



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 59

Commissioner: Honourable Justice Richard LeBlanc

Friday

21 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, Ms. Muzychka.

MS. MUZYCHKA: Good morning,
Commissioner.

Our witness for today is Gilbert Bennett. But
before we get to Mr. Bennett –

MR. BENNETT: Good morning,
Commissioner.

MS. MUZYCHKA: – we have some exhibits to
have entered please: P-04057 to P-04064, P-
04106 to P-04108, P-04215 to P-04223 and P-
04261 to P-04280.

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

MS. MUZYCHKA: Thank you.

THE COMMISSIONER: Mr. Bennett, if you
could stand. I can't remember if you were sworn
or affirmed the last time?

MR. BENNETT: I'm fine to be sworn.

THE COMMISSIONER: Sworn, okay.

Just take the Bible 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, so help
you God?

MR. BENNETT: I do.

CLERK: Please state your name.

MR. BENNETT: Gilbert John Bennett.

CLERK: Thank you.

MS. MUZYCHKA: Thank you.

Before we start with Mr. Bennett's questioning,
I just wanted to draw to the Commissioner's
attention that we did receive from the
Government of Newfoundland, from Mr. Ralph
yesterday evening, a number of notebooks that
had arisen from a summons that was issued on
January 5, 2018.

For whatever reason – there has not been an
explanation given – but they were produced only
yesterday and so the documents that relate to
Mr. Bennett or meetings of – notes of meetings
in which Mr. Bennett attended have not had –
I've not an opportunity to review. So I think in
the circumstances I just wanted to state that in
the event there are questions that arise, when I
get a chance to review those over the weekend
that we may have to either deal with them on
redirect or when we come back on Tuesday.

THE COMMISSIONER: Okay, so those – so
that's interesting. The notebooks that have been
provided, have they – do they relate to any of the
previous witnesses called like Charles Bown,
Julia Mullaley?

MS. MUZYCHKA: One of them relates to
Charles Bown. It's – as I said, I just did a quick
skim through, they have – it involved ministers
or people on the Oversight Committee. There
were some of the Cabinet Secretariat notes.

Most of them deal with the year 2018-2019 so
they don't date back too far, or at least the ones
that I've seen so far. But, again, you know, I
only had a cursory look through them all
because there was, actually, a fair number of
documents to review, so ...

THE COMMISSIONER: Okay, so –

MS. MUZYCHKA: But Mr. Ralph isn't here
today and I don't know if the government has
any further comment to add to it but, you know,
at this point that's all I know.

MR. LEAMON: Justice, I can speak to the fact
that it's from January 2018 on is the missing
notebooks.

MS. MUZYCHKA: Yes.

MR. LEAMON: I don't have the specifics of what happened and we're still working through that. I know Mr. Ralph is working back at the office to get the remainder of the notebooks disclosed. I can pass along any message at this time.

THE COMMISSIONER: Well, the only message would be, you know, like, it's kind of hard to be getting these. We got two weeks left in Phase 2 hearings. We're getting notebooks now that, I think, we should've gotten back in response to the summons back in 2018. For the life of me we've been talking about notebooks now for a month and we're getting them the day before Mr. Bennett takes the stand? Not a good state of affairs from my perspective.

I think what I'm going to have to do now is to – you know, I think basically I'm going to have to get our people on the weekend working to go through all of these notebooks now to see whether – what they actually are and what they mean. And then I'm going to have to look at it to see whether or not we need to recall people or – and we also have to get them out to the parties in case they have any concerns.

Not a good state of affairs, Mr. Leamon. So I don't think I need to say too much more than that, I think everybody gets my gist. But we'll keep on going as best we can and we'll figure out how to deal with this as we move along.

MR. LEAMON: Justice, all I can say is we can offer any assistance that we can do to help the Commission in its review. We'll do whatever we can.

THE COMMISSIONER: I can't ask the government, who is a party to these proceedings, to basically look at the notebooks for us. We have to do that ourselves, so appreciate the offer.

Mr. Coffey.

MR. COFFEY: Thank you, Commissioner.

Commissioner, is the government in a position to indicate, like, how far back these notebooks go? I mean, it's one thing to say we got notebooks from a particular point in time and

we'll hear then eventually whose they are, but I'm just trying to get a sense of how far back in time?

MR. LEAMON: My understanding is January 2018 on.

MR. COFFEY: Okay, thank you.

Thank you, Commissioner. That answers my (inaudible).

THE COMMISSIONER: Okay.

I'm going to take a couple of minutes. I have to go in and just sort of rebalance my – the staff here. You know, this is something that is catching me by surprise to some degree, and I need to figure out exactly – I think I need to get people on to this right away. So that's what I am going to do this morning.

Mr. Simmons.

MR. SIMMONS: Yes, Commissioner, the only point I'd make is that if there are entries in the notebooks that are relevant to meetings that Mr. Gilbert – that Mr. Bennett attended that he is subject to being questioned on as we move through the next few days, of course, we expect that there'll be, you know, prompt – they'll be promptly communicated to us. And even though Mr. Bennett will have started his evidence, we'll still need to have the means to have some discussions with –

THE COMMISSIONER: Right.

MR. SIMMONS: – him about those entries.

THE COMMISSIONER: And I understand that. I guess what's going to happen is that – my understanding from Ms. Muzychka, because I asked her before we came in how long she expects to be, she expected to be a day. So I assume the request now is she's going to be looking at these over the weekend and as soon as she identifies something that she needs to ask a question about, I'm sure she will be in touch with you, Mr. Simmons, to let you know. And, you know, it's just – I'm going to try to control this the best way I can and keep us on track.

MR. T. WILLIAMS: Thank you, Mr. Commissioner.

Just while if – while you're speaking with the staff if we have a sense – obviously, the Commission staff will have to review them over the weekend – whether or not there will be any disclosure prior to the weekend so counsel can make plans, if they need to get people to look at it, and as well as the volume so that we know.

You know, if we have two small notebooks, that's one thing, but if we have binders of documentation or something, just for planning purposes over the weekend and disclosure to counsel.

THE COMMISSIONER: Okay, let me – how much – what is the volume?

MS. MUZYCHKA: I would say there's probably 50 to 60 documents.

THE COMMISSIONER: Fifty or 60?

MS. MUZYCHKA: It could be. There's one – one particular folder had maybe 20 in it and then there was others. You know, there was probably eight folders of, you know, Natural Resources, Department of Finance, Justice, Cabinet Secretariat. And then within some of them there were lots of documents, and then with others there were simply emails stating – for instance, I don't know if it was Charles Bown or somebody that they have no notebooks, having reviewed their documents.

So some of those documents simply state that there are no documents, but I haven't counted but there's certainly definitely more than 25, maybe less than 50.

THE COMMISSIONER: Right.

MS. MUZYCHKA: And, you know, they're not lengthy, they're only – maybe some of them are three, five pages each, some of them are longer because they have slide decks from Nalcor and the notes written in the margins as the individual was following the presentation. So, you know, they – we will take a little time and I have already put people on to review the documents and start flagging the ones to start the

process and to make it easier when I start on the weekend.

THE COMMISSIONER: Right.

Did you say that there's more coming?

MR. LEAMON: My understanding is that there are more coming. Mr. Ralph was finalizing the number that was to be sent over.

MS. MUZYCHKA: (Inaudible.)

MR. LEAMON: I just asked for an estimate for the amount of documents that are going to be sent. I'll advise the Commission once I get a number.

THE COMMISSIONER: All right.

I want to take five minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Okay.

I apologize for the delay.

Just to advise counsel to – and the parties, so we have – we basically just put a strategy in place where everybody is going to be on duty in our staff on the weekend going through all of these documents. There are more than I even thought there were.

And, Mr. Leamon, the one thing that I am going to have to ask you to do, and I recognize that this may not be the top priority in the government right at the moment, but I want whatever else there is to provide to be provided by 4 o'clock today. If it comes after that I don't know how we will ever get through them before Mr. Bennett comes back on Tuesday.

So, you know, I think at this stage of the game I need them by 4 o'clock. So whatever is happening and if you are able to do so – if the individuals who have these documents are able

to put little red flags or flags on where the documents relate to the Muskrat Falls Project, or whatever the scenario is, that would be helpful to us to help to identify. That's not to say we're going to follow that because we will be looking at everything, but we have a lot of work ahead of us and I want it by 4 o'clock today because I've got all the staff in for the weekend to get this done.

All right?

MR. LEAMON: Understood and I'll communicate to them – that to my client.

THE COMMISSIONER: Perfect. All right.

So, Mr. Bennett, there may be other documents that are coming to you the weekend as we're going through them and we'll funnel those through Mr. Simmons so that you're aware of it and other counsel will be provided with them as well.

MR. BENNETT: All right. I understand.

THE COMMISSIONER: Okay.

MS. MUZYCHKA: All right.

I guess we'll begin with Mr. –

THE COMMISSIONER: Thank you. Yes, please.

MS. MUZYCHKA: – Bennett.

All right, I'm going to start with a question regarding the PMT slide decks and papers that we were provided with back in June of 2018.

MR. BENNETT: Okay.

MS. MUZYCHKA: Are you familiar with that five-volume set?

MR. BENNETT: Generally, I haven't reviewed every document in detail but I'm –

MS. MUZYCHKA: No, but do you –

MR. BENNETT: – generally familiar with the set, yes.

MS. MUZYCHKA: Okay. So you are aware of the contents of the documents.

MR. BENNETT: Yes, generally.

MS. MUZYCHKA: And were you involved in the preparation of those documents?

MR. BENNETT: No, I wasn't.

MS. MUZYCHKA: Had you had an opportunity to review the documents when they were being prepared?

MR. BENNETT: At a high level I – you know, I didn't have – I didn't take a detailed review of them, no.

MS. MUZYCHKA: Okay.

Do you have any reason to believe that the contents of those documents are not true to the best of your information, belief and knowledge?

MR. BENNETT: Subject to cross-check to any other documentation that's on file, no, I have no reason.

MS. MUZYCHKA: Okay.

And we've asked that question of the other PMT members – Mr. Power, Mr. Harrington, Mr. O'Brien – and they haven't indicated that there were any issues, but I just wanted to confirm that with you as well – that you're not aware of any statements or information that is not accurate?

MR. BENNETT: So, in terms of factual information, no, I'd have no issue. If there is an expression of opinion – that might be something that we'd have to look at in comparison to, you know, what was said at the time. But from the factual record perspective, no, I have no reason to think there's a problem there.

MS. MUZYCHKA: Okay.

Now, I understood that they were prepared by Mr. Harrington and Mr. O'Brien and Mr. Power and others, Mr. Kean – or maybe not Mr. Kean, but – because he would've been left by then, gone –

THE COMMISSIONER: Well, he drafted it, so –

MS. MUZYCHKA: He did draft them? Okay. So, you know, to the extent that your own team would have prepared them – unless there's something that you could point to I'm assuming, then, that you're okay with them all.

MR. BENNETT: I'd be okay, yes.

MS. MUZYCHKA: In terms of their accuracy. Okay.

I want to ask you some questions about the hiring of the project management team. We've heard a lot of evidence about the project management team and their origin and how they came to the project and so on. As vice-president of Nalcor you're – actually, you should give me your title just for the record.

MR. BENNETT: Okay. So today I'm the executive vice-president for Power Development with Nalcor.

MS. MUZYCHKA: Okay. And you've been in that position since 2016, correct?

MR. BENNETT: Yes, that's right.

MS. MUZYCHKA: All right.

Would you have to approve or at some level agree to the hiring choices of the key members of the project management team? Were you involved in that process?

MR. BENNETT: I was involved in the process. If we go back to the earliest days when, say, Mr. Clarke, Mr. Kean came on board, they were – there was an ad placed back in 2006, I think, at the time. They responded to that. It was a process that was – it was a (inaudible) process that was around – I think one of the key persons involved in that process at the time was Mr. Gerard McDonald in HR, but I was certainly aware of the hires. And I think I sat in on one or two of the interviews and I was aware of the – their selection, addition to the team.

MS. MUZYCHKA: Okay.

So it's more specifically, you know, in terms of the key members of the team. I understand that Mr. Harrington came on board first.

MR. BENNETT: Yes, that's right.

MS. MUZYCHKA: I think it was in 2006.

MR. BENNETT: Yes.

MS. MUZYCHKA: And then he started the process of building the team and he brought Mr. Power on board.

MR. BENNETT: Right.

MS. MUZYCHKA: And then Mr. Power brought Mr. Kean on board?

MR. BENNETT: I don't know if Mr. Power did it directly. I think Mr. Kean and Mr. Clarke were hired through a hiring process –

MS. MUZYCHKA: Okay. But –

MR. BENNETT: – and they responded.

MS. MUZYCHKA: But it was at the direction, I believe, of Mr. Harrington and Mr. Power. No?

MR. BENNETT: Don't have a specific recollection of –

MS. MUZYCHKA: Okay.

MR. BENNETT: – who did what, when from 2006.

MS. MUZYCHKA: All right.

But do you – you know, so in terms of, you know, the choice of Mr. Harrington or the choice of Mr. Power or Mr. Clarke or those individuals, were you aware of that – the decision to hire these individuals before they were hired? Or were you at all –

MR. BENNETT: Oh –

MS. MUZYCHKA: – you know, were they vetted past you?

MR. BENNETT: I was aware through the process.

MS. MUZYCHKA: Okay.

MR. BENNETT: It wasn't after the fact.

MS. MUZYCHKA: After the fact?

MR. BENNETT: It was not after the fact.

MS. MUZYCHKA: Oh, not after the fact. Okay.

MR. BENNETT: That's correct.

MS. MUZYCHKA: So you would have been consulted.

MR. BENNETT: Yes.

MS. MUZYCHKA: Okay.

In Mr. Power and Mr. Harrington's testimony, we looked at the qualifications of some of the individuals on the project management team and we raised questions as to the qualifications for the roles that they were hired for.

In particular, as an example, we questioned Mr. Scott O'Brien, who did not have the minimum 15 years of management – senior management experience with large projects as was set out in the job description. He had 15 or 16 years of total experience, but not in a senior role when he was hired with Nalcor – or his, you know, contracted with Nalcor. There was also issues with respect to individuals not having – I think Mr. DeBourke did not have electrical engineering background with respect to his work on transmission, but yet there were pools of candidates who had both years and applicable experience who were overlooked in favour of Mr. DeBourke.

So do you have any comment as to the criticism of the hiring choices of these individuals based on their qualifications and also the inference that they came through Petro-Canada project and that they were all known to each other? Mr. Kean knew Mr. Power, knew Mr. Clarke, knew Mr. Harrington, knew Mr. Martin, et cetera.

So I don't know if you've heard the testimony or been following some of the coverage on it, but these issues were raised in some detail with each one of these individuals, and so I'm asking you

as the vice-president involved over this project what your views were on that.

MR. BENNETT: So as a general statement, when we're – when anybody is undertaking a hiring decision we'd have to look more at the – we have to look at more than someone's résumé. So there was an interview process that was run for the selection of each of these candidates. I wasn't directly involved in the recruitment of Mr. O'Brien or Mr. DeBourke.

But, generally speaking, those are project management roles; they're not necessarily technical experts in those areas. And, ultimately, looking at any role in the project right now it's difficult to have – from a technical perspective we're not going to find anybody who can cover all of the engineering disciplines associated with the various aspects of the project. And they're not there in that technical capacity, they're there in a project management capacity.

But the general point that I'd make is that you have to look at the – you know, the overall fit of the individual, their experience, their qualifications, how they work with the team. And that is something that, you know, needs to be explored through an interview process in more detail than simply looking at somebody's résumé.

MS. MUZYCHKA: Right.

Now, we know that was a process but that the end result is that we had a collection of individuals who came to the project, some of whom may have been underqualified and others who may have had not had sufficient level of experience and whose main connection was the fact that they all were essentially recruited from the Petro-Canada Terra Nova project –

MR. BENNETT: Oh –

MS. MUZYCHKA: – where they had all worked together at some point. So, you know, one might ask a question whether or not that there was, you know, some priority given or – I won't say favoritism, but preference given to individuals who are already known to the team.

MR. BENNETT: And then, conversely, familiarity with somebody's previous work is a

benefit as well because they're a known quantity in terms of how they work, what they do and how they fulfill – how they have previously been seen to fulfill their responsibilities. From my perspective, I didn't see shortcomings or issues with, you know, the individuals who were ultimately recruited.

MS. MUZYCHKA: Okay, so you –

MR. BENNETT: So while someone could look at that and say, yes, there may have been a relationship in the past, I don't necessarily accept that that's a bad thing in the sense of knowing the person that you've previously worked with.

MS. MUZYCHKA: Okay.

So it's your view that this was not a concern to you and that you were – you hadn't raised any objections or questions with respect to other candidates or the level of experience or anything like that?

MR. BENNETT: I didn't have a particular problem, no.

MS. MUZYCHKA: No. And that would've gone through you, as you say, before the individuals were hired?

MR. BENNETT: Well, in the case of Mr. DeBourke and Mr. O'Brien, no, it wouldn't have.

MS. MUZYCHKA: Okay but with the other individuals, yes.

MR. BENNETT: The earlier individuals I was aware of, yes.

MS. MUZYCHKA: Okay.

We had testimony as well that all of the project management team – Mr. Harrington, Mr. Kean, Mr. Clarke, Mr. Power, Mr. O'Brien – are all independent contractors.

MR. BENNETT: They are, or were, depending on their position with the project. As I recall, I think the original ads that were placed for the positions that Mr. Clarke and Mr. Kean entered may have been originally posted as staff

positions, and we were unable to reach a conclusion for a staff role for those individuals.

MS. MUZYCHKA: Is that the reason, then, that they were hired in the capacity of an independent contractor with an annual contract?

MR. BENNETT: That's – I think that's an important reason, yes. It was a way to, actually, get – close a commercial arrangement with them.

MS. MUZYCHKA: Okay and what about the nature of the contract? And it's been described as an evergreen contract, so it essentially renews year over year without having to go through a process.

MR. BENNETT: The contract may renew but we have the ability to terminate it on relatively short notice at any time.

MS. MUZYCHKA: Okay.

What other benefits are there for hiring individuals under a contractual-type basis?

MR. BENNETT: I think that, in general, hiring somebody on contract terms gives us flexibility in terms of when that person might be terminated. It gives us the ability to select from a broader variety of resources.

And if we look at, you know, these particular roles, they're highly specialized. It's not a given that a person is going to assume a staff position, given their career plans. And if they're working in projects, it's not likely that they're going to sign on as an employee, unless there's a long-term pipeline of project work in that organization.

So we'll find that, you know, some of the large companies – if you're working with a consulting firm, if you're working with a major developer and they have a pipeline of work, then it's not uncommon to see staff people in those roles. But if it's not a given that they have a long-term career in that business doing that type of work, it's less likely that you're going to be able to attract them as staff.

The other consideration, particularly in the planning days, is it wasn't a given that the

project was going to move forward. And therefore there's a – you know, there are obligations that fall on the employer when they bring somebody on in a staff role, particularly in relation to continuity of service, benefits, what happens in termination and so on.

MS. MUZYCHKA: Right.

MR. BENNETT: So those are all relevant factors in that decision.

MS. MUZYCHKA: Now, that's understandable in terms of the pre-sanction state while the project – certainly for when Mr. Harrington came on board and even Mr. Kean before things were confirmed. But once the project was sanctioned and financial close and then you knew that there was a six- or seven-year period that would follow, was there any thought given to converting any of these contracts into an employment arrangement?

MR. BENNETT: That never came up as an issue that we had considered. Again, a look at the specialized nature of the work and, you know, we could look across, you know, multiple professions. If you look at the – for example, the depth of legal advice we have on the project, we never considered, you know, hiring commercial counsel, labour relations and, you know, the other specialized work that we have on the team. This is – the project has a finite duration and we look to primarily make sure that we had access to the best people from wherever we could get them in order to carry out those roles.

MS. MUZYCHKA: Okay.

Now, I understand that employees of Nalcor are subject to annual performance reviews. That would include yourself; you're an employee, correct?

MR. BENNETT: Yes, that's correct.

MS. MUZYCHKA: And – but there isn't a similar process for members of the project management team who are independent contractors. Is that correct?

MR. BENNETT: That's correct.

MS. MUZYCHKA: So what is the method in which you would manage these individuals if performance isn't specifically measured as it is for all of the employees of the Nalcor organizations?

MR. BENNETT: So we have the – commercially, we have the flexibility on relatively short notice – and that could be as short as seven days; I think some contracts have 30 days – 30 days' notice we simply terminate the arrangement.

MS. MUZYCHKA: So – but you would not have the ability, though, as you would, for instance, with an employee, if the individual is an important member of the team. As you've indicated, you want to have, you know, stability and longevity with individuals who come on board. Why wouldn't you have an employment situation where you could actually monitor and evaluate and then provide some sort of remediation or other types of assistance to correct any deficiencies?

It just seems that there's a gap. That it's one thing to say, you know, you can terminate on short notice without having the consequences of having to deal with severance and all that sort of thing, or notice periods, but it's beyond that. It's about ensuring that the team or the individuals are performing as they should.

MR. BENNETT: So we still have the ability to do that. We still have the ability to have conversations, discuss approaches, talk about behaviour, ensure that we have a respectful workplace and so on and so forth. We still have the ability on a one on one, within a small group, to have those conversations and to facilitate, you know, some modification in the activities that are being undertaken.

So we still have that flexibility, we just don't go through the formal, annual review process that we do for employees.

MS. MUZYCHKA: Okay.

MR. BENNETT: And I guess the other part of that performance review process is to think about what development opportunities and what the career path is for our staff, because they are with us for the long term. Generally, don't get

ourselves in that type of conversation with our contractors because they're not with us for the long term.

So I think, to summarize, we still have the ability to talk about any concerns in performance. The process, ultimately, to deal with that in a commercial relationship is a lot easier than what you might have to do, you know, if you're not happy with the performance of a staff individual.

MS. MUZYCHKA: Okay.

MR. BENNETT: And then the other dimension is the career-planning activity that happens with our staff.

MS. MUZYCHKA: All right.

Who determines whether a contract is renewed or not? I mean, evergreen means that they're automatically renewed. But, for instance, they have day rates and we saw a number of contracts had addendums or appendices or amending agreements to change the day rates to a new day rate. Who is the individual or who are the individuals that make the decisions with respect to that?

MR. BENNETT: Generally speaking, the – we have a master list of the personnel that we have on the project team. They're assigned end dates either tied to the end of the project, the end of the function or the end of the work that they're responsible for.

Mr. Power has taken an active role in looking at those positions and identifying when the scopes of work would be complete. It's administered through our HR lead. Needless to say, there would be a discussion that would involve Mr. Power, Mr. O'Brien, project controls representatives, HR, when they look at modifications to the team; either, you know, letting somebody go when their work scope is complete or reassigning them to a different role.

Depending on the role, the various leads that those people would be recruited under would have a conversation. So, for example, if it's a – a group – somebody in the quality group, the quality manager will be saying, yes, I need this

person or, no, I don't and then those decisions would go through HR.

MS. MUZYCHKA: Okay.

If there are issues with respect to members of the project management team who are independent contractors – and we've heard testimony of some conflicted relationships between members of the team and various contractors, be it Astaldi or Valard or any of the others. And we've also seen examples in resignation letters where people have expressed issues as to how certain individuals may be operating or running the part of the project that they're responsible for.

Does that feedback make it back to you? Are you aware of any of those instances?

MR. BENNETT: There would be, I think, some of the situations, and I'll speak about the contractor relationship. Yeah, it wouldn't – those – if they're serious matters, they will get to me. An individual, you know, working at the staff level in the organization, typically, wouldn't make it to my desk.

MS. MUZYCHKA: Typically would or wouldn't?

MR. BENNETT: Would not.

MS. MUZYCHKA: Would not.

MR. BENNETT: So –

MS. MUZYCHKA: No, but let's say if there were issues or complaints about, say, someone at Scott O'Brien's level or Jason Kean's level?

MR. BENNETT: So, again, put that in context. You know, a complaint from a contractor about their commercial counterpart, we'd have to look underneath that and find out what is the real issue we're talking about here.

In the case of Mr. O'Brien, Mr. O'Brien is the representative of the Muskrat Falls Corporation who is responsible for sending a lot of formal correspondence to and fro with contractors. And as part of that process, there are – and in terms of managing cost and schedule, there are definitely situations where we may say, no, we're not going to do that. We're not going to

do what you like us to do. We don't see a need to pay for something, or we're not prepared to give you an extension of time and to give you more flexibility, or there's a contractual requirement that you must meet. Those aren't always, what I would say, consultative conversations. There were times when a company's position has to be put on paper and documented because there may be a dispute or an issue that arises from that later.

So there were two – I think there were two issues at hand: One is the day-to-day relationship and how we work with our contractors and how we facilitate them being successful, and then there's another one where we actually have to put a position on paper and use our best effort to hold the contractor accountable for the commitments that they've made in the contract. So that goes both ways and –

MS. MUZYCHKA: And those are –

MR. BENNETT: – I think you'll see evidence of both in the record.

MS. MUZYCHKA: Right.

What about interpersonal issues, then, going beyond the contractual types of disputes? We've heard evidence from, I believe, SNC individuals that there were issues of bullying and whatnot, and they named specifically, you know, Scott O'Brien and Paul Harrington. There were concerns.

Did those ever come to your attention or were those things that, you know, you would expect they – to be dealt with in a formal process such as, you know, workplace harassment policies?

MR. BENNETT: So we do have a formal workplace standard and typically a complaint under that standard would make it to my desk. I would apprise of that situation. So I'm not aware of any formal complaint from anybody at SNC-Lavalin.

Now, if I look at the senior individuals within SNC-Lavalin, I've met Normand Béchar, for example. He is a strong personality and it doesn't surprise me that there were, you know, direct and relatively intense conversations from

him with others and I don't find that terribly surprising. But nobody came to me and said, Gilbert, I would really like you to mediate this situation because we just can't get along.

MS. MUZYCHKA: That never happened?

MR. BENNETT: I don't recall that ever happening.

MS. MUZYCHKA: No, but you were aware of the tensions between members of the SNC team and the project management team?

MR. BENNETT: I'm not surprised that from time to time there were tensions and intense conversations between various individuals on – in various locations of the project. That doesn't surprise me at all.

MS. MUZYCHKA: Okay.

Were improvement plans ever put in place like they would be with respect to a Nalcor employee, for any of these individuals?

MR. BENNETT: I never saw a situation where there was any particular requirement for improvement in this regard.

MS. MUZYCHKA: Okay.

I'm going to move now to the issue of bifurcation and ask you to look at volume 2 of your documents. And it's at P-04106 and that's tab 29.

MR. BENNETT: Okay.

MS. MUZYCHKA: So this is an email chain. At the top, email is from Lance Clark to Ron Power and it's dated Wednesday, May 18, 2016. And it's responding to an email from Paul Harrington. So if we look at page 2 of that document, so this was after the announcement was made, or after Mr. Martin's resignation and the announcement of Mr. Marshall's coming on board. And ...

So if you look at the bottom, you'll see an email from Mr. Harrington, and he writes: "I have had a chat with Gilbert. Here is what we propose

“Based upon the limited information we have we need to come forward with a governance model that reflects the addition of a VP Lta and Lil incl Sobi

“We need to be sure we maintain the functionality and respects all agreements with the Feds whilst causing the minimum disruption

“I propose that we keep everything beneath me the same and simply add John at the same level as Gilbert

“We will need to change the financial matrix.”

So do you recall discussions with Mr. Harrington with respect to his views on the proposed plans for bifurcation?

MR. BENNETT: I recall that he had concerns with the decision that Mr. Marshall was taking.

MS. MUZYCHKA: What type of concerns?

MR. BENNETT: Well, I think – in general terms, similar to what he’s expressed here.

MS. MUZYCHKA: Right. And so, as I understood, Mr. Marshall came out fairly early in the game and had proposed dividing generation from transmission into two separate projects.

MR. BENNETT: I would say he decided.

MS. MUZYCHKA: He decided –

MR. BENNETT: He more than proposed, he implemented the change and said we’re going to bifurcate the project.

MS. MUZYCHKA: Okay. So was that done in consultation with yourself as the vice-president?

MR. BENNETT: He wasn’t looking for a lot advice on this. He had a clear decision. He had rationale. It made – I understood his rationale and he requested that the change be implemented and the request from the CEO was something that was undertaken.

MS. MUZYCHKA: Okay.

What it appears is that Mr. Harrington’s position was going to be split, I guess, because he was the overall project director. And then with the introduction of John MacIsaac, brought in from NL Hydro, Mr. Harrington was simply going to be relegated to the generation aspect of the project and Mr. MacIsaac was going to be director of the transmission side. Is that correct?

MR. BENNETT: Mr. MacIsaac was to be EVP for the transmission work on the start-up of the facilities –

MS. MUZYCHKA: Right and you were EVP –

MR. BENNETT: – and – but for the Muskrat Falls side.

MS. MUZYCHKA: Oh.

MR. BENNETT: I wouldn’t say that Mr. Harrington was relegated to a particular role. I think there was still a significant body of work associated with completion and construction of Muskrat Falls.

MS. MUZYCHKA: Right. But I guess it changed in terms of who he reported to, perhaps, from his perspective?

MR. BENNETT: No, he still reported to me.

