



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 60

Commissioner: Honourable Justice Richard LeBlanc

Tuesday

25 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: Right. Good morning.

All right, Mr. Bennett, you remain under oath at this time.

And, Ms. Muzychka, when you're ready.

MS. MUZYCHKA: Good morning, Commissioner. Good morning, Mr. Bennett.

MR. BENNETT: Good morning.

MS. MUZYCHKA: I'd like to start first, Commissioner, with entering some new exhibits.

THE COMMISSIONER: Okay.

MS. MUZYCHKA: They are P-04291, P-04323 and P-04324.

THE COMMISSIONER: Okay. All right.

MS. MUZYCHKA: Thank you.

THE COMMISSIONER: Those will be entered as numbered.

MS. MUZYCHKA: Thank you.

Now, Mr. Bennett, I want to ask you some questions this morning, that we had put to Mr. Martin, for your perspective.

EY told us that there's no sense –

THE COMMISSIONER: Okay, can we –

MS. MUZYCHKA: – of –

THE COMMISSIONER: – can we just stop just for a second?

Maybe I could alert people inside that we have a problem.

MS. MUZYCHKA: It's a bit of an echo, isn't it?

THE COMMISSIONER: Yeah.

UNIDENTIFIED FEMALE SPEAKER:
(Inaudible.)

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

THE COMMISSIONER: Okay. Let's try it again now and see.

MS. MUZYCHKA: Okay. I started to say that EY told us that there's no sense of responsibility for Muskrat Falls cost escalation. The focus on completing the project regardless of the cost, with government being there to provide unlimited funds. Nalcor's view is the cost increases are unfortunate but the long-term benefit surpasses the cost increases. So, I'd like your comment on whether or not you believe that statement is (inaudible).

MR. BENNETT: I think we were – you know, we've always been concerned about cost. We've always tried to take actions to mitigate risk and minimize the cost to the extent we – to the extent we could and to the extent that were possible.

MS. MUZYCHKA: But, is there a sense of completing this project regardless of cost?

MR. BENNETT: The consequences of not completing are grave. We'd have an asset that's partially built – that we'd invested in that wouldn't be complete. So, needless to say, we're cognizant of everybody's obligation to complete and the commitments that had been made to complete. There had been, I guess, at various times, consideration given to not completing. I understand the consequences of not completing the project, but those are grave consequences as well.

MS. MUZYCHKA: Okay. But, do you believe that the long-term benefits will surpass the cost increases that we've incurred?

MR. BENNETT: We certainly believed that to be the case when project was sanctioned.

MS. MUZYCHKA: Yes. But do you believe it to be the case now?

MR. BENNETT: I think there are a lot of factors, in the business case, that are – that are relevant – if you look at the current conversation on greenhouse gas emissions and fossil fuel use, opportunities to, you know, move the provincial economy away from, you know, fossil fuel in the long term, that's an important consideration that was never included in the business case. And I think the – you know, the extent to which we will benefit in the long term, is largely going to be driven by our desire to use the – use the resource to take advantage of what we have and to actively manage the situation we find ourselves in. I also acknowledge that the capital cost is much bigger than was contemplated when we started.

MS. MUZYCHKA: Right. The focus –

MR. BENNETT: And that is a big deal. There's no question about that.

MS. MUZYCHKA: Yes. 'Cause the factors that would have been taken into account five years ago or six years ago at sanction – or financial close, aren't the same kind of numbers that we're looking at today. Correct?

MR. BENNETT: Not the same as we have today.

MS. MUZYCHKA: Okay. The other thing that EY spoke about was the change of the EPCM team to the IMT process. So, they had noted that this change in strategy – not to have a world-class EPCM contractor manage the project changed rather suddenly to an integrated project management team, and they believe that it wasn't fully thought out, in their opinion.

Do you believe that to be an accurate statement?

MR. BENNETT: No, I don't believe that to be accurate, and I think that the decision-making process that was undertaken there was to expend effort and undertake initiatives to try to improve our EPCM contractor's performance; that this was an adaptive management response, as opposed to a conscious decision from the beginning to change out our contract that we had

– went through an extensive process, to retain in the first place.

MS. MUZYCHKA: Right, but at the beginning, it certainly was Nalcor's preference to have done an IMT or certainly not let on the basis on the EPCM contract, but it wasn't favourable in the marketplace. And then, the change was to go with an EPCM, and then SNC-Lavalin was found to be the successful bidder for that role.

But the transmission seemed to have happened somewhat, I'll say, insidiously over the year and a bit after Nalcor – or SLI was appointed at the EPCM contractor.

Is there any documentation or notes or discussion? I don't see – or, certainly, EY had indicated that they have found little in the way of evidence of, for instance, board briefings or any executive briefings on the issue of changing SNC's role to that of simply an (inaudible) as opposed to EPCM?

MR. BENNETT: So, I'm a little surprised that there's no documentation. There may not be documentation to the board, but each of the decisions that was taken to look at the scope that was in SNC-Lavalin's remit and decisions to augment the team, I think you should find that there is documentation to support those individual decisions.

We need to go back to look at, sort of, why this decision was being undertaken in the first place. It was that SNC-Lavalin was unable to, you know, put – bring the resources to bear, to do what needed to be done insofar as the project was concerned.

MS. MUZYCHKA: Right, and we heard comment that they didn't bring their A-team to the project, as was anticipated. Correct?

MR. BENNETT: That's right.

MS. MUZYCHKA: And, but the – it begs a question: If they didn't bring their A-team, how is that Nalcor thought, with its relatively inexperienced team in terms of managing a project of this magnitude, would be an appropriate substitution for even SLI's B-team?

MR. BENNETT: So, I don't think it was Nalcor's resources in of itself. It was to – the effort was to augment the team with resources from other consultants, with other contractors and other firms, to bring the resources to bear that were needed on the job. I think there're aspects of SNC-Lavalin's work that were, frankly, outstanding. I think the engineering effort, for example, that's an area where we never touched. SNC-Lavalin continues to be our engineering of record today.

With procurement, we had to augment their team. And certainly with construction management, they had difficulty bringing resources to bear. But, you know, it's still – you still have to look at the scope of work that a contractor is responsible for and that that represents the vast majority of the effort in terms of the job.

MS. MUZYCHKA: Okay. But you do agree that changing management of the contract from an EPCM to an IMT process is a major strategic change in terms of the overall project?

MR. BENNETT: I think there are lots of – whether it's a major strategic change or an adaptive management response. I guess the question that begs itself is hoping that SNC-Lavalin is going to get better in the existing model is not likely a path that's going to be successful –

MS. MUZYCHKA: Okay.

MR. BENNETT: – and that some effort is gonna be required in order to augment their capabilities.

MS. MUZYCHKA: Sorry. I was distracted. Could you repeat that?

MR. BENNETT: Sorry. I think my point was that I don't think that, you know, hoping that SNC-Lavalin was gonna get better was a good path to be planning to be going down either, that some effort and some adaptive response to their, you know, inability to bring the resources to bear on the project, you know, needed action and needed a response.

MS. MUZYCHKA: Okay. It just seems that one would expect that the board would have

been consulted on that and to see if they were agreeable with the path that was being chosen by the project management team, that is to supplement the roles that previously had been contracted to SNC to be either contracted out to other agencies or from within. And it's just the absence of any record that it was within or brought to the board for consideration is surprising.

MR. BENNETT: Now, I'm not sure where the board – you know, where the board would fit into that decision-making process. I would have expected that that – you know, to the extent that it's more – I think, in fairness, it's more of a CEO decision to the extent we go there.

MS. MUZYCHKA: No. But in fairness, though, the board oversees the decisions that are made with respect to AFE and in terms of strategic decisions with respect to the contract. And it is a large contract, and the board would have been told, at the outset, here is how we're going to be managing this contract. We've retained world class engineering firm SNC-Lavalin to do the EPCM aspects of the project.

And then, with that comfort that they have knowing that the project is in good hands, the project management team starts to, over the period of a year and bit or year and a half – I believe it took – to change that model, and change it in a significant way. I mean, they're two distinct models of management of this megaproject, so it would seem that this would be the kind of information that the board would want to know to ensure that they were comfortable with the current set up as the project moved forward. Do you agree with that?

MR. BENNETT: Yeah, I'm not sure. I'm not sure I do in the sense that, you know, the decisions to augment the team aren't a – that's not an overnight decision, right? That's not something someone came in one morning and said, okay, we're just going to change out the entire team. These were decisions to augment resources in response to our EPCM contractor's inability to bring the desired capability to the table.

And I'm not aware of a conversation – I can't recall any conversation (inaudible) so I have a concern with this, I need you to roll it back. Had

we been given that direction, we certainly would have gone back and said: Okay, this is not where we want to go. We're going to go back to our EPCM model. We'll terminate the contractors that we've augmented the team with and we'll get the best we can out of SNC-Lavalin.

MS. MUZYCHKA: Mm-hmm.

You know that the change in management model was documented in SNC's 2013 risk report as a risk on their risk register?

MR. BENNETT: I understand that SNC-Lavalin was not happy at all with the decisions that were taken, but they had no solution to the problem.

MS. MUZYCHKA: Okay. But the fact that the change in management model or structure is recognized as a risk to the project in their risk assessment report. Do you agree that that is a valid risk to be identified and quantified and mitigated?

MR. BENNETT: I think the risk – so there were two risks in that description as I see it. The first risk is the EPCM contractor is not performing. That's a big risk.

MS. MUZYCHKA: Okay.

MR. BENNETT: And then, yes, I'd acknowledge that a significant change to the project organization is also a risk. And that being said, someone has to make a decision and say, okay, which way are we going to mitigate this. And SNC-Lavalin have been unable to bring forward the resources necessary to complete the job effectively, and, you know, the collective view was that augmenting their team was a lower risk alternative than having them fail.

MS. MUZYCHKA: Okay.

We heard testimony from James Meaney when he was here in March, I believe, in which Mr. Learmonth pursued a line of questioning with him with respect to the monthly reporting requirements to Canada. This would be the monthly financial reports as to the status of the project, correct? You're familiar with those reports?

MR. BENNETT: You mean the construction reports?

MS. MUZYCHKA: Yes, construction reports –

MR. BENNETT: Yeah.

MS. MUZYCHKA: – and they set out the cost to complete, final forecast cost so that progress can be measured on a monthly basis. Is that correct?

MR. BENNETT: Yes.

MS. MUZYCHKA: Okay.

And I understand that you were the person, in your capacity as the EVP, to sign off on those reports.

MR. BENNETT: Yes, that's right.

MS. MUZYCHKA: And just for – by way of background, I'll ask Madam Clerk to bring up Exhibit 02400.

THE COMMISSIONER: 02400.

MS. MUZYCHKA: Just bringing this one up for context – the numbers or the – no, it's P-02400. It's a screen exhibit. There you go.

THE COMMISSIONER: So this one will be on your screen. It's not in your book.

MR. BENNETT: Okay.

MS. MUZYCHKA: Yeah. No, the next few exhibits are gonna be – are not in the book.

Now if we scroll to – this is an email from James Meaney to various individuals – Canada, the independent engineers and so on. This one is dated Friday, December 20, 2013, and it says, "In accordance with the provisions of the ... project finance agreements," you're attaching the respective construction reports dated as of December 20. So I assume that an email like this goes out monthly to Canada and other individuals.

MR. BENNETT: Yes, that right.

MS. MUZYCHKA: Okay.

And if we scroll to page 13.

Okay, this is the construction report. This one relates to the generation facility, I guess. So we can scroll down and – to the third-last paragraph. Right there is good. And it says that you, as the vice-president, “... do hereby certify the matters set forth in Section A and Section B below.” And then as you carry on down, it says you’ve conducted investigations to provide information in the report. Continue on to the next page.

“... Schedule ‘A’ is a true and accurate table detailing ... Hard Costs ...”

“... Schedule ‘B’ is a true and accurate analysis of the Cost to Complete”

And if we just go to page 18 to look at schedule B.

Okay, we can scroll that up a little bit.

So this table, here, outlines the project budget, the incurred costs, the final forecast cost and then the cost to complete. And presumably the difference for cost to complete would be based on what’s been expended of the budget and what’s remaining.

MR. BENNETT: Yes, that’s right.

MS. MUZYCHKA: Okay.

So, in this case, the number is 3,265,278. Now, it’s hard to just – that’s just a portion that relates to the generation facility. And I guess the other reports dealing with the LIL and other parts would have similar numbers, but they would all add up to the budgeted AFE. Is that –?

MR. BENNETT: That’s correct, yes.

MS. MUZYCHKA: That’s correct.

MR. BENNETT: Yep.

MS. MUZYCHKA: Okay.

I understand further from Mr. Meaney’s testimony that the final forecast cost does not change in the report unless there’s a change in the AFE. Is that correct?

MR. BENNETT: That’s right.

MS. MUZYCHKA: Okay.

And so for each monthly report, unless the AFE is changed, the final forecast cost will always be the same number and the cost to complete will obviously be determined based on the AFE of the day.

MR. BENNETT: That’s right, and then there’s a draw from contingency as you work month over month.

MS. MUZYCHKA: In the sense that you draw from contingency before you get an approval for a new AFE?

MR. BENNETT: A new AFE, right.

MS. MUZYCHKA: Okay.

So, now, if we look at Exhibit P-02412 – and this is a document prepared by James Meaney. And it’s entitled: The LCP 2015 Cost Update Chronology. Are you familiar – have you seen that before?

MR. BENNETT: Yes, this is vaguely familiar.

MS. MUZYCHKA: Okay.

Now, we can see that in February – we’ll look at 2015, February 13, 2015 – there was, on the third bullet: “PMT indicated \$7.49B AFE revision required to award upcoming contracts.” So that’s February, and there’s reference to a cost and schedule update briefing being presented to Ed Martin by the PMT. Do you see that?

MR. BENNETT: Yes.

MS. MUZYCHKA: Okay.

So, up to that point then, the AFE would’ve been 6.99. Is that correct?

MR. BENNETT: February ’15, yes, that sounds right.

MS. MUZYCHKA: All right.

So then we see that in March of 2015 there is further discussion with respect to the need to increase the AFE, and there's a plan in terms of having to bring the – prepare the AFE in March-April of 2015 with submission to the boards in June 2015 meetings, and then it would go to Canada and the IE. Correct?

MR. BENNETT: Yes, that's right.

MS. MUZYCHKA: Okay.

And so if we just scroll down – and without having to go through the whole document, we know that delays occur and the approval actually doesn't take place until September 21, 2015. So if you go to page 4 of that document and we go down to the September 21 date – all right, so then the approval with the board is – was granted. So I'm getting to the point now in a moment.

We then can see that from February of 2015 to September of 2015 the monthly reports continue to report the cost to complete based on the 6.99 figure. Correct?

MR. BENNETT: Yes, that's right.

MS. MUZYCHKA: So that's what would've happened because you wouldn't have been able – you wouldn't have changed it based on the structure of the form. And you've indicated that until it's formally changed the old budget number is used, correct? Or the old AFE is used.

MR. BENNETT: So the reference is with respect to the current AFE.

MS. MUZYCHKA: Okay.

So now let's turn to P-02290. And, again, that's going to come up on your screen.

And this is the letter we've seen before – is a letter from Alison Manzer dated Friday, October 16, 2015. And she has – writes that she's "been asked to send you the attached to ensure we have an agenda to discuss the cost overrun situation and develop a more solid and timely reporting process around this issue."

And if we turn to the next page – and that's her letter – it's addressed to James Meaney. And just

go up to the first paragraph, Madam Clerk. There you go. Thank you.

And so, in essence, she expresses concerns that she's first learning, during a call with the independent engineer and Nalcor, that there have been cost overruns to the project. And she felt – she writes that the she and the IE felt "that the buildup of these overruns, and a proper estimate of further anticipated overruns, should have been identified on a month to month basis in the course of the regular monthly reporting, and the recently held site visits."

So, from this letter, it appears that Canada and the IE were not aware of the increase or proposed increase in the AFE to 7.49. It's a \$50-million dollar increase, which you were aware of in February, was going to be required in order to let the further contracts – that they're only learning about it in September 28 during a call.

And so she expresses displeasure with the process and that it's simply not acceptable that Canada and the IE are not being kept apprised of the cost overrun. Do you – is that consistent with your recollection?

MR. BENNETT: I think that's the gist of the letter, yes.

MS. MUZYCHKA: Okay.

And then she requests a revised reporting procedure "which will avoid these types of unreported, and unresponsive, identification of delay and cost issues." And then she summons Mr. Meaney to Ottawa to address the problem. Is that correct?

MR. BENNETT: I'm not sure about the summoning Mr. Meaney part.

MS. MUZYCHKA: Okay. Well, if we scroll down to the letter, she arranged for a meeting to essentially –

MR. BENNETT: If she – if it's here, yeah.

MS. MUZYCHKA: She called a meeting and said: We need to talk about this.

MR. BENNETT: Yes.

MS. MUZYCHKA: So, you know, I take it, from the tone of the letter, that this was a fairly serious issue for Canada as the financier of this major project.

MR. BENNETT: I'd agree with that.

MS. MUZYCHKA: Okay.

And understanding that your forms aren't the way you had been doing it all along, do you feel that Canada would have had the right to feel misled as to the true cost to complete the project, based on the monthly reports, when you signed off certifying that the project was on budget when in fact it was not?

MR. BENNETT: I think I recall in this one that we have, in previous construction reports, disclosed and explained to Canada how we were doing the math and how the cost-to-complete calculation was done. What we have done since then is had a, I would say, a more fulsome or better discussion about emerging risks. And today – well, first of all, I'd say that the methodology for the calculation of the construction report is exactly the same as today as it was in 2014 or 2013 or 2015.

MS. MUZYCHKA: Now, this report is derived from your project control system, is that –?

MR. BENNETT: Yes, it is. Yeah.

MS. MUZYCHKA: And can it be changed? Is this something that Nalcor created, this system of reporting?

MR. BENNETT: The – all the calculations with respect to contingency draw, cost-to-complete calculations, the AFE approval, that is – I guess, yes, it is baked into our project control system. But where I was going with this is that we have another conversation where we talk about emerging risks.

MS. MUZYCHKA: Right.

MR. BENNETT: And if you look at our current Oversight Committee report, which we now share with the – Canada, with the independent engineer, with everybody involved, that type of discussion about emerging issues is in there.

MS. MUZYCHKA: But at the time we're talking about, in 2015 in particular, when there was a \$50-million cost overrun and an eight-month delay in reporting it to Canada and IE, that process was not in place.

MR. BENNETT: The construction reporting process is exactly the same. We were not – at least not documenting as well as we are today – I think that's fair – these emerging risks on paper to the folks involved. So that – those emerging risks are now covered in our presentation decks to both the Oversight Committee and to Canada. And that's a change in reporting that was requested by Canada and, of course, I think we would also say it's been requested by the Oversight Committee and we have a more fulsome discussion about those.

MS. MUZYCHKA: Right.

But there are requirements in the project financing agreements that do require reporting, timely reporting, to Canada. Correct?

MR. BENNETT: Yes.

MS. MUZYCHKA: And I gather then from what you are saying is that it was Nalcor's choice to do the reporting based on your project control system and not to augment it with additional information.

MR. BENNETT: And we had explained that to Canada. So there is a note in the previous construction report where we say exactly that. Here is how the cost to complete is calculated. And I don't have the exhibit number off the top of my head but there – I think there's a report from 2014 where we explain exactly that – that the cost to complete is derived from the AFE – from the AFE value.

MS. MUZYCHKA: Right. But, there's no reason that Canada would believe that you would not keep them apprised of emerging cost exposure as you became aware of it. Like, there's nothing in that discussion where you say – here's how we're going to be reporting but we're not going to tell you about our cost increases that we're anticipating until we have approval from the board.

MR. BENNETT: The communication of the cost increase through 2015 took longer than I would have liked but I'm not the – I'm not the prime mover in terms of getting that AFE approved. So, there is a –

MS. MUZYCHKA: I understand. But the point that I'm not sure that you're focusing on is that it wasn't until the letter of Alison Manzer – when she found out eight months after the decision was made to apply for an increased AFE – that there was cost overrun of \$50 million. And the process that you've described –

THE COMMISSIONER: Actually, I think it was more than \$50 million. It went from 6.99 to – 7.4 or so.

MS. MUZYCHKA: 7.49.

THE COMMISSIONER: That's quite a bit. \$500 million.

MS. MUZYCHKA: 500 million. Yes.

THE COMMISSIONER: Yes. Right.

MS. MUZYCHKA: Well, that makes it even worse, doesn't it – to see such large numbers?

Yeah. So, I mean that's, you know, a terribly significant oversight on your part. In certifying to Canada that –

MR. BENNETT: I disagree.

MS. MUZYCHKA: You disagree?

MR. BENNETT: The certification that's on the construction report is in exactly the form that we explained to Canada we were going to follow.

MS. MUZYCHKA: But the cost to complete is an inaccurate statement on the form.

MR. BENNETT: The cost to complete is calculated exactly the same way we said we were going to do it.

MS. MUZYCHKA: But you know that there is a substantial cost overrun to be expected.

MR. BENNETT: There are –

MS. MUZYCHKA: And you need to budget for it and you need to tell the people who are financing the project and the government, as well, because they didn't learn of it until later.

MR. BENNETT: Which government?

MS. MUZYCHKA: The Government of Newfoundland.

MR. BENNETT: I think the Government of Newfoundland was aware of –

MS. MUZYCHKA: They knew a little bit earlier but –

MR. BENNETT: Well, quite a bit earlier, I think.

MS. MUZYCHKA: Okay. But I think the major point here is that – unless Ms. Manzer had drawn it to your attention it would not have occurred to you that they should have been – and the independent engineer – should have been involved in the process of –

MR. BENNETT: So –

MS. MUZYCHKA: – assessing the risk exposure that was facing the project.

MR. BENNETT: And the – sort of, the broader question of how the capital cost is approved – how the funding is received – the interaction with the province – the funding – in this case the funding for the cost increase is actually from the province, not from Canada – how that's communicated.

It is, I would say, sensitive, particularly during that time 'cause we were running up to a provincial election – I'm keenly aware of that. And there's significant discussion between, at the time, Mr. Martin, the premier and the – how that information is released is an important consideration. And we – based on our – based on the reporting process, we're not gonna be the first ones out on that.

What we have done since then is had a broader conversation about emerging risks, and what those risks look like.

MS. MUZYCHKA: And that's done by way of a telephone conversation.

MR. BENNETT: That is either done via telephone, via a face-to-face meeting or a review via telephone of the same deck that goes to the Oversight Committee, where we talk about those emerging risks.

MS. MUZYCHKA: But they're not documented.

MR. BENNETT: Well, they're documented in the presentation material that's used for those meetings and calls.

MS. MUZYCHKA: Okay, but there's no reason that could not have been done earlier in 2015.

MR. BENNETT: You're right, it could have been.

MS. MUZYCHKA: Okay.

And so it's not unreasonable for Canada to have felt that they were not being kept in the loop and, in fact –

MR. BENNETT: The –

MS. MUZYCHKA: – the reports were being somewhat misleading, since there was no footnote or addendum or –

MR. BENNETT: No, I disagree there. The construction report is calculated exactly the way we said we were going to do it. The conversation about the new AFE took a lot longer than I would have liked it to have.

MS. MUZYCHKA: Okay.

All right. I'm going to ask you some questions now with respect to environmental issues.

We can bring up P-00041. I'm not sure where that is in the book.

THE COMMISSIONER: It's not in the book.

MR. BENNETT: Okay.

MS. MUZYCHKA: Okay.

Okay, that's the Report of the Joint Review Panel.

So in 2011, we know that the JRP made recommendations and number 6.7 was to do an assessment of downstream effects of flooding the reservoir. The JRP also said that Nalcor's finding that there would be no downstream effects on levels of mercury in Goose Bay and Lake Melville were unsubstantiated.

Are you familiar with that?

MR. BENNETT: I'm generally familiar with the JRP and the recommendations, yes.

MS. MUZYCHKA: Okay.

So can you tell us what work was Nalcor doing that – responsive to that.

MR. BENNETT: So I think it's important to put in context that the Joint Review Panel report in general went to the federal and provincial governments and then they respond to the JRP, right? The JRP is a – I would say that this report is an advisory process, and then we would look to the decisions that were taken by the two governments in response to the JRP report.

So if we can – maybe we can pull up recommendation 6.7, here just so we – to refresh my memory.

MS. MUZYCHKA: That's a long report. I'm not ... I think it's near the end.

MR. SIMMONS: (Inaudible) 17?

MS. MUZYCHKA: One-seventeen?

MR. SIMMONS: Try 117.

MS. MUZYCHKA: Try page 117?

There we –

MR. BENNETT: There –

MS. MUZYCHKA: – go.

MR. BENNETT: – we go.

MR. SIMMONS: Just start it there.

MS. MUZYCHKA: Yeah, thank you.

MR. BENNETT: And if we go a little further down we'll see the recommendation.

UNIDENTIFIED FEMALE SPEAKER: Keep going?

MR. BENNETT: Keep going, yeah. You'll see it in – I think it's either bold or in a box where they talk about the recommendation. Little further down. It'll be highlighted. There we go.

MS. MUZYCHKA: There we go. Recommendation 6.7.

MR. BENNETT: Right.

So this recommendation is directed at the federal government, Fisheries and Oceans Canada. Baseline measurements, they were taken today. There was further work done, albeit later, of the quantification changes but the – from an assessment perspective, the information that was provided in the environmental assessment, including responses to information requests late in the proceeding, identified pathways for mercury through the food web. We had already undertaken a commitment to capture baseline mercury data; we're doing that today, and there are well over a thousand measurements taken in relation to mercury levels in water sediments, fish and seals.

MS. MUZYCHKA: Is this work that's being undertaken by Nalcor or work that's being undertaken by the Government of Newfoundland and Labrador?

MR. BENNETT: It's work that is contracted by Nalcor to a third-party consultant who has lots of experience in this area, and that was a – I think there were two ways to look at that. I'm pretty sure it was commitment that we had made; it was also a direction from the Province.

MS. MUZYCHKA: Okay, and when did that work start?

MR. BENNETT: Oh, gosh. Baseline data collection for fish, earliest work on that in relation to the project actually goes back to 1998. It was used during the environmental assessment itself.

MS. MUZYCHKA: Nalcor was doing assessments back as far as '98?

MR. BENNETT: Yes.

MS. MUZYCHKA: And did that change at all following the release of the JRP?

MR. BENNETT: No, it didn't. It changed in relation to the work undertaken by the IEAC, and we're collecting data more frequently than we did back then.

MS. MUZYCHKA: Okay, and that was going to be my next question.

MR. BENNETT: Yeah.

MS. MUZYCHKA: So how is it that Nalcor is tracking its obligations under the JRP recommendations? Is there some form of system –

MR. BENNETT: Yes, there is.

MS. MUZYCHKA: – where the data is being managed and tracked for trends or ...?

MR. BENNETT: So we have a – I guess, two points there. First of all, we have a commitment list that tracks our obligations and commitments for both the generation and transmission project. It's an extensive spreadsheet. It's maintained by our environment team and has approximately 500 action items on it. Some are complete, some are ongoing and some relate to future work and operations.

In relation to the – your specific question on methylmercury, we've receive an annual report from our consultant who looks at trends, and the baseline data and provides us with a summary report that we actually have posted to our website and circulate – as I recall – it's circulated to Indigenous groups, provided to government and posted to our website.

MS. MUZYCHKA: Okay.

If we bring up P-04170, and this – so – and that's a letter to Mr. Marshall. If you turn – or continue to scroll, all right, right there.

The third recommendation which states that Nalcor complete the modelling done by Reed Harris by February 2018 so that they could consider it on their final recommendations. This was not done on time.

MR. BENNETT: That's right. There was a technical problem with the modelling exercise.

MS. MUZYCHKA: And so did that get corrected or how was that –?

MR. BENNETT: It did. It ultimately did get corrected. And my recollection on this is that the information was available to the province in the summer of 2018. I think it was late June.

MS. MUZYCHKA: Okay. So what is Nalcor's position now on the downstream effects of methylmercury?

MR. BENNETT: Based on the work undertaken by the multiple consultants who were involved in this process, our view is that the effect downstream is minimal, and we have a disconnect between the Calder model and the work undertaken by our consultants.

MS. MUZYCHKA: Okay.

MR. BENNETT: And our consultants have raised a number of issues with the Calder modelling.

MS. MUZYCHKA: There's a difference of opinion, essentially.

MR. BENNETT: I think it's more than opinion.

MS. MUZYCHKA: Or research or studies, different ...

MR. BENNETT: The work that's been done by our consultants, I look at – if I look at those individuals and the firms that are doing that work, they have decades of experience. They have looked at modelling, measurements and assessment for multiple hydro developments in Canada dating back to the '70s. They have a large body of experience in the area, in the area of methylmercury, modelling and measurement, the process by which human health risk assessments are undertaken is well defined in the industry and they have laid out their work.

MS. MUZYCHKA: Okay.

Now, if we go to P-03669, and we go to page 8, it's at tab 62 of your binder.

MR. BENNETT: Sixty-two.

MS. MUZYCHKA: Tab – binder 2, I believe.

THE COMMISSIONER: Binder 3.

MR. BENNETT: Three.

THE COMMISSIONER: Binder 3.

MS. MUZYCHKA: Binder 3, sorry. It's really just that one page, so it's –

MR. BENNETT: Okay.

MS. MUZYCHKA: – if you look at it on your screen, it's fine.

MR. BENNETT: Okay, it's the same. Yeah, all right.

MS. MUZYCHKA: It's the same thing.

Nalcor engaged Westney to do an analysis which was included in the 2018 QRA, and in that analysis Westney indicated that this Inquiry could cost the project \$135 million. Do you see that there, "Impact of judicial inquiry"?

MR. BENNETT: Yes, I do.

MS. MUZYCHKA: Do you think that this number is accurate?

MR. BENNETT: I would – you know I – we look at these numbers they have, you know, three significant digits on them, and these are, you know – so, you know, is it a – so accurate, I guess, is a bit of a challenging concept when we think about risk and uncertainty. I think the order of magnitude, approximately \$100 million, is not unreasonable. There are multiple ways that this impact could occur. So I don't think it's an unreasonable number. I guess, when you think about accuracy, it's not something that's readily audited.

MS. MUZYCHKA: It's a risk.

MR. BENNETT: It's a risk.

MS. MUZYCHKA: Right.

MR. BENNETT: Right.

MS. MUZYCHKA: And Westney has quantified it by using \$135 million.

MR. BENNETT: That's where they landed, yes.

MS. MUZYCHKA: Okay.

Do you – can you identify any specific costs of the Inquiry to the project?

MR. BENNETT: The cost areas that we were concerned about were, you know, the focus of the project team, losing key members of the project team, the implications on our commercial arrangements with our contractors. Some of those risks have not materialized, some of them have to varying degrees and some of them could happen in the future.

