



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 61

Commissioner: Honourable Justice Richard LeBlanc

Wednesday

26 June 2019

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc
presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right.

All right, Ms. Muzychka first of all this morning.

MS. MUZYCHKA: Good morning, Commissioner.

Just want to enter two new exhibits, please.

THE COMMISSIONER: Okay.

MS. MUZYCHKA: We have P-04331 and P-04332.

THE COMMISSIONER: Right. Those exhibits will be entered as numbered.

MS. MUZYCHKA: Thank you.

THE COMMISSIONER: And Mr. Bennett, you remain under oath at this time, and –

MR. BENNETT: (Inaudible.)

THE COMMISSIONER: – Mr. Coffey, when you're ready.

MR. COFFEY: Thank you, Commissioner.

I –

THE COMMISSIONER: Turn on your microphone there.

MR. COFFEY: Yes, Sir.

Good morning, Mr. Bennett. Bernard Coffey, I represent Robert Thompson.

MR. BENNETT: Good morning.

MR. COFFEY: Mr. Bennett, my questions are gonna focus on the period between sanction and financial close.

In particular, on the matter of the cost estimate and, as a subset of that, contingency. Okay, that's where I – just to give you some idea of where I'm going.

You, in testifying yesterday and on Friday, a number of times referred to situations in which you had no visibility into something. It's a phrase you used, (inaudible) at times. You say I had no visibility into this, that or whatever you're being asked about, correct?

MR. BENNETT: Depending on the situation –

MR. COFFEY: Yes, yeah, yeah, I appreciate there are some –

MR. BENNETT: Sure.

MR. COFFEY: – things you wouldn't. I think it would – in relation to maybe – it was maybe insurance costs in either transmission line, I don't what it was, it was some different questions. I could take you –

MR. BENNETT: Right.

MR. COFFEY: – to the transcript, but it is a phrase you use. And, in relation to that, I'm going to be asking you things about what, perhaps, your views on what visibility the Government of Newfoundland and Labrador might have had in relation to what Nalcor knew, okay?

That's where – just to –

MR. BENNETT: Right.

MR. COFFEY: – give you some sense of where I'm going.

MR. BENNETT: Hmm.

MR. COFFEY: If we could bring up, please, Exhibit – Madam Clerk, Exhibit P-02168, and it'll be on your screen, I believe.

THE COMMISSIONER: Two-one-six-eight – yes, that one's on your screen.

MR. COFFEY: Yes, and

Now, Mr. Bennett, this – I bring this up just to set the stage. You’re not the recipient of this email. It’s an email from Mr. Harrington to Jason Kean, copied to James Meaney, March 4, 2013. It’s Nalcor Energy, independent engineer review task 5, sub 1, “JK ph Comments.docx.”

And this is a document in which Mr. Harrington said, Jason, please “find attached my suggested additions to your text – I am open to discussion on any point.”

And the subject matter in this email is “Responses to MWH” – the independent engineer – “re DG3 Estimate.”

Now I appreciate you were not on this email chain, but my computer suggests to me that the word contingency appears in that document, in that exhibit, 19 times. Okay, so it’s discussed at some length.

MR. BENNETT: Okay.

MR. COFFEY: Were you aware in the beginning of March of 2013 when the first draft – independent engineer’s report was received by Nalcor, were you aware that contingency and the amount of contingency was of concern to the independent engineer?

MR. BENNETT: I think the independent engineer had offered commentary in the report with respect to the level of contingency.

MR. COFFEY: And they thought it was low.

MR. BENNETT: They indicated that they thought it was low, yes.

MR. COFFEY: And Nalcor responded.

But my point being that right from the opening whistle, as it were, Nalcor understood that the independent engineer was concerned about the level of contingency, and the lowness of the level from their perspective.

MR. BENNETT: They had made that observation.

MR. COFFEY: Yeah.

MR. BENNETT: I –

MR. COFFEY: Yeah.

MR. BENNETT: – don’t know that there was any additional concern other than the observation that they drew. Of course, we understand the process that was followed in developing the contingency.

MR. COFFEY: Yes.

Now, now that you mentioned that, on Friday you testified about contingency, and Commission counsel asked you about contingency and she put it to you in the context of, you know, how can you determine contingency if you’re not doing your QRA? She was talking about in 2014 and 2015.

But, if I could, on Friday you said – Ms. Muzychka said to you, right – and this is, Commissioner, on page 40 of the transcript, draft transcript – it reads:

Ms. Muzychka: Right, so the AFE is a more certain number; it’s the cost the team needs or the budget that the team needs in order to continue the work that it’s doing.

Mr. Bennett: With the amount of contingency.

Ms. Muzychka: With contingency, right.

Mr. Bennett: Right.

And she then asks: If the question is, though, how are you determining a contingency if you’re not running a QRA?

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

And you continued: And bring that forward, ultimately, in establishing an AFE, there is a – there’s a level of discretion that’s applied by the approver. In this case, this is our CEO gets to make that decision as to how much contingency is to be delegated to the project team in order to complete the work.

And you continued: And, of course, there would be supporting documentation to explain why that contingency amount was appropriate, okay? So

that's at pages 40 and 41 of your transcript of Friday.

Now, Mr. Bennett, you'd be aware this Commission has heard at length about how the original contingency at DG3 was calculated at – rounded to \$368 million – \$368 million. Okay, that was the contingency period at –

MR. BENNETT: Right.

MR. COFFEY: – DG3. And we've looked at the graphs and the Westney documents.

Now, I'm going to ask you to explain to the Commissioner, okay, having done that, what then happened with the contingency? That's at December of 2012, \$368 million, and in March of 2013 the independent engineer tells Nalcor the contingency percentage at 368 is low, from our perspective, our –

MR. BENNETT: Yeah.

MR. COFFEY: – the engineer's perspective. What then happened with contingency? Perhaps you can explain to the Commissioner how all this worked?

MR. BENNETT: So between that period, the – I don't recall the contingency being recalculated. The independent engineer had made that comment.

MR. COFFEY: Sure.

MR. BENNETT: The contingency in the budget had been established –

MR. COFFEY: Yes.

MR. BENNETT: – and the next review of that happened later in the year.

MR. COFFEY: Okay and when was that?

MR. BENNETT: We would've seen that conversation, I think, in some of the spreadsheets that I reviewed yesterday –

MR. COFFEY: Yes.

MR. BENNETT: – as we get closer to the end of the year.

MR. COFFEY: Yeah, that's into November, in particular.

MR. BENNETT: That's right.

MR. COFFEY: November 2013.

MR. BENNETT: Right.

MR. COFFEY: But that's the nominal amount. The starting amount gets reviewed at that point and we end up with the 183 or 186, depending on, you know, on which one you use toward it – by the end, by the time of financial close.

MR. BENNETT: Right.

MR. COFFEY: What I'm getting at is this: Could you tell the Commissioner, please, how it is that contingency is 368, but the running total that's available in contingency drops. Sometimes it goes up, sometimes it drops. It never goes above 368 but it drops off. It gets down to a hundred, gets down to 89, how does it get charged off?

MR. BENNETT: So if there are – if there's work that's approved and then there's a difference between the budget and what's actually needed to close the contract –

MR. COFFEY: The budget for a particular contract. Yes.

MR. BENNETT: – for a particular work package, then transfers are made to or from contingency, based on whether additional funds are needed to close that work. Or there's, every once in a while, a surplus that can get transferred back to contingency.

MR. COFFEY: Now, who's doing this transferring?

MR. BENNETT: Our project controls team. So they monitor the accounting on our expenditures.

MR. COFFEY: Okay, the project controls team. And in this context –

MR. BENNETT: That's –

MR. COFFEY: – that would –

MR. BENNETT: It's within the organization –

MR. COFFEY: Yes.

MR. BENNETT: – within the – within – and I think –

MR. COFFEY: That would be Tanya Power –

MR. BENNETT: Tanya Power and –

MR. COFFEY: – or her predecessor –

MR. BENNETT: – or her predecessor, that's right.

MR. COFFEY: Okay.

Now, they would do it, they'd actually do the keypunching involved –

MR. BENNETT: Yes.

MR. COFFEY: – but who would approve of it?

MR. BENNETT: That would follow our change control process.

MR. COFFEY: Okay.

MR. BENNETT: So that's –

MR. COFFEY: And perhaps you can tell the Commissioner, because I don't think we've heard how this all – I stand to be corrected, I don't think we've heard how all of this works.

MR. BENNETT: I'm a little surprised we haven't then –

MR. COFFEY: Okay –

MR. BENNETT: – because I'm not the expert –

MR. COFFEY: – and I –

MR. BENNETT: – in this area, but –

MR. COFFEY: – stand to be corrected but –

MR. BENNETT: – there have been multiple people from the project controls team and project management here, but we have a change control process. Requests that are – requests for

additional funding or work scope changes are reviewed by – there's a cross-section of members of the team who participate in that review process, and if the change is considered to be appropriate or necessary, then the necessary funding transfers and work scope changes are made that may ultimately result in a change order on a contract to reflect that change.

MR. COFFEY: So there's a change order is approved and say it's for – well, pick a figure – say it's for \$5 million. That gets charged or you deduct it from the contingency balance, whatever –

MR. BENNETT: That's right.

MR. COFFEY: – it happens to be.

MR. BENNETT: If there's no growth allowance in the work package in the first place, then, yes, it would be charged –

MR. COFFEY: Yeah, yeah.

MR. BENNETT: – to contingency.

MR. COFFEY: Okay.

But, initially, it would be charged to a growth allowance in the package.

MR. BENNETT: That's right.

MR. COFFEY: Other than that, you have to go to the general contingency amount.

MR. BENNETT: Right.

MR. COFFEY: (Inaudible) okay.

And would there be, to your knowledge, kind of a running total and – or any – an electronic file which would show this throughout the whole project?

MR. BENNETT: There – yes, there should be a running total because we keep track of –

MR. COFFEY: Yeah there's a running total – but I'm – on each transaction.

MR. BENNETT: Each transaction –

MR. COFFEY: That's right.

MR. BENNETT: – is also recorded.

MR. COFFEY: It is.

MR. BENNETT: Yeah, in the form of a – initially, if there's an indication that something may happen early in the process, we have what's called a DAN, or a deviation alert notice, and then that turns into a project change notice.

MR. COFFEY: Yes.

MR. BENNETT: That's the mechanism by which that's communicated within the team.

MR. COFFEY: Yeah, because some – I believe some counsel have expressed some puzzlement at how, between DG3 and financial close, you could have, well, apparently, a \$514-\$515-million cost increase overall, when Mr. Ralph took you through that yesterday. And, yet, of course part of that – the contingency went from 368 down to about 183, 184, in that range – 186. So – and some of that was the difference, isn't it? Some of that 515 is that difference.

MR. BENNETT: Yes, some of that is a –

MR. COFFEY: Yeah.

MR. BENNETT: – transfer out of contingency, yes.

MR. COFFEY: And then in this context, can you tell the Commissioner how it is that you can have a pot of \$368 million, okay, at DG3, for contingency, and have a smaller pot, but a hundred – roughly half of that, \$183 million, at financial close, yet the entire cost of the project has gone up.

In other – the point being, to use Grant Thornton's phrase, by April or May of 2013 the entire contingency had been used up, in their phrase. That's the way they kind of colourfully put it, in their report they do.

MR. BENNETT: Yeah. They're – I think in the records and the explanation of how the contingency is drawn are available – I'm not going to argue with their opinion, they've got their opinion. So the records – their records

indicate the transfer is in (inaudible) contingency, I would say mostly out, through that process.

MR. COFFEY: Well, can you tell the Commissioner how it is that the difference between the \$6.202 billion and \$6.531 billion ended up somehow in the accounting system?

Because we got an AFE of 6.202, correct, at DG3. That was the kind of the opening balance, the –

MR. BENNETT: Well –

MR. COFFEY: – project cost.

MR. BENNETT: Well, no, I don't –

MR. COFFEY: And –

MR. BENNETT: This project cost, we don't think the AFE was approved for that amount at that point in time.

MR. COFFEY: At 6.202? And –

MR. BENNETT: That was the budget but I don't think there was an AFE for 6.202 at that point in time.

MR. COFFEY: Okay, well what was the first AFE?

MR. BENNETT: Don't have that off the top of my head but I know that we did not have authorization to spend \$6.2 billion until the financing was closed.

MR. COFFEY: Okay.

MR. BENNETT: So the funding –

MR. COFFEY: And –

MR. BENNETT: – that would've been available to the project team at that point in time was the preparation work and the preliminary work, the early works through 2012, when everybody understood that was being funded by equity from the province. But there was not funding available for \$6 billion prior to financial close.

MR. COFFEY: Okay, so the \$6.202 billion AFE occurred sometime after November 29, 2013, that day or some day after.

MR. BENNETT: Someday around there, when then the funding was available from the federal loan – from the – the funding backed by the federal loan guarantee.

MR. COFFEY: Now, were you aware in July of 2013 and – or that kind of June-July 2013 into August 2013 – that the Government of Newfoundland and Labrador was interested in potentially using the independent engineer, or availing of the engineer, independent engineer? Were you – was that ever brought to your attention?

MR. BENNETT: It rings a bell and – but I guess what I'm not entirely certain on, on whether it was in 2013 or later when –

MR. COFFEY: Yeah, well, they did subsequently.

MR. BENNETT: They did subsequently.

MR. COFFEY: Yeah.

But the fact that they were doing so before financial close, you have no – on this?

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

MR. COFFEY: Okay, fair enough.

You were aware, though, that in July of 2013 – or were you aware in July of 2013 that the July 12, 2013, independent engineer's report was provided by Nalcor to Natural Resources? Were you aware that it had gone over to Natural Resources?

MR. BENNETT: It's not something that's coming to mind. If there's an email that I'm –

MR. COFFEY: Okay.

MR. BENNETT: – then, you know, we have that, but it's not something that's top of mind for me.

MR. COFFEY: So you weren't – you have no recollection of having been advised that in June

the government was asking for the independent engineer's report when it came in, and then that it subsequently got sent over. You're –

MR. BENNETT: It's not ringing a bell today.

MR. COFFEY: Okay, fair enough.

MR. BENNETT: I mean there's an extensive record of documentation, but that event is not ringing a bell with me right here now, right now.

MR. COFFEY: Now, if we could, please, Commissioner, Exhibit 02176? And, again, this will come up on the screen, Mr. Bennett.

Now, page 1 of this exhibit we can see that Mr. Clarke, on July 18, 2013, is sending an email to Mr. Kean, but he's also copying Harrington, Bennett and Crawley. And it's the: Draft IE Report to Ed/NL. And he's agreeing with – well, Jason has told Paul: "I agree with your proposal," as does Mr. Clarke.

And if we could get on to page 2, please. Now, this is from Mr. Harrington to yourself and others, and he spells out that his views on – as he says in the first sentence: "I believe the IE's statements should be allowed to stand and may actually help to prepare the cost message. Before I send this note below I believe we should consider the recipients" – sorry, go back. Yes, right there, thank you: "... the recipients and the timing of this message - we need to start to lay down some markers as to where costs are going and having the IE state that the market conditions are driving them up passed what you" would "expect using contingency setting" the "recommended practices may be step one." Yeah, I'm sorry: "... you could expect using contingency setting recommended practices may be step one."

And, I'm not going to take you through the – Mr. Harrington's – the details of what he said, Commissioner. I think the Commissioner has seen this before and it's there to read anyway. But one thing I will take you to is at the top of page 3, the – Mr. – or someone from Nalcor said: "The IE then states that other similar projects are carrying larger contingencies in the 12 to 18% range and indicates that is what we may expect to realize when we get the actual major" contracting "pricing in hand. This

reflects in the IE's opinion of the current market condition."

Now, so you were aware – would've been aware in July of 2013 of the independent engineer's view contingency should be in the range of 12 to 18?

MR. BENNETT: Yeah, that wasn't surprising when I read the report. I remember the comment.

MR. COFFEY: And my question, therefore, is this: Mr. Harrington's seemingly saying to his fellow PMT members and yourself, and Mr. Crawley that, look, there's something in this for us. Now, costs are going up and let's broach – use the IE to broach the topic and the reasons for it.

So, what I'm going to ask you, Sir, is this: What was your understanding of why Mr. Harrington was going to use this indirect method? To convince whom of what?

MR. BENNETT: I think that – I don't think there was anything much more than an observation here by the independent engineer. I think I would say that the project team – project team's life, for want of a better term, in carrying out the job, is generally more straightforward if they have greater contingency.

There's always a – there's always some toing and froing on what's in the authorization for expenditure and what the project –

MR. COFFEY: Okay.

MR. BENNETT: – team has been granted, and what they have to manage.

MR. COFFEY: So if I could, Mr. Bennett – see, on that day, the subject matter of this email is: Draft IE Report to Ed/NL, okay? And Mr. Harrington is communicating with yourself, Mr. Clarke, Mr. Kean, Mr. Crawley about a proposed approach addressing the draft – giving the draft IE report to Ed/NL. And he says, "we should consider the recipients and the timing of this message - we need to start to lay down some markers as to where costs are going"

So what was going on here? What was really going on?

MR. BENNETT: I have no insight other than what we see here in this email.

MR. COFFEY: Okay.

Now, this is the same time and same month, at least later that month, July of 2013, when I believe there's evidence before the Commission the FFC had hit \$7 billion, give or take a bit?

MR. BENNETT: (Inaudible.)

MR. COFFEY: Did it?

MR. BENNETT: No, I don't – I think that there were some outlooks provided in that regard –

MR. COFFEY: In the range –

MR. BENNETT: – but I wouldn't call it the FFC.

MR. COFFEY: All right, well, okay, some outlooks and we'll – and deal with whether it's –

MR. BENNETT: Than have –

MR. COFFEY: It's described –

MR. BENNETT: – have risks –

MR. COFFEY: – in the decks as FFCs, okay?

MR. BENNETT: Okay, we have risks and uncertainties associated with them and are not certainly at the point where they're in an AFE, being managed in the project controls –

MR. COFFEY: I'm not asking – I did not use the phrase AFE, Sir. I just said –

MR. BENNETT: I understand.

MR. COFFEY: – FFC, okay? And you recall that in July of 2013 and in August of 2013 the FFC, in these slide decks –

MR. BENNETT: They're –

MR. COFFEY: – and I don't have to take you to them –

MR. BENNETT: Yeah, there was –

MR. COFFEY: – they were at the \$7 billion – give or take a bit – range; 7, 6.8, 6.9–

MR. BENNETT: There were varying outlooks with varying degrees of certainty –

MR. COFFEY: Okay.

MR. BENNETT: – around those numbers that added up to that 6.8, or later, on \$7-billion number.

MR. COFFEY: And Mr. Harrington in drafting – presumably in drafting this email that’s Exhibit 02176, he would’ve been painfully aware that the – their internal FFC was showing a \$7-billion figure.

MR. BENNETT: They were seeing some trends –

MR. COFFEY: Yes.

MR. BENNETT: – that were pushing the – the potential to push the estimate upward, yes.

MR. COFFEY: Well, in a particular trend – now that we’re talking about trends – back in April of 2013 Nalcor had received the Astaldi bid, which came in – I’ll just use a rough figure – \$300 million more than you’d budgeted, give or take a bit. In this context I’m using tens of millions of dollars as a bit – but it was \$300 million more than you had budgeted for.

MR. BENNETT: It was –

MR. COFFEY: Right?

MR. BENNETT: – \$300 million more than the estimate –

MR. COFFEY: Estimate (inaudible) –

MR. BENNETT: – that was being carried–

MR. COFFEY: Yeah.

MR. BENNETT: – that was being carried and prepared by our consultant.

MR. COFFEY: Yes.

MR. BENNETT: Right.

MR. COFFEY: And by July of 2013 Nalcor was all too well aware that the other low bid, or (inaudible) – there were two, I’ll call them, low bids in the same range – Nalcor, by that point, had come to the conclusion that, generally, that the Spanish company, I can’t remember their name –

THE COMMISSIONER: Salini.

MR. COFFEY: I’m sorry?

THE COMMISSIONER: Salini.

MR. COFFEY: Salini – they’re weren’t going to go with Salini, although the bids were kind of more or less –

MR. BENNETT: It was comparable –

MR. COFFEY: – comparable –

MR. BENNETT: – yeah.

MR. COFFEY: – in total amounts, but Nalcor also by then knew that the two other bids, bids 3 and 4, were about a billion dollars each more than Astaldi’s, weren’t they?

MR. BENNETT: One was a billion more; one was more like \$500 or \$600 million more.

MR. COFFEY: Yes, but the point being the trends. I mean if Astaldi had not bid and Salini was unsatisfactory, the trend was doubling the cost of the estimate –

MR. BENNETT: Yeah, I’m –

MR. COFFEY: – in the third bidder and almost tripling it for the fourth bidder. So the trends were to the higher side, weren’t they?

MR. BENNETT: The trend on that package was, yes. I think there may have been other factors with some of the other bidders. There were discussions, as I recall, about some contractors’ level of interest in the work and how that factored in to their proposal.

MR. COFFEY: Now, if we could briefly look at P-01826? It’s in binder 1, tab 3.

Now, this is a document the Commission has seen before. It's a September 2013 briefing deck, the – presented to you and Mr. Martin, capital costs in the range of \$6.7 billion to \$6.95 billion. And the reason I bring it up here is that – just look at page 6, please?

The first deck is: The Powerhouse and Spillway Recommendation of Award dated 10 September 2013.

MR. BENNETT: Right.

MR. COFFEY: So this is the Astaldi award and it's one of the decks. And if we go look at, please, page 13. The second deck you were shown is the Final Forecast Cost Update, Presentation to the Nalcor Executive, 12, September 2013. And somebody had noted it's presented to EJM, 12 September 2013.

And this – these are – is a slide deck, and if we could go to page 15, yourself and Mr. Martin, in terms of the key messages, you know, were being told: We – that's the project management team – are forecasting the FFC to be in the range of \$6.7 to \$6.95 billion and it goes on from there.

So the point being – my point being, that as of September 12, 2013, Mr. Bennett, you were aware – clearly aware. If you didn't sleep through the presentation, you were aware that it was 6.7 to 6.95 from the PMT's perspective.

MR. BENNETT: So they had forecasted 6.7.

MR. COFFEY: Yes.

MR. BENNETT: I'll note on page 15 of this exhibit that the high side –

MR. COFFEY: Yes.

MR. BENNETT: – FFC included growth allowance, which is certainly discretionary.

MR. COFFEY: Can we go to, please, Exhibit P-01854. It's not – it'll be on your screen, Sir. Scroll down a bit, please? Thank you.

Thank you, Madam Clerk.

Just go down a little bit more? Okay, right – yeah, right there.

Now, this is a presentation, Lower Churchill Project, Monthly Progress Report, period ending 30 September 2013 – the record number is there. It's official enough that it's authorized for issue by Mr. Harrington over his signature, okay?

So what type of a document is this? What's it used for?

MR. BENNETT: This document –

MR. COFFEY: This monthly progress report.

MR. BENNETT: Yeah, this document is published on a monthly basis, highlights various activities on the team, where there's progress, procurement. Has an update from the various groups; typically has the cost and schedule progress in it as well. And it's been published for quite some time and still continue to be published today.

MR. COFFEY: And do you know when the publication of these began?

MR. BENNETT: Can't put a finger on when the first one was issued, no.

MR. COFFEY: Okay.

And what kind of circulation? Who had access to this?

MR. BENNETT: Members of the PMT. Pretty sure that executive gets a copy of this report as well. Distribution list should be on the next page.

MR. COFFEY: Yeah.

And if you go – scroll over, please? In fact, it's quite a long distribution list; the executive all listed there, the LCP management team and other internal recipients.

MR. BENNETT: Right.

MR. COFFEY: Okay?

MR. BENNETT: Yeah.

MR. COFFEY: And you are included in them.

MR. BENNETT: Uh-huh.

MR. COFFEY: Now, if I could bring you to, please – just a moment, please, Commissioner.

Go to, please, page 22, please. Scroll down, please. Okay, right there.

Now, Current Forecast, and if you look under the second sentence under that heading: “The current CAPEX Final Forecast Cost (FFC) for LCP Phase I of \$6.202 billion is based on the actual project sanction (DG3) date of December 17, 2012,” and it goes on to explain why there may be a minor discrepancy because of reporting.

The last sentence there reads: “The Pre-Sanction cost of Phase I of the Lower Churchill Project was \$312,168,771” and it’s broken down into subprojects.

Now, “Trends are potential changes in either scope or cost that have been identified but not yet been approved through the LCP Change Management process. The Current LCP Phase I Final Forecast Cost ... includes the potential cost of these trends, at the reporting category level and a resulting drawdown or increase in contingency as appropriate. The net effect of trends on the FFC is \$0 as a result of this drawdown or increase ... however this may change in the future as contingency is further used for approved project changes.” Now, “Table 5.5 shows these trends on a component basis.”

Now, the next – if we could scroll down a little bit more, there is where I’m – just to put it in context, where I’m going: “**Project Change Notices**

“During the September reporting period 0 Project Change Notices (PCNs) for Phase I was processed in Prism resulting in a zero drawdown of Project Contingency for the period. Total Project Contingency drawdown since project sanction totals -\$168.7 million (Muskrat Falls: -\$122.6 million; LITL: -\$9.9 ...” and “LTA: -\$36.2”

So, Sir, if we started at a contingency of \$368 million in that \$6.202 billion and you’ve drawn down on the project contingency to the tune of \$168.7 million in total, the contingency should be around \$200 million, \$199 million?

MR. BENNETT: That sounds right.

MR. COFFEY: Well, that’s (inaudible).

MR. BENNETT: It should be reported here.

MR. COFFEY: Yes, in fact, there is. I’m going to take you there.

MR. BENNETT: Okay.

MR. COFFEY: If we could go, please, to page – no, just a second. Yes, page 65.

Mr. Bennett, this appears to be a cost report for – at paragraph 12.5 – for the entire project, isn’t it?

MR. BENNETT: It is, based on the budget. Yes.

MR. COFFEY: Yes.

And on the left-hand side, when we go down to entry 990, it’s contingency. The original control budget is \$367,852,000; the approved project changes, negative 168,662, which is the figure we just looked at –

MR. BENNETT: Right.

MR. COFFEY: – and the current control budget in for contingency is \$199,190,000, correct?

MR. BENNETT: Yeah.

MR. COFFEY: And if we go over to E, for contingency it has final forecast cost, FFC, is \$191,368,000, which I’m going to suggest is – was derived by deducting that negative \$7,822 figure to the extreme right, from \$199,190. I’ve done the arithmetic, so unless ...

If you subtract \$7,822,000 from \$199,190,000, you’re left with \$191,368,000, which is your FFC for contingency as of September 30 –

MR. BENNETT: Right.

MR. COFFEY: – 2013, for the entire project.

MR. BENNETT: That's correct.

MR. COFFEY: Right, okay.

And I'm – just so I've – anyone wants to follow this – at page 68. This is, in effect, the same spreadsheet, except it's just for the Muskrat Falls generation part of the project.

MR. BENNETT: That's right.

MR. COFFEY: And it breaks out the final forecast cost contingency for the plant, the Muskrat Falls generation at that point. Column E has it at \$97,411,000. It's under column E –

MR. BENNETT: Yes.

MR. COFFEY: – contingency and work your way across. It's \$97,411,000, correct?

MR. BENNETT: Yeah.

MR. COFFEY: That's what's left there.

MR. BENNETT: That's right.

MR. COFFEY: And we go to page 71, this is the LIL.

And here, the contingency is – it started out – presumably started out the month of September at \$86,628,000; approved project changes, a negative \$9,855 million; and the current control budget is \$76,773.

Now, I'll bring this to the Commissioner's attention because here, when we look at the final forecast cost, the contingency has risen to \$81,196,000, hasn't it, because, as you pointed out, sometimes there are credits to contingency.

MR. BENNETT: Right.

MR. COFFEY: In this case, it was \$4,423,000 worth.

You would confirm that, if you look out to the right-hand side, it's under –

MR. BENNETT: It's – yeah, 76.70 –

MR. COFFEY: Yeah.

MR. BENNETT: – 81.1, right.

MR. COFFEY: Yeah. If one does the arithmetic.

And finally, Commissioner, on this exhibit at page 74, and this is – just for the sake of completeness, this is the same spreadsheet for the LTA. I'm not going to take you to the actual figures. They're spelled out there.

MR. BENNETT: Right.

MR. COFFEY: But it does leave the final forecast cost contingency for the LTA as of September 30, 2013, as \$12,761,000.

Now, if we could bring up Exhibit P-03747.

THE COMMISSIONER: That'll be on your screen as well.

MR. COFFEY: And this will have to be on your screen.

MR. BENNETT: Okay.

MR. COFFEY: Now, this is called a: Monthly forecast approval form. It's for the period, on the top left-hand side: Period ending 31 October 2013.

And perhaps you could tell the Commissioner what this is and what it's used for.

MR. BENNETT: Just refreshing myself on this one.

MR. COFFEY: Pardon me?

MR. BENNETT: I said I need to refresh myself on this one.

MR. COFFEY: Oh yes, take your time.

MR. BENNETT: Yeah, just take a second here.

Right, so this one is actually looking at trends that have the potential to go beyond our approved budget.

MR. COFFEY: Yes.

MR. BENNETT: So across the top, 6.202 over on the far right is –

MR. COFFEY: Yes.

MR. BENNETT: – our control budget.

MR. COFFEY: It's – yeah. It – there is a control budget, which is the third row. It is the 6.202 figure for the LCP and it's for the – it's the same figure for the LCP previous month, isn't it?

MR. BENNETT: That's correct.

MR. COFFEY: And, now, do you know where the \$6.531 billion came from, or it originated? \$6.531 billion.

MR. BENNETT: My recollection is that as we were working toward financial close, there was a list of – we looked at a list of material contracts yesterday. There was discussion about an adjustment in contingency and the total commitment was trending towards 6.531 and that was the amount that –

MR. COFFEY: No –

MR. BENNETT: Yes, it was prepared to be approved –

MR. COFFEY: (Inaudible.)

MR. BENNETT: – around the time of the federal loan guarantee.

MR. COFFEY: Now, Mr. Bennett, you don't have a copy there with you, do you? No.

MR. BENNETT: No, I didn't bring it.

MR. COFFEY: If we look at this document, under LCP previous month. Now, previous month in this context would be the month ending 30 September 2013, wouldn't it been? Because this is October, so –

MR. BENNETT: This is October. This is the period ending –

MR. COFFEY: – previous month –

MR. BENNETT: – 30th of October.

MR. COFFEY: – September 30.

MR. BENNETT: Yeah.

MR. COFFEY: And here – if you could just follow me – under the final forecast cost FFC row, which is the – third, four, five, six, seventh – the eighth row down. See that? Final forecast cost, it's in bold print?

MR. BENNETT: Yes.

MR. COFFEY: And it's broken down by each of the subprojects. But when we come across here to the extreme right-hand side, the LCP (Previous Month), the figure for FFC is \$6,486,223,832, correct?

MR. BENNETT: Yes.

MR. COFFEY: Now, if you add \$45,527,869, which is the Potential Exposure (Trends Under Study), extreme right-hand side. See that?

MR. BENNETT: That gets you 6.531.

MR. COFFEY: And it – and to be – and I want to point out to the Commissioner, if you add it all the way up to the dollar, it's about \$2,000 or \$3,000 off, okay? Now, when you go all the way out the – if you don't bring it all the way out to however many places there is for billions, but it is \$6.531 billion.

MR. BENNETT: Yes.

MR. COFFEY: Okay?

MR. BENNETT: And I think we've seen references of 6.532 in places –

MR. COFFEY: Yes.

MR. BENNETT: – and I think if my math is right, that actually adds up to 6.531.7. (Inaudible.)

MR. COFFEY: It is consistent to the tune of point seven, yes it is. It is there.

Now, so, might this be where the \$6.531-billion figure came from? Because you'll notice here,

somebody has handwritten “Official FFC in Dashboard will remain at 6.531 B as presented to” presumably – it looks like “Feds in Nov 06 Audit” something “instructed by Paul H.”

MR. BENNETT: (Inaudible) yes. That’s what – I read the same thing. Excuse me.

MR. COFFEY: So might those figures – that \$6.486 billion plus the \$45.5 billion, 6.531 –

MR. BENNETT: Gets you to 6.531, and this report was for the period ending 31st of October, likely would’ve been –

MR. COFFEY: Yeah.

MR. BENNETT: – prepared –

MR. COFFEY: No.

MR. BENNETT: – in November.

MR. COFFEY: No, this – yeah, this is report, and I appreciate that’s when the handwriting would’ve been.

MR. BENNETT: Yeah. I also –

MR. COFFEY: (Inaudible.)

MR. BENNETT: – think the report was prepared in November as well –

MR. COFFEY: Yes.

MR. BENNETT: – after close of the month.

MR. COFFEY: But the figures I just read – had you do the calculation for are on the extreme right, which is the LCP for the previous month –

MR. BENNETT: Yes.

MR. COFFEY: – which would be for September 30, the calculation having been done in October, correct?

MR. BENNETT: That’s what that says.

MR. COFFEY: (Inaudible.)

MR. BENNETT: Yes.

MR. COFFEY: Now, if we look closer or more closely at this, under LCP (Previous Month), and I think September 30, 2013, under final forecast cost – I’m sorry, not that, no. The row above that: Remaining Contingency. See that?

MR. BENNETT: Yes, I do.

MR. COFFEY: Okay. And we come across – and I’m going to take you across this now. Remaining Contingency – but I’m going to go, first of all, to September 30 entry, which is the \$89,494,034.

See it over there to the right-hand side?

MR. BENNETT: (Inaudible) on the right.

MR. COFFEY: (Inaudible) take your time.

MR. BENNETT: Yes, okay – yeah.

MR. COFFEY: Okay.

So this suggests, doesn’t it, that as of September 30, 2013, the remaining contingency, you know, in whatever account it was being tracked in, reflected \$89,494,034?

MR. BENNETT: That’s what’s there, yes.

MR. COFFEY: That’s what’s there.

But that is not consistent with the figures we looked at for September 30, 2013, and the document we looked at a couple – we looked at five minutes ago.

MR. BENNETT: Right. So there is some adjustment being made in systems over this month.

MR. COFFEY: But they – those figures are both for the same month, for the same – \$89,494,034 is for September 30, 2013 –

MR. BENNETT: I understand.

MR. COFFEY: – and the report we just looked at was –

MR. BENNETT: Right.

MR. COFFEY: – the other one.

MR. BENNETT: So I'm unable to reconcile the two reports here this morning.

MR. COFFEY: But that \$89.4-million contingency figure for September 30, 2013, 89.4 – it would be 89.5 actually rounded – where did that figure come from? Like, where would this – what's used to generate this spreadsheet?

MR. BENNETT: So it's the same basic data as we talked about earlier. The control budget, the approved scope changes in the form of PCN and then the current budget with the remainder being left in contingency. So it was the same general information in both reports. I can't reconcile that here this morning to say which –

MR. COFFEY: Okay.

MR. BENNETT: – which items on which spreadsheet are at which point.

MR. COFFEY: Now, if we look to – we now go slightly to the left, which is under the LCP column.

MR. BENNETT: Okay.

MR. COFFEY: Not LCP previous –

MR. BENNETT: Yeah.

MR. COFFEY: – but LCP for October 31, 2013. We'll see the remaining contingency has gone up to \$100,932,782, correct?

MR. BENNETT: That's what it shows here.

MR. COFFEY: Yeah. So some – that – does that suggest, then, that sometime during October, there was approximately \$11 million – \$10.5 million added or credited back to the contingency.

MR. BENNETT: Credited back into contingency.

MR. COFFEY: But when we go further to the left, we see that that entire \$100,932,782 of contingency – \$100,932,782 – is all LITL, isn't it?

MR. BENNETT: That's what shows here.

MR. COFFEY: And there's zero contingency for the Muskrat Falls generation and for the LTA, correct?

MR. BENNETT: That's what's there.

MR. COFFEY: Would you routinely receive a copy of this document?

MR. BENNETT: I don't think I saw this one.

MR. COFFEY: Yeah.

MR. BENNETT: Report that I normally get is the one in the – is the monthly report. And we have a different set of documentation that we review with respect to risks and forecasts going forward today.

MR. COFFEY: Now, in this time frame – September, October, November of 2013 – to your knowledge, did the independent engineer or Canada have access to dashboard?

MR. BENNETT: I can't confirm. I know during that period I wasn't heavily involved in the financing file.

MR. COFFEY: No, right.

MR. BENNETT: So I can't confirm one way or the other what documentation they had.

MR. COFFEY: Now, if – and, finally, on this document, if we look at the LCP column on – in this, we'll see that if you add \$6.424 billion, which is there with the final forecast cost, and you add the potential exposure trends under study of \$178,603,096, you end up with a figure of \$6.603 billion – billion, I'm sorry.

And in other – what I'm suggesting here if one does – for October of 2013 what apparently had been done for September of 2013 to arrive at the 6.531, the FFC as of October 31 would have been \$6.603 billion. You can do the arithmetic quickly.

MR. BENNETT: Yeah.

MR. COFFEY: That works generally, doesn't it?

MR. BENNETT: Yes, it's close. Yeah.

MR. COFFEY: One moment, please, Commissioner.

Now, if we could go, please, to Exhibit P-02194.

THE COMMISSIONER: It'll be on your screen as well.

MR. COFFEY: Yes – no, this would be on his – on the screen.

Thank you, Commissioner.

Now, this is an email from Mr. Meaney to Mr. Harrington, Mr. Clarke November 1, 2013. And he's telling them – the second paragraph: "I also just got off the phone with Alison from CBB. She gave me a 'private' heads up that Rey and, interestingly, David Pyper ... have some real 'hot buttons' that we need to address ASAP, otherwise there's potential issues with IE report. I can provide more detail in person this afternoon, but at a high level they are"

And the fourth entry – I'm sorry, the third entry there is: "Contingency is not sufficient (and has been burned up primarily with award of CH0007)." Okay?

Now, although you're not on this email chain, do you recall whether or not this was brought to your attention in early November that the government's lawyer apparently was concerned – Canadian government's lawyer?

MR. BENNETT: I can't confirm – I cannot confirm that this came to me.

MR. COFFEY: Yeah. And I appreciate the email didn't –

MR. BENNETT: Yeah.

MR. COFFEY: – but the information contained in it. That's what I am asking. You don't ...?

MR. BENNETT: Not ringing.

MR. COFFEY: Okay.

MR. BENNETT: You know, as a general statement, you know, philosophy on contingency, we've heard that a couple of times

here, is that you know it was granted judiciously.

MR. COFFEY: I'll get to that.

MR. BENNETT: Okay.

MR. COFFEY: Do you – well, I'll ask you now: Was it always granted judiciously?

MR. BENNETT: Yeah, there was always –

MR. COFFEY: Or were – or there might – might there have been an exception once in a while?

MR. BENNETT: I think there was an expectation that there be clear justification for expenditures, that additions to the AFE approval –

MR. COFFEY: Yeah.

MR. BENNETT: – were granted after we had undertaken –

MR. COFFEY: Yeah. Yeah and –

MR. BENNETT: – significant mitigation efforts. And then the funding necessary to complete the job was granted.

