



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 54

Commissioner: Honourable Justice Richard LeBlanc

Friday

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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.

Concerned Citizen Coalition.

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

MR. BUDDEN: Good morning, Mr. Martin.

As you recall, no doubt, my name is Geoff Budden and I represent the Concerned Citizen Coalition which, as you no doubt know as well, is a group of individuals who for many years now have been observers and critics of the Muskrat Falls Project.

So I've got a few questions for you today, obviously, and I would like to start by talking about Dr. Guy Holburn. And you weren't, I believe – perhaps you were – but he gave evidence in Goose Bay back in February and he was qualified by this Commission as an expert in the governance of Crown corporations, and his research seems to have focused on the governance of power generating Crown corporations, not unlike Nalcor.

And his evidence was quite critical of the manner in which this board was constituted, the board of Nalcor was constituted and operated. And he particularly had issues with the size of the board, the qualifications of some of individuals on the board – I guess not so much their qualifications, but qualifications that were absent, the workload on the board and so forth. So he made a number of fairly critical comments and I'm coming to a point on this but I wanted to set the stage a bit.

So in – for instance, on page 71 of his evidence he said the following –

MR. E. MARTIN: Mr. Budden, could I just make one point? When you were at your opening remarks, I thought I heard you say the – he was – Mr. Holburn was referring to power

generating companies, unlike – you know, not Nalcor.

MR. BUDDEN: Oh, well, he talked about – he had expertise and he actually sits on the board of a small utility, but besides that he gave evidence about Ontario Power Generation and so on. So I don't want to make too much of that. His qualification was clearly the governance of Crown corporations, but I made the point that his research interests did include companies that were broadly similar to Nalcor.

MR. E. MARTIN: Oh, I understand.

MR. BUDDEN: I know Nalcor is more than that, but that clearly is a component of what Nalcor is about.

So Dr. Holburn on page 71 said the following when he was talking about the small size of the board and some of the other issues. I think this – and this is him: "I think this would lead to some questions as to the ability of a board to effectively challenge management, and act in a capacity of providing informed expert oversight and providing that forum for sober second thought."

Elsewhere he said he felt sorry for the board when talking about the workload and the capacity of independent members, and finally, I guess, we sort of pulled it together, he and I. I asked him: "Have you, in your studies, in your practice, in your research, come across a board of a major Crown corporation with so few board members receiving so little compensation for so many hours work?"

And Dr. Holburn said, "No, I have not."

So my point in all of this, Mr. Martin, is none of this was of your creation, you didn't – you had no control – you sat on the board, but you had no control over who ended up on it. That was – somebody else owns that and that's been part of the focus of this Commission. But I guess my question for you is – you're the CEO of this board, the CEO of Nalcor, and you have a board that, I would suggest, you really couldn't go to for that informed expert oversight as a forum for sober second thought. They just simply didn't have the skills or the resources to give you what a properly constituted board would have.

And my question to you: How did that – was that an issue at all in your ability to perform your role to the – in the way you would've liked to have done it? How might a robust, properly constituted board have assisted you?

MR. E. MARTIN: Well, the first point is the board composition changed over time. You know, at times there was more than less, if you know what I mean.

MR. BUDDEN: Yes.

MR. E. MARTIN: So it wasn't always a – quotation marks – small board.

Point number (b) is it was, in any event, at any time, it was an excellent forum for second sober thought. They were very strong board members and by strong, I mean very direct, you know, very inquisitive, tough driving questions, a good understanding, a deep understanding of the rationale for, in this particular case, Muskrat Falls, and the things that drove that particular development.

And then, you know, if I break down some of the really key elements that I was seeking, one would be, certainly, a financial expertise on the board. And from a board level, from my, you know, experience and also I did read some of the Hollmann document, the board is not there to do day-to-day operations. It's there to ensure –

MR. BUDDEN: (Inaudible.)

MR. E. MARTIN: – overall processes are in place, set vision, values and those types of things. So, from a financial perspective, one of the individuals on the board that was highly qualified, Mr. Shortall, and he drove that relentlessly, and I felt very comfortable. That was a very large portion of control and stuff, that we had one of the foremost individuals in the country, frankly.

MR. BUDDEN: Well –

MR. E. MARTIN: And then – if I just go on –

MR. BUDDEN: Sure.

MR. E. MARTIN: – from there.

MR. BUDDEN: Okay.

MR. E. MARTIN: And then I consider, from a governance perspective, which is critical. And I look at Mr. Clift, who, amongst other things, brought that to the table, and on the Governance Committee I go through the documentation with respect to that and the work that was done there, and I thought it was stellar and very good. So that was another very key part, because the board is oversight.

And we had, you know, Mr. Abbass, obviously, and with respect to our presence in Labrador, he was invaluable. I mean, that's something that – we were always focused on that, but he brought a – you know, he brought a tremendous additional focus, and I think woke us up to just, you know, how much we would have to, you know, be involved in that kind of situation.

And Mr. Marshall, being a very senior executive, brought tremendous leadership. You know, just the ability to understand the overall processes and what had to be done, and he was certainly, you know, a wise counsel and overseeing me closely with respect to leadership and direction.

And I can go on – some other board members have –

MR. BUDDEN: Sure.

MR. E. MARTIN: – come and go. But that being said, you know, I was a member of the board, and I think I've made it clear before, and I had requested at times that additional expertise would be helpful. And I think that's – I don't want to use the word "truism," but naturally, if you know what I mean, I think those types of things would be helpful.

So, you know, Mr. Clift and the Governance Committee, you know, pursued that, you know, with the government and over time, you know, efforts were made and it was taken very seriously. But in the meantime, we did, you know, make sure that in the absence, maybe, of some of those additional skills on the board, we were investing quite heavily in expertise that was not internal to Nalcor, some of the consultants that we used and such, and had

them, you know, providing the advice and the expertise that we needed to bounce things off.

MR. BUDDEN: There – we’re not saying that some of the people on the board weren’t good people or didn’t have other skills, but the board itself – as you alluded to a second ago, Mr. Clift over a period of years wrote the government quite strong letters, quite almost plaintive letters saying: Look, we need somebody with megaproject experience, we need other resources here, we’re a very under-resourced board. I mean, he talked of having to get up on vacation at 4:30 to make a quorum. I think that was a particular comment that prompted Dr. Holburn to say he felt sorry for the board. So the board itself, in the moment, was aware of what it lacked.

And, I guess, my – just to focus particularly on that: Do you not believe it would’ve assisted you to have somebody on the board who spoke your language? Who had experiences similar to yours in megaproject experience to give you that sober second thought? That idea, that ability to grasp what you were talking about when you’re talking about project development in a way the others’ life experience just hasn’t given them? Do you think that would’ve assisted you at all?

MR. E. MARTIN: Absolutely.

MR. BUDDEN: Absolutely.

MR. E. MARTIN: Yes.

MR. BUDDEN: Okay.

What – so following that: If that would’ve assisted you, to what degree did its absence hurt you in the carrying out of your duties?

MR. E. MARTIN: It would – you know, obviously, as I said, it would’ve been an additional value. I mean, that’s – I think that’s clear, and I don’t think that anyone could really dispute that those things are helpful.

To the extent that it didn’t help or it could’ve been better, as I said, you know, our efforts were towards getting that expertise available, you know, so that they could assist in that fashion through, you know, consulting arrangements, independent reviews and other things such as

that. So I felt we had that covered. But make no mistake, I mean, it would’ve been even more helpful, you know, obviously, if we had some of that expertise on – directly on the board, as well. I –

MR. BUDDEN: Okay, that would’ve (inaudible) – I mean, not a hired – I was gonna say hired gun; that’s a little disrespectful, but somebody you hire and say: Give me some information. This is actually a peer on the board, somebody who says: Look, Ed, you know, when we did this with Ontario Power Generation, you know, this was an issue, have you thought of this? That kind of peer-to-peer help, you didn’t have that on the board, did you?

MR. E. MARTIN: Not in certain – as I mentioned, not in certain areas, no.

MR. BUDDEN: Sure, and certainly –

MR. E. MARTIN: And – it would be helpful. I’m clear on that.

MR. BUDDEN: Sure.

MR. E. MARTIN: One additional point I did neglect to mention was – I think it was mentioned before, but I’m not sure, Mr. Commissioner, but there was many boards at Nalcor and –

MR. BUDDEN: Oh, yes.

MR. E. MARTIN: – they were all staffed and it was – I don’t know about an unusual amount, but there was a lot. And, you know, there was many efforts, I think, from the shareholder in particular who we would go to in that instance to staff those boards. So it’s like – you know, I just wanted to make the point it wasn’t just that main board that was there. There was – not a tremendous amount, but there was a lot of extra people who had additional experience from, you know, dean of engineering –

MR. BUDDEN: Sure.

MR. E. MARTIN: – for instance, and others who would’ve been at the table at some of the other boards as well. So that was helpful.

MR. BUDDEN: Helpful but not – you know, we’re talking Muskrat Falls sanction project cost. Those are fairly (inaudible) to those issues, aren’t they, those other boards?

MR. E. MARTIN: That’s a – that’s correct, because at sanction some of those sub-boards would not have been in place.

MR. BUDDEN: Of course, yeah.

So that’s the board level; then we get to the political level and by my count, and I – God knows I may miss somebody, but from sanction in December of ’12 to the time you resigned 40 or so months later, you dealt with four premiers, four ministers of Natural Resources, a whole array of senior bureaucrats. I mean, it was a time period that the book that James McLeod wrote about this, he called *Turmoil, as Usual*, so that, I think, is a pretty good description of what you were dealing with on a political level.

We’ve heard from some of the – we’ve heard from all of those people virtually. Mr. Dalley talked about a learning curve of maybe nine to 12 months, familiarizing himself with Natural Resources. Other individuals presumably would’ve had similar learning curves. So as with the board, I would suggest that, really, when you got to the GNL level, you weren’t getting a whole lot of guidance there in terms of people who had any kind of deep understanding of the issues that you were confronting as you tried to get this project moving along. Would you disagree with that?

Again, not saying you’re not –

MR. E. MARTIN: No, I understand. And –

MR. BUDDEN: – (inaudible) or anything but –

MR. E. MARTIN: – one point I wanted to try to clarify because I missed your time frame, because when – if it was when I was with the province, I think it was five premiers and eight ministers.

MR. BUDDEN: Oh yeah, no, it’s –

MR. E. MARTIN: But I –

MR. BUDDEN: – but I’m not saying it was –

MR. E. MARTIN: But I missed your time frame, so I didn’t want to –

MR. BUDDEN: I just focused on – because this phase is focused on –

MR. E. MARTIN: I see.

MR. BUDDEN: – sanction on forward, so I just said from December 2012 from sanction until you resigned.

MR. E. MARTIN: That’s the piece I missed, 2012, okay.

MR. BUDDEN: Okay, so 40 months, four premiers.

MR. E. MARTIN: Four premiers.

And so – but to the heart of your question, I think it varied, you know. Frankly, I think, number one, every premier, every minister I dealt with – look, you know, they were very dedicated. They were, you know, professional with respect to my dealings with them – incredibly so. From an expertise perspective, there were different levels of expertise, you know, I look at Mr. Williams who, you know, was a key person, for instance, on the project –

MR. BUDDEN: And who was gone by 2010.

MR. E. MARTIN: Pardon me?

MR. BUDDEN: And who was gone by 2010.

MR. E. MARTIN: Yes, he was –

MR. BUDDEN: Yeah.

MR. E. MARTIN: – yes.

MR. BUDDEN: Carry on.

MR. E. MARTIN: But I’m just trying to say that, you know, from, say, his level of depth and knowledge and background was much more suited to, you know, the types of execution and sanctioning that we were looking at, so that’s one point.

I’ll take it Premier Dunderdale had been there for quite a while as minister and then became

premier and had been an instrumental part all the way through. And her background was different but the – you know, the time, just the pure time and effort and the length of time she was involved deeply in the project. You know, her expertise and understanding was very, very strong, which was helpful. From an execution perspective of a construction project, no, you know, and the same – probably Mr. Williams. I mean, that's a fact.

Then I move on to some of the – you know, premiers subsequent that – Mr. Marshall and Mr. Davis, for instance. And once again, very helpful, you know, very bright and engaged. But their level of understanding of the – it just wasn't as deep at the time because they weren't involved as deep as they went through. So, you know, I sensed a bit more – a bit of a change there in terms of getting more information in their hands and spending a lot more time, you know, sort of coming back and walking through things again.

And then with Premier Ball, you know, probably even more so because obviously Mr. Ball, you know, wasn't – obviously he wasn't involved in the government I was dealing with for the most of it. So, you know, probably even a bigger change there in terms of the deeper understanding of –

MR. BUDDEN: Sure.

MR. E. MARTIN: – where we were at the time. So I just wanted – and I could go through the ministers in the same fashion, right? So I think it was a mix in terms of the – you know, the knowledge and assistance that I could garner from their experience and knowledge.

MR. BUDDEN: Sure.

And we've heard from those people and, again, what I would suggest and what we'll be asking the Commissioner to, ultimately, find is that really what we had there were people just rotating in and out. It was turmoil as usual as Mr. McLeod said. And there was really nobody in that mix, other than perhaps Ms. Dunderdale who was gone by early 2014, and we may even disagree with you on her. But there's really – there's nobody there who could give you that forum for sober second thought; that informed

expert oversight that you weren't getting from the board that Dr. Holburn said you really needed from a board, anybody would.

So you would agree with me there, you really weren't going to the GNL for informed expert oversight? You weren't getting that there.

MR. E. MARTIN: In some ways I was and some ways I couldn't. So I agree with that.

So your term – you know, just the broad term of oversight, I think there was many elements of oversight that they were qualified to handle. And that could be, you know, things such – you know, anything from, you know, cost focus and also an understanding, even, of the public approach to things and how things would be – so there were things. I just want – I don't want to make a blanket statement.

MR. BUDDEN: Mmm.

MR. E. MARTIN: But from a construction execution perspective, you know, no, I mean, that wasn't their expertise. And, you know – and I would also include, you know, the politicians and even the high-quality officials that were there. I mean, obviously that wasn't their expertise. So if that's what you're focused on –

MR. BUDDEN: And we've heard that –

MR. E. MARTIN: – yeah, then I would –

MR. BUDDEN: Yeah.

MR. E. MARTIN: – agree with that piece.

MR. BUDDEN: Fair enough.

You've gotten a fair bit of heat over the last couple of days and back in December, too, for not – the allegations are – I'm not asking you to debate them right now – but that you didn't fully inform government; that you simplified presentations beyond where they should've been and so forth.

I guess what I'm asking you, just to get your perspective on this, because it occurs to me that you're going in to these – you're coming out of a board without certain types of necessary expertise, according to Dr. Holburn. You're

going (inaudible), which you just said lack important areas of expertise.

Did you feel that ever limited your ability to have a full presentation of the facts of this case on these very complex matters? Matters of risk, matters of, you know, high-level, multi-billion dollar construction? Did you feel you had to dumb it down or somehow try to simplify to a level that they could understand?

MR. E. MARTIN: Never.

MR. BUDDEN: Okay.

So what – I guess to turn it around, you're not saying as an excuse for the way you presented things that: Look, I had to simplify it because they just weren't able to get it if I gave it to them the way, perhaps, I would if I was dealing with, you know, a highly knowledgeable private client in the oil sector or something? You're not using that as an excuse?

MR. E. MARTIN: Well, first off, I don't agree with the term "excuse." I don't – I think it was handled properly –

MR. BUDDEN: Rationale, justification –

MR. E. MARTIN: – so let me get that –

MR. BUDDEN: Yeah.

MR. E. MARTIN: – let me get that straight –

MR. BUDDEN: Okay, fair enough.

MR. E. MARTIN: But putting that aside. No, I approached it in a similar fashion in terms of, you know, making sure I – my role was to bring forward, you know, a decision-quality type of information. And that's not bringing, you know, a huge amount of information that has not been vetted, has not been stressed, you know, that I don't have an opinion on it, I haven't done it myself. To bring that level of information into any type of, you know, oversight type of – you know, in my career, it was just not on. I think I learned very quickly that that is one way to ensure you don't advance in an organization. I might have done it once or twice but I learned quickly that's not working for me (inaudible) –

MR. BUDDEN: Are you talking generally or are you talking about this particular –?

MR. E. MARTIN: I'm talking – I'm talking about my – not generally; specific –

MR. BUDDEN: Okay.

MR. E. MARTIN: – over time with the organizations I have worked with and came up through. That it was readily apparent that, you know, to deal effectively with very, very senior executives and decision-makers, they were looking to train and groom people who thought like that and could bring forward information, you know, in such a fashion. It was there for decision discussion.

And I used the example yesterday because it was given to me, you know, more than once over my career, specifically with these companies – that ensure that we don't spend 95 per cent of the time trying to figure out what you're telling us. We want to spend 95 per cent of our time at this level discussing the issue surrounding, you know, whatever we're dealing with. So that was the premise I was in. With the – that is point one. I would've, you know, provided more than I would be used to – have been providing in areas where I thought people had more expertise than – in that specific area than they did in this particular case.

And, you know, as per example, I know it's been commented on that I, you know, often usually brought forward, you know, a project rationale. They would ask me a question about let's – I want to focus on this. And I would say, great. And it was interesting to hear some of the testimony from people suggesting that, you know: I don't know why, but Ed always sort of brought over the rationale for the project, went back over old ground, brought lots of pictures and showed us where we were and went through stuff and described things. And it was interesting to me to hear them suggest that – you know, that was something: Well, I don't know why he did that; he wasn't answering the question.

Well, I was doing it because I was trying to make sure we had a framework that everyone was working from and give them some data and information and let them see where we were and try to talk through those things and then, you

know, get into the question of – boil the information down and then have the discussion. So that was actually, you know, one way that I was attempting to assist them in having more background.

MR. BUDDEN: Okay.

My learned friend, Mr. Learmonth, brought you to a particular exhibit, and I don't have it in front of me, so this is a bit of a digression. But Charles Bown, I believe, asked you a fairly straightforward question about project costs and you gave quite a long answer and Mr. Learmonth described it in unflattering terms, basically sort of an obfuscating kind of an answer.

Do you think there were times where you overestimated the capacity of these – you know, these people operating in turmoil, this revolving door, to understand what you were saying?

MR. E. MARTIN: I think that's possible in some cases, yes. I'm trying to think of an example.

Maybe the most – one that jumps to mind, for the most part, was, you know, the – you know, the reason that we made the decision on – to move ahead on this project was, you know, based upon, as I mentioned earlier, cost to the ratepayer on a broader set of additional benefits.

And I'd have to say that, you know, I had learned enough, you know, over the months and actually years post-sanction that I did have to keep anchoring back to that with people because it surprised – not surprised – big word – it dawned on me that, you know, I need to continue to do that and anchor back because for some reason, oftentimes, that reminder had to be offered.

MR. BUDDEN: Because you're dealing with new people who didn't have the – you know, they were still on a learning curve in a lot of cases.

MR. E. MARTIN: That's correct. And also in some cases people who have been there for quite a while.

MR. BUDDEN: Okay.

The Oversight Committee that was put in place – the committee itself, not EY; I'll get to them – that was put in place in 2014.

In your dealings with the Oversight Committee, did you feel that – again, you were dealing with people who had the capacity to give you – again, Dr. Holburn's terms – this sober second thought, this forum for, you know, this sort of peer input and so forth, did you feel you were getting that from them? Or, again, were you dealing with the same kind of people operating out of turmoil; perhaps not educated to the point that they could've been?

MR. E. MARTIN: I didn't deal directly with the Oversight Committee, is point one, so I'm trying to formulate my comments –

MR. BUDDEN: Okay.

MR. E. MARTIN: – and offer something useful without being too specific because I wasn't there, but I come up to, you know, several thousand feet, as they say.

I think, in retrospect, it depends. Probably, you know, an improvement there would've been: What is, you know, an alignment and what was the purpose of the Oversight Committee? It likely was –

MR. BUDDEN: It seems self-evident.

MR. E. MARTIN: What's that?

MR. BUDDEN: It would seem self-evident (inaudible).

MR. E. MARTIN: Yeah, I take your point. So maybe I'm – I have to move on a bit quicker here. But it would depend by virtue of, you know, at what – if you go back to Mr. Hollmann's, you know –

MR. BUDDEN: (Inaudible.)

MR. E. MARTIN: – shareholder, board, company, day-to-day policy and, you know, long-term vision and then setting the direction, you know, for the province and shareholder. So the Oversight Committee – if the Oversight Committee was there to – you know, to monitor and provide that detailed expertise for

construction, that they could be down in the heart of every detail and stuff like that, well, that's one – that's what I meant by that. Or, if they were, once again, at a level of: just checking processes, making sure things were in place, and asking questions like that, that's what I'm talking about.

MR. BUDDEN: Okay.

MR. E. MARTIN: The clarity of that, if you see what I'm saying.

MR. BUDDEN: I do.

MR. E. MARTIN: So, you can't just say the Oversight Committee is doing this. I think – what I'm suggesting is, would – in retrospect, it would likely – it would likely would be much better, more improved to maybe have laid that out a lot more clearly amongst Nalcor and the Oversight Committee and the government and the board and that kind of thing.

MR. BUDDEN: Sure. That brings us to EY. Because as we've heard, the Oversight Committee itself was aware of its limitations, and it felt it needed to be made able to engage with Nalcor at that level, that sort of more technical level, that sober second thought level, and here comes EY, which – and I would suggest to you, and perhaps you can – you'll challenge this, but on the face of it, the people EY brought to the table – David Leather, Michael Kennedy, some of the others – clearly were people with significant project management experience, significant – you know, they were, I would suggest, your peers; they were people who could give you a sober second thought.

And, I was struck another way, perhaps, that Nalcor could've approached these guys is, look, finally, adults in the room who can see what we're doing here, people who we can show our project to, we can show, hey guys, this is what we're doing, isn't this great.

That doesn't seem to have been the attitude that EY met when they were brought on the job. Can you speak to that? Like, why weren't – why was Nalcor so resistant to what EY was attempting to do?

MR. E. MARTIN: Well, I don't believe that Nalcor was.

MR. BUDDEN: Okay.

MR. E. MARTIN: You know, I guess that's the fundamental point. I think –

MR. BUDDEN: So, you reject the evidence of Mr. Kennedy and Mr. Leather and those guys that – or, you have believed at the very least they misconstrued what they were – what they thought they were getting from Nalcor in terms of resistance?

MR. E. MARTIN: So I – I was gonna pursue that concept. I know at the outset, there was a change in how the government – the shareholder, was going to operate, so okay. We went from – the reason we were established was to handle this, as the experts, because the expertise wasn't there, and we were – and I won't go deep into that, but it was a clear, you know, understanding, for my part, what we were expected to do, and I can give many examples of how we were asked to do that and how we operated.

There was several changes in political elected officials, for sure, so there was a change. So, we – you know, okay. That's – it is what it is. When that occurred and Ernst & Young came in, that was my approach. Initially, I spoke to the governments to say, you know, this is a change and talked about all that stuff and said that's – you know, that's not, you know, the way I think it should be evolving, because that's not the way it has been and there's going to be resource changes, et cetera.

But once it happened, I said okay, let's, you know, let's move ahead and try to extract value and work together to see if we can get something positive out of this arrangement. And that was the premise of how things opened and that was – my instructions, you know, to the project team and, you know, and away we went.

And – but I think what, you know, what evolved in that relationship – I wasn't in the heart of it, but the folks weren't connecting. You know, there was – when I used – when I read some of the reports that were generating, I saw nothing new there, you know, I saw – just pulling

information that they were told. I think – I know our people, because I checked, were quite open in telling, you know, Ernst & Young people that this is where we are, here things are, and you know, they were open about that.

MR. BUDDEN: Well –

MR. E. MARTIN: And that information was compiled in reports that they – that EY was told. There was a different kind of tone on the reports that were sent out and I think that became problematic because I don't think the project team could see how they were adding value. And being involved in that –

MR. BUDDEN: But the – I'll stop you there, because you've used that phrase several times: adding value. What value did you hope to get from them? When you say adding value, what do you mean? Adding what kind of value?

MR. E. MARTIN: You know, collaborating on decision-making –

MR. BUDDEN: Mm-hmm.

MR. E. MARTIN: – you know, being in a situation where if you're reviewing things together, looking to find solutions together, you know, bringing in some new ideas possibly. A lot of it comes down to, you know, attitude and, you know, you can tell when – in your working together, and create that atmosphere. And then, you know, in hopefully coming up with either something new or helpful or at least validating, you know, that that looks like we're going in the right direction here, you know, folks. So that's a value you add to give you either –

MR. BUDDEN: Yeah.

MR. E. MARTIN: – something new or a check.

And then the other element of the value you add is then you would go to the shareholder or the Oversight Committee, if not together, but certainly in that mindset of saying look, we worked with this, we worked together, we found some – we went through these various documents, we've found some things that, you know, could be improved and Nalcor's gonna approve them because they like what we've said.

We worked through these and it came out pretty good.

And, you know, we're adding value. Nalcor's working – we're working together on this, and we're getting over the hump and Nalcor would say, yeah, we got some help out of this. As opposed to, you know, it seemed to be less of that, more of taking the information, recording, you know, as much negatives as they could find and then report it and say, here's what we found. That's the difference –

MR. BUDDEN: Okay.

MR. E. MARTIN: – in my mind.

MR. BUDDEN: You've heard the evidence, or at least Mr. Learmonth spent some time reviewing it with you. I'm not going to do the same, but I will ask you this: do you believe after – even after working through all that evidence with Mr. Learmonth, that the attitude that Nalcor brought to this engagement – not just you but your team, the project team – brought to the engagement with EY was that kind of positive attitude, seeking the things that you just mentioned when you talked about adding value? That's your belief?

MR. E. MARTIN: I believe it started that way, I believe in both, you know EY and the Nalcor team – you know, it didn't stay that way over time, but it started that way, yes.

MR. BUDDEN: Okay. Notwithstanding the fact that you yourself were initially resistant to EY's involvement; you would acknowledge that?

MR. E. MARTIN: Yes, for the reasons I've stated already and –

MR. BUDDEN: Yeah, but – so if I take your evidence, you were resistant when you were told this was gonna happen. Nalcor immediately switched into a mode of – you know, the value-added mode that you just described, and the terms you described, and then were disappointed in the level of engagement; that EY appeared to be focused on certain negatives and – is that how you would describe in your evidence, the sort of totality of the relationship with EY at that sort of 10,000 foot level?

MR. E. MARTIN: Um –

MR. BUDDEN: Or where I'm wrong, tell me where I'm wrong.

MR. E. MARTIN: So, with – well, one exception is – and it's difficult because a lot of it is in the tone of your question, which I am not saying is wrong, Mr. Budden. I'm just – it's when I receive it, I'm saying –

MR. BUDDEN: Okay.

MR. E. MARTIN: – I have to think about that because when you say, I was resistant. I'd just like to put that in a frame – like, that is my job, and I see that as a positive thing. But I sense it has, you know, it has evolved into something negative –

MR. BUDDEN: Okay, just to stop you there, because that's an important point. How is it –

MR. E. MARTIN: (Inaudible.)

MR. BUDDEN: – your job –

MR. E. MARTIN: (Inaudible.)

MR. BUDDEN: – to be resistant of – just let me finish –

MR. E. MARTIN: – it maybe helpful though, if I finish the thought before –

MR. BUDDEN: I want to stop you there –

MR. E. MARTIN: You go ahead, yes, Sir.

MR. BUDDEN: – because you did say that it was part of your job to be resistant to EY coming in to provide oversight. If that's what you said, I'd like you to explain how that could be part of your job as CEO of Nalcor

MR. E. MARTIN: Okay, 'cause – well, that's helpful because that's where I was going –

MR. BUDDEN: Okay, well, go there.

MR. E. MARTIN: And, so – okay so it's – and I've also – it's not EY, it's in general and I (inaudible) –

MR. BUDDEN: Focus on them for (inaudible).

MR. E. MARTIN: – as an opener I had been complimented or – no, I'd received feedback before from senior bureaucrats, that they appreciated my approach because I was one of the few people that they had ever worked with that would be totally upfront and transparent – particularly with the premier and the minister – and they'd say – sometimes they'd say, wow, you know, you just say stuff and get to it and they said that is so powerful when you do that.

And I also received feedback that I was respectful, and people could work with me. So in that context, resistance as it is a negative word. It's my job – I saw a potential loss of value to the project in terms of a change in how oversight was being handled at the government because change means risk, change means things have to change, and that means your resources, a reallocation of things, and the way you've been structured is – all of a sudden has to change.

I'm not saying the government can't do that no problem. But I am compelled to go up and discuss that with the shareholder to ensure, in that particular case for instance, that there's risk around this, things have to change, there's gonna be cost associated with it. It's a change, change means this, and those types of things. And when I hear resistance, that's what I'm thinking. And I did it constantly, absolutely.

But it was a – you know, how could I not do that because, you know, people who are making that decision have to know the impact. If you call that resistance, that's resistance.

MR. BUDDEN: Okay.

MR. E. MARTIN: I call it, you know, my job to go up and explain, you know, the pros and cons and making sure everyone understands it before we move ahead. When the decision's taken though, that's behind me. I move on.

MR. BUDDEN: Okay.

Well, let's stop there for a second because I – we've already established you weren't getting certain types of oversight from the board. We've already established you weren't getting certain types of oversight from government. So there's

certain types of oversight you just weren't getting – you meaning Nalcor. I mean, you guys were flying – you were flying free of oversight in many important respects.

And not your fault, you know. And I'm not suggesting that. But we're now getting to the point where somebody in government is saying: Look, there's a gap here. There's an oversight gap. We're gonna fill it – we're gonna fill it with a committee, and the committee is gonna fill it with EY.

And I don't understand how that can be a problem for a project. You're not rejecting the concept of oversight, I assume?

MR. E. MARTIN: Absolutely not.

MR. BUDDEN: So, here it is. You're not getting it. They're now bringing in experts to provide it. What's the problem?

MR. E. MARTIN: Well, you're at the heart of the issue, I think. You know, Nalcor was established for oversight. Nalcor was established to be the oversight tool of the government. And that was the choice at the time, so it was, you know, recognized and explained, you know, to me and others that there's recognition that the government had expertise. Certainly they did, but not in this area, not in the area of the other things that were happening at Nalcor.

And there was an explanation that we want to do some of these things, whether they be Muskrat Falls or move ahead with – or some of the other projects that were going on. And to do that, coming out of, you know, the vision that that particular government had put in place – I think the Energy Plan is a good – is the manifestation of that – that we were – Nalcor was formed to provide the oversight of getting that done.

I'm not saying agree or disagree with it –

MR. BUDDEN: Okay.

MR. E. MARTIN: – that was the context. So my point was that's a significant change, then, in terms of how we would be structured and operate, then, if you take it – if we take a move then or a thought that Nalcor is a separate entity outside of government, not part of government,

and – you know, and is over there, totally separated, and then you say, in that case, then we don't know, understand what's happening and we don't want – and you want – we want to oversee that – that's an entirely different concept. And it's not wrong. I'm not saying it's wrong. I'm just saying it's an entirely different concept.

So – and when you're in – now we're – here we are in the middle of a significant undertaking, we've structured a certain way and that kind of change in oversight philosophy at that point – it can be handled. But there's risks attached to it. That's my point. And, you know, those huge changes to take – it requires a tremendous amount of senior people, it requires new ways to structure, to do things, to report, to spend a huge amount of time – not wrong – going through things, and a whole different structure of how the, you know, how the project would be overseen.

At the same time, you're in one – you're in the heart of one of the most – the largest project we ever undertook and structured and everybody working massive hours and focused on that.

So that – that's what I was, you know, discussing. I wasn't discussing that it was wrong for oversight or I wouldn't appreciate more oversight or the Oversight Committee was fine. That really wasn't the issue. What I just described is what I described to the shareholder to say there's risk – a huge amount of risk attached to this and it's going to – and we just got to understand that. You understand that? It means it could impact things on the project –

MR. BUDDEN: So that's the model –

MR. E. MARTIN: – the cost (inaudible) –

MR. BUDDEN: – essentially –

MR. E. MARTIN: – it's going to be more resources. As long as you understand that, like, I'm – obviously, I haven't got a problem with it.

MR. BUDDEN: But that's a model where Nalcor oversees itself.

MR. E. MARTIN: Well, I don't –

MR. BUDDEN: Right?

MR. E. MARTIN: I don't want to get into an argument as to mode – mood – mode, so –

MR. BUDDEN: It's not an argument –

MR. E. MARTIN: I think I'd have the same –

MR. BUDDEN: – you made a point that Nalcor's set up to –

MR. E. MARTIN: Yeah.

MR. BUDDEN: – provide oversight, and I'm saying so, really, that logically follows from your point that Nalcor oversees itself, full stop.

MR. E. MARTIN: No, there was – if we go back to the – there's a whole series of governance processes that were put in place. I'm not – I won't go in depth here now in terms of pulling that up. It's been – it's on record, but everything from, you know, the board of directors –

MR. BUDDEN: Which we've talked about, and its weaknesses.

MR. E. MARTIN: Yes.

And then there's – I don't have the document in front of me, but there's a whole series of government – governance structures that were put in place for Nalcor and respecting, you know, things from the board, the subs of the board, the Internal Audit, the project management team itself, the external reviews – I can't give –

MR. BUDDEN: Mmm.

MR. E. MARTIN: – a wholesome – a fulsome overview –

MR. BUDDEN: Sure.

MR. E. MARTIN: – here right now because I just haven't got that at my fingertips. But in any event, that was the way it was structured. And with respect to dealing with the shareholder, that's the way it was structured. So, once again, that's a way; to change that is another way. I'm not disputing that; I'm just –

MR. BUDDEN: Okay.

MR. E. MARTIN: – I was just coming – reeling back into where I started on this, and what – I wanted to make the point that resistance has a negative overtone, which I reject from what we were doing. It's a matter of making sure that everyone understood the risks and benefits that were attached to making these types of changes.

MR. BUDDEN: Okay.

MR. E. MARTIN: I don't see it as resistance; I see it as my job to make sure I'm upfront and explaining that to people.

MR. BUDDEN: Sure. A less charitable take might be that Nalcor – and you – resisted oversight because you didn't want oversight, you didn't want people looking at what you're doing too closely.

MR. E. MARTIN: That would be a complete falsehood.

MR. BUDDEN: Okay. Fair enough.

Madam Clerk, Exhibit P-01962, please. And, what this is – you probably know this 'cause you spent some time on it, and we have with other witnesses. This is –

THE COMMISSIONER: Tab 61.

MR. BUDDEN: Yes. I'll let you call that up there.

What this is – while you're getting the right page – this is the letter – not long after you left Nalcor, Mr. Harrington wrote Mr. Marshall. And, there are a number of assertions he makes here that I – and that he spoke to in his evidence – I want to put to you, just for clarification or confirmation, really.

If you go down to the third paragraph, there's a sentence – scroll down a tiny bit, Madam Clerk – the one – it's not one of the highlighted ones; the one that – yes, it is, partially – the one that reads, "It was decided to impose a very aggressive approach to cost and schedule."

Mr. Harrington's evidence was that it was you, Mr. Martin, who imposed that very aggressive approach to cost and schedule. That's his evidence. Do you agree or disagree with what he's saying? Do you agree that you are the one who imposed that very aggressive approach to cost and schedule?

MR. E. MARTIN: Again, we discussed this over the last several days. I – imposed is not a word that I would use.

MR. BUDDEN: It's the word –

MR. E. MARTIN: No.

MR. BUDDEN: – he used, and he said –

MR. E. MARTIN: Yeah.

MR. BUDDEN: – that you were the one who imposed it.

Would you agree or disagree with that sentence with your name in there?

MR. E. MARTIN: So, I – if that's the – I disagree.

MR. BUDDEN: Okay.

MR. E. MARTIN: Would you like to know why?

MR. BUDDEN: Sure.

MR. E. MARTIN: Not because – if I look at the word impose, it does – it's not the right connotation, again, in terms of how we operated. It was a consensus discussion. But at the end of the day, make no mistake, I was the one accountable to say that's the way we'll go. So, I just wanted to make that point.

MR. BUDDEN: Okay.

MR. E. MARTIN: And I wanted to clear up, again, that if it was a thinking that I, on the other end of a spectrum, pulled a cost risk schedule out of the air and imposed it and said you're doing that with no review, that would be the exact opposite of what happened.

The information on the cost and schedule was totally compiled within the project team. I had – obviously, I couldn't have anything to do with it. It's just too massive, and I wasn't anywhere near that. SNC-Lavalin and some of the project management team and (inaudible) resources prepared all of that with, obviously, no input from me because I couldn't. I just wasn't involved in that. They would present the documents to me. We would go through them, and they would explain, you know, to Mr. Bennett and – to Mr. Bennett and myself – Mr. Bennett explained it to me, and then we'd reach, you know, say: That looks like (inaudible). Are you folks okay with that?

And from the cost basis – the base estimate, the answer was absolutely yes. A matter of fact, they convinced me that was the right estimate. I wasn't imposing; I was being totally convinced that was the right estimate for a whole bunch of reasons, and I pushed back and I would say – like, I was in a role of no, and they were in a role of convincing, which is normal.

MR. BUDDEN: Well, let's stop it here.

MR. E. MARTIN: And the same with schedule. So, that's –

MR. BUDDEN: I'd like to get to –

MR. E. MARTIN: But I will say that –

MR. BUDDEN: – to the point.

MR. E. MARTIN: – with respect –

MR. BUDDEN: Get to the point, Mr. Martin.

MR. E. MARTIN: – to the risk analysis on the P50 –

MR. BUDDEN: (Inaudible.)

MR. E. MARTIN: – that –

MR. BUDDEN: Mr. Commissioner, I'd like to follow up Mr. Martin, so you stop talking now.

On that very point, can you turn – can we turn to the next page, please?

MR. E. MARTIN: Can I come back to that afterwards?

MR. BUDDEN: Well, we'll see, but you'll certainly have the chance to redirect through your counsel. So, he's taking notes, no doubt.

The sentence there: The –

MR. E. MARTIN: Which sentence is that? On the second page?

MR. BUDDEN: No, the second page, Mr. Martin.

We see some underlined passages there. The sentence I'm focused reads, quote: "The unlikely probability of achieving these costs and schedule targets was well known."

In Mr. Harrington's evidence, he said that he plainly communicated that unlikely probability to you.

Do you agree or disagree with that?

MR. E. MARTIN: I was trying to read as you were – and you asked me the question, so I apologize for that.

MR. BUDDEN: No problem.

MR. E. MARTIN: I –

MR. BUDDEN: I should've waited.

MR. E. MARTIN: Could you just go back through that again, and I'll listen for the question –

MR. BUDDEN: Sure.

MR. E. MARTIN: – more closely at the end.

MR. BUDDEN: I put to him, the particular sentence I was focused on, which is summation of sentence, quote; "The unlikely probability of achieving these cost and schedule targets was well known."

I put it to Mr. Harrington when he testified here, I believe in it was last week. I said, did you make that well known to Mr. Martin? He said he did. So, I interrupted you because you were

talking about, I guess, that you had to be convinced.

But what this seemed to be suggesting is what your project management team was telling you was, look, this is unlikely; this schedule, these costs, they're unlikely. And that you imposed them on them. I'm suggesting to you that is totality of the evidence of Mr. Harrington's. It's for the Commissioner to decide that, but I'm putting that to you for you really to agree with, disagree with and, yes, comment on.

MR. E. MARTIN: So, with respect to that, I had a very long answer to that in earlier testimony this week. Mr. Commissioner, so I don't think it's useful to repeat all that.

MR. BUDDEN: Okay.

MR. E. MARTIN: I certainly could, but So from that perspective, you made a couple of points I may build on, separate from that –

MR. BUDDEN: Let's start with, do you agree or disagree with the assertion that Mr. Harrington made it clear to you that the cost and schedule that was going forth to sanction was unlikely, was improbable that it would be achieved? That he made that clear to you.

MR. E. MARTIN: I was clear on that – that I disagree with that –

MR. BUDDEN: Okay.

MR. E. MARTIN: – and I was clear on that in my previous testimony, and I would just like to refer to my previous testimony. And I'm sure the Commissioner will look at it, but I want to link it to that, so I don't have to describe it all again.

MR. BUDDEN: Sure. My main – my real point there –

MR. E. MARTIN: And – and –

MR. BUDDEN: – is that you disagree with his evidence. But carry on if you wish.

MR. E. MARTIN: So there was one other point I was – in addition to that, I was going to build on. I lost it now in the – it was something with the effect – I think you made a blanket – no, I'll

have to remember. I just lost my thought for a second I'll – I'll –

MR. BUDDEN: You can return to it with your counsel.

MR. E. MARTIN: Yeah. But I think about it – but it was something – I think you just made a blanket statement about a lot of things, and I wanted to focus on the schedule one. Not on what I felt, I think, that you were saying. You were including a whole bunch of other things. But I had an example in my mind, it slipped out for a second.

MR. BUDDEN: Okay.

MR. E. MARTIN: But I –

MR. BUDDEN: But it's –

MR. E. MARTIN: – but it's suffice to say, okay, that –

MR. BUDDEN: (Inaudible.)

MR. E. MARTIN: – it's (inaudible).

THE COMMISSIONER: I think you were going to speak something about the P50, if my recollection is correct. I don't know if that sort of jogs your memory or whatever. But if it doesn't we can – it'll come back.

MR. E. MARTIN: And I'll make the note here to think about it –

MR. BUDDEN: Yeah. We can return to it on your –

MR. E. MARTIN: – and we'll return to it.

MR. BUDDEN: – on your own –

MR. E. MARTIN: Right.

MR. BUDDEN: – lawyer's evidence. What I'd suggest to you – so now we're – and this is an answer you gave that had rather struck me. I can't recall if it was yesterday or the day before. But, when it was put to you that you were moving into sanction with this particular cost and that you had a long discussion with Mr. Learmonth that, again, was returned to yesterday

about management reserve, which is a term you rejected.

But if I have you –

MR. E. MARTIN: I –

MR. BUDDEN: – correctly –

MR. E. MARTIN: – I didn't reject that term.

MR. BUDDEN: Pardon?

MR. E. MARTIN: I'm sorry. You go ahead. I'll make my note in a minute.

MR. BUDDEN: Sure.

I said it is a term, as I understand it, that you rejected.

MR. E. MARTIN: So do you want me to come back to that –

MR. BUDDEN: No, I –

MR. E. MARTIN: – after I finished your question?

MR. BUDDEN: – well, let me finish. Because what I took from your evidence yesterday, you said that there was in fact a management reserve that would far exceed the 5 to 25 per cent that one of the reports recommended, and then you said – and you're talking about then – and your little passage where you talked about the revenue that would be realized from power sales, talked a figure of many billions. And then you tied it all together and said it was money that was clearly in the hands of the province. Do you remember saying that phrase?

MR. E. MARTIN: I remember that phrase and a couple of the points you made before were different, but –

MR. BUDDEN: Yeah, okay.

MR. E. MARTIN: – (inaudible) your main point.

MR. BUDDEN: So what – I guess my main point is that, if I understand you correctly, there was the public figure of 6.2, as we've all ready

discussed at length. There was no explicit management reserve in addition to that, but you appeared to be operating with a comfort level that there was this multi-billion dollar backup reserve fund of some sort that essentially was the totality of all the benefits that would flow from this project. That was there to fund the construction of the project. Is that a fair characterization of your evidence?

MR. E. MARTIN: Partially.

I think the overall concept is there, Mr. Budden.

MR. BUDDEN: Okay.

MR. E. MARTIN: There's several points you made throughout that, like, it just raises a flag to me, Commissioner, that it's just – you know, it's not right. So I'm trying to make points, you know, in terms of what you're missing. I'll make a couple of examples, but I think overall, I think I'm fine with that concept.

MR. BUDDEN: Okay.

MR. E. MARTIN: I think –

MR. BUDDEN: (Inaudible) – carry on.

MR. E. MARTIN: – like, things like, just, you know, and I would refer to maybe – the best way to do it would be if I could link this to the previous testimony where I said this specifically might help. But you mentioned things like, you know, all benefits. I think I was more specific that there was cash, you know, of all those benefits and that there was really – I was focused on the real cash ones, because there's about a dozen benefits there, but I wanted to make a point that this was true cash that was available. It's not thinking that, you know, some of the greenhouse gas things, I think, were a part of that, because that was – I didn't see that as pure cash and guarantee. What I was referring to was the guaranteed cash.

MR. BUDDEN: Okay.

MR. E. MARTIN: You said it wasn't explicit, for instance, and then I just wanted to test that. If you agree it wasn't, you know, explained, you know, directly to the public. Although, I had many speeches and stuff where I expressed this,

but explicit in terms of describing this to the government, yes. Did I use the term management reserve? No. But it's explaining the purpose of this cash and what it could be used for and how it would be earmarked to handle the things that in management reserve would normally be handled, yes, I was very explicit with respect to that to the government. And there's two or three more – I lost them, but that's enough because I wanted to make the example that I agree with your overall concept –

MR. BUDDEN: Okay.

MR. E. MARTIN: – but a lot of the pieces in between I'm trying to make sure I'm not –

MR. BUDDEN: Okay.

MR. E. MARTIN: – I'm not agreeing with.

MR. BUDDEN: Well, let's stay at a certain level of – and, again, you will – your lawyer will have the opportunity to question you. So if he feels or you feel that there's been something here that has – will mislead the Commissioner if it's not clarified, that's what his role here is.

However, my role here is I just want to focus on this. So the cost of the project, if we were focused on simply what will this thing cost to build – and I would suggest to you that clearly was the focus of the analysis of the discussion around sanction. If we were looking at what this project cost to build, the figure given was \$6.2 billion.

MR. E. MARTIN: That's correct.

MR. BUDDEN: You would agree with me there.

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

MR. BUDDEN: So what you're saying, if I – another way of putting it, perhaps, is, look, it's going to cost \$6.2 billion to build this dam, just like it might cost a million dollars to build a garage, but – however, we also have to bear in mind and we also to have to factor into the cost the fact that this dam or this garage or this store, whatever, will generate revenue down the road. And I'm suggesting to you that's really a blending – a bleeding over of future revenue into

construction costs, when they're really two entirely different concepts.

So, again, if we were focused just for a minute, as the public at the time was focused – and I would suggest most of the politicians appeared to be focused on what's it going to cost to build this thing, to run the power lines back to Churchill, to run the power line down to Soldiers Pond, what's it going to cost build? What we heard at sanction was \$6.2 billion. I would suggest to you it was never made explicit to anybody, nothing we've seen on paper, that there is a management reserve that consisted of this whole constellation of future revenues. Would you disagree with me?

MR. E. MARTIN: I would disagree with you.

MR. BUDDEN: Okay, where is it on paper?

MR. E. MARTIN: There is a document; I don't know the number. It explains the overall net benefits of the project. It shows on the bottom right-hand corner a \$7 billion preference for Muskrat Falls. It lays out, in significant detail, the elements of that.

And that was prepared, you know, prior to sanction and shared with the government and shareholder and walked through in detail, and indicated that these areas of cash, pure cash, in addition to everything else, are flowing back to the government, based on this project. And they are available to cover unforeseen events. That was done clearly and, you know, I've consistently said that and that's what's happened.

The second thing is – and this point was made – you know, it was made so many times to me. It was drilled into my head by the – particularly the premier of the day.

MR. BUDDEN: Who was –?

MR. E. MARTIN: Premier Dunderdale.

MR. BUDDEN: Okay.

MR. E. MARTIN: And, actually – and Premier Williams at the outset. And, you know, they always said, you know, make no mistake, they said, as you – this job is about cost to the

ratepayer. And they said, you know, we need to be considering – that's what the – that's where the people, they said, will want to know, he said, and understand. They'll be interested in this cost, they'll be interested in that revenue, but – and I'm just saying what was drilled into me is that – what will count at the end of the day is what is, you know, a person going to be paying on their power bill.

And that's the other place that, you know, I believe it was made clear, and we did publish documentation about the rates, and I think that's where most people were interested in. And I think, even today, you know, I think that's – I believe that's what people are most interested in. And I think it's been unfortunate that, you know, the rates over the last, you know, two or three years have not been presented in the context of being mitigated by these pools of available gas, because I think that's what people want to know, where it's going to end up.

MR. BUDDEN: So you're saying that – and, again, there's a blending here of cost and benefits and all those things. But are you saying – because much of the criticism directed at you, at Nalcor has been, look, here is a cost figure, it's now a billion more, \$2 billion more (inaudible), now we're at double. And, again, I can debate that right now, but that's been the focus. That's why we have an Inquiry, I would suggest.

And you just made a point, if I understood you correctly – and correct me if not, because I think this is very important. Were you encouraged to see costs as a figure, that precision was not really important because the real issue was the benefits? And were you encouraged to think that way by Premier Williams and Premier Dunderdale?

MR. E. MARTIN: Absolutely not.

MR. BUDDEN: Okay. So, why – what was the whole point of what you just said?

MR. E. MARTIN: Well, it's – we were on a different topic. I don't understand the linkage you're making between one question that I answer with respect to, you know, management reserve and those types of things. And then you

asked a second question, which I'm not disputing the question, but I can't link the two.

MR. BUDDEN: Yeah.

MR. E. MARTIN: That's my issue. If you're asking me that one leads to the other and creates that connotation, I'm saying absolutely not. I mean, I just can't get that linkage.

MR. BUDDEN: Okay. Well, I'll ask just – before we move on, I'll just ask –

MR. E. MARTIN: And I meant to also say that – and I won't dwell on it here, but just to make the point so that I don't lose it is that you said rates doubled. You used the term, doubled.

MR. BUDDEN: No, I didn't say rates doubled, I said costs doubled.

MR. E. MARTIN: So, in either event, that's an incorrect statement and I'll come back to that at another time. But I want to be on record that that's fully –

MR. BUDDEN: Okay. Well, let's move on –

MR. E. MARTIN: – totally incorrect, not even close.

MR. BUDDEN: Okay, well, let's move on from that. The – but just – my one last question on that topic, before I move on, is I understood your answer to say that Premier Williams and Premier Dunderdale encouraged you to take a certain view of costs. If so, what was the view they encouraged you to take of costs?

MR. E. MARTIN: And other premiers, by the way –

MR. BUDDEN: Okay.

MR. E. MARTIN: – on the rate – on the impact on the ratepayer, so that, once again, I see as two different things. With respect to how this project will be viewed, I was – you know, it was – I was convinced it was how – the impact on the ratepayer.

As far as the elements of that cost to the ratepayer, there's several elements in there; one is capital cost. I'm changing topics now, not

linking them back. If you go to capital costs, the drive by any of the premiers and ministers to absolutely minimize cost ensured that we had a 100 per cent focus on cost and schedule. You know, I couldn't express enough on how focused they were on that and how focused they were on ensuring that was critical to minimize that to whatever extent possible.

MR. BUDDEN: Okay. Let's move on.

Madam Clerk, could you please call up P-01677, which is the Grant Thornton phase 2 report, and bring us to page 12 of that report. You would have seen this before but I'm going to take you to –

THE COMMISSIONER: Tab 42.

MR. BUDDEN: Tab 42.

MR. E. MARTIN: Right.

MR. BUDDEN: We're all quite familiar with this. So it's page – through line 19 that I'm interested in.

If you could scroll, Madam Clerk, so I can see 1 through 18 all on the screen at the same time, if that's possible. That's perfect.

MR. E. MARTIN: Which page, please?

MR. BUDDEN: Page 12. And I'm just going to read a bit of this to move on. I won't read it all but I'll read a couple of key sentences.

I think the first of it really gives the taste of it: "As indicated above, prior to financial close" – which, again, was late November 2013 – "bids were received from contractors whom ultimately were hired which collectively, exceeded the DG3 budget by approximately \$600 million, a twenty five percent (25%) overage. The amount of this overage exceeded the DG3 tactical contingency amount (\$368 million) by over \$230 million. Hence, prior to financial close, Nalcor should have been aware that the contingency amount ... in DG3 budget was insufficient."

And then we'll go down a little bit. And, line 16: "Based on our interviews and documents" received "nothing came to our attention to

indicate that Nalcor attempted to recalculate the contingency and/or the entire capital cost estimate between April 2013 and financial close”

So, firstly, those are the facts as Grant Thornton found them and as this Commission has heard other evidence, so I guess my question for you – in your evidence on Wednesday you said something to the effect, I was convinced by my project team, and my own questions and answers, that the base estimate was – and you used a couple of phrases and you settled on solid. The base estimate was solid.

I’d suggest to you that while you may have believed that and may have had reason to believe that as of December – as of sanction, certainly well in advance of financial close, you knew. I mean, it’s evident that the base estimate was not solid. So it brings to mind the quote that one hears, I think John Maynard Keynes said that, when the facts change, I change my opinion. What do you do, Sir?

And I guess I’ll ask you, when the facts changed and you knew that your opinion that the base estimate was solid was incorrect, what did you do?

MR. E. MARTIN: Well, you know, the – that’s – to directly answer your first question, the first part of that is we basically absorbed the information, reviewed it, got a deep understanding of what events were happening, and then we changed the – we changed that number, communicated it, coupled that with, as I mentioned, the other impacts that were occurring on other fronts, such as financing and excess sales. And we tested that against the decision criteria that we initially started with, and came to the conclusion that this was still – taking all those factors into account – the basis for that decision was still sound, and we proceeded. That’s the first point.

The second point with respect to this \$600 million and 25 per cent coverage, I don’t understand that number, and I don’t – I just wanted to make – make that point on the record that, you know, this gets very confusing when stated such as that, because I think what most people are referencing is the \$300 million in addition to the 6.5, which is a 5 per cent. And

that’s where everyone’s frame is, and characterizing this as 25 per cent, it doesn’t make sense to me. I thought, initially, they were trying to take the initial 6.2, take the contingency off to get to around 5.8, and then apply 600, but that doesn’t work either. So I don’t know where that 25 per cent comes from – but I just wanted to note that, and I’ll stop there, just to –

MR. BUDDEN: Okay.

MR. E. MARTIN: – just to, you know, make a note that that’s not a fair characterization of the number, in my estimation, enough said.

MR. BUDDEN: Okay.

Well, I guess I would put it this way: I would suggest to you that the prudent thing to do at this point – by this point, I mean, really anytime from the late spring of 2013 through to financial close – knowing the significance of financial close, the prudent thing would have been to have communicated quite clearly to your shareholder that, look, folks, it looks like our estimates are low, our original numbers aren’t – no longer can – should no longer be considered viable, we should do what is being proposed here – line 16 through 18 – do at least that, recalculate the contingency, entire capital cost estimate and – or even say to them, look, folks, it’s not too late, we should revisit the business case just to make sure, since it looks like what we believed at sanction turned out not to be true. Is that something – obviously not something you did –?

MR. E. MARTIN: It is something we did.

MR. BUDDEN: You really think you communicated it that clearly.

MR. E. MARTIN: Yes.

MR. BUDDEN: Did you recommend a revisiting of the DG3 numbers? Was that ever recommended?

MR. E. MARTIN: I did revisit the DG3 numbers.

MR. BUDDEN: And you – and, well, I mean, was the business case revisited? Did you recommend revisiting the business case?

MR. E. MARTIN: I did revisit the business case.

MR. BUDDEN: Okay. And did you recommend to your shareholder that the shareholder revisit the business case?

MR. E. MARTIN: Well, I told him we revisited the business case and here's the results. And they understood that.

MR. BUDDEN: Okay, they meaning?

MR. E. MARTIN: The government.

MR. BUDDEN: Okay.

Remember, at this time, we have Terry Styles as chair, and we've talked about his qualifications and performance; we have seen him. We have Derrick Dalley arrives as minister, who self-admittedly was on a – I would suggest, a very steep learning curve. I suggest now to you that really puts a very heavy onus on you, as the – as really the – no disrespect, but the adult in the room when it comes to these kind of conversations, to make it crystal clear, guys, our bids are – we got a problem here, our estimates are out of whack, we are proceeding blind based on these estimates. I suggest to you that you had a duty to make that very, very, very clear and that you failed in that duty.

MR. E. MARTIN: I did not fail, and I made it very clear, and I am not agreeing with that. This adult in the room comment, I don't want to be thinking that I am suggesting I am agreeing with that when I am talking about some of the other individuals that I am dealing with.

MR. BUDDEN: Okay.

The – in your interview you – this is a bit of a digression, but it's just something I thought I'd pursue – you advised the Nalcor board at one point that offsets might be found in the Valard contract, in the Pennecon contract, and I think you mentioned a couple of others.

I guess my question to you is a pretty simple one: Were meaningful offsets actually materialized in those other contracts? And, if so, what were they?

MR. E. MARTIN: Could you point me – I can't remember saying that or alluding to that. Could you point me to that document?

MR. BUDDEN: I think it was on page 12 of your interview. But let me park that for now –

MR. E. MARTIN: I –

MR. BUDDEN: – and we'll see how we're doing for time.

MR. E. MARTIN: I appreciate checking that, because I really – I'd really need to be refreshed on that –

MR. BUDDEN: Okay.

MR. E. MARTIN: – because I don't believe I ever said anything like that.

MR. BUDDEN: Yeah, it's a fairly small point, so I may return to it. But for now, at least, let's park that.

MR. E. MARTIN: So just – I know I'm on record as saying I need – you need – I need to get that checked, because I just don't think I said that.

MR. BUDDEN: Okay. Fair enough. We'll either return to it or perhaps some other counsel might if I don't.

You took some heat from Mr. Learmonth with respect to one aspect of the Astaldi contract, and that is the – I'll just summarize this – you'll remember the conversation – but the absence of cement pouring milestones or other limitations on the hourly rate. And you – so you answered that question, but what – I guess I'm asking by – sort of a follow-up question.

