



## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

---

Transcript | Phase 2

Volume 53

---

*Commissioner: Honourable Justice Richard LeBlanc*

Thursday

13 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:** All right. Good morning.

Mr. Martin, you remain under oath at this time.

Mr. Learmonth, when you're ready.

**MR. LEARMONTH:** Okay, Mr. Martin, could you turn to binder 1, tab 15, Exhibit P-01829, please?

Have you got it?

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

**MR. LEARMONTH:** All right.

So this is a document entitled: "Mar 2014 Briefing to CEO by Project team plus emails associated with Nalcor Board update and updated AFE's." So, at this time, just to set the stage that the – we're past financial close and we're coming up to the point where in June 2014 there's going to be a revision to the AFE to \$6.99 billion. Correct?

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

**MR. LEARMONTH:** Okay.

So this is March 2014. Now, I just want to read what it says on page 1: "The briefing deck includes a cost summary of \$7.5B with market conditions and Contractor pricing (\$407M) being the main driver for the cost increase of \$527M.

"It was clearly identified in the deck that the \$7.5B was based on certain assumptions with the key caveat being that there was no allowance for any cost increase in the Astaldi Contract because of delays and performance.

"It was also noted that the Owners cost was not through to the end of project, as well that Forex" – foreign exchange – "of \$41m was not included along with some other cost recoveries from a bond and from NLH.

"AFE Rev 1 was subsequently approved at \$6.99B."

Now, a couple of points: The project controls team and the project management team was recommending \$7.5 billion with certain – on certain conditions, as stated in this cover page. Correct?

**MR. E. MARTIN:** Mr. Learmonth, I'd like to check something, please. As I read the – through the document – and I believe I was advised by my counsel on this – I saw a note that this particular document was incorrectly placed and so I just need to check that. My understanding in the documents was that it was clarified this was – should have been in March of 2015.

**MR. LEARMONTH:** Well, how is that? I mean you've got – on page 13 of the document it says: Muskrat Falls Project Cost Update, March 5, 2014.

**MR. E. MARTIN:** I'm not sure, Mr. Learmonth, but I would like to check that because I'm sure I read it in the documents that this was referring to a 2015. So I just wanted to check that, Commissioner, because I can't – I haven't got the documents here that reference it right now, but I'm sure it was there and I had mentioned it and checked with my counsel on that.

**MR. LEARMONTH:** Okay.

Well, there's a lot of – you know, if you want to check it before we discuss it –

**MR. E. MARTIN:** I'd appreciate that, if I could, because I'm –

**MR. LEARMONTH:** That's fine.

**MR. E. MARTIN:** – almost positive of that because I saw the note and then I checked it with my counsel, Mr. Commissioner.

**MR. LEARMONTH:** Yeah.

Well, okay. Like, you know, if it's wrong, it's wrong.

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

**MR. LEARMONTH:** It's one way or the other. But I do note there's a lot of emails in this that are dated 2014 and the deck is dated 2014. But, anyway, it's still possible that all those dates are wrong, so for the reasons you stated, we'll leave that and then we can get clarification on it and come back to it. Is that satisfactory to you?

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

**MR. LEARMONTH:** Okay.

Now, tab 16, please, Exhibit P-02401.

On page 1, this is an email from James Meaney to Gilbert Bennett about a – discussing on March 17, 2014, a revision to the AFE. Now, are you familiar with this document in the materials?

I just – to assist you, just – you could just look to page 4 of this document, third paragraph: “The attached Master AFE ... Supplement #1 represents an update to the previously approved AFE. It reflects an update to direct capital costs, which was previously based on the Decision Gate 3 ... estimate, as well as a transfer of approved financing cost ... to a separate Master AFE” that relates solely to financing.

So can you identify this document when – March 2014 it appears that Mr. Meaney is preparing documents for a revision in the AFE. Is that your answer?

**MR. E. MARTIN:** And that certainly appears to be what it is, Mr. Learmonth. I wouldn't be involved in this. Would I have seen this document before? Not necessarily. I would have, obviously, been the one approving the AFE, but the actual details around how it's structured and such is, no, I would not –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – be involved, and may not have seen this document. I may have but I would not have been into it in detail.

**MR. LEARMONTH:** Okay, can you provide any elaboration or explanation for the second paragraph on page 1 of this exhibit where Mr. Meaney says: “Note that for LIL I have prepared 2 versions of the Capital Cost AFE...one that keeps the approved AFE amount at the DG3 based level of \$2,609m but shows the yearly expenditure forecast totalling \$2,546m which comes from the Project Budget baseline established for the Project Finance Agreements.”

And then he continues on at page 2. Can you provide some explanation for what is being discussed here?

**MR. E. MARTIN:** I cannot.

**MR. LEARMONTH:** You can't.

**MR. E. MARTIN:** I'm just not really familiar with what's going on there.

**MR. LEARMONTH:** You're not.

Okay, well, if, as I believe – I stand to be corrected – that this was a proposal to revise the AFE to reflect the 6.531, if that's the case –

**MR. E. MARTIN:** No, I understand what you're saying.

**MR. LEARMONTH:** Yeah. Does that give you any assistance? Because I think that's what it is.

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

**MR. LEARMONTH:** No, okay.

So, anyway, there was no revision – revised AFE for the 6.531. Is that correct?

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

**MR. LEARMONTH:** Oh, that's correct. Okay.

**MR. E. MARTIN:** Just an interesting note, I noticed at the outset of that email from – no, no, no, I missed that. I misread it.

**MR. LEARMONTH:** What was that?

**MR. E. MARTIN:** No, nothing, Sir.

**MR. LEARMONTH:** Okay.

Next is at tab 17, Exhibit P-02547. This is an article in the *Financial Post*, I believe. I know it's dated April 15, 2014. Do you remember being interviewed for this article on –

**MR. E. MARTIN:** Now, yeah, I think –

**MR. LEARMONTH:** – April 15, 2014?

**MR. E. MARTIN:** Yes, I do. This document actually jogged my memory.

**MR. LEARMONTH:** Okay.

Now, was – the article appears to have been written from St. John's. Were you interviewed in St. John's for this?

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

**MR. LEARMONTH:** You don't know. You can't remember.

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

**MR. LEARMONTH:** And on page 2 of this document refers to the 175-page MHW Canada report. That's the November 30 report that was transmitted to both the Government of Newfoundland and Labrador and Nalcor in February 2014. Does that seem right?

**MR. E. MARTIN:** It seems right to me, yes.

**MR. LEARMONTH:** Yeah.

Okay, now, it says in paragraph 3 of page 2: "Martin would not release more detail or offer any timeline for an update because giving away fiscal information could jeopardize contract negotiations."

Well, that's consistent with your understanding of that issue that we discussed yesterday.

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

**MR. LEARMONTH:** Okay.

And you say in paragraph 5: "It might make more sense to delay first power from Muskrat Falls past 2017 rather than push the construction schedule while driving up overtime and other costs ...." What – can you give some elaboration as to what you meant there?

**MR. E. MARTIN:** I'm attempting to recollect but, you know, it's in the spirit – I was always in the spirit of people who were asking me and – you know, in this particular case, I'm not exactly sure if the reporter asked or not, but I was always careful not to lock down on a cost or a date, knowing that I could never guarantee, you know, things that could or could not happen.

So I'm – you know, from that perspective, I think that was consistent with the way I often approached things.

**MR. LEARMONTH:** Well, you're – it certainly appears to be completely consistent with the way you've communicated with the government.

**MR. E. MARTIN:** Completely is a – you know, once again, it's a very definitive word.

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

**MR. E. MARTIN:** But I – you know, but if you're saying is that with the government that I would communicate to them this is what's happening and I would always be clear that this is – you know, this – you know, I'm not saying this is the actual final number that could ever happen – yes, that would be consistent.

**MR. LEARMONTH:** Okay.

And then later on page 2 of this document, down a few paragraphs, it says: "The independent engineer also questions the size of the contingency Nalcor has budgeted for unplanned costs. While most similar projects" costs "include contingency funds of six to 10%, Nalcor chose an 'aggressive' amount closer to 6%, says the report."

Well, it should've been 6.7 but, anyway. And then it says: "Martin said he stands by that amount." And then it says: "The question is, are we comfortable with that? I say, yes." So are you saying that on April 15, 2014, or

thereabouts, when we know that the contingency had been dropped or reduced to \$183 million? Correct?

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

**MR. LEARMONTH:** Yeah.

So it started off at 368, by financial close it was down to 183. Is that a true reflection of your views that at that point, with only \$183 million left to the end of the project, that you were comfortable with that contingency amount?

**MR. E. MARTIN:** That's what I believed at that point, yes.

**MR. LEARMONTH:** But there's a little – there's an error here, too, because we're not talking – it seems that the *Financial Post* is talking about 6 per cent contingency, which would be the amount at DG3 but, really, things have changed, right?

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

**MR. LEARMONTH:** Yeah but you didn't mention that, did you?

**MR. E. MARTIN:** Absolutely not.

**MR. LEARMONTH:** No.

**MR. E. MARTIN:** You know, the question was – so, you know, let's, you know, set the parameters again. There's a balance here between public disclosure and commercial sensitivity, obviously. You know, the question was about: Am I still comfortable with that? I was in the context of comfortable saying that for two reasons; one is I was reflecting upon the process of setting that contingency, which –

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** – you know, I had signed on for at the time, so – and I was still comfortable with that. And the second thing, you know, again, my perspective has been consistently in terms of cost to the ratepayer and, you know, the overall, all-inclusive place that we were with respect to the project, which would include the cost to the ratepayer, which includes the financing benefit, the overall capital cost

increase, as well as the potential increased incremental excess sale.

So from that perspective, yes, I felt comfortable saying that. As far as going further to explain where exactly we were on the 6.5 or the 182 that was a conscious decision not to get into that detail for reasons of commercial sensitivity.

**MR. LEARMONTH:** What –

**MR. E. MARTIN:** But I felt comfortable what I was saying was supportable.

**MR. LEARMONTH:** Right.

Now, in retrospect, this \$183-million contingency was way too late. Do you agree? When we know how things developed?

**MR. E. MARTIN:** I think that's obvious, Mr. Learmonth, yes.

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

Now, tab 18, that's Exhibit P-03549. This is an email dated April 16, 2014. I don't know whether it's connected with this article or not. It could be – it's close in time but I can't say that it was based on this. But this is an email from Victor Young and you know Victory Young, do you?

**MR. E. MARTIN:** I'm – I know who he is and I have spoken to him three or four times in my life.

**MR. LEARMONTH:** Yeah.

Okay and this is to you, April 16. I'd just like you to read into the record what this email from Victor Young, dated April 16, 2014, says. Just take the time to read it into the record, please.

**MR. E. MARTIN:** “Hi Ed .You certainly have me confused and I know I am missing something. You are quoted as saying: ‘It's not prudent to show any type of information when you're in deep negotiations, and that's just protecting the people of the province’. What exactly does this mean? How is it protecting the people of the Province by not allowing them to understand how this crucial project's costs are escalating? How come every major stock

company traded on the global stock exchanges that have suffered through major cost increases (oil and gas and mining and utilities) have not figured out that it is apparently in the best” interests “of shareholders to keep cost overruns secret? How come ‘full and timely’ disclosure rules require public companies to act against shareholder interests if in fact your assertions regarding protecting the interests of the people are legitimate.

“I have been asked over and over again in emails and phone calls in the last 24 hours how all of this makes any kind of sense. At this point, I have no answers. Please help me understand how all of this works.

“Vic.”

**MR. LEARMONTH:** Okay. Did you reply to this email?

**MR. E. MARTIN:** I can’t remember. I would err on the side of saying possibly, yes, but I’d have to say, Commissioner, possible not. But, normally, I try to reply to as many things as I could and I often passed these types of things on to some of my staff to help me prepare something and give me something in return. But I honestly can’t say that I did or didn’t on this one.

**MR. LEARMONTH:** Okay

**MR. E. MARTIN:** I may have spoken to him. I spoke to Mr. Young at – you know, two or three, four times, I think.

**MR. LEARMONTH:** Yeah

**MR. E. MARTIN:** Possibly.

**MR. LEARMONTH:** Mr. Young was a former senior civil servant, as well as a businessman, president of a company.

**MR. E. MARTIN:** That’s my understanding as well.

**MR. LEARMONTH:** Right. Okay. Now, what do you make of what he’s saying. He’s obviously – there’s a slight tone of sarcasm in some parts of it, but, generally, it – you know, the drift is pretty clear that he doesn’t

understand how you’re being secretive about the information when public companies are required to disclose cost increases on a more timely basis than you were disclosing them.

What do you make of what Mr. Young is saying here? What’s your –?

**MR. E. MARTIN:** I’m not exactly sure. I found it – I find it a bit confusing reading it now. Just let me read this sentence again – “How come every major company traded on global stock exchanges that have suffered through major cost increases ... have not figured out that it is apparently in the best” interest of the “shareholders to keep cost ...?”

Oh, I see what he’s saying.

**MR. LEARMONTH:** Yeah. I think there’s a little bit of sarcasm there, isn’t it?

**MR. E. MARTIN:** Yeah. Well –

**MR. LEARMONTH:** Well, anyway – maybe –

**MR. E. MARTIN:** That looks apparent, doesn’t it?

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** But that being said, so be it. I guess what I’m reading here – he’s trying to understand about the – that, you know, the timing of when to release information publicly versus, you know, not doing that. Weigh it off against the commercial sensitivity issues with the contractor and, I assume, you know, both of those issues impact the public. So, how do you find the balance?

I think that’s probably what –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – what the question is or what the discussion –

**MR. LEARMONTH:** But is he not suggesting that the publicly traded companies are required to, you know, as part of their – the securities regulations to disclose material information such as cost increase?

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

**MR. LEARMONTH:** Yeah.

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

**MR. LEARMONTH:** But he – isn't he questioning, well, why – if public companies have to do that, why aren't you doing it?

**MR. E. MARTIN:** Well, I think – point A is absolutely right. Disclosure's critical. I think it's very similar. I mean, in the private sector, I was multiple times called into analysts' reviews in Toronto, New York for the company that – the private – publicly traded – the public traded companies I was working for. I was there to represent the company in terms of discussing the major projects I was working on at the time.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** And I discussed those with analysts. I can tell you, at the time, that there were, you know, things developing in those projects that we did not, you know, have a clear handle on – that we did not have, you know, what I would call a reliable – or realistic pieces of information. And we would discuss that with the analysts. We would talk to the analyst, but we would not disclose that at that point until we had information and data that we could depend on. I would see that exactly analogous to the situation that we were faced off – faced with here. I see no difference.

**MR. LEARMONTH:** Well, yeah, you know –

**MR. E. MARTIN:** You know, there's no way you're going in to a –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – you know, from a public disclosure perspective –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – I can tell you, hands down, you're not going into New York visiting with 22 analysts and telling them: Hey, fellas, a couple of red flags. We think this puppy might be going there and going there and all this good stuff, but we'll let you know in a couple of months, and

come back in a couple of months and the information is changed.

It would never happen. You would make sure that you had this thing to a point where you were reasonably certain that you could share that data. At that point, disclosure is essential.

**MR. LEARMONTH:** Yeah.

But did – the assumption implicit in what you just said is that, for example, the July 2013 report of the project controls was not reliable. That's the assumption you're making. And I'm suggesting to you that it was something that one could rely on, maybe not to the dollar, but it was very reliable. A lot of work had gone into it by expert people in these fields, and it was something that could've been relied on.

You seem to think you couldn't rely on it, but I do point out to you that it's not coincidental, I don't think, that the July 2013 project cost estimate lined up very well with revision AFE 1 in June, 11 months later. It was spot on – well, within a hundred million dollars.

So, with that said, do you agree with me that the assumption you're making and the answer you gave is predicated on the basis of your belief that the July 2013 project cost estimate, using that as an example, was not reliable?

**MR. E. MARTIN:** For reporting purposes, that's correct. But, you know –

**MR. LEARMONTH:** That's what you're saying – yeah.

**MR. E. MARTIN:** And, again, you know, Mr. Learmonth, you know, to go through it – and I just would like to reiterate, and the only reason I'm doing that because – and rightly so, you're asking me the question – the same questions again and again, which I accept that, but I feel compelled to say the answer again because I don't – I'm concerned that, you know, you're not getting the answer, because you're asking it again.

So, that being said, I go back to the points again that if you look at the sequence of flow of the information that was provided in 2013 that started at the 6.8 to 7, we did some work

because I had asked to solidify that. That went to, I think 6.8 to 6.9 – or 6.7 to 6.9, then it ended up being 6.7 to 6.95, and then it was 6.54266-something. And in that sequence, you know, it was apparent to me that it was the right thing to do, that the information that was flowing up to that point – it was what they were working on at the time, but not reliable enough or in a form well enough for me to feel comfortable bringing it forward.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** So that's the reason why.

**MR. LEARMONTH:** Yeah, but if you're talking about – I understand your point with a publicly traded company because that information is communicated to the public. This is a different situation. In this case, with the July 2013, you were reporting it on a confidential basis – you could have reported on a confidential basis to government.

**MR. E. MARTIN:** Well, again, Mr. Learmonth –

**MR. LEARMONTH:** So it's a different situation.

**MR. E. MARTIN:** – that wasn't the role that I was given. And my understanding of the role I was given – which had – the norms of which had developed over several years and multiple project interactions with the government – that I was asked to handle, in a certain fashion, those projects totalling \$40 billion in value to the province.

And we had established a way of working that was predicated on the fact that I was charged with bringing, you know, decision-level data to the table to make sure that we – I had with – in junction with the people that I had hired to work on it, to get this information to a point where, you know, we felt it was of a quality that was reliable enough to make decisions on.

That's what I was doing –

**MR. LEARMONTH:** That's in the oil business, right?

**MR. E. MARTIN:** No, that was with the Government of Newfoundland and Labrador. From 2005, when I started, until this period of time, you know, I had taken the lead with the company, by request of the government, in terms of acquiring the Hebron equity stake –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – negotiating, you know, the royalty structures around that; the White Rose Extension acquisition for the Province of Newfoundland and Labrador, working – I was with the government; the Hibernia South Extension deal.

**MR. LEARMONTH:** Hmm.

**MR. E. MARTIN:** And all of those involved royalty parameters as well and benefits parameters, based on present value, CPW types of concepts. In addition to the Emera arrangements, I led those on behalf of the government as well; the New Dawn Agreements with the Innu Nation, which were comprised of three separate agreements. Those are several examples of the norms that were established and how I was asked to proceed.

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

**MR. E. MARTIN:** And I've described how that was. You know, as far as the value to the province, you know, it was published at \$40 billion as an estimate. And when I continued on into this particular endeavour, I was – you know, I was clear in demanding that I was given the terms of what the government was expecting and that's how I was operating.

**MR. LEARMONTH:** Yeah, you assumed that the same way of operating would apply to the Muskrat Falls Project.

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

**MR. LEARMONTH:** You just assumed that. But don't you see the difference? I mean, this is a huge capital outlay for the province. The others were negotiating royalties and so on, so obviously the government wouldn't want to know every step of the negotiation, they'd want to know the final –



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

**MR. LEARMONTH:** – they would – you wait until I finish. They would want to know the – you know, the best deal that you could get. This is a different situation. That the government is backstopping a huge project and it's, I suggest, quite different from the situation where you're negotiating royalties.

So my question is: Why did you just assume that the same reporting requirements that you had followed for the offshore benefits and the different agreements applied automatically to Muskrat Falls? Why didn't you seek clarification from government on that?

**MR. E. MARTIN:** So things – there's some critical points that I believe you may not have the right information on, Mr. Learmonth.

The phrase is just royalties. Two critical points there; the first critical point is that these arrangements were also acquiring an equity position –

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** – buying –

**MR. LEARMONTH:** I understand that.

**MR. E. MARTIN:** – capital and participating in paying for capital costs.

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** So number one, it wasn't just a royalty agreement, okay? Put the royalty aside, I'll come to that in a second. Put the royalties to one side. We acquired a piece of interest in these projects, which meant that we owned them, which meant that we had to fund capital expenditures of those projects.

**MR. LEARMONTH:** All right. I understand.

**MR. E. MARTIN:** That's not just royalties.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** Okay? So add up the billions that are associated with that. You come over to royalties.

And it's not just royalties, Mr. Commissioner, because the way the royalty structure works in Newfoundland and Labrador, there's several different tiers, as they call it, of royalties. At certain points, you pay X per cent and you get it in royalties; at a certain point, you pay Y per cent and it goes on.

The major trigger to get into royalties that have any meaningful impact on the province is that the proponents, such as an ExxonMobil, such as a Chevron, such as a Suncor – the provisions in those royalties are that the companies are permitted to build a project, invest billions in it and they're allowed to return – a return of up to 15 per cent, in some cases – on top of that before the province begins to get substantial royalties. So the province actually takes substantial – huge, substantial cost risk on those major projects.

So if a Hebron goes from a particular number to a much higher number, then the royalties associated with that are substantially reduced.

**MR. LEARMONTH:** Mmm.

**MR. E. MARTIN:** So it's not just royalty, the royalty structure is probably even – it's not probably, it's even more impactful on capital cost and managing capital cost and knowing what capital costs are because the province is actually funding that capital as much or more than the actual proponent is.

So I think it's very, very, you know, clear – I want to make it very clear that it is very, very analogous. It's not just royalties, it's exactly the same and almost more in terms of the importance with respect to capital costs and how those things are crafted.

In that context, yes, I felt comfortable that the province at that point was still looking for decision-grade information. That's the process we were following, kept them informed, you know, to the extent possible, clearly that there were cost pressures and things were happening, but I did not have the data that – you know, in a form that I would normally provide.

**MR. LEARMONTH:** So you just assumed that the same reporting would apply to Muskrat Falls as applied to the offshore.

**MR. E. MARTIN:** Not the same reporting, that's – once again, reporting is a broad term. We were talking about the provision of financial data –

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

**MR. E. MARTIN:** – for decision-making.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** Reporting was – it became substantially different because the government wanted more reporting, they wanted more reports, they wanted more documents and those types of things. So we were preparing a tremendous amount – more reporting because that's what they asked for.

**MR. LEARMONTH:** Okay. But you didn't get clarification from that for the Muskrat Falls Project, as to what exactly the government required in a way of reporting on increases in capital costs or capital cost –

**MR. E. MARTIN:** As I – did I go and get a written document asking and receiving? No. Was I comfortable in having worked through with the same government elected officials in many cases – most cases and the actual officials that we had worked this way for a long period of time? Was I comfortable and think that they were comfortable and proceed on that basis with an assumption? Yes.

**MR. LEARMONTH:** So that's an assumption you made.

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

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

Have you finished your answer on that? Do you want to say anything else?

**MR. E. MARTIN:** Not at this point but I would appreciate the opportunity if I – something else that I thought of came up that I could return to it.

**MR. LEARMONTH:** You can.

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

**MR. LEARMONTH:** Okay.

Tab 20 of binder 1, it's P-01831.

**MR. E. MARTIN:** Yeah. Binder – sorry, tab 20?

**MR. LEARMONTH:** Twenty – tab 20, yes.

**MR. E. MARTIN:** I have some –

**MR. LEARMONTH:** I'm sorry, no –

**MR. E. MARTIN:** – I have (inaudible).

**MR. LEARMONTH:** – tab 19, sorry.

Do you have that, Mr. –

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

**MR. LEARMONTH:** Okay. This is May 23, 2014, so coming up to the revision to the AFE to 6.99 in June. Correct?

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

**MR. LEARMONTH:** Now this – on page 1 of this Exhibit, it says: "The briefing deck was prepared seeking alignment on a recommended AFE revision by appraising leadership on the current management cost outlook.

"The deck considered use of Management Reserve for short term requirements (i.e. up to/through early 2016) of \$7.27B and a longer term requirement of \$7.5B in 2016.

"A meeting call email and management outlook spreadsheet is also included in the section."

So were you familiar with this document when it was prepared – around the time it was prepared, Mr. Martin?

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

**MR. LEARMONTH:** Okay. And you've reviewed it, have you?

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

**MR. LEARMONTH:** Okay.

So if we turn to page 8, there's a \$6.35 billion, is the first figure, and then Contracts with firm bid

price \$6.35billion; Contracts without firm bid price (best estimate) \$0.64 billion for a Subtotal of 6.99, right? And that was the subsequent amount used. Then there's Management reserve for short-term requirements \$280 million. Correct?

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

**MR. LEARMONTH:** And the footnote (4) says: "Short term covers the period thru early 2016." And then, Management reserve for long-term requirements, another \$230 million. And then it says in number (5): "Not required before 2016, mainly covers increase in Owner's team cost."

So the recommendation here is for an increase to 7.5 billion, not 6.99. Do you agree?

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

**MR. LEARMONTH:** It's on page 9.

**MR. E. MARTIN:** I –

**MR. LEARMONTH:** Just look at page 9 also, it's 7,501.

**MR. E. MARTIN:** So I think – could you re-ask that question, please? Because I –

**MR. LEARMONTH:** Well, the –

**MR. E. MARTIN:** – when you made the second one, I was about to make a point but you – could you just re-ask that?

**MR. LEARMONTH:** Well, I'm just – I'll answer that question by referring to page 1. It says: "The deck considered use of Management Reserve for short term requirements (i.e. up to/through early 2016) of \$7.27B and a longer term requirement of \$7.5B in 2016."

So the recommendation here, as I understand it, is the AFE should be in the 7.5 range, not 6.99.

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

**MR. LEARMONTH:** Okay. Explain that.

**MR. E. MARTIN:** On page 4.

**MR. LEARMONTH:** All right.

**MR. E. MARTIN:** On page 9 of the red page numbers –

**MR. LEARMONTH:** Okay, page 9.

**MR. E. MARTIN:** – it says: Requested AFE. And I think that means the AFE request.

**MR. LEARMONTH:** But then it says –

**MR. E. MARTIN:** It says –

**MR. LEARMONTH:** – \$272 million.

**MR. E. MARTIN:** Pardon – well, I'll come back to that. Do you have a question there?

**MR. LEARMONTH:** No, but then it says \$272 million.

**MR. E. MARTIN:** I – as you – I was trying – I was about to say that. So I'll speak a little bit faster.

First one is Requested AFE or AFE request, 6.99. I was making the point that you said it was the 7.5 requested for AFE, and I'm saying, no, it was not. The request for AFE was 6.999 – A. B, that the management reserve – and the management reserve, long and short term, are different from the AFE request.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** That's the point I was making.

**MR. LEARMONTH:** Okay. Well, what – with this information, then, why wouldn't you include the figures recommended for management reserve in the AFE rather than go with the 6.99? I mean, you didn't have to follow what they said, what this – what the deck said.

**MR. E. MARTIN:** So, again, can we turn to page 8.

**MR. LEARMONTH:** Right.

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

**MR. LEARMONTH:** Yeah, I've got it.

**MR. E. MARTIN:** And then I look at the footnotes.

So, again, the point I'm gonna make here is that I'm looking to provide information that has the reliability and reasonable level of certainty for decision-making. So I go through this document: 6.35 is contracts with a firm bid price. Contracts without firm bid price – so, once again, that doesn't have – we don't have to lock down the bid. You know, don't have to say that's exactly what it's gonna be, but I would've gone into those, we've talked about – I said: Gee – okay, well – you know, directionally, I think I'm comfortable that you have done what you've needed to do on that. Subtotal of 6.99.

Management reserve for short-term requirements. "Short term covers the period thru early 2016." Well, what's that for? I would be asking. There would be information that would be coming back to me that I would say, you know: No, that's just not sufficient. That's just not acceptable for me to put that into an AFE to approve for you to expend, that you can go and expend that and not (inaudible) come back and ask any more about what it's about. It's just not on.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** And with respect to management reserve for long-term requirements, it says – that's footnote (5).

**MR. LEARMONTH:** Correct.

**MR. E. MARTIN:** It says – an example, Mr. Commissioner, it says: "Not required before 2016 ...." So we're out a year right away. And "... mainly covers increase in Owner's team cost." So, that's the folks saying: Depending where all this goes, we wanna add a bunch more people on the Nalcor team. And frankly, I'm saying: Well, just hold on for a second, folks. You know, you just don't start doing that. We have to see where things are, we have to take, you know, a pace here; \$230 million or more people now that you're telling I wanna approval for it now, not telling you exactly why, but if we wanna add those people in 2016 – I'll stop there but I just – I think it's a good example of the types of things – I can't agree with that until I see more.

So, again, the 6.99 was what I felt comfortable with. Sharing, you know, this kind of deck, you know, with the decision-makers in the government and with the board – no. Once again, it's the same rationale. Until I get my arms around it and understand it to a level I'm comfortable with – that's the norm I was in – I just would not do that.

Would I have discussed the fact that the 6.99 is locked down 100 per cent, there will never be another change? Absolutely not, I did not do that. But I just – repeating myself again, but that is where I was with respect to this, that I felt comfortable that the 6.99 was where we could put some reliability at that point and it was a good number.

**MR. LEARMONTH:** Yeah, but it turned out to be a wrong number, didn't it?

**MR. E. MARTIN:** In hindsight, the answer is obviously, yes, Mr. Learmonth.

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

Now, this information on page 8 and page 9 shows two requirements or proposed requirements for management reserve. And I think you've conceded that that term is really government equity, right?

**MR. E. MARTIN:** I did not.

**MR. LEARMONTH:** Well, is it government equity?

**MR. E. MARTIN:** It is – it would be provided by an insertion of government equity.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** But I won't repeat this, I'll just refer to previous testimony I've made with respect to where the funding for that management reserve would come from. And that's – I've already been on the record to say that there was ample funds being generated from this project that were available to the province, that wouldn't otherwise be – that would be there for funding of management reserve. With that funding in hand, the vehicle, yes, would be an equity injection.

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

So you didn't think it was important to discuss this with the government, that there may be a call for equity injections by the government?

**MR. E. MARTIN:** That's entirely incorrect and that's not the thinking at all. I – you know, again, I think I've made this point but maybe – I'll keep going because you keep asking the question.

**MR. LEARMONTH:** I'm asking the question about different documents, I'm not asking the same question –

**MR. E. MARTIN:** Okay. So I –

**MR. LEARMONTH:** – about the same documents.

**MR. E. MARTIN:** – so I just don't want to, you know –

**MR. LEARMONTH:** Mr. Martin, I'm trying to give you an opportunity –

**MR. E. MARTIN:** – be (inaudible) and unreasonable, Mr. Commissioner, by repeating my answer.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** I'm afraid that that's going to get repetitive –

**MR. LEARMONTH:** Yeah, no.

**MR. E. MARTIN:** – and it's going to – you know, it's going to be a problem.

**MR. LEARMONTH:** Mr. Martin, I want to give you the opportunity to state your position on all these documents. You're correct – if your answer is the same as it was for earlier documents, that's fine, you can just say so. But I don't want to gloss over that because I want your position on each of these documents.

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

**MR. LEARMONTH:** So if you're concerned about repeating yourself, you can put that aside.

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

Thank you very much.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** So I was trying to remember the phrasing of your question. It was: Did I feel comfortable in not reporting some of this information to the government because I thought it was just covered by an equity injection. I think that was the –

**MR. LEARMONTH:** Generally, yeah.

**MR. E. MARTIN:** Yeah. So –

**MR. LEARMONTH:** Because it was to be covered by an equity injection.

**MR. E. MARTIN:** And I said that was the –

**MR. LEARMONTH:** According to this document.

**MR. E. MARTIN:** Yeah, that's correct.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And then I said that's incorrect. I said your statement to me was incorrect.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And the reason that is, is that I – you know, the insinuation I heard in your question was that, you know, I would not, you know, be concerned about potential increases because it was covered by equity. And that would be a complete falsehood.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** I was totally focused on cost. The equity piece never entered in to it. The management reserve piece was not the driver, whether it was there – absolutely not, in no way. My driver was to fulfill my obligation, as I saw it, to make sure when I brought forward information, it was as quickly as possible, following the point that myself, in conjunction with Mr. Bennett and the team, understood that it was at a reasonable level of information that

the decision-makers past me could make a decision on it.

**MR. LEARMONTH:** Yeah, but there was another driver, I put to you, and that was to report this to the government. And I guess your answer is the same as it's been from the beginning, you didn't think it was necessary.

**MR. E. MARTIN:** My answer is the same.

**MR. LEARMONTH:** Yeah.

Now, Julia Mullaley was shown this document and she was very critical of the fact that the government did not get this document because it did touch on possible equity injections. She was very critical of the fact that this was not disclosed to government. And the – she stated that in the first day of her evidence.

And then, in the afternoon, I understand, you came into the Commission of Inquiry and gave a press conference – not a press conference, but you made a statement to the press that was reported. And your comment on Ms. Mullaley's evidence was that it was ridiculous, right? Now, that's a very colourful term, isn't it?

**MR. E. MARTIN:** Sure is.

**MR. LEARMONTH:** Okay.

Can you tell me how –?

**MR. E. MARTIN:** As colourful as some of the terms that were being used, you know, by other people.

**MR. LEARMONTH:** Yeah.

Well, anyway, I'm not – you have a right to state your view.

How is it that Ms. Mullaley's statement is – you know, statements or position that there was insufficient disclosure, lack of transparency, how is that position ridiculous?

And I want you to think of this; I can understand you taking – you know, disagreeing with the position. That's fair enough. But why would you condemn Ms. Mullaley's evidence and make a point of coming in to this Inquiry, speaking to

the press before she'd finished her evidence and condemning her evidence or describing her evidence as ridiculous. Why would you do that?

**MR. E. MARTIN:** I'll do – I would do that because I've learned through the course of this Commission that the way the rules or processes are, is that there can be extended periods of time between a particular testimony and an alternate testimony being presented. And even though I have a – you know, attempt at least in one case to – and not attempt, I've tried to mitigate some of that by discussion, you know, with some Commission counsel – I rapidly understood that wasn't going to happen, process is process.

Now, the second thing is, you know, the reporting that's being done on this Commission is reported day to day. It's handled very quickly on social media and it's being handled, you know, in the news throughout the day, reported on the information at hand. And that's – once again, it's the way it is.

So it was clear to me over time that I had – you know, in situations where the information, from my perspective, was incomplete, not justified and did not have the full story, I had two choices; let it go and let a particular train of thought build up that I totally disagreed with. I've tried other methods. The only method I could see in cases where it got to a point that I just thought it was unacceptable and not full information to the public, my only recourse was to say something publicly.

So that's the reason I did it. And as far as the fact of saying that that was ridiculous, well, the terminology that was used to describe my process was much worse than that and I said, well, this is just not acceptable. And the reason it wasn't, is the fact that – two facts; one is in the case of the majority of these officials, they had worked through the periods of time when I was involved in the other arrangements I mentioned earlier. They had worked, you know, with the government officials – or not officials, the government-elected officials and I understood that. And I felt that, you know, in the process that had happened over that time, that at least – at the very least – they could've asked what the issue was because the track record was there.

The Commission processes don't allow that and I understand that. So, in my mind, I said, well, it is ridiculous. I would think that over time those people would say, well, at least I would've – thinking, knowing what – looking at it in this context, I would've liked to have seen it. But I wouldn't – I would appreciate having some perspective from Mr. Martin because, you know, the track record of working with Mr. Martin has been in such a way that that would surprise me. And I would like to hear from Mr. Martin what the background of that was.

And if that had happened, I would have talked about the Grant Thornton report, not including the \$6.5 billion, which this got predicated on, you know, a lot of it in the first place. I would have talked about how that stream – what I've explained here earlier and how that stream of information came to a point where I felt comfortable in doing it. I would have explained all of that.

I would also have had a chance to explain this – what I see as a fallacy of the P1 schedule and I would've had a chance to describe that and make sure people understood that this building foundation of I didn't share information was incorrect and a house built on sand, but I didn't have a chance to do that.

So that's the reason that I felt compelled to come up, at least that day, and say and put the stake in the ground, myself, to the public who are asking me constantly what's going on and say, look, that's how I feel about it. That's it.

**MR. LEARMONTH:** Okay, but do you still feel that the evidence of Julia Mullaley or parts of her evidence was ridiculous? Yeah, do you?

**MR. E. MARTIN:** I said it then and I'll say it now.

**MR. LEARMONTH:** Okay, say it. You said –

**MR. E. MARTIN:** I just said, yes.

**MR. LEARMONTH:** Yeah. You think –

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

**MR. LEARMONTH:** You think Julia's – I just want to make sure I have it right. You said that you believe –

**MR. E. MARTIN:** So I think Julia's ridiculous comment was – do I think what she said about this was ridiculous? My answer is, yes.

**MR. LEARMONTH:** Okay. And –

**MR. E. MARTIN:** And the reason is I gave before – I just laid out the reason. I'm not going to repeat them.

**MR. LEARMONTH:** Yeah. So you stand by what you said. You condemned her evidence as being ridiculous and you stand by that.

**MR. E. MARTIN:** For the fourth time, yes.

**MR. LEARMONTH:** Okay. I want to make sure we don't have any misunderstanding.

**MR. E. MARTIN:** Well, I mean I think you're clear now.

**MR. LEARMONTH:** Okay.

I take it, then, if you think Ms. Mullaley's position on non-disclosure or disclosure (inaudible) is ridiculous, that the position of the other politicians who testified is ridiculous also, when they said – for those who said that the July 2013 report should've been communicated to government?

**MR. E. MARTIN:** Not at all. I think – I'm looking back on the testimony, I'd have to refer to it all – but my recollection at that point was there was in – if not all – most cases some caveat that I would've – you know, I would've liked to but, you know, I'd like to – you know, maybe Mr. Martin had a reason, you know, I heard some of the ministers say that, allude to that. It was a different kind of tone. They weren't using, you know, very harsh, colourful terms against what I had done. And I sensed, listening to those people, that there was an element of (inaudible) have to say. Okay, well, you know, I would like to understand a bit more when Mr. Martin speaks. And I said: Well, that's fair enough.

In the case of – just recently, probably a little more vivid in Mr. Ken Marshall’s case, I think he indicated that – I did not think; I know he did – that he would’ve liked to have seen it. But at several times during his testimony he also made it clear that he wouldn’t want to see unstressed numbers; he could understand why, based upon the board-company relationship as to why he didn’t see it. And I thought to myself, well, you know, I’m comfortable with that kind of –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – but the absolute, you know, dispensing of it, I found that not acceptable.

**MR. LEARMONTH:** Yeah. Well, I think your transcript will confirm that you’re mischaracterizing the evidence given by the people that you referred to.

You’re correct that in Phase 1, often politicians said: I’d like to see what Mr. Martin said. But there’s no equivocation, for example, by Tom Marshall that when he saw the July 2013 report that it should’ve been presented. There was no qualification or hedging by him. Likewise, Premier Dunderdale – former Premier Dunderdale said that when she first saw the July 2013 report at her interview for Phase 2, she found it startling and shocking, and she said it should’ve been provided to government.

So I don’t think – there’s transcripts for all these things. But I just wanted to point out that I think that you’re mischaracterizing the evidence of those persons, and it will be up to the Commissioner to review the evidence and weigh it against what you’re saying now.

Finally, you’re again mischaracterizing Mr. Marshall’s evidence. You’re referring to some statements he made, and you’re overlooking the fact that in the end Mr. Marshall agreed that the July 2013 report should have been provided to the board. You seem to be, you know, glossing over that fact.

**MR. E. MARTIN:** Oh, I – you know, with all respect, I believe you’re glossing over the other facts. And I think I said yesterday – it’s on record, and I think that comes to the – you know, to the Commissioner, and I’ve stated what

I think, and I think you have as well. So I am prepared to – you know, to – I know it’s up to you to move on, I guess, but that’s my view.

**MR. LEARMONTH:** Well, anyway, I –

**MR. E. MARTIN:** I think he did, but I’ll stop there.

**MR. LEARMONTH:** Okay. Well, I guess this will be – there’s no point on us going back and forth on it.

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

**MR. LEARMONTH:** There is a record of this, and either your statement is correct or mine is correct, and we will just leave it like that, okay? Is that – are you content with that?

**MR. E. MARTIN:** I agree to move on.

**MR. LEARMONTH:** Okay.

Now, tab 20, this is binder 1, Exhibit P-00687. Now, this is a – the minutes of the June 20, 2014, meeting of the board of directors. And I don’t see – you can check through this, but I don’t see any reference to the impending or imminent revision up to 6.99 in this document. Is there a reason for that?

**MR. E. MARTIN:** I’m just trying to scan the notes here. We would’ve talked about it, definitely. We talked about this kind of stuff constantly. Is it recorded in the minutes? I have not been through these minutes, we’ll have to –

**MR. LEARMONTH:** Well, just take a look.

**MR. E. MARTIN:** Yeah, and that’s what I was doing.

**MR. LEARMONTH:** Yeah, please.

**MR. E. MARTIN:** So I think, you know, this would be a good example of – and page 2, section 977, Muskrat Falls Project Value and Cost Update. And it says: “The Acting Chair advised that the purpose of the meeting is to provide the Board of Directors of Nalcor Energy and the Board of Directors of Newfoundland and Labrador Hydro with an update and details on the Muskrat Falls project ... value and costs. He



advised that there would be a press release issued next week to provide an update on the Project costs.”

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** I need – so that would be the place where we would obviously have, you know, discussed the upcoming release of the information.