MS. MUZYCHKA: Okay. So, again, it's a risk assessment but it's not based on any concrete numbers.

MR. BENNETT: I don't have evidence that I can point to to say: Here's a cost, here's a dollar value that has occurred.

MS. MUZYCHKA: Okay.

MR. BENNETT: Those risks are out there and we're doing what we can to mitigate those by focusing the team on their current activities to complete the project and, as Mr. Marshall says, to finish strong and get the project complete.

We are doing what we can in relation to the commercial impacts. So we're taking steps to mitigate, but until we're done, those risks aren't fully retired.

MS. MUZYCHKA: Okay.

Do you think that these costs or that number would be less if the Inquiry had been called after commissioning of the Muskrat Falls facility?

MR. BENNETT: To the extent that the – whatever contractor, commercial issues exist have been dealt with, probably so.

MS. MUZYCHKA: In what respect?

MR. BENNETT: Well, I think that, you know, we would complete our – we would complete the work, contracts hopefully would be closed and resolved and that issue wouldn't be there.

MS. MUZYCHKA: Okay.

So, I guess, the main unknown would be the effect on potential outstanding claims?

MR. BENNETT: I think that's the main one. The impact on the project team, so far we've been able to mitigate that one.

MS. MUZYCHKA: Okay.

MR. BENNETT: And we're working toward the end of the process, so I'd like to think that that risk is starting to reduce, but it's still there. We still have key people to complete key work as we get to the end of the job.

MS. MUZYCHKA: Okay.

Just on this topic and we see that this number is something that's not easily ascertainable, but yet Westney has attempted to put a value on it for contingency purposes, agreed?

MR. BENNETT: They have attempted to put a number around it, yes.

MS. MUZYCHKA: Okay, because when we talked on Friday about why a QRA wasn't done in 2014 with respect to the changes that were occurring and the uncertainty created by the Astaldi situation, you had indicated that things were too uncertain to be able to properly quantify that risk. Do you recall –

MR. BENNETT: Yeah.

MS. MUZYCHKA: – saying that?

MR. BENNETT: I do.

MS. MUZYCHKA: And do you understand, though, seeing how Westney attempts to put a

calculation on another uncertainty, such as the impact of the Inquiry on the project cost – can be done and should be done in a sense to try and quantify potential exposure? It may not come to fruition, as you say –

MR. BENNETT: Right.

MS. MUZYCHKA: – and there are mitigation measures, which you can take, but there is – it allows the owner to, at least, have a sense as to the possible risk that the project faces.

MR. BENNETT: There is still a fair bit of uncertainty in terms of, you know, what that value is, and our effort to mitigate the impact of these various issues really didn't change with the quantification or with the effort that Westney went through here. So, while they put numbers here – they didn't terribly inform our mitigation effort. And I still – you know, if we look at the risk back in 2014, 2015 – the challenge was clearly in front of us, we knew what mitigations were required and, you know, the benefit of QRA in the middle of that process, I still believe is questionable.

MS. MUZYCHKA: Okay.

MR. BENNETT: This information here is interesting but to the extent that it's after the fact. It's not going to change the – how the Inquiry unfolds. Now, there may be things that can be done to mitigate impact, and I think counsel has been speaking about that, but in terms of the process: the process is under way; the terms of reference didn't change; the process is unfolding.

So, the dollar amount is, you know, is interesting but, really, the challenge for the project team and for the management and executive and board at Nalcor is to minimize this impact, notwithstanding the number that's there.

MS. MUZYCHKA: But you do understand the purpose of a risk assessment, because if you knew what it was and it was certain, then it would not be a risk. Right?

MR. BENNETT: That's correct.

MS. MUZYCHKA: And if you then know that the project faces a number of risks, you appreciate the importance of assessing the risks and attempting to put a number on them.

MR. BENNETT: I think the important thing is understanding what the mitigations are, and the mitigations, to some extent, are independent of the number.

MS. MUZYCHKA: Right. But we talked about mitigation, for instance, of the Indigenous protests, and Nalcor had determined that they were a risk, but that those measures had been taken to mitigate the risk and in fact assigned no dollar figure to the – to that column of –

MR. BENNETT: But it didn't stop the mitigation is the point. The risk was understood to be – you know, looking at the number and whether that number, you know, for that impact is \$80 million, \$100 million and \$165 or a \$135 million, as Westney indicated, didn't change your mitigation approach.

MS. MUZYCHKA: No.

MR. BENNETT: It didn't change your understanding of the issue at hand and the need to do something with it.

MS. MUZYCHKA: Yes, but you knew that there were – there wasn't a risk of further protest action, and we talked about the various protests that had occurred in that period such that it would have been a reasonable risk manager's approach to try and put a number on it.

MR. BENNETT: To what end?

MS. MUZYCHKA: To know what your exposure is.

MR. BENNETT: We – our effort –

MS. MUZYCHKA: (Inaudible) –

MR. BENNETT: – was on mitigating the issue.

MS. MUZYCHKA: But if you can't mitigate everything, you can't extinguish every risk, you do need to know what your potential risk exposure will be –

MR. BENNETT: So –

MS. MUZYCHKA: – as you move forward and plan, and if you don't advise the owner that there is a potential for this to happen, there's a potential for that to happen, we can have a collapse of, you know, a tower or a crane can collapse, or we can have delays in productivity, or we can have weather issues: these all may relate to a slowing down and increasing costs that can be quantified. It's not entirely accurate, but it's a means of trying to put a number on it, an estimate, so that you're prepared in terms of a contingency allowance for that in the event that those things do materialize.

MR. BENNETT: I don't think that there is any scenario where the risk of an Indigenous protest or the stakeholder protest, to be more general about it, would have resulted in a grant of contingency in our current AFE model.

MS. MUZYCHKA: So you stand by your view that zero allowance for this risk was an appropriate one?

MR. BENNETT: In the contingency for the project, in the tactical contingency, yeah, I do.

MS. MUZYCHKA: Okay, that's all the questions I have for Mr. Bennett.

Mr. Collins.

THE COMMISSIONER: All right, Mr. Collins.

MS. MUZYCHKA: I'll just move this.

MR. COLLINS: Good morning, Mr. Bennett.

MR. BENNETT: Morning.

MR. COLLINS: My first question is about the weight of the steel in the Labrador-Island Link towers.

The Commission has heard from Jason Kean that the design of the Labrador-Island Link evolved considerably between November 2011, when engineering was frozen for the purpose of the estimate, and the summer of 2014, when the Valard contract was signed.

And what Mr. Kean told us was that the design changes made construction significantly more difficult and costly. And he gave us an example from his memory.

We can see from the documents that in November 2011, the towers in the Labrador Island Link were estimated to weigh 37,000 tons of steel. When Mr. Kean believed that, at the final design, the weight was more like 50,000 tons of steel, and he pointed to how the additional 13,000 tons had all sorts of construction implications.

If we go to P-04264, which is volume 4, tab 102, we can see that you've indicated with – working not from memory but using your (inaudible) inside Nalcor, you've indicated that in 2014 the LIL was expected to weight only 29,000 tons of steel. So, instead of gaining 13,000 tons of steel, it actually lost 8,000 tons, and after that – subsequent to that, during the construction process, it increased by about 5,000 tons, ending up at 34,000.

Do you know how this effects the narrative Mr. Kean told us?

MR. BENNETT: I didn't catch Mr. Kean's testimony in relations to this. These numbers here, I asked our project controls teams to go back and review our documentation and pull these results.

MR. COLLINS: Are you able to give us some context about what these changes in weight would mean for the construction cost, for the difficulty of installing ...?

MR. BENNETT: Depending on where the steel is, whether it's in the foundations or in the towers themselves, it's a little bit difficult to extract each individual component. As a general statement, if the steel went towards more self-supporting towers as opposed to the guide towers, they take more effort to install. And those different tower types and different tower families were incorporated into the contract.

So I'm having difficulty putting the whole – putting all those pieces together. How much of the steel was in foundation? How much was in towers? How much was in guide towers

compared to how much was in self support structures?

MR. COLLINS: But –

MR. BENNETT: – those are all factors that influence the installation effort and the cost of – I guess, the cost of installing the steel.

MR. COLLINS: So –

MR. BENNETT: That's –

MR. COLLINS: – what I am taking from you answers is, you don't necessarily know, but the increase in weight between award and completion could reflect the changes in foundation types and tower types that we've already heard about.

MR. BENNETT: I would expect that to be the case.

MR. COLLINS: Okay.

MR. BENNETT: Now, that's something that – go back and look at the units in the contract – relatively easy to see where it falls, right? Those details are in the contract documentation.

MR. COLLINS: So, the Commission has heard that the usual measure of how often a transmission line is going to fail is a reliability return period. And, for example, a line will often be built to withstand a one-in-50-year event or a one-in-150-year event. Does that match your understanding?

MR. BENNETT: Yes. Generally, that's the case. You look at the importance of the structure – or the line, rather – and the applicable standards and design approaches drive you towards a reliability return period where you might expect, based on extreme weather conditions, that a structure may fail.

MR. COLLINS: And the choice of a return period reflects the role of the line in the surrounding electrical grid, the consequence of its failure and so forth.

MR. BENNETT: Generally speaking, that's the case. Yes.

MR. COLLINS: So if we go to P-04265, which is volume 4, tab 103 – it's actually just tab 3, but – this is a memo from you to Bob Barnes and Paul Harrington from December 2008, so quite early in this process. And it's about the reliability return period for the LIL at this very early stage of design. I think, at this point, you're planning primarily for Gull Island.

And on page 2, you write: "The design team has quite correctly pointed out that the HVdc link is an essential element in the Island's electrical power system, and I agree with the position that the HVdc link could reasonably require a higher level of reliability than the reference reliability level of 50 years."

Does that reflect your views at the time?

MR. BENNETT: That would reflect my understanding of the standard. The role of this line at the time, yes, I'm not – I don't take exception with that statement. I still look at it the same way today.

MR. COLLINS: If we go on to tab 108, or 8 in the same binder, there's P-04270. We see another answer given that: "The planned reliability return period for the Gull Island ... line was 1:150 years." Is that – that's correct?

MR. BENNETT: Yes, that's consistent with the memo we just saw.

MR. COLLINS: Yeah.

Now, can we go next to P-04040, which is in volume 5? It's tab 30. This is an email we've discussed with Mr. Harrington already. And it's an email from you to him. Well – sorry, if we scroll down the page we'll see an email from him to you. And he's asking you to approve something called Case 8.

Do you know what the relationship is between Case 8 and the Muskrat Falls Project, as it was eventually –?

MR. BENNETT: Not off the top of my head. Case 8, I would expect, refers to a scenario in our Investment Evaluation team. But I've not tracked through whether the design basis in Case 8 is actually the one that we have today.

MR. COLLINS: So from the description of Case 8 in this email, it's a Muskrat Falls stand-alone case rather than a Gull Island scenario. And it's a Muskrat Falls case with Labrador Transmission Assets, a line running up to Churchill Falls, and it runs straight to Churchill Falls with no stop at Gull Island. And it has a 600-megawatt Labrador-Island Link and it's using VSC technology. Is that right?

MR. BENNETT: Yes. In this model we were looking at a voltage source converter similar to the Maritime Link. That did change eventually.

MR. COLLINS: So if we go to P-00097, which is not in the binder.

MR. BENNETT: Just maybe, before we come off this page, what I can say is that Case 8 was a voltage source converter. It's not the current basis of design. So –

MR. COLLINS: Yeah.

MR. BENNETT: – there definitely were some changes between this and what we have today in the current basis of design.

MR. COLLINS: Yes.

Excuse me, P-0097 not P-04097. We'll come back to this document in a moment.

So this is the quantitative risk assessment from Decision Gate 2. And if we go to page 16 and scroll down we'll see that the assessment was done with reference to a capital cost Case 8. And the capital cost Case 8 had a 600-megawatt LIL and it had the Labrador Transmission Assets; it was a Muskrat Falls stand-alone case.

And if we scroll down to the next page we'll see that it also used VSC technology, and that the changes – a number of changes had to be made to Case 8 in order to complete this risk assessment. And one of them was to increase the capacity of the LIL from 600 megawatts to 900, and another was to take out the VSC and put in LCC.

Does that help you identify a case – whether Case 8 might be the same?

MR. BENNETT: It's getting closer.

MR. COLLINS: So Case 8 is – does it seem reasonable to conclude that Case 8 is a near ancestor of the Muskrat Falls Project as it was finally –

MR. BENNETT: Yeah, but it's different though. Case 8 –

MR. COLLINS: It's different.

MR. BENNETT: It is.

MR. COLLINS: It's –

MR. BENNETT: And we'd have to look at what happened to capital cost with these changes that were made here.

So, yeah, it's a – what's the best way to say this – it's an ancestor.

MR. COLLINS: It's an ancestor. It's not the final configuration –

MR. BENNETT: It's not the final product, no.

MR. COLLINS: – but it's an ancestor. That's very helpful.

So if we go back to P-04040, Mr. Harrington writes, the drive behind this – it's in the middle of this paragraph: "The drive behind this Muskrat Stand-alone case was to get the cap costs down as low as possible because we were advised that the LCC case did not work. So that caused the team to go with VSC ..." and he described that a bit. But if we skip, he says, "also the return period for the transmission tower design was reduced to 1:50 years"

And so what I take from this is that the return period, which had been 1 in 150 years in the Gull Island cases, was reduced to a 50-year return period, at this point, in order to reduce capital costs. Does that seem right?

MR. BENNETT: I think the other observation I'd make there is that the line is smaller, right? So the dependence of the Island on this individual supply is less of an issue than it would've been with the larger variant that we previously spoke about that it also delivers a significant block of power from Gull Island into

the Maritime provinces. So, all those factors in play.

MR. COLLINS: So that's certainly a possible reason for reducing the return period, but if we look at this email it describes – it says: The drive behind the case was to get the cap cost down as low as possible.

MR. BENNETT: That's what the project team is saying. Ultimately, I guess from a planning and reliability perspective, Newfoundland and Labrador Hydro, as we're going to see later in the PUB process, is going to have commentary on this return period and what it means to reliability on the system.

MR. COLLINS: So there may have been further analysis before this decision was reflected in Decision Gate 2 – it was retained.

MR. BENNETT: Yes.

MR. COLLINS: But the initial drive to lower the return period to 50 years was to get the cap costs down as low as possible.

MR. BENNETT: Looking at the capital cost, it would appear here that the team was looking at a variety of alternatives to say, okay, how can we re-optimize this?

MR. COLLINS: Do you – so –

MR. BENNETT: The return period would certainly be one of those.

MR. COLLINS: In the team that Mr. Harrington asks you to sign off on Case 8, do you recall if you did?

MR. BENNETT: I don't. I don't recall. I know that this evolved into the formal basis of design for DG2 – evolved into the material that was provided to the PUB review back in 2011.

MR. COLLINS: And so, when the Muskrat Falls Project – the – sorry, the descendant of this Case 8 passes through the DG2. This choice to – do you know if this – the choice to keep a 50 year return period was retained?

MR. BENNETT: My recollection is that – at this time – we were thinking of Hydro's 50 year

reliability standard, and that's, ultimately, where this goes, through DG2 into the PUB review.

MR. COLLINS: We're certainly going to go there, but –

MR. BENNETT: Right.

MR. COLLINS: – just – at DG2, the term period was 50 years.

MR. BENNETT: That's what I recall, and we can see that from – we will confirm that if we look at the basis of design for DG2.

MR. COLLINS: So, I'm going to – there are a few background points, at this point. Nalcor tested the towers against a variety of weather loadings. Can you tell me what weather loadings are and how they're used?

MR. BENNETT: So, okay – I'll try with a general description of how the transmission line designer goes through the design effort.

So, we look at the process of actually sighting the structures that comprise the transmission line. The designer has a series of conditions that all have to be met in order to have a successful design. The line has to have adequate clearance above the ground. So, you'd have to have structures located in the right place that maintain clearance from the ground underneath – undertaking the consideration to what the line crosses, whether it be highway crossings or whether it's just somebody walking under the line, you have to do that in summer. In winter, you have to look at various failure conditions on the line. What happens if a conductor breaks? Will the structures still stay up? So, there are a variety of situations there that the designer has to consider – make sure that they have a successful design.

And then, finally, when we get to meteorological conditions, the line would be designed to withstand a set of meteorological loading criteria. Typically, we look at wind. We look at ice, and, for the most part, that glaze ice or what we would see as sleet or freezing rain. But there are areas in the province where we have rime ice that accumulates on the structure, so we have a design criterion for that. And then, finally, you look at a combination of wind and ice loading.

So, there's a combination of structural, clearance and meteorological conditions that all have to be met in order for the designer to say, I have a successful design.

MR. COLLINS: And so my understanding is, instead of giving the designer – instead of asking the designer, build me a tower that will have a return period of 50 years, you would normally ask the designer, build me a tower that can stand 120 kilometre winds and 60 millimetres of glaze ice, and maybe some (inaudible) cases, but you'd tell them what conditions the tower needs to be able to withstand.

MR. BENNETT: That's right. There's an effort where you look at the available information, be it from a standard or operating experience, you establish criteria for meteorological conditions, and then you provide those to the designer.

MR. COLLINS: So, Commissioner, Nalcor produced loadings for a number – for wind, glaze ice, rime ice and some combinations. To simplify this discussion, I'm – we're going to focus exclusively on the loadings for glaze ice, which is what happens when freezing rain strikes a tower or a line.

So, in order to prepare the loading for rime ice, how many millimetres – of glaze ice – the tower needs to be able to withstand – what I understand is you start off by gathering weather data. From that, you extrapolate how much – what would be an extreme level of glaze ice that you'd encounter once in 50 years. And then you – and that becomes your loading. That's how you develop a glaze ice loading for a 50-year return period.

MR. BENNETT: Or for –

MR. COLLINS: At a high level.

MR. BENNETT: Right. For – or for any return period.

MR. COLLINS: Yes.

MR. BENNETT: I guess Hydro's experience, particularly on the Avalon – historically, we know that the Avalon Peninsula has been challenging with respect to ice accumulation, and there have been significant outages over the

years on the Avalon that has provided a data set to the team at Hydro that they used to establish their design criteria.

So the experience – there was – there were serious outages in the early '70s – the one that I remember fairly vividly is the one in 1984. And there were a couple of others along the way where there have been – there has been damage to the structures caused by ice accumulation, and that has informed Hydro's planning with respect to their design criteria.

MR. COLLINS: We're certainly gonna talk about Hydro's experience in – soon.

But my understanding is at this level is that we're – you take your historical observations of the weather and your desired level of reliability, and that those are the two factors that led – that tell you what the loading needs to be.

MR. BENNETT: But I think the point I was getting at here is that some of the loadings that were developed around DG2 and that you see in the PUB review are actually tied to Hydro's experience.

MR. COLLINS: Yes. And we'll certainly get to that soon.

MR. BENNETT: We'll get to that, but –

MR. COLLINS: But in – at a high level, do you agree with what – with the question – with the proposition I put to you?

MR. BENNETT: Generally speaking, you'd look at your meteorological results and you'd establish criteria from there.

MR. COLLINS: So in the same area, the 150-year loadings would be higher than the 50-year loadings, and the 500-year loadings would be higher than the 150-year loadings.

MR. BENNETT: Yes. Statistically, you can look at the probability of a more severe event happening, and you can scale up your earlier results to get to that higher number.

MR. COLLINS: So, if we go to volume 3, tab 66, P-03188.

This is a document we're going to talk about at some length later.

THE COMMISSIONER: Tab, again, is this one?

MR. COLLINS: Tab 66.

UNIDENTIFIED MALE SPEAKER: Okay.

MR. COLLINS: If we go to page 19 and scroll down a little, we'll see a very simple little table. And what I understand from this is that if you're using – if you take the 2010 reference loading for a particular area, you take a 50-year CSA loading and you want 150 years, you multiply by 1.2.

MR. BENNETT: That's right.

MR. COLLINS: Increase it by 20 per cent.

MR. BENNETT: That's right.

MR. COLLINS: And if you want a 500-year loading, you increase it by 42 per cent.

MR. BENNETT: Over the 50-year number.

MR. COLLINS: Over the 50-year.

MR. BENNETT: That's right.

MR. COLLINS: That's right.

And, so, if you – if your 50-year loading is 50 millimetres, the 150-year loading is 60.

MR. BENNETT: Yes.

MR. COLLINS: And the 500-year is 71.

MR. BENNETT: That's right.

MR. COLLINS: These numbers – we're gonna come back to – and if your 50-year loading were 75 millimetres, if that were true – that were – the CSA reference loading, then your 150-year would 90 millimetres, and your 500-year would 106.5.

MR. BENNETT: That sounds about right.

MR. COLLINS: And does – this also – an important point, Commissioner, you can do the same thing in reverse. The same loading can represent a high level of reliability in relatively favourable weather conditions or a low level of reliability in less-favourable conditions. Is that right?

MR. BENNETT: Depending on what your actual conditions are. I'm not sure I follow that –

MR. COLLINS: So –

MR. BENNETT: – just try that again.

MR. COLLINS: – if you have a 50-millimetre loading, that could be a 50-year line in one area, or it could be a 500-year line in an area where the 50-year line would be 35 millimetres.

MR. BENNETT: Oh, fair enough, yes, absolutely. The actual measurement is highly geographically dependent. So 50-millimetre ice loading on the Avalon is not going to get you very far, but 50-millimetre ice loading in western Labrador would be an extremely long return period because you don't – typically don't get severe freezing rain in western Labrador. So I understand your point now.

MR. COLLINS: So there are a few more conceptual points I'd like to clear up.

So as I understand it, when you design a structure, it sometimes ends up being stronger than what you were planning it to be.

MR. BENNETT: Exactly.

MR. COLLINS: And can you explain why that happens?

MR. BENNETT: So the reason why that might happen is because the other design considerations require that you have more structures or closer spacing than the meteorological loading requires. So for example, if we were on the prairies and we had unlimited flexibility as to where the structures go, you could stretch them out to meet the design criterion insofar as meteorological conditions go because there's nothing in your way. You have a straight line and you can site the structures where you want.

In our topography, that may not be the case. There may be a hill in the way that actually – or some other topographical feature that causes the line structures to be closer together than they otherwise would have been. And in that scenario, it's conceivable that the structures that you've placed on the ground and the line that you designed is actually capable of withstanding loads that are greater than those provided by your original meteorological design.

MR. COLLINS: So, as I understand it – this is another point – the Canadian Standards Association, or CSA, to whom we've already referred, has divided in – Canada into a series of weather zones and they've given reference loadings for every zone. So if you want to build a 50-year line, you could look at their document, and it would tell you in this area, you need so many millimetres of glaze ice; in another area, a different number.

If we – and if we go to page 17 of the same exhibit and scroll down to the bottom of the page, we can see a map indicating, sort of, the high-level way in which they've broken the province up into areas, each with their different loading. Is that right, Mr. Bennett?

MR. BENNETT: Yes, that's right. And the data is collected over a period of time from various weather stations, other locations, and they've used that to inform these contours.

MR. COLLINS: So the CSA has some weather data from which they've produced these reference loadings anyone can use.

If we go to the same document, again, at page 6, we have a quote from the – at the bottom of the page, there's a quote from the CSA standard. It says, "*The climatic data provided in this Standard may be augmented by reliable regional or local data where available.*"

So, what I take from that is that if Nalcor has better information than the CSA, or has additional information, the CSA standard encourages Nalcor not just to use the reference data, but to also use all the other information it has to produce the best picture possible of the weather conditions.

MR. BENNETT: Yes. That's right. The – and I think there's a reference – there may be another reference in the standard where it reflects on the designer's or the operator's previous experience. But, yes, if we have new data, new local data, new site specific information that goes above and beyond that provided in standard, of course the designer is encouraged to use that.

MR. COLLINS: And so, if a company with no local knowledge or experience, like Astaldi, came in and calculated loadings, they might just take the CSA reference levels. But if a company like Nalcor, which has access to all of Newfoundland and Labrador Hydro's experience, designs a line, they have access to a lot more than the reference levels.

MR. BENNETT: And that works both ways. There may be areas where the standard is not aligned. It may be – it may not have caught a local situation. There may be areas where the actual operating experience of the lines that are in place could be more favourable than that predicted by the standard. So, the designer needs to consider all of that – all of those factors – when selecting the meteorological loading criteria that they wish to use on the line.

So, for example, Hydro has quite a bit of experience on the Avalon – on the Avalon Peninsula – based on our previous operating experience and studies that have been done and research that has been done on the Avalon to inform the design criteria that are used on the Avalon Peninsula.

MR. COLLINS: And, in general, in the past, is it fair to say that Hydro's perception of what a 50-year loading looks like on the Avalon, for example, has always been higher than what the CSA thought?

MR. BENNETT: I don't know that they've been completely calibrated to say, okay, we are actually looking at the 50-year statistical return period. I think that Hydro's approach here is to look at a design level that is, I guess, consistent or aligned with their operating experience. I don't know if I quite answered the question, but the point I'm trying to get to is I'm not sure that there has been a complete statistical analysis of whether Hydro's 50-year design objective is

actually corresponding with a 50-year meteorological return period.

MR. COLLINS: Hydro has a set of standards that it described as a 50 year –

MR. BENNETT: They have described it as a 50-year period.

MR. COLLINS: And –

MR. BENNETT: And I guess all I'm saying is that I haven't seen the meteorological statistical analysis that lines that up against the CSA standard.

MR. COLLINS: But Hydro's – so Hydro has standards that it considers to be – and Hydro's standard loadings are higher than the CSA loadings.

MR. BENNETT: Yes, they are.

MR. COLLINS: So in this case there'd be – if you interpreted Hydro's standard to be a 50-year standard, the implication of Hydro's experience is that the loadings need to be higher than the CSA recommends. If that's how you do it –

MR. BENNETT: If that's the case. Or whether Hydro looked at it and said, this is our design criterion that offers – in their mind, offers satisfactory performance over a 50-year life cycle on the Avalon Peninsula.

MR. COLLINS: If that's what Hydro said. Actually at this point, why don't we go, for a moment, to a document I was planning to look at later. It's P-04290. I don't have the tab written down, one second –

MR. BENNETT: Tab 128. Volume 4.

MR. COLLINS: Thank you.

THE COMMISSIONER: So what book are we in here now?

MR. COLLINS: Did you say –?

MR. BENNETT: Volume 4.

THE COMMISSIONER: Volume 4.

MR. COLLINS: One twenty-four? Volume 4, and you said tab 120?

MR. BENNETT: One twenty-eight.

MR. COLLINS: One twenty-eight.

MR. BENNETT: P-04290, right?

MR. COLLINS: That's right.

So this is one of the many weather studies Hydro has done to generate their standard loadings. And if we look at page 4, the third paragraph: "Based on the ... failure rate derived from the past and recent failure data, and combining this information with the results of an earlier meteorological study ... new probabilistic ... loads are estimated for 10-year, 25-year and 50-year return period values." – skip, skip – "This indicates ... the reliability of the line is very low and does not meet the commonly accepted target design loading of 50-year return period which is estimated to be," 75 mm of glazed ice.

This does appear on its face to be to an attempt to use past data to probabilistically estimate a 50-year return period of 75 metres – millimetres.

MR. BENNETT: No question.

MR. COLLINS: Thank you.

So at this point I'm gonna – at this point Commissioner, I'm going to start a brief chronology of Nalcor's statements about how its loadings evolved after decision Gate 2. So I'd like to start with P-04273, volume 4, tab 111.

This is a document that was – Nalcor filed with the PUB. It was called exhibit 97 at the time; and it contains a review of Nalcor – of Hydro's many weather studies and starting at page 16 it gives the weather – the glaze ice loadings that Nalcor was planning at the time for the Labrador Island Link. Are you familiar with this document, Mr. Bennett?

MR. BENNETT: Yes, I am.

MR. COLLINS: And if we go to page 10 and 11, we see in the second paragraph – up a little. It says this "analysis considered all previous studies and in particular, Ref. 19," – which if we

follow the footnote is the Hatch report, and reference 22, which if we follow the footnote is a report by a woman named Cathy Jones – “... and design loads and operating experiences of existing transmission lines operated by ... Hydro in the vicinity of the proposed route. In general the estimated accumulations are greater” than forecasted by Jones but less than those recommended by Hatch.

So the loads in this document – they’re based on – they’re based on Nalcor and Hydro’s own research and experience, rather than just following the CSA reference levels.

MR. BENNETT: Yes, that’s correct.

MR. COLLINS: And at the bottom of the page, we have a little summary of how the loads in each section were calculated. It’s a little – so, there are four mountainous areas where there’s rime ice, freezing fog, and those are excluded from this document, and we won’t talk about them anymore.

On the Avalon Peninsula, they told us 75 millimetre loading, which is the same thing we just talked about, right, Mr. Bennett?

MR. BENNETT: Yes, that’s right.

MR. COLLINS: And that was understood by Hydro to be a 50-year return period.

MR. BENNETT: Yes.

MR. COLLINS: And in the other sections of the line, there’s a fairly complicated explanation, but is it your understanding that this was also based on what Hydro understood to be a 50-year return period?

MR. BENNETT: Well, that’s a good question. I don’t know that I’ve seen a specific return period reference to that standard.

MR. COLLINS: Does Hydro generally design its plans to what you believe to be a 50-year return period?

MR. BENNETT: They – I think they’re thinking – was it they designed their lines to offer satisfactory performance over their 50-year design life. I don’t know that I – again, as I’ve

stated earlier, I’m not sure that I – I haven’t seen a calibration where somebody said: Okay, here are the two competing models, and here’s how they stack up. We get to that, and we do – we actually do that comparison, but, I’m not sure –

MR. COLLINS: (Inaudible.)

MR. BENNETT: – that we actually have the statistical alignment to say this one is an X-return period, and this one is a Y-return period. I’ve always understood Hydro’s approach to be this is a design criteria that we have, that offers satisfactory performance over the – in round numbers – 50-year life of the asset.

MR. COLLINS: So, you don’t know –

MR. BENNETT: So, I’m not able to say to you that the 50-year glaze standard loading is actually a 50-year return period when compared to the CSA standard.

MR. COLLINS: Sorry, I’m not asking when compared to the CSA standard.

MR. BENNETT: Nor am I sure that there’s actually a 50-year statistical return period calculation explicitly tied to the number.

MR. COLLINS: So, these are narrower questions that I’m asking.

MR. BENNETT: Yes.

MR. COLLINS: Does Hydro generally consider its standard loadings to be 50-year loadings?

MR. BENNETT: As a general statement, yes. They say that in multiple documents when they refer to this question.

MR. COLLINS: And these are Hydro’s standard loadings?

MR. BENNETT: Yes, that’s right.

MR. COLLINS: Based – which Hydro, based on its experience, has, typically, characterized as 50-year loadings?

MR. BENNETT: They have.

MR. COLLINS: Thank you.