MR. COFFEY: Yeah, well, I'll – if we can go to exhibit, please, at P-02196. Again, this will come up on your screen.

Now, again, Mr. Bennett, this is Mr. Meaney communicating via email with Mr. Clarke, Mr. Harrington November 1, 2013. And the subject in this context is: More from Alison dot, dot, dot.

And, now, if we can go, please, just down the page a bit there. Yes, right there. Thank you. Up a bit – yeah.

Ms. Manzer, on November 1, 2013, at 11:54 a.m. sent Mr. Meaney an email: LCRP – Due diligence status call. And she says: "You and I agree on that" – and there's a bunch of emails below where her and Mr. Meaney are communicating, but she goes on to say – "will also keep feeding you the clues as to what you need to do on your side."

Okay? Now, I appreciate, again, this did not come to you –

MR. BENNETT: Right.

MR. COFFEY: – that email, but was it ever communicated to you that the federal government’s lawyer was telling her – apparently her chief contact at Nalcor that I’ll “keep feeding you the clues as to what you need to do on your side.” Did that sentiment ever – was that ever communicated to you, the fact that this was going on?

MR. BENNETT: Not in that context, I mean, I know – and I think you would’ve seen earlier in this thread – I was engaged in a conversation explaining water management and some of the concepts. I never thought of it as clues but simply requests for clarification that were requested by Canada in this process.

MR. COFFEY: Yeah, well, so that was what you understood was going on?

MR. BENNETT: Yeah.

MR. COFFEY: Yeah.

If we could bring up exhibit, please – Exhibit P-2202. Now, Mr. Bennett, the page 1 is an email from Mr. – how do you pronounce this gentleman’s name?

MR. BENNETT: Chehab.

MR. COFFEY: Chehab – Mr. Chehab, of November 5, 2013. Its subject is: “MWH Meeting on Wednesday CORRECT VERSION - New Data Major Packages Presentation - October 31, 2013.ppt” The attachments are spelled out there, including the FFC September 2013, Paul Kennedy Excel spreadsheet.

Now, here it’s – if we go to page, please – page – the bottom of page 6, top of page 7. Here, Mr. Meaney on November 1 is telling Ms. Manzer about the meeting on Wednesday. He says: “Thanks for all your feedback today. I have the LCP team lined up for a full day session next Wednesday in St John’s” and it goes on from there.

But “With respect to the key topics we’ll address that day” – can you scroll down, please – “I noted the following based on our discussions/correspondence today: ... Project Capital Cost Update: This will include data/discussion on contingency estimate.”

So there are a number of topics that are going to be discussed, but the first one, on whether or not – I don’t know if it was listed in order of priority or whatever, but number one was project capital cost update. So was it your understanding in early November 2013 that the independent engineer was really concerned about contingency – the level of contingency.

MR. BENNETT: I knew that it was a topic of discussion. Not heavily engaged in the conversation with the IE at that point in time; I had a couple of other files but I knew it was a topic of interest. And it was one that, needless to say, has had multiple conversations and presentations explaining where we’re going –

MR. COFFEY: Okay.

MR. BENNETT: – with respect to contingency.

MR. COFFEY: Now, if we could bring up, please, page 19. Now, this is one of the attachments, okay, to that – I presume to that email we looked at.

MR. BENNETT: Yes, okay.

MR. COFFEY: And to put it in context, if you can just scroll down a little bit, please, Madam Clerk – a little bit – and go out to the right-hand side. Go down a bit more, keep going – right there. You see on the bottom right-hand side it’s 8 October 2013. See that?

MR. BENNETT: Not yet. Hang on now.

Oh there. Yes, okay.

MR. COFFEY: Yeah.

So presuming – and we can look at all the other pages but you’ll see that that’s, presumably, the printout date. It looks to be.

Scroll back up, please? Now, here, you just – again, so the Commissioner has to put this in

context, when you begin at page 15 – I don't intend to go through, but just to, I guess – so we get some sense of it, there's a package number to the left-hand side and there are various, you know, entries for different columns, and the description of the package is in each of the rows.

There's an approved change as details and an – go back up, please – and an FFC comments on the right-hand side. See that?

MR. BENNETT: Yes.

MR. COFFEY: Okay.

Now, the one in particular I'm interested in here is at page 19. Now, here under package XX0006, I believe it is, yeah, the contingency is described. It's the \$367,852,397 figure and we've seen that before. See that, Mr. Bennett?

MR. BENNETT: Yes.

MR. COFFEY: Okay.

And it's the \$6.202-billion figure as the total. Now, as we work our way – as we come over under the totals – so come all the way over to the FFC, which is column 6=1+2+3+4+5 is \$6.531 billion. See that?

MR. BENNETT: Yes.

MR. COFFEY: Okay.

And just above that, the contingency is noted to be \$89,494,034. That figure we saw before, right?

MR. BENNETT: Right.

MR. COFFEY: So the – looking at this, the approved changes, which is the second row on this page – not the second row, I'm sorry, the second green row, the middle green row. See that?

MR. BENNETT: Yes.

MR. COFFEY: And come down under – come across the row of contingency you see negative \$210,679 – 769, I'm sorry – 973. You see that?

MR. BENNETT: Yes.

MR. COFFEY: And, in fact, it's in bold right above it: Approved changes. You see the bold?

MR. BENNETT: Yeah.

MR. COFFEY: Okay, which presumably they're the same figure. They represent the same thing.

So are you able to – and the CCB contingency is \$89,494,034, which is also the FFC and un-awarded scope amounts for contingency. Are you able to reconcile the \$367,852,397, the \$210,769,973 and the \$89,494,034? I mean, how do you get from \$367,852,397 –

MR. BENNETT: Yeah, the –

MR. COFFEY: – to \$89 million?

MR. BENNETT: I'm just tracking where the –

MR. COFFEY: Perfect.

MR. BENNETT: – 367 came from.

MR. COFFEY: Because the – that \$210-million figure is the total of the approved changes because it's a pluses and minuses.

MR. BENNETT: Right. So that is reconcilable by going back and looking at the individual PCMs associated with each of those changes. So, we should be able to see where the funds went if we were to scroll back up the page.

MR. COFFEY: Okay.

So you scroll up, please.

MR. BENNETT: So here we have all of the various –

MR. COFFEY: We're on page 18, go ahead.

MR. BENNETT: Right, we have all the various changes here. I'm looking for big ones, to be honest, in order to get \$200 million.

MR. COFFEY: Oh, yes. And the negative 210 – I – actually, I took the time to actually add up all those and that approved changes.

MR. BENNETT: Right.

MR. COFFEY: And I arrive at the same \$210-million figure. It is the total of your approved changes. What I'm asking you to do is explain to the Commissioner how – with the approved changes only totalling \$210 million – and I say only advisedly – and you started out with \$368 million in contingency and you are subtracting 211 – actually, I – (inaudible) rounded – how do you end up with \$89.5 million?

MR. BENNETT: We should be able to see that here, if we can scroll down for a second.

MR. COFFEY: Okay. Where –

MR. BENNETT: I mean, as I said, I'm interested in the big changes. So the original control budget, 5.834 plus 210 would give us 6.045; commitments, \$1.97 billion, that's the next column; outstanding changes in trends – so there is a –

MR. COFFEY: There's a \$31,627,815 one. Yes.

MR. BENNETT: Sounds like those are in process and have not been approved –

MR. COFFEY: Yes.

MR. BENNETT: – yet at that point in time. That's on the forecast side of the ledger.

MR. COFFEY: Yeah.

And I understand that they somehow might have been – but that still doesn't account for the difference.

MR. BENNETT: Yeah, I'm trying to work backwards to the numbers you're asking me to reconcile.

MR. COFFEY: Yeah, I tried as well. That's why I'm asking.

MR. BENNETT: Yeah and I'm not sure that – that's why I'm questioning whether they're, in fact, related, so –

MR. COFFEY: Okay, maybe –

MR. BENNETT: – because you have questions on the forecast side with trends in them and you

have the approved budget and the changes to the budget on the green column. So if trends get introduced, these numbers aren't always going to reconcile.

MR. COFFEY: One second, please, Commissioner.

THE COMMISSIONER: Go on.

MR. COFFEY: If you look, please, at Exhibit P-02206 – again, this will be on your screen. This is an email from Mr. – it begins with an email from Mr. Martin to Ms. Tucker. It's re: "Deck re Project Costs." It's "Project Update to MWH - 6-Nov-2013 - Rev 2a"

MR. BENNETT: Right.

MR. COFFEY: And so if we can go to page 5, please. And this is the one where there's a back and forth about, I believe, it's slide 14 but, anyway, it's described here.

But here – go to the – scroll up a bit – thank you, Ma'am. From Jason Clarke [sp. Jason Kean] to Ed Martin, copied to Brian Crawley, yourself, Mr. Clarke and Mr. Harrington on November 6, 2013, at 7:36 a.m., the deck re project costs.

And Mr. Kean has written: "Ed,

"My rationale for this 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 ... initially viewed).

"Paul and I would prefer to maintain this slide and leverage it to respond to this anticipated question."

So what do you recall about what was going on then, in early November 2013 with the independent engineer and the project management team and Nalcor's executive and, you know – well, there's an outright suggestion here that it's going to – it's apparent that the question will be – or they anticipate a question – what are you going to do to stop going to \$7 billion –

MR. BENNETT: So –

MR. COFFEY: – from the independent engineer.

MR. BENNETT: So that –

MR. COFFEY: So what was your recollection of what was going on?

MR. BENNETT: I got nothing specific in terms of recollection beyond what we're seeing in the email traffic here.

MR. COFFEY: Yeah. Now ...

(Inaudible.)

If we go to Exhibit, please, P-03606.

THE COMMISSIONER: On your screen.

MR. COFFEY: This will be on your screen.

MR. BENNETT: Yeah, okay.

MR. COFFEY: This is an email, well, from Mr. Meaney to his home, but the subject is: Variance explanations for feds and there are attachments.

And with the – just go down – yes, go down a bit, please. Yes. Mr. Meaney, on that day, November 8 had sent – sorry, had sent an email to a number of people – not yourself. The subject matter is the: "Variance Explanation for Feds."

And it says here: "I've been giving some more thought to the monthly cost flow series that Auburn's team should be using in the financial models, as this will also be presented to the Feds and their advisors this upcoming week. It really needs to be the same cost flow series that underpins the approved \$6,531m FFC and reconciles to the major contracts summary."

Approved FFC, in this context, as of November 8, 2013 – approved by whom, for what?

MR. BENNETT: My understanding –

MR. COFFEY: And I appreciate –

MR. BENNETT: Yeah.

MR. COFFEY: – you're not on the email train.

MR. BENNETT: Right.

My understanding would be that number and its disclosure to the federal government and inclusion in the federal loan guarantee financing package would have been approved by Mr. Martin.

MR. COFFEY: Now, if we go to page 2, the significance at the top of the page there may be – and he says: "Paul, depending on timing, it's quite possible this figure might become the official 'Project Budget' in the schedule to the Project Financing" arrangements.

MR. BENNETT: Right.

MR. COFFEY: So, here, Mr. Meaney is anticipating on pointing out that this is a serious – not only is it a serious figure but it's going to be used for serious things, if it ends up as the official project budget –

MR. BENNETT: That's correct.

MR. COFFEY: – in the financing documents.

MR. BENNETT: If we could – Exhibit P-01949.

THE COMMISSIONER: On your screen as well.

MR. BENNETT: Okay.

MR. COFFEY: Thank you.

And I just – if we can scroll down a little bit? This is the Independent Engineer's Report, draft report, for November 15, 2013. Do you recall whether you saw this?

MR. BENNETT: I'm pretty sure I saw the draft.

MR. COFFEY: And is it your recollection that at that point in time the independent engineer was still going on about the level of contingency and how low it was?

MR. BENNETT: The independent engineer had made the observation with respect to contingency? Yes.

MR. COFFEY: Exhibit P-02215, please. Now, this is an email – we’ve looked at this a number of times in the Inquiry.

Mr. Meaney is sending it to Mr. Sturge, Warren and Hull: “Updated Capital Costs - Note to Ed,” and there are two attachments, but if you go down – scroll down, please, to the bottom of the page – right there, yeah.

And, now, what I’m going to do with this, if I could, Commissioner, if you give me some latitude, I just want to take Mr. Bennett through this because it – you know, it may very well reflect who knew what and what was going on in the days – in the middle of November.

If we can go, please, to – well, if we look at pages 4, please, first of all, to get some sense of what the attachments are. Page 4: Material Contracts Cost Summary – Mr. Ralph took you to this, Peter Ralph?

MR. BENNETT: Yes.

MR. COFFEY: Okay, you recall this.

And while we’re on this page, if you look at it you’ll see that the first row is CH0007, Astaldi – or the construction of the intakes, powerhouse, spillway and transition dams. The actual award date is noted to be 24 September 2013. See that?

MR. BENNETT: Yes, with an LNTP.

MR. COFFEY: And there is – in fact, that’s – 24 September 2013 was also the date of the actual recommendation for award.

MR. BENNETT: That’s right.

MR. COFFEY: That’s the day it was printed.

MR. BENNETT: Yeah.

MR. COFFEY: And here, as you come across the row, we end up under column E, with final forecast cost of \$1,117,743,386. Correct?

MR. BENNETT: That’s what’s there, yes.

MR. COFFEY: Yeah.

And under transfer details there are a bunch of them there, but would I be correct in suggesting that if you do all the arithmetic in the transfer details, you end up with the figure under column D, transfer to and from other –

MR. BENNETT: To and –

MR. COFFEY: – contracts. That’s the (inaudible).

MR. BENNETT: – from other contracts. That should reconcile, yes.

MR. COFFEY: Okay.

And we come down to the bottom of the page, please? See to the left-hand side; see contingency and then the row and then the total row. And see in the total row, at the very bottom, in bold, \$6,531,754,580 and above that, \$89,494,034. See that?

MR. BENNETT: Yes, I do.

MR. COFFEY: Okay.

So could we scroll up to page 2, please?

On November 15, Mr. Chehab, in dealing with major material contracts files, said: “Please find attached the revised files for the 17 major contracts.”

Now, he sends it to a number of people, but then, if we go up to the top of the page, Mr. Meaney forwards it to you at 1:22 p.m. Correct?

MR. BENNETT: Yeah.

MR. COFFEY: And then you – scroll up the page – at 2:28 p.m., the same day, forward it to Mr. Martin, saying:

“Ed,

“We’re under some pressure to demonstrate the changes to material contracts as identified by the IE. The attached sheets are intended to show how the growth from 6.202 to 6.531 is occurring.

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

“Call me on my cell if you’d like to discuss.

“Gilbert.”

Now, first of all, do you recall whether Mr. Martin called you?

MR. BENNETT: No, not from six years ago.

MR. COFFEY: Oh, okay.

The tenor or the content of your email to Mr. Martin suggests that, in fact, this was information that, as of that moment in time, the IE didn’t have access to.

MR. BENNETT: I think there was –

MR. COFFEY: Because you’re saying there’s nothing wrong with sending it to him because if they were in our office, they’d see it anyway.

MR. BENNETT: Right.

MR. COFFEY: Implying that if we don’t send it to them, and they’re not in our office, they’re not going to know it, right? Correct?

MR. BENNETT: I think all I recall from this period of time – and I think it’s been described a couple of times – is that their – the IE was looking for clarity on the material contracts and where we stood.

MR. COFFEY: Yes.

MR. BENNETT: Right?

MR. COFFEY: But – and –

MR. BENNETT: And this is the documentation that supports that.

MR. COFFEY: And it had been forwarded – Mr. Meaney had forwarded it to you, you send it on to Mr. Martin having presumably looked at it. It’s only two spreadsheets – and it’s only one spreadsheet and a summary sheet –

MR. BENNETT: Right.

MR. COFFEY: – on page 5. And your comment to Mr. Martin was you saw no problem with sending it, as it was.

MR. BENNETT: That’s what I said here, yes.

MR. COFFEY: And, in particular, what I’m referring to is you saw no problem with sending the \$89.5 million in contingency as a figure.

MR. BENNETT: At least that explained where we are.

MR. COFFEY: Yeah.

MR. BENNETT: I think subsequent to this – well, one thing I did note here, I’m not sure that the CH0007 contract –

MR. COFFEY: Yeah, we’re going to get to that.

MR. BENNETT: You’re going to get there.

MR. COFFEY: Yeah.

MR. BENNETT: Okay.

MR. COFFEY: Yeah.

MR. BENNETT: Because I think there is some – I noted that number. It seems a little bit higher than what the contract was actually signed for.

MR. COFFEY: And the point I want to make with you, Mr. Bennett, is as of November 15 – that afternoon – of 2013, you were quite prepared, in your own world, to send this on as is to the IE. That’s what you say.

MR. BENNETT: Yeah, that’s what I –

MR. COFFEY: Okay.

MR. BENNETT: – say here.

MR. COFFEY: And then Mr. Meaney, at the top of the page, tells Mr. Sturge and his fellow financial people: for your information, “the pigskin is in flight.”

Now, if we could go please to Exhibit 03486. I – actually, I apologize. It should be Exhibit 02217.

Now, this is an email from Mr. Meaney to Ms. Felt, and we've looked at this – it's November 19, 2013 – looked at this a number of times, and he says access has been given to Canada and Cassels Brock and MWH, but don't give it to Newfoundland at this point. And the attachments are the capital cost and major status contracts. Look at page 2, please, scroll down a bit.

See there? This is November 19, 2013, and the figure for contingency is now \$182,944,870 under current FFC. See that?

MR. BENNETT: Yes, I do.

MR. COFFEY: And I didn't take you to page 5 of 02215, but if we looked at it, we'd find that \$89-million figure for contingency and the document itself is dated November 13. (Inaudible), okay.

But here – if we can go to page 3, please?

And this is the same spreadsheet we looked at in 02215, with some – the major change is – and you've noted it – is in CH0007, to come across the page, that \$1.117 billion has become \$1.024 billion.

MR. BENNETT: Right.

MR. COFFEY: And the difference, the \$93-million difference, has been added to the \$89.5 million to arrive at a – I believe it's a \$183-million contingency.

MR. BENNETT: Yes.

MR. COFFEY: Rounded, \$183 million.

MR. BENNETT: Right.

MR. COFFEY: Okay.

Now, were you consulted about this, this change, this move?

MR. BENNETT: That's one I don't remember. I think I know the explanation to the difference.

MR. COFFEY: Yeah.

MR. BENNETT: I can't say one way or the other whether I was consulted on that.

MR. COFFEY: Now, the contract face value signed November 29, 2013, is \$1,024,000,000 and whatever the figure is, isn't it?

MR. BENNETT: Yes, it is.

MR. COFFEY: Yes, it is.

But the FFC in the award document dated November – September 23 – anyway, September 2013, the nearest figure to an FFC for that contract is \$1.117 billion isn't it?

MR. BENNETT: I don't know that it is. I think –

MR. COFFEY: I can take you to it.

MR. BENNETT: Well, I don't – I think the point I'm raising is whether it is in fact the FFC. It's probably better described as the maximum exposure under the contract –

MR. COFFEY: Yes.

MR. BENNETT: – if they fail to meet – if Astaldi fails to meet their labour target, if I recall.

MR. COFFEY: And that's one of them, and there's another \$40 million or \$40-odd million for the –

MR. BENNETT: That would be if all –

MR. COFFEY: – if the dam – the North and South Dam gets awarded to them.

MR. BENNETT: Right.

MR. COFFEY: Okay?

MR. BENNETT: There's a bonus there.

MR. COFFEY: And there are other figures there, too.

MR. BENNETT: Yes. Those are, I think, the two big ones that come to mind.

MR. COFFEY: But there's supposed to be, isn't there, some kind of a process, you've told the Commissioner, where, you know, contingency for a particular package just doesn't get changed willy-nilly, right?

MR. BENNETT: So this is at contract time. This is when the contract is signed. The other process that I didn't fully describe is the commitment and the requisition process that follows through with this, and ultimately when the contract is signed, that goes through a parallel approval process in accordance with our financial authorization matrix, and the contract is entered into –

MR. COFFEY: Yeah.

MR. BENNETT: – a requisition –

MR. COFFEY: Yeah, but the contract itself is not signed until later that month, that's two weeks away –

MR. BENNETT: It's coming –

MR. COFFEY: – the contract signing.

MR. BENNETT: – it's coming though –

MR. COFFEY: Yes.

MR. BENNETT: – and we got to be careful where the requisition was at the time, and the approval of the requisition, once the AFE is approved, given the magnitude of this contract, goes to the CEO. And the CEO gets to decide how much growth allowance is put on the contract in the requisition.

MR. COFFEY: So, the regime at Nalcor in the month of financial close, going – in that month, was that the CEO could decide unilaterally, and he did – apparently did unilaterally decide just to move \$93 million from one FFC for a particular contract package down to contingency.

MR. BENNETT: So, here's an area where somebody has a suggestion, and ultimately a decision was taken that you don't have clarity on that, I'm not giving you the authorization to spend that money, I'm not delegating that to you within the project team, you should keep that in contingency until you have further justification,

and I'm giving you the approval on a requisition and here's what I'm prepared to approve.

MR. COFFEY: Now, do you know –

MR. BENNETT: I don't have visibility on the timing of those events, but those are the events that play out on any of these packages based on the approval level of the individual who signs off on the contract. My authority is quite limited –

MR. COFFEY: I –

MR. BENNETT: – right?

MR. COFFEY: – appreciate – I'm not –

MR. BENNETT: So –

MR. COFFEY: – you know, I understand. I'm not asking about your authority –

MR. BENNETT: No, but I –

MR. COFFEY: – (inaudible).

MR. BENNETT: The point I was getting to is I was just describing for the Commissioner how that works, that the approval authority escalates with amount upward through the organization. And once it goes above a hundred million dollars, which was the threshold at which I and another senior officer at Nalcor can approve, the requisition approval goes to the CEO.

MR. COFFEY: Now, if we could look, please, at Exhibit 03486? It'll be on your screen, Sir.

Now, here this is a long chain of emails beginning on, I believe, November 18, and it starts out with the comments about the 6.531 figure, and determining premiums for insurance costs is where it begins, because a similar spreadsheet's got to be given to the insurers, hasn't it, to get a quote. That's the spreadsheet we just looked at.

MR. BENNETT: That's right.

MR. COFFEY: And you're asked – if we can look up at page – well, actually, at page 3, on November 18 you're asked by Mr. Harrington:

“Gilbert is that spreadsheet and cover sheet OK to file in the data room?”

And, as of that time, this is the spreadsheet and cover sheet with the \$89.5 million for contingency, isn’t it, on November 18?

MR. BENNETT: Oh, we should double-check that.

MR. COFFEY: Pardon me?

MR. BENNETT: I’m not sure that it is. I think there’s a – we’re at the point where it’s one or the other.

MR. COFFEY: And –

MR. BENNETT: Well, it’s either –

MR. COFFEY: So he asks you –

MR. BENNETT: – it’s either 1.117 or 1.024.

MR. COFFEY: He asks –

MR. BENNETT: My sense is, based on the top of the thread, it’s actually the 1.024 one.

MR. COFFEY: Well, he asks you, and if we go to the bottom of page 3, you responded to Mr. Harrington, copied to Mr. Meaney and Mr. Clarke, on November 18 at 10:34 a.m., saying: “I’m in Halifax this morning ...” and “... I didn’t get any further feedback from Ed, other than a question on performance security on the Astaldi sheet.

“If somebody can check with him, that would be great”

And then if we – page 2, Mr. Harrington sends an email to Mr. Martin and copies yourself and Mr. Meaney, and requests to be allowed to put in the spreadsheet and cover sheet. And “I believe that Gilbert was talking to you about it. We have shared all the data with the Feds and IE already and the data room contains a lot of similar and even more commercially sensitive material”

And then, if we go up to the – page 2 in the middle of the page, Mr. Martin responds to Mr. Harrington, copies you and your fellow employees: “Paul et al, Do not file yet. There

has been modifications which I am looking at.” Which presumably is that \$93 million, ’cause that’s the one change.

MR. BENNETT: If that’s the one change, okay.

MR. COFFEY: And then Mr. Meaney, the bottom of page 1, asks “Any idea what modifications he is referring to?”

Of course he has the – he doesn’t respond and ask Mr. Martin that, but he asks the rest of you, and you responded on the same day, late that morning: “He asked for and was provided with some additional breakdown of the Astaldi contract.

“I think it’s in a note you were cc’d on from George Chehab @ 1815 on Friday.”

And then he comes up in November 18, 2013, he says: “OK...just saw it....CH0007 FFC has been adjusted from \$1,117m to \$1,024m and reconciliation for this contract added. Why the downward revision?”

And so Mr. Meaney, presumably, who is the chief contact with the federal lawyer, that morning did not know why the \$93 million had changed places, did he?

MR. BENNETT: If he was just seeing it here, he’s asking Monday morning –

MR. COFFEY: Yeah.

MR. BENNETT: – it would appear not.

MR. COFFEY: And finally –

THE COMMISSIONER: Excuse me just for a second.

MR. COFFEY: Yes, Commissioner, (inaudible).

THE COMMISSIONER: Mr. Coffey, you’re at an hour and a half –

MR. COFFEY: Yup.

THE COMMISSIONER: – and I’m very mindful of –

MR. BENNETT: I'm – and others – I –

THE COMMISSIONER: So, and you are – not that your points are not interesting and helpful to me, but I'm just gonna ask you to try to move on a little bit –

MR. COFFEY: Yes.

THE COMMISSIONER: – because I'm mindful of others that wanna ask questions.

MR. COFFEY: Thank you, Commissioner, and I will.

Exhibit – finally then, Commissioner, Exhibit P-02436.

THE COMMISSIONER: That will be on your screen.

MR. COFFEY: This will be in – come up on the screen here. This is an email from Mr. Martin to yourself and Mr. Harrington, Mr. Meaney on November 19, 2013. He says: “Paul and Gilbert,” and he instructs you to “Please adjust the comment box at the bottom of the table to reflect the following words, instead of what is there.” And he spells it out. And “In the second to last column heading, please add a postscript footnote reference number next to ...” and he goes on “just to make it clearer.”

“Then ok to forward.”

So Mr. Martin, who was the CEO, was so involved in this, to your knowledge – it's sent – the email is sent to you – that he was editing boxes, comment boxes, and putting postscript footnotes in this, isn't he? I mean, that's the level of detail into which –

MR. BENNETT: He –

MR. COFFEY: – he's delved at this point.

MR. BENNETT: There's no question that he is very interested in this material, the capital cost commentary, and what's being communicated.

MR. COFFEY: Okay.

So then – overall then, Mr. Bennett, the Government of Newfoundland and Labrador's

personnel, you know, I'm gonna suggest to you there's no way they'd have any visibility into what was going on in terms of moving around, beefing up or (inaudible) – increasing the contingency, which was a point of contention with the IE. The Government of Newfoundland and Labrador personnel would have no way of knowing that, would they? That you're aware of.

MR. BENNETT: I'm not sure. I'm not sure of whether they were aware – I'm not sure when they were aware of this spreadsheet. I understand that this spreadsheet did make it to the data room. I'm not sure –

MR. COFFEY: Yeah –

MR. BENNETT: – of the timing.

MR. COFFEY: – but, yeah –

MR. BENNETT: I'm not sure of the timing –

MR. COFFEY: Right.

MR. BENNETT: – but it also –

MR. COFFEY: But that's the second spreadsheet, not the first one.

MR. BENNETT: Okay.

MR. COFFEY: The grossing up – you would only see the \$180-odd-million figure –

MR. BENNETT: In the final one.

MR. COFFEY: Yes.

MR. BENNETT: So, you know, the way I look at this, this is the establishment of, you know, the budget, where the AFE is going, the approval of what's gonna be granted to the project team to manage this contract, those are Mr. Martin's key areas of interest. So this is how the project is managed.

And I would agree that representatives of the province aren't into all of these details. Although I think if we look today, the types of documents that I described –

MR. COFFEY: Yeah.

MR. BENNETT: – contingency transfers –

MR. COFFEY: Yeah.

MR. BENNETT: – PCN changes, yes, we're further –

MR. COFFEY: It's a –

MR. BENNETT: – we're much further along today.

MR. COFFEY: It's a different day. It's a (inaudible) –

MR. BENNETT: We're much further along today.

MR. COFFEY: Thank you, Commissioner.

THE COMMISSIONER: Thank you.

Okay, thank you. The Consumer Advocate.

MR. HOGAN: Good morning, Mr. Bennett.

MR. BENNETT: Good morning.

MR. HOGAN: John Hogan for – counsel for the Consumer Advocate.

I just want to start – talk about some issues regarding reliability in terms of some – the backup, which Mr. Collins took you through yesterday, and also some issues with transmission.

So when Mr. John MacIsaac was here and gave evidence, he said that the issue with the GE software, which I assume you're familiar with?

MR. BENNETT: I'm familiar at a high level.

MR. HOGAN: At a high level?

MR. BENNETT: Yes, I mean, the – so the issues that are arising with the GE software are, I guess, after, you know, the change in responsibility that I have on the project.

MR. HOGAN: Okay –

MR. BENNETT: That's why –

MR. HOGAN: – but –

MR. BENNETT: – I'm generally aware –

MR. HOGAN: When –

MR. BENNETT: – of the –

MR. HOGAN: When the contract, and GE was chosen as the contractor for this issue, what would your role have been at that point in time?

MR. BENNETT: Well, first of all, GE wasn't chosen as the contractor; Alstom was. And, yes, I was aware at that point time.

MR. HOGAN: Okay, and Mr. MacIsaac – I went through evidence with him or some issues with him with regard to the fact that the software that GE is using is – I think he referred to it as bespoke. It was specific to Muskrat Falls. And he said that there were two other main contractors who could do this work, and they don't really do specific tailoring for software; they sort of have this baseline software and then do some tweaks for specific projects.

So were you aware of that fact?

MR. BENNETT: When we looked at Alstom as a potential contractor, they were able to demonstrate their capabilities to demonstrate their understanding of the requirements of the system. We understood at the time they had – at the time of selection they were successfully implementing other systems. I can't say that I personally dug into the software development methodology and whether, you know, and which model that they ultimately (inaudible) – they were working with internally.

MR. HOGAN: All right.

MR. BENNETT: Our view was, you know, at that time, you know, and the view of our consultants was, you know, they have implemented HVDC systems, they have a reference list, and we were satisfied with their capabilities.

MR. HOGAN: Okay.

Mr. MacIsaac referred it – this software issue, the ongoing issue now, as the single biggest risk to the project right now. Do you agree with that?

MR. BENNETT: It is a significant risk today.

MR. HOGAN: Okay.

Okay, maybe you can describe for the Commissioner what the significant risk today is?

MR. BENNETT: The risk is in their timely delivery of, you know, all of the capabilities that we're looking for on the HVDC system.

This whole issue has been, in my view, further complicated by the takeover Alstom by GE and the corporate – upheaval is a strong word, but the corporate change that's happening as a result of that takeover and their focus and ability to deliver.

MR. HOGAN: Okay, so how has that affected the Muskrat Falls Project specifically, this corporate takeover?

MR. BENNETT: In terms of their development effort, how they're – the resources they have, the quality of delivery in their software features.

MR. HOGAN: Is there difficulty communicating with them or getting them to do work or getting answers or getting –?

MR. BENNETT: So now you're – now we're getting into –

MR. HOGAN: Okay.

MR. BENNETT: – sort of the day-to-day issues and the details with –

MR. HOGAN: Not your role.

MR. BENNETT: – with GE that I'm not – I don't have first-hand familiarity with. So with the change in 2016, my focus is on completing Muskrat Falls, and I'm – I have second-hand information and not all the details in relation to where GE sits.

MR. HOGAN: Okay.

MR. BENNETT: It may be a question that Mr. Marshall can fill in some detail on as well.

MR. HOGAN: Okay, thank you.

So, I just wanna turn now to some issues with backup power supply, and when Mr. Collins took you through some evidence yesterday, am I correct in that there was no plan for a backup for the Labrador-Island Link because it was going to be reliable enough? Is that what you were saying yesterday, or is that what the evidence brought out?

MR. BENNETT: No, I don't think I'd characterize it that way. I think that there are – you know, if you look at all of the resources on the system, including, you know, reserve that may be available with the Maritime Link, reserve on the generation system as a whole, Newfoundland and Labrador Hydro System Planning looked at the reliability of the system and concluded that the level of unserved energy in their view was acceptable –

MR. HOGAN: Okay.

MR. BENNETT: – using their criteria, and I think there's a lot of water under the bridge between the Muskrat Falls review and their view of the world then compared to where we are today, and that continues to be a topic of interest at the Public Utilities Board.

MR. HOGAN: Why – I was gonna ask this a bit later, so why – I mean, Nalcor doesn't have jurisdiction to close Holyrood, do they?

MR. BENNETT: Well, it would be a Hydro decision, and ultimately it's one that I suspect would be taken by the PUB.

MR. HOGAN: Right. So Hydro would make an application to the PUB.

MR. BENNETT: Yeah, expected that there's an application made, there would be some question of the cost recovery, how that unfolds.

MR. HOGAN: Okay, so if we could just turn – this is an old *Telegram* article from 2011, P-04280, please?

THE COMMISSIONER: That's at tab 118.

MR. BENNETT: Okay.

MR. HOGAN: So I just wanna read out the second sentence there, it says: “Shutting down the oil-fired generating station in Holyrood is a central theme of the \$6.2-billion Muskrat Falls project as Nalcor Energy” focuses [sp. forecasts] “higher” – mine’s cut off a little bit – “Bunker heavy oil prices in the future.”

So, I don’t think you would disagree that the public was told that part of building Muskrat Falls would lead to the benefit of shutting down Holyrood. Is that correct?

MR. BENNETT: Yes. That was –

MR. HOGAN: And you’re –

MR. BENNETT: – part – that was –

MR. HOGAN: – mentioned in this –

MR. BENNETT: – that is –

MR. HOGAN: – article –

MR. BENNETT: That was part of the plan. There’s no doubt about that.

MR. HOGAN: Part of the plan. So my question is how could it be part of the plan if it was Hydro that would have to make the application to the PUB?

MR. BENNETT: So, that has been, you know, a key part of the planning for the project for seven or eight years now. That’s our plan.

If the PUB is of the view that they would like to see different investments or they’re not happy with reliability and they determine that keeping some form of generation is preferable to other alternatives that might take us from the status quo, that’s a decision they get to take.

MR. HOGAN: Right.

MR. BENNETT: But there’s no question that the plan for Muskrat Falls and the Labrador-Island Link was to retire Holyrood.

MR. HOGAN: Nalcor’s plan.

MR. BENNETT: Yes.

MR. HOGAN: And a PUB decision.

MR. BENNETT: If the PUB exercises their jurisdiction or the province offers direction on this, then I’m not going – it’s difficult for me to speculate on how that might unfold, but there’s no question that we’ve consistently communicated our plan that, you know, Holyrood –

MR. HOGAN: But, again, the jurisdiction lies with the PUB, doesn’t it?

MR. BENNETT: I think it does.

MR. HOGAN: Okay.

And now we know that Holyrood has obviously been kept open longer than the plan. Is that fair to say?

MR. BENNETT: Holyrood is still running today, yes.

MR. HOGAN: Okay, and do you have any indication or do you believe – do you have any thoughts on when Holyrood will be closed?

MR. BENNETT: I think Hydro’s view is that they would like to see reliable operation of the link and reliable delivery of energy from Muskrat Falls and power from Muskrat Falls before they consider taking out Holyrood from the system.

I – technically, issues – there are issues with Holyrood, its ability to start up, the resources that are – would be required to keep it, and I understand that’s a topic of interest with Liberty and Hydro.

MR. HOGAN: These are additional costs, resources that need to be spent to keep Holyrood going, which – I mean, should they be – are they additional costs on top of the original \$6.2-billion estimate, if you follow my logic? I mean, the plan was to shut down Holyrood, and we’re not – that plan –

MR. BENNETT: So –

MR. HOGAN: – has not been achieved.

MR. BENNETT: So I think you also have to look at any evolution in reliability from there and what expectations are that may have happened in the Isolated case, as well, and whether any changes to the system might have been required in that model.

MR. HOGAN: Okay. Well, we'll – I guess we can get to that a little bit later.

This article, near the end, also says – three or four lines up from the end if you want to look: “Nalcor says it has designed its hydro link connecting Labrador and Newfoundland with plenty of,” and there's quotes there. I'm not sure who the quotes are from – “robustness and redundancy.”

So now it sounds like we don't have robustness and redundancy. Is that correct?

MR. BENNETT: Help me understand that. I think the key issue with respect to the transmission line and the consistent conversation that has been had over a number of years is the reliability of the structures.

MR. HOGAN: The Labrador-Island Link structures?

MR. BENNETT: Yes.

MR. HOGAN: Okay. And that doesn't talk – so that's what the robustness and redundancy means?

MR. BENNETT: I think that is where that – most of the conversation has been in that regard.

MR. HOGAN: But there had to be something else for redundancy in the system. I take it to mean that there's enough options there that we have other ways to get power, if needed.

MR. BENNETT: So, we do have other ways to get power. We do have multiple transmission facilities. We have reserve in the system. We have an interconnection to the Maritime provinces. So, yes, there are options and additional sources of supply for the Island that didn't exist prior to the interconnections.

MR. HOGAN: And on the reserve – on the stuff – on the power that can come over the

Maritime Link, how much is that? How much power is that?

MR. BENNETT: The import capability that I've seen in studies is approximately 300 megawatts.

MR. HOGAN: Okay. And are you aware of any issues of getting transmission – transmitting 300 megawatts across the Island to the Avalon?

MR. BENNETT: There are potentially constraints on the Avalon depending on which facilities are maybe in service, which contingencies were prepared to accept, and I think there is a study from Hydro within the past couple of weeks circulating on that topic.

MR. HOGAN: So there are issues with transmission –?

MR. BENNETT: There are always issues. Transmission is not unlimited.

MR. HOGAN: Mm-hmm.

MR. BENNETT: And, you know, there is a design effort and a planning effort that has to go into serving any level of load. And if I looked at another example in the province, in Labrador West, there are definitely transmission constraints should one of those lines be out of service. And it has a direct impact on industrial and residential and commercial customers there.

So that question, that risk – the investment that might be required to mitigate that risk, ultimately has to be considered carefully, because now we have a trade-off between cost and reliability.

MR. HOGAN: And we'll need someone to provide us with the 300 megawatts, correct? Obvious.

MR. BENNETT: Yes, 300 megawatts would need to be available.

MR. HOGAN: Right. And how – so, who's just standing around waiting with their hand out to say if you need the 300 megawatts, call us?

MR. BENNETT: So, there – for example, there is a reserve in the Maritime provinces today.

There is an approximately 650-megawatt reserve that's shared between Nova Scotia, New Brunswick and PEI in relation to the largest first contingency in New Brunswick, that being Point Lepreau.

So there is reserve in the system. The question that will have to be looked at, from an engineering and planning perspective, is whether we have coincident events here and whether that reserve that's available on the system can be shared on a broader basis. Again –

MR. HOGAN: There's no certainty in that reserve, is that fair to say?