I presume that that was obviously a subject negotiation between Nalcor and Astaldi, and if Nalcor had insisted on such milestones being put in place, Astaldi would've expected something else in return for clearly a fairly significant concession on their part. That is basic negotiation, isn't it?

MR. E. MARTIN: I don't agree with your statement.

MR. BUDDEN: Okay.

MR. E. MARTIN: I don't understand it, I guess, maybe is a better word. If –

MR. BUDDEN: Okay. Want me to revisit it?

MR. E. MARTIN: I was going to try to feed it back to you to see if I heard it correctly, but – no, you go ahead.

MR. BUDDEN: Let me read it – with respect to the Astaldi contract, Mr. Learmonth was critical of you because the hourly payment rate to Astaldi wasn't tied to or limited by Astaldi achieving concrete pouring milestones. I think that was what he was focused on.

And my – when I heard that, or I guess when I thought about it, that my assumption was that: Okay, well, that was a negotiation term, like any contract term is. And in return for that, Astaldi obviously, you know, received certain things or gave up certain things, like any contract term. And my point is that I assume that by Astaldi – by Nalcor agreeing to that, they received something in return from Astaldi, like a better contract price or a better hourly rate or something like that. There would've been an exchange of benefits, I would assume.

MR. E. MARTIN: I understand your question now.

MR. BUDDEN: Yeah.

MR. E. MARTIN: I'm just thinking for a second. And, I wasn't that deep in the contract, in negotiations, but maybe I could answer it this way: I believe that the labour – the caps will be tied to the labour was a recognition at the time – don't get me wrong, at the time, that there was – they thought – both groups thought there was potential for productivity savings, actually.

And if my recollection serves me correct, the – it wasn't necessarily a quid pro quo, it wasn't necessarily an exchange as you're talking about, but maybe there was an element to that because I think both parties were going to share in any savings that could result from improved productivity. And the idea was – you know, it's hindsight now, but the idea was if you – if that's going to happen and you pay them on a labour

rate, then that could improve the productivity, could spur improved productivity, that could generate some savings, and they would share that.

And I also recollect that it was a cash flow methodology, but the contract was still capped.

MR. BUDDEN: Mmm.

MR. E. MARTIN: So it wasn't like, you know, it was going to cause an increase. But I'll stop there, I don't know if I answered your question or not. I'm not sure if it's a quid pro quo – they gave something, we gave something – it was more my understanding of that development.

MR. BUDDEN: Okay.

And I would assume as well, really, that it's another way of characterizing this, is that this was somewhat of Astaldi resisting a transfer of risk from Nalcor. In the sense that if Nalcor, say, had said, okay, your concrete pour rate will act as a cap, so if you're not achieving these milestones, well, that limits the contract value, that would be a transfer of risk to Astaldi 'cause their contract value is limited by their pour rates.

So by not doing it, that essentially it's a non-transfer risk to the contractor and a retention of risk by Nalcor. You would agree with me there.

MR. E. MARTIN: I disagree with you there.

MR. BUDDEN: Okay, explain.

MR. E. MARTIN: The reason I do, and – is that the contract was capped and the contractor was, you know, responsible for all of it, you know, building, responsible for the labour and those types of things. So I – in your explanation there, you suggested there was a transfer of risk associated with this. I – there wasn't.

MR. BUDDEN: Okay, so it's a risk-neutral term.

MR. E. MARTIN: I think you could characterize it like that. I'm not sure that's the right terminology. I'd probably just leave it where I explained it, I think, might be better because once you get into cost neutral, it –

MR. BUDDEN: Risk neutral.

MR. E. MARTIN: – yeah, no, I could agree with – on that – are you talking about whether you pay on labour rates versus concrete pour?

MR. BUDDEN: No, I'm talking more about the –

MR. E. MARTIN: And are you suggesting that between those two, what happened was risk neutral to Astaldi from an overall – I would agree with that if that's what you're saying.

MR. BUDDEN: Okay. Well, I was asking, too, a more specific question, but that's – that probably answers it, so we're fine.

You sent an email – I don't know the exhibit number but I remember it quite clearly and I expect you will too. You sent an email to Paul Harrington in the fall of 2013, and it was quite simply: Is this still the right contractor? And you're referring, obviously, to Astaldi. And Mr. Harrington has given evidence on that.

I guess my question is: What prompted – do you remember sending that email to Mr. Harrington?

MR. E. MARTIN: I've seen the email and –

MR. BUDDEN: Yeah.

MR. E. MARTIN: Yeah.

MR. BUDDEN: So I've characterized it correctly?

MR. E. MARTIN: Yes, you did.

MR. BUDDEN: Okay. What was your thinking behind sending that email at that time?

MR. E. MARTIN: Just, you know, an example of the type of questions, you know, stressing, push-back that I would offer to the team.

MR. BUDDEN: Okay.

MR. E. MARTIN: You know, it was based on my experience and others' as well, and this is an obvious – this is a truism, so I'm not gonna say it's something I came up with. I mean, you know, for a contractor to start aggressively and

get off the ground fast, I mean, that's critical. That's a truism. I mean, I don't have to say that's a revelation. But we did focus a tremendous amount on it because I've seen both things in the past. And obviously, the slower start is – you know, it's – it can be recovered, it occurs. But, you know, you are improving your probability of success with a faster ramp-up, obviously.

MR. BUDDEN: Okay.

MR. E. MARTIN: So, when that was happening and –

MR. BUDDEN: Focus in the moment, if you would, on the –

MR. E. MARTIN: Pardon me?

MR. BUDDEN: – focus in the moment, not a general –

MR. E. MARTIN: Right.

MR. BUDDEN: – comment on Astaldi, but focus in the moment, the thinking behind sending that text –

MR. E. MARTIN: Right in the moment.

MR. BUDDEN: – or email that day. Yeah. Well, like what led you to send (inaudible)?

MR. E. MARTIN: I can't remember exactly, but I guess I was – I had, you know, seen – heard some things about, you know, things were not ramping up in some areas as quickly as they thought. So, you know, I was obviously very busy, like everyone else, but I would've known at that – and so I said, you know, basically, ding, you know, we get the right guys? You know, check it out, let me know. It was sort of a very tough question, over-encompassing question that I knew would get into the project team and cause them to really make an answer rather than me saying what's happening on the – you know, that portion of site excavation over in that corner. And, yeah, this was happening.

MR. BUDDEN: Okay.

MR. E. MARTIN: You know, to me, it was more of a way, at my level, to give quite a question, to say: Take a look at that.

MR. BUDDEN: 'Cause you were concerned.

MR. E. MARTIN: Well, yeah, I mean, concerned, yes. I saw some things and I wanted them to check it out. And it was a strong, broad question that caused them to – I knew what would happen. It would cause them to really get down to business and –

MR. BUDDEN: Okay.

MR. E. MARTIN: – check things out and give me an answer, which they did.

MR. BUDDEN: You've made some fairly sweeping statements about, you know, you still believe in the project, that you do – many of the things you do again. But let's focus on this: Do you believe that, in retrospect, knowing what we know now, was hiring Astaldi a mistake?

MR. E. MARTIN: No.

MR. BUDDEN: No. So you would do that again, even knowing what came after that?

MR. E. MARTIN: Knowing the processes that were followed and what happened and the analysis, I think the analysis was sound and, you know, we did the right thing at the time.

MR. BUDDEN: Okay. And, do you believe that Astaldi was the right contract, in the sense that Astaldi has delivered on that contract as well or better than the other contenders did?

MR. E. MARTIN: No, I do not believe that.

MR. BUDDEN: Okay.

How was that missed? Or could it have been picked up? Like, obviously, there is a selection process, so if you now believe that they were not the right choice, why do you believe that and what could have been done to head off this wrong choice?

MR. E. MARTIN: I think all of the elements, you know, that should've been reviewed were reviewed. I mean, you know, obviously the cost,

the experience of Astaldi – I remember being informed that we had our own people on site – at some of their sites, they had – I was informed they had northern experience, they were well-known internationally, they had been on some jobs that were looked at that actually had started slow but they recovered, their financial wherewithal was in line with other contractors, their bid – and they had good processes and procedures, you know, we had tested that at other sites, you know, that the project team informed me. We went through all of this.

And their bid was, you know, was better. And I – you know, look – you know, at the time, it would be – all the testing that was done and all the work that was done, I think it would be much more difficult, at the time, to explain why we took a bid that was hundreds of millions of dollars more than that, you know, because the depth of analysis at the time – it was what it was.

They didn't, you know, it didn't – they didn't perform in many areas. And they had their financial situation issues which we had checked, it was fine. We couldn't anticipate that because we'd done the right processes and procedures. It was that kind of thinking that, you know, I go back and think of the processes that were followed, I'm comfortable with that but, you know, obviously, they didn't perform and, you know, it costs us a very extreme, substantial amount of money so, you know.

MR. BUDDEN: And even with the benefit of hindsight, there's nothing that either SNC, your partner in this endeavour, nor Nalcor itself, the project management team, however one wants to constitute Nalcor, could have done to anticipate what a disaster Astaldi has been?

MR. E. MARTIN: You know, I think everyone has to share in the event. I can't think of any specific – to your question, I do believe the processes were followed. Do I think that Nalcor – we could have performed and done something else? Do I think that SNC could've done something else? I mean, I think that there always has to be something, Mr. Commissioner. I mean, you know, that's the way things are.

I can't think of anything specifically, but I don't want to just make a blanket statement that look,

like, we're gold, you know? And I probably shouldn't be saying that from a commercial sensitivity perspective. But on balance, I believe that we, you know, did – and would stand up, at the time, under scrutiny – we did as well and best as we could knowing what we knew. And I do believe that Astaldi, you know, didn't perform. They (inaudible) financial issues, but I – you know, you can't point your finger totally at one thing. I think there's obvious – not obvious things, but I have to believe you can always improve.

MR. BUDDEN: Okay.

Madam Clerk, Exhibit 00004 please, and it's page 25 I'm interested in. I don't believe you have this tab, partially due it's Dr. Flyvbjerg's report and there's one aspect of that you discussed with Mr. Learmonth that I'm sort of intrigued by that I want to return to.

MR. E. MARTIN: Is that one of the references here, Mr. –?

MR. BUDDEN: I don't know if you have it but you'll – it's the red-meat discussion –

THE COMMISSIONER: I don't think you have it.

MR. BUDDEN: – you had with Mr. Learmonth.

It's page 25, Madam Clerk.

MR. E. MARTIN: And I don't mean to be problematic asking for the references. I don't think it's an issue but –

MR. BUDDEN: Yeah.

MR. E. MARTIN: – sometimes when I scan things and I – rather than ask for it, I can see paragraphs and stuff before and after. Some of it, you know, gives me context and triggers things. That's why I'm –

MR. BUDDEN: Sure.

MR. E. MARTIN: – always interested in looking at the document.

MR. BUDDEN: No, no problem.

That's fair enough, but this one, I think, is pretty stand-alone. If we scroll down just a little more, Madam Clerk. It's a discussion there of the red meat – okay. Perhaps we can scroll back, it might be the previous paragraph or – no, no, I think it's that one.

It reads as follows that: "In practice" – and I'll just read it to you. "In practice, some decision makers are concerned about large contingencies. They fear what has been called the 'red-meat syndrome', i.e. that the mere fact that contingencies are available will incentivize behavior with contractors and others that means the contingencies will be spent."

And then it goes ahead and comments on this and – but this was put to you, and you had a, what I found, a very interesting answer. And if I – this is what I took to be your answer: you – as I understood, you said as a general rule, you accept this. However, for public projects, for projects done by public corporations such as Nalcor, in the restricted local market, such as Newfoundland, where everybody tends to know everybody, this simply isn't the case, that the red-meat syndrome is real. Is that a fair characterization of what you said?

MR. E. MARTIN: I think the second part of it was more real. I think you had said my general feeling it was – I generally thought this was the correct – I didn't say that.

MR. BUDDEN: I thought you did but, okay, fair enough. Yeah.

MR. E. MARTIN: If I did, you know, I wouldn't say that I – once again, we probably have to check the wording, but when it jumped out at me, I didn't just accept it. But put that aside, you know, the second – I do believe that – I think some – if I remember correctly – I won't go on too long, but I think I talked about a spectrum and I didn't think I was absolute as that so I didn't totally agree with it. I think I made it more situational.

I could see some of the points he's saying. I didn't agree with it in many cases, for obvious reasons, with my experience. And then I talked about various areas I had worked in and said it's, you know, situational.

MR. BUDDEN: Yeah.

MR. E. MARTIN: So I wouldn't call that a generally accepted, okay?

MR. BUDDEN: Okay.

Now, I thought you said he was right in some ways but, anyway but –

MR. E. MARTIN: Maybe that's a better characterization though.

MR. BUDDEN: Yeah.

My main point here is that I think your argument was – I'll put it this way – that contingencies should be – that the contractor should not know that contingencies are available because, if so, it would incentivize behaviour and that the – inevitably, the contingency would be used up. That's what the red-meat syndrome is.

And what – I take it from you, that was essentially the philosophy at Nalcor that it was best not to communicate contingencies to the public because, obviously, the contracts are part of the public and, therefore, contingencies must be kept close to the chest, they should not be publicly revealed. The monies available for the project, in other words, should not be out there to the public so that contractors also will find out. That's what you believe, isn't it? That was Nalcor's philosophy.

MR. E. MARTIN: That's part of what I believe with two additional pieces of data. I think the project team – I don't believe in giving the project team, you know, substantial additional contingency over whatever we offer on the P-factor we select. I think that's incorrect, (inaudible) public.

A little clarification, though. I think everyone understands there's contingencies. You know, I mean contractors are not – I mean, that's – you know, once again, that's close to a truism. So I wouldn't say, you know, if by virtue, you put in a number and saying there's no contingency, no one is going to believe that.

MR. BUDDEN: Mmm.

MR. E. MARTIN: But I think more so that the – you know, the larger, you know, contingency – putting in the large contingencies, creating an atmosphere and an understanding or any knowledge that there's very significant contingencies and there's room to – there because, you know, you expect that you're going to spend whatever you have to spend, I don't believe in that. But I wouldn't be sensible to say everyone didn't understand there's some level of contingencies available.

MR. BUDDEN: Okay.

Because the – but it is, I suggest, a very important point for this Commission because, you know, part of why we're here is this lack of transparency around contingencies and cost. And, really, I would suggest your evidence on this point is almost alone. It's not what Derek Owen said. It's not what Dr. Flyvbjerg said. It's not what other witnesses have said. Your own lawyer didn't cross-examine Dr. Flyvbjerg on this point, or Mr. Owen, I don't believe.

So, I guess what I'm saying is: Where – on what is your philosophy grounded? Is there some literature you can point to? Some philosophy of government? Something you've learned? Some – like, the other literature we've had here? Is it that your learned experience within certain projects? What, other than your own intuitive sense of things, can you point to for validation of your view?

MR. E. MARTIN: I think, just thinking aloud, that – I haven't given that thought, so I'm just searching my memory banks here quickly. But I think that in – if I remember correctly – you know, I think Professor Flyvbjerg's document – I believe he did offer some, you know, helpful points there. He referenced public projects, somewhat different – he talked about not giving the project team a P50, and I'm trying – going from memory here, Commissioner, when I refer to – 'cause I think he said P30 to the contractors, or something like that. P50 to the project team, and he had other – I think he was higher than P75. I'm not exactly sure with respect to management reserve and those types of things.

So, I point to that because I thought he balanced it, and I think when we was asked in his testimony – I don't remember the exact words,

but I remember thinking to myself, yeah, he's – you know, he has a perspective on that, you know, and he caveated it. So, I would point to that. And I believe someone else did, and – but I can't remember it. I'll have to research it in this testimony.

But I'd build off of that to say, you know, once again, I think there's – it is – the door is open. It's situational. That's what I was trying to describe. So, other than that, it's been my experience over time, and one of the key experiences that I've experienced is – I've mentioned here is that – is the community with respect to the openness. I don't know if Professor Flyvbjerg or others would've researched that. I don't – I guess I know they didn't.

So, I would just add that in to say, you know, that's the literature I can think of. I think it does bridge over that – it is situational. There's an element of situationality there. And then I would've used my experience that others may not have had, particularly in this province.

MR. BUDDEN: Sure.

MR. E. MARTIN: With respect to megaprojects in this province. And –

MR. BUDDEN: Now, this was your first –

MR. E. MARTIN: – I am one of the few –

MR. BUDDEN: Sorry.

MR. E. MARTIN: There are many people who have done it, but at my level, I don't know if there's – there's very few people who have dealt with megaprojects in this province as much as I have. Probably some have, but I am one of a smaller group, we'll say.

MR. BUDDEN: But this was your first public sector megaproject.

MR. E. MARTIN: That's correct.

MR. BUDDEN: Okay.

Vic Young – I mean, it's at P-03549 – and he's talking about something slightly different, but he doesn't seem to be buying this red-meat

syndrome, I would suggest. Like, this need to keep numbers close to the chest, he doesn't seem to be buying that at all, does he, in that email we saw yesterday?

MR. E. MARTIN: You'd have to ask him.

MR. BUDDEN: Okay. But from his email, which is the evidence we do have, he seems critical of that idea, I would suggest.

MR. E. MARTIN: He was asking questions. It sounded that way. But I can't speak for Mr. Young.

MR. BUDDEN: Okay.

Well, we do have his evidence. We're going to hear from Stan Marshall, Brendan Paddick; they're obviously experienced business people. They've worked in the private sector and the public sector in Newfoundland, I believe. So I plan to ask them the same question.

But, for now at least, to repeat my question: Can you point to anything – in terms of literature, in terms of any place you were told this as a way of proceeding, anything other than your own learned experience – to support your particular take on contingencies and the local environment?

MR. E. MARTIN: Same answer.

MR. BUDDEN: Okay.

MR. E. MARTIN: I gave a reference to Professor Flyvbjerg. I may come back to it. I just can't recall. Something in my mind, Commissioner, says that there is additional documentation here on that from somebody. I just can't remember.

MR. BUDDEN: Okay.

We know, of course, that the financing for the Labrador-Island Link, the LIL, was a cost-of-service financing, but the financing for the generation component and the Churchill Falls, Muskrat Link was a different model. We've heard evidence that the – from Julia Mullaley and Craig Martin and others have said that the non-LIL financing – we'll call it – the non-cost-of-service financing followed a non-traditional

model. A model that perhaps financiers, private sector financiers might've been troubled by; that regulators might've been troubled by.

Why was it, again, that the project adopted this particular mode of financing for the non-LIL elements of the project?

MR. E. MARTIN: Two points there.

The Labrador-Island Link was a much – it was a much more of a regulated asset, you know, basically totally committed to the ratepayer, Mr. Commissioner, so that was seen to be a rationale to use the more traditional cost of service. On the Muskrat Falls generating plant, that was a mix of export sales, a mix of, you know, power being used to the – for the ratepayer, and it got us linkages into markets and those types of things. So it was a total utility type of thing. That was part of the rationale.

And I think the other part of the rationale – I mean, and I thought it was a brilliant strategy. I think the other part of the rationale was there was a logic for that. Oh, before I say that, though, I think you made a point about the – the financiers, you know, they – as you can see, they really saw this financing on both cases as highly favourable. It was a Triple A guarantee by the federal government. It was backed by, you know, the ability to pay in Newfoundland. It was a great, you know – so, as far as the financiers go, I mean, they gave this, you know, a total thumbs-up, obviously, because the debt was gone within, I don't know, minutes or hours. It was very high. So they didn't have a problem with it, obviously. Why would they?

So putting that aside, then, I thought it was brilliant. This was a way of – with some rationale, though, of putting the rates on more of a consistent, reliable, understandable framework over a long period of time. So instead of having, you know, a really high peak and coming down like this or the other way around (inaudible) a really low first and really driving the – you know, the long-term rates high, the combination of those two financings averaged that out.

And it produced a curve, Commissioner, that was smoother, it looked good, it – and we thought – and it looked like – you can see what, visually – it balanced the – you know, the

current ratepayers and the future ratepayers in a much more professional and stable fashion than doing it either way. If we had done it all one way, it would've really been problematic for some ratepayers and the other way it would've been problematic for the later ratepayers. We just thought, with all that, it was brilliant the way it leveled out. There was rationale for it, and the financiers thought it was great.

MR. BUDDEN: Okay.

The power being generated – you made a distinction between the LIL and the – which you – I think the term you used was totally committed to the ratepayer and – or I may have got it backwards – and the generating component. Well, anyway, you characterized them in different terms. But doesn't all the power from the generating component have to flow down through the LIL?

MR. E. MARTIN: Yes, it does.

MR. BUDDEN: So –

MR. E. MARTIN: Actually, no, it does not. That's a very good point. Because we have the linkage from Muskrat Falls to Churchill Falls and Churchill Falls into Quebec and New York –

MR. BUDDEN: Oh, sure, yeah. (Inaudible) – yes.

MR. E. MARTIN: – we have two routes for the power. So, no, it doesn't all have to flow through the – down through the LIL, and it's a very good point that – you know, basically, I should've mentioned that, Commissioner. Once again, it's – you know, it's not the overriding rationale, but it gives a good rationale at the utility level to say why that Muskrat Falls – it wasn't all committed to the ratepayer, to the LIL. There was a difference.

But, Mr. Commissioner, I'm not saying that's the main point. I'm saying that's a supporting point. I think the overall – with those reasons, with the attractiveness of the debt and the combination of being able to smooth the rates out for the long range of different, you know, short- and long-term ratepayers, I think the combination of that – it looked really good to us.

MR. BUDDEN: Okay.

The LIL, of course, had to be approved by the UARB, didn't it? Obviously.

MR. E. MARTIN: I don't think it's the LIL, is it?

MR. BUDDEN: The Labrador-Island Link.

MR. E. MARTIN: Isn't it the Maritime Link?

MR. BUDDEN: No, I believe the whole LIL had to be approved down to Soldiers Pond.

MR. E. MARTIN: No, that's – well that –

MR. BUDDEN: Your evidence is to the contrary?

MR. E. MARTIN: – if that's what you're suggesting, that's totally incorrect.

MR. BUDDEN: Okay, but the Maritime Link did, clearly.

MR. E. MARTIN: Yes, it did.

MR. BUDDEN: Okay.

And our understanding is that the cost-of-service model, which was subject to regulation, provides a certainty of payback within a certain time frame. While the financing for the generating and Labrador – Churchill Falls to Muskrat Falls link, obviously, the financing there is, I would suggest, more speculative. It's deferred for decades down the road.

That clearly is true, as well, isn't it?

MR. E. MARTIN: No.

MR. BUDDEN: No?

MR. E. MARTIN: You used the term – I think you insinuated that one debt level – one debt structure is more certain than the other? Absolutely – (inaudible) we had Triple A Canada debt here. We had, you know – I guess a quick analogy, for what it's worth, if you look at, you know, your mortgage. Is there going to be less – is there a less chance you're going to pay your mortgage in 15 years when you're

more qualified and you've increased your income than it is now? I don't think that's correct at all.

MR. BUDDEN: Assuming you've increased your income.

MR. E. MARTIN: The other point – no, I'll stop there. Go ahead.

MR. BUDDEN: Okay.

Perhaps Exhibit 00341, Madam Clerk.

MR. E. MARTIN: (Inaudible.)

THE COMMISSIONER: That's going to be on the screen.

MR. BUDDEN: Yeah.

MR. E. MARTIN: Is there any scheduled break, Mr. Commissioner?

THE COMMISSIONER: Oh, yes.

We – yeah, is this a good spot, Mr. Budden, to break?

MR. BUDDEN: Sure.

THE COMMISSIONER: Okay.

So we'll take our –

MR. BUDDEN: Yeah, I don't have a whole lot more, but yeah, this is a good spot.

THE COMMISSIONER: Okay.

Let's take 10 minutes here now then.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right, Mr. Budden.

P-00341.

MR. BUDDEN: I'm going to move on from that exhibit actually, so we won't bother with that.

We've heard from various people, and throughout the course of the Inquiry evidence is entered that other people still had been critical of this project from, I guess, the beginning or even before the beginning. And there's a long list of names: Vic Young we've heard, David Vardy, Ed Hearn, Cabot Martin, Dennis Browne, Bern Coffey and many others.

So you were – and some of the concerns that we are dealing with this Inquiry were raised along the way. If we go to Exhibit 00334, for instance – and this is a – this is correspondence that –

MR. E. MARTIN: On the screen, I take it, is it?

THE COMMISSIONER: All right, just –

MR. E. MARTIN: Oh, sorry.

THE COMMISSIONER: – yeah, 00334. It's coming up on the screen, yeah.

MR. BUDDEN: Okay.

If we scroll down, what this is, is a document that's a letter to *The Telegram* from January 2012 from two of my clients. And if we scroll down a tiny bit further to – there's a comment there about the –

MR. E. MARTIN: Could – it's going a bit fast. I can't read it.

MR. BUDDEN: Sure.

MR. E. MARTIN: Can we go back, please?

MR. BUDDEN: Okay, well, take your time, just read it. It's a particular point that I'm focused on here. I believe it might be on the following page, but take a moment.

MR. E. MARTIN: Please scroll ahead. I'm good.

MR. BUDDEN: So, we look here there's a –

MR. E. MARTIN: I'm sorry, I – I'm sorry; I was talking to the scroller.

MR. BUDDEN: Okay, sure.

MR. E. MARTIN: Not you. Sorry, about that.

MR. BUDDEN: Okay, well, this is as far as we need to go – but this is a good place, actually. And I quote here – this is January 2012, Sir.

MR. E. MARTIN: Yeah, I understand.

MR. BUDDEN: “This project exposes us to significant risk.

“Major infrastructure projects like this inevitably cost considerably more than originally estimated so we might well double the debt of the province at a time when it is likely that offshore revenues are in decline and our expenditures are increasing to meet the challenges posed by our changing demographics.”

So my clients were writing this back almost a year before sanction, and other people were writing similar things. So, virtually – I would suggest virtually every concern that has arisen, within the terms of this Inquiry, were anticipated by some of the people I've mentioned and some others; questions were asked in the House.

So it's not as if these were, to use Mr. Harrington's terms, in the aggregate, that we are dealing with unanticipated events or things that could not reasonably have been foreseen and they were foreseen. So I guess my question to you is: What regard did you, as the CEO of Nalcor, give to these voices of caution, these voices of, look, this thing, like megaprojects generally, could easily get out of hand; the cost could just go through the roof. Those voices were there. Did you listen to them and/or – and, if so, what consideration did you give to them?

MR. E. MARTIN: Well, I did listen to them and the consideration that I gave – and I'll walk through these three points to explain that. The first point is: Major infrastructure projects like this inevitably cost considerably more than originally estimated. So on that point there, we come back to –

MR. BUDDEN: It's true, isn't it?

MR. E. MARTIN: Yeah, but I just want to say, though, we come – you were asking me how we – how I dealt with it?

MR. BUDDEN: Mm-hmm.

MR. E. MARTIN: You know, so a good way that that was dealt with was in the context of cost to the ratepayer, which is what – the basis I was on. It would be considered, once again, all the benefits of the project in addition to the capital, which, you know, obviously, was a concern where it would go, but when you consider all of it, the resources were there, you know, to account for that – that's point A.

Point B: When you say might as well double the debt of the province at a time when it is likely, so doubling the debt of the province. I think it's important. And I what I looked at, at the time was, you know, there's two types of debt. I mean, you have your debt and your net debt at the government level and I think it's the net debt that is – I don't think – it's the net debt here that is essential to look at, Mr. Commissioner, from my perspective. Because net debt not only accounts for the debt that's incurred but it also puts as asset against that.

So the net debt of the province in doubling – you know, I can't go there on that perspective. And it's – you know, the example there is, for instance, you know, if you have, I guess, credit card debt in your own personal home, and that's based upon eating out a lot or other things, that you're not getting anything back but an instant gratification. That's one type of debt.

But if you look at a mortgage of maybe \$200,000 on a \$300,000 house, then you can't count just the pure mortgage as debt. You have to look at the net debt, you know. There's an asset against it and you have value. So that was another way I considered that one. I understood the net debt concept. I understood that we were, you know, in solid shape there.

And on top of that, we also have a Triple-A federal government guarantee which, as far as impacting the debt rating of the province, not only the rating agencies were indicating that – the way it was structured that it was a ratepayer, you know, backed event, that was very helpful from a rating perspective. But the Triple-A

Canada guarantee was obviously essential to really relieve the impact of the debt situation on the province's debt findings.

And the third one, about offshore revenues are declining and our expectations are increasing to meet the challenges, well, I just think that's fundamentally incorrect because – well, I take that back. How we considered it was your question. And how we considered that was the fact that in – within Nalcor, in the oil and gas side of things, we had just spent a huge amount of effort revamping the exploration – foundational system for exploration in the province and we had been receiving international recognition of that, of how powerful that was. It yielded, very rapidly, I think it was two record land sales, all time in the province, for the offshore future exploration, which yields and leads to future developments.

And our projections, you know, which were reasonable, were projecting that over time – particularly in the life of this project – the oil revenues will exceed, you know, a great deal, the electricity revenues and that was available for the province to back this up as well.

So this – when we looked at that, this statement was accounted for, that revenues were actually, you know, on the longer – medium and longer term, ramping up significantly, which would give, you know, a really good pool of cash, again, to the government, if they so choose to invest a portion of their non-renewable into renewable assets.

MR. BUDDEN: Okay.

Well, let's – let me focus my question, perhaps, before I move on, but you would agree that it is a fair metric – it's fair to judge this project by the degree to which it was or was not delivered on time and on budget. And on time meaning with a – the date, the time at sanction, the power date in 2017, and the budget publicly revealed at sanction at \$6.2 billion. You would agree it's fair to judge the project – not in totality – but that is a legitimate metric on which to judge the project.

MR. E. MARTIN: Yeah, I think – I agree. I think there's about eight elements to count or judge success of this project –

MR. BUDDEN: Okay, but that –

MR. E. MARTIN: – or any project.

MR. BUDDEN: – (inaudible) –

MR. E. MARTIN: And I think two – I think those two are, I guess, two good elements, but I believe they're two of eight.

MR. BUDDEN: Okay, well, fair enough, but at project sanction, those were the two elements that were advanced. There are others about the other benefits, like the benefit to the environment, that's a metric and so forth; but these particular ones were the, I would suggest, the metrics, the explicit cost metrics on which the – and timeline metrics on which the project was sanctioned.

And I would suggest that many people at the time – and I'll just haul up an example – we could go on for ages – people are saying, look, this – these budget projections are not realistic, megaprojects always run over, and so forth. So in that respect, at least, the critics were right and you and Nalcor were wrong.

MR. E. MARTIN: So I disagree. Are you asking do I agree with that?

MR. BUDDEN: Do you agree that in this case that the major infrastructure projects like this inevitably cost considerably more than originally estimated? That's correct, isn't it? This one did.

MR. E. MARTIN: So, two questions.

MR. BUDDEN: Well, that's – it's not a question; that's a simple –

MR. E. MARTIN: Are you asking –?

MR. BUDDEN: – would you agree that that is an accurate description of what in fact happened to the budget figure at sanction? It was – did cost considerably more than the original sanction estimate. You would agree with me, surely?

MR. E. MARTIN: I agree that – absolutely I agree with that.

MR. BUDDEN: Okay.

MR. E. MARTIN: I mean, once again, it's a truism.

MR. BUDDEN: And would you agree that's a fair –

MR. E. MARTIN: So I have to agree with that. So –

MR. BUDDEN: – that is a fair metric on which to judge the success of the project?

MR. E. MARTIN: It's one of eight –

MR. SMITH: Mr. Commissioner?

MR. BUDDEN: Okay.

MR. E. MARTIN: – fair metrics and, you know – and then you went on – also I was trying to – I was making my list of what you were asking me. And one of the other things that you were asking, you know, you mentioned different metrics and you said it's – you know, it's cost and schedule. And I'm agreeing with that, that they are metrics, absolutely.

MR. BUDDEN: Yeah.

MR. E. MARTIN: And you went on you say that was what the public and everyone was focused on – now, that's not my information. My information is that – and I'm not saying it's correct, but it was pounded into me constantly. My information was that it was being judged on the cost to the ratepayer – what the ratepayer would pay, what a person would pay for their monthly electricity bill at the end of the day. And to me that was the key element but, you know, I don't have a – you know, a research firm to say that, but that was pounded into me.

And if you talk about the metrics, saying what is the cost to the ratepayer at the end of the day, and that's where I believe that one of the metrics – that one of the key metrics is: What is going to be that cost at the end of the day –

MR. BUDDEN: (Inaudible) –

MR. E. MARTIN: – but that's what should also be in – discussed here – that means mitigated cost because if all this cash is available to mitigate, at the end of the day – I think my

understanding, and what was pounded into me, that when we have a particular rate, it's mitigated. It may not be, but whatever the government decides with respect to using all of the available cash that's in reserve to mitigate that rate, whatever that rate is, and whenever someone writes a cheque for their monthly bill, it was my understanding – driven into me – that's what they're going to judge the project on, is their monthly bill, including whatever mitigation we put in there.

MR. BUDDEN: Okay, I'm going to stop you there.

Pounded into me, constantly – you used pound in me a couple of times.

MR. E. MARTIN: How to – pardon me – how to what?

MR. BUDDEN: Pounded into me constantly –

MR. E. MARTIN: Pounded into me, okay.

MR. BUDDEN: – your phrase. And you repeated pounded into me.

I'm going to ask a simple question: Who pounded it into you?

MR. E. MARTIN: The senior politicians of the day when we were sanctioning and moving through: premiers and ministers. They just – I think they – that's their view and they just wanted to ensure that – and we were – now, in the meantime don't get me wrong, not that we weren't from a Nalcor perspective at all, but I just knew it was –

MR. BUDDEN: So –

MR. E. MARTIN: – clearly on their focus. They I think felt and probably rightly so, that they were – had a good, really good understanding of what drove, you know, peoples' –

MR. BUDDEN: Okay. So you're –

MR. E. MARTIN: – mindsets and that – they made sure we knew it.

MR. BUDDEN: I want to get this point because I regard it as an extremely important one.

So you said the premiers and ministers of the day pounded into you. Now, they are your employers, really. I mean, I know there's the board and all that. But ultimately the politicians, those who govern our province, governed you.

MR. E. MARTIN: That's right.

MR. BUDDEN: We all acknowledge that. We all agree to that.

MR. E. MARTIN: I agree.

MR. BUDDEN: And you're saying they pounded into you that the cost and schedule were just two of – two metrics, and there was a more important metric still, which was how this, ultimately, affected ratepayers.

Did I – have I mischaracterized you?

MR. E. MARTIN: Yes, you have mischaracterized me.

MR. BUDDEN: Okay, correct me.

MR. E. MARTIN: I'm saying is that: I said there was a – from my perspective, there's a multitude of success measures, but from the – if you're going back to the senior elected officials, they weren't driving one over the other or at the expense of the other; absolutely not.

It was – when it started, you just mentioned it was cost – capital cost and schedule only, and that was paramount. But I'm saying an additional one that was paramount is at the end of the day, you know, it's – the ratepayer will pay this. Never lose sight of the fact that it's the monthly bill that our people are going to get, is going to be an extremely important metric, as well as the cost and schedule. And it was understood by the people at the time the cost, and by default schedule, would be a key input into that as well. So, I think –

MR. BUDDEN: So, isn't –?

MR. E. MARTIN: – I think it was extra emphasize on cost and schedule because of that.

MR. BUDDEN: But how is monthly bill separated from cost of schedule in a user-pay model such as we have here? I mean, how can we separate the cost to the ratepayer from the cost of the project and the schedule of the project? I mean, aren't they – aren't they absolutely intertwined with each other?

MR. E. MARTIN: 100 per cent.

MR. BUDDEN: Yeah.

MR. E. MARTIN: Yeah, but –

MR. BUDDEN: So, how does that (inaudible)?

MR. E. MARTIN: – there's also additional things that are included as well, that have to be considered just as much because they have just as much of an impact on the rates that people are paying. So, cost – increased cost increases rates. Increased capital costs increases –

MR. BUDDEN: Obviously.

MR. E. MARTIN: – rates to the people.

MR. BUDDEN: Yeah.

MR. E. MARTIN: Schedule extension adds cost.

MR. BUDDEN: Yeah, which –

MR. E. MARTIN: So, that goes –

MR. BUDDEN: – in turn, increases rates.

MR. E. MARTIN: Which, in turn, increases a person's monthly bill at the end of the day.

MR. BUDDEN: Yeah.

MR. E. MARTIN: Financing costs – if – I'll use an – if they go down, that goes – that brings the person's monthly bill down as well, so it decreases it. If you put excess sales or take a big portion of return on equity that is – has been paid to themselves, and you put that into the rates, it will reduce the rates significantly.

So, all this – the combination of what happens at the end of the day – capital, schedule, financing, operating costs and any type of excess sales that

someone may put into that or return on equity or water (inaudible) that they take out that is new money, and you put in to reduce those rates. That's what's going to yield the rate at the end of the day that people will end up looking at the bill and say, all in, through all those things, what's my bill?

MR. BUDDEN: So –

MR. E. MARTIN: Each one of those impacted it.

MR. BUDDEN: So, that is why you and Mr. Williams were in – testified back in October and a few other people continued to believe that the project is still a good project because you still believe that the benefits that will flow over the many decades – from excess power sales, from other forms of mitigation – ultimately will flow back to the ratepayers and make this still the best choice for Newfoundland. Is that fair?

MR. E. MARTIN: That's a part of it. It's not in the long term; it's now.

MR. BUDDEN: Okay.

MR. E. MARTIN: So, what you just said is that, I mean – I think it's the right, you know, project. Again, you mentioned one element, and you were right. That is because, you know, it's – at the end of the day, what's good for the ratepayer on a bottom line is gonna be good. The only thing is you mentioned long term. It's also gonna be acceptable in the short term provided the government decides to subsidise the rate for a period of time with all of the cash that's available for them to do it, that's new cash.

So, I believe that if that's done, then you're going to have rates that are going to be very manageable now. They're going to be manageable in the middle term and they're going to be manageable in the future. So from that perspective, on the mitigated perspective using the cash that's available, it's very good.

MR. BUDDEN: Okay.

MR. E. MARTIN: We need the power, replace Holyrood. I'm not gonna go there Commissioner, but there's a whole other myriad

of benefits in addition to that which I won't get into –

MR. BUDDEN: Sure.

MR. E. MARTIN: – at this point.

MR. BUDDEN: And that is –

MR. E. MARTIN: And –

MR. BUDDEN: – what the –

MR. E. MARTIN: – but another key point is that because you can have those rates that people can absorb because you have the ability to mitigate because we're paying ourselves, then you're in a situation where not only that, you are actually paying off that asset and, within a reasonable period of time, you're going to own that asset outright. And you're gonna have – if you choose, then, extremely low rates – if you choose to do so – then 'cause you own that asset and it's a hundred-year asset as opposed to putting your cash out over time – the majority of it, 60 plus per cent – to oil, which is what you'll never get back.

MR. BUDDEN: Sure. That's a point of view. It's one that my client rejects, and there is evidence here, so the Commission ultimately will deal with it.

But, again, just to return that was pounded into you constantly, 'cause that – I mean, we know what your explicit mandate was to cost and come up with a budget and, once it was sanctioned, build a dam. You know, that's what, you know, what the public understood.

MR. E. MARTIN: Right.

MR. BUDDEN: But what you seem to be suggesting is that there's more a formal mandate that was – well, not a formal – I guess it was pounded into you. But pounded into you was this sense that, look, this project, whatever its initial costs, has benefits here that are almost incalculable and that more than offset cost overruns that might occur.

MR. E. MARTIN: Only in – no, I have to say that that's not the message – can I come at it just quickly another way possibly that might help?

MR. BUDDEN: Okay.

MR. E. MARTIN: If – you know, once again, it's cost to the ratepayer. It would basically – understand the elements – they would say, Mr. Martin, understand the elements that are going to impact the ratepayer and focus on every one of those elements totally.

MR. BUDDEN: That was the message you got.

MR. E. MARTIN: That was the message.

MR. BUDDEN: Understand and focus on all those elements.

MR. E. MARTIN: Yes, focus on the rate – you know, make sure you know what the ratepayer is going to pay and then whatever – figure out the things that are going into that monthly bill, and every one of those things, make sure you have a laser-like focus. Don't leave one of them with not total focus 'cause that's what drives it.

MR. BUDDEN: And that was pounded it into you?

MR. E. MARTIN: Yes, it was. And once again, it is cost, capital, schedule, operating costs, financing and excess – I mean, drive – make sure you get the maximum (inaudible) 'cause that is going to be there, and make sure with respect to return on equity, it's there in a case that you can support and it's at an element that makes sense and make sure that's inserted because –

MR. BUDDEN: And –

MR. E. MARTIN: – that is going to give us all of that so –

MR. BUDDEN: That was pounded into you.

MR. E. MARTIN: – each one of those was a laser-like focus – not one at the expense of another.

MR. BUDDEN: Pounded into you – name names – by Premier Dunderdale, by Premier Williams?

MR. E. MARTIN: Ministers, I mean they were totally focused on you know – you can name the ministers –

MR. BUDDEN: Okay.

MR. E. MARTIN: – as well. It was a constant theme.

MR. BUDDEN: Okay, we'll see how that lines up with other evidence, but I'll move on. Exhibit 04081, please, Madam Clerk.

I have a particular point here when we get to this exhibit. It is a CBC story by Terry Roberts.

THE COMMISSIONER: Tab 76.

MR. E. MARTIN: Seventy-six, thank you.

MR. BUDDEN: Yeah.

It's Terry Roberts, who is actually covering us today, and Stephanie Tobin, another CBC reporter. And what I am interested in here, now, are what you said to them at that time, April 20, 2016.

So if we can scroll down a bit, this is you. And if we can continue carrying on, please. Just scroll back a little bit: "Ball stressed, however, that Martin's resignation was a 'personal one' that was first discussed at a meeting between the two on Sunday, and later confirmed on Tuesday evening."

So we scroll down a little bit further to what you actually said and "Martin said" – now, this is you – actually, just scroll back to the previous bit. A tiny bit more, Madam Clerk. Premier Ball and Natural Resources – okay, that's – "Martin said the same when he spoke with reporters later, saying his family is 'ready to make the move,' and dismissing suggestions that he was forced out.

"I don't get taken aback. That's not my job." And then they talk about the public scrutiny.

But the key part here is you dismissing suggestions that you were forced out. That is the reporting of Terry Roberts and Stephanie Tobin. Is that accurate – an accurate summation of your – what you had said to them, that you dismissed

suggestions that you had been forced out of Nalcor?

MR. E. MARTIN: I can't remember exactly what I said.

MR. BUDDEN: It was pretty widely reported at the time. So, are you suggesting that is a mischaracterization of what you said to them, or is that – you accept that as accurately what you said to them?

MR. E. MARTIN: I can't remember exactly what I said.

MR. BUDDEN: Okay. I'm suggesting to you – they were in the moment, reporting the next day; I don't recall any rebuttals from you or any statements or anything – that – and there's other evidence, other reporters, but that you were, at the time, dismissing suggestions that you were forced out of Nalcor. That is what you were saying at the time.

MR. E. MARTIN: I can't remember the wording, Mr. Budden.

MR. SMITH: Mr. Commissioner, again, this has been resolved by the report of the Auditor General, and the very question as to whether he was forced out, terminated or constructively dismissed is the point of the Auditor General's report.

The other day, when I raised the same objection, the issue with – which was split off from that was completely different than what –

MR. BUDDEN: Okay.

MR. SMITH: – this issue seems to be right at the moment. And, you know, I would just point out to Mr. Budden that I thought we had agreed that we would not be addressing Mr. Martin's personal situation, since it was already addressed by the Auditor General.

MR. BUDDEN: I'm not planning to go there. Perhaps when I ask my next question, it will be clearer. I would suggest to you –

THE COMMISSIONER: So – just so I can clarify something. I'm not sure – I don't know what the word agreed means when Mr. – when

you say that, Mr. Smith. I know that what I've said – and I don't think it was because I had an agreement with anyone – what I said is that I'm going to keep to the Terms of Reference that I have here, and one of the Terms of Reference isn't to determine whether or not Mr. Martin was constructively dismissed or, alternatively, was – resigned or whatever. That was not –

MR. BUDDEN: Mmm.

THE COMMISSIONER: – part of what I was going to do. So, I just want to make that point.

MR. BUDDEN: Mmm.

THE COMMISSIONER: So, I'll hear your question, and I'll see –

MR. BUDDEN: Yeah.

THE COMMISSIONER: – if it goes to where I think it – what I'm going to be dealing with. So, go ahead.

MR. BUDDEN: Okay. Sure.

As always, you had the option of saying no comment or something similar, but instead, I would suggest to you, that you made a misleading statement to Mr. Roberts, to Ms. Tobin, all the other reporters covering that story; you misrepresented the situation around your termination at Nalcor.

That's what I'm suggesting to you, Mr. Martin, that that's what you, in fact, did. Will you acknowledge that is in fact what you did?

MR. E. MARTIN: No, I will not.

MR. BUDDEN: Okay. So, you're saying that was a truthful statement, that you were, in fact, dismissed, that you were not forced out?

MR. E. MARTIN: I'm saying I can't remember the exact wording I used.

MR. BUDDEN: Okay. Are you doubting that they accurately reported it?

MR. E. MARTIN: I have some doubts; I just don't know. So, that's what I'm saying.

MR. BUDDEN: So, you are not acknowledging that you, in fact, dismissed suggestions you were forced out in the moment, to Terry Roberts, to Stephanie Tobin, to the other reporters that covered your story?

MR. E. MARTIN: That's correct. 'Cause the reason I say that is the – you know, I think the Auditor General's report has the summary of what happened and –

MR. BUDDEN: Never mind that. I'm worried – I'm not – I don't care about that.

MR. E. MARTIN: Mm-hmm.

MR. BUDDEN: I do care about how truthful you were in the moment, under pressure, because I think it speaks, perhaps, to how truthful you've been on other occasions. This is something we can test, some of the other stuff we can't test. So that's why I'm pursuing the point, and I suggest to you, yet again, you misled Mr. Roberts, you lied to him.

MR. E. MARTIN: No, I don't believe I did.

MR. BUDDEN: You told him the truth?

MR. E. MARTIN: At the time, it was a resignation. I was moving on, is what he's trying to say. And I'm saying is that that's not the case and I would've – trying to recollect, Commissioner, would've been in the mindset of whatever happened, happened. The project and the company would be the most important thing, and as I mentioned earlier, I'm not the type to – you know, I tend not to dwell on a situation with respect to the company or the project or anything I'm doing. If it happens, it happens and I move on.

I would've been in the mindset, here, of somewhat of a difficult time. I mean, I wanted to stay, frankly.

MR. BUDDEN: Mmm.

MR. E. MARTIN: And – but that's not what was decided. And I would've been in the mindset here, let's move on, let's not make a lot of noise about this. You know, that's only gonna hurt the company and the project. There's gonna be changes, and I didn't want to be, you know,

initiating a situation where that was going to become a huge undertaking. That was the mindset I was in.

Do I remember the words? You know, I am – you know, I speak a fair amount. You know, I deal with the press. Was this, you know, a stressful time? I would say, yes, it was different, I think, than what I would normally be talking about. And, so I'm not sure my words – frankly, I can't remember the words. I know that was my mindset, Mr. Commissioner, not to get into what had happened; it was more of to try to get moved on in a situation that it took the focus off of whatever was happening and kept it on the project.

And I can't exactly remember what I said, but that was my mindset at the time.

MR. BUDDEN: So even if it involved, perhaps, being less than truthful with a reporter, for the good of the project, that's what you did?

MR. E. MARTIN: Now, once again, I'm not sure I was less than truthful or not. I just provided my mindset as to where I was, and in the bright light of day, it was all, for whatever reason, it was all reviewed, and in-depth, and the outcome happened.

MR. BUDDEN: The outcome was you got a pretty good severance package because you were forced out.

MR. T. WILLIAMS: Mr. Commissioner, I'm not objecting –

THE COMMISSIONER: This is –

MR. T. WILLIAMS: – I'd just like to say –

THE COMMISSIONER: Excuse me, just for a second.

So if you could – okay, maybe I should hear from you first.

MR. T. WILLIAMS: The line of questioning I leave to Mr. Martin's counsel, but Mr. Budden's had the luxury of two-plus hours of questioning. We have ten other counsel in the room and we're now into he-said-she-said questions, a lot of evidence that has been repeated before. And I

just wonder, in fairness to other counsel that are in the room, and I know we are in a limited time, how far we're going down the road of – it's not this specific question, it's just the process we're in.

THE COMMISSIONER: Okay, fair enough. You know, I'm very mindful that, you know, we're – everybody has to have a chance. I also am very mindful witness has to be given an opportunity to speak. So, you know, timing wise, unfortunately we may be sitting extra time, but we'll get there.

But I was just going to say, with regards to that question, that I think that goes beyond where I wanna go.

MR. BUDDEN: Okay, fair enough. I withdraw it.

THE COMMISSIONER: Okay.

MR. BUDDEN: Okay.

The – I would, however, suggest to you, Mr. Martin, this is indicative of your approach to the media, throughout this. I mean, this is – captures in a nutshell. We'll see video, I'm sure – no doubt, it's out there – and I would suggest that you were indeed – you did indeed dismiss suggestions you were forced out. We've dealt with that, but I would suggest broader than that, and it will be the submission of my client, that throughout this you have consistently misrepresented circumstances when it was for what you felt to be the good of the project. That will be our submission, and that this is one particular element of it.

Do you believe that you were at all times truthful, in meaning truthful by omission, by not omitting important details, and truthful as to including all key details in your dealings with your shareholder, with your board and with the media? Is that your evidence?

MR. E. MARTIN: So, we're moving this aside. So we had a multi-part question there.

Do I believe I was truthful with the – point A, with the media, board and the government? Absolutely, yes. Do I agree that I was – and then

you defined truthful as an omission, was part of the truth.

MR. BUDDEN: The failure to tell key information is – there are lies by omission, as one way of putting it.

MR. E. MARTIN: So I don't accept that term, but I wanted to address –

MR. BUDDEN: Okay.

MR. E. MARTIN: – your comment, okay? Just to be clear, Commissioner.

If you're asking, you know, were there times that, you know, through a considered decision to omit information that, you know, could be – could end up being relevant, I say: With the board and the government, never, at all.

With the public, it wasn't, you know – and it was a balance. It was a timing issue with the government – I'm sorry, with the public – from a commercial sensitivity perspective, so obviously there's times when, by omission, when – and take the 6.5, would be a good example, Mr. Commissioner, I think I've already talked about that. I don't see that as an omission, as a negative thing. From my perspective, people – you know, to do – but there's commercial sensitivity, there's a balance there. And I've explained that before.

And I think I had a lot of, you know, public – just dialogue, but it was the nature of the job, it wasn't what I sought. And I always tried to, you know, if it was – if information wasn't being presented for commercial sensitivity reasons, I often tried to leave some indication that, you know, there was things that were happening that I couldn't talk about. I always made that attempt.

And I'm not sure I was successful all the time, but one example would have been I think there – I've seen in this testimony, there was a *Financial Post* article, I think, I was interviewed with – and I think there I wouldn't give numbers, I wouldn't give what was happening –

MR. BUDDEN: Hmm.

MR. E. MARTIN: – but, you know, I did talk about schedule issues and potential – it was that kind of thing. I always tried to say something, but I maybe – I wasn't successful all the time, but that was my intent. But, yes, I did omit some data from commercial sensitivity reasons, specific data at times, because of that.

MR. BUDDEN: Okay.

Mr. Marshall testified that – basically went as follows, and he recalled flying and having the experience to see Nalcor – he didn't name them by name, but Nalcor personnel in business class, and that he raised that with you in conversation. Do you remember that conversation with Mr. Marshall?

MR. E. MARTIN: I don't remember the conversation, but, you know, it wouldn't surprise me at all.

MR. BUDDEN: But his – he basically asked –

MR. E. MARTIN: Sure, I agree with that.

MR. BUDDEN: – you about it –

MR. E. MARTIN: He said it. I heard that.

MR. BUDDEN: – and because as you know, I'm sure, that provincial government –

MR. E. MARTIN: I don't know if he said he raised it with me, but that's not to say he wouldn't.

MR. BUDDEN: – he did. He did say he raised it with you.

MR. E. MARTIN: He had (inaudible). Yeah. He obviously said that –

MR. BUDDEN: But you know, people forget things.

MR. E. MARTIN: – and I agree.

MR. BUDDEN: Okay. He said that he raised it with you, that he knew and – well, this – okay, let me zone out. I would suggest to you there is a pretty clear provincial government policy about business-class travel and, you know, there's a process for approval and so on. I'm not saying

that was necessarily binding on Nalcor, and this Inquiry has a lot more important things to worry about than business-class travel, but –

MR. E. MARTIN: Did you – what did you say about Nalcor, you said –? I’m sorry?

MR. BUDDEN: I say that – I’m not saying that necessarily was binding on Nalcor, but my question to you –

MR. E. MARTIN: (Inaudible.)

MR. BUDDEN: – is Mr. Marshall says that you assured him that there was a policy Nalcor had with respect to business-class travel and it was being complied with. And I guess my question to you is: What was the policy and how did that policy come about?

MR. E. MARTIN: I can’t give you details of the policy; I don’t know it entirely. And how did it come about? There’s policies and procedures that were formed at Nalcor that –

MR. T. WILLIAMS: Mr. Commissioner, how this deals with the Terms of Reference – I have no idea of the plane tickets of Nalcor, you know? I further my previous objection.

MR. BUDDEN: It’s a fairly straightforward question, I think, and it’s not something I plan to dwell on, but if there’s concern of Mr. Marshall’s – Mr. Marshall spoke about it in evidence, nobody objected then. This is a follow-up question: what was the policy and how was it arrived at?

THE COMMISSIONER: Go ahead, answer the – I’ll let the question go forward.

MR. E. MARTIN: I don’t know how – I don’t know what the policy was exactly, and I’ll quickly say something that may assist, Mr. Commissioner – it may.

You know, obviously, why didn’t I notice that? Well, I didn’t handle, you know, my travel, so there was a policy. It was approved. It was developed by Human Resources. I didn’t get involved in that stuff, actually. I didn’t book my travel whatsoever; my administrative assistant, Bev, handled all of that. So I was basically handed a ticket if I was leaving the office –

MR. BUDDEN: Mm-hmm.

MR. E. MARTIN: – you know, 6 o’clock in the evening, she’d give me – here’s your package. And, have I flown business class? I have in some cases, and I think primarily overseas in – on the – in North America, I don’t think so. If I did it would’ve been in upgrades. I think a more salient point is that my – I had requested that my expense accounts be audited every year in their entirety by internal audit, and they were. And that report was brought to the board of directors and reviewed and approved every year.

MR. BUDDEN: Sure.

MR. E. MARTIN: So I don’t know if that helps or not, but –

MR. BUDDEN: Yeah, that’s fine. It’s the – I’m not – and, again, I’m not making – taking issue of how – your own personal travels. It’s the policy that I am concerned about, and as I understand your evidence, there was a policy – you had no hand in how it came about or in how it was administered?

MR. E. MARTIN: That’s correct.

MR. BUDDEN: Okay, fair enough.

The last – real last question I have for you is you’re over – you’re up there by yourself now. I mean, this – the obvious expression goes, success is many fathers, failure is an orphan. And whether or not this project is a failure and how one defines this failure is not for me to say.

But, I guess my question for you – I guess to bring it all together like this, we’ve established that you were CEO throughout this period. We’ve established that you had a board that wasn’t particularly robust in ways that perhaps a board should have been. We’ve heard that you’re dealing with turmoil in government throughout much of this period, and you seem to be the constant, and you’re the one who this all seems to – well, to be focusing on in terms of, you know, much of the blame the public is assigning.

Do you feel that there are other people who, whether the decisions were positive or less positive in the result, should share either the

blame or the accolades, however this project is ultimately judged? Other than yourself, who were the people you feel essentially should be at that table with you?

MR. E. MARTIN: As you said, I – you know, I certainly believe – don't believe the project – I believe the opposite: I believe the project's good. You know that.

As far as accountability goes, I think I have been clear in terms of, you know, with respect to my accountability; I'm CEO of Nalcor and the information and activities that have occurred there, I am ultimately accountable for that. As far as decisions for proceeding with the project – continuing to proceed with the project, I also believe it's clear that, you know, those elements where the government was heavily involved – and they have to, I mean, the points been made constantly here that they – the government has to – they control and approve things.

So I think, you know, there is shared accountability for success or failure, however people do it, but I wouldn't want to – I guess, it's a tough question to – because that's true, but I don't want to advocate my own accountability. I mean, I was in a key role –

MR. BUDDEN: Mm-hmm.

MR. E. MARTIN: – and by virtue of being CEO of – you know, of an organization such as that, I was in a key position of doing many things in providing much information in my team. So I have to assume accountability for those things. So I don't want to say I'm advocating that, but that being said – so point taken, but, you know, obviously depending on the decisions, Commissioner, other people were involved, so there would be shared accountability there, both above and below me. But there's certain things that, you know, I have to stand by and be accountable for. That's point A.

Point B, and I'll take the opportunity to say, you know, I'm not afraid of accountability; that's what I do; that was the job. But if we're going to measure accountability and you bring the public in and say it – I think we have to look at what I'm accountable for, you know, in its entirety.

And if you're asking me am I accountable for where Muskrat Falls ends up from a costs and schedule perspective; what happens to the ratepayer – providing additional benefits that will benefit the ratepayer to make it very palatable.