**MR. LEARMONTH:** Are you surmising that or do you have a distinct recollection of it?

**MR. E. MARTIN:** I have a recollection of that.

**MR. LEARMONTH:** You do have a recollection, do you?

**MR. E. MARTIN:** Oh, yes. We talked about – as I said, this was the point that we were coming out with the \$6.99 billion, publicly. And this is the note here saying that we’re going to provide the board with an update and details of the Muskrat Falls value and cost, and then Mr. Bennett reviewed the value and cost update circulated at the meeting.

**MR. LEARMONTH:** Okay.

Well, at that meeting, did you provide the board with the information in the earlier document where there was suggestions for management reserves that would’ve increased the AFE revision one to 7.5 or 7.541? Did you discuss that with the board of directors?

**MR. E. MARTIN:** Yeah, I may have, very much so. I can’t recall exactly, but at the board level I wouldn’t present exact numbers, such as that, on management reserve because I didn’t have them in a frame that I felt comfortable they were reliable.

But there was very open dialogue at the board level and oftentimes I would talk – continue to talk about cost stresses. I would say that – you know, I’d often say the project team would like to have more cash approved, you know, to cover off some potential things that they’re thinking may or may not happen. They’re uncomfortable with the level of – you know, of cash, they’d like to have more. I would often have that discussion and say: Look, we can’t give it to

them at this point until I get more information on it.

And the board would ask me what types of things are they talking about? And I would say things like, well, there’s – you know, there’s more contracts to come that we don’t know where it’s going, so it could be a similar trend, could be a different trend. We would talk about mitigation activities extensively about what’s happening.

It would be that kind of discussion that would occur. I would not give them a firm number because I didn’t have one.

**MR. LEARMONTH:** Yeah. But you did have the deck that I just referred to prepared by the project management – controls group, which showed the additions on to the 6.9 AFE to 7.501. Did you provide that information to the board at the June meeting or at any time?

**MR. E. MARTIN:** I did not provide – at the June meeting I did not provide the – I provided the 6.99 AFE approved number.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** I provided an update and discussion around additional cost pressures and what the project team may or may not like to have and significant discussion around mitigation.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** That’s what I would’ve provided.

**MR. LEARMONTH:** But no –

**MR. E. MARTIN:** I would not have provided the management reserve numbers that were presented to me because they were not in a form that I was comfortable in saying I was comfortable with. And the relationship with the board, you know, it was at a place where they also did not want partial data. They wanted vetted numbers, things that I had been through and was comfortable with. And the view of providing the board with numbers, you know, without me having been through them and

understanding them, that's not the mode the board was in, that's not the mode I was in.

**MR. LEARMONTH:** Well, why is it that Mr. Marshall said that the July 2013 report should've been provided to the board if what you are saying now is correct?

**MR. E. MARTIN:** So, at the risk of repeating myself and you said that was okay, so once again, I would refer to the viewpoints that Mr. Ken Marshall discussed in his testimony about the type of information that he wanted to come to the board and he was clear that he wasn't interested in seeing change in number on a regular basis, he wasn't interested in seeing things up and down. He was interested – he wanted to see, make sure that the – he would – he would like to have the project team and Nalcor, myself and others, stress those number so when it came to the board, it was in a format that was that was reliable and in shape for decision-making.

**MR. LEARMONTH:** Yeah, but –

**MR. E. MARTIN:** And that is, is what the clear message was to me and that's what I did

**MR. LEARMONTH:** Yeah. But, and I don't – we are going over ground (inaudible) but just say for the record that your characterization of Mr. Marshall's evidence, although it is true to a certain point, ignores the fact that in the end, Mr. Marshall said that the July 2013 report should've been provided to the board. You don't seem to wanna acknowledge that.

**MR. E. MARTIN:** Once again, the information is in the transcript.

**MR. LEARMONTH:** Okay. Okay

Now tab 21, binder 1, that's at Exhibit P-02257. Can you identify this document, Mr. Martin?

**MR. LEARMONTH:** Have I seen it before?

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

**MR. LEARMONTH:** Yes.

**MR. LEARMONTH:** For what purpose was this provided or prepared?

**MR. E. MARTIN:** Not it – well, the title is Muskrat Falls Project Value and Cost Update for the Government of Canada/MWH. And I need to back up a little bit, Mr. Learmonth. It's maybe not be entirely salient point but I may not have seen this document because I didn't deal with the Government of Canada and MWH. But what I was referring to, I think, it is similar to a document – another document that may have seen that I would have used for elsewhere, but I am not sure.

But my interactions with Government of Canada and MWH, I didn't have any.

**MR. LEARMONTH:** Okay. So that was – you didn't have any contact with – that was mostly Mr. Meaney and Mr. Sturge. Is that correct?

**MR. E. MARTIN:** That's correct, and the project team members. But I – you know, I did not – again, I did not interact with them at all.

**MR. LEARMONTH:** Okay.

And then the next document at tab 22, binder 1, is Exhibit P-02046. Now this is a Muskrat Falls Project Value and Cost Update June 25, 2014. Was this prepared for the Government of Newfoundland and Labrador?

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

**MR. LEARMONTH:** No, actually I – you don't have to answer that. If you turn to page 32, there's a minute thing, "An Update respecting Muskrat Falls Project Value and Cost Update was received from the Chief Executive Officer ...."

So do you remember? Do you see that?

**MR. E. MARTIN:** Yes, I do. I'm just reading it there now.

**MR. LEARMONTH:** Signed by Ms. Mullaley.

**MR. E. MARTIN:** Yes, so that would've been –

**MR. LEARMONTH:** (Inaudible.)

**MR. E. MARTIN:** – a few years ago, yes.

**MR. LEARMONTH:** So do you remember making this presentation to government?

**MR. E. MARTIN:** Generally, yes.

**MR. LEARMONTH:** Well, what do you mean “generally”? Like, do you remember it or not?

**MR. E. MARTIN:** Well, if you start asking me, you know, the exact time, the exact day, it’s here, I assume – if I don’t have that kind of recollection. But I definitely would’ve discussed this document, yes, with the government.

**MR. LEARMONTH:** Okay.

Tab 24 is a – Exhibit P-00690, is the Minutes of the 79th meeting of the board of directors of Nalcor, November 28, 2014. You were present at that morning – that meeting according to these – the first page. Is that correct?

**MR. E. MARTIN:** That’s correct.

**MR. LEARMONTH:** Now, at this point, isn’t it true that you knew that the Astaldi performance had been insubstantial and very little progress had been made in 2014. Is that correct?

**MR. E. MARTIN:** It’s correct. I knew that the progress that was intended was not achieved, for sure.

**MR. LEARMONTH:** Yeah.

And you knew that the schedule was – there was gonna be a delay in schedule, right?

**MR. E. MARTIN:** I did not know that.

**MR. LEARMONTH:** You didn’t?

**MR. E. MARTIN:** I did not know that.

**MR. LEARMONTH:** When did you know that?

**MR. E. MARTIN:** Well, what I’m thinking through is, I don’t know the exact date, Mr. Learmonth, so I’m trying to put some context around it.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** I would take my advice from the project team on this and I’m going from memory. I believe that in the document or documents that were provided in 2015 to the Government of Newfoundland and Labrador, the board and myself from the project team – or me to those and the project team to me – I believe in there, there was indications that Astaldi had eaten up the six- to nine-month natural float that was established because of things that I talked about when I was describing why it was not a P1 schedule. And I believe in those presentations, it said that we retain – or we remain on progress for a December first power. In other words, it had not shifted at that point, based on the information I had. And that was in 2015.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** And I have – I haven’t got the documents in my hand. If you need them, I could find them –

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

**MR. E. MARTIN:** – to point that out. So, and once again, I don’t know the date, I’m trying to provide context. As we moved into the 2015 season and got involved with Astaldi during that period of time in the summer, you know, as that was happening, I believe then is when the indications that the schedule would shift were happening and we were communicating that. And I was – as soon as I had some idea that where it could go.

So, within that time frame, Mr. Commissioner, I can’t pick a date.

**MR. LEARMONTH:** Okay. On page 6 of this Exhibit, third-to-last paragraph from the bottom, it says: “With respect to capital expenditures for the Lower Churchill Project, their forecast will be less than budgeted as the project is slightly behind schedule. Mr. Martin stated however, that work progress is improving.”

Is that a – was that a –

**MR. E. MARTIN:** I don’t quite follow you. Could you –?

**MR. LEARMONTH:** – correct statement? Page 6.

**MR. E. MARTIN:** Page 6, and what paragraph again?

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

**MR. E. MARTIN:** I keep going third from the top. I'm sorry about that.

**MR. LEARMONTH:** I'm – did I say –?

**MR. E. MARTIN:** I think I didn't hear you.

**MR. LEARMONTH:** Okay. That's fine. It says that the project is slightly behind schedule.

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

**MR. LEARMONTH:** Did you feel that at that point in time, November 28, 2014, that was a fair statement?

**MR. E. MARTIN:** Yes. If I made that statement, that's correct.

**MR. LEARMONTH:** Yeah.

Well, the next Exhibit is at tab 25, December 17, 2014 – so a few weeks later – Exhibit P-00691. On page 2 and 3, beginning on the bottom of page 2, you say: "Mr. Martin informed the Board that he had very recently met with the CEO of Astaldi, the main contractor of the construction of Muskrat Falls plant. He stated that while the construction of the Labrador-Island link and the Labrador transmission assets were on schedule, the construction of the Muskrat Falls plant is slightly behind schedule."

And did you feel that was a fair and accurate statement at the time?

**MR. E. MARTIN:** Yes, I do. And if it's okay, I'd like to continue to read the next sentence as well.

**MR. LEARMONTH:** All right.

**MR. E. MARTIN:** It says: "However, there is improvement and both parties want to ensure there is continued improvement."

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** And the combination of those statements make me – I'm very comfortable with that statement.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** And I would add, you know, the point that in my experience, you know, particularly with concrete installation over the years, you know, there's – you know, the ability to be slightly behind or slightly ahead of schedule, that flip flops, you know, on a regular basis. And slightly behind or slightly ahead of schedule is not an indicator of schedule issues.

Trending is important, here there was improvement. And I've seen on another, you know, very large, you know, concrete job – the Hibernia platform, the GBS – these big projects like that – if and when they turn the corner passed mid-project, you know, you will often see, provided it happens, exponential improvement –

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** – and a lot of tremendous recovery.

So, just in that context, Mr. Commissioner, I'm very comfortable that I did not see or was not informed of a schedule change at this point.

**MR. LEARMONTH:** But you knew that on December 17, 2014, that there was – you had lost six to nine months, with a six to nine month delay, correct?

**MR. E. MARTIN:** That is not correct.

**MR. LEARMONTH:** Well, that's what you said in your interview.

**MR. E. MARTIN:** I'm saying – is that – as I've said earlier, I was referring to the document in 2015. I don't have them in front of me, but the document in 2015 is what I was referring to. It's a document that covers the \$7.65 million – or billion, Mr. Commissioner, and in that document there's a reference to six to nine months. That's the one I was referring to.

And there's also a reference in that document that still did not – I was advised that still did not

change the first power date with a six to nine month (inaudible) – the quotation there, I think, was: They had eaten up or they had used up the natural float. So that's the document I was referring to. Not at this point in December 2014.

**MR. LEARMONTH:** Well, at page 50 of your transcript – of your February 11, 2019, interview you said that: I could've said that Astaldi had lost six to nine months, but I didn't.

**MR. E. MARTIN:** And – but, once again, I'm referring to – I – Mr. Commissioner, what I just said, I repeat: It's the documents in 2015 I was referring to there. And I can point that out if I had the document, but I just don't have it in front of me.

**MR. LEARMONTH:** Oh, we will check the transcript, okay?

**MR. E. MARTIN:** I appreciate that, but –

**MR. LEARMONTH:** These –

**MR. E. MARTIN:** – I want to be clear: That's the reference I was making, and that was well into 2015 and it's documented.

**MR. LEARMONTH:** Well, as I said, we'll check the transcript again.

Same binder 1, tab 28, P-01822.

Now, this is a February 13 briefing deck which indicated the project costs between \$7.5 and \$7.7 billion; presented by project management team to CEO and VP, finance.

So, first, can you confirm that the second revision to the AFE was not completed until late September 2015?

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

**MR. LEARMONTH:** Yeah.

And this February 13 briefing deck came up with a figure that was pretty close to what the September 25, 2015, revision was, correct?

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

**MR. LEARMONTH:** Yeah.

So why did you wait so long to prepare the revised AFE?

**MR. E. MARTIN:** Well, a couple of points there. Number one, I will – I'd like to make it clear, Mr. Commissioner, that it's on record – I read it in a summary of notes from Mr. Meaney – that in March of 2015 I met with the premier and the minister and reviewed the 7.5 number. And –

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** That's – you know, I just want to make that point because at this point things were – the contracts were coming through, and the levels of uncertainty I had talked about before were beginning to fall away because more and more information was available. And so that indicated that I felt very comfortable going immediately to the premier with the 7.5. Not with the 7.77, I think we'll see in a minute – I'll have to look at that. That was unclear as to what was going on but I did –

**MR. LEARMONTH:** Did you say March 2015 or June?

**MR. E. MARTIN:** March.

**MR. LEARMONTH:** Okay, well, that evidence is disputed by Ms. Mullaley that you gave a specific figure of 7.5.

**MR. E. MARTIN:** Well, the evidence that I saw is in Mr. Meaney's summary note –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – where myself and Mr. Sturge and –

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

**MR. E. MARTIN:** – gave an update to the premier. That's what I'm referring to.

**MR. LEARMONTH:** Well, anyway, I'll just tell you that Ms. Mullaley disputes that.

**MR. E. MARTIN:** I don't know if she does or not. I just can't remember that.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** But, in any event, it is what it is. I did tell the premier about the 7.5 at that point. And then moving on from that, you know, it was the process of getting to the 7.65 in September. I'm trying to remember that time frame. It was uncertainty around the Astaldi thing, obviously. We were heading in to the summer season with Astaldi. We had just come through a rough construction season and, you know, that was causing a lot of uncertainty outside of the \$7.5 billion.

And I believe the thinking and the dialogue was, at the time: Well, where is Astaldi going? And we said we don't know. We need the summer season. And I believe that caused, you know, some periods of time that we wanted to see how that developed.

And at that point we were into, say, a March, late April – or early April time frame with the data on the table, the 7.5. The September data, putting the 7.65 out, that's – what's that in – you know, four or five months. In that time frame, it does take a lot of work to get the AFE prepared and cleared through the boards and such. So that would be one element of that time. There's an element of waiting for – to see what happened in the summer season. And that all yielded, you know, the point that the AFE went out in that September time frame.

I know that it was – the 7.65 number was also discussed with the province and the government. I think it was in August, maybe July. I'm not sure. But if you go from the point in time here to the point in time of the AFE, government was informed along the way, and there was work to be done and we were waiting for the summer season and that caused that five to six month, you know, period of time between the numbers coming forward and getting a public AFE out.

**MR. LEARMONTH:** Okay. Well, why was there no allowance made for the Astaldi problem in this revision – in the 7.65 revision in September (inaudible)?

**MR. E. MARTIN:** We just didn't have enough data to say it and – or to put it in, was one point. I mean, there's – at that point, there's no way we could put a reasonable number around what was happening. The contract itself – in theory, the way the contract was structured, without the

financial issues that were beginning to appear with Astaldi, well, they would've had to have finished, period. No impact – in theory, as we've talked about.

**MR. LEARMONTH:** Well, that's very theoretical, isn't it?

**MR. E. MARTIN:** I'm putting – I'm laying out a spectrum, Mr. Learmonth –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – as to why we wouldn't put it in. So I'm just trying to say that's one end of the spectrum, but where the other end of the spectrum lay was extremely unclear, so you can't – you know, there's no sense, it's not right, it's irrational to pick a number when you don't know what it is.

So the way we handled that was we put the 7.65 on the table, and we were very clear with the government and the board – crystal clear – that these implications were not included. And we expressed that verbally, we talked about it at length and we also put the notations – two notations – two – not notations – two sentences, two clearly defined sentences in the 7.65 deck to the premier and the minister that Astaldi impact was not in the 7.65.

**MR. LEARMONTH:** Okay, just show me that reference.

**MR. E. MARTIN:** I'd need to have the 7.65 deck in front of me.

**MR. LEARMONTH:** Okay. Is this the one at page 18 of this exhibit? You can just refer it to me, please.

**MR. E. MARTIN:** Pardon me, Mr. Learmonth?

**MR. LEARMONTH:** Page 18 of this exhibit. This is the deck.

**MR. E. MARTIN:** No, this is not the 7.65 deck. This is the –

**MR. LEARMONTH:** Well, it's the – no, it's not the – okay, it's not the 7.65, but it's the February one –

**MR. E. MARTIN:** If we could pull up the 7.65 deck, I can easily show you that notation.

**MR. LEARMONTH:** Okay, well, we'll come to that. We'll come to that.

**MR. E. MARTIN:** Because I'd just like to make a note of that. Well, I'm sure counsel is making a note to make sure we cover that, but it's definitely in the 7.65, clearly.

**MR. SMITH:** Mr. Learmonth, that's 02006.

**MR. LEARMONTH:** 02006, okay. Just bring that up and you can refer that – refer me to that, please.

**MR. E. MARTIN:** So it's closer to the back part of the deck –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – but the page – so we can get – could you just go back for one second, please?

Oh, I'm looking here – the next page, please. Sorry to make you jump around here a bit. I thought I saw it on the way past, so – right here. Oh, that was it there, key messages.

The Powerhouse is – the last two: "The Powerhouse is behind due to Astaldi slow start, and first power from Muskrat Falls will be delayed from 2017, with the revised timeframe under review." So the revised time frame is not in this deck.

**MR. LEARMONTH:** So you're – that's (inaudible) –

**MR. E. MARTIN:** And the second point is additional –

**MR. LEARMONTH:** – paragraph you're relying on? Yeah.

**MR. E. MARTIN:** That's one point.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And then it says: "Additional costs and potential cost offsets and

reductions associated with the powerhouse delay are also under review."

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And that's the exact point where we made it clear again and again – we did it verbally, it was in the deck as well – that these numbers did not include the Astaldi impact.

**MR. LEARMONTH:** Okay.

Thank you for clarifying that.

Now, getting back to this Exhibit P-01822; if you can turn to page 24, this the is the February 2015 –

**MR. E. MARTIN:** Mr. Learmonth, can I make an additional comment on the previous point, please?

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** You know, I'd just like to link my previous discussion around, you know, providing decision-quality information to the board and the government with this document. Because, as I said here, what happens – what happened over time, then, it became much more rapid and easy to give the government – you know, to have these indicative numbers and these, you know, management reserve types of numbers, it became much easier to bring that extremely close to the AFE number because the uncertainties that were existing were falling away. You know, the contracts that were still coming; we didn't know what was going to happen to them. Mitigation activities that had been attempted or tried had gone away, we knew what happened there. And many other things had happened.

So that's why you're seeing here, for instance, when I hear a number of 7.5, I go in immediately. When we get to the 7.65, I think it was a three- or four-week lag from when I had the 7.65 to when I went in with the 7.65. And at that point I could identify that Astaldi was the problem on – and then I put that in the document. So I just want to show that progression from – you know, as we moved and got the uncertainties away, then I was able to

much more rapidly put decision information into the government's hands.

**MR. LEARMONTH:** Okay.

But at this point – are you saying you couldn't make a reasonable estimate as to how long the delay would be as a result of the non-performance by Astaldi? You couldn't make a reasonable estimate?

**MR. E. MARTIN:** That's correct. And I was certainly – I would – you said I – I mean, I think you mean the project management team. That –

**MR. LEARMONTH:** Well, you're the CEO, so I mean, you have to approve all these things, right?

**MR. E. MARTIN:** Oh absolutely, I have to approve them.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** But the point is: I wouldn't be doing the schedule. I wouldn't be coming up, you know, with the potential schedule impact. I just want to make that point, Mr. Learmonth, that – I just wanted to make the point clear that I would – you know, if you're thinking that I would be plucking a schedule out of the – out of, you know, thin air, that would not be it. That was all handled in the project team.

It would – I would have no understanding of what the puts and takes of that would be until it came to me, and at that point I would understand it. Mr. Bennett, Mr. Harrington, others would be explaining it. We would go back and forth. And at the end of the day, they would have to convince me and by default I would have to approve – I'm the CEO. But I wanted to make it crystal clear: I'm not coming up with the schedule.

**MR. LEARMONTH:** No, but you have to approve –

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

**MR. LEARMONTH:** – whatever recommendation.

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

**MR. LEARMONTH:** So you have control over that information.

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

**MR. LEARMONTH:** You have control over that.

**MR. E. MARTIN:** One hundred per cent.

**MR. LEARMONTH:** Right, okay.

Tab 29, Exhibit P-02417; that's a May 22, 2015, MF Cost Update, it's headed – James Meaney to Derrick Sturge.

And Mr. – and in this email from James Meaney to Derrick Sturge, Mr. Meaney says, Auburn – that's Auburn Warren, I take it – “Auburn and I chatted about the considerations of Ed doing a ‘two step’ update where \$ impact” – excuse me – “of any schedule change comes at a later point. In particular, we were thinking about it in the context of Canada/IE and the December 2015 COREA. Wondering while you are with him at MF site next week if you might get a chance to quietly query on whether step 1 cost update in June absolutely necessary (as opposed to one update in say, Sept, that covers both) ...” et cetera.

Now, can you tell us what's going on here about this two-step proposal for an AFE?

**MR. E. MARTIN:** I don't have a great recollection of it. It didn't have any legs for sure. So I can't offer a lot of comment on it.

My belief would be is that we're trying to find a way to get the balance, the public disclosure with the commercial sensitivity, and data and information again. And I believe it's linked to the fact that we did not know the impact of Astaldi. Where we ended up landing, I think, was to go with the 7.65 and indicate clearly to the board and the government that we had an Astaldi issue that wasn't in that number. The alternative would've been to go with an earlier number in 2015, and then following the summer season and coming into the fall and maybe the later fall, maybe we would know.

I think that was, generally, probably the thinking on that, but it just didn't go anywhere.



**MR. LEARMONTH:** Okay. So there was no – it was just a thought and then it was dismissed. Is that right?

**MR. E. MARTIN:** That's correct. And, once again, there's a lot of – you know, I guess, that's part of the role of the project management team and all of the executive to just try different things on.

**MR. LEARMONTH:** Right.

Okay, next I would like you to turn to binder 3, tab 64, Exhibit P-03430, and if we could go to page 3 of this exhibit.

**MR. E. MARTIN:** Page 60 – or sorry, tab 60?

**MR. LEARMONTH:** No, three – tab, yeah, tab 64.

**MR. E. MARTIN:** Sixty-four.

**MR. LEARMONTH:** If you go to page 3, this is a document prepared by EY for messages for government and it was in September 2016. And –

**MR. E. MARTIN:** Mr. Learmonth, can I scan – I'm just going to scan the email at the front, if that's okay?

**MR. LEARMONTH:** Yeah. You – this is in – the email in the front is not really something I'm going to be questioning you on. It's the attachment to it.

**MR. E. MARTIN:** Okay, well, I will come back to that if I think I need reference.

**MR. LEARMONTH:** Well, look, rather than do it that way, if you want to scan the email and scan the entire exhibit – this was provided to you, by the way, so I presumed you've read it, but if you haven't, take the time now to read it and then I can ask you some questions about the attachment.

**MR. E. MARTIN:** I'll scan it. I won't be very long, at all.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** So this was Tuesday – this is from Michael Kennedy to Paul Hickey, David Steele, Tim Calver, Kirsten Tisdale, December 6 – that's after I departed, is that – that's correct, isn't it?

**MR. LEARMONTH:** Yeah, but as I say, I'm referring to the exhibit –

**MR. E. MARTIN:** To the exhibit – September 2016, I'm just checking to make sure, that's post my –

**MR. LEARMONTH:** No, no. Okay, well, I'll come right to the point.

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

**MR. LEARMONTH:** This – EY, on page 6 –

**MR. E. MARTIN:** Page 6.

**MR. LEARMONTH:** – provides a commentary of the key findings in the April 2016 interim report on – well, the matters described on page 6. So maybe if you could look at page 6 and 7 before I ask you a question.

**MR. E. MARTIN:** So I'm ready to take a question.

**MR. LEARMONTH:** Okay.

Well, the first of the key findings recorded in this document by – this EY document is: "Overall conclusion that September 2015 Forecast of schedule and cost was **not reasonable**, because: Muskrat Falls Generation ('MFG') contract for civil construction ... was significantly behind schedule and consequences not reflected in September 2015 Forecast ...."

So if we go back to the earlier document where you said that they – you identified that it was under review, it appears that EY did not agree with that approach because they said it wasn't reasonable.

**MR. E. MARTIN:** I –

**MR. LEARMONTH:** Do you agree with the –?

**MR. E. MARTIN:** First off, you know, I wasn't here when this report was issued.

**MR. LEARMONTH:** No, but you were there when the September 2015 revision –

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

**MR. LEARMONTH:** – was done.

**MR. E. MARTIN:** Did you have a – I had two points but I didn't have a chance to finish them. Did you – were you asking another question?

**MR. LEARMONTH:** No, I said – you said that you weren't here for this – when this document was prepared, but I'm saying you were in control in September 2015, and this is a commentary on the September 2015 AFE.

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

**MR. LEARMONTH:** Yeah. So I don't know why you can't take questions on it.

**MR. E. MARTIN:** I'm trying to answer the question. I am taking questions, I'm trying to answer them.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** So will I proceed, or do you have another one? Will I proceed on the previous one or do you have another question?

**MR. LEARMONTH:** Well, you know, I'm asking you to comment on the key finding –

**MR. E. MARTIN:** Mm-hmm.

**MR. LEARMONTH:** – of EY in this document where it says: "Overall conclusion that September 2015 Forecast of schedule and cost was **not reasonable**, because: Muskrat Falls Generation ... contract for civil construction (Astaldi) was significantly behind schedule and consequences not reflected in September 2015 Forecast; Current contingency level representing 4.7% of cost to complete, or 2.3% of total cost, was very low for stage of completion of Project - **significant amount of physical construction work still to do, followed by commissioning and integration**; Risk of multiple month delay to completion of the HVdc transmission line contract as a result of delivery challenges to date

and future risks, where full mitigation may not be possible."

So we'll deal with those first, okay?

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

**MR. LEARMONTH:** Can you deal with them in order? What is your opinion on the findings that are identified in this report?

**MR. E. MARTIN:** So, first, I acknowledge that I was in control at the time of the September 15 document.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** So I – so, in that context, I was not here when this report was issued.

So I just got a couple of more points. I'm trying to speak fast here now.

So I did not have a chance to respond to those or the team – I was not part of a response to this document, which normally would be documented, you know, by the project team. So I don't have all the facts and information around this particular statement. So a lot of it is speculation in terms of what they say here. So in that – with that perspective, as far, you know, what do I know? I knew that the schedule and costs that we presented was reasonable and –

**MR. LEARMONTH:** But you disagree with that finding that it was not reasonable?

**MR. E. MARTIN:** Mr. Learmonth, I'm just trying – it's important I finish the second half of that, I think.

But go ahead and ask your question.

**MR. LEARMONTH:** No, continue on.

**MR. E. MARTIN:** Okay. What was I saying? I –

**THE COMMISSIONER:** You said that you knew the cost and schedule were reasonable (inaudible).

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

I knew the cost and schedule were reasonable and we had added that section that it did not include the impact of Astaldi. So my perspective would be that the 7.65 was reasonable, but also from the – it didn't include Astaldi and we told everyone that. So to marry those two together and say it's not reasonable, that's not a way I would characterize it. I think the – it was reasonable because we gave a number that we knew and we could put our hand, you know, on heart and say: We thought that's where it was. But we did indicate, very clearly, that there was more to come but we couldn't quantify it. That's point one.

As far as Muskrat Falls generation contract was significantly behind schedule and consequence, then in that particular case that was not the information that I had at hand at the time. We just didn't know. Significantly is a big word. How much time? We didn't know. But we knew it was going to be impacted and we said that.

From a current contingency level of 4.7 to 2.3 of total cost – I can't comment on that. I – you know, I believed what I had at the time. I don't know what they're basing this on.

And "Risk of multiple month delay to completion of the HVdc transmission line contract as a result of delivery challenges to date and future risks ...." Once again, I'm – you know, I'm – I can't remember discussing that in the – in that meeting. It may have – in the meeting I had back in 2015 before I left. But, you know, once again, I don't believe that – or I believe that this information would've come – I can't say that because I wasn't there.

Going back a step, my experience with EY, when I was there, was that they worked closely with the project management team, they got information from the project management team, they got documents from them and they generally regurgitated that information in a relatively negative connotation afterwards. And when I was there, I – you know, I found, as I said yesterday, the EY reports – what was in them was – had value, but it came from the team. Any added value, I didn't feel it. I don't know if that happened here because I wasn't here, so I can't comment on that.

**MR. LEARMONTH:** Okay.

Did you feel that EY was biased against Nalcor?

**MR. E. MARTIN:** I can't answer that, and what I can answer is what I've said. Again, with respect to when I saw the reports generated – were based upon information that the project team had provided and given them and they would construct the report. So the reports that – the information in them was what we already knew. I didn't sense any or see any added value from my perspective.

**MR. LEARMONTH:** No added value?

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

**MR. LEARMONTH:** Did you say there was no added value –

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

**MR. LEARMONTH:** – the work EY –?

**MR. E. MARTIN:** – I couldn't see any added value there.

**MR. LEARMONTH:** All right.

**MR. E. MARTIN:** If there was any –

**MR. LEARMONTH:** Now –

**MR. E. MARTIN:** If there was any – you know, if there was any minor points of value added, it was offset by the, you know, negative nature of how it was presented.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** So I (inaudible) overall net – no value.

**MR. LEARMONTH:** Yeah.

Now, the second point made here on page 6 is – the statement is: "Current contingency level representing 4.7% of cost to complete, or 2.3% of total cost, was very low for stage of completion of Project - **significant amount of physical construction work still to do, followed by commissioning and integration.**" So they're saying that the contingency was very low.

What comment do you have on that finding?

**MR. E. MARTIN:** Is this referring to – were they referring to the – they said current contingency level, is that – are they referring to – you may not know this. I don't know because I wasn't there. Does that refer to the contingency level at this period of time –

**MR. LEARMONTH:** Well, I think it was –

**MR. E. MARTIN:** – when the report was done?

**MR. LEARMONTH:** – September 2015. That's the way I read it. It says: "Overall conclusion that September 2015 Forecast of schedule and cost was **not reasonable**, because ...." So it seems to be a reference to the September –

**MR. E. MARTIN:** And they say current contingency. Well, I'm just not familiar with that, so I – you know, I'm not going to comment on it.

But from a broader perspective I would say that, you know, at the time, whatever was reflected in the 7.65 number at the time I was there, and I would've received that information from the project management team and, you know, obviously I would've agreed with it, because I went forward with it. So whatever was there, I would support. But I'm not sure if this was it.

**MR. LEARMONTH:** The –

**THE COMMISSIONER:** Can I just interrupt you there?

I just saw – I looked at my watch and we're 20 to 11. Where we started at 9 this morning, I think we'll take our 10 minutes here now and before you move on. If that's okay with you, Mr. Learmonth?

**MR. LEARMONTH:** It is.

**THE COMMISSIONER:** Okay.

So we'll adjourn now for 10 minutes.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** All right.

Mr. Learmonth, when you're ready.

**MR. LEARMONTH:** I'm just going to carry on with that exhibit, Mr. Martin, page 6 of P-03430. That's tab 64. We were just looking at that.

Okay. Under the heading additional key findings on page 6 is: "Project risks, whilst identified, are not systematically evaluated and reflected in the financial and schedule forecast."

Do you have any comment on that finding?

**MR. E. MARTIN:** Not in particular, no.

**MR. LEARMONTH:** You don't know whether it's accurate, or inaccurate, or right or wrong?

**MR. E. MARTIN:** Once again, I don't have the benefit of the project team's response to this. I guess at the highest level, Mr. Learmonth, the project risks – my understanding, they were reflected in the financial and schedule forecast. And when I was there – and I would predicate that on the fact that, you know, they – I would – trends would be discussed with me. You know, for instance, in all areas the risk registers would be maintained and I would ask that question, was assured that would happen. I just don't know what the project team responded to after – in this report afterwards, but when I was there, it was.

**MR. LEARMONTH:** Okay.

So you think the project team would be a better source of information on that than you?

**MR. E. MARTIN:** I do at this point, because I didn't have a chance to respond to this report. But I will make the point again, I believe clearly that when I was there, project risks were

identified and that's noted here. They "...are not systematically evaluated and reflected in the financial and schedule forecast." That is untrue for when I was there. What happened afterwards, I would expect it was the same but I can't comment on it.

**MR. LEARMONTH:** Yeah.

Well, I think this is a reference, and I could be wrong, to the September 25, 2015, but I may –

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

**MR. LEARMONTH:** – I may be wrong on that.

**MR. E. MARTIN:** The project risk – when I was there, it was clear to me based on input from Mr. Bennett and Mr. Harrington and the project team that project risks were identified and project risks were, yes, systematically evaluated, and yes, reflected in the financial and schedule forecast.

**MR. LEARMONTH:** So if they were referring to the period when you were there, you would disagree with that finding.

**MR. E. MARTIN:** I would absolutely disagree with that.

**MR. LEARMONTH:** Okay.

All right, the next exhibit is tab – we're in binder 2, tab 32. This is Exhibit P-03960, page 1. It says, "Aug 2015 Briefing deck by CEO" – that's you – "VP" –

**MR. E. MARTIN:** What – what – excuse me, I'm sorry to interrupt; what tab again please?

**MR. LEARMONTH:** Tab 32, binder 2.

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

**MR. LEARMONTH:** You have it?

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

**MR. LEARMONTH:** Okay.

So this refers to the, "Aug 2015 Briefing deck." I presume this was followed by a meeting. Is that correct?

**MR. E. MARTIN:** This deck was presented to – yes, it was presented – following what, Mr. Learmonth? You said it was presented following –?

**MR. LEARMONTH:** No, at a meeting?

**MR. E. MARTIN:** Yes, it was presented at a meeting.

**MR. LEARMONTH:** Do you remember the meeting?

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

**MR. LEARMONTH:** Okay.

And do you know who was present?

**MR. E. MARTIN:** I can't remember.

**MR. LEARMONTH:** I guess the people identified at the top, right?

**MR. E. MARTIN:** Okay, I can't remember exactly who.

**MR. LEARMONTH:** But it says, "the Premier, Minister of Finance, Julia Mulalley, Charles Bown." So I guess –

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

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

So this is the, sort of, the warning briefing for the impending revision to 7.65, this is the notice that you were providing to them.

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

**MR. LEARMONTH:** Okay. Very good.

Now – and you discuss the various issues and – in it so I'm not going to go through it; we were already aware of what your position was with respect to Astaldi and so on, and it not being included in the figure, but that you told them it wasn't included.

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

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** Okay.

**MR. LEARMONTH:** Now there's a reference here to the COREA: it says, "Discussions with IE/Canada and their financial advisors concluded in a change to how cost overruns were to be recorded in the monthly Construction Reports and the annual cost overrun calculation for Corea."

Now how did you – what was your understanding as to the way that the COREA account operated in terms of when amounts would have to be added to COREA? What would be the trigger point for, you know, putting something into the COREA account?

**MR. E. MARTIN:** Mr. Learmonth, I'm a bit foggy in this; I really didn't deal with this a lot, so I can give you an opinion but wouldn't want it, from an evidence perspective, to be considered, you know, direct or indirect because I just really did not deal with this stuff.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** My understanding –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – in that context of the COREA – you said when it would –

**MR. LEARMONTH:** Yeah, well I don't want you to speculate because we've already had information from –

**MR. E. MARTIN:** Okay.

**MR. LEARMONTH:** – Jim Meaney and Derrick Sturge on it.

**MR. E. MARTIN:** But I would refer to that and agree with that, because they handled that.

**MR. LEARMONTH:** Okay, well then, I don't – there's no point in you speculating when you believe that their –

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

**MR. LEARMONTH:** – information would be more reliable.

**MR. E. MARTIN:** – I would agree with their assessment.

**MR. LEARMONTH:** Okay. Very good.

Tab 33 is Exhibit P-02290. Page 2 – this is a letter from Alison Manzer, you know who she is, do you?

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

**MR. LEARMONTH:** She was a lawyer – and were you aware of the existence of this letter when it was sent on October 16, 2015?

**MR. E. MARTIN:** I wasn't aware of the letter but, you know, I had been informed that there was an issue that this letter covered, I never received a copy of this letter but I was informed that there was an issue.

**MR. LEARMONTH:** Yeah. And there was a threat – not a threat but a cautioning that maybe funding would be cut-off unless –

**MR. E. MARTIN:** I was informed of that, yes.

**MR. LEARMONTH:** Okay.

But were you aware that they were – that, well I guess, Mr. Meaney and/or Mr. Bennett were sending inaccurate information on monthly construction reports to Ottawa?

**MR. E. MARTIN:** I wish they were here to address that; I couldn't see – I don't – the term inaccurate doesn't ring true to me.

**MR. LEARMONTH:** Well Mr. Meaney acknowledged that that was the case when he testified.

**MR. E. MARTIN:** So, in that case, I'd have to refer to that. But could you give me some – would you – I'm wondering about the context is around incorrect. I just don't know – and pulling back again, I don't wanna speculate on this one, Mr. Commissioner. This was – I was informed of this, my response would have been: Handle it, you know, fix it.

But I have to say again, I did not get involved deeply in this part of the arrangements.

**MR. LEARMONTH:** Okay.

And were you aware that the – well, Mr. Meaney and Mr. Bennett – I'll say them both – were sending inaccurate monthly construction reports to Ottawa, between roughly February 2015 and October 2015?

**MR. E. MARTIN:** I was not aware of that and, you know, I guess I – you know, when you use the term inaccurate, I wouldn't want my response to say I agree they were inaccurate, 'cause I would prefer to get the information from Mr. Bennett, Mr. Meaney first to see what –

**MR. LEARMONTH:** But Mr. Meaney acknowledged that in his –

**MR. E. MARTIN:** I just didn't hear that, Mr. Learmonth –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – so I –

**MR. LEARMONTH:** Yeah. He said –

**MR. E. MARTIN:** – I just wanted to make that point.

**MR. LEARMONTH:** – if he didn't say they were inaccurate, he said they were not accurate. But, same –

**MR. E. MARTIN:** So once again, I don't – probably not a high value for me to offer an opinion on that. I'd – I just don't –

**MR. LEARMONTH:** All right. We'll leave that then.

Next is tab 35, Exhibit P-03423. This is an email from Richard Noble of EY to David Steele, and it's copied to other people in EY but not to Nalcor. And it has a – some, you know, negative comments on the risk management procedures that were followed by Nalcor.

And if you look at the third – second paragraph, Mr. Noble, on December 18, 2015 – so you

would've been still CEO at the time – he says: "I believe there ... be no action/changes required as ... the management responses from Nalcor." And this is in relation to the report – we can assume this – that the report that they were doing, not the detailed report but the one on process and controls. You know what I'm referring to, right? The process and controls report?

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

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

So he says: "I believe there to be no action/changes required as a result of the management responses from Nalcor. They acknowledged some of our findings and tried to soften others with wordy and at times tangential explanations... My favourite being:

“The approaches to contingency development contemplated by E&Y were undertaken at project sanction in December 2012. Our current approach, which we believe to be appropriate and prudent at this stage of project development, is to continue to engage in direct discussion on emerging risks and cost pressures and take management action when they have emerged.”

And then he says: "Which in other words is

“We did it once... but” we “haven't updated the quantitative contingency assessment in 3 years and are now managing by the seat of our pants... and living with the results’...

“Bottom line... they blew their contingency allowances which were clearly inadequate and have the substantial” cost “overruns on cost and schedule as a result... hmmm... a reassessment is perhaps warranted now, wouldn't you think.”

Now, do you – I want you to provide your comment to that – to that, you know, position as stated – I bet you know – but you can do it either globally or by breaking down each paragraph. I'll give you that opportunity.

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

**MR. LEARMONTH:** Provide your comment, yeah.

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

**MR. LEARMONTH:** Yeah, provide your comment, feel free to speak as to how you feel about these statements.

**MR. E. MARTIN:** While – I believe that the project team had responded and I agree with their response. If not a response, that first quotation-marked –

**MR. LEARMONTH:** Right, “The approaches to ...”

**MR. E. MARTIN:** – suggestion, yeah, and I agree with that. I think the – his next phrase, I think it’s a – you know, it’s a rude manifestation of, you know, how the individual felt about it, and I don’t agree with that. I agree that we didn’t do a quantitative risk assessment. I certainly entirely agreed with the second half of that sentence. And (inaudible) –

**MR. LEARMONTH:** You agree with what he said – you agree with what?

**MR. E. MARTIN:** He said we haven’t updated the quantitative contingency assessment. I’m not sure in three years, but I know we weren’t doing regular –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – quantitative contingency assessments. And by quantitative, I mean QRAs. We just talked about that the other day. So, I’m not sure the three-year period but – so, that’s my comment.

**MR. LEARMONTH:** Yeah. So you disagree with the – the comment that you’re managing by – Nalcor was managing by –

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

**MR. LEARMONTH:** – by the seat of your pants.

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

**MR. LEARMONTH:** Okay, yeah.

All right. And just to – I don’t wanna go over again, but, you know, Mr. Kennedy said that he thought that in the circumstances that Nalcor found itself in that, I guess, six month – there should be a quantitative risk assessment done every six months. And you said that you disagree with that.