So this is another document followed by – filed by Nalcor at the PUB. It's a Hydro document and it's filed one month after the glaze ice loadings.

And if we go to page 32, we see – oh, sorry – “Given the nature of the project in the overall context of system reliability” – scroll down a little, thank you – “it becomes difficult to justify an increase in the return period of the weather load beyond 1:50 years for design of the Labrador-Island Link.”

And farther down on the same page: “While it may appear desirable to increase the return period for the Labrador-Island Link, the entire 230 kV grid east of Bay d’Espoir would need to be upgraded to a similar return period in order to achieve the desired reliability improvement.”

So is it fair to say that this is Hydro’s justification for using a 50-year return period for the LIL?

MR. BENNETT: This is – (inaudible) yes, the system planning team in Hydro expressed this opinion –

MR. COLLINS: And –

MR. BENNETT: – and they support a 50-year return period.

MR. COLLINS: So the 50-year return period was perhaps originally chosen in order to reduce capital costs, but it was retained because it was believed that the rest of the grid wasn’t reliable enough to necessarily profit from a line that reliable. Is that fair?

MR. BENNETT: That’s basically what they’re saying, that if you actually want to achieve a longer return period, significant upgrades are required on the rest of the AC grid, the 230 kV grid east of Bay d’Espoir.

MR. COLLINS: But this – and the – but the reason in general that they’re justifying a 50-year return period is that they’re using a 50-year return period in their mind.

MR. BENNETT: They were using a 50-year return period and they had been unable to justify, at this point in time, going beyond that.

MR. COLLINS: So if you go to volume 5 now, tab 32, P-00077, page 143. This is the next month.

MR. BENNETT: Right.

MR. COLLINS: Excuse me, I’m – for the second time I’m looking at the wrong page.

Reduction in unsupplied – on page 143, the second-last paragraph: “... reduction in unsupplied energy due to loss of the HVdc transmission line ... is better managed through the addition” of combustion turbines as required “... rather than through investments in increasing the HVdc line design return period”

So this is another rationale for using a 50-year return period. Is that right?

MR. BENNETT: Yes –

MR. COLLINS: So –

MR. BENNETT: – and Hydro – to the extent that – yes, Hydro system planning reviewed the best way to address, I guess, a shortfall in ability to deliver energy and concluded that over a period of time, incrementally adding combustion turbines would be a better way to address that problem than continuing to push the return period.

MR. COLLINS: So, in March 2012, Nalcor submitted a revised version of Exhibit 00097; we don’t necessarily need to go there right now, but they added information about wind loadings, rime ice loadings, combined cases. Did they change the glaze ice loadings?

MR. BENNETT: My recollection is that they didn’t.

MR. COLLINS: We can confirm that.

If we go to P-04267, which is volume 4, tab 105.

THE COMMISSIONER: All right.

Just let me catch-up to you now. So we're at 04267, what tab?

MR. COLLINS: This is tab 105.

THE COMMISSIONER: In what book?

MR. COLLINS: Volume 4.

On – this is the *Basis of Design* as it stood in October 2012.

THE COMMISSIONER: What tab are we at again?

MR. COLLINS: Oh, sorry, 105. I'm sorry.

And at page 27 we see that the return period at this point is 50 years. It also – if you scroll down a little, excuse me. And if – it also indicates that this 50-year return period is, “with respect to Nalcor Energy operating experience and LCP specific modeling and test programs.”

MR. BENNETT: Right.

MR. COLLINS: So this is a 50-year return period based on – scroll down a little more, here it is. So this is a 50-year return period with respect to Hydro's experience primarily and Nalcor's research; not with respect to the CSA –

MR. BENNETT: That's right.

MR. COLLINS: – reference levels.

MR. BENNETT: That's right.

MR. COLLINS: And finally in P-04291, which is volume 5, tab 34.

This is an environmental assessment filing Nalcor filed in November 2013. On page 2 we can see that Nalcor was asked to confirm that the towers were designed for a 50-year return period event and they satisfied that commitment by filing the design.

MR. BENNETT: Along with the criteria, right.

MR. COLLINS: So, as of November 2013, Nalcor was still representing that these towers were designed to a 50-year return period.

MR. BENNETT: Yes.

MR. COLLINS: Now, if we jump forward to 2014, DarkNL hearings at the PUB go on and Newfoundland Power files a large number of information requests asking about reliability. And Nalcor's primary response is called NP-NLH-004, which is a document we've already looked at, P-03188, volume 3, tab 66.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

UNIDENTIFIED MALE SPEAKER: Tab 66.

MR. COLLINS: And the conclusions on glaze ice are summarized on page 24. For each weather zone, we see in the third column the design criteria as they were filed with the PUB. In the fourth column, we get the CSA reference, 50-year return period. In the fourth [sp. fifth], 150 year, and the fifth [sp. sixth], the 500 year.

And we can see that the fifth – the LIL – the glaze ice criteria, taken off Newfoundland and Labrador Hydro's 50-year return period, are significantly higher than the CSA's 50-year return period. And as a result, when you do the comparison, in most cases the LIL is a 150 or a 500-year structure. And in the few cases where there's doubt, Nalcor has tested them and indicated that the final towers are capable of standing – withstanding the CSA of 150 or 500-year loads.

Because, as you mentioned earlier, towers can be stronger than they were – than the spec.

MR. BENNETT: That's right. So –

MR. COLLINS: The –

MR. BENNETT: – in these cases here, we went back and re-ran the design, and increased the loading to conform to the – excuse me – to the CSA standard, and then they passed. Design passed that test as well.

MR. COLLINS: And so the implication of this document is that the line is essentially built to a 150-year return period.

MR. BENNETT: Insofar, as the latest version of the CSA standard is concerned.

MR. COLLINS: Now, what you mean there, is that the towers are designed, they meet 150 year – they'd be 150-year towers if the best data you had to go by was the CSA's reference allowance –

MR. BENNETT: Yes, right.

MR. COLLINS: – reference forecast.

MR. BENNETT: Right. Now –

MR. COLLINS: If –

MR. BENNETT: – I don't think – the only other point I'd make here is that the 2010 version of the standard is closer to Hydro's numbers, than the 2006 version of the standard. There are many areas where, generally speaking, loadings were increased.

MR. COLLINS: So, it's in many cases closer. But, again, if we look at this table, we can see that in every case, it's significantly less. And if we go back earlier, we talked about how if you take a CSA 50-year reference loading and you want to get a 150 year, you need to increase it by 20 per cent. And if you want to get a 500 year, you need to increase it by 42 per cent.

MR. BENNETT: Right.

MR. COLLINS: So, for example, those 75 millimetre – if that 75 millimetre reference loading on the Avalon is correct, if Hydro's experience is right and the true 50-year return period is 75 millimetres, then increasing by 42 per cent, the 500 year might be 106.

MR. BENNETT: It might be but I think one thing that's important to keep in mind here is that the CSA standard is also considering utility experience and measurements as well. So, we can't assume that the evolution of the standard and that the selection of their loading zones are not – that they – there's no relationship to Hydro's operating experience either and the severity in those areas. So, we're contributing data; there's additional meteorological data available for the newest version of the standard. So, can't assume that these are on independent paths and that they're totally disconnected from each other.

MR. COLLINS: Very good.

We do know that the CSA encourages you to use all the data, your experience and not just their reference levels.

MR. BENNETT: Absolutely.

MR. COLLINS: And, in fact, this isn't the first time Nalcor has made this kind of argument. Because in January 2012, Manitoba Hydro issued a report that was very critical of Nalcor's 50-year return period. Is that fair?

MR. BENNETT: Yes. In the PUB process, they did.

MR. COLLINS: And in March of that year, Nalcor made its final written submissions before the Public Utilities Board, and they're P-00099, volume 4, tab 129.

THE COMMISSIONER: Tab?

MR. COLLINS: One twenty-nine.

THE COMMISSIONER: Volume?

MR. COLLINS: Four.

And if we go to page 43 of this document, whenever you can.

So at the bottom of this page using the 2006 – the earlier version of the CSA standard, Nalcor sets up exactly the same argument. They compare their – the LIL design loadings to what high reliability loadings, based on the CSA reference levels, would be. And they conclude, on page 44: "In summary, the design ice loading for the Labrador-Island Transmission Link approximate or exceed the CSA recommended 500-year maximum ... loads."

Is that a fair summary of the argument here? It's very similar to what Nalcor did in the DarkNL hearings by using the 2006 standard instead of the 2010 standard.

MR. BENNETT: That's right. So the – this references the 2006 standard. And in the next iteration, we actually go to the most current standard that's available at the time.

MR. COLLINS: And so in 2012 when you compare to the 2006 standard, these loads look like 500-year loads. And in 2014 when you compare to the higher 2010 standard, they only look like 150-year loads. But other than that, the argument is about the same.

MR. BENNETT: That's right.

MR. COLLINS: And then if we go to P-00052, page 93, and this is – one moment – volume 5, tab 33.

So on page 93 – just scroll down. Now, we see – scroll up a little – we see Nalcor's position – the Public Utilities Board in their final decision responds to that position. They say: "Nalcor's position is that the design ice loadings for the Labrador-Island ... overland ... line approximate or exceed the CSA recommended 500-year ... loads. Taken in isolation, this statement could be misinterpreted. As noted above, it is a given that ice loadings quoted in the CSA Standard ... are inadequate. Appropriate design of the HVdc overland transmission line should follow the recommended reliability based methodology using all available meteorological data and historical experience"

So what I take the Public Utilities Board to be saying is you can't design a line based on Hydro's experience that shows a 50-year return period and then compare it to the lower CSA reference loadings and say suddenly it's a 150- or 500-year line.

MR. BENNETT: Don't think that's what was said, so Hydro's taking considerable effort to lay out its basis for its selection of its designed return period. And in addition to that, as another source of information, the loadings against the CSA standard were also provided. Two sources of information, one being Hydro's operating experience using what they call their – I think they refer to their extreme-value approach. And then there's alignment against the standard as well. So two sources of information that are provided in the proceeding.

I don't think anybody was trying to bootstrap the return period from one source of data to actually say it's something else. I tried to be careful to say here are the two pieces of information.

Hydro, based on its methodology, provided its 50-year return period – in their mind, their 50-year loadings that form the design criteria. And then, for completeness, they were also compared to the CSA standard.

MR. COLLINS: Yes.

And what the Public Utilities Board is – what I take the Public Utilities Board to be saying is that while that comparison may be interesting, it doesn't mean – make this a 150- or a 500-year line. If you wanted to build a 150- or a 500-year line, you'd need to start with your best estimate of the weather and then increase that to reach a higher reliability level.

MR. BENNETT: I would agree but, I guess, Hydro's system planning has also said they didn't see that that was warranted.

MR. COLLINS: So, this isn't – this is a 50 – the Labrador-Island Link is, in effect, a 50-year line.

MR. BENNETT: We will be able to make a final determination as to the meteorological conditions that the line will withstand once we have further operational information. And we're not in a position here today to say whether the CSA standard is an accurate depiction of loading conditions or whether Hydro's design criteria based on their almost – actually – their 50 years' worth of operating experience is the right number.

I think what we are saying is that we compare it to both sources of information. It is a design – it is a line that's designed to robust conditions. We will need some more data and the passage of time before you can ultimately conclude which is which.

MR. COLLINS: In the end, when we're all dead, someone will know how many times the line failed. There will be better information in the future –

MR. BENNETT: (Inaudible.)

MR. COLLINS: – but when this line was designed and built, it was a 50-year design and that was never increased.

MR. BENNETT: It was designed based on Hydro's criteria, which they characterized as their 50-year extreme value numbers, and for completeness it's been compared to the most current CSA standard.

MR. COLLINS: And if you wanted to build a 150- or 500-year – if in 2012, after receiving this report, Nalcor had decided, goodness, we – the MHI and Public Utilities Board don't like this loading. We're going to increase it to a 150-year standard. Nalcor would have had to go back and rework its loadings, increase them all and then re-engineer the towers.

MR. BENNETT: Well, maybe. The first thing we need to do is – we'll see in NP-NLH-004 is – test what latent capacity is actually there just to withstand –

MR. COLLINS: But –

MR. BENNETT: – additional conditions, but, yes, if somebody said I want to have – absolutely wanted – first of all, if somebody said I want to take the NLH operating experience – if that's where you're going – and scale that up to a 150-year return period and put that into the design criteria, then, yes, you would redesign the line. But, ultimately, somebody has to make a call as to how far do you go with a design. And then you can test it against the two sources of information.

MR. COLLINS: So, you've given me a couple of reasons why you believe the line is more reliable than its return period alone would indicate. One of them is the Labrador-Island Link's route. Can you explain how that – the route would make it more reliable than the loadings would indicate?

MR. BENNETT: So, there are a couple of areas where – particularly the Long Range Mountains – when you look at the ice loadings, they're done for a region. There are also conscious decisions taken to route the line to stay in sheltered areas, particularly at lower altitude, through the Long Range Mountains where the, particularly, rime loading will be lower. There are conditions that we need some more operating experience with to see whether there are particular areas of exposure which may need to

be reinforced or the line works satisfactorily. But it – specifically, we've been careful to try to route the line to keep it as sheltered as possible across the entire route.

MR. COLLINS: And if we – so, basically, if in a particular area, you need to be ready for 500 – for 200-kilometre winds, but then you put the line in a valley where the 200-kilometre winds will never come, the line is going to be more reliable than it would seem based on the tests of the 200-kilometre winds.

MR. BENNETT: Those are – yes, those are decisions that are taken during routing to try to protect the line.

MR. COLLINS: And the second reason you pointed me to is in P-03188, which is in volume 3, again, tab 66. And if we go to page 22, you'll see sort of a scatter plot. Can you explain what this chart is and why you think it indicates that the line is more reliable than it would appear?

MR. BENNETT: So what we have here is a comparison of the loading on each of the approximately 3,000 structures – a little less than that actually because we've taken the Avalon off. That's on the next page. But what we've looked at here is the glaze-ice loading as a function of the structural capability of each individual structure. So we load the – we take each structure; we load it up with the 150-year return period glaze ice condition and then see how heavily it's loaded.

So a structure that has 80 per cent – so one that's right on the 80 per cent line, Commissioner, just right on the left-hand side of the chart, has an additional – can withstand an additional 25 per cent loading before it fails. And you can see that the vast majority of these structures are loaded to 80 per cent or less of their withstanding capability. So they can take more meteorological load than the standard that was tested – that they were tested against.

MR. COLLINS: And that 25 per cent increase in loading, would that be comparable to the difference between a 150-year and a 500-year return period?

MR. BENNETT: It's approximately that.

MR. COLLINS: Now, there are also reasons to think the line might be less reliable than advertised. And if we go back to the same exhibit, page 8, we see this table. And something I take from the table – what I take from this table is – it says for a 50-year line, the yearly failure probability should be 1 or 2 per cent. Is that a fair summary?

MR. BENNETT: Yes, that's right.

MR. COLLINS: And so –

MR. BENNETT: You expect the line to fail.

MR. COLLINS: And when we're talking about the line here, the whole Labrador-Island Link should only fail once or twice a year. That's what I take this to mean is that there should be a failure somewhere – the chances of a failure happening somewhere along the line should be 1 or 2 per cent.

MR. BENNETT: That's right. The – in any given year the probability of a failure is approximately 1 or 2 per cent.

MR. COLLINS: The line straddles 11 different weather zones, and it could be – there's a chance of a 50-year storm hitting on the Avalon. There's also a chance of a 50-year storm hitting the Great Northern Peninsula or inland Labrador.

MR. BENNETT: That's true, but the meteorological history that informs those criteria, that history has played out over the recording period where weather stations have been present on the Island. So that – to some extent, the geographical view is incorporated, but I would acknowledge that it is a long line and you could have a couple of severe events.

MR. COLLINS: And the cumulative reliability of the whole line is less than the reliability of any of its parts.

MR. BENNETT: I'd say it another way, that the line can fail based on a failure anywhere.

MR. COLLINS: Yeah.

Do you know what the cumulative reliability of the Labrador-Island Link is?

MR. BENNETT: We don't know, right? We're going to need operating history to see that play out. What we have done is if we look at the meteorological conditions in each of those areas, we've designed it to be well beyond the operating history of – as we've seen here in the glaze example, we have structural headroom – for want of a better term – in the vast majority of the areas.

And where we have the most data, which is on the Avalon, the most historical information, we have gone to the most extreme level in a standard and have demonstrated that we achieved that, as well. And the reason that the Avalon is particularly important is because we have multiple transmission lines in the same corridor.

MR. COLLINS: Hmm.

The design criteria for the Avalon was just Hydro's normal 50-year –

MR. BENNETT: It is, but it's also compared against the highest level in the CSA standard.

MR. COLLINS: And so, another way of putting the point you're making is that on the Avalon, where Hydro has the most experience, the gap between what the CSA reference level and what Hydro thinks is a 50-year line is the greatest.

MR. BENNETT: Let's try that again. I was gonna say that they were actually relatively close.

MR. COLLINS: On the Avalon?

MR. BENNETT: Yes.

MR. COLLINS: If we go to P-03188, volume 3, tab 66, page 24, we see in – if we say 11-4, Rod and Gun Club to Soldiers Pond, the CSA has the – this is where the CSA thinks the weather is the worst. They think that you need – the 50-year loading is 60 millimetres, but Hydro thinks it's 75.

If we looked at Port Blandford –

MR. BENNETT: Yeah.

MR. COLLINS: – to Sunnyside –

MR. BENNETT: The design – the point I was getting to was that the design criteria on the Avalon is –

MR. COLLINS: Is the highest.

MR. BENNETT: – the highest.

MR. COLLINS: It is –

MR. BENNETT: Yes.

MR. COLLINS: – the highest because Hydro has the highest loadings there because it – Hydro's experience is that this is where the worst conditions are.

MR. BENNETT: That's correct.

MR. COLLINS: So –

MR. BENNETT: And to go beyond that, I guess, in addition to Hydro's design criteria, we have also tested the design of the line against the CSA 500-year criteria on the Avalon Peninsula and have found it to withstand those criteria, as well.

MR. COLLINS: Commissioner, I don't have very many more questions, but it is 11. Would this be a good time for a break?

THE COMMISSIONER: Well, I – if you don't have very many more questions, we can continue on and finish with your questions, and then we can get into cross-examination. But if you feel you need a break, we'll take a break.

MR. COLLINS: I have – I am through 75 or 80 per cent of my questions.

THE COMMISSIONER: Okay. So you got a ways to go yet. All right, so we'll take our 10 minutes here, now, then.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right.

All right, Mr. Collins.

MR. COLLINS: I have a few questions about why these issues matter and how they bear on the Terms of Reference. Nalcor's business case compared the Interconnected Option, with Muskrat Falls, to the Isolated Island Option. And as I understand it, the Interconnected Option didn't provide for backup generation in case the Labrador-Island Link were to go down, or for additional backup transmission. Is that right?

MR. BENNETT: Not entirely. I think the expansion plan that was considered by System Planning had additional gas turbines in it later in their study period.

MR. COLLINS: As I understand it, there wasn't – the Interconnected Option didn't contain any backup generation for the LIL. Later in the period, as load grew, there was a need for additional capacity and more gas turbines were included.

MR. BENNETT: Right. But what that did to, I guess, unserved energy and reliability at the time, I haven't seen any analysis of it. I guess my only observation was they did include additional generation, but not with a view to replacing the entire LIL.

MR. COLLINS: So, one of the assumptions in forecasts underlying Nalcor's business case was the idea that the LIL would be reliable enough that backup generation wouldn't be necessary.

MR. BENNETT: And that was – I think that's consistent with Hydro's submission at the PUB, that the unserved energy was, in their view, a reasonable number – which is an indicator of overall reliability.

MR. COLLINS: So, before the PUB and because of the limits of the – because of the limits on the PUB, because of the PUB exception, Nalcor could choose, for itself, whatever loadings or return period it felt was appropriate. But after the LIL comes into service can – who decides whether it's reliable enough to not need backup supply?

MR. BENNETT: I guess, ultimately, that decision would be taken by Hydro; there may be a PUB proceeding to make that kind of determination.

MR. COLLINS: So, if we go back to P-00052, which is in volume 5 – tab 33. At page 108, we see: “Of particular concern to the Board is the fact that Nalcor does not accept MHI’s recommendation with respect to the transmission line design criteria.”

Nalcor – on the next page – page 109 – in the second paragraph. “Nalcor does not plan to add backup generation, such as combustion turbines, on the Island in the event of a major failure of the ... line with or without the Maritime Link. The Board is of the view that Nalcor should address these significant gaps” relating “to a major component of the Interconnected Option before proceeding to the next decision phase.” And they then say in the next paragraph: “The Board has an explicit mandate with respect to reliability of the system While Nalcor is exempted from the *EPCA* and the *Public Utilities Act* the Board still has a responsibility to ensure that electricity supply for the ... system is adequately planned and operated reliably at the lowest possible cost”

So, I’m gonna suggest that that’s a clear message from the regulator, that the return period and loadings submitted at the time weren’t adequate and that unless something was done to the LIL – the design, backup generation would likely be required.

MR. BENNETT: I’m not sure it says anything about the return period; it doesn’t say anything about what the board – what level of reliability the board was looking for, whether that could’ve been achieved by Holyrood, as it currently existed, or whether it could’ve been achieved by the Isolated case.

MR. COLLINS: So –

MR. BENNETT: So I think I – what I would say in relation to this is that there is considerable discussion, I guess, ongoing right now with respect to reliability and where things may go. And I don’t think there was any opportunity to

have that completely buttoned down back at DG2.

MR. COLLINS: The board certainly is not making a ruling here on what Nalcor should build now, but this is – the topic sentence of this paragraph, that first sentence, is: “The gaps identified by MHI ... are linked to the issue of reliability” When we look at the gaps – if we go two paragraphs up, to the bottom of page 108, we see: “Of particular concern to the Board is the fact that Nalcor does not accept MHI’s recommendation with respect to the transmission line design criteria.”

Now, I’ll keep reading this time: “The Board accepts MHI’s opinion that the design criteria of 1:50 year return period ... is inadequate and contrary to Canadian utility standards and practices. MHI recommended that ... a return period of 1:150 years should be used with an alternate supply and 1:500 years should be used without an alternate supply and that Nalcor should consider an even higher standard in the alpine areas.”

So, I’m gonna suggest that the PUB in – two paragraphs later, describing generally on the gaps – reflecting generally on the gaps identified by MHI and pointing out the fact that in the end, the PUB is the one that will decide what is an adequate level of reliability is indicating that there’s a flaw in the business case.

MR. BENNETT: I would disagree. I think there was a lack of alignment as to what the return period was actually all about. And if I recall in the MHI DG3 report, MHI concluded there that the return period, when compared to the CSA standard, was actually much closer to 500 years. So, I’m – I guess, you know, looking at this decision, I was, you know, concerned with the difference in thinking here and the inability to actually align on, sort of, what the return period really is.

And I’m not sure that – you know, I’m – I think we’re closer today because we have a newer version of the CSA standard, and we have additional information, and we’ve demonstrated that the lines of robust design that has additional

structural capability than simply looking at the return period, that fact in of itself wasn't known by either MHI or the board at DG2, because the design didn't exist. So, the facts today are quite a bit different than the facts back at DG2.

MR. COLLINS: What you describe as a lack of alignment is that you made an argument to the PUB which they rejected. And in the end, they are the regulator with the power and responsibility to make the decision, and when you and a regulator have a lack of alignment, that – in other words, that is being overruled.

MR. BENNETT: So they didn't say that, though.

MR. COLLINS: They didn't. They – would you characterize this as a warning?

MR. BENNETT: There's no doubt that the question of reliability needs to be looked at. It needs to be looked at in conjunction with the Maritime Link. So there's a – I would say there's a whole new set of facts available today, if you look at where we are now. And this is going to be the basis for decision-making going forward.

MR. COLLINS: A lot's happened since 2012.

MR. BENNETT: Right.

MR. COLLINS: So, in response to this ruling, did Nalcor – Nalcor didn't, as I understand it, increase the specs. Did it add the cost of backup generation to the Interconnected Option at DG3?

MR. BENNETT: No. As I recall, there was no additional backup generation. And Manitoba Hydro also opined on this return period question at DG3, as well, and drew some different conclusions about the return period.

MR. COLLINS: Would making – would adding backup generation or increasing the return period have significantly weakened the business case for the Muskrat Falls Project?

MR. BENNETT: Hard to say.

MR. COLLINS: But it could've.

MR. BENNETT: I doubt the change in the return period, as we've seen with the – with where we are – there's – it's a pretty robust line. The upgrades on the Avalon Peninsula for the other transmission lines could have been significant, and that has to be weighed against the cost of additional generation.

MR. COLLINS: So, another way in which this question bears on the terms of reference is the question of strategic risk. As I understand it, Nalcor didn't identify a potential strategic risk of reliability-driven scope change. They didn't see reliability as a strategic risk to the project at the time?

MR. BENNETT: I think the view was that we had an apples-to-apples comparison of the isolated case compared to the interconnected case.

MR. COLLINS: So, if you go back to P-00052, the PUB decision, and we look at page 6.

We see in the last paragraph: "Apart from the possible impact on the project definition and costs these gaps related to power system and reliability"

So, the Public Utilities Board is identifying a possible impact on project definition and costs. Is that, in Nalcor's terminology, a strategic risk?

MR. BENNETT: It would be – it probably would be, and then it would need to be considered in both plans. So, you still get to the question as to what is it that, you know, we're being asked to take on here? If there are reliability considerations associated in the isolated case, they have costs, as well.

MR. COLLINS: If we go to P-01769, which is not in the binder, but this is the project management team's briefing notes, evaluating the reason for the cost overrun.

And at page 30 of this document, we have unknown strategic risk number 3, and the risk is summarised in the second bullet: "... the PUB's expectation was an increased level of reliability that must be expected from the provincial energy grid."

Was that really an unknown strategic risk?

MR. BENNETT: I wouldn't say it was unknown. I would say that there were considerations in both expansion plans.

MR. COLLINS: This was raised as a project definition issue in the executive summary of the PUB report. That was in March 2012. In May, Nalcor meets to identify the strategic risks, and it doesn't identify – they miss the strategic risk that was sitting there in the executive summary.

MR. BENNETT: I'm – I wouldn't agree there. The whole reliability question, the assessment of reliability is undertaken by Hydro System Planning, and there was not much in the way of, I guess – not reliability capability or assessment wasn't in the project team. It was – we counted on having the analysis done by Newfoundland and Labrador Hydro System Planning, and they had reviewed the configuration, which, in one form or another, has existed since 1965 in terms of a plan to develop a DC link to the Island.

And from that perspective, the overall grid connection and the reliability associated with it, there's considerable analysis done on that. So, I didn't see that as a major configuration question from a project perspective – moving forward with the design and the architecture that was outlined by Hydro and had their support in System Planning.

MR. COLLINS: But another major focus of the Inquiry is whether the analysis done by Nalcor and the government was reasonable considering best industry practice.

Was a 50-year reliability period consistent with the CSA standard?

MR. BENNETT: The CSA standard – if we look at the analysis that was done in compliance with the CSA standard, we are demonstrating compliance with their either 150- or 500-year wind, ice and combined criteria in accordance with that standard.

And, again, I'll caution – and I think the PUB has a similar issue here – they're – you're translating that the NLH 50-year extreme view is actually – needs to be scaled up in the same manner to match the CSA standard. Those are derived from two different sources, and we've demonstrated compliance with both.

MR. COLLINS: You've demonstrated compliance with a 50-year NLH standard.

MR. BENNETT: Right.

MR. COLLINS: And 150-year CSA reference standard.

MR. BENNETT: And the 500-year CSA reference –

MR. COLLINS: And depending on the region.

MR. BENNETT: – standard as applicable, based on the latest version of the standard.

MR. COLLINS: So, all the same, I'm going to go back to P-03188, which is tab 55 – 56, volume 3.

On page 5, we have the CSA's guidance on reliability periods, and it says – at the bottom of the page – the very bottom: "In all cases, lines should at least meet the requirements of a reliability level characterized by a return period of ... 50 years"

And on the next page: "It is suggested to use a reliability level characterised by return periods of 150 years for lines above 230 kV," which the Labrador-Island Link is?

MR. BENNETT: Yes, as is the 230-kV grid on the – you know, in eastern Newfoundland.

MR. COLLINS: And then: "... it is suggested to use a reliability level characterised by return periods of 500 years for lines, mainly above 230 kV which constitute the principal or perhaps the only source of supply to a ... load."

Do you know if the Labrador-Island Link goes down in the winter, will there be unserved load?

MR. BENNETT: If it goes down during peak periods, yes, and likely there will be unserved load.

MR. COLLINS: So ...

And I have just a few more questions. The first, if we go to P-03659, which is in the binder, but there are no pages in there, so we may as well just go on the screen.

Page 51. I'm going to note that Liberty – the Liberty review of – on reliability ultimately concluded that “A technical assessment of the structural adequacy of the” line “is outside the scope of Liberty’s engagement by the Board”

So to some extent, there’s – the questions we’re talking about here have not been further addressed there. Is that your understanding, Mr. Bennett?

MR. BENNETT: No, I’m not sure where you’re going here. I understand what they said, that they’re – they’ve not looked at the structure itself.

MR. COLLINS: So – yeah. So – and you may not be the best person to ask this next question, but my understanding is that there’s a transmission constraint so that in peak loads in the winter, there’s a limit on how much power can be brought to the Avalon Peninsula and the peak load can’t be served. Is that your understanding?

MR. BENNETT: We can meet peak load with facilities and service, and then depending on what facilities are out of service, we may or may not. There’s not an unlimited capability to meet load depending on how many outages are happening on the system.

MR. COLLINS: So if we go to P-03658, which is binder 3, tab 67.

And – if you – Mr. Bennett, if this is not – you know, are you familiar with this document? You might not be.

MR. BENNETT: I think I’ve read it.

MR. COLLINS: You’ve read it. We’ll ask another witness about this.

And my last question, do you know – my understanding is that there is – part of the plan, if the Labrador-Island Link goes down, is to purchase power from Emera.

MR. BENNETT: Yes.

MR. COLLINS: Do you know if there’s a deal in place allowing Nalcor to purchase such power?

MR. BENNETT: Hydro is working on arrangements with the other Maritime provinces’ utilities now that the Maritime Link is in service.

MR. COLLINS: (Inaudible.)

MR. BENNETT: There is no firm arrangement today.

MR. COLLINS: Thank you very much.

MR. BENNETT: All right.

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

Government of Newfoundland and Labrador.

MR. RALPH: Good morning, Mr. Bennett.

MR. BENNETT: Good morning.

MR. RALPH: My name is Peter Ralph, and I represent the Government of Newfoundland and Labrador.

And there’s two subject areas I’d like to cover with you this morning of the – one of which is the final forecast cost at the financial close of the federal loan guarantee, and the other one is some – just general questions about the operation of the Muskrat Falls Oversight Committee.

