



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 63

Commissioner: Honourable Justice Richard LeBlanc

Friday

28 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, good morning.

Mr. Learmonth.

MR. LEARMONTH: The witness this morning
is Jennifer Fiddian-Green.

Could Ms. Fiddian-Green be sworn or affirmed?

THE COMMISSIONER: Okay, Ms. Fiddian-
Green, if you could just stand, please.

And do you wish to be sworn or do you wish to
be affirmed?

MS. FIDDIAN-GREEN: Affirmed.

CLERK: Do you solemnly affirm that the
evidence you shall give to this Inquiry shall be
the truth, the whole truth and nothing but the
truth?

MS. FIDDIAN-GREEN: I do so affirm.

CLERK: Please state your name.

MS. FIDDIAN-GREEN: My name is Jennifer
Fiddian-Green.

CLERK: Thank you.

THE COMMISSIONER: And your last name
is – the last part of your last name, the Green is
with an E or without an E?

MS. FIDDIAN-GREEN: No E – G-R-E-E-N.

THE COMMISSIONER: Thank you.

All right, Mr. –

MR. LEARMONTH: Yeah.

I'd first like to enter – have the following
exhibits entered: P-04334 to P-04342 and P-
04350.

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

MR. LEARMONTH: Okay.

Ms. Fiddian-Green, where are you employed –
or by whom are you employed?

MS. FIDDIAN-GREEN: I am a partner with
Grant Thornton LLP.

MR. LEARMONTH: And where do you
work? What office?

MS. FIDDIAN-GREEN: I primarily work out
of our Toronto office.

MR. LEARMONTH: Yes.

And what position do you hold with Grant
Thornton in the Toronto office?

MS. FIDDIAN-GREEN: I'm a partner with our
Advisory Services and I lead our national
forensics practice.

MR. LEARMONTH: So you're the lead of the
– of that part of the Grant Thornton practice for
all of Canada?

MS. FIDDIAN-GREEN: For all of Canada,
yes.

MR. LEARMONTH: All right.

Commissioner, I'm going to ask that Ms.
Fiddian-Green be allowed to give opinion
evidence and that she be qualified as an expert.
So I'm going to first go through the
qualifications that I'd ask you to consider in
making a decision on that.

THE COMMISSIONER: Okay.

MR. LEARMONTH: If we could turn to tab 1,
Exhibit P-04334, and we can first go to page 2.

Starting with your undergraduate degree at
University of Waterloo in 1993, can you just

take us through the – your educational background –

MS. FIDDIAN-GREEN: Certainly.

MR. LEARMONTH: – since high school?

MS. FIDDIAN-GREEN: Since university. I graduated from the University of Waterloo after high school.

MR. LEARMONTH: And that's in 1993, correct?

MS. FIDDIAN-GREEN: That was in 1993. Yes.

MR. LEARMONTH: All right.

MS. FIDDIAN-GREEN: I began working full time and I started my – the program to obtain my chartered accountancy designation, which I obtained in 1995. I became a certified management accountant as well. That's a further designation. Both of those two have now rolled into what is the CPA designation – now known as the CPA, chartered professional accountant.

I became a certified fraud examiner, which is the CFE designation, in 1997.

MR. LEARMONTH: What is a CFE? Is that an association or organization?

MS. FIDDIAN-GREEN: The Association of Certified Fraud Examiners is an international – headquartered out of the United States – association of fraud investigative professionals, okay?

MR. LEARMONTH: Okay.

After receiving that designation in 1997, what was your next designation?

MS. FIDDIAN-GREEN: I also – a little bit in parallel but I also obtained the CFI designation, which is the certified forensic investigator. And that association is similar to the CFE, but they're headquartered out of – they're a Canadian organization, so it's much more relevant to Canadian content around forensic and fraud investigations. So that's the CFI designation.

MR. LEARMONTH: Okay.

Just as a matter of interest, is there a significant difference between the practices for forensic accounting in the United States as compared to Canada?

MS. FIDDIAN-GREEN: No, not to my knowledge.

MR. LEARMONTH: No.

MS. FIDDIAN-GREEN: No. It was really much more that the individuals and the networking and the content, the discussion, would be within a Canadian context environment.

MR. LEARMONTH: Okay.

And just carry on with your qualifications, please.

MS. FIDDIAN-GREEN: I became – I studied and I became – I obtained the qualification of investigation and forensic accountant. This is the IFA qualification that you see after my name. This was led by the CICA, which is now consolidated, rolled up into CPA Canada. That was a fairly intensive program around forensic accounting and investigation.

And I continued – after obtaining that qualification – I was actually grandfathered in to part of it – I continued to support that program, through some teaching efforts, some of the courses that they put on.

MR. LEARMONTH: All right.

Just turning to page 1 of Exhibit P-04334, just reading: "Jennifer is a partner with Grant Thornton LLP's Advisory Services, practicing in the area of Forensic Accounting, AML, Investigations and Litigation Support Services. Jennifer is a specialist in investigation and forensic accounting (IFA) and an anti-money laundering (AML) specialist. She has worked with Grant Thornton since joining the firm as a co-operative student"

That just summarizes the information you previously gave us. And there's a further description of the investigations – fraud

investigations and financial disputes stated on page 2.

This information is all correct, is it, on page 1 – or throughout this exhibit?

MS. FIDDIAN-GREEN: Yes, it is.

MR. LEARMONTH: You've reviewed it and you're satisfied it's correct?

MS. FIDDIAN-GREEN: Yes, I am.

MR. LEARMONTH: Okay.

And just to turn to page – once again, to page 2, 3, 4, 5 and 6, there's an extensive listing of the – your project experience starting on page 2 from 2018, '19, going back. And I don't intend to go into any detail with this because it speaks for itself, but this is an accurate reflection of the work that you've undertaken in the area of fraud – or forensic fraud investigation and anti-money laundering?

MS. FIDDIAN-GREEN: Yes, it is. It's not all but, yes, it's a list of selected projects. Yes.

MR. LEARMONTH: All right. Okay.

I would ask that – before I ask that Ms. Fiddian-Green be authorized to give opinion evidence as an expert in the field of forensic accounting, I'd ask whether there are any questions from counsel on Ms. Fiddian-Green's qualifications.

THE COMMISSIONER: All right.

Any other counsel have any questions?

Can I just ask a couple? I had reviewed your transcript – your CV earlier. So it says here in 2014 you had been engaged to provide litigation support, including expert opinion, in the auditing of construction company operations and reported results.

Is that some specialty, or is that – that's – because that's normally what I would've thought a CPA would do.

MS. FIDDIAN-GREEN: This particular case that you're referring to – I believe it's on page 4

THE COMMISSIONER: Yes.

MS. FIDDIAN-GREEN: – had to do with – the matters were now in dispute between parties and questions were – arose around the audit. So I was not actually undertaking the audit of financial statements for a construction company – because you're correct, CPAs would regularly do that work.

The issue that came forward to us was now that the audit, as well as other issues and questions and items in dispute had come forward. So the work that we did in that dispute context included providing opinion and information around the audit work that had been done by others.

THE COMMISSIONER: Okay.

MS. FIDDIAN-GREEN: Does that help?

THE COMMISSIONER: And the work that you've done here at the behest of the Commission with regards to reviewing, you know, financial documents, construction supply documents, process procurement documents, things of that nature, this is work that you've done before?

MS. FIDDIAN-GREEN: This is – I have done work similar to this before but not exactly.

THE COMMISSIONER: Okay. And I see you have been accepted as an expert to provide opinion evidence and I saw at least one case in your early days. And since that time, have you appeared in court and given expert evidence?

MS. FIDDIAN-GREEN: So, earlier in my career, I was in court as an expert and I was in court as a fact witness on a professional case. Since that time, I have not appeared as an expert. Most of the cases that I've worked on have settled before court.

THE COMMISSIONER: Okay. And your money-laundering experience through the RCMP, are you still attached some way to the RCMP or do you – how do you – are you still involved in money laundering?

MS. FIDDIAN-GREEN: Anti-money laundering.

THE COMMISSIONER: Right.

MS. FIDDIAN-GREEN: No. I completed a two-year secondment earlier on in my career. So that was a defined time period where I was actually still working with the firm, but I was seconded on site to work with the RCMP. There was a beginning and an end to that.

THE COMMISSIONER: Okay.

MS. FIDDIAN-GREEN: So, while we have – I have led projects with the RCMP as a client to the firm, I do not have a continuing, ongoing relationship.

THE COMMISSIONER: All right. Mr. Learmonth.

MR. LEARMONTH: Okay. So, I'd ask that Ms. Fiddian-Green be authorized to give opinion evidence as an expert in the field of forensic accounting.

THE COMMISSIONER: All right. And does anybody take any objection to that?

All right. In the circumstances, then, I'm satisfied – having reviewed the CV of Ms. Fiddian-Green, her evidence this morning – satisfied that she is in a position to provide opinion evidence to this Inquiry related to forensic investigation and accounting, and she will be permitted to answer questions in that area.

Go ahead.

MR. LEARMONTH: Please turn to tab 2 in your book of documents. This is Exhibit P-04335. Can you identify this document? It's 30 – 40 pages – 41 pages.

MS. FIDDIAN-GREEN: This is a copy of the report that we provided to the Commission, and it has two dates on it: April 22 and May 7. It's the report that we prepared. I authored this with my colleagues at Grant Thornton.

MR. LEARMONTH: Okay. Why were two prepared – reports prepared?

MS. FIDDIAN-GREEN: We provided this report, initially, April 22, 2019, and subsequent

to that date, there were three specific changes, one which was – I would say – was more substantive. So, the three changes that are in the updated May 7, 2019, report: we anonymized the names of some of individuals and companies. We were asked to do that. We were fine with doing that. The second change is that we corrected a reference to Internal Audit which needed to be corrected to – updated to HR, the Human Resources Department of Nalcor. So, there was – we made a correction.

And the third change was that we received a copy of a report that the internal audit function at Nalcor had completed, and our initial report said we were aware of it and that we had not received that report. We've since been provided with that report and our – a copy of that report, and our report has been updated for that information.

MR. LEARMONTH: Okay. So, the first two changes were not material. They were just a matter of style and so on. Is that correct?

MS. FIDDIAN-GREEN: I agree, yes. Yeah.

MR. LEARMONTH: And the third one was based on new information provided after you had prepared the April 22, 2019, report, and you've now incorporated that information in this report.

MS. FIDDIAN-GREEN: Correct.

MR. LEARMONTH: And that's the extent of the changes. Is that correct?

MS. FIDDIAN-GREEN: That is the extent of the changes.

MR. LEARMONTH: Okay.

Now, the – on page 4 of your report, you refer to the background, and that's self-explanatory.

I'd like you to just take us through the information you have on page 5 of the report dealing with the Scope of Work. Can you just take us through that, please?

MS. FIDDIAN-GREEN: Yeah. Absolutely.

Okay, so we were requested to respond to an additional scope of work, and that additional scope of work – that mandate that I’m going to take you through today in the report – was four specific areas, and they’re listed at the top of page 5. And the report is structured around each of these four areas.

We were asked to look at each of these and perform – design and perform procedures around them: Living Out Allowances; supplies including PPE – personal protective equipment – and small tools; non-arm’s-length contracts, conflicts of interest; and the fourth one, daily – the recording of daily work hours.

MR. LEARMONTH: Okay, and the pages for that – just for people who want to follow at the – for the Living Out allowances, that’s page 7 to 14 of your report. Number two: supplies including personal protective, PPE, and small tools, that’s pages 14 to 19. Three: non-arm’s-length contracts, 19 to 26. Recording of daily work hours, pages 26 to 32. And I just add that on pages 32 to 34, there’s a commentary on – entitled Understanding Nalcor’s Internal Audit Function. And that takes us to the end of the report, correct?

MS. FIDDIAN-GREEN: Yes, yeah.

MR. LEARMONTH: Okay. Carry on.

MS. FIDDIAN-GREEN: So, this – when we were requested to respond to this additional scope of work and look at these four areas, we were asked to look at expenditures in these areas. We designed procedures to do that; we’ve executed upon them. But the – and these are laid out on page 5 – that we went through a process of identifying the documents that we decided and thought that we needed; we requested that documentation.

We conducted interviews with specific persons – employees of Nalcor. We obtained and we documented our understanding of policy and processes in each of these four areas. And we actually went through a process of going back to Nalcor to obtain their feedback on our documented understanding of the policies and processes in each of those four areas to make sure that we understood it. We did – as I take you through each part of the report, we did

detailed testing and sampling to get at the level of specific recorded transactions and recorded activity so that we could understand it and do the work that we needed to do.

And throughout this whole process – and it’s listed at the bottom of the last indented bullet on page 5 – we were requesting information, requesting follow-up, asking questions, so there was a significant back-and-forth process with Nalcor to make sure we understood.

Throughout the – as we started the work that we did and we executed our procedures, we learned that Nalcor’s internal audit function had done specific work in each of these four areas and we undertook to learn and understand that work. But it is important for the Commission to know that we did not rely upon the work of Internal Audit in doing the work that we did. We worked to understand what was there, what had been concluded; we’ve included that for informational purposes in this report, but we have done the work that we designed. We’ve executed upon that; we’ve assessed the results and we have reported that in here.

MR. LEARMONTH: All right. Now –

MS. FIDDIAN-GREEN: There is one thing further that I’d like to add to that, that as – after we received that initial mandate of these four areas, we were actually provided – we, as Grant Thornton, received a package of anonymized letters with allegations, complaints, information in them and we used that information to update the mandate and the work that we had designed for each of the four areas. We didn’t change our approach and what we had done, but we added to it, okay?

MR. LEARMONTH: All right.

You were the lead partner for Grant Thornton on this assignment. Is that correct?

MS. FIDDIAN-GREEN: Yes, I was the partner who led the work effort on this project, yes.

MR. LEARMONTH: And who else contributed to the investigation from Grant Thornton?

MS. FIDDIAN-GREEN: There was smaller staff team. The main individual that I worked – who worked very closely with me – I worked very closely with her – her name is Caroline Hillyard, and she signed the report with myself and the front end of the (inaudible) –

MR. LEARMONTH: And she is the senior manager, forensic and dispute resolution services, in your Toronto office?

MS. FIDDIAN-GREEN: She is a senior manager in our team. She was in our Toronto office. So, she has since moved; she is in one of our western offices. But, yes, she is a senior manager on our team.

MR. LEARMONTH: Okay. Now, you were the lead; did you review the work that was completed by others on your team –

MS. FIDDIAN-GREEN: Mm-hmm.

MR. LEARMONTH: – in the sense – to the point that you can take responsibility for the full report?

MS. FIDDIAN-GREEN: Yes, I was intimately involved in designing the work, reviewing the work and then coming here today for this report.

MR. LEARMONTH: Okay.

And who were the contact persons that were assigned by Nalcor to coordinate this investigation with Grant Thornton?

MS. FIDDIAN-GREEN: There were two individuals assigned – and I apologize if I say this name wrong – Diane or Deanne Fisher and Karen O'Neill, both with the Nalcor communications department. And they were the individuals who were directly receiving our questions and our requests and sort of quarterbacking that, if you will, and getting us the required information.

MR. LEARMONTH: And how – what was the process followed to obtain information? In other words, did you conduct this investigation via electronic communications between St. John's and Toronto? Did you travel to St. John's to conduct interviews? Just give us some

description of the process that you followed in carrying out this investigation.

MS. FIDDIAN-GREEN: So there was a mix of what you've described.

We started initially with a documented request list that was delivered electronically. There was on-telephone discussion initial and then ongoing, as well as significant electronic email communication around the requests, the status of requests, what we were receiving, our follow-up questions. We conducted in-person, face-to-face interviews with the – not all of, but most of the individuals that we listed as interviewing. We conducted those interviews here in St. John's in our Grant Thornton offices here. Caroline and I travelled here to do that.

As we received the information, which was received electronically – I think almost primarily – it was posted to the Commission site, we received it, we – and took that. We had staff here in our St. John's office working to assist us with that, and Caroline and I would review that as well.

MR. LEARMONTH: Okay.

And did you receive the co-operation that you sought from Nalcor?

MS. FIDDIAN-GREEN: Yes, we received good co-operation. I think that I would – I'd share that the process took longer, perhaps, than we had initially expected at the front end, but there's – we received co-operation. All of our requests were responded to and answered, yes.

MR. LEARMONTH: Okay, okay.

All right, now, if we could turn to page 7: Detailed Findings & Observations, Living Out Allowances, the first of four topics. Can you take us through your investigation and findings on the Living Out Allowances issue?

MS. FIDDIAN-GREEN: I can. I'd like to – I did bring a PowerPoint into the room today to assist the room to go through that, so if I could – if we could have that pulled up?

MR. LEARMONTH: Okay, now, before we get into the PowerPoint –

MS. FIDDIAN-GREEN: Okay.

MR. LEARMONTH: – have you reviewed the PowerPoint to ensure that, to the best of your knowledge, there's no conflict between the contents of the PowerPoint and the findings of your report?

MS. FIDDIAN-GREEN: Correct. We – I have – we have – I have not put all of the content from the report into the PowerPoint, but what we have pulled into the PowerPoint, it is verbatim from the report. We haven't changed the wording, but we haven't brought everything from the report into it.

MR. LEARMONTH: So it's a summary. There's certain extracts from the report that you want to highlight and that's why you've prepared the PowerPoint. Is that correct?

MS. FIDDIAN-GREEN: That's correct. Yes.

MR. LEARMONTH: Okay, now let's – so why don't we bring up the PowerPoint?

MS. FIDDIAN-GREEN: Okay.

