No, no but that is government’s decision, not yours, Mr. Martin. I think you are missing that point –

**MR. E. MARTIN:** No, no, no, no I am not because I said –

**MR. LEARMONTH:** That is government’s decision.

**MR. E. MARTIN:** Mr. Learmonth, when I said we, I meant we brought that information together to give to government.

**MR. LEARMONTH:** No, but it’s government’s decision –

**MR. E. MARTIN:** It is, absolutely. Absolutely. I mean –

**MR. LEARMONTH:** – ultimately whether to go ahead with it.

**MR. E. MARTIN:** Why – excuse me, I didn’t mean to ask a question there but I didn’t say that.

**MR. LEARMONTH:** Well then –

**MR. E. MARTIN:** The way you are asking the question, I am just feeling that you are suggested I was saying that. If that was your suggestion, then I –

**MR. LEARMONTH:** Well, if government –

**MR. E. MARTIN:** – don't know what to say. 'Cause I – hundred per cent – a hundred per cent – agree that it is the government's decision.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** One hundred per cent.

**MR. LEARMONTH:** But how can they make a decision if they don't have the documents –

**MR. E. MARTIN:** They need –

**MR. LEARMONTH:** – if they're kept in the dark?

**MR. E. MARTIN:** They're not kept in the dark; they need information, as was asked of me, again, to give them that information in a manner that they can make a decision on it. That was not just taking a series of information from all over, you know, the various (inaudible) of the project and driving up a truckload of information and dropping it down and say: Figure it out and I'll get you something else on financing in a few weeks. And by the way, you know, we're going to finish up the Emera thing in another couple of months, but make your decision.

You know, that's not the way it is, you know. We were tasked with bringing forward, you know, some reasonable semblance of information that, you know, a reasonable – you know, a consensus decision could be made by the government, not by Nalcor.

**MR. LEARMONTH:** Okay, well, I think you've stated your point of view, but I will point out to you that you are alone in your belief – completely alone and isolated in your position – that the July 2013 report, final forecast cost, should not have been provided to government. In fact, everyone else – you're the only who has that view and I'm just going to give you a sampling.

That, you know, Robert Thompson, in terms of disclosure of the strategic risk report he said that should've been disclosed. Charles Bown was shocked when he found out about this \$7-billion forecast final cost. Julia Mullaley said she was shocked and angered when she found out about the existence of this July 2013 report that wasn't provided to government. Charles Bown, as I said, was shocked also.

Tom Marshall was shocked that it wasn't provided by Nalcor. Paul Davis, Derrick Dalley and even your staunchest supporter of the politicians, Kathy Dunderdale, who said that she was – when she saw this July 2013 report she found it startling and shocking that she didn't see it.

So I just want to point out to you that, Mr. Martin, of course, your point of view on this is going to be taken into account, you know, it'll have to be, but you're all alone. And, in addition – addition to the politicians and civil servants that I've referred to, even Ken Marshall of the board of directors said that it should have been provided to the board of directors and it wasn't.

So what do you make of that, that you're the only person, of all these witnesses, who holds to the view – or holds the view that there was no obligation, in terms of transparency and disclosure, to provide the July 2013 final forecast cost report to government?

**MR. E. MARTIN:** Is that your question?

**MR. LEARMONTH:** Well, does that concern you, that you're the only one?

**MR. E. MARTIN:** A couple of points, again, you know –

**MR. LEARMONTH:** But does it concern you?

**MR. E. MARTIN:** I'm trying – I'm about to answer that.

**MR. LEARMONTH:** Okay, go ahead.

**MR. E. MARTIN:** So, a couple of points, again. The first point is I think I heard – I did hear Mr. Marshall's testimony on this and I felt Mr. Marshall's testimony or – it read more like, yeah, he may – he would've liked to have seen

it, but he understood that he would not want to see it unless it was vetted. I think the words he used was stressed –

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** – you know, and those types of things. That’s –

**MR. FITZGERALD:** If I may, Commissioner.

There’s a Tom Marshall and there’s a Mr. Marshall that was here earlier this week. If the witness could just clarify which Mr. Marshall he’s talking about here.

**MR. E. MARTIN:** Mr. Ken Marshall.

So I just wanted to clarify that. And I believe that Mr. Marshall all – often, also expressed an understanding of the type of information that is handled within the company of Nalcor, which is executing and doing the day-to-day work. He also expressed a view of what the board’s role is. It’s not to get involved in day-to-day work. And I understood that he saw and respected that and indicated that he understood why we were doing exactly what we were doing. So I’ll put that on record first.

**MR. LEARMONTH:** Well, you’re wrong, Mr. Martin. He did say that this document should have been provided to the board and you can check his transcript. He perhaps hedged a little bit at the beginning, but in the end he said, yes, it should’ve been provided to the board. So I think your understanding of Mr. Marshall’s evidence, that you just repeated now, is off base.

**MR. E. MARTIN:** I guess that’s up to the Commissioner, I think. You know –

**MR. LEARMONTH:** That’s right.

**MR. E. MARTIN:** I made my comments about what he said.

Now, the second point is, you know, with respect to some of the other individuals you talked about, all I can suggest is – once again, we haven’t been allowed to discuss or talk amongst each other, which is fine. But I look at the Grant Thornton report and the way that information was presented in the Grant Thornton

report and, also, the absence of the 6.5 – the 6.6 in the Grant Thornton report that was not part of that sequence, to show that it came down; (a) you know, it would’ve been useful to have me explain some of that to them before they were asked the question in such a way that this number is – it came across to me this number was firm and final.

He didn’t present it, he didn’t – I just think the opportunity to explain what I just explained prior to asking them would’ve been extremely helpful. And I’d like to know, you know, responses after that would be – you know, it would be something.

The other thing that in the context of what Grant Thornton had in that report with respect to the overall picture of how this decision was made, with respect to cost to the ratepayer, like, that context was not there that I just explained, which all had to be brought together. So, they – in my particular case, no opportunity was there to explain that.

And, you know – and on top of that, you know, the understanding of what that meant and the sequence after that and show just how it all came together, wasn’t an opportunity to explain that. The question was asked in the absence of many, many pieces of that information and I take exception to that.

**MR. LEARMONTH:** Yeah. Well, did you communicate to Grant Thornton in your interview or –?

**MR. E. MARTIN:** Grant Thornton never spoke to me about this.

**MR. LEARMONTH:** Yeah, but did they –

**MR. E. MARTIN:** They never –

**MR. LEARMONTH:** – interview –

**MR. E. MARTIN:** – asked me about it.

**MR. LEARMONTH:** They interviewed you?

**MR. E. MARTIN:** No, not for that part of it. No.

**MR. LEARMONTH:** But did you explain to them that there was a 6.5 figure?

**MR. E. MARTIN:** To Grant Thornton – they never asked me.

**MR. LEARMONTH:** Yeah, but did you –

**MR. E. MARTIN:** But how could I? I mean –

**MR. LEARMONTH:** Oh, you got a tongue. You could've told them about it.

**MR. E. MARTIN:** Oh, come on – well, excuse me now, I'm just – from the Commissioner's – I didn't think I was allowed to go to Grant Thornton and offer them an opinion after the fact when the report was published, with the expectation that that was going to change. I didn't think that was on (inaudible).

**MR. LEARMONTH:** No, no, I'm thinking when you were interviewed –

**MR. E. MARTIN:** And then the second point, you know, I know with respect to some earlier dialogue around the P1-P3 situation I talked about this morning, I had asked my counsel many months ago to go in and talk to, you know, the Commission and say, that's – you know, I'm – I really think we need to be careful here because that's not correct, what's being said, and I need a chance to talk about.

And at the time, it didn't change. It was just, well, that's the way it is, that's the evidence we have. So I was under the impression that once it came out, I had to wait my turn to talk about it.

**MR. LEARMONTH:** Okay.

Now, so you stated your views on the justification that you felt you had to decide that you would not give the July 2013 forecast final cost report to government and the successive ones after that, before financial close, right? You've stated your views on that?

**MR. E. MARTIN:** Stated my views on why I decided not to –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – and also why I decided to wait to present, yes.

**MR. LEARMONTH:** Yeah. And do you have anything else to say? I don't want to – I want to make sure we have a full account of your evidence on that point.

**MR. E. MARTIN:** I think so but I'd like to reserve the opportunity if I thought of something else, Mr. Commissioner, that I could say it –

**MR. LEARMONTH:** Yeah, you can.

**MR. E. MARTIN:** Yeah, okay. Thank you.

**MR. LEARMONTH:** Okay. I'm not trying to limit it but I just want to –

**MR. E. MARTIN:** I understand.

**MR. LEARMONTH:** – at this point, do you have anything additional to say.

**THE COMMISSIONER:** Okay, so it's about quarter after 3, so will we take our afternoon break here now?

**MR. LEARMONTH:** We can or we can go on. I don't know.

**MR. E. MARTIN:** I'd prefer a break, please.

**THE COMMISSIONER:** Okay, we'll take our 10 minutes now, then.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** All right.

Mr. Learmonth, when you're ready.

**MR. LEARMONTH:** Yes.

Mr. Martin, your counsel advised me in the break, that you were not interviewed by Grant Thornton for the Phase 2 report. My questions earlier were based on the assumption that you



had been, so I'm wrong on that and I'll withdraw any comment that I made suggesting that you had been interviewed by them for Phase 3 –

**MR. E. MARTIN:** Thank you.

**MR. LEARMONTH:** – Phase 2.

**MR. E. MARTIN:** Thank you, Mr. Learmonth.

**MR. LEARMONTH:** Okay.

I want to ask you some questions about the issue of confidentiality and commercial sensitivity. Do you agree that when you make a presentation directly to Cabot – Cabinet, that there's no issue of commercial sensitivity?

**MR. E. MARTIN:** Yes, I do.

**MR. LEARMONTH:** Outright?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Yeah. So you can go to Cabinet with information and there's no way – unless there's an intentional disclosure by government, there's no way that anyone can get at that through ATIPPA or any other means, right?

**MR. E. MARTIN:** That's my understanding.

**MR. LEARMONTH:** Okay. So there's no hesitation to provide government with information based on commercial sensitivity or confidentiality or anything like that?

**MR. E. MARTIN:** I'm just trying to think, Mr. Learmonth. Yeah, you said Cabinet and then you said government.

**MR. LEARMONTH:** Cabinet.

**MR. E. MARTIN:** Cabinet. I agree.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** I agree.

**MR. LEARMONTH:** Yeah. Okay.

Now, on the issue of commercial sensitivity, there was some suggestion in the evidence of Mr. Marshall that there could be an issue of commercial sensitivity as far as it applied to you giving information to the board of directors. There was some discussion of that.

**MR. E. MARTIN:** I can't recall that.

**MR. LEARMONTH:** Okay.

Well, do you believe that there is any issue of commercial sensitivity in management – you and perhaps Mr. Bennett and other people in management – providing commercially sensitive information to the board of directors?

**MR. E. MARTIN:** No, I don't. I would caveat that in the same light as I, as CEO – and just so it doesn't come back for further discussion, you know, as far as bid reviews go, for instance – I would not be involved in that by design.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** So that would be commercially sensitive until shared with me and then I could share with the boards, but as far as – other than that caveat, absolutely not, no.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** No, no, (inaudible).

**MR. LEARMONTH:** But – and you recognize the powers that you have as CEO under the *Energy Corporation Act*, to block the release of any information in an absolute sense, if necessary, if the information under review is considered to be commercially sensitive?

**MR. E. MARTIN:** I understand that. And just to make sure, Mr. Learmonth, if I could test with you, I think you're saying. I understand my responsibilities, but the buck doesn't stop with me. I don't have the final say.

**MR. LEARMONTH:** Okay. Who has the final say?

**MR. E. MARTIN:** My understanding is the Cabinet, the Lieutenant-Governor in Council.

**MR. LEARMONTH:** Okay.

But, in any event, commercially sensitive information is information that is not available to the public. Is that correct? Yes?

**MR. E. MARTIN:** Yeah, I agree with that –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – and maybe others as well.

**MR. LEARMONTH:** Okay.

Now, on the issue of disclosure to the public, of information that you provide government, do you agree that that's a decision for government, not for Nalcor, as to what information government provides to the public?