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

**MR. LEARMONTH:** Yeah. And just to clarify, I think their last – the quantitative risk assessment had been done by Westney in September 2012 and there hadn’t been one done, I don’t think, until one was requested in December 2015. So, that’s the three-year gap that we’re talking about. Does that –

**MR. E. MARTIN:** I have no reason to doubt your topic. And, once again, that’s something I would normally ask the project team before I answered.

**MR. LEARMONTH:** All right. Fair enough.

Tab 36 of binder 2, Exhibit P-03346. This is an email from – well, at the top, but from Michael Kennedy, January 21, 2016. It’s copied to David Leather and David Steele and Kirsten Tisdale. These were comments that Mr. Kennedy said he – or reflections that he had after he had come down to St. John’s and met with you and the other members of the project management team in anticipation of doing work on the – what ended up to be the April 2016 schedule and cost review.

Do you know what I’m speaking of?

**MR. E. MARTIN:** I am not –

**MR. LEARMONTH:** In other words, in January –

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

**MR. LEARMONTH:** – I’ll put it this way. In January 2016, there was a formal contract made with – between the Government of Newfoundland and EY to do a –

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



**MR. LEARMONTH:** – detailed – they did that. And Mr. Leather from England and others assembled here in St. John’s – Mr. Kennedy from Vancouver – to have a meeting with you and other members of the project management to – just to tee the thing up and figure out how you’re gonna do it, a preliminary meeting.

And following that meeting, Mr. Kennedy went back to Vancouver, and these were his reflections on the meetings that you had and the general state of the review that they were doing. He says: “Hi David. I know we talked a little earlier just when I got back to YVR.” That’s Vancouver. “Just thinking a bit more, I feel pretty queasy about where we are at given the call to Julia from Nalcor and continued absence of data, which are again indicative of the culture and lack transparency over there. None of this consistent with normal practice in major capital projects, let alone best practice. Thieu Hue mentioned to me yesterday that we are 400k into this upto this week. Are we at the point of a straight forward discussion with Julia?”

Now, I just wanted to – you know, he’s speaking very clearly about, well, his belief that there was a culture where there was a lack of transparency. And he – you know, he talked when he testified, about the evidence – about the discussions that you had at the – when you met with them in St. John’s.

Do you recall meeting with Mr. Kennedy, Mr. Leather and others in St. John’s in January 2016?

**MR. E. MARTIN:** I recall a meeting. I’m not sure who was there, but I recall a meeting with EY. It was – I believe it was a kick-off meeting. I think you mentioned that.

**MR. LEARMONTH:** I think it was a – well, it could’ve been kick-off.

**MR. E. MARTIN:** It could well –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – you know, something like that.

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

**MR. E. MARTIN:** And I can’t remember the express details of it. Once again, that would’ve been one of the few meetings I had, if any, with – you know, over and above that, I wasn’t dealing with this directly.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** I do remember a meeting with a larger group at the initial stages.

**MR. LEARMONTH:** Okay. Well, Mr. Kennedy is saying he’s feeling queasy, and he refers to – well, I guess the sentence is: “... I feel pretty queasy about where we are at given the call to Julia from Nalcor and continued absence of data, which are again indicative of the culture and lack of transparency over there.”

Do you have any comment on that opinion as stated by Mr. Kennedy?

**MR. E. MARTIN:** So I – you know, I totally disagree with the lack of transparency. I don’t have a lot of information on this; I did hear portions of Mr. Harrington’s testimony on this. He and Mr. Bennett would be, you know, much more in the loop about the ins and outs of it. But, you know, I know that from EY’s perspective I just never, you know, got a good feeling that they were, you know, trying to add value to the job from the outset.

My understanding was – and part of this, Mr. Commissioner, is listening to Mr. Harrington’s testimony, so I can’t say I recall this, in essence, but I started to recall some of the conversations that Mr. Bennett, in particular, would have with me and Mr. Harrington. That, you know, these folks – EY – are coming in; there was an arrangement that they were not going to initially get into the Astaldi situation. That was an arrangement that Mr. Marshall and Mr. Ball and I had come to the conclusion of. I talked about that in my testimony previously.

And there seemed to be some lack of understanding of that. I think our people, I heard, were looking to get the proper documents, NDAs and such in place. And I know that the access to the information that were required within the scope of EY’s review – I checked that when a couple of people asked me and I was

assured that, absolutely, they were getting what they needed.

So I just – I never could understand until I read some more of these emails I found in the Inquiry documentation, the internal EY emails. I never really could get a flavour for EY was coming from. I had – and folks had indicated to me, they're just looking for more business, that's what, you know, they've done elsewhere in these situations, and I just said: Keep going, keep working.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** But I could never myself get, you know, the point of how this was working, 'cause normally when you deal with a group like this, it's between – the company and the group are working together. You're trying to add value. You're trying to plot what you can out of it.

And I remember saying to one of those gentlemen, one of the senior people at the meeting, you know, I remember saying: Look, the agreement is in place, you're here, and I said, let's get value out of this. And I said: Look, what I'm asking from you is some help, I think I said, because the project is the number one consideration, you know, we're moving this ahead in the proper fashion. I said: The government, you know, wants you to be involved here, so there's no question you're involved here. So I said my approach is, I said to them, I said I'm asking for your help, because there's good stuff going on and good people and if you can help us pull that together and, you know, inform the government, I said maybe it could be positive in moving things ahead.

That was my view. And I thought that's where they were, but as I saw the information and the interactions unfold, the reports and the discussions that were going on with the government, and particularly when I saw, through this Commission, some of the correspondence that was going on within EY and to government without my knowledge, that was – you know, looking back on that – pretty problematic.

**MR. LEARMONTH:** Okay. But – okay, just before we leave this exhibit. There's suggestion

that there's a lack of transparency, that Mr. Kennedy – and he says that was shared by the other members following this kick-off meeting – a lack of transparency. You know, you can read it yourself, but I think that's one of the suggestions that he is making in this.

What is your reaction to that allegation, or that position?

**MR. E. MARTIN:** I think it's not true.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** I'm struggling a little bit here, Mr. Learmonth, because part of my – I'm mixing the testimony I heard here, Mr. Commissioner, and what I remember, so I have to make that distinction.

But I was triggered by hearing some of the discussion around the seeking of the non-disclosure agreements and those types of things, which I never really got involved in to my – that I can remember. But if I was asked, I'd say: Absolutely, you got to have that in place. And that's just good business. And it appeared to me that, you know, they were equating some of the work around that to a lack of transparency. My understanding is once those documents were in place, there was absolutely no lack of transparency, and as – that was probably evidenced by the fact they were producing in their reports most of the stuff that we told them anyway.

**MR. LEARMONTH:** Okay. Anything more you want to say about that email?

**MR. E. MARTIN:** Not about this email.

**MR. LEARMONTH:** No, okay.

Next, go to tab 38 of the same binder, binder 2. This is Exhibit P-04088, and it's a January 2016 **"Cabinet Briefing Deck with an Astaldi focus."**

It says: "This deck was presented to the GNL Premier and Cabinet on the 26 Jan 2016 and focused on the schedule delay caused by the Astaldi performance and the costs for any potential commercial deal with Astaldi."

“GNL were informed of the 12 to 18 months delay and a \$600M to \$800M cost exposure. Nalcor negotiations with Astaldi at that time were at a potential settlement of \$250M to \$350M.”

Now, we talked about this yesterday, I don’t want to go through it in detail, but I think the \$600 to \$18 [sp. \$800] million cost exposure, based on the earlier docs, was a reference to claim that you perceived Astaldi was going to make. Is that correct?

**MR. E. MARTIN:** That’s correct. That would be – you know, the \$600 to \$800 million would be an assessment of what Astaldi’s problem was, not what –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – not what we would –

**MR. LEARMONTH:** Yeah, (inaudible).

**MR. E. MARTIN:** – offer.

**MR. LEARMONTH:** Yeah, all right.

And then in the third paragraph down: “Following the meeting Nalcor were told to discontinue any further negotiations with Astaldi which resulted in a hiatus of approximately 5 months until the May 2016 briefing with the new CEO ....” So you referred to that yesterday.

So was the communication to you to cease, discontinue any further negotiations made immediately after this January 2016 meeting?

**MR. E. MARTIN:** Immediately? I can’t say – short answer would be, yes, Mr. Commissioner. But, you know, it could’ve been a day or two. I’m just not exactly sure. But there wasn’t a lag – I was at the table with Astaldi, and I don’t have a total –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – recollection of the dates –

**MR. LEARMONTH:** Okay, but the –

**MR. E. MARTIN:** – but I know, I was informed while was at the table –

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** – and had to withdraw, which would’ve certainly been, you know – well, I ’m just trying to think now –

**MR. LEARMONTH:** Well –

**MR. E. MARTIN:** – following the meeting. So I would’ve been –

**MR. LEARMONTH:** Well, no –

**MR. E. MARTIN:** – I’m not knowing the exact sequence, but I would’ve been back sitting at the table with Astaldi –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – when I heard.

**MR. LEARMONTH:** First, I assumed incorrectly that there was a meeting. This document doesn’t suggest there was a meeting.

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

**MR. LEARMONTH:** “This deck was presented to GNL Premier and Cabinet ....” I don’t know whether the – anyone from Nalcor was there to make the presentation or whether the deck was simply presented.

Can you provide any (inaudible) –?

**MR. E. MARTIN:** Well, there’d no deck with Nalcor on it that would not be presented by Nalcor.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** So that’s clear. And the – I’m maybe – I’m not making assumptions about what the salient point is here, but I’ll suggest that this deck was presented, the information was there, you mentioned one of the – notified immediately, I’m not sure what “immediate” meant –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – but very short term, but I do know I was at the table with Astaldi when I was informed.

**MR. LEARMONTH:** Well, if you were at the meeting when this deck was presented and then you were informed –

**MR. E. MARTIN:** It would have to be after that.

**MR. LEARMONTH:** – it would have to be after.

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

**MR. LEARMONTH:** And it would have to be – were the meetings with Astaldi here in St. John's or –?

**MR. E. MARTIN:** Yes, they were.

**MR. LEARMONTH:** Okay, but anyway, so it was after that. And you were literally at the table –

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

**MR. LEARMONTH:** – and you got a phone call to say give it up –

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

**MR. LEARMONTH:** – or stop? Yeah. Okay.

All right. Tab 39, binder 2, Exhibit P-03425. This is an email from David Leather to David Steele, Tim Calver, Michael Kennedy about a meeting that apparently – well, it appears that Mr. Leather and Mr. – and Tim were at the meeting because this email says:

“David, Tim

“As discussed last week, I attach my notes of the meeting with Ed for you to add to/amend etc.”

Well, I guess, what that means – well, one interpretation is that because he was sending this to David Steele and Tim Calver, that they must have been at the meeting with Mr. Leather. Otherwise, why would he be sending, you know, the minute to them to – for their comments.

I guess I'll come to the point. Do you recall meeting with David Leather, David Steele and Tim Calver on January 15, 2016?

**MR. E. MARTIN:** I remember meeting with EY, which would include some of these people, and I remember discussing these topics.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** I don't know exactly who was there.

**MR. LEARMONTH:** Mmm. Okay.

Now, on page 2 – excuse me, page 3 of this Exhibit, the top, Risks, it says: “The delays in Astaldi's work will result in a significant delay in the completion of Muskrat Falls Generation. This could be up to 18 months beyond the ... December 2017 when all works should have been completed.”

Did you state that at the meeting we're talking about?

**MR. E. MARTIN:** I believe I would've. I think I would've said a range of 12 to 18, but my memory is not entirely clear here. I'm using not as definitive as that, only because I wouldn't know, so. And I believe these are meeting notes that were prepared – they were, weren't they? They were prepared by this gentleman, Mr. Leather.

**MR. LEARMONTH:** Yes, and then sent to –

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

**MR. LEARMONTH:** – Tim Calver.

**MR. E. MARTIN:** So, I never chance –

**MR. LEARMONTH:** (Inaudible.)

**MR. E. MARTIN:** – to review these –

**MR. LEARMONTH:** No.

**MR. E. MARTIN:** – at the time.

**MR. LEARMONTH:** Yeah, but you –

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

**MR. LEARMONTH:** – reviewed them now.

**MR. E. MARTIN:** And I viewed them now and I can't have direct recollection, I think, on that. 'Cause if you ask me specifically, I could have – I would've likely said 12 to 18 months.

**MR. LEARMONTH:** But you don't remember. You might've said 18?

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

**MR. LEARMONTH:** Could be update.

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

**MR. LEARMONTH:** It says – this note says: This could be up to 18 months.

**MR. E. MARTIN:** So, I – once again, my normal phraseology was 12 to 18.

**MR. LEARMONTH:** All right.

Okay, then we go down one, two, three, four – the sixth paragraph from the top. "The current cost estimate of \$7.653 billion includes unallocated contingency estimated by EM" – Ed Martin – "at approximately" \$200 million. "(Confirmed post meeting to be to be \$178 billion" – million should be – "at November 30 2015.) EM indicated that in addition to whatever variance may arise as a direct consequence of the Astaldi negotiations, (for which he gave no indication quantum), additional cost variances beyond this up to \$200 million could potentially arise in addition to the available contingency" – fully – "being fully utilized."

Do you recall advising Mr. Leather of that?

**MR. E. MARTIN:** No. And I wouldn't have said it like that, I wouldn't have said that.

**MR. LEARMONTH:** So you deny that you said that?

**MR. E. MARTIN:** Not in that format. That just sounds all – you know, it sounds too convoluted, I – I don't understand it myself. At that time, you know, I was talking about, you know, \$300 to \$500 million, you know, potential, (inaudible) 300 to 550 or somewhere in that range of potential total impact. I was thinking I was in the 250-plus – 250-300 range. I can't remember the exact numbers but I can – you know, I can

assure you I wasn't, you know, just using single numbers because I didn't have them and I was providing information, you know, that I would have been provided by the project management team to me. And they – then they were provided in ranges at that time because that's all we knew or that was all we could adhere to. So – but I don't agree with that characterization.

**MR. LEARMONTH:** Well, this is – this information obviously is attributed it to you. I mean you are meting with three people from EY, so this information, they are saying, came from you at the meeting. And are you saying that information (inaudible)?

**MR. E. MARTIN:** That's right. I'm saying that the information that David Leather put down in that there I don't think that's – that is not what was said. It's his meeting notes, absolutely. And I never reviewed them and I am saying that that's not how I characterize that particular piece. That's all.

**MR. LEARMONTH:** Well, how do you recall having characterized it?

**MR. E. MARTIN:** I just said – I just said that I'd put a range around any potential settlements or cost variances and those type of things. I would have put a range around that. That's what I – that's the information I had. I was consistently doing that.

**MR. LEARMONTH:** Because this information, if I read it correctly, this is what we are talking about here. You are saying that, okay, the estimate at 7.653 – that's the September 2015 revision, right?

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

**MR. LEARMONTH:** Okay. So what they are saying here is that after the meeting, you confirmed that the contingency was \$178 billion as of November 30, 2015 and that that would spent together with another – up to another \$200 million could – shouldn't be spent – and up to \$200 million could potentially arise in addition to the available contingency.

So that suggests that the potential for \$378 million, including the contingency – isn't that what it says?

**MR. E. MARTIN:** It appears to, yes.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** But I just read that, it's not, like that's – it's just not, Mr. Learmonth, in the way that I speak about these things. That's my only point.

**MR. LEARMONTH:** Okay. So, you don't think that's an accurate reflection of what you said at the meeting?

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

**MR. LEARMONTH:** All right.

The next paragraph: "With the benefit of hindsight EM agreed that ideally they would have included a greater risk allowance in the project budget relating to productivity issues, but the contingency level was influenced by ... funding arrangements."

Did you say that at this meeting?

**MR. E. MARTIN:** I can't recall saying that exactly. No.

**MR. LEARMONTH:** You may have, you may not have?

**MR. E. MARTIN:** I can't recall.

**MR. LEARMONTH:** You don't know. Okay.

And then the next sentence: These "require additional monies to be paid into an escrow account by the provincial Government. If the cost estimate increases above the original estimate of \$6.2 billion, an amount equal to the cost estimate increase, divided by the number of years remaining to completion, has to be paid into the escrow account" for "each year to ensure that the Province has sufficient funding available to complete the project."

Did you provide – is that a correct reflection of what you said?

**MR. E. MARTIN:** I can't recall other than – if it was discussed, I wouldn't have said 6.2; I would've said 6.5.

**MR. LEARMONTH:** I was gonna ask you about that.

**MR. E. MARTIN:** Well, I mean, I didn't say 6.2, so I would assume that's incorrect.

**MR. LEARMONTH:** Okay.

Tab 40, Exhibit P-03086. Now this is a document that was prepared on February 26, 2016 by Calvin Parsons, then chief of staff for Premier Dwight Ball. It was sent to Dwight Ball and Tim Murphy, who I believe is deputy chief of staff. I'm not sure, but they're all government officials. And it's a notes made of a meeting – and I'm on page 2 now – a meeting that was held on February 25, following a Cabinet meeting. There was "a 3+ hour meeting with EY to get their thoughts on the Astaldi issue and on Muskrat Falls Project more generally. The Premier, Min Coady, KP, TM" – Kelvin Parsons, Tim Murphy "and JM" – Julia Mullaley – "attended."

Now I know you weren't at the meeting but I want to go through some of the findings to see – to get your response to whether you think they're valid comments or not. So, feel free to express your views on the ....

Well, the first point, "The lead EY rep was David Leather, who in a past life was CFO for the London Olympics which had a budget of 9 billion Euros. That project came in on time and on budget."

I think your counsel has put in some documents to say it wasn't on budget and that that's not a correct statement. Anyway, we'll get that (inaudible).

**MR. E. MARTIN:** And, I think that – so, yeah, I mean –

**MR. LEARMONTH:** I think what –

**MR. E. MARTIN:** – that's a very odd statement –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – I would think, because that's not – it's just fundamentally not true, and

it was not a minor issue; it was a – at the Olympics, it was a very substantial issue, so that's interesting.

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

Well, anyway, you know, I think – and we'll get – I think what happened is that the budget for the Olympics kept on being rebaselined, so that the final estimate might've been €9 billion, but the original one was €2.4 billion, so, you know, that could be a reference to the last baseline. But, anyway –

**MR. E. MARTIN:** It could be a reference to the last baseline, but I would be remiss in not suggesting that if this is the type of information that EY was providing into the process that that's probably an indication that we've got a problem with the information.

**MR. LEARMONTH:** Okay. (Inaudible) –

**MR. E. MARTIN:** That's €2.4 to €9 billion is a –

**MR. LEARMONTH:** Oh, I don't –

**MR. E. MARTIN:** – that's a lot different than on time and –

**MR. LEARMONTH:** – I think what I just said is correct, but I think that there is – we did – I have seen something that suggested that there was a rebaseline of €9 billion, and it came in on that, but, of course, rebaselining after the – you know, is –

**MR. E. MARTIN:** Yeah, well, I make my same point, is that if this is the level of information coming from EY, I didn't see this –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – at that time, and I would be concerned.

**MR. LEARMONTH:** Okay. Well, anyway, I'm not sure, I wasn't at the meeting, and I don't know what he said. Maybe he said – I don't know – just leave it – raised the point because I know your counsel –

**MR. E. MARTIN:** I'm obviously gonna continue to say that this type of thing, you know – I wasn't at the meeting and I wasn't recording the notes, so if this is the opening note –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – you know, I'm probably gonna take some exception to some of the other things that are being said here.

**MR. LEARMONTH:** You can –

**MR. E. MARTIN:** And so that's my point.

**MR. LEARMONTH:** You can feel free to do so.

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

**MR. LEARMONTH:** Okay. Next, "EY's key conclusion from their work to date is the current cost estimate of \$7.65 Billion is not reasonable, particularly as it relates to the Astaldi situation." I think we've already dealt with that.

**MR. E. MARTIN:** We have.

**MR. LEARMONTH:** Yeah.

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

**MR. LEARMONTH:** "EY's estimate is the problem with Astaldi is in the range of \$600-\$800 million. Nalcor has been referring to a \$650 million issue."

Were you speaking of a \$650 million issue at that time?

**MR. E. MARTIN:** I'm not sure if I was, but can I clarify that I – once again, to be clear, I believe – I wasn't at the meeting.

**MR. LEARMONTH:** No.

**MR. E. MARTIN:** But we were talking about a – when they say a \$650-million issue, that's Astaldi's issue again, not what we would be settling for.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** See what I'm saying?

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** Okay, that's all I wanted to make clear –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – on that. And I don't believe that we were referring to a – once again, Mr. Learmonth, the analysis – some pretty in-depth analysis was in place and under way.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** And by the nature of analysis of this type of negotiation, there has to be a range. So I cannot see – I wouldn't do it. I cannot for sure see the project management people picking one number. They didn't have it. We didn't have it. It was a range. So I would – I can't believe that we would be referring to it as a 650 number.

**MR. LEARMONTH:** Well, that doesn't – well, anyway, it just says referring to a 650; it doesn't say whether there was any credibility given to that or not. Just says referring to.

**MR. E. MARTIN:** But – I'm sorry to interrupt you.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** But what I am saying is that the individual reporting this is referring to information he received from EY, correct? And –

**MR. LEARMONTH:** No, from Nalcor.

**MR. E. MARTIN:** No, so that's – maybe we should clarify that. I believe that this is – my understanding, this is a note from Mr. Parsons, a summary note based – summarizing the discussion he had with EY.

**MR. LEARMONTH:** No, summarizing the – what was said at the meeting.

**MR. E. MARTIN:** I believe we're saying the same thing potentially, but maybe I'll try again

to make sure I got it straight. This is a note from Mr. Parsons?

**MR. LEARMONTH:** He was present at the meeting and he took minutes. These are his minutes of the February –

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

**MR. LEARMONTH:** – 25 meeting.

**MR. E. MARTIN:** And he was at a meeting with EY?

**MR. LEARMONTH:** Well, okay, we'll just back up. On February 25, there was a Cabinet meeting.

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

**MR. LEARMONTH:** Meeting of Cabinet.

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

**MR. LEARMONTH:** After the meeting, the Premier, Minister Coady, Kelvin Parsons, Tim Murphy and Julia Mullaley met with EI.

**MR. E. MARTIN:** Yes – with EY.

**MR. LEARMONTH:** Yeah. And Mr. Parsons took notes of the meeting, and this – these are the notes that he took –

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

**MR. LEARMONTH:** – as to what was said at the meeting.

**MR. E. MARTIN:** So that's –

**MR. LEARMONTH:** So he didn't –

**MR. E. MARTIN:** – a great clarification.

**MR. LEARMONTH:** Yeah. (Inaudible.)

**MR. E. MARTIN:** So –

**MR. LEARMONTH:** So, do you understand –?

**MR. E. MARTIN:** I do understand that. So, my point is that EY is the one in this meeting telling



Mr. Parsons that Nalcor had been referring to a \$650 million issue?

**MR. LEARMONTH:** That's what it appears to be, yeah.

**MR. E. MARTIN:** That's what I was trying – that's the point I was trying to make.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** I believe that's incorrect. And I think it's another example of an incorrect peak. We would've always referred to it as a range.

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

Next, "One of EY's key findings is when the MF project was initially set up, there was no Management Reserve put in place. This Reserve is normal for major capital projects and is a finite pot of funds available for unforeseen technical and management risks that arise above the project level."

Your comment on that?

**MR. E. MARTIN:** Once again, it's misinformation. I've already talked about the management reserve perspective that – outside of the project team budget at the time of sanction, there was funds available and earmarked, which included the excess sales, the return on equity, water rentals and such that would be being paid to the government from the ratepayers, so therefore it's being paid to themselves – a pot of available cash.

That cash was not put in the project team's budget, it was there and specified and discussed with the government that that would be funds that would be available to fund unforeseen risks. So I don't agree with that comment. This reserve is normal for major capital projects and – I agree with that, that we had it in place. It is a finite pot of funds available.

Now once again, I don't disagree with that or agree with that, Mr. Learmonth, but I would, once again, look for a definition before I did or not. If the insinuation was left that a finite pot of funds meant that a particular bank account was opened up and funds were put into it to sit there

and wait, then I would disagree with it. If it was in the context of what I've explained that, you know, the shareholder in the corporation understood that they could fund it if needed, then I would agree with that.

**MR. LEARMONTH:** Or if it was placed in the budget.

**MR. E. MARTIN:** No, I don't agree with that.

**MR. LEARMONTH:** No?

**MR. E. MARTIN:** No. So –

**MR. LEARMONTH:** Or in the capital cost estimate?

**MR. E. MARTIN:** – no, I wouldn't

And as I said, that – I can't read that into this. It says it's a finite pot of funds available.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** So anyway, I – so I'm not agreeing or disagreeing with that, I'm just saying that on the –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – definitions, before I could disagree or agree with it, I'd have to know what they're exactly talking about.

**MR. LEARMONTH:** Next, "The Risk Register document for the MF project refers to the plan to establish such a reserve – but there is no record of how the decision was taken not to establish a reserve."

Your comment on that?

**MR. E. MARTIN:** I think there was no record in the PMT documents to do that. The record that I would refer to is my net benefits analysis that I provided to the government, which is the summary of the larger benefits that were available. And that it's at, you know – and also discussions and comments that have come from some of the testimony here that people understood that – from the government – that there was these funds that were not in the economics, and therefore don't use them until

we see where the project's going. That would be what I would point to there.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** But I agree, there's no record in – likely in the documents that EY reviewed.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** I'll agree with that.

**MR. LEARMONTH:** Next: "Not only was there no Management Reserve included in the budget, Nalcor's view is the amount of money available for the MF project is unlimited given that Nalcor believes government will provide whatever funding is required." This "has been the practice and experience until now."

Now that information was attributed to Jim Meaney when – by Michael Kennedy – when he testified. Do you have any comment on that –?

**MR. E. MARTIN:** Complete falsehood.

**MR. LEARMONTH:** How is it false?

**MR. E. MARTIN:** Because it's not true.

**MR. LEARMONTH:** Can you tell me in what way it's not true?

**MR. E. MARTIN:** It's not true that Nalcor's view is the amount of money available for the MF project is unlimited. It's not true.

**MR. LEARMONTH:** Okay. Well if there's an unlimited guarantee, which the government has given to – under the federal loan guarantee, how is that – this statement not true?

**MR. E. MARTIN:** It's not true from the perspective of the insinuation that Nalcor understood that at the project management team level and that they were acting in a manner that – an insinuation that they weren't cost-focused and not availing of those funds at all – you know, at – if at all possible.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** It's the opposite, in my mind, of what's being insinuated or discussed or stated here.

**MR. LEARMONTH:** All right.

Next, "EY's view is there should have been a 5-25% set aside for a Management Reserve, based on the initial \$6.2 Billion budget."

What's your comment on that?

**MR. E. MARTIN:** There was a management reserve, as I've explained, and it would far exceed 5 to 25 per cent. It would be over hundreds of per cents, I would say.

**MR. LEARMONTH:** It would be what?

**MR. E. MARTIN:** It would be – I don't know the number, I'll take that back, but it would far exceed 5 to 25 per cent, the available funds that were in the shareholder's hands to handle anything that arose from things that you would consider to be covered by the management reserve.

**MR. LEARMONTH:** And you gave your understanding of that yesterday, where it wasn't just an amount of money, it was different considerations also, right? Revenues and so on?

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

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** It was money that was clearly in the hands of the province, that I mentioned yesterday. \$3 billion in excess sales – in excess of that –

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** – there was \$23 billion in return on equity, over and above funding required to fund the project, so 23 in hand. I think there was a million – a billion, or a billion five in water rentals, and there was a couple of other I didn't mention, but it was in that \$25 to \$28 billion nominal numbers that were available to fund issues that could arise in the context of what normally a management reserve would be required for.

**MR. LEARMONTH:** Okay.

Next, “Another major concern EY has identified is the project doesn’t have a risk-adjusted cost and schedule forecast, and no documented assessment of cost schedule and performance. This is a basic requirement of Board reporting and a normal practice for major capital projects.”

What’s your observation on that?

**MR. E. MARTIN:** I probably would need some help from the project management team on this one. You know, I have some opinions and ideas on it, but this is the type of thing, I think, I need to be more specific on with the project management team, Gilbert and Paul. But in that context, Mr. Commissioner, I’d offer a comment or two, but I would stand to be corrected.

I guess we did have a risk-adjusted cost and schedule forecast. That would be early. If risk-adjusted cost and schedule forecast means that – if they’re referring back to the completion of a QRA on the schedule, I think we already established that that wasn’t done at that time. So, if that’s the case, I would have to agree with that point, but in the meantime you can adjust the cost and risk schedule without a QRA, so I would disagree with it from that point.

And no document of assessment of cost and schedule performance – I believe that was there, for sure, in risk registers, which were detailed, very deep, and constantly being revised and revisited. So, I believe that that was in place, but, once again, the project management team could probably give a much more specific answer about that.

**MR. LEARMONTH:** Okay.

Next, “From EY’s analysis to date, there has been no challenge function to the MF leadership team – not from a CFO, not from Nalcor Finance group, even though there is a fiduciary responsibility to do so.”

Your comment on that?

**MR. E. MARTIN:** Complete falsehood.

**MR. LEARMONTH:** Complete falsehood, okay.

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

Your comment?

**MR. E. MARTIN:** I disagree with the first sentence: there is no sense of responsibility for Nalcor MF cost escalation. That’s just untrue. It was – you know, it was a very, very extreme, difficult process throughout from a challenge and issues perspective, at all levels, up – right up through to the government and the premier and down to the board, myself and others, so I disagree with that.

**MR. LEARMONTH:** Okay, that’s the –

**MR. E. MARTIN:** The focus on completing the project regardless of the costs with the province – I just covered that in the previous one, so I won’t repeat that –

**MR. LEARMONTH:** You don’t – you disagree with that.

**MR. E. MARTIN:** I don’t agree with that, no.

**MR. LEARMONTH:** And the third sentence.

**MR. E. MARTIN:** “Nalcor’s view is the cost increases are ....” Well, I think it’s hard to disagree that the cost increases are unfortunate. Absolutely, they’re unfortunate. I’d take the “but” out – I don’t believe the “but” is the proper manifestation of that. But I do agree that the long-term benefits surpass the cost increases.

**MR. LEARMONTH:** And you still believe that, right?

**MR. E. MARTIN:** I still believe that.

**MR. LEARMONTH:** Yep. Okay.

Next, “EY described a culture of ‘we know best’ on the” –

**MR. E. MARTIN:** But that – but Mister – sorry to interrupt you, Mr. Learmonth. What happened – some of it, I’m thinking through – and you’re asking another question because I was not saying anything, and I had another comment I was thinking about.

**MR. LEARMONTH:** Well, go ahead and make it.

**MR. E. MARTIN:** Yeah, so I apologize for interrupting you.

But I just wanted to make the point to the Commissioner, it’s important, from my perspective, Mr. Commissioner, you know, I don’t want to link the fact – I don’t want any linkage between my understanding that the long-term benefits surpass the cost increases. There’s no linkage between the focus on cost containment and challenging at the same time. I’m afraid that’s what that but was kind of trying to do, was link those two. That would be completely false, to my mind, to link those two. But they’re two separate, stand-alone statements, yes. But they’re not linked. One’s not driving the other.

**MR. LEARMONTH:** All right.

So the next paragraph, “EY described a culture of ‘we know best’ on the MF project at the senior levels (CEO and direct reports). EY added that ... mid-management level and down in Nalcor are extremely competent and committed to the project.”

Your comment?

**MR. E. MARTIN:** I comment, you know, from my own perspective. I think I’ve already put on the record that my approach to EY, you know, after we agreed we were gonna move ahead was to seek to be collaborative, seek to see if we could jointly add some value and see if we – they could help us and we could help them, and try to extract value from the relationship. I said that –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – more than once.

So I don’t see that as a we-know-best attitude. That’s my personal view, and I expressed that several times –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – to EY directly.

**MR. LEARMONTH:** Next: “EY also looked at the issue of the change in strategy not to have SNC Lavalin as the EPCM contractor. This change in strategy to not have a world-class EPCM contractor manage but rather turn project delivery over to an Integrated Project Management Team, was not fully thought out, in EY’s opinion.”

Your comment?

**MR. E. MARTIN:** I don’t know what they’re basing that on. So I guess I, you know – but what I do know is the amount of review effort that went into working with SNC-Lavalin as the EPCM – the work that went into trying to get them to focus on the project properly at the time was massive. They had their own legal issues happening world wide, and we saw a complete lack of focus growing at the construction management piece of it, I will say that, Mr. Commissioner. On the engineering side, SNC-Lavalin always did a good job for us – very good – you know, from that perspective.

So, once again, as far SNC-Lavalin – SNC-Lavalin wasn’t totally off the job. The engineering side, which was massive, was still there and they did a great job. On the construction management piece, what we’re talking about here, and – they did not. And there were huge efforts to turn that around and there was independent, outside reviews in terms of how to handle that, and we got to a point where it had to be done. And, from that perspective, I believe it was fully thought out – very much so.

**MR. LEARMONTH:** Did you agree with the decision to change the status of –

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

**MR. LEARMONTH:** – of (inaudible) –?

**MR. E. MARTIN:** Once again, I wasn't involved –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – in the depths of it. You know –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – that type of thing would have to come to me, and I would have to say yes. But that's why I have a good recollection of the process that was followed, because I would've deeply got into that myself at the time.

**MR. LEARMONTH:** Yeah.

The next point says: "EY asked Nalcor for the documentation on why this major strategic decision was taken." That's the changing of SNC roles. "No documentation was made available, nor was there any evidence of a report to the Board on such a significant strategy change. This would have been expected to be normal practice."

Can you comment on that? Well, first, before you give your comment, was there a report made to the board – a written report made to the board on this significant change? Or was the board consulted?

**MR. E. MARTIN:** I hesitate for one second because the screen just flicked as – you know, after you read it. So I just want to catch up a little bit, okay?

**MR. LEARMONTH:** But it's in your book if you want to –

**MR. E. MARTIN:** I know. I got caught looking at the screen then –

**MR. LEARMONTH:** All right.

**MR. E. MARTIN:** – as you were reading so I just wasn't listening at that moment.

Okay. So I understand that now. Your question is?

**MR. LEARMONTH:** Was the decision to change the role of SNC-Lavalin communicated

to the board in writing? And if it wasn't, was it communicated to the board orally?

**MR. E. MARTIN:** I can't recall.

**MR. LEARMONTH:** No.

**MR. E. MARTIN:** But it was discussed with the board, yes. I can't recall when and where and what was sent.

**MR. LEARMONTH:** Okay.

Next: "Before getting into the Astaldi details we asked for EY's view on other project risks beyond Astaldi. The key risk is delivery risk regarding the transmission lines. EY noted there is a definite schedule risk. Valard and Nalcor are talking and Nalcor is confident they can fight a Valard claim. EY doesn't have an opinion as they don't have anything to assess and there is no claim at present."

At this time, was – were you confident that you could successfully fight a Valard claim?

**MR. E. MARTIN:** I was. I had discussed that with the project management team. You know, the strategy – you know, the team itself and, frankly, myself had been very heavily involved in large contractor claims over the years. So I did have a particular expertise in that over time. I wasn't deeply involved in here but I do have a depth of experience there.

I know that we had structured ourselves from the outset of the project to be ready for claims because that's what happens. We had put various people in place, we had contracts in place with some of the best claims consultants in the world early to prepare and be on top of things. We had a very strong contract and had to form the terms of the contract from our side with a deep understanding of the claims situation and how we could position ourselves properly.

Valard was analyzed and seemed to be in a very strong position – not personal – their own situation was strong. They were a really good company and had a reputation of finishing the jobs. And we had great documentation and good people in place as to what the issues were that we should compensate them for, and what issues that arose that there was no way we could

compensate them for because it was their due. So that's just a brief summary to say: Yeah, I was very confident that we were in a really good spot with Valard, very confident.

**MR. LEARMONTH:** And that was based on information provided to you by the project management team, right?

**MR. E. MARTIN:** Oh, absolutely.

**MR. LEARMONTH:** Yeah, okay, because it turns out that there was a settlement – substantial settlement with Valard.

**MR. E. MARTIN:** And from – you know, I wasn't there when the settlement happened but I – you know, from what I knew when I left, the fact of a settlement of that magnitude was made with Valard made absolutely no sense to me.

**MR. LEARMONTH:** Yeah. But the information that you based that opinion on was information that came from the project management team, not your own personal information.

**MR. E. MARTIN:** Well, you know, that's not entirely true because when I – I get the information from the project team but then I understand it. And I understand that – this particular situation well, and had several discussions about what they were doing and what we should pay. And my philosophy and principles on this – always with the contractors, was: Look, gals and guys, on the Nalcor team, we got to pay them what they're due. I mean, it's a contract. Make no mistake.

So, you know, as they talked about the potential of a claim from Valard, I did get more deeply involved and several talked to me about a couple of those things. And I said explain to me – and you got to pay them for what they're due, whatever it is. That's the contract. But the things that they're not due, talk to me about some of those things and explain a couple of those to me in some detail, and I said that's – I can see that, you know. So you cannot proceed on that basis. You can't pay them for that.

**MR. LEARMONTH:** Yeah.

Well, anyway, you were gone by the time the settlement was reached with them, so I guess you don't know what happened after you left.

**MR. E. MARTIN:** I didn't talk to anyone after I left; I don't know what they did. But at the time that I left which, you know, was – at that time I just could not understand, you know, what more could progress with Valard at the time.

**MR. LEARMONTH:** All right.

Now, I'm not going to deal with many of the other points made on the Astaldi thing but if you – I'm just going to select a few and if you want to go through every single one you're welcome to do so. But in the interest of time I'm going to abbreviate a little bit unless you want to go –

**MR. E. MARTIN:** I think we should.

**MR. LEARMONTH:** Okay. We will then.

**MR. E. MARTIN:** The next one: "Astaldi aside, the remaining components of the project are generally within what you would expect though the remaining contingency is low. EY doesn't know how much contingency is left though with a starting 5% contingency and the \$600-\$800 million problem with Astaldi, a less than prudent amount of contingency remains."

I tend to agree with that.

**MR. LEARMONTH:** You do?

**MR. E. MARTIN:** Yeah, I think that's a good –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – assessment.

**MR. LEARMONTH:** Next: "Specific to the Astaldi issue: EY is real surprised that discussions with Astaldi to resolve the \$600-\$800 million issue are still at a high level, even though the problem has been evident for 18 months." Your comment?

**MR. E. MARTIN:** You know, I can't – you know, I can't comment on whether they're really surprised or not. It's a comment. If that means they thought something different should happen – and I don't know if that's the case.

Maybe I can just explain the point that this had been evolving for a period of time and at the very highest level they – once again, we did have a strong contract with Astaldi. It was their responsibility from our perspective, things that were unfolding. Anything that we thought we should compensate, we did. And at the time when the issues started they were financially sound. So as we moved through it there was no reason to engage with Astaldi. Why would we? You know, with respect to they had to complete and it was in their –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – bailiwick. As we moved through and we saw the financial issues happening my recollection was at that point we said: Well, we'll talk to you at a high level but don't expect anything and there's going to be no discussion until those, you know, that – the productivity curves are starting to massively increase because that's your job.

That was more of what was happening. So at a high level those discussions were being had, but to engage a contractor, you know, at a very early level about any type of compensation or claim when it was entirely their responsibility and they had to deliver, is not prudent in my mind.

**MR. LEARMONTH:** All right.

Next point: "EY seriously questioned" why "the Nalcor approach of hiring a consultant to convince itself that Astaldi was in financial trouble. They described this as a type of covert, private eye approach. So far, Nalcor has provided a report on Nalcor letterhead but refused to identify for" EI – "EY who did this work on their behalf (to allow EY to follow-up and validate the findings)."

Your comment?

**MR. E. MARTIN:** I – you know, I don't understand that. I think one of the fundamental – absolute fundamental tenets of the reason that we consider going to the table with Astaldi was their financial situation. And the thought that we wouldn't have, you know, a high-end outside

assessment of that because it was a fundamental tenet – we had to.

So, it doesn't make – it just doesn't make sense to me why they would seriously question that. I don't know how we could've proceeded without it.

**MR. LEARMONTH:** Okay.

Next – "Nalcor told EY that Astaldi keeps saying to Nalcor 'why are you so worried about our financial situation; we want to focus on our MF contract problem'."

Is that correct?

**MR. E. MARTIN:** I can't remember that, but I won't take exception to that. I could see that.

**MR. LEARMONTH:** You could see that.

**MR. E. MARTIN:** I could see that being said.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** So, I would agree – I would tend to agree with that.

**MR. LEARMONTH:** Okay.

We talked about this yesterday: "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 taking it down."

Now, you gave your comment on this yesterday. Would you like to add anything or restate your position?

**MR. E. MARTIN:** I don't think it's productive. This is going to waste time.

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** I would ask to refer to that, obviously, but – yeah.

**MR. LEARMONTH:** Okay.

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

**MR. LEARMONTH:** Next: “Given that EY was kept away from the Astaldi file until very recently, they have only started to think about our options going forward. When EY asked Nalcor to walk ... through the options Nalcor considered, EY got the ‘we know best’ response, essentially dismissing anything beyond more cash to Astaldi now.”