MR. BENNETT: There's no certainty in our own reserve. If we're calling on a reserve and there is a forced outage on that spare machine, then that reserve may not be there. So if you want firm capacity, then someone is going to have to build it but, typically, you know, when we look at – when you look at those types of events, you have to ask yourself: Are they coincident? Are you going to make a firm investment? Or are you going to rely on the statistics and have an acceptably high probability that that reserve will be available.

MR. HOGAN: And the only way to have that certainty is to have it built and sign long-term (inaudible).

MR. BENNETT: If you want absolute certainty, build it, buy it and put it there, but you can get a high degree of reliability by saying there is reserve. There are assets in the Maritime systems that are available for that purpose and you may want to pool the resource, as opposed to simply building our own.

MR. HOGAN: Okay.

So you brought up the comparison to the Isolated Option. Yesterday, you said to Mr. Collins: Comparing the reliability of the Isolated to Interconnected Options was an apples-to-apples comparison.

MR. BENNETT: That was my understanding of how NLH System Planning looked at reliability in the period around sanction and pre-sanction (inaudible) –

MR. HOGAN: Who looked at that, sorry?

MR. BENNETT: That would've been Newfoundland and Labrador Hydro System Planning. So –

MR. HOGAN: So what did they look at? Because it seems to me that we already know how reliable the Isolated system is going to be compared to building an Interconnected system that doesn't exist. We haven't tested that reliability because it doesn't exist, so I don't see how it can be an apples-to-apples comparison. So maybe you can explain that.

MR. BENNETT: I think their metric was the level of unserved energy that was considered over – on a statistical basis from the two systems. And I recall – I think the exhibit may be here – a note from NLH System Planning where they looked at that level of unserved energy and compared in their – using that criterion, the reliability of the two alternatives.

MR. HOGAN: So that's a study that Hydro has produced?

MR. BENNETT: I recall that being at the PUB review.

MR. HOGAN: Okay.

So does that mean that reliability wasn't factored into an analysis of the two options? Are you just saying they're both equally reliable, slash, unreliable?

MR. BENNETT: They – my recollection from that work is that the reliability of both is comparable.

MR. HOGAN: I'll just turn to the – just a quick question about the FFCs that existed throughout the summer and fall of 2013. You've been through these with several counsel and the numbers moved around between 6.8 and 7. Do you recall that?

MR. BENNETT: Yes.

MR. HOGAN: And you said today you talked about varying degrees of certainty with these numbers. So are you able to comment on how certain those numbers were in the summer and

fall of 2013 knowing that, obviously, we come back to 6.5 at some point.

MR. BENNETT: Right.

So, you know, there were – it's hard for me to get into specifics without getting into every contract and going through a full review of every contract package and saying what are the trends, what are the concerns, what are the considerations. Needless to say, with the contract in hand on Astaldi, that is – was a lot clearer than some of the other work which was still yet to be awarded.

MR. HOGAN: I just – I'll just look at this trend as a – what I'm really concerned about is that leading up to financial close the number jumped to 7.0; financial close it is 6.5 – so this is the end of 2013. And then in May of 2014 it jumps back to 6.99. There's a lot of movement within less than a year, really.

MR. BENNETT: Right.

MR. HOGAN: And the curious part is obviously it goes down at financial close and then right back up again after financial close. So does that – do you recall that and why that number is moving like that at that point in time?

MR. BENNETT: I think as we saw here this morning, I think some of the commentary still had what I would classify as a trend or an indication or a request for management reserve, as opposed to an AFE approval level. And we can see that as further certainty is obtained, then that number, it does bounce a bit.

MR. HOGAN: Okay.

MR. BENNETT: And it does evolve.

MR. HOGAN: It does evolve.

MR. BENNETT: Yeah, it does.

MR. HOGAN: Up and down, obviously.

MR. BENNETT: Yeah. More so up, I think, as a general trend.

MR. HOGAN: Except for it did trend down right before financial close from –

MR. BENNETT: It still went from 6.2 to 6.531 and I think in the following year, moved again past 6.531.

MR. HOGAN: Okay.

You used the phrase politically complex yesterday, talking about disclosing numbers. Do you recall that phrase?

MR. BENNETT: Yes, I do.

MR. HOGAN: What did you mean by that?

MR. BENNETT: I think that there are – first of all, there were multiple considerations.

MR. HOGAN: Say that again, Sir?

MR. BENNETT: There are multiple considerations. There's the question about making the numbers public, there's commercial sensitivity. There's, I think, also a question of alignment among the various players who are involved in dealing with the capital cost; so the federal government, provincial government, lenders, board of directors, Cabinet. Those all have – in my view, those all have to be managed and continue to have to be managed and worked with in order to achieve, you know, an appropriate level of alignment.

MR. HOGAN: So it's not just – it doesn't just mean politically complex for politicians to disclose to the public, it means internal workings within Nalcor, within the federal government, within the project management team –

MR. BENNETT: The operation of the board, Cabinet, the approval process, budgeting processes, that all had to be –

MR. HOGAN: So those –

MR. BENNETT: – it all had to be worked.

MR. HOGAN: Those complexities go into decision-making about whether to tell – whether X should tell Y about the fact that these numbers have gone up.

MR. BENNETT: That was my understanding and my observation.

MR. HOGAN: Okay. Would that include these numbers throughout the summer of 2013, why it wasn't disclosed to the government, the 7.0 number, for example?

MR. BENNETT: I think on that one, again, there's a question of how certain is the number, what's the backup behind it, what is the requisite level of certainty that's being looked for in approval, how firm is the risk and, you know, what's a good number – and I use good number in a very broad way – to be worked with and granted to the project team and also to be communicated.

MR. HOGAN: All part of the complexity.

MR. BENNETT: That's all part of this.

MR. HOGAN: I guess I could put it to you it would just be easier if everybody disclosed everything, but that wasn't an option, was it?

MR. BENNETT: It's – there are – that needs to be thought through, I think. And I think we've heard, you know, even from earlier on here, you know, I think Professor Flyvbjerg had commentary on sort of the complexities of dealing with those issues, investment levels, what's appropriate to disclose to contractors. So I think it is and I continue to observe it to be a, you know, a complex issue that needs to be thought through carefully and that alignment is required among all the stakeholders that are dealing with an important question.

MR. HOGAN: If we could just turn to P-03707, please. So you're not on this email. This is an email about the Astaldi issue prior to financial close.

MR. BENNETT: Okay.

MR. HOGAN: If we could just scroll down a little bit, please. So it's an email from – scroll down a little bit more further – from Mr. Martin to Mr. Harrington, November 2013 asking obviously: Is Astaldi still the right contractor and can these things be fixed in time. Now, I know you're not on this email. This is very close to financial close, correct?

MR. BENNETT: Yes. Can I confirm –?

MR. HOGAN: I'm just wondering if you were aware of any urgency to get financial close done at this point in time. And I think you said yesterday there was an effort to get financial close done earlier, so the clock is obviously ticking.

MR. BENNETT: The clock is ticking. There's no question the clock is ticking, and the mitigation to address the ticking clock was to sign a Limited Notice to Proceed with Astaldi, grant them a level of funding in order to begin mobilizing. And my recollection of the situation is that they were concerned that the funding might not close.

MR. HOGAN: Who was concerned?

MR. BENNETT: Astaldi was concerned.

MR. HOGAN: Right. So, is the urgency to get it done so we can get Astaldi signed and get them – money flowing to them?

MR. BENNETT: I think the – I would – that may be the immediate consequence; the consequence was – I think the underlying issue is to make sure that we get the federal loan guarantees and the funding signed so if we're going to move forward, we have the wherewithal to do so in a timely manner.

MR. HOGAN: Right. Was there any concern that project costs were going up and the federal loan guarantee might be in jeopardy?

MR. BENNETT: I don't recall that being a major issue.

MR. HOGAN: You don't recall that being a ...?

MR. BENNETT: A major issue.

MR. HOGAN: Major issue?

MR. BENNETT: Right.

MR. HOGAN: It was an issue.

MR. BENNETT: I've never heard – I guess – I've never heard feedback in relation to not being able to secure the federal funding. So, it's

probably fair for me to say I don't recall it being an issue.

MR. HOGAN: Just a couple of quick questions on some follow-up evidence you gave. You talked about the protests in the fall of 2016 at the gates?

MR. BENNETT: Right.

MR. HOGAN: I think you said it was hard to quantify, financially, I guess, the effect of those protests. Is that fair to say?

MR. BENNETT: Yes. And I think that was maybe looking forward, you know, from three or four years prior to that. It's also not perfect to quantify after the fact.

MR. HOGAN: It's – sorry, it's what?

MR. BENNETT: It's not a perfect exercise to quantify it after the fact.

MR. HOGAN: No, it's not perfect.

MR. BENNETT: Yeah. After.

MR. HOGAN: So, are you able to try and quantify it. I guess if a site – this site is shut down for a day, let's say – can you quantify that cost? I mean, does it depend on what's going on at that point in time?

MR. BENNETT: Yes. I mean, it certainly depends on the number of people on site, but if you look at 2,000 people on site, the payroll in round numbers is approximately \$2 million a day.

MR. HOGAN: Two million a day?

MR. BENNETT: Right.

MR. HOGAN: And the protests shut down the site for how long?

MR. BENNETT: They – to varying degrees, between four and 10 days, and I'd say to varying degrees because there was – during that period, there was some work carrying on. That work was somewhat constrained depending on what was able to get through the gate, how many workers were on site.

MR. HOGAN: Okay. Thank you.

If we could just turn back to that *The Telegram* article at 04280. This is the last question I have for you, Mr. Bennett. Scroll down a little bit more, please? Stop there. I can't find it. I'll read it out. You'll probably know the line. It says, "The plant," the Holyrood plant, "burns about 18,000 barrels of oil per day during peak production." Does that sound familiar?

MR. BENNETT: That sounds about right, yes.

MR. HOGAN: Okay. So what does peak production mean? How long is peak production?

MR. BENNETT: It's whenever the plant is running at rated output.

MR. HOGAN: Is running at –?

MR. BENNETT: Its rated output.

MR. HOGAN: Rate –

MR. BENNETT: Its rated output, yes.

MR. HOGAN: And what would that number be, rate output?

MR. BENNETT: I think the net on the plant is approximately 460 megawatts.

MR. HOGAN: Okay.

If we could please turn to P-04344.

So this is a document provided by Nalcor showing the operating data for Holyrood –

CLERK: (Inaudible.)

MR. HOGAN: 04344.

Now, keep in mind this article was written in 2011. So this shows that in 2011, the number of hours that Holyrood operated at capacity was 18 hours, and in 2012, it was eight hours. So I'm just wondering, is it a misleading statement to say that Holyrood is burning 18,000 barrels a day at peak capacity when peak capacity is only 18 hours a year?

MR. BENNETT: I think in the Isolated case, I remember seeing in the later years here that the

MR. HOGAN: That's what I said. Keep in mind that that article was written in 2011.

MR. BENNETT: Right.

MR. HOGAN: And the 2011 number is 18 hours.

MR. BENNETT: That's true, but that's also, if I recall, a low production year for Holyrood. And you – as we recall in the Isolated case, there are two factors at play: one is the hydrology on the system and whether or not the water supply and the hydroelectric fleet is a constraint. And I think it's fair to say that in the Isolated case, the demand on Holyrood was going to increase for some period of time.

MR. HOGAN: We're not talking about demand. That sentence doesn't talk about demand.

MR. BENNETT: Well, it doesn't – I mean demand in a colloquial term that we're gonna be drawing on the plant more moving forward.

MR. HOGAN: Sure.

I mean, that is the amount that it burns if it is burning at capacity. My point is it only burns at capacity for two-thirds of a day out of 365 days a year, which is very nominal. So my question is – and this quote, or this reference, the 18,000 was used at this Inquiry, and we have other documents that show it. My question is, is it misleading to the public to use that number when 18 hours is insignificant?

MR. BENNETT: So it's one of a number of ways to describe the usage in Holyrood. We can count the number of barrels of oil that are burned over a period of time. We can look at the energy production, you can look at the rated capacity. You know, it's one of a series of numbers. And I think –

MR. HOGAN: Do you agree or disagree that that statement in itself is misleading?

MR. BENNETT: So the statement is accurate.

MR. HOGAN: Yes, it is.

MR. BENNETT: And it's not the only point that was made in that story, and I don't think it was a quote.

MR. HOGAN: No, it wasn't a quote.

MR. BENNETT: Okay, so I – I mean, so if the reporter thought that that was an interesting statistic to put in there, in the story, then that's where it landed. There were quotes; there were other points. We've talked a lot about Holyrood, its greenhouse gas emissions and all the other factors that are relevant for the plant.

But I look at that number as also being an indication of the scale of the facility and what goes through it. And, for me, you know, it's interesting to think about Holyrood burning that much oil compared to the Come By Chance refinery, which runs approximately 100,000 barrels a day. So it's a significant consumer of oil when it's running.

But I agree with you that in order to offer a fulsome story, you have to have a series of statistics –

MR. HOGAN: Right.

MR. BENNETT: – in order to tell the full picture.

MR. HOGAN: Okay.

That's all the questions I have. Thank you.

MR. BENNETT: Thank you.

THE COMMISSIONER: Right. We'll take our break this morning, now, for 10 minutes, at this stage.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right. Innu Nation?

MS. MUZYCHKA: Commissioner, before we start, I have one further exhibit we'd like to enter.

THE COMMISSIONER: Okay.

MS. MUZYCHKA: It is P-04344.

THE COMMISSIONER: So, the one we were just looking at, that will be entered as numbered.

MS. MUZYCHKA: Thank you.

MS. BROWN: Good afternoon, Commissioner.

Good afternoon, Mr. Bennett.

MR. BENNETT: Thank you, Ma'am.

MS. BROWN: My name is Julia Brown. I'm counsel for Innu Nation.

MR. BENNETT: Ms. Brown.

MS. BROWN: I have questions for you today on two topics and they follow on from topics that you were asked about on Friday by Commission counsel.

The first topic relates to protests. Commission counsel asked you some questions on Friday, about Innu protests, and I would like to clarify which protests might fall into that category.

Now, Mr. Bennett, you would have been – and I'm sure you still are – actively involved in managing and addressing any protests related to the Muskrat Falls Project. Is that right?

MR. BENNETT: Yes, that's correct.

MS. BROWN: Okay.

And so, as a result of your involvement, are you aware that Innu Nation, as an organization, has not organized any protests relating to the project?

MR. BENNETT: So I can confirm that to be the case, that –

MS. BROWN: Okay.

MR. BENNETT: – there were no issues that were raised by Innu Nation or either of the band councils, on an organized basis.

MS. BROWN: Okay.

MR. BENNETT: We've been – very good working relationship with Innu Nation and both band councils.

MS. BROWN: Okay. And that was the evidence that we had from Anastasia Qupee when she was here in February.

And would you also agree that Innu Nation, as an organization, has not endorsed any protests relating to the project?

MR. BENNETT: Yes, I can agree with that.

MS. BROWN: Okay.

I'm sure that you're aware, however, that there were Innu Nation members who have been involved in protests and mainly two sets of protests that have happened: the first being the 2016 protest regarding methylmercury and then the second set of protests being the 2015 protest relating to violence that an Innu worker experienced on the site.

MR. BENNETT: Right.

And I think there may have been some – there may have been one or two individuals who displayed displeasure at one point in time, but I don't think ever escalated to the point where we would be calling it a protest event.

MS. BROWN: Okay. Okay. So you would agree that with that respect to any other protest that may have occurred, it wouldn't be accurate to say that there was significant involvement by Labrador Innu people. Is that fair to say?

MR. BENNETT: Generally speaking, that's correct. Yes.

MS. BROWN: Okay. Okay. So, let's talk a little bit more specifically about each of these episodes of protest. First, dealing with the methylmercury protest back in 2016. Were you aware at the time, that there were members of the Innu Nation at those protests?

MR. BENNETT: Yes, I was.

MS. BROWN: But, I'm sure you would also agree that there were people from various groups at the methylmercury protests. So, not only Innu Nation members and also not only Indigenous group members but non-Indigenous people as well. Correct?

MR. BENNETT: Absolutely. I think we'd find there were representatives from the three Indigenous groups in Labrador. And they weren't – representatives is the wrong word, I think. There were members of the three groups, and there were other residents of the area, in general, who participated in those activities.

MS. BROWN: Right. Okay. So people from the communities in Labrador were there as well.

MR. BENNETT: Yes. That's right.

MS. BROWN: Okay. And so, would you agree that classifying the protests about methylmercury as Innu Nation or Innu protests is not accurate?

MR. BENNETT: I don't believe it would be accurate to call it an Innu Nation protest. Absolutely, I never heard Innu Nation leadership sanction such an event. And I think it would probably not be accurate to identify one group without identifying others who are the representatives of the community.

MS. BROWN: Right. So it might be more accurate to say something along the lines of maybe it was a Labradorian protest around methylmercury. There were members from various communities, correct?

MR. BENNETT: I'd agree with that. Yes.

MS. BROWN: Okay. Okay. And the second set of protests that a number of Innu Nation members were involved in related to a violent racist incident that happened at the Muskrat Falls site in 2015. And I am sure you're familiar with that incident. Is that right?

MR. BENNETT: I'm generally familiar with the – that an incident happened and it evoked a response. Like, off the top of my head, I don't have the details of what initiated that event.

MS. BROWN: Okay.

MR. BENNETT: Okay.

MS. BROWN: So the Commission has heard evidence from Anastasia Qupee, on this matter, and Clementine Kuyper, from February of 2019. Did you hear their evidence at all?

MR. BENNETT: Unfortunately, I didn't.

MS. BROWN: Okay. So, I'll just provide you an outline and their transcript will bear me out. And if you just accept what I say – and if I'm wrong, I'm sure somebody will correct me. But they explained that Innu workers at the Muskrat Falls site had been experiencing racism at the work site, prior to the attack. And this was the event of violence. And they had also explained that there was a perception amongst the Innu that the project, in general, was not living up to the promises that had been made in the IEA.

Were you familiar with those conversations happening at that time?

MR. BENNETT: Generally? Yes.

MS. BROWN: Okay. And so, while it might be fair to say that – in fact, it is very much fair to say that those protests related to issues of concern to the Innu Nation and its members. Again, it's not your understanding that the protests were organized by Innu Nation. Correct?

MR. BENNETT: That's correct.

MS. BROWN: Okay. Okay. And so on Friday, Commission counsel framed her questions about Innu protests in terms of risk. So, I'd like to talk about that. She asked you whether –

THE COMMISSIONER: Actually, I think she referred to it as Indigenous protests, not Innu protests.

MS. BROWN: There was mention of Innu protests. I did go back over the transcript.

THE COMMISSIONER: For the most part, it was Indigenous protests. I think that's the point. I understand the issue of the Innu's involvement

in the protests. So, you don't need to make that point to me further. I understand it.

So, my bigger concern now is with regards to the issue of risk, is Nalcor's response to the Indigenous issues related to protest. So, just so we can keep to that, I think that's going to be more helpful to me.

MS. BROWN: Okay. Thank you, Commissioner.

I'll abbreviate my questions on this then and just ask you to confirm that the risk register – so, the risk register does have a line item for risks relating to protests and it does make mention of risk of Aboriginal protests. And also, I believe it makes mention of Innu protests, specifically if an IBA is not entered into, if an agreement is not reached.

Is that your recollection?

MR. BENNETT: That is my recollection and certainly our collective view is that it was fundamental that we achieve resolution of the three outstanding concerns that were tied to the Tshash Petapen Agreement, early in our planning for the project.

MS. BROWN: Right. Okay.

You would agree that there isn't a line item in that risk register, for potential protests relating to incidents of workplace violence. Is that fair to say?

MR. BENNETT: I think that is fair to say.

MS. BROWN: And –

MR. BENNETT: Like, our mitigation and our commitment flowing out of the IBA was to develop workplace policies, offer and require that workers on the site conform to respectful workplace policy, provide orientation information about the importance of complying with those requirements. And we had an ongoing process of managing complaints that arise from that process.

MS. BROWN: And would it be fair to say that Nalcor didn't view workplace violence as something to be registered on a risk register and

managed in that way because there is – there can be no tolerance for workplace violence. Is that fair to say?

MR. BENNETT: We have zero tolerance for violence. Our – and I think that would, you know, be true in any workplace environment. Our focus was going to simply be on the question of violence and being able to say, okay, we expect to have a respectful workplace.

We were aware that we had new entrants into the workforce coming on to the site who needed to be treated in an appropriate manner. And that we had specific policies to address that issue and an ongoing process of managing that issue and a process to ensure that there was compliance with those expectations.

I'd also acknowledge that from time to time we had individuals and activities that weren't in conformance with that policy. And notwithstanding the efforts to manage it, sometimes it turned into a situation that didn't result in, you know, the desired behaviour all the time.

MS. BROWN: Okay.

Okay, thank you, Mr. Bennett.

The second topic I have for you relates to the Upper Churchill redress agreement. And you've provided evidence on this that I would like to build on and I just have a couple of questions for you on this topic.

MR. BENNETT: Okay.

MS. BROWN: Commission counsel asked you some questions on Friday about how payments required pursuant to that redress agreement would be dealt with in terms of who is going to make the payments – would it be Nalcor, would it be the Government of Newfoundland and Labrador – and also how that party's accounting department or Nalcor's accounting department, if they were to make the payments, how they would characterize them.

In your answers, you told the Commission – you told Commission counsel that the Upper Churchill redress agreement was not something that you perceive as being contingent on the

Lower Churchill Project, and so I take it that what you meant was that an – that that – the redress agreement needed to happen in its own right. Is that a fair understanding?

MR. BENNETT: Yes. And as I recall, when we look at the three agreements – well, the two agreements and the agreement in principle that were ultimately negotiated with Innu Nation and the Innu of Labrador – the payments and obligations in the IBA would be actually contingent on a decision to move forward with the project. The agreement in principle for the comprehensive land claim agreement actually became, ultimately, a fully binding document once it had been ratified and accepted by the two governments – the federal and provincial government – as well as the Innu of Labrador. But I did not see anything but a binding commitment in relation to the Upper Churchill agreement once it was signed.

MS. BROWN: Right.

MR. BENNETT: The respective releases of indemnities were provided upon execution, the payment stream started to be made and the decision about what happens with that payment stream and its conversion to, as I recall, a percentage of dividends or earning from Churchill Falls in 2041, wasn't contingent on the other two agreements being executed or a sanction decision on Lower Churchill.

MS. BROWN: Right, thank you.

And, Mr. Bennett, I wouldn't expect you to be an expert on this, but would it be fair to say, based on your own knowledge, that Innu Nation has been pushing for redress relating to Upper Churchill since that project was built?

MR. BENNETT: Oh, from – yes, and I'm familiar with the descriptions of what happened during the impoundment of the Churchill Falls reservoir. I've heard commentary from representatives of the Labrador Innu about, you know, camping sites being flooded out during the process, a lack of consultation and a long-standing concern by the Innu of Labrador in relation to that project.

And I think we can look back to the experience in 1998, when a previous iteration of the Lower

Churchill Project was discussed, and a very strong response from the Labrador Innu in that regard. So having participated in the negotiation of these agreements with the Innu – the Labrador Innu – it was abundantly clear to me that the redress of the Upper Churchill development was a serious issue that needed to be resolved.

MS. BROWN: Thank you.

And we've heard evidence from members of the Innu Nation on that piece. And so you would agree that – and this follows on what you've said – consent wasn't sought or obtained at the time that that project was built. Instead, that consent happened at the time that the redress agreement was entered into. Is that your understanding?

MR. BENNETT: Yes, but I think about the legal – the effect of the legal language. I think that's what you could, at a high level, describe it as.

MS. BROWN: Okay.

And then just a point of clarification; my friend took you to some exhibits on Friday that were emails between Nalcor and the Government of Newfoundland and Labrador about who was going to make payments for the Upper Churchill redress agreement. And you may recall it wasn't entirely clear from that back and forth who was going to make those payments.

The Commission has heard evidence on this and I won't belabour the point; however, Charles Bown was asked about this on May 15 of 2019 and Mr. Learmonth had asked him, am I – I'm going to read this section. So Mr. Learmonth said: "And, ultimately, am I correct that the government took it on, took this commitment on and paid Nalcor up front with a discount, of course, for advance payment, and that – am I correct in suggesting that the reason that the project – that the government paid for it and that it was not charged as a project cost was that it was an obligation that the province owed to the Innu Nation, regardless of whether Muskrat Falls proceeded or not?"

And Mr. Bown answered: Absolutely. So his evidence was that the government has agreed to

make those payments. You have no reason to disagree with his evidence on this point, do you?

MR. BENNETT: No, I don't.

MS. BROWN: Okay.

Thank you. Those are my questions.

THE COMMISSIONER: Thank you, Ms. Brown.

All right, Nunatsiavut is not here.

The NunatuKavut Community Council

MR. RYAN: Good morning, Mr. Bennett.

My name is Victor Ryan. I'm counsel for NunatuKavut.

MR. BENNETT: Good morning.

MR. RYAN: I just want to turn back to the issues of protest at the Lower Churchill Project site more generally. My friend just asked you about your responsibility in dealing with the protest, but I just want to get a sense. So when a protest would start at the site, how would you be made aware of that?

MR. BENNETT: Generally, if the protest arose, particularly, if it affected operations at the site, that would be communicated from the site team. Often, it was either through the project manager and up the chain or it is possible that, you know, a note or an email or telephone call would be made saying we have an issue on the site.

MR. RYAN: And specifically from someone on the site who, obviously, you know, sees the protestor, hears about it happening, to you, as the member of the project management team?

MR. BENNETT: Typically, that kind of communication would go to a number of people.

MR. RYAN: Okay.

And you weren't often on site, were you?

MR. BENNETT: I think the – I think my travel records are actually here in the document list

and it's probable that I would be on site, on average, one or two times a month.

MR. RYAN: So it wouldn't be often then, that you would become – made aware of a protest because you would see it happening or that you were at the site at the time?

MR. BENNETT: No, I can think of one example where I happened to be on site, and an event sprung up and I was at the gate for a period of time.

MR. RYAN: Okay.

MR. BENNETT: But, generally speaking, I was not on site during these events.

MR. RYAN: And so when determining how to respond to a protest, I'd imagine that the information that you receive about the protest becomes quite important. So when the information is being relayed to you, what sort of information are you getting about a protest?

MR. BENNETT: Oh, gosh. Typically one would communicate the magnitude of the event, where it is, the extent of the various activities on what the impact is on our work on site; whether it's being – whether it's interfering with the activities or simply a protest that's happening, you know, without interfering with work. So details – typically, some level of detail about the activity and what the implications are.

MR. RYAN: And so what you just said there, as I heard it, sort of, indicated a distinction in your mind between a protest that interferes with the work that's taking place on site, or just a protest. So I'm wondering, do you hold that distinction in your head when considering protests? Does the interference with site work change the seriousness or the scope of the protests in your mind?

MR. BENNETT: Yes, I think it does.

MR. RYAN: Okay.

MR. BENNETT: Yeah.

MR. RYAN: And can you explain to the Commissioner why?

MR. BENNETT: Well, I think that, you know, just thinking about what our primary interest is, you know, our primary interest is understanding the impact on work. So we have no desire to interfere with somebody's right to express their perspective on an issue. So to the extent that the protest is not interfering with our activities, that in and of itself would not be a cause for terrible concern other than making sure that we're cognizant of people's safety.

MR. RYAN: And in fashioning a response to a protest on behalf of Nalcor, which I understand would've been your responsibility, I'd like to figure out a little bit more what the precise scope of your decision-making power would be. So am I correct that you would be the lead senior person from Nalcor determining how to respond to a protest?

MR. BENNETT: We would consider the situation, try to understand how we see it and then, ultimately, if we're going to take any legal action to go down that road, then I would consult and seek approval from our CEO before taking any further action. So it's not done in a position where if we're going to – you know, we look at some of the injunctions we've applied for, for example, that's not something I'll do independently.

MR. RYAN: Okay.

That actually directly contradicts the testimony that we received at this Inquiry from Edmund Martin last week. Did you have an opportunity to review that testimony?

MR. BENNETT: No, I didn't.

MR. RYAN: So Mr. Martin's testimony, on specifically this issue of who decided for Nalcor how to respond to a protest, would've been that it was your role to fashion a response to a protest on behalf of Nalcor. Mr. Martin did not need or expect prior approval from you to take any sort of action. However, if you, as the decision-making authority, took an action that Mr. Martin deemed inconsistent with Nalcor's interests or values, he would let you know and then you would be expected to take steps to bring those actions into compliance –

MR. BENNETT: Okay.

MR. RYAN: – with Nalcor's actions and values.

MR. BENNETT: So –

MR. RYAN: Is that incorrect?

MR. BENNETT: I'm thinking about sort of what happened prior to our most serious event. If you look at the fall of 2016, Mr. Martin wasn't CEO and there's no question that, you know, prior to moving forward with the actions we did in 2016 – in October of 2016, I definitely consulted with Mr. Marshall before that happened.

MR. RYAN: And that's a fair point, Mr. Bennett. Perhaps I should clarify that there were many protests that occurred on the site as you and the Commissioner are aware. And so my scope in these questions is the protest beginning in 2011, 2012 and moving all the way up to 2016. So if there's a temporal shift that we have to account for in terms of how Nalcor responded to the issue of a protest, then we can make that distinction. So perhaps I will ask you to focus first on Mr. Martin's tenure as CEO.

And so is the process that I just relayed to you, which is my understanding of Mr. Martin's evidence, is that correct?

MR. BENNETT: I'm having trouble reconciling me simply going out and doing this independently and not having a conversation. I'm having some – well I'd probably – I would accept I had the, you know, authority to engage legal counsel and take action. It's not something that I would have simply done independently.

MR. RYAN: Okay. Well, perhaps I'll ask you about specific instances and, you know, we'll see if you can have a specific recollection of something.

So shortly before sanction, there were some protests on the site – members of NunatuKavut at the Caroline Brook access road, I believe, and the – so there was a protest at the road for a period of several hours and then the following day, Nalcor sought an ex parte injunction in court to block that protest. Do you recall –?

MR. BENNETT: Prior to sanction?

MR. RYAN: So it would've been 2011.

MR. BENNETT: That one slipped my mind and if you had said 2012 during the early works program –

MR. RYAN: Perhaps I –

MR. BENNETT: Yeah.

MR. RYAN: I mean, there's a potential I have the date wrong.

So, maybe, for clarity, if we could pull up, Madam Clerk, P-02079, so this is the Newfoundland and Labrador Court of Appeal decision, eventually, overturning the sort of series of injunctions –

MR. BENNETT: Yeah, okay.

MR. RYAN: – that stemmed from the original first protest. And just on page 2.

And so at paragraph 2 here, and I'll just read this out for you, Mr. Bennett: "In brief, the appellants, NunatuKavut Community Council ... a body representing Labrador Metis, and Todd Russell, NCC's president, organized a gathering of NCC members at the intersection of the Trans Labrador Highway (TLH) and the Caroline Brook Forestry Access Road ... to protest lack of progress in resolution of NCC's aboriginal land claims."

And then, Madam Clerk, if you just scroll down just a little bit.

Paragraph 3, "The gathering, which took place over an approximately twelve-hour period on one day in 2011"

MR. BENNETT: 2011. So this is – yeah, prior to financial close, after release from EA –

MR. RYAN: Yes.

MR. BENNETT: – and during early works.

MR. RYAN: Yes.

MR. BENNETT: Okay.

MR. RYAN: So this protest prompted Nalcor, the following day, to seek and receive an ex parte injunction from the court to block any future protests from occurring. So, specifically with reference to this, would you have been the member of the project management team to instruct legal counsel to seek that injunction?

MR. BENNETT: I would have engaged with legal counsel, yes.

MR. RYAN: Right.

And would you have asked for approval from Mr. Martin before doing so?

MR. BENNETT: I would – well, I don't have recollection of a specific conversation. This is the kind of thing that we would talk about before taking that action.

MR. RYAN: Okay, so you don't specifically recollect seeking his prior authorization or permission, but consistent with how you would have acted at the time, you assume that you would have briefed him beforehand?

MR. BENNETT: These types of issues aren't trivial. You know, from a – for Nalcor, for its relationship with the province, these are the kinds of things that would be talked about before we take the action.

MR. RYAN: So Mr. Martin's evidence is actually that he was not briefed about this before the decision was taken to seek an injunction and that he was made aware of it afterwards.

MR. BENNETT: Okay.

MR. RYAN: So, obviously, those two are irreconcilable. Is there any reason why your recollection of events might be more believable than Mr. Martin's?

MR. BENNETT: I think the only thing I can suggest here is that there's an email or some other document that, you know, clarifies that thread. That might be helpful.

MR. RYAN: Are you suggesting that you sort of remember one –

MR. BENNETT: No.

MR. RYAN: – because I haven’t seen one.

MR. BENNETT: No, I’m suggesting that it’s worthwhile to search to make sure that if there is one, it would be helpful to the Commission.

MR. RYAN: Yes, that – I certainly have had a look at the disclosure to that I’ve been given access to. I haven’t seen anything yet, but that’s not to say that such an email doesn’t exist.

So you mentioned that the term, we, when talking about making a decision, about how to respond to a protest whether to exercise any legal options. Obviously, you’re consulting with Nalcor’s legal counsel, but who else within Nalcor would you be talking to in order to figure out how to respond, if at all?

MR. BENNETT: So there’s no question there’s a conversation with legal counsel. And I can – I definitely remember in 2016 talking to the CEO.

MR. RYAN: Mm-hmm.

MR. BENNETT: As a matter of course, we would discuss with the province as well, so not going to have a surprise on this type of activity.

MR. RYAN: Okay.

And so focusing in on the protest that prompted a fair amount of litigation, at the time that you were made aware of this protest, did you consider it to be of a serious nature?

MR. BENNETT: Yes, we did.

MR. RYAN: Okay.

Why did you come to this conclusion?

MR. BENNETT: So this is, you know, an activity that is on the construction site, on the road to the ultimate construction site, but within the area that, you know, it’s an access road that’s off the Trans-Labrador Highway. It’s not an area that’s been licensed in one form or another to Lower Churchill Project. Permits have been granted. We have authorization to do the work and that work has been interfered with for quite some period of time.

MR. RYAN: Yes, approximately a 12-hour period of one day. So, just to get your evidence clear, 12 hour – approximately 12-hour protest on one day is a significant period of time when considering how to respond to a protest from Nalcor’s perspective.

MR. BENNETT: In this particular case, yeah.

MR. RYAN: Right.

Do you have a sort of threshold of time beyond which it becomes serious, or does it depend on the circumstances?

MR. BENNETT: It certainly depends on the circumstance.

MR. RYAN: Did you receive an update when this protest ended?

MR. BENNETT: I don’t recall that here today.

MR. RYAN: Okay.

In general, would you be made aware by phone or by email of a protest at or near the site ending?

MR. BENNETT: It – I think I can recall communiqués when, for example, on the North Spur if somebody elects to leave the North Spur, it wouldn’t be unusual for us to get an email to say, okay, the individuals in question have left the site.

MR. RYAN: So, we’ve heard your evidence that the protest was significant, serious, required a response. And we know that the response from Nalcor ultimately was the day after to seek an ex parte injunction to stop members of NunatuKavut from approaching the site. I’m wondering if you can explain for the Commissioner why specifically Nalcor sought an injunction.

MR. BENNETT: So in this particular case the presence on the access road, you know, is an important question. The work was shut down. It took some period of time to collect the necessary evidence to, I guess, move forward with an – with the application and that was dealt with by legal counsel.

It's a difficult situation to find yourselves in when, you know, work can be shut down at will simply by somebody saying I'd like to come on to our access road and tell people to go away.

MR. RYAN: And I don't mean to sort of re-litigate the facts of it, because I mean it's been dealt with in court. But I just want to make clear, perhaps, for the record that the Court of Appeal ultimately found five vehicles were persuaded or prevented from proceeding to the site.

So when we're talking about work stoppage, I'll put it to you that what we're talking about is five vehicles either turning around, sort of, after listening to protestors or unable to get through protestors to access the site.

MR. BENNETT: So that was a site at the time, if this was during that period of time that the work being undertaken was the construction of the access road.

MR. RYAN: Okay.

And why an ex parte injunction? So an ex parte injunction is – I'll put it to you, is a pretty extraordinary legal option. It's a very, you know, timely emergency type of procedure. So what about the time sensitivity of this protest prompted you to take such a quick action?

MR. BENNETT: Well, the work was shut down. That process was, I guess, taken on advice of legal counsel. We know that, ultimately, that ex parte application has a finite life and there's going to be a hearing very shortly.

MR. RYAN: Sure. And I don't want to put you in the position of trying to, you know, explain legal advice or get into a legal argument, so that's fine.

So do you recall hearing any objections from Mr. Martin about taking the step of an ex parte injunction either before doing so, if we follow your sort of version of events, or after the fact, if we take Mr. Martin's version of events to be true?

MR. BENNETT: I don't think so.

MR. RYAN: Okay.

MR. BENNETT: I can't place a specific concern there.

MR. RYAN: And do you recall giving the instructions to modify the ex parte injunction into an interim injunction later on, or giving the instructions to seek an interim injunction?

MR. SIMMONS: Commissioner, if I might, I think it's normally a condition of an ex parte injunction that there be an application for an interim injunction that follows, whether or not the client –

THE COMMISSIONER: Right.

MR. SIMMONS: – wants it to go that way or not.

THE COMMISSIONER: Right, so that is the way it works in (inaudible).

MR. RYAN: And fair enough. And so, if –

THE COMMISSIONER: So, it may not have required – you can ask Mr. Bennett the question, but it may not have required the –

MR. RYAN: Oh yes. That's my understanding – is that the client could, sort of, down tool, at the time, or they can just let the process go.

THE COMMISSIONER: Absolutely. At the – the way it works in this province, Mr. Ryan, and – as you may not be as familiar with the rules. And I'm not saying that in a derogatory manner; it's different everywhere you go. But in this province, once you apply for an – if you apply for an ex parte injunction, generally speaking, it's never granted on a full-time basis. It usually means there's a call-back date when you come back and you actually litigate the issue of whether or not the injunction will continue if, in fact, the ex parte injunction is granted. Many times when an ex parte injunction is requested, the judge may refuse to grant it – many times we do – until both parties are brought before the court.

In this particular case, obviously, the judge proceeded with an ex parte injunction and likely part of the – one of the conditions of the injunction was to come back and get – to get it

formalized into a more permanent type of injunction or an interim injunction. But –

MR. RYAN: Yes.

THE COMMISSIONER: – your question is fine and –

MR. RYAN: Okay.

THE COMMISSIONER: – Mr. Bennett could – in the meantime, the – Nalcor could have said, no, we don't – we won't proceed and we'll let the ex parte injunction lapse, or they could have said, we're going to go with it and try to get this now formalized.

MR. RYAN: Right. So perhaps modify is maybe the word that, sort of, has taken away from the meaning of my question, but the ex parte injunction became an interim injunction. Did you – do you recall giving specific instructions around that process?