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** Yeah. So that you can – if you go to the government with information that you think should not be released to the public, just because you go to government doesn't mean that they're going to release it to the public. Is that correct?

**MR. E. MARTIN:** Just because they go – just because I go to the government –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – they could still release it, you mean?

**MR. LEARMONTH:** No, I'm saying that –

**MR. E. MARTIN:** I think (inaudible).

**MR. LEARMONTH:** – you can take information to the government –

**MR. E. MARTIN:** Right.

**MR. LEARMONTH:** – and advise them that in your opinion, it's commercially sensitive, and there's no obligation on government, just because they receive information from you, to disclose it to the public.

**MR. E. MARTIN:** I – (inaudible).

**MR. LEARMONTH:** You don't understand what I'm saying?

**MR. E. MARTIN:** I apologize for this, I'm just – exactly –

**MR. LEARMONTH:** No, no, well, maybe I have –

**MR. E. MARTIN:** – because I was listening around the (inaudible). I thought you were saying – maybe you can correct me to make sure I have it right – that if I give information to the government –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – and say that's commercially sensitive –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – if they decide to release it –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – that's their – that's up to them. Is that what you're saying?

**MR. LEARMONTH:** Yeah, yeah.

**MR. E. MARTIN:** I agree with that.

**MR. LEARMONTH:** Okay. Yeah, and likewise Cabinet, obviously.

**MR. E. MARTIN:** Absolutely.

**MR. LEARMONTH:** So you can share confidential information on cost updates with – well, we'll say Cabinet anyway, with full confidence that they're not required to disclose that information to the public just because you provide it.

**MR. E. MARTIN:** I understand. That's correct.

**MR. LEARMONTH:** That's right. Okay, thank you.

Now, I want to touch on matters related to the AFE revision 1 – to 6.99 in June 2014. First, I wanna ask you about the question of the minutes of the boards of directors. Do you agree that the board minutes would be the best record of communications to the board, the minutes?

**MR. E. MARTIN:** Yes, but what do you mean by best record, Mr. Learmonth?

**MR. LEARMONTH:** Well, the best record. You were asked that question in an interview and I think you said it was.

**MR. E. MARTIN:** Yeah –

**MR. LEARMONTH:** And –

**MR. E. MARTIN:** – yeah, you know.

**MR. LEARMONTH:** Yeah. The question you were asked –

**MR. E. MARTIN:** Just – I’m sorry for the interruption, I just – it seemed to me that there was more to it because it was – I thought it was –

**MR. LEARMONTH:** No, no, no.

**MR. E. MARTIN:** – pretty clear, I thought – so I was waiting for a second part to that question.

**MR. LEARMONTH:** That’s no problem.

But on December 10, 2018, you were asked by Ms. O’Brien: “Now, let’s talk about how you recorded your communication.” And that’s to the board of directors.

Sure. The question is: “So for the board, we know that there are minutes, obviously, of every board meeting kept. And I think it would be – I’m assuming it’s fair to say that ... board minutes would be the best record of communications to the board of directors.”

And you say: “That’s correct.” Yeah.

**MR. E. MARTIN:** Yeah, I agree –

**MR. LEARMONTH:** Do you –

**MR. E. MARTIN:** – obviously.

**MR. LEARMONTH:** – agree with that, do you?

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** Okay.

Now, binder 1, tab 4. I mentioned earlier about the July 2013 presentation, and this is the September 2013 where there’s an adjustment down to a range of 6.7 to 6.95. And do you agree that you’ve – you received this document?

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** Yeah.

And is your answer to – you know, if I was going to say to you: Why didn’t you provide this to government because you didn’t? Would your answer be the same that you gave for the July 2013 report?

**MR. E. MARTIN:** That’s correct.

**MR. LEARMONTH:** Okay.

If we turn to tab 5, Exhibit P-00679, this is a minute of September 27, 2013, board of directors, correct?

**MR. E. MARTIN:** Correct.

**MR. LEARMONTH:** And you were present there, right?

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** Why was there no mention of the \$7-billion figure in the final forecast cost in this document? I’ve gone through it and I can’t see any reference to it. I mean, you’re reporting to the board of directors, you have at least the July 2013 report, maybe not the September report. But why wasn’t this recorded in the minutes if you presented it – or did you present it, this – the July 2013 report?

**MR. E. MARTIN:** I can’t remember specifically but I know that there was, you know, always discussion around the thing such as cost and schedule and direction and what was happening with financing and Emera – the whole nine yards –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – we had discussions around that.

**MR. LEARMONTH:** But once again, would this be a situation where you wouldn't provide figures? You'd just talk about in, you know, more general terms?

**MR. E. MARTIN:** I can't remember for sure, but as we got closer to this with the board, I would be talking numbers more than likely, in some frame. I would not be locking down a number.

**MR. LEARMONTH:** No, but –

**MR. E. MARTIN:** But I can remember talking, you know, through some things that were happening and taking some questions and it wasn't, you know –

**MR. LEARMONTH:** No, but if you –

**MR. E. MARTIN:** – (inaudible).

**MR. LEARMONTH:** – look on your comments on the Lower Churchill on page 6 and 9 – and you can look elsewhere – there's no mention of a final forecast cost of \$7 billion. There's no figures mentioned, they're just general statements, and I wonder why.

**MR. E. MARTIN:** Yeah, well –

**MR. LEARMONTH:** I mean, you've given your reason – I'll just give a little background. You've given your reason for not providing the July 2013 report to government, and we understand your reason, you've stated that clearly. But now we're talking about the board of directors. Why wouldn't you ensure that they received that July 2013 forecast final cost?

**MR. E. MARTIN:** I wouldn't necessarily give them the presentations and such, because that's still a working document in the day-to-day operations of the company. We would be in a much more rolled-up level at the board. But by this stage, you know, we would be talking about ranges of numbers, impacts and having those discussions.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** I wouldn't be giving a solid number or a presentation on it at this point. I'd

be directionally saying: Here's some stuff that's happening.

**MR. LEARMONTH:** But this is a – this is your board of directors. Now, why wouldn't you give them all the information you had?

**MR. E. MARTIN:** You know, once again, it is a board of directors, and what we're trying to, you know, do is keep them informed and bring them a number or numbers or range of things, the combination of the things I talked about before, again, in a perspective that we had vetted it, you know, we had put the resources and team to it. We'd let them know the processes that were happening.

But the board – in this particular case – and other boards have been involved in it, it's not structured to, you know, dive into the day-to-day operations and all the – you know, the information that is required to roll up here. So we would be discussing it at a rolled-up level, frankly.

**MR. LEARMONTH:** No, but the board of directors, I'd suggest, would expect to receive estimates, and if you have – the same thing I said before, if you don't think that these – this July 2014 forecast final cost was something that was final – and you've said that – you can just explain that in one sentence.

And I just – maybe I'm a little bit bewildered by this, and maybe I'm not the only one, but I just don't understand why you wouldn't give the document to the board of directors and explain it and keep them up to date every time you get a different forecast final cost, 'cause there's no record that you ever did that.

**MR. E. MARTIN:** We certainly had discussions. We talked about numbers, kept them up to date. But the idea of providing, you know, some form of document that is under review, changing constantly, bringing that into a board of directors, once again, laying it on the table and come back with another set of numbers again very soon, and another set of numbers again, my experience would be fairly rapidly, you know, the feedback would be: Will you get your ducks in row and don't – you know, and get it to us when you have it sussed out? You

know, that is the – that would be more of the reaction to – in terms of what's happening.

So, directionally, we would let them know what we're doing, where things are headed, some ranges. But to come in with documents to say here's where we are and continually change them, that wasn't the mode we were in at all. And it wasn't something that I would understand the board would appreciate.

**MR. LEARMONTH:** Yeah.

Well, you know, you're talking about the July reported reflected a huge, substantial increase. We're still before sanction. The province has a chance, if it wants to, to reassess this project, maybe get a quantitative risk assessment. And you're telling me that you would not share the numbers with the board of directors. Is that what you're saying?

**MR. E. MARTIN:** No, I think I – again, I say we were sharing some numbers and ranges with the board.

**MR. LEARMONTH:** But –

**MR. E. MARTIN:** So it wasn't like we're – it wasn't like we're in a void here. I was not sharing that specific framework. I'll go back to the point again is that when you get – you know, at the end of the day at this particular period it became – in the 6.5 to 6.6 range, you know, that would be an indication that we continue to work until we had that.

In the same light, we were keeping them involved and informed of the financing progress, giving them some idea of what was happening in the market, but we certainly didn't have a number for that, that we were prepared to share. And with the Emera arrangements – which were also taking up, you know, a significant amount of time for obvious reasons – kept them totally informed on that and indicated to them, you know, we couldn't get price references yet, we hadn't landed necessarily on this, or we had landed on this, maybe and if we get that it could be in this range. We'd be talking those things to them –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – but as far as coming forward to say: Here's where we are and here's the number and here's the package and here's what the overall, you know, framework is. You know, we wanted to get that as well into a decision package.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And that's –

**MR. LEARMONTH:** But it's not what –

**MR. E. MARTIN:** For me, in my experience in dealing with executive committees and boards over the year – over the years – and I'll use the Hibernia example for one, with respect to at the time we had an issue with the GBS which is, you know, the cement structure that the topsides rest on. It's probably about a \$2.5-billion structure, \$3 billion in today's dollars.

I was business manager; I was tasked with bringing cost information on an overrun perspective to the executive committee, which was comprised of people from all over the world of the major companies that owned it. And I can assure you that there was a same type of arrangement there that we needed to get our information at a point. At that level, people are expecting to have information that they can understand, that they know you vetted and you're prepared to stand by it for some reasonable decision-making.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** But that didn't mean we weren't advising these people all the way through either, about this was happening, we had a problem, this contract was changed out, we had to stress there. All that stuff was happening but it just come up and – what's the term I can use to – you know, when you're in a role like we were in, and I was in, when I give a number, you know, I'm held to that number. And, you know, I've learned over the years that you can – people can say just give me a number and, you know, I'll live with it. The ability for me to say a number and people to say that's what it's going to be – and when it changes, it's painful.

You know, you learn through long experience that get it as fast as you can, but have something

because when you utter that number – quotation marks – not the ranges and stuff, when I say this is where we are, then you're in a very difficult – very difficult – situation after that when you say: By the way, forget that, I think it should've been this.

That's not a good place to be. That's not what is expected of you. And when you do something like that – if you do it once, you know, you learn your lesson. You do it two or three times, you know you got a problem, right?

**MR. LEARMONTH:** Well, you know, you talk about solid numbers. I mean, are you suggesting that AFE revision 1 at 6.99 was a solid number?

**MR. E. MARTIN:** Yes, I am. And so let's, once again – you know, I hear you ask it in that frame. Often what happens is: What's the definition of solid? So it sounds to me, in the way you're coming at that – but, once again, not putting words in your mouth – you might have one definition of solid, I might have another. Maybe we should flesh that out a little bit. And, again, I would use the same parameters as I used, you know, in discussing some of the other numbers.

You know, they would have to be stressed, verified, reliable, something that you could put some reasonable certainty around. And things that had, you know, not yet happened, were in the future and no one could really nail down what can exactly happen, would be something that would not be in there.

You know, speculative numbers that a project team, you know, might say: You know, we'd like to have this kind of cover because, you know, things could happen that we're not sure of, and even though you didn't give us some cash for that in the outset in the AFE, we'd like to have it now because, you know, things are tense. And I'd say: Well, you know, that would not go in there as far as the definition goes.

So, once again, maybe a bit too long winded, but you see what I'm saying. When we say solid, I think we need to come to some understanding about what we're talking about, and then if we disagree, we disagree.

**MR. LEARMONTH:** Well, we'll – you know, you used the term, I think. Tell me what you think was meant by solid number or reliable –

**MR. E. MARTIN:** Yeah.

**MR. LEARMONTH:** – number.

**MR. E. MARTIN:** And, Mr. – and that's what I just tried to define.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** What I said.

**MR. LEARMONTH:** Are you saying AFE revision 1 and AFE revision 2 were solid and reliable numbers?

**MR. E. MARTIN:** Yes, I am, in the context of what I described –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – with one exception. You asked about 7.65. And in that 7.65 number, Commissioner, in that presentation we made to the premier and the minister, we did indicate that Astaldi impacts that we were anticipating from a schedule and associated cost perspective were not in that number. That was in the deck.