Your comment?

**MR. E. MARTIN:** I don’t understand, again, where that’s coming from. You know, we walked them through the options. People were confident. I don’t know about ‘we know best,’ but the very fact that there was a range of options would indicate – it’s hard to put a ‘we know best’ on that. ‘We know best’ makes me think about: there’s one option and that’s it. Now, there’s a range of options presented, and they were being discussed. So, I don’t understand that.

And then it says, “... essentially dismissing anything beyond more cash to Astaldi now.” And once again – I think that’s a bit of a misinformed point, because even yesterday in my testimony I was being questioned on this thing – I forget the exact reference, Mr. Learmonth, but you were raising some points that someone had raised to you that we were considering looking at Astaldi getting some cash in the operating phase –

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

**MR. E. MARTIN:** – you know, versus now and those types of things. So just from the company’s perspective, I just wanted to point that out. Maybe EY wasn’t aware of some of that, but we weren’t dismissing anything beyond cash. That just wasn’t in our mind set. As an example, as I mentioned yesterday, we were looking at different things.

**MR. LEARMONTH:** Right.

Next is: “In terms of timing, Astaldi’s 2015 financial statements” were “released on March 8 or 9. EY doesn’t know what Astaldi is telling KPMG, their auditors. Astaldi will obviously try to prevent booking any loss on MF in their statements.”

**MR. E. MARTIN:** That sounds like a reasonable –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – comment to me.

**MR. LEARMONTH:** Next, page 5: “Even if the loss on the MF contract is made public on March 8-9, EY’s view is there” is “still ... ample time to get an agreement with Astaldi – the right agreement, not a rushed agreement.”

Do you agree with that?

**MR. E. MARTIN:** This is March 8-9 of 2016?

**MR. LEARMONTH:** Yes.

**MR. E. MARTIN:** I fundamentally disagree with this.

**MR. LEARMONTH:** You fundamentally disagree?

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

I think, you know, our strategy at the time was to engage – it was the right time to engage Astaldi at the January time frame. We had – our strategy, as I mentioned, was, you know, to get through the 2015 season with improved productivity to – as the quid pro quo to even discuss anything. They did that. And then there was that – you know, continued preliminary discussions with keeping their feet to the fire, and we checked out the financial situation.

And then the strategy was, look, we have a situation where they’re in, you know, financial trouble. It’s a reason for us to discuss that with them, because we want them to continue was the thinking, but, frankly, it’s a good time to negotiate. Obviously, they’re in deep financial trouble, caused by situations elsewhere. Their



share value would be massively impacted, and they had a tremendous amount of issues on the table. So coming into a negotiation, that's a good place to be. And that was in the January period and, you know, the guys and gals were talking to me and I said, well, let's go. We're at our maximum leverage right now was point A.

Point B, it also suited our timing, because we wanted to get this thing out of the way, if possible, well prior to the summer season, because as I mentioned earlier, my experience on several jobs, but in particular on a big concrete job, the Hibernia GBS base, and I've seen it on others.

When and if these things turn around, I mean, the same – there's issues similar on Hibernia in terms of getting start-to-slow ramp up. But when the contractors in place starts the ramp, and it – and the ramp continued, after a certain point, it grows exponentially, like everything just starts to click. And the amount of – you can recover at the end of the project and amount – and how fast it can go is – it's extremely surprising just how much you can recover.

So, here we were, in my mind, like – it's like a bow and arrow. You know, we're pulling back. You know, the tension was – we're just in a great spot and getting ready, and I was thinking about the summer season and that. And if we could've got this thing out the way in a January time frame, got Astaldi up and running and back with full planning, you release that bow, and the probability of that exponential recovery would be, in my mind, very high or much higher than ever. Any day past that time frame when we were – when we had orchestrated that, to me, was – basically, you were letting the bowstring come loose, and loose and loose again. And we were losing that ability to drive that last drive through into 2016. And that, you know, formed a basis of – we said 12 to 18 months.

You know, I think we could've done a little bit better – potentially. It's a probability again, right? But that's why the ranges were there. We saw a unique opportunity to close this thing, get this contractor going, and that was our most – that was our key time to make that happen. And anything past that, we thought – as I mentioned, the bow was beginning to tighten, and I think every day we were losing that kind of ability,

and the probability was dropping that that would be achieved.

**MR. LEARMONTH:** Okay.

Next: “When we asked why Nalcor would be pressing for permission from the government to get a mandate to settle with Astaldi prior to March 8-9, EY indicated these dates were likely being used as a pressure tactic by Nalcor on government (rather than by Astaldi on Nalcor).”

Your comment?

**MR. E. MARTIN:** I think I just described that, but I'm thinking – like, where was EY's head, you know? Oh my God. I mean, if – what I just described about the – you know, the pinnacle of leverage coming together at the right time with respect to a massive amount of – not massive – a lot of time ready to prepare for the summer season, coming off a tremendous 2015 – you know, to me, that was the point. It was very – you know, wow, how could you not see that?

But “... used as a pressure tactic by” – a pressure tactic for what? Like, what were we using a pressure tactic for? It was nothing to do with Nalcor. I don't understand that comment. You see what I'm saying?

**MR. LEARMONTH:** I understand what you're saying.

**MR. E. MARTIN:** What would we be pressuring Nalcor for?

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

**MR. E. MARTIN:** To – would we be pressuring the government to do something to enable us to increase the probability of exponential productivity improvement in the summer? Well, yeah. But I think that's a really good thing. So I just didn't understand that comment.

**MR. LEARMONTH:** All right.

Next: “EY noted that what's missing from Nalcor for government to make a decision on whether to provide Nalcor with a negotiating mandate is a Negotiating Strategy. That strategy,

which Nalcor should have prepared, would outline” the “objectives of an agreement, parameters around amount of funding, how and when funding could be made available, who would be involved in the negotiations, the terms and conditions we would attach to any agreement, starting and acceptable closing positions, where the other side would likely be coming from ....”

**MR. E. MARTIN:** There’s documentation that that was in place with Nalcor, so I never understood. When I read that going through these documents, I couldn’t understand that. And I would – and I can’t remember the testimony of the project management team people to date, but I would encourage, if I’m permitted, you know, to those people at Nalcor counsel to dig those things out, because there are several documents laying exactly this out.

These are the types of things that had to be laid out to the executive. So, I don’t know where they’re coming from on that.

**MR. LEARMONTH:** Okay. I think there was some documentation presented, perhaps, by Lance Clarke on this.

**MR. E. MARTIN:** It was? Okay. Well –

**MR. LEARMONTH:** I think –

**MR. E. MARTIN:** – I think he would be the obvious person to go to –

**MR. LEARMONTH:** – he’s the main person, I think –

**MR. E. MARTIN:** – but there was several documents – and these things were laid out clearly and extremely well-thought-out, extremely analyzed. And the amount of hours that was spent in option analysis and those types of things with all of the data we collected from all of these different areas, I just didn’t understand this comment.

**MR. LEARMONTH:** All right.

Next, “EY recommended that the Premier call Ed Martin asking that he provide government with Nalcor’s Negotiating Strategy.” Well, do you have any comment on that?

**MR. E. MARTIN:** I was asked for that, and we provided one.

**MR. LEARMONTH:** Right. Now, that was that deck you provided, correct?

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

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** When you say the deck, I think I know the one you’re referring to.

**MR. LEARMONTH:** We referred to it yesterday. I think it was January 22 –

**MR. E. MARTIN:** I believe that’s it, yes.

**MR. LEARMONTH:** – a draft deck.

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

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

Next: “EY recommended that Government’s negotiating objective should be to cover as little as possible of the Astaldi cost increase, while ensuring Astaldi maintains its good productivity for the next nine months. After March 8-9, we will have a better sense of how big a financial problem Astaldi has, and we can then enter into negotiations in a measured way. They noted the negotiation with Astaldi should be framed as a commercial negotiation, and we need strong commercial lawyers on our side. EY has little faith in Nalcor’s ability alone to negotiate the type of agreement that is required (because money isn’t an issue for Nalcor).”

Your comment?

**MR. E. MARTIN:** Well, I think we have to take that one a sentence at a time. I mean, there’s a –

**MR. LEARMONTH:** Go ahead and do that. Feel free to do so.

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

“EY recommended that Government’s negotiating objective should be to cover as little as possible of the Astaldi ... increase ....” I got – I mean, that’s a bit of a truism, I think. That’s the purpose of negotiations, but that’s fine. “... while ensuring Astaldi maintains its good productivity for the next nine months.” Yeah, I think everyone would like to do that, too. I don’t think there’s a revelation there, as far as adding value. But that being said, it’s a true summary.

“After March 8-9, we will have a better sense of how big a financial problem Astaldi has ....” I think I’d go back to what I said before. We had a good – better sense of how big the problem was, and it ended up proving out to be that that financial problem decreased over time. So we were losing leverage as time went on. And, “... we can ... enter ... negotiations in a measured way.” Which, you know, that’s a good point. We need to do that.

“They noted the negotiation with Astaldi should be framed as a commercial negotiation ....” Look, I don’t know how – I don’t know what other type of negotiation we’d talk about there but – so I’d have to agree with that because that’s exactly what it is. So, okay. “... and we need strong commercial lawyers on our side.” And I couldn’t agree more.

And Nalcor – EY has – and Nalcor did from many angles, in particularly McInnes Cooper for providing us with strong commercial lawyers. I forget the gentleman’s name now, but he’d been with us from – for a while. And he and others were pulling in other strong commercial lawyers as we needed. So that was happening, and I agree with that. It should be done that way.

And, “EY has little faith in Nalcor’s ability alone to negotiate the type of agreement that is required ....” Well, I don’t think we were ever doing it alone. We were bringing in experts on the financial side –

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

**MR. E. MARTIN:** – we were bringing in commercial – I mean, that’s the way you do business. So, once again it’s a – you know. ‘Little faith’ is a bit of a strong term but I would take that away to say that we’re doing that.

**MR. LEARMONTH:** Yeah. (Inaudible.)

**MR. E. MARTIN:** And then, they said “... because money isn’t an issue for Nalcor).” Complete falsehood. So that’s my comment on that.

**MR. LEARMONTH:** Okay.

Next – last: “In EY’s view, the real window to finalize an agreement with Astaldi is by late April, or into May, before the peak summer season.” Do you have a view on that?

**MR. E. MARTIN:** I think I’ve talked about that one –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – and that’s the worst time – that ended up being the worst time to do it.

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

**MR. E. MARTIN:** I take back the worst time. That would be – compared to the plan of settling this in January framework when we had the maximum leverage and the most time to prepare for the summer season, to me, this would be a much, much weaker position to be in at that point because over time, the financial position could probably only improve. And every minute you lost in having a fully engaged contractor preparing for a potential exponential production in the summer was time – high-value time lost.

**MR. LEARMONTH:** Okay. So is there anything else you want to say about this record of the meeting that we were discussing? Any concluding comments on it?

**MR. E. MARTIN:** The only other comment I would offer – and, you know, as I said earlier, I struggled with EY input for the reasons of I didn’t sense added value, which I would have expected. I read this document, which I hadn’t seen before this time and I – it made me

question what was going on because of the reason I just went through.

My antennas were always up with EY in terms of those things because that's not the norm. And then, through this Inquiry, I did see correspondence internal to EY. And you had ask me earlier about a bias, and I think, you know, based on all of those facts, the drivers for EY, to me, you know, have come to the fruition that they were looking to expand their business and – which is not a bad thing in one way, but I think the way to do that is adding value. And I don't think that was happening. So I think, you know, their strategy was and the way this was presented was biased and clouded in terms of what the facts were, and I don't think that was helpful.

**MR. LEARMONTH:** All right. But, I mean, it's up to government – government is the one who really should – I mean, I know I asked for your opinion –

**MR. E. MARTIN:** Yes

**MR. LEARMONTH:** – but government retained EY, so I guess, ultimately, it's up to them to decide whether EY provided value. Do you agree with that?

**MR. E. MARTIN:** They do their own assessment, absolutely.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** That's my assessment.

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

Now, I just have another – one more topic. I am getting towards the end. This is the SNC-Lavalin report. Do you know the one – the risk assessment report in –

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

**MR. LEARMONTH:** – April of 2013.

Now, we've gone over it in detail, and EY and Grant Thornton has, but I just wanted to turn to tab 42 of binder 2, page 132. This is a reference to a meeting you had with Grant Thornton to discuss this issue of the SNC report.

**THE COMMISSIONER:** P-01677

**MR. LEARMONTH:** By the way, for anyone who's interested, the April 2013 report of SNC-Lavalin – I'm not going to bring it up – is Exhibit P-01811. But we don't have to bring it up for the purpose of this unless you – this question – unless you have a – wish to do so.

So if we go to page 132 of P-01677, you're quoted as saying: *“One quick aside, that brings me to this SNC Lavalin, you know,” this “foolishness that's been out there and that report business that I was dragged out of retirement for about a year ago, something like that. But, you know, I don't know the genesis of that. You know, there was some suggestion I was offered the report, and you know, didn't accept it which is not on. I have actually no recollection of anything like that happening. But I did take the report after I was invited to comment on it publically, had a look at it and, I spoke, I went through it, and I remember those, all of those risks had been covered, I called a couple of the guys and where are we on this thing, I mean you know it never happened but I remember all these risks being covered.”*

Did – is that a – do you agree that that's a correct quote from what you said?

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

**MR. LEARMONTH:** Okay.

And the next question: **“SNC, why do you think they prepared the risk report?”**

*“A: ‘I don't have anything to say about that. I didn't know it was prepared. No recollection of getting it. SNC-Lavalin were in the ’’ midst “‘of the risk analysis in any event. I have nothing to say really.’”* Is that a correct quote?

**MR. E. MARTIN:** I think so. Yeah.

**MR. LEARMONTH:** Now, I'm going to put to you – I'm going to come to the point that Normand Béchard testified here and he – you know, he said that he gave his evidence on it. It doesn't – his evidence doesn't really apply to you, it has to do with a meeting that Jean-Daniel Tremblay and he had with Mr. Harrington. You weren't present for that.

But he – Mr. Bécharde did say that at one point in, probably April or May 2013, he picked up Bob Card, the CEO, at the air – Torbay airport. He drove him to Columbus Drive and Mr. Card went in with a copy of the risk assessment report and he had approximately a one-hour meeting with you.

And then, when Mr. Card came out, he still had the report in his hand and Mr. Bécharde, his conclusion, you know, said that Mr. Card said that you refused to take the report. He said that both in his interview and when he testified here at the Inquiry.

Do you have any comment on Mr. Bécharde's recollection of those events, which I've just described?

**MR. E. MARTIN:** I wasn't there with Mr. Card and Mr. – no, with Mr. Card and Mr. Bécharde, so I don't have a comment on that.

**MR. LEARMONTH:** No, Mr. Bécharde wasn't at the meeting. He said he dropped him – he –

**MR. E. MARTIN:** No, I'm saying I don't have a recollection or I wasn't at a meeting. He was sitting in the car – I was in the car, I don't know all those things.

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

**MR. E. MARTIN:** I got no comment on that.

**MR. LEARMONTH:** No, no, no, no, I'm just giving you the background. He says that Mr. Card was coming down to St. John's –

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

**MR. LEARMONTH:** – to meet with you, okay? And Mr. Bécharde, who was living in St. John's, picked Mr. Card up at the airport and drove him to your offices on Columbus Drive. Mr. Card was going in to have a meeting with you. Mr. Bécharde stayed in the car, but he says that he – when Mr. Card left the car – left the car to go in to meet with you he had a copy of this strategic risk report with him.

And then, Mr. Bécharde said he was sitting in the car and then an hour or so after, Mr. Card came out from the meeting with you and he had the

risk report with him. And when Mr. Bécharde asked about it, he says Mr. Card said that you refused it, refused to accept the report.

Now, I'd like to give you an opportunity to respond to that evidence that Mr. Bécharde – I gave you. It's not – you know, what I'm putting to you is, I believe, substantially correct. There may be a few little nuances but he did use the word he refused to accept it.

**MR. E. MARTIN:** I was in the meeting; the report was not produced, discussed, offered or otherwise.

**MR. LEARMONTH:** So you deny categorically –

**MR. E. MARTIN:** Categorically.

**MR. LEARMONTH:** Yeah.

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

**MR. LEARMONTH:** Okay.

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

**MR. LEARMONTH:** All right.

And when did – we know that Mr. Harrington sent an email to Mr. Bennett about this meeting he had with Jean-Daniel Tremblay and Normand Bécharde and dealing – like, we should've asked – you know, keep it in draft and so on. At the time, were you aware that there had been an SNC-Lavalin risk report done, like, in April or May 2013? Were you aware that a report existed?

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

**MR. LEARMONTH:** You weren't aware of the existence of the report.

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

**MR. LEARMONTH:** Okay.

So the first time that – are you saying that the first time you became aware of the existence of the report is when it was made public here in, like, in 2017, I think or ...?

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

**MR. LEARMONTH:** That's the first time, so you didn't have any recollection whatsoever. Okay.

Just one question you may have an answer on – it's my understanding that before 2010 Nalcor explored a number of Gull Island scenarios that involved a large HVDC transmission link to the Island. And in those early scenarios, the reliability return period of the transmission link was going to be 150 or 500 years. Do you recall that?

**MR. E. MARTIN:** Not in particular.

**MR. LEARMONTH:** You have no recollection of that subject?

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

**MR. LEARMONTH:** No. Okay, well, I guess I won't ask you any questions about it.

**MR. E. MARTIN:** And – but I don't want to be obtuse here, Mr. Commissioner. I've heard some testimony around the one in 150 and one in – and those – I think that's what we're alluding to. And that's not my expertise, but I will say is that, you know, I was informed and kept apprised of those types of things, where that issue was going and I was satisfied it was well handled.

I heard some testimony here the other day asking some of those questions and I think it would be important to get, you know, the right – if you're looking for more depth – it's up to you – that you'd get the right people at the table. Because I heard – there was a younger gentleman Commission counsel interviewing here the other day; I forget his name. And he was asking some questions and even with my rudimentary knowledge – and he seemed to have a – you know, he was getting a good grasp on some of the issues, but it seemed with my rudimentary knowledge, you know, the one in 50, you know, the one in 150, I think you really need to get some clarification around those things.

Because Newfoundland and Labrador Hydro had used, you know, some – over the years it used a

certain type of return viewpoint and it was very convoluted at the time. So I'm not an expert, but I would just suggest that you may need – and you probably know that – some internal expertise that probably Hydro, who dealt with that, to really get into it. But it is a little more complex than I'm qualified to get into in any depth.

**MR. LEARMONTH:** Okay, well, we won't ask you to speculate then.

**MR. E. MARTIN:** Okay.

**MR. LEARMONTH:** That's fine. Just my final point is on this meeting that you stated you had with Premier Dunderdale, and perhaps one or two other officials, to discuss the increase to 6.5.

**MR. E. MARTIN:** I don't think I said one or two other individuals. Maybe I did but I met with Premier Dunderdale and she wasn't –

**MR. LEARMONTH:** Well, there was –

**MR. E. MARTIN:** – and she wasn't alone.

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** That's what I said.

**MR. LEARMONTH:** Well, just I understood it was one or two individuals. You didn't limit it to that?

**MR. E. MARTIN:** I don't think I did but I can't. If I did, you know –

**MR. LEARMONTH:** Okay. But it was at least one other individual.

**MR. E. MARTIN:** Oh absolutely.

**MR. LEARMONTH:** Yeah.

And I know you don't have any notes or records but how long did this meeting last?

**MR. E. MARTIN:** It's difficult to say because, as I mentioned yesterday, there was a myriad of meetings happening and with a myriad of different people at the meetings over that time period for many, many reasons: financial close, the Emera EAA, other things were happening.

So I can't pinpoint the meeting. You know, it was – you get into a point there's a lot of people coming and going.

But I think what's the more – what I do remember, probably potentially more salient, is it was an extended discussion. You know, it was – even if it was part of another discussion, you know, it took us, you know, a reasonably substantial amount of time. It didn't take, you know, hours but it certainly wasn't a short five- or 10-minute conversation; we would've been in depth of that.

I remember that. I remember, you know – I remember the premier being very – you know, questioning. She was always that way. She wanted to understand and spent time doing that. That's as much as I can offer in terms of the length of time and such.

**MR. LEARMONTH:** And you believed that the premier understood what you were saying to her?

**MR. E. MARTIN:** I do. You know, that was premier – I found Premier Dunderdale to – that was an essential part of her personality that she kept going until she understood –

**MR. LEARMONTH:** Okay.

**MR. E. MARTIN:** – understood things.

**MR. LEARMONTH:** All right.

Now, yesterday – and correct me if I'm wrong – I know you will – that I understood you to say that you discussed that the \$300-million or so increase in capital costs was in nominal terms. Did you discuss that at the meeting?

**MR. E. MARTIN:** I don't believe – no, I did not – I don't believe I did.

**MR. LEARMONTH:** Okay.

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

**MR. LEARMONTH:** You didn't. And that – you mentioned that together with the \$300-million finance charge savings.

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

**MR. LEARMONTH:** And the \$100 million in excess sales.

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

**MR. LEARMONTH:** So, the end result from this presentation that you made on this point would be favourable to the ratepayers. Is that correct?

**MR. E. MARTIN:** In the event that you use the excess sales –

**MR. LEARMONTH:** Yeah.

**MR. E. MARTIN:** – to put into rates.

**MR. LEARMONTH:** But – in terms of presenting it, if you say that there's a \$300-million cost increase that is offset by a \$300-million savings in financing, we're back to zero. And then anything for the excess energy sales would make the whole picture favourable to the ratepayers. Is that correct?

**MR. E. MARTIN:** That's not the way I explained it.

**MR. LEARMONTH:** Okay. Well, can you just go over that again?

**MR. E. MARTIN:** Sure.

**MR. LEARMONTH:** I misunderstood what you said.

**MR. E. MARTIN:** I take your point though but – I guess as a fundamental premise, if I go back to what was included in the – you know, in the rates. You know, if you look at the – we needed the power – you compared two alternatives. When you compared those two alternatives – in both cases – what was in those alternatives, what went to the ratepayer?

So, now on to Muskrat. Put the everything aside. So, in the Muskrat Falls case, what went to the ratepayers was the capital costs, the financing costs and operating costs and a myriad of other

things. The excess sales were not in that number, okay?

So, you see, you got the 300 – that would show, you know, it was generally offset from the ratepayer perspective.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** On the excess sales side, I would have indicated that that \$100 million puts us in a better position, but I can't say it's in the rates because the government hasn't decided to do that. That would be more of a – go back into this management reserve pool of excess sales and stuff. So I would never have insinuated to the government that we – you know, we were pretty adamant on that, that that was a government decision about what would happen to that management reserve. Not us.

So it may sound like a bit of a nuance to you, but I wouldn't have said we're better off from a rate perspective. I would say we're – you know, it's an offset on the rate perspective, and here's – there's more available cash in that pot to offset rates if you wish to do so.

**MR. LEARMONTH:** Right. But – okay, just putting aside the excess sales – put that aside. The conclusion one would reach, if we just consider the 300 and the offset, is that there's no change in the benefit to the ratepayers, correct?

**MR. E. MARTIN:** I would say that's a good way to characterize it, yes.

**MR. LEARMONTH:** You would. Okay.

So don't you see a problem presenting a capital cost increase in that context that someone might say: Well, there's nothing here. It's an offset. We've got 300 in, \$300 million out, what's the difference? And perhaps that's the reason why the matter never went beyond the meeting, that no politicians who we're aware of ever heard of this \$300 million capital cost increase. Julia Mullaley didn't; it didn't go to Cabinet. Do you understand how a presentation like that could lead to a situation where people would say this is basically a non-event?

**MR. E. MARTIN:** I struggle with that concept, Mr. Learmonth, to be honest.

**MR. LEARMONTH:** You struggled?

**MR. E. MARTIN:** I – yeah, I can't agree with that, not – you know, not to be disagreeable, but these are significant numbers. I just – I personally can't see that. But I can't agree or disagree, I guess. Everyone sees things in their own light.

**MR. LEARMONTH:** Right.

**MR. E. MARTIN:** But, you know, they're big numbers all around, and I was – you know, once again, I was in the mindset and always have been, and make no bones about it – and still am in the mindset of, you know, the cost of this project is the cost to ratepayers, and that's how I evaluated it. But in question to your theoretical question, I just can't – I can't get there, but others may.

**MR. LEARMONTH:** All right. Okay.

Those are my questions, thank you very much.

**MR. SMITH:** Mr. Commissioner, before Mr. Learmonth actually shuts down, there was an issue raised on the very first exhibit this morning; that was 01829. If we look at page 14 of that exhibit, where you'll see that the 6.99 is already included in the budget, which of course would not be the case in 2000.

**MR. LEARMONTH:** Okay, well, thank you for bringing that up. That's the exhibit that Mr. Martin wanted to have reviewed before he was questioned on it. Is that correct?

**MR. SMITH:** That's correct.

**MR. LEARMONTH:** Okay.

Well, what we've agreed, and I forgot to mention it, is that we're going to review that issue and we can do it in consultation with Nalcor and you, if you want, because we want to be able to come back with a full explanation for what happen here. Because I think the exhibit is correct, that it was done in 2014, but the references to it in the Grant Thornton report may be inaccurate because I think it's been



acknowledged that Mr. Harrington inadvertently provided the wrong information to Nalcor or something along – not intentionally, just inadvertently.

So we are going to look at that issue and then come back with an explanation.

**MR. SIMMONS:** Commissioner, this is something that was reported along the investigative process some time ago, and we'll discuss this with Mr. Learmonth, but my understanding is that the actual date on the presentation itself is wrong and when it says 2014, it's supposed to be 2015.

**THE COMMISSIONER:** Right.

I think based – 'cause this was raised earlier on, so I've had a bit of a look at this myself. And it appears to me that – you know, and I don't – this was not the fault of anybody, including GT because I think GT was given this – Grant Thornton was given this information by Mr. Harrington. I think the mistake was made inadvertently, as I said, with regard to the date on the presentation. I don't think the emails that are in front of the presentation are incorrect. I think the presentation itself is the wrong presentation and, in fact, as I look at it, it may well have been reversed with the one that was actually referred to on March of 2015.

But I don't know enough yet, so I really do appreciate the fact that Nalcor and Commission counsel are going to sit down and try to work this out, and I'm sure we'll report it. And, Mr. Martin, if there is a need for further discussion on that with you, we'll certainly give you that opportunity to do that.

I don't really know too much more about it other than what I've done myself. And I'm not even sure if I've reached the right conclusion. So I'll be anxious to hear what somebody has to say with regard to this. Whatever happened here it's – it is inadvertent. There was nobody trying to mislead anyone. I accept that fully. It's just a matter – just let's get it straightened out, and we'll be able to do that.

So, Mr. Smith and Mr. Martin, once we do, I'll ask Commission counsel to make sure that you are kept in the loop on this, and if there is a need

for something further, we'll find a way to get it, okay?

**MR. E. MARTIN:** Okay.

**THE COMMISSIONER:** All right.

It's 12:30 now. So you're finished, Mr. Learmonth, right?

**MR. LEARMONTH:** Yes.

**THE COMMISSIONER:** Okay.

So it's 12:30 now, we'll come back and begin cross-examination this afternoon.

I understand – one of the Commission counsel mentioned to me earlier that there was a request about somebody not being available tomorrow, I don't know which Commission counsel it is, and there was a thought about trying to – because of that, try to change the order of examination.

As I said to Commission counsel, this has come up before and I've always let Commission – let counsel with – for parties with standing to work that out. So hopefully you can all work out what is happening here, because I don't know anything more about it than that. And if not, well then, I can address the issue when we come back this afternoon.

So we're adjourned until 2 o'clock.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

This Commission of Inquiry is now in session.

Please be seated.

**THE COMMISSIONER:** All right.

So has there been something worked out on the questioning order, or ...?

Mr. Learmonth?

**MR. LEARMONTH:** (Inaudible) I think Mr. Ralph will go first followed by Peter O'Flaherty. I think everyone's in agreement on that order.

**THE COMMISSIONER:** Okay.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** All right.

All right, so, Government of Newfoundland and Labrador.

**MR. RALPH:** Good afternoon, Mr. Martin. My name is Peter Ralph, and I represent the Government of Newfoundland and Labrador.

My questions are gonna focus on the 6.5 number. And I'd like to start first with Exhibit 01826.

**THE COMMISSIONER:** That will be at tab –

**MR. RALPH:** Tab 4, book 1.

**THE COMMISSIONER:** – tab 4, yeah.

**MR. RALPH:** Now, if we can go to page 12.

So, on that page, there are a couple of emails: one from Paul Harrington to Jason Kean and one from Jason to Mr. Harrington. And Mr. Harrington, at the bottom of the page, says to Mr. Kean – not – keep going. Right here, that's it.

“we are meeting with Ed Thursday PM- the subject is CH0007 but he will ask about FFC. Has George been able to produce the range of FFC based on our last meeting? - that would be very helpful - And if a simple deck showing the major adds and takes sorted by the largest number could be provided that would also be a big help - I would drop the step chart - it tends to push Ed off the message; Thanks Paul.”

And the next page, there was a Final Forecast Cost Update. Now, I understand that these updates were almost monthly. Is that correct?

**MR. E. MARTIN:** It seems that way, yes. Yeah.

**MR. RALPH:** So if we could, we'll go to page 15.

And the key message there, it says: “We are forecasting the FFC to be the range of ~\$6.7 to \$6.95B (8 to 12% beyond the DG3 estimate).” And then go down a bit further.

Key Growth Areas: “Three (3) key areas drive the overall growth: Powerhouse, intake and spillway = \$400 M; Transmission Civil Works Construction” is \$150 M and Converter and Switchyards is \$150 million.

So as I understand it, Mr. Martin – so you wouldn't give this number, the FFC, to government because it wasn't certain enough. Is that right?

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

**MR. RALPH:** Now, if we could go to Exhibit 02194

**THE COMMISSIONER:** 02194.

**MR. RALPH:** I don't think it's in this book.

**THE COMMISSIONER:** This one is gonna be on the screen.

**MR. RALPH:** And I raise this for a very limited purpose, Mr. Martin, so it won't be a problem, it's a pretty short email. And I just want to deal with the first paragraph.

So it's from James Meaney to Mr. Harrington and Mr. Clarke. “See below. Ed Bush is out as well, but can join by phone. Having this discussion this afternoon is critical, as we need to be able to give Canada/CBB/MWH update on Capital Costs next week.”

So as I understand it at this point in time, the negotiations over the federal loan guarantee are taking place, is that correct?

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

**MR. RALPH:** And what's happening here is Canada and the independent engineer are asking for updates on capital costs.

**MR. E. MARTIN:** That's from my understanding, yes.

**MR. RALPH:** Now, if we go to 02520.

**THE COMMISSIONER:** 02520, that one is at tab 7 of your book.

**MR. E. MARTIN:** Seven.

**MR. RALPH:** It's an email from Auburn Warren to yourself and a number of other people at Nalcor and it says, "Ed, As discussed for your review. Myrden has asked that we ship across ASAP."

Now do you know who Myrden is?

**MR. E. MARTIN:** Mr. Paul Myrden, I believe.

**MR. RALPH:** Right, and he was an official with Finance –

**MR. E. MARTIN:** That's my understanding.

**MR. RALPH:** – assistant deputy minister, is that correct?

**MR. E. MARTIN:** I'm not sure about that but –

**MR. RALPH:** Fair enough.

And if we turn to the next page, there's a document here and on the furthest column on the right, four rows down, we see the number 6.202 and so that's DG3, obviously.

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

**MR. RALPH:** So you sent that – I'm sorry, we'll go to the next – 02024.

**THE COMMISSIONER:** 02024, that would be at tab 62, book 3.

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

**MR. RALPH:** So, again, what we have here is Mr. Warren sending that same document in to Mr. Myrden with the 6.202 number.

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

**MR. RALPH:** So, at that point in time, this is November 1, 2013, is that your best estimate of the cost of this project, this 6.202?

**MR. E. MARTIN:** That's what the approved cost was; the best estimate was developing, obviously, you know, at that time.

**MR. RALPH:** So you wouldn't have any sense, like, on November 1 what that figure might be as an estimate?

**MR. E. MARTIN:** You know, it would be somewhere between the 6.5 that was landed on and the most recent update that had been provided in September, that you had pointed out. I just don't know where.

**MR. RALPH:** 6.5 to 6.95?

**MR. E. MARTIN:** Yes, so the – I wouldn't have had the – I don't believe I would've had the 6.5 in hand at that point, but there would be work ongoing, you know, continued on from the September update.

**MR. RALPH:** Yes.

**MR. E. MARTIN:** So there – it would be work developing. So the reason I say where would it be, I don't know. But obviously, it would have to be somewhere between the 6.5 and what was presented there, so.

**MR. RALPH:** But you say there's work ongoing –

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

**MR. RALPH:** – developing an estimate?

**MR. E. MARTIN:** Yes, developing the estimate, yeah, providing more information. I don't know if I would have had it at that point or not. I don't think so.

**MR. RALPH:** So if we go to 02198.

**THE COMMISSIONER:** That one is going to be –

**MR. RALPH:** Probably not there.

**THE COMMISSIONER:** – up on your screen.

**MR. RALPH:** And this is – this email really has nothing to do with you. It's just an exchange between Alison Manzer and James Meaney. And you know who Alison Manzer is?

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

**MR. RALPH:** If we could go down. So, "Hi Alison" – so – "Thanks for all your feedback today." So this is November the 1st, again. "I have the LCP team lined up for a full day session next Wednesday in St John's. In addition to yourself, Pyper, Rey and Jim Loucks (via phone or video), could you let me know who else will be attending from Team Canada. Will need to make necessary arrangements for meeting room, food, etc. As discussed, the Nalcor/LCP team will be well prepared with the facts and appropriate data charts. No matter how outlandish the statements from MWH/BF may get, we'll keep our cool and demonstrate our professionalism and expertise, particularly for the benefit of the Govt Canada folks."

**MR. E. MARTIN:** And what date –?

**MR. RALPH:** "With respect to the key topics we'll address that day, I noted the following based on our discussions/correspondence today:

"1) Project Capital Cost Update

"This will include data/discussion on contingency estimate."

**MR. E. MARTIN:** Could you – I just –

**MR. RALPH:** And if we go to page –

**THE COMMISSIONER:** Excuse me just for a second. Could you roll that down, please?

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

**THE COMMISSIONER:** Okay.

**MR. E. MARTIN:** And could you just go back. What's the date on that again?

**MR. RALPH:** November the 1st.

**MR. E. MARTIN:** November the 1st, I understand.

**MR. RALPH:** Sorry, I'll slow down.

**MR. E. MARTIN:** No problem, I'm good.

**MR. RALPH:** If we go to page 3 – okay, right there is great.

So again, this is number 6 of the topics that he's gonna raise during that meeting. He'll address – and it says: Update on key contract – for the 17 material contracts we have identified provide a status update report – update chart, including: award date, if applicable; if not awarded, procurement status update – e.g., RFP issued, bids being evaluated, yet to be issued, etc. – expected award date; date of expected substantial completion; DG3 estimated cost; awarded cost; and revised estimate, if different than DG3 estimate or award value.

So, are you familiar with that, that 17 material contracts?

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

**MR. RALPH:** So, that was something, I think, that Nalcor came up with. It's – you know, you've identified 17 material contracts that are important to go through to show why there's been an increase in the DG3 – from the DG3.

**MR. E. MARTIN:** It sounds right, but I'm not exactly sure. I don't know – material contracts, if I've ever seen that in – or hearing about that in some contractual arrangements, so it could be, like, a contractual requirement, but I just don't know.

**MR. RALPH:** Okay. If we go to P-02206.

**THE COMMISSIONER:** Okay. That'll be on your screen.

**MR. RALPH:** Page 8. That's called Project Update – maybe just go back to page 1 for a second. And, it's – on it, the attachment is called Project Update to MWH. So, this is a presentation to the independent engineer.

**MR. E. MARTIN:** Understand.

**MR. RALPH:** And, if we go to page 8 again. I couldn't find a final copy – the only one I could find in the exhibits was a draft revision 2, but I'll question you on this. And this is an issue, we will address it later.

So, if you can go to page 6 – I'm sorry, page 29.

Now, you addressed this this morning, with respect to – or these numbers with respect to the presentation you gave to Premier Dunderdale. Is that right?

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

**MR. RALPH:** And, you said you gave her these numbers, in part, to address the CPW. Is that correct?

**MR. E. MARTIN:** I – first answer is yes, but I think we're saying the same thing. The CPW – yeah, if you're talking about that, I mean, the cost – you know, the final cost to the ratepayer, I agree. Except for the \$100 million, as I explained this morning.

**MR. RALPH:** You know, I – fair enough –

**MR. E. MARTIN:** Okay –

**MR. RALPH:** – I appreciate your –

**MR. E. MARTIN:** – gotcha. Right, right.

**MR. RALPH:** So, I'm not sure why that would be a concern to the independent engineer. Do you know why you're putting – or you're framing a – the project cost update in that fashion? As a sort of issue with regard to CPW?

**MR. E. MARTIN:** Point A, I think – as I mentioned, I didn't deal with the independent engineer and the federal government. But that being said, you know, I would've wished this to be presented in that fashion. I think, you know, the federal government was obviously involved as a form of partner in this arrangement, substantially.

They would have been through and understood where we were at sanction, including the reason

and rationale for the project, which was: we need more power, two alternatives, CPW analysis, cost to ratepayer was foremost in their mind. They made that clear to me several times when I was involved with them at the negotiating table for the FLG, subsequent to that.

So it would have been my understanding and my expectation that they would be provided the data that would relate the information down and back to the cost to the ratepayer.

**MR. RALPH:** So I understand you didn't have dealings, I guess, on an ongoing basis with the independent engineer or Canada, but it seems to me that you would have presented this information to the independent engineer on November the 6th. Is that likely?

**MR. E. MARTIN:** I don't think it's likely, no. I don't think it is.

**MR. RALPH:** If we just go to page 1, it says: "Please print 4 copies of this and bring it in to me asap." And again, it suggests to me that you were getting it to go present it.

**MR. E. MARTIN:** Yes, I – that sounds like that's correct. But not to the IE. I've looked at this and I was – I considered bringing this into evidence that this could be me going to meet with – you know, with someone at the province, it could be to meet with, you know, some board members who may have been coming in. I just don't know. But I don't – like, I wouldn't be the one to say bring four copies of this to me and go meet with the IE. You know, I wasn't lead in the IE file.

So I just – not exactly sure what that four copies was for –

**MR. RALPH:** So –

**MR. E. MARTIN:** – but obviously, it seemed like I was going to make a presentation somewhere.

**MR. RALPH:** Right. So it says – the attachment is called Project Update to MWH and then we have a presentation. So you think that this wouldn't have been a presentation to the independent engineer?

**MR. E. MARTIN:** No, I – no, I think it would be – sorry, I didn’t mean to leave that impression. I was going down the path: did I present this to the independent engineer? And I don’t believe I did, no –

**MR. RALPH:** Fair enough.

**MR. E. MARTIN:** – is my feeling and my thinking here, and I can’t remember this, but when I saw that – when I saw the deck and stuff, you know, my feeling is but I can’t confirm this, I was saying give me four copies of that, you know, that’s exactly what I need to –

**MR. RALPH:** Right.

**MR. E. MARTIN:** – talk to somebody.

**MR. RALPH:** Fair enough. But you certainly endorse the information that’s there.

**MR. E. MARTIN:** One hundred per cent.

**MR. RALPH:** Again, I agree with Mr. Learmonth on this, that looking at this at first glance, it paints a rosy picture that since this has been sanctioned, you know, some things have gone up you know, some things have gone down, that evens out. But, look, we have a \$100 million more income than we anticipated, which is – that’s a rosy picture.

**MR. E. MARTIN:** Well, I take some exception to that comment. But, not disrespectfully. I mean, it depends how you look at things, but from my perspective, I’m tasked with – and the company is tasked with providing a fulsome picture.

And this project was, you know, sanctioned on costs to the ratepayer and the impact surrounding that. I had made representations to the government and the board, at the time, about the full benefits of this package, which – we reviewed it several times here. That’s the one with the \$7-billion preference for Muskrat Falls, when you put in a multitude of factors. And that’s what the project was sanctioned on and understood by the government, the board, Nalcor. So I don’t see it as painting a positive or negative picture.

If those numbers had been otherwise and – you know, where it was less extra revenue and no extra financing benefit, then I would have had to present that picture. It’s a fulsome picture. So, I don’t see it, as described, as using the adjective rosy; I would describe it as using the adjective fulsome. That’s an adjective, but you know my point I’m making.

**MR. RALPH:** Yeah, fair enough. So, next question is where does that \$300 million come from?

**MR. E. MARTIN:** Which one?

**MR. RALPH:** The \$300-million capital cost, where does that come from?

**MR. E. MARTIN:** It would have come from the project team.

**MR. RALPH:** So, how would they have delivered that to you?

**MR. E. MARTIN:** They would have met with me, gone through the numbers, indicated to me, you know, what they see as the final forecast cost. That would be the 6.5 – I forget the extra digits on it.

**MR. RALPH:** So, before November the 6th, you received a document from the project management team saying that the FFC was 6.5?