Now, I understand that the Muskrat Falls Oversight Committee meets monthly. Is that correct?

MR. BENNETT: Yes, that’s right.

MR. RALPH: And, I guess, generally, you attend each month and provide a presentation on generation.

MR. BENNETT: That’s right. And I think at this point, we may be once every other month. We provide the presentation each month, and it’s at the discretion of the committee whether they want to meet with the generation team, the transmission team or both.

MR. RALPH: Right.

MR. BENNETT: We're on standby and available.

MR. RALPH: So the – part of the things that you address in your reports to the committee would be risk. Is that correct?

MR. BENNETT: Yes.

MR. RALPH: Risk in terms of costs.

MR. BENNETT: That's right.

MR. RALPH: Now, the – your report does not provide the final forecast cost to the committee. Is that right?

MR. BENNETT: No. We provide an assessment of our view of risks that are out there that may materialize.

MR. RALPH: And can you tell the Commissioner why that's not done? Why the committee would not get a final forecast cost?

MR. BENNETT: Well, the final forecast cost is a calculation straight out of our project control system where we're implementing – if we've implemented a change and we've assigned funds to that risk, which now is becoming more certain, then we actually do the transfer from contingency reflected in our project reporting system and we actually proceed to deal with the issue at hand.

MR. RALPH: But would you agree that at any point in time, that estimate, final forecast cost, is the best estimate that Nalcor has?

MR. BENNETT: I think the best estimate that we have is our most current assessment of risks that are unfolding that are outside of our authorised funds.

MR. RALPH: So that would – so in terms of that, that would be – you're saying that that's identified by taking the AFE and adding onto the AFE identified risks that are outside the AFE?

MR. BENNETT: That's right. That's what we were trying to communicate.

MR. RALPH: And –

MR. BENNETT: Risks are emerging that aren't in the AFE.

MR. RALPH: Right. And so how is – how would that figure be different from a final forecast cost?

MR. BENNETT: If those risks materialize and become a certainty, then they fall into the FFC calculation within the AFE.

MR. RALPH: Now, I understand that there are number of reports emanate – and also minutes that emanate from the Muskrat Falls Oversight Committee. I believe there's minutes and there's a quarterly report and a monthly report.

MR. BENNETT: That's right.

MR. RALPH: And I understand, as well, that before these reports are made public, Nalcor would give you an opportunity to review these.

MR. BENNETT: Yes, that's right.

MR. RALPH: I guess the purpose of that, to make sure the information is correct and also to look out for commercially sensitive information.

MR. BENNETT: That's right.

MR. RALPH: And so you're familiar with both the contents of the minutes and the reports?

MR. BENNETT: Generally. They get reviewed by others in the team. I don't always look at every report, but –

MR. RALPH: Fair enough.

MR. BENNETT: – I'm generally familiar with them, yes.

MR. RALPH: And is it fair to say that if something is discussed in a meeting and it's not reflected in the minutes or the reports, it's likely because it involves something that's commercially sensitive?

MR. BENNETT: That's a reasonable conclusion unless someone can find a way to

discuss it with – in some way that respects that commercial sensitivity.

MR. RALPH: And is it fair to say as well that the – I guess the reports represent, perhaps, a more fulsome account of discussions at the committee than, say, the minutes?

MR. BENNETT: There is certainly more extensive discussion in the report that goes out.

MR. RALPH: Yeah.

MR. BENNETT: It's a fairly substantive document compared to what's recorded in the minutes on a few pages.

MR. RALPH: Now, with regard to the final forecast cost at the time of the close of the federal loan guarantee, I understand before that happened, Nalcor had communicated to the independent engineer that the estimated cost of the project had increased from \$6.202 billion, DG3, to 6.531. Would you agree?

MR. BENNETT: That was communicated, yes.

MR. RALPH: Before financial cost?

MR. BENNETT: I think that was just before financial close.

MR. RALPH: I understand as well, that at a board meeting – the board of directors of Nalcor, on December 18 – excuse me – you made a presentation to the board regarding this change. Can you recall that?

MR. BENNETT: I remember reviewing the presentation here.

MR. RALPH: Okay.

MR. BENNETT: I don't have a specific recollection of that meeting –

MR. RALPH: That's fine.

MR. BENNETT: – yeah.

MR. RALPH: No, fair enough.

We can go to Exhibit 00684 and these are the minutes of the board on that day.

UNIDENTIFIED MALE SPEAKER: Six, four.

MR. RALPH: As you can see, it's December 18, 2013, so this is after financial close.

And if you go to page 17, and under Other Business, it states: "Mr. Bennett circulated a presentation on the Lower Churchill Project DG3 estimate compared to the current final forecast cost and advised that the information in the presentation was confidential and commercially sensitive. He noted that project management escalated slightly, environmental costs held their own, contingency was reduced by transferring work from smaller contracts to larger contracts where there was greater certainty to gain efficiencies and cost savings but expect that the contingency will be fully used upon completion of the project."

And I don't quite understand how that works. So you're saying that Nalcor has reduced the contingencies, the amount provided for contingencies in the budget, by transferring amounts from smaller contracts to larger contracts. Is that what you're saying?

MR. BENNETT: That's what the minutes reflect.

MR. RALPH: Okay. Can you explain to me how that would work?

MR. BENNETT: I think – I'm just trying to think what the history was here.

There were – I know there was a change in the Labrador Transmission Assets procurement model where we actually incorporated work into the work with Valard. Because I don't – off the top of my head, I don't know which example is being cited here, but I know that, for example, the access road construction for the Labrador transmission line was actually included in Valard's scope as opposed to having somebody separate. So that – and there were also decisions where we've elected to keep it separate because it is a larger scope, which we did on the Labrador-Island Link.

But off the top of my head, I can't give you an assessment of what example was cited, just from

the minutes. That's an example of the kinds of decisions that are made with respect –

MR. RALPH: Sure.

MR. BENNETT: – to packaging.

MR. RALPH: No, I understand that the packaging changed. What I don't understand is how you changed the packages and you reduced the amount of contingency that's required –

MR. BENNETT: I think the –

MR. RALPH: – to deal with the risk of overruns.

MR. BENNETT: – I think the other point on this: At this point in time, this was at financial close. The contract for CH0007 was known as well. And at that point in time, there was more certainty in terms of the overall package of procurement that was –

MR. RALPH: Right.

MR. BENNETT: – gathered at the time.

MR. RALPH: I'm asking you specifically about your point you made to the board of directors, which is you've – you are able to reduce your contingency or the amount of contingency in the budget because you've shifted amounts from smaller contracts to larger contracts. I'm wondering how that happens. 'Cause I understand at – you know, before sanction, there was a qualitative risk analysis and the amount of \$367 million was determined for tactical risk. Is that correct?

MR. BENNETT: I think that's right.

MR. RALPH: And now, at this point what you've done, you reduced that amount by \$184 million. Basically half.

MR. BENNETT: I think the relevant factor here would have been the CH0007 civil contract, which was known at the time.

MR. RALPH: Okay. Well, perhaps you can explain that to me. So –

MR. BENNETT: So now we're not speculating on the CH0007 contract. We actually have the contract negotiated and that's one of the reasons for this estimate change in the first place.

MR. RALPH: But that's not what you're saying here. What you're saying –

MR. BENNETT: What I am –

MR. RALPH: – is that – I'm sorry.

MR. BENNETT: I –

MR. RALPH: I just asked the question. What you're saying here is that by virtue of the fact that you took a lot of money from one budget and put it – or another line item in a budget and put it somewhere else, you're able to reduce, basically, the risk of cost overruns.

MR. BENNETT: If we're more effective in our packaging, that will – it does have the potential to reduce cost overruns. And I think the only point I'm trying to get to here is that there is a fairly extensive presentation that went along with this that is probably more than the five lines that we have recorded in the minutes here.

MR. RALPH: Do you know if that's an exhibit in the Inquiry?

MR. BENNETT: I'm not sure. Perhaps. Mr. Simmons can help with that.

MR. RALPH: So was there an exercise at this point in time, similar to the qualitative risk analysis with Westney, before sanction, in terms of trying to figure out exactly how much contingency you needed in the budget?

MR. BENNETT: I think that was done at DG3 and that was –

MR. RALPH: It wasn't done at this point in time.

MR. BENNETT: I don't think it was.

MR. RALPH: So it seems to me what you needed to know at this point was the mathematical relationship between sort of the size of a contract and the risk of cost overruns.

MR. BENNETT: So the size of the contracts, the contract packaging strategy, I don't think it changed from DG3 at this point in time. What we're getting is additional certainty as we start finishing the procurement package.

MR. RALPH: Right.

But the assumption being that if you increase the size of contracts, that'll reduce the risk of cost overruns. And it seems to me – that seems contrary to everything we've learned at this Inquiry.

MR. BENNETT: It's a – there are factors in both directions. Generally speaking, a larger contractor has generally – better capability than smaller contractors. Generally, they have greater financial resources, and there are possibly fewer interfaces among the contractors because you have a larger scope with a more capable contractor; and therefore, there is an opportunity to reduce that interface risk where the work of one contractor is impeded by the progress of the other.

MR. RALPH: But can you recall at this point in time if you were involved in an exercise where you said, look you guys, we know that if we increase the size of these contracts, then we can reduce the risk of cost overruns? Were you involved in that kind of exercise?

MR. BENNETT: There was debate – there was some debate on that, I wasn't heavily involved. I know that the contract packaging strategy had a lot of interest from our financial advisors. And they were looking to see, generally speaking, larger scopes of work completed by larger, more creditworthy contractors, with fewer interfaces.

MR. RALPH: So at this point in time, before financial close, it's fair to say that Nalcor has concluded that the budget's gone up \$300 million-and-something, the estimate, and you can operate on half as much contingency.

MR. BENNETT: The decision on granting contingency to the team is one that is at the discretion of our CEO, in terms of when it's going to be released to the team for work.

MR. RALPH: (Inaudible.)

MR. BENNETT: That's part of the – that is part of the AFE approval. How much contingency is granted –

MR. RALPH: Right.

MR. BENNETT: – to the team.

MR. RALPH: Appreciate that.

If we could go now to Exhibit 02206. And in this document –

THE COMMISSIONER: Did you say 02206?

MR. RALPH: Yes.

THE COMMISSIONER: Okay. So this one will be on your screen.

MR. RALPH: So this is a document that includes two things. I guess first, there's emails going back and forth between Jason Kean and Mr. Martin, regarding a presentation to the independent engineer. And it's called update – Project Update to MWH.

And then the presentation is also attached – or in this Exhibit. So perhaps we can go to page 5. And just go down to the middle of the page. And it's – Ed states – writes to Mr. Kean: "We should consider removing Slide 14 - too defensive? Just talk too it maybe if questioned?"

And then if we can go up at the top – and Mr. Kean responds, and this is on November 6, the date of the presentation: "My rationale for including this slide is to address the pending question of 'what are you doing to prevent this from growing to \$7B?' I am fully expecting for MWH to point out that our costs have grown by \$600+ million since we have used our contingency (much earlier than we had initially viewed)."

And if we go now to page 29, we're into the presentation itself. And Mr. Martin can't recall if he presented this, but he certainly believed that this was correct, the information that was contained in it. And it – I'm not sure how you can reconcile what's happening here. So, on the one hand, you seem to have Mr. Kean suggesting that the costs have gone up by \$600 million and Mr. Martin is making presentations

to the independent engineer saying the costs have gone up – the capital costs are up \$300 million.

Can you reconcile those two numbers?

MR. BENNETT: No, I can't off the top of my head reconcile what Mr. Kean was thinking as a capital cost increase and justifying a need for an additional \$300 million in contingency. There's no question that Mr. Martin had – was planning to authorize an increase in budget from 6.20 to 6.532 or 6.531, depending on which reference we look at.

MR. RALPH: Right.

MR. BENNETT: It acknowledged that the capital cost had gone up by 5 per cent at this point in time.

MR. RALPH: Now, I'm gonna read you a transcript of Mr. Martin's testimony. As you know, he testified before the Inquiry; most recently, one of the days was on June 13.

And at page 78, I'm asking him questions about the \$300 million and I said: So the next question is where does the \$300 million come from? And we're talking about \$300-million increase in the capital cost.

Which one?

And I said: \$300 million capital cost, where does that come from?

It would have come from the project team.

So how would they have delivered that to you?

They would have met with me, gone through the numbers, indicated to me, you know, what they see in the final forecast cost. That would be the 6.5; I forget the extra digits on it.

So it seems to me he's suggesting that he received a final forecast cost of 6.5 plus the extra digits, which I'm assuming is 6.531. Seem fair to you that that's what he's saying?

MR. BENNETT: That sounds like what he said, yeah.

MR. RALPH: Yeah.

So before November 6, you received a document from project management saying that the FAC, which I think should be FFC, was 6.5.

Mr. Martin: I don't know if I received a document but on or about this time, I would've been told.

Myself: Can you recall if that would've been a spread sheet or a presentation?

I can't recall but, you know, I guess I can't determine the saliency, but they would let me know as quickly as they could, and that would easily and most likely be verbally, that things were moving fast. They knew I wanted information. We were heading down to financial close so it would've been – it certainly would've been explained to me.

Mr. Ralph: 'Cause there are documents after this date, that explain the 6.531, but I don't see anything before November 6 explaining where that \$300 million comes from.

Mr. Martin: I think that would be best to ask to the project management team. I certainly wouldn't be involved in that. But by way of supplementary thinking, I remember one of the emails I reviewed – I think it was from Gilbert, Mr. Bennett.

A little further on, yes, saying is that, you know, the – some party, I'm not sure if it was the government, IE was asking for more detail around the number and I think – you know, and he said it's up to me, is it good? And I said, absolutely, good to go.

So he seems to be suggesting that on November 6, he derived a \$300-million increase in capital cost from a final forecast cost of 6.531. Is that correct? Do you agree with that?

MR. BENNETT: My recollection of this, and I was on – I was not, sort of, front and centre in all of these conversations. My recollection here is that there was clarity in relation to the Astaldi contract, and that was going to drive an increase in cost. But ultimately, the establishment of the contingency available to the project team is a decision that's taken by Mr. Martin.

MR. RALPH: Yeah. I'm not really interested in what's causing it. I'm asking you, you know, a very specific question about final forecast cost.

Because it seems to me, he's saying there was a final forecast cost of 6.531, on November 6, and I got that \$300 million number from that final forecast cost. Do you agree that that's what he's saying?

MR. BENNETT: That's what he said. I mean, I think you read the – that's what you read. My recollection, in addition to this presentation, is that there was a spreadsheet outlining the –

MR. RALPH: Absolutely, we'll get to that.

MR. BENNETT: Okay.

MR. RALPH: It's gonna be soon.

MR. BENNETT: So that's probably informative here.

MR. RALPH: In your recollection, before this was – you know, at the time of financial close, can you remember a final forecast cost coming up that was 6.531?

MR. BENNETT: I remember that number going into the financial close mix. There're present – there are documents that I'm copied on, there are documents that go into my inbox, and I remember that 6.531 was a number that was ultimately selected to go into the financing process.

MR. RALPH: Now, if we could go to Exhibit 01826 –

UNIDENTIFIED MALE SPEAKER: Two, six.

MR. RALPH: – and page 13.

THE COMMISSIONER: That's tab 3, book 1.

MR. RALPH: So this is – as you can see, this is a presentation on the final forecast cost update and it's a presentation to the Nalcor executive that you're a part of, obviously, and it's dated the 12th of September.

Have you got that yet?

MR. BENNETT: Yeah.

MR. RALPH: And if we go to page 15, it says: "We are forecasting the FFC to be the range of ~\$6.7 to \$6.9B (8 to 12% beyond the DG3 estimate)."

And at the bottom, there it talks about some of the reasons for it. Three key areas: Powerhouse, Intake and Spillway up \$400 million, Transmission Civil Works Construction up \$150 million and Converter and Switchyards up \$150 million.

So at this point, the FFC – are you with me? You look – do you want me to go a bit slower?

MR. BENNETT: Yeah, I lose the page here but that's okay.

MR. RALPH: I can go – I can slow it down a bit if you'd rather.

MR. BENNETT: I think I'm on – actually on the – oh, here we go, it's page 4. I am sorry.

MR. RALPH: So at this point in time, middle of September, six weeks or approximately a month before, there's an FFC of perhaps 6.531. You're talking about and FFC of 6.7 to 6.95 billion.

MR. BENNETT: On an indicative basis and I think that's the first – that's on the first slide of this presentation.

MR. RALPH: Right.

MR. BENNETT: Okay. So it's not buttoned-down by any stretch; this is an indicative view of the world and this is prior to anybody undertaking the potential mitigations that are available.

MR. RALPH: Fair enough.

MR. BENNETT: Okay? So between this number and the final number that it would end up in an AFE with an FCC available to the team, there's a decision that has to be taken. This is –

MR. RALPH: I'm sorry, could you repeat that?

MR. BENNETT: This is indicative –

MR. RALPH: Yes.

MR. BENNETT: – and the message from the project team is: We may need – we need some more funds here. And then, there's the discretion that's applied by our Gatekeeper, by our CEO, to actually say: This is the amount that I'm going to approve in an AFE. And once the AFE is approved, those funds go to the project team for administration.

MR. RALPH: Okay but we're not talking about AFE now, at this point in time, are we?

MR. BENNETT: No.

MR. RALPH: The next AFE is some months down the road in 2014.

MR. BENNETT: That's right, but this is where this number goes.

MR. RALPH: Right. So what's the difference then, between that \$6.7-, \$6.95-billion number and your \$6.531 billion?

MR. BENNETT: The 6.531 is – and I think we do see that there was an effort to put an AFE together for the 6.531. There was some thinking about that, that we would actually seek that funding, but that is – that 6.53 number, ultimately, is going to be, you know, where we would have approval for an AFE.

MR. RALPH: You're not even close to going for another AFE. This is November of 2013 –

MR. BENNETT: Honestly, I don't –

MR. RALPH: – you're not even talking about an AFE at this point, right?

MR. BENNETT: Actually, I don't think we're – I thought there was an effort to actually put an AFE together on this financial close number and we elected not to do that because there was funding available in the existing AFE; that that decision was deferred.

MR. RALPH: So you're telling me that there's a difference with this – 6.531 number is different from the indicative FFC number that we see in September.

MR. BENNETT: Yes.

MR. RALPH: And exactly what is that?

MR. BENNETT: The difference is that that 6.531, ultimately, is going to be – I guess, notionally has potential to turn into the AFE number.

MR. RALPH: But in terms of how the number is derived – I'm not interested in what use it's made of in six or seven months –

MR. BENNETT: So we need to look at yet –

MR. RALPH: – down the road, I'm interested in how that –

MR. BENNETT: So –

MR. RALPH: – how do you get to that number of 6.531 versus 6.7 or 6.95.

MR. BENNETT: So if you check the spreadsheet that I think we talked about a minute ago, we will – I think we'll get to that accounting.

MR. RALPH: So that's the only difference is what's in that spreadsheet?

MR. BENNETT: It's what's firm and what's accepted as an expectation as opposed to what's indicative.

MR. RALPH: So it makes sense to you that you're going from, basically, potentially \$6.95-billion final forecast cost down to 6.531 within a matter of weeks?

MR. BENNETT: I would say that the 6.95 is an indication of where things could go. It's not the final forecasted cost. The final forecasted cost is derived explicitly from the calculation, based on the available funds left after commitments.

My point is there's a distinction between the project team's indication and what ultimately gets approved.

MR. RALPH: No, I understand. I'm just asking now about these. We got two different final forecast numbers.

MR. BENNETT: They're different things.

MR. RALPH: And I haven't seen anything, other than the spreadsheet, to suggest that they were derived differently.

MR. BENNETT: I don't think they were – well, let's look at the spreadsheet then.

MR. RALPH: Now, we'll get to that in a moment.

So, if we could, let's go to Exhibit 03779.

THE COMMISSIONER: Okay, that one is going to be on your screen.

MR. RALPH: Okay.

This is a document prepared by Nalcor regarding FFCs at different points in time; from 2013 I think it runs, to 2019. And if we go to page 3, again, there's October 2013 so now we're getting closer to that November 6 date. It says the FFC is 6.814 which, again, this seems to be a bit more precise than the number that we had earlier in September.

And the question is: How do you go from there – and I suggest later on there's indication that that number comes from October 31, 2013 – to within a week, you're down to 6.531?

MR. BENNETT: I'm not sure.

MR. RALPH: So, in this summary, I don't see anywhere where it states that there was an FFC calculated of 6.531.

MR. BENNETT: Yeah, and I haven't – I don't have a recollection independent of that spreadsheet that we talked about earlier of how the 6.531 was derived.

MR. RALPH: Now, as we know, there were negotiations between different parties prior to the close of the financial loan guarantee. Nalcor, obviously, was involved in that and you were involved.

MR. BENNETT: No.

MR. RALPH: You weren't in the –?

MR. BENNETT: Not heavily, no.

MR. RALPH: Okay, but you were – you had some involvement, clearly and I think the documents show there's some involvement; for example, there's an email between yourself and Mr. Martin –

MR. BENNETT: That's right. So –

MR. RALPH: – regarding a spreadsheet.

MR. BENNETT: That's right. There were some documents that were sent my way, but the – my prime role at the time was not in the negotiation of the federal loan guarantee.

MR. RALPH: Fair enough. But you are involved in some part?

MR. BENNETT: As I said, there's email traffic that comes my way; there's meetings that I've attended. But at this point in time, my prime goal, and my prime area of focus during this period, was dealing with the transmission environmental assessment, fallout from the generation environmental assessment, participating in the land use agreement for the Strait of Belle Isle and the Cabot Strait.

And there's no doubt that there were documents that came my way in relation to the conclusion of the federal loan guarantee. I wasn't the prime mover on that file.

MR. RALPH: Fair enough.

If we can to Exhibit 02215.

THE COMMISSIONER: Okay, again, that'll be your screen.

MR. BENNETT: Okay.

MR. RALPH: And if we can go to the bottom of the page, there's an email between yourself – and so this is November 15, 2013, and it's between yourself and Mr. Martin. You are sending some documents for Mr. Martin to consider.

And it says: "We're under some pressure to demonstrate the changes to material contracts as

identified by the IE. The attached sheets are intended to show how the growth from 6.202 to 6.531 is occurring.”

MR. BENNETT: Right.

MR. RALPH: “Before sending them through to the IE, I’d like you to take a look. From my perspective, the numbers summarise the key changes, and I don’t see anything here that the IE would not have access to were they in our office.”

So, clearly, you’re familiar with these documents that are attached to this email. You’ve gone through them; you’ve gone through the numbers.

MR. BENNETT: Right.

MR. RALPH: And you’ve satisfied yourself that if the IE looks at this, he can also get access to the information in – possessed by Nalcor –

MR. BENNETT: That’s right.

MR. RALPH: – to check this out.

So, you know, you have a good familiarity with these documents.

MR. BENNETT: I wouldn’t say I’m familiar with this document because, as I said here, I looked through it.

MR. RALPH: Now, if we can go to page 4. And this is the spreadsheet that you were referring to earlier.

MR. BENNETT: Right.

MR. RALPH: Is that right?

And this is a spreadsheet that’s intended to demonstrate how the cost has gone from 6.202 to 6.531.

MR. BENNETT: These are the material contracts and they should show the difference.

MR. RALPH: Now, I understand that a final forecast cost would emanate from a management outlook. Is that correct? I mean, perhaps I’m not expressing that correctly but, generally speaking?

MR. BENNETT: I’d say that’s generally fair that you get this outlook.

MR. RALPH: And is it also fair to say that in a management outlook, you would have a contract reconciliation? So you’re keeping progress of where you are with each contract.

MR. BENNETT: Yes, that’s probably – that’s fair.

MR. RALPH: So, basically, similar to what you have here.

MR. BENNETT: It’d be along the same lines, yes.

MR. RALPH: Correct.

So, again, with reference to the earlier question I gave you about the difference between the 6.7 or 6.8 FFC and this one, the 6.531, you suggested the difference was this spreadsheet, that somehow this spreadsheet made the 6.531 number more precise, more sophisticated perhaps.

MR. BENNETT: It’s probably fair to say there are more knowns on this spreadsheet.

MR. RALPH: Than would be, for example, in a similar document and an FFC from October 31 –

MR. BENNETT: So –

MR. RALPH: – or thereabouts.

MR. BENNETT: – what I don’t have is that SNC workup from October 31, and the extent to which we had clarity on contracts or whether there was a request, it would simply increase contingency.

MR. RALPH: Now, if we could go to page 5 – oh, I’m sorry – go to page 3. And if we could see, sort of, the top of page 4 – or the bottom of

page 4 and the top of – I’m sorry – let me make sure I’ve got this right.

Go up to page – bottom of page 2, top of page 3 of that – see – if we go to the bottom of this, page 3.

So we’ve got – here’s an email – oh, go back up again a bit. And this is from a gentleman, George Chehab – is that how you pronounce that name?

MR. BENNETT: Yep.

MR. RALPH: And so, he’s sending – “... attached the revised files for the 17 major contracts,” and I think that’s ultimately what you send to Mr. Martin.

MR. BENNETT: Right.

MR. RALPH: That goes to Mr. Kean; somehow that goes to you, and then you send it to Mr. Martin. And if we can go to the next page ...

So the documents are “Major Package Status Report – Oct 31, 2013” and “Major Package Status Report – Oct 31, 2013.”

Now, is it possible that the documents they were talking there would’ve come out of a management outlook from October 31, 2013?

MR. BENNETT: I’m not sure. The status report, if we look at it in detail, should be explaining what’s going on in each of these major packages.

MR. RALPH: And perhaps we can go back to 03779, page 3.

So, October 2013, you’ve got: “... Project Controls\Cost LCP\Cost\Reconciliation\2013\October 2013.”

So it’s certainly possible the documents that Mr. Chehab is sending, ultimately, they get to you and Mr. Martin – are form a management outlook dated October 2013.

MR. BENNETT: I’d be cautious about comparing a management outlook to the reconciliation that’s done here in the – at the

package level, without understanding what the changes were.

MR. RALPH: So there is a reconciliation in the management outlook.

MR. BENNETT: Okay.

MR. RALPH: Is that right? There’s a contract reconciliation in every management outlook?

MR. BENNETT: I expect there would be. But then –

MR. RALPH: I mean, otherwise –

MR. BENNETT: But then there’s also typically some additional discussion about trends that are emerging but have not yet been fully defined. And that’s the other aspect of the outlook that’s less specific, less certain, less entirely clear than what we have when we get to our contract reconciliation.

MR. RALPH: Now, I mean, interesting to note that – he’s referring to documents dated October 31, and we know that the FFC in October, emanating presumably from a management outlook, was \$6.8 billion.

MR. BENNETT: So, as I said, how much of that is clear and understood, and how much of that is a discussion of a trend or something that’s less certain?

MR. RALPH: So, if we can go back, now, to 02215 and page 4. So I understand what’s happening here, they’re 17 – I guess they’re called – material contracts are being tracked to see the changes or the variance from DG3 to the present time.

MR. BENNETT: Exactly.

MR. RALPH: Right?

And then there’s a remaining pot of documents that aren’t included there – of contracts that aren’t included there, because they’re either not awarded or they’re not being awarded shortly and there’s no good sense of how much they’re going to be awarded for.

MR. BENNETT: Well, the other dimension is that this list of 17 contracts are the ones that are of particular interest to the independent engineer and they have been identified as material contracts.

MR. RALPH: How'd you know that? How do you know that he identified those?

MR. BENNETT: Because I understand that that's actually in other documentation that – I think in the independent engineer's report there was some discussion back and forth as to which contracts were material and were of particular interest to the IE.

MR. RALPH: So were you involved in that process? Did you understand that he identified these 17 contracts as ones that he wanted to look at?

MR. BENNETT: I understood that they were identified as material and of interest to the IE.

MR. RALPH: Right. So during –

MR. BENNETT: And I seem to recall that from reading it in the IE's report.

MR. RALPH: Now, if we go to the bottom of that page, page 4, and there's a box down here and there's comments. And it says: With reference to the project update deck provided on November 6, 2013. Do you see that?

MR. BENNETT: Yeah.

MR. RALPH: So it seems to me he's referencing the presentation that we reviewed earlier and he's talking about, it seems to be, some of the reasons why your costs are going up: Market conditions, productivity and reliability.

MR. BENNETT: Right.

MR. RALPH: And then he says: "Transfers are included in the FFC value but have no impact on the Variance, hence they are excluded in its calculation."

Now, if we go to Exhibit 02017 – sorry, I meant to say 02217.

THE COMMISSIONER: Yeah, on your screen.

MR. RALPH: So this is an email from Mr. Meaney to Meghan Felt. And he's advising Meghan Felt to make documents available to the independent engineer and Canada. Do you see that?

MR. BENNETT: Yes.

MR. RALPH: And he specifically says: Don't give it to Newfoundland. Do you see that as well?

MR. BENNETT: I do.

MR. RALPH: Now, so we go to pages 3 and 4 or 2 and 3 – 2 and 3. We can go right to 3, actually. So, now, here is the same spreadsheet, except it's a bit different. A couple of numbers are different; it arrives at the same FFC. But we go to the bottom of the page, again, and now the comment about the variances is gone that we had earlier. Is that correct?

MR. BENNETT: Yeah, I noticed that there. Yeah.

MR. RALPH: Now, we know that this document was made available to the independent engineer on November 19 based on this email from Mr. Meaney. And, you know, I put to you, the information – these documents and the information contained in these documents were never given to Newfoundland before the financial close of the federal loan guarantee. Is that your understanding?

MR. BENNETT: I don't know. I acknowledge what Mr. Meaney said in his previous email, but I don't know whether this provided separately.

MR. RALPH: Now, can you think of any reason why this information would not have been given to Newfoundland government before financial close of the federal loan guarantee?

MR. BENNETT: I can't.

MR. RALPH: The only reason that occurs to me – and I'll ask you if you agree with it – is because Nalcor didn't want them to see the information. I mean that's clear –

MR. BENNETT: I don't –

MR. RALPH: – from Mr. Meaney's email.

MR. BENNETT: Yeah, and I don't know why.

MR. RALPH: Pardon?

MR. BENNETT: I don't know why, at that time.

MR. RALPH: Now, if we can go to Exhibit 01930.

THE COMMISSIONER: Again, on your screen.

MR. RALPH: If we can scroll down, to page 2 it should be.

So here's the report of the independent engineer and this one is dated December 30 of 2013. And, you know, it's pretty clear that he is using information that he got – or was available to him on November 19, 2013, in this report.

And perhaps we can go to page 114, to the bottom. And here's a table, and at the bottom of the table he has: "Overall Net Variance on Awarded and Soon to be Awarded Work Relative to DG3" and it's \$514 million. Are you familiar with that number?

MR. BENNETT: That's not ringing a bell.

