



## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

---

Transcript | Phase 2

Volume 55

---

*Commissioner: Honourable Justice Richard LeBlanc*

Monday

17 June 2019

**CLERK (Mulrooney):** All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc  
presiding as Commissioner.

Please be seated.

**THE COMMISSIONER:** All right, good morning.

All right, Mr. Learmonth, when you're ready.

**MR. LEARMONTH:** Yeah. The first witness today will be Donna Brewer.

Before Ms. Brewer is sworn, I'd like to have one additional exhibit entered into evidence, it's P-04105. The other documents that I'll be referring to in the examination of Ms. Brewer and the two other witnesses today have already been filed, so that's the only new one, P-04105.

**THE COMMISSIONER:** All right, good.

Thank you very much.

All right, if you could stand, Ma'am, please –

**MS. BREWER:** Sure.

**THE COMMISSIONER:** – and there should be a Bible there and you can – we'll have you sworn.

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

**MS. BREWER:** I do swear.

**CLERK:** Please state your name.

**MS. BREWER:** Madonna Marie Brewer.

**CLERK:** Thank you.

**THE COMMISSIONER:** So it's Madonna?

**MS. BREWER:** I go by Donna but it's –

**THE COMMISSIONER:** Okay.

**MS. BREWER:** Catholic girl, Madonna.

**MR. LEARMONTH:** Ms. Brewer, what is your present occupation?

**MS. BREWER:** I'm retired, but I do retain a directorship with the Newfoundland and Labrador Hydro board.

**MR. LEARMONTH:** Okay. I'll just put some information to you to see whether I have it correct.

I understand that you retired on October 31, 2017?

**MS. BREWER:** That's correct.

**MR. LEARMONTH:** And that position that you retired from was deputy minister of Finance and secretary to Treasury Board?

**MS. BREWER:** That's correct.

**MR. LEARMONTH:** And you had replaced Laurie Skinner –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – who had –

**MS. BREWER:** That's correct.

**MR. LEARMONTH:** – occupied that position for approximately one year?

**MS. BREWER:** Yeah, I believe so, yes.

**MR. LEARMONTH:** Yeah, and Ms. Skinner had replaced Terry Paddon –

**MS. BREWER:** That's correct.

**MR. LEARMONTH:** – at that position. All right.

And is it correct that you graduated from Memorial with a B.Com. in 1984?

**MS. BREWER:** Correct.

**MR. LEARMONTH:** And that after your graduation you articulated with Clarkson Gordon –

**MS. BREWER:** Correct.

**MR. LEARMONTH:** – which later merged with –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – EY.

**MS. BREWER:** Correct.

**MR. LEARMONTH:** Anyway, and you stayed with Clarkson Gordon until approximately 1987.

**MS. BREWER:** Yeah, it was July – July of '87, yeah.

**MR. LEARMONTH:** When you joined the Government of –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – Newfoundland and Labrador, and that you were in that – you worked for the Government of Newfoundland and Labrador from 1987 until your retirement in 2017 in various positions.

**MS. BREWER:** Sure.

**MR. LEARMONTH:** Yeah, and you ended up as being deputy minister and secretary to the Treasury Board.

So I have all that correct?

**MS. BREWER:** That's correct.

**MR. LEARMONTH:** Right.

Thank you.

The first item I want to discuss is your notes and if you could return – turn to tab 68 of your documents, it's Exhibit P-04105.

**MS. BREWER:** Okay.

**MR. LEARMONTH:** As you may be aware, we've had problems locating the notes of various government officials.

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** And this is an email from Gail Boland, June 16 – just yesterday – to – where there's a description of the efforts that government made to locate your notebooks.

**MS. BREWER:** Mmm.

**MR. LEARMONTH:** And if we turn to the last – on page two, the third-to-last paragraph from the bottom.

It says: "Additionally, the former Secretary to the Deputy Minister (Yvonne Power) was consulted. She advised that in preparation of retirement, Donna Brewer reviewed all of her files, both electronic and hard copy. Those which were transient were securely shredded and originals were either stored in the Deputy's semi-active storage location or transferred to the responsible Assistant Deputy Minister. Mrs. Power commented that to the best of her memory, Ms. Brewer considered her notebooks as transient because anything of value contained within those notebooks would have been transferred to an official government record. As such, it is Mrs. Power's belief that these notebooks were securely destroyed."

Can you provide a comment as to whether that paragraph is true in whole or in part?

**MS. BREWER:** My recollection is when I left – it was a bit of a difficult time. I wasn't there the last week of my employment. My father was in the process of dying so I wasn't there for the final days of my employment.

But it is correct, I did start to go through my files and I – you know, anything that was draft, draft papers – anything that had been finalized, I would've kept the finalized copy, but anything that were drafts and copies of convenience, I was advised they were transient. I couldn't recall specifically about my notebooks, so that's why I had asked Gerlinde to contact the Government of Newfoundland and Labrador just to do one last check to see if they might have still existed.

**MR. LEARMONTH:** And Gerlinde meaning Gerlinde van Driel, your –

**MS. BREWER:** Yes.

**MR. LEARMONTH:** – legal counsel.

**MS. BREWER:** Right.

**MR. LEARMONTH:** So is that correct, that your understanding was that these were transient records that would be shredded?

**MS. BREWER:** Yeah, my understanding they were.

**MR. LEARMONTH:** Okay, but they're your own personal notebooks, are they not?

**MS. BREWER:** I mean, they weren't of any personal benefit to me.

**MR. LEARMONTH:** No.

**MS. BREWER:** Right?

**MR. LEARMONTH:** But so you –

**MS. BREWER:** So I wouldn't have taken them.

**MR. LEARMONTH:** So you expected that they'd be destroyed?

**MS. BREWER:** For two reasons. One, they were transient, and, two, my penmanship is not the best. I used to say to people that if you want to read my writing, you got to come to me within 48 hours because after that, I'm not even sure I'd be able to read my writing. So I say if anyone picked them up and looked at them, probably wouldn't have found them of much value.

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

So there's no other explanation you can have? You passed them in expecting they would be shredded and apparently they (inaudible) –

**MS. BREWER:** Well, I just left them in the office. They were either on the desk or in a credenza.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** So just before we move on from that, I just want to figure out the timing here. So you would have retired October 31, 2017?

**MS. BREWER:** That's correct.

**THE COMMISSIONER:** So this Inquiry was formally called on November 26 or sometime – November 20, 2017. So not a month later. Prior to your leaving government, were you aware that the government was considering calling an Inquiry on the Muskrat Falls Project?

**MS. BREWER:** Not that I recall. I can recall some discussions of a review.

**THE COMMISSIONER:** Mm-hmm.

**MS. BREWER:** But my understanding, when I left, was that they were – there was some thoughts that it would wait until after the project was completed.

**THE COMMISSIONER:** Right.

**MS. BREWER:** And I was, actually, out of the province – out of the country most of November.

**THE COMMISSIONER:** Right. So your notebooks would still have been available, at least, 'til you retired, would they?

**MS. BREWER:** Yeah. Like I said – I think it was the last week in October. I was actually at a retirement dinner when I got a call from the nursing home to come, that my father had taken a –

**THE COMMISSIONER:** Right.

**MS. BREWER:** – turn. Yeah.

**THE COMMISSIONER:** Sorry to hear about that and –

**MS. BREWER:** Hmm.

**THE COMMISSIONER:** – I can understand that. So somehow your notes – your notebooks, whether the penmanship was good or bad –

**MS. BREWER:** Mm-hmm.

**THE COMMISSIONER:** – I would have loved to have seen them –

**MS. BREWER:** Mm-hmm.

**THE COMMISSIONER:** – for obvious reasons. So somehow they – so after you left, a

week before your official retirement, did you – did anybody contact you with regard to those notes?

**MS. BREWER:** No.

**THE COMMISSIONER:** So after you retired, that was it?

**MS. BREWER:** Yeah. The only contact I had – I had sold my house in March, and when I was cleaning up, I found a – what they called a business continuity binder. Like, if something had happened this was, like, contact information –

**THE COMMISSIONER:** Mm-hmm.

**MS. BREWER:** – and I was to hold it in my home. So when I found that, I arranged to return that to the Department of Finance. But I didn't find anything of any government records when I was moving.

**THE COMMISSIONER:** Okay. This whole issue of government records is a problem for me, and I have to say I'm not very happy about the fact that we cannot seem to get the records.

Now, hopefully, this witness will have some better recollection than some of the others, but it certainly is surprising to me – particularly with this witness. I mean, she retired – you can speak to this, Mr. Ralph, if you want – she would've retired the end of October. I mean, this Inquiry didn't happen just with the flick of a switch. And it just surprises me that her notes would be destroyed, notwithstanding contemplation of an Inquiry and one that was called less than a month after she was – after she had left.

**MR. RALPH:** Commissioner, it's hard to imagine that anyone at that point was anticipating that those notes would be useful with regard to a 6.5 number. I can't imagine that –

**THE COMMISSIONER:** Oh, I don't care –

**MR. RALPH** – the secretary to –

**THE COMMISSIONER:** I'm not sure about the six point –

**MR. RALPH:** – the deputy minister would be anticipating that those notes would be –

**THE COMMISSIONER:** Right. I don't –

**MR. RALPH:** – relevant and admissible but –

**THE COMMISSIONER:** It's not just the 6.5 number; it's more than that. It's the notes that were taken at the time. And, you know, I have to say I just find it surprising that notes are being destroyed when, you know, we're so close to this Inquiry going ahead. And as I said, this Inquiry didn't happen with the flick of a switch.

**MR. RALPH:** As I understand it, Commissioner, I mean, this was an application of a government-wide policy with regards to transient records. Rightly or wrongly, that was the situation when Ms. Brewer was retired. So, you know, I don't think it's the misapplication of a principle or a policy.

Whether that policy is correct or incorrect, you know, that's something I think that this Commission should consider. But I think that it was the application of a policy that existed at the time.

**THE COMMISSIONER:** Anything else from you, Mr. Learmonth?

**MR. LEARMONTH:** No.

**THE COMMISSIONER:** All right. Let's proceed.

**MR. LEARMONTH:** Okay.

Ms. Brewer, could you please turn to your tab 32? It's Exhibit P-02217. I'd like you to go to page 2 of that exhibit, please?

**MS. BREWER:** Okay.

**MR. LEARMONTH:** Now, this is a document entitled "LCP DG3 Estimate vs. Current Final Forecast Cost Reconciliation." It's dated November 29, 2013. And it's – so it's before financial close.

Before I ask you about this, I just wanted to make sure you understand this: that when I refer

to financial close, I mean any time up to and including December 13 –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – the – for this reason: November 29, the documents were assigned for financial close.

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** December 10, the bonds were priced and December 13, the funds were closed.

So, when I refer to financial close, I'll take the – I mean the outside date of December 13.

**MS. BREWER:** Okay.

**MR. LEARMONTH:** Is that understood?

**MS. BREWER:** Sure.

**MR. LEARMONTH:** Thank you.

Okay. Now, the evidence is, I think, clear that at the time of financial close, there had been a change in the final forecast cost of the budget. It wasn't a theoretical or imaginary; it was a real change in the estimate. It had gone from – as this document shows – 6.202 to 6.531. It's an increase in the budget.

Now, at any time up to financial close, were you aware that there had been an actual change in the final forecast cost for the Muskrat Falls Project?

**MS. BREWER:** I'm not sure about the final forecast cost, but I was aware of a 6.5 number. And that was in reference to discussions we had around the concept of a COREA.

**MR. LEARMONTH:** Yeah. So this – the COREA is the cost overrun escrow account?

**MS. BREWER:** Correct.

**MR. LEARMONTH:** Correct.

**MS. BREWER:** Yeah.

**MR. LEARMONTH:** Okay. Now – okay. So you weren't aware that there had been an

increase in the actual project (inaudible) – a hard number, in other words?

**MS. BREWER:** No. We knew based on the COREA that the – that there had been a movement in the cost.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** But we were expecting that a revised budget would be forthcoming to the government and probably to the public within the first quarter, 2014.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** So it's my understanding that it was a formula that – I wasn't at the table when they talked about this with the federal government, but my understanding was that they had agreed and settled on a 6.5 as a baseline for the COREA. But that there was still work ongoing within Nalcor to try to finalize that number and therefore be a public update, and a formal AFE, is my understanding, would've happened in the first quarter of 2014.

**MR. LEARMONTH:** Okay. But you can accept this that the increase to 6.531, as indicated in this budget, was an actual increase?

**MS. BREWER:** It was based on known cost overruns –

**MR. LEARMONTH:** Yes.

**MS. BREWER:** – at a point in time.

**MR. LEARMONTH:** Yes. It –

**MS. BREWER:** Right.

**MR. LEARMONTH:** – was known –

**MS. BREWER:** It was known.

**MR. LEARMONTH:** – it wasn't something – it had really – well, it had something to do with the COREA. But it isn't a situation where the budget is still 6.2, but we're going to increase the baseline for the COREA –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – to have a \$300-million cushion in there –

**MS. BREWER:** Yeah.

**MR. LEARMONTH:** – which would be beneficial to the province because if the figure at financial close was –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – 6.2 –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – and the figure – the baseline for the purpose of the – calculating the COREA was 6.531 –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – then the project could have cost increases of around \$300 million and the government wouldn't have to put any money –

**MS. BREWER:** Correct.

**MR. LEARMONTH:** – into the COREA account.

**MS. BREWER:** That is correct.

**MR. LEARMONTH:** So you see the two situations?

**MS. BREWER:** Yes. Yeah.

**MR. LEARMONTH:** Have I made myself clear on that?

**MS. BREWER:** Yeah.

**MR. LEARMONTH:** Because I'm going to ask you questions on that. One is a real tangible number.

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** The other one is, I'll say, a cushion –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – for not-yet-determined cost overruns and –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – it allows to get sort of like a free ride –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – for the first \$300 million because it doesn't have to fund it.

**MS. BREWER:** Well, if it was the latter, we would've tried to push it as high we could.

**MR. LEARMONTH:** Well, of course. I mean –

**MS. BREWER:** Right?

**MR. LEARMONTH:** – if Canada had agreed to –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – \$10 million –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – well, that would be great.

**MS. BREWER:** But it's –

**MR. LEARMONTH:** That – that's

**MS. BREWER:** – my understanding, it's something that – it wasn't a number we could pick out of the air –

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** – it was something that – it wasn't a number that we can pick out of the air, it was something that the –

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** – independent engineer had to look at and verify and be comfortable with.

**MR. LEARMONTH:** But the higher the difference between the actual forecast –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – and the final forecast cost and the baseline for the COREA –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – the better for the province, because the province was having, like, a free ride –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – for the cost increases up to the baseline –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – wouldn't have to fund it.

**MS. BREWER:** If – for the purposes of COREA, it was better, but –

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

**MS. BREWER:** – it'd be better for all of us if it was 6.2 –

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** – (inaudible).

**MR. LEARMONTH:** Okay, so there's two situations. One is it's a real number –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – the other one, it's at – well, I wouldn't say an imaginary number, but I will say a baseline for the COREA. At the time of financial close, which of those two possibilities did you understand to be in effect?

**MS. BREWER:** That there were actual cost overruns to justify the 6.5.

**MR. LEARMONTH:** You believed that?

**MS. BREWER:** But that they were trying to mitigate –

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** – and that they were gonna come back to the government with a revised number.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** And based on an email that I saw from Paul Harrington – you may recall that email where he talks about ranges.

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

**MS. BREWER:** It looks to me, when I look at that, that the 6.5 was only cost overruns on the actual contracts that had been let at that point.

**MR. LEARMONTH:** Right.

**MS. BREWER:** So it was probably maybe \$2.2 billion –

**MR. LEARMONTH:** Right.

**MS. BREWER:** – that's still at play. And I think what he had indicated was if I took that overrun to 5 per cent that had happened, if I applied that over the remaining 2.2, it would bring me up to 6.6 into 6.7 range.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** But I think Canada had indicated that they didn't want the government to pre-fund – they only wanted the government to pre-fund for known cost overruns, not projected overruns –

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** – was my recollection.

**MR. LEARMONTH:** But the point is – so you knew that this was real money. This increase to 6.531 was real money.

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** It wasn't just something put in to increase the COREA?

**MS. BREWER:** No.

**MR. LEARMONTH:** No. Okay.



When did you become aware that it was a real number?

**MS. BREWER:** I think around – it would've been the last week in November. I think around the time that they were discussing – maybe around the 21st, 22nd of November?

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

I'm –

**MS. BREWER:** I first became aware of the COREA account concept, I believe, was around November 8, when I got an email from Todd Stanley.

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

**MS. BREWER:** And I think there's evidence there, there's emails there where I immediately – the minister wasn't in the office at the time, so it's not very often I would email him, but I did email him just to alert him that this issue was on the go.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** We were still early days trying to understand it ourselves, and so it's November 8. So it's – over the course of that time, it looks like, to me, when I look back at the emails around the 21st, 22nd maybe –

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** – right? And then it wasn't –

**MR. LEARMONTH:** And you knew you were talking about something real –

**MS. BREWER:** Yeah.

**MR. LEARMONTH:** – and tangible.

**MS. BREWER:** Yeah.

And then the – November 26, I believe, there was an email from Derrick Sturge where he confirmed that Canada had finally accepted that the baseline would be based on this 6.5 and not the DG3.

**MR. LEARMONTH:** Yeah, the 6.5 being a real number.

**MS. BREWER:** Yes.

**MR. LEARMONTH:** Yeah.

Okay, please turn to your tab –

**MS. BREWER:** Sorry, Mister – before we move, I don't recall getting this particular schedule, the 6.531 –

**MR. LEARMONTH:** No.

**MS. BREWER:** – until the winter.

**MR. LEARMONTH:** Yeah.

Well, there's no evidence that government did receive –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – this document, but as – so I'm just referring to it as – I didn't mean to suggest that you got this document; I'm just referring to the fact – to show you the two numbers, and –

**MS. BREWER:** Okay.

**MR. LEARMONTH:** – to show you that, from Nalcor's point of view, it was a hard – real hard number.

**MS. BREWER:** Okay.

**MR. LEARMONTH:** Yeah.

Okay, at tab 38 in your book, Exhibit P-03494.

Now, you mentioned that you became aware of the fact that this was a real number, a hard number, around, I think, in November 22 or something. Would this be the email that confirmed to you that we weren't talking about a theoretical number for the COREA, but a real number?

If we start on the bottom of page 1, this is an email from Xeno Martis, he was legal counsel for –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – Nalcor, to a number of people at Nalcor. It's dated November 22, 2013, so that's a week before financial close, and then this email was sent by Auburn Warren of Nalcor on November 22, the same day, to Paul Myrden and Paul Morris, and then, in turn, it was sent to you by Mr. Myrden on the same date, November 22?

So –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – you would've received this, according to these documents, on November 22. Is that correct?

**MS. BREWER:** I'm not a hundred per cent confident that I would've read through it all. That would've been about a week before a fall fiscal update, so that was a very busy time for me and my staff. And if I had received it on BlackBerry, I might've saw the top part and maybe not saw the bottom part.

But if Paul had indicated that he was giving this as a package deal to settle outstanding business issues, then I believe there was – would've been discussions with myself and Minister Marshall prior to him doing that.

**MR. LEARMONTH:** Okay, do you have any – you say you believe. Do you have any recollection that you had such a discussion –

**MS. BREWER:** Not –

**MR. LEARMONTH:** – (inaudible)?

**MS. BREWER:** – a clear recollection. It's just I do recall Paul was assigned to this, Paul was there with the Nalcor team, and he would quite often be –

**MR. LEARMONTH:** Paul –

**MS. BREWER:** – coming –

**MR. LEARMONTH:** – Morris, yeah?

**MS. BREWER:** Paul Myrden, sorry.

**MR. LEARMONTH:** Okay.

**MS. BREWER:** Paul Morris was with Natural Resources. So Paul Myrden was a director of debt management with the Department of Finance.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** Yeah.

**MR. LEARMONTH:** Now, the Minister of Finance at the time of financial close –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – was Thomas Marshall.

**MS. BREWER:** That's correct.

**MR. LEARMONTH:** Thomas Marshall has testified that he didn't have –

**MS. BREWER:** Mmm.

**MR. LEARMONTH:** – any idea –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – about this 6.5 increase from the 6.2 at the time of financial close.

Do you – can you point to any evidence of – that would contradict that position, or in other words, like, did you tell him or do you know that he was told by someone else? I just want your take on that, because he says he didn't know about it.

**MS. BREWER:** I read his transcript. I saw some of his testimony. My read was that he was saying that he didn't remember.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** He thought he opened the door, that it was possible. I mean, to be frank, it was six years ago. I remember the COREA process. I can see in the emails the 6.5, but I don't have an independent recollection myself of the 6.5 number.

**MR. LEARMONTH:** Okay.

So you can't say that you told Mr. Marshall about this.

**MS. BREWER:** Only that I think the emails show an intent that we – like, I did email him about the COREA. I do recall that there were meetings with Paul where Paul was briefing us. You know, it's just where it's six years ago, I can't recall exactly that the 6.5 would have been mentioned.

**MR. LEARMONTH:** Okay.

So, you can't contradict Mr. Marshall's recollection.

**MS. BREWER:** No.

**MR. LEARMONTH:** No. Okay. Thank you.

Now, this email that we're looking at here in your tab 38. If you go the bottom – and this is forwarded to you on November 22 – this is from Xeno Martis, legal counsel at Fasken for Nalcor to Auburn Warren in the financial department of Nalcor.

"Further to my call with Alison" – and Alison is Alison Manzer, the legal counsel external –

**MS. BREWER:** Mm-hmm

**MR. LEARMONTH:** – for Canada at the time of financial close – "below is the revised text. The only difference from last night's text is the fact that the funds in the Escrow Account are not taken into consideration for the purpose of DER until the debt is exhausted.

"Please let me know if I can propose ...."

Then if you turn over, and Mr. Martis writes: "As per your request below, I have been authorized by Nalcor to articulate on their behalf the following offer to settle the outstanding business issues as between Nalcor and Canada. The offer is a global one" that "will need to be accepted as a whole but not in part."

"1. On the cost overruns issue, Nalcor would agree to have funded cost overruns based on the Project budget as at financial closing (\$6.5B" – billion – "capital cost estimate and not the \$6.2B DG3 estimate) ...."

You can read the rest of it, but do you agree that that appears to be quite a clear statement that the project budget, as of financial close, had increased to the 6.5 range?

**MS. BREWER:** Yes.

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

So, if you had read that – and I think your evidence is you're not sure whether you did – but if you had read that, would it not have become abundantly clear to you that we're talking about a real number?

**MS. BREWER:** Yes.

**MR. LEARMONTH:** Yes.

Okay, thank you.

And I think in your evidence on the – that you gave at your interview on April 26, you said that based on the emails you ought to have known –

**MS. BREWER:** I ought to have known, yeah.

**MR. LEARMONTH:** You acknowledge that you ought to have known.

**MS. BREWER:** Yeah.

**MR. LEARMONTH:** Okay.

**MS. BREWER:** And what I meant was I ought to have read this. I couldn't recall if I had read this, but I ought to have known.

**MR. LEARMONTH:** Yeah, you ought to have known. Yeah, okay.

Now, I'm going to take you through some exhibits – there's a number of exhibits in the book and all the parties have copies. And I'm not going to take you through all of the – in view of your acknowledgement that you knew that this was a –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – real number, there's not much point in taking you through all of the documents because it's just going to be –

**MS. BREWER:** Redundant.

**MR. LEARMONTH:** – probably – well not – if not a waste of time, unnecessary, given –

**MS. BREWER:** Okay.

**MR. LEARMONTH:** – your admission.

Can you tell me – you’ve already dealt with Mr. Marshall and you can’t, you know, offer any evidence that would contradict the evidence he gave that he had no recollection of it.

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** Can you tell us whether you discussed this number with anyone else in government, either politicians or civil servants?

I’ll give you an example of what I’m talking about. Just an example, it’s –

**MS. BREWER:** Yeah.

**MR. LEARMONTH:** – hypothetical. I’m not suggesting it’s real. It isn’t.

But, you know, do you remember meeting with Paul Myrden or Paul Morris or Charles Bown or whatever, and sitting down and saying: Okay, we have a real cost increase here, you know, we’re gonna have to make sure that the politicians know about this? Because you would have to make –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – them aware if you had known about it, wouldn’t you?

**MS. BREWER:** Yeah. I can remember discussions. I don’t remember the exact time and who was necessarily there. I have a vague memory of a meeting with the premier and I think Ed Martin would’ve been there. But I’m not sure, specifically, on the 6.5 or it was on the UARB, but in any event, there was a risk that there would’ve been a budgetary requirement in December that we had not had a budget for.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** And would’ve – well, if the House was open, they would’ve had to put in a piece of legislation, a supplementary supply bill. If the House wasn’t open, they would have to issue a special warrant. And I – vague recollection of the premier saying that wasn’t on.

**MR. LEARMONTH:** That wasn’t on?

**MS. BREWER:** That wasn’t on, yeah.

And I think that (inaudible) – but I think what’s confusing it for me is that there was two discussions around the need for special money. One was if financial close didn’t happen, if we didn’t get the loan guarantee, the UARB issue wasn’t resolved then there wouldn’t be – we would have to continue to fund the equity.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** Like, the project was supposed to be funded every time there was a cash call –

**MR. LEARMONTH:** Right.

**MS. BREWER:** – so much was supposed to come from debt and so much would come from equity, but until the debt was in place they had no choice but to come from equity.

So my understanding – I wasn’t there for the preparation of the budget, but my understanding is that the budget was based on assuming a financial close of October 1. So it was already tight not having financial close until December and then if it wasn’t going to happen in December, you know, we were in a bit of –

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** – bit of a pickle, financial-wise, right?

So it was – the discussion around the special warrant was then, but then there was also a discussion around the special warrant if the federal government had not agreed to move the COREA baseline we could have been faced with a COREA payment in December as well.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** So there were two discussions around special warrants and I just can't fully reconcile if it was the 6.5 or the UARB or both.

**MR. LEARMONTH:** Okay. When did this meeting take place, if you could recall?

**MS. BREWER:** Based on what I can see from various exhibits, it looks like there might've been an opportunity around October 28.

**MR. LEARMONTH:** Okay.

**MS. BREWER:** Maybe another one mid-November and then there was reference to a meeting December 9, but December 9 seems late to me.

**MR. LEARMONTH:** Yeah.

But – okay, you've agreed that this was a real number and increase –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – to 6.5 –

**MS. BREWER:** Yeah.

**MR. LEARMONTH:** – or 6.531. I mean, doesn't government have to do something in their records to reflect that? Like, all of a sudden you've got a real number – we'll say – around \$300 million. I mean, surely that just can't be something that's kept in senior civil servants head. Doesn't there have to be an adjustment to the budget or something to reflect that?

**MS. BREWER:** It would –

**MR. LEARMONTH:** Here's the –

**MS. BREWER:** Sorry.

**MR. LEARMONTH:** – context –

**MS. BREWER:** Yeah, yeah.

**MR. LEARMONTH:** – I'm thinking about. If I'm lending money to the province –

**MS. BREWER:** Mmm.

**MR. LEARMONTH:** – and there's a figure of \$300 million that isn't on the books –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – I'm not going to be happy if I offer a loan, you know, agree to provide financing believing that I've got the full financial position and then after I lend the money I find out – and this is hypothetical but I just want to get your take on this.

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** And after that I find out: Oh, well, there was another \$300 million debt that I wasn't told about. Do you see the problem?

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** Is that a real problem?

**MS. BREWER:** It is, yeah.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** Yeah.

**MR. LEARMONTH:** So how could it be that this \$300 million, this real money, was not taken into account on the government books until the budget was prepared in March 2014?

**MS. BREWER:** Because, right or wrong, when we do a fiscal update it's the fiscal update for that particular fiscal year, so once we knew it wasn't an issue for '13-'14, there wasn't anything to record, there wasn't anything to go to government on with respect to the '13-'14 budget.

It was the '14-'15 budget that the Department of Natural Resources – because the equity was actually in the Department of Natural Resources, it wasn't housed within the Department of Finance. The Department of Natural Resources would've had to come forward then in its budget submission for budget '14-'15 to provide for whatever equity, either equity for oil and gas, equity for base, equity for the COREA account then.

**MR. LEARMONTH:** Yeah, but government knew – or at least you knew –

**MS. BREWER:** Yeah, yeah.

**MR. LEARMONTH:** – as deputy minister of Finance –

**MS. BREWER:** Yeah.

**MR. LEARMONTH:** – that there was an increase of more than \$300 million.

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** So how could it be that it was just left hanging there until March 2014? Because you became aware of this number as being a real number in 2013, I just don't understand how this figure could just float until the budget was prepared in 2014. Because the \$300 million increase meant that the government equity into the project was going to have to be funded –

**MS. BREWER:** Yes, yeah.

**MR. LEARMONTH:** – to meet this.

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** So how is it that it just – I'll say – floated around in outer space until March 2014? As opposed to them being – being a situation where government says: Look, our numbers are wrong, we're gonna have to fund this. We're gonna have to – I don't know if it's a special warrant or how it's done, but there must, I suggest, be some type of procedure where this \$300 million is reflected in the financial records of the government.

**MS. BREWER:** It –

**MR. LEARMONTH:** Am I off base?

**MS. BREWER:** Government operates on a cash basis, even though it prepares an accrual budget. So the money wasn't needed until budget '14-'15. So there wouldn't have been any formal request for government to fund the \$300 million until that budget process.

**MR. LEARMONTH:** Yeah, but it's a liability.

**MS. BREWER:** It was a – I'm not sure. It was noted as a subsequent event, the figure wasn't noted, but it was noted as a subsequent event in the Public Accounts that came out in November. I can't recall the cut-off for Public Accounts, if we had known the \$300 million at that point in time or not.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** So it was the fact that the government had a contingent liability would've been noted.

**MR. LEARMONTH:** Well, where would it have been noted?

**MS. BREWER:** It was in a subsequent event note in the Public Accounts for the fiscal year '12-'13.

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

**MS. BREWER:** Public Accounts is an actual – it's the financial statements of government. So they would've been released in November – actually I think it was –

**MR. LEARMONTH:** Well, I don't think we –

**MS. BREWER:** – no sorry, I think it was in December, and then the Auditor General would've commented upon them in January.

**MR. LEARMONTH:** But I don't believe I've seen that note or that record.

**MS. BREWER:** I can't help you.

**MR. LEARMONTH:** Well, we haven't seen it as far as I know – you know, an entry like of the talk – like of the –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – kind I'm talking about – in the books. Are you sure there would be such a record?

**MS. BREWER:** It was a – what we call a disclosure note.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** It was a subsequent event that talked about that the government had made the commitment, the ESA and the ESG –

**MR. LEARMONTH:** But when was this record created?

**MS. BREWER:** Would've been sometime in November, I believe.

**MR. LEARMONTH:** Of 2013?

**MS. BREWER:** 2013. Yeah (inaudible) –

**MR. LEARMONTH:** Are you sure about this?

**MS. BREWER:** Yes, Sir. Yeah.

**MR. LEARMONTH:** Yeah. Well, I am going to ask Mr. Ralph to search for that because, I mean, we have over six million documents, but –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** I have no recollection of ever seeing that document, so – we've searched for it. So if Mr. Ralph would agree to –

**MS. BREWER:** They're on the government website, too, right?

**MR. RALPH:** Yeah, I am looking at them now but –

**MR. LEARMONTH:** No, I'm talking about in 2013 –

**MR. RALPH:** I appreciate that. So I think if there's Lower Churchill or Muskrat Falls in the description in the Public Accounts, then it should be – that should have been forwarded to the Commission. I'll have a look –

**MR. LEARMONTH:** Well, we would like to get it – yeah.

**MR. RALPH:** – (inaudible) see if it's there.

**MR. LEARMONTH:** I know it is reflected in the March 2014 budget; I'm not talking about that.

**MR. RALPH:** Yes.

**MR. LEARMONTH:** I'm talking about Ms. Brewer said –

**MR. RALPH:** (Inaudible) 2013 Public Accounts.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** Just to be clear, the \$300-million figure is not there. It references the need for contingent equity and that the government had signed these agreements.

**MR. LEARMONTH:** But why wouldn't – if there was a hard number in the forecast final cost, wouldn't that have been – why wouldn't that number have been included?

**MS. BREWER:** Because at that particular time, there was no liability because there was no anticipation for – we didn't know what the COREA payment was going to be until the following year.

**MR. LEARMONTH:** But I don't want to dwell too much on this, but I'll just come back to that hypothetical –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – situation I had with a lender –

**MS. BREWER:** Yeah.

**MR. LEARMONTH:** – to the province. Let's forget about the – let's say it was a billion-dollar increase –

**MS. BREWER:** Mm-hmm. Yeah.

**MR. LEARMONTH:** – does that mean I could be lending money to the Government of Newfoundland and Labrador in January 2014, and I wouldn't know about this \$1-billion contingent liability? I mean, is that possible?

**MS. BREWER:** A lender? I'm not sure.

**MR. LEARMONTH:** If it's not reflected in the records, then –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – I suggest that would be –

**MS. BREWER:** But at the time, it would've been – even though it was a real number, it was still considered an estimate, right?

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** Right. I think –

**MR. LEARMONTH:** Yeah, but the 6.2 was an estimate, too.

**MS. BREWER:** You might have to talk to the Comptroller General, who is in charge of the Public Accounts. But my understanding, the requirements are you reflect actual legal commitments.

**MR. LEARMONTH:** Okay. Okay. Now, please turn to tab 11 of your documents. That's Exhibit P-03473

**MS. BREWER:** Sorry. What was the tab number?

**MR. LEARMONTH:** Tab 11. Exhibit P-03473.

**MS. BREWER:** Okay.

**MR. LEARMONTH:** Now, this was a – this was a record that has been – was prepared, we understand, by Paul Myrden in your office.

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** Can you – you were the deputy minister at this time – can you describe the role that you recall Mr. Myrden having played, say, on the financial – up 'til financial close, in terms of representing the Department of Finance? What was his mandate or his duties?

**MS. BREWER:** Okay. I might have to back up a bit. I started as deputy minister of Finance. I believe the news release said my appointment was effective June 20. I was actually, physically, here in the Beothuck Building with the Labour Relations Agency, so it might have been a day or two before I actually physically moved.

I think it was within a few days I had gotten a call from Todd Stanley about Muskrat Falls. I

had previously spoken to Paul and spoken to his ADM, which was Peter Au at the time, in terms of what the Department of Finance's involvement was with respect to Muskrat Falls, and they indicated, as far as they knew, that there was no individual or division actually actively doing work on the file and that Laurie attended meetings, but that they weren't briefed on those meetings.

**MR. LEARMONTH:** Laurie Skinner, you mean?

**MS. BREWER:** Laurie Skinner, yes. So –

**MR. LEARMONTH:** But she kept this to herself.

**MS. BREWER:** That's what –

**MR. LEARMONTH:** Laurie Skinner.

**MS. BREWER:** – that's what I was advised – that she attended –

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** – meetings and whatever.

**MR. LEARMONTH:** And didn't make records of them?

**MS. BREWER:** I remember in the credenza there was a file belonged to Ms. Skinner that had, like, drafts of the federal loan guarantee term sheets and maybe some presentation decks, but there wasn't a lot that I recall in that file.

**MR. LEARMONTH:** Okay.

**MS. BREWER:** But Todd had called and he said – I thought he had said that financial close was going to happen early July. Now, in retrospect, I don't think he meant financial close like you use the term today; I think it was probably the closing of the request for financing proposals and he, basically, said, Donna – he came down and actually took a fair bit of time and walked me through the structure about the – how the different subsidiary corporations were going to be set up and how the financing was going to be through those corporations, the role of the collateral agent, the role of the independent engineer, and he, basically, I guess,



was giving me the heads-up that – he said: Donna, you know, we’re going to be looking to Finance to tell us that that RFF process was a fair process and that the selection – once they made the selection was the right selection.

So as I indicated, there was a lot happening at the time. We sat down as a team, and Peter and Paul and I agreed that the best thing given the short time was actually to embed Paul and actually send him over with the team to actually be there when the request for financing proposals were open, to participate in the process for the evaluation. So then he could, then, let myself and the minister know about the process and be comfortable with the final recommendation.

At no time was Paul assigned or even was the Department of Finance assigned any responsibility to look at – to manage the equity, to review the equity. As I indicated, the equity budget was actually in the Department of Natural Resources. So under the *Financial Administration Act*, the permanent head – which would’ve been Charles Bown – it would’ve been his responsibility to manage the equity number. We were only drawn in even to the COREA conversation, again, by Todd when – as Department of Justice were working with the other lawyers for Canada and for Nalcor to finalize the agreements necessary to execute the federal loan guarantee. We were drawn into that conversation because they were asking the question: what the potential impact on the province’s budget would be – of this discussion.

So other than that, I understood Paul quite often attended meetings and – with the Nalcor financial team at what they called – there was a house there on Barnes Road –

**MR. LEARMONTH:** Right.

**MS. BREWER:** – and that he would be back and forth then. And as progress occurred, he would brief myself and Minister Marshall on it. Sometimes if I was – if I wasn’t there, he might’ve – I’ve often walked into the office and saw him there with Minister Marshall and then I would join them.

**MR. LEARMONTH:** All right. But did Mr. Myrden, to your recollection, ever tell you about

the fact that there was an increase in the project budget to 6.531? Do you have any recollection of that?

**MS. BREWER:** I don’t have any recollection, but I believe that if he knew, that I knew.

**MR. LEARMONTH:** Okay.

**MS. BREWER:** And the minister knew.

**MR. LEARMONTH:** You believe that he knew, then you knew?

**MS. BREWER:** And the minister would know.

**MR. LEARMONTH:** Okay. But that’s just based on –

**MS. BREWER:** Practice and –

**MR. LEARMONTH:** Practice?

**MS. BREWER:** – and –

**MR. LEARMONTH:** Not on an actual recollection?

**MS. BREWER:** No. And our expectation of him was he was there and he was to brief us.

**MR. LEARMONTH:** Right. But when he – I think he said that he would brief you and then he would expect you to brief the minister – that’s Mr. Myrden – as opposed to him briefing the minister. Is that a correct –?

**MS. BREWER:** That’s not my recollection. My recollection is that they had a good relationship and he wouldn’t hesitate to go talk to him and brief him.

**MR. LEARMONTH:** All right.

Now, tab 11 I referred to. This is in the handwriting of Paul Myrden. And he says – at the top of it, he says – P-034 [sp. P-03473] – there’s no date on this.

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** It says: capital cost, 300 mil – million – financing costs – capital cost, plus 300 mil; financing costs, minus 300 mil;

NS sales, 100. Now, are you aware that this was the way – do you recall that this is the way that the \$300-million capital cost increase was presented to government by Nalcor?

**MS. BREWER:** No, I saw some of Mr. Ed Martin's testimony, I think it was Friday –

**MR. LEARMONTH:** Right.

**MS. BREWER:** – where this had come up. But, like I said, I knew about the \$300 million. The number that I knew for savings for financing cost was a billion.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** Right? I don't recall this \$300 million, but I think –

**MR. LEARMONTH:** Well, that's – that was the present value of the (inaudible) –

**MS. BREWER:** Yeah, I think I saw that in a –

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** – maybe an exhibit that went to Jason Kean or something that they did a net present value of –

**MR. LEARMONTH:** Net present value.

**MS. BREWER:** – the one billion, yeah.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** Yeah. But I just don't recall this \$300-million presentation. But I think I did say in my interview that – when we talked, Mr. Learmonth, that what I indicated was that even if the government was aware of the \$300 million, that I believe Mr. Ed Martin would've made an argument that there was an offset.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** I wonder now –

**MR. LEARMONTH:** You did mention that, and you were correct because that's –

**MS. BREWER:** Yeah, but I wonder now –

**MR. LEARMONTH:** – what Mr. Martin said –

**MS. BREWER:** – in subconscious, did I hear it and I just wasn't remembering? I don't know.

**MR. LEARMONTH:** No, but what you –

**MS. BREWER:** But I said he would've said, but –

**MR. LEARMONTH:** But that's what he confirmed in his evidence.

**MS. BREWER:** Yes, but I'm –

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** – wondering now, when I said he would've said that he actually did say it. And I wonder: Was I present when he did say it? I just can't recall.

**MR. LEARMONTH:** Oh, I understand the point, yes. Okay.

All right, the next exhibit is tab 12 – yeah, I'll just put that to you that – because Mr. Martin said that he doesn't know the date, but that he recalls a meeting with the premier and one or more officials.

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** He doesn't know who the officials are or where he explained this \$300-million cost increase, and he says he mentioned the \$300-million savings in financing.

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** Do you – is it possible that you were at that meeting, or do you have any recollection of being at that –?

**MS. BREWER:** I don't have any recollection, but it's possible.

**MR. LEARMONTH:** It's possible.

**MS. BREWER:** And I can't imagine that he would meet without Julia present or someone in her office being present.

**MR. LEARMONTH:** Yeah. Because this mystery increases when we find out that this \$300-million increase was completely unknown to Julia Mullaley. She had no idea about it. She searched diligently –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – in the Cabinet records to see whether there was any record that it went to Cabinet. The answer is no.

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** And, you know, Mr. Marshall says he had no recollection; Minister Dalley, same – Mr. Davis. It seems that if Ms. Dunderdale knew, she was the only one in Cabinet that did –

**MS. BREWER:** Hmm.

**MR. LEARMONTH:** – based on the investigation we've done to date.

Based on your understanding of practices and so on, is it possible in your view – and you don't have to answer this if you feel uncomfortable doing it. But I'm just wondering whether the reason that this thing never went to Ms. Mullaley and went up to Cabinet, this \$300-million increase, was because the way it was presented, it was nothing, it was a wash.