**MR. LEARMONTH:** Well, why weren't they?

**MR. E. MARTIN:** Well, because we didn't know them.

**MR. LEARMONTH:** Well – but you did know that there was a problem and you did know there was a schedule delay and you could have made a reasonable estimate, but you didn't. And it was for that reason that Grant Thornton – excuse me, EY – said that the 7.65 AFE number was not reasonable. That was their view on it. Do you differ with that point of view?

**MR. E. MARTIN:** Yes, I do.

**MR. LEARMONTH:** You do. Okay.

**MR. E. MARTIN:** Yes, I do. And, once again, it's difficult because, you know, the definition of term – so, maybe I'll just talk about it a little bit to try to clarify what I mean.

So by – what I think is reasonable is that we knew we had cost impacts that we could quantify and do the things that I, sort of, defined as solid a moment ago, Commissioner, that kind of thing. That was 7.65. Then we were at a situation where we knew, yes, that there was issues with Astaldi, but we didn't know what the magnitude of those issues were. And, once again, that falls in the definition of not being included in what I call solid because I didn't know.

And, once again, you start laying numbers out there without the – it just doesn't work. So the way we handled it in that particular case was to be clear to the elected officials that that was not in there. And they asked tremendous questions, obviously, about what could it be and where could it go? And, frankly, I just had to talk them through that: Here's what we know – in that particular instance – but I can't give you a number. I just can't do it.

And that's why I think it was reasonable – it was a reasonable approach to how we would do it so that the government would be informed. But we just – I just can't – we just couldn't come up with the numbers. It's just not there because we didn't know where it was going to end up.

**MR. LEARMONTH:** Well, you could have come up with a number to account for the schedule delay because you knew very well that there was an extensive schedule delay at that time. You could have come up –

**MR. E. MARTIN:** And – yeah, and to be fair –

**MR. LEARMONTH:** Isn't that true?

**MR. E. MARTIN:** I take your point.

**MR. LEARMONTH:** You didn't know the amount of the settlement, but you did know that because of the problems that there was a big delay in schedule and you could have quantified that and included it in the 7.6 – added it on to the 7.65. And I think that's one of the points that EY made and I'll show you documents later to substantiate that.

**MR. E. MARTIN:** So halfway along that sentence I was agreeing with you, Mr. Learmonth, about, you know, you could provide

a schedule (inaudible) you might give some range and we did that. When asked that kind of question we said, well, if this happens, you know, you're talking maybe about this much per month and those types of discussions –

**MR. LEARMONTH:** But there was no money in it for that.

**MR. E. MARTIN:** Pardon me?

**MR. LEARMONTH:** I'm talking about –

**MR. E. MARTIN:** No, no, that's why I'm – but then I think you went on to say it should have been included in the 7.65 – I don't believe that.

**MR. LEARMONTH:** It should have been added on to –

**MR. E. MARTIN:** No.

**MR. LEARMONTH:** – the 7.65

**MR. E. MARTIN:** No, absolutely not.

**MR. LEARMONTH:** Well, if it's supposed to be a –

**MR. E. MARTIN:** In my – sorry, in my estimation –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – absolutely not.

So I just wanted to clarify that. That we were – and back to reasonable; my definition of reasonable is that for the things that we knew and were solid – quotation marks – we put down. And for things that were definitely not solid, but we knew in this particular case there was going to be an impact, we informed the government clearly about that. And we discussed the ranges on schedule to the extent we could, but that's about it.

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** And I think it's reasonable because we were – you know, we were telling them as much as we knew at the time.

**MR. LEARMONTH:** You told them after September 25, 2015, not before.

**MR. E. MARTIN:** No, I told – at – you know, in that presentation we told them.

**MR. LEARMONTH:** When? What date?

**MR. E. MARTIN:** Whatever the presentation date is.

**MR. LEARMONTH:** Yeah.

So, anyway, you're –

**MR. E. MARTIN:** But it's in the presentation.

**MR. LEARMONTH:** Yeah. But, so anyway, you're saying that –

**MR. E. MARTIN:** But –

**MR. LEARMONTH:** – even though you knew –

**MR. E. MARTIN:** Sorry to interrupt you, Mr. –

**MR. LEARMONTH:** – that there was a schedule delay –

**MR. E. MARTIN:** – but –

**MR. LEARMONTH:** I know. I heard you.

**MR. E. MARTIN:** – are you –

**MR. LEARMONTH:** Yeah, we'll come to that.

**MR. E. MARTIN:** Oh, I see. I thought you may have been disagreeing with that.

**MR. LEARMONTH:** No, no.

**MR. E. MARTIN:** Okay, I'm sorry.

**MR. LEARMONTH:** No, we'll come to that. But I'm saying that you could have done a risk analysis to determine the amount that should have been added to the 7.65 to account for the delay in schedule that you knew was there. You could have done that, couldn't you?

**MR. E. MARTIN:** I don't believe so.

**MR. LEARMONTH:** You don't.

**MR. E. MARTIN:** No, I don't, and – but, once again –

**MR. LEARMONTH:** Well, why don't you believe it?

**MR. E. MARTIN:** Okay, I'll answer that question. I mean the value of a risk assessment at that point – if you go through the process of a risk assessment, the Astaldi piece would be the critical piece of that.

**MR. LEARMONTH:** Mmm.

**MR. E. MARTIN:** And with a risk assessment you set up, you know, your cost line items and your schedule line items and you range them.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** And, you know, effectively at that point there were so many unknowns with respect to Astaldi that the ranging would be, you know, would – to me, would not be that useful. We would have needed to, you know, pursue it much further to understand what the implications were at that point and in my estimation. And the advice I received from the team is that, you know, a QAR [sp. QRA] is not going to help us at this stage.

**MR. LEARMONTH:** Yeah.

Well, you know, Grant – or EY were critical of the fact that QRAs were not done on a more regular basis, that – they pointed out that and Mr. Kennedy, who testified, said that there was one done before DG3, and for three years there was no quantitative risk assessment. And he thought that especially when there are obviously problems that were appearing, that he would have thought a good practice would be to get one done every six months. Do you know that Mr. Kennedy said that? Did you –?

**MR. E. MARTIN:** I didn't know the details, but knew they had comments on the QRA –

**MR. LEARMONTH:** They have six months.

**MR. E. MARTIN:** – and, you know, that's their opinion.



**MR. LEARMONTH:** You don't agree with that?

**MR. E. MARTIN:** No.

**MR. LEARMONTH:** So you don't agree that they should be done on a regular basis?

**MR. E. MARTIN:** Well, now you're down to regular, not six months.

**MR. LEARMONTH:** No, I said six months –

**MR. E. MARTIN:** Yeah.

**MR. LEARMONTH:** – no, six months –

**MR. E. MARTIN:** No, no.

**MR. LEARMONTH:** – he said it would be a good practice –

**MR. E. MARTIN:** No, six months.

**MR. LEARMONTH:** – especially when there are problems.

**MR. E. MARTIN:** I don't believe that and project team advised me that that wouldn't be a good idea and that's where I am.

**MR. LEARMONTH:** Yeah.

You know Mr. Kennedy is an experienced project manager, I mean, I don't think you can just dismiss his advice like that.

**MR. E. MARTIN:** Well, in EY's – I don't know, I – you know, with EY, I – you know, they came in, it was rather disappointing, frankly, you know, I thought we may have gotten some help from them. They did a – and essentially interviewed our people; they cut and paste from our documents; put a report together and put it in a format that made it sound like it was all revelations coming from them, and had a negative tone to it. I didn't think that was highly valuable.

**MR. LEARMONTH:** Well, the government thought it was valuable.

**MR. E. MARTIN:** That's – grand, no problem.

**MR. LEARMONTH:** That's who retained them, Ms. –

**MR. E. MARTIN:** I'm just giving you my opinion.

**MR. LEARMONTH:** – Ms. Mullaley and Mr. Martin felt that their services were – or there work was well done.

**MR. E. MARTIN:** So that's –

**MR. LEARMONTH:** You disagree with that?

**MR. E. MARTIN:** – that's their perspective if they said that. So, you know, nothing I can say about that, I'm just giving you –

**MR. LEARMONTH:** Yeah, you can give your point of view.

**MR. E. MARTIN:** – and that's what happened. I was disappointed because I was looking – I mean, once you make – once I expressed my concerns around EY – not EY themselves but around the program – and once I got into, you know, those discussions and went a certain way, at that point I was trying to assess some value out of it, frankly. And I'm just saying I didn't see the value out of it, I saw them interview – I mean, they came in for a short period of time; they had to use all of our information, our interviews, our people; cut and pasted documents. Anything I read in that report with respect with that was nothing new from my perspective, So I'm just saying I didn't take any value out of it and –

**MR. LEARMONTH:** So your –

**MR. E. MARTIN:** – my perspective.

**MR. LEARMONTH:** – evidence is that you didn't place any value or weight –

**MR. E. MARTIN:** On the output.

**MR. LEARMONTH:** – on the EY report.

**MR. E. MARTIN:** No.

**MR. LEARMONTH:** Or either of them. Is that right?

**MR. E. MARTIN:** Pardon me? When I say “value” now, I’m saying is that –

**MR. LEARMONTH:** Are you talking – which report are you talking about?

**MR. E. MARTIN:** – I’m talking about –

**MR. LEARMONTH:** April 2016? That was just before you were relieved. April 2016, they provided what they called an interim report and that was their assessment of cost and schedule. It’s been referred to as “deep dive” or whatever, but that was the major report. Is that the one you’re saying that –

**MR. E. MARTIN:** Yeah, I’m –

**MR. LEARMONTH:** – you place no value on it.

**MR. E. MARTIN:** – I’m referring to both but more so the second one.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And don’t get me wrong, the information that was in those reports was useful. My point is that that was information that they got from Nalcor and was the same information that we had and had been providing. So, from that perspective, there’s no added value to what I saw in that report.

**MR. LEARMONTH:** Okay. Well, it wasn’t information that the government had. It may have been information that Nalcor had, but it hadn’t been communicated to government.

**MR. E. MARTIN:** Well, we’re – you know, and that’s – they were probably gonna – you know, we’re probably at a stage maybe we need – no, I don’t think you want to do that, get the report out and go through, you know, the parts that were shared with government and not – but I know that – and a lot of the information with respect to Astaldi and other things in particular, you know, I remember sharing. So, I’m just –

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** – giving you my view, Mr. Learmonth, about that.

**MR. LEARMONTH:** Yeah. That’s fine. Okay. We know what you think of EY’s April 8 –

**MR. E. MARTIN:** Once again, the content –

**MR. LEARMONTH:** – 2016 report.

**MR. E. MARTIN:** – was fine, because we knew the content. I’m just talking about added value –

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** – you know, is what I’m – is what I was seeking.

**MR. LEARMONTH:** Okay. Well, we’ll talk about that later.

Now, tab – binder 1, tab 6, Exhibit P-03542. Now, this is an email that you sent to Charles Bown, Gilbert Bennett and Dawn Dalley on October 27, 2013.

You’re saying: “In response to the following questions;

“... Overall, are the bids that Nalcor is receiving in line with its expectations?

“... Is the project on budget?”

Now, when I read through that, you know, I – it – I’m gonna suggest to you that this is a very unclear, obtuse description or answers to the questions that you provided. Like, why don’t you just come right out and be more direct when you’re preparing a response to a government request?

**MR. E. MARTIN:** I –

**MR. LEARMONTH:** Now, read through it: “The value of the Muskrat Falls and Maritime Link project is a combination of costs and overall revenue to the province. Costs are primarily comprised of capital, operating and financing costs.”

**MR. E. MARTIN:** Yeah, but – Mr. Learmonth, it may be effective, may not be.

**MR. LEARMONTH:** Do what?

**MR. E. MARTIN:** I just – can I offer a suggestion? Is it possible?

**MR. LEARMONTH:** Sure, you can.

**MR. E. MARTIN:** If you're reading after that first sentence, for instance, if I could just speak about that for a second and put it in context, which, you know, I believe some of these people understood.

But, that is a common way I would describe the fact that this is a cost to the ratepayer decision. So, not only is capital cost involved but also operating and financing costs. And operating would have included the revenue from excess sales and those types of things.