MR. LEARMONTH: And then you can take us through it. You have the mouse there where you can –

MS. FIDDIAN-GREEN: I do.

MR. LEARMONTH: – move the pages. So why don't we get going with that.

MS. FIDDIAN-GREEN: So can I – I'll just take a moment that the – what is in the PowerPoint for each of the four sections is the mandate, which I'm going to take you through in detail for each one. What we have in the report that is not in the PowerPoint is there's a fair amount of detail around our understanding of the policy and the processes, the work that Nalcor's Internal Audit had completed and the detail of the procedures that we had completed.

I have not brought those sections into the PowerPoint. What I have brought to the PowerPoint is the detail of our observation – our findings and observations and that's what I'm going to take you through in detail.

MR. LEARMONTH: Okay.

MS. FIDDIAN-GREEN: Okay?

MR. LEARMONTH: Please carry on.

THE COMMISSIONER: Just before you (inaudible) this PowerPoint, it's actually – it's not – I'm sorry, this PowerPoint is actually an exhibit, 04350. It's at tab 18 of the book if anybody's looking for it, all right?

MR. LEARMONTH: That's correct.

Okay –

MS. FIDDIAN-GREEN: Go ahead.

MR. LEARMONTH: – please carry on.

MS. FIDDIAN-GREEN: So we've got – this is slide 4 now. And I think I can refer it to that way, or maybe I need to –

THE COMMISSIONER: Yeah, it's probably –

MS. FIDDIAN-GREEN: It's page 4 and that matches to the upper right-hand corner. It's in the exhibit as well.

MR. LEARMONTH: Well, it's page 7, isn't it, of the report?

MS. FIDDIAN-GREEN: The PowerPoint is –

MR. LEARMONTH: Yeah.

MS. FIDDIAN-GREEN: It's slide 4 and it's page 4 in the PowerPoint tab.

MR. LEARMONTH: Oh right, yes.

MS. FIDDIAN-GREEN: But in the report, it is page 7, yes.

MR. LEARMONTH: Okay. Thank you.

MS. FIDDIAN-GREEN: So what's on the screen right now is the first of the four sections that we were asked to look at, was the Living Out Allowances. So the mandate, as it was provided to us was – the information that we were given is that it was suggested that living allowances that were paid to individuals were –

was paid – were paid to individuals that should not have qualified for these living allowances.

So, as I explained at the front end, we designed procedures to look at that. And in the designing of our procedures, we were looking to see if there was or there was potential for widespread abuse. We were – the initial design of the procedures, we weren't looking at specific allegation or tip information.

However, after we had begun this mandate, we received a package of letters – this is up here on the screen. We received that on January 21. And the package included letters that ranged from May 2016 through to January 9, 2019, and those letters included specific information. Where there was specific information that aligned with the mandate that we were now working on and executing our procedures upon, we used that specific information to inform the mandate in each of the four areas. And we did not change what we were doing, but we added to what we were doing.

The letters, for the Living Out Allowances, specifically noted that an LOA was being paid out to an individual – this was an allegation in the letters – who worked at the Muskrat Falls site who had a permanent residence in Goose Bay and who also ate at the camp residence. The allegations noted that the new camp manager was very upset about the amount of food the individual was taking and consuming at the lodge. So that's here. I just want to make it clear that that information informed our mandate, okay?

Page 7, as I said, in our report we went – at page 7 in the report, as I said, we – there are now three sections and I'm just going to give you a high-level summary on those and then take you through the detailed findings. So we worked to understand the process and the policy and procedure in this area that Nalcor had around the Living Out Allowances, and what these were and what the criteria was for people to qualify for this and what the specific rules around that were.

So we learned about the assignment conditions and how these applied for individuals who were working at the Muskrat Falls site or if they were working at the – in St. John's at the project

office and what the dollar amounts were for that and what the criteria would be – what it was and what the person would have to do to meet that criteria. We learned about the point-of-origin information and how Nalcor obtained this information at the front end when they were onboarding or recruiting an individual, and how they used this point-of-origin information to determine the Living Out Allowance amount, okay?

We learned – and I'm at page 9 in the report right now – about the work that Internal Audit had done. And, as I said, we did not rely on the work that Internal Audit had completed, but as we got into this we were able to identify pretty quickly that the Internal Audit function had done work in each one of these areas.

In regards to the Living Out Allowances, the Internal Audit function had completed what they called an LCP rotational travel audit in mid-2016. That looked more at travel. We understood that as relevant because that work done by Internal Audit included looking at the point of origin information.

Further, the Internal Audit had completed work in 2017 where they had specifically completed an LOA, a Living Out Allowance review. And that information – sorry – that work that they had done actually included looking at the allegation information that had come forward to us as well, okay.

If I share with you, high level, the work that we as Grant Thornton had done – and this is at page 10 in our report – we actually went through a process to obtain – we asked for the full listing of the individuals who had received the Living Out Allowance over the period of review. The period of review that – for our mandate, was a three-year period. It was 2016 – January 2016 through to the end of 2018. So the 2016 set, 2017 and 2018 period's what we looked at.

So we requested the listing of all the individuals who had received the Living Out Allowance. We actually went into that listing and took a sample and we did testing at a detailed level, of the individuals who had received that work, okay – received that allowance. We conducted interviews, specifically asking about this area of the Living Out Allowance.

So now I'd not like to take you back to the slide deck and take you through, based on the work that we had performed – we as Grant Thornton, not relying on the Internal Audit work – our findings and observations.

So we identified through our work, that Nalcor relies on what is declared by the individual as their point of origin, and there is no work to independently verify that information, okay.

For purposes of our testing, we were informed that some of the confirmation of origin information we asked for – while we knew that it wasn't a formal requirement in their process and their policy, we asked for that information and we found that Nalcor was able to provide it for nine out of the 50 – 50 was the sample that we tested out of that list that was provided to us – that they were able to provide point of origin validation information for nine out of the 50.

MR. LEARMONTH: Okay, so for the – those that were not provided, was it just – was Nalcor's decision on these points, based on just verbal communication?

MS. FIDDIAN-GREEN: The individual – it was self – their point of origin information was self-declared.

MR. LEARMONTH: Well, if someone said I'm – my principal place of residence is Saint John, New Brunswick –

MS. FIDDIAN-GREEN: If someone said their principal place of residence was the UK or Calgary or St. John's, it was – the information was received as the person provided it.

MR. LEARMONTH: All right.

MS. FIDDIAN-GREEN: Okay.

We – that sample that we had selected so we could get to a detailed level – we requested evidence from Nalcor that the individual was not living at camp because an individual should only be receiving a Living Out Allowance if they're not living at the Muskrat Falls camp.

This information was not available, was not part of the process that Nalcor went through. So we identified that there is a risk, that staff could

obtain a Living Out Allowance and also receive some of the benefits of camp.

We – through our follow-up inquiry and work with Nalcor, we identified that there are – they – there are controls in that area to minimize the risk, but it was not something specifically looked at in the – the process at the time, okay.

Make sure I'm in the right place.

So one of the areas that we identified a – as a point of confusion or potential confusion, is that we were informed during the interviews that if an individual declared their point of origin, that this would not change regardless of whether or not they moved during their tenure with the project.

So we were – just to say that again clearly, we were initially told that the point of origin and the Living Allowance that is determined as paid and that person is eligible for, would not change even if the individual decided to move during their time with the project.

We – based on follow-up discussions and a back and forth with Nalcor, we received clarifications and we were informed that if – and we were informed in writing that if a person did relocate permanently during their time with the project, that their point-of-origin information would be updated and, accordingly, their Living Out Allowance should be changed or should reflect that new point-of-origin information.

So even as that information was coming to us, there was some confusion around it. It – we were given – initially, we were told one thing, later we were told another. So we note, to the extent that this is considered policy or Nalcor practice, it's not documented and it's not laid out in the approved assignment conditions, which is where the criteria is laid for individuals that would be eligible for a Living Out Allowance, okay?

So what that meant to us is that it was – we could see how there could be some confusion and that might have been related to the tip information that we received in the letter.

We did follow up regarding that specific information that we had received in that package of anonymized letters.

And we were initially confused because the individual that the information was provided for was not on the list of individuals that we've received from Nalcor, who'd received a Living Out Allowance. But we went back and forth and we were able to confirm with Nalcor that that person did receive a Living Out Allowance of \$3,500 per month and that that allowance, as per the approved assignment conditions, had reduced. It was in 2016 when there was a general cost savings, I think, put out throughout the province and the Living Out Allowance amounts were reduced. We identified that this individual was a contractor with SNC-Lavalin and that this name had been inadvertently – and we have no reason to believe otherwise – had been omitted from the Living Out Allowance list that was originally provided to us, okay.

The allegation information around this individual was that the person had moved to Goose Bay, Labrador, from Newfoundland, during the project and, as noted above, on that basis maybe they should not have been eligible to continue to receive the Living Out Allowance. Nalcor confirmed to us that that individual's point of origin, through their contractor, never changed, it continued to be a Newfoundland address, and as such, they were firm – they were able to confirm that this individual had received the Living Out Allowance as per their policy. We noted in our report that this – that there was the potential for some confusion around this because this policy was not documented.

We were interested that we had identified an individual that had not been on the listing as originally provided to us, and we worked through to make sure that we understood that. As – and as a result of a number of follow-up communications, we – it was determined that 54 contractors who worked for SNC-Lavalin had been omitted from the listing as it was initially provided to us. This did mean that those individuals were not included in the population that we used for our sample testing.

MR. LEARMONTH: And that was inadvertent, you found.

MS. FIDDIAN-GREEN: We found that it was inadvertent, we had no reason to believe –

MR. LEARMONTH: Right.

MS. FIDDIAN-GREEN: – otherwise and we – there was nothing that caused us to need to go further.

MR. LEARMONTH: Thank you.

MS. FIDDIAN-GREEN: We did note that the assignment conditions – the assignment conditions is the documentation where the criteria for those Living Out Allowance is laid out. Those documents were not signed as approved by the Nalcor individuals who were – it was documented it required their approval, but they weren't actually signed as approved. We found no issues with the content of those – of the criteria for the Living Out Allowances and the assignment conditions, but we did note that the documentation given to us was not signed as approved, okay?

But we – as I explained earlier – while we followed up with the specific allegation information, we had designed procedures to specifically test – to do a sample and test and get at the detailed cost that had been paid by Nalcor. So we had identified 50 individuals and we found that for 46 out of the 50, the amounts that were listed as paid to those individuals agreed, it aligned; we had no question, we had no issue with the amount that they were paid as a Living Out Allowance on a monthly basis.

However, for four of the individuals, four out of the 50, the amounts were different than what we expected based on our understanding of the assignment conditions. So we followed that up and those are listed at the top of page – and I don't think I need to go through them in detail, but they're listed at the top of page 14 in our report.

MR. LEARMONTH: Right.

MS. FIDDIAN-GREEN: We asked specific detailed questions to Nalcor regarding each of the individuals and the explanations that we got back, in each case, were reasonable to us and they made sense, and we were – we didn't

believe there was any need to go any further, okay?

We went further than just looking at what was paid – what was recorded as paid to those individuals on the listing, and we wanted to go see actual invoicing – monthly invoicing on a sample basis to see that the invoices that came through and then went through Nalcor accounting, actually were those amounts. So we selected a month – we selected the month of October 2017 to get to, you know, that level of detailed documentation. We were only able to do that checking for 25 out of the 50 because not all of those individuals were working, and therefore there was no invoice for them on October 2017. In looking in those contracts, we had no issues. There were no variances or amounts that were different than what we understood needed to be paid for those individuals.

I'm just looking for my mouse.

We did – we went one step further with another procedure. We obtained, as part of other work that we did – I'm going to take you through that when we get to section four – we obtained the swipe card data, which is the entry and the exit data for the Muskrat Falls site. And we used that data with regard to these individuals who had received a Living Out Allowance, and we wanted to see if the data told us that those individuals were actually working on site during that time period – that month that was invoiced and that we tested that they had received a Living Out Allowance, and we were able to do that. There were some individuals where they were not assigned to work at the Muskrat Falls site so their data wouldn't have been in there. So we followed up with Nalcor to confirm that they were at a different work location and that that made sense, okay?

So based on the inquiry work that we did – there were significant inquiry questions back and forth. The review of the documentation and of the detailed level of the recorded transactions and activity and the testing work that we performed, we identified no issues that appeared systemic. We did not identify a pervasive fraud or abuse and, accordingly, we did not recommend an increase to the sample testing.

We do note that there were a number of process approval and documentation improvement opportunities identified and that was particularly regarding the confusion to us as well, and we can see that for individuals on the project that it would be confusing regarding a person's point of origin if it changed over time; how that was dealt with and addressed.

MR. LEARMONTH: Yeah.

MS. FIDDIAN-GREEN: But we did not find any (inaudible) –

MR. LEARMONTH: You said you didn't find any pervasive fraud or abuse. Isn't it correct that you didn't find any?

MS. FIDDIAN-GREEN: Is it correct that we did not find any.

MR. LEARMONTH: Any, yeah, okay.

All right. Thank you.

Now, we're on – well it's page 14 of the report. That's the second of the four areas of investigation entitled Personal Protective Equipment, PPE, and Small Tools. Could you –

MS. FIDDIAN-GREEN: Absolutely.

MR. LEARMONTH: – carry on with that topic?

MS. FIDDIAN-GREEN: So could we go to the power – the slide deck – the next slide in the deck, please? I'd like to take you through the mandate for this second part.

THE COMMISSIONER: Just keep going down.

MS. FIDDIAN-GREEN: Here we go.

So in the mandate that was provided to us when we had to design our procedures to, again, look for the potential for or widespread or any abuse, it was – we were informed that it was suggested that certain supplies – and this is what's on the screen now – such as building supplies, tools and clothing were required – were acquired in excessive quantities, that is, in quantities that far exceed the reasonable needs of the project.

Examples include safety boots, cold-weather suits, small tools and other similar items. We understand that there's an inference that items were taken by employees for personal use and resale.

We had received that information; we were asked to actually select two specific items and to design procedures and follow the work and find out what was spent on those items and if there was – if we could identify abuse and report on the results of that work. After we had started the work in January, as I had said earlier, we received that package of letters with allegation and complaint and issue information, and those letters specifically included some specific information.

There were allegations that small tools and materials were being misappropriated and shipped off site by being packaged up onto flat decks or crates. And there were also allegations that shipping containers and sea cans were used to send materials to an off-site location in Newfoundland. So again, that information, while it informed and we added procedures, we did not change the initial procedures because we wanted to execute on that work and assess the results that we received, but we did follow up and do some additional work, okay?

So now, in the report again, there's three sections I just want to try to provide you with an overview and then I'd like to go through the findings and the observations specifically. So through our interviews and our review of documentation that became available to us – I'm at – I'm just giving an overview of section 2.2 on page 15 of the report. We were informed and it was confirmed through our review of materials that there was no specific budget for PPE, the personal protective equipment and small tools within the – at the Nalcor level. The contractors to the projects likely did have those budgets, but not at the Nalcor level.

So we worked to understand that better. We worked to understand when Nalcor would be responsible for PPE. We were informed that there were no quantities of small tools purchased. So when would Nalcor be responsible? Nalcor was responsible for PPE and safety related costs for the employees and the independent contractors who were employed

by or contracted directly with Nalcor. And we were actually told that those costs were recorded in a specific general ledger account. So we learned about that. And we learned about the process that an individual that Nalcor was responsible for the safety and the PPE of, what process they would have to go through to obtain that equipment and have it paid for. And that the process involved having a supervisor as well as their safety manager signing a form and agreeing that that individual required that equipment, okay?

We learned as we went through, similar with the other sections, that the Internal Audit function of Nalcor had done specific reviews related to this area as well. In late 2017, they had done a site-purchasing review which included the – taking a look at the purchase receiving, the process on site for materials that arrived and what happened to them. And further, that they had done a – (inaudible) here – they had done a further and specific review in regard to the sea cans and we came to understand that that was the same sea-can complaint information that provided into the allegation letters to us as well. So Internal Audit had done specific work.

An overview of the work that we did, just before I get into the findings and observations, we requested – we asked to see all of the amounts, the dollar amounts, and the quantities that Nalcor had paid for and logged and how they were tracking it. What we were informed and what we were provided with was a general ledger account that included a much broader scope of disbursements, so we took a good look at that. That was part of our procedures.

We reviewed that in detail. We had interviews and we had specific questions for the people that we interviewed around the purchases that Nalcor was responsible for of the PPE and small tools, as well. And we had lots of back and forth follow-up with Nalcor on this.

I'd like to now go to the slide, the Findings & Observations, and take you through specifically what we found as we executed these procedures and we did the detailed review.

So we were informed, and we confirmed this through our review – and the informing was from a number of individuals that we had

interviewed, and we looked to see that there's consistency and that the information that we received that way – that the costs pertaining to the PPE and the small tools – we were actually told that there was very little, if any, small tools purchased by Nalcor – that they were recorded in a general ledger account called the safety cost control account, but that this wasn't specific just to PPE, there were other things in there as well. We were told that there were other safety related items, and I've got examples of those up there on the screen. So we'd have to go in and look and see what we could see.

So we obtained the detail of that GL account and we got it for the full three-year period. And we identified, we learned that there was just over \$1 million of costs recorded into that account. What you see on the screen right now is our categorization of the costs that were recorded into that account. We asked for copies of invoices for specifics of the transactions, not all of them. We looked at how the transactions and the details were recorded. We had specific questions around some of those entries, others we didn't. We were satisfied with what was there. But we identified that just over \$227,000 recorded in that account over that time period related to the PPE and supplies, and, therefore, we wanted to take a further and good look at that and those are the ones that we got more of the invoices for.