Can you – do you feel comfortable providing any commentary on that possibility because it's just a possibility?

**MS. BREWER:** No, I don't think so. And the reason I don't think so was – and I don't really understand it and it wasn't among – it might be here, but it wasn't among the materials that I had – but there was another exhibit which was an information note. It was about the COREA account. So someone in Cabinet Secretariat must have requested that note.

Regrettably, when I read it, I wasn't a signature to it. It had indicated that Minister Marshall had approved it. Curious about it – it was dated December 2; if he executed the documents on November 29, I don't know why there would've been a need for an information note on December 2. Someone had put XX2013 on that

note, that's often an indication to me that that ends up on, what they call, a premier's update, on a Cabinet agenda. Unfortunately, the way they do the Cabinet agenda is they don't always list in the Cabinet agenda. It would just say premier update. You wouldn't necessarily see what was going to be on that update.

That one doesn't specifically mention \$6.5 billion but clearly the tone had changed. In the earlier documents that went to EPC and Cabinet when they talked about contingent equity, there was reference to if required; it was no longer if required, it was will.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** Now, regrettably, if I had seen that note I think, I'm hopeful, you know, if I was aware of the 6.5 that I would've made sure the 6.5 was in that.

Not to be disparaging, but it was drafted by lawyers. They were more interested in the legal issue of making sure that Cabinet was aware that the ESA and the ESG had to be amended because of the time that Cabinet approved those they didn't approve the documents, they approved a draft and I think they delegated the authority to Ministers Dalley and Marshall that they were substantially to go ahead and sign those documents.

Regrettably the 6.5 is not in that note –

**MR. LEARMONTH:** Right.

**MS. BREWER:** – but if you reread it the tone has changed. That is clearly something that government will have to fund. It was no longer if required.

**MR. LEARMONTH:** Yeah.

**MR. RALPH:** Excuse me, Mr. Learmonth.

I believe the document she's talking about is Exhibit 03940.

**MR. LEARMONTH:** Oh, I was going to get to that.

**MR. RALPH:** Okay, fine, sorry.

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

We might as well turn to it now, 03940 is in –

**THE COMMISSIONER:** I don't think it's in this book of documents.

**MR. LEARMONTH:** It's not. Well, let's bring it up then, 03940. Is this –?

**MS. BREWER:** Yes, this is it, yeah.

**MR. LEARMONTH:** Okay.

Well, just take us down to – you can ask the clerk to go down or up to identify the paragraph that you say should've tipped someone off that there was a different tone, because I think that's what you said.

**MS. BREWER:** Yeah.

That's going a bit fast for me.

**CLERK:** I'm sorry.

**MS. BREWER:** Move down another little bit.

The bullet there that begins with: The FLG also contained provisions. If you look at that last paragraph that says, "required subsequent amendments to the ESA and ESG to capture the additional equity funding obligations imposed," it doesn't say if required.

**MR. LEARMONTH:** Right.

**MS. BREWER:** Other language – it used to say if required.

**MR. LEARMONTH:** But it doesn't come out and say what we're talking about, does it?

**MS. BREWER:** No, that's what I'm saying. If you look at the bottom I'm not listed as being part of this.

**MR. LEARMONTH:** Right.

**MS. BREWER:** I don't know why. December 2, actually, was the day of the fall fiscal update, so I would've been in the office.

**MR. LEARMONTH:** Okay.

Okay, is there anything else you wanted to refer to in that exhibit?

**MS. BREWER:** Again, the second-last bullet there, the provisions governing the escrow account, "because these amounts have to be funded from equity ... that equity funding will also be required and provided in respect of the amounts necessary ...." Again, it doesn't – it's no longer if required, right?

**MR. LEARMONTH:** There's also, "will also be required ...."

**MS. BREWER:** Will also be required.

**MR. LEARMONTH:** So that – you suggest that indicates a change of tone?

**MS. BREWER:** I believe so.

**MR. LEARMONTH:** Yeah. But if someone who prepared this – why wouldn't – if it was known to the person who prepared this or approved it, why wouldn't they come out and just say: Look, we've got an increase of \$300 million? Can you explain that?

**MS. BREWER:** I can't explain. I can't –

**MR. LEARMONTH:** Can't explain it.

**MS. BREWER:** – explain it.

**MR. LEARMONTH:** All right.

**MS. BREWER:** The other thing I would draw your attention to is there was an email on November 29, I don't really know exactly what it's about, but there was some suggestion that the federal government, last minute, wanted a – some change to the COREA account, and –

**MR. LEARMONTH:** Right.

**MS. BREWER:** – Paul Myrden had indicated: I hope they're not planning to roll that back because of the communication up the line.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** Now, I mean, you can ask him, but even though this was dated December 2, presumably it would have been – that was a

Monday. I'm thinking it would have had to be prepared the Friday and maybe it's dated December 2 – Minister Marshall often would return to his district for the weekends. Maybe he wasn't available to sign it, I'm not sure.

**MR. LEARMONTH:** Right.

**MS. BREWER:** That's just an assumption on my part. So, at the time of my interview, I said "up the line" meant to Minister Marshall, but I'm wondering now if it referred to this Direction Note.

**MR. LEARMONTH:** Okay. That's just speculation, is it?

**MS. BREWER:** That's just speculation.

**MR. LEARMONTH:** All right.

Can you – before we leave this subject of the Cabinet not having been aware of this, and that appears to be the case based on the evidence –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – can you, based on your experience as a senior civil servant, can you explain why this \$300-million increase – it's a lot of money, isn't it –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – didn't make it to Ms. Mullaley's desk?

**MS. BREWER:** I can't explain that.

**MR. LEARMONTH:** It's difficult to figure –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – out, isn't it?

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** Do you agree or is it just me?

**MS. BREWER:** No, no. I do agree. And even more so is Mr. Bown not knowing.

**MR. LEARMONTH:** Yeah. Well, he says he didn't know.

**MS. BREWER:** Mmm.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** Mmm.

**MR. LEARMONTH:** And do you have any evidence –

**THE COMMISSIONER:** Yes – sorry.

**MS. E. BEST:** I meant to raise this earlier, but I'm glad it's come up again 'cause I did want to address it.

With respect to Mr. Bown not knowing, I've reviewed his evidence and I believe his evidence was that he did not recall knowing. So I'd like to point out that distinction.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** Okay.

**MR. LEARMONTH:** Okay, well, we'll use that. Mr. Bown said he –

**MS. BREWER:** Mmm.

**MR. LEARMONTH:** – has no – had no recollection or didn't recall knowing –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – about this –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – \$300-million increase. Do you have any evidence to – on that statement?

**MS. BREWER:** No, only that he seems to be in the middle of a lot of these emails, you –

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** – know, on the periphery, not necessarily ones that had the 6.5. But –

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

**MS. BREWER:** – Paul Morris, who was his assistant deputy minister, you know, I believe he knew, based on the emails that I’m seeing –

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** – so I just –

**MR. LEARMONTH:** But you don’t have any tangible evidence –

**MS. BREWER:** No.

**MR. LEARMONTH:** – in other words –

**MS. BREWER:** No.

**MR. LEARMONTH:** – saying that I was in a meeting and we talked with Charles –

**MS. BREWER:** No.

**MR. LEARMONTH:** – Bown – no, you don’t. It’s just –

**MS. BREWER:** No, recollection’s not that good. No.

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

At tab 16, Exhibit P-02208.

**MS. BREWER:** Yeah.

**MR. LEARMONTH:** If we turn to – okay, first we’ll go to page 2. This is a project update, November 6, 2013. Now, there’s no evidence that I’m aware of that this went to government. I think this was prepared for a meeting with the independent engineer and representatives of Canada.

**MS. BREWER:** Okay.

**MR. LEARMONTH:** So I’m not suggesting you saw this, but I will ask you to turn to page 24 of this document.

**MS. BREWER:** Okay.

**MR. LEARMONTH:** Okay. When’s the first time you saw that slide?

**MS. BREWER:** I mean, I saw a version of it when in your office – when you showed me the graph paper that had –

**MR. LEARMONTH:** At the interview?

**MS. BREWER:** – in the interview. And –

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** – at the time, we didn’t know it was Paul Myrden.

**MR. LEARMONTH:** But have you ever seen this slide deck before you came to the interview with me?

**MS. BREWER:** No.

**MR. LEARMONTH:** No.

**MS. BREWER:** I’ve seen a couple of it in various exhibits. I think I might’ve seen –

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** – this Exhibit, yeah.

**MR. LEARMONTH:** But you – can you say whether you saw this slide before financial close?

**MS. BREWER:** No.

**MR. LEARMONTH:** You’re saying that you didn’t or you –

**MS. BREWER:** I didn’t see.

**MR. LEARMONTH:** – have no recollection?

**MS. BREWER:** No, I see this.

**MR. LEARMONTH:** You didn’t see it?

**MS. BREWER:** No.

**MR. LEARMONTH:** Okay.

If we go to tab 17, Exhibit P-03489. Now, if you just flip through these documents we’re talking about, you know, cost overruns, there’s – this starts off with an email from Todd Stanley in – on page 4. And then if we turn to page 3 – right

in the middle of page – this is an email from you to Yvonne Power, Paul Myrden and Peter Au, re Cost Overrun Provisions.

“Paul pls advise after you have had a chance to fully digest.

“If they are saving” – I think that should be saying, correct? If they are saving?

**MS. BREWER:** Saying, yeah.

**MR. LEARMONTH:** Saying.

**MS. BREWER:** Mmm.

**MR. LEARMONTH:** “...that Nalcor has to set up and put funds in yet another dollar reserve and if this reserve is not already reflected in the \$1.886 m base equity contribution, then the impact on the province will depend on timing of the additional equity payment.

“As previously discussed, there is no flex within the current \$531 million budget to make additional equity contributions prior to March 31, 2014, whatever the reason. If this equity can be made in 2014/15 we can adjust the forecast accordingly. If the payment must be made in 2013/14 and Nalcor cannot finance same, then Government will need to approve and introduce supplementary supply.”

We talked about this earlier, didn't we?

**MS. BREWER:** Yes.

**MR. LEARMONTH:** Yeah. “This is an equity adjustment so only a cash appropriation issue – does not impact deficit position. No impact on net debt (decrease in cash / increase in GBE equity).”

Please presume – this is on page 4, please. “Presume we would get AFUDC credit for this additional payment.”

Now, when you read this, and this is on November the 7th, does that cause you to understand that you were talking about real money in terms of an increase –

**MS. BREWER:** Oh, yeah. There's –

**MR. LEARMONTH:** – as early as –

**MS. BREWER:** – a possibility –

**MR. LEARMONTH:** – November the 7th?

**MS. BREWER:** – of having to adjust the budget, yeah.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** Yes.

**MR. LEARMONTH:** Yeah, so there's no suggestion in this that you were talking about a theoretical number just for the COREA. It would have to be something tangible, correct?

**MS. BREWER:** I think we were wondering, I think we were asking a question about it.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** Yes.

**MR. LEARMONTH:** But it was on the horizon at that point –

**MS. BREWER:** Yes.

**MR. LEARMONTH:** – is what I'm saying.

And did you follow up on that? I mean, you knew that, you knew enough to write that email. At any time before financial close, did you, you know, think to get in touch with Paul Myrden or someone in the Department of Natural Resources to say (inaudible) what's the latest on this?

**MS. BREWER:** Yeah, there was – there would've been discussions back and forth and it was – finally, we were notified on the 26th by Derrick that the federal government had accepted the position and therefore there was no need for a supplementary supply or an adjustment to the budget.

**MR. LEARMONTH:** So was the – the fact that there was no need for a supplementary supply, was that decision made in accordance with government policy even though you knew that there was a real hard-number increase?

**MS. BREWER:** But we're talking here cash appropriations.

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

**MS. BREWER:** So the cash requirement to make a payment wouldn't have happened until December of 2014, so that would've been the next budget.

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

**MS. BREWER:** So it would've been part of the budget process.

**MR. LEARMONTH:** All right.

Tab 52, which is Exhibit P-02842. Now this starts off with an email on page 1 – the bottom of page 1 – from Todd Stanley and is to you and Charles Bown, Paul Myrden, Paul Morris. Now this has to do, if you turn to page 3, with the wording of the COREA account and the negotiations that were going on with respect to that wording. Do you agree?

**MS. BREWER:** Yes.

**MR. LEARMONTH:** And so, is it correct that this could've been – it's dated November 7, at this time just talking about just setting up a provision in the financing documents that should there be an increase in the project cost (inaudible), that there would be language available to deal with it?

**MS. BREWER:** That's correct.

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

And then you sent this to Thomas Marshall –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – Paul Myrden and Peter Au: "Minister

"NR and Nalcor are working on the issue raised by Todd below.

"When you are back in town, Paul and I can brief you on this matter." It said then: "Our current thinking - At Financial Close, a revised project cost estimate will be provided (by the

Independent Engineer) and that will form the new project baseline (not the DG3 numbers). From that time forward, any changes resulting in higher project costs, the Province / Nalcor will have to fund the difference by placing funds in what we believe may be some sort of escrow account. Paul thinks if it is a budget appropriation issue for us it may arise beginning in 2014/15 vs. 2013/14."

What do you make of that communication?

**MS. BREWER:** I mean this was just us alerting the minister to the fact that we had a potential budgetary issue.

**MR. LEARMONTH:** Right.

**MS. BREWER:** But letting him know that we needed to do more work on it and that we would brief him as soon as we knew one way or the other.

**MR. LEARMONTH:** All right.

And you don't recall ever briefing him further on that point, do you?

**MS. BREWER:** Not specifically, but I can't imagine that we didn't.

**MR. LEARMONTH:** Okay. But, when you say that you can't imagine, you have no recollection of it, but you just think, in accordance with practice, that you would've?

**MS. BREWER:** Yes.

**MR. LEARMONTH:** Okay.

**MS. BREWER:** And I mean, this shows our intent that we knew it was an issue that was worthy of making the minister aware.

**MR. LEARMONTH:** Right.

**MS. BREWER:** And as you can see, I mean, he did ask a lot of questions, and we were trying to follow up to the best of our ability, to try to get him answers. So I can't imagine that once we had an answer that we wouldn't have relayed that to him.



**MR. LEARMONTH:** Okay. But once again, you don't have any recollection; that's just what you –

**MS. BREWER:** No.

**MR. LEARMONTH:** – think would've happened as opposed to what –

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** – you recall happening, right?

**MS. BREWER:** Correct.

**MR. LEARMONTH:** All right.

Now, if we go to tab 28. If we go to page 4, this is an email, Paul Harrington to James Meaney and Lance Clarke. I – Jim – November 18 – I'm not certain this is clearly allocated to any one person: Do you have any data (inaudible) to align the ensured amount to the 6.531 number.

Now, so this is – once again, this is indication – an indication it's a tangible number.

**MS. BREWER:** Sure.

**MR. LEARMONTH:** Did you ever receive this email? I don't have anything to suggest you did.

**MS. BREWER:** No.

**MR. LEARMONTH:** Do you remember ever seeing that?

**MS. BREWER:** No.

**MR. LEARMONTH:** Okay.

Okay, well there are a number of documents that – I'm not gonna take you through all of them, in view of your acknowledgment that you're aware, but if you look at tab 53 please, which is Exhibit P-02125.

**MS. BREWER:** Mm-hmm.

**MR. LEARMONTH:** You're on this email. It's from Derrick Sturge.

It says: "Hi folks, we heard back from Canada last evening on the outstanding project finance business issues. As you may recall, we gave them a written proposal Thursday evening last week" of all "remaining eight business issues. They came back last evening and gave us everything we asked for with one exception and ... two clarifications. Included in the written proposal back to them (that they accepted)" and that the "cost overruns would be pre-funded in an escrow account, but only from the cost estimate at Financial Close, which is certainly better than calculating overruns from the DG3 number. So there are two issues ...."

And then if we go down to the second – well, you can read the two.

Now, doesn't that – isn't implied in that the fact that there was a real increase –

**MS. BREWER:** Yes.

**MR. LEARMONTH:** – number? You agree with that?

**MS. BREWER:** Yes. Yeah.

**MR. LEARMONTH:** And you said that in your interview too, right?

**MS. BREWER:** Yes.

**MR. LEARMONTH:** It doesn't come out and say it, but if you have a look at it, it's implied.

**MS. BREWER:** Yeah. Because it wouldn't have made a difference.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** Yeah.

**MR. LEARMONTH:** Yeah.

Okay. I'm not going to take you to any more of these documents, but there's one point I'd like to ask you about. When you left government in October 31, 2017, do you recall whether the – you know, the cost increases, overruns caused by the Muskrat Falls Project was putting any stress on the fiscal position of the government?

**MS. BREWER:** Oh yeah. It did add to our borrowing requirement, because I think up until 2013 there was sufficient cash. I think there was – Paul might be able to testify better – there was, like, \$2 billion, you know, in cash that we have invested. I mean, the primary driver for the difficult situation was the fall of 2014, when we had the precipitous drop in the price of oil.

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** But, I mean – but as well, you know, it was the major driver of our borrowing requirements was the – our deficits. I mean, when the new government came in they were facing – staring down the barrel of a potential \$2.7 billion deficit. So it was the deficits, but as well I say the number two then would have been the equity requirements, not just for Muskrat but oil and gas, as well.

**MR. LEARMONTH:** Yeah. So, the – to some extent the Muskrat Falls cost overruns were a contributing factor to the deteriorating fiscal situation of the government that –

**MS. BREWER:** Yeah. Well –

**MR. LEARMONTH:** – you recall –

**MS. BREWER:** – it increased our borrowing requirement, and therefore then we had increased interest expenses as a result of that. Right?

**MR. LEARMONTH:** Yeah.

**MS. BREWER:** I mean, I think next to education – I think debt was higher than education – I think Minister Bennett used to say, you know. You know, that was shocking.

**MR. LEARMONTH:** Shocking.

**MS. BREWER:** In how much money was being spent on interest versus, you know, available to the citizens for programs and services.

**MR. LEARMONTH:** Because the lower the credit rating the higher the interest charges, correct?

**MS. BREWER:** Yes. That's correct. Yeah.

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

I have no further questions. Thank you.

**THE COMMISSIONER:** All right. Thank you very much.

Nalcor Energy.

**MR. SIMMONS:** No questions. Thank you, Commissioner.

**THE COMMISSIONER:** Okay.

Concerned Citizens Coalition.

**MR. HISCOCK:** Good Morning.

**MS. BREWER:** Good Morning.

**MR. HISCOCK:** Will Hiscock with Concerned Citizens Coalition.

**MS. BREWER:** Good to meet you.

**MR. HISCOCK:** I have a – just a couple of questions there. And I'd like to begin with asking a couple of questions around the marginalization, I guess, potentially of your department.

**MS. BREWER:** Mm-hmm.

**MR. HISCOCK:** When she gave testimony to this Inquiry in June 17, 2019. Former minister – Finance Minister Cathy Bennett referred to the Department of Finance being excluded and marginalized in discussions surrounding Muskrat Falls. And she was referring to the period beginning December 2015 and continuing into 2016, when the Liberals formed a new government.

You served as Deputy Minister of that same department from June 2013 –

**MS. BREWER:** Mm-hmm.

**MR. HISCOCK:** – until October 2017. Did you serve with Minister Bennett?

**MS. BREWER:** Yes.

**MR. HISCOCK:** Okay. Do you agree with her observation?

**MS. BREWER:** To a point. I'm not totally clear on her point with respect to Muskrat Falls because I did serve on the Oversight Committee. What she may have been referring to is that – and I think others at the Oversight Committee may have testified to this, but despite efforts to ask, we just felt that we weren't getting clear direction. And while there was discussion of risk, we kept asking, you know, can you give me the probability that a particular risk would happen? Can you give us a quantification of it?

And it was just a sense that the numbers that we were being provided that we didn't believe that that was the right number. And particularly in 2016, as the minister testified, it was very difficult trying to borrow in the capital markets. Part of that was that, you know, it was a new government. So I mean, markets react whenever there's change –

**MR. HISCOCK:** Mm-hmm.

**MS. BREWER:** – like that. They knew our – we hadn't done a fall update before the election. So, I mean, when you don't provide information, you know, the worst-case scenario kind of filters in. They would've been shocked, I think, by the announcement when the fall fiscal update was actually done then, I think it was December 22 if I recall. 2.7 would've been a shock, I think, to the markets.

So it was very important to us that – and very important to Minister Bennett. And I think she testified that we actually brought in Auburn Warren from Nalcor to assist. But where we hadn't been in the markets prior to that since 2004, we were basically told that we don't know the name and people don't know Newfoundland's story.

So we had to really put an emphasis on an investor road show and an investor profile. So Auburn was very helpful with that. But it was very important to us that we needed to get an understanding and reflect not only in our budget for '14-'15 but we had laid out a 7 year plan. So it was very important to us that in that we get as best possible information to be honest with the credit rating agencies and with the people as

well as to what the potential is. Because until you have a clear definition of what problem you're facing, how are you going to, you know, put measures in place to resolve that?

**MR. HISCOCK:** Was this reflected before you came on as well, this not being kept fully in the loop? You had said in your interview that the previous DM had kept a fair bit to herself and that the Department of Finance had largely been left out at that point.

**MS. BREWER:** Mm-hmm.

**MR. HISCOCK:** And so this continued on right through to Minister Bennett's time as well and – that late?

**MS. BREWER:** I think –

**MR. HISCOCK:** I mean that's many years of –

**MS. BREWER:** I'm not –

**MR. HISCOCK:** – being kept out of the loop.

**MS. BREWER:** – a hundred per cent sure in the context of what she was referring but I found when I was there, that when we were contacted – and not necessarily on Muskrat Falls, on a number of files, you know, she was right; we were the last to know. And I used to say, I tried not to say it when she was minister, but I used to say we're not a drive-through service; you can't drop a proposal off, a cabinet submission off one hour and then two hours later expect to pick up a decent analysis.

And when I reflect back – I even said to my counsel yesterday when we met – I said even when you look at the paper that went to EPC in November 12 – that paper was signed by the ministers November 8; it was sent out to the ministers on the agenda November 8. I mean, what kind of reasonable analysis was done of that submission? And then normally when you had a policy committee consider a matter in Cabinet, then it went to Cabinet the following week; that particular paper went to Cabinet two days, went from November 12 to 14.

So it wasn't just Muskrat Falls, there was a lot of situations where we were brought in very late, I spent many a night 3, 4 o'clock in the morning

reading papers, trying to prepare as best I could my minister for a Cabinet meeting the next day; and sometimes she was able to get things deferred. Sometimes it would even go as far as the premier and the premier would be in a briefing, and people couldn't answer questions and he would defer it, you know. And – so I think that might have been the tone, it was just the way things were.

Now when I started with government back in '87 I started with Treasury Board; all papers went to Treasury Board and they went to a policy committee. So Cabinet had the benefit of the policy analysis but they also had the benefit of the financial analysis. If you go back through the files very little of anything went to Treasury Board with respect to Muskrat Falls.

**MR. HISCOCK:** Now do you – what do you think the reason for that would be? Because it would seem that it would be in everybody's best interest to have the materials to Finance, to have as fulsome an analysis as was possible.

**MS. BREWER:** I think everybody was just under a major time crunch and there was just a lot happening in a short period of time and people were bending over backwards, working long hours, late nights trying to get to the position of being able to get that federal loan guarantee and get the financing.

**MR. HISCOCK:** Former Premier Williams gave testimony to this Inquiry in October of 2018, at which time he gave the impression that his administration had given the Muskrat Falls Project and Nalcor's recommendations a rigorous review. Williams said that Department of Finance, Natural Resources and Treasury Board and others worked closely with Nalcor to evaluate the project before sanction. Williams said to the Commissioner at the time: "I don't want to leave you with the impression that, you know, information came in from Nalcor and then it just went right up this clean pipe through government."

Inquiry co-counsel Barry Learmonth informed Mr. Williams at that time that he was unable to find evidence of those reviews. And when so far as to say that: "...based on what we have found in our investigation, it appears that government

simply accepted the review and work and cost estimates provided by Nalcor."

When you became deputy minister did you come into possession of any of the reports that Premier Williams was referring to – these reviews and reports?

**MS. BREWER:** Not that I recall. I do recall going to the director of Treasury Board support and asking for any information that had gone to Treasury Board, and there wasn't any, and I think then she managed to find me a Cabinet submission that had the term sheet for the federal loan guarantee. And that's where I tried to get myself reoriented. But I wasn't in Finance at that particular time –

**MR. HISCOCK:** And you didn't –

**MS. BREWER:** – so I (inaudible).

**MR. HISCOCK:** – find anything in Treasury Board at that time, when you went there and asked for (inaudible)?

**MS. BREWER:** When I asked, nothing was provided to me.

**MR. HISCOCK:** Can we assume that your – that to the best of your knowledge anyway, that no such analysis was actually undertaken?

**MS. BREWER:** The only analysis that I think that the Department of Finance would've been equipped to do would've been any kind of economic analysis. Like the impact on jobs and the GDP and any kind of return to Treasury. But you'd have to ask Laurie Skinner or Terry Paddon whether or not that had been done.

And I think last going off just before I left, there was some analysis being done by the Economics and Statistics Branch with respect to more detail of the impact on people of a potential – if the rate is not mitigated, what that would mean. Because they had this tool called the Newfoundland and Labrador Market Basket that they could actually drill down based on tax data and understand people's incomes and costs.

**MR. HISCOCK:** Mm-hmm.

**MS. BREWER:** So they could project what an increase in heating costs would be, and the impact that would have in terms of the percentage of – that would take from people’s income. So I think that was analysis which again reinforced, you know, government has no choice but they have to find a way to mitigate.

**MR. HISCOCK:** If we could turn to Exhibit 00924, please.

**MS. BREWER:** Zero –

**THE COMMISSIONER:** That’ll be on your screen.

**MR. HISCOCK:** Yeah, this will come up on the screen there; I don’t believe it’s in the binder.

And this is an exchange in March 2012 between former secretary to the Treasury Board and also former NL Hydro CEO Vic Young and Mr. Ed Martin. And he writes to Nalcor CEO Ed Martin to emphasize the importance of measuring the impact on the fiscal position of the province.

The quote there: “Given the magnitude of the numbers, it is imperative that the potential impact on the fiscal position of the Province be at the top of the decision making chain...even more important than power rates at this stage. It is the Province that needs the potential financial consequences independently assessed (independent from Nalcor) and it is this independent financial review that should be tabled and debated in the House of Assembly so ... the people of the Province do not end up with a big negative fiscal surprise, as they did with Churchill Falls. Government must, therefore, be brutally frank and transparent about the potential fiscal risks and presumably Tom Marshall will start that process in his upcoming budget...just a personal view!”

Now this is March 2012. To the best of your knowledge, did the province ever conduct such an analysis as was being suggested by Mr. Young?

**MS. BREWER:** Unless it was done through Natural Resources, I’m not aware of anything happening –

**MR. HISCOCK:** Nothing within Department of Finance.

**MS. BREWER:** Not that I’m aware of.

**MR. HISCOCK:** Okay.

**MS. BREWER:** I – again, I wasn’t there in that particular time period.

**MR. HISCOCK:** During the period where you were there, was there anything significant, prior to financial close, being done along those lines?

**MS. BREWER:** No, not that I recall, no.

**MR. HISCOCK:** Okay.

Did you feel that as deputy minister you were in possession of sufficient information, at the time of financial close, to assess the financial risk to the province?

**MS. BREWER:** No, because I’ve heard testimony in this Inquiry that Nalcor was aware of a higher number than the 6.5.

**MR. HISCOCK:** At the time did you believe you had the sufficient information to assess the –

**MS. BREWER:** At –

**MR. HISCOCK:** – financial –

**MS. BREWER:** – the time –

**MR. HISCOCK:** – risk to the province?

**MS. BREWER:** – at the time I believed that I did, and as well, I took comfort in the fact that the federal government was there doing its due diligence, and in particular that the number would be reviewed and verified by the independent engineer.

**MR. HISCOCK:** Would there have been a reason that the financial department, the Finance and its expertise, would not have been brought in to do the sort of analysis that Vic Young had suggested there, that we just spoke about, to make sure that we actually – that you actually did – the province was in the position to be able to carry this burden going forward?

**MS. BREWER:** I'm not aware of anyone in the Department of Finance who would've had the knowledge of mega capital projects – and capital projects, period – to able to do anything of that magnitude. If anything, I think the government would've had to have contracted that work out.

**MR. HISCOCK:** Did you think the province was in over its head with the commitments that it made on this?

**MS. BREWER:** From a financial perspective?

**MR. HISCOCK:** Yes.

**MS. BREWER:** At the time that they did, no, but to that, when 2014 hit and the crisis happened with the oil price, very quickly any – it was like a house of cards I would say and the card got pulled and she came crashing down.

**MR. HISCOCK:** Was the Department of Finance advising the government that the feasibility of this entire project relied on continued high oil prices, and without those high oil prices this project could be one element that would drive us into a fiscal crisis?

**MS. BREWER:** I wasn't there at the time but I believe that would have come out.

**MR. HISCOCK:** Okay.

**MS. BREWER:** I seem to recall –

**MR. HISCOCK:** At the time you were there was immediately prior. We were doing financial close, it was just before the oil prices did crash.

**MS. BREWER:** Okay.

**MR. HISCOCK:** At that point, were you – was the Department of Finance advising government this plan might work, but only if oil prices stay high; otherwise, we could be in desperate straits.

**MS. BREWER:** I don't recall that direct –

**MR. HISCOCK:** Would have there been a reason Department of Finance would not have been advising government that? Or was the Department of Finance unaware that was a risk?

**MS. BREWER:** Well, the government – when I inherited the portfolio, the government had just done a 10-year fiscal forecast and, at that point in time, the outlook was increasing oil prices, not what we saw a year later. So I don't agree that at the time of financial close, that the government was aware of this impending oil price decline.

**MR. HISCOCK:** Well, it wasn't aware but it would've been aware, though, of the risk, would've realized that its financial position –

**MS. BREWER:** Mm-hmm.

**MR. HISCOCK:** – was entirely reliant on that.

**MS. BREWER:** Okay.

**MR. HISCOCK:** Is that correct, that would've been advice government was receiving from Finance?

**MS. BREWER:** I don't recall providing it at that time, but whether or not it was a part of the risk assessment that was done prior to the project being sanctioned. But, in my view, the assumptions had not changed materially from the time of sanction in '12 to – I mean potentially financial close, the financing was going happen July, October. It got delayed because – and that was news to me when I started. It was kind of a shock to me, actually, that we didn't have a federal loan guarantee.

**MR. HISCOCK:** Right.

On page 47 and 48 of your transcript you made reference to the Oversight Committee, and you felt a committee of senior provincial officials would not be considered independent and your advice was to take an alternate approach. What was your recommended approach to the Oversight Committee?

**MS. BREWER:** That the Auditor General be called in and asked to do an independent review.

**MR. HISCOCK:** After three years of serving on the Oversight Committee, do you believe your fears were realized and that the Auditor General would have been the better choice in that case?

**MS. BREWER:** Yeah, I believe that the Auditor General would have been the better choice.

**MR. HISCOCK:** Was the Oversight Committee overly reliant on Nalcor, in your view?

**MS. BREWER:** I'm not sure we had any other choice, to be honest. I think it was a good move to bring EY in. It's just, for whatever reason, it just took too long. Like, to me, we were constantly – it was like we were trying to provide oversight like you were driving and constantly looking in the rear-view mirror; like, data, it seemed to me, was always two months behind.

**MR. HISCOCK:** Mm-hmm.

**MS. BREWER:** And just the thing that frustrated me was that they never moved off the AFE. It was only when they actually had an AFE that the number moved. Whereas within government, we always would do this projected revised and the project revised could change. It could change monthly but it allowed you to get a trend as to where we could be. And then, fall update, you'd do a cut off and then, the budget, you do another cut off.

But I mean I watched Mr. Martin's testimony, I understand the position that he took, but I would join the people that feel that what he knew he should have told when he knew it. And if he had to put caveats around it or reins, I mean, we should have known what was the worst case, what was the best case and then what was the most likely outcome, you know, all along, right? And we just weren't getting that for whatever reason.

**MR. HISCOCK:** Would it not have been the job of the Oversight Committee to insist upon receiving that information, to say: Listen, we want your rough numbers. We want your best- and your worst-case scenarios –

**MS. BREWER:** Mm-hmm.

**MR. HISCOCK:** – you know? We don't just want the final figures.

**MS. BREWER:** I mean, meeting after meeting, I mean, we would make that – we would say that

and I just – reflecting back now, I don't understand why it wasn't forthcoming.

**MR. HISCOCK:** Who did you bring those concerns to? When you asked for those rough figures, the best and worst cases and so on, and you weren't getting the responses you wanted, who did you go within the government to put pressure on Nalcor?

**MS. BREWER:** Well, I mean, Julia was there as clerk. She would have brought it up to the premier even. And I think even Minister Bennett indicated that I had expressed concerns to her, right?

**MR. HISCOCK:** So it would have been the job of the clerk and the ministers to bring that to Nalcor and say: Look, this is good enough –

**MS. BREWER:** Yeah, yeah.

**MR. HISCOCK:** – we want our –

**MS. BREWER:** And I think she testified – I mean, they – you know, very early in the mandate they did bring Mr. Martin in and had the discussion. I remember that meeting. I remember being very frustrated because he put up an old deck and it was the old assumptions. And I questioned him on it and he said, yeah, but, you know, it hasn't changed that much.

And I can remember – because, I mean, I was pushing really hard that, you know, we were facing a \$2.7-billion deficit. That it was very serious, the government had to take it serious and we had to take quick action. And here, you know, Mr. Martin was, you know, we're all going to rich in 50 years. And I can remember saying to Minister Bennett, I said, you can't show that presentation to anybody. Like, it's not – it's no longer true. It doesn't have the correct assumptions.

**MR. HISCOCK:** A few further questions coming now arising out of the obligations that were generated by the federal loan guarantee.

**MS. BREWER:** Okay.

**MR. HISCOCK:** In that discussion between Mr. Martin and Vic Young that we looked at earlier, Mr. Martin refers to the need for

provincial equity investment, an investment which will attract an equity return. Can you describe the role of the provincial base and contingent equity in the financing of Muskrat Falls, as well as the completion guarantee which the province gave in order to obtain the federal loan guarantee?

**MS. BREWER:** Okay, so the base equity was the amount that was required based on the original DG3 estimate of \$6.2 billion. The contingent equity was a commitment that if the budget did increase by more than \$6.2 billion, that the province would be responsible, not the federal government, and that it would – initially, under the original federal loan guarantee, it was supposed to come from equity and not through debt through the project.

**MR. HISCOCK:** Mm-hmm.

**MS. BREWER:** I mean they didn't care if the province borrowed it to make the equity, but it had to come from the province to Nalcor into the project. It was only with the federal loan guarantee, the second federal loan guarantee, that that requirement was lifted and they allowed an additional \$2.9 billion in borrowing. And I forgot your last part of your question, sorry.

**MR. HISCOCK:** I think that largely gets us there.

**MS. BREWER:** Okay.

**MR. HISCOCK:** The last part was – no, I mean I'd just like to keep moving along, actually, at this point –

**MS. BREWER:** Okay.

**MR. HISCOCK:** – because I have another question –

**MS. BREWER:** Okay.

**MR. HISCOCK:** – a couple of questions coming out of this.

If we could turn to Exhibit 00065, which is the federal loan guarantee, signed November 30, 2012. And if we could go down to section 2 under Schedule A on page 16 then. This demands on the – that the province provide a

completion guarantee and supply the necessary, quote, base and contingent equity support.

What is the difference between the base and the contingent equity?

**MS. BREWER:** Well, as I indicated, the base was based on the 6.2 and the –

**MR. HISCOCK:** Yeah.

**MS. BREWER:** – contingent equity would refer to any overruns that would have occurred.

**MR. HISCOCK:** Just the overruns.

**MS. BREWER:** Yeah.

**MR. HISCOCK:** What rights and privileges and obligations accrued to the province from its equity in this project?

**MS. BREWER:** I'm not sure what you mean by rights and privileges, but my understanding was that the province was to earn somewhere between 8.4, 8.5 per cent –

**MR. HISCOCK:** Mm-hmm.

**MS. BREWER:** – internal rate of return, and that was to be in the form of dividends from Nalcor over a period of time.

**MR. HISCOCK:** Is there any difference between the rights and privileges and obligations vested in the LIL – so the equity used to purchase the LIL – versus the plant itself, the Muskrat Falls plant, and the LTA or the Labrador Transmission Asset?

**MS. BREWER:** I know the financing was different. I'm not sure if that's what you're referring to.

**MR. HISCOCK:** Yeah, and that gives us different rights, doesn't it? Like, on – we get –

**MS. BREWER:** I'm sorry, I'm not sure, legally, what you mean by rights.

**MR. HISCOCK:** Entitles us to different benefits, perhaps.

**MS. BREWER:** Okay.



**MR. HISCOCK:** The equity provides different benefits on the LIL –

**MS. BREWER:** Okay.

**MR. HISCOCK:** – versus the others. Is that correct?

**MS. BREWER:** Well, one, I believe, was the – regulated the cost of recovery model.

**MR. HISCOCK:** Mm-hmm.

**MS. BREWER:** But I don't recall which was which, and one was more of an internal rate of return calculation, if I recall.

**MR. HISCOCK:** Right. And so these relate to the two different costs: the cost of service model –

**MS. BREWER:** Mm-hmm.

**MR. HISCOCK:** – and the escalating supply price model. And they have different pay – they pay out at different periods, correct?

**MS. BREWER:** Yes, yes.

**MR. HISCOCK:** Okay.

**MS. BREWER:** Yeah.

**MR. HISCOCK:** Would you agree that schedule 3 – or section 3 of SCHEDULE “A” on page 16 places an obligation on the province to ensure that regulated rates recovered all costs over the term of the Power Purchase Agreement?

**MS. BREWER:** For which segment? The LIL?

**MR. HISCOCK:** Yeah.

**MS. BREWER:** Can you tell me where again?

**MR. HISCOCK:** Sorry, section 3 – so, if we're walking down here – one second there now. We're in 3 – okay. An obligation on the province to ensure regulated rates recover – yes, so, I mean, the essence of all this is that we have to recover – the rates have to be set to match an amount that allows us to recover the costs over

the full term of the Power Purchase Agreement. That's the whole idea behind the Power –

**MS. BREWER:** Sure.

**MR. HISCOCK:** – Purchase Agreement.

**MS. BREWER:** Yeah.

**MR. HISCOCK:** Correct?

**MS. BREWER:** Yeah.

**MR. HISCOCK:** Okay.

Is recovery of cost possible when capital costs have doubled from \$7.4 billion at sanction to \$12.7 billion today?

**MS. BREWER:** I think that the – we did have a discussion with the Auditor General, and at the time – because otherwise, on the financial statements, we would have to reflect an impairment to the asset, because right now, the asset and Nalcor's financial statements is being set up as the costs are being incurred.

And I believe, at that time, he was satisfied that there was sufficient there, but I think internally within government, there was understanding that rates would have to be mitigated from a social aspect because it would've been too cost prohibitive to certain members within society. But as well, there was a concern about the potential impact on the demand –

**MR. HISCOCK:** Yeah.

**MS. BREWER:** – right? My recollection was somewhere around 18, 19 cents, that if you went above that that you would start to see kind of a major impact on demand, that –

**MR. HISCOCK:** Price –

**MS. BREWER:** – then in –

**MR. HISCOCK:** – elasticity (inaudible) –

**MS. BREWER:** Yes, that –

**MR. HISCOCK:** Correct.

**MS. BREWER:** – then –

**MR. HISCOCK:** Okay.

**MS. BREWER:** – that would then require even a further increased cost because you have the same amount of costs serving less amount – lesser demand.

**MR. HISCOCK:** Yeah, so you'd have to just keep increasing the cost on a diminishing number of clients –

**MS. BREWER:** Right, yeah.

**MR. HISCOCK:** – to try and make it up –

**MS. BREWER:** Yes.

**MR. HISCOCK:** – right?

**MS. BREWER:** Yeah.

**MR. HISCOCK:** Okay.

**MS. BREWER:** Yeah.

**MR. HISCOCK:** If we could turn to P-00457, which is the Power Purchase Agreement signed between NL Hydro and the Muskrat Falls Corporation in November 29, 2013, at the start of your time there, and if we could turn to page 84 of that, under Definitions, and there's a reference to the Assigned IRR, which just really said the “‘Assigned IRR’ means **8.4%**.” And so that's our rate of return –

**MS. BREWER:** Okay.

**MR. HISCOCK:** – right?

**MS. BREWER:** Mm-hmm.

**MR. HISCOCK:** The reference under 1(c), then – or (c) down below “‘**Base Block Capital Costs Recovery**,’” you see that section there?

**MS. BREWER:** Underneath (c)?

**MR. HISCOCK:** Yup, and that's number (c) there, “distributions to equity holders sufficient to enable Muskrat to achieve its Assigned IRR.”

**MS. BREWER:** Mmm.

**MR. HISCOCK:** So the “‘**Base Block Capital Costs Recovery**’ or ‘BBCCR,’” it says up on the top, “means the recovery over the Supply Period of the following costs, without duplication.”

And so “distributions to equity holders sufficient to enable Muskrat to achieve its ... IRR,” and up above we saw that that was an established or set 8.4 per cent.