If you're asking me have we developed, you know, the oil business to a point that was unheard of before, and we'll be in a situation in the – very reasonably short time, that we're going to be one of the largest oil producing jurisdictions in the world.

If you're asking me if I'm accountable for initiating the rebuild of Churchill Falls, which was essentially extremely behind in terms of its asset base and was in a situation where it was likely going to have a real problem where we wouldn't have it in shape for 2041.

If you're asking me if I'm accountable for rebuilding Newfoundland and Labrador Hydro, which – DarkNL, I thought, should have happened about a month after I got there, because the thing had been neglected so much.

If you're asking me if I'm accountable for setting up an energy marketing corporation that we may now trade our own energy across two poles and two lines.

If you're asking me if I'm part of the accountability of getting ourselves strategically positioned to deal with the situation to deal with the situation we have electricity in our sister provinces and everything else; for example –

MR. BUDDEN: Yeah.

MR. E. MARTIN: – and the safety improvement –

MR. BUDDEN: Muskrat Falls focuses –

MR. E. MARTIN: – and the safety improvement –

MR. BUDDEN: – my question.

MR. E. MARTIN: – and the safety improvement that was made when we approved 90 per cent, the environmental approval we

improved by 35 per cent, and other things that have happened in there.

I'm just going to say, yes, let's define accountability. And in those cases, I will say what I was accountable for, I'm prepared to absorb that.

MR. BUDDEN: Okay. And, again –

MR. E. MARTIN: That's my –

MR. BUDDEN: – with just the focus on –

MR. E. MARTIN: That's the job.

MR. BUDDEN: – Muskrat Falls, I guess, is my final – follow-up to my final question. You're in that chair and you believe the politicians who sanctioned the project are equally accountable to you as you are.

MR. E. MARTIN: Yeah, I think we share accountability, absolutely.

MR. BUDDEN: Okay. Thank you.

MR. E. MARTIN: And I'm a key part of that.

MR. BUDDEN: Thank you.

MR. E. MARTIN: And I made the recommendations.

MR. BUDDEN: Sorry?

MR. E. MARTIN: And I made the recommendations, just to be clear. I don't want to shed accountability but, yes, we share accountability, naturally.

MR. BUDDEN: Thank you.

THE COMMISSIONER: All right. Thank you very much.

All right, Kathy Dunderdale.

MS. E. BEST: Good morning, Mr. Martin.

MR. E. MARTIN: Good morning.

MS. E. BEST: Erin Best, I'm counsel for Kathy Dunderdale.

I have two lines of questions that I'd like to address with you. So the first is going to be the discussion of the 6.5 number before financial close, and the second is going to be the perceived lack of hydro megaproject expertise on the Nalcor board.

So starting with the first one. So you said in your testimony – I believe it was on Wednesday – that you never met with the premier alone. That it was always a group, I believe, of government officials. Is that correct?

MR. E. MARTIN: That's correct.

MS. E. BEST: So, I just want to explore a little bit, if you can help me, not necessarily about who was present at the briefing prior to financial close, because I know you can't remember exactly who was present. But what I'm hoping you can help me with is to help us understand why you can't remember precisely who was present.

And I wonder if it was because, almost similar to the situation here, where, I guess, five years from now, I will recall that the Commissioner was here because I'm addressing the Commissioner. I wonder if you can't recall because, at the time, you were addressing the premier, and there were others present, but you were primarily addressing – speaking to, I guess, the premier even though others were there to listen as well. Does that have anything to do with it?

MR. E. MARTIN: Yeah. You know, I'm trying to put some context around it, but the answer is yes. The reason for that, it had to be that way. You know, it's the premier of the province, and I had people with me as well –

MS. E. BEST: Right.

MR. E. MARTIN: – you know, generally speaking, and you'd be sitting there and you're looking at the premier of the province and there was changing faces. It wasn't a revolving door but depending on the topics and what was happening, who was available and stuff like that – there was always someone there, but changing faces.

Those people were not asking questions, generally. Some may – but it was really a one-on-one. And unless the premier really invited someone to engage a bit more, there wouldn't be a lot of that. So it was a really intense one-on-one and, frankly, these were intense issues, normally.

When I went to see the premier, it wasn't for, you know, a social coffee – I don't want to be facetious. When I, you know, was either asked to see the premier or was summoned to see the premier, obviously, go to Confederation Building and sit down – these were not small issues. And I – you know, you had to be prepared and I was totally focused and (inaudible) with her. And I was not dialoguing a lot with others up there.

So I just wanted to provide some colour for that. That would be why I would say yes.

MS. E. BEST: Okay.

And my client tells me that there was always someone from Natural Resources present. Would you agree with that?

MR. E. MARTIN: To my recollection, yes, and – but I will add something to that, that I will say, is that particularly with Premier Dunderdale – not that it was an issue any other time, but Premier Dunderdale was – she was – she had been minister of energy.

MS. E. BEST: Yes.

MR. E. MARTIN: And I think, you know, initially we were always working to make sure because the premier's office was, you know, obviously mainly handling the file. And I think, initially, we were always working to make sure we got every – when meetings were happening, we were calling resources and was a bit – it was a bit more a learning experience. But when Premier Dunderdale got in the chair, I think having had the experience of being in energy –

MS. E. BEST: Mm-hmm.

MR. E. MARTIN: – yeah, I'd – you know, I can't say for certain it was a thousand per cent, but I would say, yeah, it was a big deal to make

sure that they were there. It just became the norm.

MS. E. BEST: Okay, thank you.

So I'm going to move on to my second line of questioning now. So I'll put to you – I take issue with the board saying that they wanted hydro-megaproject expertise on the board and the idea of not having that expertise on the board being a weakness. So that's where I'm going to go with these questions.

So – and my goal throughout these questions is to compare the idea of having an expert on the board, versus retaining an expert to advise the board, okay? So, earlier today, you said that someone with megaproject experience on the board would have assisted you. And the question went through – that went through my head at the time was if you lacked that expertise on the board, why didn't you go out and retain the expertise you needed?

But then while I was thinking that, you said that you did retain the expertise and I believe your exact quote was: I felt we had that covered. Okay? So – but then you went to talk about the added benefit of having extra hydro-megaproject expertise on the board. So I want to figure out exactly what you're talking about there when you're talking about an added benefit because I think that's a little bit contradictory.

So I think we can agree that adding hydro-megaproject expertise to the board would've cost the province a fair bit of money. Would you agree with that?

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

MS. E. BEST: Because not only would you have had to pay that person, that expert, to sit on the board, but then you would've also had to pay the other board members, it seems, an equivalent amount.

MR. E. MARTIN: That's correct.

MS. E. BEST: Okay.

MR. E. MARTIN: And I say that because that was the discussions that were –

MS. E. BEST: That – yeah.

MR. E. MARTIN: – the board would’ve, you know, dialogued about.

MS. E. BEST: So when you say that megaproject expertise on the board would’ve been beneficial, would you agree with me that, yes, it would’ve been maybe beneficial, but maybe not cost effective.

MR. E. MARTIN: No, I’m not – it’s a cost benefit, I think, is what you’re talking about.

MS. E. BEST: Exactly.

MR. E. MARTIN: I would have to – yes, I would have to agree with that. If someone – not focused on cost and those types of things, you know, I’m sure you get whatever you thought, you know, you might want.

MS. E. BEST: Sure, in an ideal world –

MR. E. MARTIN: Mm-hmm.

MS. E. BEST: – if money grew on trees –

MR. E. MARTIN: Right.

MS. E. BEST: – you’d have all of this on the board, but that’s not the situation, correct?

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

MS. E. BEST: Thank you.

So, next, I’d like to address the value of having hydro-megaproject expertise on the board. Now, I put to you, wouldn’t the most reliable expertise come from an independent expert, not from a Nalcor director?

And what I mean by that is once someone joins a board, don’t they – as a director, don’t they lose a little bit of impartiality? I mean – and I think Professor Flyvbjerg spoke to this when he talked about the, you know, added potential for optimism bias, if you accept that evidence. But once you’re on the board, isn’t your job as a director and not necessarily as an independent expert?

MR. E. MARTIN: I believe that’s true. I’m – I also believe that if – when a director comes on the board, if that person had that experience – and I’m thinking about boards that I have been on and are on – I guess one of the first things that they would possibly and likely say is that, you know, I’d like to get and make sure we have our independent experts on retainer that are helping us.

MS. E. BEST: Okay.

So that actually flows into my next question, yeah, is that even if you had had this person on the board, you wouldn’t be expecting that person to actually do a comprehensive expert analysis of the project and produce a report for the board. I mean that not the role of a director is it?

MR. E. MARTIN: Yeah, that would be a problem –

MS. E. BEST: Exactly.

MR. E. MARTIN: – if that happened. And I’m saying that from – I’m just referring to – I have my own personal experience but referring to that gentleman, Mr. Hollmann, in that report. And I go back to, you know, shareholder board day-to-day split, that a board member would not be involved in that kind of a report often. That would be a day-to-day business that you would be handling outside of the board.

MS. E. BEST: Okay.

So what I am getting at, in summary, is: Would you agree that it would’ve been cheaper and better to retain and consult with an independent expert, as opposed to having that expert on – sit on the board?

MR. E. MARTIN: For detailed analysis and report writing, it would be – you know, you’d have to go to the – you know, to the independent stuff and not the board member, if that’s your question. I mean, you know, the board would definitely not be – and not only would it be – I don’t even think it’s a cost thing. You wouldn’t have the board involved in –

MS. E. BEST: Right.

MR. E. MARTIN: – doing that kind of analysis.

MS. E. BEST: Okay.

MR. E. MARTIN: That's – that wouldn't make sense.

MS. E. BEST: Okay.

Well, yes, so that – yes, I did – that was my point was to address the notion that someone sitting on the board would actually do any kind of detailed or comprehensive analysis of the project.

MR. E. MARTIN: That wouldn't happen.

MS. E. BEST: Okay.

Thank you. Those are my questions.

THE COMMISSIONER: Thank you very much.

Former Provincial Government Officials '03-'15.

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

Tom Williams, I represent a number of government elected officials, with the exception of Premier Dunderdale, whom Ms. Best represents. And I just want to have one quick follow-up question arising from Ms. Best's line of questioning.

When Mr. Marshall, Tom Marshall, gave evidence before the Commission, he had indicated that at the time in which he took office as minister of Natural Resources, he requested to have a meeting with you in terms of a briefing and oversight and he had some questions. And he had mentioned in his testimony that the issue of having somebody with board hydro-construction expertise, I'll call it, be investigated, looked on.

Do you have any recollection of Mr. Marshall having raised that issue with you?

MR. E. MARTIN: Yes, I do.

MR. T. WILLIAMS: Okay.

And I think his evidence was that at the end of the day the decisions relating to board appointments, as it related to Nalcor, flowed through the premier's office at the time and that while the idea was looked at and considered, it didn't go anywhere at that point in time. Was that correct?

MR. E. MARTIN: On the first part of your question, you know, I'd agree it flowed out the premier's office, where that was gonna come from, one way or another. I'm trying to remember exactly. That was in the 2014 time frame, I think?

MR. T. WILLIAMS: Correct.

MR. E. MARTIN: I'll say this: I'm not sure if it was directly linked, Mr. Commissioner, but we – you know, at a certain point, we did initiate, internal to Nalcor, an engagement of – I think it was Robertson Surette, I believe – to put a package together essentially on behalf of the board and for use with the government to outline skills matrices and all those types of things. I think that may have, you know, resulted from some of those questions but I'm not exactly sure. I'd have to check the time –

MR. T. WILLIAMS: Okay.

MR. E. MARTIN: – of that report.

MR. T. WILLIAMS: And I think the timing – you may be off a little. I think the timing – it came up on two occasions. It came up when he was minister, at one point, and then when he took over as premier, the issue arose again. And then he was in office a short period of time then, and I think that's when the matrix of the –

MR. E. MARTIN: Possibly. And I'm not saying he initiated –

MR. T. WILLIAMS: Yeah.

MR. E. MARTIN: – that. Don't get me wrong. I'm just saying is that, with the dialogue that was happening on some of those things, that we just took upon ourselves to start, you know, compiling additional information.

MR. T. WILLIAMS: Okay.

Okay, my longer question that I wanted to start off with – and I only have a limited number of questions for you – is on Wednesday afternoon, in your direct evidence with Mr. Learmonth, he was questioning you with respect to the nature of the relationship as between Nalcor and government. And you spoke at some length with respect to how you stood it. Can you speak to how you viewed this relationship?

Because I have in my notes that you stated at one point: It was not arm's-length. We've had others before the Commission who described it as an extension of a government department. The clerk at the time, I think, used language that it was an integrated team approach. So, I'm wondering if you can tell me your full understanding of how you saw Nalcor's relationship as a Crown corporation dealing with government in relation specifically to the Nalcor project.

MR. E. MARTIN: You used some terms there. It was definitely not arm's-length. I mean, you know, the company was set up to be – I'm just trying to think of some phraseology. It was – you know, the concept was – you know, initially is that, as I mentioned earlier, there was a lot of work put into an energy plan, and prior to that, before my arrival, there was thoughts around that.

I think they were summarized in some of the government documents or whatever. But in any event, I came on board and it – you know, it was explained to me that as far as the natural resources of the province were concerned, there was – you know, this was one of the last great opportunities for the province.

And, you know, the vision of that particular government was we wanted to take a really in-depth look at how they were – make sure that we extracted and developed these resources for the benefit of the province, to make sure that in – as we moved forward, we were going to take ourselves out of the current state that we had been in for many, many years.

So that being said, you know, the concept of Nalcor, to me, was they – is we need to be in a position where we have the expertise to deal

with major corporations, both public and private. You know, it was – electricity was (inaudible), it was all these things and such.

And, basically, they wanted – the government wanted to have an arm, a division, a group of people that was – had the expertise and, frankly, were able to – to a reasonable extent – compensate. That was talked about. To be able to compensate those people, to get the right resources so that we had, immediately at our fingertips as part of the government, you know, that resource to help us deal with, negotiate, oversee, oversight and what we were going to achieve.

And the expression was made that government – a lot of respect for the government officials – is that they don't have expertise in that area. And we didn't want to get outflanked by other international and large corporations that may have a lot more experience and that in these areas.

So it was designed to have Nalcor handle that on behalf of the province to a point, but the integral part – I mean the integration was tied in extremely tight as between the government and, you know, the senior executive of Nalcor to make sure that that total integration was happening. So it wasn't arm's length at all, it was flow the information, get it to a certain point and then deal as a direct arm of the government, an extension of the government to – to give us this base of information and expertise to make decisions and manage in the future. And that was, in essence, how it was structured.

MR. T. WILLIAMS: Okay, would that – the nature of the relationship, which you've described – would that have extended for all packages within – under Nalcor, all envelopes of business that you had? For example, obviously, the development of a mega-hydroelectric project is a unique piece of work.

With respect to the work of the Oil and Gas side to – with respect to the Newfoundland Hydro side, with respect to the Churchill Falls side – did that, what I'll call, unique relationship exist on every envelope of business that you had in terms of your relationship with government, or was there something unique about the Nalcor

project, given the level of expertise required there?

MR. E. MARTIN: I would say the relationship was exactly the same with one possible exception I'll come to with just a quick flavour there. You know, we increased – from the Newfoundland and Labrador Hydro and Churchill Falls Labrador Corporation – for instance, we increased their capital budgets from – rough numbers Commissioner, but I think about in total combined, about 50 – \$40 to \$50 million per year, maybe a little less.

That grew after we did the asset management reviews and understood how far behind they were. That grew to \$250 million per year. That was done – basically within – Nalcor was certainly keeping the government informed that these changes were coming, and we were handling it and so that was very similar. The Oil and Gas was very similar, in terms of, you know, the compilation of the data, and the negotiations but integral interface.

The only difference, I would say, I think the oil and the Muskrat Falls would've been much more interface; so the same principal but between those two endeavours, the interaction with the government was much, much more frequent.

MR. T. WILLIAMS: Would you see the relationship as between Nalcor and government as being different than the relationship between other Newfoundland Crown corporations and government?

MR. E. MARTIN: I would not, from this perspective. I think – 'cause I've often thought through this, you know as things have – as insinuations have been made, but I guess the Health Corporation is entirely a different type of endeavour, but the concepts are similar. If you look at the expertise, required for surgery, I guess, or many medical benefits and those types of things; I'll stop there – but, you know, the idea of the government getting involved down at that level seems to be alien. And I think what comes up through is interfaced between the Health Corporation and the government, I don't know.

But my sense was they're not – you know, the government is not down into that level, they're

taking information at the higher level to make decisions that impact healthcare. Rough example, but I would say that that would be similar. The only difference on a Muskrat Falls perspective – there is nothing more important than health, number one, don't get me wrong.

But you know, if you – the political implications of a – the Churchill River, dealing with the Churchill River, and our oil and gas, I mean they're obviously very, very well-followed issues for obvious reasons. And, once again, I don't know if I interacted more with the government and the premier, minister, than the Health Corporation. I can't answer that, but I expect possibly because we went through these things, but that would have to be asked from someone else.

MR. T. WILLIAMS: How would you describe the level of reliance that government had on the information that was being provided to them from Nalcor? And the reason I preface this question, we've had evidence with respect to governments not reviewing the DG3 numbers at the relevant time. And there was evidence by elected government officials as well as members of various departments, being Natural Resources and Finance, saying with the complexity of this project we did not have the in-house ability to do that. And I'm paraphrasing their evidence but –

MR. E. MARTIN: Mm-hmm.

MR. T. WILLIAMS: So, therefore, government was reliant upon Nalcor to provide that information. Would you agree with me that the level of reliance in this relationship would be somewhat higher than it may be in another relationship given the complexity of the project at hand?

MR. E. MARTIN: By another relationship, do you mean within government or in general (inaudible)?

MR. T. WILLIAMS: Within government, basically.

MR. E. MARTIN: First off, the level of reliance, I think, was significant. So don't – I'm not saying that that's not the case, so don't get – you know, and significant and relatively high, okay? So I agree –

MR. T. WILLIAMS: When you say relatively, what do you mean by relatively?

MR. E. MARTIN: I guess – let me – so if we go back to the health corporation, it depends how deep you're going. I mean, how much reliance was there on medical procedures? I mean, very high I would say. The government was involved in medical procedures.

But that being said, you know, if I look at the Manitoba Hydro situation where we did not engage Manitoba Hydro, the province did. If I look at the reference that was made to the Public Utilities Board that was – that decision was made by government, not by Nalcor. And as things progressed, you know, other engagements with – there was many things that the government did. So I think they had a level of trust in our information, but it wasn't absolute and there was many key decision areas where they brought in their own expertise and did what they had to do.

MR. T. WILLIAMS: You indicated in your evidence – and where I'm going with this is that you indicated in your evidence that it was not your – I think your words were – not your mantra to release numbers until there's a relatively high reliability and that that's your decision, it's your style, both on this project and previous in your history.

That being said, given the fact that there was so much reliance by government on Nalcor in terms of their expertise, do you not think that that level of disclosure could've been lowered such that they could've been informed on a, you know, best available data at a particular time given that they were so dependent on the information that they were getting from Nalcor?

MR. E. MARTIN: I don't believe so. I believe, you know, the, I guess, examples – like, there wasn't – I never experienced a huge amount of interest to have, you know, massive detail coming in. A lot of times, for instance, Mr. Commissioner, there'd be a lot of dialogue around: Well, you know, ask Nalcor. Or, you know, check with Nalcor on that. Or, you know – and this was constant. And, you know, from officials and in some cases (inaudible) – so we'll get Nalcor in here or, you know, what – get them – let's get the answers.

In some cases, you know, for instance, we were asked to participate in other things. We were asked to take on the Bull Arm Corporation, which, you know, wasn't something that we were entirely desirable to do, but we did it. There was – for the right reasons. There was a – we were asked for – to bring people in, you know, from the company. The province was developing a new approach to procurement and those types of things, and we were asked to provide people into – to participate and help in that review which – fine. I mean, they're the government. That wasn't in our mantra.

I know in Minister Bennett's time she asked if we would second some people to the Finance department to assist with the financing plan for the long term, and we did. I think Mr. Auburn Warren was seconded over there, you know, which was nothing to do with us, really. So just examples of, you know, there was – you know, that was how I received and understood the relationship as well.

MR. T. WILLIAMS: I guess I'm not suggesting that, when requested, information wasn't necessarily forthcoming. I mean, I know my clients, Ministers Kennedy, Marshall, I think – well, all the clients that I represent have said that we wanted – you know, if we wanted to see Mr. Martin on a matter or Nalcor, they came in.

MR. E. MARTIN: Yeah, (inaudible).

MR. T. WILLIAMS: My side of the question is more along the lines – without being asked, why not at significant milestones in the project? And I'll use the financial close as an –

MR. E. MARTIN: Yes.

MR. T. WILLIAMS: – example. Why weren't Nalcor coming in, as opposed to being asked to come in, to say: Look, here's where we are?

Now, I appreciate your evidence in terms of what your mantra was. But should that not have been lowered to say: Look, here's the numbers that we're circulating. We're working now. These aren't finalized, but we have concerns here that this project could escalate to \$7 billion, to \$6.5 billion. You know, without waiting for Nalcor to come in, given the level of reliance that government had because of your special

expertise, that Nalcor should've been volunteering this information as opposed to waiting. And even when they did volunteer it, it was at such a high level of certainty that government didn't necessarily always have an opportunity to react.

MR. E. MARTIN: Well, I did – I wasn't asked. I did provide it. I went up and provided it myself when I had the information in a form that was of a level and certainty that I felt was useful for sharing and necessary to share from a decision-making perspective. I'm the one who initiated the meeting with Premier Dunderdale. I mean, naturally, because if I – how could she know when she wasn't (inaudible), you know, thinking that way, obviously.

But I would – I did initiate it. And as far as – again, as I discussed earlier, through that period of time the decision that was being reviewed was the decision of the – on a cost to the ratepayer perspective is what this project was sanctioned on. It had a series of elements which go into that, and each of those elements had to be vetted and reviewed to a particular point that I could present a package that made sense, you know, to go up and say: This is the fuller picture. It is data that I understand is reasonably certain and I had reliability on it, and I can put my, you know, review behind it, and the company as well who advised me on this stuff. I did that – put that package together and brought it up and initiated the meeting. So I believe I did that.

MR. T. WILLIAMS: Okay.

I just want to touch on this one issue again; we've been around it full circle. The – with respect to the meeting with Premier Dunderdale on the 6.5.

Just to be clear for the record: There was never a presentation by Nalcor to Cabinet with respect to the issue of the increase from 6.2 to 6.5 prior to financial close, correct?

MR. E. MARTIN: Not that I can recall.

MR. T. WILLIAMS: Okay.

Okay, just in concluding –

MR. E. MARTIN: But that would be – and just to be clear again, I wasn't – I can't recall that meeting, but I wouldn't be thinking they're driving, you know, the internal (inaudible) –

MR. T. WILLIAMS: And there's no way – I'm not suggesting that there was.

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

MR. T. WILLIAMS: But it's just for the record –

MR. E. MARTIN: I just want to clarify that, yeah.

MR. T. WILLIAMS: – that (inaudible) other elected government officials may not have had that same opportunity.

Over the course of the Inquiry –

MR. E. MARTIN: It's such a key point, you know, and I'm not involved in it, but there's a lot – there was multiple presentations at Cabinet. I just can't recall me making a presentation at Cabinet on that particular piece.

MR. T. WILLIAMS: Okay. That's fine.

Over the course of Phase 2 of this Inquiry we have heard a wide gamut of evidence from contractors involved in this project. We've heard from numerous Nalcor officials at various levels through the organization. We have heard from Astaldi. We have heard from SNC-Lavalin. And I certainly don't intend to take you through, obviously, the evidence that's there, and I know you've indicated that you've been paying attention to the evidence, but I don't expect that you've heard everything.

But there has been various allegations of – what I would suggest – fault, wrongdoing on behalf of one party or another. There's been finger pointing for the last four months as between the parties that I've just referenced as to who has responsibility. And without trying to prejudge what the Commissioner's task will be in assessing that, there's probably enough room for everybody to take a piece of that at the end of the day.

My preamble is to the question – to you as the CEO of Nalcor during this period of time, where do you see that Nalcor may have dropped the ball at some point in time, or where have Nalcor could have done things differently with respect to whether it be project costing, whether it's scheduling, whether it's execution of the project. And I know that's a pretty wide-ranging question and it's being asked in hindsight, but I think it would be beneficial for the Commissioner in drawing conclusions as to where does Nalcor see that by looking back, this is what we could have done differently that may have improved the outcome that we have today?

MR. E. MARTIN: Well, I think from a recording perspective – you know, I think one implication of this – as I've heard this Commission unfold and listened to different people's view that is different than may have been expressed to me over time in other places – it is what it is.

We've talked a lot about the mandate of Nalcor and the non-arm's-length and arm's-length – you know, I believe, if I had my time back and I fought, myself, for this, that – looking at what's happened is that I would've documented those understandings in-depth and, knowing what I know now – I wouldn't know how I would write that in terms of not just a simple mandate. It would be a description of the things we've talked about here: what I – you know, how I was expected to interact with all the officials over time, what the levels of, you know, information sharing was expected, and all those things. I would – and I'm good at documenting this stuff so I should've at the time, hearing what I've heard now. So, that was very clear.

I wouldn't have stopped there, though; I would've gone to – because of the implications of this, the magnitude of this, and that people have tended to let this unfold themselves, I would've had that signed off by a multitude of people, understanding that in this world, and rightly so, governments change and people change. I think I would have driven that more, because a signature often brings people to focus.

And I would've asked for the other political parties to participate in that, even though – I would think it would meet – I don't know if meet resistance or not; I don't know; it would be

difficult. That's what I would do, because that would be helpful to have a document to review each time there was a change with the government.

Point two is I would have documented – I did document the overall rationale and benefits for this project. I did that. That's the net benefits. MHI, Nalcor prepared a submission to the PUB which outlays in infinite detail a rationale and everything for this project, so it was extremely well documented. But something was not getting through so I think to myself often, I – how could I have changed that? You know, how did I miss that the people weren't getting all of those detailed documents.

So (inaudible) what I do there? I think I would do another document and I would seek, you know, the same level of sign-off, and only – not that I don't think – I think the people are totally genuine and stuff, but it's obvious that there's a mixture of understanding of how this project is structured and all that good stuff. I think, you know, people signing things at that level brings their attention – you know, brings them to focus. And it may have helped in having more broader discussions so that not only five or six key people who really deeply understood this – I was under the impression everyone understood it. Maybe they do; maybe they don't. So I would do that.

Those are a couple of things, you know, off the top of my head. The execution of the project and those types of things, I don't want to go through a long-winded piece here but, you know, there's areas we'd have to improve in, Mr. Commissioner – Nalcor, and that's me as well. I've been – I may reserve some of that for another time.

I've been going through things myself – and this happened, that happened. I've been sort of walking through it myself and I'm not saying that we're perfect by any means but, you know – and I'm not fully through it, but at this point, I'm confirming my own rationale for the decisions we made and I'm comfortable with them. But, once again, I don't want to leave the impression that that's it and I would like to be able to, you know, revert to that question as I continue my personal analysis, that I could have

a chance to input that into the Commission at some point.

MR. T. WILLIAMS: Well, maybe – your counsel will be probably following up at the end of questioning, so you’ll have lots of time to –

THE COMMISSIONER: Right. I think it’s going to be either today or no day.

MR. T. WILLIAMS: Yeah.

THE COMMISSIONER: Because once we finish with you, I have other witnesses to hear and then I’ve got a pretty significant task ahead. And I will be focusing on the evidence that I hear at the Inquiry as the basis upon which my decision is made. So if there’s something you need to add, it’s got to – it’s going to have to be now.

MR. T. WILLIAMS: Well, I’ll let that –

THE COMMISSIONER: Or today.

MR. T. WILLIAMS: – question go at this point. And, like I said, we’ll be having our lunch break soon; maybe you can give some thought to it. And if you want to address it with your own counsel, then before the close of your evidence today, or hopefully today, you can follow up.

Thank you, Mr. Martin.

THE COMMISSIONER: Thank you.

All right, Julia Mullaley, Charles Bown.

MR. FITZGERALD: Good afternoon, Mr. Martin. Andrew Fitzgerald for Julia Mullaley and Charles Bown.

I have just some factual clarifications I’d like to make and put some questions to you. If we could have Exhibit P-03960, please?

THE COMMISSIONER: 03960.

MR. FITZGERALD: It’s binder 2 –

THE COMMISSIONER: Tab 32.

MR. FITZGERALD: – tab 32.

The first page here, Mr. Martin, “Aug 2015 Briefing deck by CEO (EJM) VP (GB) to the Premier, Minister of Finance, Julia Mullaley, Charles Bown. Cap cost of \$7.65B (leading to AFE rev 2).” That’s just on the top of the page there. You see that?

MR. E. MARTIN: What’s the tab reference again, please?

MR. FITZGERALD: Oh, sorry.

THE COMMISSIONER: Thirty-two.

MR. FITZGERALD: Thirty-two.

MR. E. MARTIN: Thirty-two.

I have it.

MR. FITZGERALD: Okay. If you could just scroll down a little bit, please. Okay, stop right there.

It says: “This was a comprehensive 80+ slide deck which spanned the project from inception through to the status as of that date with a Cap cost of \$7.65B.” I guess that’s a typo: “Which is an increase since the June 2014 AFE rev 1 of \$6.99B.”

It’s my understanding that process-wise, you would brief the premier and those officials at the top of this email in August and, subsequently, there would’ve been a presentation to Cabinet in September 2015. Is that correct?

MR. E. MARTIN: Yeah, that would be normal process. I can’t remember the exact dates but, yes, I would brief the premier –

MR. FITZGERALD: Yeah, just generally.

MR. E. MARTIN: I would brief the premier and the minister first, yes.

MR. FITZGERALD: Yeah.

So if we can go down now, to page – pardon me, page 5 – sorry, yes, page 5. This says: Muskrat Falls Project Cost Update, September 2015. This would be the slide deck, I guess, that would’ve been provided by you and then subsequently to Cabinet?

MR. E. MARTIN: I think it is, yes.

MR. FITZGERALD: Yeah.

And if we could go to page 6 – actually, we can go down another page, page 7 (inaudible). Yes, this is it here. Yes. We have an August '15 cost estimate of \$7.653 billion, correct?

MR. E. MARTIN: That's correct.

MR. FITZGERALD: Okay.

So that's August-September 2015. Now, we've heard evidence at the Inquiry and I'm going to try and refresh your memory. I know you had a lot of meetings over a long period of time, but Ms. Mullaley gave evidence that there was a meeting in – on June 22, 2015.

At the time, the Oversight Committee was trying to get a report out and the number at that time was \$6.99 billion. And there was a meeting held at the Natural Resources Building between yourself; minister of Finance, Ross Wiseman; minister of Natural Resources, Derrick Dalley; Craig Martin; Charles Bown and Ms. Mullaley.

Do you have any recollection of that meeting?

MR. E. MARTIN: In what – I do not. What date was it again? What –?

MR. FITZGERALD: It was June 22, 2015. It was in Mr. Craig Martin's calendar. That's the evidence we had before the tribunal.

And the evidence also is that at that meeting you advised those officials that there are issues with Astaldi, the number might be going up to 7.5, 7.6; however, we need to see what's going to happen with the concrete pour and the concrete productivity over the summer before I can say: Take this number to – you know, to Cabinet.

It wasn't a firm number at that time – the number was 6.99 – but your evidence – or, sorry, your presentation to them, generally, was there's issues here with Astaldi, we need to see how it goes over the summer. Do you recall this at all?

MR. E. MARTIN: I don't recall the exact meeting, but I can recall saying those – that type of thing that, you know.

MR. FITZGERALD: It kind of fits with that time period, too, I would suggest.

MR. E. MARTIN: It does. It does, yes.

MR. FITZGERALD: Okay.

A lot of it had to do with the success of the concrete pour and I guess the speed of the concrete, is my understanding.

MR. E. MARTIN: That's correct.

MR. FITZGERALD: Yeah.

Now, if I could –

MR. E. MARTIN: And I think as well – that was the main point.

MR. FITZGERALD: Yes.

MR. E. MARTIN: I think the financing issues were beginning to surface. I'm not sure if I would've spoken with them at the time or not.

MR. FITZGERALD: Okay.

MR. E. MARTIN: But, you know, I'll stop there.

MR. FITZGERALD: No, no – yeah.

MR. E. MARTIN: But that June time frame was – yeah, it was – we were getting –

MR. FITZGERALD: And –

MR. E. MARTIN: – we didn't have information; we were waiting to see.

MR. FITZGERALD: And that Ms. Mullaley was very clear on this because she remembered that, in her mind, it was the first time she heard of 7.5, 7.6, that range, I guess. And that it was not a firm number at that time, and the reason it wasn't a firm number at that time was because these Astaldi issues were ongoing and it may or may not have affected the AFE going up to 6.9 to 7.5, 7.6. That's her evidence.

MR. E. MARTIN: And I don't dispute that evidence.

MR. FITZGERALD: Okay.

MR. E. MARTIN: I agree it wouldn't have been, you know, a firm number at all. It would've been an indication. The only point I'd like to make – and this is not about your client –

MR. FITZGERALD: I have a couple of clients, but ...

MR. E. MARTIN: – oh – or Ms. Mullaley.

MR. FITZGERALD: Yeah.

MR. E. MARTIN: That's not a comment with respect to her, but we did have a session in March of 2015.

MR. FITZGERALD: Oh, I'm going to take you back there in a second.

MR. E. MARTIN: You know, so I'm just not sure who was attending that and stuff.

MR. FITZGERALD: Well –

MR. E. MARTIN: But, in any event, I can't say the timings of when I met with people around that time.

MR. FITZGERALD: No.

MR. E. MARTIN: But I think your characterization of the June meeting would be reasonable.

MR. FITZGERALD: It kind of fits the equation.

MR. E. MARTIN: It certainly does, yes.

MR. FITZGERALD: Yes.

Exhibit P-02412, please.

THE COMMISSIONER: 02412.

MR. E. MARTIN: (Inaudible) I'm sorry.

MR. FITZGERALD: Oh, sorry, Mr. Martin.

MR. E. MARTIN: I gotcha. No, I gotcha.

MR. FITZGERALD: I don't even –

THE COMMISSIONER: That's in tab 43.

MR. FITZGERALD: Sorry, I didn't think it was in your binder. My apologies.

THE COMMISSIONER: Tab 43.

MR. FITZGERALD: Now, this is the Cost Update Chronology, LCP 2015, draft, March 2019 that was prepared, I believe, by – it was tendered in evidence by Mr. Meaney, but it's my understanding that Mr. Meaney had input from other individuals on the project team.

Did you have any involvement in the drafting of this document?

MR. E. MARTIN: No, I did not.

MR. FITZGERALD: Okay. And you had no input in it at all – into it?

MR. E. MARTIN: No. The first time I saw it was, I think – I heard about it was during Mr. Meaney's testimony.

MR. FITZGERALD: Yeah.

And Ms. Mullaley was very clear on this. If we scroll down, there's a reference there to a meeting March 9 and 10, 2015 – right there – which refers to a \$7.5-billion cost estimate.

Her evidence is very clear that she was not provided with that number at that time. I will say that to you. And I will also suggest to you that – it's my understating that while Mr. Sturge had 7.5 in his notes, he didn't say, Mr. Martin informed government of \$7.5-billion increase or government was informed of \$7.5-billion increase. These meetings were about distribution assets – the potential sale of distribution assets with respect to Hydro. Did you recall that topic?

MR. E. MARTIN: I recall that topic.

MR. FITZGERALD: Yes. And what I'm going to suggest is –

MR. E. MARTIN: But not –

MR. FITZGERALD: – now that I’ve refreshed your memory –

MR. E. MARTIN: But not at that meeting as – you’re at, I mean – at that meeting you mean?

MR. FITZGERALD: That’s what that meeting was about, distribution assets.

MR. E. MARTIN: Oh. Yeah, I think you had asked me do I recall the topic.

MR. FITZGERALD: Yeah.

MR. E. MARTIN: That was a topic. I can’t recall if it was at the meeting or what meeting it was.

MR. FITZGERALD: Okay.

MR. E. MARTIN: So I don’t want to make that linkage.

MR. FITZGERALD: This is where the \$7.5-billion number comes with respect to Mr. Meaney’s documents. What I’m going to suggest to you, now that I’ve refreshed your memory, we agree that the June timeline is likely when you would’ve said to the government there could be an issue here with the 7.5, 7.65. It could go higher. We need to work it out over the summer with Astaldi and see where it’s going to land. We agree on that, roughly.

MR. E. MARTIN: Roughly, yes.

MR. FITZGERALD: Yes.

So I would suggest that in March of 2015 the idea that a number of \$7.5 billion would be put forward to government officials, when it’s not your practice to put forward numbers unless they’re certainly a certain level of reliability, doesn’t seem consistent with how you would operate, because this is March and we’re a long ways out from June, July and August.

MR. E. MARTIN: I don’t think I was –

MR. FITZGERALD: Is it possible – sorry, I was just going to say: Is it possible that Mr. Meaney and company just looked at Mr. Sturge’s notes and put in \$7.5 billion and you actually didn’t say that, that day.

MR. E. MARTIN: I don’t know about the note –

MR. FITZGERALD: Yeah.

MR. E. MARTIN: – you know, if that happened or not, but I will say this: Is that in a June time frame, I would be getting more specific about the fact –

MR. FITZGERALD: Yes.

MR. E. MARTIN: – about the issues. I would have understood, coming out of 2014, that we had a concrete-pour issue –

MR. FITZGERALD: Yes.

MR. E. MARTIN: – and I would have communicated that clearly to the province. And I am very comfortable in that because you didn’t have to be a professional engineer when you visit a site to see that. So, all I am saying is that, you know, from my perspective, you know, I’m comfortable saying I would’ve – introducing the concept that –

MR. FITZGERALD: And –

MR. E. MARTIN: – we had – you know, we had Astaldi could be a potential issue (inaudible).

MR. FITZGERALD: And I am not saying that you didn’t say we might have an issue with Astaldi, we might have some cost pressures or cost risks. What I am saying is that it’s more likely than not that the numbers that were provided were in the June time frame when you were more comfortable, which is how you operated, that it is more likely than not that the numbers preceded in the June time frame heading into August, September than back in March 2015. Would you agree with me on that?

MR. E. MARTIN: I can’t say that. No, I can’t agree with that.

MR. FITZGERALD: But that’s not how you operate, though.

MR. E. MARTIN: Well, the seven – you know, I will say this, though, that –

MR. FITZGERALD: That's not the Martin mantra.

MR. E. MARTIN: But – well, let's just talk about it for a second, because –

MR. FITZGERALD: Well, we are going to talk about it.

MR. E. MARTIN: Okay? I did put into evidence earlier during my testimony here that as time went on, the speeds at which I felt I could get from, you know, an indicative view point from the project team and work through it, it's very key point, is very key point, Commissioner, because that's why things started to speed up. Earlier days, a lot less contracts in place, a lot of materials yet to be bought, contractors ramping, a tremendous amount of stuff not known, it would take longer there to stress the case and understand where we were and – but as soon as I got something, I went.

But you saw overtime – and I think I mentioned this earlier, but I went back and checked, and if I look at the time frame, as we got into, you know, 2014 for the 6.99, when I had that number, it was – I think it was, you know, a period less than a month, we had an AV out – that maybe 6 weeks, I can't remember the exact date, it was fairly quick. And then we got into the 7.65, and when I got that number, it was very quick when we did the AV.

MR. FITZGERALD: Yeah.

MR. E. MARTIN: When I got the 7.5 information, I would have been more – much more comfortable because I would have seen that we were coming much closer on everything and I – it wouldn't, it wouldn't surprise me if I – you know, if I talked about the fact that the unknown we have there is the 2015 concrete –

MR. FITZGERALD: Yeah.

MR. E. MARTIN: – session. So I could see being more confrontable talking about the 7.5 in that – because I would be more comfortable with the caveat, again, that that does not include the impact of Astaldi because, I would be very clear, we don't know that yet. I would probably be more comfortable at that point would be –

MR. FITZGERALD: Okay.

MR. E. MARTIN: – my only point because we were trying to get to the government 'cause I knew more and more, faster and faster.

MR. FITZGERALD: But you don't have independent recollection of saying that at that meeting, do you?

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

MR. FITZGERALD: Okay.

And the other point I wanted to bring up is: Already, Mr. Learmonth mentioned that Mr. Sturge doesn't have a recollection of that being actually said. It's just in his notes.

In any event – so, then it's March, then we go to June, and then we go to August. And I believe your evidence was that the big issue was the speed of the concrete pour over the summer to see if they – Astaldi could catch up a bit. That was –

MR. E. MARTIN: That was a primary –

MR. FITZGERALD: Okay.

MR. E. MARTIN: – one, and then at that point, I think we would've – as I mentioned, some indication about the –

MR. FITZGERALD: The –

MR. E. MARTIN: – financial issue. So, I would've spoken about that as well.

MR. FITZGERALD: That's a big issue, and I believe you did the right thing informing the government that in June. I guess – was there – this may seem like a foolish question, but I take it there's – there was no concrete poured in Labrador in March, April or May?

MR. E. MARTIN: I'd have to check that, Mr. Fitzgerald. I don't know.

MR. FITZGERALD: It seems unlikely, doesn't it?

MR. E. MARTIN: I could not say unlikely.

MR. FITZGERALD: Okay.

MR. E. MARTIN: I really would have to check that because, you know, with the organization work that had been done, I think March it would be unlikely.

MR. FITZGERALD: Yeah, and that's –

MR. E. MARTIN: I'm not sure, but – and I'm moving on from – I just have to check the dates.

MR. FITZGERALD: Yeah. And that's why I asked the question. I'm trying to piece this together, 'cause if the concrete pour and trying to catch up was the biggest issue, pushing the 7.65 number would make more sense that you had enough confidence in June to tell the government that that it might be a problem because you're gonna be pouring concrete all summer, as opposed to telling the government a number in March where there's concrete not even being poured.

MR. E. MARTIN: I agree with that.

MR. FITZGERALD: Okay.

MR. E. MARTIN: Because even if they started in – you know, the early start, you wouldn't –

MR. FITZGERALD: Yeah.

MR. E. MARTIN: – really have a trend there, right?

MR. FITZGERALD: Yeah.

MR. E. MARTIN: You know?

MR. FITZGERALD: That's what I'm getting at, yeah.

MR. E. MARTIN: But that being said, I don't think I would've told them a number in March 'cause if it was a 7.5, I would've said that doesn't include the impact of what's going with Astaldi.

MR. FITZGERALD: So, you don't think you would've told them a number in March?

MR. E. MARTIN: For Astaldi?

MR. FITZGERALD: Yeah.

MR. E. MARTIN: No, I don't think so.

MR. FITZGERALD: And that's what was fueling the 7.5 (inaudible).

MR. E. MARTIN: No, it wasn't.

MR. FITZGERALD: It wasn't?

MR. E. MARTIN: No. No –

MR. FITZGERALD: Okay.

MR. E. MARTIN: – absolutely not. That's the key point. I'm glad you mentioned that because the 7.5 –

MR. FITZGERALD: Yeah.

MR. E. MARTIN: – was analogous to the 7.65.

MR. FITZGERALD: It is.

MR. E. MARTIN: But in the 7.65 –

MR. FITZGERALD: Mm-hmm.

MR. E. MARTIN: – it was clear in the documents, that that had no Astaldi in it.

MR. FITZGERALD: Okay.

MR. E. MARTIN: So, from that perspective, the same thing: the 7.5 wouldn't have had Astaldi, the 7.6 didn't have Astaldi. In both cases, I would've said: These numbers do not reflect the Astaldi cost and schedule issue.

MR. FITZGERALD: Okay.

MR. E. MARTIN: And I can point you to that document if I had to, again, but –

MR. FITZGERALD: I don't want to confuse the matter, but it seems to me that the 7.65 – over the summer, you wanted to see how Astaldi was gonna do in June, so the Astaldi issue seems to be connected to the 7.65 there.

MR. E. MARTIN: It's absolutely not, and –

MR. FITZGERALD: Okay.

MR. E. MARTIN: – maybe –

MR. FITZGERALD: Well, I'm –

MR. E. MARTIN: – is it worthwhile to pull up the document –

MR. FITZGERALD: No.

MR. E. MARTIN: – and I'll show you.

MR. FITZGERALD: I'll take your word for it, if you just explain it to me the reason –

MR. E. MARTIN: And, it is on the record 'cause I had pointed out yesterday in that –

MR. FITZGERALD: I'm just trying to position this.

MR. E. MARTIN: – in that 7.65 document, that presentation that was presented to the premier and others. In that document –

MR. FITZGERALD: Okay.

MR. E. MARTIN: – I went over that yesterday, where I indicate the Astaldi situation was indicated in that document, and it was not in the 7.65.

MR. FITZGERALD: Okay. The last question I have – and it's just the way this has all been operating and, I guess, in terms of – when you get to a point of reasonable certainty – and Mr. O'Flaherty asked you some questions about this yesterday – when you're reasonably satisfied with a number, you feel you can then bring it forward, and you bring it forward because you can justify it, you've looked at it, you want government to be aware of it, and if there's questions added, asked or answered, you can deal with it. You don't wanna be bringing numbers forward to raise expectations or cause alarm – I'm just paraphrasing. Is that generally how you operate?

MR. E. MARTIN: With the additional – to, you know – I think you say raise expectations or cause alarm. I mean, it's a put and a take though, right? I'm not interested, you know, whether it's high or low –

MR. FITZGERALD: Oh, I know.

MR. E. MARTIN: – I want it to be in either case 'cause if you make a decision on the wrong information in either case, would be the issue I would be trying to deal with.

MR. FITZGERALD: Yeah. And, I appreciate that. But at what point, in your mind, does an alarm bell go off? I mean, if we're in 2013 and let's say the number is at \$10 billion or \$11 billion, at that point in time while the number is not certain, do you say, well, I should let the government know? Like, where is the line in your thinking that – if there is one – should the government be made aware of this? Like, where is the alarm bell?

MR. E. MARTIN: Well, I think the – you know, the first step is – you know, and this is in my experience – when the first numbers come out, I mean, and someone, a project management team, brings numbers forward, you know, you just learn over time just to settle down, you know.

You know, because I've seen all kinds of things in my career in terms of numbers and how people present them and stuff, so my initial reaction is definitely not alarm; it's: Okay, explain to me what you have, explain what's behind that. And then, I would delve in to understand the level of certainty that – and, by certainty I mean on a range of the signed contract on one end of the spectrum to something that is four years out, way on the other end of the spectrum. Where does it lie on that perspective, would be one example.

I would also, you know, be testing – a project team, by nature, is always looking for additional funds on approval, so that they can get everyone else out of the way and move, which is good – a good place to be if you have the right number. And I would be testing to see where their mindset was, you know, how actually, you know, accurate and how actually – you know, was that actually for something or are you looking to plug back in additional funds that you that you don't have to come back for. It would be a range of questions.

MR. FITZGERALD: Mm-hmm.

MR. E. MARTIN: I mean, you understand that. If that was at a point where I thought it was

really, really the right place, with some uncertainty but I'm – (inaudible) reasonable level of certainty that I could defend, I'd go right away. But if not, you know, just say: this, this, this, go back, it's not good enough, I don't understand it, you're not making sense, I suggest you're going to have to defend that a lot more, why are you putting that in, I want you to come back and tighten this up to let me know what is – what you – what we would consider more certain. That would be the process.

MR. FITZGERALD: For your own self-preservation, did you ever give any consideration to saying here are the numbers, I'm reporting these to my board, I recommend that government should be aware of this and put the decision on the board to decide whether or not it should be released to government?

MR. E. MARTIN: I'd be abdicating accountability.

MR. FITZGERALD: Well, no, the board's accountable – the board of directors –

MR. E. MARTIN: No, no. I'm –

MR. FITZGERALD: – you work for the board.

MR. E. MARTIN: I – you know, I don't be – I'm accountable for certain things, and I don't be – I don't hide behind anybody for that.

MR. FITZGERALD: No, I'm not saying you're hiding –

MR. E. MARTIN: And –

MR. FITZGERALD: – I'm just saying wouldn't that be prudent.

MR. E. MARTIN: Obviously I don't think so, because I've explained it. But I take exception – maybe not exception, but I will make the point strongly, that my role that I'm hired for is not to pass the buck; it's not to pass over information without being vetted to people who do not have the time or capacity or the mandate to do it; it's certainly not to pass it over and say: Look, here's information. You've asked me to vet this and bring forward decision-based data, and I look around and say, jeez, I'm getting a little –

you know, it's a big project – that's not happening. I'm in the job to handle that.

And I did it. And as far as saying would I go up and change that, to go up and get signatures all the way up the line on documents that I wasn't exactly sure of to protect me and all that stuff in the future because it's stressful? No. That's my job. If I didn't like that, I'd leave the job.

MR. FITZGERALD: Well –

MR. E. MARTIN: But I got to do the job.

MR. FITZGERALD: – well, I guess there's different ways people could do your job, I would suggest. And I wasn't suggesting a very lengthy process. All I was suggesting was an email to the board attaching the slide deck saying: Here's where we're to. Do you believe we would share this with government at this time?

MR. E. MARTIN: Wow. I mean, so just put yourself in the board's position here, okay? You know, they get – I bump a memo over to them so I got Mr. Marshall and Mr. – and other people that are working, and they're on the –

MR. FITZGERALD: Mm-hmm.

MR. E. MARTIN: – board and meeting four times a year, and they understand we're at this level, and you're sitting there on a Tuesday morning and gets an email from me: Here's a bunch of numbers. Do you think we should share this with the government?

I don't know, maybe you'd have to ask Mr. Marshall, but –

MR. FITZGERALD: Well, I did. Mr. Marshall wanted the numbers.

MR. E. MARTIN: – but – he wanted vetted numbers or he wanted them stressed?

MR. FITZGERALD: He wanted to know the numbers.

MR. E. MARTIN: He'd pick up the phone to me and he'd say, you know, what is this? You know, why are you sending me these? You know.

MR. FITZGERALD: Well, then you could answer.

MR. E. MARTIN: He would say, what's the answer? He would say –

MR. FITZGERALD: Yeah.

MR. E. MARTIN: – give me what – give me the information that I need to make a decision. And you're just throwing this over to say should I go to government? That's your decision. He said, you know, if you want me to do your job, he said, let me know and I'll do your job. But, I mean, I'm not calling up Mr. Marshall to say, well, I – you know, should I share this with the government? Maybe I'll stop there because it's just at the antithesis of how I would think or how a business would work if you're accountable for it. So, that's my answer.

MR. FITZGERALD: Well, I appreciate there's a certain level of operations you would be responsible for and the board generally doesn't get involved in operations. And my question wasn't – it wasn't posed from the perspective of general operations issues. I see billion-dollar increases in a Newfoundland company as something that's fundamental that goes above operations and I believe the board should've been known – or should've been told that.

MR. E. MARTIN: The board did know.

MR. FITZGERALD: Okay. All the –

MR. E. MARTIN: (Inaudible.)

MR. FITZGERALD: – time in a timely basis?

MR. E. MARTIN: A very timely basis.

MR. FITZGERALD: Well, Mr. Marshall said you've liked to know the 7.65 number.

MR. E. MARTIN: I don't want to get – I think you're using the wrong number there now, so just –

MR. FITZGERALD: Oh yeah. Sorry. Mr. Marshall would've liked to –

MR. E. MARTIN: Yeah, just to help –

MR. FITZGERALD: – know the number that was up to \$7 billion in 2013.

MR. E. MARTIN: But –

MR. FITZGERALD: He was very clear on that.

MR. E. MARTIN: – I'm gonna – well, I'll just – rather than debate that point, I'll just go on record to ask the – once again, the Commissioner, I'd responded to that before. And I just pointed out –

MR. FITZGERALD: Well, that's my last question anyway. Thank you, Mr. Martin.

MR. E. MARTIN: Okay.

MR. FITZGERALD: Thank you, Commissioner.

THE COMMISSIONER: Thank you. All right. It's 12:30 now, so we'll take our break. I think we'll come back at a quarter to 2.

I'm getting a sense we may not finish today. So, the option is to sit later this evening 'til we do finish or, alternatively, come back tomorrow. I'm not sure what the appetite is out there, so you guys can discuss that with Commission counsel, and I'm at your behest. So we'll adjourn until quarter to 2.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: All right. I understand we're going to change the order because some people have flights to catch. So, next is the Innu Nation. Ms. Brown.

MS. BROWN: Good afternoon, Mr. Martin.

MR. E. MARTIN: Mmm.

MS. BROWN: Good afternoon, Commissioner. I won't be taking you to the binders, so –

MR. E. MARTIN: Okay.

MS. BROWN: – no need to get organized there for me. So, my name is Julia Brown. I am counsel for Innu Nation. I have just a few questions for you, Mr. Martin, and they are dealing with a topic that hasn't come up yet. It's an environmental issue. I expect that the two parties examining you after me will probably also ask you some questions on this issue.

So the issue that I would like to discuss with you is methylmercury associated with the flooding of the Muskrat Falls reservoir. And so, as you know, that issue has been present since the early days of the project. But more specifically, were you aware that that issue was being brought to the forefront, concerns were being raised and reported in the media in, say, the 2014 to 2016 period?

MR. E. MARTIN: Yes. And with respect to being brought forward in the media and such, and, I think probably an obvious point, but from Nalcor's perspective it was always a – you know, an issue or a subject at the forefront –

MS. BROWN: Right.

MR. E. MARTIN: – even prior to that.

MS. BROWN: Right. Fair enough.

Would it be fair to say, though, that you would not have been the person at Nalcor who was closest to this issue?

MR. E. MARTIN: That's correct.

MS. BROWN: Okay. And would it have been Gilbert Bennett who would've been the main person on this?

MR. E. MARTIN: That's correct. And I would've depended upon Gilbert entirely for that. He would probably be the better person to say who else was involved with him. But I would see that as his responsibility and expertise.

MS. BROWN: Okay. Thank you.

And so would it be fair to say, then, that your involvement in managing that issue and addressing concerns on that front would've been fairly limited?

MR. E. MARTIN: On a – yes. On a day-to-day basis, fairly limited. Probably goes without saying. I wouldn't want to leave the impression it wasn't a very, very important issue for me and for the company. It was just a matter of effectively dealing with it. It would be better delegated to Mr. Bennett.

MS. BROWN: Okay. Fair enough.

Now, are you aware, Mr. Martin, that in the fall of 2016 – so this would've been after you left Nalcor – an Independent Expert Advisory Committee was struck to make recommendations on mitigating potential impacts of methylmercury from flooding the reservoir?

MR. E. MARTIN: I was aware of that through media.

MS. BROWN: Okay. And so it follows that you wouldn't have had first hand knowledge of their process or the conclusions that they reached because you weren't involved at Nalcor at that point, is that right?

MR. E. MARTIN: That's correct.

MS. BROWN: Okay.

I'd like to pull up P-01699 please, Madam Clerk? And just before this comes up, I'll say that I'm directing you to this document only for context. I don't expect you to be able to speak to it in any detail. It is from after your time at Nalcor.

So you can see on the screen here this is for the IEAC, and it was put together by their independent expert committee. So that was a committee of experts, scientists who were asked to look at mitigation opportunities having to do with the methylmercury. And if we can go to page 14, please? So just to orient you in the document this is where the experts have made their recommendations for what they think might be appropriate measures to try to reduce the impacts of the methylmercury.

And so we can see that they're saying that they've considered a number of options. And if we can scroll down, please? And then they list the options here. So Option 1 was that nothing further be done, just leave things as they are. Option 2 was: "Full clearing of soils and vegetation." Although it is noted in the last sentence there that "The IEC" notes "that the very aggressive schedule that would be needed to achieve" that "objective could result in undesired side-effects," possibly "stimulation of methylmercury production." So they were concerned it might actually make things worse potentially.

And then Option 3 we have: "Targeted removal of soils and vegetation." And can we continue scrolling down?

Option 4 was capping of wetlands. Option 5 was a combination of Options 3 and 4.

And if we scroll down there to the IEC Recommendation, we can see that – in the second paragraph there – it's noted that the experts weren't able to come to one conclusion about what to do. So it says: "Six IEC members recommended some sort of pre-impoundment mitigation, with one recommending wetland capping only ..., and five recommending both wetland capping and targeted soil removal" And then "Three members recommended no further action on mitigation"

Do you see that?

MR. E. MARTIN: I do.

MS. BROWN: Okay.

And so based on this document – and also possibly just from what you've gathered from the media – would you agree that there has been debate amongst the scientists who've looked at this about how to go about mitigating this impact?

MR. E. MARTIN: Based on those items, yes. Obviously, I was nowhere near, but just reading this, it appears to be –

MS. BROWN: Fair enough.

MR. E. MARTIN: Fair enough. (Inaudible.)

MS. BROWN: Yeah.

And I would anticipate and expect that, you know, you're not a scientist; you wouldn't be able to opine on what the best option is here.

MR. E. MARTIN: That's correct.

MS. BROWN: Okay. Thank you.

Those are my questions.

MR. E. MARTIN: Thank you.

THE COMMISSIONER: Thank you, Ms. Brown.

The Nunatsiavut Government. I don't believe they're here.

NunatuKavut Community Council.

MR. RYAN: Good afternoon, Mr. Martin.

My name is Victor Ryan. I'm counsel for NunatuKavut Community Council.

I just have some questions for you, and the first topic I'd like to discuss is the protests that took place on the Muskrat Falls site; specifically from late 2011, 2012, up until the end of your term as CEO.