So, I just want to make that point, you see, when you say – it sounds obtuse –

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** – I was just – for what it's worth, if you're in the context of being asked the question of where is the cost of this project, and my view is, and was, the cost of the project is the total cost of the ratepayer. Well, that sentence might make a little more sense to someone reading it.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And be less obtuse.

**MR. LEARMONTH:** No, but the questions are: Overall, are the bids that Nalcor is receiving in line with its expectations? Pretty simple, straightforward question. Next: Is the project on budget?

**MR. E. MARTIN:** I was –

**MR. LEARMONTH:** I mean –

**MR. E. MARTIN:** – I was referring to: Is the project on budget.

**MR. LEARMONTH:** Yeah. And then you talk about the value.

**MR. E. MARTIN:** Now –

**MR. LEARMONTH:** You weren't asked to provide a comment on value?

**MR. E. MARTIN:** No, but I was – cost, cost of the ratepayer, on that – you know, once again, we're not – we're – now we're talking about past CPW, past the comparison, now I am into Muskrat Falls. Muskrat Falls – the cost of Muskrat Falls is born by the ratepayer.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And the ratepayer pays –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – capital, financing, operating costs, plus a myriad of other things. That's the point I was making.

**MR. LEARMONTH:** Yeah. But is there any reference to ratepayers or any of those matters in –

**MR. E. MARTIN:** Well –

**MR. LEARMONTH:** – these two questions?

**MR. E. MARTIN:** – I believe when you say on budget, I believe that's in the context of the ratepayer 'cause that – 'cause cost is a function of the ratepayer.

**MR. LEARMONTH:** Well, there's no reference to ratepayers in these two questions.

**MR. E. MARTIN:** But that's – you know, what I'm telling you, if they would've – I believe that they would understand what I was talking about because that's the way I've looked at it before. But in any event, I did make the clear distinction that it's a combination of cost and overall revenue of the province. Costs are primarily comprised of capital, operating and financing.

**MR. LEARMONTH:** And then in the third line you say: "Overall at this point, we are generally on budget collectively." And this is October 27, 2013. You've got the July and September, forecast final cost would suggest a big increase. How can you say that you're on budget collectively at that point?

**MR. E. MARTIN:** Well, now we're into the cost of the ratepayers.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** So capital costs are coming up and financing costs are coming down.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And that, in fact, is –

**MR. LEARMONTH:** But that – but you're not answering the question that was posed to you on these two – question “11. Overall, are the bids that Nalcor is receiving in line with its expectations?” And: “Is the project on budget?”

Is the project on budget? Why don't – can you – yes or no and explain the variances.

**MR. E. MARTIN:** Again, Mr. Learmonth, I'm not communicating, I guess. Let me just think. It – cost – I've already said this so if I repeat myself, I'm afraid people are gonna, you know, get a little, you know, frustrated, Mr. Learmonth. But I'm just saying is that –

**MR. LEARMONTH:** You're not frustrating me. I mean, go ahead –

**MR. E. MARTIN:** Oh, okay, that's what I was –

**MR. LEARMONTH:** – I want to get your answer. No, you're not frustrating me at all.

**MR. E. MARTIN:** – that's what I was concerned about.

**MR. LEARMONTH:** No, no, not at all.

**MR. E. MARTIN:** But from a cost perspective, as I've explained, it's a cost to the ratepayer. And as far as cost to the ratepayer goes on Muskrat Falls, with respect to where we are at this particular point, we're generally where we said we would be.

**MR. LEARMONTH:** Notwithstanding the July 2013 –

**MR. E. MARTIN:** That's the capital portion.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** We know that's going up, the 6.5. We get the financing portion on the other side. It's coming together now, it's coming down as the financing cost can be quite favourable and that's – I guess that's – once again, there's the point: “Financing costs continue to be quite favorable in this historically low interest rate period, however it is also obvious there are selective ... pressures particularly on work performed in NL.” So I'm beginning to talk about the fact that financing costs are coming down; capital cost, the pressure's up. There you go.

**MR. LEARMONTH:** Yeah, but anyway.

**MR. E. MARTIN:** As far as this goes.

**MR. LEARMONTH:** I know, I just want to make sure I get your answer. But the next page 2 of this document, Exhibit P-03542: “From a revenue perspective, budgeted revenue is conservative, and we continue to see upside potential as external markets are tending to improve. Overall net value to the province is currently trending positive, but frankly, it is early days, cost and revenue projections will continue to change. That being said, the overall value of this project is clearly very favorable to the Province, and will continue to be ... over the long” run.

So, does that – what question does that answer? Which of these two questions does that answer?

**MR. E. MARTIN:** It answers – it is an addendum to the budget question.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** And we're talking about – again, the first sentence – you know, revenue is a key element of what's happening. And from a revenue perspective, as I mentioned, the Emera agreements were coming together and the value from excess sales was improving. And, although not directly in a cost to the ratepayer at that point, that was one of the pots of cash that was used to hold in reserve, from a management reserve perspective, to potentially offset some risk issues.

**MR. LEARMONTH:** Well, there was no manage reserve, right?

**MR. E. MARTIN:** No, I just – well, I disagree with that entirely –.

**MR. LEARMONTH:** Well, that was the blank check –

**MR. E. MARTIN:** – as I described this one.

**MR. LEARMONTH:** – from the government?

**MR. E. MARTIN:** Pardon me?

**MR. LEARMONTH:** That was the blank check from government? That's what you call the –

**MR. E. MARTIN:** No.

**MR. LEARMONTH:** – management reserve?

**MR. E. MARTIN:** No. So I'm – I guess I'm compelled to go through it again. Is that all right?

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** Okay. So, we talked about the project team. We did the baseline budget, we did a P50 and we did a risk analysis, picked P50 at the risk level to give the project management team. And at that point, we knew that there are – unexpected things could happen, things that you would needed to be able to fund and cover if it did happen. And in our discussions with the board and government, we indicated that our pots of available cash to do that is approximately – in nominal dollars, approximately \$3 billion in excess sales, approximately \$22 billion in return on equity and I think there's a \$3-million water rental perspective. And there was one other category that escapes my attention right now.

But these are things the ratepayer is paying for and paying it through – either through to themselves or to the province that could be used to go back into reducing rates and costs. And the excess sales weren't included but they could be available.

So there's a pot of between \$25 billion and \$30 billion nominal that was available, and that was described as making them understand: If you

had to fund something that was not in the original budget, that's what it is. Did I call it a management reserve? No, but that's the way I spoke to the folks. So I put it in plain terms and made sure they understood that's exactly what it was.

So, yes, there is an allowance for that. There is a management reserve and it's substantial.

**MR. LEARMONTH:** So the management reserve is not an amount set aside, it's a combination of a whole lot – whole bucket of different considerations. Is that it?

**MR. E. MARTIN:** It's a pot, it's a consideration I mentioned, which add up to a very clear number, not difficult to see and feel, and documented, totally documented that could be pointed to. And as far as taking that, it's not the norm to take money and put it in a bank account for management reserve; I mean you just don't do that. What you do is you make – 'cause if you did that, if you took a pot of money and you put it aside –

**MR. LEARMONTH:** No, I'm saying you put it in a budget.

**MR. E. MARTIN:** Like, you said you were putting it in this – that's not what I understood. You said put it aside.

**MR. LEARMONTH:** Okay. Well, if I did say that, I'll take that back.

**MR. E. MARTIN:** Okay. Well, that – okay, I understand that.

**MR. LEARMONTH:** And I'll say you put it in the budget.

**MR. E. MARTIN:** So my point was – is that – the key point is that you need to be able to fund it –

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** – and make sure you can continually fund. You don't put it in the bank account; you have to be able to fund it. And that's every – everywhere is like that.

So I had pointed out clearly the ability to fund that and that's all you need to know. And that yielded some of the conversations around – you know, you shouldn't be putting excess sales in. My advice was: Don't commit those types of things right now because that retains your ability to fund on that particular case.

**MR. LEARMONTH:** All right. So –

**MR. E. MARTIN:** So, yes, I – that's why I believe there is, clearly, a management reserve.

**MR. LEARMONTH:** Okay. That's your evidence.

The next document I want to turn to is tab 7, binder 1, Exhibit P-02520. Now, this is an email from Auburn Warren to you. And you can see – so attached to this is a minister request, October 2013 update. And if you turn to page 2 of Exhibit P-02520?

**MR. E. MARTIN:** Yes, I have it. I have it.

**MR. LEARMONTH:** Do you see the figures, the DG3 number 6.202, right? In the right column.

**MR. E. MARTIN:** Yes, I do.

**MR. LEARMONTH:** Okay. So, you know that this information is going to the minister, it's Minister Marshall. Correct?

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** Okay. And on November 1, 2013, you knew that the minister was being advised that the – you know, the cost estimate had not changed. Is that right?

**MR. E. MARTIN:** I'm not exactly sure of the timing, Mr. Learmonth, but that's likely.

**MR. LEARMONTH:** That's –

**MR. E. MARTIN:** That's likely, though, because –

**MR. LEARMONTH:** The email –

**MR. E. MARTIN:** – (inaudible) another –

**MR. LEARMONTH:** – the email's November 1.

**MR. E. MARTIN:** Pardon me.

**MR. LEARMONTH:** The email's November 1, 2013.

**MR. E. MARTIN:** Right.

**MR. LEARMONTH:** So at that time, you were prepared to let a document leave Nalcor, which didn't provide any clarification on the FFCs that you had received. You're telling the minister it's still 6.202.

**MR. E. MARTIN:** I was. And the reason was, there was a – I looked at this there a while ago. The request, I think, had – the request that came in had five requests, I think it was.

**MR. LEARMONTH:** Yeah, we – if anything, we will assist you with – for you –

**MR. E. MARTIN:** Yea, and I think that –

**MR. LEARMONTH:** – just turn to that –

**MR. E. MARTIN:** – I think the fifth one –

**MR. LEARMONTH:** – yeah, let's just turn to that (inaudible).

**MR. E. MARTIN:** Yeah, sure. Okay.

**MR. LEARMONTH:** Okay. Binder 3, tab 62, P-02024, I think that's the five questions you are referring to, Mr. Martin.

**MR. E. MARTIN:** I think so, yeah. I have to look it up here now.

**MR. LEARMONTH:** Is that what you are referring to?

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** Okay. So, it's five questions.

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** A breakdown of budget questions. Minister Marshall has asked to be

provided with the following financial information: a breakdown of budgeted project costs by component showing total project costs along with the portion which is the responsibility of Nalcor / NL; for the portion of each that is our responsibility, the details of the funding split between debt and equity; for the equity requirement, the split between what is already in and what is still required; for the anticipated future equity requirement, the expected timing of the requirement broken down by government fiscal year; and the most recent update on expected total project costs by component vs. budget, if available. If not available, a reason why might be helpful along with an indication of when it might be available.

So, Mr. Marshall is asking for an update covering those points. Correct?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** And do you think that it was transparent and honest to provide him with a restatement of the DG3 numbers, when you had information in your possession which called into question the reliability of the DG3 numbers?

**MR. E. MARTIN:** I do, and –

**MR. LEARMONTH:** Okay, well, please explain how.

**MR. E. MARTIN:** I will.

Things were happening, you know, very quickly there around that time. We were solidifying the package I mentioned, you know, the 6.5. At the time, I don't – I'm not – I can't remember exactly the sequence around that time about where we were in exact numbers. And we also were working the other numbers, as I mentioned, the excess sales, potentially, higher at that point, and the financing piece.

**MR. LEARMONTH:** But there's no reference –

**MR. E. MARTIN:** And –

**MR. LEARMONTH:** – to that in those questions.

**MR. E. MARTIN:** I'm – so, do you want me to answer that question first, or go back to the other one?

**MR. LEARMONTH:** Okay, go on – go ahead.

**MR. E. MARTIN:** Okay. Thank you.

So – and then, when I looked at this, you know, the way I read it was it looked – we're not going to – we're going to hold this thing up for quite a while, and the – and I believe that the minister – right or wrong, you know, he was most interested in getting a flavour of the breakdown of the financing.