MS. MUZYCHKA: Okay. Not with Stan, but he was still involved with transmission, or not?

MR. BENNETT: Up to then he was. That’s right. So it was a split in his role in that regard.

MS. MUZYCHKA: Right.

MR. BENNETT: He no longer had responsibility for the transmission aspect of the project.

MS. MUZYCHKA: Yes. So I mean there was a clear split –

MR. BENNETT: That’s right.

MS. MUZYCHKA: – that’s divided. And then there would’ve been individuals within the project management team who would have taken on different roles as well.

MR. BENNETT: There would have been some functional individuals who may have provided services to both teams. There may have been some functional groups who were actually split in two, with one function being provided to the transmission team and then a similar – a smaller group providing the same function to generation.

MS. MUZYCHKA: Okay.

Now I'm going to take you to volume 3 and its tab 71 and it's P-01962. And that's the letter from Paul Harrington to Stan Marshall dated June 6, 2016. We've spent lots of time on that over the last few weeks.

We know that ultimately, you know, Mr. Marshall did not go with Mr. Harrington's proposal that we just discussed, that he was floating out. He did write to Mr. Marshall with his concerns and he warned Mr. Marshall – and I think it's at page 3 of his letter – or page 2 it starts, at the bottom.

And he says: I do have concerns – that's the sentence that's underlined on the screen there – “I do have concerns with the timing of implementing the organizational changes and suggest we do so in a more gradual manner. I respectfully request you consider my concerns regarding the timing of such a change in the Integrated Project Management organization. I am providing these concerns because I feel that the implications, consequences and increased risk to both project cost and schedule may not be fully appreciated.” And then he goes on to outline his primary concerns.

In particular, he notes that there would be increased risk to the LIL: “the current QRA assumes that the integrated Project Management team” – it's on page 3, second bullet – “is in place until Turnover of the facilities to the Operating entity. In my opinion and based upon my experiences in mega project execution, the LIL cost QRA P75 of \$300M will be increased and the current QRA P75 schedule of 7 months will be similarly increased by the disruptions and distractions to the Project teams.”

Do you remember discussing that with Mr. Harrington? Did he bring these things to your attention as well?

MR. BENNETT: I don't recall that specific point.

MS. MUZYCHKA: Okay.

MR. BENNETT: Do I – am I aware that generally speaking he was concerned about the disruption and the distraction? Yes, I do recall that.

MS. MUZYCHKA: Did he bring these things? Like, did you and Mr. Harrington sit down together and discuss the impending changes upon Mr. Marshall's appointment to the position of CEO?

MR. BENNETT: We discussed it after Mr. Marshall indicated that this is what he would like to have happened.

MS. MUZYCHKA: Okay. And so you would have heard first-hand from Mr. Harrington the concerns that he expressed –

MR. BENNETT: I –

MS. MUZYCHKA: – with respect to the concerns he had for the project if there were to be a division of generation and transmission.

MR. BENNETT: Well, yes, he communicated those concerns to me.

MS. MUZYCHKA: And did you share these concerns?

MR. BENNETT: I can – I appreciate those concerns and I can also – I also appreciate the rationale that Mr. Marshall established to do this in the first place, to that fact that we would have two EVPs, there would be focus on both generation and transmission, with additional resources to deal with the challenges that both had. So, you know, from my perspective, there is a – there are risks and advantages and opportunities that are on both paths and –

MS. MUZYCHKA: You didn't share the same degree of concern that Mr. Harrington had –

MR. BENNETT: Hmm.

MS. MUZYCHKA: – such that he would write to the CEO and layout for him why he thought it was not a good idea?

MR. BENNETT: So, I had no particular issue with Mr. Harrington expressing his views to Mr. Marshall.

MS. MUZYCHKA: No, fair enough.

MR. BENNETT: And secondly, I see both sides of the coin, and this is clearly a decision that is within the remit of the CEO.

MS. MUZYCHKA: Yes.

MR. BENNETT: So from my perspective, that decision taken, we are going to implement it and do the best we can.

MS. MUZYCHKA: Okay.

MR. BENNETT: Which is where we are.

MS. MUZYCHKA: Were you concerned? Did you share the concern that there could be increased costs and delay with the implementation of a –?

MR. BENNETT: I appreciated that concern, but you have to trade that off against the opportunity, you know, to have focus on both sides of the project. So I didn't do any particularly analysis to support which one I thought was better than the other.

MS. MUZYCHKA: But there were pluses and minuses.

MR. BENNETT: I think in any decision there are pluses and minuses both ways.

MS. MUZYCHKA: Right. And as you say, it was Mr. Marshall's decision to make, and so, you didn't have sufficient concern that you thought it would be something that you should challenge or –

MR. BENNETT: No.

MS. MUZYCHKA: Okay. I'd like to turn back to volume 2.

Were you concerned that you could lose people – that was another one of Mr. Harrington's concern – as a result of the decision to bifurcate the project?

MR. BENNETT: It was a concern. I think, throughout that entire period, we were concerned about retaining people on the team. There was significant change going on, it was a concern.

MS. MUZYCHKA: Right. And we do know that some people did leave.

MR. BENNETT: Yes, they did.

MS. MUZYCHKA: And, these positions were filled within the organization, by other individuals?

MR. BENNETT: That's right.

MS. MUZYCHKA: And, were there problems that arose after or were they manageable – were they mitigated, I guess, to use a word that we heard?

MR. BENNETT: I would say that they were managed as oppose to mitigated.

MS. MUZYCHKA: Mitigated, okay. I guess they're were – I think you mentioned in your interview there were opportunities that arose for others, as part of the reorganization of the project itself.

MR. BENNETT: That's right, there were some shifts in responsibility –

MS. MUZYCHKA: Okay.

MR. BENNETT: From – you know, once a decision was taken, my focus was on completing the generation, so the work that I was assigned, the team that was working with me, that was my definite focus after the decision was taken.

MS. MUZYCHKA: Okay.

Now, volume 2, we're at tab 30, and this is P-04107.

This is an email from Paul Harrington to you, dated June 2, 2016. And, this has to do with a

request by an individual to have his contract changed. And this came out of the concerns – I guess there was some uncertainty with the potential organizational changes. This in particular involved Greg Fleming, I believe, who was looking for a change to his termination notice provisions and a completion bonus.

Do you recall that coming up?

MR. BENNETT: I don't recall it at the time. Certainly, the email that we reviewed in my interview is, you know, abundantly clear and there's no debate about this issue.

MS. MUZYCHKA: Well, the email from Mr. Harrington says:

"Gilbert

"Pls find attached a private email from Greg.

"This reaction is indicative of the uncertainty and mistrust that now exists. We need Greg to finish this Project and he is suggesting a change to this termination and a completion bonus. The completion bonus will be approx 150 days.

"I am compromised here because I have sent a letter to you today seeking confirmation that there are no errors and omissions present under my contract and I am seeking a 3 months notice period.

"So please consider and revert."

So it seems now that, notwithstanding the contractual relationships that were developed some years before, which were beneficial to the contractor in the sense that they had a generous day rate, but they also – the benefit to Nalcor would be termination on short notice, as you indicated.

Now, it seems that there's a shift and there's a couple of individuals, including Mr. Harrington, who are looking for some more financial security in the form of notice period or completion bonuses.

MR. BENNETT: So they were looking for additional notice provisions. I just want to circle back on the notion of a generous day rate. I think the day rate that was established for individuals

was commensurate with the roles for that position or for that function, you know, looking across industry. But there's no question that individuals are coming forward and looking for greater certainty in their role.

My recollection is that nothing was done in relation to this. We did not grant additional termination. From my perspective, Mr. Fleming is gonna be a member of the transmission team with the bifurcation, so I wasn't taking any action in relation to the transmission group in that regard.

MS. MUZYCHKA: Okay. So you don't recall – or is it that you don't recall or do you know whether or not there were any changes made to Mr. Fleming or Mr. Harrington's contracts?

MR. BENNETT: Nothing in relation to Mr. Harrington. And in relations to Mr. Fleming, once he became part of the transmission team, I wouldn't have visibility into his contract terms.

MS. MUZYCHKA: Right, because you were involved in generation.

MR. BENNETT: That's right.

MS. MUZYCHKA: Okay.

Are you aware of any bonuses – completion bonuses or retention bonuses offered to anyone on the core project management team, since bifurcation?

MR. BENNETT: No.

MS. MUZYCHKA: To your knowledge, there has been none. Is that your evidence?

MR. BENNETT: That's right, there have been none. Is it an issue that's been discussed? And as we get closer to the end of the project, is it a consideration in – that I will be discussing with Mr. Marshall? Yeah, it is because it is – you know, continues to emerge as a risk as we are closer to the end of the project.

MS. MUZYCHKA: So it's possible that you would consider providing enticements or inducements to keep members of the project management team who are on a contractual basis, to stay until the end.

MR. BENNETT: It would be important for us to look at this risk and make sure we have mitigated it properly. Yes.

MS. MUZYCHKA: Okay.

And we've mentioned earlier that you've had a number of losses on the management team, following bifurcation, Mr. Kean, Mr. DeBourke, Ms. Troke, as an example. I am sure that there were perhaps others.

Do you believe that losing these individuals had an effect of the project, overall?

MR. BENNETT: Can't quantify it. Would it – you know, is there institutional knowledge that went out the door? Yes, there is. But I can't – given that they, all three of those people were on the transmission team, I can't put my finger on a particular result of their departure.

MS. MUZYCHKA: Okay. But those positions were filled or they were – the duties of those individuals were assumed by other.

MR. BENNETT: That's correct.

MS. MUZYCHKA: And, I thought there wasn't a hole left, I guess, is what I am trying to say.

MR. BENNETT: Hard for me to speculate, you know, who the individuals were in the hole, whether there was any loss of continuity, what the effects were – I can't comment because they were in the transmission team, I didn't have visibility to that.

MS. MUZYCHKA: Okay, fair enough.

The next document in your book at volume 2 is tab 33, and that is P-04047, and we look at this one page.

This is an email chain before Mr. Argirov, who we know is the independent engineer, and Mr. Harrington, in July of 2016. Mr. Harrington seems to be venting his concerns to the independent engineer who is a representative of Canada and the financiers.

He writes: "Despite my best efforts to try and head this off. It seems that they are going to

break up the integrated project team and that will be rolled out next week or the week after I was not consulted about how the organization should look like neither were any of the managers. This was cooked up by Gilbert and John MacIsaac.

"Gilbert came to talk with me on this yesterday but it was already a done deal and I was not going to be caught giving that as a validation of their work so I politely declined and told Gilbert he has to take responsibility of the consequences of this and the way it was done, The team are disheartened and demotivated as a result of the lack of respect shown to me and others, I really worry about the impact this will have and I don't think the P75 cost will cover it A sad day Paul."

Now, I mean it's quite clear that Mr. Harrington was very opposed to the decision to bifurcate the project.

MR. BENNETT: That's evident.

MS. MUZYCHKA: That's evident

So what about his statement that he felt that this was cooked up by you and Mr. MacIsaac?

MR. BENNETT: That statement is incorrect.

MS. MUZYCHKA: Incorrect? And why would he think that?

MR. BENNETT: I don't know why he would think that.

MS. MUZYCHKA: So you had indicated that when Mr. Marshall came on, that that was a decision he'd made right from the outset, that he wanted to divide the two components. And so you really – did you really have any discussion or input in that? Or was it a fait accompli and you were to, you know, go along with it? Or find another job?

MR. BENNETT: The conversation never reached that point.

MS. MUZYCHKA: No, I don't mean it quite so flippantly, but I mean, essentially – and I think Mr. Marshall will say, you know, you are either on board or you are not. He was – that was his plan and that's how he was going

forward. So I – you know, I am not sure that Mr. Harrington appreciated that same way because he was making multiple, you know, communications with yourself and – and with the independent engineer, which – do you find that at all concerning?

MR. BENNETT: I don't find it concerning because I also have known Nik for a long time and I know that Nik can properly put that in context. And this whole question about team functionality is a risk, so I don't have a problem with the conversation happening. And I am comfortable that Nik will be able to put that into context.

MS. MUZYCHKA: So it wasn't inappropriate for Mr. Harrington to report his concerns and risks?

MR. BENNETT: I don't see –

MS. MUZYCHKA: (Inaudible.)

MR. BENNETT: – a problem with having that conversation.

MS. MUZYCHKA: Okay.

THE COMMISSIONER: So we are talking about the independent engineer who was doing work on behalf of the – Canada, it was not aligned with – supposedly aligned with Nalcor, he is an outside individual. And you have your project manager – your project director going above your head, going about Mr. Marshall's head, going right to a third party and expressing this to a third party.

Do you ever think that maybe it could have an impact on Nalcor's best interest, ultimately, at the end of the day?

MR. BENNETT: I was comfortable where we were going. Paul didn't come to me and talk to me about this before he sent this email. I recall having a conversation with Mr. Argirov about this and he – I mean, you know, in terms of the decision to bifurcate, it is a – you know, it's a risk whether it's – you know, at that point in time, my focus was on managing this risk and getting ourselves to, you know, a better level of functionality and moving past the conversation, because a decision had been taken.

MS. MUZYCHKA: The thing is, though, that when you look at the email that he writes to Mr. Argirov, Mr. Argirov responds and says: "Well this is unfortunate. I'll try to talk to Gilbert next week. Can I share your note below with others?" And Mr. Harrington says: I would prefer that you did not.

So it's not like he wanted Mr. Argirov to do anything about it, but at the same time, as the Commissioner points out, you know, Mr. Argirov represents an outside agency, the financier of this project. And, in fact, he's somewhat undermining Nalcor management by going to an outsider even though he's known to all of you and has been working on the project. He is an outsider to the organization in the sense that he reports to this agency. And it's – it would strike me as being somewhat compromising of the organization to have an individual who is sort of going offside like that.

MR. BENNETT: I don't – in my view, the conversation – that email conversation is not helping us get past the issue, okay? We need to get the team focused on the job at hand. Whether – you know, I'm not sure what Mr. Harrington said about this, you know, in his examination. He's clearly not happy. This is – there are some errors in here that are not accurate, that are in the email.

I didn't – as I said earlier, I didn't cook this up, this wasn't my plan. And, you know, in that regard, whether this was, you know, a situation where he's blowing off steam to get this off his chest – eventually, we did move on past it and we have – you know, we were working in an organization where we are – we were focused on completing the generation project and the job at hand.

MS. MUZYCHKA: Right. No, and I appreciate that.

Ultimately, you know, we've heard evidence from Mr. Harrington and he came on board, but my question to you was: Whether or not you felt this was appropriate? And, you know, I'm getting the sense that you didn't have any concerns over the fact that this communication was going on –

MR. BENNETT: So I –

MS. MUZYCHKA: – behind your back and behind the back of the organization –

MR. BENNETT: – right.

MS. MUZYCHKA: – to somebody who would have potential – could have potential consequences in terms of the financing and other confidence levels that the individuals who were providing – or the – you know, the Government of Canada providing the financing would have concern as to the risk and confidence of the project, so –

MR. BENNETT: So, maybe a couple of observations there. I wasn't, you know, in a position of monitoring conversations between Mr. Harrington, Mr. Argirov. This happened, I'm guessing, from his private email address, not from his Nalcor one, given that it's blacked out on the exhibit.

So this wasn't, from my perspective, anything that needed to be transmitted corporately to the independent engineer – the decisions on organization or something that we would've – and happy to talk about, because it's the decision taken by the corporation.

So, you know, from my perspective, it is not terribly helpful in terms of the relationship. I don't think – I think that knowing Nik, I think Nik would've used his judgment in terms of, you know, what he wants to do about this. If he saw it as a major risk, he would have seen that occur directly through, you know, our formal engagement. He would have known that this decision is being taken and he could have taken whatever action he saw fit based on that. If that meant he'd like to Mr. Marshall and understand better, talk to myself, you know, those avenues are all open to him.

MS. MUZYCHKA: Right. But it was inappropriate, let's – let's say inappropriate.

MR. BENNETT: I'm not thrilled with this, no.

MS. MUZYCHKA: No. And I mean you weren't involved in it, I know that, your name is not on the email.

MR. BENNETT: Right.

MS. MUZYCHKA: But as the vice president of the organization, who Mr. Harrington reports to you, having him take this step was clearly inappropriate.

MR. BENNETT: I don't think it was necessary. I don't think it helped the conversation, and there was a more formal way for Nik to be engaged in this conversation, if he saw fit.

MS. MUZYCHKA: It was inappropriate. Yes?

MR. BENNETT: He's – you know, as I said, if he is blowing off steam, then that happens from time to time but – yea, I don't think the communication's helpful.

MS. MUZYCHKA: Okay. Let's look at tab 28. And this is at Exhibit P-03703, binder 2. This is a chain of emails dated May 11, 2016 between Paul Harrington and Ron Power, regarding the issue of ATIPPA and the exposure of the salaries of the salaries of people working as consultants on the project.

Do you remember the concerns expressed at that time? This was around the same time, when Mr. Marshall came on board and there were a lot of changes to the organization. Mr. Harrington had sent an email to Ron Power first and Mr. Power then responded. I won't go through all of the details of the letter, but at the top, Mr. Power writes: "Paul – this is a bigger threat to the project than the Astaldi situation. Gilbert needs to open his eyes and direct his energies to stopping this. Without any input from me, most of the PMs were ready to walk out today. We can discuss further in the morning."

Can you elaborate on what was happening at that time and your involvement? It seems that Mr. Power was placing this squarely into your hands.

MR. GILBERT: Right. Well, there are – there were members of the project management team who were not pleased with the disclosure of their commercial arrangements, and particularly the day rates. They were simply not happy with that. My ability to change disclosure requirements for Nalcor is pretty well nil.

And, this was a time of considerable turmoil in the team. They were under considerable stress.

A lot of commentary about them in the public eye. And they were personally upset with the situation. But my ability to change the *Energy Corporation Act* or the ATIPPA legislation in the province is not very great.

MS. MUZYCHKA: Did they come to you? Did Mr. Power or Mr. Harrington, on behalf of the members of the team –?

MR. GILBERT: Yeah, they did, and they said: We don't like this. And unfortunately, my ability to do something about it is, you know, not very great.

MS. MUZYCHKA: No, but didn't they bring court applications to block the –?

MR. GILBERT: So they took that through court, as I understand. Yes.

MS. MUZYCHKA: Okay. Did the team feel you were not supporting them in their efforts to protect the release of their day-rate information?

MR. GILBERT: I think this is more a frustration than lack of support. I think they – everybody understood what I could do and what I couldn't do. And, so in that regard, my ability to do something about it is, as I said, is nil. Did I have concerns about the situation? Yes, I did. But this is a – so I got to find a different way because I can't change the outcome, I need to change this conversation to the – as best I can.

MS. MUZYCHKA: Okay. Did you talk to the individuals who were particularly distressed over the fact that their information may become public?

MR. GILBERT: Yes, I did.

MS. MUZYCHKA: And do you know of anybody who left because of the ATIPPA request and disclosure of their day rates?

MR. GILBERT: It was cited by a few individuals. I heard the commentary from a large number of people on the team. I can't put names to situations. But yes, I do, I do recall – maybe more so the staff level. There were some people who said, you know: I don't need this, I'm just gonna move on.

MS. MUZYCHKA: Staff level as in employees?

MR. GILBERT: No, at the working level, at the working level in the project team. There were still contractors –

MS. MUZYCHKA: Right.

MR. GILBERT: – but who just said: No, I don't need this.

MS. MUZYCHKA: And now –

MR. GILBERT: And the sentiment was expressed by practically everybody on the senior team. And ultimately, there was also a sentiment that, you know, they wanna finish the job that they've signed up for as well, and that's a part of that consideration and that, you know, factors into decisions that individuals have taken. And I've heard both sentiments.

MS. MUZYCHKA: Though, there were maybe one or two individuals or left, or none? I'm not clear as to your answer. Did anybody leave, to your knowledge?

MR. BENNETT: I'm aware that people at the working level in the organization elected to leave the project and this reason was cited. Did I speak with them first-hand? No.

MS. MUZYCHKA: Okay. But now, you know, the organization, Nalcor, is subject to the sunshine list and having full disclosure, and so I'm sure there are lots of people who aren't happy with that aspect of it, but it's just the way it is. And so I'm – I guess the – with the contractual employees – I won't call them employees, contractual individuals, they were a little bit more upset or less upset or about the same?

MR. BENNETT: Oh, I think they were generally more upset and they probably have, you know, given that they move from job to job, they have some flexibility on where they work, as opposed to an employee who has made a longer-term commitment in their career.

MS. MUZYCHKA: Okay.

So, I guess, did you agree or disagree with Ron's statement that the ATIPP request was a bigger threat to the project than Astaldi, or was that considered a little bit of an exaggeration?

MR. BENNETT: Hmm.

MS. MUZYCHKA: Or overreaction?

MR. BENNETT: It would – yeah, I mean, if you look at the math, the Astaldi situation is pretty significant, right –

MS. MUZYCHKA: Yes.

MR. BENNETT: – but, you know, in a different way. You know, having the senior team say, okay, enough, I just give up. That is a risk and I wouldn't want to understate it. It was. It took a lot of, you know, conversation to try to get people through this, to try to, you know, focus on completion as opposed to focussing on the whole question of what their day rates were. But I will acknowledge that they felt attacked and they felt like they were under siege during this period.

MS. MUZYCHKA: Right.

MR. BENNETT: And it was a, sort of, major personal issue for them.

MS. MUZYCHKA: But it wasn't going to have such a substantial impact as the Astaldi issue at the time.

MR. BENNETT: No.

MS. MUZYCHKA: No.

MR. BENNETT: Fair enough. Could it have been significant? Absolutely could've been. Right?

MS. MUZYCHKA: But not to that extent.

MR. BENNETT: Losing, you know, the senior team off the project at the time we were trying to fix this problem is a big – would be a big problem.

MS. MUZYCHKA: Okay.

MR. BENNETT: It would be a big problem. Whether it's as big as the, you know, dealing with Astaldi in totality, no, probably not. Is it a major issue that would've kept me awake at night? Yeah, absolutely.

MS. MUZYCHKA: Okay.

In Mr. Marshall's interview, one of the observations he made when coming on board was that Mr. Harrington was often reporting directly to former CEO, Mr. Martin, and he was essentially bypassing you in your role as the VP, and under his leadership he essentially told Mr. Harrington, no, you need to report to Mr. Bennett, that's the channel. Do you agree that Mr. Harrington's tendency to bypass you was problematic in anyway?

MR. BENNETT: I don't know if it was problematic, but it certainly – there were certainly situations where Paul dealt directly with Ed on issues while I was working on something else.

MS. MUZYCHKA: Well wasn't – habitual basis, which is what I understand to be the case, that he would ordinarily would by pass you and deal directly with Mr. Martin.

MR. BENNETT: I think we can find some situations that goes both ways. You know, during the – you know, the drive towards sanction around that time, there were a lot of, you know, engagements directly with – directly between Paul and the members of the PMT, directly with Mr. Martin. I don't think there are situations where I wasn't apprised, but there were certainly meetings and engagements that happened when I was on a different file or engaged on something else that was critical towards completion of the work and completion of our planning.

MS. MUZYCHKA: So you didn't see that as being a concern?

MR. BENNETT: I think it was a – you know, it's a reality that if we look at the, you know, multiple streams of activity that were going on in the run up to sanction, that it was impossible to have everybody at every meeting and every conversation.

MS. MUZYCHKA: Okay, but that's not what Mr. Marshall is talking about. He said that there seemed to be a direct path to the CEO, bypassing you specifically, but once he came on-board and did indicate to Mr. Harrington that the appropriate channel was directly to you, have you noticed a difference? Are there improvements in the flow of communications since Mr. Marshall advised Mr. Harrington to report according to the applicable lines of ...?

MR. BENNETT: I wouldn't say that there are – I mean, the flow of information is still there – was still there previously. Mr. Marshall clearly said that anything that goes to him go through me. There is no – so there is no uncertainty in that, and I'm happy to work with that style.

MS. MUZYCHKA: You didn't see the other style as undermining your authority in any way did you?

MR. BENNETT: I think Ed clearly recognized, you know, what was coming directly for him from the project team and what was – and what I was focused on at the time. And I think if we look at –

MS. MUZYCHKA: Did it come back to you? Like, were you kept out of the loop of the project because of your involvement with other projects and the fact that Mr. Harrington was reporting primarily to Mr. Martin? Or regularly.

MR. BENNETT: I wouldn't say I was out of the loop.

MS. MUZYCHKA: You wouldn't.

MR. BENNETT: I don't think so. I was, you know, apprised and aware of what was going on, but there was, you know, if you look at the – I think there were seven sets of deliverables that had to be completed as we approached DG3 and then on towards financial close. So there was certainly an area – there were areas of focus that I was, you know, directly engaged on and there were other areas where, you know, in his capacity as CEO, Ed would be happy to get direct feedback from other members of the team.

MS. MUZYCHKA: Okay.

But you yourself didn't have an issue with that – you never took it up with Mr. Harrington to say, you need to come to me first with this.

MR. BENNETT: No –

MS. MUZYCHKA: That –

MR. BENNETT: – I didn't.

MS. MUZYCHKA: Okay.

All right. The next document I want you to look at is at tab 100, and it's P-04262. And I believe it's in volume 3.

Volume 4.

CLERK: Volume 4.

MS. MUZYCHKA: Sorry, volume 4.

Okay, and we're going to page 2. Now, just before we go to page 2, these are text messages from production that you had provided to the Commission.

MR. BENNETT: That's correct.

MS. MUZYCHKA: Mr. Meaney didn't produce any text messages, but we do have a communication from him to you.

On page 2, he notes in the middle, large bubble – go down to the middle of the page, there's – there we go.

And he's talking about – he writes to you: "I am also going to mention this to Haynes in PS Leadership team" this morning. This "team meeting on Monday morning, and perhaps you guys have already discussed. I think it would be really good for the two of you guys to do a joint LCP team meeting at Torbay Rd early next week. Bring Generation and Transmission groups together to introduce everyone to Jim. Focus on how going down the home stretch it needs to be Generation, Transmission and even Hydro all working together. As we both know, Torbay Rd has been very divided for a while now. Time for a reset. I had a few people mention this to me today over at Torbay Rd after they saw the announcement."

And this is February of 2019.

Can you –

MR. BENNETT: Yes.

MS. MUZYCHKA: – elaborate on what’s – what he’s saying there and what the context is for the ...?

MR. BENNETT: So, this was after – almost immediately after Mr. Haynes’ appointment as EVP for power supply and some PSSs – power supply leadership team.

MS. MUZYCHKA: Okay.

MR. BENNETT: Just to clarify in Mr. Meaney’s text. And Jim and I, I think, at this point in time, had already had this conversation – that as we get close to in-service on Muskrat – needless to say now we’re getting generation, transmission, hydro power systems are all going to be interconnected. There’s interplay between the commissioning activities at the Muskrat site, the completion of work on the transmission link and then the integration to the overall system with hydro.

So, the message that Jim and I, at this point in time, would like to bring to the –both teams – was that, first of all, we’re going to be successful; we’re all going to be successful together. And that we’ve come through a time, you know – if you – look, prior to that, my focus was with the team, was get the generation facilities built, let’s get this ready to go. And now Jim and I are clearly looking at this with a, say – with a view of integrating the transmission generation assets to the overall electrical system. And it’s critical that we all be working together as we are converging and we’re getting ready to hand the generation asset over to the power supply operations team in order for it to be operated.

MS. MUZYCHKA: Okay.

More particularly, you know, Mr. Meaney seems to suggest that Torbay Road has been divided for a while now. So, can you shed some light on that? Were you aware that there was this division on Torbay Road? You work at the Nalcor offices on the –

MR. BENNETT: Yeah. I –

MS. MUZYCHKA: – crosstown – the (inaudible) office.

MR. BENNETT: So, I’m back and forth. I spent, you know, a reasonable chunk of time at Torbay Road, as well. So, I – the division here is, you know, literally, the bifurcation. Once the teams have bifurcated, everybody focused on their own priorities, and that was our objective. Get your work done. Get the generation project complete. Get the construction done. And then, be ready to hand off. Well, now we’re in the hand-off phase. So, we were divided for a while. I didn’t participate in the transmission work. Mr. MacIsaac looked after that function, and he looked after the operations. And we were focused on completing the generation. As we get to the end now, we need to re-converge.

MS. MUZYCHKA: Okay.

So, has this division, in fact, been a negative thing – did it impede the work of the project?

MR. BENNETT: Again, you can look at it both ways. My focus, you know, with the team that was working with me was on completion of the generation project, and that was an important goal and needed the focus and, you know, we’re 95 per cent of the way there now.

MS. MUZYCHKA: Okay.

Is this an attempt in anyway to – an attempt to undermine the CEO’s decision to divide the project into two components?

MR. BENNETT: Not at all.

MS. MUZYCHKA: No?

MR. BENNETT: No.

This is a focus now on transition to operations and, in fact, you know, we do have a transition to operations steering committee, where we have representatives from Power and Supply. I sit on the committee from the construction side and Hydro is there and we’re looking now at transitioning the facilities into operations. So, you know, Mr. Haynes and myself both have our

responsibilities, but we are working together to integrate now that we're getting at the end.

MS. MUZYCHKA: Okay.