So do you recall that beginning in 2011, 2012 and continuing into 2013 and '14, there were a number of protests on or next to the Muskrat Falls Project site?

MR. E. MARTIN: Yes, I do, and I believe – and you said – the answer is yes. There was one, I think, was much more – it was quite a distance from the Muskrat Falls site, and I think others were closer to the site.

MR. RYAN: And do you recall, at the time, knowing that the protest was attended by members of NunatuKavut?

MR. E. MARTIN: In some cases, yes, and in some cases, no. I don't have entire recall.

MR. RYAN: Do you recall that earlier in this time frame that we've established – 2011, 2012 – the dispute prompting at least some of the

protests regarded the asserted claim to Aboriginal and treaty rights that NunatuKavut had claimed?

MR. E. MARTIN: Not full recollection, but I'm certainly aware that – of that issue, and I would have no doubt that what you're saying is likely correct.

MR. RYAN: And so I'd just like to ask you what your response would have been to these protests as CEO, to what extent would you have been involved in the – in these protests?

So, I'll start off by putting it to you that I'm sure Gilbert Bennett would've taken a lead role within Nalcor responding to these protests, is that correct?

MR. E. MARTIN: That's correct.

MR. RYAN: But was there ever a level in terms of quantity of protests, seriousness of protester issues, that would have bumped this from Mr. Bennett's desk to your desk?

MR. E. MARTIN: The answer is yes, and I'd just – and in two ways.

I think, you know, I wouldn't want to say I was totally removed at all times 'cause that's not true. Obviously, when that type of situation happened it was Mr. Bennett's responsibility. He'd obviously inform me, I mean, it was in the news and everything anyway, but he would inform me as a matter of course. We would briefly discuss it, and we would generally just reaffirm, you know, our position that – to treat the people with the utmost respect, the safety of Nalcor's workers and stuff were paramount, and basically, you know, follow the, you know, the policy of the company and stick to it, you know, as we had over time, and be respectful.

So that would be our dialogue, we would confirm that or discuss it again, and then I would not get involved after that, other than updates. I'm not sure of this particular event you're talking about, if I was involved or not, but I can remember once or twice – and I'm not sure if it was the same event or if it was twice – but I did personally, you know, get involved and I travelled to Labrador myself to meet with the people – with the strikers and with some of the

leadership there, and added my assistance to trying to resolve the situation.

MR. RYAN: I know one – if there are multiple instances of that happening, at least one of them is sort of in the later time within this period, sort of closer to 2014, 2015.

So, would you – was it a consistent practice of yours, when Mr. Bennett would update you about, you know, there's a protest happening, to, you know, confirm Nalcor's values with respect to the protests and to, you know, ask Mr. Gilbert to proceed as normal, or is that something that only happened at particular flashpoints or...?

MR. E. MARTIN: It happened at the outset of the event. Regular updates, probably no, you know, when we had a call from the site or Gilbert would let me know what's happening. But if, you know, if there was a – it seemed to be escalating somewhat or if there was tension, you know, we would have a quick discussion about that again, because you know, people were getting a little bit more stressed. We both wanted to always make sure that we passed the message down properly, so that's what we would do.

MR. RYAN: So the original response from Nalcor to the first protest in 2011 was to immediately apply for and receive an ex parte injunction, preventing protestors or anyone who is aware of the injunction from approaching the site. And when I say immediately, I mean the morning following the protest. Would this have been a course of action that you would have sanctioned?

MR. E. MARTIN: Yes, I would've – once again we're – yes is the answer, but I just want to explore sanctioned for a second to be clear. I wouldn't – that would – decision would be taken by Gilbert and his team in conjunction with, you know, whatever advice he needed. I would not be asked for a specific approval –

MR. RYAN: Yup.

MR. E. MARTIN: – but by sanctioned, obviously if I disagreed, I certainly would, you know, have said something –

MR. RYAN: Right.

MR. E. MARTIN: – so, more of that kind of process.

MR. RYAN: That – it was my question, Mr. Martin, was I was attempting to ask whether that course of action could not have proceeded without your approval, and it sounds like from your answer they did not receive your express approval to take that action, but if you had disapproved you would have intervened.

MR. E. MARTIN: That's correct.

MR. RYAN: Would you have been made aware that an injunction would've been sought? Is that something that would've been reported to you on an information basis?

MR. E. MARTIN: Yes.

MR. RYAN: And so I'll put it to you that an ex parte injunction is a fairly extraordinary legal remedy. Obviously, you're not a lawyer; I'm not gonna ask you to comment on legal issues or legal arguments, but an ex parte injunction is one where you don't allow the other side an opportunity to be heard at that particular point. It's something to be sought in an emergency.

From your perspective, why would Nalcor consider an – that type of injunction necessary at that time?

MR. E. MARTIN: I frankly wasn't aware of what you just said. So I would – if it's – and with respect, Mr. Bennett would probably be the one better to ask that about because I'd be speaking without knowledge – without proper knowledge.

MR. RYAN: Sure.

And so the ex parte injunction that Nalcor saw and received was eventually modified through the courts into an interim injunction and then later a permanent injunction. Is that process something that you would have been made aware of by Mr. Bennett?

MR. E. MARTIN: The answer is I became aware of it, so I think the early answer is yes, but once again, I would not have been – he would not have asked. I would not necessarily have been informed that it was happening each step in

the way. It would've been a process at that point that would've been within the project team's –

MR. RYAN: And again, they wouldn't have come to you seeking your approval to take those course of actions?

MR. E. MARTIN: No, they wouldn't and – but on the small side, again, if it happened and I became aware of it and I thought it was improper, I mean, I would have – you know, I would've said something about it. But it was much more of a situation at that point that that would be entirely hired – sorry, handled by the project management team.

MR. RYAN: And so then continuing on, when members of NunatuKavut, my client, were arrested for violating the terms of the injunction, would your role in that incident match your roles that you've just previously discussed? Being made aware of it by Mr. Bennett, not taking any sort of decision-making stance but just receiving updates from time to time?

MR. E. MARTIN: That's correct.

MR. RYAN: So the permanent iteration of the injunction was eventually overturned in the Newfoundland and Labrador Court of Appeal, and it's a decision that's in evidence at this Commission. It's at P-02079; it's quite a lengthy decision, Mr. Martin, and again I don't necessarily mean to ask your legal opinion on certain things but there's one specific finding of the Court of Appeal that I think is relevant.

Before that, I just want to make sure you would've had no role in instructing the lawyers who represented Nalcor, in this case. This would've been something, again, handled by Mr. Bennett and the project management team, is that correct?

MR. E. MARTIN: That's correct.

MR. RYAN: So the Court of Appeal – and that's at page 11, Madam Clerk, and if you scroll down – so this point two here and then it's actually sub (d). So the Court of Appeal made a finding that the permanent injunction effectively permanently infringed the *Charter* rights of NunatuKavut members, both to “freedom of speech and freedom of association.” So when

this ruling came out, and it was in 2014, so you still would've been CEO.

The Court of Appeal would have made a finding that this injunction sought and received by Nalcor, constituted a permanent infringement on my client's *Charter* rights. And so, keeping in mind that you weren't the instructing person for Nalcor, what would've been your reaction to this ruling?

MR. E. MARTIN: I'm sorry. You said, what would have or what was?

MR. RYAN: What was?

MR. E. MARTIN: What was? I can't recall. I did not read it, I did not read it. This would be the first time I would've seen 2(d), frankly – or just because it does not come to mind. So, frankly, I think it would have – most likely have been a conversation between Mr. Bennett and I, you know, explaining where are we, what does this mean, to an extent, but it would be for information more than action on my part.

MR. RYAN: And so just to clarify, Mr. Martin, you're saying you don't have an explicit recollection of that conversation but just usual practices. Mr. Bennett would have probably updated you on this. Not for –

MR. E. MARTIN: But – sorry.

MR. RYAN: – not asking you to make a call necessarily but updating you?

MR. E. MARTIN: That's correct.

MR. RYAN: Okay. So I would put it to you that it's quite a serious thing for a company like Nalcor to be found to be infringing anyone's *Charter* rights, specifically in a permanent form and specifically with respect to protesting at a site like this which is the subject to Aboriginal title claims.

Would you agree with that? That that finding is a serious finding?

MR. E. MARTIN: If I could just put the – put a qualifier around it. I haven't read this, I don't know what's in and out, and I don't know the rest of the words. But this, standing alone, I

think you'd termed it a serious finding. On a stand-alone basis, yes.

MR. RYAN: Yes.

MR. E. MARTIN: Once again, in the context – I don't know what is all around it and what it exactly means and that kind of thing.

MR. RYAN: Of course, yeah. You're not a lawyer, it's a 38-page decision. But this, in and of itself – you know, the injunction permanently infringe NCC members' *Charter* rights of freedom of speech and freedom of association – it's a serious –

MR. E. MARTIN: That sounds serious.

MR. RYAN: – matter.

MR. E. MARTIN: That sounds – that statement sounds serious. Yes.

MR. RYAN: And so, when you would have been made aware of this, by Mr. Bennett, would such a serious matter have caused you, as CEO of Nalcor, to take stock of the way that Nalcor was interacting with NunatuKavut and to consider whether the relationship between the two parties needed some attention, needed to be improved?

MR. E. MARTIN: I can't recall that type of discussion.

MR. RYAN: And so, I'll just put it to you then that you also would not be able to recall any specific action being taken as a result of this.

MR. E. MARTIN: I cannot recall specific action. I remember upon one – one point in particular, and maybe several that I can't recall. But I had, you know, met, you know, with Mr. Russell, but I can't say it's tied to this. But I can recollect meetings, I can recollect a meeting, for sure, and I think more than one meeting with Mr. Russell to discuss, you know, concerns and issues, but I don't know if it's related to this particular item.

MR. RYAN: Do you know approximately – perhaps what year? 'Cause this would have been very late 2014.

MR. E. MARTIN: I'm sorry. I can't help you with that.

MR. RYAN: That's fine. Looking back now, in hindsight, given that you can't recall reflecting on this very serious issue or taking steps to rectify this serious issue, was that a mistake? Should you have done that?

MR. E. MARTIN: I don't believe so. It would be my – it would be my sense, I mean, my conversations and approach on this was guided by advisors and such, obviously. And, but – you know, from Nalcor's perspective, we were – I think I would say the least – have at least the ability to engage, you know, on something – on the issues that NCC was raising. And from my mind, the – one of the fundamental issues was always the status of a land claim.

And while, personally, I may have some views on that, you know, which I can't really share, but professionally, I would have to take advice that – my advice was that is a matter between the federal government and NCC. It's not a – advice to me – it's not a provincial government, you know, responsibility and certainly not Nalcor's to engage in discussing the issues around the potential for a land claim settlement, it was a federal issue.

So, that's probably a little bit of background that, you know, I may refer back to, to say, oftentimes. That's why I would – you know, would not get involved because even though I understood some of the issues, I had no ability to deal with them, deal with the fundamental issue. And any thought that – any involvement by me might assist or not assist that effort, I didn't want to be the one making that kind of engagement.

MR. RYAN: And I suppose I should just clarify: When I say, you know, not taking any action, it's my understanding and certainly the evidence before the Commission, that Nalcor didn't continue to attempt to enforce the injunction after it was overturned by the court.

So there was action taken after this decision was released, but I have your evidence on that point.

I just wanna turn to something that you said in Wednesday's examination and I have you quoted as speaking about Gull Island and saying: The project's team had approached us about, and I believe the government. But anyway, that's not the point. The point is they – I was certainly approached about expending some money at Gull to start site development to ensure we maintained the environmental approval.

And I was hoping that you could, please, clarify who approached you about starting some site development at Gull Island?

MR. E. MARTIN: It would have been either Mr. Bennett or Mr. Harrington, likely Mr. Bennett – then Mr. Harrington. But I can't exactly recall.

MR. RYAN: So members of the project team.

MR. E. MARTIN: Yes, exactly.

MR. RYAN: Okay.

And this portion where you say: And I believe the government but that's not the point. I'll put it to you that you were going to say that the government may have approached the project management team and then the project management team approached you and it didn't really matter the flow of that approach. What mattered was at the end of the day, you were approached. Is that accurate?

MR. E. MARTIN: That's not accurate.

MR. RYAN: Okay.

MR. E. MARTIN: My current recollection and understanding is that probably was not understood by the government.

MR. RYAN: Okay.

MR. E. MARTIN: But why – you know, why I say that is it was Nalcor was the proponent that went forward for the environmental approvals.

MR. RYAN: Mm-hmm.

MR. E. MARTIN: And I have no recollection and – and a feeling that the government would not have been on – would have not necessarily digested that. I feel that would have been a project management team –

MR. RYAN: Okay.

MR. E. MARTIN: – thinking. And only from the perspective of we did have – for a period of time, we maintained people looking at Gull and, you know, doing some planning, and we always try to stay ahead of the potential for that.

MR. RYAN: Right.

MR. E. MARTIN: I think that ended up, you know, either winding down or stopping, as we got much more heavily involved in Muskrat Falls. It was just resources weren't there.

MR. RYAN: And was it your understanding that the release of the entire Lower Churchill Project, Muskrat Falls plus Gull Island, from environmental assessment could expire in any way?

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

UNIDENTIFIED MALE SPEAKER: Mmm.

MR. E. MARTIN: I think we'd – I'd have – you'd have to ask Mr. Bennett that.

MR. RYAN: Okay.

So then, to be clear, you distinctly recall being approached about doing a bit of site development at Gull Island and you specifically remember that the justification for that was to ensure we maintain the environmental approval, but you're not comfortable saying that you distinctly remember having the understanding at the time that absent a bit of work done at Gull Island, the environmental approval might expire or be subject to a further approval?

MR. E. MARTIN: I'd like to – that's what I said, but I'd like to change that –

MR. RYAN: Okay.

MR. E. MARTIN: – 'cause as you say it, I'd have to have some – you know, why would I –

why would there be a, you know, a thought that we need to do something to maintain if there wasn't an exploration of some form attached to it?

MR. RYAN: Okay.

MR. E. MARTIN: So I'm thinking back, yeah, I got that point. I wouldn't know about the details, I wouldn't have known – you know, thought that at the outset, but there would be – have been some insinuation, just by logical association, I'd have to understand there was something attached to it.

MR. RYAN: Mm-hmm.

'Cause – well, and I raise this, Mr. Martin, because the Joint Review Panel report actually specifically recommended that if Gull Island did not progress within a certain time frame, that the environmental assessment release expire and the process have to be done again, and the provincial government actually explicitly rejected that recommendation and said, no, the release will stand for the entire Lower Churchill Project.

And so I'm sensing, perhaps, that this might be a line of questioning better put to Mr. Bennett, as it sounds like he might've been, at least in part, where you would've got this understanding.

MR. E. MARTIN: No, that's – that would be my suggestion as well 'cause as you started to explain that, I once again realized I better pull back because I don't have that deep an understanding of it.

MR. RYAN: Okay.

And then still on the topic of environmental approvals, but shifting slightly, I would just like to take your attention to an email that was written by Charles Bown, not to you or to anyone at Nalcor. It's at P-03460, Madam Clerk, and it's a series of questions and answers with respect to the updated federal loan guarantee.

My understanding is Canada had a number of questions that were posed to the province and that Charles Bown, along with officials in the Department of Natural Resources, provided some answers to those questions.

MR. E. MARTIN: I'm just seeing this email and I think you said – I'm not sure – but this is after my time, correct?

MR. RYAN: Yeah, I think it would've been the year that you left, but –

MR. E. MARTIN: I just notice here October 21, 2016.

MR. RYAN: And so I don't mean to put this to you in any specific way because as you say, it was after your time, and this wasn't an email that you wrote or that you received. But if we go to page 6 of this email, Mr. Bown references – and I believe it's at the bottom of that page – oh, it'd be at the bottom of page 5, sorry, Madam Clerk. Yeah, one page up. Here is fine.

And so Mr. Bown is responding to a question about clearing of the reservoir and whether partial clearing or full or additional clearing on top of partial clearing is the best approach. And then at the very last sentence of his response on page 5 – so, Madam Clerk if you can scroll up to the bottom of page – oh, it's page 4 here, but it's page 5 of the exhibit.

MR. E. MARTIN: Okay.

MR. RYAN: So that's fine. It says: "Given the potential for impacts on fish and fish habitat from further clearing and soil stripping, Nalcor is of the view that a federal EA trigger exists related to these impacts and a subsequent section 35 Fisheries Act authorization. Nalcor also notes that any new reservoir clearing/stripping undertaking may trigger federal EA provisions through the operation of the federal loan guarantee. Provincial triggers would also apply."

And so I don't mean to get into the actual issue of what amount of clearing should be done; that's gonna be subject to a response to a recommendation from government very soon. But I think this point is actual very germane to the terms of reference of this Commission, because as I read that, it sounds like Nalcor as an institution had a view that anything in addition to the clearing that was contemplated by the JRP report, would trigger a whole new environmental assessment process. So is this a view that you would have had while you were at Nalcor?

MR. E. MARTIN: Me personally –

MR. RYAN: Yup.

MR. E. MARTIN: – I wouldn't be aware of this.

MR. RYAN: Okay, and so Mr. Bennett wouldn't have ever brought this to your attention, just in an information way. Not that you can recall in any event?

MR. E. MARTIN: Not – I'm just searching my memory banks. Not that I can recall. And I'm – I can't recall. I'm just thinking that what happened after my tenure as well, this – you know, so I'm – I often try to think of what, generally, Mr. Bennett would have approached me on.

So, no, I can't remember. I'm thinking, as well, I can't offer an opinion on it because I believe this stuff was happening after I was – after I left.

MR. RYAN: And fair enough, this email is written after you left. Theoretically, this – Nalcor's view could have crystalized completely after you had gone.

Would this issue that's being discussed here – an additional environmental assessment process, additional provincial triggers, additional *Fisheries Act* authorizations – would that constitute a risk to the project cost and/or the project schedule in your view?

MR. E. MARTIN: Well, fundamentally, I don't have the data or the information because those are questions I would need to see, you know, from the project management team, you know, what the schedule implications would be, what the cost implications would be.

So, I – and that would have to be done in conjunction with – in a parallel path with everything else that's happening or not. I don't have that information. But I think, just fundamentally, I – if you're going to add work scope, at least the addition of the work scope for getting the schedule would obviously have additional cost associated with it.

MR. RYAN: And so I believe it was the evidence of Mr. Harrington from last week or

the week before that the contingency amount set aside for additional clearing of the reservoir in Nalcor's documents would not have contained any money to allow Nalcor to participate in additional processes.

But do you have any knowledge of whether the – that contingency set aside would have covered this issue?

MR. E. MARTIN: Are you talking about the contingency that was put in place after I left or the contingency that was in place before I left?

MR. RYAN: I believe it was the contingency in place before you left, but I'm not 100 per cent sure on that so –

MR. E. MARTIN: I'm not sure if I should answer that question and that particular point because I don't know what happened. I'm only (inaudible) what I could've heard in the news after the fact –

MR. RYAN: Right.

MR. E. MARTIN: – and I don't know. That's all I can say about that, unless you have another question on it.

MR. RYAN: That was my last question on that, so maybe I'll just put it to you again: You don't have any recollection right now of discussing a contingency for additional clearing and whether it would have included funding for additional environment approval processes?

MR. E. MARTIN: So prior to my leaving –

MR. RYAN: Mm-hmm.

MR. E. MARTIN: – I have no understanding what happened after words. Prior to my leaving, I cannot recall any discussion around it, I don't know if there was anything in – you know, in there for it. And not that I would, but we were not anticipating it by virtue of as has been explained to me, you know, overtime by the project management team, would not have been brought up to me. So I don't know for sure, but if I had to ask another side of the scale, I wouldn't think there was. But I really believe, having said about – as far as that, I think that is something Mr. Bennett would have to confirm.

MR. RYAN: I just wanna clarify when – Mr. Martin, when you say anticipate, do you mean anticipate that it was likely to occur? Because I'm looking at this email and it seems that Nalcor clearly anticipated it as a possibility, but whether it was, you know, something likely to occur that needed to be managed is another story. So is that the distinction you're making?

MR. E. MARTIN: No. When I said anticipated, maybe I should have just said I don't think –

MR. RYAN: Okay.

MR. E. MARTIN: – it was in there. And then you referred back to this letter, and I've already said it but anything here – there was issues after I left, with regard to reservoir clearing that I think are probably being addressed in this letter that I would have no knowledge or impact or involvement in at all.

MR. RYAN: Mmm.

I just wanna switch topics to after you left Nalcor in 2017, Nalcor negotiated what was called the Community Development Agreement with NunatuKavut and it's quite a large document. So I just wanted to ask you: Did you have any involvement in early negotiation or planning for that Community Development Agreement?

MR. E. MARTIN: No.

MR. RYAN: Right. So it's a thing wholly conceived after you left Nalcor.

The Community Development Agreement, which is in evidence but I don't necessarily think we need to go to it, I'll put it to you that it governs a few million dollars are being spent by Nalcor on issues of mutual interest between Nalcor and NunatuKavut. And it seems to me, I'll put it to you, to be an example of precisely the type of action that Nalcor could have taken during your tenure but that you say, but that you say you couldn't have taken because these were issues of the federal government – between the government and NCC, really no place for Nalcor.

Obviously, I – well, I'll ask: Have you reviewed the Community Development Agreement?

MR. E. MARTIN: No, I have not.

MR. RYAN: So given that you haven't reviewed the Community Development Agreement, but that you know in broad strokes that it exists and it was negotiated after your tenure, do you – does that give you – does that make you rethink your previous answer about the limitations of Nalcor's ability to work with NunatuKavut on issues of mutual interest?

MR. E. MARTIN: The only information I can respond to that with is the advice and counsel that I received when I was there. Based on that advice and counsel, I would not change my view. What happened subsequent to that, I can't comment on.

MR. RYAN: Okay.

And I just wanted to – this is my last question – just in reference to your testimony today, you discussed the Nalcor board and some of the passion that they brought to the project. In particular, you spoke about Leo Abbass, who was a Nalcor board member, mayor of Happy Valley-Goose Bay, was at one point my principal, actually.

And you said that Mr. Abbass had a tremendous focus and brought to our attention what had to be done with respect to his issues and his passions. And I was just wondering if you could explain whether Mr. Abbass had brought issues concerning the three Indigenous groups in the area, to the Nalcor board? If you recall, of course.

MR. E. MARTIN: I'm not sure about bringing issues, but he certainly brought up perspective and discussed it. And I think – I don't think, I know that's where I – you know, one of the reasons I would've commented on the value and – of Mr. Abbass on the board is that not – and make no mistake, not that the full board wasn't totally focused on Labrador, but it is a different perspective, we found.

And oftentimes when we would be discussing things or trying to find this – you know, a solution or something, another way forward, you know, Mr. Abbass would say: Hold on now, but, you know – and he would provide a perspective. Of course, our lights would go on right away

and say: Absolutely, we gonna put that in the decision-making.

So that was, you know, that was a regular occurrence and I guess I was basing it on that. And some of those comments would've been around – perspectives around, you know, NCC or the other groups for sure. But I can't say he brought a specific issue forward to –

MR. RYAN: Right.

MR. E. MARTIN: – deal with.

MR. RYAN: Okay, Mr. Martin. Those are my questions. Thank you.

THE COMMISSIONER: Thank you.

Ekuanitshit is not here.

Grand Riverkeeper Labrador/Labrador Land Protectors?

MS. URQUHART: Good afternoon, Mr. Martin.

My name is Caitlin Urquhart and I'm representing the Grand Riverkeeper Labrador and Labrador Land Protectors, and you'll know them as citizens groups from Labrador who are focused on maintaining ecological integrity of the Grand River.

So I have a few areas, just sort of building on much of what the last two counsel have been speaking about.

In terms of the risk around a lack of consultation and the risk of resulting protests, that risk was known from the beginning of the process, of the project.

MR. E. MARTIN: That's correct.

MS. URQUHART: Okay.

And what measures were in place to mitigate that?

MR. E. MARTIN: I think at the high – you know, at the highest levels, the engagements that occurred – I can't list them but I certainly understood that they were taking place. I

understood as well that we – you know, we had sought senior, experienced external advice, particularly from experienced legal firms in this particular area, to guide us to make sure that, you know, what we were doing was meeting the requirements and in some cases exceeding.

And – but past that, I think, you know, once again, Mr. Bennett and some of his team that were on the ground with this would be able to give it more flavour and information on that.

MS. URQUHART: So Gilbert Bennett, of course, was the lead on that project or on that –

MR. E. MARTIN: That's correct.

MS. URQUHART: – portfolio.

And, so in terms of your involvement in that, you obviously had designated Gilbert Bennett as the lead and you would have been made aware of engagement that was ongoing as well as any legal opinions as to whether the sufficiency of that is there and – I'm trying –

MR. E. MARTIN: I think generally yes. Not on a regular, frequent basis but more on an exception basis. So I wouldn't wanna leave the impression that I was getting regular updates on everything that happened.

MS. URQUHART: Okay.

MR. E. MARTIN: But, you know, from the perspective of getting an update or – yes, at times catching up on what was happening, make sure I was aware of it – that happened. But in a lot of the more detailed stuff, if I got involved, would be from a particular issue that may have arisen.

MS. URQUHART: Okay.

So that actually leads into the next question that I had, was just sort of building on – and I think you answered this to some extent, but at what point does it become a CEO level (inaudible) level issue? So you're saying, essentially, if there was a specific exception or some sort of a concern or an issue, then it rises to your level. Otherwise, if things are just going along you don't hear about it?

MR. E. MARTIN: That's correct.

MS. URQUHART: Okay.

So you indicated that you attended – that you went to meet with the protestors in Labrador. Can you recall – you said once or twice, do you – I mean, if it only happened once or twice, do you recall those occasions?

MR. E. MARTIN: I recall two occasions.

MS. URQUHART: Two occasions.

MR. E. MARTIN: And there could've been more.

MS. URQUHART: Okay.

MR. E. MARTIN: And these two may be linked, and that's my issue, but I recall two in particular. One was a situation where there was an individual who had some issues in the camp around how that person was treated.

MS. URQUHART: Okay.

MR. E. MARTIN: And that was a serious issue for obvious reasons, and I remember meeting with that person and –

MS. URQUHART: And that was to do with racism towards an Innu worker, I understand?

MR. E. MARTIN: That's correct, yes.

MS. URQUHART: Okay.

MR. E. MARTIN: And I met with, certainly, several representatives, you know, with that person and dealt – you know, not dealt with it but worked with those people. So that was one instance.

And there's another instance that I vividly recall where I went up to visit the protestors on site. I visited them on – well, the main entrance, and then I went around –

MS. URQUHART: Right.

MR. E. MARTIN: – into the back and – backside, and there was a very large group of

people there and I went down personally to meet them.

MS. URQUHART: Okay.

MR. E. MARTIN: And talked to several of them in the larger group to hear their concerns.

MS. URQUHART: And what did you hear?

MR. E. MARTIN: A partial okay, because, you know, it's been a while but –

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: – it was a range of things. You know, were the principles of the New Dawn Agreement, for instance, being adhered to, business opportunities that concerns. I believe it was referenced, I believe it was, around some of the concerns around how some people may be being treated on site by some supervisors. That would be the type of thing, and, you know, I just sat there. I knew several of the people quite well. We – you know, we just – I listed and they told me.

MS. URQUHART: Okay.

And so, though, when you're saying those issues, the New Dawn Agreement, the business opportunities, treatment by supervisors, was that the – so I'm gonna say the 2015 protest, or was that the second protest? Were they both the same sort of issues? Is that –

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

MS. URQUHART: Okay.

MR. E. MARTIN: I'm sure I could find out if I could talk to someone at Nalcor, you know, who would – but I just can't recall off the top of my head. But they're more vivid in my mind, I think, is the actual engagement not the time.

MS. URQUHART: Okay.

And you'd indicated to Mr. Ryan that when you'd be made aware of a protest you would communicate the Nalcor policy and advise them to follow that. Can you just let us know what the policy was?

MR. E. MARTIN: When you say policy, I'm – I wouldn't want to create the impression that I was, like, coming off a written script.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: So, my mind, it was, you know, we always talked about treating people with respect.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: And ensuring the safety of the workers at site and ensuring the safety of the assets. I think that was principally the discussion.

MS. URQUHART: And was there – so, obviously, in those two occasions you also went in to go and meet with the protestors. What was done with the information that you gained from those conversations?

MR. E. MARTIN: Well, in the instance of the individual who had the issues on site, I don't think I – I'm concerned about privacy issues a little bit but, you know, I instructed – I had the site team and the project management team investigate the issue, give me a report on it, and some decisions were made around that in terms of how it would be handled, which I probably prefer not to talk about here right now because I don't know about privacy issues and such.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: And I, actually, you know, apologized and explained that to the individual personally as to what happened and how we dealt with it. That was that one. The – on the other site, I don't have as vivid a recollection because it was a much broader series of issues.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: But I will say that the protest dispersed –

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: – and I would have gone back and gone through those points with the people and said I want those issues discussed and dealt with. I would've also said if they're true and they're occurring, fix it, change it. And if they're not, you know, re-contact the people who I'd been talking to and explain it to them.

So that was, generally, the process: don't let it stay out there. And I always, principally, took the point of, you know, we're not going to do something for the sake of doing it. But my approach, or our approach, particularly – I guess my own approach was I never had an issue saying yes or no, but I always felt it was important to explain in depth why there was a yes or why there was a no, and that was the approach. That was the instruction and we would've done that.

MS. URQUHART: So you've discussed with counsel earlier essentially, and I just wanna clarify, put it back to you to confirm, that Nalcor Energy was established to carry out the Energy Plan.

MR. E. MARTIN: That's correct.

MS. URQUHART: Okay. And Nalcor Energy was an integrated team with government.

MR. E. MARTIN: That's correct.

MS. URQUHART: Okay, and so my question on this is just – so who in your view provided independent oversight of this integrated team?

MR. E. MARTIN: It was a combination of the board of directors. We were reporting formally into Natural Resources and –

MS. URQUHART: Is that in the government or in – are they federally or provincially?

MR. E. MARTIN: They're provincially.

MS. URQUHART: Okay.

MR. E. MARTIN: And certainly a, you know, a direct oversight from the Premier's office as well.

MS. URQUHART: So who provided independent oversight, like, outside of Nalcor and government?

MR. E. MARTIN: Well, you know, that was, you know, the – that would be – I'm just trying to picture, I mean, who would you bring – would – you would be bringing someone in oversee government –

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: – at that point.

MS. URQUHART: Okay.

MR. E. MARTIN: So I'm not, you know, I'm not sure I can –

MS. URQUHART: So you –

MR. E. MARTIN: – answer that.

MS. URQUHART: – don't see any – you don't see it there as being some party that kind of acts as that check and balance, in your view.

MR. E. MARTIN: I think the answer is I agree with you –

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: – but I wanna make sure we're on, you know, I'm not misinterpreting your question.

MS. URQUHART: And it's not a –

MR. E. MARTIN: If there (inaudible) –

MS. URQUHART: – trick question –

MR. E. MARTIN: – you said Nalcor –

MS. URQUHART: – I'm just trying –

MR. E. MARTIN: – and talk about going up to the ministry and up to the Premier's office and that's the government, and I was –

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: – and so who's the independent oversight over and above that, that

would be an independent oversight of the Premier's office, and I don't think that – I think that's the final bastion.

MS. URQUHART: Yeah, no, it's – that's fine. As I say, I'm just –

MR. E. MARTIN: (Inaudible.)

MS. URQUHART: – honestly trying to figure out who, in your view, creates the check and balance. And so you viewed the check to the integrated team as the premier, the Department of Natural Resources and the board of directors of Nalcor.

MR. E. MARTIN: That's correct.

MS. URQUHART: Mmm.

MR. E. MARTIN: And there was also – there's a piece of paper, I believe it's in evidence, Commissioner, as well, that they – governance structures that impacted Nalcor –

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: – and there's others, I can't recall them all. There's Internal Audit, there's external, there's – oh, I think it was quality control. There's a series of things, I just can't recall them all now, but when that question has been asked previously, you know, there was documents prepared to explain, not exactly the question you were asking, but different forms of oversight and governance.

MS. URQUHART: Okay.

Now (inaudible) we're going to have similar responses to some of the previous questions. The Joint Review Panel and the environmental assessment commitments, of course these were of significant concern to Nalcor.

MR. E. MARTIN: Absolutely.

MS. URQUHART: And who was the lead on that?

MR. E. MARTIN: Mr. Bennett.

MS. URQUHART: Okay.

And so you would've had – would you have had any involvement beyond a high-level overview issues as they arise type of involvement?

MR. E. MARTIN: I would not.

MS. URQUHART: All right.

In terms of the board, you were just mentioning how Leo Abbass brought a different perspective, a Labrador perspective. And I was just wondering actually, do you recall, other than – so I know Cathy Bennett was – there was one women on the board. Were there any other – I just don't know the full composition. Were there often – were there always – was there always a couple of women on the board? What was the gender composition of your board?

MR. E. MARTIN: Going back, there was an individual of the name by the name of Ms. Turpin.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: I can't recall. I'm just searching my memory bank, 'cause I don't have a list of the boards –

MS. URQUHART: Yeah.

MR. E. MARTIN: There was Ms. – and we had several boards. There was a Ms. Blackmore –

MS. URQUHART: Blackmore.

MR. E. MARTIN: There was another lady – oh my God, the name slips my mind – I know her quite well – out of New Brunswick. But I think there's lists that are easily attainable –

MS. URQUHART: I'm sure we can get them somewhere.

MR. E. MARTIN: That, yes, we had representation, you know, female representation. Was it enough? I think as with many boards throughout certainly North America and Europe now, I think everyone is understanding that we need to improve in that area and we were doing some of that work as well.

MS. URQUHART: Okay.

In terms of the North Spur and the safety of those downstream – this, of course, would be a significant concern for Nalcor?

MR. E. MARTIN: Absolutely, yes.

MS. URQUHART: And again, this is a portfolio that was largely – or that Gilbert Bennet was the lead on.

MR. E. MARTIN: That's correct.

MS. URQUHART: Okay.

And so you would have only received sort of high-level interaction if there was an issue on this; is that correct?

MR. E. MARTIN: That's correct.

MS. URQUHART: Were you made aware of concerns expressed by Ron Power around the competence – the design competence of SNC or SLI?

MR. E. MARTIN: Um ...

MS. URQUHART: SLI.

MR. E. MARTIN: Around the –

MS. URQUHART: Design competence, or the competence (inaudible) –

MR. E. MARTIN: No, I was not.

MS. URQUHART: Okay.

That was never brought to your attention?

MR. E. MARTIN: Is that design competence of one particular issue or just in general?

MS. URQUHART: So the comments out in a series of emails around the North Spur, and Ron Power had said that he was intending to write formal letters expressing his concern about the competence of SLI. And we haven't seen any formal – you know, we didn't – we haven't seen the next step, any former letters that actually were written, so I'm not sure whether that was brought to your attention.

I'm just asking whether you have any recollection of concerns being raised because that, to me, is sort of when someone is saying I'm going to write a formal letter, that's probably getting up to your level. So I wonder if you have any recollection of that.

MR. E. MARTIN: With respect to a specific letter or comment about SLI's competence with respect to the design of the North Spur, no.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: But at a broader level, the information that I was provided consistently is that: SLI – SNC-Lavalin – their engineering portion of the contract that we had with them, which was substantial, was really good.

MS. URQUHART: Okay.

MR. E. MARTIN: So that's – but not – nothing specific, but I was constantly checking that. And, as you're probably aware, Nalcor had some issues with SNC-Lavalin from a construction-management perspective –

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: – that they dealt with. But the feedback throughout was that the engineering portion that SNC-Lavalin was providing with us was good.

MS. URQUHART: So, this was – I mean, there was a – as I say, there's a series of emails, and I can get you the exact exhibit numbers, but it's more just a – generally that – as I say, they went back and forth in your, sort of, engineering higher-ups and, specifically, Ron Power indicated, you know, he had serious concerns about their competence, and that was never flagged to you as an issue.

MR. E. MARTIN: I have no recollection at all of that.

MS. URQUHART: And, obviously, the independent engineer took some significant interest in the North Spur. It's an issue that comes up throughout the reports.

So, would the recommendations from him have come up to your level?

MR. E. MARTIN: No, they would not.

MS. URQUHART: Okay.

So you wouldn't have been advised of what any concerns or issues the independent engineer was raising in respect of that?

MR. E. MARTIN: No, I would not.

MS. URQUHART: Okay.

MR. E. MARTIN: I – you know – what I would – the level of my involvement, I would have – because, obviously, you know, it was an issue that arose in many forms.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: I did ask for an explanation, myself, of what the issues were and what the situation was. I can't remember exactly the replies, and I did it several times, but, you know, folks would go through the fundamental engineering concepts and how it was designed. They'd go through how it was being constructed. They would explain the independent assessments of that over time, and they would confirm to me that they were 100 per cent, you know, confident that, you know, things were being handled properly. That would be, really, the extent of my involvement in that.

MS. URQUHART: Okay, and so you would've asked, say, the design team or Gilbert for those updates?

MR. E. MARTIN: That's correct.

MS. URQUHART: In terms of methylmercury, I just wanted to sort of bring you to the time – I mean, that concern obviously had been raised from the beginning of the project – correct, yeah –

MR. E. MARTIN: Yes, I agree with that.

MS. URQUHART: And obviously was a significant concern throughout the JRP as you're aware?

MR. E. MARTIN: I'm aware of that.

MS. URQUHART: And there were a number of protests but it seems the sort of public, the broader public became more largely aware of this throughout 2016, when the Make Muskrat Right campaign was in full swing. Do you recall that.

MR. E. MARTIN: I recall obviously seeing that, you know, on the news but I wasn't there obviously.

MS. URQUHART: And, so prior to that, there were – I mean we have emails going back to 2011 and earlier where, particularly Nunatsiavut is pressing to have additional human health studies done and more work done on the methylmercury issue. So would Gilbert Bennett – again, Gilbert Bennett was the lead. I know you already answered that. And you would've been kept informed of the progress on these issues?

MR. E. MARTIN: That's correct so from when – you know, up until I left in, I think it was April of '16, that's a good description. You also discussed, you know, things when they got very – much more, I don't know the word I'm seeking here, but certainly public and a lot more things happening around it was –

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: – after I left.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: And I don't know who was responsible at that point, was it Gilbert or anyone else, I have no idea.

MS. URQUHART: So – apologies, I'll take you back before the Make Muskrat Right campaign because I do believe that really got into full swing in June, which would be just after your –

MR. E. MARTIN: I believe –

MS. URQUHART: – time.

MR. E. MARTIN: – you're right.

MS. URQUHART: But prior to that, would you have been advised of the steps that were being

taken to address public concerns around this, or would that have been something that would've been in the ordinary course and within Gilbert Bennett's purview?

MR. E. MARTIN: It would've been in Gilbert's purview. But I do remember, you know, taking a couple of briefings on it, it was – certainly I don't have the expertise to handle that, so I would've asked for an update. I remember one update I received, I can't remember when, but it took a little bit longer than expected because I was finding a lot of terminology and things that were being discussed there I – you know, I just didn't have any background in that. So I – yeah, I think I had an understanding of it.

MS. URQUHART: Mm-hmm.

MR. E. MARTIN: But that would be, you know, the extent of my involvement in that.

MS. URQUHART: And if there were questions on this, you would generally defer somebody to speak to Gilbert Bennett. Is that the –?

MR. E. MARTIN: Yes, I'd have to. Yeah.

MS. URQUHART: Yeah, okay.

And so, generally, there weren't – other than having some briefings to understand the background of that – of information about it, there weren't any situations that you recall that's being brought to your level, essentially, like specific issues or concerns being brought to your level.

MR. E. MARTIN: That's correct. I wanted to be prepared enough that if – you know, if somebody asked me, you know, what's going on here, I can give a cursory overview, say, I'm – you know, I reviewed it and I'm confident that the proper steps are being taken. And here are some of the steps, possibly.

But, if – or they wanted more information after that, I would say, no problem, we can arrange a briefing that Gilbert can lead in and such.

MS. URQUHART: Okay. Those are all my questions. Thank you.

THE COMMISSIONER: Thank you.

Robert Thompson?

MR. COFFEY: Good afternoon, Mr. Martin – oops.

Good afternoon, Mr. Martin.

Bernard Coffey for Robert Thompson.

Mr. Martin, I'm going to – I plan to cover with you the period between sanction and financial close, okay? My questions will relate to those – that period. And the period, of course, the days just prior to sanction.

I understood – or I understand from your evidence in Phase 1 and Kathy Dunderdale's evidence in Phase 1 that at some point before sanction – December 17, 2012 – she asked you a question to the effect of what is the kind of – give me an estimate of the worst case scenario in cost overruns. And your response was: Hundreds of millions of dollars but no more than 500 million. Does that sound right?

MR. E. MARTIN: That sounds, you know, approximately right. I don't think I need to check the transcript, but it sounds fair.

MR. COFFEY: Okay.

MR. E. MARTIN: I think I also may have explained before but, just thinking about it, I always caveat things when pushed on numbers that I cannot guarantee anything.

MR. COFFEY: Oh, yes.

MR. E. MARTIN: You know, that's an important point.

MR. COFFEY: Yes, and it is. And I appreciate that. But the number used was several hundreds of millions and maybe as much as \$500 million. And, you know, for the record, Commissioner, the transcript of Kathy Dunderdale's evidence, December 20, 2018, pages 72 to 73 cover that, in particular, from her perspective.

Mr. Martin, when Lance Clarke testified here, at the end of his evidence, and I believe it was May 23, 2019, but I stand to be corrected on that. At

the very end of his evidence, the Commissioner posed some questions to him and it was in relation to the notion of misinformation, I think was the way – 'cause Mr. Clarke had made comments about what he felt was misinformation about the project management team, okay. The misinformation that was being bandied about publicly. And the Commissioner, you know, asked him about, well, the – the 6.2 billion at sanction, was the figure that Nalcor used publically.

And Mr. Clarke's response if you look at actually – if you look at the tape, you'll see that I think his response was – he uttered the phrase "expectation management." That was the phrase he used in terms of – because it was – the issue was, well, what did the public expect in managing the public's expectations? Which you've just referred to, you would never guarantee now any number, right?

So my question is is this, in this context is: We've heard that Jerome Kennedy and Kathy Dunderdale, for example, were up 'til sanction were routinely asking, like: What's the number? What's the number? Or phrases to that effect. And we understand now that Ms. Dunderdale was told 6.2 and, as an aside by you, maybe another half a billion.

My question is: In terms of the number, the 6.2, did you explain it to government officials as being the base estimate, contingency and escalation added up to 6.2 billion?

MR. E. MARTIN: Yes.

MR. COFFEY: Okay. You wouldn't mention management reserve.

MR. E. MARTIN: Not those two words but I would've explained the concept and how we were going to deal with it.

MR. COFFEY: Yes. And, in fact, as a quick reference, on December 20, 2018 – on the bottom of page 72 and the top of page 73, the transcript – Ms. Dunderdale talks about that concept, that it hadn't been explained, that, you know, if – but she put it this way. She said that if the overrun was several hundreds of millions of dollars, she would have been told that there was enough money in terms of the cash flow, that

that could be addressed without resort to the taxpayer. Does that sound what you would have told her?

MR. E. MARTIN: Yes. I – the answer is: Absolutely, yes. I would have also added to that that there was substantially more there than that amount.

MR. COFFEY: Yes. And you've explained that and – in terms of the idea of mitigating rates. Can you tell the Commissioner whether or not there was any – ever any financial modelling done by Nalcor in relation to just that which – for example, if the cost overrun beyond, for example, \$6.2 billion, you know, in, for example, increments of \$100 million cost overruns – at \$100 million; at \$200; 300; 400; 500; 600; 700; a billion. That kind of all the way through.

Was there ever any financial modelling done in relation to, well, what would have to be used from this pile of cash, throw off cash to keep rates down to where the public had been told they would be?

MR. E. MARTIN: Yes.

MR. COFFEY: There was?

MR. E. MARTIN: Yes, there was.

MR. COFFEY: And those – that modelling should be in existence?

MR. E. MARTIN: Yes.

MR. COFFEY: Was it done before financial close, do you know? Or was it done after the AFE's began – rise?

MR. E. MARTIN: I know it was done after financial close –

MR. COFFEY: Yes.

MR. E. MARTIN: – in – several times and on an ongoing basis. Prior to financial close, there was two pieces of work I remember; one was in the MHI report, I believe it was, and they did a sensitivity analysis.

MR. COFFEY: Yes.

MR. E. MARTIN: So it wasn't a 100, 200, 300, 400, but it was –

MR. COFFEY: Yeah.

MR. E. MARTIN: – a – I think it was a – I forget the number but there's three, I believe, levels of potential increase and what – that would impact the CPW. And that was (inaudible) –

MR. COFFEY: Oh, yeah. Okay, I appreciate that, you know.

MR. E. MARTIN: Yeah.

MR. COFFEY: But I'm not talking about that, I'm talking about how much money and, you know, in terms of, well, you know, when would we use up the water rental money?

MR. E. MARTIN: Right.

MR. COFFEY: When would we use up the excess sales money – excess power sales money, you know? When would we have to change the ROE, tap into that? What I'm getting at in terms of – was that ever actually, in a quantifiable way, done by Nalcor before financial close?

MR. E. MARTIN: I don't believe so, no.

MR. COFFEY: Okay.

MR. E. MARTIN: The only thing that I would add that that may be a question – for completeness, I mean – need to be asked by some of the modelling people at Nalcor 'cause I am not exactly sure. There was rate analysis done, so there were charts produced with rates.

MR. COFFEY: Yes.

MR. E. MARTIN: And there was changes in – because there was changes in some of the underlying costs there was – I believe, more than once it was done from a rate analysis. So there may be some information there that could be useful and they may have done some of that but I've never seen the other piece you were asking about – the application of some of those pools on it – before sanction.

MR. COFFEY: Now, Mr. Ralph, I believe, took some pains to show you Exhibits P-02215 and P-02217.

MR. E. MARTIN: Do I need to look at those?

MR. COFFEY: Yes. I (inaudible). Just to –

THE COMMISSIONER: So, these will be on the screen then.

MR. COFFEY: Yes, Commissioner. Thank you.

I – and in particular if you scroll down, please, Madam Clerk? Keep going. Keep scrolling, scrolling, scrolling – going – there.

And you will recall that this is the November 13, 2013 spreadsheet on page 4. In the top row is the CH0007 contract information. If you go out to the right-hand side under the column E, which is Final Forecast Cost – he pointed you to the figure \$1.117 billion and there's a figure there all the way down to the dollar – and you recall he took you through this, and he also then looked at Exhibit P-02217, please.

And again – scroll down please Madam Clerk. Keep going, please. Yes. There we are – page 3. Thank you.

And, Mr. Martin, you'll see there at the top row – the CH0007 –

MR. E. MARTIN: Yes.

MR. COFFEY: – a contract column in this context – it's column E – the Final Forecast Cost is \$1.024 billion. See that?

MR. E. MARTIN: I do.

MR. COFFEY: And he took you as well to the changes in the contingency numbers. If we look at the bottom of the row – at the bottom of these spreadsheets, we see the contingencies change. Now, I'm going to suggest to you that the difference between the two spreadsheets – and the spreadsheets are labelled over a period of, I believe, about six days, the 13th to the 19th – the

difference is approximately – and the contingency is about \$93 million and it's all, I'm going to suggest to you – relating to reducing the CH0007 amount of \$1.117 billion to \$1.024 billion.

Is that correct?

MR. E. MARTIN: It appears that way, yes.

MR. COFFEY: Yes.

And –

MR. E. MARTIN: If I may interject –

MR. COFFEY: Sure.

MR. E. MARTIN: – and with apologies to Mr. Ralph, that's been bouncing around in my head there last night. Probably need to check with someone from the project team. Faintly recalling some – there was discussions ongoing with Astaldi at the time and I don't know if I can say that there was changes to the contract or not but something rings a bell.

MR. COFFEY: And –

MR. E. MARTIN: But I – I meant to bring that up afterwards, and apologies to Mr. Ralph because that, you know, that just didn't come to my head at the time. So I'd like to get that checked.

MR. COFFEY: Well...the final forecast cost – and I'm gonna suggest to you the following – what happened here is, is that the FFC, in 2215, Exhibit P-02215, the November 13 one – the FFC there, of \$1.117 billion, which was the FFC for that contract, and remained the FFC for that contract, got changed on or before November 19, reduced to \$1.024 billion, which was the actual contract face value of CH0007, okay?

MR. E. MARTIN: The second one.

MR. COFFEY: Yes.

MR. E. MARTIN: Yes.

MR. COFFEY: But the \$93 million difference, approximately, which was the difference in the

FFC for that contract package, between the contract amount and the FFC, and it included things like escalation, and other amounts, I'm not gonna take you through the details, now. One can go through and pick through the documents; I'm going to avoid that because we'll be here well into the evening.

But my point being that what was done here was simply someone, between the 13th and 19th of November, took the FFC of \$1.117 billion, and substituted the contract amount, \$1.024 billion, and moved all of that money, that \$93 million, down to the contingency, in order to increase the contingency. Does that sound right?

MR. E. MARTIN: Um, no. And –

MR. COFFEY: Oh, it doesn't? Okay, so –

MR. E. MARTIN: – and maybe that – I could re-explain that as to why – I mean, Mr. Commissioner, the reason that, you know, that was bouncing around in my head last night because I felt the insinuation – maybe improperly – from Mr. Ralph that I believe at the time he said it came to me, which I wasn't exactly sure of. And after it came back from me, the contingency changed, so...and I certainly had no recollection of that. I just – if the implication was I was suggesting a change for – I – it's just so alien to what happened, I just couldn't stop thinking about that a little bit.

MR. COFFEY: Now –

MR. E. MARTIN: And that's what triggered me to think that, you know – and I'm not sure about this, but I know there was stuff going on with the contract and I was gonna try to find a way to have my counsel, you know, check with Nalcor or something.

It's one of those things I'd like to ask someone about because there's always a reason with the numbers and I just can't recall.

MR. COFFEY: Okay.

Well if we want, for example – I'm not suggesting this is definitive but a shorthand way of looking – finding out is to look at Exhibit P-03486.

THE COMMISSIONER: This will be on your screen.

MR. COFFEY: It'll come up on the screen – thank you, Commissioner.

Now this is a series of emails in mid-November of 2013. And it relates to this topic and just looking at the last email on the – in this, page 1. It's from Mr. Meaney, November 18, 2013, to Mr. Bennett, copied to Mr. Clarke, Mr. Harrington. The subject is, "Re: Note from Ed on Capital Costs."

And Mr. Meaney – and I'm gonna take us through this – Mr. Meaney here says to these other gentlemen, "OK...just saw it....CH0007 FFC has been adjusted from \$1,117m to" – one – not one point – "\$1,117m to \$1,024m and reconciliation for this contract added. Why the downward revision? So is this updated document in Ed's hands for final review and sign off ASAP?"

Now –

MR. E. MARTIN: Was there an answer to that?

MR. COFFEY: Well, not that I've seen, but, in terms of this – I'm not suggesting there's not one, but I haven't seen it – and –

MR. E. MARTIN: Is –

MR. COFFEY: If we look at page 4, please.

MR. E. MARTIN: Is there a – oh, sorry, I interrupted. Go ahead. I was thinking about (inaudible) –

MR. COFFEY: Yeah.

MR. E. MARTIN: – I apologize.

MR. COFFEY: Is there – page 4. Now, this is the first email in this chain on this – in this exhibit, anyway, and it's from Mr. Harrington earlier on May 18 – I'm sorry November 18, 2013. That Monday – beginning at 10:21 that morning Mr. Harrington sent an email to Mr. Meaney and Mr. Clarke saying: Insurance costs for determining premium. And Mr. Harrington is apparently tasking Mr. Meaney with attending to

this issue of data required to align the insured amount to the \$6.531-billion number.

So we can scroll up. Thank you. Thank you.

Here, within a matter of three minutes, Mr. Meaney responded saying: "I have the charts which George Chabab prepared for Canada/IE. I would envision we use the data from that for insurers and Moore McNeil once we get the OK from Ed re: Gilbert's email of Friday. Have we heard anything on that front?"

So this is a suggestion as to how Mr. – to – by Mr. Meaney as to how he might handle the task.

MR. E. MARTIN: Do you know what the okay that Gilbert was looking for from me? Is that –?

MR. COFFEY: Well, that's – again, I don't have that (inaudible).

I – and then, again within minutes, Mr. Harrington comes back and says – this is the middle of page 3 – to Mr. Meaney and Mr. Bennett and Mr. Clarke:

"Gilbert

"Is that spreadsheet and cover sheet OK to file in the data room?"

If we go up a bit further. And Mr. Bennett – at the bottom of page 2 and the top of page 3 of the exhibit – responds, again within minutes: "I'm in Halifax this morning working on the SOBI file, but I didn't get any further feedback from Ed, other than a question on performance security on the Astaldi sheet.

"If somebody can check with him, that would be great...

"G."

And if we go up a bit further, please, Madam Clerk. This is from Mr. Harrington to yourself, copied to Mr. Bennett and Mr. Meaney. Again, the subject is still: Insurance costs for determining premium. And he says:

"Ed

“We would like to file the attached spreadsheet and cover sheet in the data room - I believe that Gilbert was talking to you about it. We have shared all the data with the Feds and IE already and the data room contains a lot of similar and even more commercially sensitive material and has very restricted access.

“Please let me know if OK with you.... we are chipping away at the list of items we need to clear off and I would like to move this one forward.”

We come up further, please. It’s an email from yourself to Mr. Harrington and just – at 11:48 a.m. that morning – “Paul et al,

“Do not file yet. There has been modifications which I am looking at.

“Ed.”

Come up a bit further to the bottom of page 1 of the exhibit. This is from Mr. Bennett to Mr. Meaney and so on, but you’re not included in it. Subject Re: Note from Ed on Capital Costs. And he says – he tells these other gentlemen: “He asked for and was provided with some additional breakdown of the Astaldi contract.

“I think it’s in a note you were cc’d on from George Chehab @ 1815 on Friday.”

I’m sorry. I apologize. I skipped one. Just we (inaudible) – at 11:22 that morning, Mr. Meaney sent Messrs. Bennett, Harrington and Lance Clarke an email. And this time, presumably, he’s forwarding the earlier emails, but this email says – subject is Fw: Note from Ed on Capital Costs – “Any idea what modifications he is referring to?”

So, presumably, Mr. Meaney is asking his fellow – or his colleagues or your subordinates “Any idea what modifications he is referring to?” And that would be, presumably, your modifications that you were talking about. And –

MR. E. MARTIN: (Inaudible.)

MR. COFFEY: – I’m not saying you made the modifications, but you were – you said there had

been modifications in your email, you – we looked at that (inaudible) just a moment ago.

MR. E. MARTIN: Yeah, I think it said modifications that I was looking at or –?

MR. COFFEY: Yeah, you’re referring to, yeah.

MR. E. MARTIN: But in any event –

MR. COFFEY: Now, did you –

MR. E. MARTIN: – keep going –

MR. COFFEY: I’m not suggesting you made them –

MR. E. MARTIN: No.

MR. COFFEY: – yourself.

MR. E. MARTIN: I understand.

MR. COFFEY: And then there’s this email from Mr. Bennett at 11:56 a.m. that morning: “He asked for” – and in the context here I’m going to suggest the “he” is you – “and was provided with some additional breakdown of the Astaldi contract.

“I think it’s in a note you were cc’d on from George Chehab ... on Friday.”

And then finally then we come back to Mr. Meaney’s – at 2 p.m. that afternoon, telling Mr. Bennett et al. on the Note from Ed on Capital Costs he has realized that the FFC for CH0007 has been adjusted from 1,117 to 1,024.

MR. E. MARTIN: This is just on the screen, is it?

MR. COFFEY: Yes.

MR. E. MARTIN: It’s – so not to hold things up but I was trying to – could you go back to check the dates? Just – I’m trying to –

MR. COFFEY: Sure. You’ll find they’re all on –

MR. E. MARTIN: – trying to understand (inaudible) –

MR. COFFEY: – November 18, but you can check –

MR. E. MARTIN: – right here –

MR. COFFEY: – have a look through.

MR. E. MARTIN: So, okay, and could you move back up again, please?

Okay, I understand, yeah.

MR. COFFEY: So – if I could, Commissioner, just one moment, please.

(Inaudible.)

Yes. If we go look at exhibit – I believe, Commissioner, it's Exhibit P-02202.

THE COMMISSIONER: Again, it will be on your screen.

MR. COFFEY: A moment, please, Commissioner.

Now – just a moment, please, Commissioner.

Now, this is – as you can see from the top, page 1, you'll see there this is an email from George Chehab, he was involved in the project, November 5, 2013, to Ed Bush. The subject is an MWH meeting on Wednesday, correct version, new data and there are a bunch of attachments and so on.

In particular, if we could go to page 11, please.

This is one of the Major Packages Overview, 31 October 2013, see that? And if we could go then, please, just to give you a context – and scroll down a little bit, please. Keep going. It's – you'll see there on the next page, page 12, these are the – various contract packages are described – scroll down, please – and the number of packages and so on. And keep going, please. Keep going. Just a moment, please. I gotta – okay, this – I apologize, Commissioner, but – yes, page 16.

Now here, Mr. Martin, there are a list of contract packages on the left-hand side of the spreadsheet, and see them there, beginning with 0006, the second one is 0007. See that?

MR. E. MARTIN: Yes I do.