MR. RALPH: So what the independent engineer is saying – and you can look at this table and satisfy yourself that this is correct – that of the work that's been awarded, or soon to be awarded, the variance from DG3 to the present is \$514 million.

The variance, as a percentage, is 16 per cent of the work that's already been awarded. And of the variance as a percentage of soon-to-be-awarded work, it's 7 per cent. So, in total, he concludes that the variance is 12 per cent increase from DG3 to the present.

Is that how you see –

MR. BENNETT: Yes, okay.

MR. RALPH: – that table?

MR. BENNETT: That's the way I read it, yes.

MR. RALPH: If we can go to Exhibit 02230.

THE COMMISSIONER: On your screen.

MR. RALPH: And we go to page 4 and scroll down to the bottom.

And here's an email from Mr. Harrington to Mr. Meaney, and he's talking about schedule and cost. And this is November 21, so this is after the November 19 date when the spreadsheet was made available to the independent engineer.

If we can go to the next page, he discusses costs: "Cost – We know we have approx 2/3rds of the total Project estimate firmed up as completed contracts, delivered Po's or firm priced executed contracts or LNTP's. The net effect of this is a cost increase of ~5% which results in the \$6.531B" budget.

Again, it seems very difficult to reconcile that with what the independent engineer is saying. Would you agree? I mean, 5 per cent does not seem correct.

MR. BENNETT: I think we'd have to look at all those numbers to fully reconcile that.

MR. RALPH: But on the face of it, he seemed to suggest – suggesting that ...

MR. BENNETT: Completed "delivered Po's ... firm priced executed contracts or LNTP's." Is that the same – I – we'd have to test whether that's exactly –

MR. RALPH: Fair enough. Fair enough.

MR. BENNETT: – the same criterion that –

MR. RALPH: Yes. But if he's –

MR. BENNETT: – the IE used in his math.

MR. RALPH: Right. But he's talking about awarded contracts, for example, only, the – and the independent engineer said that increase is 16 per cent.

MR. BENNETT: Right. So you got to slice this and understand which is accurate here.

MR. RALPH: So if we can go back to 02217. And so what you have in this left-hand column, you have – the first is numbered 1 to 17 and then you have the number, I guess, given to the contract by the project.

MR. BENNETT: Yes, that's correct.

MR. RALPH: Do you see that? And a description, then, of that contract.

MR. BENNETT: Right.

MR. RALPH: And if we go to row – column A.

THE COMMISSIONER: If we could just blow that up a bit, please.

MR. RALPH: There is the base estimate –

MR. BENNETT: From –

MR. RALPH: – and then the escalation allowance.

MR. BENNETT: Right, from DG3.

MR. RALPH: And then the original control budget which, I guess, is –

MR. BENNETT: Yeah.

MR. RALPH: – is those first two items added together.

MR. BENNETT: That's right.

MR. RALPH: And then we've got transfers from other contracts, and then we've got final forecast cost and variance.

MR. BENNETT: Yes.

MR. RALPH: Now, there's a formula in the variance column. Do you see that?

MR. BENNETT: Yes, I do.

MR. RALPH: And so it is: "F = E - C - D."

So can you tell me what's done to get to your variance, what the calculation is?

MR. BENNETT: It looks like the final forecasted cost less the sum of the transfers and the original control budget from DG3.

MR. RALPH: Now, if we go to the bottom of this spreadsheet, there's a line here that says balance of scope. And when we get to transfers, can you see that 304 number in brackets?

MR. BENNETT: Yes.

MR. RALPH: So it appears as though \$300 million is taken out of these contracts and put into the other 17 somewhere. Would you agree with that?

MR. BENNETT: That should be the net effect of that, and if we can scroll back up we can see where they are.

MR. RALPH: Right. It's a bit – it's very difficult here because some of the lines are redacted, so doing the math is very challenging. But you had talked about this earlier in your testimony; in fact, in your presentation to the board you said: We've transferred, I guess, allocations from small contracts to larger contracts. Is that right?

MR. BENNETT: Yes, and there's also – I think we're going to find that there are subsopes that are rolled together.

MR. RALPH: So what you did here, you said, okay, well we're going to transfer \$300 million, and then we're going to figure out the variance.

MR. BENNETT: No, I don't think so. I think they were transferred – the scope – the contract value for that scope was transferred to the other package, and that was a straight transfer. So you had a scope previously defined, and you're moving that scope along with its budget to another package.

MR. RALPH: So, basically, the \$300 million goes from the balance of scope into the one to 17 contracts, somewhere within those contracts, right?

MR. BENNETT: Yeah.

MR. RALPH: And then, you take the – in order to figure out variance, you take the final forecast

cost, you subtract from that the original control budget and also the transfer.

MR. BENNETT: It sounds right.

MR. RALPH: So, if we can go now to – let’s see – number 8 – CH0024-001 – “Construction of Reservoir Clearing – North Bank.” The contract was awarded at DG3 – (inaudible) best estimate – base estimate, I’m sorry, was \$54 million, and it got allowance of 32 – \$3 million.

UNIDENTIFIED MALE SPEAKER: Mr. – we can’t hear you.

MR. RALPH: I’m sorry. I’m leaning past the microphone.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. RALPH: Fair enough. Made it difficult to see it.

And then we’ve got – there’s a transfer here, actually, of \$90 million. And we end up with a final forecast cost of \$131 million and the variance is \$16 million.

So, the original cost was \$57 million. In the budget, we added \$90 million to that contract.

MR. BENNETT: Yeah, but if we look a little further, I think we’re going to find that the scopes were merged with a single bid.

MR. RALPH: But that should be reflected in the table – or in the spreadsheet, shouldn’t it?

MR. BENNETT: Well, we should – and we should find the other – the other reservoir clearing scope here.

MR. RALPH: Right. So, it seems to me – what you did – so, to get to that \$16 million –

MR. BENNETT: The scope for –

MR. RALPH: – variance.

MR. BENNETT: The scope for the north, the scope for the south, put them together, look at the contract as awarded, and if there’s a delta, report the delta.

Because, my recollection here is – in that particular example, the two contracts were combined, and we awarded one contract to Johnson’s Construction to clear the entire reservoir as opposed to having it split north and south.

MR. RALPH: So, the – the \$16 million – the minus \$16 million – in that scope – you’ve subtracted the transfer of \$90 million. So, before the transfer – the variance would have been \$106 million.

MR. BENNETT: The – no, the variance wouldn’t have been \$106 million. You had two – maybe we can scroll down here. We might find that other contract here. If we can scroll to the left first, so I can see the contract titles, and then we’ll run back up – if we could.

So, there’s line 8 – it is the north bank. So, the south bank is not shown here. What should have happened is the south bank should have been transferred out of the balance of scope, combined with the north bank into a single package, and then you look at the combined allocation for both, and then report on the delta between the budget and the awarded contract.

MR. RALPH: I’m sorry – so we’re looking at line 8, which is the north bank and which line is the south bank?

MR. BENNETT: Yeah, I don’t see it here. I think where it would be is in the balance of scope number.

MR. RALPH: So that shouldn’t have –

MR. BENNETT: (Inaudible.)

MR. RALPH: – anything to do with the variance of –

MR. BENNETT: Well actually, it does, because there’s an allocation for that other south bank in the balance of scope.

MR. RALPH: Yes, but I’m talking now about the variance you have –

MR. BENNETT: I understand.

MR. RALPH: – with regard to –

MR. BENNETT: Right, but what you –

MR. RALPH: – the north bank.

MR. BENNETT: Right, but what you're doing is, as the contract was actually awarded, the north and south bank went together in a single package. And you had to take the budget for both, put the budget for both together, and then look at the award for the total scope of work.

MR. RALPH: But that's not the situation on November the 19th –

MR. BENNETT: Actually, I think it is.

MR. RALPH: Well then why wouldn't that be represented to the independent engineer?

MR. BENNETT: I think this is what this explains.

MR. RALPH: Okay. We'll leave that for the moment, and we're gonna go to the net variances.

So we can go to the far right of the spreadsheet and go to the bottom. And scroll up a bit.

MR. BENNETT: Right, so just – we have to close off the point on the reservoir here. We can see on line 8, which is the one where we have the 16.6 delta –

MR. RALPH: Yes.

MR. BENNETT: – right? \$90.5 million was transferred from CH0023 to merge the two packages. So wherever CH0023 was, that needed to be reflected in there.

MR. RALPH: Right. And I appreciate that. My point is that it seems odd to me that – you know, so the increase in this scope from DG3 should have been, you know, what – should have included that transfer. Why wouldn't it include the transfer?

MR. BENNETT: Because what we're reporting here is the actual contract value for that work scope for the entire work scope compared to the budget for the entire work scope.

MR. RALPH: We'll come back to that.

So we can go to the bottom here of this column.

And so the net variance is \$329 million. Do you see that?

MR. BENNETT: Net variance – yes, I do.

MR. RALPH: And in order to get 329 you had to subtract \$184 million.

MR. BENNETT: \$184 million came out of contingency.

MR. RALPH: Right.

And so, the original number, if you add those two together, it's 514.

MR. BENNETT: Right.

MR. RALPH: And that's the number that was in the IE's – so –

MR. BENNETT: So –

MR. RALPH: – the independent engineer's report.

MR. BENNETT: So the delta is a draw from contingency.

MR. RALPH: So, you get down to 329 by subtracting contingencies.

MR. BENNETT: So contingency was withdrawn, yes.

MR. RALPH: As a budget exercise, I don't quite understand how those two things are connected – a net variance and a contingency.

MR. BENNETT: Yeah, I'm not sure I see the disconnect here. So, in order to – as part of that \$329 million, there was a draw from contingency, from otherwise unallocated funds, to the specific packages.

MR. RALPH: There's no draw on contingency.

MR. BENNETT: I think there is. Contingency is reduced –

MR. RALPH: There's the reallocation – basically, you take – you start off with \$367

million and you take out \$184 million in contingency –

MR. BENNETT: So –

MR. RALPH: – and you're left with \$182 million.

MR. BENNETT: There's \$182 million left. So, colloquially, yes, that's a draw on contingency. So the contingency funds were drawn to make up the specific packages here.

MR. RALPH: So you –

MR. BENNETT: That's exactly how it's reported in our project cost.

MR. RALPH: – chop your contingencies in half –

MR. BENNETT: So it's –

MR. RALPH: – so that you get your net variances down to \$329 million.

MR. BENNETT: So, like, there's always – that's always a consideration for the project team. That there's, you know, transfers from contingency to specific packages for specific activities is exactly how they do their job every month.

MR. RALPH: Well, that's Mr. Martin's call, isn't it? That's not your call.

MR. BENNETT: It is. The amount of funds – the quantity of funds that are granted to us for contingency is his call.

MR. RALPH: So at this point in time we know that there was nothing in the budget for strategic risk.

MR. BENNETT: That's right.

MR. RALPH: And, now, all we have is \$182 million in tactical risk.

MR. BENNETT: In tactical risk. That's right. Contingency was drawn down here.

MR. RALPH: That seems to be a bizarre decision, when you know your costs have gone

up \$300 million from DG3 and you're getting rid of –

MR. BENNETT: As part of that exercise, there was a draw on contingency.

MR. RALPH: Because, in fact, what's happened here is your costs from DG3 have gone up \$514 million, your capital cost.

MR. BENNETT: Right, but the corollary to that is you have more contracts awarded and your – theoretically, your requirement for contingency is required to support the future work, not the work you've already contracted.

MR. RALPH: This is not exactly a QRA. This is not a Monte Carlo exercise, is it?

MR. BENNETT: No. This is –

MR. RALPH: Okay.

MR. BENNETT: This is –

MR. RALPH: Is it –

MR. BENNETT: Oh, sorry.

MR. RALPH: Sorry, go ahead.

MR. BENNETT: No, I was going to say this is the activity that happens every month as the project team continues to do their work. And then, at some point in time, there will be a request for additional contingency should it be required. And that happens in the form of an authorization for expenditure, when the contingency is included in the AFE after further discussion and approval. And then the project team has the wherewithal to expend those funds should it be required.

MR. RALPH: But looking at this, it seems to me what you're doing – what Nalcor is doing, as an exercise, is trying to make it look like your capital costs have only gone up by \$300 million, which is what Mr. Martin reported to the independent engineer on November 6, and you've done that by cutting your contingencies in half.

MR. BENNETT: Well, the independent engineer would have been aware of the transfer

in contingency as well, because that's included in the spreadsheet. And I think the independent engineer actually offered an opinion on that –

MR. RALPH: Fair enough.

MR. BENNETT: – in his report.

MR. RALPH: But the Government of Newfoundland didn't know anything about it, did they?

MR. BENNETT: Well, I don't know.

MR. RALPH: And so that's –

MR. BENNETT: So what I don't –

MR. RALPH: That's quite something, isn't it, Mr. Bennett?

MR. BENNETT: Well –

MR. RALPH: That if – while this is happening – and we are about to sign on to a completion agreement and equity agreements – that the Government of Newfoundland has no idea that you've cut your contingencies in half.

MR. BENNETT: I'm not aware of how and to what extent that was communicated.

MR. RALPH: But you'd agree that's information they should get.

MR. BENNETT: Yeah, I'm not sure what the basis for not providing the spreadsheet to the data room was.

MR. RALPH: And –

MR. BENNETT: And whether there was a decision taken later to make it available, I can't confirm that one way or the other.

MR. RALPH: So we go back to Exhibit 01930. So the \$514 million does not include variances. We know that. We know from the spreadsheet that the 514 doesn't include – just by definition of how it's determined, variances are final forecast cost minus variances minus the original control budget. I mean that's how it's determined, that's how variances –

MR. BENNETT: Right. And I think –

MR. RALPH: – is determined.

MR. BENNETT: – when we looked at the variance on the other scope, it actually was a fairly small number. It was about \$6 million, if I recall; if we can go back to the spreadsheet and just have a quick look at that. So the net variance on the \$2.2 billion of additional work, the total variance was about \$6 million.

MR. RALPH: So the \$2.2 billion – I'm not sure where you're getting that number from.

MR. BENNETT: 2.241, over on the far left. That's the remaining – that's the other scope, right? That's the –

MR. RALPH: So –

MR. BENNETT: – non-material components, if I recall – 2.241.

MR. RALPH: Right. It said final forecast cost, it says 2,044 –

MR. BENNETT: Right. So the –

MR. RALPH: – \$2 billion, right?

MR. BENNETT: Right.

MR. RALPH: And that doesn't include the transfers.

MR. BENNETT: Actually, I think it is net of the transfers and the net transfer was about \$6 million. That's where I was going with that explanation.

MR. RALPH: Right. So it's (inaudible).

MR. BENNETT: The variance wasn't there.

MR. RALPH: Transfers aren't in that balance of scope at that point. At that final forecast cost, transfers aren't there.

MR. BENNETT: Yeah, I think they're net and I think that's the net number.

MR. RALPH: Right. So you take the original control budget and you subtract \$300 million in

transfers, and that's when you get – how you get 2,044,000,000.

MR. BENNETT: Right.

MR. RALPH: Now, if we go back, again, to 01930, page 115. So it says here, if we go down: Escalation Allowance Reduction Post DG3 and that's been reduced by 90 per cent. And so now escalation allowance is \$31 million, one-half per cent of project total. You understand that?

MR. BENNETT: Yes, I do.

MR. RALPH: Were you part of that discussion?

MR. BENNETT: Not explicitly, but my recollection of this is that the escalation allowance is tied to the specific contract packages for which it's attracted. So as those contracts get awarded, and you have clarity in the contract value, you actually don't need the escalation allowance anymore. So, you have to go back and look at the escalation that's been retired by signing the contract.

MR. RALPH: Okay, so – and I think it was – I'm not sure what the figures were but there was – like, awarded contracts was – we can go up to them at the previous page –

MR. BENNETT: Yeah.

MR. RALPH: – \$2.4 billion, and soon to be awarded is 1.7. So we've got – awarded is \$2.4 billion. So we're fairly certain about those numbers. But as a result of that, you're telling me that you can reduce – or your escalation by 90 per cent?

MR. BENNETT: No, I didn't say that. What I said was in order to have a fulsome accounting of that, you'd have to go back and look at the – where that escalation was assigned and where it's applicable. I wasn't in –

MR. RALPH: So as I understand it, though, so in terms of – the escalation is in the DG3 budget and also in the FFC of – or it's taken out of the 6.531.

MR. BENNETT: It is. As a general statement –

MR. RALPH: Except for \$30 million.

MR. BENNETT: As a general statement, the escalation is tied to specific items in the estimate. And that escalation value, once it's been crystallized in a contract, should then be tied to the contract, as opposed to being in a specific escalation bucket. So I can't explain today –

MR. RALPH: Fair enough. I'm just asking there's – as a line item – there's a line item that said \$330 million in escalation in DG3 and then we get to the FFC of 6.531 –

MR. BENNETT: Right.

MR. RALPH: – the line item is now \$31 million.

MR. BENNETT: I understand. And I'm trying to explain where the escalation allowance goes as the contracts are signed.

MR. RALPH: Now, if we can go to Exhibit 02024.

THE COMMISSIONER: Just wondering now, it's 25 to. Is this a good spot to –?

MR. RALPH: I have about 10 minutes, 15, so it's up to you, Commissioner.

THE COMMISSIONER: Ten or 15 minutes.

MR. RALPH: (Inaudible.)

THE COMMISSIONER: I think we'll take our break and come back at 2 o'clock, then.

So adjourn 'til 2 o'clock, then.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: Okay.

Just before you start, Mr. Ralph, I just wanted to just make mention of something this afternoon while mostly – most of counsel are here.

I have had an opportunity to be reviewing the Quebec Court of Appeal decision in the case involving CF(L)Co and Hydro-Québec. And, as most of you are aware, in Phase 1 of the Inquiry we held a day of in camera hearings that involved the province, it involved Nalcor Energy and it also involved the Consumer Advocate.

I have been giving some thought as to what needs to happen now because I'm not exactly certain, based upon my reading of the decision, as to what its actual impact is with regards to water management. And, as a result, I think it's important for me to get additional evidence related to that. So my plan is to be doing this – and as opposed to extending Phase 2, because we have some time in Phase 3, a half day – I'm going to be including it in the – on the 23rd of July as part of the Phase 3 hearings.

My initial thinking is that it will continue to be an in camera session as was the previous session. I will be advising – or the Commission will be advising everyone as to who will be called as witnesses once we get that ironed out. And, also, my intention is to proceed with it, as I said, in camera for the time being because, again, I'm not certain that, one, there's not – the decision is not going to be further appealed if leave was granted by the Supreme Court of Canada. And I'm not even certain as to whether or not the Quebec Court of Appeal case is going to mean additional litigation may well be necessary for further clarification, and I don't want to impact the province's rights – the peoples of the province's rights with regards to that.

So, it's a bit of a tightrope that I'm walking here because this is a public Inquiry and I'm well aware of it, but I have no problem hearing – if any of you have any comments to make with regards to the question of whether it should be in camera or in public, I am prepared to hear from you on that. I would initially ask that you provide that to Mr. Learmonth or Ms. Muzychka, and then we will set up a time when I can hear and deal with your thoughts on that.

But I wanted to get that on the record right away so that we can – and preparations are now underway, on our part, to get this keyed up. I think – if I'm not mistaken, I think Mr. Ralph and Mr. Simmons were advised of this already today, so it's just a matter of advising everyone else at this stage.

Also, back in February we had sent out a notice to all parties with standing – whether, you know, full standing, partial standing or special standing – asking, or setting out the guidelines for submissions; oral submissions as well as written submissions. And we put some timelines on the written submissions and set a week in mid-August for oral submissions in Happy Valley-Goose Bay.

We have received back very few responses about how many people are actually planning to come to Goose Bay to make oral submissions. You do not – as I said in the notice that went out, oral submissions are not mandatory, but if you want to make them, you'll be given an opportunity to do so. The written submissions are mandatory and the timelines are mandatory as well.

So what I would like for all counsel to consider is getting back to Mr. Beresford, certainly before week's end, as to who is planning to actually take part in providing oral submissions for the purposes of the Inquiry. That way we can better schedule that week's work.

The other thing I will mention, as well, is that with regards to those submissions, I've given this quite some thought and I think I'm going to go, basically, in the order that I have been going in with regards to asking questions. And at this point in time my feeling is that I will be asking the government – the Province of Newfoundland and Labrador and as well Nalcor Energy, to go one, two, and then followed by everybody else and allow them an opportunity to respond to any submissions at the end, briefly.

So that's the thinking right at the moment; again, I'm open to suggestions or comments. And just give them to Ms. Muzychka or Mr. Learmonth and I'm sure they'll be provided to me and we'll figure out a way to make sure that you're all heard.

So, having said that, we'll move on now and, Mr. Ralph.

MR. RALPH: Thank you, Commissioner.

Good afternoon, Mr. Bennett.

MR. BENNETT: Good afternoon.

MR. RALPH: I shouldn't be much longer.

If we can go to Exhibit 02024?

THE COMMISSIONER: Screen.

MR. RALPH: Mr. Bennett, this is an email in which Auburn Warren sends to Paul Myrden and others, I guess, the cost estimate which turns out to be the DG3 cost estimate.

If we can go to the – a bit further down on this page so – just up a bit further, so we've got – Mr. Myrden has written Mr. Sturge and others and he is asking for a number of things. And perhaps we will just go to number 5 and it says: "The most recent update on expected total project costs by component vs. budget (DG3?), if available."

And if we go to the next page – so on November 1 this is what is sent. And if we go on the right column here, so about five lines down it says 6.202. Do you see that? And if we following it across – we can start on the left-hand column and it says construction capital expenditures. Do you see that?

MR. BENNETT: Yes, 2.901; 692; 2.610, right. 6.202, right.

MR. RALPH: 6.202. So this November 1, 2013.

And we'll go back again to the previous page, and Mr. Myrden has asked Nalcor to send the most recent update on expected total project costs and what he gets on November 1 is the DG3 estimates. Is that correct?

MR. BENNETT: That's the way it looks, yes.

MR. RALPH: So it doesn't look like he is getting the most recent update on expected total project costs.

MR. BENNETT: It doesn't appear.

MR. RALPH: Because at that point we know in October there was a final forecast cost of 6.8; we've reviewed that earlier today, \$6.8 billion. Is that right? Do you recall that?

MR. BENNETT: Well, we had a management update that was in that order, yes.

MR. RALPH: Yes. And we know that Mr. Martin testified on November 6; he had a final forecast cost of 6.531.

MR. BENNETT: Right.

MR. RALPH: So in the midst of that, Nalcor sends government – when you're asked for the most recent expected cost, they're sent the DG3 numbers – you sent us the DG3 numbers.

MR. BENNETT: I didn't, okay? So just for clarification.

MR. RALPH: You didn't do it.

MR. BENNETT: No, but – right –

MR. RALPH: You didn't send those numbers.

MR. BENNETT: I didn't, no.

MR. RALPH: Does it make sense to you that you would send us those numbers when we had asked Nalcor?

MR. BENNETT: You mean, does it make sense that Nalcor would have sent the numbers –

MR. RALPH: Yes, yeah, fair enough, fair enough.

MR. BENNETT: – because I wasn't on this threat.

MR. RALPH: Appreciate that.

MR. BENNETT: Just for clarification.

MR. RALPH: Yes.

MR. BENNETT: Okay.

MR. RALPH: I'm asking you to comment on what is happening.

MR. BENNETT: Oh, fair enough.

Yeah, I can't explain that.

MR. RALPH: Now, if we can go to 02690.

And this is March 2014 – March 11, and at this point, Mr. Sturge sends an email to Donna Brewer, and what it contains – we can go, perhaps – I think it's page 3. And, again, on the left-hand column, you see Total Project Budget. See that?

MR. BENNETT: Right.

MR. RALPH: And we go right over and we've got 6.531.

MR. BENNETT: Right. Now, we have 6.531 here.

MR. RALPH: And as far as I can tell – and I could be wrong about this – this is the first time that number goes to government.

MR. BENNETT: I don't know.

MR. RALPH: You wouldn't know about that –

MR. BENNETT: No.

MR. RALPH: – would you?

MR. BENNETT: I don't know specifically when it was communicated.

MR. RALPH: Right. So that's the number that Mr. Martin had – or has testified that he had on November 6.

MR. BENNETT: Right.

MR. RALPH: We read that testimony, right?

MR. BENNETT: Yeah.

MR. RALPH: Now, you know, I suggest, Mr. Bennett, that before financial close, Nalcor should've given the Government of Newfoundland its most recent final forecast

costs (inaudible) between \$6.7 billion and \$6.95 billion. Do you agree with that?

MR. BENNETT: Well, there's no question that, certainly, the 6.531 should be there. How the risk associated with the delta between the 6.531 and the 6.7 or 6.8 management outlook – there's probably more context around those numbers. It still would've been helpful to have a conversation about them, I think, is where I would land on that.

MR. RALPH: Right. I mean, you can give it to the government and then tell them the, sort of, limitations of the numbers as opposed to not giving them those numbers.

MR. BENNETT: Right.

MR. RALPH: Would you agree with that? That's the –

MR. BENNETT: I would –

MR. RALPH: – that's the right thing to do?

MR. BENNETT: I would generally agree that if there are risks in there, it's helpful to have a conversation about them even though the accuracy or the quantification or the benefit or effect of further mitigation might not be abundantly clear. There's no – I can't see any reason why there wouldn't be a conversation about that.

MR. RALPH: Now, it's interesting when you look at the \$6.531-billion budget and when you add the \$184-million contingency back in again and the \$300-million escalation back in again, you're at \$7 billion.

MR. BENNETT: Yeah, I wouldn't want to read in that that was simply the difference between the numbers. I explained escalation and how that works, right, and where the escalation number gets applied and the decision on contingency is discretionary –

MR. RALPH: Right.

MR. BENNETT: – in the approval process.

MR. RALPH: But we know earlier in October and, actually, in November, subsequent to

November 6, that there are these numbers that Nalcor has that are around that number.

MR. BENNETT: They are. But not as defined as we have with the 6.531 where we can see exactly where the allocations are.

MR. RALPH: We've been through that before, because it seems to me –

MR. BENNETT: Yes, we –

MR. RALPH: – that there is a contract reconciliation in every management outlook, so to that regard, the 6.531 number is no different than the management outlook that would've existed, perhaps, in October or November.

MR. BENNETT: Oh, no, I think it is. I think that the commentary about future activities in relation to mitigation makes that not necessarily as firm or precise as the numbers that are in the reconciliation tied to the completion of contract process or actually having bids in hand or having some analysis at the completion of that review.

MR. RALPH: Well, fair enough, because I can't comment on that because I've never seen one.

MR. BENNETT: Okay.

MR. RALPH: I've never seen a management outlook.

Now, Nalcor's position at the Inquiry has been that the Newfoundland Government went into the federal loan guarantee with eyes wide open. Is that fair to say? They understood exactly what was going – what they were getting into?

MR. BENNETT: They – I sensed they understood what they were getting into, yes. Exactly? You know, to the extent that there's some lack of clarity on these numbers, I'm not sure that everybody understood exactly.

MR. RALPH: And, in fact, you know, Nalcor has suggested that public officials, like Paul Myrden, knew the \$6.5-billion number. Have you heard that suggestion?

MR. BENNETT: I've heard –

MR. SIMMONS: Commissioner, just a qualification.

I presume when Mr. Ralph says "Nalcor" he's referring to Nalcor's counsel in cross-examination, which is fine, as opposed to Nalcor having taken any formal position in the Inquiry, which of course is a –

MR. RALPH: That's fair –

MR. SIMMONS: – (inaudible).

MR. RALPH: That's fair, Commissioner.

THE COMMISSIONER: Okay.

So maybe just restate your question.

MR. RALPH: Yes.

So during the course of questioning, you know, the suggestion has been made by Mr. Simmons that government officials knew the \$6.5-billion number. Have you been privy to that?

MR. BENNETT: I understand that to be the case.

MR. RALPH: But (inaudible) if we can go back now and look at Exhibit 02206 and page 29.

I'd suggest – so this is the Project Update to the independent engineer on November 6, 2013, and I'd suggest this is the sum total about the – sum total of the information that government officials had from Newfoundland and Labrador regarding cost increase. I guess you can't comment on that, can you?

MR. BENNETT: Hard for me to comment on that.

MR. RALPH: And I would suggest that in fact they didn't even have the \$6.531-billion number that Mr. Martin said he had on November 6. Again, you can't comment on that, can you?

MR. BENNETT: No, I can't because I've heard commentary both ways.

MR. RALPH: Thank you very much, Mr. Bennett. Those are my questions.

THE COMMISSIONER: All right, thank you.

Concerned Citizens Coalition.

MR. BUDDEN: Good afternoon, Mr. Bennett.

MR. BENNETT: Mr. Budden.

MR. BUDDEN: As you know, my name is Geoff Budden. I – as you also know, I represent the Concerned Citizens Coalition, which is a group of individuals who, for a number of years, have been observers and critics of the Muskrat Falls Project. So I've got a number of questions for you this afternoon. And I'd like to start with the – and, Madam Clerk, perhaps you could call up the – P-00051.

And that is the Government of Newfoundland's response to the Joint Review Panel, which filed a report, as I'm sure you know, in August of 2011. And this report was – this response was released in March of 2012.

Just before we go there, I'm just gonna read a quote from your evidence of this past Friday. So I'm just going to read you a little passage here to sort of set this up. And this is on page 69 and this is what you said, Mr. Bennett, at that time. And I'm gonna read the whole quote and I think you'll see where I'm coming from.

You say – and it's talking here – it's just after a discussion of the protests and what risk allocation, if any, had been left – Nalcor had made to – in anticipation of work disruptions because of the protest. And you said in your evidence: Our focus was on mitigating or 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.

And then Ms. Muzychka said: So essentially the risk was identified, mitigation measures were considered – implemented – no dollar placed for contingency for that risk materializing – and you said: Right. And she continued: Which would mean that you felt it was fully mitigated. And you say: Right. We felt that we had put considerable effort – a reasonable effort into mitigating that risk.

So you obviously remember saying that this past Friday.

MR. BENNETT: Yes.

MR. BUDDEN: Okay. And so the – perhaps we could begin just by a fairly simple question. What role, if any, Mr. Bennett, did you or, to your knowledge, anybody at Nalcor play in formulating this response that we see here at P-00051?

MR. BENNETT: We did not have a direct role in formulating the response. There may have been a couple of situations where somebody from Department of Natural Resources asked about the response for clarification. But the response is the province's response.

MR. BUDDEN: Sure.

MR. BENNETT: We didn't edit or, you know, create the documentation.

MR. BUDDEN: Okay. And to what degree were you or anybody, to your knowledge, at Nalcor consulted? Like, were they contacting you guys and saying, look, this is what we believe to be an appropriate response. What do you guys think about that?

MR. BENNETT: I think it was more asking us what our thoughts were on one or two areas. And I would say that the only conversation that I can recall on any of these points would've been Mr. Bown, who was deputy in Natural Resources at the time.