Does the Department of Finance play a role in monitoring the PPA and other agreements to ensure the province receives the distributions of the assigned IRR in the recovery of its equity contributions? Do we monitor this agreement to make sure we're getting that?

**MS. BREWER:** But it hasn't happened yet, right?

**MR. HISCOCK:** Would –

**MS. BREWER:** So –

**MR. HISCOCK:** – isn't the intent, I guess, is to do that, and we would be –

**MS. BREWER:** I –

**MR. HISCOCK:** – receiving –

**MS. BREWER:** I would think it would be more Natural Resources only because the – Nalcor is their Crown corporation – like, they report in. So I would think most of the submissions that we would get would be through – through Nalcor would be through Natural Resources, so I'm assuming. But I mean that hasn't yet – happened (inaudible) but I guess it's up to them, to the clerk, to – I guess, to assign which department, but I would think Natural Resources.

**MR. HISCOCK:** Okay.

I'd like to have a quick chat about the reality of these dividends, like the – that are here.

In a situation where a corporation is under financial stress, where do shareholders stand in relation to those who hold secured bonds?

**MS. BREWER:** That's – the bondholders would come first.

**MR. HISCOCK:** And in Nalcor's case, it's the province that is the sole shareholder, correct?

**MS. BREWER:** Correct.

**MR. HISCOCK:** And shareholders are last in line to receive any payments in the event that a company experiences financial difficulties, correct?

**MS. BREWER:** Correct, yeah.

**MR. HISCOCK:** Where would the money come from to pay dividends? Would the money not have to come from ratepayers to pay these dividends that are suggested, 8.4 per cent, (inaudible) –?

**MS. BREWER:** I mean, the – my understanding of the dividends – partly were through the Muskrat Falls Project but as well, they would've been forecasting dividends with respect to the oil and gas.

**MR. HISCOCK:** Mm-hmm.

**MS. BREWER:** And I can't remember how many years Mr. Martin went out. I mean, at some point we were beyond 2041. So, I mean, you have the Churchill Falls to consider as well, right? But I know it was like a mountain, right? They were –

**MR. HISCOCK:** Yeah.

**MS. BREWER:** – started low and they went –

**MR. HISCOCK:** And so we just –

**MS. BREWER:** – went very high, right?

**MR. HISCOCK:** – sorry, we just discussed earlier the fact that the rates realistically can't –

**MS. BREWER:** Mm-hmm.

**MR. HISCOCK:** – go above 18, 19 cents without actually diminishing the amount of money –

**MS. BREWER:** Mm-hmm.

**MR. HISCOCK:** – the province sees as a result. Given that, would you agree that there's no way

that these dividends are ever going to pay 8.4 per cent?

**MS. BREWER:** The 8.4? Probably not the 8.4, but I'm not convinced that they're going to be zero either.

**MR. HISCOCK:** No.

**MS. BREWER:** Right?

**MR. HISCOCK:** Okay.

But this whole – establish – and we were just looking, the base block capital cost, this idea that it's an 8.4 per cent guaranteed dividend payment –

**MS. BREWER:** Mm-hmm.

**MR. HISCOCK:** – that's not reality, is it? I mean, there's just no way that the financial situation allows for a payment of an 8.4 per cent dividend here.

**MS. BREWER:** It's been a number of years since I've seen the numbers, but I suspect you're correct.

**MR. HISCOCK:** Okay.

Did the Department of Finance – a few questions now on financial close, and, Mr. Commissioner, I do have a few more questions for this witness, but I don't have any questions for any other witnesses today so I'm hoping I'll be allowed some latitude in – on time on this. At financial close, did the Department of Finance examine the business case for Muskrat Falls and the risk for which it was exposed?

**MS. BREWER:** We didn't re-examine, no.

**MR. HISCOCK:** Okay.

These risks included cost escalations, which had been well documented, okay? Risks also include following demand and resistance from ratepayers to rising rates.

**MS. BREWER:** Okay.

**MR. HISCOCK:** The risks have – that have materialized up to this point suggest the

likelihood that dividends on investments are very remote, and you've agreed to that, correct?

**MS. BREWER:** In the early years. I'm not sure over the life of the agreement.

**MR. HISCOCK:** Okay.

We understand that financial close for the Muskrat Falls Project began November 29, 2013, and continued until December 2013 when the funds were made available. You became deputy minister in June, before financial close. Were you involved in preparing the documents that led to financial close?

**MS. BREWER:** I wasn't involved – I'm not sure exactly what you mean by the documents, but the request for financing, that had already been in play. The agreements that I saw would've been the ones that went to EPC, and so they would've been the equity support agreement and the equity guarantee agreement. I saw those. I don't recall if I saw the financing agreements.

I weren't – I wasn't actually part of the team that was reviewing this.

**MR. HISCOCK:** Okay. But you were aware about when sanction had occurred in December 2012, it had been done without the federal loan guarantee in place, correct?

**MS. BREWER:** I didn't know that until I joined Finance. I was –

**MR. HISCOCK:** Okay.

**MS. BREWER:** – surprised.

**MR. HISCOCK:** So once you came in to Finance, that's when you realized that?

**MS. BREWER:** Yes.

**MR. HISCOCK:** Okay.

**MS. BREWER:** Yeah. And that was one of the reasons why the – it got deferred. Because they were still working through those conditions precedent.

**MR. HISCOCK:** Did the Department of Finance consider November 29, 2013, the financial close, as an opportunity to reconsider the fiscal impact of the project?

**MS. BREWER:** That didn't come up.

**MR. HISCOCK:** Do you know whether it was the approval of the Energy Access Agreement by the UARB, also on November 29, 2013, did that – is that the thing that acted as the trigger for the financial close on the same date?

**MS. BREWER:** I believe so, but I'm not a hundred per cent sure. I know that was one of the condition precedents that jeopardized whether it was going to happen or not.

**MR. HISCOCK:** The same date also witnessed the signing of the Power Purchase Agreement and the consummation of the contract with Astaldi. By that date, it was clear, based on page 12 of the forensic audit of Grant Thornton – and we can go to that. That's P-01677. And we're on page 12 of that document. And it's clear, as of that date, that cost overruns were taking place in order of 25 per cent and that the contingency reserve had been exhausted.

Just prior to that date, the province had learned in July that Hydro-Québec was disputing Nalcor's understanding of the Churchill Falls power contract, on which Nalcor was relying on to build Muskrat Falls. Did the department see this confluence of risks as the trigger to seek sober second thought on the wisdom of proceeding with the base and contingent equity along with completion guarantee for indeterminate amount of money?

**MS. BREWER:** We – the Department of Finance wasn't directly involved in those discussions. Those discussions, I suspect, would've happened with Mr. Martin and through Natural Resources.

**MR. HISCOCK:** Why wouldn't the Department of Finance have been involved given the significant impact on the finances of the province?

**MS. BREWER:** I can't explain that.

**MR. HISCOCK:** Would the Department of Finance have been pushing, at that time, to be involved?

**MS. BREWER:** No. Because where I was new, I think I was still in the learning curve, trying to understand the project and where we were.

**MR. HISCOCK:** To the best of your knowledge, was the minister concerned? Did the minister suggest that we should use these various things, these various risks that were materializing as an opportunity to step back and look at it before going through?

**MS. BREWER:** Which minister? Because I had several.

**MR. HISCOCK:** Well, why don't we run through them, but, I mean, I guess Minister Marshall would be one of them –

**MS. BREWER:** Well, Minister Kennedy was there.

**MR. HISCOCK:** Yeah, Minister Kennedy.

**MS. BREWER:** I don't recall having any extensive discussions with Minister Kennedy about the Muskrat Falls file. Minister Marshall came in October, and that's when – you can see the emails – that he started asking questions. But my understanding, that was more to prepare himself for the House of Assembly and the fact that Bill 61 was coming before the House. I don't recall any discussion other than the fact that – I believe it was during the briefing for the EPC Cabinet meetings back in the mid-November that he had indicated he wanted oversight put in place. And I didn't know, but apparently he had made that request previously. I didn't know about that.

**MR. HISCOCK:** Okay.

At the time of financial close, did you consider the Muskrat Falls Project to be a self-supporting project?

**MS. BREWER:** Yes.

**MR. HISCOCK:** Okay.

At the time that you left the department, did you still believe that it was a self-supporting project, or had your opinion changed?

**MS. BREWER:** With respect to the \$5-billion debt, I still believe that that was possible, that the project could repay that debt. I was less certain about the dividends –

**MR. HISCOCK:** Mm-hmm.

**MS. BREWER:** – and whether or not the province would have to forgo a substantial portion, if not all, of those dividends, at least in the early years, for the purposes of rate mitigation.

**MR. HISCOCK:** At what point did your opinion switch from believing, at the time of financial close, that this was a self-supporting project to, the time you left, thinking it probably couldn't sustain the dividends that it had promised to pay?

**MS. BREWER:** I would think around Budget 2016. I believe Natural Resources had been involved with some discussions of rate mitigation, but I don't think Finance had been involved. And it was around the time we started getting some information included with the budget submissions around rates and the impacts and, I think, the analysis we started to do about the potential impact that would have on families that we realized those dividends were probably, at least in the early years, in jeopardy. That was Budget '16, maybe '17. I'm not sure exactly the time frame.

**MR. HISCOCK:** Given that your view now, and as of – as it had changed while you were in that position, would you agree that in reality, many of our grants of – or our investments of equity have turned, actually, out to be more grants to the project than investments?

**MS. BREWER:** I'm not sure because I think – I still think there's potential to return the – most of the capital cost, but I think it's something that the – their external auditor and the AG is going to have keep a careful eye to. But it was raised. I know, as a board member, I did raise it with Deloitte. And as of the last that it was raised – when I was on the Nalcor board – so that would have been back in 2016 –

**MR. HISCOCK:** Mm-hmm.

**MS. BREWER:** – they said that they were watching it, but so far they – I’m not aware that there’s been any recording of any impairment in that asset.

**MR. HISCOCK:** Okay.

Was Cabinet informed that the cost recovery of Muskrat Falls was a hybrid of costs of service and escalating supply prices? I understood you understood that earlier. Do you know if Cabinet was informed of that distinction?

**MS. BREWER:** I don’t know. I mean, I learned of it because I saw it in the term sheet. So I – you know, I assume if the term sheet had presented to Cabinet, but what level of explanation they were given, I am not sure.

**MR. HISCOCK:** Okay. So you wouldn’t know – yes, that was my next question, was whether it would have been explained to them what the difference –

**MS. BREWER:** Yeah. I don’t know.

**MR. HISCOCK:** – in that did.

**MS. BREWER:** I don’t know.

**MR. HISCOCK:** Okay.

Did the minister of Finance or yourself care if the return was delayed and if your government had to provide interim funding? Because, I mean, that – the whole difference between those two is that you’re waiting a long time for any money to come out of it. So I’m wondering, was that a concern to the minister of Finance or to yourself – the delays that this model creates?

**MS. BREWER:** I don’t recall discussing with him – as I indicated when I was learning the file. I just assumed a given that they decided this was the way it was going to be. So, once the policy was put in place, I – it wasn’t my position to question that.

**MR. HISCOCK:** Was the Department of Finance provided with a schedule as to when dividend payments might be anticipated?

**MS. BREWER:** Yeah. Because we would – they would have had to have it for the 10-year fiscal forecast and then, last going off, when I was there, we were – we had projected out seven years. I guess it’s – the Ball financial plan was seven year.

**MR. HISCOCK:** Okay. –

**MS. BREWER:** So I think –

**MR. HISCOCK:** – so Nalcor’s required to consult with the Department of Finance in order to alter the schedule of dividend repayments, is it?

**MS. BREWER:** I don’t think they necessarily seek approval. They inform us through their budget submissions what the forecast would be.

**MR. HISCOCK:** I’m going to ask that we bring up Exhibit 00043 and page 12 of that exhibit – Exhibit 00043.

In the context of the public utilities, the cost of equity capital is an important part of the overall cost of capital. The free cash concept is slightly at variance with this, and I want to bring you to a table that’s here –

**CLERK:** (Inaudible.)

**MR. HISCOCK:** Page 12, sorry.

**CLERK:** Sorry.

**MR. HISCOCK:** Yes. No, I apologize.

Here we go (inaudible) down at the bottom there you see the “Free cash flow/Dividends.” How do you interpret Annex B below, this chart? Do you understand and accept that the project will recover all costs and will eventually generate a plethora of dividends? Because that’s what this chart purports to show.

**MS. BREWER:** I’m not sure. I haven’t seen it before.

**MR. HISCOCK:** Okay.

And so this dramatic increase in dividends, this is the suggestion, is that this is the repayment of dividends over time, over the life of the project I

guess. And what we're looking at here is relatively low dividend payments out in the early years and then jumping pretty dramatically come around 2046, 2048. We see them rising quite dramatically.

**MS. BREWER:** Mmm.

**MR. HISCOCK:** So that's – that was the system upon which the government was investing its equity with the knowledge that the vast majority of its returns would be well out into the future into the 2050's and beyond, right?

**MS. BREWER:** Yeah.

**MR. HISCOCK:** And that was your understanding at the time? That that was what the government expected when the government expected to see (inaudible) return?

**MS. BREWER:** I recall, like, charts like this that, you know, kind of showed the mountain climbing. I just wouldn't recall specific years.

**MR. HISCOCK:** In the 2015 Budget Speech –

**MS. BREWER:** (Inaudible.)

**MR. HISCOCK:** – there was a suggestion that government would be able to repay – sorry: “Over a total investment period of 10 years, the provincial government will have invested \$3.1 billion in Nalcor. Every penny of **that money will be returned to the province** by 2025-26. From that time on, the dividends continue to increase for Newfoundlanders and Labradorians.”

And that's what we were told in the 2015 Budget Speech. You remember that sentiment being prevalent in the Department of Finance at the time, that by 2025, 2026 we'll have recouped the money we've invested here?

**MS. BREWER:** Yeah, I can remember it was late in the budget process and Minister Wiseman wanted to kind of have this way forward document that's kind of budget highlights. And I recall contacting Nalcor, it was like late on a weekend, and asked them to send over information so that we could chart it. So I think the source –

**MR. HISCOCK:** I mean, I assume that you –

**MS. BREWER:** – the source would've said Nalcor, right?

**MR. HISCOCK:** Yeah.

**MS. BREWER:** Yeah.

**MR. HISCOCK:** Why would have the department have believed that at the time? Or did the department even believe that at the time?

**MS. BREWER:** Can you refresh my memory? What was the capital cost –

**MR. HISCOCK:** Well, it was –

**MS. BREWER:** – projection at that time –?

**MR. HISCOCK:** – suggested that the province had put – in the last 10 years the province had put \$3.1 billion into Nalcor and all that money would be received back by 2025, 2026; after that it was all gravy.

**MS. BREWER:** But in 2015 what was the capital cost projection at that time, does it say?

**MR. HISCOCK:** Not in that section, it doesn't say.

**MS. BREWER:** Mmm.

**MR. HISCOCK:** Would the – but that was the department's honest –

**MS. BREWER:** (Inaudible.)

**MR. HISCOCK:** – view in 2015 is that –

**MS. BREWER:** In 2015, yes.

**MR. HISCOCK:** – all of the money would be back in the bank –

**MS. BREWER:** Yeah.

**MR. HISCOCK:** – by 2025.

**MS. BREWER:** Yes.

**MR. HISCOCK:** Okay.

Does the Department of Finance continue to have that high level of confidence in Nalcor?

**MS. BREWER:** My understanding at the time – and it would’ve been Budget 2016, definitely, it was 2017 that that had changed and –

**MR. HISCOCK:** The confidence in Nalcor?

**MS. BREWER:** Not so much the confidence in Nalcor, but the confidence in the numbers and the fact that we would get the dividends as stated versus having to use some of that revenue for rate mitigation.

**MR. HISCOCK:** Okay.

Does the department maintain a register to show, on a year-by-year basis, the projected dividends from this project? Or did it when you were there?

**MS. BREWER:** It would vary. Like I said, when I started they had a 10-year profile, so they would’ve had to have had at least 10-year numbers. At various times, sometimes they’ve asked for 25 years and, like I said, the last going off in 2016 we had a seven-year outlook.

**MR. HISCOCK:** I have another couple of questions and it has to do with AFUDC or – and I don’t know if you had watched any of the –

**MS. BREWER:** I did.

**MR. HISCOCK:** – conversations I had –

**MS. BREWER:** Yeah.

**MR. HISCOCK:** – had with Mr. Meaney, Mr. Sturge –

**MS. BREWER:** So can I just say yes?

**MR. HISCOCK:** I was about to just say maybe we can skip ’cause the charts are kind of slow to move through.

**MS. BREWER:** Mmm.

**MR. HISCOCK:** But the basis is that the AFUDC was –

**MS. BREWER:** I mean, your logic seemed to make sense.

**MR. HISCOCK:** On the LIL –

**MS. BREWER:** Yes, yeah.

**MR. HISCOCK:** – was, you know, and that the other two assets –

**MS. BREWER:** Mmm.

**MR. HISCOCK:** – because of the accounting mechanism chosen –

**MS. BREWER:** Mmm.

**MR. HISCOCK:** – we didn’t – the government didn’t have to – or Nalcor, I guess, didn’t have to assign an AFUDC.

**MS. BREWER:** Mmm.

**MR. HISCOCK:** But if it had, it would be around a billion dollars and that kind of doesn’t –

**MS. BREWER:** Mmm.

**MR. HISCOCK:** – really show up in the financing costs of this project, right?

**MS. BREWER:** Right. My only pause was that Auburn who would – out of all of us you asked, might have a more of an – more insight into that, kind of seemed to hesitate in terms of the modelling is more complicated than that. But, on the surface, I thought your logic –

**MR. HISCOCK:** Yeah, and I mean –

**MS. BREWER:** – followed through, right?

**MR. HISCOCK:** – I’m not suggesting the \$1-billion figure is some set stone –

**MS. BREWER:** Sure.

**MR. HISCOCK:** – it’s a ballpark as to –

**MS. BREWER:** No, it was just –

**MR. HISCOCK:** But that –



**MS. BREWER:** – more the theory, the logic.

**MR. HISCOCK:** Yeah.

**MS. BREWER:** Yeah.

**MR. HISCOCK:** And that that would be a result of the accounting practices that were chosen, that if it had been done in a method like the LIL –

**MS. BREWER:** Mmm.

**MR. HISCOCK:** – if we were trying to account for the financing costs the same way as we had done on the LIL for Muskrat Falls itself and for the LTA –

**MS. BREWER:** Well, the –

**MR. HISCOCK:** – really we would have –

**MS. BREWER:** – accounting followed the commitment, the decision, right?

**MR. HISCOCK:** Yeah, and it's because –

**MS. BREWER:** Accounting didn't dictate it –

**MR. HISCOCK:** And it's –

**MS. BREWER:** – the accounting followed it, right?

**MR. HISCOCK:** It's because – well, that chart we just looked at where all the dividends were pushed out, it's because the project didn't have to account for the cash upfront, right?

**MS. BREWER:** Mmm.

**MR. HISCOCK:** And because of that we didn't have to allow an AFUDC for those other two assets because of the accounting mechanism chosen.

**MS. BREWER:** Mm-hmm.

**MR. HISCOCK:** But under a normal accounting for these kind of projects, like was used on the LIL, like Hydro had traditionally used, the baseline figure – debt figure for this project, well you'd actually have to add a full

billion dollars, or in that range, to properly account for –

**MS. BREWER:** But the impact on the taxpayer wouldn't have changed, right? One would've been a higher asset that you depreciated, versus one is, you know, in – you know, the equity being returned, right?

**MR. HISCOCK:** Well, the equity being returned, though, becomes –

**MS. BREWER:** Mmm.

**MR. HISCOCK:** – the – that's based on the dividends all being guaranteed and promised –

**MS. BREWER:** Mmm.

**MR. HISCOCK:** – and we've already spoken about that not being –

**MS. BREWER:** (Inaudible.)

**MR. HISCOCK:** – reality, you know?

**MS. BREWER:** Mmm.

**MR. HISCOCK:** Okay, well, I'm glad we've mentioned it. That skipped five pages, so we're almost through to the end there. That saved a lot of time, thank you for that.

I'd like to jump down and speak about the net debt and the fiscal impact on the province, just briefly.

**MS. BREWER:** Sure.

**MR. HISCOCK:** And if we could go back to Exhibit 00065, and turn to page 6.

And this deals with the conditions precedent – and it's section 3.5 here – conditions precedent, particularly 3.5 A, sub (a), (b) and (c). And the reference in (b) and (c) to indemnification, if you could have a look at that, in (b) and (c) there to indemnification – 3.5, capital A, five (v), yeah, (a), (b) and (c).

Given non-recourse funding under the federal loan guarantee, are there conditions where the province must indemnify the federal government

for the failure of Nalcor or any of its subsidiaries to meet its debt-servicing obligations?

**MS. BREWER:** My understanding is this section all ended up being that the province had to provide this – I call in layman’s terms – this completion guarantee, that the province had to complete the project.

**MR. HISCOCK:** Yeah.

**MS. BREWER:** Otherwise the federal government could step in and complete it for us and we’d still have to incur the cost. I think all that stemmed from this particular section of the federal loan guarantee term sheet.

**MR. HISCOCK:** So any – basically Nalcor – the province is stepping into the federal government and saying: We’re gonna finish the project.

**MS. BREWER:** Mmm.

**MR. HISCOCK:** Doesn’t matter if it’s Nalcor, doesn’t matter if it’s a subsidiary of Nalcor’s. If anybody got problems, we’re stepping in, we’re gonna backstop all of these companies down through the line, right?

**MS. BREWER:** Yeah, I was surprised. I remember saying at time: Who’s guaranteeing who here?

**MR. HISCOCK:** Yeah, exactly.

If we could turn to Exhibit 00454, which is the GT report on the PPA as well. And if we could go to page 38 of this document. Yeah.

So a section here now: “The PPA provides ... remedies if Base Block Payments are not made.

“In particular, if NLH fails to make the necessary Base Block Payments while MFCo continues to be in compliance with this agreement, MFCo may provide notice to NLH it is invoking their rights under the PPA which requires that within 10 days of providing such notice, if NLH” – Newfoundland and Labrador Hydro – “has not paid the outstanding payment, NLH is required to pay a lump sum amount equal to the full repayment of the debt financing (including principal, accrued interest and any

premiums) plus any associated costs (including legal, advisory, transaction and administrative costs).”

Now, I want to ask you if you have – what your knowledge is on this and I’m just gonna – if the NLH cannot provide sufficient revenue to meet –

**MS. BREWER:** Mm-hmm.

**MR. HISCOCK:** – the financial obligations, does this mean the province must provide the funding? That’s my view on it, but I’d like to know if that’s your view as well.

**MS. BREWER:** I mean, they would because the province has guaranteed everything, right?

**MR. HISCOCK:** Yes.

**MS. BREWER:** So the – if one of the parties doesn’t perform, then the – you know, they have the right to call the guarantee. I’m not sure if this –

**MR. HISCOCK:** Right.

**MS. BREWER:** – I’m not sure if this particular paragraph says that but –

**MR. HISCOCK:** Is it true that the federal loan guarantee provides no recourse to the province from default by Newfoundland and Labrador Hydro, even though Newfoundland and Labrador Hydro debt is not subject to the guarantee and its assets have not been pledged as security?

**MS. BREWER:** Can you say that again?

**MR. HISCOCK:** Is it true that the federal loan guarantee provides no recourse to the province if NLH – if Hydro defaults, the province has no guarantee, even though Hydro’s debt is not subject to the guarantee and its assets haven’t been pledged as security?

**MS. BREWER:** I’m not sure.

**MR. HISCOCK:** Okay.

**MS. BREWER:** (Inaudible.)

**MR. HISCOCK:** How does the Government of Newfoundland and Labrador deal with these obligations in these financial statements? The flow out of its need to –

**MS. BREWER:** It would've been –

**MR. HISCOCK:** – (inaudible).

**MS. BREWER:** – it would've been a note disclosure. It would've been kind of a contingent liability, notice of guarantees.

**MR. HISCOCK:** Okay.

There are many adverse events or circumstances which might prevent Hydro from recovering cost. These include cost overruns as well as changes in load growth and ratepayer resistance to rate increases. Has the Department of Finance assessed these risks and how they might impact both ratepayers and taxpayers?

**MS. BREWER:** My understanding is that there was some discussion, not necessarily by the Department of Finance, but in discussions with Natural Resources and Nalcor about the elasticity that we talked about. Sorry, I didn't hear –

**MR. HISCOCK:** Yeah, has Finance done anything independent of Nalcor or Natural Resources on those risks?

**MS. BREWER:** I don't think that we would have the data to be able to do that.

**MR. HISCOCK:** Was the department aware of the quantitative risk analysis undertaken for Nalcor by Westney – Westney Consulting, which recommended that a management reserve be included in the cost of the project?

**MS. BREWER:** I think that was before my time.

**MR. HISCOCK:** Okay.

In calculating net debt, the province subtracts the value of its financial assets from its liabilities. The province's equity investment in Muskrat Falls is currently based on cost, so the net debt remains unaffected by the cost. Is that correct?

**MS. BREWER:** That's correct.

**MR. HISCOCK:** Okay.

What would be the impact on the net debt of the province if the province had to write off the value of its equity invested in Muskrat Falls?

**MS. BREWER:** The net debt would increase.

**MR. HISCOCK:** Okay.

Is it the case that when the province begins rate mitigation, that public sector accounting rules require a partial writedown of the assets, which impairment would result in – and the net debt is going to be increased by the value of that impairment?

**MS. BREWER:** I think it would depend on what they choose as the rate mitigation methods. I don't know that. That wasn't decided at the time I left.

**MR. HISCOCK:** Under what circumstances will the amount of rate mitigation cause that writedown which then increases the net debt?

**MS. BREWER:** I'm not sure. I think it would depend on whether the rate mitigation was done by the province. Like, whether – if the province gave, like, a rebate to people, that I don't think would impact the asset. But if the province forced Hydro to show losses, then I think it would.

**MR. HISCOCK:** Okay.

**MS. BREWER:** So it really depends on how they actually decide and implement that rate mitigation.

**MR. HISCOCK:** And so in one case, if the government decided to just put the cash out there, I guess it wouldn't count as a – it wouldn't add to the debt per se –

**MS. BREWER:** Mm-hmm.

**MR. HISCOCK:** – it would add to the deficits, and in that way, it would add to the debt.

**MS. BREWER:** Yeah, yeah, they'd have to figure, well, how am I going to source that because the revenue was assumed to come in.

**MR. HISCOCK:** Yeah.

**MS. BREWER:** So –

**MR. HISCOCK:** But if the government just takes a more straightforward approach and says: Look, were losing money here on this, you know, if we reduce the rates –

**MS. BREWER:** Mm-hmm.

**MR. HISCOCK:** – then we don't have the asset that we said we had, they're going to have to write that into that asset, and that amount of money is just going to go straight onto the debt.

**MS. BREWER:** It would depend on – I mean, you're talking a 50-year asset, so it would depend the cash flows and the net present value of those foreseen cash flows and what that would work out to be.

**MR. HISCOCK:** Okay.

**MS. BREWER:** Right.

**MR. HISCOCK:** All right. Thank you, those are all my questions.

**MS. BREWER:** Okay.

**THE COMMISSIONER:** All right. We'll take our morning break here, now, and then we will come back and continue on.

So we'll just adjourn for 10 minutes.

**CLERK:** All rise.

### Recess

**CLERK:** Please be seated.

**THE COMMISSIONER:** All right. Edmund Martin. No questions?

**MR. SMITH:** No questions.

**THE COMMISSIONER:** Okay.

Kathy Dunderdale.

**MS. E. BEST:** No questions, thank you.

**THE COMMISSIONER:** Okay.

Former Provincial Government Officials '03-'15.

**MR. T. WILLIAMS:** Good morning, Ms. Brewer.

**MS. BREWER:** Good morning.

**MR. T. WILLIAMS:** My name is Tom Williams. I represent the group known as Former Elected Government Officials for the period of 2003 to 2015, with the exception of former premier Dunderdale.

**MS. BREWER:** Okay.

**MR. T. WILLIAMS:** I only have one brief question for you this morning.

**MS. BREWER:** Mm-hmm.

**MR. T. WILLIAMS:** In your evidence that you were giving to Mr. Hiscock shortly before we finished, at one point we were dealing with the capabilities of the Department of Finance to do reviews –

**MS. BREWER:** Mm-hmm.

**MR. T. WILLIAMS:** – things of this nature.

**MS. BREWER:** Yes.

**MR. T. WILLIAMS:** And I understood your evidence to state that you felt that the Department of Finance would have the capacity to do what we would call economic reviews so –

**MS. BREWER:** Sure.

**MR. T. WILLIAMS:** – the impact of the project on –

**MS. BREWER:** Mm-hmm.

**MR. T. WILLIAMS:** – the province and the province's financial position.

**MS. BREWER:** Correct.

**MR. T. WILLIAMS:** Just want to ask you one question: Would the Department of Finance have the ability to do a detailed financial analysis of the base cost estimates of the project including construction cost estimates in relation to various elements such as spillways, powerhouses, transmission lines, switchyards – those type figures?

**MS. BREWER:** In my opinion, no.

**MR. T. WILLIAMS:** Okay. Because there was some – some issues had arose during the course of earlier testimony as to the ability of government to do a detailed analysis of DG3 – DG2 and DG3 numbers as it pertained to those base cost estimates.

**MS. BREWER:** Okay.

**MR. T. WILLIAMS:** But do you feel the department would've been able to do that?

**MS. BREWER:** I don't believe so.

**MR. T. WILLIAMS:** Okay. Thank you. That's all the questions I have.

**THE COMMISSIONER:** Thank you.

Julia Mullaley, Charles Bown.

**MR. FITZGERALD:** No questions, thank you.

**THE COMMISSIONER:** Okay.

Robert Thompson.

**MR. COFFEY:** Good morning, Ms. Brewer. Bernard Coffey for Robert Thompson. I have one question.

As the deputy minister of Finance, did you have any understanding as to whether or not the *Financial Administration Act* did or did not apply to Nalcor?

**MS. BREWER:** I believe it did not apply to Nalcor, that there's actually a reference in the *Energy Corporation Act* that says notwithstanding the *Financial Administration Act*. I think what Minister Bennett might have

been referring to was the *Transparency and Accountability Act*, which gives her additional powers. She could actually send the Comptroller General in to look at the books if she so chose.

But a lot of the – even within the *Transparency and Accountability Act* – and my understanding, through the *Corporations Act*, was that Minister Coady as minister could give directions to it as shareholder –

**MR. COFFEY:** Okay.

**MS. BREWER:** – to the company. Yeah.

**MR. COFFEY:** Okay. And you're – in this context, you're referring to the evidence of – you know, you heard Cathy Bennett give here.

**MS. BREWER:** I heard some of it, yes. Yeah.

**MR. COFFEY:** About the (inaudible) – thank you.

**MS. BREWER:** Okay.

**MR. COFFEY:** Thank you, Commissioner.

**THE COMMISSIONER:** Okay.

Consumer Advocate.

**MR. HOGAN:** Good morning, Ms. Brewer. My name is John Hogan. I'm counsel for the Consumer Advocate.

**MS. BREWER:** Sure.

**MR. HOGAN:** Just – in terms of the, I guess, first sign of cost overruns would have been around financial close, the 6.2 and the 6.5 issue. Correct?

**MS. BREWER:** That we were aware of, yes.

**MR. HOGAN:** That you were aware of, okay. Fair enough.

So was there any calculation done or any analysis done at that point in time – or maybe at any point in time – about what the maximum cost the province could afford for this project would be?

**MS. BREWER:** Not that I'm aware of.

**MR. HOGAN:** Not that you're aware of.

**MS. BREWER:** No.

**MR. HOGAN:** Okay.

We've heard this project being referred to – the financing of it – as a blank cheque. I don't know if you – sounds like you've listened to a lot of the evidence.

**MS. BREWER:** Yeah, actually, I was mentioning to Gerlinde yesterday that when you look at the EPC document, there's actually a phrase there that talks about without limitation, that the province was to provide a contingent equity, and it actually says without limitation in that document.

**MR. HOGAN:** But you agree it was a blank cheque?

**MS. BREWER:** I'm – I haven't seen anything that would suggest –

**MR. HOGAN:** So is that why an analysis wouldn't have been done to determine what – the most the province could afford?

**MS. BREWER:** I wasn't there at the time. I mean, I was there at the time of financial close. But as I indicated, things moving very fast, and we were executing government policy at the time and we were trying to get to that end point –

**MR. HOGAN:** I understand that, but –

**MS. BREWER:** – getting the federal loan guarantee.

**MR. HOGAN:** – if the analysis is not done and –

**MS. BREWER:** Yeah.

**MR. HOGAN:** – things are moving very fast –

**MS. BREWER:** Yeah.

**MR. HOGAN:** – I mean, is government policy, then, to proceed with the project at all costs?

**MS. BREWER:** I believe once they signed that guarantee and they saw on that Cabinet paper that by signing that guarantee, that they're basically – I believe that they're basically given a blank cheque, yes.

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

Now, again, the first sign that you had overruns would have been in – around financial close.

**MS. BREWER:** Mm-hmm.

**MR. HOGAN:** And the number was \$6.2 billion from, I think, the time of the announcement in 2010, certainly the time of sanction and up to financial close would have been 6.2. Correct?

**MS. BREWER:** That's the number that I knew –

**MR. HOGAN:** Right.

**MS. BREWER:** – that was in the public (inaudible) –

**MR. HOGAN:** So was there any concern that it was only at the time of financial close that a cost increase manifested itself?

**MS. BREWER:** No, because as I indicated in my interview with Mr. Learmonth, that we were being told, you know, in that fall, that there were cost pressures.

**MR. HOGAN:** Okay.

**MS. BREWER:** And my recollection was almost relief that it was only 6.5, to be honest.

**MR. HOGAN:** Okay, so – go ahead.

**MS. BREWER:** No, I – I know there's some confusion. I remember mentioning to Mr. Learmonth about reading the independent engineer report. We're not certain, I don't think, as to which version of that report that I did have, but I recall then, while the independent engineer had a lot of positive things to say in terms of the practices and the cost in the estimate and the process, that when it came to the contingency he clearly felt it was understated. You know, so in

my mind I thought he said it could be a doubling so, you know, 6.5 was in the realm of that, right?

**MR. HOGAN:** So you were expecting worse than 6.5?

**MS. BREWER:** I wouldn't have been surprised if higher than 6.5.

**MR. HOGAN:** Okay.

So what sort of information were you getting? Because cost pressure is a word we've heard. I would call it a buzzword; it doesn't mean anything to me.

**MS. BREWER:** Yeah.

**MR. HOGAN:** So what would cost pressures mean to you that you would have anticipated a higher than 6.5 number?

**MS. BREWER:** I think that we understood, generally, given the economy in Newfoundland and evidence like on Hebron and other projects, that, you know, we were paying premiums for – you know, for the fact that there was shortage of labourers in certain situations.

So we – you know, while we weren't given specifics – and I don't recall that we had specifics anyway – that there were some projects that were coming in higher, I don't know, because everything tends to, you know, to meld together for me now. But I don't know if we knew about Astaldi at that time, about the potential that the, you know, the bids being higher than what was in the DG3.

I don't even think I was in the Department of Finance because, I mean, I was a deputy prior to Department of Finance that I could – we would have deputies breakfasts every Friday mornings and I can remember Ed coming to do a presentation to the deputies. And I remember him talking about that cover and I thought even then, you know, he was indicating that was an extra cost.

The – I forget what they're called now, they were – Astaldi was supposed to build it to try to allow for continued construction during the winter period, the cover. They had to have some sort of name on it. And I thought then that he

said, you know, we were making strategic decisions that were in the best interests of the project, but I certainly recall that that was a cost pressure there. So I can't remember exactly who said what when, but I do remember the sense of worrying that the costs were going to increase in the fall.

**MR. HOGAN:** Though, is it fair to say you would have – you – at that point in time you would have anticipated more costs above 6.5 then?

**MS. BREWER:** When I look back at the materials, as I indicated to Mr. Learmonth, is that that 6.5 was a calculation at a point in time. It was still \$2.2 billion worth of work that hadn't been contracted. You know, so even in Mr. Harrington's email he said, you know, if we assume that what happened in the first part of the project continues at 5 per cent to the (inaudible), he was up to 6.6, 6.7.

**MR. HOGAN:** So, even at that point in time, the 6.5 was not realistic. Based on what Mr. Harrington is saying –

**MS. BREWER:** It –

**MR. HOGAN:** – it would have been 6.7 or 6.8.

**MS. BREWER:** It was an estimate at the time and it was a measurement that the federal government was willing to accept with respect to the COREA and setting a baseline.

**MR. HOGAN:** Willing to accept, given the fact that the number was probably above 6.5 at that time though.

**MS. BREWER:** It could've been more, it could've been less, we didn't know. All we were told was that they were working through the number, they were trying to mitigate and they would report to us and the public in the first quarter of 2014.

**MR. HOGAN:** Did Nalcor ever want a higher number than the 6.5 for COREA, given that Mr. Harrington is saying it would've been 6.7 or 8?

**MS. BREWER:** I –

**MR. HOGAN:** And we all know the higher number is better for COREA –

**MS. BREWER:** I wasn't necessarily part of the – I wasn't at the table, a part of those discussions, so I don't know if that did come up.

**MR. HOGAN:** Okay.

**MS. BREWER:** But I do know based on, you know, what I've re-read, I mean it had to be defensible; it had to be something that the independent engineer was willing to certify and sign off on. So it had to be some basis in fact for it.

**MR. HOGAN:** Which goes to Mr. Learmonth's point that the 6.5 number was a calculated actual number.

**MS. BREWER:** Yes.

**MR. HOGAN:** And where the 6.7 and 6.8, I would say, would be more of a trend.

**MS. BREWER:** Yeah, or possibilities or ranges or...

**MR. HOGAN:** Yeah.

You sort of laughed and mentioned this morning that you had had a lot of ministers in your time. Is that correct (inaudible)?

**MS. BREWER:** Yes, yes.

**MR. HOGAN:** So who did you deal with? What ministers of Finance?

**MS. BREWER:** It was Minister Kennedy and then he left, I believe, it was October. Then it was Minister Marshall and then when Minister Dunderdale resigned, he became premier. Then it was Minister Wiseman – actually, I think – no, sorry, Minister Johnson. She was tasked to do pension reforms. So when she did that, she announced she was leaving, I think it was, August or early September.

And then I think for an hour I think I had two of them in the office, it was Minister Johnson and Minister Wiseman, and then Minister Wiseman, then there was the election and then it was Minister Bennett. And then just before I retired,

I think it was August or September, I had Minister Osborne.

**MR. HOGAN:** Okay.

So we've heard questions asked in some – and certain hard evidence that it takes a minister –

**MS. BREWER:** Mmm.

**MR. HOGAN:** – a while to get up to speed.

**MS. BREWER:** Mm-hmm.

**MR. HOGAN:** So having dealt with, I guess, a bit of a revolving door of Finance ministers, did you have any issue with the fact that it took these ministers time to get up to speed and maybe they weren't necessarily up to speed when they had to make these financial decisions?

**MS. BREWER:** Minister Kennedy, no, he was – both as Natural Resources minister and he had been in Finance before as well; Minister Marshall, again, he would have knowledge; Minister Johnson, I'm not sure what her knowledge would have been; Minister Wiseman, he would have only known it as being Speaker; and then, of course, Minister Bennett would have known it from, I guess, her Nalcor board days.

The issue that I had was more with the capacity of the department and resources, every time, had to go towards re-briefing a minister and, you know, there was a lot of energy put in that could have been spent doing other things. And as well, the direction constantly changed, so –

**MR. HOGAN:** The what, sorry? What changed?

**MS. BREWER:** The direction constantly changed. So while Muskrat Falls might have been important for one minister, the next minister there was another thing that was important to them. So you didn't have that continuity of focus and direction and purpose. And, I mean, it takes a while, even for a deputy, even myself, to come into a department and the learning curve and to be comfortable with the files. I'm not sure if that answered your question.



**MR. HOGAN:** Yes, it does.

So you did say as well that you had a problem with resources within the department. Can you elaborate –

**MS. BREWER:** Oh my God –

**MR. HOGAN:** – on that a little bit?

**MS. BREWER:** – yes. Well, when I came in – I came in, it was the latter part of June.

Government was – had gone through a very difficult budget. We all – I was here at the Labour Relations Agency. I think – I can't remember the number, it was anywhere from 10 to 20 per cent we had to cut our salary budgets. So my understanding, Department of Finance, every single division, lost one if not two people.

The Comptroller General had retired the end of June, so the person who would've been the assistant secretary that would've been involved with Laurie Skinner, I guess, charting and crafting the 10-year sustainability plan had moved over as Comptroller General. That position then was left vacant. I don't think it was filled until close to October, so I pretty much then had to carry the burden of the full fall fiscal update. Any presentations to rating agencies was left to me to do that.

I recall July getting the call from then-Minister Marshall; he was the minister of Natural Resources. He said Donna did anyone tell you, he said, that your lead negotiator for the Corner Brook Pulp and Paper, the loan financing – you know, the mill was in trouble. And I said no, Sir, no one told me that. And he said, well, he said, they're on vacation now, he said, but they're going to be contacting you in August. So that's something else that wouldn't be ordinarily – in the ordinary course of things that I had to deal with.