MR. BENNETT: No. It's – as I recall, we just let the process unfold.

MR. RYAN: Right.

As this process is unfolding, did you consider meeting with NunatuKavut members to determine how to alleviate the concerns without enjoining them from approaching the site?

MR. BENNETT: I think we got to, you know, a different place sometimes later. But, you know, at this point in time, as I recall, and I think it's in the Court of Appeal decision – the complaint that was being raised here in relation to the project was the failure of the province or the failure to negotiate a land claim agreement. That's not a trivial issue to resolve.

MR. RYAN: And fair enough, but my question is, did you consider, you know, taking steps to have a meeting, to sit down to say is there anything that Nalcor and NunatuKavut can do to alleviate this issue?

MR. BENNETT: Not at that point.

MR. RYAN: Right.

And so obviously the injunction is eventually overturned by the Court of Appeal. The decision is in the evidence before the Commissioner. It's on the screen. What was your reaction to that court decision?

MR. BENNETT: I don't have a, you know, recollection of a particular reaction in relation to the decision. Needless to say, I'm not going to try to second guess the Court of Appeal.

MR. RYAN: And fair enough.

So you can't recall specifically what your reaction would've been to this decision coming out?

MR. BENNETT: No.

You know, the – so the – you know, the decision, just like the multiple court decisions that we have in various aspects of the project, we take points away from it; legal counsel considers, you know, what the decision says, and, you know, we incorporate that into our thinking and our planning moving forward.

MR. RYAN: Would you have been the one to brief Mr. Martin on the outcome of this decision?

MR. BENNETT: Typically, yes.

MR. RYAN: Yeah.

Do you recall that conversation?

MR. BENNETT: So I don't remember a specific briefing on this decision, but typically that's the kind of conversation that we would have.

MR. RYAN: Mm-hmm.

If we go to page 11 of this decision, Madam Clerk. There's just one point that the Court of Appeal makes that I want to bring to you, and it's in the middle of the page so just – it's 2(d), so maybe if we just try to – yeah, that's perfect. Thank you very much.

So here the Court of Appeal is saying, you know, the trial judge erred in this circumstance by granting the injunction on the terms that they

did, saying that they “were too broad in that” – and I’m just really focused, Mr. Bennett, on the fourth one: “It effectively permanently infringed NCC’s members’ *Charter* rights of freedom of speech and freedom of association.”

So do you recall at the time noting that the injunction received had permanently infringed NunatuKavut’s members’ *Charter* rights?

MS. BROWN: Commissioner, I’m very sorry to – and reluctant to interrupt my friend, but in interest of providing some context to where we are in the decision, it might be helpful for the witness to know that paragraph 29 here, this is a summary of NunatuKavut’s argument, and the court’s analysis starts somewhat further down.

MR. RYAN: Fair enough. I see what you are saying.

In any event, the injunction was overturned, and so I’ll put it to you that the injunction was too broad and it infringed *Charter* rights to freedom of speech and freedom of association. Do you recall having that conversation after this process ended either with Mr. Martin or with anyone at Nalcor about this particular issue?

MR. BENNETT: So, it’s never been our intent to infringe on anybody’s *Charter* rights, right? Our concern was the undertaking of our permitted activity on the project site.

MR. RYAN: But after the fact, when the injunction was overturned, did you take stock? You know, did you take some time to reflect on the actions that you had taken and consider the appropriateness of those actions?

MR. BENNETT: So, the intent of the action from the beginning was to address the interference with our permitted activity and not to – and never under – never intended to infringe on anybody’s *Charter* rights particular in relation to freedom of speech and freedom of association.

MR. RYAN: (Inaudible.)

MR. BENNETT: So, it was never a part of our thinking in the first place, but obviously to the extent that there’s a now – there’s a court decision that speaks to how, you know, the court

is trying to address our right to undertake our project and others’ rights, then that would need to be considered going forward and try to find a way to address our concern without infringing upon anybody else’s rights.

MR. RYAN: And again, you know, the court’s decision stands obviously. You know, it hasn’t been overturned. I am not trying to ask you to sort of relitigate the decision. My point in raising it is that there is a period of several years where people were enjoined from protesting the site because of the injunction that was eventually overturned.

When it was overturned, I think the relevant portion of this for the Commissioner is did Nalcor perhaps think, you know, our intent was this but the outcome perhaps differed and why was that so? How do we change? How do we engender a better relationship with NunatuKavut? Did you have those types of conversations or thoughts after this decision?

MR. BENNETT: Not immediately after the decision. I think that, you know, if I look back, the sort of relationship between NCC and the province and the Crown – I guess it would be more general – probably had more of a change in 2016 – change in government, discussions about, you know, NCC’s land claim.

And I think further to that, corporately, we reached out to NCC, with some other approaches to dealing with this issue that ultimately didn’t address directly the project and project activities but indirectly, improved the relationship with NCC.

MR. RYAN: So, why didn’t you then, in the immediate aftermath of this decision (inaudible)?

MR. BENNETT: So, the stated intent – and it’s actually written in this decision was the – you know, the complaint about a land claim agreement. That’s a difficult one for us to address directly without, you know, heavy engagement by the province, determination of what that policy objective would be. And, ultimately, when we look at that kind of solution and that kind of arrangement, we – the federal and provincial governments on side, to do something about that particular issue. That’s not

one that we get to deal with independently as a project team.

MR. RYAN: I guess something just strikes me as a bit odd about that sort of – that line of thought, Mr. Bennett, which is that, you know, there's a sort of irreconcilable disagreement between some parties. Relationships between the parties are bad. If we can't fix the ultimate underlying issue, we just won't try anything.

Is that of – sort of a fair characterization of Nalcor's –

MR. BENNETT: No.

MR. RYAN: – position on that?

MR. BENNETT: No, and I think – I think that, you know, I understood NCC's concern about their land claim. I know that was an issue during the environmental assessment. It was an issue that both governments were aware of. I also understand the federal government had not, at the time, accepted the land claim request for negotiation. I also understood that to be the province's perspective. And I also recall that the Joint Review Panel made some conclusions on the adverse effect of the project, on NCC members' interests.

So, looking at all of those considerations, I, at the time, didn't see a way to reconcile that relationship independently of the two governments.

MR. RYAN: Okay.

So I'm just gonna move on to a different topic. You've already said that you didn't have the chance to review Mr. Martin's testimony from last week – or the week before, I believe. So I'm just gonna read you a quote that he said, and he's talking about activities at Gull Island. And he said: The project team had approached us about, and I believe the government. But, anyway, that's not the point. The point is they – I was certainly approached about expending some money at Gull to start site development to ensure we maintained the environmental approval.

And so, I asked him about this and, to be fair, when we got into a bit of a back-and-forth about

it, he sort of wasn't sure if that was entirely accurate. And so, I just wanted to put it to you to see if you can shed any more light on this.

So Mr. Martin thought he had a perception that money needed to be started – expended at Gull to start site development to ensure we maintain the environmental approval. Is that your understanding that – of the environmental approval process, that money may have had to have been expended at Gull Island or work had to be started there in order to maintain the approval?

MR. BENNETT: So I recall that there were some suggestions by members of the project team that that would – it would be desirable to expend funds and do work in order to support the EA.

My view of it was a little different than that, that the Lower Churchill hydroelectric generation project, as runs through the EA process, incorporated both phases of development and that work on the development had started. So I wasn't seeing a compelling reason to move forward with expenditures in relation to Gull Island. And given that there is no immediate plan to develop Gull Island and our environmental assessment documents speak to various combinations of sequence and timing in relation to Gull Island, I consider that to be a future issue and not really a top priority for us as a project team.

MR. RYAN: And, in fact, the Joint Review Panel recommended that – you know, the sort of approvals perhaps be split, and the province explicitly rejected that recommendation. Is that correct?

MR. BENNETT: So I recall that there were recommendation – various recommendations with the Joint Review Panel. And, I guess from a – you know, from the perspective and authorization (inaudible) our perspective as proponent – in our position's proponent rather, the operation of the environmental legislation within the province and with Canada are gonna say a lot about the validity of the environmental assessment and the release from EA for Gull Island.

MR. RYAN: Mmm. So, I suppose I'm just confused – as I read the Joint Review Panel and the government's response, it seemed to me to be quite a clear-cut issue. Both projects released the recommendation to split approvals if one portion is pursued before the other rejected.

So, is there any reason why members of the project management team would've had the concern that you did not share?

MR. BENNETT: They may have had some informal conversations with counsel, I think there still may be one or two questions in relation to the operation of the legislation. And I don't think, you know, from the Joint Review Panel's perspective, that point is interesting but not terribly helpful. At the end of the day, this is a legal question and it's one that is interpreted in relation to the – two sets of legislation that govern environmental assessment here in our province: one being the provincial one, one being the federal one.

MR. RYAN: But you don't – you don't have a recollection of anything specific coming up that would have led some people to that conclusion.

MR. BENNETT: I know when it came my way, I wasn't supportive of spending funds on Gull Island at this point in time.

MR. RYAN: Madam Clerk, if we could look at P-03460, please?

Mr. Bennett, this is an email written by Charles Bown and it's a – drafting responses to questions from Canada, about the federal loan guarantee. And it just – this email is not to you and you didn't have a hand in writing it. But I just wanna turn to page 6 of this document because Mr. Bown is relaying an opinion from Nalcor, that he's been made aware of. And so, if we just scroll down a little bit – oh, sorry, to the bottom of page 5. Okay.

And so, we're talking about additional reservoir clearing over and above what was contemplated in the JRP.

MR. BENNETT: It's okay.

MR. RYAN: And so, the part that I'm interested in – but if you wanna read the whole thing, Mr.

Bennett, please take the time, but I'm just interested in the last paragraph on the page here, the one that starts "Soil stripping"

And so it reads: "Soil stripping is therefore not a part of the current project. Given the potential for impacts on fish and fish habitat from further clearing and soil stripping, Nalcor is of the view that a federal EA trigger exists related to these impacts and a subsequent section 35 Fisheries Act authorization."

MR. BENNETT: Yes, (inaudible).

MR. RYAN: And so – and then it goes on to say: "Nalcor also notes that any new reservoir clearing/stripping undertaking may trigger federal EA provisions through the operation of the federal loan guarantee. Provincial triggers would also apply."

I asked Mr. Bown where he – or the counsel for NunatuKavut asked Mr. Bown where he got this view, and it wasn't super clear to me whether he could pinpoint it to a specific person. So I thought I'd ask you: Would Mr. Bown have gotten this view – Nalcor's view from you?

MR. BENNETT: So I'm of the view that there may be a federal EA issue in relation to soil stripping as there may be an impact on fish habitat damage or destruction, which is colloquially referred to as HADD, which is addressed in section 35 of the *Fisheries Act*. And that trigger may exist, and given that the project has federal funding, that is a definite potential trigger for EA at the federal level.

I'd also note that the potential adverse effects and benefits that may be associated with soil stripping have not been assessed as part of the Lower Churchill Hydroelectric Generation Project EA. And there's been no – to date, there's been no extensive Indigenous consultation with the groups that were involved in the environmental assessment for the Lower Churchill hydro project, which includes Muskrat Falls and Gull Island.

In the provincial level, it is also I think likely – and if we could – if we wanted to pull up the provincial act, they do talk about excavation of the reservoir being a trigger for registration. And I acknowledge that there is a latitude given to

the minister in relation to whether that registration is referred to an environmental assessment. But I think the only observation I'd make is that there's broader Indigenous discussion and different perspectives on the potential impacts and benefits of this issue; therefore, it's reasonable to think that the minister may exercise discretion and require some EA process.

So there is a risk. There's definitely a risk in relation to federal and provincial EA requirements, particularly through the *Fisheries Act* authorization.

MR. RYAN: But if I take your evidence, your view of this is less firm than what is reflected here, second-hand. So you're saying may be a risk, whereas the –

MR. BENNETT: Oh, no. It's more than a – it is a risk. And I haven't offered a legal opinion that it would – the trigger absolutely exists, so there may be – that may be a little further than what we're thinking, but we can definitely see the connections and the legislation to a requirement for EA.

MR. RYAN: Right. So I suppose the difference here is that it's stated quite definitively that, you know, those –

MR. BENNETT: Well –

MR. RYAN: – processes would happen, whereas you're saying there's a real risk that that may happen.

MR. BENNETT: Right. So we're of the view that the trigger is there.

MR. RYAN: So would this have come from you? Do you recall meeting with Mr. Bown on this issue or briefing him on this issue?

MR. BENNETT: I have raised a concern with various representatives in the province, and we're concerned – we were concerned about the potential for an EA being triggered and required in order to address this issue.

MR. RYAN: And so would Nalcor have requested or counselled the provincial government not to order any soil stripping or

reservoir clearing beyond what was contemplated in the JRP to avoid this risk?

MR. BENNETT: We would – and I think are – we would've said we're definitely concerned with the justification, the requirement, the benefits of soil removal. I think much of that information is on the record in various places.

MR. RYAN: Sorry, I'm –

MR. BENNETT: So we have concerns with the undertaking as opposed to don't do it because you might need an EA. We have concerns about the concept.

MR. RYAN: Okay. So the answer would be no then; that Nalcor didn't advise or request that government not do this to avoid future environmental assessment process events?

MR. BENNETT: Yeah. I mean, there were – we see a whole series of problems with this soil-stripping concept.

MR. RYAN: I just wanted to – one last topic, and that's this idea that the cost and delays of the protests on project can't be quantified that you raised in your testimony.

And, Madam Clerk, if we could go to P-03665, please, 03665.

And, Mr. Bennett, this is a project change notice, specifically with respect to the October 2016 protests. And it – your evidence about the inability to quantify the cost of the protests struck me as odd, having reviewed this document which, to my mind, is exactly a quantification of the project – the costs to the project from protests events.

So I'm just wondering – do you see this differently? Does this not quantify the costs of the protests on the project?

MR. BENNETT: Yeah, I think I indicated some of the costs are easy to identify and there are others that are harder to pull out, okay? So if look at global operation on the site, yes, if we – you know, if you paid to fly people home and it was next to turnaround, it's easy to get that number.

MR. RYAN: Mm-hmm.

MR. BENNETT: It's easy to look at the cost of overtime on the project delivery team. There are some of those costs that are easy to get, some of those are a little bit more difficult when you're going back to try to assess the impact on productivity on a large contractor, okay?

MR. RYAN: So it's certainly –

MR. BENNETT: So we see –

MR. RYAN: – not impossible, though.

MR. BENNETT: I would say that it's difficult, as I said. Some of these numbers are easy to come up with; some of them are harder. And if you look at the overall impact, I would say that some of those other concepts require judgment and are, as a result, not necessarily as readily quantifiable as some of the straightforward questions.

MR. RYAN: Right.

MR. BENNETT: So I think –

MR. RYAN: But it is possible, just difficult, you know, requires judgment, but it is possible.

MR. BENNETT: It's an estimate at that point in time if you're using judgment.

MR. RYAN: If we just go to page 2 of this document, Madam Clerk.

And I'm interested, Mr. Bennett, in the third paragraph that starts with: It is important.

So it says: "It is important to note that the costs associated with this protest event go beyond the direct costs noted as part of this PCN and are difficult to measure." Which is consistent with what you're saying. "For example, there is the loss of income for all of the workers that had to be demobilized due to the protest, extra costs and schedule delays incurred due to extending critical work out into the Winter season, etc. The costs noted in this PCN are direct costs only and do not account for schedule delays or Contractor claims. These have been or will be addressed via other DANs/PCNs which have or will reference this PCN."

So, as I read that, it confirms what you're saying, that some costs are super easy to quantify and those costs are contained within this project change notice; other costs are more difficult to quantify. But it appears that there's at least a promise that those difficult-to-quantify costs will in fact be quantified. So I had a brief look but didn't look at all of the PCNs that are in evidence. Are you aware whether this sort of future work had been done?

MR. BENNETT: I don't believe it to be – have been done and I don't think we've drawn from contingency and moved funds around to address this particular issue.

MR. RYAN: Okay.

So this sentence: "These have been or will be addressed via other DANs/PCNs which have or will reference this PCN," to your understanding, that's not accurate?

MR. BENNETT: Well, this was the thinking at the time.

MR. RYAN: Right, but it hasn't been done subsequent to that?

MR. BENNETT: I think that to be the case. Now, the record of PCNs is readily available.

MR. RYAN: Okay.

Thank you, Mr. Bennett. Those are my questions.

THE COMMISSIONER: All right, Grand Riverkeeper Labrador/Labrador Land Protectors.

Oh, I'm sorry, the Ekuanitshit, did you want to – you can go first, yeah.

MR. JANZEN: Good morning, Mr. Bennett. Good morning, Commissioner.

My name is David Janzen; I'm here on behalf of the Conseil des Innus de Ekuanitshit. And I asked you some questions back in November when you were here, Mr. Bennett, about pre-sanction engagement with Ekuanitshit. The questions that I have for you today deal mostly with post-sanction engagement with Ekuanitshit

and to follow up on some of the geography recommendations and environmental risks.

MR. BENNETT: Okay.

MR. JANZEN: The first exhibit that I would like to go to is P-04215, please, Madam Clerk. And, yesterday, I think that –

THE COMMISSIONER: So that'll be book 3, tab 89.

MR. BENNETT: Thank you, Commissioner.

MR. JANZEN: Thank you, Commissioner.

So, yesterday, I think it was Mr. Budden had asked you some questions about the Community Liaison Committee that is mentioned at JRP Recommendations 15.1 and 15.5. So this is a letter from you to counsel for the community of Ekuanitshit in response to a request sent to you for further information about the Community Liaison Committee.

And so if we could go to page 4, attached to the letter are the terms of reference for the Community Liaison Committee. And so the first question I would have for you, Mr. Bennett, is whether you would have drafted these terms of reference? Would you have been involved in the drafting of the terms of reference?

MR. BENNETT: I think it's likely that I would have seen them before they go out. I don't think I had the pen on these.

MR. JANZEN: It would've been drafted by Nalcor?

MR. BENNETT: Yes.

MR. JANZEN: And I see that one of the objectives of the committee is to facilitate communication between Nalcor and Aboriginal groups. Would the Quebec Innu communities, for example, have been consulted at all in the drafting of these terms of reference?

MR. BENNETT: I think these were sent as a draft and intended to be the basis for some discussion, if that was desirable.

MR. JANZEN: Okay.

If we go to the bottom of page 5, the committee membership 4.1(b) where the community membership – there would be three Aboriginal community members on the Community Liaison Committee, one member each from Innu Nation, Nunatsiavut Government and NunatuKavut Community Council. Whose decision would it have been to exclude the Quebec Innu communities from membership on the committee?

MR. BENNETT: So I think the draft language here was meant to be our first suggestion. I think if you look at the letter that came out that covers this, we had opened the door for suggestions about alternate mechanisms, including participation in the CLC. So our – the team's immediate focus was on sort of local issues, but if you look at page 2 of the letter that has my signature, we were looking for commentary and that the CLC wouldn't be the only way for us to talk.

MR. JANZEN: So would a French version of those terms of reference ever have been sent to the Quebec Innu communities?

MR. BENNETT: I think this draft went to Mr. Schulze and the link was sent directly to the (inaudible). This was a letter that went to David Schulze.

MR. JANZEN: And I believe that there – subsequently, there was a similar letter sent to the council directly in French, but still with a terms of reference in English.

MR. BENNETT: That's correct.

MR. JANZEN: And if I go to page 3 of your – of the exhibit, which is page 2 of your letter, I guess that when you said that there was some openness to flexibility, you were – you're speaking of openness to modifying those terms of reference?

MR. BENNETT: Absolutely, they're draft.

MR. JANZEN: And if I'm not – at page 3 of your – of the exhibit, page 2 of your letter, the paragraph beginning: As indicated above, the second sentence: "If Ekuanitshit would like to send a representative to participate in the quarterly CLC meetings, they are welcome to do

so. Participation on the committee is voluntary and any costs associated with participation in the CLC is the responsibility of the participant. CLC meetings will be conducted and recorded in English, as will as all related material.”

So the invitation extended to Ekuanitshit here is that they would be welcome to participate on the committee, but they would pay their own way and the meetings and all related materials would be in English, is that right?

MR. BENNETT: That’s what this says: We’d “also consider suggestions from Ekuanitshit for alternate consultation mechanisms.”

MR. JANZEN: Such as ...?

MR. BENNETT: We’re open.

MR. JANZEN: Okay. So if we could go to P-04219 then, please, Madam Clerk.

MR. BENNETT: Maybe just before I come off that if you can look at the last paragraph in this letter, that “alternate approaches such as direct engagement on specific issues may be more useful and productive for the community.”

MR. JANZEN: Okay.

THE COMMISSIONER: Tab 94 then, 04219 – I’m sorry, I didn’t mean to cut you off.

MR. BENNETT: I’m sorry. No, that was the only point I was going to make, Commissioner, is that we did open the door in the last paragraph of that letter in 04215 on page 3 –

THE COMMISSIONER: Okay, so –

MR. BENNETT: – that we were open to other means of discussing.

THE COMMISSIONER: So P-04219 would be at tab 93, book 4.

MR. JANZEN: Thank you, Commissioner.

So this is a letter sent to you by counsel for the Conseil des Innus de Ekuanitshit. And the letter is following up on the comprehensive study report made public by the Canadian Environmental Assessment Agency in June of

2013, which “concluded that ‘the Project, when cumulative environmental effects are taken into account, is likely to cause significant adverse environmental effects on the’” Red Wine Mountain caribou herd.

And I would, in particular, like to go to page 3 of the letter, where it refers back to your letter, saying that there was some “openness to suggestions from ... Ekuanitshit on alternative consultation mechanisms and ... the possibility of direct engagement with Nalcor on specific issues.”

And if I go down, then, to – the second paragraph refers to Ekuanitshit attempting to organize a meeting with federal, provincial officials, “to discuss the cumulative environmental effects on the Red Wine Mountain caribou herd.”

And the fourth paragraphs says, “You will note that we expect that your company will participate fully in the meeting to be convened with the CEAA.”

And, as I understand it, we could look at the Exhibit P-04221, which is – as far as I know, you yourself did not ever respond directly to that letter, but P-04221 is the response from Ms. Marion Organ.

THE COMMISSIONER: Okay, that’s at tab 95.

MR. JANZEN: And if we just go to page 2, at the very last paragraph, I mean, there’s reference to the materials available to – made available to Ekuanitshit through the environmental assessment process. And then: “Based on the above and the nature of the meeting on July 30th I would like to thank you for your invitation to participate but a representative from the Project will not be in attendance.”

So you would agree that this was an attempt by Ekuanitshit to initiate some direct engagement with the proponent?

MR. BENNETT: You did, but you asked for a meeting with the federal and provincial regulators, right?

MR. JANZEN: And –

MR. BENNETT: So CEAA and I think the province is in here as well.

MR. JANZEN: And the letter said that your company was expected to participate fully in that meeting.

MR. BENNETT: Yeah, I'm – yes. That's what it says here, yes. "We expect ... your company" to "participate fully."

MR. JANZEN: And Nalcor declined to participate in that meeting.

MR. BENNETT: At that point because we were looking at these issues as transcending simply Nalcor and being a conversation with the federal and provincial governments in relation to the broader question of the Red Wine caribou herd.

MR. JANZEN: Thank you, Mr. Bennett.

If we could go next, please, Madam Clerk, to P-00051?

THE COMMISSIONER: On your screen.

MR. JANZEN: And to page 8, please?

This is the provincial response to the JRP recommendations.

And I know that Mr. Budden also asked you a few questions about follow-up on the JRP recommendations yesterday. I would like to go to a couple of the other recommendations and the province's responses that relate to – related to Nalcor, specifically.

So, recommendation 6.6 in the middle of the page: Fish habitat compensation. And maybe, Mr. Bennett, could you just read the recommendation and the first bullet, please?

MR. BENNETT: Sure.

"The Panel recommends that, if the Project is approved, Fisheries and Oceans Canada require Nalcor to: prepare a detailed fish habitat compensation plan in consultation with stakeholders and Aboriginal groups that addresses to the extent possible the likely interactions between species and life stages,

including predator-prey relationships and also the potential to replace tributary-type habitats."

MR. JANZEN: Thank you.

And I'll just note that the province's response is that the recommendation is directed to Fisheries and Oceans Canada and to Nalcor.

MR. BENNETT: Yes.

MR. JANZEN: So, the bullet that you just read refers to a detailed fish habitat compensation plan to be prepared in consultation with Aboriginal groups. Was this plan prepared?

MR. BENNETT: My recollection is that the plan was prepared and, ultimately, approved by DFO.

MR. JANZEN: And would any of the Quebec Innu communities have been consulted in the preparation of that plan –

MR. BENNETT: I believe –

MR. JANZEN: – by Nalcor?

MR. BENNETT: I believe that they were consulted – provided with a copy of the draft plan that the federal government has a consultation process in relation to permit approval. So that's our standard process, and I would expect that if we were to look, we would find that that draft document was shared. And the plan was ultimately approved by DFO.

MR. JANZEN: So the – just to step back a second. You say that the plan was provided to the Aboriginal groups but the recommendation is that it be prepared in consultation with Aboriginal groups.

MR. BENNETT: So –

MR. JANZEN: The preparation of the plan, if I understand correctly, was not done in consultation with Aboriginal –

MR. BENNETT: So if you –

MR. JANZEN: – or at least in consultation with the Quebec Innu. Is that right?

MR. BENNETT: It may be helpful to look at the federal government response to the recommendation.

MR. JANZEN: Do you know whether a French version of that plan would ever have been provided to the Quebec Innu communities?

MR. BENNETT: I doubt that a French version of the entire document would have been provided.

MR. JANZEN: Commissioner, I see that it's 12:30. I –

THE COMMISSIONER: Okay.

MR. BENNETT: – I do have some more questions related to the JRP recommendations. I don't if you want to break for lunch or if you'd like me to continue?

THE COMMISSIONER: I'd like to continue maybe for five more minutes or so, and then we'll take our break.

MR. JANZEN: Okay. Thank you.

So – similar question related to recommendation 7.1, Wetland compensation plan, which is at page 10. And maybe, Mr. Bennett, I'll ask you to just read the recommendation please?

MR. BENNETT: Sure. So it's recommendation 7.1, in relation to wetland compensation: "The Panel recommends that, if the Project is approved, Nalcor be required to develop a detailed wetland compensation plan in consultation with Environment Canada, the provincial Department of Environment and Conservation, Aboriginal groups and appropriate stakeholders. The plan should set appropriate goals for the re-establishment of wetlands taking into account the purpose served by each type of wetland in the context of the surrounding ecosystem.

"The Government of Newfoundland and Labrador" accepted the "recommendation. The Department of Environment and Conservation will work with Environment Canada, Aboriginal groups and appropriate stakeholders to advise Nalcor on the development and implementation of a detailed wetland compensation plan in

accordance with the *Federal Policy on Wetland*" compensation [sp. *Conservation*].

MR. JANZEN: Do you know whether this plan was ever prepared?

MR. BENNETT: This plan is prepared in draft form and has been provided to the Department of Environment and Conservation in draft form. And they are considering next steps in relation to consultation on that draft plan, including circulation to the Indigenous groups. They're incorporated into their consultation process associated with permitting and planned authorization, and they're considering that as I sit here today.

MR. JANZEN: Okay. So, there would not have been any direct engagement with the Quebec Innu communities –

MR. BENNETT: (Inaudible.)

MR. JANZEN: – in relation to the preparation of this plan.

MR. BENNETT: We have taken – we've taken it upon ourselves to prepare a draft plan and have shared it with the province, and the province is considering next steps. And they will – once they've determined whether they would like to see the plan in its current draft form circulated or whether they have some comments on the plan itself before it goes out, we're awaiting their guidance.

MR. JANZEN: And, would it be the same then for the Recommendation 7.2 – just below that one – the Riparian Compensation Plan which was, again, developed in consultation with Aboriginal groups. Is it in a similar state to the wetland compensation plan?

MR. BENNETT: So, this one is interesting because this is the requirement for the DFO to require Nalcor to develop a detailed riparian habitat compensation plan, yet the province accepted the recommendation for Canada. So, I find that a little bit confusing, but my recollection on the general topic of riparian habitat is that it's covered in the fish habitat compensation program – or the fish habitat compensation plan.

MR. JANZEN: Okay. So, there would not be a separate riparian compensation plan.

MR. BENNETT: I don't believe there to be a separate plan. I stand to be corrected, but the riparian habitat is an important aspect of fish habitat compensation plan. And I believe that compensation activities in river deltas and spawning habitat is actually incorporated in the habitat compensation plan.

MR. JANZEN: Okay. If we could, please go to page 18, Madam Clerk – same document. And Recommendation 11.1. And maybe I'll ask you to just, again, you can – to read the recommendation, Mr. Bennett, please.

MR. BENNETT: This is recommendation 11.1: "The Panel recommends that, if the Project is approved, Nalcor, in collaboration with the Provincial Archaeology Office, establish and support a program to involve all three Labrador Aboriginal groups in (a) the documentation and interpretation of known historic and archaeological sites and artifacts and (b) the process to be followed in the case of inadvertent discoveries of previously unknown sites and artifacts during construction, including notification of the three groups. Nalcor should also give consideration to inviting participation by interested Aboriginal communities in Quebec. Nalcor should share with Aboriginal groups the results of its work on the monitoring of historic and archeological resources to be compiled and provided annually to the Provincial Archaeology Office."

And the province accepted "the intent of this recommendation, that aboriginal groups be involved in the management and protection of historic and archaeological resources."

MR. JANZEN: And was – what was Nalcor's follow-through on this recommendation?

MR. BENNETT: So, our follow-through on this recommendation is that we have, through permits received from the province, undertaken collection and preservation of historic and archaeological sites. That was done pursuant to a permit issued by the province. The province had circulated that permit application in

conformance with their consultation process prior to granting approval on that permit. My understanding is that any artifacts and historic resources that were collected have been turned over to the province.

MR. JANZEN: And so, in response to the specific recommendation to give consideration to inviting participation by Aboriginal communities in Quebec, the answer is that there was no direct engagement by Nalcor with the Quebec Aboriginal communities?

MR. BENNETT: We had that consultation effort – that was undertaken by the province in the permit approval process.

MR. JANZEN: So, the permits would have been forwarded perhaps to the Aboriginal communities by the province, but Nalcor didn't engage directly with any of the Quebec Aboriginal communities?

MR. BENNETT: We didn't. And I think the –

MR. JANZEN: Sorry.

MR. BENNETT: – it feels like we did not.

MR. JANZEN: Did you say "we did" or "we didn't"?

MR. BENNETT: We did not. My recollection is that with any of these draft permit applications, we have a specific environmental management committee that's provided for in the Impacts and Benefits Agreement that we have with the Innu of Labrador and that other consultation in relation to permit applications is addressed by the province in their permit approval process.

MR. JANZEN: Okay.

So if I can maybe sort of summarize from those – the recommendations related to those, the plans and then the historic and archeological resources, it's fair to say that that the permits were perhaps forwarded to the Quebec Aboriginal communities by the province, the plans were forwarded to the Aboriginal communities by the province, but there was no direct engagement by Nalcor with the Quebec Aboriginal communities –

MR. BENNETT: So –

MR. JANZEN: – in relation to any of the recommendations that we’ve just covered.

MR. BENNETT: – so I would say that the draft plans and permit applications were provided for input by the province pursuant to their consultation process that they’ve laid out for plans and permits in relation to the project. I’d acknowledge that historic and archeological sites, in general, are of significant interest to Aboriginal groups and many stakeholders, and the Provincial Archeology Office has a keen interest in understanding how those resources are collected and preserved. And that we looked at this and said, okay, permits are gonna be required and that the province, consistent with the intent of the recommendation, had a process for dealing with the – I’m gonna say the management protection of those resources.

MR. JANZEN: And maybe just one more question before it would maybe be a (inaudible) time to take a break, is that all of those permits and plans, again, they would’ve been forwarded in English to the Quebec Aboriginal communities.

MR. BENNETT: That’s correct.

MR. JANZEN: So maybe that would be a good time to take a break, Commissioner?

THE COMMISSIONER: Yes, okay.

All right, so we’ll break now until 2 o’clock. Come back at 2 o’clock and continue.

MR. JANZEN: Thank you.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: All right.

All right, when you’re ready.

MR. JANZEN: Thank you, Commissioner. And I just have a few more questions related to two other recommendations of the Joint Review Panel. So, Madam Clerk, if we could go back to P-00051, please. And to Recommendation 7.10, which is on page 14 of the exhibit.

CLERK: (Inaudible.)

MR. JANZEN: Page 14 of the exhibit.

And so this is a recommendation that “Nalcor should carry out the following monitoring programs,” and then there’s a long list of monitoring programs to be carried out. And maybe I’ll just ask you, Mr. Bennett, if you could read the response to the – just the response.

MR. BENNETT: Okay. So: “The Government of Newfoundland and Labrador accepts the intent of this recommendation. The Department of Environment and Conservation will continue to advise monitoring programs regarding issues under provincial jurisdiction. The Department of Environment and Conservation will work cooperatively with the federal government and Aboriginal groups to advise Nalcor on the requirements of a scientifically defensible monitoring program.”

MR. JANZEN: Okay. And from the province’s matrix of responsibilities related to the JRP follow-up, I understand that this was done through various environmental effects monitoring plans. Is that correct?

MR. BENNETT: Yes, if we could just have a quick look over the list again.

Wetlands, caribou, waterfowl – (inaudible) – yeah, those – these requirements would be captured in a variety of environmental effects monitoring programs, and the requirement for those programs flows from the authorizing regulation, which release a project from environmental assessment.

MR. JANZEN: And – pardon me – the involvement of the Quebec Innu communities in the development of those monitoring plans, that would’ve followed the same process we discussed related to the other plans this morning where Nalcor would’ve developed the plan,

forwarded it to the province, and then it would've been distributed to the Quebec Innu communities?

MR. BENNETT: (Inaudible.)

MR. JANZEN: Is that right?

MR. BENNETT: That's right. The province engages in consultation in relation to those plans.

MR. JANZEN: If I look at the second bullet, it says: "monitor the response of the Red Wine Mountain caribou herd including any population changes through the construction phase and in the early part of the operation phase."

Could you tell me what – or tell the Commissioner what monitoring is in place for the Red Wine Mountain caribou herd?

MR. BENNETT: My recollection on Red Wine caribou is because they're an endangered species, that there is a – really testing my memory there now, but there's a permit – I think the permit is granted under the *Endangered Species Act*. It's called a section 19 permit that has specific terms and conditions in relation to monitoring for an endangered species. It's captured under provincial legislation.

My recollection is that between that permit and the caribou effects monitoring program, those two requirements outline what we're supposed to do in relation to caribou, and more particularly, endangered caribou.

MR. JANZEN: If we could go to P-04332, please, Madam Clerk?

THE COMMISSIONER: All right. That's going to be at tab 139 in book 5.

MR. JANZEN: Thank you, Commissioner.

And the very last page, page 39, please? And it's the third from the bottom.

So, this document was released earlier this week. I understand it to be a status update prepared by Nalcor in relation to various commitments made throughout the environmental assessment processes. And I wasn't – I may – I couldn't – I

didn't find, specifically, a commitment related to the – from the Red Wine Mountain caribou herd corresponding to the language that we just looked at, but I wondered whether this might be it. It says that "Each year an annual report will be submitted to" – Newfoundland Department of Environment and Conservation Wildlife Division I believe is what that stands for –

MR. BENNETT: Yes. That's right.

MR. JANZEN: – "that will include the following components: analysis of woodland caribou distribution, movement and habitat selection in the range of the RWMH and MMH, based on telemetry collar data; Discussion of any mortality events involving collared caribou," and "Georeferenced information on all caribou sightings." And I was curious to – that this is – the status for this commitment is marked "Completed" in the third column of that table.

MR. BENNETT: Yes, my recollection of this particular issue is that the requirement for monitoring was during the periods when we had active construction intersecting with the Red Wine caribou range. And the terms and conditions of that monitoring effort were outlined in the effects monitoring plan.

MR. JANZEN: Okay, so I'll just go back to the P-00051, the second bullet. It says: "monitor the response ... including any population changes through the construction phase and in the early part of the operation phase."

MR. BENNETT: So it's important to differentiate between the recommendation from the panel and what the province ultimately does with that in their monitoring requirements that are provided to us or that are captured in our monitoring plan. So if the province accepted the intent of this recommendation, which if we scroll down, I think they did.

MR. JANZEN: Yes, I think that's right.

MR. BENNETT: Right, so they have indicated that there may be latitude in how the JRP recommendation is actually framed and, ultimately, becomes our obligation.

MR. JANZEN: So am I to interpret this correctly, then, that the – that monitoring is no longer ongoing?

MR. BENNETT: As I understand it, our active construction in relation to reservoir clearing and construction of the transmission line, which has a similar issue for the Red Wine herd, has been completed and that our focus on site today is on the construction site. And I think the obligations for Red Wine caribou monitoring from the province were tied to the other construction activities that I just mentioned, as opposed to the work on the site.

MR. JANZEN: Okay, so I'm – I just – is the monitoring ongoing or the monitoring is complete –

MR. BENNETT: I believe –

MR. JANZEN: – or do you not know?

MR. BENNETT: – so I believe that the monitoring is complete and it's consistent with my understanding of the completion of the other construction activities that I described.

MR. JANZEN: Okay, so Nalcor is not involved in any further monitoring of the Red Wine Mountain caribou herd, to the best of your knowledge?

MR. BENNETT: I'm not aware of any other monitoring other than what's outlined in this report. There may be some other initiatives that are under way by our corporate environmental management team, but insofar as the project obligation goes, I'm going to accept that this work – which was done by the environmental team responsible for the project activities and the project monitoring plans – I accept their indication that that work is complete and that the final report has been provided to the province.

MR. JANZEN: Thank you.

Madam Clerk, if we could please go back to P-00051 and Recommendation 7.6, which is, I believe, at page 12 of the Exhibit.

And so I'll just note that this is a recommendation that was accepted by the province. And maybe, Mr. Bennett, if you would

like to read what the recommendation was, please.

MR. BENNETT: Ask if we could just scroll up a little, please? Here we go.

So in relation to Recommendation 7.6, Recovery of the Red Wine Mountain caribou herd: "The Panel recommends that, if the Project is approved, the provincial Department of Environment and Conservation ensure that adequate resources are available so that all reasonable efforts to ensure the recovery of the Red Wine Mountain caribou herd are taken. In addition, the Department should require Nalcor to play an enhanced role in the recovery process for the Red Wine Mountain caribou herd by putting resources into the process for research and recovery efforts and to participate actively in the overall effort to ensure the recovery of the caribou herd."

MR. JANZEN: Thank you.

Now I don't see this particular recommendation as being time-limited. Do you? It doesn't refer to a particular phase of the project.

MR. BENNETT: No, nor does it make it open-ended. And I would say that the requirement for us to play that role is at the department's discretion.

MR. JANZEN: Could you describe what resources Nalcor has put into the recovery process, for research and recovery efforts? And how it has participated in the overall effort to ensure the recovery of the caribou herd?