MR. BUDDEN: Yes. So is it fair to say that while this was still in the drafting process, that there would've been some back and forth between the Department of Natural Resources and Nalcor as these responses were formulated.

MR. BENNETT: There were a couple of questions for clarification. It's not as if we saw the draft – I don't ever recall seeing the draft report or, you know, the commentary from other government departments as they're consolidated into this response.

MR. BUDDEN: Okay. And you would've been aware of this by – obviously by the spring of

2012, well ahead of sanction, 'cause it's dated March 15, 2012.

MR. BENNETT: Yes. I forget exactly when it went public, but I don't think it was very long after the documentation was finalized.

MR. BUDDEN: Sure.

I'm gonna walk you through some of these responses. And where I'm going with it, Mr. Bennett, is as we get to a response, I'm going to be asking you what Nalcor did to fulfill that directive from the government. So that's sort of where I'm going with the half-dozen of these I'm going to put before you. Perhaps, Madam Clerk, we could start by going to page 9, and it's recommendation number 19 – or response, rather, number 19 I'm interested in. There you go.

Perhaps, Mr. Bennett, the best way of doing this – because, of course, people wish to follow along, including people who are following this on our web stream. If you could read everything that falls – number 19, the two paragraphs, both the recommendation and the response, could you read those into record for us?

MR. BENNETT: Sure. Okay. So the recommendation is Recommendation 6.8, and it refers to published analysis of downstream effects over time.

So: "The Panel recommends that, if the Project is approved, Nalcor contribute to the overall knowledge about the effects of hydroelectric projects in northern regions by ensuring that a longitudinal analysis of the effects of the project in the downstream environment," that being Goose Bay and Lake Melville, "over an appropriate time period, including both mercury transport and bioaccumulation and other ecological parameters, is published in a peer-reviewed journal or the equivalent. The Panel suggests that Nalcor consider collaborating with an appropriate independent research organization to carry out this recommendation by providing knowledge, data and financial resources."

And the province, in its response, indicated it "... accepts the intent of the recommendation

that Nalcor make project effects data on the downstream environment available to the parties" and the "public and any interested academics/research organizations."

MR. BUDDEN: Okay. So, I'm going to ask you – and we'll take the response – as I would suggest this is a directive from the government to Nalcor. And in this case, the directive is "... that Nalcor make project effects data on the downstream environment available to the" public – "to the parties/public and any interested academics/research organizations."

So my question to you is, what did Nalcor do to fulfill that particular directive?

MR. BENNETT: So, what Nalcor does already, and will continue to do, through its effects monitoring programs is to collect data from our sampling program – that be it water, sediment, fish or seals – publish that information, make it available on your website, provide it to Indigenous groups and other members of the community.

MR. BUDDEN: Okay.

MR. BENNETT: We see that as being aligned with this recommendation –

MR. BUDDEN: Okay.

MR. BENNETT: – or the province's response to this recommendation.

MR. BUDDEN: Sure. And I realize the province's response is somewhat narrower, perhaps, than the recommendation itself but for now, at least, we'll stick to the response. And is it your belief that Nalcor has fully complied with that response, the directive indicated in it?

MR. BENNETT: I think we have started to comply. It goes over a long period of time, so this activity is not complete, probably, for at least a couple of decades.

MR. BUDDEN: Sure.

This recommendation is dated, as we've established, March of 2012. When did Nalcor begin this – to effect this response?

MR. BENNETT: Well, you don't have effects of the project until after – well after sanction.

MR. BUDDEN: Okay.

MR. BENNETT: So, in order to have some effect, we have to be doing something, and the primary activity would be impoundment.

MR. BUDDEN: Okay.

MR. BENNETT: Right? So this recommendation on that reporting preceded impoundment, as I recall. We're actually collecting and continuing to collect baseline information and publishing that.

MR. BUDDEN: Mm-hmm.

MR. BENNETT: And those reports are currently to our website. I don't have the date of the first report that we put up in terms of the monitoring program, but it is an ongoing program and the data is being published there.

MR. BUDDEN: Sure, because presumably the effects would begin when construction began.

MR. BENNETT: No, the effects begin when impoundment begins.

MR. BUDDEN: Okay. That's your interpretation, that this obligation only begins when impoundment begins?

MR. BENNETT: Well I think our view is that the effects begin – the effects of the project on the downstream environment, particularly in relation to mercury transport and bioaccumulation, would be tied to impoundment or some activity in the water.

MR. BUDDEN: Or some activity would include, presumably, the consequences of building a dam –

MR. BENNETT: Not –

MR. BUDDEN: – wouldn't you say?

MR. BENNETT: Not if we're not in the water, no.

MR. BUDDEN: Okay.

The – so as of the date of the protest in October 2016 – just to pick that as a particularly relevant date – had – as of that date had there been any compliance with this recommendation, such as is directed here by the government?

MR. BENNETT: I actually think there was, but we can confirm that by looking at the date of our monitor reports that are published to our website.

MR. BUDDEN: Okay.

So – okay, well we'll move on and perhaps we'll return to that.

Perhaps page 12, Madam Clerk, and it's number 25 I wish to address next.

There we go.

Could you do the same there, please, Mr. Bennett – just read both paragraphs.

MR. BENNETT: Sure. So it's, “Recommendation 7.5 – Road construction and decommissioning.”

“The Panel recommends that, if the Project is approved, the provincial Department of Natural Resources require Nalcor to minimize road construction outside the reservoirs, by locating new roads inside the impoundment area as much as possible. Any new roads proposed by Nalcor to be located outside the impoundment areas should be carefully reviewed by the Forestry Branch of the Department of Natural Resources and only approved if there is no reasonable alternative. In order to ensure that conservation objectives are met, all temporary roads outside the reservoir should be decommissioned as soon as possible to the satisfaction of the provincial Department of Environment and Conservation.”

And the response, “The Government of Newfoundland and Labrador accepts the Panel recommendation with respect to road construction and decommissioning.”

MR. BUDDEN: Okay.

To what degree do you believe that Nalcor has complied with that particular recommendation which the government has accepted?

MR. BENNETT: In terms of working the reservoir – my view is that we have complied with this to a great degree, that the vast majority of roads used for harvesting were actually constructed within the reservoir area.

MR. BUDDEN: Okay.

Quote, “Any new roads proposed by Nalcor to be located outside the impoundment areas should be carefully reviewed by the Forestry Branch of the Department of Natural Resources and only approved if there is no reasonable alternative.”

To your knowledge, has that recommendation been fully followed?

MR. BENNETT: I believe it has. My recollection is that we had a reservoir clearing plan that was the subject of a permit from the Forestry division that outlined the terms and conditions associated with that work.

MR. BUDDEN: Okay.

And then the final sentence, which anticipated that “all temporary roads outside the reservoir should be decommissioned as soon as possible to the satisfaction of the ... Department of Environment and Conservation.”

Has there been decommissioning, to this point, of temporary roads?

MR. BENNETT: There has been some decommissioning, but we also have feedback from Innu Nation who have requested that we not decommission some of these roads, given the potential for their use as access for their harvesting activities.

MR. BUDDEN: Okay.

MR. BENNETT: So I know some roads have been decommissioned; I know that some will be under water; and I know that now that there has been some commentary from Innu Nation, this will be a topic of further consultation prior to further decisions being taken.

MR. BUDDEN: Okay.

To your knowledge – and this is somewhat of a broad question, but have a stab at answering it – were any of the protest activities that took place, particularly in the fall of 2016 – were any concerns raised by the protesters arising out of perceived lack of compliance by Nalcor with respect to this recommendation? Or was that a non-issue as far as the protests were concerned?

MR. BENNETT: I don’t think any – I’m not going to suggest that anything is a non-issue. I don’t recall this being raised as a significant issue and I know that the province, through multiple departments, including Forestry branch and Environment and Conservation, has a lot to say about road decommissioning.

MR. BUDDEN: Okay.

Madam Clerk, page 17, please. And it’s number 38 that I’m now interested in, Recommendation number 38. I’d ask you again to read it as you can do it.

MR. BENNETT: Okay, so this –

MR. BUDDEN: It carries over into the next page, yeah.

MR. BENNETT: Okay, this one is “Recommendation 9.3 – Community level land and resource use monitoring.”

“The Panel recommends that, if the Project is approved, Nalcor involve all Aboriginal groups in the design and implementation of its proposed community land and resource use monitoring program for the duration of the construction period to ensure that parameters of importance to these groups and Traditional Knowledge are included.”

And the response to that recommendation is: “The Government of Newfoundland and Labrador accepts the intent of this recommendation. A community land and resource use monitoring program would inform the process used by the Government of Newfoundland and Labrador to review Nalcor Energy’s post-environmental assessment ... regulatory approval applications.”

MR. BUDDEN: Okay.

I'll ask you the same question, as I will for all of these, to what degree do you believe Nalcor has complied with this particular response?

MR. BENNETT: Community land use and resource use monitoring program – that monitoring program is not one that's jumping out at me in terms of being front and centre. All of our obligations for environmental effects monitoring are contained either in a commitment or in our authorizing regulation from the province. But this one is not jumping out at me.

MR. BUDDEN: So you're unable to say whether Nalcor has, in fact, responded as is anticipated in this response.

MR. BENNETT: Yeah, that one I don't have a clear view on.

MR. BUDDEN: Okay.

Some of the other counsel may return to that as – if it falls within their particular areas of –

MR. BENNETT: Right.

MR. BUDDEN: – interest, but for now let's move on, perhaps, to page 29 and number 67.

And this one's a little bit of a long one, but I think it's important, so I would ask you to read this one for us.

MR. BENNETT: No problem. So, this is recommendation 14.1, Emergency preparation for the possibility of a dam failure.

“The Panel recommends that, if the Project is approved, Nalcor be required to:

“prepare and provide to affected communities updated maps that more clearly show areas that would be flooded following a dam failure; prepare, in consultation with the relevant communities and appropriate authorities, an Emergency Preparedness Plan, for response in the event of catastrophic dam failure, and emergency response procedures and community evacuation procedures related to a dam failure and subsequent flooding; the Plan should be reviewed every five years; work with each

community that has been identified as being at risk of flooding in the event of a dam failure to develop evacuation plans, to be completed prior to filling of the reservoirs; work with emergency response providers and assist as appropriate in the event of an evacuation; implement a flood warning system for Mud Lake and Happy Valley-Goose Bay to be approved by the provincial Department of Environment and Conservation; and conduct seismographic monitoring in the Project area prior to construction.”

And the response from the province: “The Government of Newfoundland and Labrador accepts the intent of this recommendation. It is appropriate that the proponent be directed to ensure that comprehensive emergency preparedness planning is undertaken in consultation with communities ... as potentially at risk from a catastrophic dam failure. The Water Resources Management Division is responsible for the administration of dam safety under the authority of the *Water Resources Act* and will require the proponent to prepare Emergency Preparedness Plans (including inundation maps) for various dam failure scenarios. The Water Resources Management Division and other appropriate government departments must review and approve these documents prior to the filling of the reservoirs.”

MR. BUDDEN: Okay. So there's a bit there – so, let's break it up a bit. The first one is, what comprehensive – yeah, back to the response, please, Madam Clerk – what comprehensive emergency preparedness planning has been undertaken in consultation with communities identified as potentially at risk from a catastrophic dam failure?

MR. BENNETT: So we have an emergency preparedness plan that spanned the construction of the facilities and will take us, with revision, into operations once we go into operations.

MR. BUDDEN: Okay.

MR. BENNETT: So the plan for construction, including impoundment to full supply level, is contained within our emergency preparedness

plan. That plan has been – we have consulted with local communities and the province with respect to that plan.

MR. BUDDEN: And to your knowledge, has the community consultation – have there been complaints directed at Nalcor, to your knowledge, that that consultation wasn't thorough, or fulsome or complete? Or did the community seem satisfied, at least, with the consultation?

MR. BENNETT: There has been discussion about Nalcor's responsibilities vis-à-vis the responsibilities of communities in their obligation to undertake emergency planning for their communities. I'd say there's been some – there have been some rubs on that. I think we're working through those. And I think at this point each community has its own emergency plan, and we fit into that plan. So there has been a long conversation about emergency planning with communities in the Upper Lake Melville area.

MR. BUDDEN: Okay.

The – it goes on to require, quote, "... will require the proponent to prepare Emergency Preparedness Plans (including inundation maps) for various dam failure scenarios." Has that been done?

MR. BENNETT: The inundation mapping has been completed. It's been done a couple of times now. It's been published and circulated.

MR. BUDDEN: Okay. When would that have happened, Mr. Bennett?

MR. BENNETT: I know the first one was done during the environmental assessment process.

MR. BUDDEN: Of course.

MR. BENNETT: And they have been updated since then.

MR. BUDDEN: Okay. So as of the protest date, say, back in the fall of 2016, firstly, would these consultations have taken place by that point, or did they fall after that point?

MR. BENNETT: No, I believe that there were versions of the inundation mapping existing, because I believe some of the documentation that I'd seen during some of those events actually referred to it.

MR. BUDDEN: Okay.

So to answer my question, those consultations and what the other responses call for here would've taken place prior to the fall of 2016. Is that what you're saying?

MR. BENNETT: Some of them have. Yes.

MR. BUDDEN: Okay.

As of 2016, do you believe that Nalcor would've been in compliance with this particular response?

MR. BENNETT: In terms of the province's response to it, EPP for construction, yes; the inundation mapping, yes, that was done; an emergency preparedness plan for Nalcor and its responsibilities, yes. Engagement with the communities would be ongoing.

MR. BUDDEN: Okay.

Perhaps the next one, which is number 68 – I think that one's a little briefer. Perhaps you could read this one, again, and the answer.

MR. BENNETT: Okay. So this is "Recommendation 14.2 – Compensation for losses in the event of a dam failure"

"The Panel recommends that, if the Project is approved, the Government of Newfoundland and Labrador require Nalcor to assume liability on a 'no fault' basis for any loss of life and financial losses incurred because of the destruction of property and belongings and disruption of activities caused by flooding as a result of one or more dams failing on the lower Churchill River. Nalcor should provide guarantees in the form of insurance, bonds or other appropriate measures that individuals, businesses and institutions suffering damage would receive full compensation, the amount to

be determined by a neutral third party, regardless of the cause of the dam failure.”

MR. BUDDEN: And the response.

MR. BENNETT: And: “The Government of Newfoundland and Labrador accepts the intent of this recommendation. Nalcor will be required to have insurance for losses in the event of possible dam failure in place as per industry standards. In the event of any loss, Government will require Nalcor to respond to any losses resulting from its negligence to the full extent of its legal obligations.”

MR. BUDDEN: Okay.

So my question is: What insurance coverage has Nalcor purchased?

MR. BENNETT: We do have insurance. It covers the majority of our assets. I don’t have those details in front of me here today, but it’s easy to identify –

MR. BUDDEN: Okay.

MR. BENNETT: – the policies we do carry.

MR. BUDDEN: Okay.

So there’s a specific insurance policy that would cover what the government requires here: “Nalcor will be required to have insurance for losses in the event of possible dam failure” So that is a specific insured potential loss, is that what you’re saying?

MR. BENNETT: No, it’s not what I’m saying. It may be covered by existing policies that we have in relation to our operations, as we have dams in service elsewhere with a similar liability issue.

MR. BUDDEN: Okay.

So the specific recommendation that the government made here over seven years ago, are you able to assure us that that specific recommendation has been fulfilled by Nalcor?

MR. BENNETT: (Inaudible.)

MR. BUDDEN: And I’m referring, specifically the wording: “Nalcor will be required to have insurance for losses in the event of possible dam failure”

MR. BENNETT: “... in place as per industry standards,” just to finish the sentence.

MR. BUDDEN: Correct.

MR. BENNETT: We can – it’s easy for me to get the details on our insurance policy, but dams, dam operation facilities in the province, where we have impoundment and people downstream, this is not a new situation for Nalcor and, more specifically, Newfoundland and Labrador Hydro or CF(L)Co, for that matter.

So it would be easy for us to provide the insurance information that we do have in respect to those operations.

MR. BUDDEN: Okay.

But you cannot say, right at this moment, if such an insurance policy has been purchased as per this recommendation?

MR. BENNETT: I don’t know that insurance would need to be purchased; I know we have liability insurance.

MR. BUDDEN: Okay.

MR. BENNETT: And we have had that insurance in place for quite some time.

MR. BUDDEN: Sure.

And the second part here, I guess, the “... as per industry standards.” And I guess my question is: By what process has the sufficiency of any insurance been determined?

MR. BENNETT: I don’t have visibility on that right now. Insurance setting for Nalcor as a whole is looked after by our risk management team and our insurance team –

MR. BUDDEN: Okay.

MR. BENNETT: – as opposed to the project team.

MR. BUDDEN: Because these are concerns you hear in the community. People are concerned about the potential consequences of floods so – and it was obviously important enough that the government made these specific recommendations over seven years ago. So you do acknowledge that these are important, legitimate questions that I’m asking you.

MR. BENNETT: Right. I understand. They’re not new. We have similar exposures and risks elsewhere in the province associated with our facilities and operations.

MR. BUDDEN: Yeah, but there’s a specific recommendation here. That’s my point.

MR. BENNETT: Oh, I understand. And I think my point is the possibility of a loss and potential dam failure is an existing risk, and what we need to look at here is what the industry standard is.

MR. BUDDEN: Okay.

Well, let’s move on to number 70, and I’m really only interested in the last point that’s continuing on immediately thereafter. There’s a lot to it, so I think we can get there simply by reading the last three bullet points and the response. So if you – and I think it continues into the next page. That’s where we see the last three.

Yeah, so starting at requires Nalcor, if you could read that and then we’ll get to the response. I think that will do it.

MR. BENNETT: Okay, so this – if we can just go to the top for a second –

MR. BUDDEN: Sure.

MR. BENNETT: – this speaks to the Authorizing Regulation.

So, it’s Recommendation 15.1: The province issue an authorizing regulation, or some other mechanism, that deals with a series of issues here, including – if we look at the last three bullets, maybe we –

MR. BUDDEN: Yeah.

MR. BENNETT: – could scroll down a little bit further. Here we go.

MR. BUDDEN: Requires Nalcor ...

MR. BENNETT: “... to prepare and publish on the internet an annual report describing its environmental management activities and results, including mitigation, monitoring and adaptive management as appropriate, and related disbursements; establishes a monitoring and community liaison committee; and remains in effect for the duration of the construction period and a sufficient period of time thereafter to ensure there is no longer a risk of adverse effects as a result of the Project.”

MR. BUDDEN: And then we get to the government’s position.

Perhaps, Madam Clerk – thank you.

MR. BENNETT: Okay, so: “The Government of Newfoundland and Labrador accepts the intent of this recommendation and will make regulations to ensure compliance with environmental management commitments and measures and the establishment of a Monitoring and Community Liaison Committee.”

MR. BUDDEN: Okay.

It’s the monitoring and Community Liaison Committee that I am most interested in. Tell me a bit about that committee.

MR. BENNETT: So, the committee was established. It had –

MR. BUDDEN: When was it established, Mr. Bennett?

MR. BENNETT: Oh gosh, it’s been in place for several years. I’m not going to guess the date.

MR. BUDDEN: Was it in place as of the date of the protests?

MR. BENNETT: Yes, it was. It (inaudible) been established. It’s not as active as we would like it to be. The level of participation wasn’t always what we wanted it to be, but the Community Liaison Committee had terms of reference proposals for representation on it, had several meetings, a couple of which I attended myself.

Don't have a lot of detail with me today in terms of the specific dates, but we do have minutes and an individual who's charged with keeping that committee operational.

MR. BUDDEN: Tell me again a little more specifically about the committee. How was the committee formed, at whose initiative? Who serves on it? What role does Nalcor play on it?

MR. BENNETT: So we coordinate the development of the committee, we prepare draft terms of reference. I think we shared those with – yeah, the community of Happy Valley-Goose Bay. I believe at one time or another North West River was included on the committee. Representatives from Mud Lake were involved on the community – the Community Liaison Committee, rather.

We had invited Indigenous groups to participate in the Community Liaison Committee as well. My recollection is that the feedback was that the Indigenous groups weren't necessarily interested in participating in a committee to undertake consultation and were happy to see that engagement happen directly.

MR. BUDDEN: The – and, again, Nalcor was – like, who chaired this committee? Do you recall?

MR. BENNETT: We had, at one time or another, our manager of stakeholder or community relations was the organizer of the committee, acted as secretary, collected input in terms of what topics were the Liaison Committee wished to talk about. I think as a matter of course, it would've been a project update held at the meeting.

MR. BUDDEN: So it was a committee, essentially, chaired by a Nalcor employee?

MR. BENNETT: So the objective was to liaise with the community, collect their feedback and then try to discuss and address those with – yes, we provided the administrative –

MR. BUDDEN: Okay.

MR. BENNETT: – capability behind the committee.

MR. BUDDEN: Okay.

This recommendation speaks as – there if we see the – just at the very top of page 31. Now, this is recommendation itself, not the response, but it does use the phrase “adaptive management.” What does that phrase mean to you? Does it mean anything to you?

MR. BENNETT: Yes. Adaptive management is an important environmental management approach, and it's generally – if I can describe at a high level, the notion is that if conditions don't turn out as were planned or predicted, you look at that situation and come up with a solution to that difference, that is adaptive in nature. In other words, you're looking at what happened as opposed to what was predicted and try to find to see if there is another way to mitigate the issue or concern.

MR. BUDDEN: Sure. We have heard – this Inquiry has heard from Dr. Susan Squires, and I wasn't the lawyer from my firm who examined her, but I do know in either her evidence here or some of the exhibits, she was asked by one of my clients through an ATIPPA process, I believe, for examples of adaptive management. And one she gave was the committee that was struck after the 2016 protest, the Independent Expert Advisory Committee, which we've heard about and subsequently made certain recommendations.

And my question is that if that was an adaptive response that was put in place, really, in almost crisis circumstances after October 2016 or at the end of 2016, why couldn't such a committee – or why wasn't such a committee, perhaps, struck earlier in time, with a result, perhaps, of avoiding those concerns that shut down entirely? Would that not have been adaptive management?

MR. BENNETT: I don't know that the Community Liaison Committee necessarily would have been the right vehicle. It was certainly adaptive – the approach of establishing the IEAC was – I agree, it was and is an example of an adaptive management approach. I am not sure whether you could foresee that that committee would have been required prior to events unfolding.

MR. BUDDEN: Though, the committee – as I understand it, once the committee was struck, that did play a major role in the protest dissipating. You would agree with me there?

MR. BENNETT: Yes.

MR. BUDDEN: It did satisfy some of the concerns – many of the concerns of the protesters.

MR. BENNETT: It did.

MR. BUDDEN: So –

MR. BENNETT: It satisfied some of them; I won't say it satisfied all of them.

MR. BUDDEN: Of course not.

But it did certainly satisfy some of them and the protest did – certainly, they haven't been as troublesome to the operation of Nalcor since that committee was struck as they were immediately prior to the committee being struck. You would agree with me there?

MR. BENNETT: That's true.

MR. BUDDEN: Okay.

And I guess – so I would suggest that a good example of adaptive management might have been if that committee had been set up a year earlier. Like, there's no reason that couldn't have happened, is there?

MR. BENNETT: No, but I think that the notion of adaptive management is you're looking at a change or you're looking at a situation that unfolds and you adapt from there. I think what you're describing is more predictive, that we didn't know and you're trying to think ahead to say, okay, what could I possibly do before the event has actually started.

Adaptive management would suggest that something – you've seen something, you made an observation and now you're gonna do something about it.

MR. BUDDEN: Okay. I would suggest to you – and I won't repeat the evidence that Ms. Muzychka put to you the other day – but,

clearly, the October 2016 protest didn't come out of the blue. I mean, there was – there were protests before then; there was advocacy before then. The concerns that sort of came to a head in October '16 had been expressed well in advance of October '16.

MR. BENNETT: Some of the concerns had been expressed. The notion of taking over the site and coming on to the site is not something that was front and centre. The engagement with Indigenous groups, the concerns about methylmercury from Nunatsiavut Government, no question that that had been raised prior. We had not seen that turn into a protest until the latter part of 2016.

The other – I think the other relevant point – we, you know, from our perspective were judicious in how we responded to the work that was presented by Harvard. We had some concerns about that; our consultants had concerns about that. We didn't engage in a direct and targeted way to make that a huge issue during the process. We were trying not to create a bigger problem by turning that into competing views of the science. I don't think that we had connected the dots between that engagement, you know, with the province, DFO and Nunatsiavut Government and ourselves in relation to the protest activity.

I don't think we were really thinking it would go to that level, where we had people coming on to the site, breaking into, you know, the accommodations complex and occupying the facility.

MR. BUDDEN: And many other things leading up to that –

MR. BENNETT: There's no question that things escalated –

MR. BUDDEN: Sure.

MR. BENNETT: – very quickly during that period.

MR. BUDDEN: And Nalcor hadn't anticipated that escalation?

MR. BENNETT: No.

MR. BUDDEN: Okay.

MR. BENNETT: That the relationships with – you know, we were working with the leadership among the Indigenous groups to try to understand those issues and try to address them. But we weren't contemplating that people would take it upon themselves to come on to the site.

MR. BUDDEN: Sure, okay.

Perhaps, Madam Clerk, Exhibit 03016, if you could. I'll be returning to 00051, but I'd like to digress to 03016 just for a moment. And this is a short letter. It was dated, I believe, October 20, 2016, and it's from one of your contractors. And perhaps you could just take a quick glance through this and tell us what this is, and then I'm going to put a paragraph, too, to you.

MR. BENNETT: So this is a letter from General Electric to the project management team for the transmission facility. And there's a debate here about the contractual provisions in the agreement between Nalcor and the contractor in relation to the application of force majeure provisions in the contract.

MR. BUDDEN: Sure. And as I understand it, Nalcor would have, just prior to this, served a letter on the contractor saying, look, this force majeure event has taken place, essentially meaning that, you know, Nalcor can no longer be held to its strict timelines for this period of time. That's the essence of it, isn't it?

MR. BENNETT: That's the essence, yeah. And then the contractor replies that we disagree.

MR. BUDDEN: Sure. And – yeah, perhaps you just read that paragraph because I'd like to talk about it a bit: "For matter of clarity"

MR. BENNETT: All right. "... Contractor disagrees that blocked access to the Site is a Force Majeure event. Indeed, as previously highlighted by Contractor, the local population's resentment against Company has been increasing for some time, has not been appropriately managed by Company and is adversely" affecting [sp. impacting] "Contractor's execution of the Work as per the Agreement."

MR. BUDDEN: Okay, what do you have to say in response to that, Mr. Bennett? This is one of your major contractors saying that Nalcor has not appropriately managed the local population's resentment.

MR. BENNETT: Contractor has put forward a position; we don't have a, you know, fulsome discussion of the things that we have been doing in relation to the contract, all of the policies and procedures in relation to our role in the local community. And while I would say that there's a view in the community that, you know, people are not happy with the project, I wouldn't say that's universal, but I would acknowledge that the issue escalated through 2016.

MR. BUDDEN: Okay. And this particular contractor is essentially finding fault with Nalcor as to how it managed the resentment. That's clearly what's being said here, isn't it?

MR. BENNETT: That's what's being said.

MR. BUDDEN: Okay, fair enough.

Perhaps you can go back to 00051, Madam Clerk. And it's page 31 I'd like to go to this time. And scroll down a tiny bit further; it's 72 that I'm interested in.

Yes, perhaps you could, as has been practice, read the recommendation and the response.

MR. BENNETT: Sure.

So this is "Recommendation 15.3 – Long-term funding for environmental management from Nalcor."

"The Panel recommends that, if the Project is approved, and to the extent that funds are not committed from other sources, Nalcor identify and allocate in its detailed Project budget, financial support for environmental management for the duration of Project construction. The Panel further recommends that Nalcor make a general commitment with a ten-year forecast, to be updated every five years, until such time as there is no longer evidence of ongoing environmental effects resulting from the Project."

MR. BUDDEN: And the response is that, “The Government of Newfoundland and Labrador accepts the intent of this recommendation.”

MR. BENNETT: That’s right.

MR. BUDDEN: Perhaps you could advise us as to Nalcor’s compliance with this particular recommendation.

MR. BENNETT: So we have funding in our project budget for the development and management of our environmental effects management program through construction. And further to that, we have allocations in the operating budget for the facilities, once they go in to operations, in order to carry forward with those commitments.

The budgeting for those commitments would be consistent with the budget management process that we have for any other aspect of our operating budget.

MR. BUDDEN: Okay.

And has that been the source of controversy of any sort within the community? Was that an inadequacy of that funding or any perceived issues with that funding a cause of concern to the protesters?

MR. BENNETT: I don’t see that being a major issue. I’ve heard commentary that I think is not very well informed, that we’re not on top of our environmental commitments and that we’re not honouring them. I take exception to that.

MR. BUDDEN: Okay.

MR. BENNETT: We have hundreds of environmental commitments that are made and we’re following – we record those, track progress and follow through on those.

MR. BUDDEN: Okay.

Well, let’s move on to 74, which is just a tiny bit further down – just another couple of these. And this one is quite long so I think we can get away just reading the response.

And the – just for fullness, this is
“Recommendation 15.5 – Lower Churchill

Project Monitoring and Community Liaison Committee.” So we can cut right to the response, if you’d read that to us.

MR. BENNETT: Am I missing something here, because we spoke about a Liaison Committee previously?

MR. BUDDEN: We did.

MR. BENNETT: So can we just – if we could just go back to that one. Mr. Budden, if you have your notes, can you take me back to that recommendation –

MR. BUDDEN: Yeah, we can –

MR. BENNETT: – because now I’m seeing some – potentially some overlap –

MR. BUDDEN: I’ll tell you –

MR. BENNETT: – in the two recommendations?

MR. BUDDEN: There may be, but perhaps we can address this. If you want to go back afterwards, I will, but perhaps we’ll just get on the (inaudible) what this recommendation is, and then we can see if it’s – how it interacts with the other one.

MR. BENNETT: Right.

MR. BUDDEN: So –

MR. BENNETT: I guess I was trying to reconcile – we only have one Community Liaison Committee, so I’m – just want to make sure that we’re consistent for the Commissioner in terms of putting the two of them together.

MR. BUDDEN: That was one of my questions, because there’s yet another one that’s talked about in a further recommendation. So perhaps we can just read what the recommendation is so that we’ll – I’ll have that information.

MR. BENNETT: All right.

MR. BUDDEN: You’re going the right direction, Madam Clerk, just a tiny bit – there it is. Yeah.

Could you read that for us, please?

MR. BENNETT: Okay.

“The Government of Newfoundland and Labrador accepts the intent of this recommendation to establish an Environmental Monitoring and Community Liaison Committee. As identified in the Governments’ response to recommendation 15.1, a committee will be established by Nalcor to provide feedback and advice to the Proponent and Government on the effects of the Project. The Government is committed to ensuring consultation with affected Aboriginal groups, communities, and relevant stakeholders to address public concerns and communicate monitoring results.”