The other items in that account, you can see that we've categorized them and if – would you like me to go through each of that in detail? We categorized them out, but our review of that underlying detail, we did not see and we did not identify purchases of PPE or small tools in that account, okay? So the only one that we now became focused on was the \$227,000, which we did not identify as excessive over the three-year period.

MR. LEARMONTH: All right.

MS. FIDDIAN-GREEN: Okay?

So we were informed, as I said earlier, that no significant quantity of small tools was ever purchased by the project, by the LCP, and that this was specifically the responsibility of the contractors to the project. This was consistent with our review of that safety cost control

account. We did find that for the PPE that is purchased for the project, that Nalcor is only responsible for the PPE that's related to the employees that are employed by Nalcor who need PPE and the independent contractors' consultants, again, directly employed by Nalcor.

We wanted to go a little bit further into this and make sure that we understood that what we were being told and our understanding of the process, that it was clear, and it was reflected in the contracts and the agreements with these contractors for these PPE costs and the small-tool costs. So we found that large contractors that are paying craft labour are mostly – it's not exclusively – but mostly responsible for the PPE and small-tool costs, so that was as expected, and that the cost of the PPE and the small tools is built into the rates of the contracts that are fixed earlier on and adjusted however they were throughout the contract – throughout the tenure of the project.

So for example, we looked at the Astaldi – the contract with Astaldi, and we were able to identify that there was a clause, an addition into that contract, which didn't kick in all of the time, but could kick in some of the time, that there would be an addition of \$2.30 per labour hour, so the cost to Nalcor would be fixed into that per labour hour, and that \$2.30 was specifically intended to cover personal protective equipment and small tools with a value less than \$2,000.

MR. LEARMONTH: Okay, so just to clarify, so if tools – small tools – were inappropriately taken from the site, that wouldn't be something that Nalcor would have to pay for; it would be something that the contractor would have to pay for. Is that generally what you're saying?

MS. FIDDIAN-GREEN: That is our understanding and that's what –

MR. LEARMONTH: Right.

MS. FIDDIAN-GREEN: – we're saying.

So we looked –

MR. LEARMONTH: So it wouldn't be a loss for Nalcor?

MS. FIDDIAN-GREEN: It would not be a cost –

MR. LEARMONTH: Yes.

MS. FIDDIAN-GREEN: – to Nalcor for that.

MR. LEARMONTH: All right, thank you.

MS. FIDDIAN-GREEN: And just to make sure of that – to the extent, in the work that we were doing, that we had copies of monthly invoices from contractors that were billed to Nalcor. So I told you when we did the Living Out Allowance work, we looked at those invoices for October 2017. We looked at those invoices to make sure were there any costs for PPE or small tools, were there any additional costs on those contracts. We did not identify additional charges for any of these types of purchases from those – the contractors, the one that we looked at in our sample.

We looked specifically into two of the contracts, Valard Construction and Barnard-Pennecon, to make sure that our understanding of the language, just as we've said, that those contracts based on the labour rate included the small tools and the personal protective equipment, that it wasn't an additional cost; it was included in the labour rate.

So it was our conclusion, our understanding based on all – the look that we did, the inquiry, the testing and the review work, that any excess PPE and small tools – small tools less than \$2,000 that are purchased – it would be the responsibility of the contracting companies and not an additional cost to Nalcor, okay?

We – it was not specifically part of our mandate, but we wanted to make sure that our understanding was clear around items that are greater than or equal to \$2,000 – so would not be considered a small tool. And based on our review of the contracts and what we understood from the individuals that we interviewed, that if there was items that were costing individually more than \$2,000, that that would be invoiced through to Nalcor on the contracts. We did not specifically look at that, okay?

We did find that Nalcor did not maintain for the people that they were responsible for an

inventory or a recording specifically of the cold-weather suits and the safety boots, that the purchases that they made for those people – items were ordered as needed. It was a just-in-time program. And the individual was required to have a form signed. They had to have their supervisor as well as a safety manager sign the form and they could take the form to an approved, external vendor, and then that vendor would then invoice Nalcor for the cost of it.

Based on our review of that GL detail for the safety cost control account, we did not find the amount of \$227,000 excessive, given the number of individuals involved, the period of review – the three years – we did not find that amount excessive, okay? And we did not identify any purchases of small tools that were – was a direct cost to Nalcor in any of the places that we looked.

We do note that our work focused on the consumable supplies, such as the PPE and the small tools. The allegation information that came forward included information regarding larger items – material, lumber and equipment – and that sea can information, we did not specifically look at that. We did identify and we had learned that the Nalcor Internal Audit function had done specific work in that area, but we didn't rely on that work, we just put it in the report for informational purposes.

So it's our conclusion, based on the inquiry, the review, the testing work that we did, we identified no issues to report relating to PPE and small tools. We did note that there would be opportunities for internal control improvement and documentation improvement opportunities.

MR. LEARMONTH: Okay.

MS. FIDDIAN-GREEN: Okay.

MR. LEARMONTH: Thank you.

That takes us to the third topic, Non-Arm's Length Contracts, which is found on page 19. Can you take us through that –?

MS. FIDDIAN-GREEN: So if we could go to the mandate slide, which is the next one in the PowerPoint, please. (Inaudible), having to go back to this one – right there.

MR. LEARMONTH: There it is.

MS. FIDDIAN-GREEN: So this was the third section out of the four in our mandate that we needed to take a look at. And the information – the background information provided to us was: “It was suggested that companies that were not at arm’s length with senior Nalcor management were contracted for services without tender.”

There was no specific information provided to us in that package of anonymous letters in – regarding this area of the work that we did; however, we did learn about specific allegations of conflicts of interest and work that was done in that area by Nalcor’s Internal Audit, as well as the people around them, as we started the work – our work, okay?

So, in understanding the policy and process in this area, we learned that – this is at page 20 now in our report – we learned that there is a *Code of Conduct and Business Ethics Handbook* that all – that is made available. And there is communication and awareness training to all of the individuals involved in the project – the LCP project delivery members. And that was primarily directed to Nalcor employees, as well as the contracted staff – the independent contractors. That information was provided as part of onboarding and there was – perhaps a bit later in the project, I think it was in the 2016-2018 period – specific training and communication awareness around that *Code of Conduct and Business Ethics Handbook*.

We learned about Nalcor’s process to onboard individuals and what was asked and provided around conflict of interest information at the time and how this was documented and perhaps not documented. We asked for a listing of the identified conflicts of interests so that we could do the work that we did. And we learned that while there is a log, the log wasn’t being used and the information actually came to us from the work that was done by Nalcor’s Internal Audit function, and there was a number of reports and detailed documentation around that. So our learning about how Nalcor (inaudible) – handled the process and policies that they had in place, was very much informed by that Internal Audit work.

So specifically to just give you an overview of that – I’m at page 21 in the report now. There was – in 2017, the Internal Audit function at Nalcor had done a review and it was specifically related to an access to information request regarding a conflict – a perceived conflict of interest. There was further work done around three anonymous complaints that had come in through Nalcor’s Ethicsline, and that was in January 2018. So there was work done in 2017, there was work done in January 2018; there was further work done – a report dated in April 2018 by Nalcor’s Internal Audit. This was, I believe, less specific to anonymous information or allegation or tip information. It was an Internal Audit review of the LCP conflict of interest. It was an audit around how that was actually handled by the project.

There was an additional report prepared and it was dated January 24, 2019, and this is the report that we actually received later that caused us to provide – to update our report. And this was – I believe that this was – this work was done by Nalcor’s Internal Audit, specifically related to some allegations that were brought forward that they then responded to and dealt with. So there was a significant amount of work done by Internal Audit, and as I said earlier, that – we did not rely on that work, but it informed our knowledge of what Nalcor did and had done in this process.

So specifically related to the work that we did, the procedures that we designed – this is at page 23 in our report at the bottom. We reviewed a list of over 200 vendors to the project and we selected a specific sample of organizations to do the testing work that we wanted to do and the inquiry work. I’m going to take you through that in a moment.

The testing work that we did included our team doing our own – what we call – public records research to see what we could identify and understand about those vendors if we looked at publicly available information. We – in the interviews that we conducted – we had specific questions and queries for a number of those individuals around the conflict of interest process and the tendering process, and we had lots of follow-up with Nalcor.

So, now, if I could go to the slide deck, please, I'd like to take you through each of our specific findings and observations. It's the next one.

MR. LEARMONTH: There.

MS. FIDDIAN-GREEN: So we found that a significant number of vendors to supply goods and services – as would be expected – were used to supply the project. And we were informed by Nalcor that for – I think it was an approximate number – but it officially came to us as – for the over 100 main contracts of goods and services, information regarding Nalcor's conflict of interest guidelines was included in those contracts, specifically.

We were also informed, however, that due to the significant number of vendors they did not require every vendor to affirm that they were not in a conflict of interest. We found that Nalcor did not – or does not – perform independent checks to determine key individuals involved and any available ownership information prior to executing the contract with the individual or the company to ensure that no conflict would exist.

So we found that there is a reliance on the agencies and contractors to ensure that conflicts are disclosed for a potential staff member, an employee or a vendor. Meaning that there was a reliance on those individuals to self-report, self-disclose, as opposed to a requirement for those individuals to positively affirm to Nalcor, or any independent work that Nalcor would do to check that information.

MR. LEARMONTH: So why is that a problem, in your opinion?

MS. FIDDIAN-GREEN: In my experience, and I – and what I expected, we – in my experience I regularly see, in the work that I do, that there is a requirement for contractors to positively affirm, to attest, that they're not in a conflict of interest, rather than relying on that contractor to report if and when it does happen. And I am more often seeing that requirement now on an annual basis.

I mean we're requiring you as a vendor or as an employee – maybe not all employees but senior employees with our organization – to, on an ongoing basis, affirm to us to – that you're not in a conflict of interest. So the problem is, is that

the process here was reliant on the individuals who would be in the conflict to report and to know how and when to report, as opposed to having a specific program in place saying this is how you report and when you report to me if you have a conflict.

MR. LEARMONTH: And that would be a written statement, would it?

MS. FIDDIAN-GREEN: It would be a written statement that the individual would sign.

MR. LEARMONTH: All right.

MS. FIDDIAN-GREEN: Okay?

MR. LEARMONTH: Thank you.

MS. FIDDIAN-GREEN: (Inaudible) again.

So as part of the request that we made, we asked for the log or the list, or however it was managed, of conflicts of interest or potential conflicts of interest and we were not provided one. We were informed that one exists and I think we understand that it just isn't used. It's not that Nalcor chose or was being uncooperative in any way because we – they were not. We did not find that at all.

But we note – so we found through this process that a log of conflict of interest allegations is still not being used to track and manage the work of monitoring these. And I – we used the language: Still not being used, because when that work had been done by Internal Audit, there was a recommendation in there that the log, which existed, that it needs to be used and we need to list these conflicts out.

And it's my experience that unless we – the organization has a way to manage the conflicts of interest and log them, it's harder to understand and demonstrate how you're managing that conflict of interest, okay? So we – I told you that we, in each one of these cases, and this one – in each one of these areas and this one included, we wanted to do specific testing to get at a level of detail so we could actually look and see.

We actually started with a list of 43 different vendors from that list of over 200 vendors that

we looked at. And we – that list of 43, when we selected we asked questions. We wanted to know how the contractor had been on boarded, if there was a tendering process, if there was a bidding process. And then we got down to 12 specific vendors that we – as we went through our process, our list narrowed.

And for these 12 specific vendors we were provided with supporting files and we got to a level of detail where we could see the documented ownership information, the purchase orders, the invoices, that level of detail with that contractor. The files provided to us did document vendor ownership information and there were no potential conflicts of interest, there was no information in those files regarding that, but there were no conflicts of interest identified in those files.

We then, on those 12 files, as I said, conducted what we call the public records research. And for out of the 12 – for three out of the 12, three of the vendors, we identified names of individuals who were associated with those organizations – not necessarily ownership, but associated; it might be in a director or a key position – through that public records research that we did. And those – the names that we identified were not – they were additional or there were some inconsistencies, things that we had questions about, with the detailed file work review that we had done.

So we provided that information back to Nalcor to understand: We've identified these people that were in the file, tell us about this. And those individuals – I think this slide moved back, let me just move it forward; it's on the slide now. So we wanted to review these – the names of these individuals with Nalcor to understand how that aligned with what they knew about the groups.

So for vendor number one, Nalcor has informed us that they were aware of some of the individuals, not all, but some that we had identified and brought forward to them. And based on the new names provided, they did not identify any conflict of interest and so didn't see any reason to go forward with that. We – and we didn't press any – we had no information available to us to indicate that there would be any conflict of interest, just that we had

identified a name that was not known to Nalcor and we needed Nalcor's response on that. And their response was, okay, that's – there's some new names there to us, but we – even with that new name, we don't see a conflict of interest.

With vendor number two, Nalcor was able to tell us that the name that we provided was actually one of the – the individual involved in providing the services, even though we hadn't seen that name in the detailed file documentation and they weren't aware of any conflict of interest. So that was fine. We stopped there with that one.

For vendor number three, Nalcor was able to tell us that they were not aware of the new name that we provided; however, based on the name, they did not identify a conflict of interest. So I want to be clear that the – that this detailed testing work that we did, we did not identify a conflict of interest, but we did identify the potential for a conflict of interest because we'd identified some new name information that Nalcor had to work through. They did. We received their responses; we did not identify any conflict, okay?

So it's our conclusion for this area, this non-arm's-length contracts area, the inquiry work that we did, the review, the testing work that we performed, no additional conflicts of interests were identified. However, for a project of this size, we expected that a more detailed, risk-based approach would've been followed to include some independent assessment research – that public records research that I was talking about – to verify and inform the vendor ownership and the directorship information that is provided by the organization that wanted to contract with Nalcor to ascertain and to work towards ensuring that there was no undisclosed, non-arm's-length relationships or that other conflicts existed –

MR. LEARMONTH: Yeah, so –

MS. FIDDIAN-GREEN: – rather than just relying on the self-declaration.

MR. LEARMONTH: That's what we spoke about before, that you would recommend a positive affirmation on an annual basis from the contractors, as opposed to just leaving it out there with the expectation that the contractor, if there was a conflict, might report it.

MS. FIDDIAN-GREEN: I would expect the positive affirmation, some risk-based approach work; to do public records research to make sure that that information the vendor is providing with you is fulsome and comprehensive. And then the use of a log or a – or some form of tracking so that, to the extent the conflicts of interest did exist and we identified – and there were some. We didn't find any additional, but there were conflicts of interest that the organization would have a way to manage and track those. Those are the three areas.

MR. LEARMONTH: So what your recommendation is, is that you would get a positive affirmation in – by way – in the form of a statement –

MS. FIDDIAN-GREEN: Yes.

MR. LEARMONTH: – on an annual basis. And then rather than just accepting it, you would recommend that Nalcor verify it to the extent that that was possible?

MS. FIDDIAN-GREEN: Yes.

MR. LEARMONTH: Okay.

MS. FIDDIAN-GREEN: And likely at onboarding –

MR. LEARMONTH: Yeah.

MS. FIDDIAN-GREEN: – I'd initially – not necessarily, each year through, but if there were significant changes, you would perhaps update that information, but onboarding, yes.

MR. LEARMONTH: Okay, thank you.

Now we're on page 26 of the report, the fourth topic: "Recording of Daily Work Hours." Could you take us through that topic, please?

MS. FIDDIAN-GREEN: I can. So let's stay in the PowerPoint. I'll just go to the next slide.

So this is the fourth and final area that we looked at in doing this additional scope of work and in this report. And the background information that was provided to us included that it was suggested that employees had been paid for time not worked, through the

falsification of time records such as time sheets. So that information came forward, we designed procedures, and the – again, we were looking for the potential for wider spread abuse as opposed to specific allegation information.

However, in January we received that package of anonymized letters, and there was specific information in there that informed this section of the mandate. The letters specifically noted, and we – there was a lot – there was – there were several letters, as I'd said at the front end. We needed to and we did use information when it was specific and relevant and related to this section of our work.

So that what we pulled out of that was that the letters specifically noted certain individuals, two, who were leaving site early even though that they were billing for a full day's work, and there was enough specific information there that we could follow that up. The allegations included charging for hours never worked and not swiping in and out when entering or leaving the site.

MR. LEARMONTH: (Inaudible.)

MS. FIDDIAN-GREEN: Okay?

So, at page 26 now of the report is where we started providing an overview of the – our understanding of the policy, of the process and the background. We understood through the interviews and the documentation review that we did, that there was a process with similarities but different for each of Nalcor employees – sorry, there was a process for Nalcor employees to record their time and get their time sheets approved, a different process for the independent consultants, the independent contractors who were employed directly with Nalcor, and then the individuals who were working through the vendors that – the craft labour if you will, and how that time got recorded and the time sheets prepared and then billed through to Nalcor.

So there was a different process for each, and we worked to understand that process. And then in the testing that we did, we were walking through each of the different – okay?

We learned that as part of the process, that the – the finance function (inaudible), that there was a

payment certificate approval process, so that as – and in particular those larger invoices for the craft labour of a vendor came in, that there was a process around what would be done with that package that was – it was actually prepared and managed, that payment certificate approval process, people were working on a weekly basis and it was rolling up to a full month so that that could be reviewed and put into the accounting for approval, for payment approval, okay?

So, in – when we have specific findings or observations, I'll take you through that in detail when we get to that section.