MR. BENNETT: So, I'm not fully up to speed on everything that the province, Department of Environment and Conservation – or today, Municipal Affairs and Environment is undertaking in relation to the Red Wine Mountain herd.

I know that the – based on my historic understanding through the environmental assessment process, the Red Wine herd is in serious trouble and that the population is – the last number I heard was significantly fewer than 100 animals in that herd.

But I'm not up to speed on what the province has been doing, generally, with respect to the herd other than the obligations that they placed on us in terms of monitoring, capture telemetry information, and providing information to the province and others, from that monitoring effort. And I can see ways in which that information supports the province's efforts to assist with the recovery of the herd. I'm also fairly confident that that information would qualify as research.

But there are other aspects of management of that herd that go far beyond us. And as I know it, we have done what we have been asked to do in relation to providing information to the province, to support their efforts.

MR. JANZEN: And so, you don't see this as going much farther than the monitoring programs mentioned in the previous recommendation.

MR. BENNETT: I'm not aware of any other request from the province, for additional support. And I also recognize that if we are asked to do things or to undertake research or to expend funds, we're ultimately, as a Crown corporation, expending funds that could otherwise have went back to the province. So, there is a – there is also consideration here, in some regards, that our funding or our research is actually, you know, effectively done with their resources.

So, as I understand it – to reiterate, I understand that we've done what we've been asked to do by the province.

MR. JANZEN: And in the table that we looked at a few minutes ago, with P-04332, with a list of commitments from Nalcor, I didn't see, again, anything – and I could – may have overlooked it, but I didn't see anything corresponding to the language of this particular recommendation.

With respect to this recommendation, would you see this as being a commitment that has been completed or is ongoing?

MR. BENNETT: I don't see it as a commitment to us. And if there were monitoring or research obligations that were tied to one of our plans that are covered by the province's authorizing regulation, then that commitment would either

be captured here in this report that we're compiling ourselves, as either ongoing or complete.

MR. JANZEN: It's – beyond the reports that we had looked at previously, related to the monitoring efforts, you don't see anything further here?

MR. BENNETT: That's right. So the Joint Review Panel makes recommendations to the province and the Government of Canada, as appropriate. Either – government interprets and considers what to do with those recommendations, and then those recommendations are presented to us as either a requirement from the province and the authorizing regulation or a feature in one of our environmental effects monitoring programs, some other activity that we carry out.

MR. JANZEN: So, unless the province should exercise its discretion, as you put it, to require Nalcor to put additional efforts or resources into the recovery effort, Nalcor has not – does not intend to put any further resources into the recovery effort, if I understand you correctly?

MR. BENNETT: I think we have representation that – we have had representation on committees that are trying to address the Red Wine caribou herd. I am not aware of any specific role where Nalcor has been asked to participate in research through provision of resources. And in both cases here, the Panel's recommendation is directed to the province.

If the project is approved, the provincial Department of the Environment and Conservation ensured that resources are available. Secondly, the department should require Nalcor to play an enhanced role.

So those are activities and actions that are with the province, and they have discretion as to the extent to which they ask us to do things.

MR. JANZEN: Thank you, Mr. Bennett. I don't have any more questions. Thank you, Commissioner.

THE COMMISSIONER: Thank you.

All right. Grand Riverkeeper – oh, no. I’m sorry. I think Former Nalcor Board Members are coming next.

MS. G. BEST: Good afternoon, Mr. Bennett.

My name is Glenda Best and I’m representing the Former Board Members of Nalcor 2004-2016.

MR. BENNETT: Good afternoon.

MS. G. BEST: I just have two brief questions for you.

MR. BENNETT: Okay.

MS. G. BEST: When you were providing your testimony to Ms. Muzychka, on Friday, there was discussion about the EPCM and the change to the integrated project management team. And I understood you to say that it wouldn’t have surprised you if that wasn’t discussed with the board of directors?

Did I misunderstand you?

MR. BENNETT: Yeah. I’d be surprised if it, you know, has a work – as it was ongoing, as the issue was arising – the questions of SNC-Lavalin’s performance. I’d be surprised if that didn’t come up, but I wouldn’t necessarily have expected Mr. Martin, in his capacity, to seek approval from the board, before seeing some of those changes happen.

MS. G. BEST: So, it’s the approval from the board as opposed to the discussion with the board, that you were speaking about.

MR. BENNETT: I think so. Yes.

MS. G. BEST: Okay. So, it wouldn’t surprise you if Mr. Martin did, in fact, discuss that – those matters with the board.

MR. BENNETT: I thought he – I thought, you know, it wouldn’t surprise me at all that he did.

MS. G. BEST: Okay.

MR. BENNETT: So, the question of – the question of SNC-Lavalin’s performance is a – you know, is a relevant issue, and I can’t put my

finger on a presentation or a reference, specifically.

MS. G. BEST: Mm-hmm.

MR. BENNETT: But, it wouldn’t surprise me at all that that type of topic would come up.

MS. G. BEST: Okay. And one other question – and this arises from the EY report and there had been evidence given that the EY team had felt that Nalcor was being obstructionist. But, Mr. Kennedy, in his evidence, indicated to the Commissioner that EY wasn’t permitted to speak with the board of directors. And on further inquiry, he indicated that he understood that direction came from you.

Can you indicate whether or not that’s correct? And if it is correct, what was the basis of the refusal?

MR. BENNETT: Sure. I – so I’m not – I wouldn’t be in the position to prevent anybody from speaking to the board. The concern that we raised with the province, at the time, was what the terms of reference were for EY’s engagement –

MS. G. BEST: Mm-hmm.

MR. BENNETT: – and whether those terms of reference, as they were communicated to us, contemplated that type of scope. So, it’s not possible for me to say, no, you can’t speak to the board. EY is the province’s consultant. If the province had given them direction to engage with the board, I’m sure that direction would have come to the secretary; there would have been meetings and that would have happened.

MS. G. BEST: Okay.

MR. BENNETT: It wouldn’t require my approval for that. Our – our question that was raised was in response to – you know, our interpretation of the terms of reference for EY and that referral back to the province to say, is this really – is this what you want to do? Because we didn’t see it as part of their terms at the time.

MS. G. BEST: So do you recall, specifically, discussing that issue with the province?

MR. BENNETT: I think there –

MS. G. BEST: So, representatives of the province.

MR. BENNETT: – yeah, I think there was – I think there's – there are exhibits here where we asked the question – I think it was of Ms. Mullaley, at the time – is this part of the terms?

MS. G. BEST: Okay. And would that be a similar response then with respect to the decks that were presented to the board of directors, the presentations? 'Cause I understand from Mr. Kennedy's testimony, as well, that he wasn't permitted or EY wasn't permitted to view the decks that had been presented to the board either.

MR. BENNETT: Yeah, I – you know, from my perspective, that's not something that I get to do. If – you know, if the request, you know, goes to Martin, goes to a corporate secretary who has access to that information, then, needless to say, that's how that's gonna unfold. It's not my unilateral decision to say one way or the other. But –

MS. G. BEST: Do –

MR. BENNETT: – we did ask the question of the province, is this – did you intend to, you know, looking at the scope of EY's engagements as we understood it from the terms of reference, to include that activity?

MS. G. BEST: Okay.

So we can take from your evidence then, based on what – your discussion with Ms. Mullaley, there was no conversation to take place between EY and the board of directors?

MR. BENNETT: I asked a question and I think once that question – if that question were in the affirmative, that there were – that there was a desire to reach the board, that wouldn't involved me.

MS. G. BEST: Okay.

And do you have any personal knowledge as whether or not the board members themselves

were aware that EY was looking to speak with them?

MR. BENNETT: I don't know.

MS. G. BEST: All right.

MR. BENNETT: 'Cause there were – I think there were, I mean, there – I wasn't the only person involved in the conversation with EY and I'm not sure what other conversations may have been out there with the board, on the topic. I can't confirm that.

MS. G. BEST: Okay, thank you very much. Those are my only questions.

MR. BENNETT: Thanks so much.

THE COMMISSIONER: All right.

Grand Riverkeeper Labrador/Labrador Land Protectors?

MS. URQUHART: Good afternoon, Mr. Bennett.

My name is Caitlin Urquhart and I'm representing Grand Riverkeeper Labrador and Labrador Land Protectors, which, as you know, are two citizens organizations based in Labrador and their main aim is to protect the ecological integrity of the Grand River.

So I'm gonna – actually, Madam Clerk, if you can, please pull up P-00441. I just have a quick question off the top.

This is the Hatch dam safety audit from April 2017 – be on your screen, I believe, shortly. And, Madam Clerk, if we can please go to page 9.

Under this slide, which has a heading of Gaps, it indicates that "Issues that could be improved or clarified include:" – and the first point is to – "Provide a mechanism for obtaining continuous seepage flow measurements at the Kettle Lake Outlet Weir year round."

Do you know if that was done?

MR. BENNETT: No, it's being looked at. So, by reference, the – for the Commissioner's

benefit, the kettle lakes are a water feature on the north end of the North Spur. So, historically, they are created by glacial ice that melted in place and formed a series of lakes at the northern extent of what we refer to as the North Spur. And we have a weir there for measurement. Challenge with this issue is that it – in the winter, it's hard to access this location.

So, at this point, I don't know where our geotechnical engineering team landed, on this recommendation.

MS. URQUHART: Okay.

So, as you know, I represent community-based organizations of folks who live downstream from the project and so, aside from, sort of, the rates or the financial taxpayer burden that most Newfoundlanders and Labradorians are concerned about, my clients are concerned about effects on the ecosystem, socio-economic impacts. They're concerned about loss of culture, methylmercury and, of course, flooding and potential loss of property and life. As you're aware, they have significant concerns about the North Spur, and particularly, the sand/clay composition in that area.

So, we've just looked at this Hatch report that's talking a bit about the kettle lakes ravine, and I actually wanted to, sort of, move off the North Spur and to this specific area. And I'm wondering to what extent has the geotechnical condition of that kettle lakes ravine or that kettle lakes area been considered in the engineering design of the – of this project.

MR. BENNETT: So, to the extent that this area is within the region that I would characterize as the North Spur is included in SNC-Lavalin's various design documents. Activities were contemplated around this area. It was part of their area of interest, so I can give you that general answer. If we're gonna deeper into this, we start looking at the various engineering design reports and see where this issue lands.

As a general statement, the area south of the drainage area here is with – certainly within SNC-Lavalin's area of interest in terms of North Spur stabilization. To the north of this drain, there are areas that are outside of their concern.

So, the shoreline on the north – on the northern extent beyond the kettle lakes drain, is not an area that they're typically too interested in. They have watched the same surficial landslides that have happened elsewhere along the Churchill River valley, along that shore, but SNC-Lavalin did not consider that to be an area that needed to be stabilized in the same manner as the North Spur.

MS. URQUHART: And so you mentioned landslides and I understand that there was one slide in 2018 in that area, I suppose –

MR. BENNETT: Yes.

MS. URQUHART: And I'm not super familiar with it, the geography. I'm looking at photos. I can't tell you exactly where it is but I understand it is on the north side of the Kettle Lakes Outlet.

MR. BENNETT: Yes, it is on the north. And it was a surficial event, we were aware of it. I've looked – I've seen photos of it myself. It's in an area that, just like the entire Churchill River Valley, the geotechnical team is part of their surveillance of the reservoir rim, does monitor an ongoing – on an ongoing basis.

The presence of slumps or small events along the shoreline is a normal feature there. It's one that has not raised any concerns, one that is also one that we expect, on an ongoing basis, along the reservoir rim as the reservoir stabilizes after impoundment. So the events before impoundment, we expect that they're going to happen to some extent after impoundment, although, generally speaking, I think the view of the world is that the reservoir will be a little more stable after impoundment.

MS. URQUHART: So you said these are normal and certainly the folks in the area would agree that this is common, they're used to slides. That's part of why they're concerned. So when you say that this isn't of particular concern or that folks aren't concerned, you're referring to Nalcor, not to people in the community.

MR. BENNETT: Yeah, I'm referring to our geotechnical engineering consultant and their specialists who are looking at the reservoir rim.

MS. URQUHART: Okay.

And so the – I understand there's the Canadian Dam Association Standards that everything has to meet in order to, sort of, pass muster and for an engineer to stamp the design. I'm just wondering to what extent sensitive clays or sand-clay mixes are contemplated in those standards?

MR. BENNETT: So the Canadian Dam Association Dam Safety Guidelines speak to the integrity of the facility in general terms. And I'm going to speak in general terms and I want folks to understand that I'm not a practising geotechnical engineer.

MS. URQUHART: Mm-hmm.

MR. BENNETT: So, I am providing you with a view of what's contained in our consultant's reports and various other reports, I'm not offering a professional opinion in that regard. I am a practising electrical engineer, not a geotechnical one, although we have retained a geotechnical engineering consultant and multiple reviews done by those experts who could directly offer that professional opinion. So I'm going to give you an explanation of what's in the various reports, but those are all on the record and they're stamped and sealed by practising individuals in that discipline.

So the Dam Safety Guidelines speak to the practice of what the dam designer should be I guess satisfied with, dealing with, designing to and the safeguards that are appropriate, without reference specifically to the material in the water-retaining structure. So there's no – we don't have – we don't see different guidelines for a concrete dam compared to a rock-filled dam compared to a till dam compared to, you know, various other forms.

And, here, the designer is expected to look at the conditions and satisfy themselves that they've built a safe and stable structure. And the obligation is on the operator to make sure that that monitoring program, appropriate with the structure, is put in place and that those monitoring efforts are continued. In the event that there are items that arise, the appropriate qualified resources are brought to bear to look at that issue, should it arise in the future.

MS. URQUHART: And so beyond sort of the North Spur – which I guess I can put to you specifically; I think you've already answered this question. But you're satisfied with the safety of the North Spur; let's just get that off the table.

MR. BENNETT: Yes.

MS. URQUHART: Okay.

The question I had is actually around – about the rim. And, obviously, as you've indicated, these sand-clay mixes, sensitive clays exist all throughout what you refer to as the Churchill River, but all along the Grand River these conditions exist. And what I'd like to know or what my clients would like to know is to what extent that's been considered and the stability of the rim, the remaining portions of the reservoir. You know, to what level of confidence do we have that those are going to be safe when – upon impoundment.

MR. BENNETT: So they're safe from a reservoir integrity perspective because they're not holding the reservoir back from downstream, so they're further upstream from the Muskrat Falls site. But we did predict, in our environmental assessment documentation, that it's likely that the shoreline will restabilize over a period of time, and that the potential for slumps or small slides along the shoreline is likely to continue in the future in a manner similar to what we see downstream today.

There will be a new shoreline. The potential for local erosion and small slumps along the shoreline is likely to continue for – into the future.

MS. URQUHART: And the concern around sort of more large-scale failure or something that would create a shockwave or something to that effect, has that been considered?

MR. BENNETT: It has. So that's part of the design effort for the facilities –

MS. URQUHART: And so this –

MR. BENNETT: – in assessing the consequences of a slide from upstream.

MS. URQUHART: So it's been assessed.

MR. BENNETT: Yes.

MS. URQUHART: And we've – the Commissioner was asked – had asked for, based on some previous testimony, and we'd also requested the as-built assessments of the North Spur and we just received those in the past few days. And just for the benefit of the Commissioner, we don't have to go to them at this point, but they're under P-04282 and P-04281.

And I'm wondering if you can advise who these documents would've been shared with? So this is the post-construction assessment reports from SNC.

MR. BENNETT: So that's the – okay, the post-construction assessment report –

MS. URQUHART: And, Madam Clerk, if you'd like, perhaps you can pull up –

MR. BENNETT: You – we can pull up –

MS. URQUHART: – P-04282 just to give Mr. Bennett the benefit of, sort of, a point of reference for that.

THE COMMISSIONER: And that is at tab 120 in book 4.

MR. BENNETT: One-twenty.

Okay, so this report should be with the province. I think we've shared it with Natural Resources and Municipal Affairs and Environment, and I also understand that it's actually posted to our website as well. This is among the – somewhere between 50 and 70 documents that we have posted on our website in relation to the North Spur.

MS. URQUHART: Was this – this obviously was – or it appears to have been performed by SNC. And, Madam Clerk, if you'll just scroll down slightly, just a little bit. So it indicates that it's verified by Régis Bouchard, who I understand is with SNC?

MR. BENNETT: Yes, that's correct.

MS. URQUHART: And then approved by Greg Snyder who's with Nalcor.

MR. BENNETT: No.

MS. URQUHART: Oh?

MR. BENNETT: Greg Snyder is with SNC-Lavalin as well.

MS. URQUHART: Oh, so also with SNC.

So these – so this is produced by and verified by SNC. Was it verified by anyone else?

MR. BENNETT: Verified by – no, this is an SNC-Lavalin design document that's been reviewed according to their process.

MS. URQUHART: And so is there any intention to have this independently verified?

MR. BENNETT: We don't have a plan at this point in time to redo this work. This is, you know, a continuation of SNC-Lavalin's design calculations and the work that they had completed prior to the activity being undertaken. So this is a, really, in short form, a comparison of the design based on the conditions that were identified during construction, and then a re-evaluation of the adequacy of the design from their perspective and in their capacity as designer in the first place.

MS. URQUHART: So was it provided to the independent engineer?

MR. BENNETT: If it hasn't, it will be. As a matter of course, these types of documents would go to the IE and is generally an interest with the independent engineer in relation to the North Spur.

MS. URQUHART: And there's been significant correspondence with my clients in relation to reports of Dr. Bernander and Dr. Elfren and their concerns around the North Spur. What – is there any reason why this wouldn't have been provided to them for them to review?

MR. BENNETT: If they'd like to, it's on our website.

MS. URQUHART: So I have provided them with this and they've indicated that they still have concerns that remain unaddressed. And this

was just on – as I say, we’ve just received this on – a few days ago. So they are concerned with two things specifically and one was that the stress-strain tests were not performed. Is there any plan or intention on the part of Nalcor to perform stress-strain tests on the North Spur?

MR. BENNETT: So you’re catching me cold on this issue and you’re outside my area of practice. So I think the productive approach here would be to, you know, provide those comments and we can have our engineering team review those comments and offer some guidance from there.

MS. URQUHART: My understanding that this is part of what the – Dr. Bernander and Elfren have been seeking or have been recommending for quite some time, so this – you know, this stress-strain test isn’t a new idea but it’s one that I – I’m taking it from your reaction that Nalcor is not currently looking at.

MR. BENNETT: Well, maybe for clarification, can you explain precisely what you mean?

MS. URQUHART: Again, I’m not a – like you –

MR. BENNETT: So there’s –

MS. URQUHART: – I’m not a geotechnical engineer.

MR. BENNETT: So this is my problem. I’m trying to interpret what you’re saying from two words, without understanding specifically what that means in the field and what we’re applying that to. I understand the relationship between stress and strain, but I’m not really in a position to offer an opinion as to how it’s applicable on the North Spur and in what circumstance.

I do recall that there was a proposal expressed by Dr. Bernander at one point in time to drive piles into the Spur to see what effect it might have. And our engineer and designers and our review panel were not in favour of that alternative at all. That was exactly the kind of disturbance that we were trying to avoid in the first place, on the entire area.

So if what’s being proposed is a – some derivative of that plan, it would need to be

talked about very carefully with the design team. And I understand that there’s some fundamental thinking on that one that would need to be aligned.

MS. URQUHART: The other concern that they indicated was that the report doesn’t consider a critical inclined surface – a failure surface which may start off of – sort of off of the North Spur. So as you’ve indicated, this sort of geographical area that’s considered by SNC in their design is constrained to that portion that you’re referring to as the North Spur. Is that your understanding?

MR. BENNETT: That was the principal area of design interest. And I think I’d need to refer to our design experts to fully understand the basis and logic for the comments that you’re bringing forward here.

MS. URQUHART: So, Madam Clerk, if we can please turn to P-03704. And that’ll be on your screen, Mr. Bennett.

And, Madam Clerk, if you can please scroll down – so there’s an email here from Paul Harrington in September of 2013. And he says: “Bob/Ron

“We keep getting the North Spur vulnerability issue thrown in our faces at every turn by the unqualified naysayers and doubters.

“I have asked for this a number of times but I do not seem to get it followed up on - what I would like is a brief/concise technical report that deals with the North Spur stability, the work we have carried out, the experts we have hired and confirmation that the engineered solution we have settled on dealing with the North Spur will meet the requirements of CDA and good engineering practice.”

Madam Clerk, if you’ll scroll up, please? And so I’ll note for the record that you’re not cc’d on this. Ron Power responds to Mr. Harrington: “Paul - now that the field info is in hand and the final design is ostensibly nearing completion, I strongly recommend an independent design review. I am proposing that it be performed by Zak and David Besaw. To be frank, I am becoming less and less confident in SLI design competence. I am seeing this in many places. Also there has been a strong propensity to

overdesign as well. The specification writing efforts for the North Spur scope are lacking at present. So, I believe the report you are looking for can be produced by the noted individuals. Scott and Robert will put the arrangements in place.”

I’m specifically concerned about the lack of confidence in SLI design competence and I wanted to give you an opportunity. Were you aware of that concern being expressed by your engineering team?

MR. BENNETT: Not necessarily expressed in that type of language; however, coming out of this there was a review completed by Hatch, in terms of the design effort on the North Spur, and that document is also posted to our website.

MS. URQUHART: Were you aware of Mr. Power’s concerns about SLI’s design competence?

MR. BENNETT: And then he goes the other way to say that there’s a strong propensity of overdesign. So this was during a period of time when we had some concerns about SLI’s performance in general, in different aspects of the work, not in engineering design.

So I never had a situation where I was concerned with their design capability and their engineering design capability, but there are aspects of this that describe a desire to have a review of the work to be undertaken on the North Spur. And as I’ve indicated, that external – that independent design review was undertaken, it was undertaken by Hatch. And the report has been completed for some time – I think it was done in 2014 – the results posted and the results of that cold eye review were accepted by SNC-Lavalin. I think there were a couple of supplemental studies that were requested and those were completed and those results are also posted to our website.

So, from my perspective, when we look at, you know, questions about the spur, we get them to our engineers. We’ve undertaken independent reviews by other consultants. We’ve had others – we have a group of, I think there were four individuals who completed their own peer review and have offered their own commentary in respect to the adequacy of the work.

But, specifically in relation to this email, that Hatch report is complete, accepted and the results of it have been incorporated into the work on the Spur.

MS. URQUHART: Mr. Bennett, were you aware that Ron Power had concerns about SLI’s design competence? That’s the question.

MR. BENNETT: And I answered the question by saying that –

MS. URQUHART: You –

MR. BENNETT: – I think I did and if I – and I’ll just try it again for completeness. We’ve had – concerns were raised with other aspects of SNC-Lavalin’s work and I said that I had not seen areas where they were having difficulties or there were questions about their design capability. And I also indicated that there were two factors being raised here: their design capability and a propensity to over-design.

So that is an observation that is made here and then I explained what we did in relation to questions in relation to the engineering design on the North Spur.

MS. URQUHART: I’m really just looking for a yes or no. Were you aware of concerns about SLI’s design capabilities –

MR. BENNETT: The way the question –

MS. URQUHART: – at that time?

MR. BENNETT: The way the point was framed to me was it was desirable to have an independent review of the North Spur design as opposed to a question about the capability of the individuals doing the work.

THE COMMISSIONER: Okay.

So just a second, I guess – so your answer to the question, then, based upon what you just said, is no.

MR. BENNETT: Right.

THE COMMISSIONER: You were not aware that Mr. Power had a concern about his confidence in the SLI design competence.

MR. BENNETT: That's right.

THE COMMISSIONER: Okay.

MS. URQUHART: Madam Clerk, if you'll please pull up P-00705. If you can scroll down in that please, just to – there's an attachment that I think it's worth starting at – oh, sorry, P-03705, apologies, and that will be on your screen, Mr. Bennett.

MR. BENNETT: Yeah.

MS. URQUHART: So if you scroll down, please. So you'll note this is a chain of emails that surrounds a letter from SNC, specifically around the North Spur design and request for hydrogeological studies.

So following a cold eyes review, which you were just discussing, that Hatch did on the North Spur, they recommended some additional modelling be done and some additional studies. Essentially this letter goes on to say that SNC wasn't particularly keen on having an independent third party perform these studies; however, you know – and they offered a number of different solutions for how that could potentially be dealt with. So I guess that's for context.

Madam Clerk, if you'll please scroll up. So this is an email from Ron Power to – you, I believe, are cc'd here and in response to that letter.

And it indicates here – I'm going to just start from: "**Lance/Paul** - this design-related missive from SLI has certain undertones that I do not like. It reflects the 'attitude' that I am sensing lately from Normand and Bernard Gagne related to the notion that SLI are exemplary designers. I plan on writing some formal letters very soon documenting the design deficiencies that I have seen and am continuing to see with SLI."

So we have your lead engineer, again, expressing concerns about design deficiencies with SLI and I'm wondering if there was any – you know, did this cause you concern?

MR. BENNETT: I think it's important now to look at the letter and see what that – how that attitude is reflected, because I don't – from my experience in dealing with the actual designers

on the North Spur, I haven't heard or felt or sensed push-back in terms of the suggestions that were made in our various cold eyes review, the suggestions for additional study or work or confirmation. So I think on this one it would be helpful to look at the letter to see whether it's framed from the view of the designers or framed from the view of – what I'd call – the project managers with SLI.

MS. URQUHART: And my understanding is that no such letters were actually written, that it was sort of –

MR. BENNETT: Isn't it the letter down below?

MS. URQUHART: No, the letter attached is the one that we were just looking at from SNC.

MR. BENNETT: Right, but according to Mr. Power that's the one that would contain the undertones that he doesn't like, so maybe it's helpful to just see what those undertones are.

MS. URQUHART: Okay, the undertones that they are exemplary designers. That's what he has indicated in his email is his concern.

MR. BENNETT: So they explain the design. So their position is their design is completed. Well, we've asked for things done. They don't disagree with a new study. They don't disagree with the 3-D model. They don't consider it to be required, okay. It was done prior to construction. They felt that it should've been done by the design team, we beg to differ and we went a different way.

MS. URQUHART: So you're not concerned about having your lead engineer expressing, you know, the desire to draft formal letters documenting design deficiencies on the part of SLI?

MR. BENNETT: If they need to be addressed, they need to be addressed. But what I sense here is, you know, a view from some of the leadership at SNC as opposed to the designer, and we have – we did what we wanted in this. We're the client.

MS. URQUHART: And I understand that you're saying that all these things happened in the end and that you're satisfied with them, but

at the time, were – this wasn't raising any red flags to you?

MR. BENNETT: No, from a design perspective, no. I think the – you know, the expression of the leadership within our EPCM contractor was not in accordance with what we were looking for, and we simply got what we wanted.

MS. URQUHART: Okay.

Madam Clerk, if you can, please, go to P-01986. And this is the independent engineer's report from November 2013. And, Madam Clerk, I'm looking for page 27, please. And if you'll, please, scroll down. So, yeah, this paragraph here.

So the independent engineer states that, "Geotechnical design work continues at the time of writing" It goes on to say: Hatch recommends "additional investigations and analyses ... to further enhance design parameters for the sensitive clays and overall seepage analysis" And the independent engineer agrees.

To your knowledge, were these investigations and analyses performed?

MR. BENNETT: Yes, as I recall, they were.

MS. URQUHART: Okay.

MR. BENNETT: Let's have a look here for a second. Earthquake dynamic study, yes, that one is posted to our website. I have looked at that one at one time or another. Seepage analysis: there was a multi-dimensional hydrogeological model prepared. So, yeah, I would conclude that they were done and posted.

MS. URQUHART: (Inaudible.)

And so the landslide-generated wave heights as well?

MR. BENNETT: As I recall, that one came up during the environmental assessment.

MS. URQUHART: Okay.

And, Madam Clerk, if you could, please, go to page 209.

There's a recommendation here that indicates: "When available, Nalcor is requested to furnish to the IE for review the complete analysis of the North Spur including the laboratory test reports that determine the strength of the soils under the loadings that it will sustain during the life of the project."

Can you confirm that those were done as well?

MR. BENNETT: The lab test results, I don't have that one off the top of my head. These can be confirmed from the website, the various reports that we do have.

MS. URQUHART: Madam Clerk, if you'll please go to 03784? And that'll be on your screen.

This is an email exchange amongst a number of the Lower Churchill Project team and if – Madam Clerk, if you'll go to page 3, please? It's from November 2013. So, in and around the time that that report they were just looking at when it was still a draft.

So, scroll down just a little bit there and you'll see this email here from Paul Harrington. He indicates: "The IE report did not come out and clearly state that the stabilization design and plans we have for the N Spur are reasonable and/or robust – they are sitting on the fence."

This email has been brought up to a number of different witnesses. I note that you are not on the thread. But given that we've discussed it a fair bit it indicates – you know, it's a sort of a back and forth of Mr. Harrington trying to rally the troops, get the team together to be able to talk to the independent engineer to get a more favorable wording around the North Spur. And I just wanted to give you an opportunity to respond to some of – respond to that and whether you think that's appropriate.

MR. BENNETT: So, I look at it a little differently. I think that, again, this is a reaffirmation of the need to make sure these questions are addressed and with the appropriate expertise. And I see a reference to "ZAK," here, again. I know that Zak is a senior consultant

with Hatch. And getting that work completed by Hatch in that design review that we spoke about a few minutes ago is a, as I view it, a similar – the same theme that we had previously talked about.

So, it's not about convincing anybody; it's making sure that the work is done and the reviews are complete and that the expert's advice that we've retained is incorporated into the work.

MS. URQUHART: And we were just looking at the final version of the report. And it does, obviously, indicate that there were further investigations and analyses that the IE still wanted to have done at that time.

MR. BENNETT: And I think we're still in 2013 and I recall that the Hatch work was completed in 2014, but before construction actually started on the North Spur.

MS. URQUHART: My understanding was that the independent engineer in his November 2013 report was referring to – and, Madam Clerk, perhaps you can just go back to the last tab there – was in – looking at the first Hatch report that recommended further research. And it was at page 27, just for your reference. Scroll down a little – that final paragraph, yeah. So they had done their cold eyes review of design and technical specifications at that point.

MR. BENNETT: And they had further investigations that were to be done.

MS. URQUHART: Correct.

MR. BENNETT: We're following the recommendations of the cold eyes reviewers.

MS. URQUHART: So that's (inaudible) –

MR. BENNETT: Yeah, I think –

MS. URQUHART: Madam Clerk, if you please go to P-01992. And this is – it's actually – and page 37 it should be. So this is from September 2014. It's the Oversight Committee report. And if you'll – and there's – we'll get to it. It summarized the independent engineer's report here and indicates – Madam Clerk, if you'll scroll down, please? Perfect, thank you.

So the second half of the second paragraph here indicates: "The IE also agrees with the plan that further geotechnical observations will be made as the remedial works progress and as new geotechnical monitoring is performed. These observations will be calibrated against the expectations of the various analysis reports. Designs will be amended if any significant surprises or discrepancies are encountered."

So the intention was that on an ongoing basis as conditions are – become more apparent from ongoing work, that the design would be reviewed regularly and modified as needed. Is that your understanding of what the IE was recommending?

MR. BENNETT: I don't think that's quite what it says. "The IE ... agrees with the plan" – that would've been SNC-Lavalin's plan – "that further observations" were "made as the ... work progresses" So that was done. SNC-Lavalin had continuous geotechnical coverage as the work was undertaken.

MS. URQUHART: What is – sorry, can you just elaborate on what continuous –

MR. BENNETT: So they had a –

MS. URQUHART: – geotechnical coverage means?

MR. BENNETT: – qualified geotechnical engineer on the site as Gilbert Newfoundland and Labrador completed their work on the North Spur. And the general description of that is what they call an observational approach that that person will be in a position to make suggestions as the work unfolds and as conditions are exposed on the North Spur.

I think the calibration against the expectations, the final test of that is actually Exhibit 04282, the post-construction assessment where they go back and look at the design and confirm that based on the conditions that were encountered on the Spur, that they do – they're satisfied with the design that was originally undertaken. And that's how they get to the conclusion –

MS. URQUHART: So it was not your understanding that that would be done on an ongoing basis at all?

MR. BENNETT: The extent that it may be required if they said – if they found something that was hugely, you know, misaligned with the design intent, that they would have to deal with that. But the final closure of that question is in the form of a report and a confirmation from SNC-Lavalin that the facility, as designed and as constructed, was fit for purpose. And, as I recall, that is one of the conclusions in 04282.

MS. URQUHART: And, Madam Clerk, if you'll please go to 03884.

And this is the November 2016 IE report. Or it is a – yeah. So it's a site visit report, I suppose. And, Madam Clerk, if you'll go to page 13, please.

Thank you.

So this section – and if you'll scroll down to the bottom, please – it deals with the North Spur geological conditions. There's a number of points here, but, essentially, this second-to-last paragraph here indicates that there was a meeting. There was concern identified by the IE “that very little information was being documented or mapped by site staff about” the “geological features.” And “It was agreed,” and this is in 2016, “that geological mapping of surficial geography” –

MR. BENNETT: Surficial, yeah.

MS. URQUHART: – “and soil mechanics related features would be done in the future.”

So this was something that was brought out in 2016. Do you have a recollection of that?

MR. BENNETT: I –

MS. URQUHART: January 2016?

MR. BENNETT: I do recall that there was a period of time where what we called the as-built drawings for the work on the North Spur was behind schedule and that there was a desire to get that work done, completed and filed, and I think the final document in that exercise is the post-construction report, which has been most recently received by SNC-Lavalin.

MS. URQUHART: And, Madam Clerk, if you'll just scroll down a little bit please, just sort of building on what you were just saying, one of the concerns was that there was no as-built geological mapping plots that had been done of the downstream slope.

And so this is actually – the first note was regarding a meeting in January 2016 around concerns at the lack of mapping and on-the-ground notes being taken of the conditions as they were being found, and this is now in November 2016 when this report is being produced, saying there's still no as-built geological mapping plots that have been done at the downstream slope.

So, just – that was essentially what you were –

MR. BENNETT: That was my point.

MS. URQUHART: – you were –

MR. BENNETT: That's right.

MS. URQUHART: – identifying that concern that as-builts hadn't been received –

MR. BENNETT: At that time.

MS. URQUHART: – at that time.

And, Madam Clerk, if we can please go to P-04014, and again this is a note from a site visit of the independent engineer in December of that year, December 2016. Oh and I don't have my page reference. Only four pages, so it's got to be in here somewhere.

Madam Clerk, if you'll scroll down I suspect that – okay, perfect. There's – it's the first point. So, an item from the IE's report in July, which was noted that geotechnical mapping of the North Spur is being collected but it's – it was recorded in field books rather than being transposed in real time to as-built maps as the construction progressed.

So this was a concern not just for the post-construction – they weren't looking just for post-construction analysis. What the IE is – my read on this and, you know, you're gonna have an opportunity to give me your thoughts, but is that what the IE is looking for, is as you go along, as

site – as geological conditions are discovered, that those – that information would be mapped on an ongoing basis.

MR. BENNETT: So, my take on it is that the information is being collected, and that the final drawings and final mapping would be provided when the work is complete. So, you know, a difference of opinion as to how our engineering consultant – and I think I'd observe here that this mapping practice was being carried out by SNC-Lavalin, not by Nalcor – so, being done by our engineering consultant.

As-built drawings are provided, typically, at the end of the job; how they elected to do that – whether it was done in real time and they had a continuous drafting exercise to do that or whether they did it at the end – that would be within, you know, their remit. It's probably not a major debate as long as we get the information.

MS. URQUHART: But, I mean, you're the client, right? And the independent engineer, I would suggest, has some – you know, if he's to have any value – the suggestions that he makes ought to be listened to.

MR. BENNETT: So – and I think this one is really getting into the details if there's a debate about whether the document should be compiled at the end or whether it should be compiled in the field as you go. I don't see that one as a huge question; the primary concern for us as a client is that we get as-built documentation.

MS. URQUHART: As – and so, if – you'll see the next point here. It says, "Nalcor responded that the information is being recorded and it is currently in the process of developing the as-built mapping now that construction is complete." And so, this is in December 2016 and, as you say, there's a difference of opinion. So, the difference – the treatment – is that the IE was of the opinion that mapping should be developed as construction progresses. Right?

So, that's the issue there. And, Madam Clerk, if you'll please go to P-00895. So – sorry – 03895. Oh jeez. And if you'll scroll down, please, Madam Clerk.

So, this is a letter from – keep scrolling – there's, actually, a – yeah – exactly.

So a letter to the Oversight Committee – to Paul Carter, regarding their letter – and Madam Clerk, if you'll scroll up – I believe – so, May 11, 2017 – this letter was dated. There was a correspondence from Mr. Carter requesting these drawings and the mapping around the North Spur. They were – and you indicated that the record drawings will – you indicate in this letter – record drawings will be finalized once all the North Spur stabilization work is completed later this year.

And I put to Mr. Carter that this letter was non-responsive to his letter, because you didn't actually provide the mapping, and I wanted to give you an opportunity to respond to that.

MR. BENNETT: The mapping doesn't exist because the work hasn't been completed, and the as-built drawings aren't done, then we said that we would provide them when the work was complete. And as I understand, the work, you know, I think those drawings exist today, and I think they've been provided. If not, this is an outstanding action item and it'll be – that'll be cleared with the post-construction report.

MS. URQUHART: And so ultimately, those post-construction as-builts were completed in September of 2018?

MR. BENNETT: That was the last documentation that was received.

MS. URQUHART: Madam Clerk, if you can please go to P-02267. And that'll be on your screen, Mr. Gilbert – Mr. Bennett, sorry.

So this is an email – and perhaps, actually, you can read it. It was directed to you from the independent engineer, Nik Argirov, and so if you'll just read that – it's not very long, but if you could read that into the record, that'd be appreciated.

MR. BENNETT: So this is from Mr. Argirov, and he says: "Just FYI.

"This is what I have to deal with. Looks like the opponents have a long reach. They event try to

influence the independent engineer internally. Ingenious!”

And if I were to continue: “Good old Jim... they are using him well. My question to you is who funds the Cabot Martin ‘enterprise’? Makes me wonder if Hydro Quebec have something to say about it...”

MS. URQUHART: (Inaudible.)

MR. BENNETT: (Inaudible.)

MS. URQUHART: There’s only –

MR. BENNETT: “Also, you should –

MS. URQUHART: – a few more lines.

MR. BENNETT: – perhaps give Dr. Bernander a retainer. Hire him on some kind of advisory capacity so instead of criticism he might provide a constructive idea. He might be just fishing for that.”

I guess the last sentence here: “Well Cabot will lose his fire power and probably be upset about it, but hey...”

“Regards,

“Nik.”

MS. URQUHART: And so how did you respond? You received this December 4, 2014. How did you respond to receiving this from the independent engineer?

MR. BENNETT: I know that Mr. Gordon had reached out to multiple individuals and had expressed opinions in different ways. You know, from – again, from my perspective, what I’m trying to do is make sure that, you know, from the client’s view we’ve engaged qualified consultant, we’ve engaged an independent review of that consultant, we’ve engaged a – advisory committee to look at the work of both to gather information and advice in relation to this critical area.