MR. BUDDEN: Sure.

So this is the same committee, I agree with you there, that we discussed a moment ago.

It’s the last sentence, I guess, I’m interested in: “The Government is committed to ensuring consultation with affected Aboriginal groups, communities, and relevant stakeholders to address public concerns and communicate monitoring results.”

How well did – in your view, did Nalcor comply with that particular directive?

MR. BENNETT: So, insofar as consultation with Aboriginal groups go, if I look at the permits that were issued prior to – or subsequent to the release of the environmental assessment, the environmental effects monitoring plans and what we intended to do – the province established a consultation process that provided an opportunity for Indigenous groups, in particular, to offer commentary on the adequacy of those plans for every one of them before they were approved.

MR. BUDDEN: Okay.

MR. BENNETT: So there was an extensive process with all 10 Indigenous groups who were taken through the environmental assessment process. And the province collected input in

relation to those plans and those permit applications.

In terms of monitoring results, our effects monitoring plans, once they’re approved, and the results from those plans are all posted to our website.

MR. BUDDEN: Okay.

MR. BENNETT: And they’re available to the public.

MR. BUDDEN: Sure.

It also contemplates a consultation with relevant stakeholders, which I would suggest is set up there as a separate category than the Aboriginal groups. For instance – and the Grand Riverkeepers have their own counsel here, and I’m sure she will address this if she believes this is important.

But for completeness, what consultations would there have been with other non-Aboriginal community groups?

MR. BENNETT: So, to the extent that those results were available, they would be – my recollection is they were discussed with the Community Liaison Committee and were made available publicly.

MR. BUDDEN: Madam Clerk, bring us down, please, to 77. That’s the next one I wish to discuss. I think we’re getting near the end of these.

Yeah, if you could read this one, this is something I’d like you to read in its entirety, if you would.

MR. BENNETT: So this is: “Recommendation 15.8 – Complaints resolution”

“The Panel recommends that, if the Project is approved, before the start of construction, Nalcor develop a complaints resolution process, in consultation with the Monitoring and Community Liaison Committee, to address concerns relating to possible adverse Project

effects on individuals, and to be implemented during construction and operations. The process could include the following: easy access for individuals to bring concerns or complaints to Nalcor via a toll-free phone number, website and other appropriate means; dedicated Nalcor staff support to receive, process and respond to complaints; a tracking process with response time targets; third-party adjudication in the event that complaints cannot be otherwise resolved to the satisfaction of both Nalcor and the complainant; and a system to report on complaints received and how they were resolved.”

And the province accepted “the intent of this recommendation that a complaints resolution process be developed in consultation with the Monitoring and Community Liaison Committee, to address concerns relating to possible adverse Project effects on individuals, and to be implemented during construction and operations.”

MR. BUDDEN: Okay.

Tell me about that complaints resolution process.

MR. BENNETT: I’d say that most of the effort that we have on complaints today arises from the application of our benefits process, hiring decisions, workplace policy questions and, generally speaking, the administration of workers on the site. So that’s one aspect that, I think, has a fairly well-defined – very well-defined process around it.

So that could involve respectful workplace complaints, which are managed by Nalcor HR. If it involves grievances or application of our employment policies, the collective agreement, of course, that has a formal process with resolution through to arbitration, if that becomes the end of that process. So those dispute issues are well defined in terms of project policies.

In terms of other activities, generally speaking, if somebody has an issue, it could come in a number of different ways. Somebody could come to our office – we have our storefront in Happy Valley-Goose Bay – and raise an issue

that they’d like to talk to somebody. We have a toll-free number where people can raise an issue with the appropriate project personnel. Usually it turns out to be someone from our benefits and community consultation team who is engaged in those conversations.

And I think probably – alternately, we’ve got a number of issues this way as well, they would contact their local MHA or MP. And then they – that –

MR. BUDDEN: Sure.

MR. BENNETT: – their office would –

MR. BUDDEN: I –

MR. BENNETT: – engage with the project.

MR. BUDDEN: Sure.

MR. BENNETT: So that – those processes are a little less formal than the ones we have directly in place for employees on site.

MR. BUDDEN: Sure.

What I suggest, this is calling for something entirely different, though. I mean it – the recommendation is “that a complaints resolution process be developed in consultation with the Monitoring and Community Liaison Committee”

And I would suggest to you that this would appear to contemplate something along the lines of a process by which members of the community – not workers, not people who are dealing with Nalcor in that kind of relationship, but members of the community. The affected stakeholders of the project itself could have some sort of way of voicing their concerns, having them brought to some sort of resolution.

Was such a process ever developed in consultation with the monitoring and Community Liaison Committee?

MR. BENNETT: I’m not sure that it was. But the intent here was to address concerns related to the possible project effects on individuals. I would suggest we don’t have a lot of guidance here, other than the province saying they’d

accepted the intent of the recommendation in terms of how it was to be implemented.

And even the Joint Review Panel left that door open and said: You could do this, you could do that. They weren't prescriptive either, in my view, in terms of how the process should be operated.

MR. BUDDEN: I think I would suggest the plain meaning of that. Let's look at it: "The Government of Newfoundland and Labrador accepts the intent of this recommendation that a complaints resolution process be developed in consultation with the Monitoring and Community Liaison Committee" – that's that same committee again – "to address concerns relating to possible adverse Project effects on individuals, and to be implemented during construction and operations."

So I would suggest to you that's broader than what you just suggested it is.

MR. BENNETT: Well, I'm not sure that it is, but we do have a process where we are available. We have people who are available in the community, via telephone, via email, directly or indirectly, to address concerns.

MR. BUDDEN: Okay.

But, as you just said, that, you know – to your knowledge, no complaints resolution process was developed in consultation with the monitoring and Community Liaison Committee.

MR. BENNETT: I'm not sure that there was actually a discussion with the monitoring and Community Liaison Committee.

MR. BUDDEN: Okay. Which you've already said wasn't as effective as Nalcor hoped it would be.

MR. BENNETT: I'd agree with that.

MR. BUDDEN: Sure.

So all of this is rather a long way of bringing you around again to your evidence on Friday that there was a fulsome – that – so, the options basically for the people who were impacted by the project was this fulsome process of

community engagement as a form of mitigation. And I would suggest to you, while certain things have been done, certain other things were not done, such as this, for instance, which would've given protestors perhaps a way of voicing their concerns, short of the steps they ultimately took.

MR. BENNETT: Yeah, I would disagree with that. I don't think that this process would have eliminated some of the fundamental discontent expressed by some of the protestors in relation to the project.

MR. BUDDEN: I would agree with you that if a person was adamantly opposed to the project from day one to today, no process is going to make – perhaps, make them not adamantly opposed. But, I mean, many of the protestors are voicing very specific concerns, I would suggest, about methylmercury, about the clearing of the impoundment of the reservoir.

Surely, those – and many of those concerns, I would suggest, were met by the process that Premier Ball and those he met with arrived at, at 3 in the morning, whenever that long meeting ultimately resolved. And I would suggest to you that what is missing from Nalcor's fulsome process is some mechanism for those concerns to be addressed through this kind of engagement that this very response contemplates.

MR. BENNETT: I would – I think I would respond that to the extent that the leadership of one, two or three of the Indigenous groups had concerns that a dispute resolution process developed with the monitoring and Community Liaison Committee is not going to reconcile those issues. Those issues would require direct engagement in the form of a discussion with leadership from those groups – Mr. Marshall, premier of the day, so Premier Ball – that those are the conversations that are helping to address these issues.

MR. BUDDEN: Sure.

MR. BENNETT: You know, a process where you just, you know, were trying to solve an individual complaint, I don't think is going to address those issues.

MR. BUDDEN: Okay, well, that's your evidence. So let's move on.

With respect to the North Spur, going to have a few questions there. And I questioned you on that back in November and I was only permitted to go so far at that time; we were in an earlier phase.

MR. BENNETT: (Inaudible.)

MR. BUDDEN: So now I'm going to return to a couple of those questions. And as you will recall, no doubt, from that evidence and from your general knowledge, a Swedish academic, a Dr. Bernander, Stig Bernander, has written – or had written an academic paper, had presented at Memorial, had raised concerns about the stability of the North Spur, such as Nalcor commissioned a peer review. And back in – here's your transcript back from November, and this is what you had to say about it at the time.

And I – this is me and you talking, I say, "You are familiar, I would assume, with that peer review?"

You answered "Yes."

I went on: "Okay. And you would have personally reviewed that peer review?"

You said, "I've read the peer review, yes."

Me: "Okay. And I presume that – and that satisfied in your mind any concerns which Dr. Bernander may have raised?"

And your answer was: "Yes, I mean, the work that was completed in relation to that peer review, the terms of reference were carefully reviewed by our engineering consultants – by SNC-Lavalin, multiple individuals within that organization – and I was personally pleased with the work that came back."

So, before I move on, just a couple of questions about that. Were you aware at that time that this peer review did not at any point actually directly consult with Dr. Bernander? Were you aware of that, and now that you are aware of it, does that undermine at all your rock confidence in the peer review?

MR. BENNETT: No. I think that the peer-review team was able to review Dr. Bernander's commentary and respond accordingly. So I don't

necessarily believe that it was necessary to have direct engagement. That if he's communicated his concerns, then the peer-review team would be in a position to draw a conclusion based on what was written as opposed to necessarily having to meet with Dr. Bernander or Dr. Dury or other individuals associated with their commentary.

MR. BUDDEN: Okay. Do you not believe such a consultation would've perhaps added to the value of the peer review?

MR. BENNETT: I'm not sure that it would've. And I don't recall anybody involved in the peer review making that request.

MR. BUDDEN: Okay. The Government of Newfoundland and Labrador has a division within the Department of Environment, so we've heard, that is responsible for dam safety, dam monitoring and so on. To what degree were they consulted, or any department in the Government of Newfoundland and Labrador consulted with respect to either the concerns raised by Dr. Bernander or the formation of a peer review or such other process to address Dr. Bernander's concerns?

MR. BENNETT: I can't – it's hard for me to understand specifically what they knew about Dr. Bernander's concerns. I understand that the province was certainly aware of the concerns that were raised by Dr. Bernander. That would've been a good question for Mr. Chippett, when he was here, to understand specifically what Water Resources Division within his department were aware in relation to Dr. Bernander.

I know that his various letters have been circulated inside the province. I definitely know the Department of Natural Resources was aware of them. And while I think that Water Resources Division was also aware, I can't confirm that.

MR. BUDDEN: Okay.

I would suggest to you there's no evidence at all that they were consulted by you or anybody in the formation of this peer review. Would you agree with me on that?

MR. BENNETT: I don't think we asked the province to – you know, for guidance in terms of our peer-review process. What we were trying to do was have somebody – given that we ultimately have responsibility for that construction, we were looking for a peer-review process to help us out there.

MR. BUDDEN: And you didn't think the experts within the division, the Newfoundland government that had been charged with the responsibility for dam safety, would have anything to contribute to that process?

MR. BENNETT: They have a responsibility to make sure that we're undertaking our obligations. You know, what we were looking for, in consultation with our engineering designers, was really somebody to help give us assurance. So that was – it was a process that we were looking for assurance.

MR. BUDDEN: Okay. All right.

The – as we know and as we discussed back in November – and I'll just get to that in a second – Dr. Bernander and other of his colleagues ultimately filed a response to the peer review itself, a fairly lengthy 34-page document that discusses a peer review, reiterates their concerns and so forth. I'm going to – I think the most efficient way, Mr. Commissioner, of doing this, just again to read some of what we – of our evidence from November to avoid repetition.

And I say, “while the Clerk is calling it up” – we're not going to bother calling it up now – “this is Dr. Bernander's further response, Dr. Bernander and others, dated July of 2018, and as you can see, the headline is: ‘Response to and Comments on “Geotechnical Peer Review of Dr. S. Bernander's Reports and Analysis of the North Spur.”’

“So, I guess my first question is – and it's 34 pages and it's fairly dense, so we're not gonna review it now – but have you reviewed this response, Mr. Bennett?”

You said: “I have looked at it, not in detail. I referred it to our engineering consultants, SNC-Lavalin ... for their consideration and advice in relation to” these “comments.”

I say: “Okay, to your knowledge have SNC-Lavalin, or anybody else associated with Nalcor, provided a written response to Dr. Bernander's – to this document?”

You say, “My recollection is that there were emails in relation to this response.”

And I say: “Okay.

“And have you personally seen and reviewed those emails?”

You: “I have seen those. I wouldn't be able to quote them, but I know that when – any time that this type of material arises, we'll be asking – or we would be, as a normal matter of course – ask our engineering team to review the commentary.”

And I say: “Sure.

“And those emails, I presume, could be provided to this Inquiry if – on request.”

And you say, “I'm – I'd be surprised if they're not in our database already, depending on the timing and what's been transmitted to the Inquiry.”

And I say, “I think the report's dated August – or rather July 18 or something so, you know, it's quite recent” – as it was at the time.

You say “... okay.”

And I say: Perhaps – “Just, perhaps you could give us a gist of the response that you received from SNC-Lavalin with respect to this.”

So, that's what we discussed back in November. For the record, I haven't seen those emails. There were some comments made on the record at the time about – they would be – if deemed relevant, would be pursued. I haven't seen them.

So, I'm going to continue with my question – back to where we were in November – and my question for you is: we have Dr. Bernander's original concerns; we have the peer review; then we have this lengthy response by Bernander and others to the peer review; and I'd suggest that these are serious credentialed academics – not saying they're right – but they're people who

come to the table – I would suggest – with some credibility to at least have their concerns taken seriously. And – to this day – to this very day – they have concerns about the stability of the North Spur, and they have explained those concerns, at length.

And what I want to know is: how have you, in your position, satisfied yourself that those concerns are groundless?

MR. BENNETT: So, we could – I continue to – as we get commentary from Dr. Bernander and others who were involved, we continue to have SNC-Lavalin as the engineer of record for the facility and with the geotechnical expertise in relation to it – to review, at every opportunity, the commentary that has come in from Dr. Bernander and to identify their view as to his points. And they have done that on multiple occasions and continue to – confident in the work that they’ve done on the North Spur.

MR. BUDDEN: Okay.

MR. BENNETT: In addition to that we have – from SNC-Lavalin – an ongoing surveillance program for the North Spur. They have – since the work has been completed – gone back and looked at the geotechnical conditions that were encountered during construction and they have offered commentary on what they saw and have reconfirmed their confidence in their work on the North Spur and they have also suggested, as part of that analysis, a couple of areas for additional monitoring.

Those recommendations have been implemented and prior to impoundment, we expect to get another report from SNC-Lavalin that describes what their expected response and the various instrumentation that we have on the North Spur – what we should expect and what kind of things might be required to happen if things don’t work as expected and what timelines might be associated with other activities or other work that might be necessary on the Spur.

MR. BUDDEN: Okay.

MR. BENNETT: Those are some examples of how we are monitoring that.

The ongoing monitoring, the ongoing reading of instrumentation and collecting of records is one that will fall into Nalcor’s long-term surveillance program for the North Spur. It’s one that we have in place now for construction, but we know that we’re a temporary team. Eventually it’s gonna be turned to operations and operations in the long term will have responsibility for management of that asset, just like the others.

MR. BUDDEN: Okay.

Have any of those engineering efforts – I was going to use the word “mitigation,” but that may not be appropriate. But are any of those efforts in response to concerns raised by Dr. Bernander and an attempt to address concerns he has raised that were not previously addressed?

MR. BENNETT: I don’t think so. I think that there are some fundamental differences in views on how an event might happen on the North Spur; where it comes from. There are some differences in opinion as to where failure might originate, what mitigations are in place, the nature of the sensitivity of the material, so sort of fundamental geotechnical questions that are discussed among SNC-Lavalin, Dr. Bernander and the expert peer-review group that’s been struck for the Spur.

MR. BUDDEN: Okay.

And to return to my question: You are personally convinced that the concerns that Dr. Bernander has raised are groundless?

MR. BENNETT: I’m satisfied that competent geotechnical engineers have looked at the comments raised by Dr. Bernander and those people at SNC-Lavalin continue to express professional opinion in relation to those concerns and have also implemented, discussed, described an ongoing monitoring effort to deal with the Spur.

MR. BUDDEN: Okay.

So you are essentially relying their assurances that Dr. Bernander’s concerns are groundless.

MR. BENNETT: They are geotechnical engineers; I'm an electrical engineer. So I'm not in a position where I can –

MR. BUDDEN: Fair enough.

MR. BENNETT: – personally look at the two reports and say: Okay, I agree with this one. Or I disagree with that one. Okay, so –

MR. BUDDEN: Okay.

MR. BENNETT: – I'm definitely relying on our professionals and the additional reviews and the additional information that's been gathered by experts.

MR. BUDDEN: And, based on all of that, you have come to a conclusion that matters are okay to proceed without having regard –

MR. BENNETT: Right.

MR. BUDDEN: – to the concerns raised by Dr. Bernander?

MR. BENNETT: Right, I'm satisfied that what SNC-Lavalin has done is appropriate.

MR. BUDDEN: Okay.

My last question on the North Spur is – my clients continue to call for the appointment of a panel of geotechnical experts, entirely independent of Nalcor, to review the safety of the North Spur. Is that something that Nalcor would have any opposition to, the striking of such a panel?

MR. BENNETT: The whole question of independence is an interesting one because, you know, you get to the point where somebody has to pay these individuals. You know, from our perspective, we believe we've been diligent in terms of how we've undertaken the design, the review of the design, the ongoing monitoring on the North Spur. So I don't have, you know, a particular view on some other review process.

MR. BUDDEN: Okay. It would be a cold eyes review, of a sort.

MR. BENNETT: And we've had multiples of those done so, you know, to the extent that

somebody thinks that's a good idea, I'm not likely to argue with that.

MR. BUDDEN: Argue against it, you mean?

MR. BENNETT: Right.

MR. BUDDEN: Okay.

MR. BENNETT: Right. I (inaudible) argue with the concept, yeah.

MR. BUDDEN: Sure.

MR. BENNETT: Or argue against the concept.

MR. BUDDEN: A couple of other areas – just a follow-up or wrap-up to things. I don't know if – I'm quite happy to continue, but if you want to take a break.

THE COMMISSIONER: I think maybe we'll –

MR. BUDDEN: Sure.

THE COMMISSIONER: – take our break now.

MR. BUDDEN: Thanks.

THE COMMISSIONER: (Inaudible) noticed that it's 25 after 3.

So we'll take 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right.

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

MR. BUDDEN: Yes.

Mr. Bennett, I'm next going to be asking some questions about Exhibit P-01962, Madam Clerk. And this is a correspondence that Paul Harrington wrote Stan Marshall in June of 2016.

THE COMMISSIONER: Okay, tab 71, book 3.

MR. BENNETT: Okay.

MR. BUDDEN: The – I’m particularly interested in – there’s couple of quotes from this, but we can start off by going down the third paragraph and there is an underlined section which is rather convenient. And the – you can take a moment to read the whole paragraph but I am particularly interested in – it was the quote that begins – I think the third or fourth sentence, quote: “It was decided to impose a very aggressive approach towards cost and schedule.” And what he is talking about here was that the decision at sanction. This is Mr. Harrington, of course, writing. But we’ve heard evidence that he – this gets worked up a bit by other member of the project management team before it got sent by him.

In his direct evidence, my take on his direct evidence – I asked him quite specifically: Who is it who imposed it? And he ultimately said it was Mr. Martin.

And firstly, were you – you were obviously at the center of these events. Does that square with your recollection or understanding that it was Mr. Martin who essentially imposed a very aggressive schedule, very aggressive approach to cost and schedule, on the project management team?

MR. BENNETT: So in terms of the approach, I’d say in general terms, contingency was not granted until, you know, we had good clarity that it was actually required and we pushed hard on schedule. I think the fulsome discussion about how aggressive that approach was considered at the time is in a large body of documentation. So (inaudible) –

MR. BUDDEN: I realize that, yeah.

MR. BENNETT: – right. So I’d – let that stand. Ultimately, the determination of how much contingency is available either in the form of cost or schedule, or what are targets where would have been Mr. Martin’s decision, yes.

MR. BUDDEN: Okay. Mr. Harrington’s evidence, it was his evidence was that this was

imposed on the project management team. And if we go to the next page, we can perhaps add a bit more substance to that. And the underlined section there – and, again, it’s one particular sentence in the paragraph that I am interested in, the – quote, “The unlikely probability of achieving these costs and schedule targets was well known.”

And when under examination by me, Mr. Harrington testified that he had himself made this known to CEO Edmund Martin.

So if we tie it together, we have an aggressive schedule, the unlikely probably of achieving it, these targets being well-known and specifically being expressed by Mr. Harrington, Mr. Martin who imposed the schedule anyway. That is what I suggest the evidence of Mr. Harrington is, for other to agree or disagree or challenge me on, but that is what I am suggesting it is.

MR. BENNETT: Right.

MR. BUDDEN: Does that square with your recollection of events, that specific evidence of Mr. Harrington’s?

MR. BENNETT: So, there were distinctions between our internal targets, what was communicated publicly. But, yes –

MR. BUDDEN: There was what? I missed the very first bit of that.

MR. BENNETT: I think there were some distinctions between our internal documentation and some of the public commentary in terms of what a first power date was. There’s no question that over the course of this time, as sanction deferred into financial close, that was identified as an evolving situation. And, again, as I said a second ago, right, all of the context around that beyond, you know, a single sentence that we have here – or two sentences rather – is in a large body of documentation.

MR. BUDDEN: Yes, but I’m going to focus a little more – yet again, that Mr. Harrington’s evidence was that he conveyed that it was “the unlikely probability of achieving these cost and schedule targets,” to Mr. Martin. And Mr. Martin, nevertheless, imposed them anyway.

Does that square with your recollection?

MR. BENNETT: I know that there was, sort of, toing and froing on contingency setting. Ultimately, targets were set, and then the person who's responsible for setting targets is our CEO.

MR. BUDDEN: So if –

MR. BENNETT: So to the extent that they were set or imposed or established, a decision was taken, and they were put in place in either the AFE – in the AFE or the, you know, public commentary on the schedule.

MR. BUDDEN: Sure. And the other part of that assertion, the quote, the unlikely probability being conveyed by Mr. Harrington to Mr. Martin, is it your recollection that that, in fact, took place?

MR. BENNETT: There were conversations about cost in particular. And I missed – if you start from the beginning with a P50 schedule and P50 estimate, you know, there is uncertainty right from the beginning. As I've indicated, there was a lot of conversation and a fair bit of time that played out that made those targets challenging. I agree with that.

MR. BUDDEN: Okay. And –

MR. BENNETT: And ultimately, the decision – to your point, the decision was taken and the targets were established.

MR. BUDDEN: Okay. Well, I think you've answered my question, perhaps somewhat indirectly, but I've taken answer from it.

What did you believe?

MR. BENNETT: So there's two – I mean, there's two ways of looking at that. As time progressed, I think – first of all, what I should say first is that, you know, it's not unusual to set a target that's a little bit of a stretch for the team. I think my bigger concern through that period was the – sort of the evolution and the distinction between sanction and financial close. And from my perspective, I appreciate both pressures. First of all, I acknowledge and understand that as you're – if you don't have the financing in place, then that work that's in

between sanction and financial close is being funded with equity from the province –

MR. BUDDEN: Mm-hmm.

MR. BENNETT: – and that's important. It's important for us to be really focused on what absolutely is necessary, and things that aren't necessary are likely going to slip in the – right? My key concern was making sure that the critical work kept going.

MR. BUDDEN: Okay. That's an interesting answer; it's not – it didn't answer my question. My question again, did you believe these numbers were – okay, let me put it this way, did you believe they were improbable such as Mr. Harrington appeared to believe?

MR. BENNETT: I don't think I had a probability on it. I guess the point I was trying to get to in my explanation was if you started with P50 and you have, you know, some delay in getting the things done that, you know, need to be done, then that probability is going to slip. I didn't have, in my head, a clear number, you know, P5 versus P30, P20.

MR. BUDDEN: Okay.

Mr. Harrington testified that he thought the real number was higher than 6.2. He suggested perhaps – if I recollect his evidence – perhaps around \$7 billion. But he did have in his mind a more likely number than the number that was publicly identified at sanction.

Did you in your mind have a number or a thought or a process as to what – if not 6.2, then what a true number –

MR. BENNETT: No, I hadn't –

MR. BUDDEN: – might be?

MR. BENNETT: – I hadn't formulated the number. I think I would – the way I was looking at this is there are risks in both alternatives.

MR. BUDDEN: Pardon?

MR. BENNETT: There are risks in both the Interconnected and the Isolated alternative at the time. And I was thinking about this in the

context of if you want more certainty in the cases, you were likely going to add cost to both.

MR. BUDDEN: The – yeah, but –

MR. BENNETT: So I –

MR. BUDDEN: – that’s a separate – I would respectfully –

MR. BENNETT: Okay.

MR. BUDDEN: – suggest that’s a totally separate debate and Nalcor officials we’ve had here keep trying to conflate it, but I most specifically do not want to conflate it. I’m looking at these numbers and that schedule.

MR. BENNETT: And what I said was I didn’t have a number in my –

MR. BUDDEN: Okay.

MR. BENNETT: – a particular number in my mind. So Mr. Harrington may have expressed one, but I didn’t have one in my mind at the time.

MR. BUDDEN: So you truly, at that moment in time, when Mr. Harrington was saying, look, I think this, you know, this schedule is too tight, I think this number’s too low, and Mr. Martin was saying, well, we’re going to go with it anyway, I’m CEO and I exercise my right as CEO to say this is my final decision, you had no opinion?

MR. BENNETT: I could – I understood where Mr. Martin was coming from.

MR. BUDDEN: Yeah, but you are a very bright man –

MR. BENNETT: Okay, so –

MR. BUDDEN: – you had great academic achievements –

MR. BENNETT: And I –

MR. BUDDEN: – what was your opinion?

MR. BENNETT: And I understood the rationale for what he was saying, but at face value, you know, confronted with a less-than-

certain estimate, there’s a probability you’re going to exceed that number.

MR. BUDDEN: So that’s essentially saying the same thing Mr. Martin – Mr. Harrington said.

MR. BENNETT: Well, Mr. Harrington is making very specific numbers here, okay? He’s, you know –

MR. BUDDEN: Yeah.

MR. BENNETT: When he says recognize being five to 10, I guess my point is there’s a broad body of documentation that speaks to this. And I’m not sure it’s as clear as what’s been stated here.

MR. BUDDEN: But then he comes to a conclusion, which he –

MR. BENNETT: I –

MR. BUDDEN: – supported in his – which he confirmed in his evidence –

MR. BENNETT: And that –

MR. BUDDEN: – not with great enthusiasm, but he did confirm it.

MR. BENNETT: I appreciate that.

MR. BUDDEN: Yeah, yeah.

The – because, I mean, given your position and given, you know, what you bring to the table – you’re a man of achievement who is in the centre of this debate, and I guess I find it surprising that you would not be more forthcoming if you believed this was a number that it wasn’t probable to – that it was probable to exceed, why you didn’t say that. Or did you say that?

MR. BENNETT: I don’t recall laying a number on the table for Mr. Martin. I know that he spent a lot of time himself thinking about how much funding he was going to release at any given point in time. And he had made his philosophy abundantly clear on this that he was looking for clear evidence and clarity before he was going to reduce – release funding for the team.

I fully understood that.

MR. BUDDEN: Yeah, I missed that last bit – something before the team. What is it you said?

MR. BENNETT: So he was going to – he wanted a very clear demonstration that the contingency was going to be required before it would be authorized in the form of an AFE –

MR. BUDDEN: Okay.

MR. BENNETT: – and released to the team for expenditure.

MR. BUDDEN: All right.

Did you, at all times – I mean, there's a duty, obviously – we all have duties within hierarchies. And one duty, I would suggest, is to inform a person who's making a decision and give them your best advice, your – the fullness of your knowledge and view of things. Do you feel you did that in this debate with Mr. Martin?

MR. BENNETT: I don't think this was debated extensively. He had a clear philosophy that I understood. I understood the rationale for it. And I think my experience on this is it's less useful to engage in a debate on these kinds of topics.

I understood his philosophy; I understood where he was going. I understood that, you know, he was very clear that there were other value considerations that are relevant in his decision. He's explained it on many occasions and I understood that. I understood clearly where he was coming from and I didn't – I did not engage in a debate with him on it.

MR. BUDDEN: Okay.

So even if you thought it was improbable, you never said so to him?

MR. BENNETT: My takeaway from the various conversations is that he understood that there was a level of risk in this as well.

MR. BUDDEN: Okay.

Okay, just a few wrap-up questions. But in – earlier in your evidence, quite early, there was – Ms. Muzychka put to you some of the issues

around the hiring of the project management team that was ultimately hired. And she spoke of other résumés that had been put forward, other individuals who on the surface had more expertise. And you made that point that, look, we were – I'm paraphrasing you. I've got the exact wording, but I think I can do it – we're hiring a project management team; we're not hiring specific engineering skills. You remember saying that? When it came to the project management team.

MR. BENNETT: I do recall saying that, yes, we're hiring members of a team. I think I also pointed out that, you know, we're not hiring them typically from a sheet of paper, either, that there's a broader conversation that when we look at qualifications, it's often worthwhile to interview somebody or to understand how they fit into the team.

MR. BUDDEN: Sure. And I think what you actually said, at least in part, was, they're not there in that technical capacity, that they're in a project management capacity. So I get your point. I guess my response is, is it – are there not people out there in the applicants who had both? Who had the project management capacity, experience, but also came out of a background that was more in line with what you guys are doing here – building a dam.

MR. BENNETT: I'm not sure that there were. And in varied levels in the organization, however, there are people with that experience in those roles.

MR. BUDDEN: Again, getting back to Mr. Martin. I realize, again, he's CEO, he has the ultimate call, and the decision he ultimately made, I would suggest, is he hired a senior project management team, which (inaudible) the top levels – Mr. Harrington, Mr. Kean, Mr. O'Brien, Mr. Power – are predominantly people who have a strong background in his field, oil and gas, hardly any background in hydroelectric development. Nor did you, for that matter.

And I guess the – I'm interested in your – did you express to him any reservations at all, either about any of these individuals as individuals, or even suggest to him, look, we're – you know, we're really – have too much here from the oil and gas centre – oil and gas sector, perhaps we

should leaven it a bit by bringing somebody here who has actually built a dam before.

MR. BENNETT: So, I think I'd be remiss if I didn't point out Mr. Power's qualifications.

MR. BUDDEN: Ron Power, sure. Yeah.

MR. BENNETT: Right. And, you know, looking beyond that, you know, if you look at the challenges that the project team has, they're multidisciplinary; they're complex; they transcend the technical aspects of any given portion of the project. They cover a variety of construction disciplines, but they have major contractors, major contractor issues and a level of interface complexity that actually is reasonably – in my view, a reasonably a good fit to what goes on in the oil and gas.