And that also came to fruition. I mean, we were ready to do an announcement in December, right around the time of Muskrat Falls financial close, and something happened that derailed that until the winter. So – and then I think I had a visit from Mr. Gary Norris. He was representing Alderon at the time and there was a major mining operation was happening in Labrador West and they needed to have – because of the

complexities of a Chinese company, they needed a tax agreement with the province. So all that – I remember saying to someone, this job is a gift that keeps on giving, right? It was just one thing after another.

**MR. HOGAN:** It sounds like especially during financial close.

**MS. BREWER:** Especially during financial close and –

**MR. HOGAN:** You and your department were stretched very thin?

**MS. BREWER:** Very thin.

**MR. HOGAN:** Do you think that leads to maybe the confusion about the 6.2 or the 6.5 number that we've been talking about here?

**MS. BREWER:** In terms of reporting up to people?

**MR. HOGAN:** Well, in terms of who knew what, when and who it was reported to and how it was reported.

**MS. BREWER:** No, I think it's more of not – you know, as the Commissioner has said, not good records management and not documenting everything I think is the issue. It might have been a rush. Like, I look at that direction note. Had I seen that, I'm pretty confident that I would've said, you know, you've got to put the number in there. We know the number; you've got to put the number in there, right, you know? So, it might have been people thinking stuff was clear, and maybe not as clear and, you know, six years later –

**MR. HOGAN:** I guess my point is that –

**MS. BREWER:** – looking back at it.

**MR. HOGAN:** – if you're stretched so thin, I mean, you might forget to tell the minister. You might forget to tell your deputy. You might say: Geez, I met with him on that. I think we've talked about Muskrat Falls –

**MS. BREWER:** But, I mean, he was the distance you and I were.

**MR. HOGAN:** Mm-hmm.

**MS. BREWER:** We saw each other every day, pretty much, except when he was in the district. I just –

**MR. HOGAN:** Okay.

You did say Finance didn't have the – I don't know if this is the right word – expertise to review the financial impact of megaprojects. I think you said that to Mr. Hiscock.

Do you recall saying that?

**MS. BREWER:** Yes, yeah.

**MR. HOGAN:** So was that discussed that that was missing from the Department of Finance?

**MS. BREWER:** I don't think it's part of the Department of Finance's mandate, to be honest, so I don't think it's missing. It might be missing from government somewhere. Maybe the department of – you know, our capital works department, which was – it's various names. I think it's Transportation and Works even today, right?

But, I mean, you know, when you look at the mandate of the Department of Finance, you look at our strategic directions, you look at our annual report, there's no mention of Muskrat Falls in any of that. You look at Natural Resources, Muskrat Falls is front and centre.

**MR. HOGAN:** Who is responsible for the – to deal with the overall cost of the project? It has to come through the Department of Finance, doesn't it?

**MS. BREWER:** But it comes through Natural Resources first. The – you know, that budget is in the Department of Natural Resources. It's no different –

**MR. HOGAN:** Right.

**MS. BREWER:** – than I would feel I was accountable for the budget of Eastern Health –

**MR. HOGAN:** But if the budget –

**MS. BREWER:** – but it has to feed into me, so I can do the rollup and –

**MR. HOGAN:** And if the Department of Natural Resources comes to you and says we need more money in our budget, that is the decision of the Department of Finance, isn't it?

**MS. BREWER:** Well, no, we would then bring it forward to the Treasury Board and to the Cabinet, and they would then make the decision, right?

**MR. HOGAN:** Right.

**MS. BREWER:** Right? We were just the coordinators. We receive the submissions in. You know, we did the analysis, we did the first (inaudible), we would roll it all together and then we would present, you know, here – if you do nothing, and you accept everything the departments ask, here's what your deficit is going to be, here's what your borrowing is going to be, here's what we recommend it should be, and then there's a negotiation with the departments to try to get it down to a certain level.

And different years, it's been different. I know when Premier Williams was there, a lot of the budget was done with him and the minister of Finance and departments came in directly to him. With Minister Bennett, Treasury Board became the vehicle for all these discussions. I can't speak to – no, actually, I can because I had to appear before them.

With Minister Kennedy, there was a selected – it wasn't Treasury Board, it wasn't any – it was a special ad hoc group of two or three ministers that were tasked to go through with each department, the individual budgets, right?

**MR. HOGAN:** Well, again, like you said, depending on the minister, the policy changes.

**MS. BREWER:** Yeah. Yeah, I mean, technically, in the *Financial Administration Act*, it always should be Treasury Board.

**MR. HOGAN:** Exactly.

**MS. BREWER:** But somewhere along the way, it wasn't just so much that the Department of

Finance got marginalized; somewhere the role of the Treasury Board has gotten lost.

**MR. HOGAN:** You mention you met with Mr. Martin and the premier around the time of financial close, about the UARB issue.

**MS. BREWER:** I remember being at a meeting, I think it was near the end of October. I don't know if that was the sole topic, but I can remember her being concerned, and I can remember raising the issue that if financial close doesn't happen and we have to continue, I mean, either they were gonna slow down the project, which I don't think that was going to happen; or they were gonna have to continue on and then the province would have to continue to fund the equity, and I guess the next financial close then, I would expect, would have happened somewhere mid-January, early February. Because you don't really go into the markets the first two week after Christmas, it's just not a good time.

**MR. HOGAN:** So what was the concern with the UARB in October of 2013?

**MS. BREWER:** It was – my understanding was the condition precedent, right, that the – Nova Scotia had to sanction – and I don't know the exact nuances –

**MR. HOGAN:** The –

**MS. BREWER:** – but I knew enough that there was a condition precedent attached to it and there was some risk of that condition precedent wasn't going to be ticked off by the federal government, and therefore we wouldn't have the federal loan guarantee and we couldn't –

**MR. HOGAN:** Right.

**MS. BREWER:** – go to financing without the federal loan guarantee.

**MR. HOGAN:** Yeah. Right, what you said this morning is: if UARB wasn't resolved at financial close.

**MS. BREWER:** Mm-hmm.

**MR. HOGAN:** So was your understanding that at financial close it was or was not resolved.

**MS. BREWER:** My understanding, it was resolved.

**MR. HOGAN:** Your understanding is it was.

**MS. BREWER:** Yeah. At the – with that, yeah. 'Cause we had the federal loan guarantee so whatever was done was done sufficiently that the feds –

**MR. HOGAN:** You know the subsequent evidence –

**MS. BREWER:** – ticked the box.

**MR. HOGAN:** – on that, though, don't you?

You're, like, that –

**MS. BREWER:** I'm not sure.

**MR. HOGAN:** That Canada eventually came back and said: no, you don't get the federal loan guarantee, the UARB issue is not resolved.

**MS. BREWER:** I thought that was more before the fall; I thought that was –

**MR. HOGAN:** Okay.

**MS. BREWER:** – more around the –

**MR. HOGAN:** I'm just – I was concerned with what you thought, and what Mister – Ms. Dunderdale said at financial close.

**MS. BREWER:** Okay.

**MR. HOGAN:** When Mr. Hiscock was asking you questions, you referred to people leaving the system at around 18 or 19 cents.

**MS. BREWER:** The demand?

**MR. HOGAN:** Yeah.

**MS. BREWER:** People would try to conserve and maybe do other things or convert to oil or –

**MR. HOGAN:** So where was that information coming from?

**MS. BREWER:** That was coming from, I think, through Craig Martin, through discussions he had had with Nalcor.

**MR. HOGAN:** Okay. And did you review any report?

**MS. BREWER:** No, I don't recall and I don't think it was a report, as opposed to their models – whatever models that they do, right.

**MR. HOGAN:** And these were Nalcor models?

**MS. BREWER:** They were Nalcor models, yeah.

**MR. HOGAN:** You also said to Mr. Hiscock: it was Budget 2016-17 that you started looking at or this started to become a concern about the impact rates would have on families.

**MS. BREWER:** I believe so. I can't remember whether it was '16 or '17 exactly, but –

**MR. HOGAN:** Okay.

**MS. BREWER:** – I know it was Minister Bennett's time as opposed to a different time. Yeah.

**MR. HOGAN:** Okay.

So my question is: Was there any ongoing analysis about rates that you were aware of, prior to –

**MS. BREWER:** My understanding, there was –

**MR. HOGAN:** – (inaudible).

**MS. BREWER:** – discussions but it was through Natural Resources.

**MR. HOGAN:** So not you.

**MS. BREWER:** Now, Craig may have been aware but I just don't recall.

**MR. HOGAN:** Not through the Department of Finance.

**MS. BREWER:** Not that I recall, no.

**MR. HOGAN:** I just want to ask again about that, the \$300-million increase. And you said the money wasn't needed until budget 2014-2015.

**MS. BREWER:** Right.

**MR. HOGAN:** So can you just explain to me how it works? If every department sort of has a theoretical number where they're over budget in 2013, let's say, and –

**MS. BREWER:** Well, from a department's perspective, it's cash. Right or wrong, the House of Assembly still votes only on the Estimates. They don't vote on the actual budget, they vote on the Estimates.

**MR. HOGAN:** But they would've voted –

**MS. BREWER:** And Estimates is – sorry, the Estimates is a department's best estimate as to what they're going to actually spend between April 1 of one fiscal year and March 31 of the other.

**MR. HOGAN:** Right.

**MS. BREWER:** So had we not got the agreement of the federal government to move the COREA baseline to 6.5, it was conceivable that we would've had to make a cash payment in December of 2013 that had not been budgeted for, of the – well, it wouldn't have been –

**MR. HOGAN:** Right.

**MS. BREWER:** – \$300 million, it would've been \$300 million divided by however many years was left to commissioning.

**MR. HOGAN:** But because of the COREA, you didn't have to make that \$300-million payment.

**MS. BREWER:** We would have, if they had not moved it to 6.5. So there's two things they did: They agreed to move it to 6.5 and they agreed to move the first COREA payment to the following year, right?

So, initially, they were saying: No, we'll measure at financial close. If it's 6.5, then \$300 million divided by – I can't remember how many years left –

**MR. HOGAN:** The formula, yeah.

**MS. BREWER:** – whatever that amount was, would have had to have been paid as of financial close into a COREA account. And there was no money in the budget for that because they had not anticipated it back when the budget was done –

**MR. HOGAN:** Right.

**MS. BREWER:** – the previous March, right?

**MR. HOGAN:** So, from that perspective, that even shows – it's really important why financial close is important at that point in time, isn't it?

**MS. BREWER:** Yes, right.

But because they had – because all this had been resolved, then it didn't – it became – it's still a financial issue for government, but it didn't become an approval – a House Estimates approval issue until the '14-'15 budget –

**MR. HOGAN:** Okay –

**MS. BREWER:** – because we didn't really need the cash –

**MR. HOGAN:** Right.

**MS. BREWER:** – until '14 –

**MR. HOGAN:** (Inaudible.)

**MS. BREWER:** December '14 was when we would've made (inaudible).

**MR. HOGAN:** It became an issue for 2014-'15.

**MS. BREWER:** Yes, yeah.

**MR. HOGAN:** You sort of kicked it down the road a year.

**MS. BREWER:** Yes.

**MR. HOGAN:** Okay.

So what was the analysis done to say, well, can we afford the \$300 million in 2014-'15?

**MS. BREWER:** I mean on an \$8-billion budget, you would've –

**MR. HOGAN:** Well, it had to come – right –

**MS. BREWER:** Right.

**MR. HOGAN:** – \$8 billion budget.

**MS. BREWER:** Yeah.

**MR. HOGAN:** You've taken –

**MS. BREWER:** Yeah. It didn't –

**MR. HOGAN:** The 300 has to come from somewhere.

**MS. BREWER:** Yeah.

**MR. HOGAN:** So where did it come from? Do you know?

**MS. BREWER:** It would've –

**MR. HOGAN:** I know it's a small number compared to \$8 billion, but it's a large number that lots of departments would probably want to (inaudible).

**MS. BREWER:** I'm not sure if it came from cash on hand or if it was part of the borrowing requirement. I'd have to go back –

**MR. HOGAN:** Okay.

**MS. BREWER:** – and check.

**MR. HOGAN:** And there was discussion about going to – well, I guess recalling the House. That might've been an option in 2013 to ask for an extra \$300 million in borrowing?

**MS. BREWER:** I think it was already opened.

**MR. HOGAN:** Pardon me?

**MS. BREWER:** I think it was already opened because they were dealing with that Bill 61.

**MR. HOGAN:** Okay.

**MS. BREWER:** I think the House was already opened.

**MR. HOGAN:** So it was discussed that possibly when the House was open, there would have been a bill put forward to –

**MS. BREWER:** Yeah, I think the rule is if the House is sitting, you have to bring in the money bill.

**MR. HOGAN:** Yeah.

**MS. BREWER:** If the House is not sitting, there's provisions in the *Financial Administration Act*. If the minister of Finance and the applicable minister agrees it's in the public interest, you can issue a special warrant.

**MR. HOGAN:** Okay, so was that special warrant discussed?

**MS. BREWER:** I think what we said, depending on the timing of when it was needed, it would be a supplementary supplier's special warrant, but I think the House was still opened.

**MR. HOGAN:** But how serious was the discussion about having to issue a special warrant for \$300 million?

**MS. BREWER:** I think the premier said it wasn't on.

**MR. HOGAN:** Okay. Why did the premier say it wasn't on?

**MS. BREWER:** I'm assuming it's because – I'm not sure.

**MR. HOGAN:** So I'll just –

**MS. BREWER:** I just don't think that she wanted to go to the House and ask for another three –

**MR. HOGAN:** So I'll put this to you.

**MS. BREWER:** – whatever the amount was.

**MR. HOGAN:** For three years the public thought it was a \$6.2-billion number. If the special warrant had been brought forward, the public, for the first time, would've known it was \$6.5 billion.

**MS. BREWER:** That's probably correct. Yeah.

**MR. HOGAN:** So is that a reason that she didn't want the public to know in 2013?

**MS. BREWER:** I can't put that on her – in her – I can't – I don't recall it being discussed that way.

**MR. HOGAN:** Okay, but you do agree it would've been the first public disclosure of an increase?

**MS. BREWER:** It would've had to – would've have to say that it was for Muskrat Falls, definitely. Yeah.

**MR. HOGAN:** Yes, okay.

Thank you very much.

**MS. BREWER:** Okay.

**THE COMMISSIONER:** Thank you.

Former Nalcor Board Members.

**MS. G. BEST:** No questions.

**THE COMMISSIONER:** All right, Government of Newfoundland and Labrador, I swear I skipped you for some reason and I don't –

**MR. RALPH:** That's fine (inaudible).

**THE COMMISSIONER:** – I don't know why. So –

**MR. RALPH:** I know these are former employees of –

**THE COMMISSIONER:** Right, but I'm only doing that –

**MR. RALPH:** – the government, so I was assuming that's why you did that.

**THE COMMISSIONER:** Right, but we only agreed to that for Nalcor, so I –

**MR. RALPH:** Yeah.

**THE COMMISSIONER:** – I really –

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

**THE COMMISSIONER:** – it’s just a slip on my part. I apologize.

**MR. RALPH:** Ms. Brewer, we’ve talked on the phone before.

**MS. BREWER:** Mm-hmm.

**MR. RALPH:** This is the first time we met in person.

**MS. BREWER:** Mm-hmm.

**MR. RALPH:** My name is Peter Ralph and I represent the Government of Newfoundland and Labrador. And perhaps we can go to Exhibit 02688 first?

**MS. BREWER:** 0268 – 02668?

**THE COMMISSIONER:** 02688.

**MR. RALPH:** 02688.

**MS. BREWER:** I don’t think I have that.

**THE COMMISSIONER:** That would be at –

**MS. BREWER:** Do I?

**MR. RALPH:** Tab 7.

**THE COMMISSIONER:** – tab 7.

**MR. RALPH:** Binder 1.

**MS. BREWER:** Mmm.

**MR. RALPH:** And perhaps we can start at the bottom.

**MS. BREWER:** The Derrick Sturge one?

**THE COMMISSIONER:** No, it’s –

**MR. RALPH:** Wrong exhibit.

**THE COMMISSIONER:** – 02688 at tab 7.

**MR. RALPH:** I might have the wrong exhibit, just a second.

**MS. BREWER:** Tab 7 is 02668.

**MR. RALPH:** I’m sorry, 02668. I’m sorry.

**MS. BREWER:** 02668, okay.

**MR. RALPH:** Sorry.

**MS. BREWER:** Okay.

**MR. RALPH:** If we can go to the bottom of that –

**MS. BREWER:** Yeah.

**MR. RALPH:** – email.

So you’re familiar with this email? This is an email by Mr. Myrden to Mr. Sturge.

**MS. BREWER:** Yes, yeah.

**MR. RALPH:** Do you recall seeing that email?

**MS. BREWER:** Oh, yes. Yes, sorry.

**MR. RALPH:** Yes, okay.

**MS. BREWER:** I’m sorry, I wasn’t sure.

**MR. RALPH:** That’s fine.

**MS. BREWER:** I didn’t know (inaudible).

**MR. RALPH:** If we can scroll up a bit? And it says here – so on October 18 Mr. Sturge replies and says, “we will start pulling something together.”

And then – keep going up – on October 23 Mr. Myrden says, the M and the DM – I’m assuming that’s the minister and the deputy minister –

**MS. BREWER:** Yeah, sure.

**MR. RALPH:** – “are wondering when they might see something relative to the request below.”

And then we can go up further. And on October 23 there’s a reply from Mr. Sturge: Hi Paul, we received one draft and making some revisions. We will need to review with Ed also be flipping it over – “Ed is out of town for a couple of days, so realistically probably not before Friday. Data

we are working is still DG3 - no cost updates at this point.”

Now, if we keep going up and on October 27 it's from yourself to Mr. Myrden, Mr. Bown, Mr. Morris and Mr. Au. And so you're saying: “Minister needs information as noted below to assist him prepare for QP / HOA. He says he would like to call Ed directly but has misplaced Ed's cell number. Do you have it.

“In addition to below. He needs” the “details of this year's \$531 million budgeted for equity by project (Oil and Gas vs. MF) And also up to March 31, 2013 what equity has NL provided and for what projects. What is projected for 14/15?”

In the “meantime I will provide him a copy of ... Nov 2013 equity request oil and gas which gives him some of this information. As well as materials provided by Scott Pelley ....” And perhaps we can – “on October 10 shows Nalcor's equity requirements for the balance of” the year.

And there's a reply from Charles.

And maybe we can go, now, to 02522.

**MS. BREWER:** Is that a particular tab or –?

**MR. RALPH:** Oh, I'm sorry.

**MS. BREWER:** I see a 02523.

**THE COMMISSIONER:** 02522 will be on your screen.

**MS. BREWER:** Okay.

**MR. RALPH:** And so Mr. Warren is sending a document to yourself and Mr. Myrden and others. And perhaps we can go to – I think it's the last page. And so if you look on the fourth line down – the fifth line down – it says: “Construction capital expenditures.”

**MS. BREWER:** Mm-hmm.

**MR. RALPH:** Do you see that?

**MS. BREWER:** Sure. Yeah.

**MR. RALPH:** And then we go over – it's 6,202. So, this is November the 1st –

**MS. BREWER:** Okay.

**MR. RALPH:** – that this is sent. So Mr. Myrden, in his email, is asking for, basically, the total expected costs.

**MS. BREWER:** Sure. Yeah.

**MR. RALPH:** And so what you're given is DG3. And so at this point in time, is this particularly helpful to the Department of Finance?

**MS. BREWER:** It was to the minister because it gives him a history of the 6.2 and it gives him what the total project cost was, including the financing and other costs, and it shows the breakdown by project. And I think, on the bottom further, it even shows the equity that's required over the number of years.

**MR. RALPH:** Yes.

**MS. BREWER:** So, I mean, it was useful information, but it would have been more useful if there was a cost update to have that –

**MR. RALPH:** Right.

**MS. BREWER:** – right?

**MR. RALPH:** So, you've heard testimony in this Inquiry –

**MS. BREWER:** Mm-hmm.

**MR. RALPH:** – that there were final forecast costs projected by Nalcor before this point in time –

**MS. BREWER:** Right, yes. Yeah.

**MR. RALPH:** – of \$6.8 to \$7 billion. Are you aware of that?

**MS. BREWER:** Yes, I heard that.

**MR. RALPH:** And, I guess, what he – what Mr. Myrden was asking for was –

**MS. BREWER:** Mm-hmm.



**MR. RALPH:** – that type of information.

**MS. BREWER:** Mm-hmm.

**MR. RALPH:** Is that fair to say?

**MS. BREWER:** Sure.

**MR. RALPH:** Now, if we could go to 03940.

**THE COMMISSIONER:** 03940. That'll be on your screen.

**MR. RALPH:** And this is the information note, which – it's a bit confusing, I think. Because it's dated after –

**MS. BREWER:** Yeah.

**MR. RALPH:** – November 29.

**MS. BREWER:** Yeah.

**MR. RALPH:** And if we can go right to the sixth page.

So there's an MC here –

**MS. BREWER:** Mm-hmm.

**MR. RALPH:** – and it says – it's a joint submission of the minister of Natural Resources, minister of Finance respecting Muskrat Falls. "A presentation was provided by the Deputy Minister of Natural Resources." Which seems odd because when we go back to the note, the note is approved by –

**MS. BREWER:** Justice.

**MR. RALPH:** Well, I think it's the – I think your minister signed off on it.

**MS. BREWER:** My minister, yeah.

**MR. RALPH:** Do you want –

**MS. BREWER:** But it was drafted by Todd and Heather –

**MR. RALPH:** And Mr. Myrden.

**MS. BREWER:** – and Heather (inaudible), right? Yeah.

**MR. RALPH:** Let's go back up again to the –

**MS. BREWER:** Yeah.

**MR. RALPH:** – bottom of the information note. Okay. Right here.

So, this came up through –

**MS. BREWER:** Mm-hmm.

**MR. RALPH:** – Finance. But there was a presentation by the deputy minister.

**MS. BREWER:** Can I just see the top top? Does it say the department? Department of Justice, it says.

**MR. RALPH:** Yeah. It's a bit confusing, isn't it? Why you would have the minister –

**MS. BREWER:** Plus he wasn't both –

**MR. RALPH:** – signing off on a (inaudible) –

**MS. BREWER:** Was he both for a time?

**MR. RALPH:** I mean, maybe he was. I'll have to check that out.

**MS. BREWER:** I can't recall. I can't recall.

**MR. RALPH:** But it is – it's surprising here that that – there isn't an indication of the \$300-million overrun in this information note.

**MS. BREWER:** I seem to recall – and you might have to check it – but I think the Minister of Justice wasn't a lawyer. So he might have been Attorney General.

**MR. RALPH:** Right.

**MS. BREWER:** So anything of a legal matter, he might have had to –

**MR. RALPH:** Right.

**MS. BREWER:** – you might want to double-check that –

**MR. RALPH:** I'll check into that.

**MS. BREWER:** – just vaguely, right?

**MR. RALPH:** Okay.

**MS. BREWER:** Because I think it was minister – Darin King –

**MR. RALPH:** Yes.

**MS. BREWER:** – was minister of Justice, I think.

**MR. RALPH:** So it's hard to imagine that this is the first time that this issue comes before Cabinet. Can you recall if this issue would have been taken to Cabinet before?

**MS. BREWER:** We definitely didn't know about it when they dealt with – on November 14. We didn't know about it, right? Because – or we didn't know the resolution of it. I can't recall it coming up on the 14th.

**MR. RALPH:** And why do you say the 14th?

**MS. BREWER:** Well, the 14th was when they dealt with these agreements, right? So, it was almost like someone was trying to put the record together. I really don't know why they did it. I don't understand the December 2. Because initially when I saw it, I thought, well, maybe it was circulated to the people on the 2nd, but then the briefing note itself is dated –

**MR. RALPH:** Right.

**MS. BREWER:** – the 2nd, right?

**MR. RALPH:** Because it seems hard to believe that the Finance minister –

**MS. BREWER:** (Inaudible) but it was a change, right? At the time that they did the equity support agreements and the equity guarantee agreements, they were drafts. And there was no indication at that time from Canada that this reference to – the reference to the COREA was going to be in the financing agreements, but they subsequently wanted them also reflected in those other two agreements.

**MR. RALPH:** Right.

**MS. BREWER:** So, I'm assuming – and this is the confusing part because you can see the XX up here on the corner – XX2013 – I can't see the number. It's been redacted. But if you go down to the minute, the minute also refers to an XX.

**MR. RALPH:** So, that might not be the same number.

**MS. BREWER:** It may –

**MR. RALPH:** There could be another presentation to Cabinet.

**MS. BREWER:** It could be, yes.

**MR. RALPH:** Is my guess.

**MS. BREWER:** Okay. It could be.

**MR. RALPH:** But likely, maybe the end of October –

**MS. BREWER:** It might have been the one that Charles did.

**MR. RALPH:** – somewhere there would have been –

**MS. BREWER:** You're right. Yeah.

**MR. RALPH:** That there would have been a presentation –

**MS. BREWER:** Yeah.

**MR. RALPH:** – to Cabinet authorizing the–

**MS. BREWER:** Yeah.

**MR. RALPH:** – minister of Finance to enter into these – the equity support agreements.

**MS. BREWER:** Mm-hmm.

**MR. RALPH:** Because otherwise, it doesn't seem to make much sense, does it?

**MS. BREWER:** No.

**MR. RALPH:** There's a presentation there by the deputy minister. I'll check that myself actually –

**MS. BREWER:** Yeah.

**MR. RALPH:** – and see if ...

**MS. BREWER:** Yeah.

**MR. RALPH:** Now, if we could go to 01930. I don't think you have that, right?

**THE COMMISSIONER:** No, this will be on your screen.

**MR. RALPH:** And we go to page 2. So this is an independent engineer's report, and this one is dated December 30, 2013. Now, if we can go – are you familiar with this report?

**MS. BREWER:** Is that the one that got released public in the winter?

**MR. RALPH:** I think it would've been – I think you would've received that in March. I'm not quite sure, but I'll – I want to go to page 114.

And if we can scroll down to the bottom. And here's a table – or just – yeah, this table here so I believe this is based on information that the – was made available to the independent engineer on November the 19th, 2013.

**MS. BREWER:** Okay.

**MR. RALPH:** So it doesn't – it makes it into this report at the end of December, but it says Awarded Work to November 2013 was \$2.4 billion, and the net variance was 16 per cent of awarded work. And then we look at Soon to be Awarded Work and it's \$1.8 billion, and it's a variance of 125 and 7 per cent. So my calculation: at that point, of the work that's awarded or soon to be awarded, you're at, like, 12 per cent –

**MS. BREWER:** Okay.

**MR. RALPH:** – over base estimate. And so, then, you end up getting – the overall net variance is \$514 million. So that is, I think, probably approximately, you know, 9 per cent of 6.202. Make sense to you?

**MS. BREWER:** I don't –

**MR. RALPH:** So –

**MS. BREWER:** – I don't own a calculator anymore.

**MR. RALPH:** – that's fine, fair enough.

So, you know, you were – you understood there was a \$6.5-billion number.

**MS. BREWER:** Yes.

**MR. RALPH:** But were you advised – at this point, it looks like we're over \$500 million in excessive base estimates.

**MS. BREWER:** But they must have drawn on the contingency, I'm assuming.

**MR. RALPH:** Well, that's a good point. Let's go to the next page, if we could.

So then we've got the unreconciled work and – which is over \$2 billion. So that, basically – they assumed that that would not increase, that would stay the same. That's the only way I think you can get –

**MS. BREWER:** Mm-hmm.

**MR. RALPH:** – to 6.531. But even so, you still – here we see the contingency reduction –

**MS. BREWER:** Okay.

**MR. RALPH:** – post-DG3 of \$184 million. And so your contingency now is 182 and your escalation allowance reduction post-DG3 is \$330 million, which is a 90 per cent reduction. So if you had seen these numbers before financial close, would you be alarmed by this information?

**MS. BREWER:** No, I think it would've been around where we thought, based on what they were telling us.

**MR. RALPH:** So you think that's where it was based on the 6.5 number?

**MS. BREWER:** Yeah, it seems about right.

**MR. RALPH:** So you'd have no concerns about the fact that they're now – the project is operating on \$182 million of contingency?

**MS. BREWER:** I would've been concerned because the – I think the independent engineer was concerned that the estimate was too low. So in that respect we –

**MR. RALPH:** Right.

**MS. BREWER:** – would've been concerned about the contingency being low, but not that it's – I can't remember if he commented on the adequacy of this 182 versus the original 368, was it?

**MR. RALPH:** What's that? I'm sorry.

**MS. BREWER:** Does he – I'm – what I had read prior to financial close wasn't this document; it was the document where he was commenting on the DG3 estimate.

**MR. RALPH:** Yes.

**MS. BREWER:** And he was saying that the \$368 million was low –

**MR. RALPH:** Right.

**MS. BREWER:** – was in the lower end. It was an acceptable range but it was the lower end –

**MR. RALPH:** Right.

**MS. BREWER:** – of an acceptable range.

**MR. RALPH:** So now we're into –

**MS. BREWER:** And I recall –

**MR. RALPH:** – \$182 million.

**MS. BREWER:** – I thought he said it should be doubled.

**MR. RALPH:** Right.

**MS. BREWER:** Right? That's just my memory. But now I don't know, because I haven't seen this report or I don't recall – I don't remember it anyway, if he was commenting that the 182, if they left, was too low.

**MR. RALPH:** Right.

**MS. BREWER:** And remember he said the 368 was too low.

**MR. RALPH:** Right.

**MS. BREWER:** But the 182 on \$2 billion or whatever the amount that's not yet –

**MR. RALPH:** Right.

**MS. BREWER:** – let to tender, I know – I don't recall what he said in this report about the adequacy of the 182.

**MR. RALPH:** Right.

**MS. BREWER:** Does that – does it say anything?

**MR. RALPH:** No, fair enough.

**MS. BREWER:** Okay.

**MR. RALPH:** Yeah, I understand. Yeah.

**MS. BREWER:** Okay.

**MR. RALPH:** So when you look at that, you're satisfied that when you are, I guess, given a number of 6.5 and you just have a number, you don't have a breakdown of that number before financial close, is that right?

**MS. BREWER:** No, I don't recall getting a breakdown of the number until the winter. And the 6.5 was the overruns that happened at a point in time. And we –

**MR. RALPH:** Yes.

**MS. BREWER:** – understood that that wasn't a guarantee, right?

**MR. RALPH:** Right.

**MS. BREWER:** That they were going to try to mitigate so it could be less if we were lucky, but it also could be more.

**MR. RALPH:** Right.

**MS. BREWER:** Right? That was my recollection at the time.

**MR. RALPH:** And so if you had received this information that the independent engineer had – and I think received on November 19 – what would you have done with this information?

**MS. BREWER:** Would've made sure Minister Marshall was aware, right?

**MR. RALPH:** If we –

**MS. BREWER:** I probably would've asked to have that sheet updated.

**MR. RALPH:** The sheet that you were given –

**MS. BREWER:** The –

**MR. RALPH:** – on November 1?

**MS. BREWER:** It's like a placemat that – the nice little neat one that showed all the different components. Probably would've asked to have that updated.

**MR. RALPH:** So that was the spreadsheet you got – or not spreadsheet but, I guess, the table that you received on November 1 that said –

**MS. BREWER:** Yeah.

**MR. RALPH:** – that the DG was 6.202?

**MS. BREWER:** Yes, yeah.

**MR. RALPH:** Now, if we can go to Exhibit 02690?

**THE COMMISSIONER:** 02690; again, it'll be on your screen.

**MR. RALPH:** So I think what's happening here in this email, Mr. Sturge is sending you an update of that – the table that you received –

**MS. BREWER:** Okay.

**MR. RALPH:** – November 1?

**MS. BREWER:** Mm-hmm.

**MR. RALPH:** And if we can go to page 3, and you see now it's called: "Total Project Budget." Do you see in the left-hand column there? Five – can you see it? It's on the furthest left-hand

column under CADMM. Five rows down it says: "Total Project Budget."

**MS. BREWER:** Oh, yes. Okay.

**MR. RALPH:** Yeah.

**MS. BREWER:** Yeah.

**MR. RALPH:** And if you go right over –

**MS. BREWER:** 6.531, yeah.

**MR. RALPH:** 6.531.

**MS. BREWER:** Yeah.

**MR. RALPH:** So that is – this is March 11, 2014. Do you believe that's the first time you would've been given the 6.531 number?

**MS. BREWER:** I saw the email where I received this, and Derrick had made reference to the fact that something was submitted maybe a few weeks before that. Maybe not in this format, but it would've been, I would assume, part of their budget submission.

**MR. RALPH:** Right.

**MS. BREWER:** Okay?

**MR. RALPH:** So I guess the question is: Did you receive this number before financial close?

**MS. BREWER:** Not that I recall.

Down on the corner there, it says: As of January 18.

**MR. RALPH:** As of January 18.

**MS. BREWER:** Mmm.

**MR. RALPH:** Thank you.

Now, I looked at the – and I think you had a chance to look at them as well – the Public Accounts.

**MS. BREWER:** Yes, yeah.

**MR. RALPH:** I think it's called, *The Public Accounts Volume 1, Consolidated Summary, Financial Statements* –

**MS. BREWER:** Mm-hmm.

**MR. RALPH:** – ending March 31, 2013.

**MS. BREWER:** Mm-hmm. Yeah.

**MR. RALPH:** And I'll ask subsequently to have this submitted as an exhibit, but it's a public document. And on page 56 of this document, it says Notes to the Consolidated Financial Statements, and there is a category – a heading called Subsequent Event.

**MS. BREWER:** Mm-hmm.

**MR. RALPH:** I'm just going to read this to you, and perhaps you can explain it to us: "Subsequent to year end, the Province, through Nalcor Energy and subsidiaries, entered into new commitments related to the Lower Churchill Project," in brackets, "(the Project)." Now, I just want to be clear here, so it's dated March 31, 2013, but they didn't actually come out until, I think, the end of December 2013.

**MS. BREWER:** Yes, yeah.

**MR. RALPH:** Is that right?

**MS. BREWER:** And it would've come out earlier – it would've been due to come out in October, but my recollection was the Auditor General held it. He wouldn't release it because he wanted the subsequent event note done.

**MR. RALPH:** Okay, so –

**MS. BREWER:** So, he might have –

**MR. RALPH:** – he wanted to know what the impact of this agreement –

**MS. BREWER:** Well, he wanted to disclose to the public that these agreements had been entered into by the province, subsequent to March 31, 2013, but people should be aware when they read this information –

**MR. RALPH:** Right.

**MS. BREWER:** – that there's a subsequent event had happened, right?

**MR. RALPH:** And it says: "The Project, which is planned and developed by Nalcor Energy" through "its subsidiaries, consists of a Muskrat Falls hydroelectric plant, a transmission line connecting the Muskrat Falls plant to the Churchill Falls plant and a transmission line to move power for Muskrat Falls hydroelectric plant to the island ... of Newfoundland and Labrador.

"The electricity generated by the hydroelectric generating facility will be delivered through a high voltage transmission system to Newfoundland and Labrador, Nova Scotia and other Canadian and northeastern United States electricity markets. Construction is underway and will take approximately five years to complete. The Project will be financed in part by the Province through equity contributions to Nalcor Energy. The expected commitment will be \$1.9 billion; in addition, the province has committed to funding all contingent equity which may be required to cover cost overruns on each aspect of the" province – "of the Project," sorry. "The Project has also been financed through an issuance of bonds by Nalcor Energy's project subsidiaries in the amount of \$5.0 billion over 40 years .... The bonds are fully guaranteed by the Government of Canada."

So that's making reference to the – I guess, the commitments that the government of Newfoundland and Labrador –

**MS. BREWER:** Mm-hmm.

**MR. RALPH:** – has made in the equity agreements.

**MS. BREWER:** After March 31, 2013 –

**MR. RALPH:** Is that right?

**MS. BREWER:** – yeah.

**MR. RALPH:** Well, I looked and I don't think, at that point, that there is a number –

**MS. BREWER:** No.

**MR. RALPH:** – given.

**MS. BREWER:** No. And I mean, you can double-check with the Comptroller General's Office, but my understanding that they would only record actual commitments, legal commitments; they wouldn't record estimates.

**MR. RALPH:** Right.

**MS. BREWER:** Right.

**MR. RALPH:** Thank you very much, those are my questions.

**THE COMMISSIONER:** All right.

Counsel for Ms. Brewer.

**MS. VAN DRIEL:** No questions, Commissioner.

**THE COMMISSIONER:** Okay. I have a – oh, redirect.

**MR. LEARMONTH:** No redirect.

**THE COMMISSIONER:** Yeah, I have a few questions I'd like to put to you to you, Ms. Brewer.

Let me first of all just get an appreciation for this, because you're – you were the deputy minister of Finance; you're an employee of government and you mentioned earlier about there being an \$8-billion budget. And you sort of gave me the impression that, you know, an increase of a \$100 million, \$300 million, it's not a big deal for a – for the government.

I'm going to put to you that in the Province of Newfoundland and Labrador, \$300 million is a lot of money.

**MS. BREWER:** Mm-hmm.

**THE COMMISSIONER:** And politicians would want to know issues related to a cost that's in the hundreds of millions of dollars. Am I right or wrong on that?

**MS. BREWER:** I – maybe it was the context, maybe I didn't understand the question. I thought he (inaudible) in terms of a special warrant and Supplementary Supply –

**THE COMMISSIONER:** Mm-hmm.

**MS. BREWER:** – that in a budget of \$8 billion, if it was \$100 million or less, we would probably find it without having to resort to –

**THE COMMISSIONER:** Right.

**MS. BREWER:** – special warrants. So I apologize if I gave that impression –

**THE COMMISSIONER:** Okay.

**MS. BREWER:** – because that's not –

**THE COMMISSIONER:** Three hundred million is a lot of money.

**MS. BREWER:** It is a lot of money.

**THE COMMISSIONER:** And it's a lot of money –

**MS. BREWER:** Yeah. Especially when it's (inaudible) –

**THE COMMISSIONER:** – it's a lot of money to you as a deputy minister.

**MS. BREWER:** Mm-hmm.

**THE COMMISSIONER:** It's a lot of money to a politician.

**MS. BREWER:** It is. It is.

**THE COMMISSIONER:** Okay.

**MS. BREWER:** Yeah.

**THE COMMISSIONER:** That's what I wanted to know.

Now, how do you see your role, or what is your role as a deputy minister of the Crown?

**MS. BREWER:** Just as Finance or just in general?

**THE COMMISSIONER:** Let's talk about it generally, first of all.

**MS. BREWER:** In general it would be to – well, I would have the departments – so under

the *Financial Administration Act*, I'm the permanent head. So I'm responsible for the financial accountability of my own department in terms of budget and expenditures. I'm also responsible for the strategic directions that are set for me in terms of the Department of Finance and then would be accountable, then, through the minister to the House for that. I am answerable to the House in terms of any time I'm called before the Public Accounts Committee to talk about the budget for the Department of Finance or even, probably, more generally.

I know one time I had to appear, even, before the Management Commission of the House of Assembly to deal with a pension reform issue. I provide advice to the minister and I make sure the minister is prepared for when he has to go into the House and defend legislation that is brought forward by the Department of Finance and, ultimately, I report through the clerk to the premier –

**THE COMMISSIONER:** Right.

**MS. BREWER:** – on matters that are assigned to me.

**THE COMMISSIONER:** Okay.

So the role of the – of a public – and the reason I'm asking you this –

**MS. BREWER:** Mm-hmm.

**THE COMMISSIONER:** – is because in Phase 3 I'm actually doing a piece on the role of the public service –

**MS. BREWER:** Okay.

**THE COMMISSIONER:** – in government. So with regard to this role, if you're in the Department of Finance –

**MS. BREWER:** Mm-hmm.

**THE COMMISSIONER:** – then it's your responsibility to make sure that the minister is advised of any, you know, significant events that could impact that minister?

**MS. BREWER:** Sure.

**THE COMMISSIONER:** Okay.

So just to understand that, did I understand you, a moment ago, to say to Mr. Ralph that you were aware of a 6.5 number but you were not actually aware of the 6.531 'til some time in 2014?

**MS. BREWER:** That's correct, yeah.

**THE COMMISSIONER:** Okay.

So are you aware that documents were signed in – on November 23 – or 29, 2013, that actually have 6.531 on them?

**MS. BREWER:** Were they – I don't believe they were signed by government. I'm not sure if they were –

**THE COMMISSIONER:** No, they weren't signed by government, but –

**MS. BREWER:** – in the possession of the Department of Finance.

**THE COMMISSIONER:** – they were provided to government.

**MS. BREWER:** I think I knew later, because when we did the federal loan guarantee two, Paul Myrden had left government so I was the one – I was the point person then to be reviewing the agreements, and I think I might have saw them then –

**THE COMMISSIONER:** Right.

**MS. BREWER:** – but I don't recall if I knew at that time.

**THE COMMISSIONER:** So, at the very least, then, you were aware, as the deputy minister of Finance, that at the time of financial close –

**MS. BREWER:** Mm-hmm.

**THE COMMISSIONER:** – the project was \$300 million over.

**MS. BREWER:** At least \$300 million.

**THE COMMISSIONER:** At least \$300 million over.



**MS. BREWER:** Mm-hmm.

**THE COMMISSIONER:** And as the minister's advisor, did you or anyone in your office think it might be prudent to go to the minister and say: Mr. Minister, this is a big increase in a very short period of time. We just sanctioned this in 2012. Maybe we better have another look at this, do some sort of analysis, do something other than just accept the fact that there's a \$300 million increase at that stage. Did it –

**MS. BREWER:** No, because I think, as I indicated – even though I didn't – I can't recall exactly, I do recall the discussion of – that when you look at the total project costs and you look at the cost to the taxpayer, that there was a significant benefit to the financing that was going to be achieved.