We found as well that internal – this was also an area, as I'd said at the beginning – that internal audit – the internal audit function of Nalcor had done work on. In late October 2017, the internal audit group had done a Muskrat Falls time-sheet review and that that work had actually been initiated as a result of anonymous allegations which we came to understand were not necessarily same but very similar to the allegation information that we had received. Okay?

And I think that was the – I think it was a lengthy report by Internal Audit, but that was the only piece of work that they had done in this area.

So what we did, the procedures that we designed – if I share that with you in a high level before getting to the findings and the observations – we worked to obtain the Muskrat Falls site – what we called the swipe-card data, the entry and exit data for the full calendar year 2017. And we performed some data analytics on that data, looking for individuals that the patterns didn't make sense to us, based on our understanding of a standard 10 hours a day for most of the workers on that site.

And, we knew – and we had learned that there was – I'm gonna take you through – that there was a specific individual contained in the allegations where the swipe-card data had been informative to understanding that person's role and that there was actually decisions made and there was an individual who was removed from the project, based on analysis work that Internal Audit had done.

So we knew that this type of analysis had been helpful in prior work that Internal Audit had done, but we done – we did different and separate work, and we were looking to see if we could find other individuals who also we needed to have a good look at and ask questions about to see if there would be other individuals who had – would be similar to the specific individual who had been removed from the project.

We – there were many people who worked on the project. There was a lot of data in that file. But we started with a sample of 10, specifically, that we had identified that they're – the patterns in the entry and exit work, we didn't – we had questions about, and then the team – we actually added on another, so we ended up having a sample of 11 that – and I'll take you through the details, okay.

We had – in our interviewing of the Nalcor employees, we had specific questions regarding this area of the mandate. And one of the individuals that we reviewed and – we learned a good level of detail about this process, particularly for the craft labourers. We interviewed the contract administrator for the Astaldi contract. We had lots of follow-up and a back-and-forth.

So, if we went, now, to the PowerPoint, I'd like to take you through the specific findings and observations that we had based on the work that we did.

So, we found in our review of the work that had been completed by Internal Audit – and that work, it's my understanding, that it was initiated based on tip information that had come into Nalcor, that there was a recommendation by Internal Audit to do further analysis work quarterly – that was a suggestion – on the swipe-card data, and that Internal Audit's work in the area that was initiated as a result of the tip, had identified issues with the billing for one specific person.

And that one specific person was – it was related to the tip information, so it wasn't just a data analysis that lead to that, it was the tip information. But that Internal Audit's work – to analyze the data based on the tip and to look at that – had resulted in questions raised around the billing, and that there was – our understanding

of what happened is that individual was removed from the project, and that Nalcor is in a process to follow up with the vendor, for the hours that were billed for that person because they're not satisfied that those were worked hours.

So, the recommendation that Internal Audit provided to do that type of analysis on a quarterly basis was – we found that it was not followed up. The business did not take on – take that on; however, Internal Audit informed us that that was a suggestion and it remained a business decision as to whether or not that would be done.

I would like to note here that while this type of analysis wasn't part of the formal process that Nalcor had to review, there were two things that we learned that were quite relevant to this. One was that as part of the approval process for the larger contracts on that – on a monthly basis, for the hours worked for individuals, part of – the formal process did include that the contract administrators had to work with the individuals for the contractor on site to check that the hours coming through to Nalcor equated to the hours that the contractor was putting through their payroll. So, they weren't just receiving, you know, this thousand hours; they were making sure that the payroll, the payroll function – the weekly payroll by the contractor was actually pushing out that many hours – paying for that many hours and agreeing it. That was a formal part of the process. We learned that from the – from several people that we interviewed.

And the second point that I wanted to share is that we – while it wasn't a part of the formal process, the contract administrator for the Astaldi contract informed us that he did use the swipe card data to vet and do his review of that contract, as he was receiving information on a weekly basis as it was rolled up to the monthly invoice.

So, it's not – we do not know if all of the contract administrators used that process, but we do know that the Astaldi contract administrator included it as part of his process, okay? So that was our first finding that that recommendation was not formally implemented by Nalcor.

Our analysis of the swipe card data identified a significant number of individuals with irregular

days or characteristics, as I said, that we wanted to follow up and ask, you know: Why is this this pattern not immediately making sense to us, you know, two weeks on site, two weeks off, like, 10 hours every day? Why does it look like that there's a lot of in and out or short days?

So we went further (inaudible). For the sample that we selected, to dig into that and to understand, three of the 11 – three of the individuals were Nalcor employees and we were able to – we requested and we looked at their – the specific role descriptions for those individuals. And we, ourselves, looked to see if, based on that role description, the hours worked made sense to us.

We identified that based on the role description that there would be some off-site duties. They were required to have some duties off of the site; it wasn't exclusively on the site. So that appeared reasonable to us, but we also pushed that back to Nalcor to receive their response and understand from them if that made sense to them as well. And then the details are up here and it's in the report, but for each of the three individuals, Nalcor was able to come back in detail and tell us why they felt that that pattern, which was not the straight 10 hours, day over day over day, made sense and that it aligned with the role descriptions as we had.

What's on the screen right now: These are the two specific individuals that were included in the allegation, the anonymized letter allegation information that came forward to us. We – the work that is up here and it's in our report, it's work that we did ourselves. We found out, as we were going through, that the Nalcor Internal Audit function had already done work in this area, specifically regarding these two individuals. So we didn't know that immediately at the beginning, but we found out that they had done very similar type work.

We – individual number one, I'm not sure how much detail you want me to go through outside, just I'll go through it quickly and see. So the – so these are the individuals that there was specific allegation information. For Individual number one, based on the swipe card data available, that person was on site 51 per cent of the time for less than 9½ hours. And for 28 per

cent of their time, they were on site for more than 9½ hours, based on the swipe card data.

For the second individual, it was 85 per cent of their time that they were on site less than 9½ hours, and it was for 10 per cent of their time that they were on site for more than 9½ hours. So the swipe card data did align with the information that was received in those anonymous letters. Those letters were saying these people are not on site if you go look. We looked. We found out that Internal Audit had also looked. We looked and we could see that for a majority of their time they were on site less than 10 hours a day.

Can we have the next one?

So we looked at this. We had our understanding and we needed to hear what Nalcor was going to say on this, and at the same time we were learning what Internal Audit had done. So we came to understand that for Individual number one that this individual was actually dismissed from the project and that it was based on this swipe card data review that had been done by Internal Audit. And we came to find out that this was the same individual who had actually – that there was some confusion regarding the Living Out Allowance in the first area that we had looked at.

So this individual – it was found that this individual's role was mainly to be on site and that the hours, as per the swipe card data, just did not make sense. There was no requirement that they be on and off site or have other duties and it did not align with the billings that had actually come through to Nalcor. We understand that Nalcor is continuing to follow up with the contractor on those billings and to resolve that issue – that dispute, okay?

We were informed that for Individual number two, that that role requires a significant amount of off-site work and that the hours were considered reasonable and in line with Nalcor's expectations. We did not rely on but I believe we understand, through the Internal Audit work, that there was some discussions and warnings and communication with staff, but this – we didn't take this particular one any further, okay?

We did need to finish out the testing work that we had designed and that we were doing. And we're – we got to selecting five specific individuals and this was out of the 11 that we had initially judgmentally selected. And we asked Nalcor to provide us with invoices for June 2017. So we wanted to see the amounts that were actually invoiced through by those contractors, because we had the swipe card data, we want to see what that looks like. And we still continued to have some questions, we needed to understand that.

And so now we work with Nalcor to understand and we have got the results – the detail, I have them on screen and I have them in our report. But, basically, for each of the five individuals, that the very detailed explanations that we got to, allowed us to understand why that individual's pattern of entry and exit swipe card data didn't align to 10 hours day over day over day, and the explanation in each case appeared reasonable to us, okay? And it was different in each case, and I'm happy to go through that if people have questions.

So it was our conclusion, overall for this recording of the daily work hours, that based on the inquiry review and the testing work that we performed that there were no unexplained discrepancies regarding the recording of the daily work hours, the process to review that, invoice it through to Nalcor and the payment of those hours, other than for individual number one that was – that we had – I had described and put through in the report. And that was the individual that we'd found through the process that Nalcor had actually done before we even started our work, and they had dismissed them from the project, okay?

And they – the individual was an employee of a contractor –

MR. LEARMONTH: Contractor.

MS. FIDDIAN-GREEN: – so they couldn't be – it wasn't theirs – it wasn't up to them to dismiss that person. Okay?

MR. LEARMONTH: Oh right, so now we're on page 32.

MS. FIDDIAN-GREEN: Yeah.

MR. LEARMONTH: And the final topic covered in the report is: “Understanding Nalcor’s Internal Audit function.”

MS. FIDDIAN-GREEN: Mm-hmm.

MR. LEARMONTH: Could you take us through that, please?

MS. FIDDIAN-GREEN: I can.

So I just want to start by being clear that while we’ve included information on the work done by the Nalcor Internal Audit, we learned – often in parallel to the work that we were doing – about the level of detailed work that Nalcor had done in each of these areas. We didn’t know it at the front end. We didn’t have that understanding. We did not rely on Nalcor’s work.

Given that the information that informed our mandate was coming forward and we were given that package of letters, we felt that we could not rely on the work of Internal Audit. Not because there was anything wrong with it, but that we had to design procedures, conduct those procedures and be able to report on the results independently.

So we – the Internal Audit function of Nalcor, we learned that they have an ongoing plan. I think that it’s a five-year plan. And each year they update that plan and they inform the senior team and the board of Nalcor what they have lined up for that year in terms of their focus; higher priority areas of focus, lower priority areas of focus. They’re speaking to those groups to understand what those groups might want Internal Audit to focus on.

And, then, we were actually provided with a listing, a full listing – I believe it to be a full listing – of all the work that they have done. And we went through to identify the reports and the work and the memos and I think we have them listed here on page 33 or our report –

MR. LEARMONTH: Thirty-three.

MS. FIDDIAN-GREEN: – that were relevant to the work that we were undertaking. And we noted for informational purposes that there were two groups that, throughout the project, had

looked at the work of Internal Audit and opined on it.

And so one of those was in 2013 the Institute of Internal Auditors had given the Internal Audit function their highest rating out of three, which is that it generally conforms to the requirements. So that was a positive rating by the Institute of Internal Auditors in 2013 and that the – in 2015, that Emera had conducted a review of the Internal Audit function and provided a positive comment on there, the review of the work done.

MR. LEARMONTH: So those are two very positive reports on the internal audit work maintained by –

MS. FIDDIAN-GREEN: Yes, it is.

MR. LEARMONTH: – Nalcor, correct?

All right, that takes us to the end of the report. And I’ll now ask the Commissioner to call upon counsel to ask questions arising from your evidence and your report.

Thank you.

THE COMMISSIONER: Okay.

All right, Province of Newfoundland and Labrador.

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: Nalcor Energy.

MR. SIMMONS: Thank you, Commissioner.

Good morning, Ms. Fiddian-Green.

MS. FIDDIAN-GREEN: Good morning.

MR. SIMMONS: Dan Simmons for Nalcor Energy. Most of my questions are actually just going to be about some clarification points regarding the procedures that Grant Thornton used.

First of all, though, you’ve mentioned receiving the package of anonymous letters in January of 2019. And I believe you said that some of those actually dated back to 2016 there?

MS. FIDDIAN-GREEN: That's correct.

MR. SIMMONS: So that doesn't sound too mysterious. Were these – what was this – where were those letters directed? Were they letters that were directed to the Commission in later years or to Grant Thornton, or were they things that had been directed originally to Nalcor? Do you know?

MS. FIDDIAN-GREEN: It wasn't clear to us in each case.

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: Some of the letters did not have a – some of them said: Dear Sir.

MR. SIMMONS: Mmm.

MS. FIDDIAN-GREEN: We think the – several of them did not have an addressee on them.

MR. SIMMONS: Mmm.

MS. FIDDIAN-GREEN: But one of them, I think the 2016 one, looked to us like it had been provided to – directly to Nalcor.

MR. SIMMONS: Right.

MS. FIDDIAN-GREEN: Yeah.

MR. SIMMONS: And you've told us as – that as you worked through your audit process you became aware of the work that Nalcor Internal Audit had done, pretty well on all the same things that you were looking into.

MS. FIDDIAN-GREEN: Correct.

MR. SIMMONS: And did you become aware as to whether or not the internal auditors at Nalcor had also been aware of these anonymous letters and the material that was raised in those anonymous letters?

MS. FIDDIAN-GREEN: Yes. I don't know if they – I did not go through a process to see if they had exactly the same letters that we had.

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: But in the reviewing the work, the reports and the memos –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – of Internal Audit, it became clear to me that they had most, if not all of the information that became available to us in the letters, that they had it as well.

MR. SIMMONS: Okay and that was going to be my next question as to whether you did have all the Internal Audit reports available to you. You've identified them but you actually had the reports, the final reports, prepared by Internal Audit on those topics as well.

MS. FIDDIAN-GREEN: Yes, we did.

MR. SIMMONS: Correct?

MS. FIDDIAN-GREEN: Yeah.

MR. SIMMONS: And you'd also mentioned on your way through that Nalcor has something they call an Ethicsline, which is a means for employees of the company and others to make anonymous reports. And am I – do I understand correctly that you would have had the Ethicsline reports available to you for your reference as part of this audit as well?

MS. FIDDIAN-GREEN: We had information from the Grant Thornton CARE, very similar to the Ethicsline. And I – but we – I did not have a specific report out of that Ethicsline. I am aware that the Internal Audit work specifically referenced the Ethicsline reporting, and so then that was available to me, yes.

MR. SIMMONS: Okay.

Because before you became involved in doing your audit, there were copies of Ethicsline reports that had been provided to Grant Thornton as part –

MS. FIDDIAN-GREEN: Yes.

MR. SIMMONS: – of the earlier audit, and I'm just wondering whether those specific documents had found their way to you as well?

MS. FIDDIAN-GREEN: Not the underlying Ethicsline reporting, but –

MR. SIMMONS: Okay.

MS. FIDDIAN-GREEN: – a summary of the issues, yes, it was.

MR. SIMMONS: Okay. Good, thank you.

So you've – there's four different areas that you've looked at here; the first being the Living Out Allowances. And just – so maybe if we can understand clearly what the Living Out Allowance was intended to be, my understanding is that if someone was employed on the project and was assigned to a place of work that was a specified distance away from their principal residence, and they weren't living in the camp –

MS. FIDDIAN-GREEN: Yes.

MR. SIMMONS: – they qualified to receive an allowance that they could use to find a place to live in Goose Bay, we'll say.

MS. FIDDIAN-GREEN: Correct.

MR. SIMMONS: Okay. So that's basically –

MS. FIDDIAN-GREEN: Yeah.

MR. SIMMONS: – what we're talking about. And there's a specified distance, so that if I live –

MS. FIDDIAN-GREEN: I think it's 125 kilometres.

MR. SIMMONS: – 125 kilometres.

MS. FIDDIAN-GREEN: Yeah.

MR. SIMMONS: So if my ordinary place of residence is Deer Lake and I have to work at the site and I'm not living in the camp, I qualify for the allowance. Yeah, that's –

MS. FIDDIAN-GREEN: Yes.

MR. SIMMONS: – the basic –

MS. FIDDIAN-GREEN: Yeah.

MR. SIMMONS: – rules. Okay, all right.

So the processes that Grant Thornton used to do a check on that are described on page 10 of your report, which is at P-04335?

MS. FIDDIAN-GREEN: Mm-hmm.

MR. SIMMONS: So maybe we can go there for a moment, please, Madam Clerk, if we scroll down – and a little more, and we can stop there.

So, first of all, when you're auditing for things like this, I understand that typically you would do some sort of sampling process so that –

MS. FIDDIAN-GREEN: Mmm.

MR. SIMMONS: – you get a sample – and so you don't have to review every item that you're auditing, you select a sample, review those and – to see if there's problems that would warrant looking further at it. So, generally, that's –

MS. FIDDIAN-GREEN: Yeah.

MR. SIMMONS: – the concept.

MS. FIDDIAN-GREEN: Start with a population first and then sample. Yes.

MR. SIMMONS: Right.

And we sometimes hear of approaches being taken that are statistically based, where you get a large enough sample to be statistically significant, so reliable, but that it's drawn randomly and you'd do it that way. That's sometimes the way it could be done.

MS. FIDDIAN-GREEN: Yeah we did not select a random sample.

MR. SIMMONS: Right.

MS. FIDDIAN-GREEN: We selected a judgmental sample.

MR. SIMMONS: Right, and this was –

MS. FIDDIAN-GREEN: Yeah.

MR. SIMMONS: – going to be my question, because there's a reference here to the sample being judgmentally selected.

MS. FIDDIAN-GREEN: Yeah.

MR. SIMMONS: So what criteria do you apply, then, when you select the sample? And, specifically, what I'm interested in: Do you use your judgment to try and direct the selection to find where the problems probably are?

MS. FIDDIAN-GREEN: Yeah, we do. We do.

MR. SIMMONS: Hmm.

MS. FIDDIAN-GREEN: We are looking – and in each case, each of these, we are looking for the ones that, for some reason, look interesting or there's something that –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – might lead to a question because we want to see if we can find the answer to the question.

But part of what we looked at in selecting that sample is we wanted to make sure that we were getting individuals across the different relationships.

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: And not just Nalcor employees –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – not just the independent consultants, but making sure that we're getting a mix across that (inaudible).

MR. SIMMONS: So what you're kind of doing is you're trying to tease out the places where there's most likely to be a problem and make sure you're looking across the different types of relationships.

MS. FIDDIAN-GREEN: Yeah.

MR. SIMMONS: Yeah, okay.