MR. BUDDEN: Okay.

MR. BENNETT: So we weren't asking the most senior people to do the technical design or the engineering design; in many regards, the construction challenges that are seen across the job are not unique to hydro versus oil and gas. And if I look at – you know, assume you did have hydro people, there are inevitably going to be aspects of the job that they may not be familiar with.

It's program management skills and project management skills that are really valuable here. And this is a complex project with multiple disciplines and, in many cases, those situations have – in my view and from what I've seen – arisen in oil and gas, just as well as they've arisen in hydro projects.

MR. BUDDEN: So – and we've discussed this at great length throughout both Phase 1 and 2; we're now, of course, in the construction phase. But to bring it all together, we realize the team that was hired is the team that was hired and Mr. Martin had the final say on that.

My question to you is a pretty simple one. Were you one of – were you a voice in his ear saying: Look, I think we need to bring in other expertise at this highest level, other than these people, the expertise we have here? Was that a role that you were playing?

MR. BENNETT: I didn't have any concern with the experience of the people who were involved at the most senior level. They had seen complex work before, they had seen large-scale jobs, they had seen a variety of complex technical issues and that didn't cause me concern.

MR. BUDDEN: Okay.

MR. BENNETT: I think when you look at some of the hydro experience we've seen, there are considerations there that, I think, would've been painful as well. So some of the construction individuals may not be familiar with, you know, some of the back-office elements, the change control process, the ongoing budget management process, the, you know, need to engage multiple functional teams in making significant decisions.

So you have to look at individuals in the role that you're asking them to take and to see how they fit that role. And I don't think in that regard some of the hydro construction experience is necessarily nearly all of what you need in those roles.

MR. BUDDEN: Okay, all right.

We know that the project was bifurcated in 2016 under Mr. Marshall's watch. Do you believe that that should've been done earlier, perhaps as early as the beginning of construction?

MR. BENNETT: I didn't see it as an issue myself early on because, no doubt, that by the time Mr. Marshall arrived, there were significant challenges in both areas of the project. And, as I've mentioned before, I fully appreciate, you know, why he took the decision, what his intent was.

MR. BUDDEN: Okay.

All right, and you see, even in retrospect, that there was no particular advantage, or that there would've been an advantage having done that, say, in 2013.

MR. BENNETT: I think there are always puts and takes, but in 2013 I didn't see that as a pressing issue.

MR. BUDDEN: Or any point before 2016?

MR. BENNETT: Don't think so, no.

MR. BUDDEN: Okay.

My clients, at least, will be making submission to this Inquiry that there's been evidence – overwhelming evidence – that the Nalcor board and the shareholder, the Province of Newfoundland, was not informed properly of cost and schedule overruns. And we've spent days and days at this Inquiry pursuing that and I'm not going to ask you to comment on that. And for the purpose of this question, I'm just saying that that's where we're going with it and I don't think you need to even accept that to answer my question.

And my question is – my first question is: Did you, personally, Gilbert Bennett, ever advise, request or otherwise encourage Mr. Martin – Ed Martin – to deliver such information about cost and schedule overruns earlier in time to the shareholder or to the board than he ultimately did?

MR. BENNETT: I can't think of one. And so the whole question of the progression of capital cost, how those risks are communicated, they're certainly within his realm. I keenly understand the need for continuity in that process, that it's important that that information be communicated in a timely manner to each of the groups who are involved in those type of decisions.

So if you're going to communicate risk, it should be consistent with the premier, Cabinet, the board, the minister – who's obviously a member of Cabinet – in a consistent, coordinated and timely manner. This is important, commercially sensitive information that needs to be properly communicated in the appropriate context.

MR. BUDDEN: Agreed. And various people here will be making submissions on behalf of their clients, and many people here have testified from GNL – at least from GNL – that they were not promptly informed.

Was there ever a moment in time where you felt, look, we have this information, we really should be sharing it and we've not yet done so?

MR. BENNETT: I – and I think I may have said this already, that, you know, I was – and I had heard Mr. Martin communicate risks. There's was a – I've always accepted there's a level of interpretation between what the project management teams bring forward in their outlook. That needs to be appropriately considered and communicated.

There is – it was clear that Mr. Martin wanted mitigation to the extent mitigation was possible on some of these cost numbers. He was concerned about trying to get that accurate, to strike that balance so that we're not overstating the costs and yet not understating the costs. And that's a difficult balance to be in.

I'm also cognizant of the political consequences of having to continue to announce ongoing cost overruns, and that's not a palatable position to be in either. So what I took away from this is that this continuing effort was – required balance, required careful consideration and was a difficult topic to navigate. That's the way I looked at it.

But I didn't – in retrospect, I'm not – other than the – I mean, the situation – I think the situation in 2015 went on for a long time if we look at that cost update. And the reasons for that are, I think, on the record. It's longer than I would have been – I like, but I understood why.

MR. BUDDEN: Okay.

MR. BENNETT: So it's a roundabout –

MR. BUDDEN: Did you –

MR. BENNETT: Oh sorry.

MR. BUDDEN: Why was it longer than you would have liked?

MR. BENNETT: Well, you know, the fact that that number was discussed, you know, early in the summer and never got out 'til late in the fall, that's a long time.

MR. BUDDEN: Very long time frame. And you felt uneasy about that.

MR. BENNETT: I – it's not great.

MR. BUDDEN: Pardon?

MR. BENNETT: It's not a great situation to be in. I understood how that unfolded and I do think it took, you know, longer than ideal, but I also understand sort of the complex considerations around that –

MR. BUDDEN: Okay, I –

MR. BENNETT: – that I didn't have direct control over.

MR. BUDDEN: I agree you don't have control, you weren't the CEO; however, you were the VP. And I guess my question to you – I'll focus it a little more because you're answering, but you're not answering me directly –

MR. BENNETT: I'm sorry.

MR. BUDDEN: – and I want you to answer me directly: Was there a time when you felt we really are not giving the straight goods to our client and we should be doing so?

MR. BENNETT: No, I wouldn't look at it that way. I was thinking more about sort of the public discourse. I understood at the time that there had been communication and that what you refer to as the straight goods actually had been communicated, and there was now a difficulty in making that communication public.

MR. BUDDEN: Okay.

In retrospect, knowing what you know now, do you believe that you were incorrect in your thinking that the straight goods weren't being communicated and you were in the dark about that?

MR. BENNETT: I'm not sure that I am.

MR. BUDDEN: You're not sure that you're what?

MR. BENNETT: I'm not sure that – you know, that if I look back on it, I thought that the

communication did happen. I still understand that to be the case.

MR. BUDDEN: Okay.

But getting back, again, to that one specific example you mentioned, the June to fall gap in 2016, I believe, that was – or 2015 rather –

MR. BENNETT: '15 rather.

MR. BUDDEN: Yeah, 2015. You were uneasy within that time frame. You just said that.

MR. BENNETT: Yeah, what I said was it wasn't great that it went that long.

MR. BUDDEN: Okay.

MR. BENNETT: Did it stop the project? No, it didn't stop us from doing our work.

MR. BUDDEN: But that's only part of your responsibility. I mean, you're building a dam but you're also, I would suggest, have a duty to keep your shareholder fully informed as to what you guys yourselves know –

MR. BENNETT: So I –

MR. BUDDEN: – about the cost of that.

MR. BENNETT: And I think I explained that I understood that that conversation had taken place with our CEO.

MR. BUDDEN: Okay, with your CEO or between your CEO and your shareholder?

MR. BENNETT: From the CEO to the shareholder.

MR. BUDDEN: Okay.

So what did you make of the fact that there was this sort of gap in what was being –

MR. BENNETT: It's –

MR. BUDDEN: What did you think – what did you attribute that to?

MR. BENNETT: What did I see? The situation as politically complex.

MR. BUDDEN: So you thought it was the politicians who had the information and weren't conveying it?

MR. BENNETT: No, I didn't say that at all. I said the situation was politically complex.

MR. BUDDEN: Explain.

MR. BENNETT: Well, I'm not the one who independently releases cost information and AFE approvals for the project.

MR. BUDDEN: Of course.

MR. BENNETT: Right.

MR. BUDDEN: Yeah.

MR. BENNETT: So I understood that discussions were ongoing by the CEO and what I'll refer to as the top of the house in government and their – the decision – the discussion is within their realm. They have it. It's not – that's not an area where I would typically step into. It's one that I don't step into today.

MR. BUDDEN: So what about it?

MR. BENNETT: If Mr. Marshall has a file today, then he's having a conversation with the Premier and that's not necessarily a place for me to be.

MR. BUDDEN: So what was going on in – back there in the summer and into the fall of 2015 that you thought wasn't great? What was it you thought wasn't great?

MR. BENNETT: The length of time. And you saw the feedback from the Government of Canada and how long it took to, ultimately, get that AFE update released.

MR. BUDDEN: Okay. So – but, again, you saw the breakdown of communications as happening where exactly?

MR. BENNETT: I'm not sure that there was a breakdown in communication.

MR. BUDDEN: Okay.

Or the – who did you see as having failed to communicate?

MR. BENNETT: I think what I said was this was a complex communication that had to unfold and that the responsibility for that lay with Mr. Martin, premier of the day.

MR. BUDDEN: Okay.

You, well, were the VP. I would've assumed that at that level, just one below Mr. Martin, given again that as a VP, you know, one might have to step into his shoes if something happened to him, or any number of scenarios where one would necessarily have – I would have thought had to be in the loop. But yet it appears that, in many respects, with regard to the financing of the project and the communication of that information, you weren't in the loop. Is that a fair comment?

MR. BENNETT: I think that there are discussions that happened between the CEO and the premier and Cabinet that I may not be completely – I guess to use your words – in the loop. There were conversations that happened that don't necessarily involve me.

MR. BUDDEN: Okay and that weren't subsequently communicated to you?

MR. BENNETT: I think, generally, the results would come back. Yes, sure, they're communicated to myself because we're going to likely be doing something with them.

MR. BUDDEN: Okay. Because the impression one gets from all of that – and we've heard from the board, we've heard from other people that Mr. Martin was running, in many ways, a one-man show. I mean, he was communicating but he wasn't, perhaps, passing the information even to his VP.

MR. BENNETT: I'm not sure about that. I think what I said was that there are conversations that happen and decisions that are taken that are being carefully considered by, right, those individuals.

MR. BUDDEN: Okay.

All right, just with a couple questions with regard to the SNC risk assessment. Have you any explanation at all – what I understand from the evidence we’ve heard is that Mr. Harrington seems to have evidence that shows he sent an email and you seem to have evidence that showed that you’ve never received it. And we haven’t heard such a thing, that I can recall – certainly nothing at that level – within this Inquiry. Have you any explanation?

MR. BENNETT: Nothing further than to what I’ve – to what we’ve said –

MR. BUDDEN: Okay.

MR. BENNETT: – to what I’ve said in the documents that we have in the search.

MR. BUDDEN: And –

MR. BENNETT: I have nothing further.

MR. BUDDEN: – if I understood correctly, you had IT – Nalcor IT people – check your email and there’s no evidence that that email ever landed in your inbox.

MR. SIMMONS: Commissioner, if I might, there is an exhibit – I don’t have the number now – which is a report from us on behalf of IT concerning exactly what was investigated and what the results were. And it doesn’t – it was not possible to go so far as to say the email was never delivered to the inbox; there’s only certain parameters could be reported. And that’s – I don’t have the exhibit –

MR. BUDDEN: Okay.

MR. SIMMONS: – number handy, but there’s a report on the record concerning that.

MR. BUDDEN: All right.

All right so now – I’ll move on from that point. You testified on Friday about that report. There’s a little excerpt but I do want to speak to it.

Yeah, Ms. Muzychka said to you: We’ve 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?

And you say: 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. And Ms. Muzychka says: Right. But do you think that the two are connected? And you say: I can’t. It’s hard. I don’t want to speculate.

My interests are different; I’m not really interested in the speculation or otherwise. But you were a permanent Nalcor employee, unlike most of the project – or all, I guess, of the project management team. You clearly, other than some sense of treating people decently – if SNC came to you and said, look, we want to come back in, we want to even displace the project management team, that’s something as – your duties to Nalcor would at least require you to consider, wouldn’t it?

MR. BENNETT: Had they presented a complete proposal, we probably would have looked at that.

MR. BUDDEN: Yeah.

MR. BENNETT: But then, as I understand it, and – we’d have to assess that and make a decision, based on that information.

MR. BUDDEN: Sure.

So you would have had no reason to – your – at least somebody in your position would have no reason to shy away from such a conversation, whatever Nalcor – and even assume SNC’s motives, like all of our motives, are, to some degree, motivated by self-interest, that wouldn’t be a concern of yours.

You would – like, that’s not something that someone in your position would legitimately say: Oh I don’t want to talk to them; they’re coming from a bad place. So that’s not a concern you would have had, I presume.

MR. BENNETT: You’d have to look at what it meant to the project, the project team, the organization. You’d have to look at whatever they brought to bear on a proposal –

MR. BUDDEN: Yeah.

MR. BENNETT: – and then consider where to go from there.

MR. BUDDEN: Yeah. So you would have – you, at least, would have had no reason to ignore that email or not look at it or anything like that.

MR. BENNETT: Ignore the email.

MR. BUDDEN: From the – if Mr. Harrington had indeed forwarded the email to you.

MR. BENNETT: From – you mean from 2013?

MR. BUDDEN: Yeah.

MR. BENNETT: Oh yeah, that's – but that's not related to this notion of replacing SNC-Lavalin in 2016.

MR. BUDDEN: Okay. Other people suggested it was. Mr. Power did.

MR. BENNETT: And I –

MR. BUDDEN: Mr. Martin did.

MR. BENNETT: And, as I said, as I – yeah, well, I guess what I'm – two points on this. First of all, I indicated I couldn't directly connect the dots, but I'm trying to draw a link between the 2013 email and the 2016 engagement with SNC-Lavalin. I think I missed your question there.

MR. BUDDEN: Okay.

Well, my point was – my question was that others have – or at least an observation I made was that others here, certainly Mr. Power and Mr. Harrington, have said: Look, that's why SNC did this; they were trying to displace us and that's why they did the risk assessment.

And as you yourself just said, well, why would that be? And my response was, well, you know, your project management team seemed to be suggesting it.

MR. SIMMONS: Commissioner, if I might.

What I recall from evidence prior was the suggestion that the delivery of the report in 2016

might've been connected, rather than the creation of the report back in 2013. So I think that's the distinction –

THE COMMISSIONER: I think there's been –

MR. SIMMONS: Yeah.

THE COMMISSIONER: – actually two suggestions. I think that – the issue of the 2016 and the issue of re-engagement – and that's why they provided it to Mr. Marshall – is one thing. But I also think it's also been suggested that the production of the report in the first place was basically to get back – get themselves back reinstated with the project. That's why they – Mr. Card was supposedly going to go meet with Mr. Martin.

MR. BUDDEN: Mmm.

THE COMMISSIONER: I mean, it's not – like, it's all – it's not ironclad either way, but I mean I think I can see it went two ways here.

MR. BUDDEN: Yeah. Well, again, it's not a major point, but I'm just tying up a few loose ends here.

One thing – and this is something that I would suggest – at least my clients will be suggesting – emerges clearly from the evidence for the Commissioner to consider, but Mr. Harrington, I would suggest, was – in many ways, seemed to be acting in a – you know, as a law unto himself. And I'm thinking of his – what I would regard – what I'd submit is a highly inappropriate series of confiding in the independent engineer using terms, at one point: Shame on Nalcor.

This is from the – you know, somebody in his position talking to your – somebody who's doing a cold eyes review of you and here is he saying: Shame on Nalcor. And other comments that were hardly any more flattering. He would've had, I'd suggest, a pattern of non-compliance with oversight committees or other inappropriate behaviour towards oversight agencies, as the comments he made to Mr. Westney and Mr. Owen back in 2012; his – perhaps his handling of the SNC risk report.

But I guess my question to you as his – you were his nominal supervisor, I believe you still

are: What was done when you became aware of those behaviours – those various behaviours? What was done to convey a message to him that this is not in accordance with how Nalcor operates?

MR. BENNETT: So I think there's a couple of points there that, you know, the concerns that were raised to me at various points along the way, (inaudible) about the EY, some of the EY engagements, concern about the impact on the project team, a desire to address commercially sensitive information wasn't things that I would actually expect somebody to bring forward and think about and be aware of.

The discussions with the independent engineer, I think my indication here was that if there are Nalcor issues, then there is no reason why that can't be a Nalcor communication. So if he had a concern about a risk that he saw being – arising from – in the case of bifurcation of the team, then that's – I don't think that's inappropriate to apprise IE of that; that he has a concern. If the IE believes it's a concern, I suspect the IE was going to have some commentary about it in short order.

I think that, you know, there are examples in various places where we've seen less than temperate emails; what I would've expected as sort of the normal norm for business commination, as opposed to somebody making some very direct points. And I, you know, try not to do that myself, and I don't think it's really necessary. But I do rely on the discretion of people who may be receiving some of those emails to use appropriate judgment, and go for there.

And my message to the team is consistently: when we're writing emails, it's a good idea to make sure that you've thought those through carefully before you hit sent.

MR. BUDDEN: Okay.

THE COMMISSIONER: Just if I can, Mr. Budden. I apologize for interrupting.

But I have to go back, Mr. Bennett, and your – Mr. Harrington reports to you, and I can't – I cannot – it just doesn't strike me as, at all, reasonable to suggest here that you would – that

Nalcor would want an employee, whether by contact or otherwise, but somebody certainly at the level that Mr. Harrington was, going to an agency – whether he was friends with Nik Argirov or whatever the scenario is – makes no difference – going to an agency and basically, I think, lambasting the reputation or the abilities of Nalcor.

Like, what would've happen, for instance, had Mr. Argirov – somehow this led to Mr. Argirov actually doing something that could've – could well have impacted the project's progress, the issue of cost, whatever additional cold eyes reviews? I mean, like, I find it amazing that you would suggest that, you know, you can understand that he could go and explain that risk. He did more than just go and explain the risk. He offered his own view with regards to it –

MR. BENNETT: Yeah.

THE COMMISSIONER: – that were not consistent with the views or, alternatively, with the needs of Nalcor. And as his superior – you know, as much as you want to keep him there now to do the job – and I'm not suggesting he should be fired or anything, but to suggest that you would approve of that is – I'm sitting here and just shaking my head –

MR. BENNETT: Yeah.

THE COMMISSIONER: – and wondering: How can you do that?

MR. BENNETT: I didn't approve it, because it happened and I found out about it after the fact –

THE COMMISSIONER: No, but it sounds like you're approving it now.

MR. BENNETT: No, I'm – I guess I'm trying to be judicious, as well, in the sense that I'm trying to have a conversation with – you know, with the independent engineer on various risks, and it's hard for me to give guidance and say: Okay, you should ignore that risk and don't talk about it. I mean, I think I've said myself, there are puts and takes on this. There were – I understood the benefits and I understood some of the risks.

Had that come to me in a – and I think I did, actually, have one or two conversations with the IE on this topic, and that was the point that I made to Nik was, you know, you can look at this a couple of ways, but we need to get past it because a decision has been taken. And that was the way that I had approached it with the members of the team. People were – they had a very – they had some fairly strong views on the topic, and I looked at it and said: This decision has been taken; we need to move forward.

THE COMMISSIONER: But they didn't.

MR. BENNETT: Well, they did eventually get over it.

THE COMMISSIONER: Right. So are you still telling me that – as his supervisor that you somehow understand that he could go to the independent engineer and do and say what he did?

MR. BENNETT: I'm not happy with what was said in the email. I'm not happy with the couple of factual inaccuracies that are in the email. I've never tried to insert myself in the conversation to say I'm going to take control of the conversation with the independent engineer, because that creates another set of problems.

THE COMMISSIONER: Okay.

Go ahead, Mr. Budden.

MR. BUDDEN: Well, I had a couple of follow-up questions, but I think they've been covered, so I'll move on.

Last two questions, really. We've heard from your current board chair, Brendan Paddick, and he testified here a week or so ago, and he said something to the effect that Nalcor had been pilloried by critics and the public for Muskrat's failures – the reason why we're here – and that it was now a downtrodden organization. And he really called for the people of Newfoundland to rally behind Nalcor.

And I guess I'm putting to you as – you know, as a very, very senior person in Nalcor, would you agree that as a precondition to such public rallying, Nalcor itself and its senior personnel must convince the public that they are people of

integrity carrying out a project in a manner reflective of that integrity. That's a condition precedent, isn't it?

MR. BENNETT: Yeah, it's challenging both ways. I fully get the consequences of where we are. I understand where we stand. I understand we're all in a difficult situation, and we have a team who is trying to get the job done.

MR. BUDDEN: Mmm.

Yeah –

MR. BENNETT: And –

MR. BUDDEN: – and I guess my question for you – and maybe it's, you know, I'll – let's save it for Marshall, but you can see the problem, can't you?

MR. BENNETT: Oh, no question.

MR. BUDDEN: Yeah.

MR. BENNETT: I can see the problem –

MR. BUDDEN: Yeah.

MR. BENNETT: – and I see it very clearly both ways.

MR. BUDDEN: Nalcor has to –

MR. BENNETT: And it's not –

MR. BUDDEN: – make the public – (inaudible) public necessarily having to go to Nalcor.

MR. BENNETT: Right. And it's not easy.

MR. BUDDEN: Okay.

Last question – I won't call it up – the Westney risk assessment, P-03669, has, you know, a very large, nine-digit number assigned to the risk consequences of this Inquiry and talked about it – and you've talked about it – but I'm not gonna ask you about those.

But I will say that, you know, clearly, can you not imagine some benefits flowing from this Inquiry. I mean, this is this enormous addressing, experts have been here, you'll have

the benefit of a report from the Commissioner who has heard probably 150 days by that point.

So, I mean, perhaps that can help foster a culture of integrity and transparency within Nalcor that I would suggest in some respects has been lacking. So that clearly is not something that – perhaps I would suggest that’s something that should be calculated as the other side of the balance sheet, to any risks this Inquiry may cause for Nalcor.

Would you agree with me?

MR. BENNETT: There may be benefits. I guess they wouldn’t – it wouldn’t appear in our capital cost, right? That’s the – and at this point in time, we’re tracking to our current budget, our \$10.1 billion expenditure, and we’re looking at potential impacts on that number.

MR. BUDDEN: Okay.

MR. BENNETT: Right. That was the purpose of that exercise.

MR. BUDDEN: All right. Thank you.

THE COMMISSIONER: All right.

Edmund Martin?

MR. SMITH: Afternoon, Mr. Bennett. Harold Smith for Edmund Martin.

MR. BENNETT: Good afternoon, Mr. Smith.

MR. SMITH: Mr. Bennett, I only have one area of interest from your testimony today, and I’d like 01962 on the screen, please.

THE COMMISSIONER: 01962.

MR. SMITH: Now – and scroll down to the –

THE COMMISSIONER: Tab (inaudible).

MR. SMITH: – underlined portions, if you would.

Okay. Now, as I understand it, Mr. Martin was the chief executive officer, and could you tell us, Mr. Bennett, how much time or effort would Mr. Martin put into developing the cost schedule?

MR. BENNETT: In terms of his thinking about the information that was provided by the team or well –

MR. SMITH: Well, no – the information –

MR. BENNETT: – the schedule. I understand.

MR. SMITH: – the information

MR. BENNETT: He was the receiver of a large body of work from the project team.

MR. SMITH: But he didn’t prepare that work, did he?

MR. BENNETT: No. He didn’t do it directly.

MR. SMITH: Okay. So, in terms of the cost of the project, he would rely upon the project team to provide him with the estimates.

MR. BENNETT: Yes.

MR. SMITH: Okay. To your knowledge, were there several different estimates or was there one estimate at time of sanction?

MR. BENNETT: At the time of sanction, I recall there was one estimate.

MR. SMITH: One estimate.

MR. BENNETT: Right.

MR. SMITH: And when that estimate was put forward by the project management team, I assume the project management team believed in that estimate and communicated that to Mr. Martin.

MR. BENNETT: That’s right. They brought forward the sanction estimate, the \$6.202 billion.

MR. SMITH: Right. Because if I look at – if I look at the letter that’s been referred to by Mr. Harrington to Mr. Marshall, it says: “the direction that was provided to the Project Team was to set a very aggressive schedule with a First Power target” recognized as being P5 to 10.

“... unlikely probability of achieving these cost and schedule targets was well known.”

Now, why would the project management team put forward a cost estimate that they didn't believe in?

MR. BENNETT: No. I get your point. I think the only observation I'd make here is that there was a period of time between that cost estimate and the sanction decision and financial close. And, I think I've explained that there was some concern expressed by everybody – as the ultimate financial close decision became disconnected from sanction – that the passage of time, which is important, and the decision-making to mitigate, by doing early works, was a concern.

MR. SMITH: I'm only reading what Mr. Harrington wrote, and what Mr. Harrington didn't get into was the difference between sanction and financial close and the change that occurred after financial close and the change that occurred after that. He didn't –

MR. BENNETT: (Inaudible.)

MR. SMITH: – reference these things. He referenced – as I read it – he referenced the number at financial – sorry – at sanction.

MR. BENNETT: Right.

MR. SMITH: Correct?

MR. BENNETT: That's right. And then I – and I think, in my explanation with Mr. Budden, I was trying to put some context around it, and I think I tried to do a little of that this morning, as well.

MR. SMITH: Okay. But in terms of what Mr. Martin took forward to sanction, was numbers that the project management team fully believed in, as regarded to cost.

MR. BENNETT: The \$6.202 billion estimate was compiled and brought forward by the project team, yes. Right.

MR. SMITH: And in fact, ultimately, the 6.531 prior to financial close, was also brought forward by the project management team.

MR. BENNETT: Yes, but what – there is a bit of a distinction between some of the various numbers that I don't have complete clarity on either. That there's some desire expressed for a management reserve that was slightly in excess of the 6.531 billion.

MR. SMITH: But Mr. Harrington actually uses the term 6.531 in one of his memos to Mr. Martin.

MR. BENNETT: I think that's the case.

MR. SMITH: So, let's look at time of sanction – the schedule. Who had prepared the schedule, or identified what the schedule was for first power?

MR. BENNETT: The schedule would have been prepared by the project management team.

MR. SMITH: And Mr. Martin would not have participated in that, would he?

MR. BENNETT: Not directly, no.

MR. SMITH: No. And the schedule that was chosen, which I believe it was July of '17, was the first one?

MR. BENNETT: (Inaudible.)

MR. SMITH: First power?

MR. BENNETT: I think that's the case, yes.

MR. SMITH: And that subsequently got moved, I think, to the end of 2017.

MR. BENNETT: That's right.

MR. SMITH: Now, when we look at the schedule that was sanctioned and the costs that were sanctioned at December 2012, both those numbers came forward from the project management team.

MR. BENNETT: Right. (Inaudible) –

MR. SMITH: And the project management team believed in those numbers, otherwise I assume they would not have provided them to Mr. Martin?

MR. BENNETT: So, they did. But I think there was some gap in schedule, that the sanction decision was actually taken a little bit later than –

MR. SMITH: Than planned.

MR. BENNETT: – than planned.

MR. SMITH: Now ultimately, the schedule got shifted towards December.

MR. BENNETT: That's right.

MR. SMITH: Now, isn't it true that the primary contractor, at least on the power supply side of the equation – Astaldi – was late getting started?

MR. BENNETT: They were.

MR. SMITH: Okay. And that had some schedule pressures. However, didn't the project management team confirm that Astaldi would actually make the schedule?

MR. BENNETT: That was the thinking, yes, and we would be able to recover.

MR. SMITH: And you would advise Mr. Martin that the schedule was being accepted by Astaldi and they had put protections in place for Nalcor?

MR. BENNETT: Yeah, so at a high level, there were LDs associated with the date and there were securities in the contract.

MR. SMITH: So, when we talk about imposed, what we're really saying is not that it was arbitrary or unilaterally imposed by Mr. Martin, but rather that he chose to accept the recommendations of the PMT.

MR. BENNETT: Right.

MR. SMITH: That correct?

MR. BENNETT: With – yes, with the provisions that I've –

MR. SMITH: Yes.

MR. BENNETT: – discussed here in the past few minutes, yes.

MR. SMITH: And he took the position, as I understand it, that contingency – you'd have to prove to him that you needed the contingency?

MR. BENNETT: Yes.

MR. SMITH: And like all project management teams, you like to have a little more contingency than you might need?

MR. BENNETT: More contingency is – gives you a better probability that you're gonna have to come back to ask for more.

MR. SMITH: Right. So it's easier if you have lots of contingency as opposed to the minimum contingency.

MR. BENNETT: Yes.

MR. SMITH: That correct?

MR. BENNETT: Yes, both in cost and schedule.

MR. SMITH: Both in cost and schedule. Okay.

So, the word "imposed" here is really not reflective of what actually happened. It is essentially a term, word or whatever that can give the wrong impression?

MR. BENNETT: There's a lot of context and a lot of documentation and history that is not contained in those three lines.

MR. SMITH: Thank you, Sir, that's all the questions I had.

THE COMMISSIONER: Okay. Kathy Dunderdale is not present.

Former Provincial Government Officials.

MR. T. WILLIAMS: No questions, Commissioner.

THE COMMISSIONER: No questions.

Okay, I'm going to try to see where we are right at the moment.

Julia Mullaley/Charles Bown.

MR. FITZGERALD: No questions, Commissioner.

UNIDENTIFIED MALE SPEAKER: Thank you.

THE COMMISSIONER: Robert Thompson.

CLERK: All rise.

MR. COFFEY: (Inaudible.)

This Commission of Inquiry is concluded for the day.

THE COMMISSIONER: Okay. Consumer Advocate.

MR. HOGAN: (Inaudible.)

THE COMMISSIONER: Okay. Innu Nation.

MS. BROWN: (Inaudible.)

THE COMMISSIONER: Okay. Nunatsiavut, I don't believe is here. The Ekuanitshit, questions? Yeah.

Grand Riverkeeper – yeah.

Astaldi Canada.

Former Nalcor Board – okay.

The Building Trades Council – not here right now.

Dwight Ball, Siobhan Coady – yeah.

Okay. And Newfoundland Light and Power.

MR. KELLY: Just a couple of questions.

THE COMMISSIONER: Okay.

All right, so I think we'll break here. And I think we'll start at 9 o'clock tomorrow morning and come back at that stage and we'll – next up will be Julia Mullaley, Charles Bown.

UNIDENTIFIED MALE SPEAKER: (Inaudible) questions.

THE COMMISSIONER: Oh, I'm sorry. That's right.

I'm sorry, it will be Robert Thompson.

UNIDENTIFIED MALE SPEAKER: Commissioner, what time will we start?

THE COMMISSIONER: 9 o'clock.