**THE COMMISSIONER:** Look, you have a \$300 million increase –

**MS. BREWER:** Yeah.

**THE COMMISSIONER:** – in the cost. You can talk about the benefits until the cows come home.

**MS. BREWER:** Yeah, yeah.

**THE COMMISSIONER:** You have a \$300 million increase in the cost of your project. As a deputy minister, the people in the bureaucracy who are advising the minister – and I'm not –

**MS. BREWER:** Mmm.

**THE COMMISSIONER:** – saying this to put the blame on you or anyone –

**MS. BREWER:** Mm-hmm.

**THE COMMISSIONER:** – else. I'm just trying to –

**MS. BREWER:** Yeah.

**THE COMMISSIONER:** – it just seems to me to be an obvious point – did somebody not think about maybe we should have another look at this, maybe we should put the breaks on for a bit, figure out where this \$300 million is –

because you've already told you didn't have a breakdown of where it was.

**MS. BREWER:** Mm-hmm. Mm-hmm.

**THE COMMISSIONER:** Like, to me, it just seems to be natural, like, \$300 million is a lot of money. Somebody had to take notice of this, and was there ever advice given to the minister or to the premier or anybody else that, hey, maybe we better just put the breaks on for a bit and just sort of – just have another a look at this?

**MS. BREWER:** I don't believe so, and I don't think \$300 million – even though it is a lot of money – in the context of the sanctioning and the differential, I understand, was \$2.4 billion. I don't think that panic would have set in at that stage, and the direction was – through the government, was to get this done. And that's what we were all working diligently to get that done.

**THE COMMISSIONER:** Well I may be wrong on this, but my recollection of what Mr. Marshall said was that if he had been aware that there was a \$300 million increase –

**MS. BREWER:** Mmm.

**THE COMMISSIONER:** – it would have resulted in something happening at that stage of the game. So perhaps, you know, when I think about that –

**MS. BREWER:** Mmm.

**THE COMMISSIONER:** – and when I think about your response, I mean, the minister was just as much aware of it as you were, of this so-called \$2.4 billion –

**MS. BREWER:** Mm-hmm.

**THE COMMISSIONER:** – differential. There's still money that has to be paid; this adds to money that has to be paid back.

**MS. BREWER:** Yeah.

**THE COMMISSIONER:** Okay. Again, I just ask like, how come nobody thought about this? Nobody thought about saying: hold on, maybe

we better have another look at that, benefits notwithstanding.

**MS. BREWER:** Mm-hmm. Mm-hmm.

I mean, again, Commissioner, I wasn't there at the time of sanction, but the \$6.2 billion was an estimate. I mean, the people have good-faith belief that the project was gonna be built and completed, and the estimate was gonna be 6.2.

**THE COMMISSIONER:** Right.

**MS. BREWER:** Or were they aware that there was a range? And this was within that range. And as difficult as it is, it was \$300 million, it was still within a range and it was still within, you know –

**THE COMMISSIONER:** A range of what?

**MS. BREWER:** Well I read somewhere, there was some report there –

**THE COMMISSIONER:** The province –

**MS. BREWER:** – that –

**THE COMMISSIONER:** – the province advised the public that –

**MS. BREWER:** Mmm.

**THE COMMISSIONER:** – this project was gonna cost \$6.2 billion.

**MS. BREWER:** \$6 billion. Mmm.

**THE COMMISSIONER:** So what's –

**MS. BREWER:** But I guess I'm saying at the time, I mean, my history – even being on Treasury Board – is that most of the capital projects of – the government was doing wasn't even coming –

**THE COMMISSIONER:** Right.

**MS. BREWER:** – in on budget, let alone the Muskrat Falls, the 6.2.

**THE COMMISSIONER:** Correct.

**MS. BREWER:** I guess, I find it hard, even as a citizen, accepting that the government didn't anticipate or didn't believe that there would be any cost variances on this project.

**THE COMMISSIONER:** Right. So, as sitting on Treasury Board, you've never sat on a project that the province –

**MS. BREWER:** No.

**THE COMMISSIONER:** – that the province was taking on that was \$6.2 –

**MS. BREWER:** No, no.

**THE COMMISSIONER:** – billion.

**MS. BREWER:** No, the highest would've been maybe several hundreds of millions.

**THE COMMISSIONER:** Right.

**MS. BREWER:** Yeah.

**THE COMMISSIONER:** So you're sure that you were never made aware that the number was 6.531 at –

**MS. BREWER:** (Inaudible.)

**THE COMMISSIONER:** – before financial close?

**MS. BREWER:** Yeah.

**THE COMMISSIONER:** All right. Thank you very much, ma'am. You can step down.

All right. It's twenty to one. I guess we'll take our break here now and come back at two o'clock this afternoon.

How are we doing on the schedule for today, Mr. Learmonth? Just so I can figure this out.

**MR. LEARMONTH:** Not well. Behind, substantially, from my estimate. So, could we come back a little early?

**THE COMMISSIONER:** A quarter to two?

**MR. LEARMONTH:** That would be better.

**THE COMMISSIONER:** We'll come back at a quarter to two. (Inaudible.)

**CLERK:** All rise.

**Recess**

**CLERK:** All rise.

This Commission of Inquiry is now in session.

Please be seated.

**THE COMMISSIONER:** Okay.

All right, Mr. Learmonth.

**MR. LEARMONTH:** Yes.

The next witness is Paul Myrden. Can Mr. Myrden be affirmed, please?

**THE COMMISSIONER:** Okay.

Mr. Myrden, if you could stand please? If you could stand, please?

**MR. MYRDEN:** Oh. I'm sorry, (inaudible).

**CLERK:** Do you solemnly affirm that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth?

**MR. MYRDEN:** I do.

**CLERK:** Please state your name?

**MR. MYRDEN:** Paul Myrden.

**CLERK:** Thank you.

**THE COMMISSIONER:** Okay and you just be seated there, Mr. Myrden.

I'm not sure if your mic is on. If you could just press your (inaudible), okay?

**MR. MYRDEN:** Is that better?

**THE COMMISSIONER:** That's better.

**MR. MYRDEN:** Okay.

**THE COMMISSIONER:** Thank you very much.

**MR. MYRDEN:** Thank you.

**THE COMMISSIONER:** All right, Mr. Learmonth.

**MR. LEARMONTH:** Yes.

Mr. Myrden, what is your present position?

**MR. MYRDEN:** I am retired.

**MR. LEARMONTH:** And when did you retire?

**MR. MYRDEN:** March 2017.

**MR. LEARMONTH:** And when you retired, what was your position?

**MR. MYRDEN:** I was director of Debt Management with the Department of Finance, Province of Newfoundland and Labrador.

**MR. LEARMONTH:** Okay.

I just want to take you through some of your background to make sure we have it straight. I understand you graduated from Memorial with a B.Sc. in 1976?

**MR. MYRDEN:** I graduated from StFX with a B.Sc. in 1976.

**MR. LEARMONTH:** With what?

**MR. MYRDEN:** St. Francis Xavier.

**MR. LEARMONTH:** Oh, St. Francis, StFX. Okay.

**MR. MYRDEN:** Yeah.

**MR. LEARMONTH:** And that you got your chartered accountants designation in 1978. Correct?

**MR. MYRDEN:** I – actually, the date on it would be early '79, but I was part of the '78 class and that was the year that I wrote the exam and qualified.

**MR. LEARMONTH:** Okay. And you worked in private practice as a licensed chartered accountant for how long before you joined the government?

**MR. MYRDEN:** Oh, I did a lot of different things before I joined government. I joined government in the early 2000s, so I worked 25 years in a variety of different places (inaudible).

**MR. LEARMONTH:** In different – as a – in private industry?

**MR. MYRDEN:** I worked in a variety of different industries and a variety of different roles. I was in the insurance industry. I worked for a period of time with the federal government. I did some independent consulting on my own. I worked in the public accounting business. I worked in the IT business. I did a lot of different things. I like new challenges.

**MR. LEARMONTH:** And then you joined the government in what year, did you say?

**MR. MYRDEN:** I believe it was 2002.

**MR. LEARMONTH:** And you stayed there until your retirement.

**MR. MYRDEN:** I did.

**MR. LEARMONTH:** All right.

Now, could you turn to, in your book of documents, tab 32? You've got a book there.

**MR. MYRDEN:** (Inaudible.)

Okay.

**MR. LEARMONTH:** Tab 2.

Now, I'd just like to know some particulars about the – your role –

**MR. SMITH:** Exhibit number, Mr. –?

**MR. LEARMONTH:** Tab 32, Exhibit P-02217, page 2 – page 2.

Now, before we turn to that exhibit I'd like you to explain your role in your – the work you did and what your assignment was for the federal

loan guarantee that was completed – well, you know, the documentation was finalized November 29, bonds priced December 10, December 13 the funds were received. So when I refer to financial close, I'll refer to – I'll mean any time on or before December 13, just to take in –

**MR. MYRDEN:** Sure.

**MR. LEARMONTH:** – to account all the dates.

**MR. MYRDEN:** Sure, yeah.

**MR. LEARMONTH:** Okay.

Now, you worked on this project for the Department of Finance, did you?

**MR. MYRDEN:** I did, yes, for a period of time.

**MR. LEARMONTH:** And what was that period of time?

**MR. MYRDEN:** I would – again, I don't have specific dates, but it would have been summer of 2013 until late 2013.

**MR. LEARMONTH:** And what percentage of your time was devoted to the working on the federal loan guarantee and related matters?

**MR. MYRDEN:** I really don't know. I guess, on an overall basis, I would say perhaps 50 per cent? But it would go up or down depending upon –

**MR. LEARMONTH:** What per cent?

**MR. MYRDEN:** Fifty.

**MR. LEARMONTH:** Fifty, okay.

**MR. MYRDEN:** Yeah. I still had regular day-to-day responsibilities –

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** – with government.

**MR. LEARMONTH:** But on average, from the summer right up until financial close, would it have been roughly 50 per cent?

**MR. MYRDEN:** Well, no, I don't – I think if you were to take that entire time it would be less. It might be 25, I mean I don't know. There were times when it was a hundred per cent and there were many times when it was zero so –

**MR. LEARMONTH:** Okay.

And were you the lead contact for the Department of Finance in relation to the federal loan guarantee?

**MR. MYRDEN:** No, I think that I was perhaps the primary person assigned to it. I think if there were issues around other things that concerned the Department of Finance, they would have – normally would expect the deputy minister to be the lead contact.

**MR. LEARMONTH:** Okay.

But did you devote more of your time to working on the federal loan guarantee than anyone else in the Department of Finance, to your knowledge?

**MR. MYRDEN:** Yes.

**MR. LEARMONTH:** You did. Okay.

And I understand that you met frequently down in an office on Barnes Road that was set up by Nalcor to deal with federal loan guarantee matters?

**MR. MYRDEN:** Yes.

**MR. LEARMONTH:** All right.

Now, just to that exhibit – to get back to that exhibit I referred you to.

**MR. MYRDEN:** Sure.

**MR. LEARMONTH:** This is, yeah, P-02217, "LCP DG3 Estimate vs. Current Final Forecast Cost Reconciliation," dated November 19, 2013.

**MR. MYRDEN:** Yeah.

**MR. LEARMONTH:** And this is – in the current FFC, that's final forecasted cost. Now,

when is the first time that you saw this document, to the best of your recollection?

**MR. MYRDEN:** I believe it was the day that – the previous day I was questioned in relation to this. I don't think I'd ever seen it before that.

**MR. LEARMONTH:** Okay, so that was the time for your interview and that would have been March 30, 2019?

**MR. MYRDEN:** A month or so ago. Yeah, something like that.

**MR. LEARMONTH:** You don't recall ever having seen it before that?

**MR. MYRDEN:** No.

**MR. LEARMONTH:** Okay.

Now, we have evidence that this figure of \$6,531,754,580 was a hard-dollars figure – well, it was still an estimate, it could go up or down, but it wasn't some theoretical thing. It was worked out based on the contracts that they – that Nalcor had received. And so it had – it was of the nature of a – well, we'll say a firm estimate; although, that might be a – it was subject to fluctuation. But that was the number, based on increases from DG3, that Nalcor relied on in the closing documents for the federal loan guarantee, and that was the number that went into the federal loan guarantee.

Now, were you aware, in your capacity with the Department of Finance, that this \$6,531,754,580 was a real number based on, you know, data that had come in since DG3 on contracts that Nalcor had assessed?

**MR. MYRDEN:** I would not have been aware of that, no.

**MR. LEARMONTH:** You didn't know?

**MR. MYRDEN:** No.

**MR. LEARMONTH:** No.

Well, what – did you know anything about a 6.5 or 6.531 number at the time of financial close?

**MR. MYRDEN:** There was a lot of talk and there were a lot of conversations. To me, in terms of the talk around – and if I can just generalize a little bit –

**MR. LEARMONTH:** Yeah, take your time, because we –

**MR. MYRDEN:** Okay.

**MR. LEARMONTH:** – want to know exactly what your –

**MR. MYRDEN:** Yeah, yeah.

**MR. LEARMONTH:** – understanding is.

**MR. MYRDEN:** The talk around it was – and there were three or four different moving pieces that were brought forward and so the talk was – number one: there was – acknowledged that there was upward pressure on capital costs. Number two: there was a notion put forward that they were compensating savings on the financing side – or potentially compensating savings there. There were potentially savings in other areas, let's say, that would also potentially offset whatever might be there in the capital cost. And finally, there was a notion that the existing numbers included a contingency and that the contingency was intended to cover unforeseen things.

So, yeah, there was noise, but I was never provided with facts. And I would've insisted that – if such an updated estimate were available I would've insisted (a) that it – that I have it either provided to myself or directly to the deputy minister in writing with a source in terms of who could be asked follow-up questions. I was never provided with that.

**MR. LEARMONTH:** Did you ask for it?

**MR. MYRDEN:** I would have – I – that would've been my policy dealing with Nalcor. I have a recollection of saying: If such a document exists, it should be shared with the deputy minister of Finance. I can't say for certain that it was with respect to this document, but that would've been my – my position on things was: I'm not interested in rumour, I'm not interested in hearsay, I want facts, and to the

extent that if there were facts available, I would've wanted them in writing.

**MR. LEARMONTH:** So you never saw any documentation?

**MR. MYRDEN:** I never saw this 6.531 before you showed it to me, you know, somewhere on this floor.

**MR. LEARMONTH:** Yeah, but were you aware – you may not have been aware of this document, but are you aware of – were you aware before financial close of discussions on this 6.531 figure?

**MR. MYRDEN:** Not on the 6.531 specifically, no, no. And having said that, even if I was, it wouldn't have been relevant to the work I was doing.

**MR. LEARMONTH:** Why not?

**MR. MYRDEN:** Because it would not have impacted the documents or the piece – let's call it the piece because it was a fairly narrow piece of the whole picture – was largely around finalizing the details on the federal government guarantee.

**MR. LEARMONTH:** Right.

**MR. MYRDEN:** So, regardless of what the working estimate might have been at that particular point in time, the language – it wouldn't have changed the language around that guarantee so it wouldn't have changed what I was focused on in terms of that level of detail.

**MR. LEARMONTH:** So it wouldn't have mattered to you?

**MR. MYRDEN:** Capital costs were not something I had any particular grounding in. I was thrown into the project during the summer. I had no previous experience on the project. The 6.2 was – had long since been a public number. Other than the fact that it was a number that was supposedly the cost, it had no particular relevance to me.

**MR. LEARMONTH:** Okay.

But you're the manager of debt – what's the title? Manager –

**MR. MYRDEN:** Well, yeah, but –

**MR. LEARMONTH:** I'll just ask you this: That if you knew or had reason to believe that there was an increase of, we'll say, \$300 million in the capital cost –

**MR. MYRDEN:** Mm-hmm.

**MR. LEARMONTH:** – wouldn't that have jumped out at you and caught your attention because it's such a big number?

**MR. MYRDEN:** If it was – if I was told that, I would ask for detail. I would ask: Can I have the updated estimate in writing? And I would've put it – sent it up the line to Finance. I would've sent it to the deputy minister.

**MR. LEARMONTH:** And you never did that?

**MR. MYRDEN:** You know, I'm sure if there was any record of me having received information and not passing it along, the Inquiry would already be aware.

**MR. LEARMONTH:** Yeah, but when there was talk about the \$6.5 billion – and you acknowledge there was talk about the \$6.5 billion, correct?

**MR. MYRDEN:** There was noise. I think noise was a little bit different from talk. But there was noise around, yeah, there's gonna – in fact, the whole focus of the negotiation – and I'm speaking about the cost overrun piece – the whole focus was on setting a baseline. What will the baseline be?

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** And the initial proposal from the federal government, I believe, was a 6.2 number – would be (inaudible) –

**MR. LEARMONTH:** You're talking about a baseline for the COREA, right?

**MR. MYRDEN:** A baseline for the cost overrun funding which was – which is a very small piece

of it but it was – 85 per cent of what I worked on was that.

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** So a lot of other things might have been going on around me that I didn't – either wasn't invited to engage on or didn't engage on simply because it wasn't relevant to what I had been asked to do.

**MR. LEARMONTH:** Yeah. But you used the word – when I said: Was there talk about it? You said: No, there was noise.

**MR. MYRDEN:** Mm-hmm.

**MR. LEARMONTH:** But if it wasn't in writing, it had to be talk. You're just – I mean –

**MR. MYRDEN:** Again, if, you know – if – the Nalcor people always knew more than I did. I might have been in the room but I didn't know everything that they knew. So, you know, again, if I had been given this, I immediately would've forwarded it. Immediately would've forwarded it.

If I had been given it – handed it to me – which I probably wouldn't have accepted because I would've wanted an email, I would've wanted, obviously, to have a trail for it. If I had anything to say that this is the revised cost, it would've gone up the line as quickly as I received it.

**MR. LEARMONTH:** Okay.

But – and I understand that with the COREA that the higher the number the better it is for the province –

**MR. MYRDEN:** Absolutely.

**MR. LEARMONTH:** – because then the province wouldn't have to fund as early in the game, we'll say.

**MR. MYRDEN:** Exactly.

**MR. LEARMONTH:** But aren't there two situations here? If – in relation to the COREA, which you were working on, if the project cost estimate was 6.5 –

**MR. MYRDEN:** Mm-hmm.

**MR. LEARMONTH:** – and that was the number used for COREA, right?

**MR. MYRDEN:** I don't –

**MR. LEARMONTH:** Just use that as an example.

**MR. MYRDEN:** The number used for COREA was to be the actual estimated cost to be established by the independent engineer as at financial close.

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** Now, whether that was 6.5 or some other number, I have no idea.

**MR. LEARMONTH:** Yeah. But surely you would've addressed your mind to this, that if the actual project cost estimate at the time of financial close was 6.5 –

**MR. MYRDEN:** Mm-hmm.

**MR. LEARMONTH:** – and if that 6.5 was used as the baseline for the COREA, then that would be a completely different situation than if the project cost estimate was \$6.2 billion –

**MR. MYRDEN:** Mm-hmm.

**MR. LEARMONTH:** – yet the COREA was set at 6.5, because in the latter situation there'd be a \$300-million cushion –

**MR. MYRDEN:** Mm-hmm.

**MR. LEARMONTH:** – that whereby cost overruns could be incurred without imposing any obligation on the province to fund it. So there would be two different situations, wouldn't there?

**MR. MYRDEN:** Mm-hmm.

**MR. LEARMONTH:** Do you agree?

**MR. MYRDEN:** I agree, but I was only focused on one of them. I'm not an engineer, I had no background in the development of the 6.2, I didn't know what was in it. In fact, when I

became involved in this, I could not even have told you what the components of the project were, okay? I got –

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** – I was asked to become involved because of two reasons. Because the piece or the point they were at involved guarantees from the provincial government, and all guarantees that the provincial government issued had to be signed by the Department of Finance, and my division was the division that essentially was the gatekeeper of – sorry – was the gatekeeper for guarantees of any sort. So there was a natural fit with what I was already doing in terms of that federal government guarantee.

The second piece was the capital markets piece, which was part and parcel with – essentially the same thing, because the two had to happen contemporaneously. And I had experience there because of my role as Director of Debt Management, which is essentially managing the Treasury function for the province. So that was why I was put in. I wasn't put in there because I had any understanding of capital costs, as I said. Technically I couldn't even have told you what the components of the project were, but I understood guarantees, and I understood capital markets.

**MR. LEARMONTH:** Yeah. But –

**MR. MYRDEN:** And that's what I focused on.

**MR. LEARMONTH:** Okay, I understand that, but you know what a project cost estimate is, I mean you – I know you didn't know –

**MR. MYRDEN:** Sure. Yeah.

**MR. LEARMONTH:** – the components, but you know what we're talking about.

**MR. MYRDEN:** It's an estimate.

**MR. LEARMONTH:** So – yes, it is, an estimate or final forecast cost estimate, they're all estimates.

**MR. MYRDEN:** Mm-hmm.



**MR. LEARMONTH:** But in the two situations I gave you, the one where the 6.531 is a real number as opposed to 6.2 being the real number and having a \$300 million cushion, they're two very different situations for – in terms of the province's commitments, aren't they?

**MR. MYRDEN:** Well there's – one is five per cent more than the other, (inaudible).

**MR. LEARMONTH:** Exactly. So, having been aware that there was a figure of – or as you say noise about this 6.5 –

**MR. MYRDEN:** Mmm.

**MR. LEARMONTH:** – why didn't you – and knowing that there was a – why didn't you inquire by saying that: Is this a real number, or is it still 6.2?

**MR. MYRDEN:** I believe I would have said: If there were a revised number, I would appreciate being provided with it.

**MR. LEARMONTH:** And because you were never provided with it, you assumed there wasn't?

**MR. MYRDEN:** I just assumed if there was, I would have been provided with it. I don't necessarily think I would have had to be, because as I said, it – 6.2 or 6.5 had absolutely no relevance to the piece of work that I was asked to do, that I was doing – that I did.

**MR. LEARMONTH:** Yeah. But realizing that there was a difference in the two scenarios, I just wonder – I wonder why you didn't push, at least by asking Nalcor, is this a real number – the 6.5 – or is the 6.2 still the real number. Why wouldn't you have done that?

**MR. MYRDEN:** I – if – again, if there is a revised number, I would appreciate being provided with the details.

**MR. LEARMONTH:** So, you let it go like that?

**MR. MYRDEN:** There were other people in the – Finance did not record on capital costs. Finance – we were accountants, yes. Capital costs were an engineering thing. It was – you

know, the capital cost reporting, before and I suspect after, that came from Nalcor, all came up through the Department of Natural Resources.

So, while your question is a great question, I mean, it wasn't part of what I considered to be my mandate; that there were other people involved in the project who had responsibilities in that area that I didn't.

**MR. LEARMONTH:** Well, what, then, was your mandate in terms of establishing the baseline for the COREA?

**MR. MYRDEN:** My mandate was to negotiate as advantageous or as least-onerous a deal that I possibly could for the signature by my minister.

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** So, my mandate in a – in essence would've been limited to those items that required either approval from or direct sign-off by the Minister of Finance.

**MR. LEARMONTH:** Okay.

So, given that – your evidence that you didn't turn your mind as to whether the 6.5 was a real number or whether it was still 6.2 with a \$300 billion cushion –

**MR. MYRDEN:** Mmm.

**MR. LEARMONTH:** – you didn't turn your mind to that. I take it that you didn't have any discussions about this with either Donna Brewer or Minister Marshall, is that correct?

**MR. MYRDEN:** I would have had ongoing discussions with Donna Brewer and Mr. Marshall, but they would not have been focused on what is the capital cost.

**MR. LEARMONTH:** It would not have been –

**MR. MYRDEN:** Been focused on documents.

**MR. LEARMONTH:** And you said focused. They wouldn't have mentioned –?

**MR. MYRDEN:** It would've been focused on things that required approval from the Department of Finance.

**MR. LEARMONTH:** But you wouldn't have mentioned that issue to Ms. Brewer or Mr. Marshall?

**MR. MYRDEN:** Not – in the absence of facts, I wasn't particularly in the business of trading and rumors or innuendo. So, no, if I had facts, I would pass them along. If I didn't have facts, I wouldn't.

**MR. LEARMONTH:** So, you didn't pass them on. Okay.

Okay, now, there's a few exhibits I want to ask you to consider.

The tab 8 of your book of documents, Mr. Myrden, is P-02024.

**MR. MYRDEN:** Tab 8.

**MR. LEARMONTH:** Do you see that?

**MR. MYRDEN:** Yeah, I think so.

**MR. LEARMONTH:** Okay.

**MR. MYRDEN:** (Inaudible.)

**MR. LEARMONTH:** Now, we have – this is a – this, in the middle of the page, is an email from you to Derrick Sturge, Rob Hull, James Meaney, Auburn Warren.

They were the people in the Department of Finance at Nalcor, correct?

**MR. MYRDEN:** Yep.

**MR. LEARMONTH:** This is August 31 – excuse me – October 18.

**MR. MYRDEN:** Yeah.

**MR. LEARMONTH:** Minister Requests, so I presume that you were directed or requested by Minister Marshall to obtain particulars on the project cost estimates and related matters; is that true?

**MR. MYRDEN:** I suspect that the request would've gone from Minister Marshall to the deputy and then from the deputy to me. So I would've conveyed it as Minister Marshall has asked as opposed to Minister Marshall has asked me. I know it's just semantics but the reality is there was a line of communication and mine was with the deputy.

**MR. LEARMONTH:** Okay.

So you wouldn't get directions from Mr. Marshall, they would flow through the deputy?

**MR. MYRDEN:** Sure, if Minister Marshall is giving direction to the deputy, then the deputy clearly would flow those through to people who's –

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** – (inaudible).

**MR. LEARMONTH:** But would there be occasions when Mr. Marshall would give – or whatever minister was in that office at the time would give directions to you directly and bypass the deputy minister?

**MR. MYRDEN:** I can't think of anything offhand. I mean, normally there was a process there and – yeah, and as a director, I was not a member of the executive. And so, you know, support of the political side wasn't something that would normally fall under a director's responsibilities, so ...

**MR. LEARMONTH:** Okay.

Okay, so then you got the reply on this Exhibit P-02024. It was on November 1 from Auburn Warren. Attached, "As discussed please find attached summary for your review." Now do you remember having a discussion with Mr. Warren on or about November 1 to discuss this summary?

**MR. MYRDEN:** I couldn't tell you if I had a discussion with him on November 1, no.

**MR. LEARMONTH:** Because it says, "as discussed" so I just wonder –

**MR. MYRDEN:** It doesn't necessarily mean it was discussed with me.

**MR. LEARMONTH:** No, that's right.

But anyway, you don't remember?

**MR. MYRDEN:** In many cases – and it wasn't just a minister's request – in many cases, this might have been a deputy's request, but it was completely normal for me to be asked to obtain information from Nalcor. For whatever reason, I was seen as the person who – the contacts in Nalcor. And so, often if the deputy wanted information to inform the budget process, she would ask me would I find it – would I get it for her.

So the fact that my name is on a request, I guess, does not mean that it was information that I was requesting for me. And as you can see in this, I clearly indicated it was being a request for somebody else.

**MR. LEARMONTH:** If we just turn the page to page 2, you can see in the right-hand column that the information Mr. Warren provided you was the 6.202 DG3 capital cost estimate, correct?

**MR. MYRDEN:** I am –

**MR. LEARMONTH:** The right column total, September 30, 2013.

**MR. MYRDEN:** Yeah, hang on, I'm with you, yeah.

**MR. LEARMONTH:** Did you find it?

**MR. MYRDEN:** I'm there, yeah.

**MR. LEARMONTH:** Yeah. So that's the DG3 numbers, right?

**MR. MYRDEN:** That was the original cost estimate. Again, the DG3 terminology wasn't something that I was particularly schooled in. It wasn't something that I used, to my recollection.

**MR. LEARMONTH:** Well, does the number 6,202,000,000 mean anything to you?

**MR. MYRDEN:** That was the original cost estimate –

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** – of the project, yeah.

**MR. LEARMONTH:** Okay, well that's – that was the DG3 estimate –

**MR. MYRDEN:** Sure.

**MR. LEARMONTH:** – the original cost estimate.

**MR. MYRDEN:** Okay, well then that's (inaudible) –

**MR. LEARMONTH:** So upon receipt of this information, did you understand that there had been no change in the capital cost estimate for the project?

**MR. MYRDEN:** This would have been information that would have been taken from this point by the deputy and incorporated in whatever she was doing. This was not – this particular piece of information did not have a great deal of relevance for me in terms of what I was working on at the time.

**MR. LEARMONTH:** Okay. Now the last question, just to turn page –

**MR. MYRDEN:** Yeah – I guess one other point I'll make on this is that this particular presentation – so this presentation of this document – probably exists in dozens of different versions as it was continuously being refined and updated over an extended period of time.

So I've seen this format and this layout and, you know, these numbers – or not necessarily these specific numbers – but this type of information multiple and multiple – I would have seen it on – probably on many occasions.

**MR. LEARMONTH:** Okay.

Now just turn back to page 1. The fifth question in your email to Mr. Sturge is – you're asking for the following financial information: "The most recent update on expected total project

costs by component vs. budget (DG3?), if available. If not available, a reason why might be helpful along with an indication of when it might be available.”

Now, did you ever follow up with Mr. Sturge or have any communications with him as to when the – an update might be available?

**MR. MYRDEN:** I don’t recall having any –

**MR. LEARMONTH:** No recollection.

**MR. MYRDEN:** – further – any specific feedback to that question, (inaudible).

**MR. LEARMONTH:** Okay.

Tab 11 of your list of documents. That’s P-03473.

**MR. MYRDEN:** Yep.

**MR. LEARMONTH:** You see that?

**MR. MYRDEN:** I think so, yeah.

**MR. LEARMONTH:** Now that’s in your handwriting, right?

**MR. MYRDEN:** It is, yes.

**MR. LEARMONTH:** Now just at the bottom, it says, “Jamie.” Who’s Jamie and why does Jamie’s name appear there?

**MR. MYRDEN:** May well have been a – the only Jamie I guess I can think of offhand was a Jamie who worked for Bank of America Merrill Lynch, so it may well have been – who was representative with one of the dealers who firmed – formed part of our borrowing syndicate – I know this is a little bit off topic – and it may well have been just a phone message that there was a message from Jamie and I might have just scribbled his name at the bottom of the piece of paper.

**MR. LEARMONTH:** So it could have been completely unrelated to –

**MR. MYRDEN:** Absolutely and most likely, it would’ve been.

**MR. LEARMONTH:** All right. Now, this is your handwriting is it?

**MR. MYRDEN:** Yeah.

**MR. LEARMONTH:** (Inaudible.) Now, you put – there is no date on it; do you know when this document was prepared?

**MR. MYRDEN:** I have no idea.

**MR. LEARMONTH:** No idea.

**MR. MYRDEN:** No.

**MR. LEARMONTH:** It says: Capital costs, plus \$300 million; financing or financial costs, minus \$300 mil – is that million? M-I-L?

**MR. MYRDEN:** That would be million, yeah.

**MR. LEARMONTH:** And then: NS sales, 100.

**MR. MYRDEN:** Mm-hmm.

**MR. LEARMONTH:** Now, can you tell us why you wrote those numbers down?

**MR. MYRDEN:** I –

**MR. LEARMONTH:** And then in the right column, it says DG3, 6.2; “gone to \$6.5”?

**MR. MYRDEN:** Again, I couldn’t tell you when I wrote these down, and the only – I believe when I was in my earlier questioning, we had happened (inaudible) – or I was presented with a Nalcor presentation that largely had that same information from the – in the presentation. So if I wrote it down, I was obviously writing it down from a source that – you know, I – it wasn’t my number. Let’s put it that way.

**MR. LEARMONTH:** Yeah, but it indicates that you were aware that there was an increase in capital cost of \$300 million, does it not?

**MR. MYRDEN:** Well, it does, but it doesn’t indicate when. So –

**MR. LEARMONTH:** So – well, do you believe that you – this would have been prepared before financial close?

**MR. MYRDEN:** I have no idea. I honestly don't. I was not a note-taker and I have no idea where this came from.

**MR. LEARMONTH:** But you wrote it?

**MR. MYRDEN:** Yeah, I wrote it. Absolutely.

**MR. LEARMONTH:** So at some point, you knew there was an increase from the DG3 number 6.2 to 6.5, correct?

**MR. MYRDEN:** I wrote it down. Whether I knew it or not, I guess, is – perhaps I was just writing it down from a slide, but like I said this (inaudible) – like I said, this particular set of notes is not –

**MR. LEARMONTH:** Yeah, but you're –

**MR. MYRDEN:** – does not resonate with me –

**MR. LEARMONTH:** You're a chartered accountant.

**MR. MYRDEN:** I am.

**MR. LEARMONTH:** And you have been for a long time, so –

**MR. MYRDEN:** Yeah.

**MR. LEARMONTH:** – I would suggest that if you're writing down, you know, a capital cost increase of \$300 million and you got specific reference to DG3 6.2 and then "gone to 6.5" that at the time you made this record, that you knew that there was a \$300-million capital cost increase in the project.

**MR. MYRDEN:** And I guess if the – if you look to the left of that, there was also a \$300-million savings on financing –

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** – and net – it was a wash. Net no change.

**MR. LEARMONTH:** Yeah, so that's how you treated it, just as a wash, right?

**MR. MYRDEN:** Again, it wasn't an area that I had been asked to look at and it wasn't an area

that I felt I had any responsibility for. There were others on the project who were more – far more engaged on the capital cost side.

**MR. LEARMONTH:** And who would those other people be?

**MR. MYRDEN:** They would be the technical people at Nalcor together with the – I assume – the Natural Resources people.

**MR. LEARMONTH:** Okay.

**MR. MYRDEN:** I was guarantees and capital markets.

**MR. LEARMONTH:** Okay.

Tab 12, which is Exhibit P-03474. And once again this is in your handwriting, is it?

**MR. MYRDEN:** Yeah.

**MR. LEARMONTH:** And it's not dated. Do you know when this record was made?

**MR. MYRDEN:** No idea.

**MR. LEARMONTH:** And then there's another entry right – a little bit below the middle of the page: Cost overruns – \$300 million.

**MR. MYRDEN:** Mm-hmm.

**MR. LEARMONTH:** Do you know why you would have written that down?

**MR. MYRDEN:** I was either being shown it or told it.

**MR. LEARMONTH:** Okay.

**MR. MYRDEN:** I wasn't pulling it out of the air.

**MR. LEARMONTH:** Tab 13.

**MR. MYRDEN:** Yeah.

**MR. LEARMONTH:** Now, once again this is –

**MR. MYRDEN:** (Inaudible.)

**MR. LEARMONTH:** Tab 13 – Exhibit P-03475.

**MR. MYRDEN:** Yeah.

**MR. LEARMONTH:** Yeah.

Now, on this document, on page 2, there is a date. It says, “NS – Schedule for” Cabinet “approval of IGA is Nov. 28 subject to the UARB decision before that.”

So am I correct in assuming that this document would have been prepared before November 28?

**MR. MYRDEN:** That would seem to be – yeah, I suspect that that would be a logical assumption, yes. Yeah.

**MR. LEARMONTH:** Yeah. So does that give you any insight as to when – to the date on which the earlier two handwritten notes were made?

**MR. MYRDEN:** I don’t see any particular relationship between the two sets or even the three pages of notes, to be honest, but –

**MR. LEARMONTH:** So do you believe that these three pages of notes were made on the same day or different days?

**MR. MYRDEN:** I have no idea.

**MR. LEARMONTH:** No idea? Okay.

**MR. MYRDEN:** No. As I said, I wasn’t a note-taker. If I was taking notes to be kept, I would have a date. There would be a date in the upper right-hand corner.

**MR. LEARMONTH:** Right.

**MR. MYRDEN:** So this – these were scribbles, in my view, that somehow, I guess, remained with my things after I left the employ of government. And somebody must have decided that they were important, but I can’t for the life of me tell you why.

**MR. LEARMONTH:** Okay. Did you have a notebook? We know some of the senior civil servants had notebooks that they would – you didn’t have a notebook?

**MR. MYRDEN:** No.

**MR. LEARMONTH:** Okay. So yours wasn’t lost because you didn’t have one. Is that right?

**MR. MYRDEN:** (Inaudible.)

**MR. LEARMONTH:** We you know that – we know some have been shredded. So, you didn’t have one.

**MR. MYRDEN:** No.

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** But somehow these notes mysteriously survived the shredding of all the important –

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** – books. So –

**MR. LEARMONTH:** All right.

**MR. MYRDEN:** – (inaudible).

**MR. LEARMONTH:** Now, next, tab 17 –

**THE COMMISSIONER:** Just before we move off that tab, can we go back to page 1 of 03475 before you change the page? The one that you were just on. Are you still there?

**MR. MYRDEN:** This one? The –

**THE COMMISSIONER:** Yeah.

**MR. MYRDEN:** Yeah.

**THE COMMISSIONER:** Will you read for me what it says next to the 300 – the reference to 300: “Now being asked to” what? Can you –?

**MR. MYRDEN:** “Now being asked to prefund future estimated cost overruns.” That is the cost overrun funding mechanism.

**MR. LEARMONTH:** Does that suggest to you that you were dealing with real numbers or just possible numbers that could appear if there were future cost overruns?

**MR. MYRDEN:** I've really – you have to understand that I wasn't dealing in the moment here. I was dealing in terms of the two objectives of the exercise with respect to the cost overrun funding, and that's what I spent the vast majority of my time on. The two objectives were to reduce the amount of funding that would be required to the absolute minimum, to push as far as you could in terms of how much of it would have to be funded and, secondly, to then push the timing of that payment out as far as possible.

**MR. LEARMONTH:** Right.

**MR. MYRDEN:** So we're basic cash flow management, which is basically try and minimize your outflows and then, to the extent that you can, try and push them out as far as you can. Those would've been my two guiding principles in terms of this particular exercise.

**MR. LEARMONTH:** Okay. But doesn't that still come back to the question of whether you're dealing with hard numbers? Because in a situation where the capital –

**MR. MYRDEN:** There would be a hard number. The hard number would be established by the independent engineer at financial close.

**MR. LEARMONTH:** Right

**MR. MYRDEN:** If that number came back at \$6.2 million – or billion rather – \$6.5 billion, \$7 billion or \$10 billion, that would be an extremely relevant number to what I was doing. Anything –

**MR. LEARMONTH:** Because that would've determined when the COREA would have to be funded.

**MR. MYRDEN:** Exactly.

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** But it was a hard and fast determination. So knowing that that would be done as at financial close kind of removes any particular – or certainly from my point of view – removes any particular urgency around what is the number two weeks or three weeks earlier. Because the formula would be based on whatever the actual turned out to be.

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

Now, exhibit – tab 17, Exhibit P-03489, if you go to page 4 of that?

**MR. MYRDEN:** One, two, three, four. Okay.

**MR. LEARMONTH:** Okay. This is an email from Todd Stanley, dated November 7.

Can you give us some insight into what this discussion is about from your perspective?

**MR. MYRDEN:** That – so what was – I'm sorry, what was the question? I just (inaudible) –

**MR. LEARMONTH:** Okay. What is the subject matter that is being discussed in this email based on your –?

**MR. MYRDEN:** This, to me, is all over the cost overrun language.

**MR. LEARMONTH:** Okay. As a real number over and above the 6.2 or it's just in a theoretical sense?

**MR. MYRDEN:** No, this would've been around the drafting of the language –

**MR. LEARMONTH:** The language –

**MR. MYRDEN:** – in the – I guess, it would've been part of the –

**MR. LEARMONTH:** Okay.

**MR. MYRDEN:** – documentation that the minister of Finance would have to sign.

**MR. LEARMONTH:** And then page 3, there's an email from Donna Brewer and it – you're on this email.

**MR. MYRDEN:** Yeah.

**MR. LEARMONTH:** This is to you. Paul – I presume that's you, is it?

**MR. MYRDEN:** That would be me, yes.

**MR. LEARMONTH:** "Paul pls advise after you have had a chance to fully digest.

“If they are saving,” it should be saying, “that NALCOR has to set up and put funds in yet another dollar reserve and if this reserve is not already reflected in the \$1.886 m base equity contribution, then the impact on the province will depend on timing of the additional equity payment.

“As previously discussed, there is no flex within the current \$531 million budget to make additional equity contributions prior to March 31, 2014, whatever the reason.” And it goes on.

Now, at this point, wouldn't it be clear to you that you are – that what was under discussion here was real increases in the capital cost estimate –

**MR. MYRDEN:** This –

**MR. LEARMONTH:** – not theoretical?

**MR. MYRDEN:** This would not necessarily reflect the capital cost estimate. This was a new concept, to me, when it was – when it surfaced. Was the notion that in essence what the cost overrun required the province to do was to pre-fund estimated future cost overruns. So this would've been an increase in the equity contribution quite irrespective of anything that might have been driven by an increase in capital costs.

This was – to me, it was a new – it was a newly surfaced item that was in the term sheet, I guess, the signed term sheet from the – whenever it was executed, 2012 I believe it was. But this would have increased the amount of equity required from government without any increase in capital costs, because it required an amount of money to be placed on deposit in an escrow account. While it would be considered equity for certain purposes, it wouldn't unlock borrowed money, so it was a largely unproductive use of funds. So it was not a concept that was particularly attractive to the Department of Finance, or to me personally, I guess.