MR. COFFEY: And you'll see as you go across that CH0007 row, that the FFC is the second-from-the-right yellow column, yellow-headed column, and you'll see – yes, thank you, Madam Clerk. It's – the amount of the FFC is, well, it's \$1.117 billion, and there's other figures there, but

So as of, apparently, the end of that month, the month before, the end of October, the FFC was still \$1.117 billion, and it was \$1.117 billion on November 13. And apparently by November 19, somehow it ended up at \$1.024 billion, and the \$93-million difference ended up on contingency.

Now, were you aware that that was the case?

MR. E. MARTIN: Well, I'm just following these documents –

MR. COFFEY: No, back then. Were you aware back then?

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

MR. COFFEY: Okay.

Now, I'm gonna suggest to you that in doing some arithmetic – that if we look at, please, Exhibit P-02215 again. Thank you, and scroll down please.

Thank you. And, yes, and over to the right, please. I'm sorry, to the left. I apologize, my other right.

You'll see contingency is the last row, and we go over to the right-hand side, please. Thank you. The amount there, the total in contingency at this point in time, included in the \$6.531-billion figure, \$6.531-billion figure, is \$89,494,034, okay?

Now, Mr. Martin, I'm going to suggest to you that \$89.5 million is just under 1.4 per cent contingency on a \$6.531-billion contract – not contract, or cost estimate, okay?

So as of November 13, would you agree, based on what we've seen here, that the contingency included in the complete project as of that date, based on the November 13 figures, was just

under – it was 1.37 per cent of the total contract value – not contract value, the total project value. Does that sound right?

MR. E. MARTIN: I can see the number.

MR. COFFEY: Yes.

MR. E. MARTIN: I can certainly agree with you with respect to the number. Percentage, I don't know. That's what this document says. I think it's obvious, though, that's not what went ahead.

MR. COFFEY: Pardon me?

MR. E. MARTIN: I think it's obvious; obviously, that's not in, though. That's not what went ahead at – in the final analysis.

MR. COFFEY: No. In the final analysis, the \$93 million that came out of the CH0007 and was added to the contingency, ended up in a two point – no, I think it's about 2.4, or two point – no, 2.8 per cent contingency.

MR. E. MARTIN: Yeah.

MR. COFFEY: So, did you know that this was going on?

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

MR. COFFEY: Okay.

So in saying you can't specifically remember, does that mean you may have known or you may not have known, or you didn't know?

MR. E. MARTIN: The former two.

MR. COFFEY: Okay.

Now, Mr. Martin, as 2013 – the year 2013 got underway. Now, we came in in the spring of 2013. You knew that you told Kathy Dunderdale the worst-case scenario –

MR. E. MARTIN: Yeah.

MR. COFFEY: –you hadn't guaranteed it but you told her, in your view, worst-case scenario was a half a billion overrun. Some time in

February or March, we're not certain when, of 2013 you became aware that she was upset with you because of an issue involving the federal government's attitude toward the sanction agreement.

Do you remember that? Do you remember that? Do you remember that she was upset with you?

MR. E. MARTIN: I don't think it was only me.

MR. COFFEY: Well –

MR. E. MARTIN: She was upset, that's for sure.

MR. COFFEY: She was upset, okay.

MR. E. MARTIN: Yeah, that's for sure.

MR. COFFEY: Okay.

Now, did you understand in 2013 that Kathy Dunderdale would not go ahead with the project unless there was a federal loan guarantee?

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

MR. COFFEY: Okay.

So, you know, as the year – when it came through the spring, and she was upset about the federal view of the sanction issue, I take it you were, in effect, tasked with fixing that sanction agreement problem.

MR. E. MARTIN: Yes, I brought forward the issue and I'd laid out a way forward –

MR. COFFEY: Yes.

MR. E. MARTIN: – and the premier was in alignment with that and made it clear to get on with it.

MR. COFFEY: Did you understand at the time why she was upset?

MR. E. MARTIN: Yes.

MR. COFFEY: What did you understand was the reason for her being upset?

MR. E. MARTIN: The same reason I would've been upset about that. We had, I believe, the sanction agreement with Emera in December. It was a joint understanding, from my perspective, that the project was sanctioned based on that. And I believe in that March time frame there was some question marks brought up around that by the federal government, aided and abetted, if I can remember, somewhat by the Emera board, and the understanding that that – the Emera board was going to sanction the project as they had agreed to came into doubt.

So that was a big – you know, I thought that was quite an issue.

MR. COFFEY: I'm sorry, I – your voice is fading.

Could you repeat that, please?

MR. E. MARTIN: All of it?

MR. COFFEY: Yeah. No, certainly the last –

MR. E. MARTIN: Yeah.

MR. COFFEY: – 30 seconds.

MR. E. MARTIN: Okay.

MR. COFFEY: You understood she was upset, why?

MR. E. MARTIN: For the same reason that, you know, I was upset and others were upset –

MR. COFFEY: Mmm.

MR. E. MARTIN: – and the fundamental basis was we had signed a sanction agreement with Emera –

MR. COFFEY: Yes.

MR. E. MARTIN: – in the December time frame of 2012, and the understanding was that was a solid, fixed agreement to sanction, and we went ahead on that basis, all of us. And in that March time frame I think the federal government had raised some concerns, aided and abetted by some inkling or some information from the Emera board that they would – they want some additional something or information to sanction,

which brought some doubt into the sanction agreement, and that was very upsetting because we had agreed to sanction, together.

MR. COFFEY: In fact, I'm gonna suggest to you that on December 17 or December 18 of 2012, Emera actually posted online a signed copy of that sanction agreement.

MR. E. MARTIN: Yes, they did. And I believe they also had a press release. So I can remember –

MR. COFFEY: Yes.

MR. E. MARTIN: – they indicated they'd sanctioned the project, I believe.

MR. COFFEY: But the agreement was signed by Nalcor and by Emera, so it – presumably, Nalcor knew exactly what was in the agreement.

MR. E. MARTIN: That's correct.

MR. COFFEY: Did you – do you recall ever briefing the government on exactly what was in that agreement?

MR. E. MARTIN: Yes. Ask me dates and such, no, but I mean this was obviously, you know, a significant issue, we always brief the government with respect to that.

MR. COFFEY: Okay. Well, I – could you point me, do you – are you aware of any written detailed briefing of government, in relation to the – again, of the various clauses in that agreement?

MR. E. MARTIN: Now we – there are written documents. I can't recall them off the top of my head, Mr. Commissioner, I wasn't, you know, sure I'd be asked these questions, but I can't really recall them anyway. But there are documents, rather extensive documents, both PowerPoint presentations and I believe there might've been some other written documents, I can't say that for sure, but definitely a series of detailed documents around these arrangements.

MR. COFFEY: So, just so the Commissioner's clear then, so in – by the time you went to that meeting with the Premier Dunderdale and – you know, in or about March of 2013, and I – now

we (inaudible) it wasn't just her; apparently, this was a meeting where it was a big cast, right, a lot of people in that room.

MR. E. MARTIN: It wouldn't be totally unusual but –

MR. COFFEY: But –

MR. E. MARTIN: – yeah, sure.

MR. COFFEY: – this being described that way. Anyway, it's –

MR. E. MARTIN: I agree with at.

MR. COFFEY: So, by the time you went to that meeting and certainly by the time you left it, you understood she was upset, you were, for the same reason, upset that somehow or another you felt that Emera's board was seeking to renege on this, to kind of – you know, kind of weasel it in a certain way to get more. What, what was it –?

MR. E. MARTIN: Neither of those two.

MR. COFFEY: Okay. Well, you said something that the board members or some board members, you know, were abetting the federal government or abetted by the federal government or abetting the federal government.

What was – what's that about? It's the first we've heard of this that I – at least I've heard of it. So, what was going on there?

MR. E. MARTIN: First you've heard of it right now or are you –

MR. COFFEY: Yes.

MR. E. MARTIN: – talking about me?

MR. COFFEY: No, the – heard first, I – well, we've heard about this, the fact that Emera's board might've been somehow involved in this.

MR. E. MARTIN: Well, I – I can't comment on that, I think that was already discussed. But in any event, that's not the point, is it?

You were asking: Did they renege? No. The other one you used: Were they seeking something additional? No.

MR. COFFEY: Well, then what was there to be upset about?

MR. E. MARTIN: I can't speak for Emera, but my understanding from recollection was I believe they wanted all of a sudden, in my mind, to get approval from the UARB so that from the board's level, at least, they would get an answer to whether the proposal that was on the table at the time would work with the UARB and – as opposed to what the sanction agreement did was anticipate the potential for that type of thing happening –

MR. COFFEY: Yes.

MR. E. MARTIN: – where the UARB would – may or may not approve some or all of it. And the agreement was that we work through those variations and covered off how we would handle that and agreed: In any event, we would proceed together.

MR. COFFEY: So, I'm clear then. So Premier Dunderdale was upset because she thought that as of December 17, 2012, Emera had sanctioned the project?

MR. E. MARTIN: That's correct, plus –

MR. COFFEY: And you had led her –

MR. E. MARTIN: – it would be –

MR. COFFEY: – to believe that that was the case?

MR. E. MARTIN: – it would be useful, I guess, to ask Premier Dunderdale that. But I also think that she and we had issues with the Nova Scotia government as well, I think she was also upset with because even though they weren't signatories to the agreement, you know, there was significant interaction between the two governments.

MR. COFFEY: Yes.

MR. E. MARTIN: You know, they had to provide, you know, supplementary types of guarantees at the provincial level so that, you know, they – the Nova Scotia government was involved as well. And I think obviously the general – not that – the clear understanding was

we had the stuff nailed down together and we were moving ahead. So I think there was more than just Emera in her mind, but I – you would need to confirm that with her.

MR. COFFEY: So you – in talking then about – you know, using a phrase like expectation management, her expectation and understanding apparently was, was that it had been sanctioned and as it turned –

MR. E. MARTIN: Her understanding was it had been sanctioned.

MR. COFFEY: Yes, it had been.

MR. E. MARTIN: That's correct.

MR. COFFEY: And as it turned out, it wasn't. And she would have gotten the expectation or the understanding from you –

MR. E. MARTIN: That's correct –

MR. COFFEY: – initially.

MR. E. MARTIN: – because that's what I understood.

MR. COFFEY: Okay.

MR. E. MARTIN: Was there a management portion that – you mentioned expectation management, I – did I answer that question exact –

MR. COFFEY: Yes.

MR. E. MARTIN: – that's a term I'm –

MR. COFFEY: Yes.

MR. E. MARTIN: – I didn't feel was related to that.

MR. COFFEY: Now, I could then just move on.

THE COMMISSIONER: Just before you do, perhaps this might be a good place to break?

MR. COFFEY: Yeah. Thank you, Commissioner. I'll come back and finish up very promptly. Okay?

Thank you.

THE COMMISSIONER: Okay, thank you.

And so we'll take 10 minutes now.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right, Mr. Coffey.

MR. COFFEY: Thank you, Commissioner.

Exhibit P-01964 – and this will come up on the screen, Mr. Martin.

THE COMMISSIONER: It's not in your book.

MR. COFFEY: Okay, this is the Recommendation for Award, Summary Report for the CH0007 contract. Scroll down a little bit, please. You'll see generally it's signed off in – beginning September 20 and on into October of 2013.

If you look, please, at page – let me see, first of all. Just a second, Commissioner, I'll just bring it up. Oh, page 15, please, first.

Scroll down, please – right there, paragraph 4.0, Recommendation for Award. And, here, the evaluators have concluded that it should be awarded to Astaldi Canada Inc. for the following contract price: \$1,117,752,550 Canadian: "This price excludes HST and includes estimates for travel allowances, escalation and other allowances for specified and non-specified growth," and it points out where it's summarized.

If we could as well, on the same exhibit, look at page 45, please? And here, the table 1, Mr. Martin, the – "**Table 1.9 – Request for Award**," and here you'll see in the beginning of that chart the forecast total contract cost is, again, \$1,117,752,550. And it's broken down into the contract – total contract value of \$1,069,092,550 [sp. 1,067,092,550], escalation

\$3.8 million, and forecast non-specific growth allowance, which is described in note 3 below, of \$46,860,000. And the Commissioner, at his leisure, can look through that.

If we go to the bottom of the page, please – right there: “*Conclusion:*

“The current forecast of \$1,117,752,550 inclusive of escalation, specified and unspecified growth, represents an over-run of \$342,434,314 compared to the revised budget and should be retained as Authorised Fund Amount.”

So, would you agree then – and you’ll see that somebody has signed this September 26, 2013, Mr. Chehab, as lead cost controller – that that was the FFC for CH0007?

MR. E. MARTIN: Well, that’s – I’m trying to remember which number was on the 6.541 document (inaudible) –

MR. COFFEY: 6.531? Well, there were two – okay, if we look at – and that’s – I’m puzzled in the same way you are. If we look at Exhibit –

MR. E. MARTIN: I’m not saying I’m –

MR. COFFEY: – 0221 –

MR. E. MARTIN: I’m not saying I’m puzzled, I’m just –

MR. COFFEY: Well, 02215 –

MR. E. MARTIN: I just want to refer to the –

MR. COFFEY: Okay.

MR. E. MARTIN: – to the documents.

MR. COFFEY: Exhibit, please, 02215. Scroll down, please.

MR. E. MARTIN: So the first one – maybe to save you some time, I was just trying to think –

MR. COFFEY: Yes.

MR. E. MARTIN: – out loud, the first one – the second – the first one had that number and the second one didn’t, is my understanding.

MR. COFFEY: Yes, that’s correct.

MR. E. MARTIN: Yeah, I’m fine with that.

MR. COFFEY: Pardon me?

MR. E. MARTIN: I’m – I was requesting the documents.

MR. COFFEY: Yes.

MR. E. MARTIN: I was trying to slow that down because I was just saying, yeah, I’m – that number was on the first document, it was not on the second document.

MR. COFFEY: Because it was one – well, \$1.024 billion on the second –

MR. E. MARTIN: That’s –

MR. COFFEY: – that’s –

MR. E. MARTIN: That’s – yeah, that –

MR. COFFEY: – \$93 million –

MR. E. MARTIN: – sounds right.

MR. COFFEY: Ninety-three million dollars has been moved from that into –

MR. E. MARTIN: That’s correct.

MR. COFFEY: – contingency.

MR. E. MARTIN: Exactly. I agree.

MR. COFFEY: Did you approve of that move?

MR. E. MARTIN: Did I approve of it or did I approve it?

MR. COFFEY: Did you approve it?

MR. E. MARTIN: I can’t remember approving a move, but I would’ve, you know, okayed the final 6.5 number.

MR. COFFEY: No, that’s not what I asked. Did you approve of the moving of –

MR. E. MARTIN: Well, yeah –

MR. COFFEY: – money in the estimate –

MR. E. MARTIN: Yeah, yes, I must've because, you know, I went with it.

MR. COFFEY: Okay.

So, you would've been aware of the 1.117 number and you approved of the move to 1.024, and the shift of money, the \$93 million or approximately, into contingency.

MR. E. MARTIN: I can't specifically remember it but it goes to follow that I would've known. I mean –

MR. COFFEY: Okay.

MR. E. MARTIN: – you know, the documents were circulating, it's a large number, so I have no reason to doubt I wouldn't.

MR. COFFEY: All right.

MR. E. MARTIN: And, you know, it – just to put some flavour on that –

MR. COFFEY: Yes.

MR. E. MARTIN: – I think, once again, these numbers, they're extensive, they're being worked by the project management team, and I'm certainly focused on this but on many other things.

A lot of this stuff would be happening quickly within the project management team and they would've certainly informed me. I would've seen the documents, I know I would've, but I wouldn't have been involved in the, you know, the moment-to-moment adjustments and such.

MR. COFFEY: Pardon me?

MR. E. MARTIN: I wouldn't have been involved in the moment-to-moment adjustments. That's all I'm trying to say –

MR. COFFEY: Yeah –

MR. E. MARTIN: – is that –

MR. COFFEY: – but –

MR. E. MARTIN: – I wouldn't have direct recollection of sitting down and working through this in detail.

MR. COFFEY: But this is a – the only difference between those two spreadsheets, in terms of moving significant amounts of money – any significant amount of money; in fact, even almost a dollar, more than a dollar amount – is that move.

MR. E. MARTIN: I agree with that.

MR. COFFEY: Yeah, yeah.

MR. E. MARTIN: Absolutely.

MR. COFFEY: You agree with that, so –

MR. E. MARTIN: Absolutely.

MR. COFFEY: So that \$93-million move, you would've – you were involved in it, you approved of it.

MR. E. MARTIN: I –

MR. COFFEY: You knew about it and approved it.

MR. E. MARTIN: Yeah, I approved of it, absolutely.

MR. COFFEY: Fine.

Now, a couple of – I have questions on different topics, Mr. Martin. Can you name an instance where a Government of Newfoundland and Labrador civil servant complained to you that Nalcor was giving them too much information?

MR. E. MARTIN: No, but I think back in some of the –

MR. COFFEY: And it's in relation to the Muskrat Falls Project. I don't care about anything else in this context. In this context, do you ever remember any –

MR. E. MARTIN: Yeah, I –

MR. COFFEY: – civil servant –?

MR. E. MARTIN: Not to be rude –

MR. COFFEY: Yes.

MR. E. MARTIN: – I need to speak faster, I think –

MR. COFFEY: Okay.

MR. E. MARTIN: – but I don't. Just let me just think about that. I was going to refer to some –

MR. COFFEY: Sure.

MR. E. MARTIN: – of the early arrangements. Yes, I do, but that's out of the realm of this question. On the Muskrat Falls arrangements, I think the answer would be, yes, and – but not as directly. But I want to say yes because I don't think I would have a chance to offer anything unless –

MR. COFFEY: No?

MR. E. MARTIN: – I did, and I think of more in the context of, as I said earlier, people asking questions, it was – you know, it would be get Nalcor, you know, refer to Nalcor.

MR. COFFEY: Yeah.

MR. E. MARTIN: It would be in that context that, you know, the officials that I was working with were comfortable with our analysis, they weren't seeking reams and reams of data; that was clear to me. But as far as actually coming up with an instance where someone said don't give me any more information; I can't come up with one off the top of my head.

MR. COFFEY: Okay.

MR. E. MARTIN: I guess, and I don't think it's appropriate to ask for five or 10 minutes to search my memory banks but –

MR. COFFEY: Okay.

MR. E. MARTIN: – there it is.

MR. COFFEY: Now –

MR. E. MARTIN: I may come back to that, though. I may come back to that.

MR. COFFEY: Now, Mr. Martin, do you have any concrete evidence that this province is more of an information sieve than any other province? You made an assertion this morning that, in this province, you know, this – in your experience there's more of a sieve here in terms of the spread of information than elsewhere.

Do you have any concrete evidence of that?

MR. E. MARTIN: I didn't use the term sieve, but I understand what you're saying.

MR. COFFEY: Or a phrase to that effect.

MR. E. MARTIN: Yeah, so I wouldn't wanna be attributed with –

MR. COFFEY: Yes.

MR. E. MARTIN: – that terminology, that's all. But that being said, no, I don't have any, you know, concrete evidence –

MR. COFFEY: Yes.

MR. E. MARTIN: – as I mentioned, I don't have a survey, but I do have extensive experience in the industries, construction industries. I've worked in many, many centres, and I'm probably, you know, one of the people who's worked in this centre extensively, and that's based upon my experience and – and I –

MR. COFFEY: Okay.

MR. E. MARTIN: – could go on to say –

MR. COFFEY: Fair enough.

MR. E. MARTIN: I would go on to say, though, I – you know, anyone I've ever talked to around these types of topics seem to be highly aligned with my thinking, whether it was in a serious manner or breaking into a significant chuckle and nodding their head when I said it.

So that's not concrete, no, but I – you know, I've validated that through many interactions with many people.

MR. COFFEY: Okay.

Do you know or what was your understanding, when you were CEO of Nalcor, as to whether the *Financial Administration Act* applied to Nalcor? Did you have any understanding about whether it applied or not?

MR. E. MARTIN: I'm not familiar with the financial standard act.

MR. COFFEY: Okay.

Okay I – and I understand you're not aware in this context. I just wanted to ask the question anyway because –

MR. E. MARTIN: I understand.

MR. COFFEY: – the subject has come up, and I anticipate it may come up again.

MR. E. MARTIN: No but –

MR. COFFEY: But you had no –

MR. E. MARTIN: I had no personal – I still don't know what that is, but Mr. –

MR. COFFEY: Okay.

MR. E. MARTIN: – Coffey, if I would offer a point, though?

MR. COFFEY: Yes.

MR. E. MARTIN: That would not be something I would be engaged in.

MR. COFFEY: Yes.

MR. E. MARTIN: You know, we had lawyers –

MR. COFFEY: Yeah.

MR. E. MARTIN: – and accountants and CFOs that would be handling all of that kind thing for –

MR. COFFEY: Yeah.

MR. E. MARTIN: – me, so I wouldn't wanna leave the impression that I would not be interested or –

MR. COFFEY: No, I'm –

MR. E. MARTIN: – or saying we weren't adhering to it, it's just not something I would be familiar with and within my realm of activity that I would be even concerned with it.

MR. COFFEY: Yeah, and I raise it in this context, that you were certainly acutely aware of whether the Access to Information Act applied or not.

MR. E. MARTIN: Yes.

MR. COFFEY: Okay, so, but the *Financial Administration Act* not in the same – you weren't as acutely aware one way or the other; you weren't aware at all.

MR. E. MARTIN: No question about –

MR. COFFEY: Okay.

MR. E. MARTIN: – that, and I guess the reason would be the act changed with Nalcor so I would've been consulted on that as we – as the government went through it.

MR. COFFEY: And finally, Commissioner, Exhibit P-02176? That will come up on the screen, Mr. Martin.

Now, Mr. Martin, the Commission has seen the – this series of emails before. They are – do not – are not directly sent to you but you're mentioned in them.

This is an – the top one here on page 1 is from Lance Clarke to Jason Kean, July 18, 2013. It's copied to Mr. Harrington, Bennett and Crawley. It's a – subject is Draft IE Report to Ed/NL. And if we could go to page 4, please?

MR. E. MARTIN: Would it be –

MR. COFFEY: Okay you –

MR. E. MARTIN: – possible to just –

MR. COFFEY: – (inaudible) take these –

MR. E. MARTIN: – scroll a little bit –

MR. COFFEY: (Inaudible.)

MR. E. MARTIN: – I’m reading (inaudible) –

MR. COFFEY: Scroll down –

MR. E. MARTIN: – as quickly to –

MR. COFFEY: – slowly, yes. Okay, we certainly will, Mr. Martin. Madam Clerk, could you go back up please and scroll slowly for Mr. Martin? Thank you.

So here –

MR. E. MARTIN: Okay, keep going –

MR. COFFEY: – Jason is –

MR. E. MARTIN: – no keep going –

MR. COFFEY: – agreeing –

MR. E. MARTIN: – I’m good, keep going –

MR. COFFEY: Yeah.

MR. E. MARTIN: – please, keep going. Let’s stop there – no, keep going, I got it – okay, can I just read this?

Could I see who signed that?

MR. COFFEY: Yeah, now this –

MR. E. MARTIN: Yeah.

MR. COFFEY: – this is a draft. That – what you’re seeing there is a draft by Mr. Harrington, oh but he’s gonna send it to Jim – I understood Jim Loucks.

MR. E. MARTIN: Jim – and we’re talking Jim Meaney there I believe.

MR. COFFEY: No, that’s a gentleman – yeah, well this is going back and forth to Jim Meaney, but this is an email, I gathered, to Jim Loucks, probably.

MR. E. MARTIN: All right, excuse me –

MR. COFFEY: Yes.

MR. E. MARTIN: – Jim Lewis?

MR. COFFEY: Jim Loucks, who’s a –

MR. E. MARTIN: Who’s that, do you know?

MR. COFFEY: – something connected with the IE or the federal government.

MR. E. MARTIN: I understand. Okay, just (inaudible).

MR. COFFEY: Sure.

MR. E. MARTIN: Okay, I’m good. This right here please? I’m good.

And I’m sorry about that. Who’s this from and to – oh, from Jim – I have it. I understand. I’m good.

MR. COFFEY: And you’ll notice the last sentence – the last two sentences in that: “The one area we” – where, it should be, I said, presumably where or “we I could see some potential sensitivities with Ed and Province is the level of Contingency in the DG3 estimate. Below is the latest commentary in this area,” and the blue ink – or blue font, I gather, is the IE.

So, my questions is this, is, because you’re not in the email chain: Were you consulted about whether or not the IE’s July 12, 2013 draft report would go to the province?

MR. E. MARTIN: I can’t recall. I don’t think so, I can’t recall.

MR. COFFEY: Okay.

If we could just go down a bit further please? Keep going.

MR. E. MARTIN: I’m – okay, go ahead, just –

MR. COFFEY: I’m –

MR. E. MARTIN: Could you stop there, please? Okay, I’m good. Stop there again, please. Okay, I’m good.

Fine. Fine, thank you. Oh – oh, could you just go to the last paragraph please? I understand. Now that’s Jim – which Jim is that?

MR. COFFEY: And that's – presumably is Loucks, I think his name is, L-O-U-C-K-S, probably.

MR. E. MARTIN: 'Cause that would –

MR. COFFEY: I –

MR. E. MARTIN: – be unusual, just need to check that, 'cause –

MR. COFFEY: Yes, and –

MR. E. MARTIN: – Mr. Loucks, he wouldn't be referring to me as –

MR. COFFEY: Some of this –

MR. E. MARTIN: – (inaudible).

MR. COFFEY: Some of this is Jim Meaney.

MR. E. MARTIN: Okay.

MR. COFFEY: But some of it may be –

MR. E. MARTIN: It could be – could we – would you mind –

THE COMMISSIONER: I think –

MR. E. MARTIN: – checking that?

THE COMMISSIONER: – the person who signed that last email was Jim Meaney.

MR. E. MARTIN: Okay –

MR. COFFEY: Yes –

MR. E. MARTIN: – I'm good.

MR. COFFEY: – Meaney, yes, I apologize –

MR. E. MARTIN: Yeah.

MR. COFFEY: – Commissioner, I didn't – I didn't know (inaudible) yes, it would be.

Just one place, Commissioner, and – if we could go to, please, page 4, the bottom of the page, you'll see this is Mr. Meaney emailing Mr. Harrington and Bennett et al, and July 16, 2013, and he says:

“Hi Folks

“I just wanted to give you a heads up.

“Both Ed and the Province have been asking about the latest draft” of the IE's report, and you're looking at or wondering about some of the big issues and NL wanted a copy ASAP, and “The consensus amongst Derrick, Auburn and I this morning was a copy of the report should go to Ed before the Province gets it and he should be made aware of any key points.”

Now, Mr. Martin, would you have had to approve, then, of this going to the province – the draft?

MR. E. MARTIN: I think the – yes is the answer, but not to stop or not make it happen. I'm reading here that they want to flag some issues with me. That – if they said that there, they would've – you know, they would've discussed this with me and I would add some comments and then it would've gone. But I wouldn't say approve or not approve, and if the Newfoundland government wanted it, they got it.

MR. COFFEY: And were you aware that in the prior month, apparently, the – Nalcor had committed to providing a copy of the IE's draft report to Newfoundland and Labrador – to the government?

MR. E. MARTIN: No, I was not.

MR. COFFEY: You weren't – okay.

MR. E. MARTIN: No, I was not aware of that. And I'm comfortable there because that's not something that would come to me. I wasn't – as I said, I wasn't dealing with the IE and the federal government and such, so ...

MR. COFFEY: Oh, no – yeah, between the feds. And what I'm getting at is it's between – were you aware that in June Nalcor had committed to the Newfoundland government, apparently, that they would – Nalcor would provide copies of the IE reports?

MR. E. MARTIN: No, I'm not. And I'm just saying that wouldn't surprise me though –

MR. COFFEY: Okay.

MR. E. MARTIN: – or shouldn't surprise anybody either because, you know, the IE report, if Finance in government wanted it, sure. No one would feel compelled to check that with me, I don't think.

MR. COFFEY: Yeah.

And we've looked through – you've had a chance to look through some of the blue in this email – series of emails. In the draft reports, the – I mean, IE is talking about 12 to 18 per cent contingency, right? In that –

MR. E. MARTIN: I saw that, yes.

MR. COFFEY: For the entire project. And this is July of – July 12, 2013. And in mid-November of 2013 you were aware or had become aware that the contingency had gotten as low as 1.4 per cent and it got boosted to 2.8. Is that correct?

MR. E. MARTIN: That's not entirely correct. And the reason for that is –

MR. COFFEY: Okay.

MR. E. MARTIN: – I'd like to put the proper bounds around this, 'cause my understanding, as I skimmed through those blue notes, that the IE ended up agreeing with something less than that.

MR. COFFEY: Oh, yes. But – less than, but at the time –

MR. E. MARTIN: But at –

MR. COFFEY: (Inaudible.)

MR. E. MARTIN: – you know, at the time, it was less – you said 12 to 15 – I think it might – I forgot – 8 to 10 or something like that or – so I just wanted to put that – that's what the IE, you know, would've said that I would've seen. And then as far as the outside bound with the 6.5, it was 2.8 or something like that. Yes, from that perspective, I saw both.

MR. COFFEY: Okay.

So you were aware – going into November of 2013 – beginning of November 2013, you were aware that the IEC had expressed concern about contingency amount percentages.

MR. E. MARTIN: At what time?

MR. COFFEY: Were aware – the beginning of November 2013. In the past they had expressed concerns.

MR. E. MARTIN: Yes, I am aware of that. But, once again, if you, just for context, put yourself in my position, I don't get involved in that stuff. They would've ended up – what was in the report, was in the report. And by virtue of some discussions, they would've informed me of that discussion, but I wouldn't have been involved in it.

So, yes, aware of some concerns, but they landed on a number and that's – you know, that's what I would've gone with in the IE report, as well as the final 6.5.

MR. COFFEY: Thank you, Commissioner.

Thank you very much.

THE COMMISSIONER: Thank you.

All right, Consumer Advocate.

MR. BURGESS: Commissioner, can I ask a question with respect to procedure?

It's 4 o'clock and I don't know – it seems like there's a fair bit of evidence to go forward. Is the intention to sit late this evening, or if not, when it would pick up –?

THE COMMISSIONER: The sense that I got, since lunchtime, was that we're sitting late this evening.

MR. BURGESS: Okay, that's fine.

THE COMMISSIONER: Okay.

MR. BURGESS: Thank you.

THE COMMISSIONER: Consumer Advocate.

MR. LEARMONTH: Perhaps I can just put an exhibit in.

This was the exhibit that we discussed yesterday. It was the clarification on Exhibit P-01829 that Mr. Martin – the exhibit that you wanted to defer questioning on until there was a clarification made to a slide deck.

Do you remember?

MR. E. MARTIN: I do.

MR. LEARMONTH: Yeah.

Anyway, this is the – Mr. Paul Harrington gave evidence on this. He raised the point, and he inadvertently provided information to GT, honest – he believed it was correct, but was a typographical error, and then GT relied on the accuracy of the document. So there are some consequential changes that will have to be made to the – in the GT report as well.

But they're identified on page 1 and 2 of this exhibit. This is true as far as I know, and if any of the other counsel wish to add anything to it, then they can make their submissions.

UNIDENTIFIED FEMALE SPEAKER:
What's the exhibit?

MR. LEARMONTH: The number if P-04100, if it could be entered.

THE COMMISSIONER: Yes, that will be entered.

I would just make a point here that it refers to the fact that that deck, which was dated March 5, 2014 – I think I raised this yesterday – was improperly marked because it should've been March 2015. I'm not certain that it – it seems to suggest that this is a collection of documents assembled by Paul Harrington, but there are emails that are with that document in that collection that are dated March 2014.

So my understanding is – and I just want to confirm this – that the emails are correct –

MR. LEARMONTH: Yes.

THE COMMISSIONER: – those are right – properly dated. The only thing that's not properly dated is the presentation itself, which was – should've been March 5, 2015, and not March 5, 2014.

MR. LEARMONTH: That's my understanding, yes.

THE COMMISSIONER: Correct.

So this has been discussed with Nalcor and –

MR. LEARMONTH: And Mr. –

THE COMMISSIONER: – this is what –

MR. LEARMONTH: – the counsel for –

THE COMMISSIONER: – and Mr. Smith.

MR. LEARMONTH: – Mr. Martin.

THE COMMISSIONER: Okay.

Okay, so this has all been worked out.

MR. SIMMONS: Can you turn off your microphone?

Yes, that's correct, Commissioner.

And in addition to the presentation that's part of that package being incorrectly dated, the first page of that package is Mr. Harrington's memo describing what's in it –

THE COMMISSIONER: Right.

MR. SIMMONS: – so, consequently, he got it wrong in his memo (inaudible).

THE COMMISSIONER: Right. So the – yes, I understood that. I'm just talking about the emails that came before the presentation, so – okay. So I now have that understanding. It's not something I didn't totally suspect and it does provide clarification.

So it will be marked as numbered. That's fine – no, that's fine.

All right, Consumer Advocate.

MR. PEDDIGREW: Good afternoon, Mr. Martin.

Chris Peddigrew for the Consumer Advocate.

Mr. Martin, just – I'll try to keep it as brief as possible this afternoon.

The first question is about the provincial Energy Plan: Did you have a hand in drafting or preparing that, or was that completely an exercise undertaken by the Department of Natural Resources?

MR. E. MARTIN: I had a hand in that.

MR. PEDDIGREW: Okay.

And when you say a hand in that, what do you mean? Did you review it? Did you revise drafts? Did you – the people from Nalcor draft parts of that report, or was it simply a review and commentary?

MR. E. MARTIN: I think it's the former.

MR. PEDDIGREW: People from Nalcor had input into the drafting of the provincial Energy Plan?

MR. E. MARTIN: Yes.

MR. PEDDIGREW: Okay.

MR. E. MARTIN: And not – you know, not entirely, but everything you said there would apply –

MR. PEDDIGREW: Okay.

MR. E. MARTIN: – but the former –

MR. PEDDIGREW: Joint effort of the department and Nalcor, is that fair?

MR. E. MARTIN: Joint effort and – but led by the government or by the province, obviously. And, you know, in that context, we had some – you know, some good expertise there, particularly from, you know, the private sector and a lot on the oil side. I have to say that, Oil and Gas side. (Inaudible) this is Muskrat, but from that perspective, there was – you know,

that was part of the arrangements to get input from those folks.

So that's some context, but your former summary was correct.

MR. PEDDIGREW: Okay, thank you.

Mr. Martin, just some questions about – I guess some of the wording you used in some of your answers over today – yesterday mostly. But I guess the priority of the ratepayer in terms of government and Nalcor's thinking about how they were approaching – well, you know, I guess – and you broke it down into two things: the capital cost estimate and then, sort of, the costs going forward and what would the ratepayers ultimately have to pay.

And, I guess, in listening to some of your answers – and I just want to put some of these things to you. So, as everyone is aware, government made the decision in 2012 not to grant the PUB sort of, you know, broad input into what it thought the best option was; gave it two options, and said tell us which one is the least-cost (inaudible) between those two. Legislation speaks to the lowest possible cost, so it's fair to say there could have been a lower possible cost option besides the two that were put before the PUB.

In – I guess, in the context of saying that you supported the ratepayer, is that anything that you voiced concern about, that not necessarily the lowest possible cost might not be reached?

MR. E. MARTIN: Well, I believe it was reached.

MR. PEDDIGREW: Right, but would you at least agree with me that if a decision-making body is limited to two options, that there's possibly a third, fourth, fifth option that might be lower cost?

MR. E. MARTIN: I do not agree because we had screened. So I – my – I'm just saying what I believe is that the lowest possible cost option was selected.

MR. PEDDIGREW: Okay.

So you approached it – just so I’m clear on your evidence, you approached it from the point of view that there was no possible way a conclusion could be reached that was lower than one of the two options put before the Public Utilities Board.

MR. E. MARTIN: That’s correct. We went through an analysis and that’s my –

MR. PEDDIGREW: Right.

MR. E. MARTIN: – opinion.

Now, I will – probably important to make the point that going to the PUB or not going to the PUB has nothing to do with Nalcor.

MR. PEDDIGREW: Oh, I am aware. That’s government’s decision.

MR. E. MARTIN: I think that’s the –

MR. PEDDIGREW: Correct.

MR. E. MARTIN: – context we’re in –

MR. PEDDIGREW: Right.

MR. E. MARTIN: – so I was just giving my personal opinion there.

MR. PEDDIGREW: Yeah.

MR. E. MARTIN: But, you know, that’s what I feel. As far as going to the PUB and that, I have no input into that.

MR. PEDDIGREW: Okay.

And so, yeah, my question was: Did you express any concern? But I guess if you agreed with the (inaudible).

MR. E. MARTIN: Yeah, that’s my point I think. Yeah.

MR. PEDDIGREW: Okay.

And so there’s been some discussion, as well, about rates approaching the 22-, 23-cent per-kilowatt-hour cost based on the current projected costs of the Muskrat Falls Project. And you were talking about some rate mitigation, some money

that’s available for that based on the return on equity, based on water sales, based on proposed excess sales.

And so I guess my question on that is – and I guess the way you phrased it this morning – and correct me if I’m wrong certainly, but it seemed to be, you know, a simple solution, just take some of this money and throw it towards rates and you bring rates down. And, I guess my question is, if it’s that simple – and maybe – you know, maybe that’s not what you were trying to convey, but if it’s that simple, why would the PUB be holding rate mitigation hearings now trying to address this issue?

MR. E. MARTIN: Well, you’re – I mean, you know, I’m not going to comment on that because you’re asking me to comment on: Do I think that the process that’s being going through now is valid or not?

MR. PEDDIGREW: Well, yeah, do you think it –

MR. E. MARTIN: That’s really none of my business.

MR. PEDDIGREW: Do you think it – well, I’m interested in your thoughts on it. Like, you seem to express today that, look, it’s a simple solution, just throw some of the money that we are going to make over the next 50 years. That can bring rates down. I don’t think the PUB thinks it’s that simple; thus, they’re holding hearings. And I’m wondering: Do you think that the hearings are unnecessary?

MR. E. MARTIN: I think that you mentioned that the PUB is holding them because they think it’s important. I don’t know that. I understood but I wasn’t there at the time because I was left – I thought I heard on the news that the government referred it to the PUB. So that would be a little bit different.

Point B is I was involved when I was there in extensive – reviewing extensive calculations, reports and analysis on just how that could happen. And –

MR. PEDDIGREW: Just how what could happen? The 22 –

MR. E. MARTIN: How the rates could be –

MR. PEDDIGREW: Okay.

MR. E. MARTIN: – mitigated using the pools of cash that I mentioned.

MR. PEDDIGREW: Right.

MR. E. MARTIN: And, frankly, to me it – there were options there, but they did not appear complex. It appeared to be once you put a decision package together like was prepared there – when I was at Nalcor, to bring that package forward in that form, I think the decision would revolve around which way do you want to go. I don't think that would be a difficult discussion. Lots of dialogue –

MR. PEDDIGREW: Right.

MR. E. MARTIN: – people having opinions, but armed with that fundamental data we had prepared, I don't think the selection would be – it would be a rigorous discussion, but that would be what the focus would be. After that, you would pass it back to implement and I don't think it was that complex.

And point C is that, you know, I think it's beginning to happen now and I think a lot of it needs to, you know, to – it's my opinion now, be rapidly put in place. You know, for instance, I looked at with interest on the PUB website over the last couple of months, and I noticed that even though publicly the cents per kilowatt hour have been discussed, I think, at 22.85 – 22.85 cents – there's a PUB-Nalcor-078 document in that hearing indicates that the most recent number provided by Nalcor was 21.05. It's come down 1.8 cents. And that equates to about, you know, a hundred million – or hundred million dollars per year. And I read that with interest because that was without any prompting, no mitigation.

MR. PEDDIGREW: Right.

MR. E. MARTIN: And in that context, I say, well, it looks like things are beginning to unfold, maybe somewhat as expected, because operating costs were down \$44 million from the number that was quoted here from the Commission here earlier. Demand had gone up, which, you know,

I've often said it would fluctuate, so that reduced it more.

And there was a series of other reductions in that which, without any mitigation, brought it down 1.8 cents. I expect fuel prices is going to continue to rise and that's going to bring up the – where we are right now on the other end of it. So I see the gap closing, without any mitigation.

My estimation is probably to 14 – 13, 14 cents where we'll end up now with nothing to do with Muskrat. I expect the top will come down. It's down to 21; I expect that will be another run at operating costs and that will come down to 20 or so. Then you're into that five- or six-cent – four-, five-, six-cent range and that four – sorry, at approximately \$60 to \$65 million per cent to mitigate, then you're looking at, well, how much do you have to mitigate? Well, Muskrat Falls itself is generating dividends in the, you know, \$100- to \$200-million dollar range in the early years.

MR. PEDDIGREW: Right and where is that money coming from?

MR. E. MARTIN: Pardon me?

MR. PEDDIGREW: Where is that money coming from?

MR. E. MARTIN: That's coming from the ratepayer who pays their bills and included in that bill and their cheque is an amount to cover off the return on equity. So they're paying themselves in essence. So that cash would come in. The ability to return some of that to the ratepayer is not complicated.

MR. PEDDIGREW: Right.

MR. E. MARTIN: That's number one.

MR. PEDDIGREW: Mr. Martin, I guess –

MR. E. MARTIN: And number two, the excess sales revenue is coming in as well and when I add it up – and I'll stop there – when you add it up, the ability to close from that 20, 21 cents where it is now, you know, up from the bottom where it's going to be, as these other things non-

Muskrat Falls-related come in, I don't think it's that – the cash is there. It's available.

The analysis was done – in deep analysis when I was there. I'm sure the same thing is done right now, so the methodologies are there. The discussion has to be what do you want to do? From the government's perspective, make the decision. The implementation is not that complicated.

MR. PEDDIGREW: Well, I guess I'd put to you that what you just said and the amount of money you feel will be available – and it may be, but it's based on a number of assumptions. It's based on a number of load forecasts and amount of power usage that's outlined, I would suggest, in forecasting that was done, that may or may not prove to be the case. Is that correct?

MR. E. MARTIN: That's incorrect. Particularly, in the Muskrat Falls case because –

MR. PEDDIGREW: Are you telling me you can predict how much load we're going to use over the next 50 years?

MR. E. MARTIN: No, but I can predict the amount of revenue coming from it because the ratepayer is going to be paying the full cost of Muskrat.

MR. PEDDIGREW: The ratepayer is going to be forced to pay.

MR. E. MARTIN: Yeah. You know, that's correct. And, in that, is the return on equity so, no, that's set. That's available regardless.

MR. PEDDIGREW: Right.

MR. E. MARTIN: And then on top of that, the excess sales has a little more volatility to it, but you're talking in a range around \$1.3 billion – or sorry \$3 billion, give or take a couple of hundred million.

So that's available and relatively certain, but not as certain as those amounts. On top of that, you had the water rentals which are really certain, because it's going to be focused on a certain set

amount. And then there's other revenue, ones there I won't go through, and then there's other income available from other departments that were stated would be available as well. So it's there, it's available and it's available now.

MR. PEDDIGREW: So, I guess, based on the calculations you have done and you feel that you're competent in, would it be fair to say that –

MR. E. MARTIN: I didn't do the calculations.

MR. PEDDIGREW: Okay, well, the calculations you're relying on.

MR. E. MARTIN: Experts within the company did it.

MR. PEDDIGREW: Okay.

And based on the calculations that you're saying the experts – you're relying on and your discussion of management reserve yesterday, would it be fair to say that, if there is that \$23- to \$25-billion figure you're talking about, is that – are you saying, essentially, that if the project went over by, you know, from the \$6.2 billion estimate to – went over by \$19 or \$20 billion, there'd be enough money from the funds you're talking about that we wouldn't have to worry?

MR. E. MARTIN: I can't say that. I'd have to run the numbers.

MR. PEDDIGREW: But roughly speaking.

MR. E. MARTIN: Well, that's not a rough calculation because I believe the way the structure – a big portion of the structure would be when we'd use that cash flow to finance something. But I think in principle, I wouldn't use – I couldn't go that high 'cause I'd have to run the numbers. But, in principle, there is a very, very substantial amount of cash to cover unfortunate cost – capital cost overruns. It's – it is extremely substantial. I haven't run the numbers to give you a number but it's large.

MR. PEDDIGREW: Okay.

And, Mr. Martin, I guess, you know, you're the first witness that's spoken to this, I believe, at the Inquiry. I've heard Mr. – the former Premier Williams speak to this line of thinking as well. I believe you said this morning that this is something you communicated to different people in government. To whom did you have this sort of conversation or with – to whom with did you have this sort of conversation about this?

MR. E. MARTIN: Many people and –

MR. PEDDIGREW: What's some names? With politicians or with some people from Natural Resources?

MR. E. MARTIN: So both. The premier, officials –

MR. PEDDIGREW: Premier Dunderdale?

MR. E. MARTIN: That's correct.

MR. PEDDIGREW: Okay.

MR. E. MARTIN: And there's a document that I presented here – it's been presented several times.

MR. PEDDIGREW: I think I know the one you're talking about.

MR. E. MARTIN: You know it shows the –

MR. PEDDIGREW: Yeah.

MR. E. MARTIN: – net benefits difference. And in that document, I've identified several times – which is fine – you know, where the genesis of that \$25-billion number comes from. I've talked about the present value of that; I've talked about the cash flow associated with it. So that's the document that was used to present to the people I'm talking about and, you know, I can name names, but they – it was obviously a document that was in circulation and people made fully aware –

MR. PEDDIGREW: So from your point of view –

MR. E. MARTIN: – of that, that that cash is available.

MR. PEDDIGREW: – people within government would have been generally aware of these billions of dollars you're saying are available.

MR. E. MARTIN: That's correct.

MR. PEDDIGREW: Okay.

Mr. Martin, did Nalcor, I guess, through the course of the cost increases, did it ever engage in an elasticity study to see what the impact of the growing costs would be in terms of rates and then what that might mean for ratepayers and whether they would turn to alternative sources of heating their homes? Was that sort of study ever done? If it wasn't done, was it ever considered?

MR. E. MARTIN: I can't answer that. I think you'd have to ask Mr. – I think it was Mr. Humphries and his team. They testified in Phase 1, I believe, to some of this.

My recollection is they did –

MR. PEDDIGREW: Their testimony was about pre-sanction in Phase 1. But I guess what I'm asking is throughout the course of these cost increases – as costs were going up, obviously rates are going up. And I guess I'm wondering were Nalcor aware of elasticity issues and were they concerned about what that might mean to how many ratepayers are gonna remain on the system?

MR. E. MARTIN: I believe yes, and – but I think it would be useful to check again with that group, I mentioned Mr. Humphries, but the reason I say that is that there was – when increases occurred and were documented and approved, I think in all cases rate projections were done to match up to the new number. And then those rate projections would be done in the same manner as the original ones were.

MR. PEDDIGREW: Right.

MR. E. MARTIN: And to the extent the original ones, you know, included that kind of analysis, it would be included in those that would go to follow.

MR. PEDDIGREW: Right.

What about the – because there's rate projections and then there's what do those rate projections mean in terms of elasticity.

MR. E. MARTIN: Right. It was my understanding, and this is – I'm going back to my Phase 1 memory about the inclusion of how Nalcor – or Hydro included price elasticity and the other term leaves my mind right now there was –

MR. PEDDIGREW: Yeah.

MR. E. MARTIN: – there was two, I think it was to do with – but in any event –

MR. PEDDIGREW: You're not sure if it was done.

THE COMMISSIONER: CBM?

MR. E. MARTIN: CBM exactly, thank you Mr. Commissioner. So – and so I understood at that level, I understood they were in and I think there was some dialogue around, some people said well, they didn't think it was in totally and Hydro would say well, we do believe it was in, but whatever.

MR. PEDDIGREW: Right.

MR. E. MARTIN: That – to the extent that was done there, I'm very extremely confident that that would've been done in the same manner when they updated it during the capital cost (inaudible).

MR. PEDDIGREW: Right, but you're not sure if anybody external to the organization was engaged to provide that sort of information to Nalcor during the cost increases?

MR. E. MARTIN: I'm not aware of that.

MR. PEDDIGREW: Okay.

Was there ever any discussion about a ratepayer representative on the board of Nalcor? Somebody to provide the ratepayer perspective or express their concerns or bring the concerns of ratepayers to the organization?

MR. E. MARTIN: Not as – not someone like, you know, you're talking like a specific advocate kind of situation –

MR. PEDDIGREW: Somebody with knowledge of the electricity industry, how rates work, what goes into rates, somebody to represent the ratepayers.

MR. E. MARTIN: I believe so, but I think a good reference would be, and I think it's filed with the commission, the document that Nalcor had prepared with respect to the traits that were required on the board. And that was the one done by Robertson Surette, you know, with assistance from us. And I believe in that document that that was noted and considered. That's my belief.

MR. PEDDIGREW: Okay, but not ultimately done.

MR. E. MARTIN: Pardon me?

MR. PEDDIGREW: Not ultimately followed.

MR. E. MARTIN: Well, in my time, no, that document wasn't imposed and I'm not sure about what's happening now.

MR. PEDDIGREW: Okay.

Mr. Martin, just a few questions about Holyrood and I guess the continuing need of Holyrood as a backup power supply. Just interested in your understanding of what the proposed backup power supply for the Labrador-Island Link was pre-sanction, after sanction, and if your understanding of what the backup supply changed during your time at Nalcor.

MR. E. MARTIN: Could you repeat that, please?

MR. PEDDIGREW: All right. So if the Labrador-Island Link went down –

MR. E. MARTIN: Yes.

MR. PEDDIGREW: – and we don't have enough power for the Island and so there needs to be a backup source, I understand there's some talk about it being the Maritime Link now; there's also talk about Holyrood having to

remain on longer than first anticipated. And I'm wondering what your understanding was of the backup source in the event the Labrador-Island Link went down and I'm wondering if that changed during your time at Nalcor.

MR. E. MARTIN: So my – I'll give you my understanding and it did not change from the time I –

MR. PEDDIGREW: Okay.

MR. E. MARTIN: – was at Nalcor. We were – we – the strategy was to keep Holyrood warm up until – I forget the exact date, it did move around by some months but, you know, '21.

MR. PEDDIGREW: What does warm mean? Keep it on so it can be utilized December to March when necessary?

MR. E. MARTIN: Not keep it on; just keep it – maintain it and invest in it with the ability that it could be turned on –

MR. PEDDIGREW: Okay.

MR. E. MARTIN: – and that would entail significant work. But, you know, and that would go on until '21 – 2021 or so –

MR. PEDDIGREW: Okay.

MR. E. MARTIN: – I'd have to check that date. That's (a) and then (b) longer term there was third line built in recently, a couple of – within the last couple of years from Bay d'Espoir, and that was essential to relieve the congestion of being able to get additional power in from Bay d'Espoir that was available and other outside of the Avalon things – generating stations into the Avalon area. So that line was completed and that removed that constraint which gave us a significant amount more ability to –

MR. PEDDIGREW: As a backup – are you saying that that was a backup source; your understanding was the extra line from Bay d'Espoir?

MR. E. MARTIN: Yeah, 'cause that would, you know, you would likely run your reservoir down and use extra power –

MR. PEDDIGREW: Okay.

MR. E. MARTIN: – that may be available, more so than you normally would from – if Holyrood's running you're not bringing your reservoir down as fast in many cases, so you would bring your reservoir down faster in Bay d'Espoir and other places and be able to get the power in.

MR. PEDDIGREW: Okay.

MR. E. MARTIN: Not the ideal situation because you're running your reservoir down, you have to make up for it afterwards but in any event it was another source. The Maritime Link –

MR. PEDDIGREW: Okay.

MR. E. MARTIN: – was obviously, you know, considered and there's a study –

MR. PEDDIGREW: When you say considered, was that, I mean, I'm – what I'm thinking of is, you know, you're planning to make Muskrat Falls a – one of the primary sources of power for the Island; in the event it goes down, what was the plan for – what would replace it temporarily until the Labrador-Island Link is back up and running? So, I guess, I'm hearing Bay d'Espoir third line. When you say potentially –

MR. E. MARTIN: No, no.

MR. PEDDIGREW: – Maritime Link, was Maritime Link part of the plan?

MR. E. MARTIN: Not potentially, it was the Maritime Link.

MR. PEDDIGREW: It was part of the plan, okay.

MR. E. MARTIN: Yeah, I, you know, I'll take that back –

MR. PEDDIGREW: Okay.

MR. E. MARTIN: – it was the Maritime link and the ability to flow power back from that direction. The gas turbines are available and they – there was a new gas turbine constructed at Holyrood; I believe it was in the – I forget the

wattage now, actually, but it was fairly substantial. A hundred and thirty-five –

MR. PEDDIGREW: Okay.

MR. E. MARTIN: – I believe.

MR. PEDDIGREW: But, that was the gas turbines in Holyrood. Was that part of the back-up plan, or was that part of the, I guess, mandated solution – for want of a better term – for the fact that Muskrat Falls was delayed?

MR. E. MARTIN: It was part of the back-up solution because there – and the turbine is part of it, now I'm saying. But the turbine was – the turbines are put there for peaking needs.

MR. PEDDIGREW: Right.

MR. E. MARTIN: So, you know – but if Holyrood – sorry, if the line was down, you would run the turbine, like, constantly, so that would give you a hunk of base load to replace.

MR. PEDDIGREW: Okay.

MR. E. MARTIN: Do you see what I'm saying?

MR. PEDDIGREW: Yeah.

MR. E. MARTIN: So, that was part of that.

The fourth thing was: we had a report commissioned, and I referred to this in evidence before, Mr. Commissioner, and for some reason, the name of the report – Teshmont – the Teshmont Report. T-E-S-H-M-O-U-N-T [sp. Teshmont]. And that was commissioned by Newfoundland and Labrador Hydro to do a comparison of the reliability of the system – of the electrical system in Newfoundland and Labrador, before Muskrat Falls, and compare it to what it would be after Muskrat Falls.

MR. PEDDIGREW: What's the date of this report? Approximate?

MR. E. MARTIN: Well, I saw a – before I left – I think in February before I left, I saw close to a final draft. I assume that, you know, it was done then.

MR. PEDDIGREW: Right.

MR. E. MARTIN: But I didn't –

MR. PEDDIGREW: So, (inaudible) – so, maybe 2016.

MR. E. MARTIN: (Inaudible) before I left. It may not have been, but it's there.

MR. PEDDIGREW: It was done sometimes in 2016. It wasn't done before financial –

MR. E. MARTIN: Oh, no, it was –

MR. PEDDIGREW: – close or before sanction.

MR. E. MARTIN: It was done in 2014, 2015, I believe.

MR. PEDDIGREW: 2014, '15, okay.

MR. E. MARTIN: But in any event, that report showed that the reliability of the system after Muskrat Falls was – I think it was an order of magnitude more reliable, or very close to that, which – an order of magnitude is ten times, but maybe it's not that high. But it was substantially higher – the reliability after Muskrat than before Muskrat; taking all those things into consideration.

So, just an additional point to consider: if the line did go down, and there was a shortage of power, then the chances of that happening with Muskrat were much, much less than it would be if Holyrood had been maintained.

MR. PEDDIGREW: All right.

MR. E. MARTIN: So, that was very helpful –

MR. PEDDIGREW: Right.

MR. E. MARTIN: – you know, to understand the reliability was increased so significantly, and when you put the Maritime Link on top of it, it increased it even more.

MR. PEDDIGREW: So, just a question about the –

MR. E. MARTIN: And the fifth point was – because I – you know, we looked at this a lot.

MR. PEDDIGREW: Sure.

MR. E. MARTIN: The fifth point was: I said, well, what would happen?

And the experts were telling me: well, it would obviously be a terrible scene. We think we have it covered, and reliability is so much higher, in any event, that we're way better off than we were before that.

But they said: Remember, depending on the location, if that LIL – if that Labrador-Island Link goes down, with the way that's built, it's so sturdy, they said, in that area, the distribution system would be matchsticks, they told me.

You know, the system that would take the power and go into, you know, the various towns, what you see in and around St. John's. They said if there was an ice storm or an effort that took the LIL down, they said that would – for an extended period of time, that would probably be the least of your worries.

MR. PEDDIGREW: When you say they, are you referring to the Teshmont Report?

MR. E. MARTIN: No. I'm referring to the experts at – in Newfoundland and Labrador Hydro.

MR. PEDDIGREW: Okay.

MR. E. MARTIN: I'm looking at this 1 in 50, 1 in 150, 1 in 300 and 1 in 500.

MR. PEDDIGREW: Okay.

MR. E. MARTIN: They were saying if you look at the type of storm that would take down that LIL, they said that – for a period of time, that would be the least of your worries. Because the rest of the distribution system would – and they used the term matchsticks, but I probably shouldn't say that – but it would be – like, the rest of the system is nowhere near as robust as the LIL.

So that is not a great way to look at it. But it gave you some confidence to say – again, when you put it in context – just how reliable and how heavily built that LIL is.

MR. PEDDIGREW: Right.

MR. E. MARTIN: And I put those factors together, and that's what gave me comfort that we were much, much better off from a reliability perspective in the short and the long term after Muskrat Falls than before Muskrat Falls.

MR. PEDDIGREW: Okay. And whether that's the case or not, I'm not sure. If in any event, even if it happens once it's a significant event and you –

MR. E. MARTIN: (Inaudible.)

MR. PEDDIGREW: – and you wanna make sure you have back up source.

MR. E. MARTIN: Right.