**MR. E. MARTIN:** I don’t know if I received a document, but on and about this time, I would have been told.

**MR. RALPH:** Can you recall if that would have been a spreadsheet or a presentation?

**MR. E. MARTIN:** I can’t recall, but, you know, I’m not – I guess I can’t determine the saliency, but they would let me know as quickly as they could, and that would easily and most likely be verbally, that things were moving fast. They knew I wanted information. We were heading down to financial close, so it would have been – it certainly would have been explained to me.

**MR. RALPH:** ’Cause there are documents after this date that sort of explain the 6.531. But I don’t see anything before November 6 explaining where that \$300 million comes from.

**MR. E. MARTIN:** I think that would be best to ask to the project management team. I certainly wouldn't be involved in that. But by way of supplementary thinking, I remember one of the emails I reviewed – I think it was from Gilbert – Mr. Bennett – a little further on, yes, saying is that, you know, the – some party, I'm not sure if it was the government or the IE, was asking for more detail around the number and I think – you know, and he said it's up to me, is it good – and I said, absolutely. I said good to go.

So I, you know, I wouldn't – that indicates to me I probably didn't see the detail behind it, you know, at that point. But that wouldn't be unusual.

**MR. RALPH:** 'Cause GT – Grant Thornton – there was a report that was given by McInnes Cooper that was, I guess, done on – I'm sorry, the other way around. Nalcor produced the document and gave it to McInnes Cooper, and they reviewed all the FFCs over a period of time.

And in September, October, November, they're around 6.7, 6.8, 6.9. I think that, you know, I don't recall seeing one that said 6.5.

**MR. E. MARTIN:** Well, the document I've been referring to is the one that was produced by Mr. Harrington and I – the number is – I think I said it yesterday, 02229, I think I was trying to remember that. And that's, you know, a summary of what was produced – not as a, you know, as a spreadsheet, but that's what I understand is the best description of what Mr. Harrington and Mr. Bennett would have told me.

**MR. RALPH:** And when would that have been done?

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

**MR. RALPH:** I'm asking you when –

**MR. E. MARTIN:** Around –

**MR. RALPH:** – that document would have been made.

**MR. E. MARTIN:** I can't remember. It's in – I don't know the date. I – it's in November and it's past this date.

**MR. RALPH:** That's fine. We'll come back –

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

**MR. RALPH:** – to it.

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

**THE COMMISSIONER:** We can bring it up, if you'd like.

**MR. RALPH:** Yeah, perhaps we'll have a look at it.

**THE COMMISSIONER:** P-02229.

**MR. E. MARTIN:** And we could scroll down –

**MR. RALPH:** So that's the 21st of November.

**MR. E. MARTIN:** It – so there you go. And then if you go down to the cost section, it's – “We know we have approx 2/3rds of the total Project estimate firmed up as completed contracts, delivered Po's or firm priced executed contracts or LNTPs. The net effect of this is the cost increase of” approximately “... 5% which results in the” 6 billion – “the \$6.531B – so there is \$2.2B left to firm up with contracts and PO's – the cost to complete as far as we know today is 6.531B and we believe that the greatest budget hits are already behind us and even in the worst case the 5% increase in cap cost we have seen continues to be experienced for the next \$2.2B (which we do not accept as this time) the \$6.531B would not exceed \$6.641” billion. “So we are now out of the realm of estimating theory and into the world of fixed and firm contract and PO costs. So MWH can be assessing actual fixed and firm costs that we have and then focus on the costs we have yet to firm up and again using their experience to look at the cost situation and pass an opinion on the reasonableness of a revised budget of \$6.531B.”

**MR. RALPH:** So, you're relying on a document that was dated November 21 to justify the \$300-million figure that you had in November the 6th.

**MR. E. MARTIN:** No, absolutely not. I mean –

**MR. RALPH:** So there – you think –

**MR. E. MARTIN:** I'm not relying on the project team telling me that this was the situation.

**MR. RALPH:** So do you think there's an earlier iteration of that email by Mr. Harrington?

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

**MR. RALPH:** So you can't tell me, right now, where that \$300 million came from.

**MR. E. MARTIN:** Yes, I can. Oh. Maybe – what do you mean by where it came from? It's a – maybe I'm answering it too simple. It's the difference between 6.5 and 6.2. So, am I answering your question? And so six –

**MR. RALPH:** No, I understand that that's \$300 million. Yes.

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

**MR. RALPH:** Now, and I'll come back to this many times, but the next document I'd like to bring up is Exhibit 03473. I don't think –

**THE COMMISSIONER:** 03473. That one will be on your screen, as well.

**MR. RALPH:** I understand – he will be testifying – I understand that these are the notes of Paul Myrden. So, it's pretty clear that he got the same numbers that were given in this project update. Do you agree with that?

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

**MR. RALPH:** Now, I don't quite understand – you know, I guess you're – the \$300-million capital cost going up and 300 going down, is there a relationship between those two things if – you know, have the financial costs gone down because you've invested wisely in something in capital costs and that's going to reduce the financial costs, or are they completely separate things that are moving completely independently?

**MR. E. MARTIN:** And just for clarification, are you talking about the financial costs and the capital costs?

**MR. RALPH:** Yes, yeah.

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

They're two separate things, but they add – they added into or subtracted from the same base. So, once again, you know, from the sanction of this project, it was done on the cost to the ratepayer. So the cost to the ratepayer is, you know, all of the capital costs of either alternative, all of the financing costs, all of the operating costs, and there's a multitude of other costs that go in there – sustaining capital, as they call it, which is capital to keep things going over the years. And that goes into a profile over 50 years. The financing costs are part of that. They get added in over 50 years, and then that's brought back to a present value.

But, in any event, it's that string of costs, all-in, that the ratepayer pays for. Okay?

**MR. RALPH:** Yes.

**MR. E. MARTIN:** I –

**MR. RALPH:** I'm sorry, have I – were you finished?

**MR. E. MARTIN:** I'm not, but maybe I misinterpreted your question because I was trying to explain why –

**MR. RALPH:** No, I guess the point – I'm sorry to interrupt you again.

**MR. E. MARTIN:** Go ahead.

**MR. RALPH:** No, I guess the point I'm trying to make is it's confusing to me because it seems to suggest this – these numbers seem to suggest, well, look, you know, we've gone up 300, but that's okay 'cause we managed to go down 300.

**MR. E. MARTIN:** I'm not saying it's okay, but that's the net effect on the cost to the ratepayer, yes. That's exactly what happens.

**MR. RALPH:** So you're not – you didn't go into government and say, look, can we spend



another \$300 million because we've saved \$300 million on financial costs. That didn't happen, did it?

**MR. E. MARTIN:** Well, I explained the situation, you know, to the government, and they were aware of it, so I think the answer is yes.

**MR. RALPH:** Go to page 5 of this Exhibit, please.

Oh, I'm sorry, go back to Exhibit 02206.

And go to the middle of the page.

So, you've stated – this is between yourself and Mr. Kean. I think he's the one who's drafting this – the update to MWH or the independent engineer.

**MR. E. MARTIN:** It appears that way, yes.

**MR. RALPH:** Yes, okay.

And so you say to him: "We should consider removing Slide 14 - too defensive? Just talk too it maybe if questioned?"

And if we can go to the top.

And it – Mr. Kean replies: "My rationale for including this slide is to address the pending question of 'what are you doing to prevent this from going \$7B?'. I'm fully expecting MWH to point out that our costs have grown by \$600+ million since we have used our contingency" – in brackets – "(much earlier than we had initially viewed).

"Paul and I would prefer to maintain the slide and leverage it to respond to this anticipated question."

I can't – I don't see that slide referencing \$600 million in this presentation. Do you know if that slide came out?

**MR. E. MARTIN:** I don't know, actually.

**MR. RALPH:** And there might be – this is the only draft I could find of this update.

**MR. E. MARTIN:** And we're on – what exhibit are we on again? I'm sorry.

**MR. RALPH:** P-02206.

**THE COMMISSIONER:** 02206. It's on your screen.

**MR. E. MARTIN:** Okay. 02206. Presentation – I can't – I don't know.

**MR. RALPH:** Now, perhaps we can to page 4 of that exhibit.

And keep scrolling up towards the beginning of the email. Keep going.

So, Mr. Martin, there doesn't seem to be any response from you regarding Mr. Kean's assertion that the – that MWH is going to point out that our costs have grown by \$600 million and we have used our contingency. It seems to me that Mr. Kean is not – he's not representing what MWH is saying. I could be wrong about this, but it seems like Mr. Kean is suggesting that you're \$600 million over and your contingency is gone. And would you agree or disagree with Mr. Kean if he was saying that?

**MR. E. MARTIN:** Could you repeat that again? Because there's been some confusion around what the base is. So, there – you know, I've seen it – the base used excluding contingency at DG3, I think it was 5.8 or something.

**MR. RALPH:** Yes.

**MR. E. MARTIN:** And then that went up 600 and then – and I'm finding every time people talk about this, they're mixing contingencies and base numbers. So, I'd have to be very precise here. 'Cause it gets – it can get confusing unless we're extremely precise.

**MR. RALPH:** Yeah. And I – honestly, I can't tell you. It's not evident, I don't think, in this series of emails if he's using five point or 6.2.

**MR. E. MARTIN:** I can't help you either. So, I don't mean to be difficult like that, but I've heard some testimony, seen it around, going around this five-eight number, and it was clear to me that most times these numbers are getting mixed, and I think it's extremely confusing.

**MR. RALPH:** Would you comment on the observation that the contingency has been used?

**MR. E. MARTIN:** The 6.2 contingency –

**MR. RALPH:** Yes.

**MR. E. MARTIN:** – was used.

**MR. RALPH:** It was used – by November 6, the contingency was gone?

**MR. E. MARTIN:** The contingency for the 6.2 was gone, and –

**MR. RALPH:** And how much was that?

**MR. E. MARTIN:** I believe it was in – between \$300 and \$400 million.

**MR. RALPH:** \$367 million? Does that sound right?

**MR. E. MARTIN:** Something like that, yeah. So I agreed with that, and then – but the point I'm making is that you go to the 65.21 number, and I think the number is 190 contingency is in there, is my point. So – that's it. That's my point. It's just a matter of anchoring to the right comparison. That's all.

**MR. RALPH:** When did you tell Premier Dunderdale that the contingency was gone?

**MR. E. MARTIN:** It would've been at the time that, you know, I met with her. And I think it's evident, you know, the key message for the premier at that level would be we've gone from 6.2 to 6.5; 6.2 contains contingency, so in her mind – in anyone's mind – the contingency from the 6.2 would be used up, yes.

**MR. RALPH:** Now, I mean, it seems kind of extraordinary that we've only gone up – that you're at a \$300-million overrun and your contingency's gone. It seems to me you'd have a much higher overrun if your contingency is gone and it was \$367 million.

**MR. E. MARTIN:** Well, it's – once again, we're mixing some numbers here.

**MR. RALPH:** Let's use 6.2.

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

**MR. RALPH:** Let's use 6.2 as the base.

**MR. E. MARTIN:** If we use 6.2, if you bring that back to before contingency, that's approximately 5.83, or something like that. And then if you use up the – if you put \$600 million on top of that, you get to, I think, about 6.3 is the number, I believe. So that obviously uses up the contingency in the first 6.2; it gets you to 6.3. Instead of stopping there, then they added \$189 or \$190 million of contingency on top of that to get 6.5.

**MR. RALPH:** If we go to Exhibit 02524.

**THE COMMISSIONER:** Again, that will be on your screen.

**MR. RALPH:** And this is two or three emails back and forth between Jason Kean and Auburn Warren. There's a number of other people that cc'd, including Ed Bush, Derrick Sturge, Gilbert Bennett, James Meaney, George Chehab, Gordon Alexander and Tom Garner. And perhaps we can go to page 3.

**MR. E. MARTIN:** Can I just – could you stop there –

**MR. RALPH:** Yeah.

**MR. E. MARTIN:** – for one second, please, just to scan it.

**MR. RALPH:** It's really short emails but you can take your time.

**MR. E. MARTIN:** Okay, great. I'm good.

**MR. RALPH:** So page 3, so this is Auburn Warren to Jason Kean – you can go a bit further. Okay, that's good: "Can I get the updated cash / cost spend profile that we would normally have gotten in past as I need to update all our models for the new \$6.5B?"

"I need asap as we are presenting updated models to Canada on Tuesday plus may need to update for the \$300M financing savings issue."

And if we can go to page 2, right there is good: "Auburn, This practically can't be given on short order.

"Ed, How long would it take to provide an updated cash flow?"

**MR. E. MARTIN:** Can I just – I don't think that's me, is it?

**MR. RALPH:** That's Ed Bush, I think is –

**MR. E. MARTIN:** I think – I just wanted – I didn't see the –

**MR. RALPH:** Yeah, I think that's Ed Bush.

**MR. E. MARTIN:** I couldn't see the names on top.

**MR. RALPH:** Yeah, I think that's Ed Bush.

**MR. E. MARTIN:** Okay, good, good.

**MR. RALPH:** And if we go to page 1 and Mr. Warren says: "Understand and appreciate the short order... unfortunately we've been looking for a capital cost update since July.

"Appreciate process and time required to vet #s to get you to today's presentation of costs however we also consistently indicated that we will need to update our models and it was indicated that data I needed would follow very shortly after cost update was communicated. To gain perspective for our need, we will be attaching our models to our revenue agreements (and thus will not change thereafter) which we are getting Cabinet and Boards approvals the end of next week – and as part of this is getting Canada's sign off on the models next Tuesday.

"I'll wait to hear timing from Ed, but I am available to discuss at anytime if need be.

"I've also copied in Gord and Tom ...."

**MR. E. MARTIN:** Ed Bush again, I think, isn't it?

**MR. RALPH:** Yes.

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

**MR. RALPH:** And Mr. Kean writes back and says: "This is ... news to me." So this is November 6 and you're now into negotiations over the FLG. Is that right?

**MR. E. MARTIN:** Yes, we've been in there for a while.

**MR. RALPH:** And Mr. Warren is part of your finance team.

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

**MR. RALPH:** And on November 6 he's saying we need the capital cost update and he doesn't have it and it's November 6. And it's odd because you say there is a new FFC of \$6.5 billion, which went into the presentation to the independent engineer. Is that right?

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

**MR. RALPH:** Any idea why Mr. Warren wouldn't have that?

**MR. E. MARTIN:** There's two different things here, though, just to be clear. Once you do the capital cost update at 6.5, that's step one. That gives you a total number. Then you need to spread that out over time to see what the cash flow is.

So that means you have to pull your schedules in, I believe. You have to have people, you know, plow through that and start matching up the timing of the expenditure. It takes – I don't know how much time it takes, I haven't done it in years, but –

**MR. RALPH:** It takes a long time.

**MR. E. MARTIN:** – it takes time.

**MR. RALPH:** So on November 6 –

**MR. E. MARTIN:** Yeah, so – go ahead, I'm sorry.

**MR. RALPH:** On November 6 it doesn't appear as you're even close to doing that then. He doesn't even have a capital cost update.

**MR. E. MARTIN:** No, that's two different things again. We need to be clear on this; the capital cost update is the 6.5. The –

**MR. RALPH:** And he doesn't have that – he doesn't have that.

**MR. E. MARTIN:** I think he's saying he has that; he's looking for the cash flow.

**MR. RALPH:** We've been looking for capital cost updates since July.

**MR. E. MARTIN:** So that's another topic. So, yes, he's been looking for a capital cost update since July. What appears to me here is that he has the capital cost update now at 6.5. Now, what he's looking for is number three, which is separate from that, which is the cash flow associated with the capital cost. And that's another significant chunk of work to do that. So

**MR. RALPH:** It just seems extraordinary to me that you are in the midst of a negotiation of a \$5-billion guarantee and weren't your – the people on your finance team don't have a capital cost update on November 6.

**MR. E. MARTIN:** I don't mean to be argumentative but that's – I'm not sure if I'm communicating properly because they have the capital cost. Maybe an example possibly – just to make sure we're communicating because I'm not sure if I am properly – but a house example. You buy a house for \$250,000, that's the capital cost. And you say, great and that's it, you do your bidding, you get it for 250. But before you make your final decision, you want to know what you're going to pay monthly. And you have to go to the bank, you got to get your mortgage organized, you got to see it's going to be, you know, \$329 a month. And that work of getting that cash flow is different than just buying the house. So hopefully that's helpful.

**MR. RALPH:** Right.

So – and who figures that out?

**MR. E. MARTIN:** So we have the capital cost

**MR. RALPH:** And who figures that out, your finance team.

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

**MR. RALPH:** If you got the cost over –

**MR. E. MARTIN:** No. In this case, no, the capital cost – the cash flow associated with that has to come from the project management team because they manage the schedules. And the

costs, spread over time, they have to be managed to the schedules because the schedules will obviously say what goes in first, like, you know.

And I don't want to use a bad example but, I mean, you're not going to put turbines in before you build the dam, for instance. So you're going to have to know the schedules (inaudible).

**MR. RALPH:** Yes.

**MR. E. MARTIN:** So all that information has to come from the project management team. So what I see happening here is that Mr. Warren says I have the 6.5 – finally, he's saying I got it. And he's saying now, Jason, I need the cash flow with that now. And Jason, I think, is saying, oh gee, that's going to take a bit of time and everyone is in a panic. And he's saying, okay, I'll get it for you and he has to go and work that out at that point, because it's all happening very quickly.

**MR. RALPH:** Right. Well, perhaps we can go to Exhibit 02214.

**MR. E. MARTIN:** I mean I'm just – not to belabour it, but are you ...?

**MR. RALPH:** I understand your point.

**MR. E. MARTIN:** Okay.

Thank you very much. Yeah.

**THE COMMISSIONER:** This will be on the screen as well.

**MR. RALPH:** So these are emails between Jason Kean and people in finance with Nalcor. And if we could go to – this is November 14. So this is approximately a week later – just over a week later. And so this is an email from James Meaney and it says, subject: Updated capital costs, urgent.

**MR. E. MARTIN:** I'm not sure if I'm on the same page.

**MR. RALPH:** Oh, I'm sorry, page 3.

**MR. E. MARTIN:** Is it 02114?

**MR. RALPH:** That's right, 02214.

**MR. E. MARTIN:** 02214 – I think we have the wrong exhibit. Is that correct?

**THE COMMISSIONER:** Yes, you do. It's coming up now. What page on this?

**MR. RALPH:** Page 3.

**THE COMMISSIONER:** Page 3.

**MR. RALPH:** On page 2 at the bottom it says: James Meaney – from James Meaney to Gilbert Bennett. And go back in out of page 3 and it says: "As a follow up to last week's session with Canada and their advisors ..." So I'm presuming he's referring to that November 6 meeting, whether it's a November 6 up – project update –

**MR. E. MARTIN:** Yeah, it appears that way.

**MR. RALPH:** – MWH?

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

**MR. RALPH:** "... and their advisors where we tabled the projected \$300m capital cost increase along with the financing cost savings, Auburn and his team are meeting with Canada and Blair Franklin tomorrow at 11am EST in Toronto to review financial models that have updated with the \$6,531m cost flow series provided by LCP Project Controls mid week. This session was originally supposed to occur Tuesday, but had to be postponed to ensure we had the updated cost flow. The capital cost figures will only be seen at the aggregate level in the models (as opposed to the material contract level detail), as follows ...."

And so these – the numbers we see here – MF, 3,285; LIL, 2,527; LTA, 720 – in fact, that equals your 6.531.

**MR. E. MARTIN:** Are you asking me that?

**MR. RALPH:** No, I'm just telling you.

**MR. E. MARTIN:** Oh, thank you. Okay.

**MR. RALPH:** "The question will likely come up what's driving the decrease in LIL compared to the DG3 estimate of 2,609. Hoping you can provide a few key points on this that Auburn can convey to Canada/BF.

"The question will also be asked as to when we'll be providing the material contracts reconciliation that your planning on sending to Ed for sign off. Unfortunately we didn't get a chance to have our meeting today, and Derrick, Rob and I will be back in with the Boards of the new LCP entities from 8:30 to 12:30 tomorrow. I think the alignment meeting got rescheduled to 11:00.

"In light of the above, I would suggest you send the material contracts reconciliation to Ed this evening advising this needs to be sent to Canada and MWH tomorrow as they specifically requested it be provided as part of completing their FLG due diligence and the IE report by early next week."

And then the next email –

**MR. E. MARTIN:** Is there anything in this stream that indicates that's – Ed is me? Do you know?

**MR. RALPH:** I don't think that would be you. I think that would be – oh, I'm sorry, where's this?

**MR. E. MARTIN:** That –

**MR. RALPH:** No, that's you. That's definitely you. Yeah, it is. You'll see, there's a couple more emails coming up.

**MR. E. MARTIN:** That's what I was wondering. I just wanted – yeah, I thought you might know that –

**MR. RALPH:** And there's – they send this reconciliation to you.

**MR. E. MARTIN:** Gotcha, gotcha. Yeah.

**MR. RALPH:** And so we can go to page 1. Go to the bottom. So we got Jason Kean to James Meaney: "Jim,

"With respect to the specific question re the decrease in capital for LIL, I advise as follows:

"The LIL numbers are the least mature of the three, due to the fact that as a %" –

**MR. E. MARTIN:** Just – sorry to interrupt. Can I just see who that is from and to, again, please? Just up a little bit. This is from Kean to Meaney.

**MR. RALPH:** That's right.

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

**MR. RALPH:** "... we have received less bids and awarded less contracts for it than the others" – than the others. "We have not bid the HVdc line construction, while bids are under review for the converter, and are expected for the switchyards and synchronous condensers this and next month. The receipt and ... analysis of the results for future bids have not been factored into the approved FFC."

So that to me is a confusing concept: an approved FFC.

**MR. E. MARTIN:** So you're asking me to comment on that –

**MR. RALPH:** Yes, what does that mean?

**MR. E. MARTIN:** I don't think it's a formal term. I think it's probably a manifestation of we're down – it's a way to describe what I've been talking about: the point in time when, you know, there's an FFC that would be relatively certain. It would have enough certainty around it, we would be comfortable in sharing it, being able to explain it. You know, it would be something that would be reasonably reliable, as opposed to, you know, some of the – there's a lot of terms going around. It's been called indicative; it's been called crystal ball.

I don't want to get into all of that, but I term it that the – you know, the original, kind of, early FFCs that are presented that need massaging and need a lot of stress testing to find out exactly where it is. I would see that, you know, this approved FFC would be on the right-hand side of that; it would be on the former. And that would obviously be going into – this would be the 6.521 that would be – not publicized externally, but, you know, shared (inaudible) –

**MR. RALPH:** So approved by whom?

**MR. E. MARTIN:** It would have to – I would have to give the blessing that this is, you know, at a form that I'm comfortable to sharing it with –

**MR. RALPH:** I mean, the – it's an improved FFC. Any idea – when it said an approved FFC, who approved it?

**MR. E. MARTIN:** I think you may be reading too much into the approved FFC, but I don't want to pull back either that I would be accountable for saying: Okay, we're at a point now where this is the number that we can share.

**MR. RALPH:** You're saying – you're comfortable that this number is a number you can share.

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

**MR. RALPH:** And so this is on November 14?

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

**MR. RALPH:** So the material contracts have not been reconciled and I guess what he's talking about – they haven't gone through that process of looking at the 17 contracts –

**MR. E. MARTIN:** Who –

**MR. RALPH:** – and seeing the material ones.

**MR. E. MARTIN:** But who hasn't done that?

**MR. RALPH:** Nalcor hasn't done that yet, at this point.

**MR. E. MARTIN:** Now – did you want to finish the question first? I'll make a note of that and come back to it.

**MR. RALPH:** Okay, that's fine.

**MR. E. MARTIN:** I apologize for that.

**MR. RALPH:** And there'll be some emails after this that perhaps (inaudible) but it – you know, I would suggest that they're saying in this email that the reconciliation of material contracts – and

we saw in an earlier email they were talking about 17 contracts.

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

**MR. RALPH:** And Nalcor had said: Look, these are the material ones in terms of the increase in capital costs. So on November 14 it appears as though that work has not been done.

**MR. E. MARTIN:** I don't –

**MR. RALPH:** Or at least that –

**MR. E. MARTIN:** Could you –

**MR. RALPH:** – Mr. Meaney doesn't have it.

**MR. E. MARTIN:** I would say that's probably a more accurate –

**MR. RALPH:** That's fair.

**MR. E. MARTIN:** – I'm much more comfortable with that.

**MR. RALPH:** That's fair.

**MR. E. MARTIN:** Because, you know, the material contracts, that information would've been, you know –

**MR. RALPH:** Fair enough.

**MR. E. MARTIN:** – (inaudible) the PMT. But I take your point.

**MR. RALPH:** Mmm.

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

**MR. RALPH:** And I think that's accurate. I think he doesn't have it on the 14th.

So we can go to 02215.

So this is – the first email is Mr. Meaney to Derrick Sturge, Auburn Warren, Rob Hull. It's November 15 at 4:10. And he says, "the pigskin is in flight." And I think what he's talking about there is that same day, just a bit earlier, you

received this material contracts with reconciliation. And so that's the pigskin, and it's gone to you. And you perhaps wouldn't know that.

**MR. E. MARTIN:** I wouldn't know that. Maybe if I read (inaudible) –

**MR. RALPH:** We'll go down to the next one and we'll (inaudible) –

**MR. E. MARTIN:** – it might help. I don't know what (inaudible) referring to.

**MR. RALPH:** So here's Gilbert Bennett emailing you and Mr. Meaney and Mr. Harrington. It's November 15.

It says: Major Material Contracts Files. "We're under some pressure to demonstrate the changes" – it says: "Ed,

"We're under some pressure to demonstrate the changes to material contracts as identified by the IE. The attached sheets are intended to show how the growth from 6.202 to 6.531 is occurring.

"Before sending them through to the IE, I'd like you to take a look. From my perspective, the numbers summarise the key changes, and I don't see anything here that the IE would not have access to were they in our office."

**MR. E. MARTIN:** So could you go back up a little bit, please, to the pigskin comment? It's after that.

I can't recall here exactly, but what I read there is that they're asking me to give the thumbs-up for – you know, to raise the material contracts. I wouldn't have known – I wouldn't be involved in that, they would just be – you know, it was tense times, they're probably getting my sign-off on everything because people were a little uptight.

Gilbert said give me a call; I would've picked up the phone and said: Go, Gilbert, nothing I can do with those material contracts, I'm not into them, I don't understand them. If you say they're okay, go. And I – my thought would be that Gilbert

would've gotten back to him and said: They're ready to go. But I don't know. You know, I'm just saying that that's the way I was reading that (inaudible).

**MR. RALPH:** Okay. So he clearly – I mean, Mr. Bennett is sending these to you, asking you to sign off on them.

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

**MR. RALPH:** Right?

Go to the next page, and really what – there's a couple of other emails here and they show the – I guess the work – the reconciliation or the major package status report was done by George Chehab. Down –

**THE COMMISSIONER:** Go to page 2.

**MR. RALPH:** Right there.

So do you know that gentleman? George Chehab?

**MR. E. MARTIN:** I've never heard of him before, no.

**MR. RALPH:** Okay. He looks like – he works for Lower Churchill Project, or at least he did at the time.

And we go further up. Oh, back the other way. Here we go, this right here. So go back – sorry it's page 2.

So Mr. Chehab sends it to Mr. Meaney, and then Mr. Meaney sends it to Mr. Bennett, and Mr. Bennett sends it to you on November 15.

And now if we can go to page 5.

**MR. E. MARTIN:** Did you say – it may not be an important point, but did you say he sent it to me?

**MR. RALPH:** No, he sent it to Mr. Bennett, and Mr. Bennett sent it to you.

**MR. E. MARTIN:** Well, I just didn't see the email where Mr. Bennett sent it to me. But that's fine, if you say it's there, it's there.

**MR. RALPH:** I – we can go back if you feel uncomfortable.

**MR. E. MARTIN:** No, no. I was trying to follow the stream of emails here.

**MR. RALPH:** And so on page 5, we have a document that's entitled "LCP DG3 Estimate vs. Current Final Forecast Cost Reconciliation." So, this current FFC, is this the one you spoke of earlier? So, this was done earlier. It was known on November the 6th –

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

**MR. RALPH:** – that it was the 6.531?

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

**MR. RALPH:** And, so what we see here, we see that the historical costs, of course, have remained the same; the material contracts have gone up by over \$900 million; project management has gone up \$10 million; environmental has gone up \$175,000; and, the balance of scope has gone down approximately \$309 million.

And now, the contingency in this reconciliation is now \$89 million.

**MR. E. MARTIN:** I'm – for what it's worth, I believe there's another one –

**MR. RALPH:** There is.

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

**MR. RALPH:** Yeah, there absolutely is.

**MR. E. MARTIN:** Okay, I'll just wait.

**MR. RALPH:** And, perhaps we can go to that one now. It's P-02217.

**THE COMMISSIONER:** Again, that'll be on your screen.

**MR. RALPH:** Perhaps go to page 1. So, I think this is – this has been brought to your attention before.

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



**MR. RALPH:** So, this is the one he's asking to put in the data room; he's saying don't give it to Newfoundland. Give it to Canada and the independent engineer. So, let's go to – the number is page 3 – or page 2, I should say.

So now, the previous reconciliation – and I'll go back to it – but it was dated November the 13th; this one's dated November the 19th, and the number is still 6.531.

**MR. E. MARTIN:** Mm-hmm.

**MR. RALPH:** But now, the contingency is \$182 million. And, I think that's approximately \$93 million more. And, if you look up at this – at the material contracts –

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

**MR. RALPH:** – that's gone down by approximately 93 million.

Now did you have anything to do with these documents?

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

**MR. RALPH:** Any idea –

**MR. E. MARTIN:** Anything to do now, I mean – preparation wise –

**MR. RALPH:** – yeah.

**MR. E. MARTIN:** – I wouldn't be down for preparing this, no. Obviously, I would see copies and things like that. So I think the answer is no, I just – I wouldn't. If you're talking about preparing these documents and running the numbers and the cash flows, no, not physically doing that.

**MR. RALPH:** So if we go to Exhibit 02215, again, page 5.

So on November the 13th when they were sent to you, material contracts were \$4.397 billion. On November the 19th, when they're put in the data room, they're down \$93 million and contingencies are up by basically an identical number. Does that make sense?

**MR. E. MARTIN:** In – it makes sense. It is what it is. It makes sense from that perspective. I'm not exactly sure what you mean by make sense.

**MR. RALPH:** Well, I'm asking you how is it that on the 13th of November, you've got \$4.397 billion in the material contracts category, and then on the 19th, it's down \$93 million?

**MR. E. MARTIN:** I can't answer that. I'm trying not to speculate, you know – don't know.

**MR. RALPH:** It seems extraordinary, doesn't it? Wouldn't you agree?

**MR. E. MARTIN:** I don't see it as extraordinary, no. I see that the numbers at the bottom lines are the same. It could be the fact that where cash was being – or money was being put, you know, I know that there's often a mixture between growth allowances, other allowances, contingency. It could be something to do with that but I think the fundamental point from my perspective is the number is the same.

**MR. RALPH:** Perhaps we can go to page 4 of 02215?

**THE COMMISSIONER:** 02215?

**MR. RALPH:** And if we go – as far right as you – well actually, we'll start here. So I'm not – are you familiar with this spreadsheet?

**MR. E. MARTIN:** I've seen it before, yes.

**MR. RALPH:** So on this left-hand side here, there's 17 contracts and they are the ones identified by Nalcor as being material. And then on – there is a line here at the bottom, and it's – it just says Balance of Scope. So that's the remaining contracts.

So on the 17, Nalcor is telling the independent engineer and Canada, you guys have a good idea what the costs are gonna be, for those contracts. You don't know – you don't have a good idea of what's happened to the Balance of Scope.

**MR. E. MARTIN:** If you are asking me that, I'm not exactly sure because –

**MR. RALPH:** You can accept that as correct; if I'm wrong someone will point it out.

**MR. E. MARTIN:** Yeah, but I'm just – 'cause I make the point –

**MR. RALPH:** Yeah, sure.

**MR. E. MARTIN:** – so I – 'cause the – I believe material contracts are – that's – I think it's some form of defined term somewhere? So the material contracts could have some final – you know, some solid information, some may not. I don't think the definition of material contracts is that they're all – people know exactly what's going on with them.

For instance, if I look at the – number CH0009, Construction of the North and South Dams, and come across, and is due to be (inaudible) Q4 2017, I think. So like that wouldn't be anywhere near having a final thought on it. So I just wanna make the point – I think you're making the point material contracts are ones that we know everything –

**MR. RALPH:** Yes.

**MR. E. MARTIN:** – a lot about, but that's not the case, that's not the definition of material contract.

**MR. RALPH:** But I think what they did here – they're having discussions.

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

**MR. RALPH:** Canada was getting upset with Nalcor 'cause what you did – on November the 6th, you gave a presentation, asking to guarantee \$5 billion, and you gave a piece of paper saying: It's up 300, it's down 300, we got \$100 million more of income. And that's it. That's the only information you gave about capital cost updates.

And as time went on, they got increasingly frustrated. And Nalcor said: Well why don't we do this – you see it in James Meaney's email – we'll get the material contracts together and so you can see where the cost increase is coming from. That's where it comes from.

**MR. E. MARTIN:** I'm just, once again, to be – to – again, I believe it comes from the 6.531, but

I just – I'm just making a point that material contracts, you know, the definition of that – a definition of that is not the contracts that the project team is comfortable on where they are – it's not that, is the only point I'm making.

**MR. RALPH:** Okay.

So let's go to the right-hand side, and – right there, go to the top. So you got the Base Estimate, Escalation, Original Control Budget, Transfer from/to other contracts, Final Forecast Cost, and Variance. So variance is the variance between DG3 and the current Final Forecast Cost.

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

**MR. RALPH:** Is that clear?

**MR. E. MARTIN:** Can I just clarify something to make sure I – I don't mean to be disruptive here, but –

**MR. RALPH:** No, that's fair. I mean just take your time. I've spent a lot of time looking at this document –

**MR. E. MARTIN:** Absolutely. Absolutely, but –

**MR. RALPH:** – so I'm (inaudible).

**MR. E. MARTIN:** – what I want to just explain is you said the difference is at the end is what DG3 is and what the new number is?

**MR. RALPH:** That's right.

**MR. E. MARTIN:** But I think it's important to consider the transfers to and from other contracts.

**MR. RALPH:** Right.

**MR. E. MARTIN:** Because there's a lot of scope transfer going on there because that's a key element, you know.

**MR. RALPH:** So let's go to the bottom of that. So we got transfers, D, and there's – go to the bottom. So 304, see that number?

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

**MR. RALPH:** That's the transfers out of the balance of scope, right?

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

**MR. RALPH:** So where would that go?

**MR. E. MARTIN:** It looks like it's going up into the material contracts.

**MR. RALPH:** So there'd be \$304 net million going up, 304 ...

**MR. E. MARTIN:** Between balance of plant and the material contracts?

**MR. RALPH:** So it – you would think –

**MR. E. MARTIN:** That sounds logical, yes.

**MR. RALPH:** – it would be zero, ultimately.

**MR. E. MARTIN:** Within – zero –

**MR. RALPH:** Well, \$304 million goes up into the other 17, right?

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

**MR. RALPH:** So that's plus 304 and there's minus 304 down here.

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

**MR. RALPH:** So that's zero. The net effect of the transfers is zero.

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

**MR. RALPH:** Right?

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

**MR. RALPH:** So if we can go back up to the top again – actually, no, we stay down here.

**MR. E. MARTIN:** That – if you go down here to these numbers, I agree with your original statement that you were saying – go ahead –

**MR. RALPH:** Which original statement?

**MR. E. MARTIN:** I'm going to stop there because you need to ask the questions.

**MR. RALPH:** So what we've got here, this second column here, and it says 6.53, right?

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

**MR. RALPH:** And that includes \$89 million in contingency. That's – that line there is contingency. So want to go over and here's \$367,852,397.

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

**MR. RALPH:** And that was the original amount in the 6.202 figure?

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

**MR. RALPH:** So in the far column here, they added up all the variances and they subtracted \$278 million.

**MR. E. MARTIN:** I just missed the – yes, I got it. Yes.

**MR. RALPH:** See that?

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

**MR. RALPH:** So if you add up the 89 and the 278, that gives you 367.

**MR. E. MARTIN:** Okay.

**MR. RALPH:** So it looks like they just took out contingency and subtracted that contingency from the variances.

**MR. E. MARTIN:** I'm not disputing that, but maybe – is there a question?

**MR. RALPH:** Do you – I mean it's very difficult to see this spreadsheet on the screen, I know.

**MR. E. MARTIN:** But is there – maybe you could – is there a point you're trying to make that I could address?

**MR. RALPH:** Oh yeah. I mean am I correct that that's what they're doing here? They're taking \$278 million of contingency leaving 89 and subtracting 278 from the amount that the material contracts have increased.

**MR. E. MARTIN:** I can't answer that right now. It's –

**MR. RALPH:** Okay.

Well, just assume for a moment that I'm right. So we then have \$329 million left and when you add that to 6.202, you get 6.531.

**MR. E. MARTIN:** I'm just lost a little bit here with my problem.

**MR. RALPH:** Okay, take your time.

**MR. E. MARTIN:** I'm just trying to, you know, stick with – stay with your calculations, you know. But your calculations are here. I mean I agree – if it's of any assistance, I agree with the bottom line, obviously. I mean, you know, the change from the 6.2 to the 6.5 and I think the – I believe, and I find it somewhat complicated that the ins and outs of moving money between material contracts and the other scope – I think it makes the math a little confusing to me –

**MR. RALPH:** But I think we –

**MR. E. MARTIN:** But I it all works here so –

**MR. RALPH:** But I think we agreed that if \$304 million goes up then –

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

**MR. RALPH:** – the net effect would be zero.

**MR. E. MARTIN:** Within that column, absolutely.

**MR. RALPH:** So if we could go to the top of the first – of the last column here. So that is – this is CH0007 and we can go over far, over to the left, if you want to see that. Okay?

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

**MR. RALPH:** Now, let's go back again. So that's \$372,725,150.

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

**MR. RALPH:** Okay so that's the one that Gilbert Bennett sent to you. He sent you this one where there was \$89 million in contingencies.

Now, if we can go to 02217 and page 3. And, again – so we got this CH0007 and we go the furthest column over to the right and so now we're down to 279. And go to the bottom and now we're up to 184 there and one – or down to 184. And now contingencies are 182 and that's a difference of \$93 million.

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

**MR. RALPH:** Basically, exactly the same amount of money came out of CH0007 and went into contingencies between November 13 and November 19. And that, ultimately, is the document that went to Canada. And do – is there explanation for how this happened? Do you know why this happened or how it happened?

**MR. E. MARTIN:** No, I don't. The project team would likely be the one, you know, to ask how that happened or what happened there.

**MR. RALPH:** Because the document – Mr. Bennett clearly sends you the document.

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

**MR. RALPH:** Six days later, it goes – and it looks like that, you know, you start off with the 6.531 number and then you start changing things just to get there. So you start off with a number and then move your numbers around to stay at 6.53 and 5 per cent.

**MR. E. MARTIN:** We would never just change something to get there. There would be a rationale and a logic to whatever happened. Just to be clear.

**MR. RALPH:** But you can't give me an explanation of how is it that in six days your major contract goes down \$93 million and the exact same amount of money shows up in contingencies. How does that happen?

**MR. E. MARTIN:** I can't. I mean if I could – you know, if I had the team here, I'm sure they'd fill me in and I'd let you know. I'm confident, though, knowing the team, there would be a reason for it. I could speculate some reasons but I just don't know so ...

**MR. RALPH:** If we go to 02223.

**THE COMMISSIONER:** Again, it'll be on your screen.

**MR. RALPH:** So this is emails between Alison Manzer and James Meaney. And you weren't a recipient; I just want to ask you to comment on some of things they're saying back and forth. So on page 4 – at the bottom of the page. So, I'm not sure this gentleman here – he must be working with MWH. I'm not sure. Do you recognize that name?

**MR. E. MARTIN:** I do not.

**MR. RALPH:** Anyway, there's a series of, I guess, responses from MWH – I believe it's from the Government of Canada – asking questions about various things. And on page 5 – actually, you've answered this question. You've already said there was no contingency left at this point in time. Is that right?

**MR. E. MARTIN:** On the 6.2?

**MR. RALPH:** The 6.2. Yes.

**MR. E. MARTIN:** Exactly. Yeah, right you are.

**MR. RALPH:** Go to page 6. It says – so, this is Canada writing this to the independent engineer: *“We are aware that the delivery of information is with Nalcor at this point in time, and are aware of the cost overrun identified for the Astaldi contract. We are also aware that there is a modeling exercise coming up shortly (scheduled for Friday I believe), which may be useful for you to participate by phone/webex. It is important to understand where the costs may be heading, and a reconciliation to DG3, and comment as to the reasonableness of that reconciliation, is desired.”*

And, the MWH response is: We are – “... we also appreciate the importance of trending the early information to better gauge deviation. We were not able to attend the phone/webex conversation but would like to review any of the germane notes that were taken of key points that were being discussed/considered. We also call the Government's attention to the requirement, following the AACEI's protocol to provide a new, updated cost estimate and schedule at the

time of financial close as well as a follow-up cost estimate at approximately the mid-point of the construction of the projects. We have included this reminder as a recommendation in Section 10 ....”

So, was there a new, updated estimate at the time of financial close, or was this the one that you'd refer to?