**MR. LEARMONTH:** And did – in – when the final document was prepared, was this taken out of it, this concept?

**MR. MYRDEN:** The – no, the concept was in the – it was in the signed document that was – it

was an MOU or a term sheet, I forget exactly what the name on it was. But there was an agreement signed between the province and the federal government, which was basically committing to the guarantee, and then in order to put in place – obviously there were detailed legal agreements required. So this was in the initial document. And it was really at this point in November, it was just surfacing as part of the putting together the documentation around the final agreement.

**MR. LEARMONTH:** Okay.

But then on the – page 2, it's an email from you to Donna Brewer.

The second paragraph: “Essentially, it looks as if Nalcor will be required to pre-fund cost overruns based on pro rata annual payments over the period from the date of determination to the commercial operations date. The amount will be determined/certified by the independent engineer with the first such determination to be at financial close.” And you go on with further particulars.

So, you know, it suggests that you were aware that there was going to be an increase in the project capital cost at the time of financial close. Is that a fair –?

**MR. MYRDEN:** Well, no, I think that you're really – you're – I won't say confusing, but you're mixing two things that were separate issues.

The issue of capital costs was a separate issue. Yes, capital costs and capital cost estimates were part of the picture, but for me the notion of this formula was that there would be pre-funding required of these cost overruns, so therefore in order to minimize the amount of the pre-funding required, then the motivation would be to have that baseline set at as high a number as possible.

So, you know, 6.5 if that – if (inaudible) – if 6.5 – or, no, 6.5 is probably a bad example. Let's say for argument's sake that the federal government had been willing to hard-wire \$7 billion into that formula for the baseline for funding cost overruns. I would have been delighted, because it would've meant that that



would give the province that much of a cushion or a holiday –

**MR. LEARMONTH:** Yeah, well –

**MR. MYRDEN:** – before (inaudible) –

**MR. LEARMONTH:** – that’s what we talked about before, yeah.

**MR. MYRDEN:** So –

**MR. LEARMONTH:** But there’s no cushion if it’s – if the amount determined by the independent engineer is a real number –

**MR. MYRDEN:** Well, but at that point –

**MR. LEARMONTH:** – there’s no cushion.

**MR. MYRDEN:** – the determination was still to come. This was November; the determination was going to be done a month later.

**MR. LEARMONTH:** Yeah.

But it made a difference to the province is what I’m saying.

**MR. MYRDEN:** Well, it didn’t make a difference to what I was doing. But certainly to other people who were working within the province, an increase in capital cost should have made a difference, I suspect. But in –

**MR. LEARMONTH:** But not to you.

**MR. MYRDEN:** – terms of what I was doing and in terms of, you know, what’s the baseline gonna be? To me, you know, the, you know –

**MR. LEARMONTH:** So whether –

**MR. MYRDEN:** – object number one would be to set it as high as possible.

**MR. LEARMONTH:** Yeah, but it – so it didn’t matter to you whether there was a cushion or whether it was a real number.

**MR. MYRDEN:** Well, it didn’t matter is kind (inaudible) – it’s – was it relevant to what I was doing? No, no. It was – the baseline was relevant

and my objective with the baseline was to push that number as high as I possibly could.

**MR. LEARMONTH:** But you realize – well, if you’re saying it wasn’t relevant to you –

**MR. MYRDEN:** Mmm.

**MR. LEARMONTH:** – you realize it was – it ought to have been relevant to other people.

**MR. MYRDEN:** I was doing what I was asked to do. I was not asked to go in and assess the accuracy of current capital cost estimates. Furthermore, had I been asked, I would’ve said: I’m in no way qualified to do that.

**MR. LEARMONTH:** Okay.

But I’m not talking about your capacity or ability to assess. I’m asking about your capacity and ability to identify the difference between an increase in the capital cost and a cushion for the purpose of COREA. I mean, you can figure that out.

**MR. MYRDEN:** I can figure it out, but what I’m saying to you is that what mattered to me was what that baseline was set at.

**MR. LEARMONTH:** Okay, so you – apart from that, you weren’t concerned whether it was a capital cost increase –

**MR. MYRDEN:** Again –

**MR. LEARMONTH:** – or not?

**MR. MYRDEN:** – to say I’m not concerned is perhaps – you know, I’m a taxpayer, okay, you know, it’s – I’m the same as you are. So I’m as much concerned as anybody on the street who says: Oh, there go the costs going up again.

But was I in a position to influence it or influence the direction of the project? Or if somebody had told me this is gonna be a \$7-billion project, I would’ve said: Okay, you know, have you told people? But beyond that, my capacity to engage on that or do anything about it was nonexistent.

**MR. LEARMONTH:** Okay. But you could have reported on it.

**MR. MYRDEN:** I reported what I knew. I reported facts to the minister and deputy minister of Finance. I didn't particularly get into reporting rumors –

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** – or allegations or insinuations or –

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** – anything else. As I said, the line was there are a lot of moving parts; on balance we expect it's gonna be a wash.

**MR. LEARMONTH:** Okay.

Tab 32, that's Exhibit P-02217, and we referred to this earlier, but I want to take you to page 1. This was a November 20 – 19th email from James Meaney to Meghan Felt and it – attached to this is that chart that we looked at before, Mr. Myrden, on page 2. Do you see that?

**MR. MYRDEN:** Yeah, similar, yeah.

**MR. LEARMONTH:** Yeah. And it says, "Hi Meg Please post the attached files to the data room this evening. I am going to suggest the 'Material Contracts' folder in the 'Overview' subfolder. Access needs to be given to Canada, Cassels Brock, Blair Franklin and MWH. Do not provide access to NL, BLG and Faskens at this time."

Do you have any idea why this request was made that GNL not be given access to this document at the time?

**MR. MYRDEN:** No, I have no idea.

**MR. LEARMONTH:** Does that surprise you?

**MR. MYRDEN:** It – you know, am I surprised that 100 per cent of the information that Nalcor had wasn't shared with me? Not at all, no.

**MR. LEARMONTH:** No?

**MR. MYRDEN:** No, no, I mean, Nalcor understood as well as I did what my role was, and my role was anything that requires the signature of the minister of Finance, I have to be

in a position that I can recommend that he put a signature on it.

**MR. LEARMONTH:** But you're representing the shareholder on a very big capital-intensive project.

**MR. MYRDEN:** Well the shareholder was the minister of Natural Resources, and I was not representing minister of Natural Resources, if you want to split hairs about it. I was representing Finance's role in the project. I was not trying to be an engineer from Nalcor, I was not trying to be an employee of Natural Resources. I was doing what had to be signed off for the Department of Finance.

**MR. LEARMONTH:** So did you feel that Nalcor was providing you with full disclosure of all financial matters related to the project.

**MR. MYRDEN:** No. No, I'd have no reason to feel that.

**MR. LEARMONTH:** No?

**MR. MYRDEN:** No, I would have no reason to expect that.

**MR. LEARMONTH:** Okay.

**MR. MYRDEN:** I felt that Nalcor was disclosing to me all the information that I needed to do the work that I was engaged in doing.

**MR. LEARMONTH:** Yeah.

And looking back with what you know now, do you believe that Nalcor fulfilled its obligation to provide you with all relevant documentation so you could get your part of the job done?

**MR. MYRDEN:** I think from the corner that I was working in, I had all the information I needed to do the job. If I didn't have the information, I would've made noise until I got it.

**MR. LEARMONTH:** Okay.

And tab 33 is Exhibit P-02535. This is an email – November 20, 2013; Derrick Sturge to Auburn Warren, Rob Hull and James Meaney. It says, "Hi folks, the other thing we need to do based on

direction from Ed and Charles” – I presume that’s Ed Martin and Charles Bown, but I’m not 100 per cent sure. Anyway, “from last week is to walk Donna Brewer and Paul Myrden through the LCP cost update data.”

Now, do you recall being walked through the LCP cost update data on or after November 20, 2013 – either with Donna Brewer or alone?

**MR. MYRDEN:** I do not.

**MR. LEARMONTH:** No recollection.

**MR. MYRDEN:** I was not.

**MR. LEARMONTH:** Oh. You were not?

**MR. MYRDEN:** It didn’t – certainly didn’t happen with me in the room.

**MR. LEARMONTH:** Okay. All right.

Now tab 38. If we go to P-03494 and if we go to page 1, Mr. Myrden.

**MR. MYRDEN:** Yes, Sir. Yeah.

**MR. LEARMONTH:** Do you see that?

**MR. MYRDEN:** Yeah.

**MR. LEARMONTH:** Well, what this is, is an email that starts off the bottom from Xeno Martis. He was legal counsel at Faskens – acting for Nalcor, I believe. This is dated November 22, 2013. Anyway, this ends up on your desk or in your computer, correct? And then you forward it on.

**MR. MYRDEN:** I guess. Sure looks like it. Yeah.

**MR. LEARMONTH:** And then you forward it on to Donna Brewer.

**MR. MYRDEN:** Okay. Yeah.

**MR. LEARMONTH:** Do you remember receiving this document – this email?

**MR. MYRDEN:** I’ve received hundreds of emails that would have been either from or forwarded from Xeno, so – so I don’t have any

specific memory of this particular email but, you know, certainly looks like it could be one of that group, so.

**MR. LEARMONTH:** Yeah. So, if we go to page 2 –

**MR. MYRDEN:** And, I mean, I commented on it as I forwarded it. So, clearly it’s, you know, obviously –

**MR. LEARMONTH:** You read it, obviously.

**MR. MYRDEN:** I was engaged. Yes. Yeah.

**MR. LEARMONTH:** Yeah. So, you – if you commented on it you would have read it. Is that right?

**MR. MYRDEN:** Well, I commented on it to the extent that – there were a number of outstanding issues at this point. I think there were probably somewhere between five and 10 outstanding issues. The cost overruns was one of them. It was clearly the one that was of most importance to Finance. There were other issues that didn’t work, particularly – relevant one way or the other in terms of some of the things that were still being negotiated.

So, I guess when I say that I’ve given the okay – what I essentially am saying is that the issues that are important to us, I’m okay with and those issues that are part of the package that would be put forward as, sort of, a final settlement proposal – I had no objections to.

**MR. LEARMONTH:** Okay. But if you turn to page 2 –

**MR. MYRDEN:** Sure. (Inaudible.)

**MR. LEARMONTH:** Item 1. Just below the opening paragraph.

**MR. MYRDEN:** Yeah.

**MR. LEARMONTH:** “On the cost overruns issue, Nalcor would agree to have funded cost overruns based on the Project budget as at financial closing (\$6.5B capital cost estimate and not the \$6.2B DG3 estimate) using substantially your definition ....” I mean if you

read that, doesn't that make it clear that the 6.5 – there's an increase in the project budget from \$6.2 billion at financial close to 6.5 at the time of – excuse me, 6.2 at DG3 to 6.5 at financial close?

**MR. MYRDEN:** (Inaudible.)

**MR. LEARMONTH:** It's clear, isn't it?

**MR. MYRDEN:** Yeah, yeah, yeah. No, that's what it says. Yeah.

**MR. LEARMONTH:** It's not ambiguous, isn't it?

**MR. MYRDEN:** Again, you know, there would be some question as to the fulsomeness of the estimate, shall we say.

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** The 6 – remember again, this email is dated, what, late November?

**MR. LEARMONTH:** It says November 22.

**MR. MYRDEN:** So as at financial close, this number –

**MR. LEARMONTH:** This is a week before financial close.

**MR. MYRDEN:** This number – the independent engineer, as at financial close, would turn that number into a hard and fast number.

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** Yeah?

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** That was – and it was that hard and fast number that was incorporated in the legal documents.

**MR. LEARMONTH:** Yeah, so you would've known at this point that this potential about there being a cushion –

**MR. MYRDEN:** It was being talked about but, again, I had not seen any – here is the revised cost estimate.

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** Because, again, this was the lawyer for Nalcor putting forward a 6.5 estimate.

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** I was okay with that from the perspective of the work that I was doing.

**MR. LEARMONTH:** Yeah. But just, again –

**MR. MYRDEN:** Again, I would have preferred if he had said – if it had been agreed (inaudible).

**MR. LEARMONTH:** Okay.

But, like, when you got this, if you weren't aware that there was an actual increase of \$300 million –

**MR. MYRDEN:** Mm-hmm.

**MR. LEARMONTH:** – I expect many people would expect you to look at this information and then say, oh, so this \$300 million is a real number and I just better make sure that the deputy knows about this.

**MR. MYRDEN:** Well, I think by forwarding the email to the deputy I've –

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** – perhaps fulfilled –

**MR. LEARMONTH:** Yeah but –

**MR. MYRDEN:** – my responsibility –

**MR. LEARMONTH:** I know you did.

**MR. MYRDEN:** – in that regard.

**MR. LEARMONTH:** I know you did, but did you talk to the deputy about it?

**MR. MYRDEN:** Again, capital costs were not my thing. I did not know where the – I didn't have any grounding in the 6.2. I didn't know

what was in, what was out, what the contingencies were, what the – where the risks were. I knew nothing about the number. To me, it was a number.

**MR. LEARMONTH:** Okay, tab 39, Exhibit P-03495. This is an email from – well, it starts off at the bottom, Yvonne Power to you and Donna Brewer, dated December 9.

**MR. MYRDEN:** Yeah, okay.

**MR. LEARMONTH:** “Hi Paul:

“Donna wants you to attend a Muskrat Falls briefing today @ 3:00 pm with Premier, Minister Marshall & Donna.”

And then up above you say: “Briefing now is @ 2:30 pm - right after question period.” Now, do you remember going to this briefing?

**MR. MYRDEN:** I did not go to any briefings at 2:30 in the premier’s office. So this briefing –

**MR. LEARMONTH:** You say, okay.

**MR. MYRDEN:** I said, okay, I would go.

**MR. LEARMONTH:** But did you go?

**MR. MYRDEN:** I – as far as I can recall, it didn’t take place.

**MR. LEARMONTH:** Okay.

**MR. MYRDEN:** Or if it did take place, it took place without me.

**MR. LEARMONTH:** So are you saying that you have no recollection of attending, or that you didn’t attend?

**MR. MYRDEN:** I have a recollection of attending a briefing in the premier’s office, but it was not at 2:30. It may have been on or around this date, but –

**MR. LEARMONTH:** Well, what is your recollection of that –?

**MR. MYRDEN:** Well, I guess it was kind of a little bit of a strange experience, but –

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

**MR. MYRDEN:** It was a little bit odd, I guess. There was a briefing – if it was the same briefing, it eventually got pushed around and rescheduled or whatever. And there was a briefing that took place in the evening one night; I believe it was in December. And I remember there was a choir singing in Confederation Building on Christmas sort of thing, and there was often things going on around the Confederation Building. I think everybody would recognize that.

**MR. LEARMONTH:** But would that be as early as December 9?

**MR. MYRDEN:** It may not have been. It may have been – it was likely in December. Any more detail than that, I can’t tell you and I don’t have any access to my records for that back there.

**MR. LEARMONTH:** So what’s your recollection of that meeting? Okay, first –

**MR. MYRDEN:** The –

**MR. LEARMONTH:** – who was – where was the meeting and who was in attendance?

**MR. MYRDEN:** The meeting was in the premier’s office or the premier’s boardroom. I had been asked to attend with the minister and Donna, and as it turned out I don’t believe Donna was available. So I was – I asked what I should do, whether I should go or not and her secretary told me that I should go.

So at – I don’t know, I’m going to say for argument’s sake 7 o’clock in the evening or something like that, Minister Marshall wasn’t in the office and I decided that perhaps he’d gone ahead of me and gone up to the premier’s office. So I went up and explained to whoever greeted me why I was there and they brought me in and sat me down in a boardroom and Minister Marshall wasn’t there.

**MR. LEARMONTH:** Who was there?

**MR. MYRDEN:** As I recall, it was the premier, Ed Martin and Minister Dalley.

**MR. LEARMONTH:** So just the four of you.

**MR. MYRDEN:** There probably were one or two other officials there, but I can't offhand – they may not have even been people that I knew on a personal level.

**MR. LEARMONTH:** And even though you don't know the date, you have a distinct recollection of this meeting, right?

**MR. MYRDEN:** I know there was singing or some sort of musical thing going on in the lobby of Confederation Building, so I'm not –

**MR. LEARMONTH:** Christmas, yeah?

**MR. MYRDEN:** Yeah, it was a pre-Christmas – I think it was in December.

**MR. LEARMONTH:** Yeah.

**MR. MYRDEN:** Yeah, that's as –

**MR. LEARMONTH:** Okay.

**MR. MYRDEN:** You know, perhaps if you had the record of what was going on in the lobby of Confederation Building in the evenings, I might recognize the group that was there, I don't know.

But I did – I went to the meeting. Minister Marshall wasn't there, he was late or he was on his way or whatever. So I sat quietly and waited and didn't really say anything. It was just idle chit-chat I suppose, as much as anything.

And then, Minister Marshall showed up and he came in and sat down and the chit-chat continued. And after 20 minutes or a half an hour, I believe Minister Marshall looked at me and said, are you ready to go? And I said, sure, and we got up and I believe the two of us left together.

**MR. LEARMONTH:** But what was discussed at this meeting?

**MR. MYRDEN:** There was nothing discussed.

**MR. LEARMONTH:** Nothing? Well, you were – you didn't sit there for 20 minutes in silence. I mean, there must have been –

**MR. MYRDEN:** It was the premier's office. I would've sat there for three hours if I was told to.

**MR. LEARMONTH:** But there was discussion at the meeting.

**MR. MYRDEN:** There was, I would call it, idle chit-chat and primarily amongst Mr. Martin, the premier and Minister Dalley.

**MR. LEARMONTH:** Anything about financial matters related to Muskrat Falls?

**MR. MYRDEN:** I don't recall it being anything related to Muskrat Falls whatsoever.

**MR. LEARMONTH:** So did you question why was I asked to come here?

**MR. MYRDEN:** I left when Minister Marshall suggested we leave and went on with my life. I didn't ask questions. I mean as an official – particularly as a director, you sit and you speak when you're spoken to.

**MR. LEARMONTH:** Yeah, but if you're called to a meeting – especially outside office hours as this was –

**MR. MYRDEN:** Mm-hmm.

**MR. LEARMONTH:** – you said 7 o'clock at night – and you go to a meeting in the premier's office and Ed Martin is there and others, and the discussion is about nothing to do with the work you're doing at the time, doesn't it strike you – even maybe if you're walking out – why on earth was I called to this meeting?

**MR. MYRDEN:** I believe I said at the outset that it was a little odd.

**MR. LEARMONTH:** Okay, that's what you meant.

**MR. MYRDEN:** Yeah, I didn't question it. I just – you know, I accepted my – I was not asked to talk about it and I didn't talk about it.

**MR. LEARMONTH:** Okay.

Okay, those are my questions for this witness.

**THE COMMISSIONER:** All right. Thank you.

The Province of Newfoundland and Labrador.

**MR. RALPH:** Good afternoon, Mr. Myrden.

**MR. MYRDEN:** (Inaudible.)

**MR. RALPH:** My name is Peter Ralph. I represent the Government of Newfoundland and Labrador.

It's nice to meet you in person –

**MR. MYRDEN:** Likewise.

**MR. RALPH:** – we spoke on the phone.

**MR. MYRDEN:** Likewise.

**MR. RALPH:** Just a couple of questions. The first – and I suppose they're not really questions. It's regarding – just a moment. It's regarding the notes that you've been referred to. I think it's 03473.

**MR. MYRDEN:** (Inaudible.)

**MR. RALPH:** Exhibit 03473.

**MR. MYRDEN:** Yeah, no I – the cross-reference to the tab number –

**THE COMMISSIONER:** 03473 is –

**MR. MYRDEN:** (Inaudible.)

**THE COMMISSIONER:** – tab 11.

**MR. MYRDEN:** Yeah. Okay, those are my notes. Okay.

**MR. RALPH:** I'm not going to ask you questions about the substance of it but – exhibited here are just a couple of pages.

**MR. MYRDEN:** Yup.

**MR. RALPH:** And I – I think I discovered this amongst the course of hundreds of thousands of documents that we have – the government has in its possession that it's given the Commission. And what I found was approximately 240 pages

and in the midst of those 240 pages were those handwritten notes.

**MR. MYRDEN:** Yeah.

**MR. RALPH:** And what we have, as well, there are draft copies of agreements, so on and so forth. And so what it appears to me is that there likely was a file, a paper file, and in the midst of documents such as drafts of agreements, you would've poked your handwritten notes.

Does that sound about right? Is that a possibility?

**MR. MYRDEN:** I suspect that perhaps they were left sitting on my desk when I left the employ of government, and somebody else perhaps poked them in it.

**MR. RALPH:** Oh, fair enough.

But do you think you would've had a file folder called COREA or FLG –

**MR. MYRDEN:** (Inaudible.)

**MR. RALPH:** No? Okay, fair enough.

**MR. MYRDEN:** (Inaudible.)

**MR. RALPH:** I am going to ask you – my last question is about, I guess the – it's your understanding the independent engineer would ultimately decide what the baseline was for the COREA.

**MR. MYRDEN:** Yup.

**MR. RALPH:** Is that right?

**MR. MYRDEN:** Yup.

**MR. RALPH:** And if we go to Exhibit 00065.

**MR. MYRDEN:** 00065. Oh, wait now – yeah, okay.

**MR. RALPH:** You don't think that's (inaudible).

**MR. MYRDEN:** Is this – am I looking at the same –?

**MR. RALPH:** So this is the federal loan guarantee –

**THE COMMISSIONER:** You have to look at this one on the screen.

**MR. MYRDEN:** Okay.

**THE COMMISSIONER:** Look at this one on the screen, please.

**MR. MYRDEN:** Okay.

**MR. RALPH:** This is the agreement providing the key terms and conditions for the federal loan guarantee.

**MR. MYRDEN:** Yes. Yeah.

**MR. RALPH:** And we go to page 12 –

**MR. MYRDEN:** (Inaudible.)

**MR. RALPH:** – and we scroll down a bit.

**MR. MYRDEN:** Yup.

**MR. RALPH:** Keep going.

So here, Expected Costs to Complete –

**MR. MYRDEN:** Yup.

**MR. RALPH:** – “Cost Overruns for a Project must be funded with Equity and/or Additional Debt ... as follows.” And number two there says: “(ii) The Independent Engineer will confirm the Borrower’s revised estimates of Expected Costs to Complete and any related changes to the construction schedule ....”

Is that – to your knowledge, is that where the authority comes from for the independent engineer to determine what the costs are in terms of the COREA? Or are you aware of some other –?

**MR. MYRDEN:** Well, this would have been – this would’ve been the sort of – I think I had referred to it earlier as a term sheet or a MOU. This would’ve been, I believe, the original – and again I don’t have a hard copy in front of me so it’s a little –

**MR. RALPH:** That’s okay.

**MR. MYRDEN:** – a little odd.

The – I believe, this would’ve been the original agreement that formed the basis of the negotiations and the finalization of detailed agreements –

**MR. RALPH:** Right.

**MR. MYRDEN:** – to support it. So in terms of where the authority for the independent engineer might have come from, I mean, I didn’t have any involvement in the relationship –

**MR. RALPH:** But –

**MR. MYRDEN:** – with the independent engineer.

**MR. RALPH:** – it was your understanding during the, I guess, the negotiations with the federal loan guarantee or the COREA account that the actual figure, the baseline, would come later, would come, I guess, at the time of financial close.

**MR. MYRDEN:** The –

**MR. RALPH:** What did you understand?

**MR. MYRDEN:** No, no. My understanding was that the baseline would be established as at financial close; obviously, it wouldn’t be done until some point after that.

**MR. RALPH:** Okay.

Thank you very much.

**MR. MYRDEN:** You’re welcome.

**THE COMMISSIONER:** All right, thank you.

Nalcor Energy.

**MR. SIMMONS:** Thank you, Commissioner.

Good afternoon, Mr. Myrden.

My name is Dan Simmons, here for Nalcor Energy.



I'm going to refer you to a number of documents, some of which Mr. Learmonth has already brought you to.

**MR. MYRDEN:** Yup.

**MR. SIMMONS:** And we're going to try to piece together, a little bit, some of the things that happened in November leading up to financial close.

So I'm going to talk first about some things that happened on the 8th of November. And we're going to go first to some notes that Mr. Derrick Sturge took. You know Mr. Sturge I expect?

**MR. MYRDEN:** I do, yes. Yup.

**MR. SIMMONS:** Yes. And the exhibit is 02523 and it's at tab 23 of the binder that you've got. And we're going to go to page 7 –

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** – of that – of his notes.

**MR. MYRDEN:** Yeah, oh my goodness.

**MR. SIMMONS:** Now, you might recall Mr. Sturge is one of these people who carried a notebook with him and made notes at the various meetings he attended. I don't know if you recall that or not.

**MR. MYRDEN:** I really couldn't say that I recall it or not to be honest.

**MR. SIMMONS:** Okay. Did you deal with Mr. Sturge very much while you were working on – as the Department of Finance representative on these closing arrangements in November of 2013?

**MR. MYRDEN:** I think that, you know, I dealt with the Nalcor group –

**MR. SIMMONS:** Yes.

**MR. MYRDEN:** – in terms of the financial group. I don't think that there was any particular focus on one individual over another.

**MR. SIMMONS:** Right, right.

So some of the people you would've been dealing with would've been Mr. Sturge, Mr. Auburn Warren, perhaps.

**MR. MYRDEN:** Yes, yup.

**MR. SIMMONS:** Mr. Jim Meaney, maybe.

**MR. MYRDEN:** (Inaudible.)

**MR. SIMMONS:** Okay. Maybe Mr. Rob Hull.

**MR. MYRDEN:** Yes.

**MR. SIMMONS:** Okay, so those are all familiar. And were those people who would spend time with you at Barnes Road?

**MR. MYRDEN:** They were people who would've been at Barnes Road, yes.

**MR. SIMMONS:** Right.

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** How were things set up there? Did you have your own particular office or space that you could use in that house on Barnes Road?

**MR. MYRDEN:** I did not.

**MR. SIMMONS:** You did not. So when you spent time there –

**MR. MYRDEN:** Mm-hmm.

**MR. SIMMONS:** – what were the physical arrangements? Were you sharing open space –

**MR. MYRDEN:** I was –

**MR. SIMMONS:** – with the other people who were there?

**MR. MYRDEN:** – sitting at a fairly large table and sharing space with whoever else happened to be sitting at the table at the time.

**MR. SIMMONS:** Right. Okay.

**MR. MYRDEN:** And it was a table that was used for meeting purposes, conference calls, that sort of thing.

**MR. SIMMONS:** Right.

**MR. MYRDEN:** So it was a fairly large open space in the – I guess the front left – bottom floor, left-hand side of the building.

**MR. SIMMONS:** Okay.

And the purpose of having that space there, I understand, was so that the group could focus their efforts – which had to be focused fairly intensely –

**MR. MYRDEN:** Yup.

**MR. SIMMONS:** – on getting the arrangements in place to meet the deadline for financial close.

**MR. MYRDEN:** That'd be fair, yeah.

**MR. SIMMONS:** Right, yeah.

Was there anyone else from the Department of Finance, other than you, who was part of the team that was there?

**MR. MYRDEN:** I don't recall. I think there may have been occasions when there were others who may have been there for a relatively brief period of time.

**MR. SIMMONS:** Mm-hmm.

**MR. MYRDEN:** But I – my attendance there, most of the time I would've been the only person from Finance.

**MR. SIMMONS:** Yes.

And the Department of Natural Resources had a representative there as well, Mr. Morris, I believe.

**MR. MYRDEN:** He probably would have been one of them, yes, yup.

**MR. SIMMONS:** Okay.

And did – were both you and Mr. Morris there at times attending some of these various meetings that took place?

**MR. MYRDEN:** I suspect I was probably there more frequently than Mr. Morris –

**MR. SIMMONS:** Mm-hmm.

**MR. MYRDEN:** – but there would've been some overlap, yeah.

**MR. SIMMONS:** Okay, all right.

So this – these are Mr. Sturge's notes and on the left-hand side, just coming down a little bit, it says, "Update call with Canada 11/8/13."

So would some of these meetings, around this table on Barnes Road that you attended, have been ones where there were conference calls with people who were not present in the room but would've been the lawyers or others representing Canada on the federal loan guarantee arrangements?

**MR. MYRDEN:** I guess I probably have to answer that question two ways because –

**MR. SIMMONS:** Yes.

**MR. MYRDEN:** – there were occasions when I was there and there were conference calls that took place. I would suggest that the majority of conference calls that I participated in, I did it from my own office in –

**MR. SIMMONS:** Right.

**MR. MYRDEN:** – Confederation Building.

**MR. SIMMONS:** Okay. Yeah.

And if we look at these notes, there were a group of people here. For Nalcor, it looks like it was Mr. Sturge, Mr. Warren, I think it's Craig Hippert and Mr. Meaney. Then there's BF; that would be Blair Franklin. Do you recall the role Blair Franklin played?

**MR. MYRDEN:** I do, yes – yeah.

**MR. SIMMONS:** Okay.

And Cassels, that would be a law firm. Do you recall Cassels Brock participating here as lawyers for Canada?

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** Yes.

And there's a reference there to some people from Justice and then NRCan, which would be the federal government, the Department of Natural Resources. You recall their participation?

**MR. MYRDEN:** Mm-hmm.

**MR. SIMMONS:** And then Finance, it says NL P. Myrden, that would be you.

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** T. Stanley, Todd Stanley from the Department of Justice.

**MR. MYRDEN:** Right.

**MR. SIMMONS:** Paul Morris from the Natural Resources department.

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** And then Faskens, that's another law firm acting for Nalcor in the course of this. You would recall that?

**MR. MYRDEN:** Yes, I would.

**MR. SIMMONS:** Okay.

So this is a fairly large group.

**MR. MYRDEN:** Yes.

**MR. SIMMONS:** And it says, check-in call, business issues, item 5 says cost overruns. And it's something of specific drafting from Cassels. So you've told us that, I think, one of the issues you were involved in was how the COREA account was going to be set up and how it was going to work in order to deal with this cost overrun issue, correct?

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** So this would've been one of these meetings on the 8th of November when you were involved in that.

**MR. MYRDEN:** Oh, yeah.

**MR. SIMMONS:** Okay.

Let's take a look please at Exhibit P-03489. Mr. Learmonth brought you to this a few minutes ago –

**THE COMMISSIONER:** That's tab 17.

**MR. SIMMONS:** – yes, and it's at tab 17. I'm going to bring you to page 2, where Mr. Learmonth had brought you as well –

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** – because he'd taken you to an email message and if we scroll down a bit – and stop there. This is actually from the day before that meeting, the 7th of November –

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** – and you're writing it and you're reporting to Donna Brewer. Who's Yvonne Power?

**MR. MYRDEN:** She would be Donna's secretary.

**MR. SIMMONS:** Okay.

And you're copying it to Peter Au –

**MR. MYRDEN:** Mm-hmm.

**MR. SIMMONS:** – and his position was what?

**MR. MYRDEN:** He was an ADM, an assistant deputy minister in the Department of Finance at the time.

**MR. SIMMONS:** Okay, and we know Mr. Stanley was with the Department of Finance as well.

**MR. MYRDEN:** Justice, I'm sorry.

**MR. SIMMONS:** I'm sorry, Justice, yes.

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** Thank you.

So Mr. Learmonth took you to the second paragraph there, beginning "essentially" and I'm gonna go down a little bit further, about probably six or seven lines down where it – just

in a bit it begins, “So, for example” – you see that? “So, for example, if it is determined that the cost overrun at FC is \$500 million, Nalcor would be required to fund say one-fifth of this (assuming 5 years to COD)” – what’s COD?

**MR. MYRDEN:** I used to know.

**MR. SIMMONS:** Okay.

Well, we’ll skip that.

**MR. MYRDEN:** (Inaudible) perhaps?

**MR. SIMMONS:** Yeah, yeah. “... or \$100 million, prior to drawing down funds raised pursuant to the FLG. This would be over and above the equity provided to ‘fund’ construction costs prior to FC and there would be no room in the existing 13-14 budget for the Province to provide funds to Nalcor to cover this obligation.”

Now, does that refresh your recollection at all about the concern – which we’ve heard from others being –

**MR. MYRDEN:** Mm-hmm.

**MR. SIMMONS:** – that there was expected – it was already identified that costs as of financial close were higher than at sanction, and if the cost overrun account was applied the way Canada had drafted it, there would be a requirement at financial close – or in 2013 – for the province to put in equity into that account, and it hadn’t been budgeted.

Does that sounds familiar to you?

**MR. MYRDEN:** Yeah, it does sound familiar (inaudible).

**MR. SIMMONS:** Because what you’re reporting here seems to be that you’re, in fact, reporting to Ms. Brewer on that very issue.

**MR. MYRDEN:** Well, what I’m reporting on is the mechanism, in terms of the implications of what was being proposed for the cost overrun provision, okay? The 500 was, simply, you know –

**MR. SIMMONS:** Mm-hmm.

**MR. MYRDEN:** – a nice, round number that was easy to do –

**MR. SIMMONS:** Mm-hmm.

**MR. MYRDEN:** – you know, examples or calculations on. So, that was why I chose the 500 –

**MR. SIMMONS:** Right.

**MR. MYRDEN:** – and the five years. Was to make it –

**MR. SIMMONS:** So, putting aside the number –

**MR. MYRDEN:** (Inaudible.)

**MR. SIMMONS:** – of what – how much the cost overrun was, do you accept that, at this point, you knew there was a cost overrun?

**MR. MYRDEN:** No. No, not in the least.

**MR. SIMMONS:** As you –

**MR. MYRDEN:** All I would suggest at this point was that: If there was a cost overrun, it would –

**MR. SIMMONS:** Mm-hmm.

**MR. MYRDEN:** – require immediate funding.

**MR. SIMMONS:** Okay. All right.

And when you get to the end of that passage that I just read, you’re actually flagging that there’s no room in the budget. So, that suggests to me that there an immediate concern here that needs to be addressed – when the form of this cost overrun provision is settled – to protect the province against having to put equity in if there’s a cost overrun.

Now, go a little further.

**MR. MYRDEN:** Again, you know, our, you know – just maybe you could rephrase the question because –

**MR. SIMMONS:** Okay. Well, let me ask you –

**MR. MYRDEN:** – I’m afraid that there’s no –

**MR. SIMMONS:** – something related.

**MR. MYRDEN:** – correlation and causation are –

**MR. SIMMONS:** Okay.

**MR. MYRDEN:** –not necessarily (inaudible).

**MR. SIMMONS:** Do you recall that it was Canada’s position that the accounting for cost overruns should start with the 6.2 billion number on – at sanction in DG3?

**MR. MYRDEN:** Mm-hmm.

**MR. SIMMONS:** And a counter position that was being put forward by Nalcor with the province involved was: No, don’t count it from then –

**MR. MYRDEN:** Mm-hmm.

**MR. SIMMONS:** – count it from what the costs actually are now at financial close.

**MR. MYRDEN:** Yep.

**MR. SIMMONS:** You recall that?

**MR. MYRDEN:** I recall that being –

**MR. SIMMONS:** Right.

**MR. MYRDEN:** – the rationale, yeah.

**MR. SIMMONS:** Right.

And if Nalcor’s position was accepted, that would mean there’d be no concern about having to put equity in in 2013, because the cost – the cost on financial close was the baseline number.

**MR. MYRDEN:** Well yeah but – you’re suggesting, perhaps, that there was a – that there was expedience around the current fiscal year in terms of the work that I was doing.

**MR. SIMMONS:** Mm-hmm.

**MR. MYRDEN:** The reality was, I was looking at the cost overrun funding provisions and

attempting to minimize what that would represent over the life of the project, in terms –

**MR. SIMMONS:** Right.

**MR. MYRDEN:** – of a requirement from the project. Because there were two – well, there were three – I had – three is probably editorializing a little bit, but it’s probably important. There were – you know, there were different factors at play here, in terms of the whole – you know, my initial reaction to the whole cost overrun funding was that it was onerous. That the province was already providing a completion guarantee –

**MR. SIMMONS:** (Inaudible) agree with you on that.

**MR. MYRDEN:** – was essentially already committing to do this. And so, to actually have to pre-fund it was a little bit, I thought, onerous, okay?

Secondly, the – not only was the requirement there to fund it, but the requirement that it be launched in an escrow account removed any ability for that equity contribution to unlock borrowed money. And when I say that, and what I mean, is that the project funding components had maximum debt-equity ratios established. So debt could only be drawn down to the extent that the province had sufficient equity there to support the – whatever the minimum debt-equity requirement was.

The money that was put into the escrow account would be unproductive money from the point of view of the province. It would not unlock any borrowed funds. It would not be available to be used on the project until all borrowed funds were exhausted, and at that point then the cost – or the escrow account could begin to be collapsed to be applied against the – so it was a larger, longer issue –

**MR. SIMMONS:** Yes.

**MR. MYRDEN:** – than just about, how to we cover off on the fact that we haven’t got enough money in the budget this year.

**MR. SIMMONS:** Now –

**MR. MYRDEN:** Because there are mechanisms to get money outside of the budget process.

**MR. SIMMONS:** Mm-hmm.

**MR. MYRDEN:** The reality was, that in order to do it, it's a very public process, and it has to go to the House and it has to be voted on. And I can tell you that in that environment, at that time, there was no political appetite to open the House because Nalcor needed more money in the short term.

**MR. SIMMONS:** Sure, sure, okay.

So this was the 7th of November that you sent this message to –

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** – your deputy minister. If we scroll up to the top of page 1, I think, I just want to see what the date is, at the top here. So there's some discussion she has with Mr. Stanley and, eventually then, we get up to November 8 now, which is the day you had the meeting I brought you to a moment ago –

**MR. MYRDEN:** Sure, yeah.

**MR. SIMMONS:** – to talk with Canada and others.

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** And now, let's go to Exhibit P-02842 which is another message from the 8th.

**MR. MYRDEN:** 842.

**MR. SIMMONS:** And that is –

**MR. MYRDEN:** 02842.

**MR. SIMMONS:** – tab 52.

**MR. MYRDEN:** Fifty-two. Okay, yeah.

**MR. SIMMONS:** So this is late in the day on Friday, November 8, 5:21. And Ms. Brewer sends this to Minister Marshall. You're copied on it so you would have received a copy of this –

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** – of this message.

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** This late in the day, would it be reasonable that this is probably after you've had that big meeting that's noted in Mr. Sturge's notes? You're nodding your head. So that's a yes, is it?

**MR. MYRDEN:** Yeah. No, that –

**MR. SIMMONS:** Yes, yes, okay.

**MR. MYRDEN:** – seems to be the logical assumption.

**MR. SIMMONS:** The transcript needs you to say yes on it.

**MR. MYRDEN:** Sure, yeah. I understand.

**MR. SIMMONS:** And if we scroll down a little bit, please –

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** – there's a section there that begins: "Our current thinking - At Financial Close, a revised project cost estimate will be provided (by the Independent Engineer)" – that's what you've told us –

**MR. MYRDEN:** I know. Yeah.

**MR. SIMMONS:** – "and that will form the new project baseline (not the DG3 numbers)."

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** "From that time forward, any changes resulting in higher project costs" et cetera – and then says: "Paul thinks if it is a budget appropriation issue for us it may arise beginning in 2014/15 ...."

So had Ms. Brewer been involved in the discussions that day or is this a result of what you must have reported back to her as the Finance representative at that meeting?

**MR. MYRDEN:** I suspect she was – she may have been involved at that time. I can't say for certain, no.

**MR. SIMMONS:** Okay.

Is this consistent with what you think you would have reported back to her?

**MR. MYRDEN:** Well, this is her email so, you know, it was – if it was – if there was anything in here that I thought was inaccurate or inconsistent with anything that I told her, I would have made her aware of it.

**MR. SIMMONS:** Okay, let's run back to 02523, please, Mr. Sturge's notes – and we'll just confirm whether Ms. Brewer was there – page 7.

**MR. MYRDEN:** (Inaudible.)

**MR. SIMMONS:** So when I look down through the list of attendees I don't see Ms. Brewer noted anywhere here.

**MR. MYRDEN:** Oh, perhaps she wasn't then.

**MR. SIMMONS:** Okay.

**MR. MYRDEN:** I don't really think it's relevant one way or the other, but perhaps –

**MR. SIMMONS:** Okay, all right.

**MR. MYRDEN:** – if something turns on it that I don't know about.

**MR. SIMMONS:** So if she wasn't there, you would have been her only source of information. She would have been dependent on you to report back what she needed to know in order to pass that information on to the minister. Correct?

**MR. MYRDEN:** That's correct. Yeah.

**MR. SIMMONS:** Yes. Okay. All right.

So let's jump ahead a little bit and let's go now to November 19, 2013. And I'm – and let's go to Mr. – we'll stay on Mr. Sturge's notes and go to page 13 first.

**MR. MYRDEN:** Thirteen, oh, in these notes?

**MR. SIMMONS:** Yeah. And that's tab 23 of your binder –

**THE COMMISSIONER:** Twenty-three.

**MR. SIMMONS:** – page 13.

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** And there's actually 13, 14, 15 when you look over them. This is – it looks like there's a whole series of conference calls with Canada and various things. And it appears that you are involved in this because I see your name mentioned a couple of times.

Let's go ahead to 15 which may be the reference I'm looking for. Okay, we can stop there.

**MR. MYRDEN:** Mm-hmm.

**MR. SIMMONS:** So on the left hand side on the bottom, it says: Call with Canada to discuss o/s – that would be outstanding business issues. And at NL it says: Pelletier – that would be Randy Pelletier from the Department of Justice, correct?