MR. BENNETT: And Mr. Marshall is fully aware of all those activities and how we're working together in order to achieve that.

MS. MUZYCHKA: So this isn't something that's being initiated by Mr. Meaney?

MR. BENNETT: Not at all.

MS. MUZYCHKA: So it's part of the ongoing discussions as you go into the home stretch?

MR. BENNETT: No question.

Jim – Mr. Haynes – that's Jim Haynes and myself have talked about this – talked about this almost as soon as the announcement was made, to say okay we need – now we're at a point where we need to talk about integration and hand-off and we're getting there. That was our philosophy right from the beginning.

MS. MUZYCHKA: Okay.

MR. BENNETT: As soon as he was in the role.

MS. MUZYCHKA: Right.

Okay, I'm going to change topics now for a moment. And talk about – one of the issues that we've heard from multiple witnesses at this Inquiry, is the issue of authority to make decisions on-site versus on Torbay Road. A common thread in what we're hearing is the project team's such – members such as Scott O'Brien doesn't spend enough time on site and that the construction managers that were on-site do not have sufficient authority to make major decisions, which led to at least two managers leaving the project.

We've gone through some letters – we can talk about those in a moment – but just wondering what your thoughts are on that because I'm sure you've heard that and it certainly came up in the interviews that we've had with you that the issue of on-site authority and whether it's Scott O'Brien that needs to be on site or whether or not he needs to empower individuals on site to

have the ability – or whether they still have to come back to him so that it can be vetted through members of the team in Torbay Road.

Is this a problem in your view?

MR. BENNETT: I don't see it as a particular problem and I haven't tripped over any – what I would characterize as major decisions, that weren't done. So – I think I talked about this in my interview as well that, first of all, if we're going to make a major – a significant decision there's more than one person's input required to do that. We have a formal change control process. We have a formal mechanism for determining, you know, when a change to the game plan is required or is beneficial.

So it could be either way. So, you know, this whole question of decision-making – I think it's important to put in context that the contractors have their scope of work, and they should do it. And when they come looking for something, we need to understand what that is. And if it's a, you know, a relatively straightforward question, I'd like to use that area over here instead of some other location for storage, then that generally gets worked out on site.

But if somebody says I want a change to the terms of my contract, I want additional compensation, or I want schedule relief, or I want to do something differently than I had told you I was going to do in the contract and what we signed up for – that inevitably requires some decision-making support before that change is accepted. And that necessarily requires input more than simply the manager on site.

MS. MUZYCHKA: Okay, but some of the things that we've heard – and I understand that, you know, if you need to make changes that will affect an engineering input or, you know, major cost change, that they would have to be dealt with in those – in a more formal manner. But we did hear from a number of witnesses, including Des Tranquilla, who was a manager on one of the sites; John Mulcahy; and Don Delarosbil, who was the project manager for Astaldi, that it was an issue.

And we've also heard from multiple other perspectives including on-site managers, experienced hydro people in Torbay Road

office. So – and I mean we can look at – we had letters of resignation from Ted Vanwyk; Brian Cottrell, HR advisor; John Mulcahy in his resignation letter cited a number of concerns as to how he saw the management of the organization. And this was also raised as a concern in the SNC 2013 risk report in terms of on-site authority and – versus Torbay Road.

And while we heard that the site team was empowered, they had authority up to \$250,000, I believe, as compared to Scott O'Brien, who had \$2 million, I think, and Ron Power who had 5 or thereabouts. Even in cases when they had the ability within their financial authority, there was still the need to go back to St. John's to get authority for the changes.

And, you know, Mr. Delarosbil talked about a number of things involving scheduling, things that could be adapted, efficiencies that could be found which would result in some changes, but not necessarily ones that would require, you know, scope change or anything of that magnitude, but that people were just not prepared to make the decisions unless they got the okay from Torbay Road.

And is that something that you heard or were aware of?

MR. BENNETT: So, I never heard that from Mr. Delarosbil, I guess; I never heard any specifics of, you know, his concerns. I heard the blanket concern but, you know, changes in schedule – well, if it's changes in schedule and his workflow that's totally within his control; he doesn't need permission from us in order to do something that's within his remit.

MS. MUZYCHKA: I think, just to be fair, he was talking about in terms of having access to the integrated project schedule so that he could determine whether or not there were some issues if he was running slightly behind and knew that the next contractor, who would be dependent on his finishing, wasn't going to happen –

MR. BENNETT: So –

MS. MUZYCHKA: – you know, that –

MR. BENNETT: – yup.

MS. MUZYCHKA: – just the ability to be making decisions of free flow of information then – collaboration if you will.

MR. BENNETT: So that one's interesting because, with respect, he was the cause for the problem in the schedule; and his contractor.

MR. LEARMONTH: Hmm.

MR. BENNETT: So the other contractors were actually relying on his work and his completion in order to plan their work, and it's actually not productive for him to be thinking about what another contractor in the IPS was either planning to do or waiting to do. We had a contract with Astaldi with milestones, with deliverables and that's what needed to be managed. So I think that's sort of the root of the point here – is that, you know, in terms of decision-making authority, if it turns into, you know, a change in contract Ts and Cs or deliverables or milestones or pay items, then that is, in our process, something that has to be run through the change control process and ultimately will require an amendment to the contract in the form of a change order.

MS. MUZYCHKA: Okay. Well, let's just look at a specific example rather than talk in generalities.

MR. BENNETT: Sure.

MS. MUZYCHKA: And these aren't – these were in the PMT binder but we'll just pull them up on the screen. P-02819.

And this is the letter of resignation of John Mulcahy. And if we look at page 2, he writes: "In all my years in construction, the field team ran the construction site and the head office supported the field team. On Muskrat Fall, it is vice versa and is to the detriment of the project and the people of the province especially with all the interfaces coming up. It cannot be micro managed from head office."

What would you say to that?

MR. BENNETT: I'd make a couple of points; and in terms of interface activity and how work is being scheduled I'm personally aware that happens on-site and I've been to integration

meetings where we are talking among our various contractors and coordinating the work activities; that does happen at site. Mr. Mulcahy at that point in time might not have been fully aware of that, but I have sat in the interface meeting from time-to-time when I visit site and I would also agree it can't be micromanaged from head office.

To the extent that, you know, we were focused on completion of the civil contract and, you know, clearly having a view on performance under CH0007. There was a lot of focus on their completing their work. So there are – I would say that there are factual – factually accurate statements here and the team is aware of that and is managing that work today in an appropriate manner.

MS. MUZYCHKA: So you think there have been changes in the way the team from Torbay Road manages the site based on –

MR. BENNETT: No –

MS. MUZYCHKA: – input from individuals such as Mr. Mulcahy and other –?

MR. BENNETT: No, I think there's – there's an evolution of the work and an evolution of the – particularly, the interfaces where that activity is happening at the site and necessarily does.

MS. MUZYCHKA: Okay.

Let's also have a look at Mr. Cottrell's. That's P-03049. And if we go to page 3 – is there three pages there? The last page, yeah, okay.

Yeah, so he indicates he felt his capabilities and experience were not being fully utilized, he's not challenged by his work, has no decision-making capability. "Further, the management style employed by St. John's gives me great concern as the control and decision making capabilities do not lie with the experienced people on site, but rather with St. John's who are removed from the day-to-day ... operations and this often causes unnecessary delays."

And there are others and we don't need to go through them.

MR. BENNETT: Right.

MS. MUZYCHKA: Interestingly, we had heard from an expert in project management this week, Professor George Jergeas.

MR. BENNETT: Yes.

MS. MUZYCHKA: And I don't know if you caught any of his testimony but one of the things he talked about in terms of effective management of a project is that it was imperative that there be sufficient decision-making authority on site in order to make quick decisions before an opportunity is lost. And that having to delay to go back to St. John's and get decisions when there are things that are happening. There's a lot of moving parts, I'm sure, in these projects and if you had to wait each time to revert to someone with higher authority on the team, there may be some opportunities that were lost. And, in fact, those were the sentiments that were expressed by Mr. Delarosbil as well, in the course of his testimony that, you know, there were things that they couldn't do.

Now, we've heard from other managers who say, well, you know, if there was a piece of rebar that shouldn't be where it is and, you know, you could ask someone to change it or move it. But I mean I'm thinking that the issue is a little bit larger than that and it may be a culture of collaboration or – not so much collaboration, a culture of having sufficient decision-making on site and to trust the individuals on site.

I think it was in one of the other letters, might've been Mr. Vanwyk's, who said basically: All we are, are the eyes and ears for people in St. John's, and we don't actually get to do anything and it undermines our authority on site.

MR. BENNETT: Right, and I'm struggling what – with what little bit with what that authority was expected to be. Like, we are – in terms of managing cost and schedule, if we're talking about expenditure of dollars, then that needs to be recorded. And if we didn't do that and we didn't have those processes, you wouldn't have anywhere near the level of documentation we have right now to explain the various changes in – you know, in the work, in our project controls team.

Day-to-day instruction decisions can happen on site. And I always – I struggle with what authority was expected to have been exercised. And again, you know, the decision-making authority in terms of expenditures and changes to cost and schedule, they're not trivial, and I don't think anybody should be expecting that they're simply going to happen on site. There are commercial consequences to that, that even if somebody does have a couple of million dollars of signing authority, there has to be some process around how that is exercised.

The day-to-day activities, I'm gonna focus on this, I'm gonna focus on that, that is routine construction management, and that's why there is a construction manager on site who deals with those issues. I'm sure there are conversations back and forth between the construction manager and the project manager – what's priority today, what is – you know, what is something we're going to do later. I'm sure that there are differences of opinion that may happen from time to time. But I guess I haven't seen much in the way of supporting evidence where somebody says, okay, this is a problem.

And if we look at – you know, the processes are outlined in the various contracts. The turnaround time, you know, for various activities, I haven't seen evidence of major issues there.

MS. MUZYCHKA: (Inaudible.)

MR. BENNETT: I would acknowledge that there are action-oriented people in – throughout the organization, and those are the type of people who end up in project management. And what we can't have is a process where somebody says: Well, I think this is the best thing to do, I'm just gonna go do it and I'll worry about the paperwork later. And that's –

MS. MUZYCHKA: (Inaudible.)

MR. BENNETT: – a big problem. So, you know, there's – we can't have either end of the spectrum. You can't have one or the other where the project – where the home office is driving everything. You can't have a situation where the site team has just gone off and done what they wanna do and come – somebody comes back and explains it later.

MS. MUZYCHKA: Right, but this –

MR. BENNETT: There's –

MS. MUZYCHKA: – is –

MR. BENNETT: – gonna be a place in the middle, and there's always gonna be a little bit of tension on this topic.

MS. MUZYCHKA: Right.

Would it be more efficient, though, if you did have someone with the authority such as Scott O'Brien or his equivalent in other parts of the project, to be on site more often and to be more familiar with the people and the contractors and his own management team that are present on site, to allow them to know and to be their own eyes and ears of what's happening.

And, you know, we've heard evidence from Mr. MacIsaac that when he came on, he pushed his project managers to get out of the office, put on their boots and get to site, because you don't know the project from behind a screen and a telephone. You know, you need to get there and have visibility, understand the issues first-hand, as opposed to getting one person's interpretation of that.

And, you know, I understand from our discussion during your interview, that you share a view in terms of the reasons why you go up on site fairly regularly. In fact, you know, we have analysis of the amount of time you spend on site versus how much time Mr. O'Brien spends on site, and you're the VP of the project, of the organization. You know, it seems somewhat counterintuitive that that would happen.

MR. BENNETT: It might seem that way, so let's talk about that a little bit. First of all, there is a construction management team with a construction manager on the site full time. So that person is there, and there's an alternate when that person is off the site.

You know, from my perspective, and I think this is a perspective that would've been shared by Mr. Martin, Mr. Marshall and also Mr. MacIsaac, there is value in having the senior leadership team represented and visible on the site.

For example, when – and you may have seen this, you know, on tour or members of counsel here, that when Mr. Marshall visited the site, it's a bit of an event. People want to take selfies with him and they recognize that clearly he is the leader of Nalcor and he is visible on the site. I don't have the same photo recognition, but I do have – the people on the site know who I am and appreciate that I'm there and I'm interested, and it's – there's value in that just from a visibility perspective and a commitment perspective.

There's value from a safety perspective. We can also demonstrate that we're, you know, concerned about worker safety. As a Nalcor practice, we engage the senior team, both in Hydro and Nalcor, to be visible in the field and to express that sentiment.

So those are leadership messages that I get to bring. I also get to get a visibility of how things are working and how the relationships are working.

In terms of Mr. O'Brien, he has a lot of other responsibilities. He's negotiating with contractors at their head office. He's dealing with issues that require attention from multiple functional groups, and he has a full day as well. So if someone were to say, okay, let's just, you know, pick him up and move him to site, that there are a lot of other things that would potentially slip by the wayside if that were to happen. So this is a balance and needs to be worked that way.

MS. MUZYCHKA: Right, no, and I don't think there's any suggestion that, you know, he should be on site full time, but I certainly think that when you look at how much time he spent on site in terms of the number of days, and we can look at that ... I think it's volume 2, P-03948, tab 75.

Did I say volume 2? Volume 3, sorry.

MR. BENNETT: (Inaudible.)

I was right the first time.

MS. MUZYCHKA: Actually, if we look at tab 74 first, tab 74 is a summary of your travel. This is –

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MS. MUZYCHKA: Oh, sorry, 03636.

So when it was compared as to Mr. O'Brien's time on site, there was a difference. I'm not saying twice as much, I don't have the exact number there, but it was substantially more.

And the reason that we were told – and is the reason you just gave is that, well, Mr. O'Brien has a lot of other commitments and he has to travel and so on. And Exhibit 03948, which is the next tab 75, we have his out-of-province travel.

And, certainly, in the early years, the number of days that he would spend on the road in Montreal or Chicago, Detroit, et cetera, was not excessive. It might have been 10, 12 days a month. Now, granted, as we moved into 2017 and 2018 the – his amount of time increased significantly but, certainly, during the times in the early period of the project when there were start-up issues and construction issues, from 2013-2014, the year Astaldi was having challenges, 2015-2016, he wasn't away so much that he couldn't be on site some more.

MR. BENNETT: I think there were – if we go back and look, there were lots of activities that he was heavily involved in, in the office that required his attention.

MS. MUZYCHKA: Okay.

MR. BENNETT: I mean I – I don't think there's – again, there's a, you know, formulaic response to this that says, you know, project manager should be there –

MS. MUZYCHKA: Okay.

MR. BENNETT: – X number of days. You really have to look at what was he – what were we trying to accomplish? So we know through 2014 into 2015 we were working intensely with the Astaldi team in order to turn them around and that wasn't necessarily simply a conversation at site.

MS. MUZYCHKA: Okay.

MR. BENNETT: There were workshops, events that were being held with our leadership in order to find a way forward.

MS. MUZYCHKA: Is it possible, or might it have been another alternative, to have another individual take over some of Scott O'Brien's duties so that that person with that level of authority and role could spend the time on site and be more involved? You know, boots on the ground –

MR. BENNETT: Yeah.

MS. MUZYCHKA: – the feel of the project.

MR. BENNETT: There is – some of the individual – there is an individual on the ground, there is a construction manager on site.

MS. MUZYCHKA: Right, but they don't have –

MR. BENNETT: Right?

MS. MUZYCHKA: – near the authority that Mr. O'Brien has.

MR. BENNETT: So, you know, for the sake of – if you're talking the difference between a quarter million and \$2 million of spending authority, you know, if we saw an issue there, we could've adjusted that. I guess I'm struggling with sort of the direct connection that says here's an area where a decision did not get made –

MS. MUZYCHKA: Mm-hmm.

MR. BENNETT: – that caused a problem.

MS. MUZYCHKA: Okay, so this issue, you know, we've heard about it from various people –

MR. BENNETT: Right.

MS. MUZYCHKA: – here in this Inquiry room. So, I'm just – I'm getting the sense that this was not something that was brought to your attention or that you felt was an issue sufficient to do something about it.

MR. BENNETT: So maybe a little bit more context – and I think I talked about this in, you know, my interview – I've worked in head office in corporations, I've worked in regional office in corporations and I've always heard the complaints on both ends. (Inaudible) the regional office – head office not paying attention, between the head office in regions are out running off willy-nilly doing their own thing. The answer is somewhere in the middle and it requires a level of balance and I think that level of balance was achieved.

MS. MUZYCHKA: Has been achieved?

MR. BENNETT: Yes, it was.

MS. MUZYCHKA: You think that it was there at the beginning?

MR. BENNETT: Again, you're looking at priorities and the work that needs to be done and asking where the focus is. This is an ongoing question that has to be managed by the managers.

MS. MUZYCHKA: Okay.

We did hear evidence from the Valard witnesses that when Mr. MacIsaac came on board, he spent a fair amount of time going back and forth to the various sites on the transmission line – and I appreciate that wasn't your part of the project, but just as an example – and that he had more of collaborative approach. And when he testified here in the Inquiry, he indicated that, you know, it was his goal to get out of the office, go meet the individuals, find out what was going on, see how they could work together to get the job done. And it wasn't a we-they or an adversarial approach; it was more collaborative.

And interestingly, this Professor Jergeas, or Jergeas, gave evidence as to the need to build collaborative relationships with – between contractors and the owners instead of having an adversarial relationship. And so that – I don't know if that is also part of the culture change or shift, in terms of trying to facilitate more efficient project management. Do you have any thoughts on that?

MR. BENNETT: Well, I think that if you look at, you know, early efforts with supporting our

contractors in the field, getting them on site, getting them up to speed, helping them with performance issues, holding workshops, carrying out activities jointly, explaining the labour relations framework, explaining the benefits strategy, working with them in order to improve their opportunity of success: those are just but a few examples of where we have tried to collaborate with our contractors in order to help them be successful.

On the other end of the spectrum, there are contractors who have very significant claims and very significant issues that, ultimately, you have to, you know, apply the terms and conditions in the contract. And that's a less – it's a less collaborative place but, ultimately, there are situations when you get there and they have to be managed.

So the role of the management team is to be able to work, you know, across that spectrum from one end to the other and to be able to support, facilitate as a first approach. I agree with that fully. So I agree with Professor Jergeas on that one, that that is a default. That should be the default approach and I think I can – I've cited a few examples, of many, where that's happened. And then, ultimately, you may get to a less-than-ideal place and a different approach is required.

MS. MUZYCHKA: Okay.

Has there been a shift in the approach or culture of the relationships with contractors over the last couple of years, between Nalcor and the various individuals or companies on site?

MR. BENNETT: I don't think that there was a global shift; I think different contractors are working in different ways. So the transition from CH0007 to CH0011 that – the end of the CH0007 contract was difficult for everybody involved. The relationship with CH0031, our balance of plant contractor – that one is working very well.

The contractor is focused on priorities, focused on the systems that, you know, we require in order to support first power, prioritizing the work and, you know, is generally working, I would say, quite effectively. And then there are others that I could identify, they're somewhere in the middle of that spectrum.

MS. MUZYCHKA: Okay.

All right, going to move to a new topic now –

THE COMMISSIONER: Okay, maybe this would be a good time then, to take our morning break?

MS. MUZYCHKA: Sure.

THE COMMISSIONER: So we will take 10 minutes now.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: So a little longer than I usually take.

So, Mr. Leamon, anything to report on what's coming our way?

MR. LEAMON: What I can say, Commissioner, is that your instructions have been communicated and communicated throughout government, and we're hopeful to have them to you as soon as possible and, obviously, by 4 p.m. today.

THE COMMISSIONER: Okay.

So we still don't know the volume of what we're going to get.

MR. LEAMON: I can't give a number; I'd be only speculating if I were to give a number. So I'm not sure.

THE COMMISSIONER: All right, thank you.

All right, Ms. Muzychka.

MS. MUZYCHKA: Okay.

Earlier in our Phase 2 hearings, we heard evidence from Grant Thornton expert, Scott Shaffer. In his testimony, he explained that there was no indication that Nalcor had recalculated the CPW analysis, despite the fact that after

sanction the bids were coming in above the DG3 analysis. And Mr. Shaffer had indicated in his interview with you that you had told him that, quote: Once sanction decision is made, it's made.

And so I guess my question is: Was that the reason why Nalcor did not run the CPW after 2013?

MR. BENNETT: So there was a –

MS. MUZYCHKA: (Inaudible.)

MR. BENNETT: As I recall, there was a CPW analysis done at sanction. I'm not aware of any request after sanction to do the CPWs. So, you know, I think the – probably some clarification – I mean, notionally, yes, you make a sanction decision, and then you're moving forward with the project. I think we also recognize – and probably some additional context – the final go, no-go call happens at financial close –

MS. MUZYCHKA: Okay.

MR. BENNETT: – in our case. But, I mean, normally speaking, at sanction your AFE is signed for the sanction estimate you put forward. Of course, that didn't happen here. We had, as I recall, some funding for interim works, but major contracts weren't let until financial close.

MS. MUZYCHKA: Okay.

So, is the point of no return, then, sanction or financial close?

MR. BENNETT: I think, classically and sort of academically, you've made the decision at sanction. In practice with the project, we didn't sign the largest contracts until financial close. So there was a period of time in between the sanction decision and financial close where we were doing some work, we were undertaking limited activities, but we hadn't made the full commitment for all of the project contracts, recognizing that the financing had not been secured.

MS. MUZYCHKA: Okay.

We heard testimony from Pat Hussey in March, when he spoke about letting contracts out for bid

prior to sanction so as to have some certainty as to the numbers or the cost. From what I understand of his testimony, he said that this plan was not followed under your direction.

Can you tell us why you didn't want to do that?

MR. BENNETT: Not sure I can recall his commentary on that. There was – I know that, you know, during that period of time between sanction and financial close, we had not secured all the funding for the entire project, and therefore we would not be in a position, necessarily, to maintain all those commitments we'd be funding with the province's equity during that interim period. I know that through that entire period, there was fairly intense discussion on which contracts we would move forward with.

MS. MUZYCHKA: Prior to sanction.

MR. BENNETT: Oh, prior to sanction?

MS. MUZYCHKA: Yes.

Mr. Hussey talked about putting contracts out for bids so you'd have an idea as to the cost.

THE COMMISSIONER: Part of the 2008 plan.

MR. BENNETT: If you don't recall – I don't recall much in the way of dialogue about that.

MS. MUZYCHKA: No – 'cause he said in his testimony – I've just got a section where he said something about, "... we do get actual contracts ... that we have to place in order to maintain" the "schedule. And generally, in projects I've worked on, that's happened before sanction but I'm not sure even of the timeline when I was on that project and how long it was between sanction"

He was referring to his experience, and then he later said – there was an email. He said, "... I'll go back to an email that's – that I saw which Gilbert Bennett wrote ... or it was responded to, to this item and said, you know" I think it's "impossible for" the "project to put all these contracts in place before sanction"

MR. BENNETT: Well, to put them in place –

MS. MUZYCHKA: Yeah.

MR. BENNETT: – yeah, there’s no question they couldn’t be put in place; we didn’t have funding. Whether – and I can identify examples where we did go to the street and start procurement activity for long-lead items but, at the same time, avoiding making commitments. And the two that come to mind were preliminary contracts on the turbine generators and the submarine cable, where we had taken action to secure manufacturing slots or have model testing done that fed into the civil contract.

MS. MUZYCHKA: Okay.

And he confirmed that, “financial close may require most contracts” – Mr. Hussey did. And then he said: “That was not a guiding principle that we took. This was back in 2008.”

MR. BENNETT: Well, that’s way early –

MS. MUZYCHKA: So was –

MR. BENNETT: – right?

MS. MUZYCHKA: – there is a plan in place in 2008 where it was contemplated that there would be letting of contracts prior to sanction?

MR. BENNETT: I think that you may have seen contracting, you know, procurement activities. I think, even later than 2008, there was some expectation that financial close would have been closer to the sanction date, right? But as we know, as it turned out, that the financial close never happened until 2013 –

MS. MUZYCHKA: Right.

MR. BENNETT: – the fall of 2013.

MS. MUZYCHKA: December of 2013.

MR. BENNETT: Right.

MS. MUZYCHKA: There was thought that it could happen in the summer of 2013?

MR. BENNETT: What could happen?

MS. MUZYCHKA: Financial close.

MR. BENNETT: I think there was a desire to have it earlier to the sanction decision, yes.

MS. MUZYCHKA: And the sanction decision was the previous December 2012.

MR. BENNETT: Right.

MS. MUZYCHKA: So it was a full year that –

MR. BENNETT: It was a gap there.

MS. MUZYCHKA: Right.

So, in your view – so the point of no return, then, was it sanction or financial close?

MR. BENNETT: Ultimately, the absolute point, you know, when you’ve made the – you’ve made a binding commitment to the Government of Canada at financial close.

MS. MUZYCHKA: So there’s no turning back.

MR. BENNETT: You’re in then – you’re either going to complete or negotiate some termination with Canada.

MS. MUZYCHKA: Okay.

Okay.

Then just going back to the earlier point about the DG3 numbers, and the fact that after the contracts were let out to bid and they were all coming back – this was happening during the period between sanction and financial close, ’cause we know that Astaldi bid came in higher and there was others that essentially blew the contingency before financial close, correct?

MR. BENNETT: I think the Astaldi one was a big one in there.

MS. MUZYCHKA: Yeah.

MR. BENNETT: My recollection is that the mass excavation contract was reasonably close. Some of the supply contracts that were being looked at through procurement were reasonably close as well, ’cause I seem to recall that, in general, the contracts for supply and materials were coming in very close to budget. The Astaldi one was definitely an outlier and needed

to be funded, and that got us to the – sort of the conversation at financial close.

MS. MUZYCHKA: Okay.

Just wanted to speak a bit about cost reporting and COREA and just as, by way of overview – I’m sure you know all these dates – but we know December 2012 was sanction and we had a 6.2 number – 6.2 billion. And then June of 2014, there was the first AFE revision, and that was to 7.0 billion. In September 2015, the second revision to the AFE was to 7.7 –

MR. BENNETT: Right.

MS. MUZYCHKA: – and then it went, in June 2016, to 9.1; December 2016 to 9.4; and then June 2017 to 10.1. Okay – so with that in the background.

Just to have a look at binder 1, tab 1, and it’s Exhibit P-00664.

These are board minutes from August of 2012.

If we go to page 4 – we know that you were at this meeting or present by invitation. It’s August 23, 2012.

And at page 4, middle of the page, the board of directors there.

“The Board of Directors discussed its involvement in the approval to sanction the Muskrat Falls Project and its involvement subsequently, during the construction of the Project. Mr. Martin stated ... he sees the Board as providing the approval to sanction the Project. This approval would involve the approval of the AFE for the full period of construction and the involvement of the Board after ... initial approval would be if any significant issues arise which require the input of the Board, with regular project updates and presentations to the Board on an ongoing basis.”

So, is it true that the project management team informed you in July 2013 that they were forecasting a cost for the project of approximately 7 billion?

MR. BENNETT: They –

MS. MUZYCHKA: Yes.

MR. BENNETT: They identified that that possibility existed.

MS. MUZYCHKA: So you were aware of that?

MR. BENNETT: I think I was copied on that presentation when it was –

MS. MUZYCHKA: Yes.

MR. BENNETT: – also provided to Mr. Martin.

MS. MUZYCHKA: Yes, so, the PMT had provided a slide deck presentation showing the numbers that would bring it to 7 billion.

MR. BENNETT: That could bring it to 7 billion, yes.

MS. MUZYCHKA: In 2013 – in July of 2013.

Are you clear on the date?

MR. BENNETT: I recall the date –

MS. MUZYCHKA: That sound about right?

MR. BENNETT: – just – I’m interested in the context of what was actually in the presentation.

MS. MUZYCHKA: Okay.

Do you recall passing that figure on to the board of directors? ‘Cause this is now August of 2012, sorry, where there’s discussion of providing, “project updates and presentations ... on an ongoing basis.” So now this is a year later, it’s July of 2013, and the project has not yet been – not had financial approval or financial close. And we already know that there’s a number that’s looking – that is closer – has the potential to be at 7 billion. Is this something that you would have brought to the board of directors –

MR. BENNETT: I wouldn’t –

MS. MUZYCHKA: – at that time?

MR. BENNETT: I wouldn’t independently of Mr. Martin bring anything –

MS. MUZYCHKA: (Inaudible) –

MR. BENNETT: – relating to cost to the board.

MS. MUZYCHKA: So that would have been Mr. Martin's call to raise it with the board of directors?

MR. BENNETT: Absolutely. In terms of what he's looking for, in terms of funding on the AFE, he's looking for additional capital – that conversation is one that I'd look to him to have.

MS. MUZYCHKA: Okay.

Would anyone from the Government of Newfoundland and Labrador have been told about the 7.1 – or 7.0 billion –

MR. BENNETT: So the –

MS. MUZYCHKA: – potential in –

MR. BENNETT: Right.

MS. MUZYCHKA: – July of '13?

MR. BENNETT: Conversations about project cost are ones that I would have looked to him to lead.

MS. MUZYCHKA: Sorry?

MR. BENNETT: Conversations about project cost and funding from the province are the ones that I would look to Mr. Martin to – Mr. Martin would engage with either the Premier or Cabinet or the Minister of Natural Resources as applicable. That's not something that I would lead the conversation on.

MS. MUZYCHKA: Okay.