And the outcome of that sampling work, to get to the end, was that you didn't find any cases of anyone receiving a Living Out Allowance that they weren't properly entitled to.

MS. FIDDIAN-GREEN: We did not. We only found four individuals where the amounts paid to them –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – didn't match to that assignment condition, those criteria. And the explanations for each of those four all made –

MR. SIMMONS: Right.

MS. FIDDIAN-GREEN: – they made good, reasonable sense to us.

MR. SIMMONS: Okay.

And the second area you looked at was the provision of personal protective equipment, PPE, and small tools. And from reading your report, I gather that wasn't a case where you did a sampling process; it was more of an investigative process to understand what Nalcor's responsibility would be for providing those items, how significant the costs were and what sort of control where in place to govern it?

MS. FIDDIAN-GREEN: The answer is yes, but we hadn't intended that. We wanted to get a listing or to understand how Nalcor was tracking their purchases –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – and what that looked like, but what we found out is that that listing didn't – that kind of tracking wasn't done. So we had to change and adjust, and we looked at all the cost in that account –

MR. SIMMONS: Right.

MS. FIDDIAN-GREEN: – and we didn't look at every single invoice, but we dug into that –

MR. SIMMONS: Sure –

MS. FIDDIAN-GREEN: – to –

MR. SIMMONS: – good, good.

MS. FIDDIAN-GREEN: – understand what was recorded.

MR. SIMMONS: Right. And one of things you discovered in doing that, of course, was that the vast majority of small tools and PPE are actually bought by the contracting companies, the construction contractors, to be provided to their employees and are not provided by Nalcor directly.

MS. FIDDIAN-GREEN: That's correct.

MR. SIMMONS: Right.

So it's a relatively small portion of all the tools onsite and the PPE that Nalcor would have been responsible for tracking and (inaudible).

MS. FIDDIAN-GREEN: That's my understanding. Yup.

MR. SIMMONS: Okay.

MS. FIDDIAN-GREEN: And that's what we found out from the review, yes.

MR. SIMMONS: Good. Okay. Thank you.

And then the third area was the non-arm's-length contractors. This – the work that you've – that your people have done and that you've done is described starting on page 24 of this report, and this is another case where I note that a sample was judgmentally selected.

MS. FIDDIAN-GREEN: That's correct.

MR. SIMMONS: And that's, I think, how you narrowed from the approximately 200 total number of contractors, first, down to 43.

MS. FIDDIAN-GREEN: We had a list of 200 –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – and we went to the 43. And that judgmental sample, if that's your question –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – how do we choose –

MR. SIMMONS: Yes.

MS. FIDDIAN-GREEN: – those, we're looking for privately held companies where maybe the ownership information might not be immediately be clear, we are looking for companies that have – it's a numbered company, so maybe we know less about what – who that company is and we want to explore that –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – and when we got to the 43, we asked questions about – because we only – we started with a list, now we want to understand Nalcor's relationship with that company, and then we got down to the smaller sample where we did the very specific work.

MR. SIMMONS: Okay. So, again, this is a very directed approach, designed to try and find the places where there might be a problem.

MS. FIDDIAN-GREEN: That's – yes, that's why we designed it. Yup.

MR. SIMMONS: And the result of all that was that you didn't actually identify any conflicts of interest among the small number that you focused on at the end.

MS. FIDDIAN-GREEN: We identified individuals –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – associated with companies who were unknown to Nalcor –

MR. SIMMONS: Right.

MS. FIDDIAN-GREEN: – but we did not identify any further conflicts of interests, and the conflicts that we knew about –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – came through that work that the internal audit had done.

MR. SIMMONS: That the internal audit had done. Right.

MS. FIDDIAN-GREEN: Yup.

MR. SIMMONS: And, you'd said that the source you used for looking for names associated with these contractors that might not have been known to Nalcor were publicly available records.

MS. FIDDIAN-GREEN: We did public records research, yes.

MR. SIMMONS: So was that primarily the records at the Newfoundland and Labrador Registry of Companies?

MS. FIDDIAN-GREEN: It would've included that but not exclusively. No.

MR. SIMMONS: Okay. And so where else would you have looked other than at the Registry of Companies, 'cause that's where the official, I'll say, filings are as to who the directors are of companies.

MS. FIDDIAN-GREEN: Well, we actually run as part of our practice, a group that we call – we called our IR team, the Investigative Research team.

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: And, we – so there's – and I believe in this case we only used public records research, but in – sometimes you can purchase, you can buy into a database with people who consolidate publicly available information.

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: So we're looking broadly. So these are internet searches. This is information about individuals who are associated with those companies that if you took the time to go look in the external – the outside world, publicly available information, it would become known to you.

MR. SIMMONS: Okay.

MS. FIDDIAN-GREEN: So it's not as simple as going to the company's registry. It can include PPSA information. It can include credit information. It's broader than just the company registry.

MR. SIMMONS: So it's publicly available, not necessarily public authority or public registry –

MS. FIDDIAN-GREEN: Right.

MR. SIMMONS: – information that you're looking at.

MS. FIDDIAN-GREEN: Right. Correct.

MR. SIMMONS: Okay. 'Cause I know in the case of registry of companies, it's not an area I do work in – other lawyers in the room will know more about this than me – but I understand that information that's provided to the Registry of Companies is the information that's submitted by the company. And I'm not aware of any independent verification process that the Registry of Companies engages in –

MS. FIDDIAN-GREEN: Mm-hmm.

MR. SIMMONS: – beyond relying on the information that's submitted to that. I –

MS. FIDDIAN-GREEN: That's correct.

MR. SIMMONS: – don't know if you know. Yeah.

MS. FIDDIAN-GREEN: Yeah. That's correct.

MR. SIMMONS: Okay. All right. And in one of the recommendations that you've made here in relation to this is that it would be better practice if the contractors were required annually to make a positive affirmation that there's no conflict of interest. I understand that.

From the work that you did and looking at the arrangements with those contractors, did the contractual arrangements include an obligation for them – not annually – to say we have no conflict of interest, but an obligation on them to report conflicts if they had one?

MS. FIDDIAN-GREEN: So the short answer is yes –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – The – that code of conduct –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – and that the – yeah – I don't have the official – the code of conduct and the ethics program that Nalcor had required, and there was an ask, to the individuals it was provided to –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – to self-declare.

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: And the – in the – Nalcor informed us, the approximately – I think they used the word about – 100 main contracts for goods –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – and services, that there was conflict of interest language in that contract. So again, articulating that need to self-declare.

MR. SIMMONS: Right.

MS. FIDDIAN-GREEN: So there was some language around that.

MR. SIMMONS: Right.

So it's not a situation where there was no obligation on companies to report if they had a conflict of interest. Your suggestion is that there should be a more positive obligation on them to annually come forward and say: We don't have a conflict of interest.

MS. FIDDIAN-GREEN: Absolutely.

One of the conflicts of interests that we learned about – through reading the work done by Internal Audit.

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: And I understand the work done by Internal Audit came through tip information to Nalcor, which –

MR. SIMMONS: Yes.

MS. FIDDIAN-GREEN: – that information didn't come to us in the letters. That's why I know –

MR. SIMMONS: Mmm.

MS. FIDDIAN-GREEN: – there was some differences.

MR. SIMMONS: Mmm.

MS. FIDDIAN-GREEN: It was reviewed; it was looked at by Internal Audit. It was determined that a conflict did exist and the individual said, well, I told someone, I can't really remember who I told and nobody could remember being told.

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: So that speaks to the need to have a program –

MR. SIMMONS: Right.

MS. FIDDIAN-GREEN: – to positively affirm.

MR. SIMMONS: Right. And that report, I think, independent audit report, was submitted and may even be an exhibit.

So the fourth area then, was the audit of the daily work hours. And I gather that this involved looking at not just people employed directly by Nalcor as employees or contractors, but to some extent those people who were working for the construction contracting –

MS. FIDDIAN-GREEN: Yes.

MR. SIMMONS: – companies on site as well?

MS. FIDDIAN-GREEN: Yes.

MR. SIMMONS: Okay.

Now, just a word about swipe cards so we understand this. Is it your understanding that the

Muskrat Falls site is a closed site so that there is an access road with a gate, and when you get in and out, everyone swipes a card and there's an electronic record of when they're in and when they're out.

MS. FIDDIAN-GREEN: That – my understanding is that's how it should be, yes.

MR. SIMMONS: Yes, yeah.

It's like an old-fashioned punch clock – punch-card clock, where you went to work and you punched in. Okay.

And the approach –

MS. FIDDIAN-GREEN: But I would just say, further, we were informed all along the way –

MR. SIMMONS: Yeah.

MS. FIDDIAN-GREEN: – that while it's like a punch card, it wasn't meant or designed to be that punch card.

MR. SIMMONS: Oh, okay.

MS. FIDDIAN-GREEN: That was made very clear to us. So we understood that we – and I think you'll see it through the work that we did, that the –

MR. SIMMONS: Mmm.

MS. FIDDIAN-GREEN: – to the extent that the swipe card data indicated however many hours –

MR. SIMMONS: Mmm.

MS. FIDDIAN-GREEN: – that raised a question for us that we had to go get answered, not an immediate conclusion that the person didn't work enough hours.

MR. SIMMONS: Yes.

MS. FIDDIAN-GREEN: That that – it wasn't meant to be a recording of people's time.

MR. SIMMONS: Yeah.

MS. FIDDIAN-GREEN: It was designed for –

MR. SIMMONS: So it was essentially an audit tool for you.

MS. FIDDIAN-GREEN: – for safety.

MR. SIMMONS: Yeah.

And the other point being that, aside from the Muskrat Falls site, there are other work sites, as you are aware of, that would not have –

MS. FIDDIAN-GREEN: Mmm.

MR. SIMMONS: – been controlled –

MS. FIDDIAN-GREEN: That data.

MR. SIMMONS: – by the swipe card process. I'll say one, for example, if you are familiar, the North Spur work was on the other side of the river and was outside of this area of control.

MS. FIDDIAN-GREEN: Correct.

MR. SIMMONS: Okay.

And the approach – if we look at your report, we see that the approach you took to sampling for daily work hours was also to select a judgmental sample, but that came after you did something called data analytics –

MS. FIDDIAN-GREEN: Yes.

MR. SIMMONS: – on the swipe card. So what was the data analytics?

MS. FIDDIAN-GREEN: Well, we received that data file for –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – the calendar year 2017 –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – January to December. I believe there were just over 7,500 – there was data for over 7,500 different swipe cards.

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: The reason I'm not saying people is because if somebody lost a card and got another card, we might have the same person signed in. You'd have to figure all that out. I think there was over 255,000 lines of data in there.

MR. SIMMONS: Mmm.

MS. FIDDIAN-GREEN: So in ingesting that data and getting it set up in a way that we could look at it – because we weren't using it the same way that Internal Audit have; they went in, they had a person, they looked at that person –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – we had to get the data in a way that we could now see if we could identify individuals who had a pattern –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – based on their own entry and exit that didn't make sense to us. So we were told that people had – 10 hours a day was standard, but there would be some people who would be on and off the site and be doing different things at different sites, as you've indicated. And that we would likely see regularly that people would be on for a couple of weeks, they'd be off for a couple of weeks.

So we were – the judgmental sample that we selected, we were looking now for individuals who – on their own specific data for this person, it didn't make sense.

MR. SIMMONS: Right.

MS. FIDDIAN-GREEN: We had to sort out and find a sample amongst all the data.

MR. SIMMONS: So, again, this wasn't a randomly selected sample. This was a –

MS. FIDDIAN-GREEN: It was not random.

MR. SIMMONS: – very directed sample to try and find the most likely problems –

MS. FIDDIAN-GREEN: We were looking for –

MR. SIMMONS: – and identify them.

MS. FIDDIAN-GREEN: – for data –

MR. SIMMONS: Mm-hmm.

MS. FIDDIAN-GREEN: – that was indicative of what we'd already knew Internal Audit had used and –

MR. SIMMONS: Right.

MS. FIDDIAN-GREEN: – relied upon in that – in regards to that individual number one who'd ended up being dismissed.

MR. SIMMONS: Okay.

MS. FIDDIAN-GREEN: We were looking for people like that.

MR. SIMMONS: And aside from individual number one who'd been dealt with, if I understand correctly, you didn't ultimately find anyone else from that analysis that had similar problems.

MS. FIDDIAN-GREEN: We did not find any discrepancies that were – that had any – that had explanations that weren't reasonable requests.

MR. SIMMONS: Good, yeah.

Thank you very much. I don't have any other questions.

THE COMMISSIONER: Thank you.

Concerned Citizens Coalition.

MR. HISCOCK: No questions.

THE COMMISSIONER: Thank you.

Edmund Martin.

MR. SMITH: No questions.

THE COMMISSIONER: Kathy Dunderdale is not here.

Former Provincial Government Officials.

MR. T. WILLIAMS: No questions, Mr. Commissioner.

THE COMMISSIONER: Julia Mullaley, Charles Bown.

Robert Thompson is not here.

Consumer Advocate.

MR. PEDDIGREW: No questions, Commissioner.

THE COMMISSIONER: All right.

Former Nalcor Board Members.

MS. BUIS: No questions, Commissioner.

THE COMMISSIONER: Okay.

Redirect, Mr. Learmonth.

MR. LEARMONTH: No redirect.

THE COMMISSIONER: All right, thank you, Ms. Fiddian-Green.

I appreciate your work on this and you're free to go. Thank you very much.

MS. FIDDIAN-GREEN: Okay. Yeah.

THE COMMISSIONER: We'll take a break now as we set up for our next witness here this morning.

CLERK: All rise.

Recess

CLERK: Please be seated.

THE COMMISSIONER: All right.

Just before we begin the next witness, I want to make an announcement this morning related to the plans for Phase 3 of the Inquiry.

I indicated some time ago that aside from looking specifically at what transpired with regards to the project, that I would also like to look a little bit forward to see whether or not there are some topics that we could get into that

fall, certainly, within the Terms of Reference, or at least close to them, that could provide us some future assistance. So, as a result, and because of timing, obviously, we have basically two weeks left for hearings if I'm going to be able to get this report completed and provided in time, which is what my plan is.

So, we've decided to – or I've decided to ask that four main areas be covered. First of all, I want to look at the financial effects of the Muskrat Falls Project, at least as seen by ratepayers and taxpayers. So, as a result of that, the Commission has arranged for a panel of witnesses to provide presentations related to paying for Muskrat Falls from increased power rates and/or general tax revenue.

The panel of witnesses will include Denise Hanrahan from the Department of Finance; Dennis Browne, who is the Consumer Advocate; Professor Brandon Schaufele from the Ivey Business School at Western University; Jerry Earle from NAPE; Lorraine Michael; Peter Alteen from Newfoundland Power; and Kevin Fagan from Newfoundland Hydro.

Following that in topic number one is a topic related to preparing for 2041 – the time when the contract related to the Churchill Falls – the Upper Churchill Falls plant will end. And the Commission will then – will be exploring how the province and Nalcor can prepare for 2041 and the expiry of the 1969 agreement, including an examination of potential for exports, issues of load forecast and strategy. The witness that we have brought in – or will be bringing in for this is Pelino Colaiacovo who is with Morrison Park Advisors Inc.

I have asked him as well – or asked counsel to ask him, as well, to provide some information related to prior load forecasting and system planning at Newfoundland Hydro as well as the CPW – done some analysis on the CPW analysis that was done to support the Muskrat Falls Project's sanction.

The next area is the area of energy regulation in the Province of Newfoundland and Labrador, and the Commission will be hearing evidence relevant to the province's energy regulation framework and energy legislation. And the witness that we have contracted to provide us

with information is a gentleman by the name of A. J. Goulding from the London Economics International LLC.

With regards to the third area, the managing of large-scale publicly funded projects, obviously this is key to the Muskrat Falls Inquiry. This topic will supplement earlier evidence and cover governance schemes for large-scale publicly funded projects in other jurisdictions. And specifically we have contracted Professor Ole Jonny Klakegg from the Norwegian University of Science and Technology, who will be providing us with information related to the management and governance of large-scale projects around the world.

The fourth area is the role of the civil service, record-keeping, the duty to document and document production. This topic will cover questions about the role of civil service, record-keeping, whether there should be a duty to document and document protection.

The witnesses will include Professor Mel Cappe from the Munk School of Global Affairs and Public Policy at the University of Toronto; Judge Donovan Molloy, who is the former – or formerly was employed here in the province related to the ATIPPA legislation; associate professor Kelly Blidook from the Harris Centre at Memorial University; and Gobhina Nagarajah, one of our Commission counsel, will be providing a review of the ATIPPA report that was done in 2014.

I also want to announce this morning that the Commission has engaged the Leslie Harris Centre of Regional Policy and Development, the Harris Centre at Memorial University, to facilitate two consultation sessions that will be open to the public and to the media. The purpose of these sessions is to gather comments from members of the public who do not have standing at the Inquiry, but who would like to provide input on matters within the Commission's mandate. There will be two sessions: one will be on July 30, 2019, here at St. John's, and the second session will be on August 8, 2019, at Happy Valley-Goose Bay. Further details on these public sessions will be available on the Commission's and the Harris Centre's website, and we will be doing other publication of those dates as well.

Just to add, with regard to Phase 3, while not directly related to looking to the future, it has some relationship to that, as a result of the decision of the Quebec Court of Appeal, with regards – the recent decision of the Quebec Court of Appeal, there remains a question in my mind related to effective water management. As a result, I will be – as I indicated earlier this week, on the 26th of July, I will be reconstituting our panel on this topic of water management, or the impacts on water management of the Quebec Court of Appeal's decision. We are working now to get that firmed up with regards to who the actual witnesses will be.