This email is a little bit cynical. I’m not going to dispute that, but, you know, it’s not something that – and it’s not something I certainly ask for.

MS. URQUHART: And, certainly, a bit informal for somebody who’s got the role of independent engineer over the project that you’re managing.

MR. BENNETT: There are some cynical comments here, yeah.

MS. URQUHART: So I’m going to move on to the topic of methylmercury. And when you were last before the Commission, I’d asked you a question about downstream effects beyond the mouth of the river and you’d indicated that they had been addressed.

MR. BENNETT: Yes, they’ve been looked at.

MS. URQUHART: That being said, I just wanted to clarify that during the JRP process, Nalcor maintained the position that there would be – that there would not be significant impacts beyond the mouth of the river.

MR. BENNETT: And, in addition to that, we filed modelling results with the Joint Review Panel through the information request process – and I always get caught on this IR response, whether it’s the response to JRP 165 or 166. I believe it to be JRP 166 where we looked at downstream effects using, at the time, Reed Harris’s relatively new mechanistic model. And there was down – some level of downstream effects modelling provided to the JRP at the time.

MS. URQUHART: Though – yes, Nalcor maintained the position that there would be no significant effects.

MR. BENNETT: Yeah. The conclusion from that was that we’re not expecting significant adverse downstream effects.

MS. URQUHART: Okay.

And, obviously, the JRP didn’t agree with that.

MR. BENNETT: The JRP expressed their views in that regard, yes.

MS. URQUHART: Okay.

Madam Clerk, if you’ll please go to P-01488? And, unfortunately, I don’t have the original

press release, but it's a press release from Nunatsiavut dated August 29, 2011, and – oh, just a little bit up. Perfect.

And this is just following the release of the JRP report and indicates – goes on to indicate that they are pleased that there's been recognition of the potential for significant adverse effects on Labrador Inuit and states: "The proponent, Nalcor, did not consider that Inuit would be affected by its project. We are pleased to see that the panel found many of our concerns to be valid and agreed with many of our recommendations.

"For example, the panel concluded that Nalcor did not carry out a full assessment of the fate of mercury in the downstream environment, including potential pathways that could lead to mercury bioaccumulation in seal and fish and the potential for cumulative effects of the project along with effects of other sources of mercury."

And: "'This statement from the panel differs significantly from Nalcor's assertions throughout the environmental assessment process that they were certain that there would be no measureable downstream effects from the project,' the Minister" – being Minister Sheppard – "said."

And the final line here is just: "It is quite clear that this proposed project poses significant risks on Labrador Inuit, on traditional harvesting and fishing" and the Minister – unless these – it says: "Unless these deficiencies can be addressed, the project should not go ahead."

So this is a statement from August 2011 indicating Nunatsiavut's position in respect of this project. This was made as a press release – it was a public statement that they didn't feel that, until this issue was addressed, that the project should go forward. Were you aware of that?

MR. BENNETT: Yes. And I'm also aware that, throughout the course of the environmental assessment, the work that was done in relation to methylmercury, which has been a known issue for decades in relation to hydroelectric development, was considered in the manner that's consistent with the environmental assessment of other projects in Canada.

I'm also aware that the requested modelling that was described during the environmental assessment was stretching the state of the art, in terms of mercury modelling. And I'm aware that Dr. Reed Harris provided information to the Joint Review Panel on a direction of research that he was undertaking. And I'm also aware that the most current version of that modelling is consistent with information that, ultimately, we provided to the province in 2018, following a request from the minister in relation to the activities of the IEAC.

So there's a broader context, in my view, than simply saying, well, we'd like to do more research. That's a, I think a – maybe a multi-dimensional view of the issue at hand.

MS. URQUHART: And I would put to you that NG was actually open to having a dialogue around how this might look. And if – Madam Clerk, if you'll go to P-01609, this is a letter from NG – specifically, from then-President James Lyall to the premier. And it indicates, you know, like, very similar to the press release, but it does go through and specifically – and Madam Clerk, you can just sort of scroll through it a little bit slowly, you'll see it has a section about potential bioaccumulation of mercury, importance of fishing and seal hunting to Inuit and other recommendations.

And at the – on the last page, page 3, you'll see that it was proposed that there'd be "a meeting between political leaders of the Province of Newfoundland and Labrador and Nunatsiavut Government and senior representatives of Nalcor" And it actually says: "Ideally, this would include a minimum of yourself, Minister Pottle and Minister Wiseman on behalf of the Province as well as Ed Martin and Gilbert Bennett from Nalcor Energy." And so they go on to propose a date.

So, to your knowledge, were there meetings held following the release of the JRP report around methylmercury mitigation with Nunatsiavut?

MR. BENNETT: I'm not sure. I don't think that I participated in such a meeting between the release of the JRP and the province's response to the JRP. I can't recall that meeting – such a meeting. And just maybe, so I can refresh my memory a little further, maybe if we could scroll

up a little bit to understand the process they're talking about here.

Right, so an integral part – being an integral part – Nunatsiavut “being an integral part of Lower Churchill discussions with the Province and Nalcor”

MS. URQUHART: Mm-hmm.

MR. BENNETT: Yeah. I'm – I don't recall such a meeting.

MS. URQUHART: And, Madam Clerk, if you can scroll down actually a little bit further, you will see – so this was also sent to you. You're cc'd there, so you would have received a copy of that at the time.

MR. BENNETT: Yeah.

MS. URQUHART: And we can go – I don't know that we need to pull up an exhibit for this. I think you'll – you probably are aware that in March of 2013 the Nunatsiavut Government, prior to that, had requested some funding for research and monitoring of the fate of methylmercury and that request in March 2013 was denied. Were you aware of that?

MR. BENNETT: I think that's the case.

MS. URQUHART: I mean, I can pull up the –

MR. BENNETT: I'm not –

MS. URQUHART: There's an information note about it but –

MR. BENNETT: Yeah, I'm not going to debate it.

MS. URQUHART: I don't think –

MR. BENNETT: So if you have an information note, I mean, the record is there.

MS. URQUHART: Yeah, I don't think it's a contested issue. And we've seen the letter; I believe it was Minister Tom Marshall at the time who wrote the letter, indicating that they were denying the request for funding. And so, despite that, Nunatsiavut went ahead and initiated this

research on its own without government funding. You're aware of that?

MR. BENNETT: Yes. They've undertaken research.

MS. URQUHART: And, Madam Clerk, perhaps you can go to P-04067. And this is just an article, just for reference, that indicates in September 2014 that: “Muskrat Falls prompts Harvard research on mercury levels.” It's just a quick – just in terms of setting the timeline for these.

And following this, in September, October 2015, what's referred to as the Schartup or the Harvard research study was released. And that sounds right to you?

MR. BENNETT: Yeah.

MS. URQUHART: And, Madam Clerk – well, actually, I'll just put it to you and you can let me know if we need to go to the document. The Human Health Risk Assessment Plan was first filed in late 2012 early 2013. Is that your recollection?

MR. BENNETT: That is ringing a bell. Yes. So the HHRA Plan, with an exercise to undertake baseline sampling within representatives of the communities in Labrador, was filed.

MS. URQUHART: But it wasn't accepted at that time, is that correct?

MR. BENNETT: I forget the exact process now for getting it finalized. I think there was an exercise where it had to go through the – because it was a sampling exercise in relation to the human population, I think it had to go to the health ethics board before it could ultimately be approved. And I also recall that Nunatsiavut didn't want to participate in our plan.

And the – well, we had looked at undertaking work in the community of Rigolet. Nunatsiavut Government said we don't want that to happen.

MS. URQUHART: And my understanding is that there were actually – that, at least in the earlier stages, there was more engagement with Nunatsiavut and they were providing comments

on the various drafts. I believe there were four, there's B1, B2, B3, B4 –

MR. BENNETT: Yeah.

MS. URQUHART: – and perhaps B5 is the one that was ultimately accepted.

MR. BENNETT: There were multiple versions of that plan with input provided to the various drafts.

MS. URQUHART: Throughout, yeah. So – and you did participate in providing input at various points throughout that process.

MR. BENNETT: That's correct.

MS. URQUHART: And my notes indicate, or some of the notes in here indicate, that they – what ultimately became the final version, the version that was accepted, that was provided in late 2015, early 2016 to the Government of Newfoundland and Labrador. Is this ringing bells to you now? Like, I just want to confirm. As I say I can – does that timeline seem correct to you?

MR. BENNETT: If you have the plan document there, it's probably just as well to bring it up so we can have a look.

MS. URQUHART: Well, we can go – Madam Clerk, P-02124. And this is an Information Note from the Department of Environment and Conservation and this is providing context around the methylmercury issue.

And this was dated November 24, 2015, and you'll note here – so this is in November 2015 – oh, sorry. Just on the first page, actually, it indicates: "Nalcor, in consultation with government departments, has received approval for the vast majority of the Environmental Assessment release conditions with the exception of: Wetland/Riparian Compensation Plans" and the "Human Health Risk Assessment Plan/Environmental Effects Monitoring Plan." So that at least at November 2015 it remained outstanding.

MR. BENNETT: Remained outstanding, right.

MS. URQUHART: And this actually is where it indicates that Minister Marshall denied their request for funding on that. So in 2015 it was not – it had not yet been approved – late 2015. And we have some records that indicate that Nunatsiavut had indicated that this final plan had insufficient technical detail for them to properly assess the plan. Do you recall that being brought out?

I believe there was a press release from Minister Shiwak indicating that the – that they didn't – that they weren't – at that point they weren't going to participate because they didn't feel that they had the – that they could with the information that was put before them.

MR. BENNETT: Right.

I know that they didn't participate. I'm surprised that this type of plan, which is a normal risk assessment that's been done on multiple projects, didn't have sufficient technical detail provided by our consultants.

MS. URQUHART: And, Madam Clerk, if you can please go to 02064 – P-02064 – there's a letter here from the – Rigolet at page 4, please – a letter here from the Rigolet Inuit Community Government. And it's addressed to Minister Trimper, so it's not actually addressed to Nalcor, but it indicates some of the concerns that they're having. Actually, Madam Clerk, if you'll just scroll up a little bit, please.

UNIDENTIFIED FEMALE SPEAKER: I actually have it here.

MS. URQUHART: Oh, sorry, still on page 4, but just scroll – yeah. So April 26, 2016 is the date of that so – I'm just working chronologically here to keep it as clear as possible.

So this letter, as I indicated, is from Rigolet. And, Madam Clerk, if you'll just scroll down, please. So from the folks in Rigolet, they indicate – and if you can scroll down a little bit just so we can see the top of the – oh, that's fine, actually, it's – it's okay, perfect, perfect.

So: "The findings of the *Scientific Report* by Harvard University regarding methyl mercury that can be produced by the creation of a

reservoir for this project is very concerning for all of Lake Melville. We do not yet know what the full extent of how high levels of this toxin can do to human organs, nor do we know once consumed at above normal levels, the full effects it may have on the ability of humans to lead a full and normal lifestyle. I don't feel that anyone human has to be put in the position of being the test guinea pig to a process that is not reversible.

"On behalf of the residents of Rigolet and all those who may or will depend of the resources of Lake Melville for food purposes, I strongly recommend that you carefully consider all four solutions recommended in this Summary of this *Scientific Report* as is, before endorsing the creation of this reservoir. The wellbeing and health of all peoples do not carry a price tag, and is not to be compromised.

"We feel our concerns are legitimate, with regards to any decision, respecting to the creation of this reservoir."

So that was the sort of tone of what was going on. And this is sort of the beginning of the Make Muskrat Right campaign. Would you've been made aware of these concerns arising in and around that time?

MR. GILBERT: So we were aware of both the Schartup and Calder report, so both reports. We were seeing the situation unfold and we were hearing some fairly significant concerns from our consultants and experts in relation to methylmercury and the two reports.

MS. URQUHART: Okay.

And Nalcor's Human Health Risk Assessment Plan was then approved June 14 of 2016, and – which one's the – sorry, I'm just trying to get – prep up these in the right order. If, Madam Clerk, can, please go to 02064. Sorry, I'm assuming that that's the correct date, that's the date that I'm – I believe is in the record as the date for the approval for the Human Health Risk Assessment Plan, June 14, 2016. Does that sound right to you?

MR. BENNETT: That sounds reasonable.

MS. URQUHART: And so, Madam Clerk, P-02064, please. Oh, sorry, it's more – I'll have to get the right page for you. Apologies.

THE COMMISSIONER: So maybe while you're looking for that, we're gonna soon take our afternoon break. I notice you've been up now over an hour, so I'm gonna ask you to move along as best you can so we can get the other people in today.

MS. URQUHART: I won't – I can trim some of the – some of these questions here, yeah. So –

THE COMMISSIONER: Okay. Did you want to take the break now to do –?

MS. URQUHART: – probably makes – makes sense.

THE COMMISSIONER: All right. Let's take 10 minutes now, then.

CLERK: All rise.

Recess

CLERK: Please be seated.

THE COMMISSIONER: Ms. Urquhart.

MS. URQUHART: Thank you, Mr. Commissioner.

So, Madam Clerk, if you'll please go to page 22 you'll see here that Nunatsiavut appealed the decision of the government – and you can scroll down, this is August 12, 2016 – the decision of the government to accept the Human Health Risk Assessment Plan, which, as indicated here, was approved on June 14. So were you aware of this appeal?

MR. BENNETT: Yes, I was.

MS. URQUHART: And, Madam Clerk, if you can please go to P-04288.

This is an email of Peter Madden of the Lower Churchill Project, and there's some comments on a letter here: "Comments on Appeal Letter," it indicates. And, Madam Clerk, if you'll please go to page 5. Just wanted to – this section here says – so again, so this is something that is

prepared within Nalcor, within the Lower Churchill team as a response to Nunatsiavut Government's appeal of the HHRA.

And it indicates here: “‘Full Clearing’ as defined by Nunatsiavut Government is a significant deviation from the project that was proposed during the EA and would require a provincial and federal EA processes. This would severely compromise project completion and more likely result in project abandonment. The mitigation would require multiple years of study Given to understand the likely adverse environmental effects, and in addition to the the lack of precedence, ~~and unknown effects~~ the potential for EA release is uncertain.”

It goes on and then indicates – so is that your understanding, that what Nunatsiavut is proposing in terms of soil clearing would require provincial and federal EA processes?

MR. BENNETT: I think I discussed that this morning that, yes, I can see a potential to have federal and/or provincial triggers associated with the activity, and therefore you would at least start – there's a risk that you would start an environmental assessment process.

MS. URQUHART: And so was that ever confirmed? Did you ever contact the provincial or federal responsible parties to confirm whether or not this would trigger an EA?

MR. BENNETT: We did not seek legal advice or confirmation from either the federal government or the provincial government, but we could certainly see the risk, having participated in two major environmental assessments coming up to this point and having a reasonable understanding of what the relevant federal and provincial EA triggers are.

MS. URQUHART: And so why wouldn't you ask for confirmation from those bodies as to what their expectation would be?

MR. BENNETT: This point in time, would've been premature.

MS. URQUHART: And since this point in time – that's in 2016, in August of 2016 – have you asked the provincial or federal governments

whether or not soil clearing or full clearing would trigger an EA?

MR. BENNETT: Nope. We've not contemplated, other than the SNC-Lavalin work that was completed for the IEAC. We have not complete – we have not contemplated the scope of such an activity.

MS. URQUHART: The response goes on to indicate in the second paragraph we see here: “The statement that ‘Nalcor did not identify any feasible way to’ – to reserve mercury – or sorry, to ‘reverse mercury contamination in the ecosystem once flooding takes place’ is incorrect. At this time a feasible mitigation measure does not exist.”

Is that your understanding?

MR. BENNETT: So, the notion of taking all of the material and soil out of a hydroelectric reservoir is an unprecedented activity in – certainly in Canadian experience. And I'm not aware of it being done anywhere else.

MS. URQUHART: Do you agree with the statement that “At this time a feasible mitigation measure does not exist”?

MR. BENNETT: If you look at the scope, magnitude, potential impact of those efforts, I don't believe that what's being discussed here is feasible. That's my personal view, which may be interesting, but if the powers that be take us down this road, then the feasibility will be further discussed.

MS. URQUHART: And, Madam Clerk, if you'll please scroll down to page 8 of this, the very last sentence here. And I just wanted to note this, and again, this is for the, just for the record, essentially.

So: “It is also noteworthy that under all scenarios suggested at the August meeting (low, medium and high increases, with low representing topsoil removal), consumption advisories are still likely. This would result in the same concerns over consumption by resources users as would be without implementing this measure.”

So that's your understanding that the – regardless of whether it was low, medium or high, that consumption advisories are still likely?

MR. BENNETT: My recollection is that we're predicting that a consumption advisory in the reservoir area is something that is reasonably likely.

MS. URQUHART: And my friend brought you to – earlier, to the terms of reference for the Community Liaison Committee, and I note from those terms of reference that environmental – the environmental and NGO community does not have a seat at that table. Are you – is there any reason why they wouldn't have been provided an opportunity to participate?

MR. BENNETT: I don't know that – I don't know that the Labrador Land Protectors actually existed as a group when the advisory committee was struck, but the intent was to work with representatives of the local communities and Indigenous groups.

I think if somebody had said we'd like to be part of that exercise, then we would've contemplated it. And there has been certainly lots of direct questions, inquiries from the groups over the years. But it wasn't something that, as – you know, from my perspective, I don't recall the question of Grand Riverkeeper or the land protectors at a given point in time coming up as being members of the CLC. Although I think there has been lots of contact back and forth over the years.

MS. URQUHART: And so I'm not sure exactly when the CLC was initiated, but Grand Riverkeepers have been around since the early '90s, so –

MR. BENNETT: Yes, and (inaudible).

MS. URQUHART: – and they were obviously heavily involved in the Joint Review Panel, so –

MR. BENNETT: No argument there.

MS. URQUHART: – would be an NGO that you would be aware of, familiar with and that certainly, I mean, participated in all of the hearings, provided submissions and, as you've

indicated, has significant – you know, has correspondence with Nalcor. But they would have to ask. They – you know, it's – the burden is on them to request a seat at this table.

MR. BENNETT: Yeah, I believe the thinking was we were looking for, sort of, representatives from the communities as opposed to a variety – a broader stakeholder engagement. And rightly or wrong, that was the way the terms of reference were drafted.

MS. URQUHART: And, Madam Clerk, actually, perhaps, we can pull those up quickly. It's P-04215. And I just want to note that one of the issues that is in – I can't recall exactly what page it was at actually. If you'll scroll down to the – it was the first page of the terms of reference – indicates the purpose. And – right, that's perfect.

And it indicates – actually, scroll up a little bit. I believe it says right in here that they were looking for – “The purpose of the Committee is to promote open communication with area stakeholders and provide them with an avenue to bring forward feedback on community, environmental, economic or other matters relating to the development of the Project.”

So at the time that this was prepared, Grand Riverkeeper was not considered a relevant community stakeholder. Is that –?

MR. BENNETT: I think in the context of this committee, it would appear not.

MS. URQUHART: Okay.

And Madam Clerk, if you'll please go to one – P-01857. And I'm almost – my last few. This is a Monthly Progress Report from June 2016, and at page 20, please, Madam Clerk? It indicates that following – and scroll down a little bit – yes, perfect. So the Environmental Assessment Commitments. So there's a – indicates that Nalcor is performing “Ongoing review and updating of 450+ commitments” and “... adding documentation of how commitments are being met.”

So who are these being reported to?

MR. BENNETT: So that reporting is internal. And I think there were two recently added exhibits that cover the commitment log that we maintain internally for generation and transmission. And – so they're in volume 5. 'Cause I looked at them here a couple of minutes ago. They're Exhibits 04331 and 04332, for generation and transmission respectively.

MS. URQUHART: And so – so these are just internal. Are they reported to the government at all?

MR. BENNETT: I believe that they are.

MS. URQUHART: That would be contradicted by the evidence of the witnesses that we've had from government so far that have indicated that they –

MR. BENNETT: Yeah.

MS. URQUHART: – don't have any sort of – and – document (inaudible) –

MR. BENNETT: You know, I understood they didn't have their own system. But I'm not sure that this log doesn't make its way to the province and Canada. Easy to confirm because we'd have transmittals that are completed by us to –

MS. URQUHART: Okay.

MR. BENNETT: – to whoever these go to.

MS. URQUHART: And are they – sorry, go ahead.

MR. BENNETT: So they have been maintained internally.

MS. URQUHART: Mm-hmm.

MR. BENNETT: And I've asked our team recently to make sure that this information ends up on our website.

MS. URQUHART: Okay. That was going to be my next question, was – whether they were available to the public at all?

MR. BENNETT: Right. I mean, there's no reason why they wouldn't be. These are –

MS. URQUHART: But they are not to date.

MR. BENNETT: It's being worked as we speak. It was one the –

MS. URQUHART: Sorry. Up until this recent request, they –

MR. BENNETT: That's right.

MS. URQUHART: – haven't been made public.

MR. BENNETT: That's right. And I've – you know, I've looked at these and said there's no reason why they shouldn't be posted. The status of various commitments are reported back to the province in our various plans. And from my perspective, there's a lot of work here and there's actually good reasons for having it posted to the website.

MS. URQUHART: And the next point here indicates that you're requesting variances from the regulator where commitment is no longer appropriate. And I'm just wondering – so beyond the regulator, who would be advised when there is a change in how Nalcor's going to proceed on its commitments?

MR. BENNETT: So that variance, if – to the extent one is requested would be granted by the province or the federal government as applicable. I can't cite an example of a variance off the top of my head.

MS. URQUHART: But, I mean there – you can look at those documents and see that there are variances that are requested. And I'm just wondering again, I'm trying to, from the perspective of the community who this is a project in their territory and in their backyards and they, there are a number of commitments that are made by Nalcor. They have an interest in knowing when something is, when there's a change being requested, and I'm wondering whether there's any of that information that's provided to the public –

MR. BENNETT: So –

MS. URQUHART: – that you're aware of?

MR. BENNETT: – any variances that are granted are, you know, granted the authority of the appropriate regulator. And I guess I'm looking for a good example of a variance to see how material these are, but I'm not going to hold up this afternoon –

MS. URQUHART: I'm just –

MR. BENNETT: – (inaudible).

MS. URQUHART: – wondering whether you have any knowledge – are you – to your – the best of your knowledge, are variances made public? Requests for variances and/or the approval of the request?

MR. BENNETT: I'm not aware that they are. I understand that the process requires approval from either the province or the Government of Canada. Off the top of my head, I'm not aware of what consultation process, if any, they follow prior to granting a variance. And as I said, I'm looking for some good examples here so we can put this perspective in scale and context.

MS. URQUHART: I'm satisfied – I just wanted to know whether –

MR. BENNETT: Right.

MS. URQUHART: – you were aware of whether or not they would be made public. And that's my last question.

MR. BENNETT: Okay.

MS. URQUHART: Thank you, Mr. Bennett. Commissioner.

THE COMMISSIONER: All right, Astaldi Canada, Inc.

MR. BURGESS: Thank you, Commissioner.

Good afternoon, Mr. Bennett. My name is Paul Burgess, and I represent Astaldi Canada Inc.

MR. BENNETT: Mr. Burgess.

MR. BURGESS: Mr. Bennett, a couple of questions in relation to earlier testimony we had from you and from others. When Mr. Scott O'Brien testified there was a discussion – Mr.

Scott O'Brien – a discussion concerning sharing of the Integrated Project Schedule. Did you listen to or are you aware of Mr. O'Brien's evidence at this Inquiry?

MR. BENNETT: I don't think I heard specifically his commentary on the schedule and when that issue arose.

MR. BURGESS: Okay.

Well, let me share with you that he had first indicated that it was a long-standing process that the Integrated Project Schedule would be shared with all contractors, but then later on in my cross-examination, he acknowledged that it wasn't shared with Astaldi up until 2016 when the integrated – when the Completion Contract was entered into and he indicated it was for commercial sensitive reasons. That's my understanding.

Were you aware of the fact that the integrated project schedule wasn't shared with Astaldi for a period of time?

MR. BENNETT: So I was aware that we had, as a project team, considerable difficulty in obtaining a workable schedule from Astaldi and that the IPS is fed with information supplied by the contractor.

MR. BURGESS: Okay.

MR. BENNETT: So I am aware of that history. I'm not aware of how the IPS would have fed back. But I can certainly envision a scenario where if there's speculation in the schedule than what we really need to understand is the Astaldi project management team's view of their schedule and their work; recognizing that Astaldi is the first contractor on site in the powerhouse and their work – the work of other contractors is dependent on them. What's really important is the schedule that is provided by them for the work scope that they have, being the first in the powerhouse.

MR. BURGESS: So –

MR. BENNETT: And I can (inaudible) –

MR. BURGESS: So let me interrupt you.

Can I ask you though, Sir, is the answer to my question: No, you weren't aware that there was – that they weren't sharing the integrated project schedule with Astaldi for a period of time?

MR. BENNETT: Right, I'm not aware that the schedule wasn't out there, but I need to add that if there is other contractor schedules built into the IPS that are dependent on the completion of Astaldi's work, that is a commercially challenging question.

MR. BURGESS: Okay.

Were you aware then – because there was evidence put before Mr. O'Brien and there was documentation – with letters that went between Mr. O'Brien and Mr. Delarosbil on behalf of Astaldi – that there was a request from Mr. O'Brien for the integrated project schedule and clearly the message back from Mr. O'Brien was: We don't intend to share it with you? Were you aware of that? I don't need an explanation –

MR. BENNETT: Yeah.

MR. BURGESS: – just were you aware?

MR. BENNETT: I'm not aware of the specific correspondence, no.

MR. BURGESS: Okay.

You talked about the site authority in your earlier evidence and the levels of authority and whether Mr. O'Brien should or shouldn't have been on site and so on, and we heard from Mr. Power when we talked about the issues that were raised. So there were some resignations from – for example Mr. Tranquilla, Mr. Cottrell, Mr. Mulcahy; they gave evidence with respect to the authority on site.

I take it, Sir, you would be aware of those concerns being raised at the time, were you not?

MR. BENNETT: At the time?

MR. BURGESS: At the time that those issues were raised, so when the resignation –

MR. BENNETT: (Inaudible.)

MR. BURGESS: – of Mr. Tranquilla, would you have been aware that his resignation was based on his lack of authority on site?

MR. BENNETT: No, I had (inaudible) he left at that time.

MR. BURGESS: But as to the details –

MR. BENNETT: I didn't have insight into the details at that point in time, or at least I don't recall them today.

MR. BURGESS: Okay.

At that point in time, did you have any knowledge that there were being concerns expressed by both Nalcor employees and contractors with respect to the level of site authority?

MR. BENNETT: No.

MR. BURGESS: Okay.

We did hear some evidence – I don't think you've testified with respect to it, but we did hear evidence – significant evidence before the Inquiry that while Astaldi had a slow start, that in mid-2015 their production and their performance improved significantly. Were you aware of that?

MR. BENNETT: Yes, generally speaking, the production in 2015 was much better than what we had seen prior to that.

MR. BURGESS: Okay.

And, Mr. Bennett, I'll be referring to just a few exhibits. Each of these exhibits I do not believe are in your binder so they will come up on the screen, and I say that for your purposes as well as the Commissioner.

Madam Clerk, can you bring up Exhibit P-03123, please?

Mr. Bennett – and if you could just scroll down for the purposes of Mr. Bennett and the Commissioner – this is a correspondence from – signed by – it's not signed, but Scott O'Brien signs it – it's signed on behalf of Mr. O'Brien. It's to Astaldi, to Mr. Don Delarosbil. And as

you can see it deals with the removal of Mr. Brian Chaput.

MR. BENNETT: Yes.

MR. BURGESS: Is that a letter that you're familiar with?

MR. BENNETT: I am aware of the situation and I'm familiar with the content of the letter.

MR. BURGESS: Okay.

What, if any, role did you have in relation to the removal of Mr. Chaput and that decision that was made by Nalcor?

MR. BENNETT: So I'm supportive of the decision to remove Mr. Chaput from site. And if it hasn't been explained here, Mr. Commissioner, for the benefit of yourself, the issue that happened on the 12th of June, Astaldi personnel had arranged to have a mobile crane start decommission –

THE COMMISSIONER: So this has been explained.

MR. BENNETT: It has been explained to you, okay.

THE COMMISSIONER: (Inaudible.)

MR. BURGESS: And if I could ask, Mr. Bennett, that if you could respond to my questions and I'll bring you to what questions, and if you want time to explain after I'm sure you'll get an opportunity.

THE COMMISSIONER: Just a minute now.

In fairness to Mr. Bennett, he was trying to explain something. He did say in case we didn't know. But I wanted Mr. Bennett to understand that we did – we have had evidence related to the crane falling over and –

MR. BURGESS: Yeah.

THE COMMISSIONER: – whatever.

MR. BURGESS: Thank you.

And that incident – so as I understood from Mr. O'Brien, I understood him to say, that it was ultimately your decision.

MR. BENNETT: Yes.

MR. BURGESS: Is that correct?

MR. BENNETT: Yes.

MR. BURGESS: All right.

Now, that was a decision – the event – the incident took place on June 12, 2018, correct?

MR. BENNETT: That's correct. So this letter says.

MR. BURGESS: Right. And this letter, though, was dated in July 7, I believe. Madam Clerk, if you could just scroll up so we could show that to Mr. Bennett.

So three – a little bit more than three weeks later when you terminate and at the same time it's Mr. Chaput and two other employees of Astaldi, and that's done without any consultation with Mr. Don Delarosbil or anyone from Astaldi. Were you aware it was done without any consultation?

MR. BENNETT: I don't think Mr. Delarosbil was on site at the time –

MR. BURGESS: And is –

MR. BENNETT: – when the incident happened.

MR. BURGESS: Okay.

Well, are you aware of whether there would've been any communication? Mr. Delarosbil gave evidence that indicated no one communicated with him the fact that there was a termination of three of their people, including Mr. Brian Chaput who is fairly senior.

MR. BENNETT: Right. So, for clarification, they weren't terminated; they were asked to leave the site.

MR. BURGESS: Okay.

MR. BENNETT: And that decision was communicated. We weren't asking at that point in time. The decision had been taken.

MR. BURGESS: Right. When you say he –

MR. BENNETT: (Inaudible.)

MR. BURGESS: – wasn't terminated, though, I'd suggest to you it's a distinction without any real difference.

MR. BENNETT: Oh, I don't – I don't know if there are – if Astaldi Canada has other engagements for them or if you want to use them in some other capacity in some other location, that's entirely (inaudible) –

MR. BURGESS: Right, but you weren't letting them back on site.

MR. BENNETT: We weren't going to have them back on site.

MR. BURGESS: Okay.

And was there a reason, though, that there wasn't some communication with Astaldi? And so for your benefit, Mr. Delarosbil gave evidence and indicated that he would've expected that's – a decision like this – given it didn't seem to be an emergency because the event happened three weeks earlier – there would've been at least some communication, so there could've been a discussion as to how it was handled.

MR. BENNETT: This is a fundamental break down, at multiple levels, of Astaldi's safety management system that could easily have killed a dozen people that night.

MR. BURGESS: Okay. Then I'll move on.

Madam Clerk, if we could bring up Exhibit 03087, and this will be on your screen, Mr. Bennett. And if you could just scroll down so Mr. Bennett – and Mr. Bennett you can – perhaps if you want to indicate to the clerk or the Commissioner – this is correspondence from the CEO of Astaldi to Mr. Marshall, dated April 26, 2016.

I don't know if you want to read it all first, Mr. Bennett, or see – is this a correspondence that you're familiar with, first of all?

MR. BENNETT: Generally, yes.

MR. BURGESS: All right. And I'm just then going to take you – because I wanted to put some things to you because they would've happened while you were there and prior to Mr. Marshall coming. This is a letter to Mr. Marshall when he is first then appointed, I believe, as the CEO. So he's coming in new.

MR. BENNETT: That's right.

MR. BURGESS: Okay.

So let me just go through some of the things I just want to make sure that happened prior to his coming in, because I will put some questions to Mr. Marshall concerning this letter. So if you look at paragraph 3 – and, Mr. Bennett, you slow me down or look at any parts that you wish. I don't think there's anything contentious here. I just want to confirm that – if there's any inaccuracies in your view, I want you to point them out for the Commission, please.

The third paragraph, it starts off: "Our respective teams have been engaged continuously over the past year in well-documented attempts to resolve fundamental issues." Do you take any issue with that statement?

MR. BENNETT: No. There have been efforts.

MR. BURGESS: Right.

And for purposes, so you understand, it is recognized there's commercial sensitivity issues as between Astaldi and Nalcor, given the ongoing arbitration. I'm not trying to stray into those areas but, again, if there's a factual issue here I would like you to point it out.

Then, in the next paragraph, the bottom paragraph on page 1 it talks about: "Nalcor's CEO responded on 11 June 2015 setting two preconditions to resolution: first, that Astaldi provide a rebaseline schedule acceptable to Nalcor, and, second, that Astaldi demonstrate sustainable productivity against forecast concrete production rates."

Do you take any issue with that being the two conditions to – preconditions to a resolution?

MR. BENNETT: To a resolution. I don't think there is, necessarily, clarity on what that resolution might look like.

MR. BURGESS: No –

MR. BENNETT: I –

MR. BURGESS: – I don't think you've reached it yet, but you're starting to go down the road. And what this says to me is that Nalcor CEO responded on June 11, 2015, setting some preconditions.

MR. BENNETT: Right, without accepting any definition as to what resolution actually meant.

MR. BURGESS: Right.

MR. BENNETT: These are prerequisites of any kind of engagement.

MR. BURGESS: Right.

MR. BENNETT: We see a schedule that makes sense and we see productivity that is reasonable.

MR. BURGESS: Right.

So, prior to this – so for the times that we're going to be talking about, would you have been involved – I take it, Mr. Martin – Mr. Ed Martin would've been involved, but would you have been involved with the Astaldi discussions –

MR. BENNETT: I would –

MR. BURGESS: – and negotiations, call them what you wish.

MR. BENNETT: – generally be involved in the file, yes.

MR. BURGESS: Okay.

Then if we could go to page – the next page, please? And it says: "Throughout this protracted period of negotiation with Nalcor, Astaldi developed a rebaseline schedule which was substantially shared by both technical teams. Astaldi also achieved remarkable labour

production, publicly recognized by your predecessor as '*one of the largest types of pours experienced in the Canadian industry.*'"

And it goes on in the last sentence there: "Moreover, Astaldi efforts to hugely increase labour resources at Nalcor's request has accelerated the consumption of 'Lmax.'"

Do you take any issue with any of those statements?

MR. BENNETT: There are more factors at play than what's written in this letter.

MR. BURGESS: And that's fair enough. If there's any inaccuracy here, though, that's what I want to focus on.

MR. BENNETT: I don't think it tells the full story is the point I'm getting to.

MR. BURGESS: Okay, point taken.

In the next paragraph it talks about a meeting on June 16, 2015, and the parties agreed to jointly work together and it talks about a road map. Any – did you take any issues with that – those statements?

MR. BENNETT: Oh I think there was a discussion about trying to find a way forward. I don't know that it was known what that way forward would actually look like.

MR. BURGESS: Okay.

And, Mr. Bennett, so I'm clear, I'm not trying to back you into a corner to say there weren't other meetings or anything. It's –

MR. BENNETT: Well –

MR. BURGESS: – not that type of (inaudible).

MR. BENNETT: I understand, but this is going on the record and there are two CEOs involved and I'm being careful to understand and not trip over one mandate versus the other. I'm also highly cognizant of the ongoing arbitration process.

MR. BURGESS: All fair comments.

MR. BENNETT: So I'm trying to work through this with you.

MR. BURGESS: Okay.

In the next paragraph it talks about that: "In September 2015, legal counsel established a joint task force to undertake a 'without prejudice' Collaborative Settlement Process"

And then if you go down the last sentence, it says: "This Collaborative Settlement Process was suspended following an inconclusive meeting between management and CEOs for both organizations during the week of 24 January 2016."

Would that 2020 – January 2016 date correspond to the time you testified with respect to negotiations stopped by the incoming government?

MR. BENNETT: Yeah, that's approximately that time.

MR. BURGESS: Okay.

MR. BENNETT: The notion that legal counsel are going to put together contractual solutions to talk about the new value of the works, I'm not sure that that's a fully accurate statement.

MR. BURGESS: Okay.

MR. BENNETT: There were certainly different views as to how costing could be – costing – or pricing, rather, could be developed and what that might look like, but I don't agree that there was necessarily alignment on that point.

MR. BURGESS: Okay.

Then the next paragraph talks about Nalcor being – it alleges Nalcor as being "aware of the order of magnitude of Astaldi's claims since at least 7 October 2015" And it talks about a claim of \$700 million and the discussion about labour productivity rates.

Do you acknowledge that around that – in October of 2015, at least, you would have known that Astaldi was claiming that kind of amount? And I'm not – you're not acknowledging it was due or valid or anything

of that, but were you aware that Astaldi was putting forth a claim in that magnitude?

MR. BENNETT: I don't have a specific number but the order of magnitude sounds reasonable.

MR. BURGESS: And the time frame as well?

MR. BENNETT: Sounds about right.

MR. BURGESS: Okay.

The last paragraph on that page: "On 21 March 2016, however, Nalcor's CEO required Astaldi to submit a 'without prejudice' justification for additional compensation. On 31 March 2016, Astaldi delivered this document" and it's \$785,500,000. And I think that's called the justification for incremental compensation. Is that correct?

MR. BENNETT: That sounds right.

MR. BURGESS: Okay, all right.

Thank you on that, Mr. Bennett.

Now I'm going to just ask you some very brief questions with respect to the bridge agreement and the completion agreement that was entered into Astaldi. And, again, can you explain to the Commissioner whether you're familiar with those documents and what your role would've been with respect to those documents.

MR. BENNETT: So I'm generally familiar with both agreements and have participated during the course of negotiation for both of those agreements.

MR. BURGESS: Okay.

Madam Clerk, if we could bring up –

MR. BENNETT: Along with other members of the team.

MR. BURGESS: I'm sorry, Mr. Bennett, I interrupted you.

MR. BENNETT: I'm sorry; just add that point, along with other members of the team.

MR. BURGESS: Yes.

MR. BENNETT: Right.

MR. BURGESS: Madam Clerk, Exhibit 03028, please. And this is a copy, I believe, Mr. Bennett, of the Bridge Agreement. And I just want to take you down on the first page to the WHEREAS clauses. And on the second, third, and fourth, I just want to go over those.

It says – the second one: “**WHEREAS** the Parties understand the cost to Contractor to complete the Agreement exceeds the amount remaining to be paid under the Agreement; **AND WHEREAS** the Parties do not agree as to the reason(s) and liability for the said additional cost; **AND WHEREAS** it is in the best interests of both Parties that conditions be found under which work under the Agreement may continue uninterrupted”

So what this is essentially doing, in a nutshell, is it’s addressing immediate financial issues without any admission of liability. Is that generally correct?

MR. BENNETT: I would say, generally, that’s the approach here, yes.

MR. BURGESS: Right and –

MR. BENNETT: We’re not acknowledging the reasons in liability for these costs, but we are seeking a way to move forward and see that the work continues. That’s –

MR. BURGESS: Right.