MR. PEDDIGREW: And just a question about the –

MR. E. MARTIN: So, I don't wanna – if you say not sure, but my point is there's documents there that – and I think that Teshmont Report may be on file. I'm not sure, Mr. Commissioner, but I mentioned it before. So –

MR. PEDDIGREW: That's how I understand it –

MR. E. MARTIN: – I thought it might've been coming in. If not, it would be a useful document to review.

THE COMMISSIONER: I'm sure we have it.

MR. E. MARTIN: You know, I –

MR. PEDDIGREW: And in terms of the Maritime Link being a back up – and obviously if we're going to need extra power, the most important time of year would be the December to March time period – I guess reasonable – it would be reasonable to assume that that's the time of the year that Nova Scotia and the Northeastern US would also need power.

Do we have a guarantee that that power is available via the Maritime Link if it goes down at the coldest time of the year?

MR. E. MARTIN: I'm not sure where we are on that right now. At the time, before I left, they were in the process of preparing emergency exchange agreements, which is the norm between jurisdictions that are linked in the world, and provinces in Canada or states in the US. It's a new concept to Newfoundland, because we were never linked to the mainland.

MR. PEDDIGREW: Right.

MR. E. MARTIN: But I know that that document should be in place. If it's not, I assume it will be, because it's standard practice when you're linked. So, the Nova Scotia, New Brunswick, Quebec and others, they should want it as much as we do, because it goes both ways. And I'm not – I'm sorry, I lost track of where it is because I'm not there anymore.

But with that document in place and those arrangements in place – in Nova Scotia, you know, they have coal capacities often not on. You know, New Brunswick has other capacity, et cetera.

So, you know, our estimation is that, yes, there would be power available. There would be emergency arrangements in place that would kick in that would provide that energy. If those emergency arrangements aren't in place, I just don't know. I'm not there anymore – I'm –

MR. PEDDIGREW: It wasn't in place when you left?

MR. E. MARTIN: – but I – yeah – but they were in progress. So certainly –

MR. PEDDIGREW: In progress.

MR. E. MARTIN: – the – these – the task was afoot.

MR. PEDDIGREW: It was on the radar screen.

MR. E. MARTIN: More than that.

MR. PEDDIGREW: Okay.

MR. E. MARTIN: It was being progressed.

MR. PEDDIGREW: I'd like to take you to Exhibit P-03986, please. I don't know if that'll

be one that's – I don't think it's in your binder, so on your screen.

THE COMMISSIONER: No it's not, so it'll be on the screen.

MR. PEDDIGREW: So Mr. Martin, while this is coming up, this is a series of emails between, it looks like, people from Auburn Warren's group in the October 2013 time period, and I'd just like to take you to – and I'll just give you briefly, they seem to be talking about the cost of fuel that'll be necessary, given that there's a delay in the power date for Muskrat Falls.

I'd just like to take you to page 12 first.

MR. E. MARTIN: Just –

MR. PEDDIGREW: And if you wanna look at that first page, we can certainly (inaudible).

MR. E. MARTIN: Well look, I'll tell you – well let's try 12 first –

MR. PEDDIGREW: Yeah.

MR. E. MARTIN: – and I'll – if you don't mind, if I need to go back, we will?

MR. PEDDIGREW: Sure, no problem.

So if we look –

MR. E. MARTIN: And if – it would be very helpful in the meantime, was this just an exchange of emails dialoguing this topic here, or was it a long email describing something?

MR. PEDDIGREW: It's a series of emails.

MR. E. MARTIN: Okay, thanks.

MR. PEDDIGREW: Yeah, so that's why I went to the bottom, just to go to the first email – or one of the first emails in this.

And if we could go a little bit – probably to the bottom of page 11, Madam Clerk, just so Mr. Martin can see who the email's from.

So Kevin Goulding – sorry, Terry O'Rielly to Kevin Goulding. And if we scroll down a little

bit, and so – the paragraph that begins with because, Mr. Martin.

“Because of delayed COD, ratepayers will see” additional “increased fuel consumption for 7 additional months. The choice to not drawdown the reservoirs will cost customers an additional 500” gigawatts – gigawatt hours, sorry “of associated fuel as well. These erosions of value will likely be highlighted in the waterfall as a delay in COD and a change in drawdown.”

So, certainly, if you wanna look at some more of this document, that’s fine. I was gonna bring you back to page 1, but if you wanna see more, that’s fine, or are you okay to go to page 1?

MR. E. MARTIN: Yes please, that’s –

MR. PEDDIGREW: Okay.

MR. E. MARTIN: – good, yeah.

MR. PEDDIGREW: And then if we scroll down just a little bit further, there we go.

Right, so for the waterfall, which I have learned it’s a type of bar graph presentation, but “For the waterfall could we just assume the only change is” the – is “in MF in-service? The value associated with this would simply be the delta in fuel between the isolated DG3 and the infeed DG3 fuel cost from July 2017 to March ... 2018.”

So, I guess what’s going on here in these emails, there’s a discussion about extra fuel costs for Holyrood because Muskrat Falls was delayed, and I’m wondering if in your sort of – you know, your value approach to what the cost of the project is for purposes of telling the ratepayer what they have to pay, is this something that was factored in?

MR. E. MARTIN: By me, yes, but I haven’t seen this document before. Would you like me to comment on it or anything, ’cause I’m just scanning it –

MR. PEDDIGREW: Sure. I guess my question is –

MR. E. MARTIN: – (inaudible)?

MR. PEDDIGREW: – and maybe the answer is just as simple as yes. But my question is: Was the extra cost of fuel associated with the delay? You know, you talk about including things like the excess sales because –

MR. E. MARTIN: Yes.

MR. PEDDIGREW: – that’s a benefit. That will benefit the ratepayer and it will save the ratepayer money if we’re able to sell the power. Likewise, well, this is gonna cost the ratepayer more.

It’s not something I saw referred to in any of your PowerPoints or in other documents. This is, I think, the only reference I’ve seen to it in emails. And I’m wondering is this something that was communicated to government, to ratepayers, that: Look, there’s going to be extra costs on this project because of the delay associated with having to buy more fuel?

MR. E. MARTIN: So it was considered and allowed for. And as far as the – this document, I haven’t seen it before.

MR. PEDDIGREW: Okay.

MR. E. MARTIN: And it might be useful to refer to a bit of this to give you a background as to how it was considered. But this would be – a lot of work would need to go into this and this would be, I think, some of the financial people talking to some of the engineer, modelling people.

MR. PEDDIGREW: Yeah.

MR. E. MARTIN: And it gets a bit confusing here – which is normal because there’s a lot of back and forth – a lot of work has to go into something like this. But it says: “The value associated with this would simply be the delta in fuel between the isolated DG3 and the infeed DG3 ... from July 2017 to March 1 2018.”

So, for instance, the first question that I’m sure the – sure some of the technical people would ask is that – somewhere else – as we flicked through this, I saw they were saying eight or nine months of fuel.

MR. PEDDIGREW: Yeah, I believe that's in there, yeah.

MR. E. MARTIN: Something there – I saw it as you blew through – (inaudible) walked rapidly through that. And, of course, in – at this point in the summer, I wouldn't see any fuel being burnt in July, August, September, you know –

MR. PEDDIGREW: Right, so I guess (inaudible) talking about –

MR. E. MARTIN: – you're into probably December –

MR. PEDDIGREW: – December in 2017 to –

MR. E. MARTIN: – yeah –

MR. PEDDIGREW: – March 2018.

MR. E. MARTIN: – you know, as it ramped up, probably December –

MR. PEDDIGREW: Yeah.

MR. E. MARTIN: – and January and –

MR. PEDDIGREW: Yeah.

MR. E. MARTIN: – February and it starts to come down again. So –

MR. PEDDIGREW: So I understand there's about \$150 million worth of fuel. Is that –?

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

MR. PEDDIGREW: Okay.

MR. E. MARTIN: Good question, but once again, I think that calculations would have to be done, so I didn't understand that.

“This approach would eliminate all impacts from different load to changes in fuel price.” So I'm not sure what that meant. There's a load situation here which obviously is a question mark.

And then it goes on to talk about – he needs to produce – Kevin needs “to produce a projection that reflects high water to flow through the RSP

....” And once you're talking about high water, you're into Bay d'Espoir again and the various other hydro – so it really is – you know, it –

MR. PEDDIGREW: Yeah, and I'm not –

MR. E. MARTIN: – raises a lot of questions in my mind. But put that aside –

MR. PEDDIGREW: Right.

MR. E. MARTIN: – we'll say that has to be worked. But at the highest level, the LIL would be in service. So we moved to, you know, in service to December, that means the LIL would be in service.

MR. PEDDIGREW: And what they seem to be talking about – and we can go look at some other pages in this email – is that only part of the power from Muskrat Falls would be available, you know, it would come in staggered –

MR. E. MARTIN: That's correct.

But to finish my point, that's – so, yes, you would have part of the Muskrat Falls power coming in. But with the Labrador-Island Link connection in place, just like last winter, apparently, they were bringing in power from Churchill Falls.

MR. PEDDIGREW: Right.

MR. E. MARTIN: And recall and the ability exists, as well, to buy power –

MR. PEDDIGREW: Right.

MR. E. MARTIN: – (inaudible) –

MR. PEDDIGREW: But still burning fuel in Holyrood as well in 2019.

MR. E. MARTIN: Well, I don't think so. I think that the ability to pull that power in from those sources is an eight – is a nine – you know, at the time, you know, it was to be in service as a 900-megawatt line, so what would, you know, prevent you from pulling in 500 – 480 or 470 megawatts of power at certain points.

But you wouldn't have to do that because you would – you know, you would be running the

turbines at a certain load. But with that being said, you could bring in that amount of power from both directions and that would be, you know, an extremely lower cost than –

MR. PEDDIGREW: Right.

MR. E. MARTIN: – you know, a Holyrood option. And I, you know –

MR. PEDDIGREW: I guess, Mr. Martin – and I'm not trying to cut you off – but my question was a fairly simple one.

I guess what I'm wondering is when you were doing, in your own head, the analysis of what is the ratepayer going to pay – and I want to make sure that picture is very clear because ultimately it's the ratepayer that we are – they're our highest priority; that was your – I think you said this morning your priority and government's priority. Was – the extra cost associated with the delay, is that something that was factored into what you were telling ratepayers they would have to pay?

MR. E. MARTIN: Yes, it was. And the way that was – if you look at what was presented, you know, we left a lot of room in those numbers to account for any 'unforeseens.' For instance, on the \$300-million capital increase, that was a nominal number from 6.2 to 6.5.

MR. PEDDIGREW: Right.

MR. E. MARTIN: That's a nominal number. If you cash flow that and do a present value that number drops to – I don't know exactly, I think it was in the 270 – or 260 to 275 range. So you're building in, you know, the ability there that it was a very conservative number not – you know, to help. On the financing side there was some small number, I think it was \$10 or \$15 or \$20 million that – it was a bit higher. It was left at 300 – well, that was present value.

And on the excess sale side of things, the initial suggestion was over \$200 million. They cut it in half to \$100 million and that left room on the upside there. And then there's a discussion – which I won't get into now because time is running – but as to why – and maybe we can talk about that at another point – is that why that EAA agreement with Emera will – I can explain

why that will lead to maximizing the amount of revenue there. But, personally at that point, I was clear that we had extra room in that as well.

So leaving those conservative buffers in, I was comfortable that without any of this analysis being complete – which I hadn't seen, but in my mind I was thinking some of the same things, that there was sufficient room that that – if there was something associated with this it would be covered.

MR. PEDDIGREW: Okay.

So the answer is yes, that from your point of view, the cost (inaudible) –?

MR. E. MARTIN: That's correct.

MR. PEDDIGREW: Okay.

Let's turn to the issue of Astaldi and the Limited Notice to Proceed in the fall of 2013 and, I believe, there's some evidence you were told that the – despite the late start for the ICS – the dome structure – that it was still possible to complete that in time for winter so that work could be carried out in the winter of 2014. Is that correct? That the project management team told you that despite the late start, look, this is something that can still be achieved?

MR. E. MARTIN: Yes, and you mixed the ICS in there, so I was trying to –

MR. PEDDIGREW: Right.

MR. E. MARTIN: So was it the late start and the – so I think in answer to your question, the answer is yes, the project team told me they were comfortable that the project schedule was –

MR. PEDDIGREW: That the dome could be completed before winter so that work could take place during the winter.

MR. E. MARTIN: So what time frame are you in when they would've told me that?

MR. PEDDIGREW: My understanding is they started it in November of 2013 – they started the

work. They had planned on starting back in the summer, I believe, but it got pushed for a number of reasons.

MR. E. MARTIN: But they couldn't start in the summer because site prep wasn't done. They couldn't get in until –

MR. PEDDIGREW: I think that's (inaudible) –

MR. E. MARTIN: – I think (inaudible) post-September.

MR. PEDDIGREW: – I think they were supposed to start much earlier than they did. They didn't start until, I believe, it was November of 2013. And my understanding is that the project management team told you that despite that late start it could still be done in time.

MR. E. MARTIN: That's correct. That's correct, and I just want to make the point, again, is that September was site access for Astaldi, so you're into October then.

MR. PEDDIGREW: Okay. So are you saying (inaudible) –

MR. E. MARTIN: So I had no reason to think otherwise.

MR. PEDDIGREW: Okay.

MR. E. MARTIN: It seemed to be reasonable –

MR. PEDDIGREW: You're not trying to say it wasn't late starting? I mean, we may not know the date that they were initially supposed to start, but you're not taking issue with the fact that they were late? When they started it was later than anticipated.

MR. E. MARTIN: It was later than anticipated but, you know, we're talking, you know – it's important to note – there's a big difference between six months –

MR. PEDDIGREW: Yeah.

MR. E. MARTIN: – and (inaudible).

MR. PEDDIGREW: Fair enough.

MR. E. MARTIN: That's all I'm saying.

MR. PEDDIGREW: Fair enough. Yeah. Okay.

And I believe Scott O'Brien's evidence was that during the Limited Notice to Proceed they got virtually – Astaldi got virtually no work done. That was Mr. O'Brien's evidence.

Did you have any doubts yourself about the possibility of Astaldi being able to – or for that ICS to be complete before the winter?

MR. E. MARTIN: I did not have thoughts about that because I wasn't deep into it. I would've been taking advice from the project team.

MR. PEDDIGREW: Right. Did they raise it as something that you need to be concerned about?

MR. E. MARTIN: Not at the time.

MR. PEDDIGREW: Okay.

Madam Clerk, if we could call up Exhibit P-03707, please.

THE COMMISSIONER: 03707. Okay, that will be on your screen.

MR. PEDDIGREW: So, Mr. Martin, this – when it comes up here you'll see this is a – if we scroll down a little bit, so an email between – emails between yourself and Mr. Harrington. If we scroll down to page two, please.

So I think this email we looked at earlier today, so an email from yourself to Paul Harrington, where you're saying: Still the right contractor, in reference to Astaldi. And I believe you said, when you sent that email to Mr. Harrington, I believe you said earlier today that you would've, I guess, anticipated that, well that would be the cue for the project team to go do some digging and figure out whether that's – whether Astaldi is the right contractor.

MR. E. MARTIN: That's correct; it would be a serious question, obviously.

MR. PEDDIGREW: Okay.

And so, I mean I guess, you know, your expectation would be before they come back to you they're gonna look into the matter. And, you know, you're not just asking that question for the sake of asking it; you wanna know whether Astaldi's still the right contractor. You want the project team to look into the issue.

MR. E. MARTIN: Yes, and they would take it serious.

MR. PEDDIGREW: Okay.

If we could just scroll back up to – just take note before we do actually. So this email was sent by you to Mr. Harrington at 1:57 p.m. on November the 7th, 2013, and if we could just go back to the first page. Mr. Harrington replies to you six minutes later, and says: Yes, Ed, they're still the right – or, Ed, they're still the right contractor; they can pick up speed.

So, I mean what kind of analysis can Mr. Harrington do in six minutes? I mean, did you – you're asking him, so clearly you have doubts about Astaldi; are they still the right contractor? You indicate your expectation is he will do some digging into that issue and he responds six minutes later to say: Yes they are. Did that – was that sufficient to satisfy you?

MR. E. MARTIN: It was. My experience with these people, who I'd worked with many over time, it was evident to me they were asking themselves the same question. So they would've been through that and acknowledged that, you know, I would – I understand your question, I would make it clear, I think it's obvious what I'm saying is that it wasn't a seven-minute analysis, you know –

MR. PEDDIGREW: No, I'm not suggesting –

MR. E. MARTIN: – (inaudible) –

MR. PEDDIGREW: – it was, but –

MR. E. MARTIN: – for Paul and Gilbert to come back with that –

MR. PEDDIGREW: – you thought it important enough to ask.

MR. E. MARTIN: Absolutely.

But to me, yeah, that would satisfy me because I know that they would've looked into it. They would've been asking themselves the same question. I mean, Mr. Power, you know, was on site; he had good people around him, he – a very conservative individual, very qualified. Mr. Harrington's the same. I would've taken this to say that –

MR. PEDDIGREW: Yeah.

MR. E. MARTIN: – yeah they had been into it. They understood the question and, you know, they were comfortable in saying it. They would've been looking at it themselves –

MR. PEDDIGREW: (Inaudible.)

MR. E. MARTIN: – and would've said they've assessed it and here's what we're thinking.

MR. PEDDIGREW: Okay.

Was there any serious consideration at this point, so November 7, 2013, was there any serious consideration given to terminating and replacing Astaldi?

MR. E. MARTIN: Not by me. But I can't speak for the others. Other than the fact that I would've heard it, so maybe that's not a fair comment either.

MR. PEDDIGREW: What's that, sorry?

MR. E. MARTIN: If, you know, I – maybe I'll adjust my evidence on that from a logical perspective; I said I did not and I said but I can't speak for the others, but I think that's going a bridge too far because if they were thinking in that context it would have definitely come to me regardless.

MR. PEDDIGREW: Right.

Given their performance out of the gate as an audition or whatever you want to call it; their, I guess, lack of performance and what Scott O'Brien had to say about them – how poorly

they performed – you did not give consideration to it 'cause at that point – you hadn't signed a contract with them at that point.

MR. E. MARTIN: We had – well, Limited Notice to Proceed – and what point are we talking about? November, December?

MR. PEDDIGREW: November 2013. Right. So, in my understanding (inaudible) –

MR. E. MARTIN: No, we wouldn't have –

MR. PEDDIGREW: – three other options –

MR. E. MARTIN: Yeah, I agree.

MR. PEDDIGREW: – one of which was around the same price, two of which were much more expensive – hundreds of millions of dollars more.

MR. E. MARTIN: Well, we would – I agree, we would not have signed it around this time, so in answer to your question; I think you were saying was there any consideration given –

MR. PEDDIGREW: Yeah, did you consider that, look, Astaldi had not performed well in their – the first few months with us; it's a –

MR. E. MARTIN: That was the genesis of the question.

MR. PEDDIGREW: Right.

MR. E. MARTIN: Right. So I was asking it; I had received a response and that satisfied –

MR. PEDDIGREW: And that was enough?

MR. E. MARTIN: That was enough. I guess there was another point, my personal experience, I had been through, you know, several projects. I, you know, the concrete, you know – I like to refer to the concrete work – I've been through another job with significant concrete and I've seen slow starts twice with one contractor and then a replacement contractor –

MR. PEDDIGREW: You had faith that they could recover?

MR. E. MARTIN: I knew it was – I felt it was a very reasonable and probably a strong probability they could at the time based on their reputation.

MR. PEDDIGREW: Okay.

MR. E. MARTIN: And I had seen it before.

MR. PEDDIGREW: Okay.

Mr. Learmonth asked you about some of the, I guess, accounting and some of what Mr. Sturge described as preposterous or silly ideas for driving down costs. And I think in your evidence you refer to it as driving down costs, which I took to mean, you know, actually reducing costs as opposed to moving costs somewhere else and then some of the examples Mr. Learmonth went through you – went through with you seemed to be more an example of moving costs somewhere else or not recognize them but perhaps recognizing them somewhere else.

So I understand the exercise but, you know, that has nothing to do with reducing the cost to the ratepayer, is that fair? I mean it's more of an optics exercise as to what the number that's going to appear in terms of the cost.

MR. E. MARTIN: No, that would reduce the cost to the ratepayer.

MR. PEDDIGREW: Okay, so how would those – and I think one of them we talked about was foreign exchange, the other one was Gull Island – moving some of the costs to Gull Island; so how would things like that reduce the cost to the ratepayer?

MR. E. MARTIN: So – let me do the more obvious one first. The, you know, if a transfer of capital occurred to Gull, Gull then would bear the cost; it would rest on Nalcor's books, not go into the pool for the ratepayer.

MR. PEDDIGREW: Right.

MR. E. MARTIN: So that would be a –

MR. PEDDIGREW: And is that a –

MR. E. MARTIN: – reduction for the ratepayer –

MR. PEDDIGREW: Okay.

MR. E. MARTIN: – and because you would be assigning those costs to Gull for a future development. So, the ratepayer would definitely not (inaudible) that, so that would reduce the cost to the ratepayer.

MR. PEDDIGREW: Okay.

Assuming that, somebody didn't challenge whether that was compliant with the legislative requirements to have the ratepayer pay the full cost of Muskrat Falls?

MR. E. MARTIN: No, it wouldn't make any difference.

MR. PEDDIGREW: Wouldn't make any difference (inaudible) –

MR. E. MARTIN: (Inaudible) –

MR. PEDDIGREW: – the federal government said, look, we think that that is a Muskrat Falls cost, not a Gull Island cost; we feel the ratepayer should be responsible for that according to legislation. You're saying that's Nalcor's call?

MR. E. MARTIN: No, that's not what I'm saying. I guess you introduced the federal government, so I don't think they're the –

MR. PEDDIGREW: Just as an example.

MR. E. MARTIN: Yeah –

MR. PEDDIGREW: (Inaudible) take issue (inaudible).

MR. E. MARTIN: I take your point, but I think it's a good point because, as I mentioned yesterday, this is not Nalcor's decision. This is a decision of the external auditors and the final analysis who are governed by a set of accounting rules, which from my perspective any questions that the people were asking is fine because the rules will govern them. We don't make that decision.

MR. PEDDIGREW: Okay.

And that was my next question to you. So if there is a dispute about whether something is a

valid project cost, what's the resolution mechanism for that?

MR. E. MARTIN: External auditors.

MR. PEDDIGREW: They are the decision-makers for determining what are the costs of the Muskrat Falls –

MR. E. MARTIN: Based upon accounting – based upon published accounting principles. It's pretty straightforward actually –

MR. PEDDIGREW: Okay.

MR. E. MARTIN: – which, again, you know, I just like to comment and try to temper the nefarious, you know, tone around these things. It's not like that at all, it's –

MR. PEDDIGREW: No, I'm not suggesting that Mr. Martin, I guess (inaudible) –

MR. E. MARTIN: Okay, I appreciate that –

MR. PEDDIGREW: – my concern was whether –

MR. E. MARTIN: Yeah.

MR. PEDDIGREW: – it was actually (inaudible) for the ratepayer or not.

MR. E. MARTIN: Right, and so you also mentioned foreign exchange, did you want me to talk about that one?
But it –

MR. PEDDIGREW: (Inaudible.)

MR. E. MARTIN: –'cause it's not exactly the same principle.

MR. PEDDIGREW: Okay, so go ahead.

MR. E. MARTIN: The foreign exchange, you know, that wouldn't happen. That, once again, was the – that was raised by people in the project team who were used to working in corporations where that was handled elsewhere. So, they just raised it.

MR. PEDDIGREW: (Inaudible.)

MR. E. MARTIN: But in any event, that one would be going to the ratepayer, in any event, is my point.

MR. PEDDIGREW: So, not considering terminating Astaldi, in before financial close, so the November 2013 time period, and I guess the decisions that you made for the reasons you've explained at length over the past couple of days about not disclosing the final FFCs in June, July, August, September of 2013. Was there any concern on your behalf that bringing forward the FFC information or switching out the contractor – one of the biggest contractors for the project – might impact financial close or delay financial close?

MR. E. MARTIN: No.

MR. PEDDIGREW: That was not a factor in your mind at all.

MR. E. MARTIN: No, it wasn't. It's just two different things. You can't mix those concepts. No, absolutely not.

MR. PEDDIGREW: Well, I guess what I'm thinking is if you made a decision in November 2013 that you know you were going to go with or the other contractors – not Astaldi – and if you had disclosed the financial, or the FFCs during the summer and early fall of 2013, it's possible that the federal government or the independent engineer may have had more questions than they did at the time of financial close?

MR. E. MARTIN: I was confident about where we were and nothing would've – you know, I'm not the type of person to shy away from a tough decision or a tough discussion or make the right decision.

MR. PEDDIGREW: And maybe not from a –

MR. E. MARTIN: Or make a decision.

MR. PEDDIGREW: Yeah, maybe not take a chance.

MR. E. MARTIN: So if there's something here that was impacting the project, I've been – you know, I've been around in that stuff. I've been involved in some – outside of this even, some

pretty hefty things. And if it wasn't the right thing to do, I'd have no problems standing up and saying it.

MR. PEDDIGREW: Okay.

So the pending financial close had no impact on either of those decisions, to keep Astaldi or to not disclose the FFCs in the summer and fall of 2013?

MR. E. MARTIN: Absolutely, yes.

MR. PEDDIGREW: Okay, just a few more questions, Mr. Martin.

Mr. Marshall –

MR. E. MARTIN: And then just to (inaudible) – excuse me for interrupting, but that's a – just, to me, it makes logical sense though. Like, what would be the – you know, what would be the rationale not to do something like that? I just can't connect with – but it's a good question, but I guess I just wanted to explain that it's just not in the realm of my knowledge. And I struggle to see why that – how would inputs see any different?

I'm going to stop there. It's getting a little late in the day, Mr. Commissioner, I shouldn't have said it – went down that path. Carry on. That's my opinion.

MR. PEDDIGREW: Okay. Thanks.

Ken Marshall, when he gave evidence, I asked him whether he expected to get from yourself, from the Nalcor executive, worst-case scenarios when he was being provided updates and he responded, yes. And so I know there's been a lot of discussion and you've given your reasons many times about why you did or did not disclose information to the board at particular times.

But Mr. Marshall was clear in his evidence that he wanted worst-case scenario. And I would submit that in June, July, August of September – or of 2013, best-case scenario, according to the FFCs, was 6.8, worst case was about 7. Granted, I understand your position to be that, well, they weren't filing enough to share, but are you satisfied that Mr. Marshall's desire to have

worst-case scenario information was met by holding that information back?

MR. E. MARTIN: I didn't – it wasn't – I don't agree with the term, hold back. Again, I'll go back –

MR. PEDDIGREW: Well, it wasn't provided. So it's –

MR. E. MARTIN: (Inaudible.)

MR. PEDDIGREW: – another way to say the same thing, but –

MR. E. MARTIN: I'll go back, I'll try to summarize it briefly because this is – I've been through this in evidence –

MR. PEDDIGREW: Yeah –

MR. E. MARTIN: – I believe, a couple of times but –

MR. PEDDIGREW: – and if it's the same as what you said before, then –

MR. E. MARTIN: Yeah.

MR. PEDDIGREW: And I guess what I'm just asking is: Do you feel Mr. Marshall – you met the obligation to Mr. Marshall to provide him with worst-case scenario?

MR. E. MARTIN: Yes and I point to that document that summarizes the 6.5 context which was not documented in the Grant Thornton report and I think I've mentioned that. You know, in terms of showing the flow of what happened over those months to come to that, I think that flow, in my mind, shows that we were working the issues to stress them, to make sure that we had the information that we could trust and have some reliability.

I know Mr. Marshall's testimony that – you know, Mr. Learmonth and I went back and forth on that several times and I landed on saying – I said it to the Commissioner that, you know, I had my say; I thought Mr. Marshall did say something, that he wanted stressed cases. So just those types of things, I'm comfortable – and in the 6.5 summary they did talk about the worst

case – the project team, they thought, at the time.

Once again, it's a lot of changes in hindsight, but those are just a couple of brief summary points that I don't want to belabour that, yes, I feel that –

MR. PEDDIGREW: Okay.

MR. E. MARTIN: – I gave Mr. Marshall and the board that –

MR. PEDDIGREW: Worst-case –

MR. E. MARTIN: – information.

MR. PEDDIGREW: – situation.

MR. E. MARTIN: Yes.

MR. PEDDIGREW: Okay.

Madam Clerk – and just a couple more questions, Mr. Martin – Exhibit P-03085. I don't believe that'll be in your binder, so it'll be on the screen.

And so, Mr. Martin, I guess based on the questions to you from Mr. O'Flaherty yesterday, my understanding is that in January of 2016 you were told by the Premier to – you, I guess, no longer had a mandate to negotiate and to cease and desist, I think might have been the words.

But if we look at this email right here, I'm just wondering what the context of this is. So it's an email from yourself to Charles Bown and Julia Mullaley on February 10, 2016, so within a month of being told by the Premier – and maybe things changed between then and this date, I don't know. But it says: "Charles and Julia

"Just a note to let you know to expect a call soon from" the "Italian Ambassador to Canada to Premier or Minister, also to connect to Federal politicians. As I had mentioned, this is an expected path for Astaldi to take. Acknowledge as a commercial issue and refer back to Nalcor - important to keep them with one channel only."

So I'm just wondering what was going on here?

MR. E. MARTIN: We had – we were, I guess, from the Italian ambassador’s perspective – well, we were in negotiations. There’s puts and takes of what happened at that point, but put that aside, right?

MR. PEDDIGREW: Were you in negotiations with Astaldi at this point, after being told by the – like, had you been instructed, okay, go ahead, it’s time to negotiate again?

MR. E. MARTIN: No, that’s what I was talking about.

MR. PEDDIGREW: Okay.

MR. E. MARTIN: I’m not sure the time frames, but I was adhering to what the Premier had said. I thought that was the salient point. I’m going to put that aside for a second.

MR. PEDDIGREW: Yeah.

MR. E. MARTIN: What was happening here, regardless of that, they – Astaldi thought we were probably still in negotiations and, you know, things were happening, they still needed things dealt with. And my point here was that no matter what internal – by internal I mean within, you know – you know, within the circle of the Newfoundlanders –

MR. PEDDIGREW: Right, yeah.

MR. E. MARTIN: – all of us. My point was we may be, you know, trying to sort some things out ourselves, but let’s present a front to anyone who’s not part of our province that we are aligned and, you know, we have a single point of contact.

MR. PEDDIGREW: I was just wondering about that.

MR. E. MARTIN: That’s the most effective way to do it.

MR. PEDDIGREW: How did you know that Charles Bown or Julia Mullaley should expect a call from the Italian ambassador to Canada? How did that come up? Were you contacted by the Italian ambassador of Canada?

MR. E. MARTIN: I can’t remember what happened there. I would’ve been either contacted by the Italian ambassador or maybe – some possibilities; maybe Astaldi mentioned to the project team or Gilbert that this was happening, I don’t know.

MR. PEDDIGREW: You don’t remember.

MR. E. MARTIN: But, you know, what I found – you know, once I understood it –

MR. PEDDIGREW: Okay.

MR. E. MARTIN: – that – you know, I knew I had –

MR. PEDDIGREW: And did you have any dealings with the ambassador?

MR. E. MARTIN: Yes, I did.

MR. PEDDIGREW: Okay and what? Meetings, phone calls?

MR. E. MARTIN: I had a – I think I testified – or, sorry, in my evidence earlier I note one for sure – I think two – one for sure was a site visit and we did that and, you know, had some meetings at site.

MR. PEDDIGREW: And that was before or after this email or do you recall?

MR. E. MARTIN: I don’t recall. But, once again, the relevancy, I think, is that they would’ve had the message from me that, you know, we’ll treat, you know – we have a contract with Astaldi, it’ll be dealt with on that basis. And I hope you enjoyed your tour and, you know, come back any time, we’ll show you around again, but trying to, in a polite, reasonable way, to tell them connecting with Nalcor with respect to anything to do with Astaldi to impact negotiations is a waste of your time.

MR. PEDDIGREW: So when you say important – and my last question on this email – important to keep them with one channel only, did you mean yourself or did you mean the Premier?

MR. E. MARTIN: At that time I meant myself but, once again, just as a representative – it represented anybody and I wasn't hung up on who it was. If there was going to be another – if there was going to be an ongoing negotiation with Astaldi, I wasn't too fussed by who it was, but my advice was whatever happens, make sure it's one person.

MR. PEDDIGREW: Okay.

MR. E. MARTIN: A single point of accountability, a single point of contact.

MR. PEDDIGREW: All right.

And, sorry, one more question – just: Was the Premier aware that this was happening at this time frame?

MR. E. MARTIN: I don't know but I would've been sending it to Charles and Julia –

MR. PEDDIGREW: Oh, you (inaudible).

MR. E. MARTIN: – for the purpose – for the obvious purpose –

MR. PEDDIGREW: Okay.

MR. E. MARTIN: – of speaking to the Premier about it.

MR. PEDDIGREW: Okay.

All right, thanks very much.

THE COMMISSIONER: All right, thank you.

Astaldi Canada Inc.

MR. E. MARTIN: Is it possible for a short break?

THE COMMISSIONER: Do you need a break?

MR. E. MARTIN: Please.

THE COMMISSIONER: Yeah, we'll just take five minutes now and then we'll have you, Mr. Burgess.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Okay.

All right.

Mr. Burgess?

MR. BURGESS: Thank you, Commissioner.

It's Paul Burgess on behalf of Astaldi Canada, Inc.

Good afternoon – soon to be good evening, Mr. Martin.

MR. E. MARTIN: Mmm.

MR. BURGESS: I'm going to stay away from several issues because of their commercial sensitivity, like the negotiations and things of that nature. But what I'm also going to do – and I'm going to ask you, if you could, to focus – I'm going to ask you very specific questions, and after you will certainly have an opportunity, I'm sure, to expand if you feel it necessary to do so.

In your evidence when you were being asked questions by Mr. Learmonth, there were some discussions about Astaldi's access to the site on October of 2013 and the Limited Notice to Proceed. We've heard a fair bit of evidence on that.

Was your – did you have a lot of involvement with the LNTP, or would people down at the level of the Scott O'Briens and Mr. Power have more involvement on that?

MR. E. MARTIN: Those two would have more involvement and I wouldn't be dealing with them, but to me I would say yes, and it would be Mr. Bennett on down, from my perspective.

MR. BURGESS: Okay.

So if I suggested to you that the LNTP was in September of 2013 but the site access and the – there was certain – it has a limited access at that

point, but the access to site didn't happen until late December of 2013, would you take any issue with that timing?

MR. E. MARTIN: Not off the cuff but, once again, I would –

MR. BURGESS: You'd defer to the other gentlemen.

MR. E. MARTIN: I would defer to the others on that date. I definitely wasn't involved.

MR. BURGESS: Okay, fair enough.

Just prior to your departure from Nalcor, Mr. Martin, on April of 2016, there was correspondence that was forwarded to you by Astaldi dated March 31, 2016, and it was called justification for incremental compensation.

Do you remember that document?

MR. E. MARTIN: Not in detail, but I remember receiving, you know, something like that, so I –

MR. BURGESS: Okay.

MR. E. MARTIN: – think yes, but I can't recall the contents.

MR. BURGESS: Okay.

I'm gonna suggest to you some things and you can tell me whether you remember them or if you don't remember them, and that was correspondence that Astaldi sent to Nalcor and it outlined their claim. So this was in March of 2016, there was ongoing negotiations, and they were claiming additional compensation in the amount of 785,000 – or \$785,500,000 with associated schedule relief.

Do you agree that that's the general principle? I'm not saying – suggesting that you agreed with their claim, but do you agree with me that that generally outlines your recollection of their claim at that point in time?

MR. E. MARTIN: I do. The numbers, though, are not – I can't place the numbers.

MR. BURGESS: Okay.

I'm gonna suggest to you in that correspondence that they claimed, Astaldi claimed, that the contract with Nalcor was void or voidable because of Nalcor's misrepresentations and breach of good faith.

Do you recall that principle being enunciated in that document?

MR. E. MARTIN: I do not and, once again, I can't – I'm not disputing it but I cannot recall that, and the – just for some background, the – I think you've already alluded to it, but I would've – if I – I received this document, you're saying?

MR. BURGESS: I believe you did but – but if you didn't you can (inaudible) –

MR. E. MARTIN: You know, so I don't know. It would be great to see that.

MR. BURGESS: It's not an exhibit, but would that have come to you or would someone else on your team, like Mr. Bennett, be more involved at that level?

MR. E. MARTIN: It would depend. If it came from the president of Astaldi it would've likely have come from me, or to me.

MR. BURGESS: Okay.

MR. E. MARTIN: If it wasn't it, would've gone to someone else, but I would also say that if I got that I would've scanned it but it would've immediately gone to Mr. Bennett and the team, like –

MR. BURGESS: So that – but that's my point.

That's – you would've gotten it, you would've been in the loop, but you would've let it go down the line and be dealt with at that level with your involvement, no doubt. Is that how it would go?

MR. E. MARTIN: That's really – that's a really good description and it had to be that way because I couldn't do anything without that level of expertise handling it, the project management team and legal people and such so that would exactly be the way it would be –

MR. BURGESS: Okay.

MR. E. MARTIN: – if I received it.

MR. BURGESS: I'm going to list four things that I want you to tell me – there's four categories. There was many more, but I want to just highlight four for you and you can confirm for me whether you recollected it being raised or not – that one of the things that was raised by Astaldi was a claim that they had incurred unexpected labour market conditions. That was part of their claim. Do you recall that part? Yes or no?

MR. E. MARTIN: No.

MR. BURGESS: Do you recall that they raised issues that there was lack of accommodations provided by Nalcor to Astaldi as part of their basis for their claim?

MR. E. MARTIN: No.

MR. BURGESS: Do you recall that they claimed that there was over break in the powerhouse excavation as part of their claim?

MR. E. MARTIN: No.

MR. BURGESS: And fourthly there was a claim, I suggest to you that it – there was a delay in the ICS redesign approval by Nalcor; do you recall that?

MR. E. MARTIN: I have some recollection of that. I'm not sure if it's in a letter or not, but that is something that triggered a memory.

MR. BURGESS: Okay.

I think you indicated and you would agree that Astaldi had a challenging period of time in 2014, clearly. Would you agree with that – yes or no?

MR. E. MARTIN: Yes.

MR. BURGESS: But in 2015 we've heard other evidence – and I want to make sure that it's your understanding. In mid-2015 we saw – you saw

Astaldi's performance significantly improve. Correct?

MR. E. MARTIN: Yes, I did.

MR. BURGESS: Okay.

We heard some evidence with respect to on-site authority issues and that is that there wasn't sufficient authority claimed by certain contractors, including Astaldi – there was others. And there was former employees of Nalcor who raised that issue. Were you aware at – not at the Inquiry when – the time of the Inquiry – but back in those times when there was resignations and letters of concern, were you aware of those issues at the time?

MR. E. MARTIN: No. Maybe I should say not that I can recall.

MR. BURGESS: That's fair enough.

MR. E. MARTIN: The only caveat I would put on that is that – in the projects I've been in, that was like one of those – there's a – it was a constant discussion over all the projects. If I had heard it, it probably wouldn't have registered, you know.

MR. BURGESS: Fair enough.

And can you tell me, in a general way, how often would you visit the site – the Muskrat Falls site?

MR. E. MARTIN: Twice a year, you know, but I can't be held to that. It might be three times – two to three times for a year, I would think. It wasn't frequently.

MR. BURGESS: Did you ever have any concern that Mr. Scott O'Brien or any of your project management team didn't visit the site sufficiently?

MR. E. MARTIN: I have no concern about that.

MR. BURGESS: Okay. That's all my questions.

Thank you, Sir.

THE COMMISSIONER: Thank you.

Former Nalcor Board Members.

MS. G. BEST: Good evening, Mr. Martin. Glenda Best on behalf of the Former Nalcor Board Members, 2004-2016.

I just have a few questions with you, and it's concentrated on the board itself and its operations.

Who prepared the minutes of the board meetings – whether it was Nalcor or Newfoundland Hydro, whomever? Do you know who prepared the minutes?

MR. E. MARTIN: There was a secretary of the board there, and it was usually – I think for part of the time, secretary of the board was Wayne Chamberlain, and for another period of time, it was Mr. Hickman.

MS. G. BEST: Mm-hmm.

MR. E. MARTIN: But whoever that was would've prepared the minutes.

MS. G. BEST: Okay.

So had you had an opportunity, when you came to the project, to see any of the minutes that – any of the prior minutes, for example, of the Newfoundland Labrador Hydro board?

MR. E. MARTIN: I could've had them if I wanted them, but I can't remember ever reviewing them.

Do you mean prior to my coming there?

MS. G. BEST: Yeah, prior to you joining Nalcor.

MR. E. MARTIN: Obviously, I could've seen them if I wanted to, but I didn't look at them.

MS. G. BEST: Okay.

MR. E. MARTIN: I did not look at them.

MS. G. BEST: And did you or any of the board provide any instructions to either Mr. Chamberlain or Mr. Hickman not to include numbers or amounts in the minutes?

MR. E. MARTIN: No, I did not. But that being said, you know, my – not expressly, but I would've – my experience and thought with respect to minutes has been pretty consistent over my career: that they would focus on, you know, decisions, making votes, those types of things. You know, that's where I am and that worked for me. And – so that's from that perspective so ...

MS. G. BEST: Did the board ever raise with you any concern that the numbers or the ranges weren't going into the minutes?

MR. E. MARTIN: Not that I can recall, no.

MS. G. BEST: Okay.

A second question is, Ms. Bennett and Mr. Marshall testified, before the Commission, that they would have an open discussion with you or with the project management team or whomever was making a presentation as – following the presentation and that on occasion, they had asked for additional information from you or from the project management team.

Would that be your recollection as well?

MR. E. MARTIN: That the board had asked for additional information at times?

MS. G. BEST: Yeah.

MR. E. MARTIN: That would be – yes, that would be correct.

MS. G. BEST: Okay.

And what type of discussions ensued when you were presenting, for example, cost estimates to the board?

MR. E. MARTIN: We would prepare a rigorous package, for sure. We knew it was gonna be, you know, an in-depth discussion. It was the – it was one of the top priorities of the board to get into that.

MS. G. BEST: Mm-hmm.

MR. E. MARTIN: And they would have the packages prior to the meeting, and they would come, obviously, well-prepared. And there would be a presentation and then there would be an extended, you know, discussion. It would be a combination of questions to understand, challenges –

MS. G. BEST: Mm-hmm.

MR. E. MARTIN: – you know, disagreements. You know, that kind of thing. It was very robust discussion and very direct, and I wouldn't say tense, but there was – you know, it was obviously a pretty intense –

MS. G. BEST: Okay.

MR. E. MARTIN: – would be better than tense, I would say, with respect to the meetings. And as you mentioned, some cases, more information would be required, and we would bring the people around the table that we – you know, would have the answers that were requested to the extent possible. So it would be that kind of – you know, that kind of arrangement.

MS. G. BEST: I note that in your answer, you referred to robust discussions. Mr. Budden had suggested to you that the board had an inability to engage in robust discussions with you and to challenge you and the project management team with respect to the matters that you were bringing before them or not bringing before them. And I wonder if that would be something that you would accept as being accurate?

MR. E. MARTIN: I would not accept that as being accurate. I don't know how to convey the level of knowledge, depth and, you know, and toughness these people had. I mean, they were into it, deep, and the questions, you know, were always well researched. Sometimes I would ask myself, where did it come from? You know, because to me, it was obvious they were garnering and preparing for this type of thing, so they must've been getting some guidance from somewhere. That's why I always felt that way, because it was very deep and detailed.

That being said, we gave deep and detailed information, so –

MS. G. BEST: Mm-hmm.

MR. E. MARTIN: – as I mentioned, there's a – there was a lot of questions around understanding the information as well.

MS. G. BEST: Mm-hmm.

MR. E. MARTIN: And then there would be, you know, significant debate. So it was a good balance. I felt, you know, we – obviously we were – we knew that we had to be super prepared going into that board meeting. And other than that, we wouldn't have been able to come across as confident because it was intense, as I said.

MS. G. BEST: Okay.

Did you have any concern about the competency of any individual board members? The – their ability to understand the information that was being conveyed to them, to react to the information that was being conveyed to them?

MR. E. MARTIN: I guess two levels there – three levels. You know, I found the board members were very – I guess the word is intelligent. I mean –

MS. G. BEST: Mm-hmm.

MR. E. MARTIN: – you know, you could tell that. The, you know, quick learn is not the right word, but good understanding, right questions, and they drove to understand, so that capability was clear. With respect to the understanding, you know, within the areas of expertise they had, I thought – you know, the key expertise they had – I thought they were some of the best I had worked with, in the world.

I think, you know, as we mentioned from a specialized construction perspective –

MS. G. BEST: Mm-hmm.

MR. E. MARTIN: – you know, having gone through megaproject construction in the heart of it, these people didn't have that experience. But – and therefore, you know, it wouldn't be at the level that – you know, I wouldn't want to sit here and say that they had all that experience because that's –

MS. G. BEST: Yeah.

MR. E. MARTIN: – not the case.

But with the level of information we were providing and the background that they had, I would say I was often, you know, for a while taken aback by the level of knowledge that they had with respect to what was occurring. And – you know, and the further we went and the more that they, you know, got deeper and deeper into it, I would say they became very – they became quite experienced in, you know, board – effective board management with a megaproject.

MS. G. BEST: Okay.

And one further question: With respect to the ATIPPA legislation, did that in any way affect what information was being placed in the minutes?

MR. E. MARTIN: Yes, it did, you know, frankly. And I understand the points that have been made here that up to a certain point, the CEO would have the ability to prevent things from going out, and I understood that. Things would go past me, though. There was other levels there, and right, wrong or indifferent, you know, you're always thinking, well, how's that going to pan out? And I think another driver for me was I didn't want to have the company garner a reputation that, you know, we were consistently holding data back because even if that's the right thing to do, after a certain point, you know, it becomes a tsunami of negativity.

MS. G. BEST: Mm-hmm.

MR. E. MARTIN: So I was always in the mind of, you know, trying to answer all questions and that would – I understand that even the commercial sensitivity, you know, issue and the fact that I did have some strong control over what went out –

MS. G. BEST: Yes.

MR. E. MARTIN: – I was – you know, I was of the mindset and I would've – my input to the board would've been that that was an issue and they wouldn't have come up with that themselves.

MS. G. BEST: Yes.

MR. E. MARTIN: I have to say that. And, you know, so I would have said that that was an issue that I felt was important. And I did say that.

MS. G. BEST: Mmm. Do you have any recollection of the number of requests that you received?

MR. E. MARTIN: There wasn't – I had a document prepared once. I can't remember the numbers. And the document was driven by – we were trying to help the – I think a time – I think one of them was with the PUB, we were trying to help them understand, you know –

MS. G. BEST: Mm-hmm.

MR. E. MARTIN: – the volume of information we were trying to handle because there was a lot of issues from the PUB that we weren't providing information on a timely basis.

MS. G. BEST: Yes.

MR. E. MARTIN: And there was another, I think, with respect to EY. I don't think it was as direct with that one, but it was that context, we were getting a lot of that. So we did compile a document once to lay out – to try to help people understand what we were dealing with.

I can't remember the numbers, but you're talking, like, I think thousands, you know, like it's was hundreds and – it was a really very large number that we looked at it and said: Oh my God, I didn't even know that – sometimes what was going on in the organization, trying to respond to these things.

So I'd love – I wish I had a number. I wasn't prepared to have one but it was startling.

MS. G. BEST: If I were to suggest to you that it was over 12,000?

MR. E. MARTIN: I wouldn't blink, you know, if that was an – like, that wouldn't surprise 'cause I was so taken aback myself when I saw the data that there was a – it was an astounding number.

MS. G. BEST: Okay.

And in response to those requests, do you have any idea how many you would have – tried to withhold the information or not release the information? Do you remember what percentage or whether it was frequent, infrequent –?

MR. E. MARTIN: It would be low. It would be quite low.

MS. G. BEST: Mm-hmm.

MR. E. MARTIN: Because, you know, that was the culture that we inserted into the organization, we wanted to – answer every question was our goal.

MS. G. BEST: Okay.

MR. E. MARTIN: And so, it would have to be low and I just wish I had those numbers. But, once again, it was, you know, it – we did – the amount of effort that went into that was so massive, it had to be low, very low.

MS. G. BEST: And my final question is: Were there ever any occasions when you came to the board or the project management team came to the board with a request and the board made a decision that you – they weren't in agreement with it?

MR. E. MARTIN: I can't recall a specific one right now. I know we were sent back many times and I'd like to – I'd have to go back and, you know, try to check minutes or check – I mean, it would be useful to talk to the board again about that to refresh my memory. It's just not coming to fruition right now, but I know we can't do that.

But I know there's some – there was – I can remember periods of consternation with the board being – you know, the organization being – you know, unhappy is the wrong word –

MS. G. BEST: Yeah.

MR. E. MARTIN: –but maybe a little frustrated that you know, the board was driving so hard on something and – so, I can't remember that specific instance, I'm not saying it didn't happen but I – you know, I know that the – there was no

question the strength of the board – that they had their hands on their – on the steering wheel of what they had to do –

MS. G. BEST: Okay.

MR. E. MARTIN: – and were on top it. I just don't have an example off the top of my head here now. I know that in other cases, like we talked about performance evaluation.

MS. G. BEST: Mm-hmm.

MR. E. MARTIN: I can remember instances where Mr. Marshall came back to me and made changes that, you know, I had recommended to do and he didn't agree with them. And obviously, the board didn't, so, you know, I came back and made changes unilaterally.

MS. G. BEST: Mm-hmm.

MR. E. MARTIN: And said this it's the way it's gonna be. That was – be one example. So, I am searching my memory banks right now, but I am not just coming up with others. But there – but, you know, there was no lack of understanding that that would happen.

MS. G. BEST: Okay.

MR. E. MARTIN: If the opportunity arose, you know.

MS. G. BEST: Okay. And, just let me see now.

MR. E. MARTIN: I'd like to change one bit of evidence, though – or adjust it, Mr. Commissioner, 'cause I thought back to the minutes question and I wouldn't want to leave the wrong impression. You asked – I think the question was: Did I ever instruct anybody to remove numbers and such?

MS. G. BEST: Not necessarily to remove, but not to put a number in the minutes.

MR. E. MARTIN: There was never an instruction like that. But I frequently reviewed the minutes, Mr. Commissioner, and, you know, I can't remember taking numbers out or in, but I just wanted to make sure that it was – you know, I thought as you were talking and went – that I was leaving the impression that, you know, Mr.

Hickman or Mr. Chamberlain prepared minutes and they wished me to know, look at them. I looked at the minutes.

MS. G. BEST: Okay.

MR. E. MARTIN: And at some points, I made some adjustments and wording and things like that. So I wanted to make that clear that I was also responsible, in addition to Mr. – whoever was there, for the minutes. I didn't want to leave that out there.

MS. G. BEST: So, that would've happened before the minutes went before the board? Went back to the –?

MR. E. MARTIN: That's correct, yes.

MS. G. BEST: Okay. Thank you very much.

That's all the question I have.

THE COMMISSIONER: Thank you.

Newfoundland and Labrador Building and Construction Trades Council, Resource Development Trade's Council?

MS. QUINLAN: I have no questions, Commissioner, thanks.

THE COMMISSIONER: Okay.

Nalcor Energy?

MR. SIMMONS: Thank you, Commissioner.

Good afternoon, Mr. Martin.

I am going to try and come as directly as I can to the questions I have for you, and I am probably going to lead more than I would normally try to do. But if you need to provide any context or explanation, obviously it's quite your – you're quite free to do so.

Some of my first questions concern the Astaldi contract and the Astaldi's performance of its work. We've heard from a couple of other witnesses here that it was the consequences of Astaldi's failure to perform that is one of the largest single contributors to the cost overrun on the project, so it is important.

You'd been asked some questions – however, many days ago now it was you've started – about the Astaldi contract, and the proposition, I think, was that the payments made to Astaldi were not tied to the performance of the work.

So, I'd like to bring up, please, Exhibit P-01813?

This was a memorandum prepared for Grant Thornton by an expert that they have engaged. And it's just a useful tool to identify what some of the payment terms are in the contract that I want to refer you to.

MR. E. MARTIN: Do you know if that's in the binders?

THE COMMISSIONER: It's not.

MR. SIMMONS: It is not.

MR. E. MARTIN: Okay. No problem, yeah.

MR. SIMMONS: So, this was prepared by Mr. Derek Hennessey. As you can see, it was directed to Grant Thornton, and he had conducted a review of the CH0007 contract.

So, just scroll down a little, please? You can stop there, please, Madam Clerk? And there is a helpful table here that summarizes the elements of the contract.

Now, first of all, would you agree with me that construction contracts typically can have three different basis of payments in them? They can be lump sum payments in which there's a fixed price for the contractor to do all the work. There can unit price payments in which there is a fixed price for defined units of work and the total amount to be paid will depend on how many units of work have to be performed. And that there can be reimbursable elements where there is some agreed-upon formula by which the contractor's reimbursed for actual cost of performing the work, plus some kind of markup and profit.

Am I generally correct?

MR. E. MARTIN: Yes, and I'm familiar with that –

MR. SIMMONS: Okay.

MR. E. MARTIN: – construction.

MR. SIMMONS: Now, the Astaldi contract has been sometimes characterized as a reimbursable contract, it's been discussed largely in terms of the labour portion.

But am I correct that the Astaldi contract, in fact, included lump sum portions, reimbursable portions and unit price portions in the contract?

MR. E. MARTIN: That's correct.

MR. SIMMONS: And if we're to look at this table, the item that's – three or four down, where it says Component, Lump Sum and Unit Price items, and the value of those in the contract was \$452 million.

So, of a total contract value listed here of \$1,088 billion, \$452 million of that – or something in the range of 40 per cent or so – was actually lump sum and unit prices.

Do you see that?

MR. E. MARTIN: I do. It's correct, yeah.

MR. SIMMONS: So, the basis of payment for those would be tied to the actual – for the lump sum items on the right, it says, Invoicing is “on percentage of physical completion.”

So, those items are tied to the production of Astaldi and the performance of the work. Correct?

MR. E. MARTIN: That's correct.

MR. SIMMONS: The unit prices are invoiced on completion of units of the work. So as long as the number of units stays more or less within the estimate, those are going to be paid in proportion to the completion of the work, correct?

MR. E. MARTIN: That's correct.

MR. SIMMONS: Okay.

Then, the other large portion of the contract is labour, and the top line says that there's \$507 million for the target cost of labour, \$64 million then for the labour-sharing amount, and then

\$571 million is the LMax. So they briefly describe what I understand those things are and the effect of them.

You can tell me if I have it right, please.

MR. E. MARTIN: That's correct.

MR. SIMMONS: Okay, so Astaldi would be paid, or some would say reimbursed, for its labour costs as defined by the terms of the contract as those labour costs are incurred, up to, first, the target cost of labour, and that there was a provision in the contract that if its total labour cost was less than the target cost of labour, then the savings would be shared between Nalcor and Astaldi.

Have I –

MR. E. MARTIN: That's correct.

MR. SIMMONS: – got that right?

MR. E. MARTIN: Right, that's correct.

MR. SIMMONS: Would I be correct that that provides an incentive to Astaldi to keep their labour costs below the target cost of labour?

MR. E. MARTIN: That was the intent, yes.

MR. SIMMONS: Okay, and that once – if their labour costs exceeded the target cost of labour, but were lower than the LMax, at that point, then, there's no longer an opportunity for Astaldi to share in any savings –

MR. E. MARTIN: That's correct.

MR. SIMMONS: – on labour, right?

And once the LMax was reached, all the costs of labour after that becomes Astaldi's, so after the LMax all risk in relation to labour cost transfers to Astaldi.

MR. E. MARTIN: That's correct.

MR. SIMMONS: Okay.

There's one other item there which is labour profit, which is \$35 million, and that's defined as 7 per cent of the target labour cost, and for

invoicing that's noted as being invoiced at percentage of completion of the concrete work. So that amount is also tied directly to Astaldi's production on the job, correct?

MR. E. MARTIN: Correct.

MR. SIMMONS: Right.

So if we were to say the Astaldi contract was only paid on the basis of their incurred cost and not in proportion to the work that was being accomplished, that would be incorrect because about 40 per cent or more of the contract is tied to the work that's being accomplished.

MR. E. MARTIN: That's correct.

MR. SIMMONS: Okay.

And for the items which are not paid on that basis, the contract has built into it incentives for Astaldi to keep the labour cost, first below the target costs of labour, and certainly below the LMax at which all the cost risk transfers to them.

MR. E. MARTIN: That's correct.

MR. SIMMONS: Okay.

Now, are you aware that SNC-Lavalin had estimated labour productivity as being considerably better than Astaldi actually bid in its bid?

MR. E. MARTIN: Yes.

MR. SIMMONS: Their estimate for labour was lower than what Astaldi bid. So do you know whether or not that provided any reassurance to Nalcor when this contract was entered into, that Astaldi would be able to stay within the LMax and even stay below the target cost of labour?

MR. E. MARTIN: That's correct, and I can recall some of those conversations.

MR. SIMMONS: Now, are you aware also that there was performance security taken by Nalcor from Astaldi in order to protect Nalcor against Astaldi's failure to achieve its targets or perform the work?

MR. E. MARTIN: I agree that –

MR. SIMMONS: Okay.

MR. E. MARTIN: – I know that.