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** And you're listed there. So this was one of the calls that you would've been on.

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** And when you go to the right-hand column there's a whole heading for cost Overruns.

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** And there's an underlined part at the bottom there that says: Again, the discussion came back to the need to get capex – capital expenditure – data to Canada. So does this trigger any recollection that you would have about what was happening that time about verifying what the capital expenditure information was?

**MR. MYRDEN:** I – no specific recollection related to that point.

**MR. SIMMONS:** Okay.

**MR. MYRDEN:** Clearly, the capital cost data would be something the guarantor of the debt might be interested in.

**MR. SIMMONS:** Right.

So we do know that the 19th is the day that the 6.53 reconciliation document was put in the data room for Canada. We know that, so that seems to coincide here on the 19th.

**MR. MYRDEN:** Okay.

**MR. SIMMONS:** And we'll go now to the next day – early the next morning on the 20th, which is Exhibit P-02535. Mr. Learmonth brought you to this. I'm walking this through so we can put some things in sequence here.

**THE COMMISSIONER:** That would be tab 33.

**MR. MYRDEN:** Yeah, 33. Yeah.

**MR. SIMMONS:** This is Mr. Sturge's message to Mr. Warren, Mr. Hull and Mr. Meaney where he says, "the other thing we need to do based on" the "direction from Ed and Charles ... last week is to walk Donna Brewer and Paul Myrden through the LCP cost update data."

Now, you've told us you don't have any recollection of that happening.

**MR. MYRDEN:** No.

**MR. SIMMONS:** Right? Okay, well, this is the 20th.

And we're going to go to the 21st and Exhibit 03447, please, which is probably not in your –

**MR. MYRDEN:** Sixty-three.

**MR. SIMMONS:** – list. Yes, it is, it's tab 63.

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** So this is the next day.

**MR. MYRDEN:** Mm-hmm.

**MR. SIMMONS:** It's a message from Mr. Warren.

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** It's to a large number of people, including Mr. Bown, Ms. Brewer, Mr. Morris and you are among the list. You see that –

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** – of recipients?

**MR. MYRDEN:** Yeah, sure.

**MR. SIMMONS:** Yeah?

And Mr. Warren says: "Hi all,

"Here is a list of items for our discussion momentarily."

And if we go down, please – go to page 2, first.

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** And we see there's a list of outstanding business issues.

And now go to page 3.

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** And the list continues with item 6, assignment of loans, and item 7, date certain. So I'm – we're going to save that for a moment because we're going to come back to seeing that again in just a moment.

But, first of all, I'll bring you back to Mr. Sturge's notes at P-02523. Sorry, Madam Clerk, for bouncing around so much.

**MR. MYRDEN:** That's okay. I can see those on the screen.

**MR. SIMMONS:** Page 20 this time.

**THE COMMISSIONER:** That's at tab 23.

**MR. SIMMONS:** Yeah.

**THE COMMISSIONER:** Page 20.



**MR. SIMMONS:** Page 20.

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** So here we are now on the same date –

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** – the 21st, and on the left-hand side, it says: Debrief with Ed/Charles. And Mr. Sturge notes: Ed, Charles, Donna Brewer, P. Myrden, P. Morris and then other people who are there, and the first item is: Capital cost overruns.

Is this possible, that this is the meeting that Mr. Sturge had referred to in his email message where you and Ms. Brewer were to be walked through the capital cost increases?

**MR. MYRDEN:** I don't think so.

**MR. SIMMONS:** Okay.

So let's go to your notes at 03437, please.

**MR. MYRDEN:** 03437.

**MR. SIMMONS:** And –

**MR. MYRDEN:** 03437?

**MR. SIMMONS:** I've noted – oh, 03473, I'm sorry.

**MR. MYRDEN:** 034 –

**MR. SIMMONS:** Your tab 11.

**MR. MYRDEN:** Okay, thanks.

**MR. SIMMONS:** And we'll go to page 2.

**MR. MYRDEN:** Page 2, yeah.

**MR. SIMMONS:** So –

**MR. MYRDEN:** Okay.

**MR. SIMMONS:** – page 2 is the second page of the agenda that Mr. Warren sent out for the meeting on the 21st. Do you recognize that as

being item 6 and 7, the same that we referred to earlier, a moment ago?

**MR. MYRDEN:** It certainly looks like it.

**MR. SIMMONS:** Yeah.

So now, when we go back to page 1 –

**MR. MYRDEN:** Yeah.

**MR. SIMMONS:** – we have notes that you made.

**MR. MYRDEN:** Yeah. Yeah, isn't that something.

**MR. SIMMONS:** Right? It is something.

And it says: DG3, 6.2 gone to 6.5; plus \$300 million. So this kind of sounds like walking through the cost increase, doesn't it?

**MR. MYRDEN:** No, not at all. That's – these two pages are completely unrelated. And why are they – why this document is two pages copied on to one is beyond me. They –

**MR. SIMMONS:** They've been produced to us that way and the two come to us as a single document.

**MR. MYRDEN:** Clearly the front is graph paper –

**MR. SIMMONS:** Okay. Well let's –

**MR. MYRDEN:** – and the back is not.

**MR. SIMMONS:** – well let's just read some of the content of it then, as I just wanted to see. So it starts after the numbers; it says some enhancements plus overruns. And it says current estimates of project costs and comparison to budget DG3 is the explanation for all material deviations. Value of contracts awarded, current plus cumulative, details of tendered but awarded contracts, expectations as to award – this all sounds very much like walking through an increase to the capital cost, which was what, on the 20th, Mr. Sturge said was going to be done for you and Ms. Brewer and, on the 21st, Mr. Warren sends out a meeting invitation with that on the agenda, and this is your note – and I'm

just gonna – I’m gonna suggest to you that these are the notes you made in that meeting. On the 21st of November.

And you say they’re not.

**MR. MYRDEN:** I can say that the likelihood of that being the case would be extremely small in my view.

**MR. SIMMONS:** Why?

**MR. MYRDEN:** I can’t say for certain that it’s not –

**MR. SIMMONS:** Why would the likelihood be small?

**MR. MYRDEN:** Typically because there’s no – yeah. I was not in the habit of writing notes on the back of pages of other documents. A document was kept intact; my notes were done on graph paper; for the most part they were thrown away. Why this one surfaces five years later is beyond me.

**MR. SIMMONS:** Well, forget the second page. Just look at the content –

**MR. MYRDEN:** Yup.

**MR. SIMMONS:** – of your notes.

**MR. MYRDEN:** Yup.

**MR. SIMMONS:** Isn’t the – doesn’t the content of your notes sound like being given information about why and how costs have changed from DG3 to financial close?

**MR. MYRDEN:** I would suggest that it sounds a lot more like the beginnings of a shopping list that may have been a list of types of information that one could expect to have reported on a regular basis on a major project.

I recall – I don’t – I can’t tell you where it was, or – I believe I saw it in the binder that I was given in advance of the previous round of questionings, but I recall there was an email in there that I had written which would basically set out maybe 15 points that would be a – my first thrust at putting forward what a regular

reporting regime might look like and what sorts of information –

**MR. SIMMONS:** Mmm.

**MR. MYRDEN:** – might be included.

**MR. SIMMONS:** Mmm. So the numbers at the top of the page are purely coincidental, are they?

**MR. MYRDEN:** I’m not saying they’re coincidental, but I don’t – you know, that to me looks like a different – completely different exercise than the one I was engaged in in the latter days of November.

**MR. SIMMONS:** Okay.

The name at the very bottom on the left – Jamie. Could that be Jamie Chippett?

**MR. MYRDEN:** I sincerely doubt it. I – very rarely would I have any correspondence with Jamie. It was more likely Jamie Hancock with the Bank of –

**MR. SIMMONS:** Okay.

**MR. MYRDEN:** – America Merrill Lynch.

**MR. SIMMONS:** Okay.

And just to round it out – so the – we know that there was an agenda for a meeting on the 21st of November, which had capital cost update as part of the agenda –

**MR. MYRDEN:** Yep.

**MR. SIMMONS:** – and you’ve been brought to a message that you sent the next day, November 22, which is at P-03494, please.

Now let’s just bring it up again so we can put it in proper sequence.

**MR. MYRDEN:** (Inaudible.)

**THE COMMISSIONER:** That’s at tab 38.

**MR. MYRDEN:** Mm-hmm.

Yeah.

**MR. SIMMONS:** So this is the next day after that meeting. And this is the one where – when you scroll down – Mr. Learmonth brought you to the passage where there’s an explicit reference to \$6.5 billion capital cost estimate.

**MR. MYRDEN:** Yep.

**MR. SIMMONS:** So I’ll just close out by saying: prior to financial close, can you say whether or not you were aware that there was an increase in the capital cost estimate for the Lower Churchill Project?

**MR. MYRDEN:** I can say what I said earlier, was that I was aware that there was upward pressure on capital cost. I had –

**MR. SIMMONS:** Mmm.

**MR. MYRDEN:** – never been provided with detail to say that this is the revised capital cost.

**MR. SIMMONS:** Right.

Since you were the primary person from the Department of Finance –

**MR. MYRDEN:** That was not –

**MR. SIMMONS:** – who was a participant –

**MR. MYRDEN:** – that was not my choice. I – you know, I felt, and others that worked with me felt, that perhaps the finance involvement was a little thin here.

**MR. SIMMONS:** Many of us have to do things that’s not our choice at times –

**MR. MYRDEN:** I understood that –

**MR. SIMMONS:** – Mr. Myrden –

**MR. MYRDEN:** – and I sucked it up (inaudible) –

**MR. SIMMONS:** – and it doesn’t lessen our responsibility to do what we’re supposed to do –

**MR. MYRDEN:** I hear you.

**MR. SIMMONS:** – when we’re given the task to submit.

**MR. MYRDEN:** Yep.

**MR. SIMMONS:** So as the person from the Department of Finance –

**MR. MYRDEN:** Yep.

**MR. SIMMONS:** – who was the primary person with access inside the room about what was happening in –

**MR. MYRDEN:** Yep.

**MR. SIMMONS:** – these negotiations and with the information we’ve just gone through, that would have allowed you to conclude that it looks like there’s going to be a capital cost increase at financial close, what responsibility did you regard yourself as having to make sure that that was effectively communicated up the line to your deputy?

**MR. MYRDEN:** In terms of my responsibility for reporting on capital costs, I had none, okay?

**MR. SIMMONS:** So regardless of the information you were exposed to, you did not regard yourself as having any responsibility to ensure that that information was passed on –

**MR. MYRDEN:** I would have –

**MR. SIMMONS:** – to your deputy?

**MR. MYRDEN:** I would have surfaced if I was told things that were suggestions or indications. I would have passed those along to the deputy. In terms of having specific information on revised capital cost numbers, I did not have it.

**MR. SIMMONS:** Thank you very much.

No further questions, Commissioner.

**THE COMMISSIONER:** All right. Thank you.

Concerned Citizens Coalition.

**MR. HISCOCK:** No questions.

**THE COMMISSIONER:** Edmund Martin.

**MR. SMITH:** No questions.

**THE COMMISSIONER:** Kathy Dunderdale.

**MS. E. BEST:** Good afternoon, Mr. Myrden. I'm Erin Best, counsel for Kathy Dunderdale.

**MR. MYRDEN:** (Inaudible.)

**MS. E. BEST:** So you've just indicated to us that you felt you had no responsibility to report on capital cost.

**MR. MYRDEN:** I did not feel it was part of my mandate. In fact, it clearly was not part of my mandate.

**MS. E. BEST:** And why do you say that? What precisely was your mandate, and who gave you your mandate?

**MR. MYRDEN:** My mandate was to become involved in those things that required sign-off by the Department of Finance.

**MS. E. BEST:** And would the – would not – would the capital cost update, as reported by the independent engineer – confirmed by the independent engineer on financial close, that particular number, would that not require sign-off by the minister?

**MR. MYRDEN:** Not to my knowledge.

**MS. E. BEST:** You think that the minister wouldn't – not have had –

**MR. MYRDEN:** I have –

**MS. E. BEST:** – not have had any interest in knowing that number.

**MR. MYRDEN:** I have no idea what was expected of the minister; I know what was expected of me. And I was not there to review capital costs.

**MS. E. BEST:** Okay. But with respect to the 6.531 number, who specifically told you not to report that to your minister?

**MR. MYRDEN:** I've never had the 6.531 number. It wasn't about reporting or not reporting it.

**MS. E. BEST:** Okay. Well, with –

**MR. MYRDEN:** I was never given it.

**MS. E. BEST:** Now, that's a little bit contradictory because I think you have said today that if you did have the detailed – I guess, I think you said, to quote you, factual –

**MR. MYRDEN:** Had I been given –

**MS. E. BEST:** Excuse me. Let me finish. Let me finish.

**MR. MYRDEN:** Had I been given –

**MS. E. BEST:** – factual information on the capital cost, you would have reported that. You felt that that would have been your duty to report that –

**MR. MYRDEN:** If –

**MS. E. BEST:** – to your minister, correct?

**MR. MYRDEN:** If I had been given that information, I would have forwarded it to my deputy. At that point – where it went from there it would have been up to her.

**MS. E. BEST:** Okay. But we do know that you did know about the 6.531 –

**MR. MYRDEN:** No, I did not know.

**MS. E. BEST:** You did not know. So Madam Clerk, if you could please take us to P-03494.

**THE COMMISSIONER:** That's at tab –

**MS. E. BEST:** Oh good. We're already there. Sorry.

**THE COMMISSIONER:** Tab 38.

**MR. MYRDEN:** Oh, yeah.

**MS. E. BEST:** Right. So, we're on page 2 there.

**MR. MYRDEN:** Yeah.

**MS. E. BEST:** So we've already gone over this exhibit many times in the context of this Inquiry and already at least a couple of times today.

**MR. MYRDEN:** Yeah.

**MS. E. BEST:** And as you see there, it refers specifically to the “\$6.5B capital cost estimate and” points out – as we can see clearly there – “not the \$6.2B DG3 estimate.” And you read this email –

**MR. MYRDEN:** Mm-hmm.

**MS. E. BEST:** – so you did know about the \$6.5-billion number, correct?

**MR. MYRDEN:** I knew, yeah. I – certainly, I got this email.

**MS. E. BEST:** Okay. So, is this what –

**MR. MYRDEN:** I was –

**MS. E. BEST:** – you were calling earlier a rumour?

**MR. MYRDEN:** This would not be – to me, this would not be a detailed estimate of capital cost; this was clearly identified as an estimate – as to an estimate for the purposes of establishing where the baseline might fall, okay?

**MS. E. BEST:** Okay. So you – is this what you would’ve considered to be what you called earlier noise or a rumour?

**MR. MYRDEN:** This was information to be confirmed in a couple of weeks’ time by the independent engineer. At that point, it would be – there would be fact available. So up until that point, it was an estimate. It was somebody’s estimate.

**MS. E. BEST:** And you felt that you had no duty to pass this along to your minister.

**MR. MYRDEN:** I felt like I had no particular insight into the number and I felt as if it had no relevance to the piece of work that I had been asked to do –

**MR. RALPH:** Excuse me, Commissioner. I believe he did forward this one on. I think he (inaudible) –

**MR. MYRDEN:** I may have. Yeah, no, no. I may have. I mean, I’d be surprised if I didn’t forward anything I received of substance.

**MS. E. BEST:** So, I believe what Mr. Ralph had said is correct. I believe you forwarded it on to Mr. Bown. Is that right?

**MR. MYRDEN:** This particular one? I believe I forwarded it to Donna Brewer.

**MS. E. BEST:** Donna Brewer. Excuse me.

Actually, Madam Clerk, if you could scroll up please.

**MR. MYRDEN:** So it is.

**MS. E. BEST:** Yes, to Donna Brewer.

**MR. MYRDEN:** I did inform her of this.

**MS. E. BEST:** Okay, but –

**MR. MYRDEN:** Again, perhaps rumour is a poor choice of words.

**MS. E. BEST:** – specifically, though –

**MR. MYRDEN:** In the absence of a concrete schedule that says revised estimated capital costs as at a certain date, any other discussion around capital cost, in my view, was not a discussion around substance because the substance hadn’t been presented.

So it was – whether it was rumour or innuendo or ballpark numbers or working estimates or a variety of different things, it was never portrayed as the updated cost estimate for Muskrat Falls.

**MS. E. BEST:** Okay.

Mr. Myrden, earlier today when you were testifying, I believe you were describing your role.

**MR. MYRDEN:** Mm-hmm.

**MS. E. BEST:** And a number of times when you were doing that, you made a hand movement when you were describing what you were focused on –

**MR. MYRDEN:** Yep.

**MS. E. BEST:** – and you were making this hand movement. Is that right?

**MR. MYRDEN:** Yeah. Yeah.

**MS. E. BEST:** So I was watching you do that.

**MR. MYRDEN:** Yeah.

**MS. E. BEST:** To me, that hand movement indicates that you had tunnel vision, that you had blinders on. Does that correctly describe –

**MR. MYRDEN:** I –

**MS. E. BEST:** – how you felt about the number?

**MR. MYRDEN:** I would perhaps agree with the tunnel vision without agreeing with the blinders. But I was focused on a particular piece of this. This was a huge project with hundreds of people involved. I had responsibility for a piece of it all on my own, pretty much. I took that piece; I did the best job that I could on it. As far as I know, everybody was happy with it. In terms of what the other 199 people may have been engaged on during that period, that was their business, not mine.

**MS. E. BEST:** But in several circumstances, and particularly when you were in the house on Barnes Road –

**MR. MYRDEN:** Mm-hmm.

**MS. E. BEST:** – there were times where you were the only government representative there. Is that right?

**MR. MYRDEN:** Yeah. That could well be the case, yeah.

**MS. E. BEST:** So is what your saying that if you had learned a piece of important information about the project while you were there –

**MR. MYRDEN:** Mm-hmm.

**MS. E. BEST:** – unless it was specifically within what you considered to be your very precise mandate, you would not pass that along –

**MR. MYRDEN:** No. I didn't say that; I said that I would pass along anything of substance. What I'm saying is if the –

**MS. E. BEST:** And how do you make that qualification –

**MR. MYRDEN:** – information that I'm being asked did I have – or did I have access to, I did not have.

**MS. E. BEST:** So how did you make that decision about what had substance and what didn't have substance? And when you answer this question, can you please advise me who directed you to make that qualification in that way?

**MR. MYRDEN:** I think that I focused on the work that I had to do. There were all kinds of things going on around me.

**MS. E. BEST:** So you decided yourself?

**MR. MYRDEN:** No. I did what I was asked to do. And I did it completely.

**MS. E. BEST:** And so someone told you that – did anyone ever tell you specifically not to share anything that wasn't, I guess, a revised cost estimate that was laid out in a way that you considered to be factual? I just – what I'm trying to get at – it still doesn't make any sense to me why you would not have thought that the 6.5 number was more significant.

**MR. MYRDEN:** The – I like the 6.5 number better than the 6.2 number 'cause it suited my purposes for what I was asked to do. I would've been happier, still, if that number was \$7 billion from the perspective of cash requirements from the province. That's what I was focused on. Other people had different foci.

**MS. E. BEST:** Okay. And so did you ever report to your minister or to anyone else in government that you didn't feel that the – a person with a different focus, i.e., the person who's concerned about cost overruns, should have been present on Barnes Road or involved in the discussions that you were involved in?

**MR. MYRDEN:** I don't think that there was anybody in the Department of Finance that I would've nominated as being that person.

**MS. E. BEST:** What about a person from Natural Resources then?

**MR. MYRDEN:** Again, that was – I didn't run that department or have any input in how it got run.

**MS. E. BEST:** And I think this is my problem with it – is that, why did you think that was your decision to make?

**MR. MYRDEN:** It wasn't a decision. It was I had a job to do and I did it. I certainly wasn't in a position to say, well, I got all the different balls in Muskrat Falls under my control here.

**MS. E. BEST:** Okay. But if –

**MR. MYRDEN:** I mean, seriously.

**MS. E. BEST:** – you recognize that there was a ball in the air that no one was catching, then shouldn't you have reported that to somebody?

**MR. MYRDEN:** Well, I caught all the ones that no one was catching that related to the work that I was asked to do.

**MS. E. BEST:** That did not answer my question.

**MR. MYRDEN:** Well, then, I'm sorry.

**MS. E. BEST:** If you saw that there was a ball in the air that no one was catching, why didn't you report that to someone?

**MR. MYRDEN:** There was – as I said, you know, I made it clear that if there was a revised update, my minister and deputy minister would love to have a copy.

**MS. E. BEST:** Again, I think you're evading my question –

**MR. MYRDEN:** Well –

**MS. E. BEST:** If there was a ball in the air that no one is catching –

**MR. MYRDEN:** Again, I had no background in capital cost, no engineering background, no knowledge of what was in the 6.2, no understanding of what the project components were, what the difficulties of the project were. I was asked to look at the federal guarantee as it related to the project financing, and I did what I was asked to do.

**MS. E. BEST:** So, you decided yourself to keep the blinders on and not report it up –

**MR. MYRDEN:** Those are your words, not mine.

**MS. E. BEST:** Okay. Those are my questions. Thank you.

**THE COMMISSIONER:** Thank you. Former Provincial Government Officials.

**UNIDENTIFIED MALE SPEAKER:** No questions, Commissioner.

**THE COMMISSIONER:** Julia Mullaley, Charles Bown.

**MR. FITZGERALD:** No questions.

**THE COMMISSIONER:** Robert Thompson.

**MR. COFFEY:** No questions. Consumer Advocate.

Oh, it's 3:30 here now, I just noticed. We'll take our break here now then and come back in 10 minutes.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** Just before we address anything, as a result of the questions that were asked by Mr. Simmons, I felt it was important to try to track down how we actually got the document 03473, which is the document that had the reference to Mr. Myrden's notes. And then a second – on the back of that, as one page, at least in the exhibit book, the actual part

of the letter, part of the email from Mr. Warren with regards to the agenda. So I've asked – it appears that that document actually came to us from Donna Brewer.

Now I'm checking on this to make sure, but apparently the practice of Commission counsel, and I haven't had a chance to speak to Mr. Learmonth about this, but apparently the practice is that if a witness brings in a document, we would take the document, we would copy it and we would return the original document back to the witness; however, I'm not sure if that's exactly what's occurred here or not. So we are doing some exploration now to see what we actually did receive by way of documents. I know we also received a bundle of documents from the Government of Newfoundland that included this document, as well as the Warren email.

So all of that we're going to try to track down and figure out exactly what it all is, and I'll hear submissions about it later, but I'm just saying at this point in time we are trying to figure out exactly whether those two documents came to us together or alternatively separately. And if anybody has any information they want to share with the counsel, I don't want to talk about it now –

**UNIDENTIFIED MALE SPEAKER:** Yeah, that's fine.

**THE COMMISSIONER:** – share it with Mr. Learmonth and Ms. Muzychka.

All right, Mr. Hogan.

**MR. HOGAN:** Thank you, Commissioner.

Good morning, Mr. Myrden. My name is John Hogan. I am counsel for the Consumer Advocate.

You've mentioned numerous times in your testimony that you weren't concerned or wasn't your area to worry about the capital costs. Correct?

**MR. MYRDEN:** Mm-hmm.

**MR. HOGAN:** So who would have been responsible for reviewing capital costs within government?

**MR. MYRDEN:** I don't think I can answer that question.

**MR. HOGAN:** Okay.

**MR. MYRDEN:** I don't know.

**MR. HOGAN:** You don't know?

**MR. MYRDEN:** I – and like I said, I had no involvement in the development of the 6.2; no further involvement in capital cost analysis of any sort.

**MR. HOGAN:** So I guess I'll be a little bit more clear. I'm not really concerned about if anyone in the Department of Finance or Natural Resources would look at the number and say: Yes, this is a good estimate for our capital costs.

**MR. MYRDEN:** Yeah.

**MR. HOGAN:** I'm more concerned about if anyone in government would be responsible to say: How are we going to allocate or how are we going to spend or how are we going to borrow, where are we going to come up with 6.2 or 6.5?

Surely someone in the Department of Finance would have to answer that question.

**MR. MYRDEN:** I think that would be a budgetary question, in its broadest form, in terms of what money is required and when is it required. So that would be a guess.

**MR. HOGAN:** Okay. And who in the Department of Finance would be responsible for that?

**MR. MYRDEN:** The Department of Finance would be under the direction of the deputy minister.

**MR. HOGAN:** Okay.

Now, Ms. Brewer said this morning –

**MR. MYRDEN:** Yeah.



**MR. HOGAN:** – that she felt that it would be on the Department of Natural Resources to deal with that issue. And Mr. Morris, in his interview, actually said: Generally speaking, in relation to the financial aspect – this is his interview transcript I’m reading from –

**MR. MYRDEN:** Mm-hmm.

**MR. HOGAN:** – like in this case, the cost overruns, the Department of Finance would’ve been involved in it to a greater extent than Natural Resources would’ve been.

So, where do you –

**MR. MYRDEN:** Yeah.

**MR. HOGAN:** – put it then? I mean –

**MR. MYRDEN:** Again, I would not have been directly involved in that payment stream. It was not – I was not, you know, of signing authority for the government. I was, but not for these sorts of things.

The normal process would be that requests, let’s say, for monthly draws or funding of any sort would come – would go from Nalcor to the Department of Natural Resources. In order to be paid, it would then have to come to Finance. So there would be a two-stage process.

**MR. HOGAN:** Right.

**MR. MYRDEN:** So, Donna would have been – I think for most of the Nalcor payments, they would have come from Natural Resources, through Donna, and then wherever she would (inaudible).

**MR. HOGAN:** Okay.

Now, you’ve talked a lot about your mandate for this aspect of the project, the federal loan guarantee.

So, what was your position outside of this specific task? What was your role?

**MR. MYRDEN:** You mean within the provincial government –

**MR. HOGAN:** Yes.

**MR. MYRDEN:** – my involvement with the Department of Finance?

I was Director of Debt Management.

**MR. HOGAN:** Okay.

So, as Director of Debt Management, aren’t you concerned with how much is being spent on a project over and above what the budget is? Because it could, potentially, impact the debt.

**MR. MYRDEN:** I would suggest that as Director of Debt Management, I am – was concerned at the bottom line that would be represented by the annual cash requirement. The reasons or the components of that cash requirement would have been the individual concerns of the sponsoring departments.

**MR. HOGAN:** But as costs go up –

**MR. MYRDEN:** Yeah.

**MR. HOGAN:** – potentially there’s going to be more debt, right?

**MR. MYRDEN:** Yeah, okay. I mean in its simplest form, I mean there’s – you know, the cost of the project could be funded three ways: It could be funded from debt, and it could be funded from the internal resources of Nalcor, or they could be funded from the province. So those would be the three sources of finance.

**MR. HOGAN:** Okay, well, let’s make a simple question then. The 6.5 number –

**MR. MYRDEN:** Mmm.

**MR. HOGAN:** – the noise –

**MR. MYRDEN:** Hmm.

**MR. HOGAN:** – that you heard in December – November-December 2013, did it give you any pause for thought? That when I go back to my debt management job –

**MR. MYRDEN:** Hmm.

**MR. HOGAN:** – that noise I heard might affect what I have to do.

**MR. MYRDEN:** No, because what I would have to do would be affected by the terms and conditions of the cost overrun funding documentation, which is what I was focused on. So I knew that the outcome of what I was doing would give me a quite accurate picture into what the expectations would be, based upon a possible range of ultimate capital cost numbers.

**MR. HOGAN:** But the number can go up again from 6.5.

**MR. MYRDEN:** Clearly, it did.

**MR. HOGAN:** Yeah and that – my question is: Did that not ring any alarm bells?

**MR. MYRDEN:** Again, from my perspective, I was focused on the cash requirements. That's what I did.

I mean at the end of the day, the – you know, the departments would submit their budget request; the budget request would be rolled up. At the end of the day or at the end of that process, they would arrive at a cash requirement, and then that number would be given to me to do my component of the budget, which would be the last piece, which was basically: Where's the money going to come from?

**MR. HOGAN:** Okay.

If we could turn to P-02217, please, which you've looked at today.

**MR. MYRDEN:** 02217, 32.

**MR. HOGAN:** Tab 32.

**MR. MYRDEN:** Yeah.

**MR. HOGAN:** So Mr. Learmonth took you to this where, I believe –

**MR. MYRDEN:** Yeah.

**MR. HOGAN:** – do not provide access to Newfoundland and Labrador.

**MR. MYRDEN:** Yeah.

**MR. HOGAN:** In your interview, when you were asked about this, you said: There's a huge

amount of information going around the file, I mean nobody would be even capable of keeping track of it.

Do you mean no one at the Department of Finance would be able to keep track of all the information?

**MR. MYRDEN:** No, I think what I was trying to suggest there was that there were so many moving parts and so many things going on at the same time, that it was not the sort of project that could be managed by one or a group of individuals on any kind of a, sort of a command and control, top-down basis. That it was – there were multiple pieces in multiple places, there were environmental issues, there were construction issues, there were – we all know there were a lot of different issues.

So, to me, for any one person to be on top of all the different things that might have been happening on that project, particularly during that period of time, to me would be –

**MR. HOGAN:** Overwhelming.

**MR. MYRDEN:** They would have to be a pretty impressive person.

**MR. HOGAN:** But that's not a reason not to put a relevant piece of information in the data room.

**MR. MYRDEN:** Again, it's – my suggestion there was that in order to be effective, you had to be focused on your piece of it. You couldn't be focused on somebody else's responsibilities.

**MR. HOGAN:** Ms. Brewer said this morning that there was a change in the role of Treasury Board during her time in government. I don't – did you hear her evidence this morning?

**MR. MYRDEN:** No, I didn't.

**MR. HOGAN:** So I'm paraphrasing her, but she basically said there has become less responsibility at Treasury Board for financial issues and more responsibility spread out throughout the departments. Does that ring true with you?

**MR. MYRDEN:** I don't – most – again I'm getting into a little bit of esoterics here. Most of

what I spent was what would have been or what I – what my area was responsible for spending, which was broadly described as servicing the public debt, most of what I spent would be statutory in nature.

And when I say statutory, essentially what it means is that you have authority to spend the money by statute. In other words, the *Financial Administration Act* provides authority to pay interest on the debt. I would not need Treasury Board approval, for example, for semi-annual interest payments; it would simply be made because it would be a statutory expenditure.

**MR. HOGAN:** Did you see any (inaudible) of the role of the Treasury Board over your time – during your time in government?

**MR. MYRDEN:** I may have been in front of Treasury Board perhaps once in 15 years.

**MR. HOGAN:** You also said this afternoon –

**MR. MYRDEN:** And it was not at Muskrat Falls.

**MR. HOGAN:** – there was no political appetite to open the House because Nalcor wanted more money.

**MR. MYRDEN:** Well, that's my personal view.

**MR. HOGAN:** Okay, where is that personal view coming from? It must be –

**MR. MYRDEN:** My personal view comes from somebody who watches the news and reads the newspapers. I mean, you know, I did – my job was a very small area of finance. I was still a voter and a taxpayer, so I was interested in what generally was going on in the province.

**MR. HOGAN:** So was there any theme running throughout the Department of Finance that this was – that other people were – had this – share this view that you had?

**MR. MYRDEN:** I don't think that there was anything, you know. Other than Donna and myself, I'm not aware of a whole lot of engagement by anybody else in the Department of Finance. And, again, you know, I'd assume there were government accountants involved, for

example, but that would've been an area that was completely apart from what I did, different – different place in the building even.

**MR. HOGAN:** Okay.

Let's – can we please turn to P-02024, which you looked at already today.

**THE COMMISSIONER:** Tab 8.

**MR. MYRDEN:** Number eight. Okay, yeah.

**MR. HOGAN:** So this is your email that Mr. Learmonth took you to, on behalf of Minister Marshall looking for – number 5 says, "The most recent update on expected total project costs ...."

**MR. MYRDEN:** Yeah.

**MR. HOGAN:** You recall this.

**MR. MYRDEN:** Yeah.

**MR. HOGAN:** And then the response comes to you about two weeks later. I'm just wondering if you find that to be a long period of time to receive this information which is, I would suggest, a fairly simple question: how much is the project costing us at this stage?

**MR. MYRDEN:** In the – under the circumstances at the time, perhaps two weeks would not have been an unreasonable time frame. I – again, this would have been information that somebody else wanted. The fact that my name is on the request –

**MR. HOGAN:** The minister wanted it.

**MR. MYRDEN:** Well, yeah, okay. But it could just as easily have been the deputy minister in these situations.

**MR. HOGAN:** But it was the minister in this situation.

**MR. MYRDEN:** Sure, that's fine.

I guess what I'm saying is that I passed along a lot of requests for information. The – a lot of the information that I requested wasn't information that I needed to do my job; it was information

usually that the deputy minister was looking for. And I think perhaps she'd asked me to see if I could track it down because, perhaps, she thought I had a better idea of where to look for it or who to ask for it.

**MR. HOGAN:** Okay.

If we could please turn to P-00807.

**THE COMMISSIONER:** It'll be on the screen.

**MR. HOGAN:** So, Commissioner, this is a –

**MR. MYRDEN:** I'm sorry, I didn't –

**MR. HOGAN:** You don't have this.

**THE COMMISSIONER:** It's on the screen.

**MR. MYRDEN:** Oh, sorry.

**THE COMMISSIONER:** It's on the screen.

**MR. MYRDEN:** Three?

**MR. HOGAN:** Commissioner, I'm going to ask if –

**THE COMMISSIONER:** It's on the screen, Sir.

**MR. MYRDEN:** Sorry.

**MR. HOGAN:** Sorry.

Commissioner, I want to – I hope it's okay if I can ask a question about this. It does not really deal with the issues in Phase 2 because it's dated May 11, 2011. Is that okay?

**THE COMMISSIONER:** Go ahead.

**MR. HOGAN:** So, Mr. Myrden, do you recall this document?

**MR. MYRDEN:** 2011 – I haven't seen it yet, so I'm still at the –

**MR. HOGAN:** Well, it – it's on a – it starts on page 2. The part I'm interested in – it says: "Whether to approve the selection and retention of a qualified consultant to provide an independent review and report on the detailed

project analysis prepared or commissioned by Nalcor ...."

**MR. MYRDEN:** Okay.

**MR. HOGAN:** Do you recall this? And if we turn to the last page, it might ring a bell –

**MR. MYRDEN:** I'd like to see the last page, yeah.

**MR. HOGAN:** Yup.

**MR. MYRDEN:** Yeah.

**MR. HOGAN:** It says prepared by yourself, approved by Mr. Paddon and Bown. And Ministers Skinner and Marshall signed off on this.

**MR. MYRDEN:** Okay.

**MR. HOGAN:** Do you recall this document?

**MR. MYRDEN:** My name is on it. So I haven't read it in detail. I can if you want me to.

**MR. HOGAN:** It's up to you. I'm asking if you recall it. If you want to look at it –

**MR. MYRDEN:** Well, (inaudible) – I'm looking at the date, if I can go back to that. The date was 2011, so that was two years previously. That was long before – I think that was probably even before the project was given the initial go-ahead.

**MR. HOGAN:** Yes, it was before sanction.

**MR. MYRDEN:** Yeah. Yeah.

**THE COMMISSIONER:** It's an information note, Mr. Myrden, where the minister of Natural Resources –

**MR. MYRDEN:** Yeah.

**THE COMMISSIONER:** – and the minister of Finance were approaching Cabinet or the premier to see whether or not they could get an independent assessment done outside of government –

**MR. MYRDEN:** Yeah.

**THE COMMISSIONER:** – on the two options that had been presented for the program.

**MR. MYRDEN:** Yeah.

**THE COMMISSIONER:** That's generally what it is. Now, you wrote this on their behalf, and they signed it.

**MR. MYRDEN:** Yeah.

**THE COMMISSIONER:** And it went to the premier's office.

**MR. MYRDEN:** Okay.

**THE COMMISSIONER:** And then certain things happened after that.

**MR. MYRDEN:** Okay.

**MR. HOGAN:** Do you recall this document?

**MR. MYRDEN:** I – yeah, okay. I'm –

**MR. HOGAN:** So, did you – how did it come that you –

**MR. MYRDEN:** I don't specifically – let me just – I don't specifically recall the document, but –

**MR. HOGAN:** No.

**MR. MYRDEN:** – I do recall –

**MR. HOGAN:** You recall the issue of looking for an independent review?

**MR. MYRDEN:** I recall the context in which the document would have been prepared.

I did a lot of writing for the department. I was reasonably – I guess I must have been a reasonably good writer, because I kept asking to be – to write things. So, you know, I wrote –

**MR. HOGAN:** So are you just writing this because you're a good writer or –

**MR. MYRDEN:** No, I was writing this because of the – clearly the references in there to the rating agencies – the credit rating agencies and the credit rating. And that was where I live and

that was – relationships with credit ratings were an area that I had primary responsibility (inaudible) –

**MR. HOGAN:** Getting an independent review was relevant to the credit agency?

**MR. MYRDEN:** No, the reference there, I believe, was to one of the credit rating agencies had recently changed the province's credit rating.

**MR. HOGAN:** So, why is that relevant to getting an independent review?

**MR. MYRDEN:** Well, that was relevant because I was the point person for dealing with the credit rating agencies. So Muskrat Falls, as you might expect, was a hot topic for the ratings agencies because they would always want to know what's going on.

**MR. HOGAN:** And what sort of independent review did you contemplate when you drafted this?

**MR. MYRDEN:** I did not contemplate any independent review; I was simply holding the pen. I was writing the – I did not participate in any – I did not participate in the independent review itself.

**MR. HOGAN:** So, when there was a review announced, that this was going –

**MR. MYRDEN:** I have no idea –

**MR. HOGAN:** – to go to the PUB, did you have any –

**MR. MYRDEN:** I have no idea. Once I wrote that note, I think that perhaps my involvement in that was – certainly I wasn't involved in any retention or any relationship with any consultant. I couldn't even tell you if somebody was hired.

**MR. HOGAN:** Yeah. That's all the questions I have. Thank you.

**MR. MYRDEN:** Okay.

**THE COMMISSIONER:** All right, Former Nalcor Board Members.

Not present.

All right, Counsel for Mr. Myrden.

**MS. VAN DRIEL:** No questions, Commissioner.

**THE COMMISSIONER:** Redirect.

**MR. LEARMONTH:** No.

**THE COMMISSIONER:** Okay. All right, thank you, Mr. Myrden, you can step down.

Next witness.

**MR. LEARMONTH:** Paul Morris.

**THE COMMISSIONER:** Okay, Paul Morris.

**UNIDENTIFIED MALE SPEAKER:**  
(Inaudible), thanks a lot.

**THE COMMISSIONER:** All right, Mr. Learmonth, next witness, Paul Morris.

**MR. LEARMONTH:** Yeah, could Mr. Morris be sworn or affirmed? What's your choice?

**MR. MORRIS:** Sworn, please.

**MR. LEARMONTH:** Sworn.

**THE COMMISSIONER:** Just take the Bible in your right hand, then, please?

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

**MR. MORRIS:** I do.

**CLERK:** – so help you God?

**MR. MORRIS:** I do.

**CLERK:** Please state your name.

**MR. MORRIS:** Paul James (inaudible) Morris.

**CLERK:** Thank you.

**THE COMMISSIONER:** And be seated, Sir, please.

**MR. MORRIS:** Thank you.

**MR. LEARMONTH:** Mr. Morris, what is your present occupation?

**MR. MORRIS:** I'm currently retired.

**MR. LEARMONTH:** And when did you retire?

**MR. MORRIS:** June 30, 2016.

**MR. LEARMONTH:** And what position did you hold when you retired?

**MR. MORRIS:** I was the assistant deputy minister for Energy Policy with the Department of Natural Resources.

**MR. LEARMONTH:** Okay. And you were in that position at the time of financial close?

**MR. MORRIS:** Yes, Sir.

**MR. LEARMONTH:** And just to repeat what I said to other witnesses, when I say financial close, I mean up until December 13. The documentation was signed November 29, bonds priced December 10, funds advanced on the 13th. So I'll use the outside date.

**MR. MORRIS:** Right, yes.

**MR. LEARMONTH:** Okay.

So what had been your position before you became assistant deputy minister in Energy Policy, Department of Natural Resources, on June 30, 2016? What was your –

**MR. MORRIS:** Prior to that, I was assistant deputy minister for the – what was called the Energy Innovation Roadmap, also with the Department of Natural Resources.

**MR. LEARMONTH:** All right.

So you were – and you had been in that position since April 2013?

**MR. MORRIS:** As assistant deputy minister –

**MR. LEARMONTH:** Yeah.

**MR. MORRIS:** – with Energy Policy, yes –

**MR. LEARMONTH:** Yeah.

**MR. MORRIS:** – from April 1, 2013.

**MR. LEARMONTH:** So you – this was a new posting for you, was it?

**MR. MORRIS:** Yes, it was.

**MR. LEARMONTH:** Yeah, April 2013.

And I understand that you – as assistant deputy minister, your direct reporting person was Tracy English, who was associate deputy minister?

**MR. MORRIS:** Yes, that's correct.

**MR. LEARMONTH:** And that the deputy minister was Charles Bown?

**MR. MORRIS:** Yes, correct.

**MR. LEARMONTH:** But that there were no formal lines of reporting, so that you could go directly to Charles Bown. Is that correct?

**MR. MORRIS:** Yes, Sir, it is.

**MR. LEARMONTH:** There was no rigid –

**MR. MORRIS:** No, no, no.

**MR. LEARMONTH:** – lines of authority.

**MR. MORRIS:** None at all.

**MR. LEARMONTH:** Okay.

And is it true that Tracy English, associate deputy minister, had little or nothing to do with Muskrat Falls?