And if you go to page 2, Madam Clerk, and paragraph or clause 1, it indicated that the: “Company shall increase the Contract Price by \$150 Million ... on the terms” of this agreement. So it’s seeing \$150 million potentially flow on the contract price, correct?

MR. BENNETT: Yes.

MR. BURGESS: Okay.

MR. BENNETT: As identified a little further down below, I think the payments are tied to actual placement of concrete volume.

MR. BURGESS: Right.

MR. BENNETT: So it’s not a unilateral, here’s a \$150 million, it was tied to production.

MR. BURGESS: Right.

MR. BENNETT: And we’ll see that below.

MR. BURGESS: Okay.

And on the completion agreement, Madam Clerk, it’s Exhibit 03029, please. And perhaps, if we could just go to page 2, for context, Mr. Bennett, this is the Completion Contract, Muskrat Falls and Astaldi, December 1, 2016. Page 3, Madam Clerk, please.

And this just, again, highlights the parties, there’s some ‘whereas’ clauses. But if you could go to page 4, Madam Clerk, and clause 4.

Mr. Bennett, it – would you agree that this agreement, the completion agreement, essentially increases the contract price to \$1.83 billion plus HST and travel costs? That’s essentially what this agreement does, isn’t it?

MR. BENNETT: Yes, notwithstanding if you change orders and other adjustments that are made as part of contract administration that’s – that suggested this, yes.

MR. BURGESS: Okay. And if I could – Madam Clerk, if we could go to page 11 and paragraph – or clause 32, please. And, Mr. Bennett, Liquidated Damages, it says here that the “Company waives its right to assess or claim liquidated damages for any Milestones which have not been achieved by the dates specified in the Agreement ... which have accrued to December 1, 2016.”

So that’s basically saying: Whatever was in the other – the older version of the contract, now is being replaced with respect to liquidated damages. Correct?

MR. BENNETT: This term is here. I am not going to offer comment on other terms in the contract which may effect LD. And there are also, if I recall, terms in relation to LDs in

subsequent agreements. So, I just need to be careful that this is what this says.

MR. BURGESS: Yeah.

MR. BENNETT: There are other agreements that address LDs in different ways that need to be interpreted legally and would likely be a subject of discussion at the arbitration.

MR. BURGESS: Fair enough. But essentially, what this is is, this is a reset. This is in late of 2016. This is a reset of the initial contract pursuant to the terms that are there, isn't it?

MR. SIMMONS: Commissioner, that's sort of casting on interpretation – overall interpretation on the agreement here that could have some bearing on some of the matters that may be coming up in the arbitration. So, while it sounds like a very general question, the responses could be interpreted to have some impact on it.

MR. BURGESS: I'll defer to the Commission. It's – there's nothing critical terms on it. I'm not trying a legal interpretation.

THE COMMISSIONER: I'm just trying to figure out how it helps me with my terms of reference, and it doesn't. So, maybe we can skip it.

MR. BURGESS: I think it speaks for itself. So, I – we can – I can –

THE COMMISSIONER: I can read –

MR. BURGESS: – make a legal argument on it.

THE COMMISSIONER: – I can read.

MR. BURGESS: Yes.

THE COMMISSIONER: Right.

MR. BURGESS: Okay. That's it for that document, Mr. Bennett.

Mr. Bennett, I wanna ask you, though: I take it you would acknowledge that early on in this project – because you've been one of the few people – certainly, the most senior person who's there from start to where we are today. There's

been significant challenges that Nalcor has had in relation to this project, hasn't there?

MR. BENNETT: Oh, there're challenges across the board, sure.

MR. BURGESS: Right.

And, as the senior vice-president – and just help me out to understand the project management team – you're on the project management team, aren't you? Are you a member of the team?

MR. BENNETT: I guess it's a matter of interpretation. The team reports to me.

MR. BURGESS: Okay.

MR. BENNETT: So, when they put me on one side of the fence or the other –

MR. BURGESS: Well, which side of the fence do you think you sit on?

MR. BENNETT: Well, let's – I'm involved in and have – certainly, currently playing a key role in the decisions that are being taken with respect to construction.

MR. BURGESS: Okay.

Did you ever consider, whichever side of the fence you sit on, that you might wanna to – did you ever consider replacing the members of the project management team, given the challenges that were being faced?

MR. BENNETT: No.

MR. BURGESS: All right.

MR. BENNETT: There were lots of challenges by multiple parties, in relation to execution of the work.

MR. BURGESS: Okay, and we'll get to that.

So, I understand your position – if I understood it correctly, you can correct me if I'm wrong – you said that there were certain – certainly, cost overruns impacted by Astaldi and their performance on the contract. But you'd acknowledged there were other impacts as well, would you not?

MR. BENNETT: Oh, there are. I mean, you can look at the history there. There are certainly other issues, yes.

MR. BURGESS: Right.

So, let me just go through some, and you can tell me and confirm whether you agree that they impacted the project financially or operational or however. The SNC – the whole thing of having to replace – from an EPCM to an integrated management – impacted the project. Correct?

MR. BENNETT: It had an impact on the organization. I shouldn't have impacted, I guess, Astaldi and their ability to complete their work.

MR. BURGESS: No, I'm not talking about Astaldi now. I wanna separate Astaldi and say there were other impacts on the financial – the cost and schedule of the project, separate and distinct from Astaldi.

Certainly, you're not saying everything was Astaldi, are you?

MR. BENNETT: No, I guess, in this context. And I'm probably more interested in Astaldi's performance.

MR. BURGESS: Okay. Valard has challenge – you've had challenges with Valard. Correct?

MR. BENNETT: I think it would be – and we – there are challenges in managing large-scale contracts.

MR. BURGESS: Right.

MR. BENNETT: There's not question about that.

MR. BURGESS: GE Alstom?

MR. BENNETT: Sure.

MR. BURGESS: Okay.

Would you acknowledge that there was a financial impact on the project and Nalcor, as a result of the resignation of senior employees like Mr. Tranquilla who was the site construction manager, Mr. Cottrell – when Mr. Mulcahy –?

MR. BENNETT: Financial impact, a significant financial impact? No. I don't think so.

MR. BURGESS: Okay.

MR. BENNETT: And I think it need to be qualified, you know, an impact – 'cause you – you said impact, in your first couple of questions, and you went to financial impact. So, just wanna make that clarification that impacts – you know, impacts associated with our various activities need not be financial.

MR. BURGESS: Okay. Well, explain then: When you have senior employees like Mr. Tranquilla and Mr. Mulcahy and those individuals, explain how then how that would impact Nalcor and/or the project?

MR. BENNETT: So it may mean that others have to address issues, step in, we had to replace somebody. I mean those are impacts, but they're – I don't see a significant impact from those.

MR. BURGESS: Okay. You would acknowledge, though, the project's gone significantly over budget, over the DG3 –

MR. BENNETT: It's over the original estimate, yes.

MR. BURGESS: Okay. And you would acknowledge, clearly, the schedule has been lost.

MR. BENNETT: The schedule is delayed.

MR. BURGESS: Right. And I put it to you that Nalcor – Nalcor is ultimately responsible to the Government of Newfoundland and Labrador and the people of Newfoundland and Labrador, for failing to deliver the project on schedule and on budget. Would you acknowledge and accept that principle?

MR. BENNETT: So as a project manager, the result is what it is. The factors involved in that, I think, are evident from the record. And you can – and I guess the Commissioner ultimately will be, you know, looking at the degree to each of those factors contributes to the cost situation we find ourselves in.

MR. BURGESS: But at the end of the day, does the buck not stop with Nalcor? It's the project

that you brought to sanction. Do you not acknowledge and accept that ultimately, Nalcor is responsible?

MR. BENNETT: Nalcor is managing this project. And we have managed it to the best of our ability. And nobody is happy with the result.

MR. BURGESS: Let me ask it again. And it's a – I think, a yes or no. Do you acknowledge and accept that Nalcor has the ultimate responsibility?

MR. SIMMONS: Commissioner, it's a question that ultimately you may have to weigh in on at the end. It's a big broad question. It's not a simple yes-or-no question, given everything that we've heard over the last 125 days.

THE COMMISSIONER: Right. It's not a question that is an unusual question or an unexpected question. Maybe a little bit more unexpected from counsel for Astaldi than others. And I – it was a question I was ultimately gonna ask at the end of the day. Because I've asked people from government, in the past: Do you take any responsibility for what's happened here? So I don't think it's an unfair question. I think it's a bit surprising it's coming from the Astaldi counsel and not others, but in the circumstances, it's a question I'm gonna ask at the end of the day, so we can answer it right now.

MR. BURGESS: Mr. Commissioner –

THE COMMISSIONER: So – just a second now. So I'm going to ask the question myself. You know, based upon everything that you've, you know – the Commission – you're right, the Commission has a lot of evidence before it. There are a number of things that happened. Some things perhaps controllable, some things – others, uncontrollable. Those are things that I have to look at. Ultimately at the end of the day what do you say to the people of the province with regards to Nalcor's responsibility for the fact that this project is a \$10.1 billion cost at this stage, plus financing, together with a schedule delay of about a year?

MR. BENNETT: So I'm in the seat. It's hugely challenging. We can connect the dots, you're right. There are things that could have been

controlled; there were things that weren't controllable. There are events that have happened. And we're here and we wear it.

THE COMMISSIONER: Okay.

All right, Mister – go ahead.

MR. BURGESS: Thank you, Mr. Bennett.

Mr. Commissioner, just so you understand, when I had asked a question of Mr. O'Brien specifically with Astaldi you told me a general question I could ask, but not with respect to Astaldi. That's why I didn't ask a specific Astaldi question.

THE COMMISSIONER: Well, that's why I didn't prevent you –

MR. BURGESS: (Inaudible.)

THE COMMISSIONER: – from asking. That's why I asked it the way I did.

MR. BURGESS: Thank you. That's all my questions.

Thank you, Mr. Bennett. Thank you, Commissioner.

THE COMMISSIONER: Thank you.

All right. Newfoundland and Labrador Trades Council. I always miss them. They're not here. Dwight Ball, Siobhan Coady.

MR. O'FLAHERTY: My clients will have no questions, Mr. Commissioner.

THE COMMISSIONER: ANDRITZ. Hydro Canada. Grid Solutions. Barnard-Pennecon. Newfoundland Light and Power.

MR. KELLY: Good afternoon, Mr. Bennett. Ian Kelly for Newfoundland Power.

MR. BENNETT: Mr. Kelly.

MR. KELLY: Mr. Bennett, I just have a couple of questions which are really supplementary to questions Mr. Collins asked you about, about reliability. And I'll start with this; you've probably heard the expression before –

transmission lines are designed to fail – in some variation.

MR. BENNETT: Yes, there is a design criteria, and if you exceed that criterion, that possibility exists.

MR. KELLY: Right. And I'm going to give you two subsets of that. The first proposition is that transmission lines are unlike other structures. It's not practical, either practically or economically to design them to a – what I'll call a no-fail situation. In other words, you wouldn't design a dam or a powerhouse with a 1 or 2 per cent probability of annual failure as you discussed with Mr. Collins. Yet transmission lines are designed with a probability of failure.

MR. BENNETT: I don't know that there's a – I can think of a couple of other examples out of building engineering, so if we thought about snow loads on a roof; they're designed in accordance with a standard. If that standard is exceeded, it's conceivable that the bearing capacity of the roof fails under an extreme situation. We've seen some examples of that that have been caused by weather. We've seen others that have been caused by design errors.

In the case of a dam, you're right in the sense that the flood-handling capability of a dam is designed – is considered in such a matter as you just don't want that to fail. You design for what's called a probable maximum flood, and it's beyond what you would ever expect to see.

Some people actually put a return period around it that's measured in thousands and tens of thousands of years. But as I understand it that's not the appropriate practice in that area.

MR. KELLY: I don't need to go into detail on this; the corollary of the first proposition is the second one, which is that as a result, transmission lines are designed with anti-cascading devices, so that if they're subject to extreme loading conditions – whether that's ice, wind, combination – then they're designed to fall down in a controlled manner.

MR. BENNETT: Uh –

MR. KELLY: And Mr. Kean explained –

MR. BENNETT: Yes.

MR. KELLY: – every 20th structure in the LIL is an anti-cascading tower.

MR. BENNETT: That's right.

MR. KELLY: (Inaudible.)

MR. BENNETT: There were other examples of that where you have progressive failure between the anchors, the structure, the insulator – and so on and so forth.

MR. KELLY: Okay.

MR. BENNETT: Right.

MR. KELLY: And so, with those two principles, let's turn and have a look at the design criteria for the LIL and if I take you to Exhibit 03188 – I believe it's your tab 66 –

MR. BENNETT: Okay.

THE COMMISSIONER: Tab 60 –

MR. BENNETT: (Inaudible.)

MR. KELLY: – take you to page 12 of that exhibit.

MR. BENNETT: So 3188, volume 3, tab 66.

MR. KELLY: You'll see if you scroll down there a bit – here you go – can we go – okay – these are the design criteria for the Labrador-Island line – the Link. And so if you look at loading zone 7, for example, that's in the Long Range Mountains. So while we may have ice accumulations of 115 to 135 millimetres and wind of 180 kilometres an hour, on the combined loadings, the line will only sustain 60 to 70 millimetres of ice with 125 millimetres of wind.

MR. BENNETT: That's right. So those are a separate design criteria that are applied to the structure as part of the design process.

MR. KELLY: Right. So if we come down to loading zone 11 – I'm just gonna use these as examples – which is the Avalon Peninsula including the isthmus, we – the – while you

could have 75 millimetres of ice – and we’ve seen that in the past – and certainly 130-kilometre-hour winds – we’ve seen that in the past – it’ll only sustain 45 millimetres of ice at 60 kilometres an hour.

MR. BENNETT: So, just a clarification, it will sustain at least that.

MR. KELLY: At least that, okay. Fair enough.

MR. BENNETT: Right.

MR. KELLY: Okay.

That’s the design criteria. And if we go over to page 42, this report indicates that the as-built line was evaluated against certain additional criteria called the IEC criteria. It’s page – sorry, 44 is the table. My mistake.

MR. BENNETT: Yes, it’s on page 42.

MR. KELLY: It’s 42 of the document, 44 –

MR. BENNETT: Oh, I’m sorry.

MR. KELLY: – of your exhibit number. There you go.

And so if we look at the same evaluation on an as-built basis and we look at item 7. So, we’ve seen in the original design, you might have 115 millimetres of ice and 180 of wind, it’ll – it’s evaluated to 24 of ice and 79 of wind combined or 72 of ice and only 50 of wind.

MR. BENNETT: That’s right.

MR. KELLY: Right – and down in 11, which is the Avalon Peninsula, while we could have 75 of ice and 130 of wind, it’s evaluated only to 22 and approximately 86 to 90 of wind or 85 of ice with only 50 of wind.

MR. BENNETT: Right, and just for clarification here, my recollection of how this IEC standard is evolving is that the standard writers were looking for two criteria – one where you have heavier ice with less wind, and one where you have less ice and more wind –

MR. KELLY: Right. And –

MR. BENNETT: – so they gave you a couple of bookends other than the singular design criteria that had been historically applied by Hydro in this regard.

MR. KELLY: And the problem in Newfoundland, of course, is we can get situations where we will have either simultaneously both events, or sequentially, in the sense that the ice will form from freezing rain to be – stay accreted to the lines and then we will have a major wind event.

MR. BENNETT: That may happen.

MR. KELLY: In which case, the design criteria for the line will be exceeded.

MR. BENNETT: Well, may be exceeded.

MR. KELLY: Okay.

Now, with that, then, one of the comments that you made was this is a particular challenge on the Avalon Peninsula because all the lines run through the same corridor, correct?

MR. BENNETT: Yes.

MR. KELLY: Especially as you come across the isthmus because there’s a very narrow available land mass for which the lines can travel through, agreed?

MR. BENNETT: Yes, that’s right.

MR. KELLY: And that has a couple of consequences. Number one, would you agree that that means that all of the lines will potentially be subject to the same ice and wind conditions at the same point in time?

MR. BENNETT: So they may be subject to similar conditions, and I guess there’s some other factors in play: what is the shelter on one side of the right-of-way compared to the other, what is the elevation on one side to the other. Those – well, I’ll call them micro-differences – exist, although I do acknowledge that the lines are in close proximity and they’re going to be, in general terms, also subjected to similar conditions.

MR. KELLY: Right, and so we have all of the lines feeding into the Avalon Peninsula, in particular the St. John's metro area, subject to essentially the same risks at the same time.

MR. BENNETT: Very similar risks.

MR. KELLY: Right.

And the second issue that flows out of it is, as I understand it, the AC lines are necessary for the operation of the DC line. If we go to –

MR. BENNETT: Yeah, there are limits in reactive power and stability associated with –

MR. KELLY: Right, can we go –

MR. BENNETT: – (inaudible) facilities.

MR. KELLY: – to Exhibit 01669 at page 31?

THE COMMISSIONER: That'd be on your screen. Wait now, no, actually that's in book 3 –

MR. BENNETT: I think it is –

THE COMMISSIONER: – tab 65.

MR. BENNETT: – tab 65, yes.

MR. KELLY: And I won't spend long on this, but if you scroll down a little bit to the next paragraph, "One must keep in mind," right? And –

MR. BENNETT: Yes.

MR. KELLY: – I'll just pick it up partway through: "For the HVdc converter at Soldiers Pond to function properly, the 230 kV transmission system must be reasonably intact to provide the necessary equivalent short circuit ratio Building the HVdc line to a very high reliability level," one in 500-year return, "while the connected ac transmission system has a lower reliability level (i.e. 1:25 year return period) is problematic as a 1:50 year weather loading will result in failures to the ac transmission system while the HVdc line is unaffected."

Correct?

MR. BENNETT: Yes.

MR. KELLY: So there's a real challenge, especially with ice loadings on the isthmus area, with the ability to affect the transmission into the St. John's metropolitan region.

MR. BENNETT: I guess maybe two observations here: there is an opportunity should it be desired to make adjustments and enhancements to the AC system, the AC system is existing. Hydro has a level of experience as to where issues have historically taken place. The design criteria for the AC system on the Avalon is based on previous research and effort by Hydro to establish design criteria and since – I would say generally, since 1984, with the exception of a couple of minor exceptions along the way, the criteria that Hydro is using has given us relatively good results.

MR. KELLY: Right.

After Holyrood is decommissioned, then there will be limited generation on the Avalon peninsular, especially in the St. John's region, if lines are affected on the isthmus, correct?

MR. BENNETT: That is correct. There's approximately – I guess in round numbers, 200 megawatts of generation on the Avalon.

MR. KELLY: Approximately. And that would be problematic in winter conditions with a 14-day restoration period as Hydro indicates in the report we just looked at?

MR. BENNETT: Right.

MR. KELLY: Right.

And so that's the background, is it not, for the board's concerns that it expressed in its report that Nalcor had not looked adequately at the need for backup generation?

MR. BENNETT: So the commentary on reliability is actually, I think, discussed in this report: sort of the expectations on availability, whether a, you know, event in 50 years is considered acceptable, when it happens, what the system load is. Is it in the middle of the winter on peak? Is it on the shoulder seasons? What's the extent of any AC upgrades that

might be required on the 230-kV system? Is there an opportunity to reinforce that line? Is there an opportunity to, as those lines are rebuilt – and I guess an observation I can make is that the Bay d’Espoir lines, TL202/206, were placed in service with Bay d’Espoir in the late 1960s. All those discussions are available to take place over, you know, the coming years.

MR. KELLY: Right. And – but that concern for the lack of generation on the Avalon is what underlay the board’s assertions in its report that Nalcor hadn’t properly addressed the reliability issues. Would you agree with that statement?

MR. BENNETT: I think there’s a connection there in terms of the level of reliability and what the best answer is, right? What the best combination of transmission upgrades, additional generation or, you know, some other alternative –

MR. KELLY: Right, and so –

MR. BENNETT: – are yet to be – I think those are yet to be had.

MR. KELLY: Okay, so you put your finger on enhancements to existing transmission and backup generation, correct? The two –

MR. BENNETT: Those –

MR. KELLY: – two items.

MR. BENNETT: – those are two items.

MR. KELLY: Right.

Has Nalcor, at this stage, come to a position on the desirability of backup generation on the Avalon Peninsula?

MR. BENNETT: I’m not aware that Hydro has.

MR. KELLY: What about Nalcor?

MR. BENNETT: I don’t think Nalcor has made the determinations that that would, at this point, be a discussion for the Hydro organization.

MR. KELLY: So neither Nalcor nor Hydro have yet reached a conclusion on that point?

MR. BENNETT: I’m not aware that Hydro has reached a conclusion.

MR. KELLY: Thank you.

Those are my questions, Mr. Bennett.

THE COMMISSIONER: All right, thank you.

All right, Nalcor Energy.

MR. SIMMONS: Thank you, Commissioner.

Mr. Bennett, I’m going to bring you back to some discussion regarding events following commercial close, and in particular, there had been some questions of you earlier yesterday, I believe, concerning construction reports –

MR. BENNETT: Okay.

MR. SIMMONS: – which were prepared and submitted to the Government of Canada as a result of the financial arrangements that were entered into at financial close at the end of November in 2013. So you’re familiar with those?

MR. BENNETT: Yes.

MR. SIMMONS: Good.

We haven’t actually looked at any of them in – during your testimony so I want to look at a few construction reports and a few other documents to put some things in sequence here.

So we’ll start first, please, with P-01894.

THE COMMISSIONER: Okay, that’s one that would come up on your screen.

MR. SIMMONS: And it’s probably not in your – in the book.

Now, I understand this to be one of the first construction reports and that whenever – at each occasion when a monthly construction report is prepared, there’s a separate report for the Labrador-Island Link part of the project and one for the Muskrat Falls generation and the Labrador Transmission Asset part of the project.

MR. BENNETT: That’s correct.

MR. SIMMONS: So there are two separate reports. This one is a LIL report. And although, if you scroll up a little bit, it's dated December 20, 2013, if we scroll to the lower part of the page – you can stop there – scroll back up a little bit, please – stop there – you'll see in the paragraph beginning: This construction report is delivered, that it refers to it being in respect of the month ending November 30, 2013.

MR. BENNETT: That's right. And that's –

MR. SIMMONS: And that's the way each of these reports work. They're for the end of a particular month and they're filed and dated about 20 days after the end of that month.

MR. BENNETT: That's exactly right. They're due on –

MR. SIMMONS: Right.

MR. BENNETT: – the 20th or the first business day after the 20th day of the month of the following – the month following – the month following the date for which they're applicable.

MR. SIMMONS: Thirtieth of November 2013 would be immediately after financial close, which we are dating from the 29th of November 2013. So am I correct that this would be the first set of construction reports?

MR. BENNETT: This should be the first one.

MR. SIMMONS: Now, on the bottom of that page, it – the last large paragraph begins saying: I, Gilbert Bennett without personal liability, do hereby certify that. And the first paragraph, number 1, says: "I have conducted such investigations as I have deemed necessary to provide the information set out in this report"

So can you describe for me, a little bit, about what the process is – the administrative process within Nalcor for collecting the information that you sign off on in this report as being the result of such investigations –

MR. BENNETT: Right.

MR. SIMMONS: – that you have deemed necessary.

MR. BENNETT: So, administratively, this report is compiled by our project controls team and they coordinate the, I guess, the assessment of the various numbers that are provided in the report. They gather commentary in relation to activities and then, ultimately, that report runs from project controls – usually, the manager of project controls would review this report with project management, ultimately with me, and then the report is finalized and we submit it.

MR. SIMMONS: So, of course, you can't do all that work yourself, so you have to rely on the work of others for the accuracy of the information that's reported here.

MR. BENNETT: That's right. Correct.

MR. SIMMONS: Reasonable, okay.

Let's go, please, to page 5 of this document. Page 5 is a schedule, Schedule B called Summary of Cost to Complete. And there are columns here, there's one that's described as project budget, then there's incurred costs project-to-date and then it's a final forecast cost and cost to complete. And you'll see here that the total for project budget and final forecast cost is the same number, two million five hundred – sorry, \$2,546,155. See that?

MR. BENNETT: That's correct.

MR. SIMMONS: So is this the budget amount for the LIL portion of the project?

MR. BENNETT: Yes, it is.

MR. SIMMONS: Okay.

I'm going to bring you now to Exhibit -01895, please, which is the Muskrat Falls generation and Labrador Transmission Assets Construction Report for the same time period.

And we'll go to page 5. Scroll down, please. Okay, just one moment now.

Page 6, please. And on page 6 we see the Schedule B which is the Summary of Cost to Complete for the Muskrat Falls generation

portion, which has a total budget amount and a total final forecast cost. You see that?

MR. BENNETT: Yes.

MR. SIMMONS: And we'll go to the next page, please, page 7.

And we'll see the same table for the Labrador Transmission Asset piece with a project budget and a final forecast cost that's the same number.

MR. BENNETT: That's right.

MR. SIMMONS: Now, I've added up the – both the project budgets and the final forecast cost for each of those three elements and I am getting a total of \$6.531 billion. Do you recall that being the amount that was used for both project budget and final forecast cost when these first set of post-financial close construction reports were done.

MR. BENNETT: Immediately post-financial close. That's right.

MR. SIMMONS: Right.

I'm going to jump ahead now to May of 2014 because we know that once we reach June of 2014 there is a change in project budget to increase it to \$6.99 billion. And we know eventually in September of 2015 there's another change to increase it to \$7.653 billion.

MR. BENNETT: That's right.

MR. SIMMONS: So let's look at May 2014, Exhibit P-01831, please, which is shortly before the increase in the project budget. This is one of the –

THE COMMISSIONER: That one's at tab 14, if you wish to look at it in your book.

MR. SIMMONS: Yes, sorry.

THE COMMISSIONER: That's in volume 1.

MR. BENNETT: Volume 1, thank you.

MR. SIMMONS: So this is one of the collections of materials prepared by Mr. Harrington, which he's described as being the

May 23, 2014, briefing deck. And I want to bring you first to page 6. And this is where we identify a briefing deck called Management Outlook that's noted as presented to Mr. Martin by Mr. Harrington.

MR. BENNETT: Right.

MR. SIMMONS: So my first question is: When these management outlooks were prepared by the project management team – we know that they were presented to Mr. Martin – where did you fit in? Did you fit in on the preparation side or were you on the receiving side of this information?

MR. BENNETT: Generally, I would have been on the receiving side –

MR. SIMMONS: Okay.

MR. BENNETT: – with Mr. Martin.

MR. SIMMONS: And would this information generally be presented to you prior to presentation to Mr. Martin, simultaneously, or is there – was there any pattern to the sequence in which that would occur?

MR. BENNETT: It could have been either way.

MR. SIMMONS: Now, let's go to page 15, please.

Now, the reason I'm going here, Mr. Bennett, is that – and we'll look at this in a moment. We know there was a memo prepared for the Commission which – in which Tanya Power, from project controls, went back and looked to find the project controls work that was done on final forecast cost that was used to inform these management outlook presentations that were made here.

And while those documents are identified in the memo by the production number used by Nalcor to present to the Commission, we have – I don't think we have any of them actually in as exhibits. And I believe this attachment here is an example of one of those, do that's why I want to bring you to it for a moment.

So does this look familiar to you?

MR. BENNETT: Generally, yes. If I look at the various numbers here, we've seen these in various places before.

MR. SIMMONS: Okay.

Well, we know at this time in May 23 the project management team was recommending that there be an AFE brought out for \$6.99 billion. And if we look in this column, as we move across the right on this table, there's a column headed AFE. And if you look down at the bottom, there's a \$6.99 billion figure there.

MR. BENNETT: Right.

MR. SIMMONS: And if you look, then, farther to the right, there's a column called management outlook and it's 6 – sorry, \$7.5 billion.

MR. BENNETT: Right.

MR. SIMMONS: You see that there.

MR. BENNETT: Yes.

MR. SIMMONS: So I want to look at some of the other columns that precede that, and there are three groups there which each have brown boxes at the top. The first one is called awarded contracts, and it says total exposure and then it says potential growth included in the total exposure.

Would you have any concept or can you help us understand what potential growth means in the context of this report?

MR. BENNETT: Generally speaking, if we look at a growth allowance, we'd have a nominal amount tied to the contract for minor variations in quantities as a contract is executed. That's a typical reason for having a growth allowance or understand that miscellaneous activities, miscellaneous items, are going to come up from time to time.

MR. SIMMONS: So would it be fair to say that the items here under awarded contracts, these are pretty firm numbers?

MR. BENNETT: They'd be pretty firm if they're awarded, yes.

MR. SIMMONS: The next column is substantially advanced bids, and there's a column for bid value and a column for potential growth.

So compared to the previous column of awarded contracts, how firm are these numbers in relation to the earlier ones?

MR. BENNETT: There not as firm. The bid is not buttoned-down. All the terms and conditions aren't necessarily finalized. There may be some issues but – so it's – I would say – characterized reasonably good, but they're not as good as when the contract is awarded and finalized.

MR. SIMMONS: And in the next column it says bids not received, and then below that it says latest estimates.

MR. BENNETT: Yeah.

MR. SIMMONS: So how firm are these numbers?

MR. BENNETT: So those are estimates, right? We don't have documentation.

MR. SIMMONS: Okay. This sheet here appears to be a summary sheet, in that when we go across the rows these appear to be high-level groups of work packages. Do you see that?

MR. BENNETT: Yes, if we look at the high level, those are not specific to a given contract package. Some of them might stand on their own, some of them may be multiple packages. So, for example, the A2 list, if we look at that for a second: civil works, bulk excavation CH0006, North Spur CH0008, North and South Dam CH0009, reservoir clearing –

MR. SIMMONS: Okay, I'll take you to the next page, please –

MR. BENNETT: – (inaudible).

MR. SIMMONS: – page 16, Madam Clerk.

So this is the beginning of several pages of what appears to be a more detailed breakdown of information actually by particular contract package.

MR. BENNETT: Right.

MR. SIMMONS: Does this look like information you would tend to see coming out of project controls?

MR. BENNETT: This is – yeah, this is familiar both in terms of package names and how things are coming together.

MR. SIMMONS: Okay.

So some of the column headings here are different – and if we were to look at this and look down at the totals at the bottom we'll see we can find the 6.99 number down at the bottom of this, as well.

MR. BENNETT: Right.

MR. SIMMONS: And it says – one of the column headings, as we come across, is potential trends. Do you know what sort of – what kind of information is included here as potential trends?

MR. BENNETT: So some of these are – I'm looking for a second – they are potential transfers that could be contemplated by the project team. There are estimates – so for example, there's a – if I look at LIL, CD0534, which is about two-thirds the way down the page –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – Soldiers Pond, synchronous condensers is – there's estimates that are aligning with other bid prices. So there's judgment being applied as we look at some of these potential trends.

MR. SIMMONS: Okay. And when I look at the two columns proceeding that, I see one is called OCB and I always forget what OCB stands for, is it original control budget?

MR. BENNETT: Yes.

MR. SIMMONS: And then the next one says, FFC April. Is that the result of the management outlook from the previous year for that – for the previous month? The final forecast cost –

MR. BENNETT: (Inaudible.)

MR. SIMMONS: – for the previous month.

MR. BENNETT: Right, (inaudible) cost from the previous month.

MR. SIMMONS: And then when we come back to potential trends, I see that some numbers are positive and some are negative. Do you have any explanation for why we would have both negative and positive numbers in potential trends?

MR. BENNETT: Well, if you have transfers out –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – so I can see one there – make sure I'm on the right page. So I'm on – no, I can't read it – page 17, if we could go there for a second.

MR. SIMMONS: Sure.

MR. BENNETT: So the – toward the top of the page, CH0032, I think it's right about where the cursor is there, there's a transfer out of that package, so we de-scoped one contractor and gave it to another. So here you're going to see potential reduction on one and then an addition on the other.

MR. SIMMONS: Okay, all right.

So – and then there's another column there called assumptions. Do you know what that would be?

MR. BENNETT: So those would be assumptions by the project controls or project management team that are being applied to this outlook.

MR. SIMMONS: And there's another column called management reserve here.

MR. BENNETT: Right.

MR. SIMMONS: So are there elements of certainty and uncertainty built into this table and this calculation?

MR. BENNETT: I would say that they were both here.

MR. SIMMONS: Okay, all right.

So I want to bring you now, just for cross-reference, to the project controls memo that was done at the request of Commission counsel, and that's at P-03779, please. And in your book –

MR. BENNETT: I don't think it's there.

MR. SIMMONS: Not in your book?

THE COMMISSIONER: No, it's not.

MR. SIMMONS: So, Mr. Bennett, you weren't part of the preparation of this material, I don't think, in response to this request, were you?

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

MR. SIMMONS: No, okay.

So I'm on – I'm surprising you a little bit with these questions, but if we could just take a look, please, at the first paragraph there that says: Purpose.

And I'll read it: "... In my interview on March 13, 2019, Inquiry Counsel Kate O'Brien asked me about the Management Outlook briefing decks provided to Grant Thornton by Paul Harrington. Ms. O'Brien indicated that Paul Harrington stated the cost and schedule information in those Briefing Decks was provided by the Project Controls Team. Although I did not become the Project Controls Manager until June 2016, and was not Project Controls Manager when the 2013, 2014 and 2015 Management Outlooks were produced, I was asked to locate the detailed backup. The following is what I have located in the project folders with respect to cost information." And then there's some further explanation in the findings portion there.

So, for my purpose, I just want to bring you over now to page 5. And here on this page we have a notation here that Ms. Power has found a file on – you see where it says Excel files and there's three bullets underneath there?

MR. BENNETT: Yes.

MR. SIMMONS: The middle one says a file dated May 19, 2014, which would be three days

before the presentation we just looked at – that was May 23 –

MR. BENNETT: Right.

MR. SIMMONS: – 2014. She lists the FFC as 7 million, five – \$7,501,535,584, which is a fairly precise number. And I want to bring you back because that number appears in the table that we had just looked at. And the reason I'm doing this is to be able to cross-reference between Ms. Power's work and what she has identified as the FFC on this memo and what we actually see in the work product that's contained back at P-01831.

So if we can go back to P-01831 please. And if we go again to page 15, and we scroll just across.

The number under the management outlook column at the bottom, \$7,501,535,584 – cents. That's the same number we see in the memo.

MR. BENNETT: Right.

MR. SIMMONS: So this would appear – so if we want to see what went into that, this would appear to be a source that we look to get the detail.

MR. BENNETT: That's right.

MR. SIMMONS: And would you agree with me that built into that number – into the 7 billion 501 million number – is several areas where costs are not fully firmed up; several areas of assumptions and items that have been identified as management reserve?

MR. BENNETT: Right. And so the – you know, the total of management reserve was identified there and that's basically the difference between the AFE value and the management outlook.

MR. SIMMONS: Okay.

And then, finally on this document, we'll go to page 9, which is one we've seen before, and if we can make it page view.

This is what was actually being asked for in the presentation made by the project management

team to you and Mr. Martin on the 23rd of May, which is an AFE of 6.99 and then the management reserve item. So that seems to correspond with material we've just looked at.

MR. BENNETT: Okay.

MR. SIMMONS: Okay?

MR. BENNETT: Good.

MR. SIMMONS: Now, let's go to the construction report that followed just shortly after that. And that's at P-02402, please.

THE COMMISSIONER: It'll be on the screen.

MR. SIMMONS: Page 2.

And scroll down – a little more. We can stop there.

So, we'll see that this is the construction report for the month ended May 31, 2014. Correct?

MR. BENNETT: Yes.

MR. SIMMONS: Which is just shortly after the presentation that we viewed a moment ago.

MR. BENNETT: That's right.

MR. SIMMONS: Let's go to page 10, please.

Scroll down – continue, please. You can stop there.

There – and we have at the top of this page the table of the construction cost forecast table which has – I'll tell you it's the same numbers that have been carried forward since financial close. But if we scroll down again to the bottom of the text – the last paragraph says: "An update of the Final Forecast Cost is currently underway by Devco and the results will be incorporated in the Construction Report for the period ending 30-June-2014."

Do you see that?

MR. BENNETT: Yes.

MR. SIMMONS: So, was this a communication to the independent engineer of the fact that an update to final forecast cost was coming and was under way.

MR. BENNETT: It was coming and – yes.

MR. SIMMONS: Right. And what's Devco?

MR. BENNETT: Devco is Lower Churchill Management Corporation. So, it's the project management entity we've – in the corporate structure, we've separated the management team from the three asset companies that actually are the owners of the assets that are being constructed.

MR. SIMMONS: And I won't bring you there, but if we were go to page 11 and page 25, we'll see the same statement made in respect of the Labrador Transmission Assets and the Labrador-Island Link that there's a forecast being prepared.

MR. BENNETT: Right.

MR. SIMMONS: Now, we know then that on June 20, the board approved the new authorizations for expenditure totalling the 6.99. So, let's go to the next construction report after that date, which is P-02403, please.

Page 2. And if you scroll down and stop there.

It's stated there that this is for the month ending on June 30, 2014. Do you see that?

MR. BENNETT: That's correct.

MR. SIMMONS: Page 6. Stop there.

So, this is the Summary of Cost to Complete table. And now you'll see that the Project Budget total remains the same as on the previous reports, but we have a new number for Final Forecast Cost.

MR. BENNETT: Right.

MR. SIMMONS: Right? And if we scroll down. Stop there.

Just bear with me a moment.

(Inaudible) three. Okay.

Just one moment, Commissioner –

THE COMMISSIONER: All right –

MR. SIMMONS: – get the right reference.

THE COMMISSIONER: – take your time.

MR. SIMMONS: Okay, so if we can just scroll up a little bit, please.

Right, we can stop there.

The first paragraph under Analysis reads: “The Final Forecast Cost has been updated to align with the 2014 revised Authorization for Expenditure (AFE) approved by the Board of Directors of the General Partner during the current period, resulting in an approximate increase of \$202M in the overall Cost to Complete, compared to the previous period.”

So what’s being communicated to Canada and the independent engineer here by this statement?

MR. BENNETT: That we have additional funds and they’re incorporated now into the budget.

MR. SIMMONS: So does – this explains the change –

MR. BENNETT: Right.

MR. SIMMONS: – in the –

MR. BENNETT: Subsequent to the approval of the AFE.

MR. SIMMONS: Right. Okay.

Now, we can track the same process through and – up to September of 2015, when the board has approved new AFEs for the total of \$7.653 billion. And if we go, for example, to the construction report at P-02407 – and this is the last one I’ll go to.

This is the – if we go to page 2, this is the report for the LIL for the period ended September 30, 2015, which is the first period ending after the update.

If we go to page 6. Scroll down. We can stop there.

Under Analysis we have the same statement, I think, which I read before, reporting that now that there has been a change in the AFE, “The Final Forecast Cost has been updated to align with” it.

MR. BENNETT: Right.

MR. SIMMONS: Now, in the intervals between financial close and the June 2014 change in AFE and then the June 2014 AFE and the change in September of 2015, what was the practice for carrying the final forecast cost as is reported on these construction reports?

MR. BENNETT: It was reconciled against the current AFE at the time.