So you wouldn't have taken it upon yourself to raise it, or that wouldn't be appropriate?

MR. BENNETT: It's something that I wouldn't have been – I didn't interpret as being expected to do.

MS. MUZYCHKA: Okay.

MR. BENNETT: It's on the – those questions are, you know, within his realm.

MS. MUZYCHKA: But you knew that these figures were out there – not out there out there, but within the project management team and the organization. But they – and you would have been at meetings and you would have known if they were communicated to the board or to the government, correct?

MR. BENNETT: I would have know that sort of the risks were talked about. There were a lot of terms and conditions associated with the numbers that the PMT had communicated. There's a broader context there that Mr. Martin's gatekeeper, who's the one who approves the AFE – ones who releases funding, in terms of the AFE approval – conversations about the province's capacity on borrowing are the ones that I would've looked to him have led those conversations.

MS. MUZYCHKA: Okay.

So wouldn't it have been up to you to say to Mr. Martin: Do you think we should present this to the board, or do we need to get the premier on the line and have a discussion about this?

MR. BENNETT: It wouldn't have been a conversation that I would've led with him, no.

MS. MUZYCHKA: No?

MR. BENNETT: He was – there's no doubt in my mind that he was engaged in the – highly engaged in the business case, was ultimately, you know, the decision-maker in release – in relation to that business case. Conversation with the premier about some risk, the ability of the province to invest under varying circumstances: those were, in my view, issues that were clearly his, and he was the individual who had the relationships with all of those individuals directly.

MS. MUZYCHKA: All right.

In December of 2013, you updated the board of directors of Nalcor on the project, and that's P-00684. It's in tab 9 of your book.

There are no numbers, specifically, here, I don't think. There's various individuals providing information – Mr. Sturge and yourself.

If we look at page 9, the bottom of the last two paragraphs. And this is “**Lower Churchill**” and you join the meeting, and on the last paragraph on that page it says: “Mr. Bennett circulated a Project Update Report at the meeting and advised that the information in this update is confidential and commercially sensitive. He reviewed background information noting that the engineering is 90% complete, two-thirds of the procurement contracts have been either awarded or ready to award and that certain construction milestones and expectations have been achieved. He stated that the supply chain ...” et cetera.

So would you have, at that time, provided the board with the 6.531 number? This is after financial close.

MR. BENNETT: I don’t have a recollection of what was – what I presented, so I do note, though, down below in the last sentence in the paragraph following that –

MS. MUZYCHKA: Yes.

MR. BENNETT: – we examined three categories of cost growth: design enhancements, market conditions and construction productivity. So I don’t have the presentation, but to the extent there was conversation about cost growth –

MS. MUZYCHKA: Right, and you talked about “key changes from DG3.”

MR. BENNETT: Right.

MS. MUZYCHKA: So I’m assuming that would’ve been the 6.531 number?

MR. BENNETT: I can’t confirm. All I can point to is what the minutes say here.

MS. MUZYCHKA: ‘Cause it’s not noted –

MR. BENNETT: Right.

MS. MUZYCHKA: – in the minutes –

MR. BENNETT: I understand that.

MS. MUZYCHKA: – so (inaudible) discussion with the brevity of the notes that came from the board of director meetings. But if you had

mentioned that there were changes from the DG3 number – because of the contracts being let and cost growth, design enhancement, market conditions – would it be something that you would have told the board of directors at that time, that this brings our number to 6.531? Or would you had not have mentioned a number?

MR. BENNETT: I – you know, if we talk about these types of things, typically there would be a number involved.

MS. MUZYCHKA: Right –

MR. BENNETT: Yeah.

MS. MUZYCHKA: – especially where in the earlier paragraph it stated that you’re providing an update and the information is confidential and commercially-sensitive.

MR. BENNETT: Right.

MS. MUZYCHKA: So would that give you more –

MR. BENNETT: I –

MS. MUZYCHKA: – of a comfort in knowing that you did –

MR. BENNETT: – I –

MS. MUZYCHKA: – release a number or didn’t release a number?

MR. BENNETT: I think I talked about a number here. I guess I can’t point to a document that states what the number is unless we have the document, the deck that was actually provided to the board at the time.

MS. MUZYCHKA: Okay. Well now this was about a week after or five days after financial close, and the number on financial close was –

MR. BENNETT: The 6 –

MS. MUZYCHKA: – 6.531.

MR. BENNETT: That’s right.

MS. MUZYCHKA: So I’m wondering why this wouldn’t have been shared with the board prior

to financial close and not after, as it would appear from the minutes?

MR. BENNETT: And, you know, I don't have a recollection of all the timing here.

MS. MUZYCHKA: Okay, but this is December 18th meeting?

MR. BENNETT: Yes.

MS. MUZYCHKA: We know financial close was December 13th.

MR. BENNETT: So, we know it's here –

MS. MUZYCHKA: Yes.

MR. BENNETT: – and I guess we got to go back and look and the other board minutes and understand what happened.

MS. MUZYCHKA: Okay.

It doesn't appear that the information was in the prior board meeting minutes. But this seems to be the first reference where you are talking about a change from the DG3 number, which was the 6.2. So does that sound ...? Or are you not certain?

MR. BENNETT: Well, I think, I'd have to go back and look the various minutes for the previous meeting, and confirm what was said.

MS. MUZYCHKA: Okay.

MR. BENNETT: I think – there's no question here we're talking about cost growth, which is above DG3.

MS. MUZYCHKA: All right.

Given that the financial close was based on the 6.531 and that a week or so later it appears – subject to contrary evidence – that the board would have been advised of the 6.531. Why wouldn't a new AFE have been requested at that time?

MR. BENNETT: The requirement for an AFE is at the – you know, the CEO's discretion; he is authorizing the team to spend funds. If we needed an AFE at that point in time, to close the

contract, we would – that would've been an absolute requirement.

Otherwise, the approval of the AFE, the authorization from the CEO, you know, is granted at his or hers discretion, based on the needs of the project.

MS. MUZYCHKA: So, it wasn't something that was pressing at the time? Is that what you are saying?

MR. BENNETT: I don't think it was. I don't think there was an impediment to signing, you know, the contracts that were in the bill at the time.

MS. MUZYCHKA: Okay.

We have evidence that draft AFEs were prepared in March of 2014, but none went to the board until June of 2014. Do you know why the delay?

MR. BENNETT: I can't place it, no.

MS. MUZYCHKA: Okay, if we go to tab 14, of book 1. It's Exhibit P-01831.

And this is a note: “**May 23 2014 Briefing deck presented by Project team to CEO \$7.27 to \$7.5B range.**”

And we look at the page 9 of the slide show – slide presentation, you see that there is a request for an AFE of 6.99. And – but there's numbers there when you add management reserve of between \$7.2 and \$7.5 billion as being the cost to completion. Is that correct?

MR. BENNETT: Well, the management reserve is tied to an identification of risk by the project management team. The – typically, I think we've seen that management reserves have some more strategic considerations in them other than just the funding that the PMT has been granted.

So the clear requirement was for \$6.99 billion to move forward and there's also, you know, a signal here that there may be additional funds required in that reserve.

MS. MUZYCHKA: Right, up to \$7.5 billion.

MR. BENNETT: That's right.

MS. MUZYCHKA: Right.

Do you recall sharing this with the board of directors, this analysis, or was it just the 6.99?

MR. BENNETT: I don't recall sharing it.

MS. MUZYCHKA: Would that have been your obligation to share it or would that have been Mr. Martin's?

MR. BENNETT: I would have looked to Mr. Martin to discuss funding requirements and his priorities with the board and the shareholder.

MS. MUZYCHKA: So it would have been his decision as to what information would have gone to the board?

MR. BENNETT: Look at it that way, yes. That's within his discretion and his judgment.

MS. MUZYCHKA: Okay. Not yours.

MR. BENNETT: That's right.

MS. MUZYCHKA: So you couldn't – you would stay silent at the meeting if you knew that 6.99 was being put forth and you knew that the range was actually closer to 7.5 once you factored in the management reserves?

MR. BENNETT: So those are different things, right? So the management reserve deals with future risk.

MS. MUZYCHKA: Yeah.

MR. BENNETT: I've – in multiple meetings I've heard Mr. Martin explain what those risks are. They weren't necessarily quantified, but he certainly discussed the nature of risks associated with the project.

MS. MUZYCHKA: Okay.

So you would then, I guess – following what you stated earlier, that wouldn't have been information you would have shared with the Government of Newfoundland.

MR. BENNETT: I'd defer the conversation on capital cost sort of investment requirements, funding requirements. Those are conversations that he would lead. I would have expected him to lead those.

MS. MUZYCHKA: Okay.

So this was in 2014 this was ongoing. One of the issues that we've explored in this Inquiry is why there was seemingly no QRA done after the DG3 analysis was performed, up until 2016. So there was a three-year period, essentially, or four-year period, because I believe the QRA was done in 2012.

Why wasn't there a QRA done sooner than 2016? Because, you know, we're talking about the risks and putting forth the appropriate reserves. Would there – should there have been a further analysis done at a much sooner period, once the numbers started to change?

MR. BENNETT: I think, you know, the critical activity is actually getting the numbers and completing the procurement, and that's really the way to run this issue down. So let's get the procurement done and then we know what we have.

The challenge with analysis is if you don't have good information going into it, you're not likely to get a good result out the other end. So, during this period, the critical focus was: Let's get the contracting done, get the numbers buttoned down and then we have something that we can quantify.

MS. MUZYCHKA: Do you do – you had more information in 2013 and 2014 than you had in 2012 when you just had a budget –

MR. BENNETT: You had –

MS. MUZYCHKA: – and you were dealing with theoretical, you know, risks and whatever. But once you had gotten underway and, certainly, by 2014 you knew that the issues with Astaldi were going to have an impact on cost and schedule. Why – I don't understand the basis on which you wouldn't want to run a QRA to assess those risks more precisely.

MR. BENNETT: Because I don't believe – I mean, let's understand what QRA means: quantitative risk analysis –

MS. MUZYCHKA: Yeah.

MR. BENNETT: – which suggests that you have information – really useful information to feed into that quantitative analysis. And the critical objective was to get Astaldi moving and to have something to work with. I don't think we needed a QRA to explain to the management team that we needed to put effort into getting Astaldi working successfully.

MS. MUZYCHKA: No –

MR. BENNETT: And it is a management tool, right, and it's a tool to help the team understand where the critical-focus priorities are, and that was clearly understood by the team. We need to get Astaldi performing and, secondly, we need to finish the procurement and button down, you know, any issues with respect to a difference between budget and the real numbers.

MS. MUZYCHKA: So, essentially, any plans to do QRA were going to wait until periods of further certainty?

MR. BENNETT: I think it's – there's a – if the tool is useful to the management team, in terms of focusing its attention on its priorities, I think we had a pretty clear agenda earlier on. I don't see that a QRA and doing the analysis and the Monte Carlo simulations and trying to speculate as to what the outcome might be, would be as useful as actually doing the work and finishing the procurement and getting the numbers.

MS. MUZYCHKA: But wouldn't you want to see if there had been a change in the risk analysis?

MR. BENNETT: I've given my – I give my answer. I think the priority is really on getting the work done and building certainty that way.

MS. MUZYCHKA: Okay.

Is it possible that there was concern that if there was a QRA run at that time, that it might trigger a COREA funding payment?

MR. BENNETT: I've heard – I've seen that comment. I don't necessarily subscribe to it because you still have to come back to what is the certainty we're looking for.

MS. MUZYCHKA: Okay.

So if you look at – if we look at binder 3, tab 76 and that's Exhibit P-01819. And this is a slide deck entitled: Financial close/completion guarantees/COREA, May 2018.

If we look at page 5, it's, I would say, highlighting what the understanding is of how the cost overrun is calculated. But in the second paragraph it's noted: "The rationale was understood to be that costs that were not yet realized as fixed and firm were not part of the pre funded equity payment calculation, as inclusion of costs that may not be realized could trigger an over funding of COREA payments and cause unnecessary financial hardship to the Province."

Now, this is something that was written by the project management team, presumably.

MR. BENNETT: Yes, I've stated this.

MS. MUZYCHKA: So do you agree with this rationale? Do you understand that to be the case? Did you go through understanding that if the risk analysis was conducted and it came up with particular new range of expenditures that have not yet been realized, but as potential cost, that it would trigger a payment to the COREA account?

MR. BENNETT: So they've said it could – I'm not – because I'm not convinced that it would. I know that the mechanics of the COREA funding arrangement tied to – they tie to the AFE and the approval of the AFE. Once the AFE is approved for a higher amount, then the funding is set aside in the COREA account to facilitate completion of the project.

MS. MUZYCHKA: Right.

So the AFE is a more certain number. It's the costs that the team needs, or the budget that the team needs in order to continue the work that it's doing.

MR. BENNETT: With an amount of contingency.

MS. MUZYCHKA: With contingency, right.

MR. BENNETT: Right.

MS. MUZYCHKA: The question is though: How are you determining the contingency if you're not running a QRA?

MR. BENNETT: Well, there are other ways to do it without running a QRA. You can look at the exposures on the job and you estimate that –

MS. MUZYCHKA: Right.

MR. BENNETT: – and bring that forward. Ultimately, in establishing that AFE amount, there's a level of discretion that's applied by the approver. In this case, this is our CEO gets to make that decision as to how much contingency is to be delegated to the project team in order to complete the work.

MS. MUZYCHKA: Okay.

MR. BENNETT: And, of course, there would be supporting documentation to explain why that contingency amount was appropriate.

MS. MUZYCHKA: Okay.

Let's just look at the next tab 77. And it's P-03421.

And this rationale regarding the COREA account is also cited by Nalcor, in particular Paul Harrington. And if we look at page 14 of that Exhibit – and this is in response to an EY report.

There's a comment that Mr. Harrington makes to the comment: "Consider conducting detailed assessments of the cost and schedule status of the Project on an ongoing basis until Nalcor's corrective action addressing key risks and issues noted in this report" are "complete to the Oversight Committee's satisfaction." The "ongoing assessment should include the basis and accuracy of the forecasts for completion at the contractor level, as well as the quantification of cost and schedule risk."

And quantified assessment, as you said, that is what we're talking about when we about the QRA, correct?

MR. BENNETT: Yes, that's right.

MS. MUZYCHKA: And if you look at the comment bubble next to it, that's Mr. Harrington's: "This is proposing a quantified risk assessment with associated cost and schedule implications – do we really want to run a monte carlo analysis now and then have to deal with Canada and the pre funded equity payment hit that will ensue?"

So there seems to be a concern that's expressed – in two places here – on Nalcor's behalf that running a QRA may trigger equity funding payment.

MR. BENNETT: So, I said this a couple of times now. This is an interesting observation, but my primary motivation is getting certainty by doing the work –

MS. MUZYCHKA: Okay.

MR. BENNETT: – that the on-going analysis and effort to quantify a risk that is not well-defined is a – there is a more productive way to approach the problem; and that's to take the problem head on and solve it. We didn't need any help identifying what the priorities were, that needed to be resolved from a project point of view.

MS. MUZYCHKA: But having a QRA – not to belabor the point – doesn't give you certainty; it quantifies or gives some measure of quantification to the risks.

MR. BENNETT: So –

MS. MUZYCHKA: And if those things are changing as you move along, then it simply would give you a sense from a management perspective what your potential exposure is so that you can direct your mitigation efforts, presumably.

MR. BENNETT: So, two observations. Quantification – unnecessary – it does suggest certainty. And the other trite comment that I would make here is, you know, a colloquial comment we hear many times: garbage in, garbage out. If you don't have good information feeding the analysis and focusing the priorities, the analysis is not going to be as useful as it could otherwise be.

And my – the critical issue that had to be resolved is the performance of the critical contractor on one hand, or identifying and understanding what other contracts had to be complete. Those were the efforts and exercises that actually improved the certainty of the work going forward.

THE COMMISSIONER: Can I just sort of take you back a little bit here. You know that EY was doing this work for the Oversight Committee. So the purpose of the Oversight Committee, I assume, was to oversee what was happening with the project.

So while in – it may not have been, in Nalcor's view, necessary to do a QRA, would not have it provided at least some information to the Oversight Committee, that could've been helpful in their oversight of this particular project?

MR. BENNETT: It – one might think that it might, but it really – like, the challenge with the whole concept of analysis is that you actually have something to analyze. So risks are –

THE COMMISSIONER: Astaldi was only – like, you're saying that it was – the big thing was Astaldi and I agree with that, but it wasn't the only risk that existed. There were other contracts that were higher. There was other things going on. There was more than just the Astaldi risk.

So – you know, and EY are – is basically saying here that they felt that a QRA was necessary. So from their perspective, they were saying, for the purposes of oversight it was a necessary item. So I'm asking you to consider it from the perspective of the Oversight Committee, not Nalcor's perspective. Would a QRA have provided useful information to the Oversight Committee?

MR. BENNETT: I don't think it would've helped a lot. That the QRA would've been much more effective if you had, you know, better certainty underneath it in terms of these uncertain issues that we were trying to work down.

I appreciate EY's perspective on this and, you know, had the Oversight Committee say, you know what, we're not interested in this, we just – just do the QRA, then, something would've fallen out of that, I'm sure. We would not have just simply ignored a directive to complete the work.

I guess from our – from my perspective, in my role, I didn't see strong utility in completing that work and that the – really, the best way to come at the problem was to try to solve it. And, you know, maybe that's – you know, sort of the – in the engineering view of the world as opposed to the analysis view of the world where, you know, somebody might take a different perspective on that.

MS. MUZYCHKA: Is it fair, then, to say in the comments to EY's report that the reason why you wouldn't want to do that is because it could trigger funding to COREA, when really the real reason is that, A, you probably didn't find it to be of value or, B, you were concerned that it would expose the risks to be at a much higher level than what had been previously quantified –

MR. BENNETT: Yeah, I –

MS. MUZYCHKA: – and it was something that was trying to be avoided until you had more certainty?

MR. BENNETT: I don't think we were trying to, you know, avoid exposing an issue. We were trying to address the issue and I think that, you know, a comment in, you know, a draft response here doesn't represent the fulsome response that Nalcor had on the topic.

MS. MUZYCHKA: Okay, but it would've been a response that EY would've seen as the basis for: do you really want to run a QRA, as opposed to: it's not a tool that management feels is appropriate at this time.

MR. BENNETT: I think we –

MS. MUZYCHKA: It just seems that it may have been – the COREA might have been an excuse for not –

MR. BENNETT: But –

MS. MUZYCHKA: – running something that may have provided valuable information, if not to Nalcor, but certainly to the government to be aware of where this project was potentially going.

MR. BENNETT: Yeah, I don't think the COREA was a fundamental issue on this.

MS. MUZYCHKA: No.

MR. BENNETT: And I think we said probably in correspondence – in more formal correspondence that our approach was to take an effort to try to mitigate the issues.

MS. MUZYCHKA: Do you think that discussion should've been had with the government in terms of where you were and the recommendation from EY that a QRA be run and why you felt it wouldn't have been run or necessary so as to give the shareholder an opportunity to say whether or not they felt having a QRA is something that would be useful to them?

MR. BENNETT: Well, I think, you know, from that point, if they ultimately said, look, we don't care, we want a QRA, we would've done a QRA.

MS. MUZYCHKA: Okay.

Do you recall if it was discussed, this rationale about not doing a QRA because of COREA? Was that ever discussed with Mr. Martin?

MR. BENNETT: I don't recall that conversation – any conversation along those lines.

MS. MUZYCHKA: Okay.

So what other reasons are there why a QRA wouldn't have been run in 2014 or 2015?

MR. BENNETT: I think I've covered the key point.

MS. MUZYCHKA: So the same thing. You said you were waiting for certainty.

MR. BENNETT: Working on that. So as we – you know, working through with Astaldi, getting their performance under control and then – or more clear, I should say, as opposed to under control. It should be more clear. And then we have positioning before it with things we can quantify.

MS. MUZYCHKA: Okay.

Let's turn to binder 3, tab 78. That's 03423, Exhibit.

This is an email, an internal EY email, dated December 18, 2015, from Richard Noble. I don't know if you've seen this before, but in the email, Mr. Noble says that Nalcor "acknowledged some of our findings and tried to soften others with wordy and at times tangential explanations... My favourite being" – quote – "The approaches to contingency development contemplated by E&Y were undertaken at project sanction in December 2012. Our current approach, which we believe to be appropriate and prudent at this stage of project development, is to continue to engage in direct discussion on emerging risks and cost pressures and take management action when they have emerged.'...

"Which, in other words is" – quote – "We did it once... but we haven't updated the quantitative contingency assessment in 3 years and are now managing by the seat of our pants... and living with the results'...

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

Now, what – it certainly doesn't appear that EY is as convinced as to the reasons why you wouldn't do a QRA at that stage.

MR. BENNETT: I'm just disappointed with the tone of this email. And it's – you know, I'd have similar comments to other emails that I've looked at this morning.

MS. MUZYCHKA: Well, it was an internal email.

MR. BENNETT: It was an internal email and, you know, I – it's just disappointing to see this, you know, type of language.

MS. MUZYCHKA: Right, but if you set aside the tone for a moment and look at the message – which is more important – is that they were somewhat taken aback by the fact that there were no formal quantitative reviews or risk analysis done in the period prior – from prior to sanction to 2015, three full years, and in which a lot of things had happened and how are you managing the risks. And, essentially, the way they saw it, it was just – you were just basically managing it as you went along, but there was no picture.

MR. BENNETT: Right. I just disagree with the tenor here. And I've explained, you know, why we were focused on solving the issues and I think this language is consistent with our position.

MS. MUZYCHKA: Okay.

Now, Mr. Kennedy, Michael Kennedy – I don't know if you met him –

MR. BENNETT: I have met Mr. Kennedy, yes.

MS. MUZYCHKA: – he testified that in his experience, that at sanction you would certainly expect a Monte Carlo simulation to be performed along with other analysis of cost and schedule. And thereafter, good industry practice would – on projects of this type – is that you would run a Monte Carlo simulation every six months. Or even if their project is going well and things are more stable, that you could do it annually, which seems to be in complete contrast to what you're saying.

MR. BENNETT: Well, you know, again, focus on the issues that were identified and, I guess, you know, when you're – I mean, it's a fundamental point. From my perspective, you'd understand the utility of that practice as a management tool. A Monte Carlo analysis is literally that, it is a statistical analysis.

MS. MUZYCHKA: But that's how you measure risk. If you knew what the risk was, then it wouldn't be a risk, it would be a known –

MR. BENNETT: That's correct.

MS. MUZYCHKA: – and you could put a number on it.

MR. BENNETT: But –

MS. MUZYCHKA: So how do you determine the risk? Well, you have to make estimates and you have to have some sort of basis. And, as I understand, the Monte Carlo risk analysis is not perfect, but it does provide some measure of analysis that would allow you to draw some comfort from a number that you should set aside for contingency. It is – you recognize it as a valid management tool?

MR. BENNETT: A – I recognize it as a management tool. I have done Monte Carlo analyses myself previously. I understand the statistics behind them, I understand how they work. And, yes, there are situations that can be helpful, but when there are a couple of critical issues that are going to colour that analysis, it is really helpful to have focus on those and try to solve them. And with that done, then you can look at a more normal statistical situation.

MS. MUZYCHKA: Okay. So you disagree with the industry standards?

MR. BENNETT: No, I disagree with the utility of that tool, given the circumstance that we are facing.

MS. MUZYCHKA: Okay, so you just – you would distinguish it based on how you viewed the circumstances?

MR. BENNETT: And I think that's a management decision. Those are – like, those are decisions that, you know, where discretion is exercised based on the facts at hand. You know, we don't have a cookbook that says if you do a QRA every six months everything will work out fine. It's a management tool and it's intended for exactly that. And I think from my perspective, you know, as we documented in our response, our priority was to try to get it done and try to figure it out.

MS. MUZYCHKA: Okay.

All right, now I want to turn to the scope and the concerns that Nalcor had with respect to EY's involvement, since we're on that topic. If we look to binder 2, it's Exhibit 03646 at tab 34.

This is a chain of emails involving you, Mr. Harrington and Mr. Meaney in December of 2014. We can start at the bottom of page 3 with the email from Mr. Harrington to you on December 22, 2014.

And in that email he recounts: "I have just spent a very frustrating two hours with Craig Martin- The OC want to engage E&Y to conduct in what is, in all but name, an Audit of the Project Costs and Schedule processes and Final Forecast Costs. The Principles that we agreed to are being pushed aside – primarily the principle that the OC will not repeat work that has already been performed. and that we rely on the levels of assurance as per Mark Bradbury's audit plan."

And then he goes on to talk about the IE reviewing your processes every month, provides confirmation of cost and schedule forecasts. MHI twice reviewed cost and schedule processes and, "Yet the OC want to have E&Y do the same thing, tying me and the team up and distracting us from what we need to be doing" – excuse me – "i.e managing our contractors. Of course Craig will say that ... is not the intent but they cannot control E&Y and they will drive this deep into our Project Management business.

"The conversation was going nowhere and the only way out of this is to ask Mark Bradbury to conduct" an "Audit of the cost and schedule processes that address the OC questions and the OC can then have E&Y review the Audit scope and results and provide input to the OC on the results."

So – and, of course, then we finish – Mr. Harrington finishes by saying: "We need to head this off and I suggest we get Mark to drop everything and conduct ... such an audit asap – then we will be ahead" of "the OC – Craig hinted to me that would cause a lot of trouble and our CEO would be impacted but I suggest that this is our prerogative."

So what it appears is that Mr. Harrington is expressing some frustration with respect to having EY involved as part of the OC process that had been appointed by the Liberal government in – was it the Liberal government?

MR. BENNETT: No, this is –

MS. MUZYCHKA: No, Mr. Marshall –

MR. BENNETT: – 2014 now.

MS. MUZYCHKA: Right, sorry, Mr. Marshall's – Tom Marshall's direction.

So with respect to how Mr. Harrington expresses his views, is – are these views that you shared as well in terms of the role of the EY involvement on behalf of the OC? Were you as resistant as he appears to be with respect to their involvement?

MR. BENNETT: I think there's probably two observations here. If he has a concern about the impact on priorities and, right, the activities and the use of resources in the project team, I share that concern because there's a risk that arises from that. Also, as we talked about similarly with, you know, disclosure earlier this morning, if the province wants it done, it's going to get done. And I fully accept that.

Here there were conversations that involved Ed – Ed Martin – that were, you know, relaying a concern. But this is the shareholder's prerogative, and if they want this done, they will give terms of reference to somebody, and we will work within that framework. Is it frustrating? Yeah, there's some – there was frustration expressed in multiple places in the organization on this topic, but, you know, the way I look at this, with a decision taken, we are going to move forward with the decision.

MS. MUZYCHKA: Just going back to page 3 of that exhibit, Mr. Harrington writes: "The Principles that we agreed to are being pushed aside – primarily the principle that the OC will not repeat work that has already been performed." Is that – are you aware of what agreements there were between –

MR. BENNETT: I –

MS. MUZYCHKA: It appears that it's with the government and –

MR. BENNETT: I understood that was the basis –

MS. MUZYCHKA: – Nalcor

MR. BENNETT: I understood that was the basis for the engagement. Is there a formal agreement? No. But that was the way the discussion started on this topic in relation to the engagement of EY. But as I said, this is – you know, EY is the province's consultant, and, you know, there was a desire not to repeat or replicate previous work. But that discretion is with the province.

MS. MUZYCHKA: Seems to me that Mr. Harrington is suggesting that he wants to set the scope for EY's involvement, narrow the scope. He says – where is the – in any case, it's in the – context of what he is saying is that we are already being audited by our own Internal Audit process, and we've had the independent engineer and we've had, well: "MHI twice reviewed the cost and schedule processes" But it seems to be disregarding the very fact that it's the shareholder, the Government of Newfoundland and Labrador, has specifically ordered that an oversight committee be put in place and has empowered the committee to engage the services of an expert in form of EY to go in and do what investigations they need to in order to provide oversight.

And what I am seeing Mr. Harrington as saying is that let's just give them the information that our people come up with and give that to EY so that they can then communicate it to the OC, which is almost recycling information as opposed to providing independent oversight. I mean, do you see the irony in that?

MR. BENNETT: I just observed what he said – you know, he's not retaining EY. Ultimately, it's not a decision that he is the final decision-maker on.

MS. MUZYCHKA: Exactly.

MR. BENNETT: And the scope of EY is going to be defined by the province and is going to be done.

MS. MUZYCHKA: Right

MR. BENNETT: So –

MS. MUZYCHKA: But it certainly seems that there's an attempt on this – on Mr. Harrington's part to limit the scope.

MR. BENNETT: He's expressing, you know, some frustration here, but he doesn't get to make that final decision.

MS. MUZYCHKA: No, he doesn't, does he?

MR. BENNETT: No.

MS. MUZYCHKA: And then you respond to him that – at the top of page 3: "It's Intensely frustrating; Ed relayed a similar conversation from the 8th flr to me today. I wasn't expecting you to get a call on this today, so I was going to leave well enough alone until the new year."

So, and then you're saying: "I will be looking for clear terms of reference on this exercise, as FFC" did "not come up in my chat with Ed."

So what was that chat about?

MR. BENNETT: So I think the only point is, you know, Ed – as I mentioned here in this note, Ed had a conversation with the eighth floor being the premier's office. Needless to say, we're gonna continue work on this, and I think once these concerns are addressed, we get to a scope of work and then we carry on from there.