**MR. E. MARTIN:** This is the 6.5 –

**MR. RALPH:** Five three one.

**MR. E. MARTIN:** – 31 is the one.

**MR. RALPH:** And page 4. At the top. So, this is Alison Manzer sending email to James Meaney: “Sending you two emails to make sure you know about them. Quite frankly this is a shit storm and a no can close at this stage. Canada is confused and caught – who is not delivering to whom .... The costing info has created a big issue – late and apparently not well done – causes real concerns for timely delivery during the deal and accuracy – NOT good at all. You will need to ensure” that “what is needed gets there, it is timely and accurate, you work with them in the report revisions, you convince Canada you are turning all over and correctly, that you ... give up to date and correct scheduling and costing etc. Right now the perception is you cannot and have not. Have you thought of pulling SNC into this to comment opine whatever they do have credibility and could help in this exercise ....”

So at this point in time, which is November 20 –

**MR. E. MARTIN:** And this is from –

**MR. RALPH:** This is from Alison Manzer.

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

**MR. RALPH:** So she's expressing frustration and anger, I guess, for the people who are working for Canada, saying they're not happy with the numbers, they're not happy with the information they're getting from Nalcor. And this is the 20th. This is 10 days before financial close.

**THE COMMISSIONER:** Actually the 21st.

**MR. RALPH:** September 21.

And would you share that opinion that what you're providing at that point in time was insufficient?

**MR. E. MARTIN:** Well, I wouldn't be in the heart of it, but if Ms. Manzer was feeling that, well, I would have – I'd have to agree, she's the one.

**MR. RALPH:** Now, I'm going to refer to an email that you referred to earlier, and it's Exhibit 02230.

**THE COMMISSIONER:** That'll be on your screen.

**MR. RALPH:** So these are emails between James Meaney and other people on the – in Finance and also Mr. Harrington. You referred to this email earlier. If we could go to page 5.

**MR. E. MARTIN:** I'm not sure if I did but I'm – fine.

**MR. RALPH:** And this is where Mr. Harrington – you – I think you read this entire paragraph.

**MR. E. MARTIN:** Oh yes, it was – this looks like another exhibit, but it's the same words it looks like.

**MR. RALPH:** Yes, that's right.

**MR. E. MARTIN:** I just wasn't familiar with the exhibit number.

**MR. RALPH:** Yes.

**MR. E. MARTIN:** Okay but – point taken.

**MR. RALPH:** And then if we can go back –

**MR. E. MARTIN:** And this is – I apologize.

**MR. RALPH:** – this is Mr. Harrington writing Mr. Meaney, Mr. Clarke, Mr. Bennett and Mr. Bush. And on page 3 –

**MR. E. MARTIN:** Okay, great.

**MR. RALPH:** – Mr. Harrington says: "For me the only risk to sharing this with Alison is the potential slightly higher number than the \$6.531b number ...if we all feel comfortable with that as a potential outside number for MWH to deal with them we are ok." And any idea why he'd be suggesting there might be a higher number – why they would interpret it as being a high number?

**MR. E. MARTIN:** If you could just go back, I think – I don't know the answer, but I'm – knowing that paragraph, I think, if it's the same one – just to come back a little bit, please. And that second number two, up above.

**MR. RALPH:** Maybe we're gone the wrong way.

**MR. E. MARTIN:** Oh, okay, I'm sorry.

**MR. RALPH:** I think we need to go back to – you're talking about the paragraph written by Mr. Harrington?

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

**MR. RALPH:** Yeah. It's number five – page 5.

**MR. E. MARTIN:** Yeah. There it is, I think. I was reviewing this for this Commission, and if you go down to number 2, please.

**MR. RALPH:** Down.

**MR. E. MARTIN:** There, I think it says – yeah, there it is, reference to 6.641. I'm not sure but I – they're – you know, they could be and may be referencing should the 6.641 go in or should that be shared? But I don't know. I was just –

**MR. RALPH:** Okay. You don't know where that 6.641 number comes from, do you?

**MR. E. MARTIN:** Well, it comes from –

**MR. RALPH:** I don't think –

**MR. E. MARTIN:** – the project team. And, you know, they were saying –

**MR. RALPH:** How they figure out that number?

**MR. E. MARTIN:** Not particularly.

**MR. RALPH:** It's not clear to me.

**MR. E. MARTIN:** I couldn't give you details on it.

**MR. RALPH:** Fine. Now, perhaps we can go now to page –

**MR. E. MARTIN:** It does say, you know, "... and even if in the worst case ..." and it goes on to explain that, that that's – is that helpful? I don't know if that's helpful to you. Just the couple of sentences before that, or the two lines before that. You got –

**MR. RALPH:** Fine, yeah. That's good. Thank you.

Bottom of page 2.

So, this is Mr. Meaney writing. "See note from Harrington at the bottom of this thread, in particular #2. If Canada agreeable to having FC as starting point for measuring cost overruns and they have 'protection' with their equity pre-funding mechanism (which we will agree to), it would seem to me this might be a reasonable approach to try and get MWH aligned on schedule and cost. By all means let me know if anyone thinks otherwise."

And then go up that page. Okay. Right here.

And then Mr. Sturge says: "Are we suggesting that we talk to Canada about a \$6.6 theoretical number? Certainly need to be sure that it is not taken out of context."

And we kind of heard that idea in testimony, that the 6.5 was not actually a number – a cost overrun number; it was a theoretical number for the purposes of COREA.

Do you – were you ever privy to those discussions of that nature?

**MR. E. MARTIN:** Yeah, I was privy to the – you know, the description that the 6.531 was the number.

**MR. RALPH:** And on the first page, down at the bottom: "Agree with Derrick... don't want to shoot ourselves in the foot" – this is Auburn Warren on November 21 – "don't want to shoot ourselves in the foot on the cost overrun issue bearing in mind how ultra-sensitive they are to even a \$1 change ...."

So, he seems to be suggesting – and, obviously, you don't know what he's thinking, but he seems to be suggesting: Look, let's just use this as a theoretical number. It won't be – we're not going to say it's a cost overrun but we don't know what cost overruns are, so we'll just agree on 6.5 for the purpose of COREA so the Newfoundland government doesn't have to come up with any money this year, and everyone will be happy.

**MR. E. MARTIN:** I don't see that at all.

**MR. RALPH:** Okay.

And now if you go to tab 3.

**THE COMMISSIONER:** Tab 3. The – give us the number with that.

**MR. RALPH:** I'm sorry, Exhibit 00684 – sorry – 00684, binder 3, tab 60.

So this is the minutes of a board meeting – so we're after financial close now, and it's a board meeting, December 18, and you're present at this meeting.

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

**MR. RALPH:** And if we go to page 17, under Other Business, it says: "Mr. Bennett circulated a presentation on the Lower Churchill Project DG3 estimate compared to the current final forecast cost and advised that the information in the presentation was confidential and commercially sensitive. He noted that project management escalated slightly," which we know is, I think, \$10 million, "environmental costs held their own, contingency was reduced by transferring work from smaller contracts to larger contracts where there was greater certainty to gain efficiencies and cost savings but expect that the contingency will be fully used upon completion of the project."

So Mr. Bennett – and you were present – said the contingency was reduced by transferring work from smaller contracts to larger contracts. Could you explain to me how that works?

**MR. E. MARTIN:** I just can't recall. As I've said, this was – this would be, you know, project management team, you know, stuff, in terms of how it was being handled, and from reading that I couldn't offer an explanation.

**MR. RALPH:** I mean, you know how a contingency is determined; you're familiar with that process.

**MR. E. MARTIN:** Yes, very familiar. Yes.

**MR. RALPH:** I mean, so, how can it be that the contingency here was reduced from 367 to 182 by the transfer – transferring of work from small contracts to larger contracts?

**MR. E. MARTIN:** I just – I'm just trying to come up with an explanation. I can't do it at this moment. As I said, I would talk to the project management team, could help explain that. It's just not leaping out at me right now.

**MR. RALPH:** So after financial close of the federal loan guarantee, we're now operating from a new baseline. Is that right?

**MR. E. MARTIN:** That's correct. Based on a new number?

**MR. RALPH:** Yeah.

**MR. E. MARTIN:** Yeah, 6.5.

**MR. RALPH:** Right, and we're operating with new contingencies: half the amount.

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

**MR. RALPH:** (Inaudible) look at the construction reports for December, these reports go to the IE, and it indicates that it's, you know, \$184 million, I think that's the contingencies between the three different projects, the LIL, LTA and Muskrat Falls. Does that make sense to you? I can point you out in an exhibit –

**MR. E. MARTIN:** It seems – it makes sense to me. It seems to be – once again, I wouldn't have

reviewed or been involved in those monthly reports to the IE.

**MR. RALPH:** And perhaps I will just bring you – 02400.

**THE COMMISSIONER:** That will be on your screen again.

**MR. RALPH:** And go to the bottom.

So these construction reports are being sent. We can keep going, that's fine.

And you've seen these before, have you?

**MR. E. MARTIN:** Only at this – having looked at some of the information here.

**MR. RALPH:** You wouldn't be dealing with the –

**MR. E. MARTIN:** I would not be dealing with this. I would not review these reports.

**MR. RALPH:** No, fair enough. And we'll go to –

**MR. E. MARTIN:** I (inaudible) going back and forth, no.

**MR. RALPH:** We'll go to a schedule on page 5 of the first report here.

So this says LIL and it says that the contingency is 79 and incurred cost is zero, so there's no – no contingency has been used, but now it's 79.

And if we can go then to page 13. So, again, this is another construction report, and on page 17, this is Schedule "A" of that report. So this is with regard to Muskrat Falls and Labrador Transmission Asset. And we've got \$94 million for Muskrat Falls and incurred is nothing. And keep going down.

And so for the Labrador Transmission Asset, we now have \$14 million in contingency and nothing is incurred. So it's approximately \$180-something million. So at this point –

**MR. E. MARTIN:** Are they carrying 6.5 in these reports, then?



**MR. RALPH:** Yes, they are.

**MR. E. MARTIN:** Okay.

**MR. RALPH:** Yes, so this is after. This is – we got our new baseline, 6.531.

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

**MR. RALPH:** Yes?

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

**MR. RALPH:** So, in essence, we have, like, a new DG3. We got DG3 two, whatever it is. I mean, it's – this is basically a new budget that we're operating from. Is that – do you agree with that?

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

**MR. RALPH:** And do you know when that number, 6.531, made its way into government?

**MR. E. MARTIN:** In the – in – you know, around mid-November, around that time frame when I spoke to the premier.

**MR. RALPH:** So – 'cause I understand – it seems to me that when you look at, for example, Mr. Myrden's notes, and he's an ADM of Finance, what he has is that it's – capital costs have gone up 300, financial costs have gone down 300; we got an extra \$100 million in income.

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

**MR. RALPH:** That's what he's got.

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

**MR. RALPH:** That's what the independent engineer had on November 6.

**MR. E. MARTIN:** Correct.

**MR. RALPH:** I'd suggest to you that's, in fact, what you told Ms. Dunderdale.

**MR. E. MARTIN:** It is.

**MR. RALPH:** So you didn't tell her that 6.531 number, 'cause that did not get into the

government, I'd suggest, Mr. Martin, until March of 2014.

**MR. E. MARTIN:** Well, I see what you're saying. Well, I was talking about what I communicated to Premier Dunderdale. What got into government's hands at, you know, the officials' levels and stuff, I guess you'd have to review that with the folks who were dealing with that on – within Nalcor and within the government bureaucrats.

But with respect to, you know, discussing with Premier Dunderdale, yeah, and it was the plus 300, minus 300, 100 and I would've talked about the fact there, obviously, 6.2 plus 300 is 6.5. So, yes, I – you know, I communicated that to her. And as far as what else was communicated with respect to between the Nalcor officials and the government officials, I wasn't involved in that.

**MR. RALPH:** So – but, you know, it seems to me that what you're saying is the overall budget remains unchanged. When you include capital cost and finance – financing costs, if you total those together, they haven't changed in November of 2013 because there's up 300 and down 300.

**MR. E. MARTIN:** That's in the context of the cost to the ratepayer.

**MR. RALPH:** Yes.

**MR. E. MARTIN:** You know, the – yeah, some people refer to it as the CPW. It could be the cash flow over time. But from the cost to the ratepayer, the net impact hasn't changed. From a capital-cost-only perspective, which is one element of that, they have changed, and that was communicated.

**MR. RALPH:** If we can go to 02690?

**THE COMMISSIONER:** And that'll be on your screen.

**MR. RALPH:** So, this is Mr. Sturge, he's sending in a document to government, and it's very similar to a document that we've looked at earlier that was sent Aubrey [sp. Auburn] Warren to Mr. Myrden. Do you remember that one? Which had the 6.202 figure in it?

**MR. E. MARTIN:** That's the one where you had the five or six categories –

**MR. RALPH:** Yeah, that's right.

**MR. E. MARTIN:** – (inaudible)?

**MR. RALPH:** Yes.

**MR. E. MARTIN:** Okay.

**MR. RALPH:** So, look at page 2 of this document – page 3, actually.

**MR. E. MARTIN:** Oh, but I wasn't thinking of that one, but –

**MR. RALPH:** Oh, you weren't? Okay.

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

**MR. RALPH:** Mr. – you know I'm talking about?

**MR. E. MARTIN:** I remember the other one, yes.

**MR. RALPH:** And, so, here on the – I guess the – in the peach colour on the right-hand side here, there's a number there, \$6,531. Do you see that one?

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

**MR. RALPH:** So, I – you know, I've looked at a lot of documents and I'm not certain about this, but it seems to me this is the first time that this number makes it into government. And I'm sure if I'm wrong about this, someone will point it out.

Would that surprise you?

**MR. E. MARTIN:** Very much so – well, because it didn't happen. As I've – well, I've already explained that.

**MR. RALPH:** Can we go back to 02206? And page 29? Is that right? Like – yes.

So, the documents that we went through, there was one email that – it was Jason Kean – or James Meaney sending a document, asking the document to go into the data room. Do you

remember that one? And it was the material contracts reconciliation.

**MR. RALPH:** I believe I do, yes.

**MR. RALPH:** And it said: Don't let Newfoundland get this. And I – again, stand to be corrected – I can't see where we would've received that, where the Government of Newfoundland and Labrador would've received that before financial close.

**MR. E. MARTIN:** First off, I wasn't involved in that type of thing, but I think I mentioned yesterday as well, that there was my understanding from reading these documents and hearing some testimony, that it was released to the Province of Newfoundland the next day, but I believe that's something that – I've read it, it's there. I think it was checked out yesterday, I'm not sure, but I believe that's what (inaudible).

**MR. RALPH:** Do you think the material – the reconciliation – I went through these with you just a few minutes ago –

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

**MR. RALPH:** – where the contingencies were at 89 million and they went up to 182 million.

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

**MR. RALPH:** And the CH0007 went from 379 down to –

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

**MR. RALPH:** – so you're – you think that those documents went to the Government of Newfoundland and Labrador?

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

**MR. RALPH:** And you think they went to the government before financial close?

**MR. E. MARTIN:** That's correct. With the exception – as you were speaking, I was thinking on the – I don't know what the sequence but when I was asked this question – looked it up before – it was that sheet that showed the five or six categories of 6.51. That's

the one I understand clearly went to the Province of Newfoundland through the process you just mentioned, yes, absolutely. The material contracts, I'm almost certain, but I didn't follow through on that because I think that went with that sheet, but I can't confirm that. But the overall sheet, yes.

**MR. RALPH:** So when you spoke to the premier, you didn't sit down with her with the material contracts reconciliation?

**MR. E. MARTIN:** Absolutely not.

**MR. RALPH:** And said: Look, this is what we've done, we've reduced –

**MR. E. MARTIN:** No, no.

**MR. RALPH:** –contingencies. So what you did, you – the information you presented to the premier at the time, was on page 29.

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

**MR. RALPH:** So the premier agreed to encumber the Government of Newfoundland with a completion agreement on the basis of that.

**MR. E. MARTIN:** I think you'd have to ask the Premier Dunderdale that. But, you know, for clarity sake, I believe this would be a normal type of approach. And, you know, you roll up the data to something that's very understandable and readable and the – you know, the instructions and the norms are – my expectations, to me, was, you know, I – the people – what were expecting to have data in such a fashion that we would spend 90 per cent of our time – 95 per cent of our time discussing the issue and 5 or 6 per cent of the time understanding the information you're presenting as opposed to coming up with a whole bunch of information and now spend 95 per cent of your time trying to figure out what we have and 5 per cent of the time on analyzing and discussing.

So this would be the norm of what I would – type of thing I would bring so that we would go through this, understand it as quickly as possible. Obviously, there would be a lot of issues around that.

**MR. RALPH:** Yes.

**MR. E. MARTIN:** There's no question.

But, you know, the expectation was that we would spend 95 per cent of the time on that issue and get down to business. And that's why it would be presented in this type of format.

**MR. RALPH:** Thank you, Mr. Martin.

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

**THE COMMISSIONER:** All right. Let's take our break here for 10 minutes.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** All right.

Dwight Ball, Siobhan Coady.

**MR. O'FLAHERTY:** Thank you, Mr. Commissioner.

Good afternoon, Mr. Martin. I represent the Premier, Dwight Ball, and the Minister of Natural Resources, Siobhan Coady.

I've observed that you provided a significant amount of evidence about the flow of information between yourself and various government officials and elected officials, correct?

**MR. E. MARTIN:** Correct.

**MR. O'FLAHERTY:** And I'm going to have some initial questions about two December 2015 meetings with my client, Dwight Ball, that you testified, okay? But before I do that I think it would be helpful just to confirm your understanding of the principles around that flow of communication between yourself, as the CEO, and the Premier of the Province of Newfoundland and Labrador and the senior officials, okay?

Perhaps, Madam Clerk, we can start with P-02549 at page 13.

**THE COMMISSIONER:** 02549.

**MR. O'FLAHERTY:** This will come up on your screen, I hope, Mr. Martin.

**THE COMMISSIONER:** It's also in your book –

**MR. O'FLAHERTY:** Oh, is it? Sorry.

**THE COMMISSIONER:** – at tab 26.

**MR. O'FLAHERTY:** Okay. I'm sorry, I don't have the correct – that's not the correct number, and I apologize, Mr. Martin. I didn't mean to get off on the wrong start, but this was the document – oh, yes it was. You can go to page 13. This is the correct document. I apologize. It is. It's not really the content of it that's important; it's this page here, which I take it is a statement, really, like a mission statement sort of thing from Nalcor principles.

And my learned friend, Mr. Learmonth, commenced his questions by bringing you to these. I think you'll recall that, correct?

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

**MR. O'FLAHERTY:** And you were asked to confirm that you personally adhered to and were guided by core values of open communication and trust and honesty in your communications to the public and the Government of Newfoundland and Labrador, correct?

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

**MR. O'FLAHERTY:** Now, in addition to adhering to these fundamental core values and principles referred to, in your role as CEO, I've heard you testify yesterday and today as to your very broad decision-making powers, correct?

**MR. E. MARTIN:** I can't recall the – discussing my broad decision-making powers, no.

**MR. O'FLAHERTY:** You don't recall that, okay.

**MR. E. MARTIN:** Maybe give me an example or something like that.

**MR. O'FLAHERTY:** Well, I'm really thinking of all of the issues around how the information flowed from you up to the Government of Newfoundland and Labrador and to the board about cost. It seemed to be funnelled always through you, and I heard you say – and we'll get into that evidence in a little while – that at the end of the day, you had to be reasonably certain that the numbers were correct in order for them to go forward to the decision-making people, correct?

**MR. E. MARTIN:** I did say that, yes.

**MR. O'FLAHERTY:** Right.

So all of the information, in this context that we're talking about, flows through you and you decide whether or not it proceeds to the decision-makers, correct?

**MR. E. MARTIN:** Just for – the first answer is yes –

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** – but to clarify –

**MR. O'FLAHERTY:** So that's the context in which –

**MR. E. MARTIN:** Just to – excuse me – just to clarify, though, I mean, it was the high-level, fundamental changes in the number, but once that was established –

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** – there was, like, hundreds of channels going, not through me.

**MR. O'FLAHERTY:** Well, I understand that, Mr. Martin –

**MR. E. MARTIN:** Okay, I just wanted to make sure that it was clear.

**MR. O'FLAHERTY:** What I'm just trying to establish is: What are the principles around you communicating this information to these senior officials and government officials? Because as I

understood your evidence, a lot of times, for reasons that you've explained, it was done verbally, correct?

**MR. E. MARTIN:** Some – in some cases, but, you know, not all cases for certain, and I would say more printed than verbal.

**MR. O'FLAHERTY:** Okay. All right.

So while certain – so as I was saying, you were the CEO through all – at all material times of Nalcor Energy, correct?

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

**MR. O'FLAHERTY:** Right, and I guess you would accept, would you not, as the CEO, that you would have specific fiduciary obligations, both to the corporation, through the board, and to the shareholder, the Government of Newfoundland and Labrador, correct?

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

**MR. O'FLAHERTY:** Okay, and let's talk a little bit about the content of those, focussing in on what we're doing here today, what I'm asking you about. Do you acknowledge that, as the CEO, you had a specific duty of full and frank disclosure to the board and to the Government of Newfoundland and Labrador?

**MR. E. MARTIN:** Yeah, within the bounds of what's – the norm is, yes.

**MR. O'FLAHERTY:** Okay, but you do accept you were under that obligation, correct?

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

**MR. O'FLAHERTY:** Okay, and do you acknowledge that the CEO has the specific duty to fully inform both the board of directors and the shareholders about the major issues facing the business he or she runs?

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

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** Obviously, fully informed would be in the context of what I've already mentioned –

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** – that it would be something that I –

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** – believe was reasonably correct.

**MR. O'FLAHERTY:** I'm not suggesting you didn't comply with these obligations, Mr. Martin; I'm just saying you understand what the principles were when you were making – providing this information to these decision-makers, correct?

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

**MR. O'FLAHERTY:** Right. So you accept, then, and you're telling the Commissioner you accept that in your role as Nalcor CEO you had these specific obligations I just referred to, correct?

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

**MR. O'FLAHERTY:** Okay. Thank you.

And those obligations would also cover your disclosure of cost information about the Muskrat Falls Project to the shareholder, the Government of Newfoundland and Labrador, correct?

**MR. E. MARTIN:** Correct.

**MR. O'FLAHERTY:** Okay. Thank you.

So let's go to the two meetings that involved my client that you testified about, and those are the meetings that are held after the election on November 30, 2015. And the first is a meeting on December 4, 2015, with the Liberal transition team, and the second is later in the month of December when you testified you met with Mr. Dwight Ball and Mr. Ken Marshall at the premier's office, correct?

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

**MR. O'FLAHERTY:** Okay.

Madam Clerk, may we have P-02676, please? So, Mr. Martin, I think it would be helpful to discuss the transition team meeting first.

**THE COMMISSIONER:** What was that exhibit number again, please?

**MR. O'FLAHERTY:** I'm sorry, 02676, Mr. Commissioner.

**THE COMMISSIONER:** Thank you.

02676. Okay, that'll be on your screen.

**MR. E. MARTIN:** Okay.

**MR. O'FLAHERTY:** This is the presentation provided by Nalcor to the transition team at the meeting, correct?

**MR. E. MARTIN:** I believe it is. Could you just carry on down, have a look at it?

**MR. O'FLAHERTY:** Sure, I'll bring you to the page that I'm referring to. But before we get there, my information is you delivered a presentation to the transition team at an office in the West Block of Confederation Building, correct?

**MR. E. MARTIN:** I think that's correct.

**MR. O'FLAHERTY:** Right. So it's not on the eighth floor in the premier's office?

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

**MR. O'FLAHERTY:** Right. Because Mr. Ball was not the premier at that stage, correct?

**MR. E. MARTIN:** Could you clarify? You're saying he was the premier-elect?

**MR. O'FLAHERTY:** He was the premier-elect. He was sworn in on the 14th of December, correct?

**MR. E. MARTIN:** Yes, I –

**MR. O'FLAHERTY:** Right. So that's the process –

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

**MR. O'FLAHERTY:** – where there's a team that –

**MR. E. MARTIN:** Actually, yeah, that's correct.

**MR. O'FLAHERTY:** – provides briefings, correct?

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

**MR. O'FLAHERTY:** Right. So, at that stage, he has no Cabinet, correct, because the Cabinet gets sworn in on the 14th as well.

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

**MR. O'FLAHERTY:** Okay, I'm sorry. I'm just trying to set this day's –

**MR. E. MARTIN:** Some of these processes on the government side –

**MR. O'FLAHERTY:** That's okay.

**MR. E. MARTIN:** – I wouldn't be that familiar with, so don't –

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** – please take no exception to the fact I'm just not sure of the process.

**MR. O'FLAHERTY:** Okay.

I had understood, though, you had been in the role of CEO through a number of transitions, though – of government, hadn't you? Or, is it, you know, from one premier to the next in the Progressive Conservative times?

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

**MR. O'FLAHERTY:** Okay.

So transition meetings like this involve a team of top bureaucrats, as well as the elected premier, correct, and as well as the political advisors. That's who was at this meeting. We're going to look at the minutes of it but that's who was there, wasn't it?

**MR. E. MARTIN:** I think that's correct, yes.

**MR. O'FLAHERTY:** Right. And my information is that you gave this presentation from a podium in front of the room. Do you recall that?

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

**MR. O'FLAHERTY:** Okay. So that information you accept that that's correct.

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

**MR. O'FLAHERTY:** You accept that that's what happened, correct?

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

**MR. O'FLAHERTY:** Right.

So if we could go, then, to page 43, please? So I'm just really interested on the far right-hand side of the page it shows a capital – sorry: “Cost Growth Contributors Since Sanction” and it shows a figure of \$7.653 billion, correct?

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

**MR. O'FLAHERTY:** And that is the same total project capital cost figure released by Nalcor on September 29, 2015, correct?

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

**MR. O'FLAHERTY:** Let's go to page 46, please. And page 46 is under the heading: “Current Project Summary,” correct?

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

**MR. O'FLAHERTY:** And we see a breakdown here but if you do the – if you do add these up, this is the same project breakdown – sorry, breakdown of project cost information which was actually released on September 29, 2015, correct?

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

**MR. O'FLAHERTY:** Okay.

So according, then, to the formal presentation that you – when you were at the podium, what was on the screen, I take it, correct? These slides were up, right?

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

**MR. O'FLAHERTY:** There's nothing had changed in the project cost information between September 29, 2015, and the date of the election or 4 days after, in this case, which is December 4, correct?

**MR. E. MARTIN:** No, that's not correct.

**MR. O'FLAHERTY:** Pardon?

**MR. E. MARTIN:** No, that's not correct, if I understand your question. If you notice, the red on the bottom right-hand corner?

**MR. O'FLAHERTY:** Yeah, I do. Yeah.

**MR. E. MARTIN:** Yeah, that was – the purpose of that was to give me the point to introduce the fact that there's 7.653 –

**MR. O'FLAHERTY:** Yeah.

**MR. E. MARTIN:** – and then the Astaldi issue. That's where that was discussed.

**MR. O'FLAHERTY:** Right. I think –

**MR. E. MARTIN:** And that –

**MR. O'FLAHERTY:** – you said yesterday that means under threat or something, red means.

**MR. E. MARTIN:** No, no, at that point, you know, I expressed the fact that we had issues, significant issues with Astaldi that would have, certainly, schedule and cost implications – significant –

**MR. O'FLAHERTY:** Yeah.

**MR. E. MARTIN:** – that were not in the 7.63.

**MR. O'FLAHERTY:** Yeah, I don't think we're disagreeing, Mr. Martin.

**MR. E. MARTIN:** Okay and (inaudible).

**MR. O'FLAHERTY:** I think this is the same document but, as you say, it now has a red highlighting on this particular corner of the page. Is that what you're telling us? And then that gave you a cue to lead into your discussion

about the issues that we're going to get into, which is the cost and schedule overruns, correct?

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

**MR. O'FLAHERTY:** Right.

So – but what I'm saying to you is besides that red bold on there, this is the same formal presentation that had been provided previously and now you're going to provide verbally some additional information, correct?

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

**MR. O'FLAHERTY:** Right.

So I understand that at the meeting with the transition team you did advise them there was an expected cost impact of between \$500 and \$600 million as a result of the issues with Astaldi Canada, correct?

**MR. E. MARTIN:** Yeah, that sounds correct. Yes.

**MR. O'FLAHERTY:** And that the Government of Newfoundland and Labrador would have an expected cost impact of \$200 million, correct?

**MR. E. MARTIN:** No, I don't think that's correct.

**MR. O'FLAHERTY:** You don't think so. Okay.

**MR. E. MARTIN:** No, I was speaking in –

**MR. O'FLAHERTY:** I –

**MR. E. MARTIN:** I –

**MR. O'FLAHERTY:** I'm going to bring you to an exhibit now –

**MR. E. MARTIN:** I had –

**MR. O'FLAHERTY:** – that might help us with that.

**MR. E. MARTIN:** – had a (inaudible.)

**MR. O'FLAHERTY:** What is your recollection, though, today?

**MR. SMITH:** Mr. Commissioner, can the witness be allowed to answer? Standing – talking over him is hard to –

**MR. O'FLAHERTY:** I apologize, Mr. Martin.

**MR. SMITH:** – understand what he's saying.

**MR. O'FLAHERTY:** Carry on, Sir.

**MR. E. MARTIN:** I just wanted to make the point that I – you know, as I said earlier, I – at this point, speaking in ranges because we didn't have a finite number.

**MR. O'FLAHERTY:** Okay, but – well, the information that I'm going to show you in a minute is a record from the meeting that was taken by one of your officials, and it indicates what the information was. And it says that the expected cost impact was \$500 to \$600 million as a result of the issues with Astaldi Canada – you've just agreed with that – and that the expected cost impact to the Government of Newfoundland was \$200 million. But you don't think that's what you said at the meeting?

**MR. E. MARTIN:** No, I think I would've expressed a range with respect to the 200 to 250, 300 with respect to the direct Astaldi cost.

**MR. O'FLAHERTY:** Okay, well, we'll – that's fine. Thank you.

And – but the point I'm making is that this cost information is provided to the officials verbally and not in the presentation, correct?

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

**MR. O'FLAHERTY:** Right.

And I believe you told the Commissioner, in your evidence, you had verbally advised the board and Government of Newfoundland officials in the past, verbally, about project cost information as well, correct?

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

**MR. O'FLAHERTY:** Right.

So let's go to 02630, please.



**THE COMMISSIONER:** 02630. Okay, that's going to be –

**MR. O'FLAHERTY:** Page 22.

**THE COMMISSIONER:** That'll be on your screen as well.

What page again, Mr. –?

**MR. O'FLAHERTY:** Page 22, Mr. Commissioner.

So this was brought forward by your – sorry, by counsel for Nalcor Energy, I believe it was earlier this week, in response to an issue that I had raised about the transition team deck. So I just want to take a moment. Are you familiar with this document?

**MR. E. MARTIN:** I'd have to – I've seen it before but not that familiar with it, no.

**MR. O'FLAHERTY:** Okay. You take your time.

It's – these are what I understand to be contemporaneous notes of a meeting participant, Mr. Derrick Sturge.

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

**MR. O'FLAHERTY:** Okay?

**MR. E. MARTIN:** Mm-hmm.

**MR. O'FLAHERTY:** Okay, so can you look at the people who are at the particular meeting as well. I just want to review those with you. According to Mr. Sturge's note, we have Dwight Ball. We have Peter Miles, who is a political staffer. We have Nancy O'Connor, who is a press person – press officer. We have Charles Bown, who you've – you obviously worked closely with; Julia Mullaley; Ed Roberts; Gary Norris, the former clerk; Jamie O'Dea, another political staffer; and Kelvin Parsons, another political staffer – that's the chief of staff.

Okay? Do you believe that that accurately reflects who was there on behalf of the transition team?

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

**MR. O'FLAHERTY:** And then from Nalcor was Ed, Derrick and Gilbert. I take it that's yourself, Derrick Sturge and Gilbert Bennett. Correct?

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

**MR. O'FLAHERTY:** Okay. And then if we move down the page, the first one – well, let's go to the issue of the cost. What it says here is: "Cost \$500 to \$600M; Could be \$200M our side versus \$300-400M on Astaldi side." Correct?

**MR. E. MARTIN:** That's what it says. Yes.

**MR. O'FLAHERTY:** Right. So, this is what Mr. Sturge, at least, recorded as to what you had said from the podium on the date in question.

**MR. E. MARTIN:** That's correct (inaudible) –

**MR. O'FLAHERTY:** So, does this sound like it's probably an accurate reflection of what you said?

**MR. E. MARTIN:** I'd have the same point that I would have used a range with respect to the 200; I would not have just said 200. I would have ranged that.

**MR. O'FLAHERTY:** Right. But his note says that you did say 200.

**MR. E. MARTIN:** I agree that's what his note says.

**MR. O'FLAHERTY:** And it says that the range you gave was with respect to what Astaldi would be expected to –

**MR. E. MARTIN:** That's what the notes say and then I'm – and you asked me did I think that was correct, and I responded, other than the ranging of the 200 as well –

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** – that's what he recorded.

**MR. O'FLAHERTY:** I understand that, and that's why I wanted to bring you to this document so I could show you the note and then confirm with you because I realize you're just going from present recollection of what went on.

You don't have any notes of what went on in this meeting, do you?

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

**MR. O'FLAHERTY:** No. And then above that it says: "Schedule – Ed said" – sorry – yeah – "... Ed said likely first power around end of 2018 (versus end of 2017)." Correct?

**MR. E. MARTIN:** Now, where's that again, I'm sorry?

**MR. O'FLAHERTY:** Just above the cost one. It says schedule.

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

**MR. O'FLAHERTY:** Okay. It says – "Ed said likely first power around end of 2018 (versus end of 2017)." Correct?

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

**MR. O'FLAHERTY:** Now, I went through your deck –

**MR. E. MARTIN:** I just noticed –

**MR. O'FLAHERTY:** – just one question – I haven't asked you a question yet, Mr. Martin.

**MR. E. MARTIN:** Okay.

**MR. O'FLAHERTY:** I went through your deck –

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

**MR. O'FLAHERTY:** – there's nothing in the deck about the schedule, okay, itself, per se, that I could find. Do you know if there's something in the deck about the schedule?

**MR. E. MARTIN:** I'd have to review it again. But in any event, I was verbalizing it here –

**MR. O'FLAHERTY:** Yeah, sure.

**MR. E. MARTIN:** – because it's a salient point.

**MR. O'FLAHERTY:** Right, I understand.

**MR. E. MARTIN:** And in addition to that, I just wanted to add probably something that could help here, Commissioner. It's up on the top of page 22 on the right-hand side. It says: "Schedule – monthly carrying costs ..." and – would be – that's where I – maybe there's somewhat of a confusion around Mr. Sturge because that would increase the \$200 million significantly as terms of a cost to Nalcor. Because once you – and what I was referring to here is – and I maintain my point about \$200 to \$250 million or so – and what the split with Astaldi would be on the overall cost. But in addition to that, I would have been referencing that there would be schedule cost add-ons in addition to that because there's carrying costs and such when you extend the schedule.

**MR. O'FLAHERTY:** So you're talking there about the monthly carrying costs you mean for – are you talking about the operating costs of, like, the accommodations complex on site? Is that what you're referring to there?

**MR. E. MARTIN:** That's one of those items, but there's several.

**MR. O'FLAHERTY:** And project management team would be another I guess?

**MR. E. MARTIN:** That would be another but there's more.

**MR. O'FLAHERTY:** Oh sure, sure.

**MR. E. MARTIN:** And then, but – significantly more, so I think it's important to talk about that because –

**MR. O'FLAHERTY:** Mmm.

**MR. E. MARTIN:** – I would have discussed some of these issues, but – as well, on a monthly (inaudible) – you have other contractors that have carrying costs. Because if you're delayed –

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** – with respect to the powerhouse, you're going to have other contractors delayed, and that's gonna be additional costs on a monthly basis. So that number is not – it's substantial, and I just wanted to make the point that that would be in

addition, you know, to the cost expressed on the bottom of the left-hand side, which would be more reference to – directly to Astaldi.

**MR. O’FLAHERTY:** That’s fine. So, Mr. Martin – so you’re saying that you – these notes accurately reflect what you told the meeting on that day, do they? About these issues?

**MR. E. MARTIN:** Except for the \$200 million, I believe, that – I presented a range on that.

**MR. O’FLAHERTY:** Really? Okay. All right, I understand.

So these notes do accurately reflect what you said from the podium on the date in question, correct?

**MR. E. MARTIN:** Except for the 200 –

**MR. O’FLAHERTY:** Right.

**MR. E. MARTIN:** – to 250 range on that number.

**MR. O’FLAHERTY:** Well – but that’s not there, but yeah – and you don’t have any notes to dispute this, correct?

**MR. E. MARTIN:** I agree with that, but you – I’m just answering your question, do I believe that this is what was presented, and I’m saying yes –

**MR. O’FLAHERTY:** But –

**MR. E. MARTIN:** – with the exception of the 200.

**MR. O’FLAHERTY:** Okay, sorry, I didn’t mean to interrupt you. But remember what you said earlier when you were testifying, Mr. Martin? You said that when you give a number, it tends to really fossilize. People remember the number, don’t they? They don’t remember the qualifications, they don’t remember it’s 200 but it’s subject to this or that. They remember the number, and that’s why you’re so careful about giving numbers, correct?

**MR. E. MARTIN:** That’s – exactly. And that’s why I would have ranged that number.

**MR. O’FLAHERTY:** Right. But you don’t have an explanation for why Mr. Sturge doesn’t have you ranging that number, do you?

**MR. E. MARTIN:** No, I don’t.

**MR. O’FLAHERTY:** No. So let’s move on then –

**MR. E. MARTIN:** But I did range it.

**MR. O’FLAHERTY:** Well, I heard your evidence on it, Mr. Martin. You said you did.

**MR. E. MARTIN:** I appreciate that. I was just –

**MR. O’FLAHERTY:** So that’s fine.

**MR. E. MARTIN:** – you’d asked me so many times, I wanted (inaudible) –

**MR. O’FLAHERTY:** Now, Mr. Martin, when you’d said these words, you intended to convey specific cost and schedule information to these government representatives, correct?

**MR. E. MARTIN:** You say specific cost and schedule information?

**MR. O’FLAHERTY:** Well, yes. That –

**MR. E. MARTIN:** Well, would I –

**MR. O’FLAHERTY:** – what’s on this page – I will term that as specific. You may have a different definition, but you intended to convey that to those government representatives, correct?

**MR. E. MARTIN:** So without the word specific, yes.

**MR. O’FLAHERTY:** Okay. Thank you.

And this – these are – so then these are the cost numbers and the schedule information that went forward to the premier-elect, the government officials and the political staff on December 4, 2015, correct?

**MR. E. MARTIN:** With the exception of the 200 ranging, yes.

**MR. O'FLAHERTY:** So the answer is you agree with me that that's what went forward on that day?

**MR. E. MARTIN:** Are you adding the –?

**MR. O'FLAHERTY:** No, I'm not adding anything.

**MR. E. MARTIN:** Well, then I have to keep repeating that with the exception that I ranged the \$200 million.

**MR. O'FLAHERTY:** I think everybody understands that, Mr. Martin, and, plus, your counsel will have the opportunity to come back to it afterwards. It's not a problem. I'm just getting the context, that you – this is what you said on this day to these individuals, correct? Not – subject to your qualification that's 200 (inaudible) –

**MR. E. MARTIN:** Yeah, absolutely, subject to my qualification. I agree. I agree.

**MR. O'FLAHERTY:** Well, that's what you said. Okay. Thank you.

So you had told Mr. Learmonth on any number of occasions yesterday your approach to providing cost numbers to government or to the board, correct?

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

**MR. O'FLAHERTY:** And your evidence was you only gave them numbers that – and I'm quoting from your evidence now – had a reasonable amount of certainty around them, correct?

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

**MR. O'FLAHERTY:** And you said that until you were comfortable with the numbers, you were not going to give them to the government or to the board, correct?

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

**MR. O'FLAHERTY:** Right, and you specifically testified, Mr. Martin, that – and, again, I'm quoting you – my definition of reasonable is that for the things we knew and

were solid – quotation marks – we put down, correct?

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

**MR. O'FLAHERTY:** Right.

So, then, I take it, then, at this meeting with the transition team, when you advised the incoming premier that there was an expected cost impact of \$500 to \$600 million as a result of the issues with Astaldi, and that \$200 to \$250 million, as you say, was Nalcor's expected share of the costs, you were comfortable that these were reasonably certain numbers, correct?

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

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** With the addition of the schedule costs that I mentioned at the top of the right-hand page, which would be substantial.

**MR. O'FLAHERTY:** That's – but, Mr. Martin, I don't want to quibble with you or split hairs. That's not a number, is it? "Schedule – monthly carrying costs (did not mention first 2 bond payments)": that's not a number, is it, Sir?

**MR. E. MARTIN:** Well, it's not a number, but I think it does validate what probably we're both saying, is that I had, at this point, some reasonable certainty that the overall costs were in the \$500 to \$600 million range. That's what I understood as –

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** – reasonably certain at the time. I thought that, you know, we could settle up with Astaldi, potentially, in the 200 to 250 range. That would leave Astaldi with the balance on their side. And then I was also – knew that whatever landed on the schedule was going to add a substantial amount to that, but I didn't have enough information there to be comfortable enough to give a number on that. So I did mention the fact that there would be additional substantial monthly carrying costs and I didn't give a number.