**MR. MORRIS:** At that point in time – or, yes –

**MR. LEARMONTH:** Up until financial close?

**MR. MORRIS:** Yes.

**MR. LEARMONTH:** Okay.

**MR. MORRIS:** I mean, she was involved in the later stages of it, on and off, but certainly not that –

**MR. LEARMONTH:** Yeah.

**MR. MORRIS:** – close, no.

**MR. LEARMONTH:** Am I correct that your main involvement on the Muskrat Falls Project was to act as a liaison between the Department of Natural Resources and Nalcor to ensure that the obligations of the province to enable financial close were met?

**MR. MORRIS:** Yes, Sir, that's correct.

**MR. LEARMONTH:** Is that a fair description of it?

**MR. MORRIS:** Yes, it is.

**MR. LEARMONTH:** Okay.

So between April 13, 2013, when you were appointed to that position, and December 13, 2013, is it correct that your work on Muskrat Falls was your number one priority?

**MR. MORRIS:** Yes, Sir, it was.

**MR. LEARMONTH:** Okay.

How much of your time did you spend on Muskrat Falls during that period?

**MR. MORRIS:** I believe I said in my interview approximately three-quarters.

**MR. LEARMONTH:** Three-quarters.

**MR. MORRIS:** So it would have been that and maybe even a little bit higher, to tell you the truth.

**MR. LEARMONTH:** Okay.

Now, can you give us some idea of the breakdown of the duties or responsibilities between the Department of Finance and the Department of Natural Resources in relation to the Muskrat Falls Project?

**MR. MORRIS:** The Department of Natural Resources was – seemed to be the lead department on the file, primarily because Nalcor reported to the minister of Natural Resources. So the Department of Natural Resources was the

lead on the file coordinating many aspects of it while the Department of Finance would have been responsible, primarily, for the financing part of the project.

**MR. LEARMONTH:** So in relation to the issue or topic of cost overruns, do I take it that the Department of Finance would have had more involvement than the department of national revenue?

**MR. MORRIS:** Yes, (inaudible) –

**MR. LEARMONTH:** Department of Natural Resources, I should say.

**MR. MORRIS:** Yes, I believe that to be the case. Yeah. I mean, the Department of Natural Resources was kept in the loop on things, participated in conference calls and so on, but the Department of Finance would certainly have been the main lead on that part, yes.

**MR. LEARMONTH:** Yeah.

In terms of the duties – the split of duties between Finance and Natural Resources for Muskrat Falls, was there a clear line of demarcation between the duties? In other words, like a, you know, a list – okay – Natural Resources responsible for item one, two, three and four. Natural – Finance is responsible for item five, six, seven, eight. Were there clear lines of demarcation between the responsibilities of the respective departments?

**MR. MORRIS:** I think there was. I don't know if I can recall seeing anything on paper that laid it out exactly like that. But I think – and on a working, case-by-case basis, I would say yes.

**MR. LEARMONTH:** So, did you have any doubt as to what your role was as a part to the – as liaison as opposed to the role of the Department of Finance?

**MR. MORRIS:** No, Sir. I don't think I did, no. I didn't have any doubt as to what my role was versus Finance's role.

**MR. LEARMONTH:** Okay.

Please turn to tab 32 in your book, Exhibit P-02217.

**MR. MORRIS:** Okay.

**MR. LEARMONTH:** When is the first time you saw this LCP DG3 Estimate vs. Current Final Forecast Cost Reconciliation dated November 19, 2013?

**MR. MORRIS:** The first time that I can recall seeing this was when these materials were provided to me.

**MR. LEARMONTH:** Can you talk a little louder?

**MR. MORRIS:** Sorry.

**MR. LEARMONTH:** Or into the microphone. Yeah.

**MR. MORRIS:** Yeah. Okay.

The first time I can recall seeing this was when these materials were provided to me for the interview.

**MR. LEARMONTH:** For your interview – just this year.

**MR. MORRIS:** In April – on April 26, I believe.

**MR. LEARMONTH:** Yes. You weren't aware of the – you don't recall ever having seen this document before they were –

**MR. MORRIS:** I –

**MR. LEARMONTH:** – given to you by the Commission of Inquiry?

**MR. MORRIS:** Not prior to being given to me, no.

**MR. LEARMONTH:** Okay. Now, I'll come right to the point. The – you can see from looking at this document now that the figure of 6,531,754,580 was a real number, you know, that it was –

**MR. MORRIS:** Yes.

**MR. LEARMONTH:** – it was the final forecasted cost and there had been an estimate



that had been prepared by Nalcor effective November 19, 2013.

**MR. MORRIS:** Yes.

**MR. LEARMONTH:** Yeah.

Now, at the time of financial close, were you aware that the cost estimate increase from the \$6.2 million at DG3 had been increased to this number of \$6,531,754,580?

**MR. MORRIS:** I don't recall specifically, but I have seen – in the materials that were provided to me, I had seen an email that I was copied on. But I do recall, at the time, there was – you know, the figure was out there for sure. I do –

**MR. LEARMONTH:** Yeah.

**MR. MORRIS:** – recall that.

**MR. LEARMONTH:** Yeah, as an actual number, right?

**MR. MORRIS:** Yes.

**MR. LEARMONTH:** Not as some theoretical thing for the COREA.

**MR. MORRIS:** No, no I can recall someone saying at the time that the number of 6.5 would be the figure that would be included in the project finance documents.

**MR. LEARMONTH:** Yeah. Okay, we know that, and the 6.531 was included, but I wanna make sure I understand your evidence in this: Did you understand that the 6.531 number represented an actual increase in the final forecast cost based on data provided by Nalcor, as opposed to being a theoretical number that was put in there for the COREA account?

**MR. MORRIS:** Yes, that was my understanding at the time.

**MR. LEARMONTH:** Which is your understanding?

**MR. MORRIS:** That it was an actual number.

**MR. LEARMONTH:** It was an actual number.

**MR. MORRIS:** At that point in time, yes.

**MR. LEARMONTH:** Yeah.

**MR. RALPH:** Commissioner, I don't quite understand the question because I thought his answer to the question had you seen it before, and he said, no, he hadn't seen the 6.531 number.

**MR. MORRIS:** Well, I haven't seen this breakdown before.

**MR. LEARMONTH:** He hadn't seen this document.

**MR. MORRIS:** This particular document before.

**MR. RALPH:** So he hadn't seen the 6.531 number until –

**MR. LEARMONTH:** No, he hadn't seen the document.

**MR. MORRIS:** I hadn't seen this particular document before.

**MR. LEARMONTH:** That's what you said, isn't it?

**MR. MORRIS:** Yes, that's (inaudible).

**MR. LEARMONTH:** Yeah, but you were aware that the –

**MR. MORRIS:** I was aware –

**MR. LEARMONTH:** – 6.531 –

**MR. MORRIS:** – that the – yes.

**MR. LEARMONTH:** – was a real number and it represented the actual project estimated cost at the time of financial close?

**MR. MORRIS:** Yes, Sir.

**MR. LEARMONTH:** You were aware of that at the time of financial close?

**MR. MORRIS:** Yes, Sir.

**MR. LEARMONTH:** All right.

Now, tab 18 – I’m not gonna – in view of what you’ve just admitted, I’m not gonna take you through a lot of documents, but I’ll take you through a few of them, just to ...

Okay, tab 18.

**THE COMMISSIONER:** 02525?

**MR. LEARMONTH:** P-02525.

Now, at this point, you don’t appear to be on the emails here, but on – as of November 8 – I’m sorry, you are on this email, at the bottom of page 1 of the exhibit, it’s from you to Derrick Sturge, and you can go over to page 2 –

**MR. MORRIS:** Mm-hmm.

**MR. LEARMONTH:** See that?

**MR. MORRIS:** Yes.

**MR. LEARMONTH:** At this point, were you aware that the 6.531 was a real number? Or did you believe it was just a figure that was being used for the purpose of developing the language for the COREA account?

**MR. MORRIS:** I wasn’t aware that it was a real number at that point, no, I don’t recall that.

**MR. LEARMONTH:** You weren’t aware at that time that –

**MR. MORRIS:** No.

**MR. LEARMONTH:** – it was a real number. Okay.

Are you able to say when you became aware that it was a real number?

**MR. MORRIS:** I don’t recall specifically. As I said, I’ve been out of government – that was about 5½ years ago, and I’ve been retired three years, but when I was given these materials, I did see an email that was – that I was on, dated, I think it was, November 22.

**MR. LEARMONTH:** Okay, now, that might be – if we can turn to tab 38 of this book of documents. This would be Exhibit P-03494.

**MR. MORRIS:** Yes.

**MR. LEARMONTH:** If you look at the bottom, there’s an email from Xeno Martis of Faskens – he was a lawyer for Nalcor – to a number of people. And this email was forwarded, on the same date, November 22, by Auburn Warren to you and Paul Myrden. Do you see that?

**MR. MORRIS:** Yes, (inaudible).

**MR. LEARMONTH:** And then it was forwarded on to – from Paul Myrden to Donna Brewer. Anyway, page 2 of Exhibit P-03494, next to the 1, right at the top –

**MR. MORRIS:** Mm-hmm.

**MR. LEARMONTH:** – in the second paragraph, it says: “On the cost overruns issue, Nalcor would agree to have funded cost overruns based on the Project budget as at financial closing (\$6.5B capital cost estimate and not the \$6.2B DG3 estimate).” So that would’ve told you pretty clear that it was an actual hard number.

**MR. MORRIS:** Yes.

**MR. LEARMONTH:** Is that correct?

**MR. MORRIS:** Yes, Sir, I –

**MR. LEARMONTH:** So is that the point at which you were aware that this was a real number?

**MR. MORRIS:** Yes, Sir, based on this, for sure, yes.

**MR. LEARMONTH:** Okay.

Now, having received that information on that date, what did you do? I mean, you knew that there was an increase of at least \$300 million, what –

**MR. MORRIS:** Mmm.

**MR. LEARMONTH:** And that’s a significant amount of money, correct?

**MR. MORRIS:** Yes, it would be. Correct, yes.

**MR. LEARMONTH:** So what did you do in terms of reporting it or discussing it or communicating the figure – this information with anyone in government, your department or Finance, anyone?

**MR. MORRIS:** Well, it would've been my practice at the time to forward such an email to my superiors, which would've been Charles Bown and Tracy English. That would be my first reaction. I note that there – there's no exhibit to that effect here in these materials. But I would certainly would've – would have expected to have forwarded that on to them.

**MR. LEARMONTH:** So are you saying that based on your practices at the time, you would've sent that to Tracy English and Charles Bown, but you have no record of having done that. Is that what you're saying?

**MR. MORRIS:** That's exactly what I'm saying, Sir, yes.

**MR. LEARMONTH:** So you expect you would've done that –

**MR. MORRIS:** I would have expected that I would've done that because I would've done that in many other situations where –

**MR. LEARMONTH:** Yeah.

**MR. MORRIS:** – I would've been forwarded emails. I – as a matter of course, I forward them on to both Charles and/or Tracy.

**MR. LEARMONTH:** But there is no email to – you're aware of that, are you?

**MR. MORRIS:** I'm totally aware of that, yeah. I'm not sure what happened to it. I don't have any access to my emails anymore –

**MR. LEARMONTH:** Okay.

**MR. MORRIS:** – since I left government. So I can't say for sure, but that would've been my normal practice, yes.

**MR. LEARMONTH:** Okay.

Now, do you remember ever before financial close, discussing this 6.5 or 6.531 figure with Tracy English or Charles Bown?

**MR. MORRIS:** I can't say with 100 per cent certainty that I did, but I can say that at the time, there was, you know, a lot going on and, the way that I operated at the time, that it would've been very, very likely that I would have discussed it with Charles and or Tracy.

**MR. LEARMONTH:** Yeah.

**MR. MORRIS:** For sure, either by – in person or by phone call, because I was on the fifth floor and Charles was on the seventh floor. So, I would've made an attempt to either, you know, contact him by phone or to go up to his office to see him, or, you know, in a meeting tell him, I mean, it's just – it was – it would've been my – the way I operated that I would've done that for sure.

**MR. LEARMONTH:** Okay. But – but am I correct that you're reflecting what your normal practice would've been at the time, but that you did not have any independent recollection of ever discussing this with either Tracy or Charles. Is that right?

**MR. MORRIS:** I cannot say with absolute 100 per cent certainty that – I mean, it was 5½ years ago. I truly –

**MR. LEARMONTH:** You have no recollection?

**MR. MORRIS:** No.

**MR. LEARMONTH:** Okay.

Now, if we go to tab 48. This is Exhibit P-03504. The bottom of page 2 is an email from Tina Williams to you, Craig Martin and Christine Boland. And this is dated July 30, 2014. It says: "When did the PG" – I guess that's provincial government, is it?

**MR. MORRIS:** Yes, it is.

**MR. LEARMONTH:** Yeah, "... know about the \$6.5 million?" That should be billion, I take it?

**MR. MORRIS:** Yes.

**MR. LEARMONTH:** “The Provincial Government became aware of the \$6.5” – well, it says million “figure during finalization of the Federal Loan Guarantee in December 2013.” And that would be your understanding. At least, you would’ve known it then, right?

**MR. MORRIS:** Yes.

**MR. LEARMONTH:** Okay. And it says: “Why did the PG not publicly release this figure?”

“We have indicated for ... months now that there was a possibility of an increase in cost” of “the Muskrat Falls Project.

“The Provincial Government did not” disclose “the \$6.5” – well, it keeps on saying million, but it’s obviously an error there –

**MR. MORRIS:** Mm-hmm.

**MR. LEARMONTH:** – “figure during” the – “during December 2013 as Nalcor was still in the process of negotiating and awarding a number of contracts. Releasing this figure may have negatively impacted their negotiating strength and wanted to ensure we secured the best value for ratepayers.”

Okay.

Now, was that your understanding as to why that figure wasn’t released?

**MR. MORRIS:** Yes, Sir, it was.

**MR. LEARMONTH:** It was.

**MR. MORRIS:** Yes.

**MR. LEARMONTH:** You – at the time of financial close, you were aware of that, were you?

**MR. MORRIS:** Yes.

**MR. LEARMONTH:** Okay.

Now, in – by the way, who is Tina Williams?

**MR. MORRIS:** At the time, she was the manager of communications with the Department of Natural Resources.

**MR. LEARMONTH:** Okay.

So, this would’ve been something – like these were answers that were prepared by Tina Williams in anticipation of, perhaps, politicians being questioned on these items?

**MR. MORRIS:** These –

**MR. LEARMONTH:** Or – well, I should ask you: why would these question and answers have been prepared?

**MR. MORRIS:** These were – going back through the documentation that I was provided with, it appears to me that these were questions and answers being prepared for the July 31 release of the first Oversight Committee report.

**MR. LEARMONTH:** Okay.

**MR. MORRIS:** There are some other documents here where there are Q & As – questions and answers – and key messages that were being prepared by the Premier’s office. And these would’ve been – and they are – as I’ve seen in other documentation – they were included in those Q & As.

**MR. LEARMONTH:** Okay.

Now, just turning back to page 3, there’s also a reference here lower down the – “On June” – the second to last bullet on page 3 – “On June 26, 2014, Nalcor issued its news release which provided an updated capital cost forecast of \$6.99 billion ....”

“One day prior to Nalcor’s public announcement, Nalcor provided the Premier and Cabinet with the updated \$6.99 ... figure.”

Right?

**MR. MORRIS:** Right, yes.

**MR. LEARMONTH:** And then if we go to page 2, this is your email – July 30, 2014, to Christine Boland, Tina Williams, Craig Martin.

You're saying a couple of items: "We probably shouldn't say the Premier and Cabinet were only made aware one day before the announcement – just say the Premier and Cabinet were made aware before the announcement."

And that is in reference to which figure – the 6.9 announcement or the 6.5?

**MR. MORRIS:** The 6.9.

**MR. LEARMONTH:** That'd be 6.9. Okay.

And then, "The 'we' refers to Nalcor – that should also be changed."

Then, "Nalcor should be asked for examples as to why the \$6.5 was commercially sensitive and to confirm the answers even though they are directed to the" provincial government.

Okay, that's your answer.

So, I guess that confirms that you were aware of it at the time of financial close – the 6.5 – correct?

**MR. MORRIS:** Yes.

**MR. LEARMONTH:** Yeah.

Now, we've had evidence from the – your minister at the time, Derrick Dalley – that he had no knowledge of the 6.5 figure. No recollection of any – of ever receiving this figure. In fact, even after financial close, early in 2014, he was making – he made at least one public statement talking about that the price hadn't – or the cost hadn't gone up from the 6.2. So do you have any knowledge – direct knowledge or even indirect – that would bring into question the correctness of what Mr. Dalley was saying about not knowing about the 6.5?

**MR. MORRIS:** I can't comment on –

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

**MR. MORRIS:** – Mr. Dalley not knowing that, no.

**MR. LEARMONTH:** No, you can't.

And Minister Marshall in Finance, I know that wasn't your minister, but he said the same thing, that he had no recollection or knowledge at all of the 6.5 figure at the time of financial close. Same question: do you have any information that would call into question the correctness of what Mr. Marshall said?

**MR. MORRIS:** No, I would have no reason to know why he wouldn't know that.

**MR. LEARMONTH:** Okay.

Do you recall discussing this 6.5 or 6.531 figure with any officials in the Department of Finance, that would be, for example, Donna Brewer or Paul Myrden, for example.

**MR. MORRIS:** Prior to financial close?

**MR. LEARMONTH:** Yes.

**MR. MORRIS:** Not specific conversations I can recall, but I know Paul and Donna were on emails there that referenced the 6.5.

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

**MR. MORRIS:** So they would've, you know.

**MR. LEARMONTH:** Okay.

Those are all my questions.

**THE COMMISSIONER:** All right.

Cross examination. Province of Newfoundland and Labrador.

**MR. RALPH:** Good afternoon, Mr. Morris. My name is Peter Ralph. It's nice to meet you in person. We've spoken on the phone.

**MR. MORRIS:** Yes.

**MR. RALPH:** I'd like to go to Exhibit 02217.

**THE COMMISSIONER:** Okay, tab 32.

**MR. MORRIS:** Tab 32.

Okay.

**MR. RALPH:** And we've – the Commission has heard about this email many times, and it's an email from James Meaney of Nalcor directing Meghan Felt, who was a lawyer working for a law firm, to put some documents in the data room. And it specifically says to give access to Canada, Cassels Brock. Can you see that in the email?

**MR. MORRIS:** Yes.

**MR. RALPH:** And, "Do not provide access to" Newfoundland, "BLG and Faskens at this time."

**MR. MORRIS:** Mm-hmm.

**MR. RALPH:** And perhaps we can go to page 3.

**MR. MORRIS:** Okay.

**MR. RALPH:** And page 3 is called, "MATERIAL CONTRACTS COST SUMMARY." Can you recall receiving this or seeing this document before financial close or after financial close?

**MR. MORRIS:** I don't recall seeing it before financial close. I'm sure I would have seen it at some point for sure, or after financial close, but I don't recall seeing it, like, with that kind of breakdown or any breakdown of the 6.5 number prior to financial close.

**MR. RALPH:** Right.

So what this is doing, it's breaking down the – all the scopes in the project into 17 material contracts and then the remainder called the balance of scope. And it's taking the variances and coming up with the figure – you can see on the right-hand column, the third to the last right-hand column – final forecast cost.

**MR. MORRIS:** Right.

**MR. RALPH:** So it's a fairly specific number based on actual scopes.

**MR. MORRIS:** Mm-hmm.

**MR. RALPH:** So would you have seen that information before financial close?

**MR. MORRIS:** No, I don't recall seeing that information prior to financial close.

**MR. RALPH:** And this is a document that, I think, is the first time – or one of the first times – that we see the 6.531 number.

**MR. MORRIS:** Yes.

**MR. RALPH:** And so you wouldn't have been given a number with that precision before financial close. Is that correct?

**MR. MORRIS:** I don't recall seeing a number with that precision, no.

**MR. RALPH:** So the number that you recall hearing, would it have been a rounder number, like \$6.5 billion?

**MR. MORRIS:** Exactly. Yes.

**MR. RALPH:** If we go to Exhibit 02206.

**MR. MORRIS:** Excuse me. What tab is it?

**THE COMMISSIONER:** 02206 – this one's gonna be on your screen.

**MR. MORRIS:** Okay.

**MR. RALPH:** Now this ultimately leads to a presentation which was given. It's called a project update to the MWH. Do you know what that is? The –

**MR. MORRIS:** Yes. Yes, Sir.

**MR. RALPH:** Okay.

So that's the company that employed the independent engineer. And if we went to page 29.

And so in this presentation you have, "Key Changes ... DG3." And so you've got up \$300 million in terms of capital cost, down in terms of financing costs and then "Excess sales/other value" are up \$100 million.

Do you recall seeing these numbers before?

**MR. MORRIS:** Not before I was given the documentation in April.

**MR. RALPH:** So can you recall in what way or what form you would have heard the 6.5 billion number? Would it have been in a document, or would someone have spoken to you about that number?

**MR. MORRIS:** Well prior to receiving these documents, I just recall it being talked about. I remember someone from Nalcor telling me that the number that was gonna be in the final project financing agreements was going to be 6.5. But I don't recall seeing any numbers on paper (inaudible).

**MR. RALPH:** Okay. Great.

Thank you very much.

**THE COMMISSIONER:** All right, thank you.

Nalcor Energy.

**MR. LEARMONTH:** If I could just add this in case someone wants to cross-examine it, I just got the original documents as we received them, those three exhibits. It looks like the photocopy – like the form of these documents is the same as we have in the binders.

**THE COMMISSIONER:** Okay, so that's the way we received them.

**MR. LEARMONTH:** Yeah.

**THE COMMISSIONER:** Did we get those through a witness or did we get those through the government?

**MR. LEARMONTH:** If anyone wants to have a look at them.

**MR. RALPH:** Yeah, Commissioner, I –

**THE COMMISSIONER:** Yes, just one second now.

So did we get those through a witness or – because I did see DB1 on there, and –

**MR. LEARMONTH:** This was entered as an exhibit at – I believe what happened is that we got a bunch of – in a binder, I'm not sure exactly who it was from, it could've been – I don't know. But most of the stuff wasn't relevant, so

we – these were taken out and at Donna Brewer's interview they were entered – they were taken out of the –

**THE COMMISSIONER:** They were marked at her interview.

**MR. LEARMONTH:** – group and they were marked as exhibits.

**THE COMMISSIONER:** So they came from the province.

**MR. LEARMONTH:** That's – as far as I know, yes, but I stand to be corrected.

**MR. RALPH:** No, that's fine, because, Commissioner, as I –

**THE COMMISSIONER:** (Inaudible.)

**MR. RALPH:** Okay, that's fine.

I believe what happened is that we discovered this – these are Mr. Myrden's – I believe it was a folder of Mr. Myrden's and it was 240 pages.

Ms. Mullaley came in to see me and I pointed out that document, the one that had the 300, 300 and 100, which she – I believe she took with her and brought that to the interview. So we had sent this – it was in the – it would've been originally produced to the Commission in documents from the Department of Finance, which then – I discovered that, and then I separated that from the Finance documents, just because there were so many of them, and sent this to the Commission, as a whole.

**MR. LEARMONTH:** Yeah.

**MR. RALPH:** So that's how I found it.

**THE COMMISSIONER:** Okay –

**MR. LEARMONTH:** Yeah so –

**THE COMMISSIONER:** – so when you –

**MR. LEARMONTH:** But –

**THE COMMISSIONER:** Excuse me. So when you actually sent those to the Commission, am I understanding that the graph page with the

wording – with the notes of Mr. Myrden on it, together with the items of the agenda that were referred to in Mr. Warren’s email, that they were actually back to back on the sheet in Mr. Myrden’s file?

**MR. RALPH:** That’s correct.

As I found it, you can see there’s – it’s back-to-back notes.

**THE COMMISSIONER:** Okay, thank you.

All right, Mr. Simmons.

**MR. SIMMONS:** Thank you, Commissioner.

Mr. Morris, Dan Simmons for Nalcor Energy. I won’t be very long.

Mr. Learmonth established with you that as of November 8 of 2013 you looked at a particular document and you’d said at that point you didn’t have what he called a hard number for a cost increase on the project. And he brought you then to a document dated – an email dated November 22, which had \$6.5 billion in it that you’d received and forwarded on, and established that at that point you did have the 6.5 number as what you regarded as being a real cost increase for the project.

So have I summarized that much correctly?

**MR. MORRIS:** Yes, I think that’s correct.

**MR. SIMMONS:** Okay.

I’m just going to show you a couple other documents now because I – there was a meeting the day before on the 21st that you attended. And I’m going to bring you first to an email message on the 20th of November, which is at P-02535, please.

**THE COMMISSIONER:** 02535.

**MR. MORRIS:** P –

**THE COMMISSIONER:** That’s at tab 33.

**MR. MORRIS:** Oh, thank you.

**MR. SIMMONS:** And you weren’t copied on this. This was between Mr. Sturge, who sent it to Auburn Warren, Rob Hull and James Meaney. You would have known all these people quite well at this point, I think.

**MR. MORRIS:** Yes.

**MR. SIMMONS:** Yes, from working with them on Barnes Road pretty well really.

**MR. MORRIS:** I was at Barnes Road –

**MR. SIMMONS:** Yes.

**MR. MORRIS:** – on a number of occasions, yes.

**MR. SIMMONS:** So this is very early in the morning in the morning on November 20 and he says: “Hi folks, the other thing we need to do based on direction from Ed and Charles” – who we think is Charles Bown – “from last week is to walk Donna Brewer and Paul Myrden through the LCP cost update data.” So that was the 20th.

And we’re going to go to Mr. Sturge’s notes now on the 21<sup>st</sup>, which is at P-02523.

**THE COMMISSIONER:** 02523, that’s at –

**MR. SIMMONS:** Page 20.

**THE COMMISSIONER:** – tab 23.

**MR. MORRIS:** Twenty-three, thank you.

**MR. SIMMONS:** Sorry.

**THE COMMISSIONER:** Tab 23.

**MR. MORRIS:** Okay.

**MR. SIMMONS:** And page 20. And I won’t bring you to it but we also have in evidence an agenda for this meeting that was sent out by Mr. Warren a little earlier in the day. For the record it’s at P-03447 where he says the first item on the agenda is capital cost overrun discussion.

And when we look here at Mr. Sturge’s note, bottom left, we see he’s noted you in attendance at a meeting along with Mr. Myrden, Donna Brewer, Charles and Ed. You see that there?



**MR. MORRIS:** Yes, I do.

**MR. SIMMONS:** Okay.

And then below that: Issues. Item number one is capital cost overruns. You see that?

**MR. MORRIS:** Yes.

**MR. SIMMONS:** So, my question is: Do you have any recollection at all of this meeting taking place with this agenda to look at capital cost overruns?

**MR. MORRIS:** I don't have any specific recall of it. That's not to say –

**MR. SIMMONS:** Right.

**MR. MORRIS:** – it didn't happen, obviously it did, but I don't recall the number.

**MR. SIMMONS:** Okay. Because we know on the next day on the 22nd you had the email message which had 6.5 in it.

**MR. MORRIS:** Yes.

**MR. SIMMONS:** You said you would normally have sent it on to Ms. English and Mr. Bown.

**MR. MORRIS:** Yes.

**MR. SIMMONS:** You didn't find a record of actually having done that.

**MR. MORRIS:** Yeah.

**MR. SIMMONS:** So my question is the prior day this meeting took place and Mr. Bown was there and the subject was capital cost overruns, would that in any way explain there not being a record of you having sent that message along the next day?

**MR. MORRIS:** Would it have anything to do with me not sending it along?

**MR. SIMMONS:** Yes, yeah. Since Mr. Bown is already at this meeting.

**MR. MORRIS:** I guess it's conceivable.

**MR. SIMMONS:** Okay.

It doesn't stir any recollection. So you don't have any recall whether at this meeting where Mr. Bown attended, if this is where the capital cost overrun walk-through was done that Mr. Sturge had talked about in his message a day prior.

**MR. MORRIS:** I can't say for sure because there were – at that point in time there were so many meetings going on, conference calls and so on that –

**MR. SIMMONS:** Right. So you can't –

**MR. MORRIS:** – I can't recall the specific one. No.

**MR. SIMMONS:** Yeah.

Thank you. I don't have anything else.

**MR. MORRIS:** Thank you.

**THE COMMISSIONER:** All right, concerned Citizens Coalition.

**MR. HISCOCK:** No questions.

**THE COMMISSIONER:** Edmund Martin.

**MR. SMITH:** No questions, Commissioner.

**THE COMMISSIONER:** Kathy Dunderdale.

**MS. E. BEST:** No questions. Thank you.

**THE COMMISSIONER:** Former Provincial Government Officials '03-'15.

**MR. J. KING:** No questions, Commissioner.

**THE COMMISSIONER:** Julia Mullaley, Charles Bown.

**MR. FITZGERALD:** Good afternoon, Mr. Morris. Andrew Fitzgerald, I represent Mr. Bown and Ms. Mullaley.

**MR. MORRIS:** Good Afternoon.

**MR. FITZGERALD:** I'm just a – a couple of points of clarification.

**MR. MORRIS:** Sure.

**MR. FITZGERALD:** As I understand your evidence, in response to Mr. Learmonth, it was your understanding that while DNR was the lead on the file – Department of Natural Resources – Department of Finance was responsible on cost overrun issues.

**MR. MORRIS:** Well, on the general financing aspect of the project in general, which would have included the cost overrun issue. Yes.

**MR. FITZGERALD:** Yeah, you said on cost overruns, the Department of – I believe you said on the cost overruns the Department of Finance was responsible. That was the piece of their –

**MR. MORRIS:** The (inaudible) yes, mainly. Yes.

**MR. FITZGERALD:** Yeah, that was a piece of their responsibility.

**MR. MORRIS:** Sorry?

**MR. FITZGERALD:** That was a piece of their responsibility.

**MR. MORRIS:** Yes. Yes, that's correct.

**MR. FITZGERALD:** All right. Thank you.

And you also indicated that, despite there not being a written document about clear lines of demarcation, you understood clearly what your role was vis-à-vis Department of Finance.

**MR. MORRIS:** Yes, I believe –

**MR. FITZGERALD:** Yes.

**MR. MORRIS:** – that to be the case. Yeah.

**MR. FITZGERALD:** Okay, if I can take you to P-03494, please? You've looked at this a lot today. There is a –

**THE COMMISSIONER:** That's at tab 38.

**MR. MORRIS:** Tab 38?

**MR. FITZGERALD:** Yeah, tab 38. And the top of this email is from Paul Myrden to Donna Brewer. You see that there?

**MR. MORRIS:** Yes, I do, Sir.

**MR. FITZGERALD:** Okay.

If we can scroll down a bit further to the next page, please? Thank you.

And this indicates that on the cost overrun issue, "Nalcor would agree to have funded cost overruns based on the Project budget as at financial closing (\$6.5B capital cost estimate and not the \$6.2B DG3 estimate) using substantially your definition of cost overruns." Do you see that there?

**MR. MORRIS:** Yes, Sir. I do. Yeah.

**MR. FITZGERALD:** So we have the 6.5-number here.

**MR. MORRIS:** Yes.

**MR. FITZGERALD:** Yeah. If we could just scroll up a little bit further – no, the other way. Thank you.

Thank you.

It seems to have come up – Auburn Warren is here. You're on an email here and Paul Morris is here – sorry, and Paul Myrden is here. Then up above, this gets forwarded to the deputy minister of Finance. Do you agree?

**MR. MORRIS:** Yes, Sir. I do. Yeah.

**MR. FITZGERALD:** Do you have – is it possible that the reason why there's no written record of you transporting this – or sending this document to Mr. Bown or Ms. English is because it was your understanding that the Department of Finance was taking the lead on that and Donna Brewer was being notified by Mr. Myrden, that there was an issue with the \$6.5 billion. You knew it was handled.

**MR. MORRIS:** It's possible. It's possible – yes, to answer your question it is possible.

**MR. FITZGERALD:** Yeah, because you're – the way you operate, according to your evidence, is that your practice is that you would forward the email to Mr. Bown. And I got – or

Ms. English. So that generally would be your practice.

**MR. MORRIS:** That was my practice with the way I operated, yes.

**MR. FITZGERALD:** You know, and in fairness to you, I'm just wondering what – you know, it may be a reason why we don't have a written record of you forwarding such information to Mr. Bown or Ms. English, is that you believed it was the responsibility of the Department of Finance.

**MR. MORRIS:** Well, it was certainly my belief at the time that the Department of Finance was the lead on this issue.

**MR. FITZGERALD:** Do you recall at the time whether or not Mr. Myrden let you know that: Hey, I'm gonna forward this to Ms. Brewer and she'll handle it or...?

**MR. MORRIS:** I don't recall that, no.

**MR. FITZGERALD:** Okay. The other point I wanted to make is you indicated that you would send it to Mr. Bown or Ms. English. You have no record of it going to Ms. English either, do you?

**MR. MORRIS:** No, if I had – no I don't.

**MR. FITZGERALD:** Okay. And you have no recollection of actually telling Mr. Bown this?

**MR. MORRIS:** I can't say with one hundred per cent certainty that I told him but, as I said, it would be in all likelihood I would've passed that information along to him, in some form or other. If I didn't forward the email, I'm – I'm certain I would have passed it along by way of trying to call him, because as I said, my office was on a different floor than his, or pass it along in conversation with him, as soon as I was able to see him. But at some point I'm pretty well certain I would've –

**MR. FITZGERALD:** Is it possible –

**MR. MORRIS:** – yes.

**MR. FITZGERALD:** – it wasn't done because you believed that this was a Finance issue? And

Finance were handling it? Everybody was doing different things at the time, I take it.

**MR. MORRIS:** That's true, I –

**MR. FITZGERALD:** Yes, he doesn't have a recollection –

**MR. MORRIS:** – I guess anything is possible.

**MR. FITZGERALD:** Yeah I guess, 'cause he doesn't have a recollection, and you don't have a recollection of telling him. Yet, we do know from your evidence that you believed that there was a demarcation between Natural Resources and Finance as opposed to roles and responsibilities here, don't we?

**MR. MORRIS:** Yes, that's correct, yeah.

**MR. FITZGERALD:** And we do know that despite your practices, you don't have an email going to the Department of Natural Resources.

**MR. MORRIS:** I don't have a record of the email, as I say, I'm no longer in government and don't have access to email, so I don't know if that email exists or not, but –

**MR. FITZGERALD:** Okay.

**MR. MORRIS:** – it's not entered into evidence, so.

**MR. FITZGERALD:** Well we – yeah, it hasn't been disclosed. If it does exist, we don't have it. I can tell you that at least, it hasn't been –

**MR. MORRIS:** (Inaudible.)

**MR. FITZGERALD:** – given to counsel.

Thank you. Those are my questions.

**THE COMMISSIONER:** Thank you. All right. Robert Thompson.

**MR. COFFEY:** No questions.

**THE COMMISSIONER:** Consumer Advocate.

**MR. HOGAN:** Good afternoon, Mr. Morris. My name is John Hogan and I'm the counsel for the Consumer Advocate.

**MR. MORRIS:** Good afternoon.

**MR. HOGAN:** I'm going to take you away from the 6.5 issue. Another issue that was relevant at financial close was the condition precedent around the Maritime Link sanction. Are you familiar with this issue at all?

**MR. MORRIS:** Okay. Yes. Okay.

**MR. HOGAN:** You are? You do –

**MR. MORRIS:** Vaguely. I haven't thought about it in a long time. But –

**MR. HOGAN:** Okay. So you haven't thought about it but where – was it – did you deal with it at financial close at all?

**MR. MORRIS:** Maritime Link sanction?

**MR. HOGAN:** Yes. The condition precedent for the Maritime Link sanction.

**MR. MORRIS:** Not – no, not really. 'Cause that wasn't – that wasn't – I mean it was there as a condition precedent but it wasn't something that I actively worked on that I can recall.

**MR. HOGAN:** Okay.

So, Mr. Martin, when he testified last week, Mr. Learmonth asked him: "had Nalcor, to your knowledge, been the – provided the information to Premier Dunderdale that the condition precedent had been met in December?" of 2013. Mr. Martin said: "Yes, we would've. As far as what other information the government would've received from their internal departments, such as Justice and Natural Resources, I don't know."

So he's referring to Natural Resources as being involved in this issue. So I'm asking you what your involvement as part of –

**MR. MORRIS:** (Inaudible.)

**MR. HOGAN:** – Natural Resources Department had?

**MR. MORRIS:** With respect to the Maritime Link that – that really wasn't a major focus for us at the time. It was a condition precedent that

had to be filled, and fulfilled. But I don't recall personally being involved in the issue to any great extent.

**MR. HOGAN:** Okay. So you say it had to be filled or fulfilled.

**MR. MORRIS:** Well, as part of the conditions precedent.

**MR. HOGAN:** Right.

**MR. MORRIS:** Yes.

**MR. HOGAN:** And so was it your understanding that it had been fulfilled at the time of financial close or not?

**MR. MORRIS:** It would've been my understanding as one of the conditions precedent that had to be fulfilled, yes, because at the time of financial close it would've been my understanding that all the conditions precedent would have been met.

**MR. HOGAN:** Okay. And that would've been your understanding. That would've been everyone in Natural Resources' understanding?

**MR. MORRIS:** I believe that's true to say that. Yes.

**MR. HOGAN:** Okay. Thank you very much. That's all the questions I have.

**THE COMMISSIONER:** All right. Thank you. Former Nalcor Board Members are not present. Counsel for Mr. Morris.

**MS. VAN DRIEL:** No questions, Commissioner.

**THE COMMISSIONER:** Okay. Redirect.

**MR. LEARMONTH:** No.

**THE COMMISSIONER:** I just have a couple of questions, Mr. Morris, arising from your testimony. You say that Finance was responsible for the financing issues as well as any cost overruns. Can I – and I don't mean to be quick in asking this – but can I ask you what you were doing there?

**MR. MORRIS:** What I was doing there?

**THE COMMISSIONER:** Yeah, on financial close. What was your – what were you doing for Natural Resources and for Nalcor on financial close?

**MR. MORRIS:** I was basically a contact in the department to sort of make sure – not make sure, but to see that all the conditions precedent that were outlined in the terms of reference – or terms and conditions for the FLG were going to be met at time of financial close. So I would've been sitting in on conference calls, perhaps attend the odd meeting, but it was – certainly Finance was at the lead.

**THE COMMISSIONER:** All right.

So, you would've been there to ensure things like whatever the IE was required in order to close, the independent engineer – were you working with the independent engineer?

**MR. MORRIS:** No, no.

**THE COMMISSIONER:** Were you involved in telephone conversations involving Canada and the independent engineer?

**MR. MORRIS:** I was – I recall being party to conversations with Canada and Canada's lawyers, trying to ensure – or when we were talking about the status of the different conditions precedents that were being met. So –

**THE COMMISSIONER:** Okay, what were the conditions precedents that you were working on?

**MR. MORRIS:** Primarily the ones related to the – ones where the province had to be a signature to a formal agreement such as the equity support agreement and the equity support guarantee agreement that the province had to sign, the Newfoundland and Labrador and Canada intergovernmental agreement that the province had to sign.

Another one I can recall was Bill 61. There was changes to legislation to the Electrical Power Control Act and to the *Energy Corporation Act* that had to do with Muskrat Falls. So most of those involved Cabinet papers that had to go

through the system, so I was sort of a point person to try to ensure that those Cabinet papers did go to Cabinet and the Cabinet policy committee before that.

**THE COMMISSIONER:** Okay.

So were you involved in – did you actually see the financing documents that were signed on November 29, 2013 by Nalcor and the Government of Canada?

**MR. MORRIS:** There would've been drafts going back and forth that I would've been copied on and I would've received drafts, but I don't – I didn't see the actual – get copies of the actual finalized documents until well after financial close.

**THE COMMISSIONER:** All right.

And in those draft documents, was there any reference made, to your recollection, to \$6.5 billion?

**MR. MORRIS:** No, there was a place within one of the financing documents where the actual number was to be inserted, and I was informed, as my previous testimony stated, that at a point close to financial close, I was made aware that the number that would be inserted there would be 6.5 instead of 6.2 –

**THE COMMISSIONER:** Right.

**MR. MORRIS:** – at DG3.

**THE COMMISSIONER:** See, that's interesting; 6.5, which suggests it's \$6,500,000,000 but it was actually \$6,531,000,000 and more; 31 million didn't count?

**MR. MORRIS:** The only number that I can recall was the rounded number at 6.5 at the time.

**THE COMMISSIONER:** Now, I have to ask you this question: Like, you saw the email that came from Xeno Martis that referred to the \$6.5 billion amount. That's the only email that I think that you actually got that had the \$6.5 billion number on it – only email. Now, there were other meetings and Mr. Sturge had notes or whatever.

Are you certain, today, that you were aware that there was – that the number had increased to \$6.5 billion before November 29, 2013?

**MR. MORRIS:** As I said earlier, Sir, I can recall being told that the number that was going to go into project finance documents was going to be 6.5. To my recollection, that would've been before financial close. But, again, I can't say with 100 per cent certainty.

**THE COMMISSIONER:** All right.

Thank you very much, Mr. Morris.

All right. Thank you.

**MR. MORRIS:** Oh, thank you.

**THE COMMISSIONER:** All right.

I guess we're adjourned for the day then.

We'll start again tomorrow morning at 9:30.

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.