And from six to whatever we were coming up with, I didn't think it would be that different to hold it up for another – whatever it was going to take to get this package together. And me not having the final numbers or anything, I thought that we'll get – you know, I thought he was asking for a break in a budgeted project cost, which were the 6.2 at that time. And then I read the fifth one as a – you've got to – you've got an update in cost, we need to know.

So, I was comfortable to say: Well, get on the six point – you know, if you're going to give them six point – that's what we got. Blow it over there. Get the information moving, and, you know, as soon as we get the update, you know, it'll be out there.

**MR. LEARMONTH:** Well, did you ever communicate the update to Mr. Marshall – Minister Marshall?

**MR. E. MARTIN:** I don't know if I did or not. I know I communicated it to Premier Dunderdale and – for sure. A lot of the times with Minister Marshall – not Minister Marshall – on the Finance side of things, I didn't deal with the Finance minister a tremendous amount at all. That's just the way things evolved. It wasn't, you know – Derrick and his team generally handled that side of things, and I had limited interaction with the Finance minister over all of the years on any of the things I did.

So, it wasn't a constant interaction at all. As a matter of fact, it was very sporadic. I think I met with – over the course of when Mr. Marshall came in and started the – I think I met with him

two or three times, which was probably more than I met with any of the Finance ministers since I was there.

**MR. LEARMONTH:** Well, but –

**MR. E. MARTIN:** Other than Ms. Bennett.

**MR. LEARMONTH:** Okay. Are you finished?

**MR. E. MARTIN:** Yes, I am.

**MR. LEARMONTH:** Okay.

Now, knowing that Mr. Marshall was going to receive this information on the 6.2 on November the 1st, and knowing that there was going to be a revised budget for financial close, why wouldn't you ensure that you informed Mr. Marshall of this increase? Because his evidence is that he knew nothing about the 6.5 at the time of financial close.

Why wouldn't you realize the importance, as I suggest it was, to say: I'm giving the minister of Finance an update on November the 1st? I know that there's a cost update which is imminent – and I think it was, you know, agreed to on November 6 or something like that. Why wouldn't you ensure that Minister Marshall, who had asked for this information, be provided with it directly?

**MR. E. MARTIN:** I would think – thinking back on it, it would be – as I said, I wanted to get the information over; we hadn't finalized the number to the final degree, and I would have spoke to the premier first, you know, before just blowing the number out – not blowing the number out there – you know, putting the number out there. So, I – you know, that's what would've happened. I would've said get the information over, because in my mind, don't hold it up, get it over based on the budgeted project cost. I believe that's what he wanted to see.

I would not have spoke to the premier by this point and I would not, you know, get – put numbers out and have something filter up to the premier without her knowing. I just wouldn't do that.

**MR. LEARMONTH:** No, but if you knew that an increase was – in the cost estimate was imminent, and it was, why wouldn't you ensure that when you communicated this – when this – that this – when this information was communicated to Mr. Marshall, that he was aware – here's the number, but we'll get back to you within a week because there's gonna be an increase. Why wouldn't you provide that –?

**MR. E. MARTIN:** That's a good point. You know, I can't remember. I know it was all happening very rapidly. I know the numbers were starting to get put together. I expected it would be out in the next, you know, week or two.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** And, I think, once again, my view at the time was to get him the numbers on the financing, and I think that I just believed the numbers were coming out, you know, really, really, really soon to get the thing moving.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** That's probably – I'm not exactly sure, Mr. Learmonth, but that's probably it.

**MR. LEARMONTH:** Yeah, but that doesn't address the point that I'm trying to get your comment on, which is, okay, you know you wanted to get that number out to him right away. Why didn't you either wait until you had the cost update and then supply the information to him or, alternatively, supply the 6.202 information to him with a note that there would be an increase coming before financial close?

**MR. E. MARTIN:** On the latter, I think I've explained that I just – the minister of Finance called. We wanted – you know, he was looking for some breakdown of the project cost by – et cetera. I wanted to keep information flowing. That was a – that would be a huge portion of what he was looking for.

In terms of understanding the implications, the change to, you know, to the 6.5 would not seriously impact those numbers. So at least there would be, you know, data in his hands that we weren't holding up.



And then on the second one, you know, I was preparing the information to update, you know, the premier and others, and I wanted to get to that.

**MR. LEARMONTH:** Yeah, but that doesn't really answer the question, I don't think. Why then –

**MR. E. MARTIN:** I'm sorry. I thought I did.

**MR. LEARMONTH:** Why didn't you – if you thought it was important to get this 6.2 out to Minister Marshall on November 1, and if you decided you wanted to get it out, you know, without further delay, why didn't you make sure that Marshall – Minister Marshall, was aware that, look, within a week we're going to have a new figure and we'll get it to you.

**MR. E. MARTIN:** I likely would've wanted to communicate that to the premier first.

**MR. LEARMONTH:** Okay. But never mind, you –

**MR. E. MARTIN:** But that's why.

**MR. LEARMONTH:** But you were requested by Minister Marshall. This request came from Minister Marshall, the minister of Finance. Why couldn't you have communicated that information to him?

**MR. E. MARTIN:** Yeah, well, I think we did shortly thereafter. I think it was communicated, you know, to – throughout the organization after that. And, my understanding, it would've been handled.

**MR. LEARMONTH:** Well, Minister Marshall never got the information.

**MR. E. MARTIN:** I can't explain that.

**MR. LEARMONTH:** No.

And Minister Davis never got the information, and Minister Dalley never got the information, and Julia Mullaley never got the information, and it was never presented to Cabinet. Do you – are you aware of that?

**MR. E. MARTIN:** I'm aware that they've said that. That's what they say. I know that I presented the data to the premier, and I was clear on the 300-plus – minus 300, 100. I can –

**MR. LEARMONTH:** But –

**MR. E. MARTIN:** – clearly remember discussing that page.

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** He was in a meeting. There were other people there. I can't remember when the meeting was or who was there, but I clearly communicated it. And –

**MR. LEARMONTH:** So you communicated this to Premier Dunderdale at a meeting?

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** Where was the meeting?

**MR. E. MARTIN:** I don't know exactly, but normally it would be in the boardroom at Confederation Building.

**MR. LEARMONTH:** Yeah. Yeah.

And there were other people there?

**MR. E. MARTIN:** Yeah, there always was.

**MR. LEARMONTH:** Yeah.

So you're saying – your evidence is that you met with Premier Dunderdale, you communicated the \$300-and-some-odd million increase, and that there were other officials present at the meeting when you communicated this information to her?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** But you can't tell me who the other people were.

**MR. E. MARTIN:** No, I can't. You know, the meetings – and I wouldn't see that as unusual. The meetings were – you know –

**MR. LEARMONTH:** No –

**MR. E. MARTIN:** – at this time, there was many things happening.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** We were meeting – you know, we would be meeting – you name it – on the Emera situation. Obviously, there was a lot of pressure coming to bear here. I mean – and that’s part of the job, that’s part of the role. I’m not saying that’s good or bad. But, obviously, this was a huge pressure-filled time.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** It was all coming together. Meetings were happening frequently.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** You know, people were going everywhere. You know, we had joint groups going. From my perspective – and, Commissioner, Muskrat Falls was the number-one priority, but, you know, there was a lot of other things happening as well that we were meeting on in some of the other divisions, also with the province. And it was a constant arrangement – high pressure.

So, I really can’t remember a specific meeting. I don’t know if it was a meeting just to discuss this. I don’t know, you know, exactly where it was, but they were almost always at the premier’s office. I always went to the premier’s office. Like they –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – you know, for – obviously, the premier never came to –

**MR. LEARMONTH:** So you remember this meeting, but you don’t –

**MR. E. MARTIN:** I do and I –

**MR. LEARMONTH:** – know who was there?

**MR. E. MARTIN:** – and what sticks in my mind is the – is that slide that we’ve seen in several presentations.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** It’s just one slide with the 300 – minus 300 – 100 on it, and it’s in the November – there’s a November 6 document that is – it’s in, and I am not sure if I used that document or not, frankly. But I know, clearly, that that document was communicated.

**MR. LEARMONTH:** Well, was it given to them at this meeting? One thing to communicate it; was it given to someone in government?

**MR. E. MARTIN:** I can’t remember, Mr. Learmonth. Probably. I mean, you know, it’s a one-page document, you know – one page, it could have been in a presentation. But that’s what I have a vivid memory of, is going through it.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And vivid memory of the premier, in particular, who, you know, had a good handle on this, really, you know, grilling myself and such on that.

**MR. LEARMONTH:** Now, and you acknowledge that when you communicated this \$300-million increase, that you said: Well, there’s a \$300-million increase, but there’s a \$300-million offsetting savings in financing, and a \$100-million savings because of excess sales.

**MR. E. MARTIN:** That’s correct.

**MR. LEARMONTH:** Yeah. Well, don’t you think – I want to know first – first, this information never went to Cabinet and there were – the other ministers all say that they didn’t become aware of it. And I suggest to you that one of the reasons that they didn’t become aware of it is because of the way you communicated it to the premier, which was basically this is a complete wash, there’s nothing to it. And that’s the way you did present it, isn’t it? You just said so.

**MR. E. MARTIN:** Mr. Learmonth, the – it’s – you know, you build up to these – the questions, and I’m listening, I mean, you throw terminology that it just – I just can’t grasp it at the end. The way you say total wash is like – you know, so that’s just my concern. You may not – and I know you’re – I believe you’re not attempting that.

**MR. LEARMONTH:** Well, okay, I'll –

**MR. E. MARTIN:** Because people listening to this stuff – when you phrase it like that, it's like, you know –

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** – it's like I darted in for 10 minutes and, you know, said, this is a wash, relax. It wasn't like that at all.

**MR. LEARMONTH:** If you say –

**MR. E. MARTIN:** At all.

**MR. LEARMONTH:** If you say there's a \$300-million increase in capital cost – which was not accurate because it was 6.531, but anyway, we'll go with the \$300 million – and then you say, but there's a \$300-million savings that offsets it. Then I suggest that someone listening to that would say that there's no net effect whatsoever, nothing to worry about.

**MR. E. MARTIN:** In the context of the ratepayer, who is bearing the cost of this?

**MR. LEARMONTH:** No, I'm talking about your communications to Premier Dunderdale.

**MR. E. MARTIN:** Yeah, and so am I.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** So am I, Mr. Learmonth.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And I'm saying – is that, you know, from the ratepayer perspective, that's exactly correct. The impact on the ratepayer – because of these two elements, which the ratepayer is paying, I would've clearly said the impact on the ratepayer would be negligible. And I would've also said that –

**MR. LEARMONTH:** Would be negligible?

**MR. E. MARTIN:** On the – yeah.

**MR. LEARMONTH:** Yeah, yeah.

**MR. E. MARTIN:** And I would've also said that there's an extra – at least a hundred million dollars here that we expect, you know, incremental to the initial estimate of excess sales.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And I would say that, premier, would not necessarily be a direct reduction to the ratepayer, but it would go in the pot of excess sales that you would have –

**MR. LEARMONTH:** Mm-hmm.

**MR. E. MARTIN:** – or government of the day would have at their disposal to cover off some of the – and I didn't use the term management reserve, but I – the same concept – to cover off some of those things.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** So I would've expressed it that way.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** Would they have read that – excuse me – it's not a problem, don't worry about it? I don't believe so. I mean, the – Premier Dunderdale was, you know, totally focused on capital costs. You know, I believe one of her points, you know, she was – she made that point, I think, that she got it. But, you know, from a capital perspective, you know, that's probably, you know, a key concern right now. Publicly it would be a key concern. So she would've focused on that.

But, you know, Premier Dunderdale obviously understood –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – you know, the framework I was presenting and she would've got that. But I can clearly tell you it was not lightly absorbed by the premier. Nothing ever was.

**MR. LEARMONTH:** Yeah. But, you know, Mr. Martin, you've given a detailed recollection of what you said at this meeting with the premier, but you can't even remember who else

was there. I think some people would find that unusual.

**MR. E. MARTIN:** I don't think that's the case, Mr. – because I gave that commentary to many people. Like, that was – what I just gave there was the theme that I would've talked to the board about, I would've talked to people in the company about, I would've talked to – anyone I spoke to. It was the same message, and I used the same slides. So, you know, I'm recalling the messaging that I gave across the board and probably dozens – a dozens of time – dozens of times. Would it be exactly those words? Obviously not. But it – you know, that was the purpose of that slide and that's how I projected that situation –

**MR. LEARMONTH:** But you –

**MR. E. MARTIN:** – to many, many people.

**MR. LEARMONTH:** You can't remember how many other people were there or you can't – and you can't remember the names of any of the other people. Is that right?