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** So that would sort of match up with my thinking at that point.

**MR. O'FLAHERTY:** Okay, thank you, Mr. Martin.

Now, I don't want to go too deeply back into the evidence that you gave to my learned friend, Mr. Learmonth, with respect to the issue of reasonable certainty. But I do have a couple of additional clarification questions for you, Mr. Martin, on that topic, okay?

So, first, I take it from your evidence that you did not operate by a written or established set of criteria to get to reasonable certainty, correct?

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

**MR. O'FLAHERTY:** Okay.

And that threshold then – what you're actually telling the Commissioner is when that threshold is met it's when you are reasonably certain, correct?

**MR. E. MARTIN:** In conjunction with the project management team.

**MR. O'FLAHERTY:** Well, no, I think you told us – over and over again – that they could give you information but ultimately at the end of the day it was your call as to whether or not that information went forward to the board or to government, correct?

**MR. E. MARTIN:** I agree with that but –

**MR. O'FLAHERTY:** Yeah.

**MR. E. MARTIN:** – that's not the point I was making.

The point I was making is that, you know, with the process of stressing and questioning and working on the numbers to get them to a point, it was still a consensus. It was my call in the final analysis –

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** – Mr. Commissioner, I'm not saying that at all. But I did operate in a consensus manner. I had some very, you know,

well-qualified and professional people with respect to, you know, Mr. Bennett, Mr. Harrington and his staff, so it wasn't, you know, just an imposition or this is the way it's going to be. I won't move ahead unless they said: Yeah, I think that's what – that's where we are, we agree. And there would be that level of consensus. If they didn't agree and I made a couple of adjustments, that could happen, but they wouldn't be substantial.

That's what I mean by the fact that the project management team and I would have a general consensus on that.

**MR. O'FLAHERTY:** So that's fine, Mr. Martin, and thank you for that qualification.

But back to my question, which was what you're actually telling the Commissioner that when you talk about reasonable certainty or being comfortable with numbers, you're talking about you believing that you're reasonably certain or comfortable with those numbers, correct?

**MR. E. MARTIN:** Yes, and I'm basing that on my experience with respect to, you know, many, many years – 30 years –

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** – of working in this type of field –

**MR. O'FLAHERTY:** Sure.

**MR. E. MARTIN:** – where I – you know, I have a – developed, you know, a very good, strong understanding of the types of numbers you need for decision-making.

**MR. O'FLAHERTY:** Yeah.

And you anticipated my next question, and that is that your level of reasonable certainty or comfort is actually based on your assessment, relaying on your experience and qualifications, correct?

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

**MR. O'FLAHERTY:** Right.

So, for example, you told Mr. Learmonth in one of your – one of his questions, you said his definition of solid numbers may not be the same as yours, correct? Solid might mean different things to different people?

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

**MR. O'FLAHERTY:** Right. Okay.

And can we also agree then that reasonable certainty and your being comfortable are really another way of saying the same thing, correct?

**MR. E. MARTIN:** I think that's – I think that's generally correct –

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** – I mean, yeah –

**MR. O'FLAHERTY:** Sure.

And so in that meeting it's reported that you said you were – that there was an in-service date – and I don't want to use the wrong technical language because I'm – you know, I wasn't here throughout the whole Inquiry. But in other words, that – at first power, at the end of 2018, you were comfortable telling that information to the decision-makers, correct?

**MR. E. MARTIN:** I think – just to read it here, it says, Ed said likely, that's a key word –

**MR. O'FLAHERTY:** Yeah.

**MR. E. MARTIN:** – first power around the end of 2018.

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** So those – once again, these are Derrick's notes.

**MR. O'FLAHERTY:** Right, I was gonna say, so in this case –

**MR. E. MARTIN:** So I – you know, I mean –

**MR. O'FLAHERTY:** – so you're saying you (inaudible) –?

**MR. E. MARTIN:** – so I can't say exactly what was happening –

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** – but if – and I'm speaking – and I would be presenting, you know, a series of information and going through it. I think it would be reasonable to assume, in this case, that if someone like Mr. Sturge is saying likely and around, I mean, I would be saying that there's parameters around that, there's ranges around that, again, and I couldn't lock it down. And I would be clear on that kind of thing –

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** – because of – I could not lock it down and I know that from a long history, that I would make sure that was clear, that you cannot lock down on this date. It's around, it's likely, but it could easily fluctuate. We have to work it with Astaldi. And that goes to follow because it's really – until we got through the discussions with Astaldi, how could you?

**MR. O'FLAHERTY:** Yeah, that's fine, Mr. Martin. I think we're – I'm not – I don't think we need to belabour that point any further, but you could always come back to it if you feel it's necessary.

But I guess my point is that I heard you testify about this and you had told Mr. Learmonth, I believe, that these numbers were not known at the time of the September 2015 cost and schedule update or what other witnesses have called an AFE, but I think it's technically an update, correct?

**MR. E. MARTIN:** No, it was an AFE.

**MR. O'FLAHERTY:** It was an AFE, was it? In September, okay.

**MR. E. MARTIN:** The 7.65 – yes, it was an AFE.

**MR. O'FLAHERTY:** Okay, 7.6.5 – 7.65 is an AFE. But as I understood your evidence, you had said on a number of occasions to Mr. Learmonth that it's not in there because the numbers were not known at that time, correct?

**MR. E. MARTIN:** Yes, absolutely.

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** Yeah, the finite numbers were not known.

**MR. O'FLAHERTY:** Well, the numbers we're talking about here because I'm saying to you that it's clearly 60 days later on November 30, you were reasonably certain about the numbers and you were comfortable with the numbers so they were known then, 60 days later, correct?

**MR. E. MARTIN:** To the extent of the ranges I'm giving –

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** – and things like that.

**MR. O'FLAHERTY:** Okay.

So, Mr. Martin, you've testified it was strategically important for you to deal with Astaldi right at this particular point in time when you're transitioning from the old government into the new government, correct? You said because you knew the numbers and Nalcor had formed a view that Astaldi was in some financial difficulty and the leverage was maximum at that stage, correct?

**MR. E. MARTIN:** That's correct – except at the outset of that I think you said we knew the numbers. So I just want to clarify that we didn't know – you know, it sort of goes to follow: you don't know until it's over. What we knew was that we had ascertained what Astaldi felt that the financial problem was in the 600-plus range – 500 to 600.

**MR. O'FLAHERTY:** Hmm.

**MR. E. MARTIN:** That was our understanding at the time – or my understanding based on what was told to me. We didn't know where it was going to land, so we thought, you know, knowing their financial situation that we could probably split that.

**MR. O'FLAHERTY:** Mmm.

**MR. E. MARTIN:** We thought we could make it attractive at 200 to 250. And we knew there was going to be schedule impact at that point because we had been through the summer and had the assessments with respect to what was done and –

**MR. O'FLAHERTY:** Mmm.

**MR. E. MARTIN:** – we had the analysis done. So we knew there was going to be a schedule impact of some significance and we knew there was a cost associated with that. So that's what we knew. So it's not a matter of knowing the numbers. I just want to make that – you know, just make that distinction.

**MR. O'FLAHERTY:** Okay. No, I appreciate that for – that's understood by you.

But you see my point, don't you, that you had said they were clearly – they were not known on September 29, but 60 days later, the numbers are now known, aren't they, correct? They're known well enough for you to tell the government decision-makers on that date, correct?

**MR. E. MARTIN:** And with growing certainty. And so –

**MR. O'FLAHERTY:** You call it growing certainty –

**MR. E. MARTIN:** – I'm only trying to take exception to the knowns, you know –

**MR. O'FLAHERTY:** Well – okay, well, that's fine.

So back to the point about Astaldi: you had testified that – you said it was strategically important to deal with the negotiations at that stage because you had understood, I take it, that Astaldi were in trouble financially. Now, let's just go to page 11 of 02630, page 11.

**MR. E. MARTIN:** And I agree with what you're saying, is that we thought that that was an important leverage point.

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** But I also expressed the fact that it was also at a time when – if we resolved it

in the January, you know, early February time frame –

**MR. O’FLAHERTY:** Yeah.

**MR. E. MARTIN:** – to the satisfaction of Astaldi, that would really create a very strong push, you know, as we moved into the heavy construction season –

**MR. O’FLAHERTY:** Okay.

**MR. E. MARTIN:** – in 2016. So it was – my point is a combination of things.

**MR. O’FLAHERTY:** So there’s another timing issue as well. So we’re – and we’re trying to give the Commissioner the full – most full, I guess I should say – the fullest would be the best way to say it – appreciation of what the considerations were.

So I want to go to this one first, page 11 on the right-hand side of the page, Astaldi Update. And if you look at the fourth of these –

**MR. E. MARTIN:** What’s the reference number again, Sir?

**MR. O’FLAHERTY:** Oh, it’s –

**THE COMMISSIONER:** It’s going to be on your screen. It’s the same –

**MR. O’FLAHERTY:** 02630.

**THE COMMISSIONER:** – exhibit (inaudible) –

**MR. E. MARTIN:** Okay, I see. Okay –

**MR. O’FLAHERTY:** Yeah. Sorry, Mr. Martin.

**MR. E. MARTIN:** – I thought it was a presentation. I’m sorry.

**MR. O’FLAHERTY:** And this is a meeting on October 23, 2015. Ed, Gilbert – I don’t know who the third person is – and then Lance and it looks like Jim Meaney. Okay, do you see that?

**MR. E. MARTIN:** On the top right-hand side?

**MR. O’FLAHERTY:** Yes.

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

**MR. O’FLAHERTY:** Okay. And then it says: “Who has leverage?”

“Does leverage shift as we get closer to next summer?” Right?

**MR. E. MARTIN:** Mm-hmm.

**MR. O’FLAHERTY:** And then it says they definitely don’t want anything – something reported in their financial statements at year-end. Ed is pushing hard to find ways to apply revenues against capex, carve out some capex against exports, et cetera; really starting to feel uncomfortable.

Do you see that?

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

**MR. O’FLAHERTY:** Does that reflect how you felt at that particular point in time? Is that accurate?

**MR. E. MARTIN:** No, I – are you suggesting that the really starting to feel uncomfortable – I was saying that?

**MR. O’FLAHERTY:** No, I’m saying that Mr. Sturge said that – this is his note of what was happening. You were pushing hard to do these things. Really starting to feel uncomfortable – that’s what I’m saying it says.

But it’s not on that point, anyway. If you don’t feel like commenting on that, Mr. Martin, that’s not really the substantive point. The point is you were talking about the leverage and timing with respect to Astaldi, right at that meeting and – because Astaldi don’t want any negative results in their financial statements, correct?

**MR. E. MARTIN:** Well, I think you said two things – first off, we were discussing it, yes.

**MR. O’FLAHERTY:** Okay, that’s fine. So –

**MR. E. MARTIN:** But I think you linked two things there. I don’t know if it’s relevant or not. I think we were talking leverage as you approach the summer season in 2016, as I just mentioned. That was being discussed there.



That's not related to the – their financial statements is all. I thought you linked those two and I couldn't understand that.

**MR. O'FLAHERTY:** Yeah, okay. I'm sorry if I confused it, but I was really focused on what you told the Commissioner this morning was –

**MR. E. MARTIN:** Mmm.

**MR. O'FLAHERTY:** – that this was the main issue for you. You wanted to move forward now with Astaldi, right, because the timing was good to do this. Correct? This is what I took from your evidence this morning.

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

**MR. O'FLAHERTY:** Right. And this was because they were in financial difficulty, correct? Not because you said –

**MR. E. MARTIN:** That was one of the elements, yes.

**MR. O'FLAHERTY:** Oh, you said we have a very strong contract. We're in a very strong contractual position, right?

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

**MR. O'FLAHERTY:** Right, but this is what you said. I mean, I'll stand corrected on the record, Mr. Martin –

**MR. E. MARTIN:** Sure.

**MR. O'FLAHERTY:** – but that's what I understood you to say. But I'm going to suggest to you – and I want to get to my point now –

**MR. E. MARTIN:** Mm-hmm.

**MR. O'FLAHERTY:** – I'm going to suggest to you that you and your team were attempting to get to the table with Astaldi at the time of the government transition, in and around December of 2015, for another strategic reason, Mr. Martin. And that was because it was the belief of you and your team that the new government would want to get this issue dealt with and behind them, if possible, as quickly as possible, to attach it to the prior administration and not to them, correct?

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

**MR. O'FLAHERTY:** Okay.

So let's go to page 19 of the same document. On the right-hand side of the page, Mr. Martin, this is under the heading: Astaldi update, November 23, 2013. Let's start with the actual – on the left-hand side of the page on the bottom, okay?

**MR. E. MARTIN:** Mm-hmm.

**MR. O'FLAHERTY:** "Update on meeting with Astaldi CPO last week. Essentially they came to the table with nothing to offer."

So you must've been in negotiations with Astaldi at that point, correct?

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

**MR. O'FLAHERTY:** Okay, up to the top –

**MR. E. MARTIN:** I don't think I was there.

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** I wasn't there.

**MR. O'FLAHERTY:** Okay, that's fine.

Up to top of the next page: "If we had a deal with Astaldi based on us making certain payments contingent on performance then how would we book/disclose that." Do you see that?

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

**MR. O'FLAHERTY:** This is the next point: "I think our new shareholder will want to get this behind them – deferring to 2017 attaches it too close to them vs. previous government."

So, clearly, these people who are sitting here at this meeting, who are – with the exception of yourself, the leading officials, executive team of Nalcor, that's what they're discussing, isn't it?

**MR. E. MARTIN:** That's what the words say, yes.

**MR. O'FLAHERTY:** That's what the document says. And then it says: Our assumption is that a material change in Astaldi

contract once finalized will have to be disclosed, correct?

So, Mr. Martin, I put it to you that including this strategic consideration provides the Commissioner with a more complete interpretation of the context of the transition team meeting, from the perspective of your team on December 4, 2015, correct?

**MR. E. MARTIN:** With the exception that I wasn't at this meeting, I did deal a lot with the governments more than most of the team. They would be sitting in there speaking. I'm not suggesting that they were, you know, that politically astute.

I'm sure there's lots of discussions going on around the time with respect to government change, so I can't – when you say the team, I wasn't part of this. They may have been thinking that way, but that wasn't on my radar screen.

**MR. O'FLAHERTY:** Well, that's fine but I'm suggesting to you, Mr. Martin, that this is evidence which shows that that was one of the considerations behind getting this Astaldi issue dealt with. Because we're going to turn now to the evidence, and in fairness, Mr. Martin, it appears that you were pushing for an early resolution of this issue in the time frame that we're going to come to now.

**MR. E. MARTIN:** That's fine. I just stand by –

**MR. O'FLAHERTY:** Okay. Thank you.

**MR. E. MARTIN:** I just stand by my previous comment that that wasn't the driver and –

**MR. O'FLAHERTY:** So let's turn to the context of the meeting from the perspective of the other people, and that's the transition team, Mr. Martin, on December 4, 2015, okay? I want to think about this for a moment. This is the fourth day after the election, isn't it, on December 4.

**MR. E. MARTIN:** On December – yeah, I take your word for it.

**MR. O'FLAHERTY:** Right.

So, in this context, the premier-elect and the staffers of his political side and the senior officials who are there – Julia Mullaley and Charles Bown, correct? They are there at information briefing sessions, correct?

**MR. E. MARTIN:** At the transition team session?

**MR. O'FLAHERTY:** Yeah.

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

**MR. O'FLAHERTY:** Transition team, right.

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

**MR. O'FLAHERTY:** And the chair of the Oversight Committee is in the room at your briefing, correct? Julia Mullaley.

**MR. E. MARTIN:** At the transition team meeting?

**MR. O'FLAHERTY:** Yeah.

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

**MR. O'FLAHERTY:** Right. So to use your term, Mr. Martin, these are reasonably intelligent people in the room with you, aren't they?

**MR. E. MARTIN:** Yes, they are.

**MR. O'FLAHERTY:** Okay.

And by – both Nalcor and the Oversight Committee had, approximately 60 days earlier, both published reports giving the public and government a figure of \$7.65 billion, correct?

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

**MR. O'FLAHERTY:** Okay. And that was the same number, as we've said, in your deck, but for the change with the highlighted red portion, correct?

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

**MR. O'FLAHERTY:** Right.

So before – I think it’s fair to say that before your presentation, the project cost information known to the meeting attendees was \$7.65 billion, wasn’t it?

**MR. E. MARTIN:** It goes to follow, yes.

**MR. O’FLAHERTY:** Right.

Exhibit 02017, Madam Clerk.

So this is a letter, Mr. Martin, showing that Mr. Ball had specifically asked for – if you go to the next page – sorry, Madam Clerk, go to the next page.

**MR. E. MARTIN:** Sorry, I was trying to read the: to, fro, up at top. Could I look at that –?

**MR. O’FLAHERTY:** From the premier’s office, okay?

**MR. E. MARTIN:** And the date is ...? So this is –

**MR. O’FLAHERTY:** This is October 7, 2015. I’m sorry, didn’t mean to rush through it.

**MR. E. MARTIN:** So it’s premier of that time –

**MR. O’FLAHERTY:** Yeah.

**MR. E. MARTIN:** – from him or –

**MR. O’FLAHERTY:** Right, from Paul Davis.

**MR. E. MARTIN:** Yeah, okay.

**MR. O’FLAHERTY:** Premier, I should say –

**MR. E. MARTIN:** Paul Davis (inaudible) –

**MR. O’FLAHERTY:** Premier Davis is going to write a letter to Mr. Ball, who is then the leader of the Opposition, okay?

**MR. E. MARTIN:** Mm-hmm.

**MR. O’FLAHERTY:** So we go to the next page. So what had happened was Mr. – Minister Dalley had approved the content for the signature of Premier Davis, okay?

So if you look here, it says: “Dear Mr. Ball,

“Thank you for your letter of September 28 ... in which you requested an updated budget and construction schedule for the Muskrat Falls Project.” Correct?

**MR. E. MARTIN:** That’s correct.

**MR. O’FLAHERTY:** And then it goes on to say: “As you are aware, on September 29, 2015, Nalcor provided an update on the Muskrat Falls Project.” And then it refers him to the website which I take it would be your press – you know, press releases, correct?

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

**MR. O’FLAHERTY:** Okay.

And then the next paragraph says: “The Government of Newfoundland and Labrador released a Muskrat Falls Oversight Committee report on the same day, which includes an assessment of project costs, schedule, and risk management.” And it gives a reference to that report, correct?

**MR. E. MARTIN:** That’s right.

**MR. O’FLAHERTY:** Now, I’ve looked at these two reports and I don’t want to, you know, get bogged down about it, but these both say \$7.65 billion, correct?

**MR. E. MARTIN:** I would assume so, yes.

**MR. O’FLAHERTY:** Do you accept that or do you want me to – do you want to look at them or ...?

**MR. E. MARTIN:** Well, maybe I should. I just don’t know the content of them right now and –

**MR. O’FLAHERTY:** Do you remember that there was a project AFE put out at that particular –

**MR. E. MARTIN:** Absolutely, I’m not questioning –

**MR. O’FLAHERTY:** Yeah.

**MR. E. MARTIN:** – that.

**MR. O’FLAHERTY:** And it was \$7.65 billion.

**MR. E. MARTIN:** 7.65, 100 per cent.

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** I just don't know what else is contained in the press release.

**MR. O'FLAHERTY:** Okay, right.

**MR. E. MARTIN:** That would be point A. You know, I don't –

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** So I agree with that entirely.

**MR. O'FLAHERTY:** Okay, so –

**MR. E. MARTIN:** You just asked me did I agree with these at all. No, sometimes there's words put in there that could, you know, cover off some other issues. There's oftentimes – I can't remember now – I was interviewed. Like, you know, I don't know the background of what I said (inaudible).

**MR. O'FLAHERTY:** And I'm not saying there aren't – there isn't more content there that you could provide other flavour to –

**MR. E. MARTIN:** Yeah, so it's – that's fine.

**MR. O'FLAHERTY:** – but as a general proposition, you'll accept that Mr. Ball wrote a letter and was directed to two documents that said \$7.65 billion, correct?

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

**MR. O'FLAHERTY:** And now, 60 days later, he's sitting in a room with you and you say, oh, \$200 million or, as you say, \$200 to \$250 million, correct? And as you testified yesterday about the \$300 million at the time of financial close, this is a massive amount of money, isn't it?

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

**MR. O'FLAHERTY:** Right. And this would be an amount of money that you would be obliged to disclose to the shareholder, Government of Newfoundland Labrador, correct?

**MR. E. MARTIN:** Once I had an understanding of the reasonableness of it, yes.

**MR. O'FLAHERTY:** Right.

So, Mr. Martin, now let's look at it from the perspective of these individuals. They don't know about the \$200 to \$250 million, and Mr. Ball will come and testify, okay?

So you make this announcement of an expected cost impact of \$500 to \$600 million, as a result of Astaldi Canada, and \$200, as you say, or \$250 for Nalcor's expected share. So I'm going to suggest to you that two fairly obvious questions are going to occur to reasonably intelligent people at that time, Mr. Martin: First, how long did Nalcor know of the cost impact; and, second, did you tell the previous government? Okay?

And we already know from the evidence in June 2015 that you were sitting in the negotiation – at the negotiation table with the president of Astaldi on June 16, 2015, correct?

**MR. E. MARTIN:** I'd need to check that. I think there was – I don't know.

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** I'm not saying I wouldn't have met with that individual. I think there's a comment now, just passed here a little while ago that said that Astaldi came in and had nothing to offer.

**MR. O'FLAHERTY:** Well, that was in November.

**MR. E. MARTIN:** So I'm getting a little, you know –

**MR. O'FLAHERTY:** Right and I don't mean to confuse you –

**MR. E. MARTIN:** So –

**MR. O'FLAHERTY:** – but I'm saying there were negotiations going on in June.

**MR. E. MARTIN:** So I just don't know about the June. I don't know.

**MR. O'FLAHERTY:** You don't know that you were negotiating with Astaldi in June?

**MR. E. MARTIN:** Of 2016?

**MR. O'FLAHERTY:** 2015.

**MR. E. MARTIN:** 2015, I – just pull back for a second. You're giving me lots of data and I'm trying to process –

**MR. O'FLAHERTY:** No problem.

**MR. E. MARTIN:** – and then agree as I go and I as I do that – you mentioned June. I met with them on June 15 and was negotiating, that rang a bell. I said, hang on now, I can't, you know, recall that. I was not negotiating with them in June but I may have met with them. So I was just trying to – I was just trying to put, you know, a stop in the ground to let me process that.

We were not negotiating in June of '15; I wasn't negotiating in June of '15. I may have been listening to them and talking to them, you know, to see what's up, but I wasn't negotiating. And I'm not saying I didn't meet with them June 15, I just can't recall it at this moment.

**MR. O'FLAHERTY:** Well – and, Mr. Martin, I'm not here to split hairs with you. Mr. Martin, the document that was produced – I understand it's by Mr. Meaney – shows that you were negotiating with Astaldi on June 16, 2015. I mean, I didn't write the document, but –

**MR. E. MARTIN:** It might be useful to see the document in that case.

**MR. O'FLAHERTY:** Well –

**MR. E. MARTIN:** I might be able to confirm it for you.

**MR. O'FLAHERTY:** But you don't have a – you're saying there was a meeting but it wasn't a negotiation.

**MR. E. MARTIN:** No, no I'm not saying that.

**MR. O'FLAHERTY:** Well, what are you saying?

**MR. E. MARTIN:** I'm saying on that particular point, I can't remember meeting with him, with Astaldi on the June 15. I don't believe I was negotiating with them on June 15. That's what I'm saying. And then you went on to say that Mr. Meaney said I – and stuff like then there's a document and I suggested, well, it might be useful to see that document because that might help me get past this and agree or disagree with you.

**MR. O'FLAHERTY:** Well, I don't think that's – and I don't want to obstruct your – or go in a different direction, Mr. Martin, I just – I'm – you know and, frankly, I'm a little surprised that you're saying that you weren't negotiating with Astaldi in 2015 in June. I'd understood that to be a Nalcor document but we'll come back to it, okay?

**MR. E. MARTIN:** Well, I would really –

**MR. O'FLAHERTY:** Thank you very much.

**MR. E. MARTIN:** Just to come back, I agree with that, but just – I would like to see the document because –

**MR. O'FLAHERTY:** Sure. Yeah.

**MR. E. MARTIN:** – I was negotiating with Astaldi in that January time frame. That's when I went – when I was at the table, you know, negotiating.

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** That's what I remember. On the June '15, I – it would be useful for me to see the document.

**MR. O'FLAHERTY:** Okay, well, perhaps we'll get that for you.

But, Mr. Martin, let me just come at this a little bit different. You were sitting at a table with Astaldi in June of 2015, correct?

**MR. E. MARTIN:** I can't recall but I'm not saying that's not – that didn't happen.

**MR. O'FLAHERTY:** Okay.

Now, I understood you to be saying this morning to my learned friend that when you were asked about comments that had been made about Ernst & Young's characterization of this as dragging on for 18 months at a high level, you know, but it hadn't been resolved.

This is a commercial issue, right? You made a point to say it's obviously a commercial issue, correct?

**MR. E. MARTIN:** I was agreeing with EY's comment that it was commercial, yes.

**MR. O'FLAHERTY:** Right. But that was your point this morning, that it is a commercial issue that you're dealing with, with Astaldi.

**MR. E. MARTIN:** Yes, and I think that – maybe that could help us a little bit because I believe in that note – I'm trying to remember now from the EY summary by Mr. Parsons – I think EY there was suggesting that they didn't understand why we were not negotiating (inaudible).

**MR. O'FLAHERTY:** Okay, I don't want to take us down a rabbit hole on EY.

**MR. E. MARTIN:** No, but –

**MR. O'FLAHERTY:** That's okay.

**MR. E. MARTIN:** No, no, but I think it's – I believe it's salient to this point because that – if that's the case, that would match up to my thing. Because EY was suggesting that we were not negotiating, you know, for eight months and didn't know why. Well, that would sort of fit my thinking is that, no, I wasn't negotiating with them at that point. That's the only point I want to make.

**MR. O'FLAHERTY:** Well, we had Mr. Ken Marshall here from the board this week, Mr. Martin. He told us that the board knew there was a likely cost impact of hundreds of millions of dollars in the summer of 2015 arising out of this. Do you – are you aware of that evidence?

**MR. E. MARTIN:** I can't remember that evidence and I'm not disputing that, but I'm just saying that's different than what the point I was making with respect to was I negotiating in June

of '15. That's – I don't see those two as related and I'm not disputing that one either, just back to the main point I was trying to make on that June 15, that's all.

**MR. O'FLAHERTY:** Well, I'm going to put to you, Mr. Martin, that you had a non-performing contract that was at a critical stage in the summer of 2015 and you were negotiating about two issues: One is a recovery plan for Astaldi to continue to work and, secondly, staving off their pending bankruptcy. That was the issue in the summer of 2015. That's why you were at the table with them.

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

**MR. O'FLAHERTY:** You don't agree. Okay, that's fine.

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

**MR. O'FLAHERTY:** So let's now go back to December 4 of 2015, Mr. Martin. As I said, you had – you were at this meeting and, as I said, there were two fairly obvious questions that would likely occur to reasonably intelligent people. And the first one was how long had you known about the cost impact, okay? And I take it you're saying that you didn't know about the cost impact back in the summer.

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

**MR. O'FLAHERTY:** Even though Mr. Marshall has said that the board knew about hundreds of millions of dollars in the summer.

**MR. E. MARTIN:** So there's a difference here in terms of a number versus did we know there was going to be impact. We felt there was going to be impact and that's why – obviously, in the September document that was prepared and presented to the premier and the minister of the day – I've been crystal clear on this and showed you the references – the board knew and the government at that time knew, because I put it in the document that the 7.65 did not include impacts for Astaldi from a schedule and cost perspective.

**MR. O'FLAHERTY:** Okay –

**MR. E. MARTIN:** So when –

**MR. O'FLAHERTY:** So you deny that you – that Nalcor knew in the summer of 2015 that there was a likely a cost impact of hundreds of millions of dollars with respect to the Astaldi issue. You deny that.

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

**MR. O'FLAHERTY:** Okay. So –

**MR. E. MARTIN:** But, see – but the question you – just can you give me a chance to verbalize it, please, just for a second because, like, you know (inaudible). You know, I was reading your question to suggest that I knew a number in the summer. And, well, I took – I was listening to you literally to say, no, I did not know a number in the summer. We were not negotiating with Astaldi in June and that – put that point aside.

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** Did we understand that we had an issue? Well, we had a 2015 season that production was going quite well, actually, and improving.

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** We did become aware, at that point, of the growing financial problem with Astaldi. I agree with that. And as we came out of the summer period, we were feeling there was – we knew that – we were gaining the feeling, or at least knew, that Astaldi had a financial issue –

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** – in terms of – or they had a contractual problem in, you know, the 6.7 – a large amount. And we started to gather the data and understand more clearly that they were getting into financial trouble.

**MR. O'FLAHERTY:** Mmm.

**MR. E. MARTIN:** So all those things, I agree, were understood. It's a number I did not have.

**MR. O'FLAHERTY:** No, that's fine.

**MR. E. MARTIN:** And could the impact of that be in the hundreds of millions of dollars? The answer would have to be, yes, because if Astaldi

had a \$600- to \$700-million problem, they were getting into financial trouble, it goes to follow that, yeah, we understood there's potential for hundreds of millions of dollars (inaudible) but –

**MR. O'FLAHERTY:** Right. And you had a contractual problem, too, Mr. Martin, didn't you?

**MR. E. MARTIN:** But we didn't have a number, and it would be that type of information that we garnered more and more.

**MR. O'FLAHERTY:** Mmm.

**MR. E. MARTIN:** And as we got to the 7.65, you know, that August-September time frame when we released the 7.65, we indicated that in the document that we presented to the government of the day.

**MR. O'FLAHERTY:** Right

**MR. E. MARTIN:** And from there it evolved down for several months to – you know, we got our ducks collected, and, you know, in around that time frame we, you know – it began to solidify what we thought could happen. Still ranges and still nothing locked down, but the message was the same, hundreds of millions of dollars potential –

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** – and schedule impact.

**MR. O'FLAHERTY:** Thank you, Mr. Martin.

But I'll just simply put to you, Mr. Martin, by that reasoning that the number is never actually known until the completion agreement is signed in – at the end 2016 then, is it, when you actually know what the number is that you're going to pay Astaldi.

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

**MR. O'FLAHERTY:** Okay.

So – but – and our jobs – well, sorry, your job as an advisor and how it's been described in the advisory job that I do is you got to give your opinion, not your doubts. Correct?

**MR. E. MARTIN:** Well, I imagine you'd probably give both, wouldn't you?

**MR. O'FLAHERTY:** Okay.

In any event, back to my question which is, you say that you didn't know the specific number, but you knew there was hundreds of millions dollars of cost impact in the summer. Correct?

**MR. E. MARTIN:** Potential hundreds of millions dollars, yeah.

**MR. O'FLAHERTY:** Right.

Now, my information is that Mr. Bown –

**MR. E. MARTIN:** And the reason I say potential is because it's linked to the financial state of Astaldi.

**MR. O'FLAHERTY:** Yeah.

**MR. E. MARTIN:** If you're a strong contract, there may be a lot less because you drive it through. So it's a growing– you know, there was a growing understanding –

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** – that the juxtaposition of those two things, the further we went along you could see it was going to become an issue, provided we were going to keep Astaldi on, or even if we didn't.

**MR. O'FLAHERTY:** I don't have your long experience in claims that you have testified to, Mr. Martin, but my understanding is that you had – not you personally – Nalcor had a significant contractual problem, as well, in the summer of 2015 because of the issues around the solvency of the parent company, Astaldi in Italy, correct?

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

**MR. O'FLAHERTY:** Right.

And that was an issue that came about because when you assessed a reasonable balance of risks and cost, it was decided to accept a completion guarantee from the parent, correct?

**MR. E. MARTIN:** No, but that was at the original contract phase, right?

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** Back in 2013.

**MR. O'FLAHERTY:** '13.

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

**MR. O'FLAHERTY:** Correct. Right, that's what happened.

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

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** We had a parent company guarantee.

**MR. O'FLAHERTY:** Right, you had a parent company guarantee.

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

**MR. O'FLAHERTY:** Exactly.

And you had certain performance security in – with Canadian – you had \$150 million performance – sorry, it's not a performance bond, you had a holdback bond, correct?

**MR. E. MARTIN:** I won't quibble over terminology but we had –

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** – you know –

**MR. O'FLAHERTY:** And you had a \$50-million letter of credit, correct?

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

**MR. O'FLAHERTY:** And you had some liquidated damage provisions in the contract.

**MR. E. MARTIN:** \$75 million.

**MR. O'FLAHERTY:** Right.

So – and the owner – and the – according to the documentation I've seen – and I wasn't here for



the first part of the Inquiry, but what I've seen is that the cost of the \$150 million holdback bond and the \$50 million security was an owner's cost, it was part of the reimbursable to Astaldi, correct?

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

**MR. O'FLAHERTY:** You don't know. Okay.

So, in any event, a decision was taken and I'm not second – I'm not here to criticize, second-guess decisions, but the point was you had a problem in the summer of 2015. They had a problem but so did Nalcor, correct?

**MR. E. MARTIN:** You meant three – you, you're talking about me –

**MR. O'FLAHERTY:** Not you personally, Mr. Martin.

**MR. E. MARTIN:** I thought – so Nalcor and –

**MR. O'FLAHERTY:** Nalcor had a problem and Astaldi had a contractual problem, correct?

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

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** As we came out of the summer, because of the insolvency situation, that we knew that we had to get involved. So it became, you know, more of a contractual issue for us as well.

**MR. O'FLAHERTY:** Right.

So that was the first issue, was the knowledge of the impact, okay? The second issue I said that a reasonably intelligent person might ask at that meeting is – let me just go to it for you: Did you tell the previous government about this, okay?

So my information is that Mr. Ball will testify that at this meeting on December 4, 2015, you told him that you had discussed the potential cost impact of the Astaldi issue with the previous government in May, June 2015. Do you agree that you told him that information?

**MR. E. MARTIN:** I'm trying to remember that year. I know we did a discussion with – I recall

because I was reviewing this with respect to the \$7.5-billion number that was presented in March or April of 2015.

I can't recall if we gave specific numbers there. We would've highlighted the potential issue with Astaldi for sure at that meeting and we would've – if I – I think what we did was we carried on. We said, well, let's carry on through the summer; let's see how this develops, let's see how production goes.

The financial situation of Astaldi, I think, at the time was not that apparent. We had a strong contract so we would've indicated that, you know –

**MR. O'FLAHERTY:** Yeah. So –

**MR. E. MARTIN:** – Astaldi is a potential issue.

As we came into September, August-September time frame, that's when we would've presented that in the 7.65 document and we would've talked in terms of, as I've already mentioned –

**MR. O'FLAHERTY:** Yeah.

**MR. E. MARTIN:** – you know, the impact. Because the impact that we knew from Astaldi was going to be in the 600 to 800 range, we thought –

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** – that the issue would be – you know, could be several hundreds of millions of dollars for us.

**MR. O'FLAHERTY:** Okay. Thank you, Mr. Martin.

And I gather that my question wasn't really that clear. What I'm telling you, Mr. Martin, is that my information is Mr. Ball will tell the Commissioner that at the same meeting on December 4, 2015, you told him that you had discussed with the previous government the cost impact of the Astaldi issue in May-June 2015. Do you understand what I'm putting to you, Sir?

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

**MR. O'FLAHERTY:** Right.

Did you tell Mr. Ball at the meeting on December 4, 2015, that you had discussed the impact of the Astaldi issue – the cost impact – with the previous government in the time frame May-June 2015?

**MR. E. MARTIN:** I would've discussed the impact, yes.

**MR. O'FLAHERTY:** No, no. I'm asking you –

**MR. E. MARTIN:** As far as –

**MR. O'FLAHERTY:** – did you tell Mr. Ball –

**MR. E. MARTIN:** I'm trying to answer the question.

**MR. O'FLAHERTY:** No, no, but this is a yes-or-no answer. I'm not trying to not let you go on and give your answer; this is a yes-or-no question. Did you tell Mr. Ball at the meeting on December 4, 2015, that you had discussed the cost impact of the Astaldi issue with the previous government in the time frame May-June 2015, Mr. Martin?

**MR. E. MARTIN:** Two questions, two answers. I discussed the impact of the – the potential impact, that there would be a significant cost impact. I did not discuss numbers, in my recollection, other than to indicate that it could be, you know, in the hundreds of types of millions on either side because the overall problem that Astaldi had was 600 to 800.

I would not – I guess what I'm trying to clarify, I would not have given him, you know, numbers of ranges at that point, no, but I would have indicated that the problem could be in the hundreds because they have \$600 to \$800 million.

**MR. O'FLAHERTY:** So let me break that down. You're telling the Commissioner that you did, in fact, tell Mr. Ball at the meeting on December 4, 2015, that you had discussed the cost impact of the Astaldi issue with the previous government in May-June 2015, but you didn't give them specific numbers. Is that your evidence?

**MR. E. MARTIN:** I believe – yes, that's my evidence.

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** You pinned me down to May-June. I'm trying to recollect, Commissioner, of the time frames, you know, but –

**MR. O'FLAHERTY:** I'm not asking you about May-June, I'm saying did –

**MR. E. MARTIN:** I thought you were –

**MR. O'FLAHERTY:** – you tell Mr. Ball that? That's –

**MR. E. MARTIN:** No –

**MR. O'FLAHERTY:** It's a very simple question –

**MR. E. MARTIN:** You know –

**MR. O'FLAHERTY:** – Mr. Martin.

**MR. E. MARTIN:** – I'm much more clear on the September time frame, that, what I discussed there. Back in May-June I'm not as clear. And did I tell Premier Ball that? Well, that's why I'm hesitating.

**MR. O'FLAHERTY:** That's what I'm asking you.

**MR. E. MARTIN:** I'm trying to –

**MR. O'FLAHERTY:** Did you tell –

**MR. E. MARTIN:** I'm trying to think –

**MR. O'FLAHERTY:** – Premier Ball?

**MR. E. MARTIN:** – in my own mind, was it the September piece I spoke to him about or was it May-June. I can't recall that but I think – what I'm trying to say is the salient point is I did discuss that, you know, in around that time frame of either September –

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** – or the summertime –

**MR. O'FLAHERTY:** So –

**MR. E. MARTIN:** – I'm just not sure.

**MR. O'FLAHERTY:** So then I take it then, you would've felt then if you did tell the previous government about it in May-June 2015 that you would've been under a duty to disclose that if the premier-elect asked you about it on December 4, 2015. Correct?

**MR. E. MARTIN:** On the ifs of those dates, I – yeah, I would've disclosed when I spoke of it.

**MR. O'FLAHERTY:** Perhaps I'm not being clear in my question, Mr. Martin. I don't know – we seem to be, as you said yesterday, missing each other on this question. You're telling us that you did tell Mr. Ball, I take it, on December 4, 2015, that you had discussed the cost impact of Astaldi in May-June 2015, correct?

**MR. E. MARTIN:** I'm agreeing with the – that we had discussed the cost impact. I cannot recall if it was May-June.

**MR. O'FLAHERTY:** I really – I'm just trying to get you to say, Mr. Martin, whether or not you told Mr. Ball that. Did you tell Mr. Ball?

**MR. E. MARTIN:** I can't – in that case I can't recollect. I'm trying to be as clear as I can, I can't recollect if I told him May-June. I recollected that I would have answered the question, yes, that when I discussed some cost impacts on this with the previous administration. I know I didn't in September but I don't know if it was May-June.

**MR. O'FLAHERTY:** Well, do you understand why I showed you the letter that Mr. Ball wrote in September, right? Remember we just looked at that?

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

**MR. O'FLAHERTY:** And Mr. Ball was told that the numbers were 7.65, correct? Right?

**MR. E. MARTIN:** Yes, I see what you're saying.

**MR. O'FLAHERTY:** Right.

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

**MR. O'FLAHERTY:** So what stuck in his head was that you told them that you had advised the previous government in May or June of 2015. Did you do that, Mr. Martin?

**MR. E. MARTIN:** I believe that I would've discussed the impact – I can't recall exactly what I was saying –

**MR. O'FLAHERTY:** Well –

**MR. E. MARTIN:** – but I – you know, it would give us –

**MR. O'FLAHERTY:** Well –

**MR. E. MARTIN:** I know I wouldn't have given a specific dollar amount but I, you know, would have been clear over time even at, you know, over those months that we had a growing problem with Astaldi and I would have kept the government informed.

**MR. O'FLAHERTY:** But, Mr. Martin, if I'm correct that you were sitting at the table with Astaldi's president and CEO on June 16, 2015, in either a commercial negotiation or a meeting, whichever way – that's your characterization of it – then wouldn't that line up with the time frame that you would go to government to discuss what you were doing, get a mandate, get authority, all the things you've said that you did with Mr. Ball.

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

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** That's clearly incorrect, that line of thinking.

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** I was not negotiating with them at that time. We were not at the negotiating table. I had no need for a negotiating mandate. That's entirely incorrect –

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** – that piece of it.