MS. MUZYCHKA: Okay.

In the process – and I guess the focus does come back on Mr. Harrington because he, as project director, seemed to be the key point of contact between EY and – EY. So, with respect to getting the information.

And we've seen some of EY's internal communications with respect to Mr. Harrington's attitude towards their trying to execute their mandate on behalf of the Oversight Committee on behalf of the Government of Newfoundland, shareholder, owner of the project. And not sure that you're aware of them, but we can bring them up. It's tab 79 and tab 80 of book 3, I believe.

At tab 79, page 2, this was dated April 10, 2014: “The meetings were understandably quite tense. The Nalcor team had received the government’s detailed data request... and rebuffed the request saying it was more than required by other interested parties, but” was also ““superficial’ and at other times ‘too detailed, intrusive and requiring additional work’... and at other times ‘we already used that information.

“At the end of the first session, our client felt defended by EY but also a tad insulted by Nalcor’s Proj Dir who had dismissed” – I think that’s a typo – consistently [sp. inconsistently] “their requests.”

And then at tab 80, there’s a reference to a meeting, at page 6, of the – an email exchange between EY. And in the internal memorandum, page 6, they note that they had called a meeting with Mr. Harrington and Steve Pellerin, Craig Martin, Richard Noble and Emiliano Mancini to talk to Paul Harrington about the review. And they say: As soon as EY prepared to formulate the first question, Paul Harrington interrupted the meeting and left, saying he was expecting a debriefing and was not prepared to respond to any question. So that’s just a couple of examples of Mr. Harrington’s interactions with the team from EY.

Were you aware that there was tension or issues on Mr. Harrington’s part with respect to dealing with the Oversight Committee’s firm?

MR. BENNETT: So I’m aware of, you know, the concern raised by Mr. Harrington in terms of duplication of effort and sort of what I’ll call the sort of the drain on resources and priorities, but, you know, my expectation here was just with the terms of reference established, we would co-operate with EY and get through this.

MS. MUZYCHKA: Okay. What we heard, though, from EY’s testimony and as documented in their reports and – you know, frustrations as was expressed even through Julia Mullaley, that there was not a free flow of information between Nalcor and EY and the Oversight Committee. And when you see references here like, you know, dismissive, rude, walking out of meetings, trying to reshape the scope, expressing concerns as to duplication of effort and disruption of, you know, the work that you’re

doing, while it’s all understandable that there’s disruption, I mean, the bigger picture here is that the Government of Newfoundland and Labrador set in process a motion – a process in motion that would allow them to have access to information that they felt they weren’t otherwise getting from Nalcor. And then here’s Nalcor trying to reshape and put limits on it and complaining about the intrusion and the imposition on their time.

How do you respond that? That absolutely, you know, raises concerns that limitations are being placed on the very group or experts who are going to review and ensure that the information that is being provided –

MR. BENNETT: Yeah.

MS. MUZYCHKA: – is transparent and complete.

MR. BENNETT: So I’m not aware that they didn’t get the information they were looking for. Right? The information existing in our files is available to the shareholder, would’ve been available to EY. Might’ve been some debate about priorities and timelines and whether things were available as quickly as desired, but I wasn’t aware of a situation where they didn’t get what they were looking for.

MS. MUZYCHKA: But that’s – that would be contradicted by testimony from Mr. Kennedy as well as from the Oversight Committee.

Do you agree that it would be unreasonable for Nalcor to not co-operate with the Oversight Committee in terms of the provision of the information they were seeking?

MR. BENNETT: So if the information they were seeking existed, then there’s no reason why that wouldn’t have been made available. And I understood we had a data room; data room was populated with information (inaudible), to my understanding – my recollection, that was looked after. If there was a debate about things that didn’t exist, a QRA being the most obvious one, then it didn’t exist and that was a subject of EY’s report. But my recollection of this is that the information that was in the files was available to EY.

MS. MUZYCHKA: Okay. So that didn't come to your attention then that there were difficulties with respect to the transmission of information between Nalcor and EY?

MR. BENNETT: I remember commentary about scope and that was certainly something that the Oversight Committee would be interested in as the administrator of the arrangement with EY. I can't recall somebody saying they're looking for access to this document and we're not giving to them. I don't recall being brought into – making an adjudication or determination as to whether that document should be put into the data room.

MS. MUZYCHKA: Okay.

You were aware of various obstacles being put up when EY came to meet with Nalcor in 2015 and Mr. Harrington had raised a concern that they did not have the appropriate non-disclosure agreement or confidentiality –

MR. BENNETT: That would be –

MS. MUZYCHKA: – procedures in place?

MR. BENNETT: – so that would be a normal commercial issue that we would raise in any engagement like this; we're dealing with commercially sensitive information.

MS. MUZYCHKA: Yes, but you were dealing not with a random auditor; you were dealing with the owner of the company bringing in a firm to conduct a review of the financial information.

MR. BENNETT: Right. So –

MS. MUZYCHKA: There was no commercial sensitivity between Nalcor and the government, surely.

MR. BENNETT: Absolutely not. But there is a huge commercial sensitivity with Nalcor and a third-party consultant.

MS. MUZYCHKA: Right. But would you not have satisfied yourself with the government prior to that –

MR. BENNETT: Sure.

MS. MUZYCHKA: – that there was a full suite of confidentiality –

MR. BENNETT: Yeah.

MS. MUZYCHKA: – provisions and –

MR. BENNETT: I don't know how we –

MS. MUZYCHKA: – conflict issues.

MR. BENNETT: – there's no question that in terms of our relationship with the government, providing access to government to – including the Auditor General; there's no debate about any of that. But when that information is provided by us to a third party, it will be incumbent upon us to have some form of agreement with that third party, relating to the disposition of the information that's pulled out of our files. That'd be a normal – that would be a normal legal and commercial point that our team would raise.

MS. MUZYCHKA: Okay.

I won't get into it in a lot of detail because we did go through it at length with Mr. Harrington. But it appeared that the requests came up at the eleventh hour when the team had travelled from Toronto and beyond to meet with Nalcor, that the issue was raised as to whether or not the appropriate non-disclosure and conflict issues had been addressed –

MR. BENNETT: Right.

MS. MUZYCHKA: – when it could have been done at an earlier point. It just appeared to be somewhat obstructionist.

MR. BENNETT: Well, I'm –

MS. MUZYCHKA: There was a lot of discussion over it. So I know you weren't involved in a lot of that, but I'm just simply pointing out to you that that was certainly the appearance. You can certainly comment on that.

MR. BENNETT: Yeah.

I'm just – I'm, you know, from my perspective, I'm a little bit surprised that a normal consultant arrangement who is looking for access to our files and information in the files is – would

normally be considered to be commercially sensitive, hadn't raised that issue earlier on. It's unfortunate that was the outcome, but I would have thought that that would have been a normal process, it would have been addressed in the retainer for the consultant. That it's unfortunate that it came up at the last minute.

But, I mean, it is a valid point that that should have been considered and probably would – could have been considered earlier on in the process and it would have been a non-issue at that point in time.

MS. MUZYCHKA: Right.

MR. BENNETT: Better for someone to raise it late than not raise it at all.

MS. MUZYCHKA: No, but fair enough.

But, again, you know, EY wasn't looking into matters on behalf of the public – well, they were actually, but wasn't some kind of a random audit-type situation or request. It was specifically related to an Oversight Committee –

MR. BENNETT: No, I –

MS. MUZYCHKA: – involvement, so.

MR. BENNETT: So I take – there's no issue with them working for government and government having access to the information. The problem is we're putting in the hands of a third-party consultant that we have no relationship with.

MS. MUZYCHKA: Right.

MR. BENNETT: The standard, commercial due diligence question in my view that – you know, the information is being provided to EY, we have no insight or visibility into where it goes from there.

MS. MUZYCHKA: All right.

MR. BENNETT: Not questioning for a second the purpose for which it's being used, but there is a possibility that it could be used for some other purpose down the road and we have no relationship or no understanding of how that would be addressed. So, you know, lots of other

activities – that gets taken care of in the normal completion of commercial matters. Unfortunately, it happened late here.

MS. MUZYCHKA: All right.

So now we know that EY prepared a report on the 18th of December, 2015. That's –

THE COMMISSIONER: Just before we go to that, might this not – might not this be a good spot to break?

MS. MUZYCHKA: Yes.

THE COMMISSIONER: Okay.

Let's take our lunchtime break now and come back at 2 o'clock.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: Okay.

All right, Ms. Muzychka, when you're ready.

MS. MUZYCHKA: Good afternoon, Commissioner.

Just before we start, I have some new exhibits to enter.

THE COMMISSIONER: Okay.

Okay.

MS. MUZYCHKA: P-04281 to P-04290.

THE COMMISSIONER: Okay.

Those will be entered as numbered.

MS. MUZYCHKA: Okay.

Now, we were just going to get into the EY report but there was a couple of things that I just

wanted to circle back to, Mr. Bennett, that we talked about this morning – Exhibit 03646.

MR. BENNETT: 03646.

MS. MUZYCHKA: That's tab 34, binder 2.

MR. BENNETT: Okay.

MS. MUZYCHKA: Okay. And we had talked about this exhibit in terms of the issues with the OC and the involvement of EY. And we had talked about your response, which is on page 3. I wonder if you could explain to us what you meant in the second last paragraph where you say, "I will be looking for clear terms of reference on this exercise, as FFC did not come up in my chat with Ed."

MR. BENNETT: I don't have anything that I recall, other than what's – what's written there, but I think the important point was – I wanted to make sure we have clarity on what the expectations are. I mean, that's all I was looking for in terms of clear terms of reference. And I don't have any specific recollection to a conversation with Mr. Martin at the time – other than what's written there.

MS. MUZYCHKA: So, what did you mean by "as FFC did not come up ... with..."?

MR. BENNETT: FFC – I mean, it's an acronym for, you know – forecast –

MS. MUZYCHKA: I know – forecast cost.

MR. BENNETT: Right. And –

MS. MUZYCHKA: Is that related to this or is that something else? I'm – it just seemed a little disjointed so I –

MR. BENNETT: I don't have anything to add –

MS. MUZYCHKA: – wanted you to explain.

MR. BENNETT: – but Paul indicated in his note – in the first paragraph there, that there was now – he was concerned about, right, an audit of project costs and schedule process and final forecast cost.

MS. MUZYCHKA: Okay. So –

MR. BENNETT: I wasn't aware of any – my note says I wasn't aware of that conversation from Mr. Martin.

MS. MUZYCHKA: So were you questioning whether or not EY should be looking into the final forecast cost analysis or –

MR. BENNETT: At that point, I didn't know.

MS. MUZYCHKA: Okay.

MR. BENNETT: Right.

MS. MUZYCHKA: So, that's what you would be referring to – that you didn't – it didn't come up in your chat with Ed which –

MR. BENNETT: (Inaudible.)

MS. MUZYCHKA: – does that relate to the terms of reference that you were talking about in the conversation?

MR. BENNETT: It was looking at the history here. Mr. Harrington made reference to it. I wasn't aware of it. It would be helpful to have clear terms of reference so there was no ambiguity.

MS. MUZYCHKA: Okay. So, that's –

MR. BENNETT: So, I mean, that's what that thread says.

MS. MUZYCHKA: Okay. All right. And – one other point. I'm not sure if I was entirely clear; when we were talking about the project management team and the contracts and the renewal and so on – when they apply for an increase in their day rate, I wasn't clear if it was Ron Power who has the ultimate discretion to make that decision or is it somebody else? Who signs off on that as being appropriate?

MR. BENNETT: So changes to the day rate is a matter of – I guess as a matter of course, they typically come my way. They're negotiated within the team.

MS. MUZYCHKA: So it's within the project management team or does –

MR. BENNETT: No, it's not. My recollection is – I mean, we've had, we've been operating under a freeze on day rates for a number of years now, and so I don't think there actually have been too many recent changes to the day rates.

MS. MUZYCHKA: There haven't been any?

MR. BENNETT: But I can't think of any recently. I know we've established a freeze. I mean, I don't have the records in front of me, but it's easy to go back and look at, right, the contract terms for, you know, any or all the team. When we were subject to a wage freeze inside Nalcor I think the same thing happened with respect to day rates.

MS. MUZYCHKA: Okay. But in terms of who has the authority to make the call as to whether or not Paul Harrington's day rate increases or Ron Power's or any other?

MR. BENNETT: Senior ones would come my way.

MS. MUZYCHKA: Your way.

MR. BENNETT: Yeah.

MS. MUZYCHKA: And then what about those junior – so below Ron Power?

MR. BENNETT: If you had staff individuals, it wouldn't be unusual for –

MS. MUZYCHKA: Scott O'Brien, who would determine that one?

MR. BENNETT: – off my head, I don't have a clear recollection of the approval process there.

MS. MUZYCHKA: Okay. But you know that you would approve ones that are higher up on the org chart?

MR. BENNETT: No question, they'd come my way.

MS. MUZYCHKA: Okay. All right.

MR. BENNETT: I think there were – you know, if we're doing something with respect to, you know, CPI adjustment or some other factor that was in the contract itself, then that would

just, that would be handled by the commercial team. So sometimes there were provisions for nominal increases tied to consumer index, that kind of thing, and that would've been handled by the supply chain team as part of the contract that had already been negotiated.

MS. MUZYCHKA: Okay. And then, just, not to go back too much, any changes in terms of completion bonuses or renegotiating the terms that we discussed earlier – that would be made by whom?

MR. BENNETT: That would come to me, typically.

MS. MUZYCHKA: Even if it was lower down on the –

MR. BENNETT: Oh, at the –

MS. MUZYCHKA: – organization?

MR. BENNETT: – at the staff level? Completion bonuses, if that was provided for in a – approved HR policy, then at that level for the site team, in particular, is where we see some of those – that would be managed by HR in accordance with that policy that had previously been signed-off.

MS. MUZYCHKA: Okay, so it would be similar with the increase in the day rate, and then at the higher up – the organizational chart, it would go to you to make that approval?

MR. BENNETT: Typically it would come to me, yes.

MS. MUZYCHKA: Okay. All right. Now, we were just starting on tab 78 of binder 3. Exhibit 03423. And this was – this is an email attaching the E&Y report – or EY – that was dated 18th of December, 2015. Are you familiar with that report?

MR. BENNETT: Yes, I've read this in the past.

MS. MUZYCHKA: Pardon me? You read it?

MR. BENNETT: I have previously read it. Yes.

MS. MUZYCHKA: Right. Okay.

So I mean, obviously, it's addressed to the – to Craig Martin as part of the OC Committee. Do you remember what your reaction was when you reviewed the EY report, in terms of its conclusions and recommendations?

MR. BENNETT: I don't have a, you know, specific memory of how we looked at it. I do believe we replied with a response –

MS. MUZYCHKA: Well, if you –

MR. BENNETT: – to the findings.

MS. MUZYCHKA: – turn to page 8 –

MR. BENNETT: Okay.

MS. MUZYCHKA: – it'll give you the summary of key findings and the key recommendations. Do you want to just take a moment to review those?

MR. BENNETT: Sure. Okay.

Okay.

MS. MUZYCHKA: And if you look at number 2 on page 9 it says: "Consider conducting detailed assessments of the cost and schedule status of the Project on an ongoing basis until Nalcor's corrective action addressing key risks and issues noted in this report is complete to the Oversight Committee's satisfaction."

And this was, again, the quantification. That was the same sentence that was highlighted that Mr. Harrington had stated before that questioned – called into question the need for a further QRA. So you don't have any recollection as to how you received that report in terms of was it surprising, was there any issues with the deficiencies they had noted or anything like that?

MR. BENNETT: I mean given the, I guess, the previous discussion about, you know, QRA and the desire to engage in that, it didn't strike me as surprising.

MS. MUZYCHKA: Okay.

Would you agree that EY identified some deficiencies in how you were reporting cost and schedule to the Oversight Committee?

MR. BENNETT: They had some – I mean, obviously, they had some areas where they identified that there were some – they had some recommendations. I guess they viewed them as improvements –

MS. MUZYCHKA: Okay.

MR. BENNETT: – to the extent that they were – we were short of what they expected. Yeah, I guess that's a fair assessment –

MS. MUZYCHKA: All right.

MR. BENNETT: – in their mind. Yeah.

MS. MUZYCHKA: So were there any changes to your reporting practices that you made in direct response to the EY report? Do you recall if there were any changes that were made?

MR. BENNETT: In terms of reporting December of '15 the – if I recall, the QRA effort was initiated very quickly around the same time –

MS. MUZYCHKA: Okay.

MR. BENNETT: – we started that work. There were – towards, I guess, getting into the early part of 2016 the next capital cost update used a different probability; it was a P75 estimate instead of P50. So we're starting – yes, those changes were being implemented –

MS. MUZYCHKA: Okay.

MR. BENNETT: – through that period.

MS. MUZYCHKA: And did you make any changes in how you were assessing contingency? Or was that part of the QRA?

MR. BENNETT: That would've fallen from the QRA and the next AFE update.

MS. MUZYCHKA: Okay.

So these would've been made in response to the inquiries and the recommendations made by the Oversight Committee through EY, I take it?

MR. BENNETT: A combination of that and, I guess, not many months after this report was issued, Mr. Marshall had some perspectives of his own, in terms of what he was looking for, in cost updates and estimating approach.

MS. MUZYCHKA: All right, but that didn't happen until early – or April or May of 2016 –

MR. BENNETT: 2016.

MS. MUZYCHKA: – correct?

MR. BENNETT: Right. So that got us to the next cost update.

MS. MUZYCHKA: Right. Okay.

All right, if we could turn to tab 81 of that volume, it's Exhibit P-03584. And this is a letter from you to Julia Mullaley on December 18, 2015, regarding the Review of Muskrat Falls Project Costs and Schedule Management Processes and Controls.

And if we turn to page 2, at the third paragraph you say: "We concur with the key schedule management process and control issues highlighted by E&Y and have been actively working with our contractors to see them addressed."

And then the next paragraph, you talk about: "The baseline documents identified in issue number 1 (baseline schedules and control documents) are contractor deliverables. As contractors are engaged, our approach is to provide feedback and comments so that deficiencies in these documents can be rectified by the applicable contractor before this information is incorporated into the Integrated Project Schedule"

So I understand that there was some delay in keeping the IPS up to date because there were delays in terms of contractors providing the information. Is that your recollection?

MR. BENNETT: That's right. The information that's fed into the integrated project schedule is actually delivered by our contractors –

MS. MUZYCHKA: Right.

MR. BENNETT: – to the extent that there are issues with the schedule as they provided. Those then actually create an issue in the IPS itself.

MS. MUZYCHKA: Right. And the IPS is a fairly important management tool, isn't it?

MR. BENNETT: It's one management tool.

MS. MUZYCHKA: But it outlines the integrated project schedules of all of the various contractors so that you can follow on one document, presumably, integrated –

MR. BENNETT: Yes.

MS. MUZYCHKA: – as to where everybody is in the process, correct?

MR. BENNETT: Yes.

MS. MUZYCHKA: Okay. So keeping that up to date is important; it's part of your processes.

MR. BENNETT: It is part of our process, but it gets back to so this whole question of resolution of issues with some of the contractors and why they have issues with their schedule or why they're falling behind.

MS. MUZYCHKA: Mmm.

MR. BENNETT: It's not the only tool we use to manage contractor performance.

MS. MUZYCHKA: Fair enough but, you know, it is part of the process –

MR. BENNETT: Oh, yes.

MS. MUZYCHKA: – and EY identified that it had not been kept up to date as it could've been, or that there were some issues in maintaining its currency. That was attributed to the delays in the contractors providing you with the information that was required.

MR. BENNETT: Correct.

MS. MUZYCHKA: Right?

So, I guess, you know, one would have to wonder why the contractors were allowed to be delinquent or delayed in terms of providing this information so that management could keep tight reins on the project.

MR. BENNETT: So I guess the practical question is: How do you force a contractor to deliver something and, force, being the operative word. So another approach to deal with that is to use alternate means and alternate sources of information to manage the contractors' performance.

MS. MUZYCHKA: So you wouldn't rely on –

MR. BENNETT: There's a very – I wouldn't necessarily only rely on the IPS. And there's a point in time here where the – while the IPS is an important and useful tool, there were other higher level approaches that might have to be used by the project management team in order to assess where things are going.

MS. MUZYCHKA: Is – was it possible for the people working on site to be able to assess the schedule, based on what they were seeing in terms of progress by the contractors? Were they able to provide, you know, estimate so you'd have a sense as to how well along –

MR. BENNETT: There are –

MS. MUZYCHKA: – a particular contract was going?

MR. BENNETT: Oh, there's a whole host of means we can use to look at that. We can look at the placement of concrete volume, we can look at the progress in the field, we can count concrete pours and we can count activities that needed to have been done, and the site team is invaluable in doing that. So those are the kind of tools that we also use, you know, on a more tactical level, in order to assess concrete performance.

MS. MUZYCHKA: But –

MR. BENNETT: You know, through some of this period, some of those are as simple as a bar

graph where we're tracking the volume of concrete poured by Astaldi.

MS. MUZYCHKA: Right. But is it tracked or available to view at a high level such as with the IPS? Was there another mechanism that you were using where you were inputting your own data as opposed to relying on what the –

MR. BENNETT: Well –

MS. MUZYCHKA: – contractor was providing?

MR. BENNETT: Because the IPS is not high level; the IPS is a very detailed, has –

MS. MUZYCHKA: Yes.

MR. BENNETT: – hundreds and thousands of work items inside it.

MS. MUZYCHKA: Right so –

MR. BENNETT: So we – you know, we as a team relied on other – what I would say – other higher level or simpler tools in order to assess contractor performance.

MS. MUZYCHKA: And who relies on the IPS? Would the independent engineer review that as part of his role in terms of reporting to Canada?

MR. BENNETT: They have visibility to the IPS. They also had, you know, visibility to the other performance measures that we were using.

MS. MUZYCHKA: Right, but would they be able to tell at a glance as compared to where things –

MR. BENNETT: (Inaudible) –

MS. MUZYCHKA: – what the schedule is and what the milestones are –

MR. BENNETT: Yeah.

MS. MUZYCHKA: – and where the contractor is in terms of that?

MR. BENNETT: Nothing happens at a glance.

MS. MUZYCHKA: Okay. No, well, I imagine it's quite detailed but –

MR. BENNETT: Absolutely and had –

MS. MUZYCHKA: – you know, a more sophisticated, lengthier glance, we'll say, as opposed to a quick –

MR. BENNETT: So, again, you know, it's really about assessing the performance using the appropriate tool. And sometimes the detailed – I mean, the detailed IPS is really important when we look at interlocking activities that interface and one is dependent on the other.

If I'm looking for Astaldi to measure, for example, how many thousand cubic metres of concrete they're pouring over the course of the construction season or over on a month-by-month basis, that actually could be a bar graph on the wall, which was one of the things that was in my office. If we look at the bridge agreement, we had expectations that we were looking for a hundred-and-some-odd thousand cubic metres of concrete poured. We were tracking, month over month, how many thousand metres did we get and are we ahead, behind or generally on track.

So you've got to look at this information in the context of how you're trying to manage and what you're trying to accomplish. So sometimes the IPS is really important, sometimes there's an Excel spreadsheet that's really important, depending on the activities. And we look to the project team, the various levels in the organization within the various roles, to make sure that they have information upon which to base decisions. So it's not always the IPS.

MS. MUZYCHKA: No, but that is, obviously, an important part of the project management tool or you wouldn't be maintaining such a detailed –

MR. BENNETT: Absolutely.

MS. MUZYCHKA: – document.

MR. BENNETT: Absolutely.

MS. MUZYCHKA: Okay.

And I think that, you know, to not – one of the criticisms raised by EY is that, you know, to not have this kept up to date and to insist that the contractors comply with the information requests, you know, is not good practice.

MR. BENNETT: I think that there's no shortage of documentation where we insisted that our contractors provide the information, but it does get to the fundamental question of whether they had it or able to deliver it in an accurate manner, or whether we needed some other adaptive management approach to deal with the situation at hand.

MS. MUZYCHKA: Right. Create some incentives to produce the documentation required.

MR. BENNETT: Or stop arguing over it and find a different way to measure it and manage performance. And those are the kind of things that have to be done day after day. It's not as if we can will our contractors to deliver or to perform in any given way. We have to find a way through that, either – you know, again, you know, you go back to is there a commercial term that we can hold if somebody doesn't want to do it or isn't able to do it, or do we find a different way to work our way through the job? That's sort of the day-to-day management of the job by the team.

MS. MUZYCHKA: Okay.

All right, let's turn to page 3 of Exhibit 03584, and you start your paragraph with "A decision to re-baseline project cost and schedule is made at the project leadership level and not by the Project Control team. Consequently it's not in their mandate and therefore not in their process or procedure. However, it is part of the Project Control team processes and procedures to monitor and report cost and schedule performance and provide the necessary management information to project senior management to take necessary action ..." et cetera.

So this was in response to a recommendation made by EY with respect to rebaselining the project, correct?

MR. BENNETT: I think it was, yes.

MS. MUZYCHKA: Yup.

So who in Nalcor's senior management would have had the ability to make the decision – or had the authority to make the decision to rebaseline the project or not?

MR. BENNETT: I think, off the top of my head, Mr. Harrington could, I could, Mr. Martin could –

MS. MUZYCHKA: Okay so –

MR. BENNETT: – or Mr. Marshall is, as he is today.

MS. MUZYCHKA: Yeah. But back in 2015, it would have been Mr. Martin.

MR. BENNETT: Right.

MS. MUZYCHKA: So was this – is there something that typically would trigger a rebaseline, or is it entirely a discretionary measure?

MR. BENNETT: Well there's a – I mean, there is a point in time where sometimes either cost or schedule, as we have it set up in our system, if you look at (inaudible) the original plan, it becomes out of date and, you know, less than ideal as a management tool. So, at that point in time, you'd be inclined to reset your baseline schedule and (inaudible) or cost estimate, whichever is applicable, and then move forward from there.

MS. MUZYCHKA: Right. And what would be the benefits of rebaselining a schedule?

MR. BENNETT: Well, the benefit –

MS. MUZYCHKA: And cost.

MR. BENNETT: – once you have identification of trends and you've solved some critical issues in there, then you actually have a new basis by which you're managing the work from that point.

MS. MUZYCHKA: So it's sort of a reset in essence?

MR. BENNETT: It is a reset and then it's – you know, again, you realign the complete IPS and, if you're checking against the cost estimate, the cost estimate as well. And then you measure from that basis forward with the new metrics that you have for either cost or schedule, as applicable.

MS. MUZYCHKA: Okay.

Any reason why you wouldn't have rebaselined in – earlier than 2015 – or 2016?

MR. BENNETT: The question at the time would have been do we have new information – new data, rather, that actually, you know, is useful and supports that new baseline.

MS. MUZYCHKA: You wouldn't have done it while Astaldi was falling behind and failure of the ICS and –

MR. BENNETT: I don't think so –

MS. MUZYCHKA: – or productivity on the concrete, there was –

MR. BENNETT: Not really helping. What is the new baseline – in my view, the new baseline is not helping us at that point in time. Again, it's back to this fundamental question. You need to fix the problem, to establish a new trend and therefore you can move forward with a new management set from there.

MS. MUZYCHKA: Okay.

So basically it wouldn't have been a value to the organization to see where you were, even if you did it internally to reassess where things, at a specific moment in time after a tumultuous beginning had left you –

MR. BENNETT: Not in my perspective. Not in my perspective. Once you had performance established and you had a new baseline set moving forward, then I'd agree, yes, you have something to work with. But I don't think we needed a new baseline schedule to know what the issue was at the time.

MS. MUZYCHKA: Well, I think the issues were fairly obvious. The question comes down to how do you keep track of costs or calculate

knock-on effects or when to put out requests for proposals or other contracts, you know. How can you make decisions if you don't have the information as to where your –

MR. BENNETT: So –

MS. MUZYCHKA: – project stands?

MR. BENNETT: So, I think we did have the necessary information to make those decisions.

MS. MUZYCHKA: And you didn't need to rebaseline to do that?

MR. BENNETT: That's correct.

MS. MUZYCHKA: Is it because of the lack of certainty that you were reluctant to engage in a revision or rebaselining process?

MR. BENNETT: That's a really important point, that in the absence of that certainty or in the absence of clarity as to where things sit, it would be important to try to get that clarity to understand what the remainder of the project is. And there is enough information looking at key activities, key milestones that we did have the necessary information to take decisions. For example, taking a call on when to award – or whether not to award the CH0009 and the CH0031 contracts. (Inaudible), okay, we have time here, we have float, we can defer that. And we didn't need a detailed cross-linked Primavera P6 IPS in order to do that, in order to make those calls.

MS. MUZYCHKA: Okay, so you felt that you had sufficient information, albeit not in a specific format, that enabled the management team to do that?

MR. BENNETT: That's correct.

MS. MUZYCHKA: One of the things I noted with Mr. Kean when he testified was, you know, as part of the documentation that he prepared and some of the philosophical statements that accompanied some of that, he quoted Peter Drucker and, in particular – I think it's in the Project Controls Management Plan: What cannot be measured cannot be managed. And so do you believe in that statement? Do you agree with that philosophy?