MR. SIMMONS: Mr. O'Flaherty asked you some questions about that and I'm not sure he described it correctly. So let me tell you what I understand the important performance security was. A \$100-million letter of credit and a \$150-million performance bond, and because there was an advance given to Astaldi, there was a separate letter of credit which fully secured the advanced money. But I'm going to put that to one side because I'm not going to consider that performance security.

So there was \$250 million of performance security; \$100 million of which is the letter of credit. And our letters of credit in the world of security, some of the best form you can get because they're relatively easy to cash and to realize.

Is that your experience?

MR. E. MARTIN: That's my experience.

MR. SIMMONS: Okay.

And performance bonds, while they are – well, sometimes take some litigation or some work in order to realize on, they guarantee that the value of the money is ultimately available.

MR. E. MARTIN: I agree.

MR. SIMMONS: Okay.

So that level of performance security, did that help offset any residual risk that remained because the labour was being paid to Astaldi on a sort of a reimbursable basis up to the LMax versus being tied to the productivity on the job?

MR. E. MARTIN: I agree with that.

MR. SIMMONS: Were these the sorts of things that were taken into account, to your knowledge,

when the final decision was made to enter into these contract terms with Astaldi?

MR. E. MARTIN: Yes, I can remember asking similar questions and receiving these types of answers.

MR. SIMMONS: Okay.

MR. E. MARTIN: The numbers had somewhat slipped my mind in terms of what was in and what was out in terms of that but now – that’s why I’m writing it out. It’s clear to me that that was, you know, explained.

MR. SIMMONS: And I’ve missed one piece of performance security and that is the parental guarantee from Astaldi S.p.A., the Italian parent of Astaldi Canada. And am I correct that Astaldi Canada, itself, was not a very substantial company with assets, but that diligent work was done by the Nalcor treasury department following a set of procedures that had been adopted to investigate the strength of Astaldi S.p.A to stand behind that parental guarantee?

MR. E. MARTIN: I’m familiar with that, yes.

MR. SIMMONS: Okay.

And would you have been familiar with what that process would’ve been and had the results of it reported up to you before this contract was entered into?

MR. E. MARTIN: Yes.

MR. SIMMONS: So ultimately, we know that a problem developed with this contract when Astaldi ran over the LMax amount. And Astaldi S.p.A was unable to stand to the parental guarantee. At the time that the contract was entered into and awarded, were there any indications that you were aware of as a result of any of the analysis work that had been done that either, (a), that there was a substantial risk that Astaldi would overrun the LMax; or (b) that the parent would be unable to stand to the personal – to the parental guarantee?

MR. E. MARTIN: Not that I was communicated to me, no. Questions were asked.

So, you know, I was comfortable with that on the financial wherewithal of the parent. That work was done and it was falling within the range of what I was used to seeing –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – with large construction contractors –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – that I’d – I had engaged in other areas over the course of my career. So, there was no flags raised.

MR. SIMMONS: Okay.

How did the level of performance security, in particular the letter of credit and the performance bond in proportion to the value of contract – can you give me some idea how that would compare to what you had seen previously in your career in the oil industry or elsewhere?

MR. E. MARTIN: This would be higher, more rigorous. You know, this was on top – I believe, I could stand to be corrected, was there was liquidated damages –

MR. SIMMONS: There were.

MR. E. MARTIN: – as well which – it’s certainly something different. But, you know, from my mind I – you know, from a higher level perspective, I put the liquidated damages in that context to compare to –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – the types of performance “guarantees” – quotation marks – because it’s not exactly the same that I would’ve experienced in other contracts and, you know, from my experience I thought this was a very powerful combination.

MR. SIMMONS: And you’ve been asked a number of questions about the Limited Notice to Proceed, the LNTP, and questions also which put the proposition that the award of the contract was delayed. Questions whether that would’ve had some impact on Astaldi’s ability to perform the work and on the planned schedule. And as I

understand it from evidence that we've heard, there had been originally an intention to try to award the powerhouse and spillway contract in July of 2013.

It was ultimately awarded to Astaldi at the end of November 2013, immediately following financial close – does that sound familiar?

MR. E. MARTIN: That's correct.

MR. SIMMONS: And that the LNTP was entered into in September of 2013 in order to allow Astaldi to begin doing the preliminary work to get ready to undertake the main construction on the spillway and powerhouse. Does that sound familiar?

MR. E. MARTIN: That sounds correct.

MR. SIMMONS: Okay. We've also, I think, heard evidence from others that the site access to the site as a whole was available to Astaldi in September; access to the powerhouse and spillway site was not available 'til December. Does that sound familiar to you?

MR. E. MARTIN: Sounds familiar to me.

MR. SIMMONS: Okay. And we've also heard evidence that the bulk excavation had to be completed before the site could be made available, and even if the contract to Astaldi had been awarded in July, the bulk excavation was not scheduled to be completed until about one month before it actually finished in November. Does that sound familiar?

MR. E. MARTIN: That sounds familiar; getting into a bit more detail now but I remember that.

MR. SIMMONS: Okay.

During the LNTP period, we have heard evidence that Astaldi did not take advantage of the opportunity to perform all the work that was called for in the LNTP. Do – and I'm leading a lot here so if you disagree with anything –

MR. E. MARTIN: I'm listening closely.

MR. SIMMONS: – (inaudible), okay.

So – prior to the final award of the contract to Astaldi, I think about November 29, 2013, it was known what Astaldi had done and not done in the LNTP period. Was there any assessment made or were you aware of any assessment or did you do any assessment at that time to determine whether that was indicating an inability of Astaldi to have done the work, as opposed to an unwillingness of Astaldi to commit itself to doing the work to the – in the LNTP period?

MR. E. MARTIN: A little mixed on that – on remembering that because I've heard that testimony; I can't exactly say I would have known at the time.

MR. SIMMONS: If you don't recall that's fine.

MR. E. MARTIN: So I can't recall. The only supplementary piece that, you know, related possibly – the question that has been raised here a couple times, I asked about: is this the right contractor.

MR. SIMMONS: Yes.

MR. E. MARTIN: I don't know if that was explained to me or not but I would expect that they would have dealt with all that and got the answer. And I do remember something around, you know, asking some questions – I guess the response was: look, Astaldi has, you know, they've – they have signed on to do this, like you know, this was made clear to them, it was explained to me, about these dates and –

MR. SIMMONS: Yup.

MR. E. MARTIN: – these access things, and where we were on the issues that were around us, 'cause I remember asking that – so, you know, where's Astaldi, I said, is that clear? Are they signing up, do they know, are they – and the answer to me was yes.

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: And that's as far as I would have taken that, but – and I wouldn't have been detailed into the contract, but I did ask that question and I was assured that Astaldi and – was – and Nalcor had talked this through deeply and they said they can do it.

MR. SIMMONS: Okay. Good.

Now through 2014, we know that Astaldi's performance was not good, to say the least. Now you've been asked questions about that period already and I want to just try and summarize a little bit of what you've said to see if I've got this right.

So during that time period – oh, and we know from other evidence that the project management team intervened in 2014 in a number of ways that have been described by Ron Power and others. And do I understand correctly that Astaldi continued to give assurance through 2014 that they could turn it around and they could pick up the schedule?

MR. E. MARTIN: That's correct and I remember that because we were – there's notations in some presentations around that, you know, 'cause the questions were specifically asked and it was continued to indicate to me when asked that – still obtainable, contract – Astaldi said that we're still there and we can go and it was a constant topic.

MR. SIMMONS: And you've told us already that your experience from your prior work life had been that you'd seen situations where contractors had had significantly slow starts but had picked it up and had achieved in the end.

MR. E. MARTIN: No question, and, you know, there was – in varying degrees, but the life cycle of the projects I was involved in – in some cases a relatively quick start, sometimes a slower start. You had, you know, a grinding time in the middle, you know –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – getting things organized and – but coming out the back end, as they called it, you know, at varying degrees I've seen really, really unbelievable performance coming out the back end and recovery that's surprising. And I've seen slower recovery but still there's always – I've experienced a significant kick –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – in performance, upward, as the project comes in.

MR. SIMMONS: So by the end of 2014, then, can you say – and if you can't that's fine – can you say whether or not the team and yourself were in a position to be able to say there's going to be a schedule delay because of Astaldi by the end of 2014?

MR. E. MARTIN: I can't say that, you know, that was told to me –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – I know there's a tremendous amount of work on the go. I'm trying to remember some presentations that indicated that. There was one – I'm losing the dates now – I'm losing the dates on it, but –

MR. SIMMONS: Well, we will –

MR. E. MARTIN: – (inaudible) there's a six to nine month –

MR. SIMMONS: Yeah.

We'll move into – as we move –

MR. E. MARTIN: Yeah.

MR. SIMMONS: – into 2015 –

MR. E. MARTIN: 'Cause I don't think – I – my memory is that we were still on track to make it at that point and I'm –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – trying to reference a couple –

MR. SIMMONS: Right.

MR. E. MARTIN: – of presentations that would help me – remind me of that for sure.

MR. SIMMONS: Well I'm not going to drag you through –

MR. E. MARTIN: Hmm.

MR. SIMMONS: – too many documents now. I'm going to try to avoid that. I do have a few, but on another topic.

So we know by the time you get to September of 2015 there is a recognition that there's a schedule problem, but your evidence has been that it was still not possible to quantify it in cost terms.

MR. E. MARTIN: That's what I understood.

MR. SIMMONS: Yes. And that's why when the AFE was increased to \$7.65 billion in September of 2015 it – the information that was conveyed by you was qualified by saying that it does not include the impact of the Astaldi delay.

MR. E. MARTIN: That's correct.

MR. SIMMONS: And am I correct that at that point when we're talking about costs we're talking about the other – the knock-on effect costs. At that point it was not under consideration, as far as I know, that there would be a need to actually pay Astaldi any more money; do I have that right?

MR. E. MARTIN: Could you –

MR. SIMMONS: At that point.

MR. E. MARTIN: – could you repeat that one again because I was focused on knock-on costs for a second there.

MR. SIMMONS: Okay. As of September 2015 when the AFE for \$7.6 billion was put in place –

MR. E. MARTIN: Yes.

MR. SIMMONS: – by that point, because we know we have a contract that passed all the labour risk over the LMax to Astaldi. By that point in September of 2015 was there beginning to be any concern that there would have to be extra money actually paid to Astaldi as opposed to costs incurred because other contractors were delayed or the total project was going to be extended?

MR. E. MARTIN: I see what your question is, I'm – on the Astaldi side a combination of points there; one is the advice to me, the contract was very strong –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – and, you know, they have to finish the job and, you know, we don't have to pay –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – but at that time too, I think on the – on another side of the coin, you know, some financial – their financial issues –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – I believe at that point were coming to fruition.

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: And, you know, and I would have been – I was informed of that and knowing – and they told me that's going to be a problem and then it became down to the fact is that we don't have to pay them any more money but then we – the discussion started around, well what happens if they can't?

MR. SIMMONS: Right.

MR. E. MARTIN: And I knew that and I knew the potential implications if that happened –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – so I can't say entirely, you know, it wasn't one way but –

MR. SIMMONS: So –

MR. E. MARTIN: – I knew that there was an issue looming.

MR. SIMMONS: So one point coming out of that, I'm interested in any information you can give us about the timing; if we have to we can go back afterwards and go to the documents on this. But was it really in the latter part of 2015 that this concern started to arise about whether Astaldi would have the cash to continue past the LMax to the end of the job and that that's when the hard work started of investigating the parent's capability to stand behind its parental guarantee?

MR. E. MARTIN: That would fit the timing. You know, you're saying later in the year –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – like, post-September, yes. You know, I can't say it wasn't August, you know what I mean, but it was certainly in that time frame.

MR. SIMMONS: Yes.

MR. E. MARTIN: It wasn't, you know, throughout the summer and those things as such.

MR. SIMMONS: And –

MR. E. MARTIN: I may be stretching a bit there, Mr. Simmons.

MR. SIMMONS: Okay.

MR. E. MARTIN: I'm just – I'm trying to remember it now, but –

MR. SIMMONS: Well, I don't have too much more for you on this.

MR. E. MARTIN: I felt throughout 2015 I was feeling that, you know, this thing was rampant.

MR. SIMMONS: Yes.

MR. E. MARTIN: And, you know, the feeling I had is that but – you know, we're still in the hunt.

MR. SIMMONS: Okay.

MR. E. MARTIN: I can't exactly talk about when the financial stuff came to my attention.

MR. SIMMONS: Now, Mr. Burgess did refer you to a claim document that was submitted by Astaldi. It is in evidence, it's – for the record it's P-03672. And that claim document, while it's not dated, it speaks to responding to a request that was made on March 21, 2016, so it came after that point.

And do you know whether Astaldi had actually made any claim for any amount of money prior to that? Because this March 2016 was getting up to the time that you left the project, do you recall there actually being any hard numbers that Astaldi was putting on the table claiming payment prior to that?

MR. E. MARTIN: Not that I can recall.

MR. SIMMONS: And there had not been?

MR. E. MARTIN: No.

THE COMMISSIONER: I think Mr. Burgess was referring to a letter dated March 31, 2016, at the time. I don't think it was the earlier document.

MR. SIMMONS: Mm-hmm.

THE COMMISSIONER: I know we have a document as an exhibit that sets out the claim, but I think that was for negotiation purposes –

MR. SIMMONS: Yes.

THE COMMISSIONER: – and they were trying to figure out exactly what Astaldi – you know, they were asking Astaldi to put their position forward.

MR. SIMMONS: Mm-hmm

THE COMMISSIONER: But I think what Mr. Burgess was referring to was another document which I'm not sure if we have or not.

MR. SIMMONS: Okay. It's in the same time frame, I heard him to say –

THE COMMISSIONER: Yeah, it was – this one was –

MR. SIMMONS: – to say in March so ...

THE COMMISSIONER: Yeah, it was March 31, I think –

MR. SIMMONS: Mm-hmm.

THE COMMISSIONER: – is what he said otherwise.

MR. SIMMONS: Okay.

Now, at the point where the transition happens – the government transition happens the end of 2015, the end of 2016 – can you give me some idea of how mature the analysis was about the – without getting into the detail of the Astaldi

options and that, I'm just interested in how mature that work was at that point?

MR. E. MARTIN: Very mature.

MR. SIMMONS: Yes. Okay.

MR. E. MARTIN: I could describe – very mature, and I say that because I visualize, I think it was 11 by 17 sheets of paper summarizing the options. You know, I remember PowerPoint presentations going –

MR. SIMMONS: Mmm.

MR. E. MARTIN: – through the basis of the analysis, with options again. I remember reports of – summaries of the financial reviews that we had done externally.

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: And the documentation is there and I remember the sessions of plowing through those options because that was probably the most intense stuff, is working through the options and landing on the way forward. But the work that was done I thought was very mature, based upon the experience that I've had over the years –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – in dealing with these types of situations. And I'm not trying to, you know, build my résumé; I'm past that. But I will say that from closing and negotiating large contracts at the end – I have a lot of experience in that.

MR. SIMMONS: Mmm.

MR. E. MARTIN: – this was very deep analysis.

MR. SIMMONS: And do I understand that if I could try and summarize what the conclusion was, based on all the analysis, was that although Nalcor was in a strong contractual position – and if it was just a matter of fighting over whether the contract said Astaldi was entitled to extra payment or not, Nalcor was confident they were in a strong position. But the problem was that if Astaldi did not have a source of some cash to get

through to the end of the job, it would fail and have to be replaced by another contractor.

MR. E. MARTIN: No question. And just in – by a way of summary, it's probably obvious, but if you had a – you know, a strong – if the parent was financially strong –

MR. SIMMONS: Mmm.

MR. E. MARTIN: – it's a relatively, you know, straightforward decision at that point because you have, you know, the two – \$325 million in, you know, the letter – all those types of things, including the LCs.

MR. SIMMONS: Mmm.

MR. E. MARTIN: You had a parent company guarantee and to make a switch at that point, if you had to – first off they would perform, in our estimation –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – if they could afford it because that's what they do. If it got to a point a switch had to be made, or we had to deal with that, you know, \$275 million and the pressure of going after a parent company guarantee, which we would likely be successful in, would give us a lot of comfort that – that's not where a company would want to be, but we would still have the wherewithal to make a switch and stay on and be able to absorb those costs that were associated with it.

MR. SIMMONS: Right.

So, do I understand correctly, though, that the analysis – by the time we get to the beginning of 2016 the analysis was that the ability to realize on the parental guarantee was now in doubt because of events that had happened regarding the solvency of Astaldi S.p.A., the parent company?

MR. E. MARTIN: That's correct.

MR. SIMMONS: And that the analysis was saying that the lowest cost option here was to find a way to make a deal with Astaldi that put some more money in their hands and got them

through to the end of the job. Replacing them with another contractor was going to cost more.

MR. E. MARTIN: And no matter how we cut – no matter how we cut it that was the answer. And, you know, I think that, obviously, that’s where we ended up, but there – you know, if you go through the documents and do the option analysis and understanding where it was, it – I was extremely comfortable because it became apparent that was the only sensible option.

MR. SIMMONS: Okay.

I have a few questions for you regarding the events leading up to financial close. I’m going to try and cut this down as much as I can and be as direct as possible. I will have to refer to some documents just as kind of anchors. Let’s go to P-04053, please.

THE COMMISSIONER: Okay. That one is in your book, I think.

MR. SIMMONS: It may be.

THE COMMISSIONER: Yes, tab 59.

MR. SIMMONS: So this is November 1, 2013. Let’s see if I’ve got the right one. Okay.

And just to give you some context, earlier, around the middle of October, the request had come through from Minister Marshall’s office with five questions to be answered.

MR. E. MARTIN: I remember that.

MR. SIMMONS: And you can remember that. The first four of them, I think, generally dealt with questions of equity funding and what the requirements were going to be, and the last one asked for a project update. And we know from documents you were referred to earlier, in other examination earlier, that a document went back in response to that which was still working from the \$6.2 billion DG3 cost number.

Now, this is an email message and on the bottom of page 1 there’s a message from you to Derrick Sturge where you’re checking on the status of that request from Minister Marshall’s office.

And on the top of page 1, Mr. Sturge replies and says, “we are getting something finalized now ... we will flip to you before sending to finance. The only point I will make is that the data we are providing is based on DG3. The request from the Minister also asked for this with latest cost update. At this point we do not have data available for a cost update.”

So you were aware, at that point – this wasn’t unknown to you that the information that was going to the minister at that point didn’t have the cost update in it.

MR. E. MARTIN: That’s correct.

MR. SIMMONS: Correct? Okay.

And Exhibit P-02521, please.

THE COMMISSIONER: 02521. And that one is just going to be on the screen.

MR. E. MARTIN: Are we finished with this one?

MR. SIMMONS: Yes, we are. Yeah. Yeah.

And some of these I’m going to refer to are probably not in your book. So this is another email message from the same day. And if we scroll down towards to the bottom of the page – stop there, up just a little so we can see who it’s from – this is from Mr. Warren to you and other people. And what he’s actually sending is the draft of the information that’s going to go over to Minister Marshall.

And then go up to the top of the page, please. And you reply and you say: “Please copy Charles.” So would that be Charles Bown?

MR. E. MARTIN: Yes.

MR. SIMMONS: Okay.

Now, the request is coming from Finance. Charles Bown is in the Department of Natural Resources. Why would you be ensuring that Mr. Bown was copied with this information?

MR. E. MARTIN: I always, you know, endeavoured to keep as many people in the loop as possible. And Charles was the – was a key point person –

MR. SIMMONS: Yes.

MR. E. MARTIN: – you know, for me and Nalcor.

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: He was a senior – the senior official in Natural Resources. That was obviously the department that, you know, was responsible for us. But Charles was, you know, he was on top of this, you know, he obviously would want to know what was circulating elsewhere. He, you know, often explained a lot of things for us or we'd be – one of our first calls to say how we want to handle this with government. He was a very, very strong and helpful liaison into the province. So anything going to Finance or anywhere else – I'd learned that, you know, let's just – I always did that double check – make sure Charles gets it or –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – you know, or a couple of people, just to close the circle. And I'm not saying that the Auburns of the world and stuff weren't like that. Probably nine times out of 10 it was happening.

MR. SIMMONS: Mmm.

MR. E. MARTIN: But that would have been a normal thing – can you make sure you copy Charles and make sure keep him in the loop.

MR. SIMMONS: We've heard that there's – was during your time as CEO and involvement in the project that there was considerable turnover in elected officials, premiers, ministers and so on. But Mr. Bown – he was continuity through the whole period that you were there, pretty much, wasn't he? In one position or another, he was involved, either Natural Resources or elsewhere – with this project and was a contact that was available for you. Correct?

MR. E. MARTIN: That's correct.

MR. SIMMONS: Okay.

And Mr. Bown, I believe, also was close to several important parts of the project, such as the Emera negotiations?

MR. E. MARTIN: Yes, he was with us – me – at those negotiations.

MR. SIMMONS: He was present at them.

MR. E. MARTIN: He was present at the negotiations. I believe – not sure he was at the table, but –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – he was at – in the next room and at –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – break time, you know, obviously we'd get together and go through things. He was an – he was a very bright, instrumental –

MR. SIMMONS: Right.

MR. E. MARTIN: – guy and a great liaison and he was helpful.

MR. SIMMONS: Yeah, and he was –

MR. E. MARTIN: He was with us all the way on that one.

MR. SIMMONS: Right.

And since the Department of Natural Resources was the department responsible for Nalcor and the minister of Natural Resources was responsible, when Mr. Bown was in the deputy minister position there, would he be your primary point of contact into the minister or would you contact the minister directly if you had information to pass along?

MR. E. MARTIN: He was the prime point of contact.

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: Wouldn't prevent me from calling the minister.

MR. SIMMONS: Sorry? (Inaudible.)

MR. E. MARTIN: It wouldn't prevent me from calling the minister –

MR. SIMMONS: Yes.

MR. E. MARTIN: – direct –

MR. SIMMONS: Yes.

MR. E. MARTIN: – you know, obviously, or the premier but, it was – the vast majority of the time it was through Charles I would, you know –

MR. SIMMONS: Yes.

MR. E. MARTIN: – and if I happened to call the minister I'd tell Charles I was calling him most likely.

MR. SIMMONS: Did you rely on Mr. Bown to help you get things done in government?

MR. E. MARTIN: Absolutely. He was just, you know, very competent, knew the system –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – easy to work with –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – and, you know, saw the value of what we were doing and was just extremely professional and helpful and well-connected in government and he was invaluable for us to get things done there.

MR. SIMMONS: To what extent did you make it a practice to keep Mr. Bown very well-informed about what was happening on the project?

MR. E. MARTIN: You know, a very high degree. You know, I was often in – I often picked up the phone very quickly –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – and just to say, you know: Charles, look, heads-up, this was – some of this stuff was happening, keep you posted. A lot of quick calls like that, just to make sure that we were in the loop –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – he's very accessible; I was very accessible to him for the same reason but I made – and I believe he did – well, I – my – in my role, I made a very, very large effort to keep Charles fully informed.

MR. SIMMONS: Okay.

I'm – so in this time period now leading up to financial close, another issue that came up, and I'm gonna cut this short as much as I can, 'cause I was going to ask you as well about some of the messages that Mr. Coffey brought you to about the change in the final forecast cost for the Astaldi contract, in the early version of the material contract summary, and the final version of the material contract summary. And I'm going to suggest, from listening to the examination that Mr. Coffey has suggested and I looked at the documents, so I'm gonna suggest what seems to me to have happened and you can tell me right or wrong or if you don't know, that's fine.

So it appears to me that when the Astaldi award recommendation was made, the total amount that was recommended to be the award value was \$1.17 billion. And the award value is more than the contract amount; it always includes some contingency amounts that are going to be carried on that work package. Is that your understanding (inaudible) –?

MR. E. MARTIN: That's my understanding. That would be normal practice, yes.

MR. SIMMONS: Okay.

And the first version of the material contract summary had \$1.17 billion in it as the final forecast cost for the Astaldi contract, and \$96 million I think, or (inaudible) million for the contingency. And that the final version had the contingency that had been embedded in the \$1.17 removed and brought down and put on the

contingency line with the rest of the contingency. Is that what we saw –

MR. E. MARTIN: That makes a lot of sense –

MR. SIMMONS: – when we worked through this?

MR. E. MARTIN: – actually (inaudible) I was trying to – searching for what was happening there but your summary – I do know absolutely that the contract value is different than what is carried on the books.

MR. SIMMONS: Right.

MR. E. MARTIN: There's no question. And there's – yeah, there is contingency built in on the books, but the contractor would never see –

MR. SIMMONS: Right.

MR. E. MARTIN: – and – yes.

MR. SIMMONS: Right.

And the – and we know the Astaldi contract was actually only signed and became an awarded contract simultaneously with financial close, correct?

MR. E. MARTIN: That's correct.

MR. SIMMONS: But before that, it still would've been in the category of an unawarded contract.

MR. E. MARTIN: Correct.

MR. SIMMONS: Exhibit P-02217, please.

This one should be in your book. Maybe it's not.

THE COMMISSIONER: No, I think this is the one – it's going to come up on the screen. This is the new number one.

MR. SIMMONS: Yeah.

So, this will come up on your screen, and I've got this here because this is – this was actually the day, November 19, when the final approval came through to distribute that material contract summary and the reconciliation from \$6.2

billion capital cost at DG3 and 6.531 at financial close.

And these – this is Mr. Meaney's instructions to have it posted in the data room, which is a secure electronic repository that has secure access that can be provided only to limited people. I think you would've understood that. And the – you've been brought here to the instruction that Mr. Meaney gave to "Do not provide access to NL, BLG and Faskens at this time."

Now, I've a couple of questions for you about that.

First of all, do I understand correctly that when there was going to be any change to capital cost that – first of all, you had to approve it?

MR. E. MARTIN: That's correct.

MR. SIMMONS: Yes?

And, secondly, that you would want to communicate it at a high level in government before the information found its way into the bureaucracy.

MR. E. MARTIN: That's correct.

MR. SIMMONS: Okay.

Do you know whether, on November 19, 2013, you had communicated the 6.5 number into government and, in particular, to the Premier's office?

MR. E. MARTIN: I can't actually recall the data.

MR. SIMMONS: No.

MR. E. MARTIN: I think I've testified that –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – a couple of times.

MR. SIMMONS: Yeah.

MR. E. MARTIN: But, I –

MR. SIMMONS: Well, let me ask you this then: Did you give any instructions to anyone to say that information can't go to the province? Don't give it to the province?

MR. E. MARTIN: Not that I can recall.

MR. SIMMONS: Mm-hmm. Okay.

Was there any reason you would not have wanted to transmit it to the province other than the timing issue?

MR. E. MARTIN: Absolutely not, you know, but in the event that – you know, that the government, at a high level, didn't know – if that was the case – I can't remember if that was the case or not. I would've –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – wanted to have said that before any was sent, but I can't recall the timing, and I can't recall –

MR. SIMMONS: Yeah. Okay.

MR. E. MARTIN: – giving an instruction to that effect.

MR. SIMMONS: I'll bring you to one more message. This one was November 19, and this is 9:29 p.m. So, this is in the evening of November 19.

Can we go to Exhibit P-02535, please?

THE COMMISSIONER: It's going to be on your screen as well.

MR. SIMMONS: Yes. It will be.

So, this is very early the next morning – 20th of November, 6:25 a.m. – and Mr. Sturge sends a message to Mr. Warren, Mr. Hull and Mr. Meaney.

He says: "Hi folks, the other thing we need to do based on direction from Ed and Charles from last week is to walk Donna Brewer and Paul Myrden through the LCP cost update data."

So, does this trigger any recollection or refresh any memory of what may have been happening around the communication of that cost update data?

MR. E. MARTIN: Well, the first thing that comes to mind – dates are a problem for me – but if I gave instructions in the last week, according to this –

MR. SIMMONS: Yeah.

MR. E. MARTIN: – for – to go ahead and debrief Donna Brewer and Paul Myrden, then prior to that I would have talked to the senior levels of government.

MR. SIMMONS: Okay.

MR. E. MARTIN: That would be obvious to me, because it wouldn't happen otherwise.

MR. SIMMONS: Right.

MR. E. MARTIN: So, that would start, I guess, to bound the date of –

MR. SIMMONS: Yes.

MR. E. MARTIN: – when I had talked to the government – would have been before that time – whatever that date – that week was.

MR. SIMMONS: Right. Now, the – this says "based on direction from Ed and Charles," and I'm presuming that would be Charles Bown.

MR. E. MARTIN: That's correct.

MR. SIMMONS: Yeah. So, why would the direction come from both of you? Do you have any – can you offer any explanation for that?

MR. E. MARTIN: Well, once again, you know, if I was, I mean, dealing with – I would have to inform the senior levels of government.

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: You know, I would have informed Charles I was going to do that.

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: You know, that would be my norm. I would call Charles and say, look, I'm gonna – here's what I'm going to talk about and I'm coming.

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: And I'd get an appointment to go, and then I would go up and let him know it was going to happen. I wouldn't blindside him.

MR. SIMMONS: Yeah.

MR. E. MARTIN: Strong word – but I kept him informed on everything and, you know, I wouldn't – I was in the mindset I wouldn't want him to get caught out. He would know.

So, I would – in that light there, you know, we would have been talking with the team. We probably would have been doing it together, and those (inaudible) situations we were probably, you know, on an equivalent basis in those types of conversations where I was –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – making the call on, you know, Nalcor's side for that thing, and Charles would be, you know, saying, yeah, yeah, we're good.

MR. SIMMONS: So, this message suggests that – prior to this time, that Mr. Bown, at least, knew that there was going to be a cost update – if not knew what the cost update was going to be.

MR. E. MARTIN: That's correct.

MR. SIMMONS: One other question, now, on this whole question of the cost update around this time.

One of the propositions we've heard is that the 6.531 figure somehow might have been an arbitrary number put in place in order to set the baseline for future COREA calculations. I don't

know if you'd heard that proposition put before, as opposed to being a real cost estimate of the project.

So, my observation – I guess it's a question – is that if that were the intent – if the intent were to try save money in the future on how much money had to be put into the COREA account, would it not make sense to have that new number as high as possible?

MR. E. MARTIN: No question. Yes is the answer.

MR. SIMMONS: Okay.

All right, then the only other topic I want to ask some questions about, I think, is – it's been examined a fair bit – on what was communicated to government in March of 2015. So, I want – about the final forecast cost and whether elected officials were informed that the costs could be in the \$7.5 billion range, as early as that. We know in June you did, and the questions have been around March.

So first of all, I want to bring you please to Exhibit P-02630, which is Mr. Sturge's notes. And where – it will be on your screen only, and we'll go to the bottom of page 1 please.

Now, we're here on this page, and fortunately we have these. At the very bottom on the right-hand side, there is a note that says "Muskrat Falls Co. Board," and that date there has been identified to us as the 5th of March, 2015. And the board meeting includes Mr. Marshall and Mr. Rick Daw, I think, and you're present, and Mr. Shortall is there.

So, now we go over to the top of the next page where this continues, and the meeting continues on the right-hand side, and the second bullet from the top says, "Ed started" signalling "that we are having pressure on costs, but outcome not clear yet."

So, this suggests that on the 5th of March, 2015, you knew there was cost pressure, but you weren't in a position to be able to assess what it was.

And I want to bring you next to Exhibit P-01830. Again, it's not in your book, I don't think, but I think you've been brought to it before. This is going to be a – we're going to a presentation from the project management on page 23, please.

Okay. So, this is three days later from the note that we just saw – Mr. Sturge's notes – and if we go to page 25 – oh, if we stop here. There's a note here – written on it: "Presented to Ed" and so on. So, we presume this was given to you.

If we go to page 25, two pages over, scroll down please, stop there. This is where we see that the amount that's being presented in this one – Mr. Harrington called these management outlooks – is 7.499 million, essentially 7.5, okay? So that's the 8th of March.

Now let's go back to Mr. Sturge's notes at P-02630, page 3. And on the bottom right-hand side, we have a meeting on the 9th of March. This is the next day after you've been given that presentation. And it says MF update. It's – and it's hard to read here but I think it says North Spur and it's got some numbers after it. And it says dams and it's got some numbers. It's got Astaldi and then it's got 7.5 with a dollar sign in front of it. The reason I'm showing you this is 'cause this 7.5 seems to correspond with the information you had from the project management team the day before.

So do you have any further recollection on what might have – and at the bottom, by the way, it says that this is a meeting with Minister Dalley, Julia Mullaley, Charles Bown, Craig Martin, you, and it looks like Derrick, which is Mr. Sturge. Mr. Sturge's evidence was, while this meeting was to talk about distribution assets, as you typically did at the start of meetings like this, you'd say now I'm going to give you a Muskrat Falls update. So having said all that, does that trigger any recollections about what might have happened at this meeting and whether you may have communicated this 7.5 billion number at that time?

MR. E. MARTIN: No, it's helpful to see this because I was kind of – sort of at the distribution asset comment this morning but that is correct. I think I mentioned that several times, that I attended meetings with multiple topics often, or

one topic but at (inaudible) distribution assets and the distribution assets one would've been, I think, the potential sale or purchase or whatever it was, of distribution assets. In any event, yes, I would have given a Muskrat Falls, you know, update as I always did, particularly if there's new information.

And what would I – what would have gone on here is that it would've been the 7.5, as communicated, you know, looking at some of the documents and remembering would've been a number that I was reasonably comfortable with but not including the Astaldi –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – situation because it was unfolding.

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: And at that time, I was thinking to myself, and I explained this earlier, is that you're trying to get to the government as fast as, you know, as you could, you know, with the information. I would've been comfortable with the 7.5 and mentioned to them as well, I would say, that you know, Astaldi is an issue.

MR. SIMMONS: Astaldi's out there.

MR. E. MARTIN: Astaldi's out there kind of thing and –

MR. SIMMONS: So –

MR. E. MARTIN: – and –

MR. SIMMONS: – I'm going to bring you –

MR. E. MARTIN: – and let them know, you know, that that's where we were headed, and I was – I think at the time, or I would've been thinking about how we're gonna handle the AFE structure at that point without Astaldi, so I don't know if I was thinking about doing two or – at the time or not, which was coming up – I'm not sure if that was this year or the previous year, but in any event, I would've been comfortable enough with the 7.5 to say we got to start communicating that.

MR. SIMMONS: So that's the 9th of March 2015, and one last step, we'll go to the next page please, page 4 of these notes, and on the left-hand side Mr. Sturge has a note the next day, the 10th of March, of "Meeting with Premier." The attendees are listed as Premier Davis, his chief of staff, Joe Browne, Julia Mullaley again, Minister Dalley, Charles Bown, you and Mr. Sturge.

Now, a number of these people were at the meeting the previous day; Julia Mullaley was, Minister Dalley was, Charles Bown were, see that? And if you go down through, there is a note there that says: "mf costs (i) North Spur; (ii) Dams; (iii) Balance of Plant."

Were these three areas that were driving increases in costs at that time?

MR. E. MARTIN: I clearly remember the North Spur and the dam.

MR. SIMMONS: Yes.

MR. E. MARTIN: The balance of plant – it's not jumping into my mind right now.

MR. SIMMONS: All right.

MR. E. MARTIN: But the first two, definitely.

MR. SIMMONS: Now, 7.5 billion is not noted in Mr. Sturge's notes here. If you had raised that number the previous day with the minister, do you think you would've gone into this meeting with the same people and the premier and not at least given some sort of discussion of what the magnitude of these cost impacts were?

MR. E. MARTIN: Absolutely, and, you know, I mean my assumption would be she knew, the premier knew, or he knew.

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: What time was this, the 15th? That was Mr. Davis, I think, was it?

MR. SIMMONS: This is March 10, 2015.

MR. E. MARTIN: In any event, you know, I'm – don't mind me on the – which premier it was,

but in any event, if the people I talked about the day before were there –

MR. SIMMONS: Mm-hmm.

MR. E. MARTIN: – then my assumption would've been that the premier would know, in any event, because of that, but that being said I would definitely talk about the number, there's no way I would – I would do it because it's the right thing to do, but also, you know, what if I didn't do it and somebody – and someone else raised it, doesn't make sense, if you know –

MR. SIMMONS: Yeah.

MR. E. MARTIN: – what I mean, but that wouldn't be the primary reason, it would be that I would say it.

MR. SIMMONS: Okay, good.

Thank you very much. I don't have any other questions, Commissioner.

THE COMMISSIONER: All right, counsel for Edmund Martin.

MR. E. MARTIN: I apologize, is it possible –

THE COMMISSIONER: Oh –

MR. E. MARTIN: – for a –

THE COMMISSIONER: – can you –

MR. E. MARTIN: – short –

THE COMMISSIONER: – take a –

MR. E. MARTIN: – fiver –

THE COMMISSIONER: – break for –

MR. E. MARTIN: – please? I'm all right just –

THE COMMISSIONER: Okay.

MR. E. MARTIN: – five minutes be great.

THE COMMISSIONER: Let's take five minutes and then if we'll call counsel for (inaudible).

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Counsel for Ed Martin.

MR. SMITH: Thank you, Mr. Commissioner.

I don't think I have to introduce myself to Mr. Martin given the last six months.

Mr. Martin, I have a number of questions, mostly arising from questions of other counsel, so therefore there's no pattern or necessary, you know, topics. It's dealing with particular issues that we've identified as – that perhaps need further detail.

And I'd ask, if I could, Madam Clerk, to bring up 01864 [sp. 01846].

THE COMMISSIONER: 01864. That's not going to be on your – that will be on your screen, rather.

MR. SMITH: Thank you.

Now, have you – do you recognize this document, Sir?

MR. E. MARTIN: Yes, I do.

MR. SMITH: Have you had a chance to review it?

MR. E. MARTIN: Not recently in detail, no.

MR. SMITH: Okay.

I'll bring you, if I could, to – the point of my questions is the suggestion throughout the Inquiry that the information you sanctioned the project on was a P1 or a P3 schedule, and I understood from your direct evidence that you strongly disagree with that.

MR. E. MARTIN: That's correct. And –

UNIDENTIFIED MALE SPEAKER: I believe it's 01846, just for –

MR. E. MARTIN: I think we – yeah.

UNIDENTIFIED MALE SPEAKER: – assistance, you're looking for.

MR. SMITH: Oh, sorry. 01846. I've got the wrong one, did I? I'm sorry. The numbers are transposed on my first thing.

So, Madam Clerk, 01846. Okay.

Now, I'll ask you the same question: Do you recall this one? This document, Sir?

MR. E. MARTIN: Yes, I do.

MR. SMITH: Okay. And have you had an opportunity to look at that one?

MR. E. MARTIN: Yes, I have.

MR. SMITH: Okay.

So, looking at that document, I'm going to bring you to – in terms of the issue that you have between a P1, P3 schedule, which had been, you know, pretty predominant through the course of this Inquiry that you were – that you were accused of sanctioning on the basis of that, and you disagree. I'll ask you to look at items 2 and 3. There are a lot of issues in this document but we're going to focus, for the benefit of time here, on item 2 and 3.

And looking at item 2 and 3 and picking it up at this detailed project schedule, in other words there was – “A July 2017 Target First Power date was supported by a detailed project schedule (~10,000 work activities) that integrated all project elements, having been premised upon several years of feasibility studies and investigations into the Muskrat Falls Project.”

To your knowledge, did the QRA done at Decision Gate 3 do a – sorry – a schedule analysis of all of those items, 10,000?

MR. E. MARTIN: No, it did not.

MR. SMITH: And it goes on to state that: “This detailed project schedule, referred to internally as the ‘Project Control Schedule,’ provided, what was considered at the time to be, a sound-basis and rationale to support a public statement at the December 2012 Project Sanction announcement that First Power from MF would be targeted by end of 2017.”

And do you agree that that’s what the suggestion was at that time?

MR. E. MARTIN: That’s what was explained to me.

MR. SMITH: Okay.

And I look at paragraph 3, if I could, and I’ll be brief: “This Project Control Schedule incorporated all detailed construction scheduling prepared by SNC-Lavalin and incorporated all detail design and construction planning available prior to Project Sanction. This schedule was developed based upon, what was considered at the time to be, realistic, benchmarked and externally validated concrete pour sizes and placement rates, which was in-turn aligned with those in the Base Estimate. An approximate 15% (1 day per week) non-productivity allowance was built into the schedule.”

What’s your understanding of what that means?

MR. E. MARTIN: As explained to me, that meant that the schedule was based on six days a week working and one day not working. And it was also explained that, you know, this was termed natural floats or available floats or, you know, a day that could be used to, you know, if necessary for additional work so that it created an allowance, a float allowance.

MR. SMITH: Okay.

Paragraph 6 – if we could, scroll down, please. In paragraph 6 it says the Lower Churchill – I don’t remember what that is.

MR. E. MARTIN: Management –

MR. SMITH: Management group [sp. Corporation].

MR. E. MARTIN: I always called it the PMT, but it’s the same group.

MR. SMITH: Oh, okay. Sorry. “LCMC leveraged the time-window between the scheduled July 2017 First Power and the publicly declared power before the end of 2017 as a schedule reserve of 4 to 5 months”

That’s, I think, been generally referred to as the float. Is that correct?

MR. E. MARTIN: That’s correct.

MR. SMITH: And the different – the situation here is that it appears that at sanction – oh, sorry – before the end of 2017, the schedule was extended from mid ’17 to the end of ’17.

MR. E. MARTIN: That’s correct.

MR. SMITH: Number 7: “A number of third-party reviewers,” which we’ve heard about, “(MHI, Independent Engineer, SNC-Lavalin experts) assessed the schedule underpinning the 2017 First Power target, with each concluding that the planned duration appeared viable.”

And then –

MR. E. MARTIN: Yeah, and –

MR. SMITH: – I’ll say to you there: What’s your knowledge of those expert reports on the schedule?

MR. E. MARTIN: They – each of them verified that the schedule, as presented, was achievable. This is a summary document here.

I will note that as far as sanction goes, it was MHI and SNC-Lavalin experts, prior to sanction. Post-sanction, the independent engineer information, you know, became more readily available, and in the independent engineer’s case, he said it was achievable, albeit at the lower end of that range.

MR. SMITH: And finally, in terms of the summary, paragraph 8: “Schedules provided by the contract bidders for Muskrat Falls Generation reaffirmed the reasonableness of the 2017 First Power target, with bidders producing detailed construction schedules confirming their

ability to achieve the target date. Successful bidders produced execution plans and schedules further reinforcing the attainability of a 2017 First Power, each willingly agreeing to significant contractual liquidated damages should they fail to meet the schedule”

And you mentioned this in your direct testimony that this was what you understood at the time of sanction. Even though the information that’s there, you know, occurred after – in 2017 in terms of moving the date, for example, and the – well, that’s the primary one: moving the date. That was – you wouldn’t know that at the time of sanction.

MR. E. MARTIN: That’s correct. This is –

MR. SMITH: So, that was, effectively, you know, after-the-fact knowledge that came in – or hindsight, if you will – with respect to that part of the – of your discussion yesterday as to why you don’t agree it’s first – P1 or P3.

MR. E. MARTIN: That’s correct.

MR. SMITH: Now, I bring you, if I could, to page 9, Madam Clerk?

This is a reference to the change from a six-day work to a seven-day work at the third bullet. “While LCMC fully expected contractors to work a 7-day work week, proactively in order to provide” in – sorry, “an in-built schedule contingency, the Project Control Schedule was built using” six days, rather than seven-days schedule. “Acting as a schedule reserve or buffer, this provision provided ~8 months of cumulative schedule allowance or float.”

We talked about that a minute ago. But, again, this would be known at the time of sanction.

MR. E. MARTIN: That’s correct.

MR. SMITH: And looking at, now, a key element here, and that is the references to P1, P3 that come – that arise from the QRA that was done in – for DG3 and used at sanction.

Turn to page 16, please, Madam Clerk?

And you testified just for – if you scroll down a little bit further, please? Okay. There. Thank you.

Schedule Stress Testing to Validate Attainability, okay? “With a detailed Project Control Schedule, available and verified by experienced personnel, that verified the attainability of a targeted July 2017 ... Power, LCMC endeavoured” – or the project team “endeavoured to stress test the schedule to validate attainability.”

Now, does a stress test of the schedule equate to a probability analysis of the schedule?

MR. E. MARTIN: No, and if you’re using – it does use probability techniques, but the difference is on a full, you know, true schedule probability analysis, you would be looking at things at both ends of the spectrum: things that could improve for various reasons, things that could go the wrong way for various reasons. You would be working in mitigation efforts and you would be producing a fully vetted schedule at all levels.

A stress test is to go into the rolled-up schedule, in this particular case, and stress it – you know, make it look like – push things to make it look bad. And the purpose of it is to run probability analysis as was explained to me to find and hunt what are the key things to focus on, mostly to – even if the worst things happen, you need to focus on from a mitigation perspective.

MR. SMITH: And at the – in the next paragraph, “As indicated” – can you just scroll up a little bit more? Thank you.

“As indicated within Section 10.2 of the DG ... QRA document, stress testing using time-risk modelling techniques identified that the Target First Power date would be most influenced by the identified 3 strategic risks which would influence the outcome of the following schedule critical items.”

And the – do you recall what the three items were that they identified?

MR. E. MARTIN: As listed here: Award of the mass excavation contract, availability of

accommodations on site and Primary and secondary concreting durations, meaning, you know, the rate of pour and some of these heavy cement – or concrete areas of the powerhouse.

So the output was, you know, the work was useful because it identified those things that, you know, to make sure you got a laser focus on these things.

MR. SMITH: I believe there's a couple more on the next page, please. Scroll down – or up, rather.

Thank you.

MR. E. MARTIN: And as you can see there, the North RCC Dam construction window, reservoir impoundment, which obviously is required to do particular work on the powerhouse and isolate it. And then from a transmission perspective, the HVDC overland transmission line construction, which is the LIL, excluding the subsea piece.

MR. SMITH: Okay.

Let's scroll up a little bit more, please. Well, stay on the page, thank you.

Okay. "The QRA advised that should the" expected "occur" –

MR. E. MARTIN: Unexpected.

MR. SMITH: Sorry, "... should the unexpected occur" – yes, thank you – "the ability to achieve a July 2017 First Power was remote (less than a P10), while there could potentially be an 11 to 21 month exposure (P25 and P75) for Full Power beyond the December 2017 scheduled date."

Now – so the QRA is effectively telling the project team and yourself what?

MR. E. MARTIN: It was indicating that in my mind, what was explained to me is that the schedule was still where we were. If unexpected things happened, as we've identified here, and since we've not mitigated then – and not dealt with, then you would have a problem that would drive you to these kind of dates. It was not saying the schedule was problematic or in the

low probability; it was saying if these unexpected events happened, that's where we would be. And that's not unusual. That's the type of thinking that I would be exposed to on other projects. You're always trying to find the things to focus on. This is not saying it was a P1 schedule; it was saying if you don't focus on these things and make sure you are on top of it, these are the unexpected things you need to address.

MR. SMITH: Okay.

Now, could I try and summarize what I'm hearing? I'm hearing that the QRA that was done in relation to DG3 was to actually identify those areas that could create serious problems for the project.

MR. E. MARTIN: That's correct.

MR. SMITH: And therefore, the P1 or P3 – depending on which document you look at – the P1 or P3 is what would be the result if those unexpected happened.

MR. E. MARTIN: That's correct.

MR. SMITH: They're not actually saying that the schedule itself is P1 or P3, but rather that if these unexpected events occur, a combination of them or – then in that situation, the resultant schedule would be a probability of P1 or P3.

MR. E. MARTIN: That's correct.

MR. SMITH: I'm going to – having – you said even though this –

MR. E. MARTIN: And just as a further point, you know – I apologize for interrupting, but in the last line of this paragraph, is – I believe is an important point in the exact context of what you just said. It also – I was also informed that the results that you just described revealed that there was no single risk event contributing to that time risk exposure as they called it. Rather, a number of discreet items which, when compounded, could cumulatively push first power.

So it's not like you're saying one or two or – it's, like they're talking about – that would have to all come – those unknowns would have to be

cumulative to happen, as was explained to me, to make that happen.

MR. SMITH: Now, how close, to your understanding at the time, is the summary produced, I believe in October of 2018, for the Commission? How close is that, the description of what was going on, to your understanding, in 2012 at sanction?

MR. E. MARTIN: It's – very close, I mean this was, you know, this was what was talked about and when I read this document, you know, I wasn't fussed by it, I just said: That's right, that's it, that's how it was explained to me.

MR. SMITH: Could we have –

MR. E. MARTIN: And, you know, and I remember as well, you know, just – the reason that I did spend a significant amount of time understanding this, in earlier testimony it was indicated that at one point, Mr. Owen was leading a team, that I attended a meeting. And I forget the terminology, but they said I was upset or something. And he said it was a low probability schedule, or whatever. And I remember at that meeting, I think testimony was there, I came out and said: Well, you know, what the – you know, what is – you know, and the folks were saying: Well, no, no, no, Ed, you know; no, that's not it. And I said: Well, you know, book a date, come in and explain it to me. Okay, no problem.

And this is the genesis of where that – this depth of explanation was provided, and I was comfortable with that, I got it.

MR. SMITH: Can I have 01677, please, Madam Clerk?

You'll recognize this as the Grant Thornton report.

THE COMMISSIONER: Tab 42.

MR. E. MARTIN: I do.

MR. SMITH: And this report is dated December 7, 2018, for the Commission. I'll ask you to turn to page 94, if you would.

Have that?

MR. E. MARTIN: Yes, I do.

MR. SMITH: I'll pick it up at line 1: "In response to Grant Thornton's question 10.41, where we requested a copy of the schedule analysis recently prepared, Nalcor provided a document titled '*Reasonableness of the Attainability of 2017 First Power*' prepared on October 18, 2018. We reviewed this document which notes it was prepared in order to address questions and statements raised during the Muskrat Falls Inquiry related to attainability of first power ... We gave no weight to this document for the following reasons:

"Westney's analysis from 2012 noted that there was an extremely low probability of achieving the schedule."

And then it says: "To the best of our knowledge, Nalcor did not perform an analysis at the time of Westney's report to conclude why they felt the schedule was attainable in light of Westney's conclusion. If such an analysis was prepared, it was not provided to us.

"The analysis" – was provided, excuse me. "The analysis that was provided, was prepared in 2018 (approximately 6 years after the project was sanctioned) with the benefit of hindsight."

Now when you read that in the Grant Thornton report, which I assume you've read –

MR. E. MARTIN: I have.

MR. SMITH: – yeah, now what was your reaction to that comment that it was – that this 2018 document was dismissed by Grant Thornton because of hindsight?

MR. E. MARTIN: You know, I try to use colourful words, as I said, I probably would except I said I wouldn't. I was – you know, I could not believe what I was reading, frankly. That those three points that they gave no weight to the document for the following reasons. And the reason I was as – you know, I was just so frustrated was the first point, as we just went through, was not – as explained to me, that was not that point, that it was an extremely low probability. We just talked about that, so I thought that's – that's incorrect according to what I was told, explained.

And the second point, you know: Did not perform an analysis to conclude why they felt the schedule ... Well, that analysis was actually that work and it yielded much information. And then, you know, with respect to “it was prepared with the benefit of hindsight,” well, I could remember in the DG3 across the schedule document that was used – presented, you know, for approval, that there were, you know, similar references that, you know, made some of the same points that was based upon, you know, what I made the decision off.

So this was a really good description and I remember – and I went back and looked at the DG3 document before sanction and as I read through that, it wasn’t laid out in this fashion but there was – the references were there that said we – that was talked about and I couldn’t understand why it was given no weight. I just could not understand it.

MR. SMITH: Now look at document 00130, Madam Clerk?

THE COMMISSIONER: I believe it will be on your screen.

MR. SMITH: Okay, just scroll up just a little bit so we can have the witness know.

Is this the Westney analysis, to your knowledge, for Decision Gate 3 that we’ve been talking about?

MR. E. MARTIN: Yeah, I think it’s part of it, but I think this is the – you know, an overall, including them. I think it’s the overall project cost and schedule risk analysis that would’ve formed the basis of where we were with respect to that at DG3.

MR. SMITH: Can I ask you to, if I – if possible, to turn to page 9? Madam Clerk, scroll down to 9 – okay, and would you scroll up that page a bit to 9.0? Yeah. So, this section deals with basis of assessment, okay?

Now, scroll down to 10? Okay. Oh no, no, no, sorry. Scroll to page 10, I apologize, Miss – Madam Clerk. Okay, stop there. Okay. Page 10, yes. And scroll down to – the paragraph begins: “The time-model’s objective”

Now, here in this document prepared by Westney, it says: “The time-model’s objective is to model the project schedule core driving logic and key activities ... as to facilitate a means of assessing the potential viability” –

MR. LEARMONTH: Look, I just wanna – do you say this was prepared by Westney?

MR. SMITH: I – no, maybe – I may have mistaken –

MR. LEARMONTH: You did say –

MR. SMITH: I overstated –

MR. LEARMONTH: – it was.

MR. SMITH: – I said that –

MR. LEARMONTH: It wasn’t prepared –

MR. SMITH: No, no –

MR. LEARMONTH: – by Westney.

MR. SMITH: – it’s –

MR. LEARMONTH: No.

MR. SMITH: – it’s at Decision Gate 3.

MR. LEARMONTH: But it was not prepared by –

MR. SMITH: No.

MR. LEARMONTH: – Westney.

MR. SMITH: You are correct.

MR. LEARMONTH: Yeah.

MR. SMITH: Yes, you’re correct, Sir. Okay. I’ll come back to say where I saw that. And I apologize to my colleagues.

It says: “With Westney’s guidance, both cost and time-models were developed to provide a useful tool for the analysis of potential risk events and estimate uncertainties on the overall cost and schedule basis noted in Tables 1 and 2.”

So, Westney's information was being used, I guess, by the authors of this DG3 document.

MR. E. MARTIN: That's correct.

MR. SMITH: Okay.

And then they go on to say – now, again, can't underestimate the value – “With Westney's guidance, both cost and time-models were developed to provide a useful tool for the analysis of potential risk events” Again, Westney was developing a model for potential risk events and that's what we've been talking about.

“The time-model's objective is to model the project schedule core driving logic and key activities so as to facilitate a means of assessing the potential viability of the schedule in consideration of identified Tactical Risks and Key Risks. Given the amount of interdependencies and constraints contained within the overall project schedule, the configuration of the final time-model, as contained in Attachment B.9, took considerable effort to ensure as accurate as possible representation of the key schedule pivot points and driving logic. It should be noted however that this simplified critical path logic network does not take into account any mitigation measures available to Nalcor should progress towards critical weather windows not be on-target.”

So – well, first of all, I'll ask you: What, to you – what is the document telling you? This was a document available in 2012.

MR. E. MARTIN: It was telling me, as explained, you know, at the time and noted here, is that the time-risk analysis is not what we've been calling here a full-schedule analysis. It's a time-risk – or sorry, it's a – whatever the term is there. In any event, it's not what people have been referring to.

Now, that being said, it goes on and a key element is the last sentence there, it “does not take into account any mitigation measures,” which obviously puts a whole new, you know, point on this whole analysis. It doesn't include things like taking into account work that may be done to fix some of the issues that may be

showing; things like the – you know, using the seventh day with the eight-month float to alleviate some of the pressures. The four and six month float that occurred after the fact, all the same, it wouldn't include anything such as that, and any other mitigation activities that could occur.

So this is just – this is a sentence that clearly indicates to me, as explained, that there's been no work in terms of trying to mitigate those issues. It was there to identify what – if you didn't, what are the key items that could cause you the most trouble? And armed with those, then you go work on the mitigation to make sure that you're covering yourself in the future.

MR. SMITH: Would a mitigation effort of doing the bulk excavation ahead of –

MR. E. MARTIN: It –

MR. SMITH: – financial close be one of the mitigating efforts?

MR. E. MARTIN: Yes, that's a great example. And that – you know, as that was – or two examples.

This was pre-sanction, it yielded – one was to make sure you get the site available for work in time to let the contractors in. And that's why we took the approach to go up and get the government to approve with us to spend substantial amount of money prior to sanction so we could award the bulk excavation and do the key elements up there. And that was before anything was sanctioned. The second one was on the combinations in camp and before sanction we made some decisions and made some investments to get camp in there and get things upgraded and change things.

So those are two examples of what you do when you get this data. You're obviously mitigating that and therefore the indication would be if you're doing that, and the whole thing is a combination of events that causes the problem, you're starting to remove the combinations. You're continuing to improve the probability of your schedule, and it's being used for what it was intended to be used for. It does not have anything to do with the rating of the overall schedule.

MR. SMITH: But a probability analysis of the schedule, the full schedule – project schedule – that would require an assessment of the ten thousand line items as well as any mitigations that were done to ensure the schedule was met.

MR. E. MARTIN: That's right. It would be an iterative process.

MR. SMITH: (Inaudible.)

MR. E. MARTIN: And you would put things in like this, you'd test it. Then you would – you know, you might put in, you know, working, you know, seven days a week half the time. You might do some other things that have been indicated. And you – it's an iterative thing until you get your schedule to a point where it's working for you. And you still try to maintain as many of the mitigation items in your back pocket as you could to give yourself additional opportunities as the project moves on.

MR. SMITH: Could I have page 15, Madam Clerk? Scroll down, please, to the summary. Yes, thank you. Thank you.

I pick up here where, in this particular document prior to sanction, it says: "In summary, the analysis indicates" – and I think they're speaking again about this analysis done by Westney, okay, of the key-risk factors that could cause a P1 or P3 –

MR. E. MARTIN: That's correct.

MR. SMITH: Okay. So it says: "The analysis indicates that based upon the identified unmitigated time risks, there was a low probability of achieving a July 2017 First Power" Okay?

So, again, unmitigated time, and so they're just looking for what would could cause a P1 or P3 result.