Again, my thinking is that we will continue to do this in camera. This would be the one area that I am concerned about that I do not want to in any way jeopardize the position of the Province of Newfoundland and Labrador, Nalcor Energy or the people of the province. So as a result, I would like to hear that evidence in camera. I have indicated already that I'm open to hearing from parties that – with regards to their position on that. I haven't heard anything as yet, but I suspect I will in the not too distant future if there is any concern or comment to be had, and I certainly will consider it.

So that having been said, that's where we're going. Obviously we have to finish Phase 2, and our next witness is Mr. Marshall. So, Mr. Marshall, I'll ask that you stand and you can indicate whether you wish to be affirmed or alternatively whether you wish to swear.

MR. S. MARSHALL: Sworn.

THE COMMISSIONER: Sworn – just take the (inaudible) your right hand, please.

CLERK: Could you take The Bible in your right – thank you.

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

MR. S. MARSHALL: So help me God.

CLERK: State your name please.

MR. S. MARSHALL: Stan Marshall.

CLERK: Thank you.

THE COMMISSIONER: Okay, thank you, Sir. You can be seated.

Ms. Muzychka.

MS. MUZYCHKA: Thank you, Commissioner.

Before we start with Mr. Marshall, I'd like to enter some new exhibits. We have P-04343, P-04352 to P-04360.

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

MS. MUZYCHKA: Thank you.

Good morning, Mr. Marshall.

MR. S. MARSHALL: Good morning.

MS. MUZYCHKA: I'd like to start with you providing a brief overview of your education and work experience. I understand, of course, that you're presently the CEO of Nalcor and you've been in that position since 2016?

MR. S. MARSHALL: That's correct.

MS. MUZYCHKA: And you have a background in engineering and law.

MR. S. MARSHALL: That's correct.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: I graduated from the University of Waterloo in 1972 with a bachelor's degree in engineering – in chemical engineering – and worked for several years in the mining industry and graduated from Dalhousie University in law in 1979, and after a brief period of articling with other firms, joined Newfoundland Power in December of 1979.

And from there, I started off doing legal and regulatory work and eventually became VP of Regulatory and Legal Affairs. When Fortis was established in the late '80s, I was given the task of growing the organization. So I became the VP in charge of corporate development. Then in mid-90s I became president and CEO of Fortis, where I remained until 2014, end of 2014.

Along the way, I was the president, director, chairman of numerous utilities that we acquired. Generally my role was to – as we acquired the utility, to go in and if need be, restructure it. In which case, I usually became the CEO of that subsidiary. If the work was less demanding, I would be chairman for a period, or if not too much work was required, maybe just a director. But I was responsible for those organization as they came to Fortis, and made sure that they were brought into shape.

So, I retired at the end of 2014, and, as you say, came back for – as CEO of Nalcor in 2016.

MS. MUZYCHKA: Okay.

With respect to your seats on the boards, you mentioned that those were in connection with the companies that Fortis had acquired?

MR. S. MARSHALL: Yes, except for two. I was on the board of Toromont, which is a heavy equipment distributor for, I think, 12 years. And when I retired from that, I went on the board of Enterflex, which is a global leader in the manufacturing and supply of gas handling equipment and facilities around the world. So, I'm on the board there currently, and I'm chairman of the HR Committee.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: And on the corporate governance committee.

MS. MUZYCHKA: Right. I was going to ask you that – did you have seats on any other boards currently (inaudible) at that point.

MR. S. MARSHALL: I'm the board of a lot of the subsidiaries of Nalcor, of course. I'm also CEO of CF(L)Co.

MS. MUZYCHKA: Right.

All right. Just for reference, there is a press release at tab 32 of the books – volume 2 – in which Premier Ball announces your appointment to Nalcor as CEO. And in that, there is a backgrounder on page 2 which highlights, in detail, all of the various boards that you've sat on and your experience relating to Fortis.

THE COMMISSIONER: So, this is 04358, and it would be tab 32.

MS. MUZYCHKA: Correct. Thank you.

MR. S. MARSHALL: I'm not sure it captures all of them, but it captures –

MS. MUZYCHKA: It may not.

MR. S. MARSHALL: – a substantial number.

MS. MUZYCHKA: Yes, it's quite detailed. So, you were retired, then, in 2014 –

MR. S. MARSHALL: Yeah.

MS. MUZYCHKA: – and you were still – did you still do some board work at that point, or were you completely retired?

MR. S. MARSHALL: I severed my relationship with Fortis at the end of 2014.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: I'm still a shareholder; that was – I declared that when I became CEO of Nalcor.

MS. MUZYCHKA: Okay.

So, take us to April of 2016, and how you came to be involved in this project – this company.

MR. S. MARSHALL: In early April of 2016, I was at my winter vacation home in Central America and received a call from the Premier. We had a brief discussion where he talked about the problems he was having with Muskrat Falls, in particular, and Nalcor. And it was very general, and he basically said, you know, would you be interested in coming back as being a director or maybe chairman or something like that, and I indicated I would not be.

But after a, sort of, brief discussion, he asked me when I was coming back to Newfoundland, and I indicated towards the end of April, and he asked if I would go and – come and see him, and I agreed to do so. And I think between that period – I was given a particular time, which was I think the last Monday in April of 2016, 9 o'clock in the morning.

And so I went to see him. The meeting went on for about, I suspect, an hour and a half, which is the longest I've ever been in the Premier's office, anywhere. And it was a general discussion again, discussion about, you know, how I could help. For the most part, it centered on governance and, describe it generally, I would say that, Premier, you don't have a governance problem. You have a leadership problem and maybe at some point I could help you, but I'm not looking for a job, don't want to be on the board.

And from there, I'm not sure what happened between Monday morning and Thursday morning when we made the announcement – it's almost a blur – I just remember several things about what went on. I know at one point there were several phone calls. At one point he said, well, can you recommend anybody to be CEO? And I said, no, I can't. And he sort of indicated, well, if you can't, then the choice is you. And I indicated I was prepared to talk to him about that, but I couldn't possibly start before the end of – beginning of June because I had commitments all through May and I was heading back to Belize at the end of the week in – Friday.

And he seemed to be content with that and by Thursday morning it had evolved to the point – but no, no, I had to start right away. So I did. And we had a press conference on Thursday morning. I went from there to the offices of Nalcor, met with the employees, spoke with the employees generally, called a meeting of the executive, gave them what – a list of topics that I wanted to be briefed on when I got back in two weeks, gave them my personal phone number, my personal email and said, I'm always available. But I want – back in two weeks, here are the topics I want to be briefed on.

MS. MUZYCHKA: All right, then. In your interviews – and you just mentioned there a moment ago, that when you spoke with the premier, you felt that Nalcor didn't have an oversight issue, that it was a leadership problem. Can you elaborate a little on that, please?

MR. S. MARSHALL: Well, in the 40-odd years I've been in the business, when people talk about governance, my experience is that – never a governance issue – it's a leadership issue. If

you have a leadership issue, governance can never solve it other than getting a change in CEO.

So it's a general statement. My general experience is that, you know, it starts with the leadership. If you don't have good leadership, all the governance in the world is not gonna solve your problem. If you have good leadership then, generally speaking, governance is not a problem.

MS. MUZYCHKA: Did you find that there was an element of bureaucracy within the organization or dealing with government in terms of how Nalcor was operating?

MR. S. MARSHALL: (Inaudible) an element of bureaucracy?

MS. MUZYCHKA: Yeah.

MR. S. MARSHALL: Absolutely, government is one big bureaucracy.

MS. MUZYCHKA: For government, sure, but in terms of dealing with that, with Nalcor and how the leadership at Nalcor was interacting –

MR. S. MARSHALL: No, I wouldn't describe it as any more bureaucratic than most corporations of that size.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: You have to understand that when I went in there the whole situation was in crisis. The company was in crisis, Muskrat Falls was in crisis, everything surrounding it was in crisis, so it wasn't a normal situation in any event.

And, quite frankly, when I went in there first, I didn't have an appreciation of how much of a crisis it was in. It was only when I got the briefing two weeks later that I realized how severe it was.

MS. MUZYCHKA: All right.

So when you got yourself caught up and had received your briefings, you had committed to doing an update in June of 2016, correct?

MR. S. MARSHALL: Yeah, but my approach to this was – and I was obviously aware of the controversy that was surrounding it. I had been following it for many years. The Premier had come to see – the current Premier had come to see me when he was the leader of the Opposition, and I had given him some advice, which I assume was why he – led to the call in the first instance.

So there's no – the big picture was apparent, of the problems, but I wasn't – I mean, I was – had retired for – essentially for a year and a half, rather enjoying myself and not paying much attention to what was happening at Muskrat Falls. So a lot of what I learned came as a bit of a shock to me; although, I understood the general context.

The first thing I had to do was do an assessment – so it's crisis management. This is not general management; it's crisis management. In a crisis you got to establish your priorities, you got to find out where you are, what actions you might have, but you – the first thing you need to know is: Where are we? So the immediate focus was to try to assess that. And also I felt my obligation, at that point in time, especially as I started to learn the magnitude of the problem, is that I had to immediately get – make my best efforts, by the end of June, to tell the government and the people of the province the state we were in. And it was not a pretty picture.

So, I mean, to do a really comprehensive review, you know, would've taken months by many people. But I felt it was much better if you got it quickly, with a general statement of where we were, than to spend more time on it. So I set a target for myself at the end of June, and I met that.

MS. MUZYCHKA: When you spoke at the interview recently, you had said that after you had had your preliminary review, you felt that you were going to need another \$3 billion in order to bring this project to –

MR. S. MARSHALL: Well, this is the problem: Until you do an initial assessment, you don't know, you know, what the problems are. But it became –

MS. MUZYCHKA: Well, how did you know – ?

MR. S. MARSHALL: – quite clear that I had – the first thing I had to do was get some reasonable assessment of what the estimate would be, and it became clear that we were probably a bit short of \$3 billion. And so one of the priorities had to be: Can we get \$3 billion?

So – but that was not priority number one, because priority number one had to be Astaldi. By May of 2016, Astaldi was running out of money. They were facing a wall in terms of how they were being paid, and that was going to come and face us in July, early July. If Astaldi were not going to carry on, then everything fell apart.

MS. MUZYCHKA: Right.

MR. S. MARSHALL: So what I kept saying to people, you know, if your shed is on fire, sometimes you got to ignore it if your house is on fire with your kids in it. There are a lot of problems. We can't deal with everything. We have to establish a priority and deal with the priorities one at a time. Take care of the other things if and when we can. But the first priority had to be to deal with Astaldi, because how do you even estimate what a cost is going to be when your main contractor is facing, you know, a termination?

So one of the things I did there was to – I asked for an assessment from our team and also to talk to Westney, who had been the risk adviser and I arranged for a conference call. And I asked anybody if they had ever had an experience – because I certainly hadn't – where the main contractor had either abandoned or had failed in the middle of the project and what the experience would be.

And I forget who it was, but one of the people on the call from Westney indicated to me that – he had made reference to US – an employee – whether it was him or someone else in his firm who had been with the US Corps of Engineers, and said that they had an experience – a similar experience and that you might as well shut down for a year, and that it would be very difficult to bring in a new contractor on – other than on a reimbursable basis to carry on the work.

So this was going – if that were to happen, the cost would be even higher; the delays would be longer. So from that I established – priority number one was to deal with Astaldi. We either had to straighten it out or, you know, everything else was so uncertain they can't – couldn't be dealt with.

MS. MUZYCHKA: Right.

And then, around the same time, as you were coming into the role of CEO, you made the decision to bifurcate the Muskrat Falls Project.

MR. S. MARSHALL: Yeah. One of – so one of the things I wanted to do was get executive control over the project. You know –

MS. MUZYCHKA: Right.

MR. S. MARSHALL: – at that point in time people – if I could just sort of overstate it a little bit – people were waiting for the next shoe to drop. Everybody knew Astaldi was running out of money. This project was a serious problem. Contractors were starting to line up, too, with their claims. And, of course, ANDRITZ did file a claim before – a court action before the end of 2016. By the end of it everybody was lining up. A lot of uncertainty; I think you've heard evidence that the employees felt they were going to be fired on the project, or the contractors. So everything was in limbo. I had to do with two things, as CEO. One was to bring some confidence back and, you know, you had to show leadership and you have confidence that you're going to get control of the situation.

It was also apparent that Gilbert was overwhelmed. He was responsible for all these elements of the project; in addition to things like doing public relations and – he was carrying way too much of a load. No human being could carry it. So I just – I looked at how I could divide this project up. But the objective at that point in time was to get control – executive control of the project. I am used to functioning with a small team of executives who I rely upon fully, and as they run into difficulties I work with them one-on-one and give them support.

So really we divided it up and Gilbert was assigned the task of carrying on with Muskrat Falls. I was looking for somebody to take – I

wanted to split transmission because – I’ll come to that later – you know, it’s substantially different in terms of its challenges than generation. So –

MS. MUZYCHKA: You saw them as two distinct projects.

MR. S. MARSHALL: Absolutely.

Two of them are – each, in their own right, would’ve been a massive project with different factors involved in the success and different challenges. And so I looked around for somebody who might take over as executive of transmission and I spoke to John MacIsaac. I knew he had project management experience globally in another business and he had been in power for – Hydro for several years and the last few years I think he was CEO of Hydro – rather. And so I spoke to John, and he played difficult to get, and I eventually talked him into taking on the role.

That left me a – then I – the other thing I wanted to do was I wanted to make a clear separation with the regulated part of the business and make sure that was functioning and the regulator and transparency (inaudible). And it has also been my policy to have the regulated part of the business separate. So I had known Jim Haynes for many years, he had been in the business – he had retired and I approached Jim to come back as head of Hydro and take care of that for me.

I also spoke to Derrick about being more involved in the project. It was indicated to me that, you know, his involvement had been limited.

MS. MUZYCHKA: And Derrick, being Derrick Sturge, your financial –

MR. S. MARSHALL: Derrick Sturge. And I said Derrick: There are no limitations going forward. Get in there and make sure you’re well informed and play your role.

Then I approached Jim Keating, who was on the Oil and Gas side and asked him if he could take on some roles in terms of Aboriginal relationships and the media and those sort of things – human resources.

So we split it up – it’s not only bifurcation, in a sense, but we allocated among a smaller executive group to get that control so I could have a small group of people and I could deal with each one of them as the problems arose and coordinate the whole thing. And it worked out quite effectively.

MS. MUZYCHKA: Okay.

You had indicated in your interview that your observation was that Torbay Road were essentially operating on their own.

MR. S. MARSHALL: Absolutely, and –

MS. MUZYCHKA: Which is one of the reasons why you needed to bifurcate the management team. So if you can explain –

MR. S. MARSHALL: Part of that – part of the reason bifurcation wasn’t – like I said, ‘cause that – you have to imagine, part of it was getting things under control.

The other part was that it’s a different – than the – different type of activity than building a big plant like Muskrat Falls. Muskrat Falls can be very much akin to building Hibernia; one site, a lot of putting things together, whereas the transmission component is spread out over 1,500 kilometres.

The other thing is I asked – I said, well, there’s challenges here, different challenges. Two aspects of that: are we ready for – are we getting ready for transitional operations? And I spoke to Rob Henderson, who was, again, a former president of Hydro. And Rob shocked me, saying no, we’re not – we have done no budget, we’re just getting there. And that alarmed me, because I know that the thing that wasn’t being appreciated by the people on Torbay Road, in my view, was the complexity of the transmission system, the challenges it presented.

But also, I asked the question well, is there an opportunity here? Can we use this line to bring in power from the Upper Churchill? And so I asked our electrical engineers to have a look at it, and they came back very quickly and said that with a \$10 million piece of equipment at Muskrat, we can use that to bring in the power from the Upper Churchill and potentially save,

you know, tens or hundreds of millions of dollars in the interim if it works properly.

So I said order that piece of equipment, let's get on with it, and let's excavate – escalate the transmission line, because it had been slipping, as well. Everybody knew that Muskrat Falls was slipping, probably by about two years, so there was no word to say get on with the transmission line, because everybody said, well, when Muskrat's finished, we'll plug her in, and it'll work.

MS. MUZYCHKA: Right. Was the transmission line on the critical path?

MR. S. MARSHALL: Not at that time.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: But, in my view, it was. I said –

MS. MUZYCHKA: Or it should've been.

MR. S. MARSHALL: – there's an opportunity here, and I said it's a tremendous risk.

And people were saying there was a risk in bifurcating the project.

And I said, yes, there's a risk of not bifurcating the project; there's a risk in escalating the project; well, there was a risk in not escalating the project.

And so it was very – it was challenging, of course, on those things. The challenges that you're aware of in terms of bifurcation. There's challenges in escalating the transmission. But, if going – sticking to the transmission component, here we are today, three years later, the transmission is on the control path despite the escalation we did. So if we hadn't done that, we'd be in a hell of a mess.

MS. MUZYCHKA: Right.

And we know that there's power coming from the Upper Churchill.

MR. S. MARSHALL: Yeah, we have no way to get the Muskrat Falls power out in (inaudible).

MS. MUZYCHKA: Right.

Now, bifurcation of the project wasn't well received by certain members of the project management team. Is that correct?

MR. S. MARSHALL: That's correct.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: And, Mike talked to Gilbert, and Gilbert was saying that Paul had been used to, in many instances, going around and talking directly with the – my predecessor.

MS. MUZYCHKA: Right, and that's Paul Harrington, the –

MR. S. MARSHALL: Right –

MS. MUZYCHKA: – project –

MR. S. MARSHALL: – Paul. So Paul – and Paul wrote me a comprehensive letter objecting to what I was doing.