MR. SIMMONS: And what was your understanding about whether that matched, or didn’t, the requirements of the financial arrangements that were put in place at financial close?

MR. BENNETT: This process, you know, was and continues to be the one that we use, and we understood it to be consistent with what Canada was looking for later in 2015. We received fairly clear feedback that they were looking for more, and we added to that process.

MR. SIMMONS: Right. But – and the way you added to that process, if I understand from your evidence earlier, was by providing information outside of the construction reports and that even after September of 2015, the practice of only reporting of a final forecast cost that matched the current AFE continued and continues today.

MR. BENNETT: That’s right. So, we have additional reporting in a similar format for the Oversight Committee, for Canada and the IE and also for the board of directors, in terms of aligning and discussing some of the future risks and issues that are arising but have not been incorporated –

MR. SIMMONS: Okay.

MR. BENNETT: – through the change control process.

MR. SIMMONS: And has Canada or its representatives made any objection to that process of reporting continuing?

MR. BENNETT: Not since the initial feedback in 2015.

MR. SIMMONS: Okay.

So, I have a few questions for you on some other things that have come up during your last three days of examination, so I'll try and get to the point of them as quick as I can.

Quantitative risk analysis or QRAs. Can you just maybe take a moment and explain what the difference is, from your perspective, between a QRA and the normal risk register work that's carried on and how they each relate, actually, to the getting of the work done on the project?

MR. BENNETT: So, I mean, if I looked at the QRA process, it is a Monte Carlo analysis. It engages our consultant – our risk consultant, and we go through an extensive review of each of the major risks that are associated with the work and we get a probabilistic view of contingency and, you know, consideration on what might be required to fund the work. Also an analysis where we look at the same questions in relation to schedule.

On a month-over-month basis, as a matter of course, we are looking at the funding in each contract package independently of the QRA. We're looking at transfers in and out of contingency. We have contingency assigned to various packages and are tracking those on an individual basis and reporting on draws to and from contingency.

MR. SIMMONS: So, there are risk reports – risk registers that are maintained globally for the project and for particular contracts as a matter of course –

MR. BENNETT: Right.

MR. SIMMONS: – by the project, correct?

MR. BENNETT: Yes, there are.

MR. SIMMONS: And those risk registers, while they may not quantify risk, they are used to identify risk.

MR. BENNETT: They are used – absolutely.

MR. SIMMONS: And are they static? Do they only incorporate the risks that were identified at the start of the project?

MR. BENNETT: No, they have risks that are coming on and going off as the work is proceeding.

MR. SIMMONS: Right. And how, from a practical sense, is the information in those risk registers used to manage the work of the project?

MR. BENNETT: Those inform day-to-day management decisions, they inform our conversations with the Oversight Committee, as well as with the IE in terms of significant risks that either have been – have emerged, are being managed or are being retired.

MR. SIMMONS: Right. So are they a tool to be used in mitigating risks and controlling cost and managing the schedule?

MR. BENNETT: That's our day-to-day approach for dealing with –

MR. SIMMONS: And for those purposes, is it necessary to attach dollar values to the potential outcomes if those risks materialize?

MR. BENNETT: There may be ranges or orders of magnitude associated with it and they help us, you know, focus on sort of the critical risk with the higher probability that have a greater potential to have an impact on the project.

MR. SIMMONS: Mm-hmm, right.

And we know the QRA was done prior to sanction, which we can understand quantifying values or risks at that point would be useful for the purpose of deciding whether to sanction the project. Once sanctioned, is a QRA as useful after it's been sanctioned or does it contribute to the actual management of the work of the project?

MR. BENNETT: We had some – you know, during the early years, we had some critical issues that we were focused on. I think I’ve talked about the performance on CH0007 at length – as that being an area of requiring immediate and ongoing and continuous focus to improve performance there. And then, as those issues begin to get resolved, that we can start focusing again on a broader process where we have done a QRA now, if I recall, in 2016-2017, and we’ve been working with our current budget since then and analyzing it at a – I guess, a, you know, less probabilistic and more focused view with the listing of risks that we’re currently working with.

MR. SIMMONS: All right, I’ll leave that.

Thank you, Mr. Bennett.

You were asked some questions regarding the 2013 SNC risk report, and in particular you were brought to an email message that Mr. Harrington had sent to you, which you’ve told us you have no recollection of receiving. And I just want to show you a – an exhibit, P-04058, which is the report that we made to Commission counsel concerning the efforts of IT to find out some information about where that email may be.

So I’m just gonna bring that up for a moment and just to have you identify it, if we can scroll down, please. You’ve seen this before, I believe?

MR. BENNETT: Yes, I have.

MR. SIMMONS: Okay.

THE COMMISSIONER: Tab 38, book 2.

MR. SIMMONS: Yeah.

MR. BENNETT: Okay, thank you.

MR. SIMMONS: Now, my first question for you is that I understand that you first saw the report or learned of it from Mr. Marshall in either 2016 when he received it or in 2017 when it became publicly known.

MR. BENNETT: That’s right.

MR. SIMMONS: And do I understand from your evidence earlier that you don’t have a clear recollection of whether it was 2016 or 2017 that that happened?

MR. BENNETT: Correct.

MR. SIMMONS: Okay.

Now, you said something about going to your email then. What did you do then when you went back to your email to look?

MR. BENNETT: So when Mr. Marshall indicated he had this document, I went and looked to confirm whether I had emails in my inbox at the time that were related to that topic.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: That was independent of any search that had been taken by our IT team.

MR. SIMMONS: Yes.

MR. BENNETT: I just wanted to look for that myself.

MR. SIMMONS: Yeah.

MR. BENNETT: And couldn’t find anything.

MR. SIMMONS: And you found nothing at that time?

MR. BENNETT: That’s right.

MR. SIMMONS: Okay.

Now, in this report – I’ll just summarize a little bit here – as the Commission would be aware, for the production of email messages, Nalcor worked from a complete system backup that was taken in July of 2017. And this reports that your message was not present anywhere on the system in that backup of July 2017.

So I’ll ask you straight-out: Did you find a message and delete it before July 2017?

MR. BENNETT: No, I didn’t.

MR. SIMMONS: Okay.

This report also says that there's no evidence of you having replied to the message or having forwarded the message anywhere within the organization because then it would've shown up in someone else's mailbox.

What are your general practices regarding acknowledging messages that you receive? How often do you acknowledge them? How often do you reply? Is it variable?

MR. BENNETT: I'd say it's – my normal practice is to acknowledge –

MR. SIMMONS: Mm-hmm.

MR. BENNETT: – that I've received something.

MR. SIMMONS: Mm-hmm. Okay.

And you've seen this message now, it's been shown to you as part of this process, can you give us any indication as to whether – had you seen it at the time, this is a message you likely would have had some further engagement with so that we would've seen a reply or a forward?

MR. BENNETT: Yeah. I'm surprised I, you know, didn't respond but –

MR. SIMMONS: Okay.

Ms. Best has actually already touched on the next point I was going to ask you about, because you've been asked some questions regarding the change of SNC from the EPCM role – the transfer to the integrated team.

And my first question was: Am I correct that the original concept for this project was actually an integrated team and it was only when responses came in from the engineering companies that the project was convinced to go to the EPCM model?

MR. BENNETT: That's the original – you're right, there was a transition in thinking there.

MR. SIMMONS: Right.

So the – when the time came to move to an integrated team, that then wasn't a foreign concept to the project leadership, this was

something that had already been considered and that – I'd suggest – they would've had some understanding of.

MR. BENNETT: It wasn't foreign, they had thought of it before. And I think acknowledging the concerns raised by some of the consultants who were participating in the RFP.

MR. SIMMONS: Now, you've told Ms. Best already that the board – I understand, the board wouldn't be expected to have to approve the change from EPCM to the evolution to the integrated project management team. And in relation to that, does the board even approve the award of contracts? They're informed of it.

MR. BENNETT: They're advised. Mr. – the CEO of the day has the authority to enter into a contract.

MR. SIMMONS: Right, 'cause my understanding of the approval of an AFE by the board is it gives the CEO the authority then to expend the money to the limit of the AFE. And am I correct that that includes giving him the authority to actually award the contracts?

MR. BENNETT: That's right.

MR. SIMMONS: So the change from EPCM to integrated project management team would seem to be of even – you know, not of the same magnitude, even, as awarding –

MR. BENNETT: Right.

MR. SIMMONS: – a contract.

MR. BENNETT: So it wasn't a complete retirement of SNC-Lavalin. There was a change in scope.

MR. SIMMONS: Okay.

Back to the time period – and in this case – leading up to financial close. You've been asked a number of questions about your degree of involvement when you were shown email messages that you were copied on, in – particularly in the October, November 2013 period.

Can you tell us a little more about what you were doing in the months leading to financial close? What your areas of assigned responsibility were? And then, also, how that played into whether you were closely or not involved in the arrangements for financial close?

MR. BENNETT: Right, so critical issues that were unfolding at that time, in addition to planning for financial close, would have been the completion of the environmental assessment for the transmission line, which was a closely related activity in terms of needing to be complete and dealt with by Canada as (inaudible) –

MR. SIMMONS: And what was your role in relation to that?

MR. BENNETT: I was the lead in terms of getting those issues over the line.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: As we've seen here in email, I was also heavily engaged with Emera and the Government of Canada in relation to the Strait of Belle Isle land use agreement.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: And that was a necessary component of the financial – if I recall, that was condition precedent for financial close, that that land use agreement be finalized. During that period, we would have been dealing with some of the core challenges that were coming out of the generation project.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: So those are, off the top of my head, some of the activities that needed to have been done in order to be in a position to continue to move forward.

MR. SIMMONS: So those were all things that – where you were the lead on them and you had the primary responsibility for those aspects of moving. And they were things that had to be done to get to financial close.

MR. BENNETT: They were certainly –

MR. SIMMONS: Correct?

MR. BENNETT: – key deliverables.

MR. SIMMONS: Right.

So as vice-president for the Lower Churchill Project, from a functional, practical point of view, were you assigned the overall responsibility for getting financial close done? Or did things, from a practical point of view, work differently than that?

MR. BENNETT: There were aspects that – where particular members of the project team were dealing directly with the Government of Canada, on various activities.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: Some of the rating agency presentations – discussion on capital cost, other members of the team were directly engaged in those activities.

MR. SIMMONS: Mm-hmm.

MR. BENNETT: And, you know, there was a need to have all of those complete in order to be in a position to move forward.

MR. SIMMONS: Mm-hmm. Okay. All right.

MR. BENNETT: And maybe if I could add to that that at a similar time, we were also dealing with some of the Emera issues and making sure that they're in a position, commercially –

MR. SIMMONS: Right.

MR. BENNETT: – right, to deal with obligations under their federal loan guarantee, which was happening at a similar time.

MR. SIMMONS: Okay.

A few other more specific things arising out of some of the other examinations today. You've already been referred to Exhibit P-04331 and 04332, we don't need to go there now. Those are the status tracking sheets for the environmental and other commitments that are maintained by Nalcor, that you've described.

MR. BENNETT: That's right.

MR. SIMMONS: Yes.

So I just want to confirm are those point-in-time reports or are those continuous status reports that are maintained as things change?

MR. BENNETT: They are maintained on an ongoing basis. And as commitments and new information are addressed, that report is updated.

MR. SIMMONS: Okay.

And for how long has Nalcor been maintaining this log of these commitments?

MR. BENNETT: My recollection is that commitment log have, for generation, spun up during the environmental assessment process. We were tracking commitments through the EAs that were being made through the JRP process.

MR. SIMMONS: Okay.

MR. BENNETT: And as we can see, there's a similar list for transmission.

MR. SIMMONS: You were asked some questions about the Red Wine caribou herd, and I just want to – and you were referred to Exhibit P-04332, which is the log for the LIL. I want to bring you to P-04331, which is the other log. I'm gonna – just going to go to page 5, please?

UNIDENTIFIED SPEAKER: Okay.

MR. SIMMONS: And that's volume 5.

THE COMMISSIONER: Tab 138.

MR. SIMMONS: Tab 138.

Page 5, please? Okay, might need to blow it up just a little bit.

So, I want to draw your attention to – if you stop there – the second row from the bottom, as shown on the screen right there, and it says: "Nalcor will continue participation as a member of the Labrador Woodland Caribou recovery Team and support research and other management initiatives." Described as the Commitment.

You'd been asked some questions regarding caribou recovery, and I just wonder if this particular commitment and the response to it relates to that – to those questions.

MR. BENNETT: Yes, it does.

MR. SIMMONS: And this is described as a status ongoing.

MR. BENNETT: Right.

MR. SIMMONS: And the description there is membership in the Boreal Caribou Recovery Team.

MR. BENNETT: Right.

MR. SIMMONS: So, is this a currently ongoing initiative that Nalcor continues to be engaged in?

MR. BENNETT: That is an ongoing one that I hadn't flagged in my memory, from this list.

MR. SIMMONS: Okay.

You were also shown an email message from Mr. Ron Power where he was (inaudible) question SNC's engineering capabilities in the context of the North Spur? And I want to bring you to one other document, which is P-04274, please?

This is actually Mr. O'Brien's reply to Mr. Power on this – to this same message. And he writes: "As discussed, this letter is initiated as a result of my request to have remaining work on North spur modelling undertaken as a third party exercise. SLI's view of the design is that it is complete and this work is not needed. With our view that this work is a true verification exercise to establish suitability of a complete design package, performance of the work by a third party, and not internalized by SLI is, we believe, a prudent approach. This is also consistent with the approaches taken in design verification elsewhere" And it goes on to describe then the steps are being taken.

So, was this, in fact, the initiation of the separate review conducted by Hatch of SLI's work, to confirm that the design work was adequate and appropriate?

MR. BENNETT: Yes. This follows on as an independent look at their work.

MR. SIMMONS: Right. Okay. And I believe those reports are – if they're not in evidence, I'm not sure, Commissioner, if that particular report is an exhibit.

THE COMMISSIONER: I think it is.

MR. SIMMONS: But if it's not, we'll make sure it is.

THE COMMISSIONER: No, I think that one is an exhibit. I'm pretty –

MR. SIMMONS: Yes.

THE COMMISSIONER: – sure I've seen that one.

MR. SIMMONS: Yeah. Okay. All right.

And, there were also some questions you were asked about as-built drawings for the North Spur, and I want to make sure we have an understanding of what an as-built drawing is. So, I'll give you another example and you can tell me if this sounds right.

If I were building a building, I might have a set of drawings that describe the building that I want to get built. And in the course of construction, I may agree with the contractor that we're going to move a wall or we're gonna change something in the layout or the design. And when I'm finished, the contractor is – when the contractor's finished, they have to produce what's called an as-built drawing which shows exactly what they built so now you've got a record of what was really built. Is that –?

MR. BENNETT: That's exactly the case.

MR. SIMMONS: Okay.

MR. BENNETT: So during the process, the drawing would often get marked up and then the markups are incorporated into a final document that's –

MR. SIMMONS: So –

MR. BENNETT: – provided back.

MR. SIMMONS: – so when we talk about as-built drawings for the North Spur, is it any different than what I've described?

MR. BENNETT: I don't see it as any different; that there are notations and observations taken as part of the construction process, and then those are incorporated back in the final drawing. So their maybe slight changes from what was originally designed or what was originally specified, and those are incorporated in an as-built drawing. And then after a while, they're revised, produced, updated and then returned to the client.

MR. SIMMONS: So is an as-built drawing something that's necessary to have available in order to actually carry out the work?

MR. BENNETT: No, to – the as-built drawing is completed and prepared after the work is done.

MR. SIMMONS: Now you've told us that in the course being carried out on the North Spur, I believe you said that, there was a geotechnical engineer who was on site, to observe the work for the whole time. And that's something you described as the observational approach?

MR. BENNETT: That's right.

MR. SIMMONS: What was the purpose of having that engineer on – present?

MR. BENNETT: The purpose of having that individual there was to be sure that if there were things that were different than planned, that that could get caught and be dealt with. It's also a quality consideration. As well, that that person is there seeing the work that's being undertaken –

MR. SIMMONS: Right.

MR. BENNETT: – and understands each step along the way –

MR. SIMMONS: So would the –

MR. BENNETT: – and how the conditions look; and secondly, that the work is being done.

MR. SIMMONS: So would the as-built drawing then record the result of that

observational approach as opposed to having been something that needed to be in place, to allow that to be done?

MR. BENNETT: That's correct.

MR. SIMMONS: Okay.

Okay, Mr. Bennett, is there anything else coming out of the last couple days, that you want, felt you needed elaborate on or add? Or are you pretty well tapped-out?

MR. BENNETT: We've covered a lot of ground.

MR. SIMMONS: Okay. All right.

Thank you. I don't have any other questions, Commissioner.

THE COMMISSIONER: All right.

Redirect?

MS. MUZYCHKA: Okay, I just have a number of questions on redirect.

Yesterday in your testimony, when you were being questioned by Mr. Smith, he had suggested to you that it was the PMT that put forward the estimate to the executive, to Mr. Martin, and that the PMT believed in this estimate and you tended to agree.

MR. BENNETT: Yes, the sanction –

MS. MUZYCHKA: Do you recall that?

MR. BENNETT: I mean the sanction estimate was brought forward.

MS. MUZYCHKA: Yes.

And on – with respect to the schedule, you also indicated that it had been prepared by the PMT and put forward by the project management team.

MR. BENNETT: The original schedule was.

MS. MUZYCHKA: Right.

MR. BENNETT: And I think I also acknowledged that there were – there was passage of time in relation to the original sanction estimate and schedule when there were views on when contracts were to be awarded. There was a delay in financial close and there were certainly actions taken in between those two milestones where the team attempted to mitigate schedule risk caused by the gap between financial close and the original sanction date.

MS. MUZYCHKA: Right.

And the executive – yourself and Mr. Martin – were aware of the fact that there were concerns with respect to the budget and the cost and schedule during that time. But I just want to go back to the point of sanction because I think that was the point that Mr. Smith was making with you, was that this was a cost and schedule that was – had been created by the project management team and put forward to the executive for review, and that he accepted the recommendation of the project management team.

But I want to point out that Mr. Martin himself gave evidence that it was he who had chosen to go with the P50 schedule – or P50 cost probability. Were you aware of that evidence?

MR. BENNETT: Oh, I agree – I mean, I agree with that point and I didn't think that was sort of the basis for the line of questioning at the time. I knew it was a P50 estimate. That was –

MS. MUZYCHKA: Right. And that was –

MR. BENNETT: That was –

MS. MUZYCHKA: And it was his decision to make.

MR. BENNETT: Yes.

MS. MUZYCHKA: Right.

And there was also – we heard evidence from Mr. Kean that while the PMT had built the project schedule, it had – the one that was outlined had no reserve and hence that's why it was called an aggressive project schedule. And so that was known to the executive when this

information was put forth to yourself and to Mr. Martin.

MR. BENNETT: Yes, and that there were – I guess there was some level of float in that schedule. We've heard the conversation that the number of days in the work week in some of the assumptions – and there was certainly a delay in achieving financial close, which introduced pressure to the schedule and I think that was understood.

MS. MUZYCHKA: Right, but there was pressure right from the beginning, even from sanction.

MR. BENNETT: There was some, yes.

MS. MUZYCHKA: Right.

And Mr. Kean, in his evidence, also indicated that he would have been happier if there had been some reserve built in, in the schedule. I don't know if you heard his testimony on that.

MR. BENNETT: Didn't catch that point.

MS. MUZYCHKA: Right.

So in terms of the statement that the team was satisfied with the schedule that they put forth to the executive, that they were happy with it is not a correct statement.

MR. BENNETT: Well, they did produce a schedule. I don't think – I think I made – I may have made a comment throughout my testimony that, needless to say, contingency is something that, you know, any project manager, myself included, would be happy to have.

MS. MUZYCHKA: Right.

MR. BENNETT: And so additional flow, through additional contingency is something that, you know, the project team as a whole would have more flexibility with.

MS. MUZYCHKA: Okay.

But there was also evidence to – and I think this came from Paul Harrington – that he and Jason Kean had provided a fairly substantial package of information to yourself and to Mr. Martin in

2012. So it was around the time of sanction or before sanction that laid out the risks and the contingencies and the range of numbers. So it's not really fair to say that there was just a single number given and there was nothing else provided to the executive in terms of the decision on going forward on the cost of scheduling.

MR. BENNETT: Yeah, I wasn't trying to leave that impression.

MS. MUZYCHKA: Okay.

MR. BENNETT: It was just –

MS. MUZYCHKA: It came about as a result of the comment that Mr. Harrington had made that the schedule had been imposed upon the project management team by Mr. Martin or the executive. And I just wanted to clarify that there was more to it than that, that there had been communications by the project management team to the executive and options were provided, and information was provided so that the executive could make the appropriate decision as to cost and schedule.

MR. BENNETT: Oh, I'd agree. And I think what I said, in response to questions there, was that the two or three lines in that letter didn't – I don't think were a fulsome reflection of the extensive conversation that had been had on cost and schedule and associated risks.

MS. MUZYCHKA: All right. Okay.

And I think Mr. Harrington acknowledged, as well, that it was clear that their role was not to set policy, rather it was your role and Mr. Martin's role. That they acted upon the directions from the management.

MR. BENNETT: Understand.

MS. MUZYCHKA: Okay.

Just on the review that we did this afternoon on the management controls and construction report – and, you know, I think it was helpful for the Commissioner to see the origin of all those numbers. And I take it that this was, you know, in response to the delay, in terms of reporting to Canada and the independent engineer, of the

very significant half-billion-dollar cost increase which had developed in February of 2015 that wasn't reported to the – to Canada and the IE until some eight months later.

And I think that notwithstanding the forms of the reports that you have and notwithstanding that you say Canada knew about this, this is how we report cost, wouldn't you agree that there's still really no excuse why Canada and the independent engineers should not have been given a heads-up significantly earlier than they were of a very significant and substantial cost overrun?

MR. BENNETT: So we've – yes, so we've adapted our process –

MS. MUZYCHKA: Right.

MR. BENNETT: – to provide additional context beyond the construction report in response to the feedback from Canada. And there's been – I know that when we were looking at the CH007 contract, for example, we knew that was coming as an issue. We were ahead of that, had the conversation, but did it in a process that, I guess to the point, is above and beyond the construction report; we weren't simply going to rely on the construction report to communicate that information.

MS. MUZYCHKA: Right. There was nothing preventing you from providing that additional information that didn't have to be in your formatted reports that were tied to the AFE. There was – my question is that there was nothing that stopped you or Jim Meaney or Ed Martin from communicating to the IE or to Canada that the numbers had increased substantially?

MR. BENNETT: Right, other –

MS. MUZYCHKA: Or the forecast was that –

MR. BENNETT: Right, other than, I guess, sort of the general need I described where we need to do that in some coordinated manner, so that there are no surprises or we're not ahead of one recipient of the information, out of line with the others.

MS. MUZYCHKA: Right.

MR. BENNETT: So that – I think I referred to it as well, called the political complexity of dealing with multiple governments and the – you know, and our board, making sure that's done in a coordinated manner.

MS. MUZYCHKA: Fair enough, but it didn't need to take eight months.

MR. BENNETT: I agreed with that, I think.

MS. MUZYCHKA: Okay.

MR. BENNETT: Yes.

MS. MUZYCHKA: I just want to bring up Exhibit P- 01831, please

THE COMMISSIONER: On the screen.

MS. MUZYCHKA: And can I go to – is it page 1, maybe? Right, okay, in that page there is a discussion of the use of management reserve for short-term requirements. Is this reference, because we've heard a significant amount of evidence about a management reserve being set aside to cover strategic risks. When this document mentions management reserve, is that what it's referring to?

MR. BENNETT: I think it's – in this context, we're over and above what's identified in, sort of, in the contingency. So we'd have to look at what those requirements are and the basis for those and ultimately the level of certainty that came with it. So –

MS. MUZYCHKA: But is it – is it the management reserve that was identified, you know, if – that that's to be funded by the equity of the province?

MR. BENNETT: To the extent that this is above the financing level provided in the federal loan guarantee. Until the second federal loan guarantee tranche, it would've been funded by equity, yes.

MS. MUZYCHKA: So this management reserve that's referenced in that exhibit refers to money that is to be funded?

MR. BENNETT: Should it be required it would have to be funded by equity at that point in time, yes – in 2016.

MS. MUZYCHKA: So that would mean that you would have to issue – or request a new AFE, in order to access that.

MR. BENNETT: That's correct.

MS. MUZYCHKA: Okay. So you would need an AFE in order to fund this particular management reserve that's –

MR. BENNETT: That's right. Should –

MS. MUZYCHKA: – referred to in that document.

MR. BENNETT: – should it be required a new AFE would be required in order to fund this amount.

MS. MUZYCHKA: Is this an alternative? The management reserve an alternative to an AFE? Just – I'm a little confused as to the use of the term management reserve in this context.

MR. BENNETT: Well it was an outlook from the project team and it was beyond that which was going to be approved in the AFE.

MS. MUZYCHKA: So it was essentially a cost overrun.

MR. BENNETT: If these requirements or if these issues materialize, then yes, it would result in a cost overrun and also would require a supplemental AFE to fund the matter at hand.

MS. MUZYCHKA: Right. Okay. All right. That's all the questions I have. I think Mr. Collins has an additional –

THE COMMISSIONER: Collins.

MS. MUZYCHKA: – question or two.

MR. COLLINS: Mr. Bennett, when you were speaking to Mr. Kelly, you talked about how if the Labrador Link – Island Link proved not to be reliable enough on its own to support the Avalon – the Avalon Peninsula loads in the winter, one alternative — one option the Public Utilities

Board could look at would be additional generation. And another you mentioned was additional transmission.

I was going to suggest that there are additional – there are other options as well, one of which would be a reduction in the expected repair time for the Labrador Island Link. That the different – that degrees of unreliability that might be unacceptable if it takes four weeks to repair the line, might become acceptable if it takes only one week.

MR. BENNETT: If it could be shorter. I think that in the reliability note that came from Hydro System Planning and the PUB review, they did observe that the load starts falling off. If you look at the duration, which we're on peak, that duration – that repair duration may or may not have an impact on reliability, because you may be slipping outside of the period in which we were – we have peak demand in the system. So that is a consideration and that's something that they would look at as a matter of course in thinking about reliability consequences.

MR. COLLINS: And another option would be some sort of conservation or demand management –

MR. BENNETT: Yes, if you could –

MR. COLLINS: – program.

MR. BENNETT: – shave the peak demand; if you could find a way to separate essential versus non-essential loads, that's a way – potential way through this. And if that were looked at in conjunction with a rate mechanism that incented people to think about on-peak versus off-peak usage, there is a path there.

MR. COLLINS: And another alternative would be to simply accept the risk that service might be less desirable than we might like.

MR. BENNETT: So that is a trade. We can trade cost and reliability and have to – will ultimately have to land on what an acceptable level of reliability is.

MR. COLLINS: It's not just transmission or generation.

MR. BENNETT: Oh no, it's all those.

MR. COLLINS: I'd also – when we talk about transmission constraint, one possible solution to a transmission constraint is to build another line. But depending on the nature of the constraint, you might need something else; you might need a synchronous condenser, or you might actually need a generation source. It depends on the nature of the problem.

MR. BENNETT: Oh, there's no question.

MR. COLLINS: So –

MR. BENNETT: That's not an overnight solution where we can say let's pick this and go forward. You could, you know, there – I mean, historically, one of the constraints on the system today is the system voltage out around Sunnyside, and that is actually a constraint that limits the amount of power that can be transferred from Central Newfoundland on to the Avalon. There may be differing ways to look at that.

MR. COLLINS: The analytical work, as I understand it, it could be quite complex and it could be difficult to tell if this is a very big problem, a smaller problem, what – how difficult this transmission constraint could be to resolve.

MR. BENNETT: And I know there's work being done on it, and yes, the reports that are circulating within Hydro are complex and extensive and look at a number of alternatives from a (inaudible) transmission perspective. And I think it's fair to say that there will be additional dialogue required on what the preferred path going forward might look like.

And those are similar considerations that we may have seen in the Isolated case. Although different, that you still get to the same engineering principles and the same power transfer questions and what happens on contingencies – what the various limitations are on the system and what is the best answer to address it?

So, it would have been very difficult when we started the project to be able to say we're going to solve all those problems for 40 or 50 years.

MR. COLLINS: My second question is – when did the final forecast cost become 6.531 billion? Do you – do you know?

MR. BENNETT: I don't have a specific date and I think we've looked at, sort of, the evolution of documents here today. So, I haven't seen the magic one that says – here it is.

MR. COLLINS: You have no recollection of additional documents. I have looked for documents showing the final forecast cost of 6.531 billion before November 6th and I – I haven't succeeded in finding any.

MR. BENNETT: No. I can't – I haven't been able to put my finger on it. I say we see documents that come close to it, and you can see some before that don't have it, and you can see a few after that clearly do. So, I think – like, my recollection – when, you know, on December – I think it was December 18 the document went to the board and it said capital costs is up \$300 million and that one's a pretty good indicator that we know it's a 6.531 one then. We see it in the construction report for November 30. Based on close on November 29. That's another indicator that it's there. How we got up to that I don't have – I don't have clarity for the documentation either.

MR. COLLINS: The final forecast cost would be documented.

MR. BENNETT: Ultimately, it will show up in the project control system to say – here it is. Now, we can see it on November 29, November 30 – I'm pretty sure on the construction report we saw this afternoon – it was there.

MR. COLLINS: So, if there are no documents then – before November 6, 2013 – there was no final forecast cost of 6.531.

MR. BENNETT: Well, there was – it seems to me that there was one going through an approval process and we see where it came out. What I can't quite put my finger on is the first – the first document that says here it is.

MR. COLLINS: No questions.

THE COMMISSIONER: I just have a couple of questions and I apologize to everybody who's

waiting – we’re long – it’s been a long day and I apologize to you for keeping you here a little longer but kind of important. Just on the issue of reliability first of all. Correct me if I’m wrong, but was not the idea of the – building the Interconnected Option – or looking at the Isolated Option to ensure that the Island portion of the province would have reliable and sufficient power? Like, when that \$6.2-billion number was given, one of the rationales for spending this money was to provide the Island portion of the province with reliable electricity to meet its supposed need at that stage. Am I wrong there or –?

MR. BENNETT: No, I don’t think you are.

THE COMMISSIONER: Okay.

So what you’re telling me now, after what I’m listening to – ’cause I don’t think if you were to add additional generation or you were to enhance the construction on the lines or even do CDM programs or whatever, there’s a cost associated with those. Those aren’t free.

MR. BENNETT: And I think that the bar on reliability seems to be moving here, and that in itself is a bit of a challenge. So if I look back to the System Planning documentation that we put – that Hydro put together back in 2011 and 2012, established parameters for what they call unserved load or energy unavailability.

Their numbers were consistent with and comparable to their benchmarks. I mean, they achieved what they thought was necessary in terms of the definition of reliability.

THE COMMISSIONER: So –

MR. BENNETT: Some of the conversation now, I think, we’re moving –

THE COMMISSIONER: So –

MR. BENNETT: – to a different place –

THE COMMISSIONER: – but it’s not an unexpected conversation, is it? I mean, we’re talking about events. I mean, climate change is not just a new thing that’s come around the corner. 2012 is not that long ago. We’re talking about greenhouse gases at that stage.

What’s – I’m having trouble trying to understand why, like, if – notwithstanding what Newfoundland Hydro produced, did anyone – was there anyone capable of looking at this and saying, you know, a one in 50 standard or whatever the standard is, who knows, at this – you know, that we need to make sure that we – you know, we’re building something that’s gonna last 50 years; we have to make sure that it’s gonna be reliable.

Is anybody up top looking at this, or anybody in the organization looking at this, other than Newfoundland Hydro?

MR. BENNETT: Oh, no, absolutely. I think from – I mean, if you look at the design criteria that are applied in the construction of the line, I think I had two points that I was trying to – and if I didn’t successfully get them across, I –

THE COMMISSIONER: Okay.

MR. BENNETT: – probably need to reinforce it.

First of all, the line that we built, structurally, is tougher than anything else we have in the system. And that might be a question you can address with Mr. Marshall as well ’cause he has perspective on that. But looking at those design criteria, this is the most robust transmission facility in the province bar none.

It’s been designed in accordance with Hydro’s experience, and we attempted to display conformance to the latest version of the applicable standard in every way possible. Through that RFI response to the PUB process, NP-NLH-004, we tried to demonstrate that. We also tried to demonstrate that we have additional structural capacity in the line to go beyond those criteria to try to demonstrate that it is a reliable line.

THE COMMISSIONER: All right.

I just want to ask you a couple of questions about the project and the Maritime Link in particular. This is something that’s been sort of gnawing at me for the last few weeks. Am I right in suggesting to you that there are four main components to this project, i.e., the Muskrat

Falls plant, the LIL, the LTA and the Maritime Link?

MR. BENNETT: The Maritime Link is – I guess part of the concept was a condition of achieving the federal loan guarantee, and is also using some of the energy production from Muskrat Falls. And there are extensive commercial agreements associated with the Maritime Link and the delivery of energy to Nova Scotia.

THE COMMISSIONER: Right. But it is a component of this project. For instance, we've heard Premier Dunderdale tell us that without a financial guarantee, from her point her view, there would've been no project. You don't have a financial guarantee unless you have somebody else involved like Nova Scotia is what I understand.

MR. BENNETT: And I understood that – you're right. And I understood the same thing, that the federal government said that if it weren't a regional project and didn't have the involvement of more than one province, there would not be a federal loan guarantee.

THE COMMISSIONER: Right. So the \$6.202 billion at sanction basically was the construction cost – the estimate of the construction costs for the Muskrat Falls plant, for the LIL and the LTA, not including AFUDC.

MR. BENNETT: That's right.

THE COMMISSIONER: So I understand that the construction cost for the Maritime Link actually was \$1.555 billion, not including AFUDC. And that was the responsibility of Emera.

MR. BENNETT: That's being funded by Nova Scotia ratepayers.

THE COMMISSIONER: Right. Then – my understanding, as well, is that there was an agreement whereby ownership of the Maritime Link will transfer to Nalcor after the provision of 20 per cent of the estimated energy output from Muskrat Falls, 0.98 terawatts, for the first 35 years and an additional 240 gigawatts for the first five years.

MR. BENNETT: That's correct.

THE COMMISSIONER: All right. So – and my understanding is that's going to get us to a situation where, at some point in time in 35 years, actual ownership of the Maritime Link will fall into the hands of Nalcor.

MR. BENNETT: That's correct. The asset will be transferred back to Nalcor.

THE COMMISSIONER: Right.

And Nalcor – or Emera, rather, in the meantime is receiving the associated greenhouse gas credits for the first 35 years.

MR. BENNETT: So they have used – that's right, they've used the energy from Muskrat, that's being delivered as the Nova Scotia Block, to comply with Nova Scotia's greenhouse gas regulations –

THE COMMISSIONER: Right. And –

MR. BENNETT: – for those 35 years.

THE COMMISSIONER: – Nalcor has the right to transmission capacity in excess of the Nova Scotia Block.

MR. BENNETT: That's correct.

THE COMMISSIONER: Yeah.

MR. BENNETT: So there's notionally 300 megawatts of transmission capacity available over the Maritime Link. Emera, through Nova Scotia Power, has committed to make that capacity available on demand across Nova Scotia. There are transmission rights through New Brunswick and into Northeast New England associated with their – the latter two associated with their investment in the Labrador-Island Link.

THE COMMISSIONER: Right.

So looking, for a moment, at operating and maintenance costs, my understanding is that there is an agreement between Nalcor and Emera so that Emera will pay 20 per cent of the operating and maintenance costs for the whole of the project, correct?

MR. BENNETT: That's right.

THE COMMISSIONER: Okay.

And so, in the circumstances then, what will happen is that somebody will figure out exactly what those are going to be at the time. There's a bit of dispute as to what they are. And then they'll be divvied up and there will be a true up and all that will be moved on.

MR. BENNETT: That's right. There's an operating committee that's been charged with the responsibility to settle those.

THE COMMISSIONER: Okay.

And just to look at cost recovery then, so we have a 50-year PPA in place where the ratepayers pay the full cost of the Muskrat Falls Project and the LTA. Correct?

MR. BENNETT: That's right.

THE COMMISSIONER: And the – for the LIL, then the costs are being recovered through the cost-of-service model.

MR. BENNETT: Right.

THE COMMISSIONER: Right.

So can I suggest to you that with the exception of the O&M costs allocated on an 80/20 basis, that a hundred per cent of all other costs identified are to be recovered from the Newfoundland ratepayers.

MR. BENNETT: I guess the only thing I could add to that is that there may be – to the extent there is surplus energy, the door is open to use that –

THE COMMISSIONER: That's right.

MR. BENNETT: – as mitigation –

THE COMMISSIONER: Right.

MR. BENNETT: – whatever flows from the province's efforts to identify mitigation opportunities.

THE COMMISSIONER: Right.

So I guess where I'm going with this is this: This project is – Newfoundland – the ratepayers of Newfoundland, the taxpayers – whether it's ratepayer or the taxpayer, we're actually paying something for the Maritime Link. We're paying the – for instance, and it might – the easiest way to look at it would be whatever the opportunity cost for the sale of that 0.98 terawatts and the – the Nova Scotia Block – the total of the Nova Scotia Block, assuming there was a market, that's what we're paying for the Maritime Link.

MR. BENNETT: So you could look at it that way. The corresponding benefit would've been the benefit and financing cost that accrued from the federal loan guarantee.

THE COMMISSIONER: Oh yes, and there's no question about that, but I'm not going to double count that. That was already a benefit that's already been considered by everybody in selling the whole project as a whole. I guess what I'm getting to is that the real cost of this project – and what I'm trying to figure out is why this hasn't been – it never jumped out at me, certainly, when I first started this but it's been on my mind, as I say, for quite some time.

And the real cost of this project to the province, if you were to look at it, includes four components and not three. There is a cost associated with the Maritime Link, and for some reason, we have never – I have never heard numbers related to this project that includes the value of what it is we're paying for the Maritime Link.

MR. BENNETT: And you're right in the sense that that is the opportunity cost associated with the energy in the Nova Scotia Block.

THE COMMISSIONER: Right.

So has anyone ever – from your understanding or from your knowledge, has anyone in Nalcor or anyone in government ever attempted to quantify potentially what that number is?

MR. BENNETT: I believe that our Investment Evaluation team could look at that number based on a variety of views of energy pricing.

THE COMMISSIONER: Right, but if it hasn't been done –

MR. BENNETT: So (inaudible) help you with that. I can't put my fingers on an exhibit that says here it is for you.

THE COMMISSIONER: Okay. So to your knowledge, it hasn't been done as of yet?

MR. BENNETT: I can't place it. There may be commercial – commercial planning undertaken in energy marketing or other divisions within Nalcor that I haven't seen.

THE COMMISSIONER: Okay.

All right, thank you, Mr. Bennett, that's all.

MR. BENNETT: Thank you, Commissioner.

THE COMMISSIONER: All right, we're adjourned until tomorrow morning.

And I think we're okay tomorrow, I think, to start at 9:30. So we'll start at 9:30 tomorrow.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.