MR. BENNETT: As a general statement, if you want to manage something, it needs to be measured. I think there are other points though, okay, there are other considerations, and having better clarity on – in particular during this period – on Astaldi's performance and getting them to a – to an acceptable level. We were measuring and – albeit in a slightly different way.

MS. MUZYCHKA: Right. So anybody who is looking for a specific document, such as EY, going to – looking at your established project controls manuals and how you were tracking expenses, might not find it in the established protocols but they might find it in other forms. Is that what you're saying?

MR. BENNETT: No, what I'm saying is that those systems work really well when you're in a somewhat normal state.

MS. MUZYCHKA: And if people are providing the information that you need to populate those tools.

MR. BENNETT: And it's accurate and there are no errors in it and there are no significant issues in performance, okay? And I think the management team had a pretty clear idea of what the issues were and what was required for resolution, and had the necessary information available from a variety of sources within the team, in order to manage the situation.

MS. MUZYCHKA: Okay.

Do you think that the not strict adherence to the project controls manual and the various modalities that were identified in there for tracking cost and schedule not being followed strictly might be seen as less than best practice?

MR. BENNETT: Just come back to how do you will that to happen, right? You can't make a contractor give you the information. You can't force them. I can't go into their office and make them type it up and send it over. We're managing, we're not directing and we don't have the ability in many of these areas to simply direct and will that the work be done. So, from a management perspective, the process exists, the expectation of how we are going to manage the project was clearly defined and we were working towards it.

I think you also have to look at, sort of, what happens when there's an issue with that, and what is the adaptive approach, the approach to adaptive management, where we adapt the way we're doing things to make sure that we're managing things in the most effective way possible. Know what we'd like; if that like can't be achieved, then we have to find a way to manage as effectively as possible in order to address the situation.

MS. MUZYCHKA: Okay.

Now, I want to turn your attention to tab 82 of that same binder, Exhibit P-03346. And this is another EY internal email. This is the one that arose after EY had come to St. John's to meet with the members of Nalcor to start the process for oversight review. And if you look at the statement from Mr. Kennedy, he says at the top, "I feel pretty queasy about where we are at given the call to Julia from Nalcor and continued absence of data, which are again indicative of the culture and lack of transparency over there. None of this is consistent with normal practice in major capital projects, let alone best practice."

Do you have a response to that?

MR. BENNETT: Well, I'd look at the thread on the bottom of the page: Nalcor is reluctant to provide the information as they feel this is not related to our scope of work. So once that's clarified, this is a straightforward conversation. But, you know, at this point in time we're matching our, you know, our participation in this process, our delivery of information in accordance with what we understood the Oversight Committee to be looking for.

MS. MUZYCHKA: Though there was some – not resistance, but – the refusal to provide information was because you felt it was outside the scope of EY's –

MR. BENNETT: The question was raised, yeah. It was – you know, is this relating, and once Julia resolves that, then we're all fine.

MS. MUZYCHKA: What would be the difficulty in providing to the Oversight Committee documents that they had felt that they needed to –?

MR. BENNETT: No issue with information to the Oversight Committee but this is to EY.

MS. MUZYCHKA: EY is doing it for the Oversight Committee.

MR. BENNETT: Well, if the Oversight Committee had simply said: yes we're good with this, we've amended our terms of engagement and we're off to the races, there would have been no issue here. But as a matter of – I mean, it's just a matter of principle, if we are engaged with a third party, they've given us a scope of work, we typically would manage that scope of work. And it would be for the Oversight Committee to provide us guidance in terms of what they would like, as opposed to having a consultant do it for them.

MS. MUZYCHKA: Now their mandate was fairly broad, in the sense that they were to assess reasonableness of cost and schedule forecast.

MR. BENNETT: Yes?

MS. MUZYCHKA: So having access to project briefings –

MR. BENNETT: Well no – that's not – now it has become an ongoing engagement and – I mean from my perspective I – if the Oversight Committee would like to do that, I have – I take no issue with that. You just let me know.

MS. MUZYCHKA: Okay, well who called Julia Mullaley to complain about EY asking for things? It doesn't say there.

MR. BENNETT: And I am not sure?

MS. MUZYCHKA: Would that have been you?

MR. BENNETT: It could have been me; it could have been, you know, a conversation between somebody on the PMT with the representative of the Oversight Committee that got to Julia. So I don't have visibility into how that connection was made.

MS. MUZYCHKA: So do you see how the optics of this are? That Julia Mullaley is working for the Government of Newfoundland and Labrador; retains EY; EY then goes to Nalcor and is to determine the information with

respect to cost and schedule oversight, so that the owner of the project is kept up-to-date on potential overruns, delays and so on, and instead is met with a call from Nalcor back to the owner – calling the owner and saying, why do you want all this information?

What is the problem? Is – from my perspective, in terms of why you're trying to limit or constrain EY to a scope, when their object is to see and to determine information and have a free flow, so that they can assess for themselves how the project is going and what their potential financial exposure is.

MR. BENNETT: So, you know, I look at that as a, you know, straightforward – a straightforward question. If the Oversight Committee was looking for EY to, you know, expand their scope or mandate or what they wanted done, straightforward, just let us know, and it'll go from there.

But in the absence of some clarity on that and if the consultant is, you know, looking to expand its mandate and do something that had neither been communicated to us and didn't appear to be, you know, within their game plan, then I don't think it's unreasonable to ask a question before we go down that road with, you know, with the province's consultant.

THE COMMISSIONER: Can I just, actually, just put this a little bit in perspective. Because my recollection is, is that there had been an election; the new government came in; they made an announcement before Christmas that they were going to get a full study done on the cost and schedule; there was a public release. I'm assuming somebody must've phoned Nalcor to advise them of it at some point in time.

So in this particular case, somebody's asking – somebody from Nalcor is asking why can't EY get project briefings made to the premier and to the Nalcor board. It would seem to me that with the knowledge that you had, why – what would be the big deal about getting the project briefings made to the premier and to the Nalcor board?

MR. BENNETT: I mean, there would've been – at this point in time there would've been

information about the negotiations with Astaldi, for example, in those briefings.

THE COMMISSIONER: Mm-hmm.

MR. BENNETT: And, you know, given the sort of commercial nature of those, it's not uncommon for us to just seek clarification before we just go and release.

THE COMMISSIONER: Right, but – so maybe the better question, instead of picking up the phone and asking why, somebody just says, you know, we have some concerns about commercial sensitivity because of the Astaldi situation, how can we make this work, as opposed to saying: Why do we have to provide these project briefings –

MR. BENNETT: Right.

THE COMMISSIONER: – made to the premier and Nalcor board based upon the scope of –

MR. BENNETT: So –

THE COMMISSIONER: – work we understand?

MR. BENNETT: So, Commissioner, you've raised a perfectly reasonable way to ask a question, and what I don't have here is how the question was actually raised. What we have is the feedback from EY and how they interpreted the way that –

THE COMMISSIONER: Right.

MR. BENNETT: – the communication went. Your – the way you framed the question is entirely reasonable and would be indicative of the types of conversations that actually happen. That's the kind of conversation that I would have with counterparts in Natural Resources, for example.

MS. MUZYCHKA: And –

MR. BENNETT: So I think there – I vaguely remember that there might be email traffic (inaudible) myself and Charles Bown on a related topic here, and it was, well, how do you want to do this.

MS. MUZYCHKA: Right. But I think, though, that had we not seen the kind of push-back from Paul Harrington, and yourself as well, in terms of just having the EY imposition on Nalcor to be looking through documentation and project costs and some controls information, was not exactly met with open arms.

So it's more likely, I would suggest, that, you know, information was requested by EY and followed up with a call, like, why do you need this information?

MR. BENNETT: Right.

MS. MUZYCHKA: As opposed to a more collaborative, you know, we'll get this together for you, as the Commission has suggested. And just bear in mind that, you know, we wouldn't want this publicly released because of –

MR. BENNETT: Right.

MS. MUZYCHKA: – these considerations. Because as you acknowledged earlier, there is no issue of commercial sensitivity between the Government of Newfoundland and Labrador and Nalcor.

MR. BENNETT: No. No, that's right. There is –

MS. MUZYCHKA: It is one and the same, and the information should be free flowing with, obviously, you know, concerns raised if Nalcor is in a better position to identify the fact that this could be commercially sensitive.

MR. BENNETT: Right.

MS. MUZYCHKA: But –

MR. BENNETT: So, maybe, if we can go back to Exhibit 03286, it was –

MS. MUZYCHKA: Which tab are you at?

MR. BENNETT: I'm at tab 79.

MS. MUZYCHKA: Okay.

MR. BENNETT: Okay. I mean, so this is an EY thread that – I mean, looking at the second paragraph there that “Nalcor's resistance is

bedded partly in an understandable desire to minimize the effort required to support the oversight... and ... reduce the potential for unwarranted red-flags and noise” So I'm not hugely surprised that, you know, the project director would say that, and then the moderating conversation would likely have been with me.

MS. MUZYCHKA: So there was a slightly different approach, you'll say, between yourself and Mr. Harrington?

MR. BENNETT: Mr. Harrington is, you know, looking after his role as project director, and I think Professor Jergeas had some commentary on that nature as well. And it's not unusual for that to come to me to say, okay, how are we going to figure this out? How do we balance the more broad, competing priorities?

MS. MUZYCHKA: I think that, you know, most people would find it puzzling and troubling, even, that there was so much friction between Nalcor and the Oversight Committee in their request to get their information that they needed through the EY route.

MR. BENNETT: So was it friction with the Oversight Committee or was it friction with EY?

MS. MUZYCHKA: Well, friction with EY, but I would say that EY standing, you know, at the mandate in the shoes of the OC.

MR. BENNETT: They are. They are. And it's important that we be aligned with the Oversight Committee, and that we have common understanding and that the Oversight Committee is saying, yes, we want EY to do that, and then we go from there.

MS. MUZYCHKA: Right, but you would agree that there wasn't alignment between EY and Nalcor in terms of the provision and transparency and access to information that they should've had?

MR. BENNETT: And I think there were, you know, these types of concerns, you know – these types of concerns as we've seen in this exhibit, in 03286, were – you know, were raised by the project team. And then I don't find it unusual or surprising that it would take a little bit more effort to get alignment to make sure that we're

lined up with the Oversight Committee and then we go from there.

MS. MUZYCHKA: Right, because, I mean, EY does identify the fact that their surprise – that, you know, you would’ve expected, given that it’s a public – publicly funded project, that you should’ve expected such a high-ticket, politically sensitive project needs a fairly robust monitoring framework. So it’s not like suddenly, you know, some private corporation being asked to provide its books for, you know, some other reasons. It’s –

MR. BENNETT: Oh, in terms of the oversight, there’s no issue there at all.

MS. MUZYCHKA: There was some issue, with scope.

MR. BENNETT: There was an issue with EY. There was a lack of clarity on the scope. We’ve seen evidence that they wanted to grow the order book – we’ll look at some of their other internal emails. We’ve seen that from other, you know, contractors and consultants who’ve been established on the project.

MS. MUZYCHKA: Regardless of that, they still had a job to do.

MR. BENNETT: I fully agree.

MS. MUZYCHKA: And the job was being thwarted. I mean, at one point, I believe, even in the email we were just looking at, Mr. Kennedy, at 03346, comments that they’re \$400,000 into this project with little to show for it because of, you know, challenges in terms of trying to get information. So, I mean, they were frustrated; they were trying to do a job and they were spending money, they were coming down, they were trying to get information and they were being faced with roadblocks.

MR. BENNETT: There were some issues, and they needed to be addressed. And some of those we’ve talked about this morning. If we go back and look at, sort of, basic commercial agreements and non-disclosure and confidentiality understandings, those – I mean, those should’ve been addressed in short order. But, you know, the making sure that everybody’s on the same page, particularly us

and the Oversight Committee, Nalcor and the Oversight Committee are on the same page, this is what you’re looking for, this is where you want to go, this is what you want them to do, that’s a pretty normal conversation.

MS. MUZYCHKA: Right. Did you happen to see any of Michael Kennedy’s testimony here before the Commission?

MR. BENNETT: I didn’t see a lot, no.

MS. MUZYCHKA: Okay. Because he’s, you know, described in fair detail the challenges that he faced that, frankly, came to him as a big surprise in the performance of one of these type of reviews; that there was a high degree of resistance. Does that surprise you?

MR. BENNETT: I mean, looking at some of the types of commentary that’s back and forth here and not having, sort of, clarity on what deliverables are, those are – I mean, those are instant rub points, there’s no doubt about that. Someone is going to say, well, if this is not in your terms of reference, where is this going? And it would need – you know, it reasonably would need a conversation with the Oversight Committee to make sure that we’re on the same page. Once that’s done, then we move forward.

So, you know, in terms of project governance, I remember the conversation coming up as to, well, is that – you know, what does that have to do with, you know, briefings that, I guess, Mr. Martin at the time made to Cabinet or the premier or, you know, other briefings that weren’t in the, sort of, remit of the project team.

MS. MUZYCHKA: Mm-hmm.

MR. BENNETT: And it wouldn’t be the project team’s remit to pull up board information or, you know, briefings from the CEO. That’s going to be a different conversation with somebody else within Nalcor.

MS. MUZYCHKA: Right.

But at the same time, I mean, if it’s the OC who is, you know, representing the owner of the project, why does it matter? Why would they even be questioned about restricting information that they are entitled to have?

MR. BENNETT: So it's not about the OC. I think I've tried to explain that. It's not about the OC; it's about EY making the decision to expand their scope of work and their mandate, at least from what we had seen, because we hadn't heard anything from the OC on this. Once that was clear with the OC, then it's entirely straightforward.

MS. MUZYCHKA: Again, I don't see the difference between the two because they're one and the same acting in the furtherance of the goals of the OC.

MR. BENNETT: Oh, I think there's a big difference.

MS. MUZYCHKA: Okay. Well, I won't belabour that any further.

Going to turn our attention, now, to the protests.

MR. BENNETT: Okay.

MS. MUZYCHKA: And we heard evidence from Roberta Benefiel and Marjorie Flowers with respect to their involvement in the protests in 2016. There was some confusion over how long the protests actually interrupted work on the site. Were you able to determine – was it 11 days? Was it four days?

MR. BENNETT: There were differing activities. So there's no doubt that that whole protest event, whether it be at the gate or inside the facility, fairly certain it went much longer than four days.

MS. MUZYCHKA: So a large part of it, as I understood, is that it prevented workers and materials from coming and going because of the blockage at the gate.

MR. BENNETT: That's correct.

So the – my recollection of that situation is that the – I guess the way the protest worked at the gate was that vehicles and people could leave the site, but nobody could come on. So, nobody can come on or nothing can come on. Deliveries of fuel, deliveries of supplies, delivery of material necessary for construction, delivery of workers as they come out – you know, come back to work on the turnaround, were being

denied entry to the site. So that had an impact on work on the site.

MS. MUZYCHKA: Right, but in terms of how many days, was that ever firmed up? Do you have –?

MR. BENNETT: I don't have it off the top of my head, but I know –

MS. MUZYCHKA: Mm-hmm.

MR. BENNETT: – that that went for – that the occupation at site was – my recollection is three days or so. The occupation at the gate, or the protest at the gate, went considerably longer than that.

MS. MUZYCHKA: Okay.

What was your role in Nalcor's reaction to the October 16 protests?

MR. BENNETT: Well, I was definitely engaged, involved, was advised of the situation, was apprised of the situation as it unfolded and the protest started up.

I think in terms of the court proceedings, I discussed with Mr. Marshall what the appropriate legal course – recourse would be, and with his approval we proceeded with the court – with the injunction proceedings.

MS. MUZYCHKA: But that was a decision made by yourself and Mr. Marshall?

MR. BENNETT: Mr. Marshall concurred with the decision to move forward on that basis.

MS. MUZYCHKA: And was Nalcor's response to the protest coordinated in any way with the Government of Newfoundland and Labrador?

MR. BENNETT: Government was aware of things as they were unfolding.

MS. MUZYCHKA: And who was communicating that, and how?

MR. BENNETT: There would've been a variety of mechanisms that would've been – some of those communications were from our communications team. There were, if I recall,

conference calls with a number of deputy ministers. Mr. Marshall would've been in contact with – pretty sure he talked to the Premier and minister through that period. So there were multiple means of communicating back and forth.

MS. MUZYCHKA: And were they aware that Nalcor was going to take legal action to –

MR. BENNETT: They –

MS. MUZYCHKA: – get injunctions?

MR. BENNETT: They were advised of that, yes.

MS. MUZYCHKA: Okay.

Ms. Benefiel and Ms. Flowers talked about a lack of trust in Nalcor. Can you comment on how, in that context, and given that the protest did manifest, that – how Nalcor considered the risks of protests being fully mitigated? Because there was some evidence that there was – it was a known risk. It was identified in the risk register and there were mitigation measures. Was there a thought by – on Nalcor's part, that that risk had been fully mitigated?

MR. BENNETT: I think there was, certainly, a view that our participation in the environmental assessment process, our delivery of information to support decision-making, the efforts that were undertaken to engage the various Indigenous groups involved in both environmental assessments, were important means by which we were mitigating that risk.

MS. MUZYCHKA: Okay.

MR. BENNETT: Now, there are participants in those processes who did not agree with what was going on and fundamentally were, at varying levels, simply opposed to the project and –

MS. MUZYCHKA: Yes.

MR. BENNETT: Right and then –

MS. MUZYCHKA: But how do you mitigate against that or how do you –?

MR. BENNETT: That's really hard.

MS. MUZYCHKA: Okay.

So was there any dollar amount allocated to the cost of that potential risk of protests?

MR. BENNETT: I don't think there was a dollar amount set aside for protest activity back at the sanction decision.

MS. MUZYCHKA: Did you feel –

MR. BENNETT: Our focus was on mitigating by making sure that we were participating in a fulsome manner in the environmental assessment process and making information available – undertaking our consultation efforts, both with Indigenous groups and with the public.

MS. MUZYCHKA: So, essentially, the risk was identified, mitigation measures were considered, implemented. No dollar placed for contingency for that risk materializing –

MR. BENNETT: Right.

MS. MUZYCHKA: – which would mean that you felt it was fully mitigated.

MR. BENNETT: Right. We felt that we had put considerable effort, a reasonable effort, into mitigating that risk.

MS. MUZYCHKA: Now, was that a reasonable approach, given that you knew that there were still pockets of individuals who were opposed to the project regardless and that the risk was still there?

MR. BENNETT: I think what we did at the time – based on the information processes that were followed – we thought they were reasonable.

MS. MUZYCHKA: So – but we know that, I guess, that kind of risk can be calculated because if you close access to the work site you can easily calculate, on a rough basis, what each day of non-productivity or lost productivity is costing. Correct?

MR. BENNETT: So you could and the question is: How likely is that event to happen and how many days will it go for before somebody intervenes and fixes the problem?

MS. MUZYCHKA: Right. But nobody made any attempt to –

MR. BENNETT: It would have been –

MS. MUZYCHKA: – calculate that.

MR. BENNETT: It would have been very hard to quantify.

MS. MUZYCHKA: Okay, but a lot of these risks are hard to quantify because they're just that: they're risks.

MR. BENNETT: Yes.

MS. MUZYCHKA: But it's not to say that they can't materialize. And not having the ability to give it a firm number doesn't mean that it doesn't get assigned a value.

MR. BENNETT: That's for certain. We weren't thinking – after the environmental assessment process and the rigorous review and the engagements that happened and then, you know, looking at the proceedings that unfolded since then, we weren't – you know, the possibility four years later that a protest was gonna spring up, was a, I guess – you know, a risk that had bubbled up high enough on the register to say, okay, this is a clear and present issue.

MS. MUZYCHKA: Okay.

Can you comment on to what extent the Quebec Innu were consulted?

MR. BENNETT: The Quebec Innu – so the seven Quebec Innu groups that were consulted through the environmental assessment process were identified in the Environmental Assessment Guidelines for both the generation and transmission projects. The information sharing and feedback collection processes were identified in the respective EA documents. The – I think I can say that the level of engagement was probably not the same as the – you know, as we did with the Labrador Innu.

And if we look at sort of proximity and traditional activities and occupation of particularly the Muskrat Falls area, there is a spectrum of Indigenous interest. For our part, we worked with the EA guidelines, engaged those groups, provided project information, provided opportunities for feedback in relation to their interests; collected as best we could, information with respect to land and resource use, and fed that into the two environmental assessment processes.

MS. MUZYCHKA: In what language would they have been consulted?

MR. BENNETT: There were communications in English and there were also some adjudications provided in French. I seem to recall the plain-language summaries of the project were actually translated and provided in French. I'm not sure off the top of my head whether they were also done in some of the French-Innu dialect. But I know that there were certainly conversations – or documents rather, that were provided in both English and French.

MS. MUZYCHKA: Okay.

I want to direct you to binder 4 at tab 99. It is Exhibit P-02062.

This is a report on the Mud Lake flooding finding, and in the conclusion, which is on page 29, indicates that it was not caused by activity on the Lower Churchill Project.

You're familiar with this?

MR. BENNETT: Yes, I've read this report.

MS. MUZYCHKA: So at the middle of the page, there is Spring 2017, at the last line: "... hence, the ice-jam flood event of 17 May 2017 along the lower reach of the Churchill River cannot be attributed to the operations of the spillway."

Can you comment on how this report came about?

MR. BENNETT: Yeah. This report by Dr. Lindenschmidt was commissioned by the province, so the Department, as I recall, of Municipal Affairs and Environment had this

review done after the Mud Lake event. We had a similar report that was – we had commissioned internally and that was completed by Hatch, our hydrological consultant, but this report was commissioned by the province.

MS. MUZYCHKA: Okay.

MR. BENNETT: So by – Mr. Chippett was here yesterday, by his department, Water Resources Division.

MS. MUZYCHKA: All right.

We've heard from Innu Nation witnesses, Anastasia Qupee and Clementine Kuiper, in February they gave evidence, and they had some concerns over workplace situations. Ms. Kuiper said that one of the complaints from the Innu workers, regarding the transport bus to site, would mean that the Innu workers would have to get up at 3:30 a.m. to be ready for the bus that went from Sheshatshiu to Happy Valley-Goose Bay before going to the site, and the early time of the bus schedule led to absentee issues. And the complaint was escalated to Anastasia Qupee and Nalcor, and there was an eventual solution raised where another bus was added that went only from Sheshatshiu to the site.

Do you have any comments as to why this issue wasn't foreseen earlier in the transportation planning stages, why it wasn't examined before this issue became escalated with the Innu on site?

MR. BENNETT: So, I mean, as a matter of – I think, just in general in the communities, we had provided through our contractors, transportation from Sheshatshiu, North West River and Happy Valley-Goose Bay, and then on to the site. Collective agreement for the project (inaudible), so the work day starting when workers get to the site. And I don't recall it being an issue for residents of North West River, but I do understand that, yes, fairly early on, we had a meeting with representatives of Innu Nation; they raised the concern, and we were able to solve it.

MS. MUZYCHKA: Okay.

We've also heard testimony that there were complaints from Innu workers about racism on

site. What's your response to those complaints? And what did Nalcor do, if anything, to address those issues?

MR. BENNETT: So, the need for appropriate policies was known early on, and certainly in the – it was addressed between the environmental assessment and the IBA. We all recognized that there were Innu workers coming into the workforce and that right from the beginning, the project has respectful workplace policies and, sort of, zero tolerance for the type of behaviour that they're describing. So that's a site policy.

There were provisions for respectful workplace training, cultural awareness, safety orientation, provided to every employee that comes onto the site before they come onto the site. And those policies are communicated.

We have a policy that sees those addressed either informally or formally when they're reported. We encourage reporting on those issues and we have a team that monitors and receives those complaints and issues carried through to resolution. So it's certainly an issue that we were sensitive to and had policies established and in place to address those and ultimately, you know, in the most serious types of events, can see somebody removed from site permanently.

MS. MUZYCHKA: Okay. So Nalcor was aware and managing these issues?

MR. BENNETT: Actively managing those issues. And –

MS. MUZYCHKA: Okay.

MR. BENNETT: – a similar process for safety performance. We have safety absolutes on site that are no-go areas. And in those areas, we have a similar approach that can see somebody disciplined, removed from site temporarily or removed from site permanently. In similar vein, our drug and alcohol policy can take it to the same place.

So there were, from the beginning of the project activities, a series of policies established, maintained to make sure that we maintain a respectful workplace, keep people safe, you know, throughout the job.

MS. MUZYCHKA: Okay.

My understanding is that Nalcor played some role in providing guidance to contractors, like Astaldi in particular, on writing job descriptions for – and requirements for postings. Is that correct?

MR. BENNETT: We would, you know, throughout our benefits team, provide support and guidance, you know, on a number of these issues. So, for example, the explaining the requirements and the Benefits Strategy, outlining the hiring policy and the hiring protocol, and generally explaining the requirements the contractors have to work with. We did provide guidance to our contractors in terms of making sure that the qualifications for the people they were seeking were aligned with the qualifications that they really needed. And this can cut two ways.

If the contractor is not cognizant of the importance of having those qualifications properly specified, they may get the wrong people.

MS. MUZYCHKA: Right.

MR. BENNETT: They may get people who lack the requisite skills. So that's a problem for them, that it's important for them to know about, given the operation of the hiring protocol in the collective agreement.

The other problem is if the contractor goes the other way with this and unfairly overstates qualifications, then they're really running afoul of the benefit strategy and undermining the ability to get the right person on the job.

So typically, in that scenario, if the contractor is going the other way, then they may find that their work – they're going to be hiring people probably from the Island with generally greater qualifications than somebody who might be available in the local area. That can't happen either.

So you know, in the – if either of those two were to happen, then we'd be intervening in a couple of ways –

MS. MUZYCHKA: Okay –

MR. BENNETT: – providing guidance on that. I mean, also, in the case of somebody who wasn't appropriately hired, it's possible to have recourse through the collective agreement and the agreement's procedure.

MS. MUZYCHKA: Right.

And we did hear, one of the issues raised by Ms. Kuyper in her testimony, was that there were unnecessarily high experience requirements for certain positions on site, which affected Innu workers' ability to apply for positions. She provided examples like contractors asking for five years' experience in cleaning and 10 years' experience requirements for operating cement trucks.

Were you aware of those complaints or concerns?

MR. BENNETT: I wasn't aware of those specifically and personally, but I expected if they were to arise, our Indigenous relations or benefits teams would have been engaged – those are the types of conversations we – you know, we do get into – have addressed over the course of the project.

MS. MUZYCHKA: So in terms of that complaint being raised are you saying that Nalcor was alive to the potential concerns or difficulties that certain job descriptions may pose for the Innu workers?

MR. BENNETT: Yes, we were alive to those issues; we were alive to those issues in relation to the general community. And then on the other side, we're also alive to the, you know, concerns that may have been raised by people in the community who felt that they were qualified to take on positions for which they actually weren't. So there's a – that is an ongoing management effort that we were live to and active in over the course of the project.

MS. MUZYCHKA: Okay. All right.

I want to turn to the Upper Churchill Redress Agreement payments and the accounting treatment for that. So let's turn to binder 3, tab 83, and that's Exhibit 03579.

So I understand, just by way of background, that – or perhaps you can tell us, Mr. Bennett, what the – how the payments arise under the Upper –

MR. BENNETT: Churchill Redress –

MS. MUZYCHKA: – Churchill Redress Agreement.

MR. BENNETT: So, the Upper Churchill Redress Agreement is one of the three agreements that are included in the Tshash Petapen framework with the Innu Nation and the Innu of Labrador. The three agreements included the Upper Churchill Redress Agreement, which dealt with effects on Innu interests – Labrador Innu interests – I'll just use that general term – in relation to the Churchill Falls development from the 1960s.

The second agreement is the Lower Churchill IBA, the Impacts and Benefits Agreements, that deals with the construction and operation of Muskrat Falls and, should it be developed, Gull Island.

And then the third agreement is the agreement in principle associated with the comprehensive land claim of the Innu of Labrador, so on behalf of Innu Nation and the two First Nations.

So, collectively, they are referred to as the Tshash Petapen Agreement, and that was ratified – those three agreements were, as I recall, ratified with the Labrador Innu on November of 2011.

MS. MUZYCHKA: Okay.

MR. BENNETT: If I have my dates right.

MS. MUZYCHKA: And then if we look at page 2 of that Exhibit –

MR. BENNETT: I'm working without the Exhibit here. I'm sorry.

MS. MUZYCHKA: Sorry, it's at tab 83.

MR. BENNETT: Thank you.

Okay.

MS. MUZYCHKA: There's just a brief description of the issue, and it provides for payments to the Innu Nation from the effective date of execution to 2041. You see that there in – just the first box?

MR. BENNETT: Yes, that's correct.

MS. MUZYCHKA: Right.

And so then, the question comes down to – so up until – there's payments "of \$2.0 million annually (increased annually by 2.5%) to the Innu Nation from the" date of signing "until 2041."

And then, "After 2041, the ... Redress" Agreement "requires Nalcor to pay to the Innu Nation 3% of dividends paid by CF(L)Co. to Nalcor or an affiliate."

MR. BENNETT: That's right.

MS. MUZYCHKA: Correct?

MR. BENNETT: Yup.

MS. MUZYCHKA: Okay. And so the issue, I guess, is going to come down to the accounting of these payments to the Innu Nation.