MS. MUZYCHKA: Right, and that just –

MR. S. MARSHALL: So I –

MS. MUZYCHKA: – let's stop you there for a moment, Mr. Marshall – it is at tab 8, it's P-01962.

You can continue. I just wanted to point out that the letter is there –

MR. S. MARSHALL: Okay.

MS. MUZYCHKA: – for your reference.

All right. You can continue. So you were saying that Mr. Harrington –

MR. S. MARSHALL: So my door is always open, and even though I encouraged people in the company to go over – to go through their executive, Paul came to see me, and he was – felt very strongly about this, as in – evident by his letter, and so finally I said Paul, I understand what you're saying, but I've made my decision, and it's time to move on.

MS. MUZYCHKA: Right.

So, you – your reaction to his letter of June 6, 2016 –

MR. S. MARSHALL: But Paul is a very experienced guy. I'm used to dealing with very strong executives –

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: – and I encourage them, in fact, to challenge me, so I don't – I'm glad he did, because it caused me to make sure that I had my thinking together, but he had then to make a decision whether that he would support my position and stay on or move on.

So I hadn't – took no offence to the thing at all. I'm glad he did it.

MS. MUZYCHKA: Right. And what were his concerns with respect to your plan for bifurcation?

MR. S. MARSHALL: Well, he – and justifiably so, he said if you put it in two, maybe some of the people are going to be – you know, some of them might have been lost; some people are upset by it; they're going to lose their authority over it; it's gonna cause some confusion. The things that are generally set – outlined in his letter.

MS. MUZYCHKA: Yes. And did you feel that there was any merit to his concerns?

MR. S. MARSHALL: Yes, there was merit to his concern.

MS. MUZYCHKA: Right.

MR. S. MARSHALL: But, there was also merit in not doing nothing, as I said earlier. You know, I'd rather the risk of not doing nothing, so – and I considered both factors, weighed it and made my decision.

MS. MUZYCHKA: Okay.

You mentioned, just before we got into the letter, that Mr. Harrington had a habit of going directly to the CEO.

MR. S. MARSHALL: That's what I've been – that was what I was told –

MS. MUZYCHKA: Okay, so –

MR. S. MARSHALL: – by the different people in – at the head office, that, you know, in many instances Paul felt he'd report directly to my predecessor.

MS. MUZYCHKA: But he was supposed to report to Mr. Bennett, correct?

MR. S. MARSHALL: Well I'm not – like I said, it was quite evident to me that Gilbert was overwhelmed in the tasks that were assigned to him –

MS. MUZYCHKA: Yeah.

MR. S. MARSHALL: – and that and the fact that sometimes he was working over on a tangent, you know, dealing with certain environmental issues or when, you know – so there was a natural gravity of Paul to deal directly with the CEO.

MS. MUZYCHKA: And did you see that being a problem, in terms of the leadership and organization of this project?

MR. S. MARSHALL: Yeah, I'm a very strong believer, I – like I say, I like to have a core group of people around me, a smaller group than my predecessor had, 'cause you can't deal with a big, large group, so this is why I created the executive vice-president role. I mean, you can't remove the title of the people already there, so I created a smaller group, called them executive vice-presidents, and I want them to deal with me directly, to be accountable – clear accountability – I don't want anybody saying, well, I didn't know, I didn't know (inaudible).

And also with a small group then they can come to me with their problem, and I encourage them to do that, because if they come to me with a problem, I can help them solve it. Whereas, if they're going off on tangents I don't know about, the problem's going to get worse. So that's part of my own management style. Other people are different.

MS. MUZYCHKA: Right, okay.

So just to fill in the context. So you had made Gilbert Bennett the executive vice-present of the Muskrat facility –

MR. S. MARSHALL: Yes, and I –

MS. MUZYCHKA: – (inaudible) generation?

MR. S. MARSHALL: – and I told Paul that he clearly reported to Gilbert, and told Gilbert Paul clearly reported to him.

MS. MUZYCHKA: Okay. And then you had Mr. MacIsaac put in as the executive VP of transmission?

MR. S. MARSHALL: Right. And that – so, with John the tasks were somewhat different, 'cause (inaudible) – also had to address this problem with transition to operations. So I intentionally built in a bit of a tension between the two.

So I said to John, I want this line brought back on track and quickly. Take care of that. I also want you to start preparing for operations. The transmission line is going to come on first, and then when Muskrat is finished, you'll take control of the operations of Muskrat. That builds in a tension, then, that those who are going to be responsible for the operation have a vested interest in keeping their eye on what's going on in the construction, without being responsible for it. And Rob was given – Rob Henderson – then was given the resources to beef up the transition to operations, which became fairly sophisticated thereafter.

MS. MUZYCHKA: Right. And then, of course, you brought Mr. Sturge in, he had the role of VP finance?

MR. S. MARSHALL: I made it quite clear to him that, you know, he has access to everything. He had all the financial information to get in there and make sure his Internal Audit team were there doing things that, you know

MS. MUZYCHKA: How did you see his role before you came on in terms of the project?

MR. S. MARSHALL: Well, as I said, when I came on first, I got briefed on the topics. I went

to see each one of the executives individually, asked them what issues they had.

Derrick expressed to me his concern that he was kept out of the loop. And I said, Derrick, you're in the loop. I don't want to hear a complaint no more. You know, you're in charge of finances, go and do it.

MS. MUZYCHKA: Okay.

You've said in your interviews that the project management team came out of the oil and gas industry, for the most part, and that while they are experienced, their working culture is different and perhaps caused them to be more focused on the generation side than transmission. And we've heard, obviously, that transmission has been a challenging component. Can you elaborate on some of the problems that you were seeing with the teams, perhaps, disproportionate focus on generation? I know you've touched on it briefly there.

MR. S. MARSHALL: Well, the generation part of it is more akin to the type of work they've been doing, you know, building on a big, massive assembly project and part – with a specific site. Don't get me wrong, you need good project managers, and these were good project managers. But their focus was on – as it should be – on building the project. But there's another aspect, which I referred to, and then there's, you know, we need to plug this thing it.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: And it was there that I think that their – we didn't have the right – I would say perspective on the thing, you know.

MS. MUZYCHKA: This was obviously complex, the whole transmission side, whereas the plant or the dam and everything else like that, that was more of a civil engineering project. Is that a fair description?

MR. S. MARSHALL: Each project was massive in its own right.

MS. MUZYCHKA: Right.

MR. S. MARSHALL: The – but Muskrat Falls is more conventional. It's a hydro project. If you

worked on one, you know how their assembled. I mean, it's very complex – Muskrat Falls is a very complex hydro project because of things like the North Spur; different types of materials you're in there – involved there with. There's four machines, for example, they're – type of turbines, some of the largest ever been installed in the world. They're much bigger than they are at the Upper Churchill. So in its own right, Muskrat Falls was a challenging piece of work.

The differences I saw on the thing when I came on is I looked at transmission, and people were looking at – people – even here, the focus is on Muskrat Falls. The most challenging part was the transmission system. It is primarily, in fact, a transmission project. If you look at – add up the dollars going on the LIL, the Labrador Transmission Assets, Maritime Link, it exceeds what's going into Muskrat Falls. And if you look at the initial estimate, more was going into transmission and generation.

So everybody was focused on Muskrat Falls, whereas in my mind, the most complex and challenging aspect was the transmission, where you're going to tie in for the first time the Island of Newfoundland to Quebec and to the Maritime provinces. And at the same time, you're going to bringing on this massive new plant. It was hellishly challenging. And at the same time, you're going to bring in HVDC technology, which no one in the province had experience with, because, you know, the demand for expertise in that area globally is horrendous, and so we were going to bring this on stream and – with no experience.

And so I was more content to leave the – more – my focus on the transmission side rather than on generation alone. Of course, I got to go from one to the other on an almost daily basis.

MS. MUZYCHKA: Right, okay.

Do you think that the fact that the project management team had essentially come from the oil and gas industry and lacked hydro experience and transmission experience was a problem or an issue?

MR. S. MARSHALL: It wasn't a problem. I mean, these are very experienced people, great project managers. But there's an element of it

that, you know, what they're trying to do they're missing in terms of the complexity of the transmission. The other thing is I think – and I experienced this as well – throughout the piece, there had been confusion as to what the role of the project team is as the role of Nalcor and the role of the government.

I mean, each of these three have a role to play and one shouldn't be trying to play the role of the other. I mean, you don't want government telling you how to build the project, and nor do you want people building the project to tell you about what the savings are to the people of the province. I mean, the people on the project should be focused on building it. That's their task.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: And people at Nalcor should be saying, what's here for the customer? How do we make this thing work with our neighbouring utilities, and how we take care of reliability and all those issues? And the whole thing got confused as to what responsibilities were. You know, I apologize for sort of smiling at it, but it was a mess.

MS. MUZYCHKA: Was there some loss, then, of the big picture as a result of the lack of experience in hydroelectric powers and looking at it from a utility perspective?

MR. S. MARSHALL: Absolutely.

MS. MUZYCHKA: Okay.

Can you explain a little bit more on that?

MR. S. MARSHALL: Well, I think I explained some of it.

MS. MUZYCHKA: Or was it – speaks for itself?

MR. S. MARSHALL: You know, what the role was, what the challenges and opportunities for generation. Imagine, I had – when I asked is there an opportunity to bring in power from the Upper Churchill, you know, maybe somebody thought about it, but it certainly wasn't articulated. Someone – no one expressed it to me. If it only took \$10-million piece of

equipment, you know, you'd say, okay, let's do that right away and get ahead of the task of bringing on Muskrat Falls and save the money.

MS. MUZYCHKA: So the \$10 million was a cost, but what were the savings?

MR. S. MARSHALL: Well, I think if we put in a reactor, a small piece of electrical equipment, in Muskrat Falls to make it work.

MS. MUZYCHKA: And then you said it had repaid itself in millions?

MR. S. MARSHALL: Oh yeah, in terms of – well, we were relying upon a line coming down from – a rickety old line coming down from Churchill down to Goose Bay, which is still there. And we had generation on site, you know. And that's not even counted as a benefit of the day because we've been using that line now – new line coming from Churchill to Muskrat to feed Goose Bay and avoid blackouts in Goose Bay last winter. You know, there's a lot of benefits here that haven't been quantified doing this. The fact that it hadn't been thought about and acted on, to me, was astounding.

MS. MUZYCHKA: Okay.

And so that was one of your early tasks when you took over the CEO.

MR. S. MARSHALL: Well, that was one of that tasks I assigned –

MS. MUZYCHKA: Oh, all right.

MR. S. MARSHALL: – to John.

MS. MUZYCHKA: Okay.

Now, we were just talking about how Nalcor was not focused on the transmission and, I think, you said partially, too, because it wasn't on the critical path. The project team – we've heard evidence – had been giving the contractor a hard time – the squeezing of the dollars with respect to the transmission. We talked about it about at one of your interviews where you had said that that kind approach to the contractor was an oil-patch approach. Do you recall that?

MR. S. MARSHALL: I don't (inaudible) recall saying to the oil-patch approach. I mean, there's a general tension between the contractor and owner, always.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: I mean, the contractor is always looking for more money; the owner is always looking to save money. So, there's a natural tendency there. So ...

MS. MUZYCHKA: You were – but I think in the context of the discussion at the interview, you were saying that sometimes it's better to pay a little extra for acceleration or for different changes in (inaudible) –

MR. S. MARSHALL: Yeah. That became more evident on the transmission side.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: You know, when we changed it – when we changed the focus there with new leadership on the transmission side, it became immediately apparent that they were fighting over things that they shouldn't be fighting over.

MS. MUZYCHKA: Okay. So, just back to the project management team's experience. We've heard from several members of the project management team that despite their backgrounds in largely oil and gas, they felt their project management experience was transferrable to Muskrat Falls, and I think you alluded to that just earlier.

MR. S. MARSHALL: Yeah. I think – it's certainly transferrable to Muskrat Falls, generally. There's also skills transferrable to, you know, the transmission point. There's a general skill of manning big projects.

MS. MUZYCHKA: Right. But –

MR. S. MARSHALL: And people move from one industry to the other, one project to the other. So, it's not so much the project management experience that I'm working with; it's the bigger picture. You know, what's more important than others – another part of the project. You know, you're – because you're

always trying to anticipate, you know, things – things are not going turn out as planned and what's – so how do you anticipate some of this? How do you change, and what do you change?

Like, for example, if you're in – if you're looking at transmission and the generation part of it, the people working on the transmission, once they saw that Muskrat Falls was going to be delayed, they said: Well, okay, there's no emergency here. We can, you know, probably proceed now at a much slower pace, maybe at a lower cost without recognizing the opportunity and the threat, right? The bigger picture.

But I don't fault so much the project team, you know, the – there's some really good people. I mean, the people I have there now, if I were building another hydro project, I'd have no problem at all, you know, in hiring them to build it. They work very hard. When I went on the site, I challenged them all. I said to all of them – I met with them and I said: You know, mistakes have been made; may have been your fault, may not. I said: Our focus now is to get this thing finished strong.

So I'm starting with a clean slate and I said: Work with me. I'm assuming you're all staying unless you tell me otherwise. And so I challenged them to do things, and throughout the piece I've asked them to do things and they've done everything I've asked and more besides. I do not fault the project management team at all. There's a missing piece there, they didn't have the expertise, that they didn't see, but so did – but Nalcor missed it, too, and maybe it was Nalcor's responsibility rather than the project team.

MS. MUZYCHKA: Okay.

So I mean there is some acknowledgement then, that the lack of hydro experience on the part of some of the key members may have been a disadvantage.

MR. S. MARSHALL: If you would stop focusing on hydro experience and say the electricity utility experience –

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: – I agree with you a hundred per cent. Hydro is the Muskrat Falls Project. What was really missing was, you know, the – how does this get integrated into the electrical system. How – what does this mean –

MS. MUZYCHKA: So that's –

MR. S. MARSHALL: – for electrical systems on the Island, in Nova Scotia, in New Brunswick and Quebec? So it's more about the electric part of it outside the hydro. Hydro is the hydro plant.

MS. MUZYCHKA: Right, okay.

So I see from what you're saying then, it appears that that would be more a higher level management issue –

MR. S. MARSHALL: Yes.

MS. MUZYCHKA: – than the project management team whose job is, essentially, to construct –

MR. S. MARSHALL: To execute.

MS. MUZYCHKA: – the facility –

MR. S. MARSHALL: Right.

MS. MUZYCHKA: – to execute the plan.

MR. S. MARSHALL: Right.

MS. MUZYCHKA: Okay.

So – and what you're saying then, is that that ability to see the project as integrated into the utility system was lacking.

MR. S. MARSHALL: Right.

See the big picture. What was missing was a good understanding of the big picture. I always think that's a fundamental aspect that, you know, the execution day to day, you know, it was very similar to any big project – challenges, conflicts, delays.

MS. MUZYCHKA: And you, of course, came into this project with a different background having worked for many years with Fortis.

MR. S. MARSHALL: Right.

My skill is not construction. I mean we've constructed projects. And whether you're building a project, 10 billion or 1 billion, a lot of the challenges are the same. And how to avoid trouble is usually the key to those things are in one as they are in the other.

MS. MUZYCHKA: Okay.

Now, we mentioned that there was some concerns with people leaving when you had come in to bifurcate and make some changes in the organizational structure. And I just want to touch briefly on Jason Kean leaving Nalcor, because we've heard from Jason that he had become involved in the project at a very early stage, sometime in 2010 or 2011, and was pretty much the architect of all of these project management plans and, you know, outlooks and everything else like that.

So – and we also had Ms. Troke and Mr. DeBourke who left the project. Do you believe that losing these individuals had any impact overall, or were you able to mitigate that through existing individuals or hiring new –

MR. S. MARSHALL: I was sorry they left.

You know, Jason was very a hard-working, bright Newfoundlander. He had a different view and the other people had a different view. You could only have one view. At the end of the day, the person in charge has to (inaudible) it.

MS. MUZYCHKA: Okay.

One of the things that Mr. Kean indicated in his testimony, in his interviews, was that the project had always been cost-driven, and then under the new change of leadership, the project moved to a schedule-driven, you know, and –

MR. S. MARSHALL: I think there's a lot of semantics there.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: And it also points out that was a part of the problem.

MS. MUZYCHKA: Yeah.

MR. S. MARSHALL: Time was money. I mean if you're late, you're losing an opportunity. And here's one of the big differences between the oil business and the hydro business: In the oil and gas business, if you don't get the oil out today, they're there tomorrow; if the water is not captured today, it ain't there tomorrow. You've lost it.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: So there's a different approach to these things and how we look at them.

And I think it got reflected in – like, one of the things I did when I started to give the cost update, for the first time ever I started incorporating finance costs. I mean that's fundamental in the world I come from. So, before that, you just talk about the basic cost without finance, and I insisted that it would go in there with the finance cost included, it's real.

MS. MUZYCHKA: Right. So instead of the 6.2, it should've been the –

MR. S. MARSHALL: Yeah.

And, again, they were – in their view this was not on the critical path. So if your view is not on the critical path, why are we expending additional funds to accelerate it? And it's because, in my view, it wasn't on the critical path there then but it was a hell of a risk that it was going to be. And, in fact, it has become – even despite the fact that we took this step to accelerate it and do what we could to advance it, it's on the critical path today.

MS. MUZYCHKA: Right.

And I think you were saying before in your interviews that time is money, so the cost and the schedule are (inaudible).