**MR. O'FLAHERTY:** All right. I got your evidence on that. Thank you, Mr. Martin.

Now, in terms of the sequence of events, before we move to the second meeting with Mr. Ball in December 2015 my information is that you also placed a call to the newly appointed Minister of Natural Resources, Siobhan Coady, immediately after she was appointed on December 14 or 15, 2015. Do you recall doing that?

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

**MR. O'FLAHERTY:** Ms. Coady will say that you called her soon after her appointment to congratulate her. Would that have been something that you would normally do when there was a new minister?

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

**MR. O'FLAHERTY:** Okay.

And she will also say that when you called, you said you wanted to meet as soon as possible about the Astaldi situation. Do you agree with that?

**MR. E. MARTIN:** I can't remember, but that would – sounds reasonable.

**MR. O'FLAHERTY:** Okay.

Well, in the context of that call, now you were talking to the minister. She's now appointed and so she is with Government of Newfoundland and Labrador, the shareholder, correct?

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

**MR. O'FLAHERTY:** Right. So what we talked about earlier, you would have a duty to disclose requested, important information to government, correct?

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

**MR. O'FLAHERTY:** Right.

She said she was advised by you that there were cost overruns, despite the improved performance of Astaldi over the summer and it was necessary to start negotiations with Astaldi. Does that sound like what you told her?

**MR. E. MARTIN:** It sounds reasonable.

**MR. O'FLAHERTY:** Right.

And Ms. Coady will also say that she referenced the September cost update and you told her the cost overruns were not reflected in that number of 7.65, okay? Sound like what you would've said?

**MR. E. MARTIN:** Well, they weren't.

**MR. O'FLAHERTY:** That's correct, isn't it? The cost overruns for Astaldi were not in the 7.65, were they?

**MR. E. MARTIN:** I've said that many times –

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** – in this last couple of days.

**MR. O'FLAHERTY:** And she'll also testify that you told her on the call that you discussed this cost impact with the previous government in May-June of 2015. It's the same thing Mr. Ball is going to say, Mr. Martin.

So I put it you, Mr. Martin, that you did discuss this matter with the previous government in May and June of 2015, correct?

**MR. E. MARTIN:** Same answer I had before.

**MR. O'FLAHERTY:** Okay.

So I'm going to put it you, Mr. Martin, that Nalcor's management knew about the cost impact of Astaldi's performance in May-June of 2015, correct?

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

**MR. O'FLAHERTY:** I'm going to put it to you that the Nalcor board knew about the cost impact of Astaldi's performance in May-June of 2015.

**MR. E. MARTIN:** Could I just clarify something again?

**MR. O'FLAHERTY:** Sure.

**MR. E. MARTIN:** Because you say the cost impact. I guess that's holding me up a little bit on this. We knew that there was a potential – so when you say, the, I'm thinking, you know, we knew definitively where this was going to land. That's my issue.

As far as knowing that we had a growing problem that we had to address that could be in the hundreds of millions of dollars, the answer is, yes. Did we have the cost impact understood? No.

**MR. O'FLAHERTY:** Yeah, that's fine.

Okay, so the Nalcor board knew about the hundreds of millions of dollars in May or June 2015, correct?

**MR. E. MARTIN:** Once again, the potential, okay? We did not have those numbers lined out. We were informing people as we went that there was a developing situation.

**MR. O'FLAHERTY:** Okay.

I understand your point. And the Government of Newfoundland knew about the potential cost impact of hundreds of millions of dollars in May-June of 2015, correct?

**MR. E. MARTIN:** Yes, I would say that we were informing them –

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** – that there was a growing issue.

**MR. O'FLAHERTY:** So here's my –

**MR. E. MARTIN:** And it could be in the range of a hundred –

**MR. O'FLAHERTY:** Sorry.

**MR. E. MARTIN:** – but we were far from giving numbers.

**MR. O'FLAHERTY:** Okay, so here's the question I have: What instructions did you receive from the previous government regarding disclosing the issue of the hundreds of millions

of dollars in the upcoming cost and schedule update in September?

**MR. E. MARTIN:** I would've been – personally, I would've been advising them to – that we had – you know, we were right at the cusp of the Astaldi situation and, you know, negotiations were – we were getting to that point.

You know, at that time in September there was even more of an understanding that there was a larger problem. And for us, obviously we didn't include anything in the AFE because –

**MR. O'FLAHERTY:** Mmm.

**MR. E. MARTIN:** – we didn't want to signal anything with respect to we were going to do anything with Astaldi, because that's the message we were giving them, that there was nothing there, it was their business. And so we didn't include it.

And from my money – or from my, you know, perspective, we shouldn't be out publicly saying that we are – that we – there's no way we could go out publicly and say we're putting in more money, there's more money there for Astaldi or address the Astaldi situation.

**MR. O'FLAHERTY:** Yeah.

**MR. E. MARTIN:** So my recommendation was we can't publicly state and reference anything with respect to Astaldi or any thought that there was going to be compensation for Astaldi because –

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** – we were telling Astaldi that there was zero dollars for it.

**MR. O'FLAHERTY:** Who did you provide that recommendation to, Mr. Martin?

**MR. E. MARTIN:** That would've been – the premier and the minister would've been part of it.

**MR. O'FLAHERTY:** The premier of the province?

MR. E. MARTIN: Yes.

MR. O'FLAHERTY: And who was that?

MR. E. MARTIN: Mr. Davis.

MR. O'FLAHERTY: Mr. Davis, okay.

And so you discussed whether or not to include the cost and schedule information in the September update. You recommended against it for the reasons you've stated and Premier Davis and Minister Dalley agreed, correct?

MR. E. MARTIN: Yeah, well, we didn't do it. I didn't do it, so no one instructed me to do it or not. I just went ahead with that and didn't do it for those reasons.

MR. O'FLAHERTY: Okay, thank you.

So I want to move to December 20, 2015, which is the next meeting and, hopefully, we can move through this one a little bit quicker. The next December meeting you testified about was the meeting with you and Mr. Ball and Mr. Ken Marshall. Correct?

MR. E. MARTIN: Yes.

MR. O'FLAHERTY: And you don't have any notes of that meeting with you and Mr. Ball and Mr. Ken Marshall. Correct?

MR. E. MARTIN: Yes.

MR. O'FLAHERTY: And you don't have any notes of that meeting or even know the date of that meeting, correct?

MR. E. MARTIN: That's correct.

MR. O'FLAHERTY: My information is that Mr. Ball will testify he reviewed his calendar and he had a meeting with you on Sunday, December 20, 2015, at the Premier's office. Does that sound right to you?

MR. E. MARTIN: Sounds reasonable.

MR. O'FLAHERTY: And according to his calendar, that's the only time that he met with you in December of 2015, except for December 4, 2015. Does that sound right to you?

MR. E. MARTIN: That sounds about right, yeah.

MR. O'FLAHERTY: Okay.

And that was the day before he went out to the media with Minister Coady on December 21, 2015, to announce the government was opening the books on Muskrat Falls, correct?

MR. E. MARTIN: I have no reason to dispute that. I just don't know.

MR. O'FLAHERTY: Okay.

Madam Clerk, 03452, please. This will be a press release on December 21, 2015: **"Government Opens Books on Muskrat Falls Project."** Do you see that? This is what was announced the next day. It was a press release, correct?

MR. E. MARTIN: Yes.

MR. O'FLAHERTY: Okay.

And if we scroll down to the second bold it says here that Minister Coady said, we have – last sentence, Mr. Martin: **"We have advised Nalcor of the planned review, they have committed to full cooperation, and recognize the value of such a review."** Correct?

MR. E. MARTIN: That's correct.

MR. O'FLAHERTY: Okay, so you testified at the meeting that you did discuss the public announcement of the decision to order an independent review of the reasonableness of the September 2015 cost and schedule update and risks, correct?

MR. E. MARTIN: That's correct.

MR. O'FLAHERTY: And you discussed your reasons for opposing the involvement of EY, correct?

MR. E. MARTIN: Yeah, that's correct.

MR. O'FLAHERTY: And you were advised that the decision of Premier Ball and the government was the review would proceed, correct?

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

**MR. O'FLAHERTY:** And so to use your terminology, I take it you concluded that you and the government were not aligned on that issue, were you?

**MR. E. MARTIN:** Yeah, until after the decision was made.

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** Then I get aligned.

**MR. O'FLAHERTY:** Okay.

And you and your team had – and we won't need to go back over all the evidence, but you and your team had resisted and opposed the involvement of EY for the reasons you've stated from the outset of its engagement back in March of 2014, correct?

**MR. E. MARTIN:** Back in March, well –

**MR. O'FLAHERTY:** When it was established, when you learned that EY were being retained to give advice, correct?

**MR. E. MARTIN:** Yeah, so I think there's two different things happening here, though; one is we had some reasons back then. I think there was additional and different reasons here; some were similar and some were in addition.

**MR. O'FLAHERTY:** Yeah. No, I got that.

**MR. E. MARTIN:** Mmm.

**MR. O'FLAHERTY:** And you said that new information you've learned about what happened in 2016 is, you know, you've said that that caused you to question, you know, what EY was up to. You said all that. But I'm talking about what's going on, on this day, on the 20th of December, 2015, correct?

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

**MR. O'FLAHERTY:** Right, so –

**MR. E. MARTIN:** If that's what you're talking about.

**MR. O'FLAHERTY:** So – right. So Mr. Ball has a meeting with you and he says: This is what's going to happen. I've listened to your point and it's going ahead and I expect you to co-operate, correct?

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

**MR. O'FLAHERTY:** Right. And he is the CEO of the province which owns the company that you work for, correct?

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

**MR. O'FLAHERTY:** Right. So he has the right to tell you that that's the way it'll be, doesn't he?

**MR. E. MARTIN:** Sure.

**MR. O'FLAHERTY:** Right. And you actually advised the premier at the meeting that Nalcor would co-operate with the review, correct?

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

**MR. O'FLAHERTY:** Right.

Now, you have told the Commissioner you recognize the absolute right of the government as shareholder –

**MR. E. MARTIN:** Remember we also spoke about the Astaldi situation.

**MR. O'FLAHERTY:** No, I understand that. I understand that. Thank you.

I don't need to cover any of those questions about you recognizing that the government had the right to do all the things they decided to do, correct? You accept that.

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

**MR. O'FLAHERTY:** Right. And to instruct you to disclose the necessary documents to Ernst & Young, correct? They had that authority.

**MR. E. MARTIN:** Sure.

**MR. O'FLAHERTY:** Right.

And I must assume you instructed your own staff to co-operate with the review and to

disclose the documents to Ernst & Young, correct?

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

**MR. O'FLAHERTY:** Right.

Now, I have a couple of questions about your evidence – which is the second point – regarding the provision at that meeting of a mandate to negotiate and a settlement authority of \$500 million, Mr. Martin, okay?

And that evidence is as follows. Mr. Learmonth asked you this question: 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? And you said: That's correct. I felt absolutely that way, right?

That's the point I want to focus on. And I understood from your evidence that this is the meeting at which you got that mandate. Correct?

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

**MR. O'FLAHERTY:** Right.

Now, at that meeting, the Premier advised you the government had announced it would – it had decided to order an independent review of cost, schedule and the risks of the project. Correct?

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

**MR. O'FLAHERTY:** And there were significant public concerns at the time about the significant, as it says here, cost overruns on the project, giving the anticipated pricing pressure on electricity, correct? That's what the public was concerned about, wasn't it?

**MR. E. MARTIN:** Oh, absolutely.

**MR. O'FLAHERTY:** Right. And the next day the commitment was made that this report, as it says in this document here – I don't mean to point, but in the one we're looking at – that that report was going to be publicly released, correct?

That's what this document says –

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

**MR. O'FLAHERTY:** – if you could scroll down, Madam Clerk?

**MR. E. MARTIN:** I have no reason to dispute that, but I like –

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** I guess I should see it, yes.

**MR. O'FLAHERTY:** So – and you would have known already, I take it, in this, as you –

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

**MR. O'FLAHERTY:** Oh sorry, it's just –

**MR. E. MARTIN:** Could you point – you were going to point that out to me, please?

**MR. O'FLAHERTY:** Yeah, sure. No problem. We'll keep going.

Right there, in the first bullet: "The final report, including Nalcor's response, will be presented to government's Muskrat Falls Oversight Committee, following which it will be released to the public." Okay?

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

**MR. O'FLAHERTY:** So you were on all fours with the government, you understood what had been decided, they listened to your case and they had said, no, they're going ahead with it, right?

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

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** – I do reference the Muskrat – you know, the Astaldi situation again, that that was –

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** – also discussed here.

**MR. O'FLAHERTY:** Yeah, no, I got that.



And you then said that you – on December 20, at that meeting, you obtained a mandate to negotiate for \$500 million with Astaldi, correct?

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

**MR. O'FLAHERTY:** At the same meeting that these things were discussed that I just went through? Okay?

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

**MR. O'FLAHERTY:** You did – and on December 20, 2015, no briefing document had been provided by Nalcor to any person of authority in the government, whether in the bureaucracy or the executive, outlining either the rationale for making a payment to Astaldi, the amount that should be paid or the timing of the payment, correct?

**MR. E. MARTIN:** Not that I can recall right now, but I –

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** – I may need to check that.

**MR. O'FLAHERTY:** And that document was provided or a document was provided outlining your rationale for those things on January 21 or 22, 2016 – later, correct?

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

**MR. O'FLAHERTY:** Right.

So – and in that document you said that even if there was a settlement made with Astaldi around these numbers, that this was not guaranteed to result in a final agreement, correct? This was just an amount to keep Astaldi going and keep them from going bankrupt, correct?

**MR. E. MARTIN:** No, that's not correct.

**MR. O'FLAHERTY:** Okay you don't agree with that. Well, that's –

**MR. E. MARTIN:** No, I don't agree –

**MR. O'FLAHERTY:** – what's in your document –

**MR. E. MARTIN:** No, I don't agree –

**MR. O'FLAHERTY:** – Mr. Martin.

**MR. E. MARTIN:** No, I don't agree with that at all and I don't believe –

**MR. O'FLAHERTY:** All right.

**MR. E. MARTIN:** – that's in the document.

**MR. O'FLAHERTY:** Well, let's deal with the issue that I'm on, which is your evidence to the Commissioner and –

**MR. E. MARTIN:** And what can I –

**MR. O'FLAHERTY:** – that you left this – yeah?

**MR. E. MARTIN:** Can I make one additional point? It was –

**MR. O'FLAHERTY:** Carry on.

**MR. E. MARTIN:** – with respect – I just wanted to clarify back to the \$500 million. I was in a – the context there, the total cost of the project, not a payment to Astaldi, as far as – you know, as what the impact would be on that when I was speaking to the Premier.

**MR. O'FLAHERTY:** Your words were: You had a mandate to negotiate and you had a settlement authority of \$500 million? That's –

**MR. E. MARTIN:** Right. In my mind, a settlement – and that would be impact to the project.

**MR. O'FLAHERTY:** So you're saying it's not a \$500-million authority, it's a – what is it?

**MR. E. MARTIN:** So whatever arrangements that I landed on would have a net impact on the cost of the project of \$500 million.

**MR. O'FLAHERTY:** Well – but you didn't say any of that to Mr. Learmonth. You said: That's correct. I felt absolutely that way. That's your words.

**MR. E. MARTIN:** Yeah, but I'm looking – I think we're saying – I believe we're saying the

same thing, but maybe you don't think that way. But I just wanted to clarify the fact that that was in terms of the cost of the project –

**MR. O'FLAHERTY:** Let me move on, Mr. Martin. You –

**MR. E. MARTIN:** – in terms of settling with Astaldi's – whatever I settled with Astaldi would have an impact on the project of up to \$500 million.

**MR. O'FLAHERTY:** Well, I'm going to put to you, Mr. Martin, that you left that meeting with no such mandate or authority to negotiate or settle for any hundreds of millions of dollars a figure, okay, Mr. Martin? But I want to go back to your – I want to ask you a couple of questions.

You believe that was a reasonable understanding when you left the meeting. That –

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

**MR. O'FLAHERTY:** – you had a mandate to negotiate and a settlement authority of \$500 million.

**MR. E. MARTIN:** That's correct, and with the \$500 million being the cost of the project, which would include Astaldi and other things.

**MR. O'FLAHERTY:** And you did not receive a written mandate or authority letter or email from the Government of Newfoundland, correct?

**MR. E. MARTIN:** That's correct, but that's also in the context that, you know, I would've – it would've been clear I'd be going back to get final approval from the board and the shareholder on whatever I did. That's the norm and that was discussed as well.

**MR. O'FLAHERTY:** So your answer is I'm correct on that.

**MR. E. MARTIN:** Could you ask –

**MR. O'FLAHERTY:** Yeah.

**MR. E. MARTIN:** Could you ask the question again, just to make sure that –

**MR. O'FLAHERTY:** You didn't have a written mandate or authority letter or email for \$500 million or any amount, did you?

**MR. E. MARTIN:** No, that's correct.

**MR. O'FLAHERTY:** Right. And you didn't follow up for a written mandate or authority letter either, did you?

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

**MR. O'FLAHERTY:** No.

And Mr. Ball will testify as to his recollection of the meeting and the Commissioner will address that evidence in due course. But whatever about all that, Mr. Martin, soon after that date, whatever authority you might've thought you left the meeting with, you were disabused of that, correct?

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

**MR. O'FLAHERTY:** Right.

So the issue that this raises, though, for me, you know, in the context of your evidence that I want to raise with you is whether this was an established practice that you were following in your various financial negotiations, which I believe you've described as leading to delivering of value of \$40 billion to the province and was – you were following on the Muskrat Falls Project.

So are you telling the Commissioner that over the time period 2005 to 2015, with previous governments dealing with major Nalcor decisions, that you could go to a meeting with the premier with no written materials and leave that meeting with a mandate and an authority in the hundreds of millions of dollars?

**MR. E. MARTIN:** With the added very strong caveat that I had to come back for approval before I settled finally. So whenever I did anything I would lay out – we would lay out the numbers and everything, but I could not go ahead on my own at that point.

I'd still have to come back, you know. And what would happen is during the negotiation phase you would come back and keep people informed

as to what was happening. And, then, if I did a deal at a particular table, I would've had updated my mandate constantly so I knew I was close. And then if I said, look, we'll settle on that, but I – you know, that's settlement on the –

**MR. O'FLAHERTY:** Mmm.

**MR. E. MARTIN:** – on the understanding that I have to get board and shareholder approval. And then I would go off and get that.

**MR. O'FLAHERTY:** So, Mr. Martin, you went to great lengths to tell the Commissioner that, in fact, the structure of Nalcor was it is an arm of government. It's not an arm's-length part of government; it is government, isn't it?

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

**MR. O'FLAHERTY:** That's what you told them?

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

**MR. O'FLAHERTY:** And you're suggesting that in your role in government that you could get a verbal authorization for hundreds of millions of dollars to sit at a table with another party and negotiate towards a settlement, on the basis of a verbal –

**MR. E. MARTIN:** Negotiate –

**MR. O'FLAHERTY:** – say-so.

**MR. E. MARTIN:** Yes, negotiate toward the settlement and then you would come back on a – you know, a regular basis, as things progressed, you began to understand what the parameters of what could happen –

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** – at that point. Then you would – you know, you would start putting – you would put that on paper and say here's where we are –

**MR. O'FLAHERTY:** Yeah.

**MR. E. MARTIN:** – and here's the parameters, now we got a flavour for what's happening –

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** – now, this is where it could land. Can we go with that?

And then that would be discussed, and if not, then you would say, okay, and you go back to the table at that point and you continue getting closer and closer. And then, before you got near the end, you'd go back again and say, here's where we are. You go through it and make sure that if I was getting close to closure, then, you know, you would have to – I would have to be really darned close if I was going to say, well, I – you know, that's a deal, but I still have to go back and get final approval of the board and the shareholder.

But it would be very difficult, if I said that, to go back then and cancel a deal. I had the ability to do it but I wouldn't want to do that. So we would be keeping people informed all along the way, which was – would've been my (inaudible).

**MR. O'FLAHERTY:** Are you familiar with the concept of ostensible or apparent authority, Mr. Martin?

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

**MR. O'FLAHERTY:** Okay.

All right, P-03874, please, Madam Clerk.

Now, Ms. Mullaley wrote a letter to the Premier on January 25, 2016, Mr. Martin, which followed a telephone call she said she received from you on or about January 18 – I'm sorry, Mr. Commissioner, it's –

**THE COMMISSIONER:** Tab 66. Okay.

**MR. O'FLAHERTY:** Okay. Do you have that document? You looked at it, I believe, in your evidence, Mr. Martin.

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

**MR. O'FLAHERTY:** Yes, on direct. So she gave evidence that there – she had worked with you on some of these oil and gas royalty negotiation mandates with you, correct?

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

**MR. O'FLAHERTY:** And is that – is she telling – is that actually what happened, that she did work with you in previous issues?

**MR. E. MARTIN:** In some instances, yes.

**MR. O'FLAHERTY:** Okay.

And what she told us at the Commission was that, in fact, there was an established protocol in practice, in oil and gas and royalty negotiations, where there's a structure process in place in which an equity ask or a negotiating mandate or financial authority is based on written briefings with full information. Did you know that she gave that evidence?

**MR. E. MARTIN:** I didn't but it goes to follow that that makes sense.

**MR. O'FLAHERTY:** It makes sense, doesn't it?

**MR. E. MARTIN:** Sure, it does.

**MR. O'FLAHERTY:** So it's not based on telephone calls or meetings with the Premier, is it?

**MR. E. MARTIN:** Well, that's not correct, either. You know, as I laid out before, to go to the table initially and find out, you know, what was happening, where we were, then there would be, you know, some verbal discussions oftentimes; there could be some paper transfers in other times. But, you know, you had to get an understanding of where – were you in the ballpark of what could happen before you engaged even with the negotiations.

And then, following that engagement, the more you learned and the more you – and the closer you got to it, I was in a situation – we were in a situation of coming back and getting more and more data, getting things on paper and getting, as I mentioned, step-by-step closer so that we could describe with some reasonable certainty as we progressed where things were going, continue to get a mandate. Initial indications could've been that the initial verbal thing was: No way it's going to happen, so why go to the table?

**MR. O'FLAHERTY:** All right.

**MR. E. MARTIN:** Why even go to the table? So that was the initial viewpoint. We'd get some data, we'd be back and forth and that would've been the intention here as well.

**MR. O'FLAHERTY:** Yeah, I know, Mr. Martin, but you said that you had a mandate to negotiate and settlement authority of \$500 million at the meeting. So the question I'm asking you is: Do you accept what Ms. Mullaley is saying is the true and correct facts, which is that in the oil and gas mandate and authority for negotiations for royalty agreements, it's done on the structure process she described, where you have written briefings with full information.

Do you accept that to be true? The same ones you were at, the same royalty arrangements you were involved in, is that how it worked?

**MR. E. MARTIN:** So the answer is, yes, and that's the way it would work here. But what is missing in the process that you're laying out there is initial discussions would occur with respect to: Do we want to negotiate? If the parameters are in this, you know, framework of what percentage ownership or what type of royalty structure you want, generally speaking, all those discussions would be had verbally.

And you'd land on the fact that, okay, if that's what we're trying to achieve, if this what it looks like, are we aligned on that? Oftentimes, verbal, and then that would give you the ability to go talk to the oil companies and you would have several sessions.

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** And if you knew after several sessions that that just wasn't on, we're not going to go with equity, over our dead body and we're leaving the province and all that kind of stuff happened, then you decide: Will you bring that back? And you say: Okay, are we going to go ahead or not and that would be the start of the process. If it looked like there was some –

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** – ability there, you would go and you would structure somewhat of more of a presentation and you would pursue it that way.

In this particular case, I would see that under a little more time pressure, but the same thing. You go in and say: Are you prepared to settle? If it's in this mandate, within these numbers – this is what we're looking at – is that something that, you know, you can digest? And if that's the case, I'm going to go to the table and we're going to start that process and I have a mandate to talk to them about that.

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** Yes, and then you would go to that and what I was doing here – once we got to a point I can see where things were maybe starting to evolve, I gave a call as early as I could to say: Look, we're headed in this direction, what do you need?

**MR. O'FLAHERTY:** Right.

Thank you.

**MR. E. MARTIN:** You know.

**MR. O'FLAHERTY:** Mr. Martin, you've already – if Mr. Meaney's letter is correct, then what it says is you were at the table with Astaldi from June 16, 2015, up until December of 2015, okay? So all I'm really trying to confirm here is you didn't have any of these written briefings done – any of these – any of the typical established protocol and practice with Nalcor negotiating mandates and authorities that she described on December 20, did you?

**MR. E. MARTIN:** Yes, we had – within Nalcor, we had analysis done. You know, we had frameworks laid out in terms of where this could go and I could see that, you know, as I mentioned to you, that this was a framework that could work. I had to get with Astaldi to understand that because that's negotiations started with my involvement at that time frame, so, yes.

**MR. O'FLAHERTY:** Okay, so let's go to the facts, Mr. Martin. You didn't have a briefing to the Premier before the meeting of December 20

which outlined the full information that Ms. Mullaley talked about did you?

**MR. E. MARTIN:** Well, we couldn't because we hadn't gone through the first phases of discussions –

**MR. O'FLAHERTY:** So the answer is, no –

**MR. E. MARTIN:** – with Astaldi.

**MR. O'FLAHERTY:** – correct?

**MR. E. MARTIN:** The answer is, no –

**MR. O'FLAHERTY:** Right, okay.

**MR. E. MARTIN:** – but I don't want to leave the insinuation that that was anything unusual. It wasn't.

**MR. O'FLAHERTY:** So if that was the established protocol and practice with Nalcor negotiating mandates, how could you tell the Commissioner yesterday you left the meeting on December 20 absolutely understanding you had a mandate to negotiate and a settlement authority of \$500 million?

**MR. E. MARTIN:** I've just described it all.

**MR. O'FLAHERTY:** Okay, thank you.

I put it to you that that's not what happened at the meeting, Mr. Martin. You had no such authority whatsoever.

**MR. E. MARTIN:** Yeah, well, I disagree with that.

**MR. O'FLAHERTY:** Okay, thank you.

**MR. E. MARTIN:** And will add some flavour to it again, just to make sure we're clear on this, is that we also discussed the fact that I would come back, prior to a settlement, to explain what's happening and make sure that we were still aligned. That was discussed and it's a similar and the same process that I've used before.

**MR. O'FLAHERTY:** Okay, I'm going to –

**MR. E. MARTIN:** The mandate I'm talking about is to be able to go to the table and, you know, and be able to come to a framework that was getting close to that and see if it could happen. If it started to happen I could have some more discussions, but if it got anywhere close, I'd come back, indicate where we were, check the mandate, have more discussions and then go back again, because I was in a total mindset that we had to be aligned.

And as I got to a point where I could say, yeah, we can close, even though I have to get board and shareholder approval, I had zero tolerance myself to go back and say I can't, you know, go back and change my mind afterwards. So that process I was always working extremely hard to make sure I wasn't cut out on that. And you do that by constantly interacting with the board and the shareholder, when you get closer to an arrangement.

**MR. O'FLAHERTY:** So I'm going to move on to another topic. Mr. Martin, are you finished?

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

**MR. O'FLAHERTY:** Yeah? Okay, thank you.

So on December 23, 2015, EY requested project information from Nalcor to facilitate the review. Were you aware of that?

**MR. E. MARTIN:** Not at the time, no.

**MR. O'FLAHERTY:** No.

On January 7, 2016, there was a meeting held at the Premier's office and my client will say that he, again, told you that he expected you to co-operate with the EY review. You were at that meeting, correct?

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

**MR. O'FLAHERTY:** January 7, 2016, kickoff meeting, correct, at the Premier's office.

**MR. E. MARTIN:** And who was at that meeting?

**MR. O'FLAHERTY:** The Premier –

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

**MR. O'FLAHERTY:** – you, Mr. Harrington, Mr. Bennett and Mr. Kennedy from EY was there.

**MR. E. MARTIN:** Was there a fairly large group there?

**MR. O'FLAHERTY:** Yeah, there was a large group there.

**MR. E. MARTIN:** I remember that meeting that – yeah.

**MR. O'FLAHERTY:** Okay, right.

**MR. E. MARTIN:** I wasn't sure of the date.

**MR. O'FLAHERTY:** Do you acknowledge that, at that meeting, Mr. Ball said that he expected you to co-operate with the review? He said something to the effect you're all going to be living under the same roof. Do you remember that?

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

**MR. O'FLAHERTY:** Okay.

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

**MR. O'FLAHERTY:** So that's the second time that Nalcor was told it was expected to provide the documentation to EY, correct?

**MR. E. MARTIN:** Well, that's – yes.

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** That's the first time I heard it.

**MR. O'FLAHERTY:** Okay. Thank you.

And Mr. Harrington was there –

**MR. E. MARTIN:** But there's no reason, you know, we wouldn't provide the document, you know.

**MR. O'FLAHERTY:** We're just getting the facts out, Mr. Martin. That's what happened, okay?

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

**MR. O'FLAHERTY:** So – and Mr. Harrington was at the meeting, correct?

**MR. E. MARTIN:** Yes, he was.

**MR. O'FLAHERTY:** And Mr. Bennett was at the meeting, correct?

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

**MR. O'FLAHERTY:** And you would've heard the Premier speak and ask for – you asked for advance notice of any information going to the Government of Newfoundland in the spirit of collaboration and co-operation at that meeting, correct?

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

**MR. O'FLAHERTY:** Right. So that was an ask from you. You said you wanted to have a look so there were no surprises, was what we were talking about, correct?

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

**MR. O'FLAHERTY:** Right. So did you know that the documentation was not – had not been provided to EY by the time of that meeting on January 7, 2016?

**MR. E. MARTIN:** I can't recall.

**MR. O'FLAHERTY:** No. And you said that you were not aware at the time that there was an issue of a requirement for an NDA by – to be signed by Ernst & Young that had been raised in January 2015, but if you had known about it, you would've supported it, correct?

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

**MR. O'FLAHERTY:** Okay.

So you would've then – they would've had your support to refuse to provide the requested documents to a government-appointed independent consultant, which already had existing confidentiality arrangements with the government. That's what you're telling us?

**MR. E. MARTIN:** If they had asked me, I would've, but at the time –

**MR. O'FLAHERTY:** That's what you were saying.

**MR. E. MARTIN:** – I cannot recall being approached on it.

**MR. O'FLAHERTY:** Okay.

Doesn't this seem to, on its face, contradict the whole purpose of an independent review, Mr. Martin, which is to let the government and the people of the province know exactly what the financial position is?

**MR. E. MARTIN:** I do not.

**MR. O'FLAHERTY:** No. Okay.

**MR. E. MARTIN:** And just to go further, to make the point on that, if it had come to me – and I'm not sure if it did eventually or not –

**MR. O'FLAHERTY:** Mmm.

**MR. E. MARTIN:** – I would be able to see the commercial considerations of having the NDA in Nalcor and such, for the reasons that were discussed here previously – EY had some conflicts and those types of things – but I also would understand that the government, you know, is – you know, makes the call and it has to happen.

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** So there's a couple of conflicting things there, though. And my normal approach when and if it came to me, I'd pick up the phone, you know, I'd get some folks on the go and I'd say, well, let's get this worked out, like, explain the situation and we'd find a way through.

So just the way you asked the question, I just wanted to clarify to ensure I wasn't leaving the impression that I would say: I know it, don't give it to them until we get that. That wouldn't be my way I would operate. If it came to me like that, I would try to get folks on the phone –

**MR. O'FLAHERTY:** Well, we have the evidence in the record saying that they wouldn't give it to them until it was signed, and it was –

and we have the evidence in the record it was signed on January 18, 2016, okay?

**MR. E. MARTIN:** And that's – and I don't dispute that.

**MR. O'FLAHERTY:** Okay. No.

And, in fact, Mr. Martin, if we reflect back to September of 2015, my information is that you went to a meeting of the Cabinet and spoke to the premier about preventing the previous project controls review from being released to the public at that time.

**MR. E. MARTIN:** I can't remember that but I wouldn't doubt it.

**MR. O'FLAHERTY:** You wouldn't doubt it.

**MR. E. MARTIN:** No, I would say that would be a reasonable –

**MR. O'FLAHERTY:** Right.

**MR. E. MARTIN:** – assumption in determining –

**MR. O'FLAHERTY:** Right.

And we saw some emails around that in which the release of that project controls review to the public was described by Mr. Harrington as foolishness and by Mr. Gilbert Bennett as surreal, okay?

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

**MR. O'FLAHERTY:** Okay.

But you admit, though, that you actually did go and ask the premier not to release that report? Correct?

**MR. E. MARTIN:** I can't remember that –

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** – specifically, but what I'm saying is that if there – I knew there was some commercially – what I felt was commercially sensitive information –

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** – I wouldn't be averse to releasing the report, I would be thinking about, you know, what commercially sensitive information could be in there.

**MR. O'FLAHERTY:** Yeah. No, that's – and that's fine, Mr. Martin. It's just these individuals who describe making public the Ernst & Young project controls review as foolishness or as surreal, they, in fact – I put it to you, they actually reflect the tone at the top in your organization, don't they? They reflect your thinking on the EY involvement in this Oversight Committee, correct?

**MR. E. MARTIN:** Not at the time. No. As far as disclosing information, I would be the one that would ensure it happened, you know.

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** These people were – Mr. Bennett and Mr. Harrington and those folks, they were handling the EY situation. I mean, my involvement was to speak to the premier as we talked about.

**MR. O'FLAHERTY:** Mm-hmm.

**MR. E. MARTIN:** It was going to happen. Once I had expressed some thoughts on it and it was deemed to happen, my instructions were, you know, okay, guys and girls make it happen. And I wouldn't be involved in that day-to-day basis unless there was an issue that came up to me. And at that point, I would, you know, assist in dealing with it to the best of my ability.

So I wouldn't have – no, I would not be saying don't give them this or whatever you're suggesting. No, that would not be – I just wouldn't be involved at that point until something came up that was –

**MR. O'FLAHERTY:** But –

**MR. E. MARTIN:** – that the folks couldn't resolve themselves.

**MR. O'FLAHERTY:** But, Mr. Martin, at the end of September 2015 you went to the premier



of the province to prevent the release of the previous EY report, correct?

**MR. E. MARTIN:** Yeah, well, I – you know, what would’ve happened there is I would not be having been involved in that very deeply either. And I expect the project team would’ve come to me and said we got issues with this and they would explain it to me and they would’ve said they want to release the report. And I would say, well, what’s your issues? And, you know, I would’ve called the province and say, you know, what can we do here? You know, here’s the issues –

**MR. O’FLAHERTY:** Right.

**MR. E. MARTIN:** – what do you think?

**MR. O’FLAHERTY:** Yeah, and they would’ve said –

**MR. E. MARTIN:** It would be –

**MR. O’FLAHERTY:** – it’s foolishness –

**MR. E. MARTIN:** – more along that kind of –

**MR. O’FLAHERTY:** They would’ve said it’s foolishness or it’s surreal and you –

**MR. E. MARTIN:** No, no, I –

**MR. O’FLAHERTY:** – went to the Premier and stopped it. That’s what happened, isn’t it?

**MR. E. MARTIN:** No, no, that’s not what happened – absolutely not.

**MR. O’FLAHERTY:** Okay.

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

**MR. O’FLAHERTY:** Thank you.

So I just want to move on because this is taking longer and I’m not going to cover all of the interactions between –

**THE COMMISSIONER:** I was just going to – about to stop you.

**MR. O’FLAHERTY:** Yeah.

**THE COMMISSIONER:** So I recognize you have an issue for tomorrow. What time are you – what time does your issue begin tomorrow?

**MR. O’FLAHERTY:** It’s in the Court of Appeal –

**THE COMMISSIONER:** At 10 o’clock.

**MR. O’FLAHERTY:** – at 10 o’clock, yeah.

**THE COMMISSIONER:** Okay, so how much longer do you have to go?

**MR. O’FLAHERTY:** I’m going to move through it quickly. I would say another 15 minutes perhaps? Is that too – is that over long, Mr. Commissioner?

**THE COMMISSIONER:** Yeah, I – you know, Mr. Martin’s been here since 9 o’clock this morning.

**MR. O’FLAHERTY:** Yeah.

**THE COMMISSIONER:** I think it’s – I don’t mind another five minutes, if you want to do that, and then come back and continue on for 10 minutes tomorrow?

**MR. O’FLAHERTY:** No, I’ll finish in five minutes.

**THE COMMISSIONER:** Okay.

**MR. O’FLAHERTY:** That’s fine.

**THE COMMISSIONER:** Go ahead.

**MR. O’FLAHERTY:** Let me just make sure – let me go to the ...

Okay, finally then, let’s go to this point, Mr. Martin. I want to ask you about what you say was the cancellation of your mandate and authority to negotiate, okay? Which I understood that you said you received a telephone call telling you not to carry on with this authority and mandate that you said you got at the December 20, 2015, meeting, okay?

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

**MR. O'FLAHERTY:** And you testified that you were advised after the meeting on January 21 or 22, 2015, when you provided the briefing, to stand down by government on any further negotiation with Astaldi at that time, correct?

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

**MR. O'FLAHERTY:** And I take it that you took this as a signal that the new government had perhaps lost some confidence in you as the CEO of Nalcor, correct?

**MR. E. MARTIN:** I think that's – I had some thoughts of that, yes.

**MR. O'FLAHERTY:** Right.

And Mr. Ball will say that you and he had specifically discussed the Government of Newfoundland and Labrador having a further review of your Nalcor-Astaldi strategy and approach by Ernst & Young, correct?

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

**MR. O'FLAHERTY:** Right.

And this was to give Mr. Ball a second opinion about the negotiation strategy and either: Is this the right time to pay anything to Astaldi, what is the amount to pay to Astaldi, or whether anything should be paid to Astaldi. Correct?

**MR. E. MARTIN:** But all of those things, I believe – I'm not sure they were all discussed, but it was evident.

**MR. O'FLAHERTY:** But it was a massive amount of money, wasn't it, as you've already said.

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

**MR. O'FLAHERTY:** Hundreds of millions of dollars.

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

**MR. O'FLAHERTY:** And in January – and as you said it's a – you know, this is a leaky sieve of a town, everybody in St. John's knew the government was under considerable financial pressure in January of 2016. Correct?

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

**MR. O'FLAHERTY:** You don't know. Okay.

So – and Mr. Ball will testify that he wanted you, in your negotiation, to have the assistance of Mr. David Leather at the conduct of negotiations. He discussed that with you, with Astaldi, correct?

**MR. E. MARTIN:** There was discussions around that.

**MR. O'FLAHERTY:** He wanted him in the room, correct –

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

**MR. O'FLAHERTY:** – to bring, as you said this morning, added value from EY. Correct?

**MR. E. MARTIN:** I'm not sure that was the reason, but –

**MR. O'FLAHERTY:** Well, that's what he felt it would've done, correct, to bring added value?

**MR. E. MARTIN:** Well, I guess you'll have to ask him that.

**MR. O'FLAHERTY:** Oh, well, okay.

And you resisted that, correct? You didn't want Mr. Leather in the room with you, did you?

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

**MR. O'FLAHERTY:** No.

And he specifically told you that he was not comfortable having you and your team alone in the room with Astaldi to fix this contract, correct?

**MR. E. MARTIN:** I can't remember that, no.

**MR. O'FLAHERTY:** Okay, well, that's what he'll say.

**MR. E. MARTIN:** I don't (inaudible).

**MR. O'FLAHERTY:** And he'll say, Mr. Martin, that that was because he felt that to do so and proceed in that manner was not in the best

interests of the Government of Newfoundland and Labrador, as you and your team were the ones who negotiated the same contract which had now failed, okay? Do you remember him telling you that?

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

**MR. O'FLAHERTY:** Okay.

And do you accept, Sir, that that was a decision within the full purview of the CEO of the shareholder to make that decision, correct?

**MR. E. MARTIN:** Oh, no question. There's no question about that.

**MR. O'FLAHERTY:** Okay. Okay.

**MR. E. MARTIN:** And I also – we also had discussions around why it was important, in my estimation, not to have anyone else in the room. And I talked earlier about that in earlier testimony about single-point accountability and (inaudible) accountability. And I certainly wasn't averse to dealing with it, you know, together, if that's what the province wanted. My advice was don't (inaudible) the accountability in the room and I made that clear as well.

**MR. O'FLAHERTY:** Yeah, and – but I have stated the facts correctly as to what happened. He wanted Mr. Leather in the room, correct?

**MR. E. MARTIN:** Initially.

**MR. O'FLAHERTY:** Yeah.

**MR. E. MARTIN:** But when I – when we –

**MR. O'FLAHERTY:** And you didn't.

**MR. E. MARTIN:** No, and we talked about that. I gave the reasons and such.

**MR. O'FLAHERTY:** Okay.

**MR. E. MARTIN:** And that's where it stood.

**MR. O'FLAHERTY:** Right.

And you didn't get an authority to negotiate a mandate between then and when you left.

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

**MR. O'FLAHERTY:** Right. Okay.

Thank you for your patience, Mr. Martin. I appreciate it.

Thank you, Mr. Commissioner, for accommodating me.

**THE COMMISSIONER:** Thank you very much.

All right, so we're going to start tomorrow morning at 9 o'clock again. Now you know why I was pushing so hard to finish on Tuesday. And next up will be the Concerned Citizens Coalition.

So we'll adjourn until 5:30 – or 9 o'clock tomorrow morning.

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.