So, on page 2 there's – or maybe it's not page 2. Page 4, sorry.

Conclusions as to how these would be addressed: "1. The net present value of the liability related to the annual \$2.0 million payment from the effective date to 2041 should be recognized as a liability once the agreement is ratified.

And number "2." – more importantly – "The amount should be capitalized as part of the construction of the Lower Churchill Project."

Do you see that?

MR. BENNETT: Yes.

MS. MUZYCHKA: So do you remember the discussion around this?

MR. BENNETT: I remember there being discussion around it, yes.

MS. MUZYCHKA: Right, and so the capitalized value, I understand, is in the range of \$39 million to \$40 million. Is that correct?

MR. BENNETT: That's correct.

MS. MUZYCHKA: So, what that seems to be saying is that this would be in addition to the overall cost of the Labrador – the Lower Churchill Project?

MR. BENNETT: That was the thinking in this document, yes.

MS. MUZYCHKA: Okay. So that would add an extra \$40 million to the whatever-the-current or at-the-time total would be?

MR. BENNETT: That's correct.

MS. MUZYCHKA: At time of signing.

MR. BENNETT: Right.

MS. MUZYCHKA: Okay.

We had some indication from the documents that this may have been reviewed by Deloitte accounting firm. Is that your recollection?

MR. BENNETT: I do believe it went to Deloitte. I think the finance team under Mr. Sturge's leadership did go to Deloitte on this topic.

MS. MUZYCHKA: And I understand that the basis for wanting to include it as a capitalized cost of the project is that the agreement would not have been necessary but for the Lower Churchill Project being developed?

MR. BENNETT: That's debatable.

MS. MUZYCHKA: Okay.

MR. BENNETT: I don't think that Innu Nations and the Labrador Innu would agree that their historic concerns about the development of Churchill Falls would necessarily be tied to the development of Lower Churchill. I would agree that the converse is true: that in order to move forward with the Lower Churchill those previous issues had to be addressed.

MS. MUZYCHKA: Yes, okay.

MR. BENNETT: But I don't think that that –

MS. MUZYCHKA: But it's related to the development?

MR. BENNETT: Well, I'm trying to draw a one-way street here. If we're going to move forward with Lower Churchill, they have to be fixed, but just – in the event that Lower Churchill weren't moving, I don't think the Labrador Innu would agree that that issue didn't exist, was front and centre and needed to be addressed.

MS. MUZYCHKA: Okay, but for purposes of that agreement at that time it was linked to the development.

MR. BENNETT: There are three pillars.

MS. MUZYCHKA: Yes, you mentioned them.

MR. BENNETT: Right. The IBA –

MS. MUZYCHKA: Mm-hmm.

MR. BENNETT: – the Upper Churchill redress, and the comprehensive land claim.

MS. MUZYCHKA: Okay.

Well, let's turn to tab 55 in book – binder 2.

MR. BENNETT: Fifty-five, okay.

MS. MUZYCHKA: And this is an email from Mark Bradbury.

THE COMMISSIONER: 03595.

MS. MUZYCHKA: Oh, sorry, P-03595, an email from Mark Bradbury, Nalcor Finance, writing to Paul Scott from the Government of Newfoundland and Labrador, November 22, 2011.

And he writes: "Hi Paul

"You had requested an overview supporting our request that the Province reimburse Nalcor for future Settlement Payments made under the Redress Agreement. Here is what we have put

together. We have structured this in a format that should facilitate your preparation of the related Cabinet paper. Please advise if there is any other information you need. As noted previously, it is critical for us to get this resolved prior to year end and hence we are hoping this can be on the agenda of the upcoming meeting of Cabinet.”

And then he attaches a draft memo called: Support document for memorandum to Executive Council. So that would be on page 2. And if we move on to page 4 of the memo, can you read the third paragraph of page 4, beginning with: If the province?

You can read it aloud.

MR. BENNETT: Oh, I’m sorry.

If the project doesn’t – “If the Province does not agree to reimburse Nalcor for all future Settlement Payments, then the \$39 million will be recorded as an unbudgeted capital addition to” LCP. Such a charge – if I could just abridge this – “will put unanticipated pressure on the Project economics and contribute to a revised project estimate that might exceed previously publicized figures.”

MS. MUZYCHKA: Right.

So that’s what we were talking about just a moment ago. So isn’t Nalcor saying here that the government should take on the liability in order to keep the capital costs of the project down? Is that the thinking behind this request to have the government assume –?

MR. BENNETT: So my view of the agreement is that the redress issue was independent of the development of the Lower Churchill. And it was one of the three agreements that composed the New Dawn or Tshash Petapen Agreement.

The redress agreement wasn’t conditional on the Lower Churchill Project moving forward, and from my perspective that obligation existed with or without sanction if I was unable to – from my perspective – find a logical connection between that commitment to address the long-standing concerns of the Labrador Innu in association with the Lower Churchill.

So I was involved in these negotiations and it was abundantly clear to me that redress of this – redress of the development from the Upper Churchill was a condition of the Lower Churchill moving forward. We would not get it if that weren’t done, and we would not have an IPA. But I don’t think it’s accurate to say that the Innu wouldn’t have been looking for redress from the Upper Churchill even if the Lower Churchill didn’t move forward. They were still looking for redress in relation to those previous effects.

So I didn’t have, from my point of view, a logical connection between the liability and the project moving forward. You could go a step further and ask whether the issues associated with Upper Churchill redress, to the extent they go in the project budget, ultimately get carried by the electricity customers, whether that connection actually made sense.

MS. MUZYCHKA: Okay.

MR. BENNETT: So my view of this was we settle these issues, and it’s not much different than the comprehensive land claim that needed – that needs to be resolved, as well. And that resolution wasn’t dependent on Lower Churchill either.

MS. MUZYCHKA: Okay.

Well, let’s now turn to the next document, which is at tab 56 – or were we just at that one? No. Tab 56, binder 3. And this one is dated January 23 – January 29 – sorry, I’m reading from the wrong section – January 29, 2012.

And it’s entitled – “This is Nalcor's support document; I am not sure I sent it before. They no longer claim that covering the Redress payment will have a detrimental impact on LCP financing. Rather they claim it will have a negative effect on their 2011 net income as they say they have to book the full value of the Redress payment (\$40M) against their 2011 net income. It is not clear as to why.”

That’s tab 56.

MR. BENNETT: Right.

MS. MUZYCHKA: Exhibit 03596.

And then if you look at the document there are some redacted areas but the paragraph that we had just read previously is no longer there. So it doesn't highlight the pressure any longer on the Lower Churchill capital cost and estimate if the government chooses not to reimburse.

MR. BENNETT: Right.

MS. MUZYCHKA: But do you know how that – why the change came about? Why did Nalcor decide that that would not be included?

MR. BENNETT: No, I don't. I know that – I seem to recall that the effect on 2011 net income turned into a note on the annual report for 2011. I'm not an expert in IFRS reporting standards and how those liabilities get booked, that's –

MS. MUZYCHKA: Right, but there was a change in approach. On the one hand it was going to be a capital cost added to the Lower Churchill Project in the previous memorandum addressing this issue, and then in this particular one, it becomes a question of it being included as an expense on Nalcor's 2011 balance sheet.

MR. BENNETT: Right, so now it is not in the project, it's at the corporate level.

MS. MUZYCHKA: Right. And you don't have any –

MR. BENNETT: No.

MS. MUZYCHKA: – recollection as to why the shift?

MR. BENNETT: I seem to recall it wasn't in the project budget.

MS. MUZYCHKA: No.

MR. BENNETT: So that's something that would need to be addressed.

MS. MUZYCHKA: Okay.

MR. BENNETT: But –

MS. MUZYCHKA: And that –

MR. BENNETT: – I guess suffice it to say, the responsibility for the commitment was – could be in one of three places: It can be Nalcor corporate, it can be the project or it could be the province.

MS. MUZYCHKA: Right –

MR. BENNETT: Those are the three places it can arise.

MS. MUZYCHKA: But it seems to have shifted away from the project as it was initially.

MR. BENNETT: That's the way this looks. Yes.

MS. MUZYCHKA: Yes. To it being a corporate expense of Nalcor.

MR. BENNETT: Right, which makes logical sense to me in the sense that this commitment was not tied directly to the project.

MS. MUZYCHKA: Okay.

MR. BENNETT: It wasn't conditional on the project moving forward.

MS. MUZYCHKA: Right.

Now, so if we turn to exhibit 84 – at tab 84 of that book and its 03597. And this is – looks like briefing paper from the Government of Newfoundland. And if we turn to page 24, it appears that the government ultimately agreed to reimburse Nalcor for these settlement payments. And so, therefore, these payments were not included either in the sanction capital budget or on Nalcor's balance sheet.

MR. BENNETT: Right.

MS. MUZYCHKA: Is that correct?

MR. BENNETT: That's the way this looks. Yes.

MS. MUZYCHKA: Yeah. Okay.

(Inaudible.)

All right, the next topic that we're going to cover, Mr. Bennett, is the 2013 SNC risk report.

THE COMMISSIONER: So might this be a good time – I see it's 20 after 3 – a good time to break?

MS. MUZYCHKA: Yes, that would be appropriate.

THE COMMISSIONER: Okay, let's take our 10 minutes now then.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right, Ms. Muzychka.

MS. MUZYCHKA: Thank you, Commissioner.

All right, we're going to turn now to the SNC April 2013 risk report. And that is at binder 2, tab 36, and it's Exhibit 03159.

THE COMMISSIONER: 03159.

MS. MUZYCHKA: Actually, that's not the right – it's the right exhibit, but it's not the report. This is an email from Paul Harrington to you, Mr. Bennett. And it's copied to Lance Clarke, Jason Kean and Brian Crawley and it's dated May 29, 2013.

In this email, Mr. Harrington specifically recommends that SNC – let's find the page, sorry – bottom of page 2. So I'll just read this email. So, again, it's an email to you from Mr. Harrington.

And he says: "Gilbert

"I met with Normand and JD Tremblay (the SLI Risk person) yesterday and asked for clarification on the SLI risk analysis that was carried out on the project.

"It appears that M&M division VP asked for this and the M&M division performed the analysis - it was based on the data from the LCP ... Workshops that Jason had chaired mid last year.

"The status is that a draft is with B Gagne and Scott Thon and they may be thinking about providing it to us. I would respectfully decline that offer because of a number of very important factors"

And then he recites, number "1 Because the work was based on the same source data that Westney used there is nothing new here- Risk wise.

"2 The risk analysis shows the unmitigated risk and cost result and is not a probabilistic analysis using Monte Carlo sampling techniques - so ... results will be subjective in interpretation and will not reflect the mitigations we have implemented or the cost result of the mitigations- i.e. the results will be misleading and inaccurate.

"3 We have had no opportunity to challenge the assumptions or factual accuracy of the input data and we really do not have the time or inclination to do so - we need to focus our efforts ... on the risks going forward and not spend time on some dated, incomplete analysis using techniques which are inferior to those used by Westney."

So he's recommending that we talk to Scott and reassure him we realize there was no mal intent; however, we would prefer it remain a draft internal document of SLI.

Do you recall receiving that email?

MR. BENNETT: I have no recollection of this email until I saw it here in the package.

MS. MUZYCHKA: Until when, sorry?

MR. BENNETT: We saw it here in the package as an exhibit.

MS. MUZYCHKA: Okay.

And so you had reviewed your emails and your inbox and gone through all of the electronic means that you have to verify whether you received the email or deleted it or ...?

MR. BENNETT: That's correct. I understand this search was done by Nalcor corporate IT, not by me personally. I also remember that when the whole topic of this report came up, I went

looking for – and it came from Mr. Marshall – I went looking for email. I couldn't find anything myself in my own search.

MS. MUZYCHKA: Okay.

In your initial interviews with Grant Thornton and with Kate O'Brien back in August of 2018, you indicated the first time that the SNC report came to your attention was in 2017. And you didn't recall anyone ever mentioning it to you previously. Is that correct?

MR. BENNETT: My recollection was that it came – the question came from Mr. Marshall and it would have been when he received the report.

MS. MUZYCHKA: So that was your first recollection of hearing about this –

MR. BENNETT: That's right,

MS. MUZYCHKA: – SNC risk report –

MR. BENNETT: Report, yes.

MS. MUZYCHKA: – was in 2016 or '17?

MR. BENNETT: I think it was '16, actually, when Mr. Marshall had a copy. So maybe confirm when he, in fact, first received the report because he came and saw me about it.

MS. MUZYCHKA: So that was in 2016?

MR. BENNETT: I think that was '16.

MS. MUZYCHKA: Or 2017?

MR. BENNETT: Memory is not entirely clear.

MS. MUZYCHKA: Okay.

MR. BENNETT: I know it went public in '17. I'm not entirely sure, off the top of my head, when Mr. Marshall received it

MS. MUZYCHKA: Okay.

So he was the one that brought that it to your attention?

MR. BENNETT: Brought it to my attention.

MS. MUZYCHKA: And you had never seen it before or heard tell of it.

MR. BENNETT: No recollection of it. That's right.

MS. MUZYCHKA: No recollection.

MR. BENNETT: That's right.

MS. MUZYCHKA: So did you have any discussion, thinking back, with anyone at Nalcor and SNC about this email or the independent risk work that SNC were doing? Because at that point you had your own risk analysis performed in – going back to 2013 now.

MR. BENNETT: Right.

MS. MUZYCHKA: You don't – I mean it would strike me that something as significant as learning that SNC had prepared their own risk analysis of the project, independent of Nalcor, without your knowledge and not at your request and then learning of it, having it come to light, would be something that you would remember. That it would certainly be a topic of discussion amongst the project management team and the executive.

MR. BENNETT: As I said, the first I recall of this report was when Mr. Marshall raised it with me.

MS. MUZYCHKA: There were references in Normand Béchard's testimony that back in 2013, when this report first came to light, was he had offered it to Jason Kean to review. And there was also discussion when Bob Card came to meet with Ed Martin and that the issue of SNC risk report had been brought up and Paul Harrington was aware. And, certainly, we know from this email Paul Harrington is aware of the risk report.

MR. BENNETT: That there's something floating out there is what this says, yes.

MS. MUZYCHKA: Right? Because the email to you is dated May 29, 2013. And, in fact, there is, you know, an exchange between Jason Kean and Paul in terms of access to information. So he was aware of it, and, you know, certainly there was no question that these two individuals had

received the email and were involved in a discussion about what to do with the SLI risk report or SNC.

And you were not part of that discussion at all? You have no recollection whatsoever?

MR. BENNETT: I have no recollection of this report.

MS. MUZYCHKA: None whatsoever. How can you explain that?

MR. BENNETT: I'm just – I'm telling you about the – what I know about the report.

MS. MUZYCHKA: But wouldn't this be something that would have been brought to your attention as the VP of the project at the time, to be aware that there's another risk report out there and that it has numbers attached to it and that it could be quite damaging?

MR. BENNETT: I understand that. This report is – I mean, looking at the report, the report wasn't finalized with – inside SNC-Lavalin. I don't think it has Mr. Thon's signature on it –

MS. MUZYCHKA: No.

MR. BENNETT: – and I don't know where it went.

MS. MUZYCHKA: Right, but, I mean, it could have easily at that time in 2013 when it was brought up – it could have certainly moved to the next stage of being finalized and produced to –

MR. BENNETT: Oh, it could have –

MS. MUZYCHKA: – Nalcor.

MR. BENNETT: – been finalized, submitted via document control and submitted to us. Yes, it –

MS. MUZYCHKA: And you would have to deal with it.

MR. BENNETT: – could have been, and we would have.

MS. MUZYCHKA: Right. And that could have had an impact on the project costs, correct?

MR. BENNETT: We would have looked at –

MS. MUZYCHKA: Certainly the contingencies.

MR. BENNETT: We would have looked at the risks and understood what to do with them.

MS. MUZYCHKA: Right.

MR. BENNETT: I mean, many of these aren't new risks.

MS. MUZYCHKA: No, the risks might not be new. Some of them were, I would suggest, and we did a comparison with –

MR. BENNETT: Mmm.

MS. MUZYCHKA: – Mr. Kean. But it's a question of quantification for those risks, which I would suggest is where the concern lay with Mr. Harrington and Mr. Kean on this.

MR. BENNETT: Well they do outline concerns about what the mitigations are –

MS. MUZYCHKA: Right.

MR. BENNETT: – and what the value of these risks might be.

MS. MUZYCHKA: Sure. And there may be ways to, in evaluating that to say, well, no, that's not a risk because that was mitigated and it's now behind us or –

MR. BENNETT: Or it's a –

MS. MUZYCHKA: – what have you or –

MR. BENNETT: Or it's a smaller number and it falls –

MS. MUZYCHKA: Or it's a – sure.

MR. BENNETT: – into the probabilistic analysis that Westney had done for us.

MS. MUZYCHKA: Right. But it certainly could have sparked an engagement between

SNC and Nalcor as to re-evaluation of the risks at that point –

MR. BENNETT: Could have.

MS. MUZYCHKA: – in the spring or summer of 2013 –

MR. BENNETT: It could have.

MS. MUZYCHKA: – right? Which would not have been an inappropriate time to review the risks given the fact that the – previously had not been done prior to DG3, correct?

MR. BENNETT: But it could have.

MS. MUZYCHKA: Right.

And you did –

MR. BENNETT: (Inaudible.)

MS. MUZYCHKA: – not know – it's your evidence you had no knowledge of this report.

MR. BENNETT: I did not know about the report. I mean, obviously, these are risks we talk about, right, when you look at the ones that are enumerated in the report, right?

MS. MUZYCHKA: But even after sending you a detailed email from Mr. Harrington, he never followed up with you to say, you know, Gil, I never heard from you. Did you get it?

MR. BENNETT: I have nothing. I have no recollection of the email. We went looking, I mean, IT went looking for this email and were unable to find it. All they can say is that the risks that are in the report are obviously things that we would have talked about.

MS. MUZYCHKA: Talked about ...?

MR. BENNETT: As a matter of course in relation to the project.

MS. MUZYCHKA: Right. But not in the context of SNC has valued this risk as being –

MR. BENNETT: Here's the report and here's what they are. No. I –

MS. MUZYCHKA: Okay.

MR. BENNETT: – have no recollection of that.

MS. MUZYCHKA: So, based on what Mr. Harrington is saying to you in the email that you never received, that he met with Normand and J.D. Tremblay and is going to go back to them and say thanks but no thanks, keep the report as an internal draft document and don't produce it to us.

And so, if you don't recall having received this email and you don't recall any conversation with Mr. Harrington about it, or Mr. Kean or anyone else who may have had knowledge of this report, this would mean that Mr. Harrington would've made the decision with respect to meet with Mr. Tremblay and Mr. Bécharde about the report in 2013 without your knowledge or input.

Does that cause any concern?

MR. BENNETT: No, in many regards, I wish the report were submitted in our document control system from the consultant to the client, and then we'd have to the report. So –

MS. MUZYCHKA: But he's making a decision without any input from –

MR. BENNETT: Oh –

MS. MUZYCHKA: – yourself.

MR. BENNETT: – I don't know the decision was taken. What I do – I think, if we go further down in this thread, I think Mr. Harrington says we're gonna go look at these risks and make sure that they are mitigated. It's the last paragraph, you know, dealing with those – dealing with the risk register and focusing on the risks and make sure that they're addressed.

MS. MUZYCHKA: Right, no – and I appreciate that he had planned to look at it and address the issues, but my question to you was, whether you had an issue with how it was handled by Mr. Harrington without your knowledge or input?

MR. BENNETT: I don't know how it was handled.

MS. MUZYCHKA: It was handled in the sense that he told – or SNC to keep the report in draft and don't give it to them.

MR. BENNETT: Was that communication actually given?

MS. MUZYCHKA: That communication was given. According to Mr. Béchard's evidence, the report was not accepted even by Mr. Martin at the time, and it was shelved until it surfaced again in 2016.

MR. BENNETT: Well, I'm not aware of, you know, the conversation with Mr. Martin either, right?

MS. MUZYCHKA: Okay.

In discussing this with Grant Thornton and with the Inquiry and so on, did it ever come up in conversation with Mr. Harrington about the SNC report? Did you ever talk to him about it in terms of – you know, do you recall if I responded to you? Did we discuss this? Or did you have any kind of communication with each other over the mystery of the SNC report?

MR. BENNETT: I don't think – nobody has been able to identify that report in Nalcor's document control system. I think that's a note on the Westney presentation. We haven't found this report internally within Nalcor.

MS. MUZYCHKA: Sorry?

MR. BENNETT: I said this report – the report that's being talked about here did not surface within Nalcor.

MS. MUZYCHKA: No, it surfaced – well, SNC, as I understand it, had presented it to Stan Marshall.

MR. BENNETT: That's my understanding, as well.

MS. MUZYCHKA: Which is how then you learned of it.

MR. BENNETT: That's my – that's correct.

MS. MUZYCHKA: Or that's your evidence. Okay.

THE COMMISSIONER: So, again, did you have any discussions with Mr. Harrington? You found out about this email, and you looked at the documents with the Inquiry. You found out about this; you had your own people search your own emails. Did you talk to Mr. Harrington about this?

MR. BENNETT: No, I didn't go further than what we have here in the thread.

MS. MUZYCHKA: In terms of Mr. Harrington's reasons for wanting to decline the report that we just went through, the three points that he listed, do you have any comment in terms of his reasoning? Do you agree with that, or do you think that the report should've been accepted and reviewed and critiqued?

MR. BENNETT: I think as – you know, as a general statement, you know, a – if they have a report, it's better to have it; then we can manage it. I think I've said that on a couple of occasions. Even if there are issues in it, let's get to the bottom of the issues, right?

MS. MUZYCHKA: So you would've accepted the report?

MR. BENNETT: I probably would've, yeah.

MS. MUZYCHKA: And then dealt with your own analysis or sent it out for analysis or –

MR. BENNETT: Right.

MS. MUZYCHKA: – or done what Mr. Harrington was going to do was – it was to review the risk register and have a consideration.

MR. BENNETT: Make sure – just want to make sure it's buttoned down.

MS. MUZYCHKA: Right.

MR. BENNETT: And I'm – and looking at this email here, if he went – his commitment was to go look at the risks, make sure they're incorporated. That's not a bad outcome, either.

MS. MUZYCHKA: Right.

Now, you said that the report apparently did not disclose any new risks. I don't know if you were

aware that SNC may not have necessarily been fully informed of all of the risks – risk analysis work that Nalcor had done leading up to the QRA in 2012. They weren't part of the – there was a number of workshops that were held by Nalcor, a two-day workshop in particular. And on one day Nalcor and SLI people were in attendance and the second day, when the discussion of strategic risks was undertaken, there were no SLI representatives.

MR. BENNETT: So, just for clarification for my part: was that in relation to sort of the ranging and quantification of those risks, or was it from the identification? Because I understood that Mr. Tremblay had the risk register.

MS. MUZYCHKA: Okay, so he would've had access to all of that information.

MR. BENNETT: My understanding is that he did.

MS. MUZYCHKA: Right.

MR. BENNETT: Yeah.

MS. MUZYCHKA: But if you look at Mr. Kean's email, on page 2 of 03159, he says: "One point of note – SLI did not have access to any data from these sessions.

"They only participated in some of it and I provided none of it too them."

MR. BENNETT: Okay, so that's in relation to the sessions.

MS. MUZYCHKA: And whatever discussions would've come around.

But he does note "... that JD can make time for working this, but can't maintain the risk register left by the previous incumbent." So, I mean, SNC-Lavalin had access to the register.

MR. BENNETT: That's what I read from that.

MS. MUZYCHKA: Right, but not necessarily with respect to Nalcor's quantification of those risks.

MR. BENNETT: From that session that Jason describes.

MS. MUZYCHKA: Okay.

At the time, though, that Mr. Harrington received or became aware of the report, he did not accept it, and it's not clear how he would have been able to make the determination that all of the risks that were enumerated in SNC's report were the same as what was contained in the Nalcor report. And it's not just a question of five or 10; there's – it's a fairly extensive document. So, you know, I'm kind of puzzled as to how one could make that determination and say, well, no, it's the same. There's nothing new identified.

MR. BENNETT: I think what he said was he was going to go back – if we could go down to the bottom again and look at his commitment, I thought it was go back and work with SNC-Lavalin, make sure the risks were considered.

MS. MUZYCHKA: Right, but his first point as to why he wouldn't accept it – on the bottom of page 2 – is "Because the work was based on the same source data that Westney used there is nothing new here- Risk wise." So he's assuming that the report was based on Westney's report as opposed to one they created themselves.

Do you see that?

MR. BENNETT: Yeah, I'm just looking at his note above that where he says – I mean, he says: "... appears that" mines and minerals, which is M&M at SNC-Lavalin, "... performed the analysis – it was based on ... the LCP Risk Workshops"

MS. MUZYCHKA: Right, but that was the risk workshop in which SLI or SNC were not invited to attend on the day of the strategic workshop – strategic risk analysis.

MR. BENNETT: From the ranging exercise.

MS. MUZYCHKA: Right.

Anyway, it's not entirely clear, and so, you know, it seems that there was a very quick knee-jerk reaction on the part of Mr. Harrington to say: Whoa, not having this. This doesn't identify anything new, and we don't want to receive it.

But I take your evidence that you would've – if you had in fact received the report or were involved in the discussions, that you would have likely received –

MR. BENNETT: Well –

MS. MUZYCHKA: – the report and dealt with it.

MR. BENNETT: – in many regards, it's not like we get a decision to receive it. Email gets sent, email appears, we have the report, right? Or it gets sent in our document-transfer system through Aconex, and we have received the report. And at that point, there's a record.

MS. MUZYCHKA: Right.

MR. BENNETT: And it exists, right?

MS. MUZYCHKA: Right.

No, it's not about the – I'm talking about your response. If you had, in fact, received this email and had discussions with Mr. Harrington at the time in 2013, as I understand your evidence, you would have –

MR. BENNETT: I might've said sure, you know, what's the fuss here, why just – just get the report. Or if they had sent it, there would've been no need for a discussion at all, it would've just arrived.

MS. MUZYCHKA: Right.

MR. BENNETT: Two observations.

MS. MUZYCHKA: Okay.

Now, with – I have a document, I don't know if we need to go to it, but it's P-00130, tab 85, page 137, and that's a list of the attending participants at the DG3 strategic risk workshop that was held on May 24, 2012.

MR. BENNETT: That takes us to (inaudible).

MS. MUZYCHKA: If you look at Day 2 – on – it's on your screen as well –

MR. BENNETT: Okay.

MS. MUZYCHKA: – there.

You see the names there. Is there anybody on that list that is from SNC?

MR. BENNETT: No, there's not.

MS. MUZYCHKA: Okay.

And the previous Day 1? There are a number of people there. You can see Normand Bécharde is –

MR. BENNETT: Normand –

MS. MUZYCHKA: – there –

MR. BENNETT: – Bécharde.

MS. MUZYCHKA: – and area managers and so on.

MR. BENNETT: Yup.

MS. MUZYCHKA: We've seen evidence from Mr. Westney that the risk workshop results were later refined by Mr. Kean and Mr. Harrington at the Westney offices in Texas – Houston. So after this workshop was taken place and there was brainstorming and discussion over the risks attendant on the project, they were – it was just the two of them, Mr. Kean and Mr. Harrington, that went to meet with Westney and discuss the risk analysis that would be undertaken, but there was no input by SNC. There was – Mr. Bécharde wasn't there, and there was no other members of the SNC organization with respect to the risk portion of the project.

Is there any reason why that would've happened? Why would not SNC – 'cause at the time, they would – certainly, in DG3 in 2012, they would've been the EPCM contractor.

MR. BENNETT: Looking for the date here.

MS. MUZYCHKA: May 24, 2012.

MR. BENNETT: Okay.

Not sure. I'm not sure what the basis was for the conversation with Westney and how that was decided.

MS. MUZYCHKA: So you don't have any sense as to why SNC would've been excluded from the DG3 risk – strategic risk analysis?

MR. BENNETT: No, I can't offer much insight there.

MS. MUZYCHKA: I mean, you were and are the VP –

MR. BENNETT: I am –

MS. MUZYCHKA: – would this be something –?

MR. BENNETT: – but I didn't set up the workshop and I didn't invite the people to it.

MS. MUZYCHKA: No, but when you're talking about the strategic risk analysis and the costs and the issues, would it not be something that would get – rise to your level as to here's where we are, these are the numbers that we're looking at?

MR. BENNETT: Nobody came to me and said these are the people we are inviting to the workshop.

MS. MUZYCHKA: Well, it's not just about that; it's about –

MR. BENNETT: No, but it was (inaudible) – it was in the sense that that's when the workshop was held. People were invited to it on day two, and somebody made a decision to include a fairly broad cross-section of people across Nalcor and the project team to the strategic session.

MS. MUZYCHKA: Okay.

But you were told and you were aware of what was contained in the DG3 QRA, were you?

MR. BENNETT: I've seen that report, yes.

MS. MUZYCHKA: You were involved in that process at the time that it was ongoing – or concluded?

MR. BENNETT: Certainly when the conclusion – we get to the conclusion of it, yes.

MS. MUZYCHKA: Okay. It's not just something that you've seen since involvement with the Inquiry?

MR. BENNETT: I wasn't – but I wasn't in that process day in and day out saying, okay, here's – you know, participating in the process as it unfolded.