**MR. E. MARTIN:** I can't. I mean, like I just said, the meeting schedule was constant. So I would be just – I would be disingenuous to start saying I could give you a list of names. I can't.

**MR. LEARMONTH:** Yeah.

Because Ms. Dunderdale, in her evidence, said that when she met with you, there were officials present at all times. She never met with you alone except on one occasion relating to Hebron. And the two – of the people that – who would be present at this meeting – at meetings with you, the two most likely people would be Julia Mullaley and Charles Bown. And neither Mr. Bown or Ms. Mullaley has any recollection of ever receiving this information about the \$300-million increase.

Does that give you any cause to reflect on what you're saying?

**MR. E. MARTIN:** No, it doesn't, other than –

**MR. LEARMONTH:** No.

**MR. E. MARTIN:** – (inaudible), you know, it's just –

**MR. LEARMONTH:** Okay. And –

**MR. E. MARTIN:** – surprising.

**MR. LEARMONTH:** – what about the fact that this was never –

**MR. E. MARTIN:** Surprises me.

**MR. LEARMONTH:** What – is this –?

**MR. E. MARTIN:** It was communicated.

**MR. LEARMONTH:** It wasn't communicated to Cabinet. Does that give you any cause to concern – concern that Ms. Dunderdale perhaps didn't –

**MR. E. MARTIN:** That's not my business.

**MR. LEARMONTH:** Yeah.

I don't believe Ms. Dunderdale has any recollection of this meeting. She didn't say so.

**MR. E. MARTIN:** Of the Cabinet meeting, you mean?

**MR. LEARMONTH:** No, the meeting when you met with her at the Confederation Building.

**MR. E. MARTIN:** I'm just telling you what I know. And –

**MR. LEARMONTH:** And you don't know when you met with her, do you?

**MR. E. MARTIN:** Not exactly, no.

**MR. LEARMONTH:** No. Okay.

**MR. E. MARTIN:** I could – you know, I could make up – but there's no sense in doing that. It's clear – crystal clear to me that, obviously, and, you know, and I just – how could you not? It's all gonna come out anyway. If – I mean, that's not the way (inaudible) – and that's not the reason. I mean, this is a fundamental issue here that – you know, and I did not move without being in lockstep, you know, particularly with the premier and the board.

And it – there's just no sense in doing that because what are you gonna do, you know, if you think logic – what are you gonna do a few weeks later? I mean, it doesn't make any sense. Naturally, I'm gonna talk to the premier about it.

**MR. LEARMONTH:** Well, there's a lot of points here where I think someone could say it doesn't make a lot sense.

**MR. E. MARTIN:** Well, I just think that, you know –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – I'm not gonna comment on that.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** I've already had my piece, and just, you know, it's clear –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – to me.

**MR. LEARMONTH:** I have your evidence on that. That's fine.

Tab 9 of book 1, Exhibit P-02526. This is an email from Derrick Sturge to you, and this refers – this – is this sent in anticipation of the –

**MR. E. MARTIN:** I'm just catching up here, look, Mr. Learmonth, I'm sorry.

**MR. LEARMONTH:** – okay.

**THE COMMISSIONER:** P-02526, tab 9.

**MR. LEARMONTH:** Just describe your interpretation of what is going on here.

**MR. E. MARTIN:** Yeah, a similar – not a similar situation but I – in this particular case, we were meeting with some boards – new boards, fresh people, and, you know, I wanted to be in the position where I just explained what I explained in terms of, you know, 300 on both sides, plus the 100. I mean, I – you know, this was a constant theme that I wanted to make sure I had clear with everybody, with respect to what the implications on the project was right now.

And particularly, you know, with some of the new people around the board and stuff, I don't know where they were. I didn't know if they knew the 6.2, frankly. You know, and with both boards I wanted to make sure, as I did, with everyone that I dealt with on this, that they had the full picture we had just put together. So I wanted to be able to go into the board and explain that.

**MR. LEARMONTH:** Okay.

Well then, why did you remove two decks that referred to 6.5 as the cost estimate in the board presentations?

**MR. E. MARTIN:** It was pretty detailed slides.

**MR. LEARMONTH:** You want me to take you through the documents or are you aware of –?

**MR. E. MARTIN:** Oh no, I'm aware, I looked it up.

**MR. LEARMONTH:** Okay, well I don't have to – so I just want to make sure you agree to this. If so, I don't have to go through the documents, that Mister –

**MR. E. MARTIN:** Well, you know, Mr. Learmonth, it may be worthwhile to do that.

**MR. LEARMONTH:** All right, I will.

**MR. E. MARTIN:** Because it might put a bit of context around – like it wasn't just a big 6.5. I was just concerned that some of them were going to pick up the number and say where the hell did that come from, not knowing about it. They knew about it and I wanted to be able to make sure I explained it –

**MR. LEARMONTH:** Okay, so –

**MR. E. MARTIN:** – clearly in the context.

**MR. LEARMONTH:** – so you wanted to be able to explain it so you took out the slides that provided the details?

**MR. E. MARTIN:** Well that's why I think it might be worthwhile looking at the slides because the slides weren't, you know, structured

on describing costs – capital cost increases – it was just a number.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** So why don't we pull it up, if you don't mind. Is that – can we pull it up?

**MR. LEARMONTH:** Okay, well let's do that then.

If we go to tab 44, that's Exhibit P-02531.

**MR. E. MARTIN:** Tab 44?

**MR. LEARMONTH:** Right.

So this is an email from Auburn Warren to you, dated November 13, 2013. And we know that there were two board meetings: one on November 14, 2013, and one on November 15, 2013. Correct?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Okay. So, if we go to – and if you turn to the back of this document – it's 120 pages – can you confirm that? Right at the end.

**MR. E. MARTIN:** What page? Pardon me?

**MR. LEARMONTH:** Oh – the end of the document. It's page 120. The last page in the tab.

**MR. E. MARTIN:** 120.

**MR. LEARMONTH:** 120. Right? Correct?

**MR. E. MARTIN:** Correct.

**MR. LEARMONTH:** Okay. So, then if we go to tab – the – I'll just tell you in advance. The deck that was presented to the board of directors was 117 pages.

**MR. E. MARTIN:** I'm sorry, Mr. Learmonth, I got that. I was – just wanted to look at the slides.

**MR. LEARMONTH:** Yeah. No. But – I'm telling you –

**MR. E. MARTIN:** I understand that.

**MR. LEARMONTH:** – this is 120 and that the presentation to the board of directors – which I'll come to next –

**MR. E. MARTIN:** There were three slides removed.

**MR. LEARMONTH:** There were three slides removed.

**MR. E. MARTIN:** Absolutely. Got that.

**MR. LEARMONTH:** And the slides that were removed – looking at this same document – P-02531 –

**MR. E. MARTIN:** Right.

**MR. LEARMONTH:** – was page 3

**MR. E. MARTIN:** Right.

**MR. LEARMONTH:** If you look at that.

**MR. E. MARTIN:** Yeah.

**MR. LEARMONTH:** And then – page 13 which contains a reference to the 6.5, right?

**MR. E. MARTIN:** Yes it does.

**MR. LEARMONTH:** Yeah. And the number of that is – that's page 11 in the document – that's page 13 in ours but it's page 11 in the slide, right?

**MR. E. MARTIN:** Right. That's correct.

**MR. LEARMONTH:** That's 11. Okay.

So, then if we go to page 46 – once again – can you confirm that that contains a reference to the 6.5?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** And the page number of the slide deck – not in the top right-hand corner – is 44, right?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Okay. Now, there's – the next exhibit is Exhibit – you wanted me to take your through this –

**MR. E. MARTIN:** No. I'm – if I could make a suggestion, please? I just wanted to have a look at those two slides that were removed.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** I was – can I go ahead and do that? On page 13 on the red –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – and page – the only point I was trying to make, Mr. Commissioner, was that these weren't slides designed to talk about capital cost increases or decreases or, you know, or any other type of thing. These were detailed slides laying out some of the financing parameters and my concern was, you know, that, you know, it had the 6.5 within it – in both cases – which I wouldn't have had a chance to discuss, you know, in the context of what I described before with some of the board members. That was it.

**MR. LEARMONTH:** Well, I don't understand that. Can you go over that again?

**MR. E. MARTIN:** Sure.

So the reason I wanted to have a look at the slides is I wanted to make the point that these slides were designed to lay out financing summaries. And the focus of the slides, you know, was not explaining a capital cost change; however, when you look at the slides you can see the 6.5.

And, in my view, was – I would value more highly discussing the change from 6.2 to 6.5 with the – you know, with folks who wouldn't be aware of that change in the context of not only that – letting them know what's happening – but also incorporate the other elements that I discussed earlier.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** The financing change and the excess sales potential change. And that's why in some of the correspondence prior to this,

I think I saw, was I was saying – are the – you know, are the financing numbers in? Like, I couldn't figure it all out as to what was in or out, but it wasn't clear in terms of the impact on the project. And I wanted to be in a position to explain that to the board –

**MR. LEARMONTH:** Mmm.

**MR. E. MARTIN:** – you know, before, you know, we started sharing a 6.5 number with some of the board members who wouldn't know. That's it.

**MR. LEARMONTH:** Okay, but why would you – if you wanted to give an oral explanation to the board members, why would it be necessary to remove these slides? Why couldn't you do both so that you'd be in a position where you could explain what the 6.5 slides were about, pages 11 and 44?

**MR. E. MARTIN:** No, I wanted –

**MR. LEARMONTH:** Why do you have –?

**MR. E. MARTIN:** I wanted –

**MR. LEARMONTH:** Why do you have to take them out?

**MR. E. MARTIN:** – I wanted to do it in person. I didn't want it to sit and even, you know, overnight or for a couple of days. I just didn't want to do that. I don't – you know, I don't like surprising people like that. You know, I want to be able to describe it to them, verbalize it and then, once they understand it, let's move on.

**MR. LEARMONTH:** Well, these are –

**MR. E. MARTIN:** But to have –

**MR. LEARMONTH:** Go ahead.

**MR. E. MARTIN:** No, but I guess that's it. That's primarily it. I just wanted to – that's the way I am.

**MR. LEARMONTH:** So you removed these two slides so that you could provide a better explanation orally?

**MR. E. MARTIN:** That's correct. And better explanation of –

**MR. LEARMONTH:** That's what you're saying.

**MR. E. MARTIN:** – the 6.5 and the offsets and the other pieces of it in total context, yes.

**MR. LEARMONTH:** Yeah, but you did that – you did present a slide deck to the board of directors on December 18, after financial close, that had those \$300 million, \$300 million, \$100 million. If that's what you wanted to communicate to the board of directors, why didn't you include that slide deck or that information in the presentation to the board on November 14?

**MR. E. MARTIN:** Once –

**MR. LEARMONTH:** Because – and I'll just add something to that –

**MR. E. MARTIN:** Oh, sure. No (inaudible).

**MR. LEARMONTH:** – you've already told us now that prior to this board meeting you would've had this meeting with Premier Dunderdale. Correct?

**MR. E. MARTIN:** And, once again, Mr. Learmonth, I didn't give dates –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – so I'm not exactly sure, myself, on the dates.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** But what's your point? Maybe I should listen to it from that perspective.

**MR. LEARMONTH:** Well, you know, the point is that: If you wanted to communicate this information to the board of directors, you would not have removed the slide decks. If you didn't think these slide decks presented proper information and clarification, you could've used an earlier slide deck which showed the 300, 300, 100, because we know that that slide deck was presented to the Government of Canada at a meeting in St. John's on November the 6th. That

information was already contained in a slide deck.