MR. E. MARTIN: And that – even that analysis was based on July 2017 first power.

MR. SMITH: Okay. Okay.

Rather the risk-adjusted schedule – excuse me, I better pick that up again: "In summary, the analysis indicates that based upon the identified

unmitigated time risks, there was a low probability of achieving a July 2017 First Power, rather the risk-adjusted schedule suggests the potential of an 11 to 21 month delay for Full Power (P25 to P75)," result. "However caution must be considered when attempting to directly interpret the probability that a given schedule date will be achieved as this is a simplified modeling of a very complex construction schedule, and does not consider the mitigations that may be implemented should a risk event be expected to occur in the near term. Given the inherent nature of such time-analysis, the predictive range (P25 to P75) should only be used to facilitate informed decision making with respect to establishing realistic targets for project completion, rather than blindly considering the output as 100% accurate. To that effect, these results support the merit of leveraging the natural schedule reserve that exist between July 2017 and December 2017 or when power is required on the Island to meet energy requirements."

Now, that suggests, that even at this point, pre-sanction at DG3, that the project management team were looking at a first power situation of July and December.

MR. E. MARTIN: That's correct.

MR. SMITH: And could you, if you would, comment upon how that paragraph fits with the summary that was prepared in 2018.

MR. E. MARTIN: To me, that's a – in conjunction with some of the other points, is a précis of what was described in greater detail in this document.

MR. SMITH: Okay.

MR. E. MARTIN: And it – this made sense to me. It was explained to me and when I read the other documents – well that's exactly what was being talked about and explained to me.

MR. SMITH: I have just few more questions.

You mentioned in the spring and summer of 2013 you did not see the June FFC as reliable for several reasons –

MR. E. MARTIN: Mr. Smith, there's one other

—

MR. SMITH: Oh, sorry.

MR. E. MARTIN: — supplementary piece of information that I think is salient as well. Is that further on in the other document that we had looked at first, there was also some information that came out, you know, during the sanction — between sanction and financial close. And I think we've already addressed that but I wanted to make the point that, again — maybe you have, maybe I'm just getting a little —

MR. SMITH: No, please go ahead.

MR. E. MARTIN: — a little tired, I don't know, maybe. But this was the pre-sanction information that links directly, and then I was also informed, as we went from sanction to financial close, about the things that are also summarized in that document, what the IE said, you know, and what the contractors, you know, were telling us what they were signing on for, and other things that are included here were also explained to me as we went to the financial close.

And I just want to reiterate that these are, you know, the same description that was received, and it is summarized as said to me in that — the first exhibit we looked at.

Sorry to interrupt you.

MR. SMITH: So you mentioned in your evidence, your direct evidence that in the spring, summer 2013 you didn't see the June FFC as reliable for several reasons, one of which was the Emera negotiations in June of — June, July of '13.

Is that accurate that the Emera negotiations occurred in that time frame, in 2013?

MR. E. MARTIN: Yes, all throughout that area, yeah, yes.

MR. SMITH: Now, could you tell me whether that was the EAA or was that on the term sheet with Emera?

MR. E. MARTIN: The —

MR. SMITH: Those negotiations.

MR. E. MARTIN: The EAA.

MR. SMITH: Now, Mr. Warren, in his evidence, suggested it was a win-win and was challenged quite heavily by others, I'll say, okay, here at the Inquiry. Would you agree with Mr. Warren that it was a win-win situation for the Province of Newfoundland?

MR. E. MARTIN: And Nova Scotia. I do.

MR. SMITH: And Nova Scotia.

MR. E. MARTIN: And I think the win-win — you know, if you had to pick a side to favour, it would be the Newfoundland side. But I'm definitely not saying it's 100 per cent Newfoundland and zero per cent Nova Scotia. But it is for sure an equal win-win and I believe it's — from Newfoundland's perspective we have — you know, we would have the edge on that.

MR. SMITH: Okay. Now, why would you say it's a win-win? Because there has been a lot of evidence with respect to the EAA and that some — I think as Mr. Collins at some point in time suggested that the province actually loses because of the requirement to offer power to Nova Scotia.

MR. E. MARTIN: I don't want to — I'm going to avoid going into a full description of it because there has been a lot of that, but I think there's at least two points that I have not heard in evidence that I think, you know, are significant. You know, if I look at the fact that it's been described — well, you can offer it, you know, but they don't have to take it. And I'm saying, well, just hold on for a second, you know, let's look at what we developed here. We have a situation where — two points in particular — Nova Scotia has passed legislation in terms of what their — we'll call it — you know, I call it greenhouses gases, but there is even more towards that — that they have to meet certain regulations or certain limits by a certain time.

MR. SMITH: Green energy?

MR. E. MARTIN: Regarding clean energy.

MR. SMITH: Clean energy.

MR. E. MARTIN: And they have to obtain that by legislation, which is very helpful to us. In that same legislation – and the targets are stringent and they're tough. And, you know, without this energy, it would be extremely difficult for Nova Scotia to meet those arrangement.

In addition, in that same legislation, they have actually qualified Muskrat Falls energy as fulfilling those requirements clearly. So, there is no question that Muskrat Falls will fulfill – whatever is provided for Muskrat Falls will fulfill their legislative needs, as opposed to imports coming from other areas that's not that defined or well-defined. And coming out of New England, it's very difficult to be able to say that that's green energy and that's going qualify for Nova Scotia to reduce their requirements.

So on one hand you have tailor-made, what the province wanted, what the UARB suggested, and what we have is that they need to reduce their targets, and our power is totally, 100 per cent qualified to do it. That's point A. Point B, if they bring in power from elsewhere, instead of ours, it's going to be a New England purchase for the most part, and coming out of New England – not qualified, in that same fashion, for being green, so they have a meeting-their-targets issue. And, also, exports from New England, attract a \$14-per-megawatt export fee on top of the transmission fees that they would pay in New Brunswick and on top of the generation cost. And that's never been discussed here before, so the thought that Emera is just going to go out and grab other energy to satisfy their needs without including that kind of – \$14 per megawatt hour is a lot of money, so your costs are going up – and, as well, not satisfying their green-energy requirements.

From that perspective, now let's look at – we offer into Emera. So the price is going to be competitive, and that's why they chose that price – very good for us, very good for them. We both don't have to pay transmission, so we both win. We land on a price that we couldn't get anywhere else – especially with the transmission that – we land on a price that they couldn't match, for the most part, and it meets their green-energy requirements. And when we offer, if they decide not to take it, that still reduces our obligation to offer over time.

So over time, if they continue – which I can't see them doing – but over time, if they continue to refuse our power, what they're doing is they're compressing, eventually, their need to fulfill those green-energy requirements, and I don't see that that's a smart move for Emera to do. Because if you keep tightening and tightening and not (inaudible) off your green-energy targets, and you wait until you have absolutely – you're so tight that you really have to bring energy in, well, that's a great place for us to be because we have fully qualified green energy. At the last minute, if they let it happen that it was the most pressure to pull it in, who's in the driver's seat then? I'm not – I'm saying they won't do that; they're too smart.

And I'll stop there, but from that perspective, getting those elements in, this is a win-win situation and is a highly viable market, and they will take the energy. And we're gonna do better than we even estimated.

MR. SMITH: Okay.

Now, I only have a couple of more questions there. I'm going to ask you to look at, again, the Grant Thornton report, which is 01677, I believe.

THE COMMISSIONER: That'll be at tab 42.

MR. E. MARTIN: I have it.

MR. SMITH: Have it? All right.

Could we go to line 1 through 16, I think it is.

THE COMMISSIONER: Okay, what page?

MR. SMITH: I believe it's on – just a second now, I – page 20 ... I think it's 25.

THE COMMISSIONER: Twenty?

MR. SMITH: I think it's 25.

THE COMMISSIONER: Or 25?

MR. SMITH: I believe it's 25, Mr. Commissioner

THE COMMISSIONER: Okay, page 25.

MR. SMITH: Sorry, my note is not –

THE COMMISSIONER: Page 25.

MR. SMITH: That's – no, that's not it.

UNIDENTIFIED MALE SPEAKER: I think it's 12.

MR. SMITH: Twelve? Okay. Thank you. Yeah, that's the one.

Now, you mentioned in your evidence that you had difficulty recreating where the 25 per cent coverage was. Could you, perhaps, offer an explanation as to why you're having difficulty with that?

MR. E. MARTIN: Yes, I will.

First, though, one clarification – and, Mr. Smith, I forgot to mention this to you as well. It came to my attention that when I was trying to address this, initially, in previous days, Mr. Commissioner, I – in the flow of my words, I used term 6.5 plus 300, and I meant to say 6.2 plus 300 in that particular one. So that's a reference you see in the previous manifestation of my evidence. I just wanted to make that point clear, that I made a mistake there. I meant to say 6.2 plus 300.

But once again, if I can just, you know, express my confusion over this, maybe take my – a little bit more time, I just don't know where that 25 per cent comes from and we may need to get explanation, we may not, but I just wanted to note that I don't think the 25 per cent is accurate. I certainly don't understand it, and it may cloud some issues. And I took the – what I thought was the worst case that I could think about, which was if you take the \$6.2 billion and you deduct the contingency that was in that \$6.2 billion at the time, which was approximately \$370 million or \$380 million, it would drop you down into the \$5.85 million, roughly. If I put the \$600 million over that number, it's not 25 per cent. So I thought that was probably the best way to get to the higher number.

Then I approached it in terms of, if I went from 6.5 to 6.3, it's – that would be \$300 million over 6.2, and that certainly wasn't 25 per cent. So, there may very well be some calculation in here

that works, but I feel, you know, compelled to make that note because even though it's on, you know, a line 3 of a multi-page document, I just think it's important to make sure you understand that I don't think 25 per cent is the right notation there. And I wanted to get that on record.

MR. SMITH: It appears, and reading it carefully: "As indicated above, prior to financial close, bids were received from contractors whom ultimately ... hired which collectively, exceeded the DG3 budget."

Well, the DG3 budget was what?

MR. E. MARTIN: Six point two billion.

MR. SMITH: And if you added \$600 million to the – just doing it the way it's read – reads, if you look at \$600 million as a portion of \$6.2 billion, does that come out to 25 per cent?

MR. E. MARTIN: No. I just can't find that number.

THE COMMISSIONER: Can I suggest maybe a way to get to that number?

If you were to add up in your DG3 budget what you have allotted for your contracts – your construction contracts – not your add-ons for your PMT and all those other, sort of, costs – I think you might see how – I've done it, it doesn't work out to quite 25 per cent, but it's very close – so, you may want to have a look at that because that's where it might be. But, again, I just make that suggestion. I'm not even sure if I'm right on that.

MR. E. MARTIN: I appreciate the feedback, Mr. Commissioner, and I won't belabour the point. I've tried some of that as well, and on the Astaldi side of things, I was trying to do it with, you know, their increase from that, and I couldn't get there either. But I take your point –

THE COMMISSIONER: Okay.

MR. E. MARTIN: – and I'll look at that. I appreciate that.

MR. SMITH: Can we scroll down, please?

Lines 16 to 18. “Based upon our interviews and documents reviewed” and again, you were not interviewed for phase 2.

Is that correct?

MR. E. MARTIN: That’s correct.

MR. SMITH: “Based on our interviews and documents reviewed, nothing came to our attention to indicate that Nalcor attempted to recalculate the contingency and/or the entire capital cost estimate 18 between April 2013 and financial close”

That suggests that Grant Thornton weren’t aware of the 6.531.

MR. E. MARTIN: That’s what I read in that as well, and, you know, which – it is what it is, but the work that went into calculating the 6.531 was extensive. It went through many iterations, as I’ve described here earlier.

And the other thing that, you know, I didn’t understand was in the section of this report where they list down the various progression of what they called the FFCs and such. The 6.5 wasn’t in there, and the 6.5 to 6.6. And it – I didn’t understand that and I didn’t – you know, I thought that was – I frankly thought that was a miss that – why that wasn’t in there because it, certainly, as I said earlier, shows progression and indicates that that’s where the number was at that time, which we’ve seen in the documentation it was.

MR. SMITH: So, just going back very quickly – the 25 per cent number, if it was based upon the costs of contracts as suggested by the Commissioner to get to 25 per cent, wouldn’t the 6.531 alter that suggestion that – of 25 per cent cost increase?

MR. E. MARTIN: I’m not – frankly, I’m not sure of that. Where I’m confused on the 25 per cent, I don’t think on the fly it would, you know, I may be able to answer that, Mr. Smith.

MR. SMITH: Okay.

MR. E. MARTIN: And I would like to, you know, take a look at some of the comments the Commissioner made. You know, I think my

comments stand – I don’t think they’re 25 per cent. From my perspective it’s a good representation. But I would like to take a further look at some of the suggestions that the Commissioner made.

THE COMMISSIONER: And I’m not saying that I know that for sure. It’s just that I was fooling around with these numbers myself, so ...

MR. E. MARTIN: I understand. Thank you.

MR. SMITH: If we could, you have expressed throughout your testimony great confidence in that this is the right project for the province. Looking at the project as a whole, versus the other approach, which would be an Isolated Island, would the Muskrat Falls be worth more to the province as an ongoing – or as a going concern than the other type of project, the Isolated Island?

MR. E. MARTIN: Two points – the answer – could you ask that question again?

MR. SMITH: Okay – I was just saying would the Muskrat Falls – the project as a whole, the asset, if you will, after construction – would that be worth more as a going concern to the province’s asset base than other options?

MR. E. MARTIN: It would definitely be worth more and, you know, compared to any other option. And that is because of what I’ve explained before, is that we are, you know, acquiring an asset which has a debt base, yes, but it also has an equity portion. It’s supported by revenue that is essentially guaranteed – not only from the ratepayer but also from the triple-A federal loan guarantee. And it also has revenue streams coming at it from the perspective of excess sales. And on top of that the return on equity is being provided into the people of the province.

I won’t go much further than that ’cause I’ve explained it, but I will have a supplementary point which has come to mind because I think is important to note – is that putting aside the comparison and just thinking about Muskrat Falls, the Muskrat Falls plant – the Muskrat Falls complex as we know it, it has – you know, what is on the books – the Muskrat Falls Project

will – has more value than is even what is on the books of the province as we speak.

So once again we have a huge significant asset and account it as a house, as an example. We have a mortgage on that house, and we have equity in the house; so that is an asset that's worth a lot of money because it has a guaranteed revenue stream. It's like in a house, if you have a guaranteed rental for 30 years at reasonable rates, it would add a lot of value to that.

So in our case, not only do we have the asset and it's on the books and it's worth X – I've been in the situation where I've had Emera approach me in terms of looking to, you know, acquire more of the Labrador-Island Link and others have as well, which is fine, because it's a great asset. But they've approached us – they had approached me over time to say: well look, even on the rate of return we'll take a less of a rate of return if we can get another piece potentially, because it's such a great asset that we'll live with that.

Now in the – in acquisition theory, if you lower your return rate that drives the cost – that drives the price up. So we could, in my estimation, easily sell this project for more than we've actually paid for it; that's the type of asset we have here. Would I recommend ever selling it? For that exact reason, never. It's water, it's the plant.

But I, you know, it's another way to project, in my view, what the value of this project is. It's worth more today than what is actually – we have built it for. And that includes all the revenue streams that go with it. I just wanted to make that point.

MR. SMITH: Now, you took office in 2005, as I understand it.

MR. E. MARTIN: That's correct.

MR. SMITH: And left office in 2016.

MR. E. MARTIN: That's correct.

MR. SMITH: Okay.

And since then – well, first of all in that time frame with respect to the project in 2016, what

was your understanding of what the project would cost at that time?

MR. E. MARTIN: A bit of a range, but we had been at 7.65, we knew we had the Astaldi situation. In my – and I've made, you know, I've made representations on this with respect to the Astaldi situation – I had said resolve it with them, you know, in the \$250 million range for them – there would be knock-on effects. I felt confident about that but then, you know, after the fact and say looking at it, well, that had gone to something higher than that, which is quite possible, you know, you could be in the 350 to 400 range for Astaldi and additional knock-ons.

In addition to that, there would be some transmission – LIL – Valard issues to deal with. I had a good handle on what they were; not substantial but you'd have to understand that that was going to happen.

You'd have to put contingency on because we weren't finished. But when I do all that and look at the puts and takes add on extras, looking back on it, you know, my view was with those additions, we could be in and around the, you know, the 8.8, give or take, range. That was my view at the time. Add – you know, as is in adding in some, you know, some substantial contingencies at the day – of the day.

MR. SMITH: And again it's 8.8 without financing. Is that correct?

MR. E. MARTIN: That's correct. You know, that's – doesn't include financing.

MR. SMITH: And with respect to where the project is today, I – my understanding is that the current administration have moved it to a P75.

MR. E. MARTIN: I read that in the document. I wasn't aware of that. But I did read that in some documents that were submitted.

MR. SMITH: In your understanding of the probability numbers, would P75 be, you know, your 8.8 and now 10.1 because of the probability numbers?

MR. E. MARTIN: I would be somewhere in between there, I think. And, once again, it's very difficult in probability analysis, but the reason

I'm saying that it would be more than a P50 is that I was adding in some extras, in realization that I wouldn't have known everything that would be happening at the time. I'd – you know, and I'll stop there.

And, Mr. Commissioner, I always find it difficult to pick a probability without the analysis. I'm trying to generalize here to answer Mr. Smith's question. But I wouldn't be P50 and I wouldn't be lowballing it at that point in my mind 'cause I was trying to get reasonably where I thought I could land. And at that point, you're headed down – as the project winds down, so many more things have been solidified that that's where my mind – and that's what I understood that – and that's what I would've been comfortable with.

MR. SMITH: Now, we were – you gave evidence earlier that you were moving ahead with Astaldi before you were told to stop, okay? And EY were left to analyze what to do. Do you recall what EY ultimately decided was the appropriate course?

MR. E. MARTIN: I heard testimony in this Commission and also, obviously, through some of the news events that that's – they moved ahead to put a settlement in place with Astaldi and proceed.

MR. SMITH: And do you recall or know from the media or otherwise what you understand the settlement was with Astaldi?

MR. E. MARTIN: My information is that it's in the \$800- to \$850-million range. But that's based upon information I've gleaned from what I could find in the reports here and what was stated publicly, Mr. Commissioner. I don't have details of – you know, I don't have it.

MR. SMITH: And that was done after your watch on – as CEO?

MR. E. MARTIN: That's correct.

MR. SMITH: Okay.

Are there any other major factors that you can think of that may have driven it to 10.1?

MR. E. MARTIN: Well, I can indicate the things that – a couple of things: I don't understand 'cause I don't have the information. And I provided some evidence to this perspective is that I don't understand the two hundred and – what I understood and heard from information that was something in the neighbourhood of \$250 million for Valard settlement. I testified earlier from my information when I was there, I just don't understand, you know, the genesis of that. So, that would be a question I had in my mind.

You know, I know, as I explained, that I believe the – and it's the province's prerogative, so don't get me wrong, I'm just trying to think of reasons for cost as you asked me. But, you know, with the Astaldi situation, the change – when I was pulled away from the table, there is a period of time before folks re-engaged and there weren't – you know there would be a – there would have to be a cost impact associated with that because of delaying and moving ahead getting off the ground. I don't what that is, but, you know, months at that point in the project where the site is very busy and there's lots of contractors on it, it's very expensive.

And there's additional knock-ons to that, extra stuff. So I could – you know, I could see – in my mind, I was trying to understand, you know, in the terms of, you know, \$900 billion – or, sorry, \$900 million or so, I don't know. And then this P50 to P75 change, there would be additional contingencies associated with that that would have been added in. And that would – I would assume – would have to make some of the difference that there would be additional contingencies added in and I don't know the outcome of that. So that's my sense; that's my feeling. I'm – you know, as I – obviously, 8.8, in that range, a bit higher, maybe, than I would be thinking, but that's what I understood. Those other elements, I can't explain and understand and certainly had no part in them.

MR. SMITH: Can I have P-04100, please?

MR. E. MARTIN: I don't think that's in the binder, is it?

THE COMMISSIONER: No, it's the one –

MR. SMITH: It was just introduced today.

MR. E. MARTIN: Oh, I see.

THE COMMISSIONER: It was the one that relates to the March 2014 being March 2015.

MR. E. MARTIN: I see.

MR. SMITH: Now, I'm going to ask for a couple of other documents, Madam Clerk, to be – so we can flip back and forth. And they are 01829 and 03779. So just –

THE COMMISSIONER: 01829 is tab 15, and 03779 is tab 65.

MR. SMITH: Now, if we can start at 04100? Thank you.

Essentially, this exhibit is a clarification of some of the – or one of the exhibits, actually – 01829, okay? And if we look at – keep going down. Slide – scale down. Yeah. I'm most interested in this aspect. There's a lot of things that I'd like to talk about but (inaudible) – you know, in deference to time. The – and I'm looking at the highlighted part there: **“The following parts of the ‘Grant Thornton’s Phase 2 Report (P-01677) are also inaccurate to the extent that they include a March 2014 \$7.517B capital cost”**

Do you – or have you any knowledge of a slide deck or a presentation from the project management team in March of 2014?

MR. E. MARTIN: On this topic, no. I have no recollection.

MR. SMITH: Can we switch to 03779, please? This is a memorandum that was given by or to McInnes Cooper, prepared by Tanya Power. And scroll down, if you would?

It outlines the decks that were provided to the executive over a period of time. And I note that the first and – the only deck – or the earliest deck in 2013 was June, correct? Now, if there was no deck presented to the executive, you, the CEO, in '18 – or, sorry, in March or February, et cetera, of 2013, okay, the first one being June '13, right? So those three files we located in June, okay? Do you know if there was a deck provided to you beyond June?

MR. E. MARTIN: I just want to clarify. You're saying June. What we were just talking about – March 2014, weren't we?

MR. SMITH: Yeah, March 2014. Okay, so we scroll down to '14? Sorry. I think there's one in February. Yeah, stop. Okay. Okay, there's one in January of '14 –

MR. E. MARTIN: Mm-hmm.

MR. SMITH: – as indicated. And then – I think it looks like it was modified in February '14. Okay? There is no deck to you in March. Is that correct?

MR. E. MARTIN: And – I've already mentioned that – not that I can recall.

MR. SMITH: Okay.

Now, if we could switch over to –

MR. CONSTANTINE: If I could assist for a second. I helped Harold out with this. Apologies.

But I think the point is that there were FFCs done here but the meeting invites don't include Mr. Martin for any of the meetings between December and May of 2014.

MR. SMITH: Which is the paragraph that follows. You see that there, Mr. Martin?

MR. E. MARTIN: Meeting notice – the meeting – the paragraph that starts: Meeting notice found –

MR. SMITH: Yes.

MR. E. MARTIN: – for February 4. I understand. I see that. And –

MR. SMITH: You're not mentioned as –

MR. E. MARTIN: I'm not mentioned in that list, no.

MR. SMITH: – meeting on – on these – on these – right?

MR. E. MARTIN: That's correct.

MR. SMITH: Okay.

Can we go back to 04100 for a second?

It's been described that – in the middle of the page here – that there's several references to this particular deck. This is a March deck, which turns out to be March of '15. There's several references: page 19, 21, 23, 24 and 25. And conclusions are made by Grant Thornton in respect of you being provided a briefing in March of 2014. When the evidence shown from the McInnes Cooper document indicates you were – never attended any meetings to be briefed on those documents.

MR. E. MARTIN: Not that I can recall.

MR. SMITH: Okay.

So there was, in fact, in this period of time, no briefing to the CEO that you're aware of.

MR. E. MARTIN: That's correct.

MR. SMITH: Go to 01829, again, for a minute – nearly done. Okay, scroll down to page 4. Okay. Can I go to five for now? Okay.

There's a discussion here that you were moving from DG3 – \$6.202 billion to \$6.531 billion, which is yet another example of the Grant Thornton report being in error, that there was no realignment of the capital cost or capex. Do you have any comment on that?

MR. E. MARTIN: Well, I just – I think it's another follow-up that, you know, to me it – particularly with the way the information progressed, I was – I would've expected that the \$6.531 billion would've been expressed in the Grant Thornton report in that table and in context.

MR. SMITH: And the final question – and I hear the sighs behind me.

The final question is that – Mr. Learmonth, through very forceful assertions, asserted that at September '14 the project cost – 2014 that is – the project cost had climbed to 6.99 AFE without construction commencing, and he said that on several occasions.

Is that, in fact, true that there was no – excuse me – construction on the site before September '14?

MR. E. MARTIN: No, that's incorrect.

MR. LEARMONTH: I didn't say that. I said it was very limited.

MR. SMITH: I'm afraid I disagree. You said that there was no construction.

MR. E. MARTIN: In any event, around that period of time, I think we were up to 900 – \$800 to \$900 million of expenditure in the – in the late 2013 time frame as we moved through that. So that would be a touch point to assess that –

MR. SMITH: Nearly a billion dollars were already into the project.

MR. E. MARTIN: That's correct.

MR. SMITH: Thank you.

That's all the questions I have.

THE COMMISSIONER: All right.

Redirect.

MR. E. MARTIN: Is it possible to take one short break? Or how long are we going to be?

MR. LEARMONTH: I'm only going to be 10 minutes.

THE COMMISSIONER: Do you need a break –?

MR. E. MARTIN: Yeah, I think so, because I am not sure where it's going and –

THE COMMISSIONER: Okay.

So let's take our – take five minutes.

MR. E. MARTIN: I won't be long.

THE COMMISSIONER: Okay.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right.

Redirect, Mr. Learmonth?

MR. LEARMONTH: Thank you.

Now, Mr. Martin, you've made a number of criticisms of the Grant Thornton report, correct?

MR. E. MARTIN: I've pointed out some areas that I thought information was not reflective on what actually happened.

MR. LEARMONTH: Yeah.

Well, why then didn't your – didn't you ensure that your counsel cross-examined Grant Thornton on these points when they testified in February in Goose Bay so that they would have an opportunity to provide an explanation for you?

MR. E. MARTIN: I guess as things have unfolded and I've been, you know, hearing and reading more and more – I mean, I guess, from my perspective, Mr. Learmonth, that I've been, like others, I guess, busy in other things. I've been trying to put as much time into this as I can. I can't do it 24-7. I digest a lot of information – I attempt to. And any input that I would've had would have – you know, would have been as soon as I knew it.

With respect to the six point – or, sorry, with respect to the P1-P3 situation that I've described there – I can't remember the exact date – but I did ask my counsel to go and talk to Commission counsel at one point to say, look, this is what I felt. (Inaudible) was not true, and I asked, you know – I guess, inappropriately at the time, Mr. Commissioner – to say, you know, could you cease and desist on that? Of course, I think the response – I'd have to check with the counsel – but I think it was to the effect of, well, that's the – what we have in evidence at the time.

So, I found that, you know, it wasn't the answer I wanted, but I thought that was the answer, and I had to wait to, you know, deal with it.

MR. LEARMONTH: (Inaudible.)

MR. E. MARTIN: Which was – I felt was problematic. On the 6.5 –

MR. LEARMONTH: No, I'm asking you about the GT report, and I asked you why you didn't make arrangements to have Grant Thornton – Mr. Scott Shaffer – cross-examined on this point when he testified in Goose Bay. And I believe you were present in Goose Bay, were you?

MR. E. MARTIN: Yes, I was.

MR. LEARMONTH: You were for his evidence, and you received the Grant Thornton report before – well in advance of Mr. Shaffer's testimony.

MR. E. MARTIN: That's correct.

MR. LEARMONTH: And now you're telling us, for the first time, all these criticisms, and I just wonder why?

I mean, these errors – I just – you know, you say these errors jumped at you. Well, if you had read the report before Mr. Shaffer testified, which I assume you did, it would have jumped out at you then, and it would have been a perfect time to cross-examine. And I just don't understand why you didn't.

MR. E. MARTIN: So I am trying to – you know, to think through some logic there. I think I mentioned that I mentioned it to counsel. I was a – I also heard – I think it was Mr. Kean and Mr. Harrington in their testimony, as time went on, express these thoughts and I thought that would – you know, would have corrected the information, but for some reason, it didn't seem to – people kept talking about the P1-P3 as a fact and that – you know, I didn't know what to do at that point. I thought it would be cleared up when Mr. Kean and Mr. Harrington and Mr. Bennett and others got up, was part of my thinking. And –

MR. LEARMONTH: (Inaudible) be cleared up.

MR. E. MARTIN: – I (inaudible) described that, but it didn't seem to catch hold, you know?

MR. LEARMONTH: What would be cleared up? What do you mean it would be cleared up?

MR. E. MARTIN: Well, my understanding of what the – I don't agree with the characterization of the P1-P3. I just described all that. So –

MR. LEARMONTH: Yeah.

MR. E. MARTIN: I thought that would be described in the manner it was described to me.

MR. LEARMONTH: Yeah. Well, it was described in the – in many of the documents presented by the project management team. But you also realized that Mr. Westney and Mr. Dodson both testified here. Why wasn't your criticism of the P1 and the P3 and the P-factors put to both or at least one of them when they testified so that they would have an opportunity to respond to your criticisms? Why?

MR. E. MARTIN: I just can't think of an answer right now. You know, I'm trying to let you know as things evolved, I thought once again that Westney would – that these gentlemen – I just – it was explained to me; I made some representations that I didn't agree with it. I didn't feel that – I felt that's the way it was, so it had to proceed, from my perspective, and then I expected that – I expected –

MR. LEARMONTH: What do you mean by that?

MR. E. MARTIN: – as people were talking that – and giving their evidence that it would be described in the way it was described to me.

MR. LEARMONTH: Yeah.

MR. E. MARTIN: As it unfolded, that's not what happened, so I felt compelled to basically – you know, when I had my opportunity to clearly explain what was described to me, and that's what I've done.

MR. LEARMONTH: Yeah, but answer the question why you didn't put these criticisms of the P1 and the P3 to Mr. Dodson and/or Mr. Westney. They testified here; you had counsel. That would have been a perfect time to put your position to them and get their take on it. And it's

difficult for me to understand why you didn't take – avail of that opportunity. And then you come in at the end after most of the people have testified and come up with this theory.

You're entitled to do that – I'm not saying that you're not allowed to do it. But I think it may bring into question a lot of things like – that you had the opportunity to put it to the people that you're criticizing and you didn't.

MR. E. MARTIN: Well, I guess part of it is, you know, for whatever reason, I wasn't – I guess I didn't digest the process. This is a new process to me. I – you know, I'm not – Mr. Commissioner, it's just a new process, you know, the way things have unfolded. It's just not what I was used to, what I was expecting. And I think that's part of the issue – is that I expected things to – I made a comment; I just thought we could go in and talk about it. That wasn't gonna happen. Couldn't talk to the project team people, so that didn't happen.

You know, yes, I take your point, but, you know, I just wasn't in – I just – I guess in my mind I wasn't in to the process in terms of exactly how it would unfold. I was personally getting, you know, frustrated with it, figured I would be able to build on what had been said by others as they've been up and build on that, and I guess time just got on and here I am.

MR. LEARMONTH: Yeah, but –

MR. E. MARTIN: I took my opportunity –

MR. LEARMONTH: – you had legal counsel throughout, didn't you?

MR. E. MARTIN: Yes.

MR. LEARMONTH: And you didn't – you say that you didn't understand the process?

MR. E. MARTIN: No, I'm not saying that, I guess –

MR. LEARMONTH: Well, that's what you said.

MR. E. MARTIN: No, I said I.

MR. LEARMONTH: Yeah.

MR. E. MARTIN: Me.

MR. LEARMONTH: Yeah. You didn't understand the process. And I said, but you had legal counsel throughout that were well able to provide the process to you if you had been interested in knowing it. Isn't that true?

MR. E. MARTIN: Yes, I obviously had legal, you know, process, so maybe, you know, if they asked – I have to ask counsel. I can't do that right now –

MR. LEARMONTH: Mmm.

MR. E. MARTIN: – obviously. Like, I don't think, from the process. But in any event, here we are.

MR. LEARMONTH: Well, here we are and – anyway –

MR. E. MARTIN: But, you know, so I take your point, Mr. Learmonth, and I go on to say, though, as well that we did make representation to Commission counsel on this topic.

MR. LEARMONTH: What representation did you make and when and to whom?

MR. E. MARTIN: Mr. Smith made it to – I'm not sure who. He'd have to speak – Harold?

MR. LEARMONTH: Well, no, you know, you have to –

MR. E. MARTIN: I mean, I'm just –

MR. LEARMONTH: – answer the question.

MR. E. MARTIN: – I asked him to go in and speak to counsel. So I don't know who he spoke to and – but he did go in and speak and indicate that this issue was – from my perspective – I don't know why it's being presented that way. It's untrue. And I was asking to have it, you know, stopped until we got it there.

MR. LEARMONTH: Have what stopped?

MR. E. MARTIN: But I guess I'm – have the manifestation of this P1, P3, you know, presented in the manner it was because I didn't see it as true.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Well –

THE COMMISSIONER: So just a second now.

Mr. – I guess Mr. Smith is going to identify or speak to this.

MR. SMITH: First and foremost, they – my understanding is the rule of Browne and Dunn does not –

MR. LEARMONTH: Mm-hmm.

MR. SMITH: – necessarily apply to the Commission. The second is –

MR. LEARMONTH: Yeah.

THE COMMISSIONER: Oh, I'm not so sure I agree with that.

MR. SMITH: Okay. But –

THE COMMISSIONER: At this stage of the game, I can assure you I'm not worried about Browne and Dunn and I'm not worried about other things like that. I just want – you know, I'm okay. So –

MR. SMITH: Yeah, okay.

The other aspect of this is that when we approached Commission counsel, the answer was you'll have your turn when Mr. Martin is on the stand.

THE COMMISSIONER: Okay, so who – I guess the idea is Mr. Martin doesn't know who you spoke to, so –

MR. SMITH: And I don't remember what it was – it's clearly not Mr. Learmonth because he doesn't remember. It very well may have been the individual justice –

THE COMMISSIONER: Justice O'Brien.

MR. SMITH: – O'Brien, yeah, Justice O'Brien, at the time. But I clearly recall being told that Mr. Martin will have his turn on the stand –

MR. LEARMONTH: Mm-hmm.

MR. SMITH: – and he can make the explanation or whatever he wants at that time, and we took that position to be the process here at the Inquiry. And I really do think it's unfair to be pressing Mr. Martin to disclose his instructions to counsel or otherwise. I, you know, I find that very, very much on the line in regard to the matter.

But I clarify it for the Commissioner that we did approach Commission counsel about our – and we did cross-examine a number of the witnesses regarding the P1, P3 schedule and how it was developed or what their understanding of it was, et cetera. So, you know, at this point in time I think it's, you know, that's all I can say.

MR. LEARMONTH: Well, you know, it – I'm not gonna get into a tit-for-tat, but this comment that it's close to the line is something, I think, is a very, very unwarranted comment.

But the last thing I'll say about that is if Mr. Smith is allowed to communicate this – is when he talked to Commission counsel, did Commission counsel tell him that he wasn't allowed to cross-examine Mr. Westney –?

THE COMMISSIONER: Right, but we're not going to get into, you know, what you and – what Commission counsel –

MR. LEARMONTH: Yeah.

THE COMMISSIONER: – would've said because that's all hearsay –

MR. LEARMONTH: Okay, well anyway, I'll forget about it.

THE COMMISSIONER: So let's –

MR. LEARMONTH: Yeah, anyway.

THE COMMISSIONER: – let's move along.

MR. LEARMONTH: Okay.

So I've asked the question on that and you – have any more to say on that, on those topics?

THE COMMISSIONER: I don't really want to hear any more on that so let's just move on.

MR. LEARMONTH: Okay.

Now, you mentioned the figure of \$8.8 billion as what you thought it would take to complete this project. Is that –?

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

MR. LEARMONTH: Okay. So we know – and that's without interest.

MR. E. MARTIN: That's correct.

MR. LEARMONTH: And we know now that the budget is 10.1.

MR. E. MARTIN: That's correct.

MR. LEARMONTH: So what are you – are you saying that your successor, Mr. Stan Marshall, overspent?

MR. E. MARTIN: No, I'm not –

MR. LEARMONTH: Because that's what you implied.

MR. E. MARTIN: I think – no, I don't believe I did.

MR. LEARMONTH: Okay, well what – okay, well, you didn't intend to suggest that?

MR. E. MARTIN: No, what I was saying is that I was asked the question about –

MR. LEARMONTH: Mm-hmm.

MR. E. MARTIN: – you know, what the differences could be and I said – I prefaced it by I don't have the information, I don't have the –

MR. LEARMONTH: Yeah.

MR. E. MARTIN: – background data. And this was my, you know, what I had heard or gleaned through certain documents and heard publicly. And I tried to lay out what I thought the differences were, and from my assessment personally of that, I was comfortable that, you

know, during my tenure I was still comfortable about where my thinking was.

MR. LEARMONTH: Yeah.

MR. E. MARTIN: And what happened afterwards, I just don't understand and wasn't involved in it.

MR. LEARMONTH: Okay, so you realize – so you're not suggesting that the – your successor, Mr. Marshall, overspent, are you?

MR. E. MARTIN: I am not reflecting or offering a comment or anything else with respect to Mr. Marshall.

MR. LEARMONTH: Yeah, but – no, no, about the budget going from 8.8 – I mean, what you suggested, you didn't come out and say it, but you mentioned an 8.8 and then you said 10.1 and I don't understand it. The suggestion there was that the 10.1 – that it wasn't necessary to spend as much as 10.1.

MR. E. MARTIN: I –

MR. LEARMONTH: That's the suggestion that came from your comments. And then you say things like: Well, Valard, I don't know why, I don't understand why \$250 million – it was actually 245 – was spent. I mean, I think it's pretty obvious what – the point you're trying to make in an indirect way.

MR. E. MARTIN: Is it – I mean, is it okay to say that's your opinion, Mr. Learmonth?

MR. LEARMONTH: Yeah, you can say that.

MR. E. MARTIN: I mean, fine to say that.

MR. LEARMONTH: Sure.

MR. E. MARTIN: Yeah, I said, you know, I expressed it in terms that I couldn't answer the question, I don't understand –

MR. LEARMONTH: Yeah.

MR. E. MARTIN: – that's my view.

MR. LEARMONTH: Well, why do you mention it if you don't understand it? Why do you even bring it up if you don't understand it?

MR. E. MARTIN: You know, it's a subject that – of interest to me. That's it.

MR. LEARMONTH: But why do you bring it up? You sort of dropped this 8.8 and then the 10.1 and you say I don't understand.

MR. E. MARTIN: I thought it would be useful information for the Commission as to where I thought it could've landed and then indicating – the obvious question is, well, what's the difference? And I said I don't have all the data, I don't understand it, but here's what I've heard. It's information and it's on record as that.

MR. LEARMONTH: Hmm. So it's \$1.3 billion in the difference between your 8.8 and 10.1. Is that right?

MR. E. MARTIN: That's the math.

MR. LEARMONTH: Yeah. And you just don't understand how it got to 10.1.

MR. E. MARTIN: That's correct. I mean, I don't have the information.

MR. LEARMONTH: You don't have the information, okay. Well, maybe Mr. Marshall will be able to explain that.

The – you said that – you were talking about Muskrat Falls being a huge significant asset.

MR. E. MARTIN: I did.

MR. LEARMONTH: Yeah. But what you didn't say is that to get that huge significant asset – that because of the cost overruns – the fiscal position of the province, because of the added debt, has been challenged. How can you look at – you know, you make a statement: a huge significant asset. How can you make that comment without also saying that there was a huge significant loan attached to it?

MR. E. MARTIN: I think I did say that, but if I could just offer a couple of – an answer to your question.

I disagree with your comment that the fiscal situation of the province is challenged because of this. And what I base that upon, Mr. Commissioner, is that this is a – as I mentioned before – number one, an asset – or sorry – debt with an asset attached to it; referred to, obviously, as net debt in the government books. Meaning it's like, you know, owning a house – as I mentioned before – with a mortgage of a certain amount and equity in the house. You still have the house asset. It's not credit card debt.

So net debt is extremely different in the government books, as I'm sure you're aware, than – we'll call it – debt, as they term it. So that's point (a). So if you look at the fiscal perspective of the province, they own a huge revenue-producing asset with some – with debt against it, but a big hunk of equity and it's worth a tremendous amount of money. It's net debt and it's like owning a very large home with a – you know, a 60 to 65 per cent mortgage on it and 35 per cent equity and you're in, you know – that is a very good place to be, provided that you can afford the payments to get you there.

MR. LEARMONTH: That's right.

MR. E. MARTIN: And so – that's right. So to afford the payments that means – and the payments in this particular case are the cheques or cash that the people of Newfoundland and Labrador have to pay to – for their light bill.

MR. LEARMONTH: Right.

MR. E. MARTIN: And as I've mentioned, you know, constantly is that that payment would be comprised of the cost associated with the capital financing and all those costs that are associated, you know, with this asset and it will also be comprised, if the government so determines to apply the excess sales, which wouldn't be here without this project and the return on equity of over \$23 billion – much over that actually – that wouldn't be here without this project. If they choose to take that cash, available cash, and put it on rates for the short, medium, or long-term then the actual mortgage payment or the actual light bill will be affordable.

MR. LEARMONTH: Mm-hmm.

MR. E. MARTIN: No question about it. So from that perspective – one other point I wanted to make is that –

MR. LEARMONTH: Well, just before you leave –

MR. E. MARTIN: – in addition to all that –

MR. LEARMONTH: – just before you leave that point.

MR. E. MARTIN: – in addition to all of that that which, you know, supports what I am suggesting, the net debt is very powerful because there is a revenue stream attached to it, but it also has a federal government Triple A guarantee against it. And the financiers, as I've read in the papers and have read in some documentation – and I can't say it's filed here but I've been reading up on it and staying close to it – they're saying that the fiscal situation of the province is sound, regularly over the past several years, understanding where we are at Muskrat Falls.

MR. LEARMONTH: Yeah. Okay.

So all these criticisms and the – that are in the public domain about the fiscal position of the province being very weak; talks of insolvency; bailout; great concerns expressed by people about the rates up – I take it that you don't put any credence or weight on those concerns?

MR. E. MARTIN: I certainly put, you know, weight on them – it weighs on me, but I'm just pointing to the facts that I gather in – with respect to that. And fact number one is what the actual rating agencies are saying about the province, and I've read those. You know, secondly the calculations that I understand – you know, I've run when I was there and have been run since and some of the publications that the two current political parties have put out with respect to – sorry – with respect to rate mitigation –

MR. LEARMONTH: Mm-hmm.

MR. E. MARTIN: – and how that looks. That's – what those parties have put out actually matches up to what I understand, you know, and when I look at those parameters I'm saying

that's what I understand – that's what I read into it, is that the financiers are saying that here's where we are; here's where Muskrat Falls impacts it with a Triple A guarantee and I see the both – several of the parties – political parties are producing information on rate mitigation availability that I agree with; that's where it could go if they so choose. That's the basis of my information.

MR. LEARMONTH: Okay.

Now, the final forecast cost of 6.531 that we've discussed today – it's in Exhibit 02114. The document says, "**LCP DG3 Estimate vs. Current Final Forecast Cost Reconciliation.**" dated November 19 – do you know what I'm talking about?

MR. E. MARTIN: I think I do. I think it's been pulled up here, actually.

MR. LEARMONTH: Yeah.

So, you've said that the July, August and September final forecast costs were not of sufficient reliability that they could be presented to government, correct?

MR. E. MARTIN: That's correct.

MR. LEARMONTH: Okay.

So, why was this final forecast cost of sufficient reliability that it could be presented to government and used in the financial close documents – what was different about this?

MR. E. MARTIN: The difference on this was that – I understood with my deliberations with these people that: The balance of what contracts had been let, what the \$900 million that had been expended to this point was showing us, what the information they provided me in terms of where we were landing on actual purchase of – not contracts but purchase of hard assets, you know, for the project were coming in, you know, within – close to budget.

And when I, you know, reviewed that information – and also, there was a document – or there was information that they had – they were including some trends in this number. Trends meaning not lockdown numbers –

MR. LEARMONTH: Mm-hmm.

MR. E. MARTIN: – by any means, but a projection, in some cases, where they had some information as to trends were there, and I looked at – and, actually, I saw that in one of the documents – one of the documents presented here at the Commission recently that showed trends as part of this 6.5 number –

MR. LEARMONTH: Right.

MR. E. MARTIN: – and the combination of that kind of thing is what got me to a point I said, yeah, I can understand this, and I think it's of a reliable nature enough to move forward with.

MR. LEARMONTH: But the July, September and October – even though it had trends in it, they had trends in those documents also. They weren't of sufficient reliability.

MR. E. MARTIN: That's correct, and –

MR. LEARMONTH: That's what you're saying?

MR. E. MARTIN: That's what I'm saying.

MR. LEARMONTH: That's what you're saying.

MR. E. MARTIN: Yes, I am.

MR. LEARMONTH: Okay.

Was a – why wasn't an AFE done for the 6.531 figure?

MR. E. MARTIN: I think I've had it in evidence earlier that we were coming just past financial close, we were letting – in the process of moving ahead with significant procurement and contracting. An AFE would, you know, would be a, you know, very public exercise and we'd made a balanced decision with respect to protecting the commercial interests of the province with respect to preparing an AFE which would go public at this time, and I also felt that within a reasonable period of time, you know, we could get something out with more certainty.

MR. LEARMONTH: Right.

MR. E. MARTIN: That was the reason.

MR. LEARMONTH: All right.

Now, for the other – for many of the other final forecast costs, I'll refer again to the July, September – or July, August and September 2013 documents which we've reviewed, right? There was a – there were decks made, there was a, you know, a group of documents and charts and so on.

Was any such materials prepared for the 6.531?

MR. E. MARTIN: Well I think we've seen this material, we've seen the list of material contracts, there's cash flows associated with this. You know, there's a series of documents that have been, you know, provided here that I've seen and gone through, and I know they're there, that documented the 6.5.

MR. LEARMONTH: Yeah, but they're in isolated emails here and there.

I'm talking about the – when you compare the documents that are – that you're relying on in support of the 6531, it's quite different from the package of documents in good order that are put together for the July, August and September 2013 finance – final forecast cost. Like, and the form of all this is completely different, do you agree?

MR. E. MARTIN: I agree, and you know it makes me think that that's probably a good example as to why we did a lot more work on the documents, that's one element, and there's a timing element as well, Mr. Commissioner.

But as we worked down through these documents, you know, I could see the project team compelled to provide a large amount of justification because there's a lot of uncertainty around that to work through. We continued to work through that, and as we got closer to this number, obviously discussions were happening, it wasn't being done in isolation, so when I understood they were coming at this level, they talked me through it, showed me the numbers, and we went through it again, I didn't feel a need at that point for a deck, and plus we were –

MR. LEARMONTH: You didn't –

MR. E. MARTIN: I think –

MR. LEARMONTH: – feel –

MR. E. MARTIN: – that –

MR. LEARMONTH: – the need –

MR. E. MARTIN: I think that's –

MR. LEARMONTH: – for a deck?

MR. E. MARTIN: – fair – it's a fair comment to say that –

MR. LEARMONTH: You didn't –

MR. E. MARTIN: Yeah.

MR. LEARMONTH: – feel the need for a deck?

MR. E. MARTIN: Not at this point because I'd been involved enough to understand where the number was, and at that point things were evolving, there's no question, extremely rapidly, extremely rapidly.

So, the value of, you know, producing any more than what we – what I was getting to support that, I didn't see the value in it.

MR. LEARMONTH: Okay.

Well, why were things happening so quickly? Why was there so much pressure around financial close, and in particular, why wasn't this work for the final forecast cost done earlier? We know that Jim Meaney and Derrick Sturge in July, August and September were after you all the time for these numbers 'cause they knew they had them, but you pushed them off or you didn't give them any answers until November and that – it caused them some frustration.

Why was this left 'til the last minute? Why?

MR. E. MARTIN: Is there another question? 'Cause that's the second why. Is there a different question?

MR. LEARMONTH: Well, you – okay, okay. Fair enough.

MR. E. MARTIN: Fair enough.

MR. LEARMONTH: I said why twice, I'm sorry. I'll withdraw the second why. Will that make it easier?

MR. E. MARTIN: Appreciate that.

MR. LEARMONTH: Okay. Go ahead.

MR. E. MARTIN: So, what Mr. Meaney and Mr. Sturge then were looking for – and I understand that, that they were driving for numbers, and that's very important. But, remember, they're not driving the project and, you know, they need to wait until I have a reasonable number.

But more importantly, you know, things had to happen before we moved ahead. One was the Emera arrangements, and that was – you know, that was a critical path item. The financing was a critical path item. And, as well, we had the contractors working but we were getting close to awarding large contracts. And that was going on at the same time.

So all those things were more of a driver in terms of the timing. And as they started to come together, then the pressure built. And I would say that's totally normal for a large construction investment job like that. Throughout my career, I have never been involved in a key – in a decision point on a project like that that people weren't working 24-7 to get the thing over the line. It's just the way it is. And the effort for the last 10 per cent is always – probably matches – as the effort for the first 90. That's the norm.

MR. LEARMONTH: Yeah.

MR. E. MARTIN: And everyone was busy, frustrated, looking for numbers. But that's what – that's the job and that's the way it is and that's what they all get paid for and that's what we do.

MR. LEARMONTH: Mm-hmm.

Well, I don't think Alison Manzer on behalf of the Government of Canada thought it was the norm. She was quite concerned at the lateness of

the delivery of the – of this important information. So you may think it's the norm, but there are others out there, I think, in the Government of Canada who would take a different view.

MR. E. MARTIN: The only point – you know, I guess to remake the point, Mr. Learmonth – is that I think what she was experienced – experiencing was what everyone else was experiencing, including, obviously, myself and everyone expressing frustration and intensity at that point. I do feel it's the norm, and from my perspective, I'd been through it many times before and you balance that and move ahead. You know, I took the leadership role in getting it over the line with everyone else, and –

MR. LEARMONTH: Yeah.

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

MR. LEARMONTH: All right.

The – Mr. Smith went over – or, excuse me, Mr. Simmons went over the – with you – these – this March 9, 2015, and March 10, 2015, meeting where there was a discussion about whether you mentioned the 7.5 figure in either of the meetings. Do you remember that?

MR. E. MARTIN: Which year are we in now?

MR. LEARMONTH: 2015.

MR. E. MARTIN: (Inaudible.)

MR. LEARMONTH: Do you remember there was a meeting on March 9 with – concerning the distribution assets.

MR. E. MARTIN: I remember that –

MR. LEARMONTH: And you just brought up – it wasn't on the agenda, but you just said at the beginning, well, by the way, when I'm here, you know, I'm going to talk about Muskrat Falls or something like that.

Now, is your – how do you – on what basis do you say that you mentioned the 7.5 at the meeting? Because Ms. Mullaley denies that you did and I believe – I'm not a hundred per cent sure – but I think Craig Martin did. What – on

what basis do you assert that you mentioned the 7.5 figure at that – at either of those meetings?

MR. E. MARTIN: Could you repeat the question? At what basis did I assert?

MR. LEARMONTH: Well, on what – is it your memory? Are you going by your memory? You don't have any notes.

MR. E. MARTIN: No, I think I've indicated that. The basis of my assertion. I –

MR. LEARMONTH: Okay. You know, if you don't understand the question, I'll put it this way: You're suggesting – or you suggest in your evidence – if you didn't come out and say it point-blank – that you mentioned \$7.5 billion at the March 9 meeting and the March 10 meeting in 2015. Okay?

MR. E. MARTIN: That's correct.

MR. LEARMONTH: Now, what was the basis of that? Is it your memory? You don't have anything in writing. On what basis do you say that? Are you just saying I remember doing it?

MR. E. MARTIN: Mr. Sturge's note triggered me to think through that I did it. And then as I thought through it further – I think I mentioned this earlier, as well, is that the – at that point, we had progressed things much further with respect to, you know, certainty contracts, procurement, other things out of the way, and the ability to assess a 7.5 number in that range would be much quicker. And we were in a situation, and if you looked through – back through the records, as we were getting – as I was getting these decks in, it was within weeks – days, weeks, months – within a month that I was out there either preparing an AFE or talking to the government. And that's because we had, you know, the information that was available to do that quickly.

And I would – in that context, you know, I would've gone into the meeting to say – tell these folks like now because I'm comfortable enough with that number.

MR. LEARMONTH: Mm-hmm.

MR. E. MARTIN: And in addition to that, I would've been clear that I didn't address the Astaldi situation –

MR. LEARMONTH: Yes.

MR. E. MARTIN: – at that point – in those numbers.

MR. LEARMONTH: Well, that conflicts with the evidence of Ms. Mullaley and possibly Mr. Martin. You're aware of that, are you?

MR. E. MARTIN: Well, you're telling me that. To the extent that you're telling me –

MR. LEARMONTH: Yeah.

MR. E. MARTIN: – I'm aware, but I don't know if that's the case or not other than what you're telling me.

MR. LEARMONTH: And are you saying that Mr. Sturge said clearly and unequivocally that he – that you mentioned the 7.5?

MR. E. MARTIN: I see it in the notes so, yes.

MR. LEARMONTH: Well, I don't think you're right there.

MR. E. MARTIN: Well, Mr. Learmonth, I'm, you know – Learmonth – I'm just telling you what I think about that.

MR. LEARMONTH: The point, I'm going to tell you that what you think may not be correct. And I'll show you a reference in page 74 of the transcript of Mr. Sturge's evidence. He didn't come out clearly and say that you mentioned the 7.5. And –

MR. E. MARTIN: Well –

MR. LEARMONTH: – I'll just read to you what he said. He said – and this is from the first meeting, okay? The one from March 9 for the distribution assets. He says: "And my notes from that meeting are a little bit cryptic, but they say – they talk about some of the factors, and I had written down 7.5. So that would lead me to believe that he would've said 7.5 in that meeting as where he saw it at that point."

That's a little different from coming out clearly and saying he said it. And as far as the next meeting is concerned, the one on the 10th, the next day, he says: "But in that meeting, Ed did the same thing at the beginning, an update on Muskrat Falls and it's in my notes. In that meeting I didn't have the 7.5 written down, so I can't certainly – with certainty say he mentioned it, but the factors driving it I did have listed there."

So, it's a little different from coming out and saying that you clearly mentioned it. Don't you agree?

MR. E. MARTIN: The words – whatever the words say are what they say, so I can't disagree with that. I don't have it in front of me and I don't know the context around it.

MR. LEARMONTH: What to see it?

MR. E. MARTIN: I stand by my –

MR. LEARMONTH: Do you want to see it? It's on page 74 and 75 of the transcript –

MR. E. MARTIN: But I'm –

MR. LEARMONTH: – of March 27 if you want to check it.

MR. E. MARTIN: But I'm agreeing with the words because you're reading them.

MR. LEARMONTH: Okay.

MR. E. MARTIN: That's all I can say.

MR. LEARMONTH: Okay.

Now, at this – you had a deck prepared showing the 7.5 at the time you had these meeting, according to Mr. Sturge. Do you agree with that?

MR. E. MARTIN: I believe – I'm going from memory. Do you have a reference there? I believe there's a 7.5 deck that I remember –

MR. LEARMONTH: Yeah. Well, Mr. Sturge said that you had – I asked him – because I asked him, was there a deck? And he said, yes, but you didn't present it. So my question is, if

you were talking specifics about 7.5 – if you were – and if you had a deck, why wouldn't you share the deck with the people that you met with on March 9 and March 10?

MR. E. MARTIN: I think I've – I think the main point from my perspective is saying it, is addressing it. And often times, you know, I would do it that way in terms of following up with a deck. That's one potential suggestion.

But I think the most important point is that, you know, I was sitting down across from some, you know, government shareholder people. I had information in my head; I felt that it was reliable and reasonable. And looking them in the face, you know, I was that way. I would tell them what I'm thinking and let them know the information I had.

MR. LEARMONTH: Well, why wouldn't you give them the deck? If you were talking about a number, why wouldn't you give them the deck?

MR. E. MARTIN: We – it was a meeting – and I'm stretching here a bit, Mr. Commissioner, because I'm trying to come up with a reason to help. I can't totally recall, but I don't want to be unreasonable.

Part of my thinking – and likely – you know, the way I would operate, we were going over for a distribution assets meeting, you know, to just turn that meeting into a presentation on something, I think that would not be in my manner. I think the – but that being said, the norm was for me to give an update. And for me to give an update on Muskrat Falls with the information in my head that I felt was reliable –

MR. LEARMONTH: Yeah.

MR. E. MARTIN: – I would feel challenged not to say that.

MR. LEARMONTH: Even though it was based on a final forecast cost document?

MR. E. MARTIN: As I think I just – well, again, as the time evolved, it became much more efficient and faster to assess the reliability of those documents, Mr. Commissioner, because so much more had occurred. And to be going through documents and saying, well, before we

had, you know, X number of contracts and Y (inaudible) not done – those numbers were shrinking.

So, you know, once you saw what was left –

MR. LEARMONTH: Yeah.

MR. E. MARTIN: – and what was out there a couple years, you could say, well, no I'm – that's not as material as before, and I have enough to say, No, this is reliable, add some trends in. It was much quicker to do that. And you see that, as I mentioned earlier, from the time when I – over time as I had information in the decks – the faster I went to the government. That was the manifestation of that, and there's a clear record of that.

MR. LEARMONTH: All right, thank you very much, Mr. Martin. That was the end of my questions.

THE COMMISSIONER: All right, thank you, Mr. Martin.

It's been a long day. I appreciate the fact that you're here. It saved us from coming back tomorrow.

So we'll adjourn now until Monday morning at 9:30.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.