MS. MUZYCHKA: You weren't involved as it unfolded, or you were?

MR. BENNETT: From time to time, I was.

MS. MUZYCHKA: You were.

MR. BENNETT: Yeah.

MS. MUZYCHKA: And so you were aware, then, that it was only a Nalcor initiative and that SNC wasn't involved?

MR. BENNETT: I don't know that SNC (inaudible) – so if you look at them – I'm trying to understand where you're coming from. If you look at the workshop, SNC was involved.

MS. MUZYCHKA: Involved in day one, and then day two there was strategic risk analysis discussion.

MR. BENNETT: So that's a two-day workshop, but I think that translated – if I understood the question properly – to SNC not being involved in risk management. And I don't think that's the case.

MS. MUZYCHKA: Okay. Fair enough. They had some involvement at the outset, but then when the information was received and reviewed, it was refined by Westney in consultation with Mr. Harrington and Mr. Kean. So there was no SLI or SNC involvement. Do you agree with that?

MR. BENNETT: At that stage, if – I have (inaudible) – I got no reason to question what you're saying, that Mr. Harrington and Mr. Kean met with Westney at the conclusion of that process and reviewed the output for Westney's report. I'll accept that SNC wasn't there.

MS. MUZYCHKA: Okay.

We heard from Mr. Power and Mr. Harrington that the reason they believe the report was given to Mr. Marshall by SNC was in an effort to be reinstated as EPCM. Do you have any comment on that? Is that something –?

MR. BENNETT: I don't know if I can make a direct connection, but I know that there was interest expressed by representatives of SNC-Lavalin to re-engage on the project.

MS. MUZYCHKA: Right. But do you think that the two are connected?

MR. BENNETT: I can't – that's hard – I don't want to speculate.

MS. MUZYCHKA: Okay. All right.

Now let's turn to tab 86, volume 3, P-03172. And this is an email that is from Mr. Harrington to Mr. Dahl that originates – if we look at page 2 of the document, you got the first in the chain there. And in that, Mr. Harrington requests an analysis to be done. And just to get the date, it's November 15, 2017, so this would be the more recent discussion with respect to the report now.

And he writes Mr. Dahl and he requests an analysis to be done to, quote, "understand if the risks identified in the SNC-L report were identified by the Project team Risk identification in 2012(or earlier)" And then we see on the bottom of page 1 that Mr. Harrington sends you the analysis after it's complete on December 7.

So he encloses that to you. Do you recall that?

MR. BENNETT: Yes.

MS. MUZYCHKA: Were you involved in the process of getting Westney involved to review or the –?

MR. BENNETT: No. I remember that – I think I remember Mr. Harrington saying he'd – it would be a good idea to get that done and he proceeded to do so.

MS. MUZYCHKA: But he did that without your knowledge.

MR. BENNETT: He has the authority to do –

MS. MUZYCHKA: Okay.

MR. BENNETT: – this kind of analysis as a matter of course. Yeah.

MS. MUZYCHKA: So that wasn't of any concern or surprise to you?

MR. BENNETT: No.

MS. MUZYCHKA: No. Okay.

Do you know why Mr. Harrington requested the analysis? I mean, the report now is somewhat dated, it's 2013.

MR. BENNETT: I don't remember the specific conversation, but I mean he does note here that it's certainly become a topic of public interest and it was helpful to have this analysis in the files.

MS. MUZYCHKA: Okay.

You had indicated in the interview that we had in April that it was – you indicated it was just an opportunity, if nothing else, to close the record, to say that they looked at it and here are our thoughts on the report. Is that still your thought today?

MR. BENNETT: I still look at it that way. I mean this thing came up in – you know, they have this document that's dated 2013, it is now public issue. It's good for us to have, you know – I see no issue with having reference, you know, with a report in the files that deals with disposition of these risks.

MS. MUZYCHKA: Okay.

Was it your thought that this would be publicly released or was it for internal use?

MR. BENNETT: I hadn't given much thought one way or the other, to the extent that it's a report that reviews a, you know, somewhat dated document. I don't know if there is anything terribly sensitive about it.

MS. MUZYCHKA: Okay.

MR. BENNETT: But, you know, it's – you know, it's a worthwhile document for us to have

on file. That's the way I look at it. I hadn't, you know, thought to the point where we would go public and wave the report around.

MS. MUZYCHKA: All right.

Mr. Harrington testified that he wanted to do the report to assure himself that there were no new risks identified. Was that – like, do you think that was a good enough reason to engage Westney to –

MR. BENNETT: Yeah, I think that's a fair reason.

MS. MUZYCHKA: –spend the money and review the report and say –

MR. BENNETT: But –

MS. MUZYCHKA: – yay or nay about the risks over something that really was in the past?

MR. BENNETT: I think that's a fair point.

MS. MUZYCHKA: Okay.

Given that Mr. Harrington seemed to be fairly confident in 2013 that there were no new risks, and confident enough to decline the report from SNC in 2013, kind of makes you wonder why the further analysis in 2017 was even necessary. Do you have any insight as to that?

MR. BENNETT: Not particularly, no.

MS. MUZYCHKA: Okay.

Were you aware that prior to engaging Westney that Mr. Harrington had asked Mr. Kean, who is no longer with Nalcor or the project et cetera, to do some analysis of the top risks identified by SNC. Were you aware Mr. Kean was back involved in this particular issue?

MR. BENNETT: Not specifically. I mean I think there was – I remember at one point Mr. Harrington expressed a desire to use Mr. Kean for some work and consultation with, I think, Mr. Marshall. We just said let's not – let's try to avoid that.

MS. MUZYCHKA: Who wanted to avoid that? Did you say you wanted to avoid that?

MR. BENNETT: A conversation with myself and Mr. Marshall, said and still (inaudible), once Mr. Kean had separated from the organization, it was probably best to move on.

MS. MUZYCHKA: Okay. So –

MR. BENNETT: I think that was done after some of these, what I'd call, relatively – well, I'll call part-time activities had taken place from time to time.

MS. MUZYCHKA: Okay.

So I take it from your evidence that you weren't aware that Mr. Kean was engaged to assist in the review of the risk report?

MR. BENNETT: I found out after that –

MS. MUZYCHKA: After the fact. And when would that have been?

MR. BENNETT: Can't put a date on that.

MS. MUZYCHKA: Was it before the Inquiry, after the Inquiry, while this process was ongoing?

MR. BENNETT: To the extent that there was a desire to – I think when we were – when they were pulling together factual information to support the Inquiry, I think there had been some requests made of Mr. Kean.

MS. MUZYCHKA: No, but I mean in terms of the evaluation of the SNC report.

MR. BENNETT: Timing is all –

MS. MUZYCHKA: Were you aware when it was happening or shortly after it was completed? Or is it something you learned as part of your involvement in the Inquiry?

MR. BENNETT: Yeah, I learned about it after the fact. I don't have a specific recollection of –

MS. MUZYCHKA: Okay.

MR. BENNETT: – when it happened.

MS. MUZYCHKA: All right.

Do you think that there would've been any conflict of interest by having Mr. Kean or Westney involved in evaluating SNC's report?

MR. BENNETT: I think that Westney had done our risk work previously. They were familiar with what risks were included. I'm not seeing the conflict here.

MS. MUZYCHKA: You don't?

MR. BENNETT: No.

MS. MUZYCHKA: No. The report that Westney was involved with Mr. Kean in preparing back in 2012, and then comparing that to see if SNC's report mirrored it, you don't think that there's any sort of bias that may exist by having the reviewer reviewing their own analysis?

MR. BENNETT: It should be a straightforward comparison of the risks that were enumerated in both documents.

MS. MUZYCHKA: Okay, but there would be an element of bias, though, wouldn't you agree?

MR. BENNETT: I don't know. I don't think so. I don't think –

MS. MUZYCHKA: There'd be the appearance of bias.

MR. BENNETT: One could think that there possibly could be but you'd – I think you have to look at the work and say, okay, what was done, how were the risks enumerated and how were they considered.

MS. MUZYCHKA: But it's a subjective process, though, isn't it, to evaluate risk, to identify them, to evaluate them as to the impact that they may have?

MR. BENNETT: Well, the first step is comparison of whether the risk was identified and whether they are the same risk.

MS. MUZYCHKA: But you don't see –

MR. BENNETT: So I don't –

MS. MUZYCHKA: – any issue with it?

MR. BENNETT: I don't think there's a lot of judgment involved there.

MS. MUZYCHKA: No. So, from your perspective, you don't see any conflict of interest or concerns with having the same corporation and individual involved in reviewing a risk analysis, as compared to their own, because that's essentially what was happening. It wasn't just an independent, isolated review of SNC's work, it was: Does it bring anything new that we hadn't already considered?

MR. BENNETT: So did it identify anything new that we hadn't identified before.

MS. MUZYCHKA: Right.

MR. BENNETT: So it's their perspective.

MS. MUZYCHKA: Yes.

MR. BENNETT: Right.

MS. MUZYCHKA: So you're not seeing that that's –

MR. BENNETT: I'm –

MS. MUZYCHKA: – an issue?

MR. BENNETT: I'm not seeing that as a major issue.

MS. MUZYCHKA: Okay. Some would disagree.

MR. BENNETT: I understand.

MS. MUZYCHKA: Okay.

Now, if we turn to tab 87, which is the next document in your binder, it's P-03661. And this is an email from Paul Harrington to you and to Karen O'Neill and Ron Power is copied. And he writes: "Gilbert/Karen

"I believe Nalcor should consider responding to the recent Pam Frampton article regarding the SNC Report that surfaced in 2016 when given to Stan and presumably GNL.

"As you know Westney have carried out an analysis of that SNC report (attached) and have

confirmed that there were no new risks identified in the SNC report and the risks contained in that report were all in the Project risk register, were included in the QRA prior to Project Sanction and were being actively managed and where possible mitigated. I suggest that the Westney report is released because this misrepresentation of the facts by the media needs to be addressed.”

Do you recall the circumstances surrounding that email?

MR. BENNETT: I remember *The Telegram* article, and I would say that there was a desire expressed by members of the project team to, for want of a better term, set the record straight. From a communications perspective, and speaking with members of our communications team, they concluded that that type of effort is not likely to be successful in the media. That was a perspective I shared, and we elected not to move forward with that course of action.

MS. MUZYCHKA: It was not released?

MR. BENNETT: If somebody had asked for it, there would’ve been, you know, a process and disclosure and it would’ve happened as a matter of course. But we didn’t see it to be productive to engage in public dialogue on this topic.

MS. MUZYCHKA: Okay.

So just to go back to the issue of why you would refuse a report at the time that it was brought to light contemporaneously – though it was in 2013 – you say that all the risks are identified; they’re the same risks, so what’s the point of – it’s no new information. Is that my understanding of one of the rationale?

MR. BENNETT: I think what I said was that had the report been put in my inbox, I would’ve –

MS. MUZYCHKA: You would’ve reviewed it, but –

MR. BENNETT: Sure.

MS. MUZYCHKA: – just in terms of going back to what Mr. Harrington’s rationale was, that it didn’t identify anything new. But I guess

it would – just going back to our discussion with respect to the Innu protests and how you had indicated this – the risk of protests and its impact on the construction schedule and costs of the Lower Churchill Project was identified by Nalcor in its risk register, correct?

MR. BENNETT: I recall that the possibility of protest was included in there, yes.

MS. MUZYCHKA: Right. And that in the risk register there was also identification of various mitigation strategies, correct?

MR. BENNETT: Yes.

MS. MUZYCHKA: And when I asked you what value you put on it in terms of the risk potential, you know, contingency amount, you said there was none put in there, that you felt at that time it was fully mitigated.

MR. BENNETT: The effort – the effort was put into the mitigation effort, that’s right.

MS. MUZYCHKA: Right, okay.

But things aren’t static. Wouldn’t you agree? Things change that would trigger a reasonable management team to continuously review the risks and review the contingency, and is it adequate; have we still, you know –

MR. BENNETT: Mm-hmm.

MS. MUZYCHKA: – maintained adequate mitigation processes? Do you agree with that?

MR. BENNETT: I agree with that, yeah.

MS. MUZYCHKA: Okay.

And, yet, there is no evidence that Nalcor went back and looked at the risk register, especially in relation to – just as an example – the Aboriginal risk of protest, and readjusted the figures because you had felt that there was no need; the risk had been already mitigated, correct?

MR. BENNETT: Well –

MS. MUZYCHKA: Because we just talked about that and you had agreed.

MR. BENNETT: What – yeah, but once you – I mean, so we get it out to 2015, 2016, the budget is buttoned down, we’re moving forward with the risks as we identified them and understand them at the time.

MS. MUZYCHKA: But at the time, again, using the protest as an example, there were many things that happened – or a number of things that happened following the DG3 assessment of that particular risk. We had the methylmercury issue arose, there was protest on the North Spur in 2014, there were Make Muskrat Right protests, there was a Rally in the Valley in 2016 and there was – NunatuKavut had blocked the highway.

So these are all things that are happening leading up to 2016 and, yet, there isn’t any sense that Nalcor revisited the contingency for the possibility of protest as having impact on the potential cost of this project.

MR. BENNETT: Notwithstanding those events that happened over a period of time, we weren’t contemplating a large-scale, long-term event.

MS. MUZYCHKA: Despite the incidence of –

MR. BENNETT: Those (inaudible) –

MS. MUZYCHKA: – there were multiple, I’ve listed off six or seven.

MR. BENNETT: Yeah, and they were – they had relatively minor impact on our activities.

MS. MUZYCHKA: Right, but they could be the hallmark of potential escalation of –

MR. BENNETT: I’m just giving you –

MS. MUZYCHKA: – the satisfaction –

MR. BENNETT: I’m just – that’s (inaudible) –

MS. MUZYCHKA: Which I think –

MR. BENNETT: And that’s our point. I mean, we didn’t see those as escalating to the point where the site would be shut down for a protracted period of time.

MS. MUZYCHKA: So, essentially, Nalcor did not recognize them as being potential flags – red flags, warning flags – as to a bigger problem.

MR. BENNETT: Well, they were not – didn’t see those at the time. They weren’t assessing those as escalating to the point where a significant contingency would need to be carried for those.

MS. MUZYCHKA: Okay.

Now, I have – Commissioner, I’m just noticing the time. I have three smaller areas to go through but they’ll probably take more than 10 or 15 minutes. I don’t know if you want to break here and address any further issues with respect to the documents or whether I continue and we’ll go until 4:30?

THE COMMISSIONER: Let’s continue for another 10 minutes or so –

MS. MUZYCHKA: Okay.

THE COMMISSIONER: – and then I’ll address the issue of the documents.

MS. MUZYCHKA: Fair enough.

All right, so I’m going to touch on the CH0009 bid evaluation process. We’ve had some discussions about that and we heard evidence yesterday from Mr. Over and Mr. Snyder?

MR. BENNETT: Snyder, yeah.

MS. MUZYCHKA: Yes, with respect to the bid process for the package and the issue surrounding Barnard-Pennecon being awarded the contract. And there were differences – and I won’t go through it all in great detail because we’ve all heard detailed backstory about the difference between the two bids between Barnard-Pennecon and H. J. O’Connell-Dragados.

And, in particular, concern with the fact that Barnard-Pennecon did not have a cap on its labour, it wasn’t a lump-sum bid. And there was exposure to Nalcor as a result of the way they had their bid structure, correct? So you understand the background.

MR. BENNETT: Yes, I understand. One was –

MS. MUZYCHKA: Okay.

So if we go to tab 88 which is the next document in your book.

MR. BENNETT: Yeah.

MS. MUZYCHKA: And it is P-02814 and this is an email from you to Ed Martin advising him of the award recommendation for Barnard-Pennecon. And here you're saying that the Barnard-Pennecon had a much stronger technical proposal than H. J. O'Connell. Do you recall that?

MR. BENNETT: Yes.

MS. MUZYCHKA: So you would've been involved in the process at a higher level?

MR. BENNETT: I would've been briefed at the end of the process.

MS. MUZYCHKA: Right, so you wouldn't have been involved in the process for selection, is that what you're saying?

MR. BENNETT: The selection recommendation would come to me after the team expended their effort in their technical and commercial review and then were ready to present at the end.

MS. MUZYCHKA: Okay.

So who briefed you on the results of the bid evaluation?

MR. BENNETT: Looking at this note, it was Paul and Lance at the end of the process.

MS. MUZYCHKA: Okay.

And they were presumably briefed by Ron Power, Scott O'Brien and Ken McClintock?

MR. BENNETT: There would've been a presentation, a bid support package and a recommendation to award coming out of the technical and commercial review.

MS. MUZYCHKA: Okay.

Did you get briefed on any of the details of how the bid evaluation was done – things such as evaluation criteria, normalization ...?

MR. BENNETT: So, those details would be in the award – I mean, what I would've seen would be what was boiled down in the award recommendation.

MS. MUZYCHKA: You would've just been provided the ultimate recommendation and not all of the details –

MR. BENNETT: There's some –

MS. MUZYCHKA: – in terms of how –?

MR. BENNETT: – I think, that there was more than just, you know, here's who we're going with; there was a rationale for why that preferred contractor would've been picked in any package. I'm surprised we don't have that award recommendation.

MS. MUZYCHKA: It's – well, they're consulting with you. I mean, they haven't actually made the award, but they do say: We've been through the award recommendation; we're all on the same page. Our plan is to issue Limited Notice to Proceed –

MR. BENNETT: Right.

MS. MUZYCHKA: – to Barnard. So, it seems like it's giving you an opportunity to weigh in if you wanted to.

MR. BENNETT: Well, no, there's an award – there's no – well, there should be an award recommendation at this point in time with it buttoned down and a preferred contractor clearly selected. So, it's not as if we were going to continue and try to pick which contractor was going to be going after an LNTP was issued.

MS. MUZYCHKA: No, no. I understand that, but, I guess, my point is, is that you – they selected the successful proponent, but I take it from the way the wording is that they had not awarded it at that point and they were advising you that this is what the plan was, or were you told a bit after the fact that we've awarded it to Barnard-Pennecon?

MR. BENNETT: The – normally, the way this process would work is that the award recommendation would be documented, preferred contractors identified, and then what would proceed from there is, ultimately, we’re going to go to a requisition signed with the – you know, with the successful proponent as well as the contract. And given the magnitude of that work, it was going to go to Mr. Martin for a signature.

MS. MUZYCHKA: Right. So –

MR. BENNETT: The LNTP was a step along the way. And it would be evident to me that if we’re issuing an LNTP, the process is complete.

MS. MUZYCHKA: Process –

MR. BENNETT: We’ve selected –

MS. MUZYCHKA: Right.

MR. BENNETT: – and it’s been documented.

MS. MUZYCHKA: Okay. ‘Cause you’re writing to Mr. Martin at that point and saying this is –

MR. BENNETT: This is –

MS. MUZYCHKA: – this is what we’ve done.

MR. BENNETT: This was the preferred alternative.

MS. MUZYCHKA: Okay.

You note two comments about Barnard-Pennecon’s project team. You say that they are a “solid project team with significant RCC experience in the team leadership,” and you also say that their “senior leadership with JV partner with greatest experience,” correct?

MR. BENNETT: From the award recommendation.

MS. MUZYCHKA: Were you aware that there had been some question as to whether Barnard-Pennecon could actually send the team – the senior team that they had proposed to actually complete the project or execute the project?

MR. BENNETT: So the comments here would’ve been based on the award recommendation as documented and the work – the collective work of the team.

MS. MUZYCHKA: Okay, so you pull these out of the award recommendation?

MR. BENNETT: They would come from the award recommendation, yeah.

MS. MUZYCHKA: That you didn’t write yourself but that was presented to you in your capacity.

MR. BENNETT: That’s true. That’s correct.

MS. MUZYCHKA: Okay. But were you aware that there was possibility that the senior team – leadership team and the solid project team that they talked about might not actually be the team that was sent to the –

MR. BENNETT: I think there’s inevitably some risk that the contractor doesn’t follow through with the team that they’ve put forward.

MS. MUZYCHKA: Right.

MR. BENNETT: But this is a commitment they’ve made and these are the people they’ve identified.

MS. MUZYCHKA: Okay. So on the strength of their commitment –

MR. BENNETT: Strength of the, you know, analysis and the recommendation and process that we’re in.

MS. MUZYCHKA: All right.

MR. BENNETT: This is how we got to this conclusion.

MS. MUZYCHKA: And we’ve heard evidence from Mr. Mulcahy, Mr. Snyder and Mr. Over that while they had had some input into the bid award document, they had not reviewed the final draft. In fact, we heard from Mr. Over that his name was signed on the final document without his knowledge. I believe Ken McClintock signed for him because he was in Montreal or somewhere. Would you have the same

confidence in this award recommendation if you knew that only one person on the bid evaluation team had drafted and reviewed the final document?

MR. BENNETT: It would have been – I guess I wasn't aware of that activity at the time.

MS. MUZYCHKA: You weren't aware? No. And you would have seen, on the bid evaluation document, signatures by Mr. McClintock on behalf of Mr. Over and Mr. Snyder.

MR. BENNETT: Not uncommon to have somebody sign for somebody else. But as a matter of practice, I would expect that when that happens that the subject matter has been discussed with somebody else –

MS. MUZYCHKA: Okay.

MR. BENNETT: – with that person.

MS. MUZYCHKA: So it wasn't brought to your attention that they weren't involved in the final review?

MR. BENNETT: Well – was – they weren't involved in the final review or is there some inaccuracy?

MS. MUZYCHKA: Or haven't – well, they hadn't reviewed the final draft.

MR. BENNETT: Okay.

MS. MUZYCHKA: So that wasn't – you –

MR. BENNETT: But was there any distinction in what was in the draft compared to what they – what their input was?

MS. MUZYCHKA: There might have been some changes.

MR. BENNETT: Were there?

MS. MUZYCHKA: There were slight changes.

MR. BENNETT: Okay.

MS. MUZYCHKA: But – not that I can pull them out for you here now but –

MR. BENNETT: Okay.

MS. MUZYCHKA: – the point being that –

MR. BENNETT: And I find myself in the same boat. Yeah.

MS. MUZYCHKA: – the final version – one would normally expect that all participants would sign off, correct?

MR. BENNETT: You know, it's not unusual for, you know, someone to be out of town and have somebody sign for them. I guess what's really important here in the records is did the evaluation – did their gradings and ratings work into the evaluation and was there any issue with the info – the input that they provided.

MS. MUZYCHKA: Okay.

MR. BENNETT: It's not unusual to have somebody sign off on some – on behalf of somebody else and we look at the number of signatures that are on a given document than people being in or out at a given point in time.

MS. MUZYCHKA: Fair enough.

Commission has heard some evidence that the scoring team made a recommendation based on a revised scoring criteria, and that they were told in a meeting on July 24, 2015, to revert to the original scoring criteria. Were you aware of that?

MR. BENNETT: Not at the time.

MS. MUZYCHKA: But you since became aware?

MR. BENNETT: Through commentary here.

MS. MUZYCHKA: Right. That there were some issues.

So at the time you wrote this email to Ed Martin advising of the award to Barnard-Pennecon, those issues with respect to the scoring criteria being suggested to be changed, the possibility that two members or more of the team had not seen the final draft, those weren't available – that information wasn't made available to you?

MR. BENNETT: I wasn't apprised of any issue with the evaluation and the recommendation that was brought forward.

MS. MUZYCHKA: Okay. All right. Thank you.

THE COMMISSIONER: Okay, I think we'll end here for today.

So, Mr. Ralph, I appreciate your coming over. On the break this afternoon, I was advised that you were having some difficulties gathering all the documents, and so what I'm trying to figure out is, first of all, when we're going to get them and how much we're going to get.

MR. RALPH: So, we went back to – there was – I spoke to Ms. Dinn this afternoon and –

THE COMMISSIONER: Okay. Just excuse me there for a second.

MR. RALPH: Yes.

THE COMMISSIONER: Mr. Bennett, if you wish, you can step down.

MR. BENNETT: Oh, thank you.

THE COMMISSIONER: (Inaudible.)

MR. RALPH: And we agreed that we'd go back to the sort of eight essential departments. They are Finance, Natural Resources, Justice, Environment, Indigenous Affairs, Labrador Affairs, Intergovernmental Affairs, Cabinet Secretariat and the Premier's office. And so that the search in all those are complete, except for there's an ADM, a Corey Snook in Natural Resources, who's on the road, and he believes that there may be some entries in his notebook that would be relevant to the Inquiry. And so when he gets back, he's going to give us those, those notebooks. And also he suggested there may be some notes on his desk that are relevant.

So everyone else has given us – and I was a bit worried, 'cause I said to you, I think, yesterday that on Wednesday, I spoke to the clerk and Mr. Carter, and they had notes that they had not provided. And so I was concerned that this was a fairly systemic issue. And as it turns out, I don't think that's the case.

THE COMMISSIONER: Okay.

MR. RALPH: That – you know, so there's one additional item from Environment, one from Indigenous Affairs, one from Labrador Affairs. There's six from Natural Resources. I know two of them are regard to a board meeting at Nalcor that took place today. So I think they're likely – I know there's bits and pieces that they've kind of – they've swept through the departments again and they've found bits and pieces. The lion's share of the material that we found came from Cabinet Secretariat. So, there's 40 records that came from the clerk and the deputy clerk, and there's also notebooks – I don't know how many records – the notebooks of a former ADM of John Cowan, who's now in Cabinet Secretariat, those were provided to the Commission this afternoon before 4 o'clock. And I don't know how many records they are, but in total right now, by my count, there is approximately 67 records.

THE COMMISSIONER: Okay.

MR. RALPH: So it's not – and it's a significant amount of material, but I don't think it's – it's not what I was kind of worried about when I first alerted the Commission that there may have been a problem. I was concerned that departments hadn't searched for notebooks and written records and notes, but it appears as though they did. However, there were some written notes and records that were in Cabinet Secretariat that weren't forwarded for whatever reason. And I don't – I can find an explanation for that, but right now I don't have one.

THE COMMISSIONER: All right. Okay.

MR. RALPH: So it's not as bad as I first sort of –

THE COMMISSIONER: Okay. So what is the time frame for these notes? Is it – because the other bit of news that I received this afternoon on the break was that we – that you had actually located documents going back to 2006. So is that the case?

MR. RALPH: No, I'm not sure if that's the case or not. I'll tell you what we did – 'cause my worry was that we had not been responsive to

the original summons, and the original summons used that date.

THE COMMISSIONER: Okay.

MR. RALPH: So I told the departments – we sent an email right after you had spoken about this this morning in the hearing room. And so, I said, well, let's make sure that we go back to 2006. When we go back to the departments, tell them 2006. Make sure that we're responsive.

THE COMMISSIONER: So –

MR. RALPH: So that's – it wasn't that we – you know.

THE COMMISSIONER: Okay. So as a result of it, the documents that you were getting, are they primarily for the period – like, you said – or like it was indicated this morning – 2018, 2019? Is that what –?

MR. RALPH: I think that's probably fairly accurate. Except for – I think Cabinet Secretariat documents might go further back. Again, I think it's fairly recent 'cause I think – right now, the clerk and the deputy clerk have not been in their positions for a long time, so I don't think it would go back a great deal.

THE COMMISSIONER: (Inaudible.)

MR. RALPH: So I think it's closer in time than, you know, certainly 2006, '10, '12, '14. I don't think it's that era. I think it's probably in the last couple of years.

THE COMMISSIONER: Okay.

MR. RALPH: And I haven't gone through these documents. You now have all of it – the Commission has all these documents except Corey Snook and John Cowan. One is an ADM of Natural Resources, and – actually you do have John Cowan's, now that I think of it. But we brought over his actual books. It was gonna take too long to photocopy them. So we brought over his notebooks.

Mr. Snook is on the road, and as soon as he gets back, he's gonna get those for us.

THE COMMISSIONER: So when is he gonna get back?

MR. RALPH: I believe it's this evening.

THE COMMISSIONER: Okay, so we will have those tomorrow?

MR. RALPH: I would think you'd have those tomorrow. I haven't – you know, I was told he's on the way back; when he gets back, he's going to the office, and he's gonna get it for us.

THE COMMISSIONER: Okay. All right.

MR. RALPH: So it's not – I mean, I was worried that they hadn't searched for written notes, but I believe they have. So, like I said, the only – the biggest concern is number of documents that are coming out of Cabinet Secretariat. Otherwise, I think it's little dribs and drabs, and I suspect it won't be particularly significant from the other departments.

THE COMMISSIONER: Okay. But we have everything now except for the Snook documents.

MR. RALPH: That's correct. That's my understanding.

THE COMMISSIONER: All right. Good.

So, I'll be able to assess what we have, and then figure out how we're going to handle it. So, we will try to do a review of those at some point in time. I'm not sure now – based upon what I'm hearing – that it's as urgent as I thought it was, but we will do a review of them. And, obviously, we will providing disclosure to the parties as soon as we can vet them ourselves.

All right. So, we'll adjourn until Monday morning. I think I'd like to start on Monday at – or Tuesday morning, I guess – thank God – Tuesday morning – I'd like to start at 9 o'clock, if possible. So, let's start at 9, and then hopefully we can keep moving with Mr. Bennett. All right. Thank you.

Thank you, Mr. Ralph.

CLERK: All rise. This Commission of Inquiry is concluded for the day.