**MR. E. MARTIN:** (Inaudible.)

**MR. LEARMONTH:** So, why wouldn't you have provided that information in that slide deck to the board?

**MR. E. MARTIN:** Well, again, Mr. Learmonth, for the same reason, I – you know, I wouldn't provide that kind of information unless I verbally presented it first. That's what I did. You know, I just would not throw information out of the company (inaudible). I mean, these are internal terms. I mean, I wouldn't present data before a meeting about – even a magnitude of a 300 – minus 300, plus 100, and let them stew or shift or review that over a period of time, and then come into a meeting and say what's this? I just don't do that. I wouldn't do that. I would present it verbally first –

**MR. LEARMONTH:** Why?

**MR. E. MARTIN:** – and go through it at a meeting. Because I don't believe it's proper to surprise somebody. I think you have to prepare – I mean, it's the board. Again, you know, it's not some distant group; you're just not concerned about how they're thinking or what they know.

I mean, put – just think about it. You got a high-powered board there, you know, as part of the company. And there's new board members, and you give them some extremely important information at a highly, highly stressed volatile time, with a thousand things on the go, and you give them that early and you say: I'll talk – you know, and then they come into the meeting, and that's the first time we talked about it. I'm sorry. I don't do that.

**MR. LEARMONTH:** Yeah. But you could've given it to him at the meeting.

**MR. E. MARTIN:** I'm not sure if I did or not. I know I spoke about it (inaudible).

**MR. LEARMONTH:** Well, you weren't even at the meeting. You were by telephone.

**MR. E. MARTIN:** Yeah. So, I don't know if it was handed out at the meeting or not. But,



frankly, I doubt it. But that would be a norm, as well, is that I would talk through it, and it's not that complicated, and that's what I did, and that's the way I operate. I just would not –

**MR. LEARMONTH:** But you wouldn't put it –

**MR. E. MARTIN:** – do it (inaudible).

**MR. LEARMONTH:** You talk through it. You wouldn't put it in writing.

**MR. E. MARTIN:** Pardon me?

**MR. LEARMONTH:** You wouldn't put it in writing (inaudible).

**MR. E. MARTIN:** Oh, I would, but after I had a chance to debrief them on it first.

If you see what I'm saying is that: They're getting information without explanation of that magnitude, and then there's a period of time before I get to a meeting to discuss it. I wouldn't do that. I just wouldn't do it.

**MR. LEARMONTH:** Okay.

Okay, well, that's your explanation for removing the two slide decks. Is that right?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Okay.

Now, if we go to – just for completion of this issue – tab 46 –

**MR. E. MARTIN:** And you – go ahead.

**MR. LEARMONTH:** Go ahead?

**MR. E. MARTIN:** No, you – I think – that's right, you mentioned December 18 as well, and certainly that wasn't –

**MR. LEARMONTH:** We'll get to that later.

**MR. E. MARTIN:** That –

**MR. LEARMONTH:** We'll get to December 18.

**MR. E. MARTIN:** All right, sounds good. Come on. Let's go.

**MR. LEARMONTH:** So, hearing binder, okay, 3, tab 46. This is Exhibit P-02533 –

**MR. E. MARTIN:** Just – I – just for one second, if it's possible to take just a slight break, and I'm not in a hurry to leave or anything else by any means. I'm good for all evening, but I –

**THE COMMISSIONER:** Okay, let me just –

**MR. LEARMONTH:** By all means.

**THE COMMISSIONER:** – sort of get the map here, now.

Where are you in your – just as an estimate, just so I can figure this out. 'Cause we could either continue on this evening, start tomorrow at 9 o'clock. Just trying to figure out where you are.

**MR. LEARMONTH:** My preference would be to go 'til 5 o'clock today.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** Or even 5:15, maybe.

**THE COMMISSIONER:** Okay.

Are you close to finishing? Is that what I'm hearing you say?

**MR. LEARMONTH:** I'm not close, but I'm getting there. I'm not close. Like, I'm not – I don't think I'll be finished today. But I don't wanna – I wanna leave enough time for –

**THE COMMISSIONER:** Okay –

**MR. LEARMONTH:** – cross-examination.

**THE COMMISSIONER:** – well, let's take a break. We're gonna go to 5 today and then we'll stop at 5.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** So well adjourn 'til – well, just adjourn five minutes.

**CLERK:** All rise.

**Recess**

**CLERK:** All rise.

Please be seated.

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

**MR. LEARMONTH:** Yes. Next document I want you to consider is binder 3, tab 46, P-02533. You got that, Mr. Martin?

**MR. E. MARTIN:** Yeah, I do.

**MR. LEARMONTH:** So, this is the email from you to Derrick Sturge:

"Derrick,

"Just to confirm, I assume this is the deck for the board you and I have been emailing back and forth about, with the 2 slides we were discussing removed?"

Right?

**MR. E. MARTIN:** That's – yes.

**MR. LEARMONTH:** Now, if you turn to the end of that, you'll see that the total number of pages is 117. So, those three documents that I referred to in the earlier exhibit had been removed. Do you agree with that?

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** Okay.

Next, I'd like you to refer to – well, actually, before I do that, I think you said earlier that you wanted to explain this to the people in person, this thing, rather than give them the slide deck, but you didn't even attend the meeting. You'd attended it by telephone, so you denied yourself of the opportunity to explain it to them in person.

**MR. E. MARTIN:** Verbally would've been better than in person.

**MR. LEARMONTH:** What's that?

**MR. E. MARTIN:** Verbally, I meant to say.

**MR. LEARMONTH:** Oh, you meant to say verbally, okay.

Now I'd like you to turn to binder 1, tab 10, Exhibit P-006681 [sp. P-00681].

That's the minutes of the November 14, 2013 meeting, correct?

**MR. E. MARTIN:** That's correct, yeah.

**MR. LEARMONTH:** Now can you go through that, flip through that and tell me if there's any reference to this \$300 million in those minutes.

**MR. E. MARTIN:** Yes.

Just give me one second, please.

**MR. LEARMONTH:** Take your time.

**MR. E. MARTIN:** I just apologize for the delay, I just saw something a minute ago and I'm trying to find it again; I guess I'm getting a little ...

Yes, okay.

**MR. LEARMONTH:** Okay.

Do you see any reference whatever, direct or indirect, to this \$300 million figure in those – in the November 14, minutes?

**MR. E. MARTIN:** No, I believe that in places that I – you know, I would've seen that, we would've dealt with – it would have been either in the, you know, the commercial – the section on page 4 in the second paragraph, or potentially in page 5 on the paragraph second up from the bottom where it says he, "advised that Phase 1 of the Lower Churchill Project is the least cost option and will provide means to link the Provincial power." And –

**MR. LEARMONTH:** How is that a reference to the \$300 million figure?

**MR. E. MARTIN:** – well no, I'm just pointing out where, you know, at times when that would have been likely discussed. When you're talking

about least-cost options or finances or costs or those types of things, you know.

**MR. LEARMONTH:** But I asked you whether there's any mention of this \$300 million?

**MR. E. MARTIN:** No, there's not.

**MR. LEARMONTH:** There's not.

**MR. E. MARTIN:** No.

**MR. LEARMONTH:** Okay, correct.

Now –

**MR. E. MARTIN:** Right.

**MR. LEARMONTH:** – next I want you to turn to tab 11, binder 1, P-00682. And I'd like you to – that's the minutes of the November 15 board of directors meeting. I'd like you to do the same thing; that is, review the minutes and advise me whether there's any reference to the \$300 million.

**MR. E. MARTIN:** No, there's not.

**MR. LEARMONTH:** No?

**MR. E. MARTIN:** No.

**MR. LEARMONTH:** Okay.

We said earlier that the minutes are the best record of what happened at the directors' meetings, right? You gave evidence on that in –

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** – December, yeah.

Now, Derrick Sturge attended both meetings in person, and he took notes, and he acknowledged that if the six point – if the \$300 million increase had been mentioned, that it would have appeared in his notes. And the reason he's comfortable saying that is that he believed that it was wrong to remove the two slides, and that he agreed that, if there had been any mention of it, he certainly would have put it in his notes because he would have self – you know, he would have felt a sense of relief. That's generally what he says. But –

**MR. E. MARTIN:** But –

**MR. LEARMONTH:** – there's nothing in his notes.

**MR. E. MARTIN:** But that summary is not what I understand Mr. Sturge said, so, I just want to put that on record.

**MR. LEARMONTH:** Okay, what do you understand Surge said?

**MR. E. MARTIN:** Something more along the lines that it wasn't in his notes. He thought probably he would have expected it to be, but he didn't have a recollection of if this was talked about or not, either way.

**MR. LEARMONTH:** Well, he also agreed that – with the point, that the – it is very likely that if the \$300 million had been mentioned, he would have recorded it in his notes, and the words very likely are a quote from his evidence.

**MR. E. MARTIN:** That's – you know, that's Mr. Sturge's comments. I don't know about the length of his notes. He was certainly – Mr. Sturge was certainly well aware of all of this stuff, so I am sure it wouldn't be news to him, his terms are recorded as something new. He was crystal clear on it.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** So, that's all I can say about that, in any event. Certainly (inaudible) –

**MR. LEARMONTH:** Yep.

But do you see – you know, your evidence will have to be considered, but you see that one problem may be that you – first, you remove the two slides, then you don't attend the meeting. The record – the minutes of the meeting do not reflect there is any mention of the \$300 million. Mr. Sturge, who was personally present, had notes, and he – and there is nothing in his notes to suggest you mentioned it, and he says that, if it had been mentioned, it's very likely that it would have been his notes.

That's the evidence that you're dealing with, and are you still saying that you mentioned the \$300

million at either the November 14th or November 15th meeting?

**MR. E. MARTIN:** Absolutely. You know, but also, I guess, if –

**MR. LEARMONTH:** So you're saying that –

**MR. E. MARTIN:** – you're seeking evidence and such – I got that.

A couple of points here. You know, number one, the minutes – you know, we took abbreviated minutes. You know, that was the norm from the start. You know, I see minutes as a couple of things: one is, you know, it records actions, and – you know, and voting situations and stuff like that. I am not an advocate of detailed minutes, and many, many organizations – and you look up what minutes are for, it will say do that, or they may say different, but that's what we did.

Putting that kind of detail in here, there is a level of commercial sensitivity. People will say, well, you had the right to be able to block it anyway. And, I wasn't in that mindset either. I didn't want to block it. I wanted to block the least amount I could. So, you know, I get a reputation of – if this – you know, of the hundreds of stuff we were requested for, we try to avoid it as much as possible, that kind of stuff.

But that aside, from the broader perspective, Mr. Commissioner, it's a huge project; it's a huge undertaking. Three hundred million dollars is a massive amount of money. The financing arrangements on the other side, you know, were worth \$5 billion – I mean, you know, the point I'm making is that, you know, we're moving ahead with this. Whatever happens here is gonna be more than public – I mean, more than public within God knows when.

And the thought in my mind, as CEO – that anyone would think that you wouldn't involve the premier, you know, the government and the board in this situation when it is what it is, but on top of that, there's some puts and takes and we're moving ahead, like, it makes no sense to me how anyone could think that. You know, within hours after whatever, it's gonna be public. Or if it's – how could you explain that? It's unexplainable, because no one would do it.

And the thought of not sharing that data, like, it just makes no sense to me. I just wanna say that from an overall perspective, that it's something I would wanna make people have in their minds. Wow, it just wouldn't happen. What's the – you know, no – it would be – not of no value; it would be immensely, you know, damaging to many, many things. It wouldn't happen.

**MR. LEARMONTH:** Yeah. But just to clarify something, the 6.5 figure at financial close was not communicated to the public.

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** Not at that time.

**MR. LEARMONTH:** No.

**MR. E. MARTIN:** I think post-that –

**MR. LEARMONTH:** Are you sort of saying it was gonna be communicated within a few days or something like that?

**MR. E. MARTIN:** Well, I meant to the people, you know – I meant to the governments and to the board. It was in the financial – the federal government document.

I mean, this is not something that was, you know, scurried away under the carpet. It was impossible to do that. And with respect to the public, I take your point that it wasn't going to be a day later, but it was coming out. I mean, it had to come out. And it did. You know, it came out in various documents. I think it was addressed somewhere, you know, following – or whatever. But the point being is –

**MR. LEARMONTH:** Well, it wasn't addressed 'til, you know –

**MR. E. MARTIN:** But – but –

**MR. LEARMONTH:** – at the earliest, the spring or June 24th or whatever –

**MR. E. MARTIN:** Publicly.

**MR. LEARMONTH:** – the next year – yeah.

**MR. E. MARTIN:** Yes, publicly, Mr. Learmonth, absolutely. And I don't disagree with that whatsoever, but I just want to – that's not – the salient point I'm trying to make here is that, you know, it makes no sense knowing it's going to come out, you know.

**MR. LEARMONTH:** Well, okay.

Now, if we go binder 3, tab 60, Exhibit P-00684. This is a – these are minutes of a December 18, 2013, board meeting –

**MR. E. MARTIN:** Is it 53, Sir?

**MR. LEARMONTH:** Sixty.

**MR. E. MARTIN:** Page 60.

**MR. LEARMONTH:** December 18, 2013. P-06684 [sp. P-00684].

**MR. E. MARTIN:** Right.

**MR. LEARMONTH:** Okay. And, you're personally present at this meeting, correct?

**MR. E. MARTIN:** Yes, I am.

**MR. LEARMONTH:** Now, it's not in the book of documents, but if you need more time to refer to it before you answer the question, please do so. If you could bring up Exhibit P-04021, please.

**MR. E. MARTIN:** Now, Mr. Learmonth, did you have a question on this one first, or ...?

**MR. LEARMONTH:** And there's – no, I just want to – you know, get in – make the point that there was a meeting on December 18.

**MR. E. MARTIN:** What's that? So, I'm finished with this?

**MR. LEARMONTH:** Well, yep. Unless you want to refer to it again, but I don't want to. You can if you want.

Go to Exhibit P-04021. Now, you can see that this document is the "NALCOR ENERGY 73RD BOARD OF DIRECTORS MEETING DECEMBER 18, 2013." And this – well, go down a little more – this is some – like, the

documents that were prepared for the board, correct?

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** Okay.

And then, if we go to page 140 – 124. One twenty-four, this is a project update, December 18, correct? A slide deck –

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** And, if we go to page 147. You see what I – you see what comes up there?

**MR. E. MARTIN:** Yes, I do.

**MR. LEARMONTH:** That's the slide deck with the 300 million – 300 million, 100 million, correct?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** So, why is this being – if they already knew about the information about the – that's the directors knew about the 300 million – why on December 18 are you preparing a slide deck with that information?

**MR. E. MARTIN:** Well, very simply put, as I mentioned earlier, I wouldn't provide this kind of detail unless I verbally spoke about it. I verbally informed the boards and, in particular the – this was a meeting of the main board, I believe. And, in dealing with the main board members, in particular, they were aware of the – I was open dialogue going on about this throughout – and, you know, you wouldn't have to go through in detail that – throughout that period of time, but this was an opportunity to go through more detail with respect to the project; you know, where we were, the causes, we were going into Christmas.

This slide was a chance to just review that again, but it was easy – not easy, it was, you know – it was just an opportunity to provide more detail around it, put the pictures on it, and, like as I said earlier, you know, I wouldn't be surprising board members in the meeting unless I had already informed them about where we were.

**MR. LEARMONTH:** But, they were already aware –

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** – of this information. That's what you're saying.

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** But why didn't you present this chart or slide to them at the November 14 or November 15 meeting?

**MR. E. MARTIN:** Now, that one – as I mentioned earlier – that wasn't my focus, to put a piece of paper in their hands beforehand. A piece of paper, at the time, it could have been useful. I wasn't there. That's correct. I was calling by phone, but my primary focus was to ensure that people were informed about what was happening. And then following that is, you know, as I said it's to get into this kind of detail – to fill in much more information – very useful to do.

**MR. LEARMONTH:** Okay.

Now, if we go to tab 12 – binder 1 –

**THE COMMISSIONER:** I notice that it's 5 now. Is this a good spot – maybe to take our break?

**MR. LEARMONTH:** Can I finish this – oh are we going to end for today?

**THE COMMISSIONER:** Okay so you're on the same line? Okay. Yes. Go ahead.

**MR. LEARMONTH:** Or – if you want to break now it doesn't matter.

**THE COMMISSIONER:** No. No. If it's in the same line of –

**MR. LEARMONTH:** Well, it's just a – yes – it is.

**THE COMMISSIONER:** Okay. Go ahead.

**MR. LEARMONTH:** Okay. Tab 12 – binder 1 – P-02114. This is Exhibit – yeah.

**MR. E. MARTIN:** Tab 1.

**MR. LEARMONTH:** Tab 12.

**MR. E. MARTIN:** I'm sorry - binder 1 – tab12.

**MR. LEARMONTH:** Yeah. You familiar with this document, Mr. Martin?

**MR. E. MARTIN:** I'm familiar with the – yes – with the second page. Yes.

**MR. LEARMONTH:** Okay – with the second page. And there's also a – but I want to refer you to page 1 where it says – this is from James Meaney to Meghan Felt at McInnes Cooper. Second paragraph – “Access needs to be given to Canada, Cassels Brock, Blair Franklin and MWH. Do not provide access to NL, BLG and Faskens at this time.”

Now, if we turn to page 2 of P-02114 this is where we see the reconciliation of the LCP DG3 estimate versus current final forecast cost recollection. Right?

**MR. E. MARTIN:** That's correct.

**MR. LEARMONTH:** And it shows that there's – shows the – the differences. Now, do you know why the instruction would have been to not provide access to NL at this time? This is November 19, 2013. Why would the Province of Newfoundland be deprived of receiving this document at that time, do you know?

**MR. E. MARTIN:** I have no idea.

**MR. LEARMONTH:** Okay. And we talked about the –

**MR. E. MARTIN:** But – I asked my counsel about this and I think the – and I want to just verify this – because I just didn't know – apparently is it true that they were given access within the next day or so? Is that correct?

**MR. LEARMONTH:** There's some information but it hasn't been followed up. But I don't think the information on that is conclusive. And according to Mr. Ralph –

**MR. E. MARTIN:** Maybe we can tie that up afterward; but in the meantime, I just don't know but you know –

**MR. LEARMONTH:** Now, there was a document put in that suggests that –

**MR. E. MARTIN:** Yeah.

**MR. LEARMONTH:** – but it was not followed up and there's some question – I think Mr. Fitzgerald had some question as to whether his clients had access to it – but I take the point. But, anyway, not to go on too much further with this document, but page 2 it says this is a current final forecast cost. You're using a final forecast cost for the purpose of the federal loan guarantee, a very significant document, because there was no AFE.

Now, can you explain to me why a final forecast cost would be sufficient to provide in an important document, like the federal loan guarantee documents, yet a final forecast cost would not be – would not contain enough detail or not be important enough to provide to the government in July 2013?

**MR. E. MARTIN:** Again, as I've discussed several times, at this point I had vetted this, stressed it. The team had come back to me enough. I had received, you know, an update and a deep description – a deeper description of what was included in here. And at that point I was satisfied that this was, you know, reliable within a reasonableness range. It included some trends for the future and I felt I was – you know, I was at a point I was comfortable that this was something that was explainable.

**MR. LEARMONTH:** Yeah, so it was – a final forecast cost was sufficient for the federal loan guarantee, but the July 2014 final forecast cost was not developed enough, we'll say, to share with the Government of Newfoundland and Labrador?

Is that what you're saying?

**MR. E. MARTIN:** In essence, yes. And this was developed to share with the government and the directors as well at this point. I was comfortable.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** In addition to this, again, as I mentioned earlier, I felt at that time we were also reasonably comfortable, and with enough certainty on the financing improvement of \$300 million. And the Emera information had come in and analysis had been done to a point I was comfortable that in all of these – in the case of the overall analysis of the business decision, I was comfortable that we were in a frame.

And, Commissioner, I had a couple of buffers there as well, because this \$300 million – or whatever exactly it is – difference here is actually not present value, it's actually nominal. So the \$300 million detriment to the project, from a present value or CPW or cost to the ratepayer, would be less from the present value perspective, because this was spread out over time, the 300. And I – but I left it at 300 because it was more of a bit of a buffer.

**MR. LEARMONTH:** The \$300 million in savings, you mean, from the federal loan guarantee?

**MR. E. MARTIN:** No, no. I'm talking about 300 million capital cost –

**MR. LEARMONTH:** Well why would you do a present value of that?

**MR. E. MARTIN:** Once again, getting back to the business decision of the all-in cost to the ratepayer –

**MR. LEARMONTH:** Mmm.

**MR. E. MARTIN:** – and my perspective that we were generally where we were at the time.

**MR. LEARMONTH:** Mm-hmm.

**MR. E. MARTIN:** So I'm just saying that there was a – somewhat of a buffer built in there, you know, which helped me say that this is better than even that. The financing, the – some of the gentlemen had informed me the financing was probably a little bit better than the 300.

And on the excess sales side of things, you know, I knew that the 100 was conservative as well. So not saying the numbers were wrong but

I had them at a point that I was comfortable that we were here, it was realistic, it had trends, and I had vetted it enough and it also allowed enough, you know, room in all those estimates to say that it's probably better than I'm showing here but I didn't wanna go, you know, that far to leave some buffer in case something else may have come up. Just wanted to make that point.

**MR. LEARMONTH:** Okay, so you were satisfied that before construction had started, that a contingency which was being 368 million at the time of the DG3 sanction – it's now been reduced to 183 million. You haven't even started work on the project and you were satisfied that that was an adequate contingency?

**MR. E. MARTIN:** That's what I was advised, Mr. Learmonth.

**MR. LEARMONTH:** By who?

**MR. E. MARTIN:** By the project team.

**MR. LEARMONTH:** And you believed that?

**MR. E. MARTIN:** Yes.

**MR. LEARMONTH:** You did.

It turned out to be quite off, didn't it?

**MR. E. MARTIN:** It did. But, you know, if you read the – there's a good summary in one of the exhibits about –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – what the project team had sent us, and I keep this one in mind. It's – I think it's – 02229.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And in that one there, you know, I read that and that was what was communicated to me. And, in essence, you know, it did say what it was, it did say where we were on it and what – you know, we were at a good time, and here were the reasons why. It added up to what I understood from the team was telling me, and it – as I mentioned, it had, you know, included, you know, certain trends.

Now granted, it did give a range of 6.5 to 6.6, but the wording in that made it pretty clear that, you know, I was advised that this was the place we – was a good place to be right now.

**MR. LEARMONTH:** Yeah, well, unfortunately –

**MR. E. MARTIN:** And I was comfortable with that.

**MR. LEARMONTH:** – that didn't pan out, did it.

**MR. E. MARTIN:** And I – yeah, I understand that.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** Once again, I was talking about –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – what was happening at the time, Mr. Learmonth.

**MR. LEARMONTH:** Yeah.

But because – you know, this \$183 million contingency – and we'll deal with this tomorrow – but when EY did a review of the 7.65 revision 2, at that point, they commented on the fact that – and then – the project had been substantially advanced at the time, and they said that the 2.3 per cent contingency was insufficient, in their opinion. So the 2.3 per cent would be, you know, way, way down the road from this, and if they're right in saying that the 2.3 per cent of contingency – if they're – if that's a fair comment, then this 1 – 8 – and 83 billion [sp. 183 million] before the project is started is, I suggest, woefully inadequate.

**MR. E. MARTIN:** I would take exception to that term.

**MR. LEARMONTH:** Okay, please do.

**MR. E. MARTIN:** I mean, once again, they're very colourful terms, so it makes me take – pay attention to say I'd like to comment on them.



You know, I believe there's a couple of differences here. In the 7.65 number, I'd have to look at that but, you know, the whole thing Ernst & Young came up with at that point, Astaldi was upon us. You know, we had some schedule changes coming there. That would be a whole different mindset than would be existing right here at this particular point.

We had just sanctioned. We had some bids come in, and if you're – and, Mr. Commissioner, and that 02229 Exhibit, you know, I'm sure you've looked at it. It's worth looking at. It does provide some comfort as to the number of contracts that have been considered and let – what's left to come. The trends that are in the supplementary piece, and I know what's happened subsequent – a lot of things happen subsequently. But at this time, you know, it made sense and I was convinced.

**MR. LEARMONTH:** Okay.

Well, I guess, that'll end it for today, and we'll be back at 9 o'clock tomorrow, is it?

**THE COMMISSIONER:** Yes. I think we'll start at 9 tomorrow. So we'll start at 9 o'clock.

**MR. LEARMONTH:** Okay. Thank you very much.

**THE COMMISSIONER:** Thank you.

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.