MR. S. MARSHALL: That was my – and I'd like to – when I talk about people, I generalize a lot. It gets me in trouble sometimes but I like to have little rules of thumb. So when he started talking about this, I said look, if you've got – if you've borrowed \$10 billion, which is, you know, roughly the cost we're looking at, and if you're paying 3.65 per cent per annum –

roughly, what we're paying – that's a million dollars a day.

So you're paying a million dollars a day on the interest, right? Then you look at the value of the water going over the falls and looking at what we're spending on Holyrood. You do a rough calculation; it depends on, of course, the price of oil and all that sort of thing. Let's say, it's probably close to another million.

So, to me, when I look at this project, every day if I can save – spend \$100,000 to save \$2 million, I'm going to do it. So I'm not going to focus on what I'm going to – going to cost me an extra \$100,000, the people of the province are better off if I do that and if they save the \$2 million. So it's a different way of thinking and approaching it.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: But I – so I use these rule of thumbs. Roughly, you know, if we can save a day and it's going to cost – if someone comes to me and say, you know, we can save a day here if we spend 100,000 bucks, they should know they can go ahead and do it.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: It's a no-brainer. And don't tell me it's all – you're going to see 100,000 bucks extra on the capital cost.

MS. MUZYCHKA: So be it, I guess, from your perspective.

MR. S. MARSHALL: So be it.

MS. MUZYCHKA: Because you save –

MR. S. MARSHALL: I'm focused on, you know, what's best for the people who own this, the people of the province.

MS. MUZYCHKA: Okay.

We also heard from Darren DeBourke that he felt there was a change, obviously, in the focus with new leadership, and that Nalcor was, essentially, throwing money at the problems. So, you know –

MR. S. MARSHALL: Good thing we did on the transmission side. We'd be in a real mess.

MS. MUZYCHKA: So I mean there was – and we'll probably get to it this afternoon, but there was settlements that were made with Valard and there was other steps that you made; for example, spending money to enhance or enable transmission from Upper Churchill and those sorts of things. So how would you respond to someone saying that you were throwing money at your problems?

MR. S. MARSHALL: He just didn't understand the situation. He was looking purely at what the capital cost was going to appear on his project. And maybe he was right to do so in a small – at that level, but he had to recognize your different view, the different reasons for doing this and a different view of what may be coming on the critical path.

MS. MUZYCHKA: Now, if we turn to tab 26, it's P-04049.

MR. S. MARSHALL: Yes, sorry.

THE COMMISSIONER: (Inaudible.)

MS. MUZYCHKA: Book 2.

MR. S. MARSHALL: I have it.

MS. MUZYCHKA: All right.

This is a letter from Jason Kean to you, dated July 20, 2018.

And so I want to just have you explain the circumstances of what led to this letter. And I guess I understand when you came on board and were looking for cost information and updates from all of the various managers – so that you could prepare your update for 2016 as you promised when you took over the CEO position – there was some issue with respect to some cost information that had not been brought to your attention?

MR. S. MARSHALL: I think it was more going into the update of 2017, but let me –

MS. MUZYCHKA: 2017.

MR. S. MARSHALL: – give you the background.

MS. MUZYCHKA: Okay. And so Mr. –

MR. S. MARSHALL: So the cost update I gave in 2016, very little time to do it, all I did was call in the executive, talk – bring in the management team, go through all the risks they had identified, made a determination of, you know, the level of risk that I wanted to take, and picking up – I said – I thought it was more important that we get a number out there quickly, that was generally right, rather than to spend months trying to get a more precise number. It turns out it wasn't bad.

And also I indicated at that time, that there was some real uncertainty because of the Astaldi situation, for example. Of course, as we went through 2016, we had other problems – disruption of the camp, we had – and we didn't even know we were gonna get the money to finish it, so there was a lot of uncertainty in 2016. Made a good stab at it, turned out to be not too bad.

So going down – going into 2017, now I won't – and I – as I went through 2016 – for example, at the end of 2016 when we resolved the Astaldi issue, I gave an update to the government – I think I indicated to the press as well – an interim update, indicated that there was gonna be costs associated with the business interruption because of the demonstration.

So I'm going down – I wanted to give an – I felt it was necessary to give another update now in 2017, and – so many things had changed. And so I went to our – again, went through the process again, talked to the – our executive. And in the process of that discussion, John came to me and start talking about what it was gonna take to resolve the Valard contract. And he and I had met on – we met with the principals of Valard, and he identified one item. He said that they were costs related to 2015 and '16 on the transmission line and on the geotech work that had been sitting there and hadn't been resolved. Basically, you know, the way I interpreted it, it was sitting on Jason's desk, even though it related to prior years.

So when I went to our executive in 2016, I wanted them to be totally open with me – you know, don't hide anything. So what I'm off to do now, okay, this is – relates back to 2015-'16, why in the hell didn't he bring it forward when I did 2016? Now is on – another \$100 million I got to explain on top of everything else.

So, that was a brief conversation I had with John. I said: John, go have a conversation with Jason to find out what the hell is going on here. And a short time later, he came back and said – he said Jason's gone. And I said: Okay, move on. I interpreted that in a certain way.

Then, subsequent to that, Paul Harrington approached me one day and said: Could you – you know, what happened? And I explained what had happened, and he said, I don't think that's right, he said: You know, you should talk to Jason. And I said: My door is always open; if Jason wants to come and talk to me, come and talk to me.

And so as a consequence of that, Jason did come talk to me and explained to me that, you know, Ed was wrong on some of these things. I said, fine, I said: Maybe you should have expressed that last year when you were approached by it. I said: I just – if I was wrong, I apologize, doesn't make any difference now, drive on.

And he asked, you know, if I had anything against him personally and his wife. His wife used to work for me at Newfoundland Power, (inaudible) Newfoundland Power. And I said, no, and nothing makes it all. I said: You know, I think you are a good engineer and I have great respect for your wife, I am not out here to stop you from having work.

And there is another incident, of course, you are aware of, respecting Westney that – I said: Look, you didn't offer an explanation last year; I made an assumption, I was wrong and I had gone back and checked with John. John said: You had – some – misunderstood what he had been saying that – and I said: (Inaudible), you know, fine – makes no difference.

He – I didn't fire him, he resigned.

MS. MUZYCHKA: Right. But the – it – the concern, I guess, that you had with Jason was

the fact that you had not been notified of the \$100 million in Valard claims that were –

MR. S. MARSHALL: The way that I proceeded was – first expressed to me by John – was that we could’ve – should’ve known in 2016 that there was \$100 million there (inaudible) roughly, due to the contractor. Jason had expressed it somewhat differently, it doesn’t matter who was right who was wrong because we got it resolved.

We got Valard to finish the – line by the end of 2017, which was my objective. I am happy with it. I think I’ve expressed to Jason, you know, if I misunderstood, fine, you know, apologize for that, but it had no consequence. You know, as far I am concerned, I wish him all the luck in the world. He is a very bright hardworking engineer and – carrying on.

I think he misinterpreted, too, what I had done with respect to Westney because we were relying on Westney for advice in terms of risk. And at some point, I discovered – someone came to me, John MacIsaac came to me and said: Are you aware that Jason is working on this analysis? And I – sort of I’m – I said: No. And –

MS. MUZYCHKA: This was after Jason had left.

MR. S. MARSHALL: Yes, after Jason had left. And, so I called in Gilbert, and I don’t Gilbert – I am not sure if Gilbert was aware of it or not, but I made it quite clear. I said: Gilbert, we can’t have this – you know, I got nothing against Jason at all, but if someone who has a dispute with the management team here, is working on the project and I am looking for an independent defensible report, it taints it. And the – so I said: Look, if you needed to engage Jason to a (inaudible) fact, if enough, if you are looking for some factual matter, by all means, have Jason do it. But I can’t have him involved in expressing an opinion on things because it’s – not that I don’t have respect for Jason, I do, but you know, it’s supposed to be independent, and it’s tainted.

And I – when Jason came to see me, I said, Jason – I assumed that he had a problem with John. I said, John – I said, you must have had a problem with John. He’s the one who first told

me that, no, John didn’t talk to him, and it was – oh – the other guy – hang on – I think he’s referred to here – give me a second.

MS. MUZYCHKA: Fleming?

MR. S. MARSHALL: Fleming.

MS. MUZYCHKA: Greg Fleming?

MR. S. MARSHALL: Greg Fleming. And he said, no, there wasn’t – I don’t have a problem with John, he said, I have a problem with Greg Fleming; I thought he was my buddy and, you know, he – that document – the reason I remember that is it surprised me. I had assumed, too, that his differences were with John. They weren’t with John.

MS. MUZYCHKA: All right. Okay.

So, in terms of – just going back to the Valard claim and, again, you know, in terms of the settlement that was made, and Mr. Kean had expressed surprise at the amount of money that had been spent to settle that particular claim. But we’d heard evidence from John MacIsaac, recently, as well, that a lot of the claimed amount that was due to Valard arose out of the unit cost items. So, they were things, because of the geotechnical information and the fact that the foundations weren’t adequate or improperly (inaudible) –

MR. S. MARSHALL: Right. That was what John expressed to me. That’s what I interpreted was – the thing had been (inaudible) properly, and that the unit – that Jason was sitting on it. So, that is the issue.

MS. MUZYCHKA: Right. Okay.

So, you mentioned that you’re aware that Mr. Kean had been doing other work for Nalcor, that he’d been hired back on contract to do various things. What’s your view about that? And we heard that from Mr. Harrington, that he continues to do some work from time to time for generation.

MR. S. MARSHALL: Well, I had made it clear to Gilbert, and Gilbert agreed with me, that Jason was not to be involved in any work that required an expression of opinion on behalf of

Nalcor. Now, I know he was involved in doing that package for the Commission.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: And that's fine. Because my view there was that, you know, you guys on the project, express your views, honestly and fully, but it's not necessarily the views of Nalcor. It's your view. You've been asked for that; give it honestly.

But – so, I have no problem with that. And, as I said, I made it clear to Gilbert that, you know, Jason can be engaged to provide factual information, but my concern was I didn't want reports that were supposedly independent to be tainted by –

MS. MUZYCHKA: That was from Westney.

MR. S. MARSHALL: – people that had a problem with – not necessarily me but other members of the management team.

MS. MUZYCHKA: Right. Okay.

Commissioner, I don't know how we're going with time.

THE COMMISSIONER: Okay. I just noticed now it's 12:30, so – or just after 12:30, so this is a good spot to break?

MS. MUZYCHKA: It's a good spot.

THE COMMISSIONER: We'll break here and come back at 2 o'clock then.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session.

Please be seated.

THE COMMISSIONER: All right.

Ms. Muzychka, when you're ready.

MS. MUZYCHKA: Thank you, Commissioner.

All right, I want to ask you, Mr. Marshall, about governance. Prior to coming to Nalcor, did you have much experience with Crown corporations?

MR. S. MARSHALL: I interacted with them a lot over the years.

MS. MUZYCHKA: And how did those experiences compare to your experiences in private industry, in terms of –?

MR. S. MARSHALL: I always sympathize with those who work for Crown corporations. It's a very difficult situation to be in.

MS. MUZYCHKA: How so?

How so?

MR. S. MARSHALL: Because they're torn between operating a business and trying to operate as a business and yet being heavily influenced by government considerations. I mean, just look at the last 12 months or so – there's two Crown corporations in Canada have seen CEOs resign – or gotten rid of – and boards resigning. You know, it's a very difficult situation to be in.

MS. MUZYCHKA: Is it because of political interference or – how would you explain that?

MR. S. MARSHALL: It's just where the political meets the business, and even if both parties are acting in the best interests of the province or the industry – it's just they have different interests, genuine interests. So we can't fault either one of them. But it's a very – it's where the rubber meets the road. It's a very difficult situation to be in.

MS. MUZYCHKA: Okay.

What do you see as being a board's role in a Crown corporation?

MR. S. MARSHALL: You need – it's like – almost like a PUB. The greatest value is that you have to account to them. Knowing that you have to account, you know, you make sure that you're in a position to – everything organized and brought forward.

I mean, in a normal corporation, the biggest task to the board is to appoint and replace the CEO. Now, in Crown corporations, they don't even have that role to fire and hire the CEO – usually a government prerogative.

Their value is to be there, to ask questions and to be helpful sometimes to the CEO, because, again, it's a very difficult situation to be in, and the board can help smooth over the business and the political.

MS. MUZYCHKA: Right.

And I guess that differs from a private corporation or even a public corporation –

MR. S. MARSHALL: Yeah. Public – yeah. You know, when you're looking at – and if that's your own business, you have a very clean focus. You have the shareholders, you have a mandate, and you can go forward.

You know, the corporate structure's an ingenious creation, because you have a CEO, and it's only place in the whole organization where one person is responsible and accountable.

And that's important 'cause you don't – it's important that a corporation have only one vision and one ethos at a point in time. Next – it comes down to the CEO. But you don't want the CEO to have absolute power. So above the CEO, there's another pyramid to make sure that the CEO's power is constrained and exercised properly. But, the matter is very clear in an investor-only situation. In government, as we've seen here, I mean, there's all kinds of interaction, and that's why it's so difficult.

MS. MUZYCHKA: Okay. I guess there are challenges in boards, regardless, but I hear you say that, within a crown corporation, there are different sets of challenges.

MR. S. MARSHALL: The crown corporation has extra challenges.

MS. MUZYCHKA: Extra challenges.

MR. S. MARSHALL: You know, being CEO of any corporation – big corporation is a very difficult situation to be in. That's why the tenure

is – tends to be very short. You know, 5 years, 6 years tends to be the max. But, you know, a crown corporation has that added responsibility – I know I've had people who worked for me who've gone on to be CEO's of crown corporations, and they don't last very long; they just can't take it.

MS. MUZYCHKA: Oh. All right.

I'm just gonna ask you to turn to tab 25 of your books, volume 2. It's P-00722. And this is a set of board minutes dated August 8, 2017. Brendan Paddick testified at the Inquiry last week, and he talked about an issue that had been brought up in the August 8, 2017, board minutes. And if we look at page 2 of that Exhibit, it had to do with the reservoir level.

So there was information that was being provided by Mr. Bennett with regards to the reservoir level, and the board had expressed concern.

If we look at page 3 of the Exhibit – the second last paragraph: "The Board" – stop right – oops – "The Board discussed the timing of them becoming aware of correspondence and meetings involving SNC-Lavalin."

So, when Mr. Paddick testified, he said that it was explained to the board that it was an operational issue that had escalated quickly without the board being notified.

And they were concerned that they had found out of concerns regarding the Muskrat Falls reservoir through the media and not from Nalcor.

So my question to you is: what information do you think should go before the board, and when should they be informed?

MR. S. MARSHALL: Normally, I try to keep the board fully informed as possible. You try to time to – you know, quarterly meetings – we have regular quarterly meetings.

If something extraordinary comes up, you'd contact the chairman and give him an update. But, as it happens frequently, sometimes something which is operational in nature blows up, especially in something like Nalcor, which

the media is on to everything, and there's a tendency to sort of make news out of it, and then the government reacts, and all of a sudden it is a big issue when it shouldn't have been. That's the one more that's difficult to accommodate in terms of talking to the board.

MS. MUZYCHKA: Sometime things move too quickly before you can (inaudible).

MR. S. MARSHALL: Yeah, something that should not have been a big issue at all becomes a big issue –

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: – unexpectedly.

MS. MUZYCHKA: We've heard some evidence from various people – board members, executive – in terms of the degree of information that should be provided to a board member.

Do you think that a board should be given regular updates on finances down to fine details regarding all possible risk factors, or should it be on a more broader base?

MR. S. MARSHALL: No, the – it's always a challenge, you know. People who have been CEOs are your best board directors because they know what, you know, the responsibility of the board is as opposed to management.

You know, the role of the board is not to manage; it's to oversee management. And, it's very straightforward when it's regular business; you know, you do it every quarter. Or if something clearly extraordinary comes up – like in the private sector you're making acquisitions – make sure your board is brought on side well in advance and make sure they got all the information they want, because they're being asked the questions.

I always say that the focus in dealing with the board is to focus on: are you asking the board to make a decision? That's what should be focused on. There's regular updates of information, but you got to focus on: is the board being asked to make a decision? In that case, you really have to lay the proper groundwork, keep them posted, make sure they have the opportunity to ask the right questions and provide those answers.

MS. MUZYCHKA: Okay.

Would you agree that information, such as significant or substantial cost overruns, should be brought to the board's attention as soon as they're known?

MR. S. MARSHALL: Absolutely.

MS. MUZYCHKA: Okay.

A new board was appointed in December of 2016, once you came on board yourself. What role or involvement did you have in the IEAC process?

MR. S. MARSHALL: Not a lot in the IEAC process, but before that – when I came on board, of course, the existing board had just resigned.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: And the company, as I described earlier, was in crisis. So in talking to the government, I suggested that in crisis, you know, you don't want to bring in new people, but they should be involved intimately, and I recommended that they appoint two deputy ministers as directors in the interim. I think I recommended Finance – deputy of Finance and deputy of Energy, and they chose a deputy of Finance and a deputy of legal. And – because I needed a board, and the closer I got to the government, the better because that would make sure that there was good information flow. And they – it turned out to work quite well.

And then when they proposed bringing on a new board, I said: Look, this is unfair to people coming on. This thing is still in crisis. I'm going to be asking for major decisions here very quickly. I really felt it was unfair to the new board members, but they felt – you know, they had to proceed with it. So I said, fine, we'll do what we can.

And, of course, when a new board member – you're bringing on a whole new board at one time. I mean, this is almost unheard of in the private sector. I mean, you always bring on board two – a new board or two, and you go through an exercise of (inaudible) – yeah, it takes almost a year to bring them fully up to speed on the developing issues. But a full board?

I mean, you know, quite a number of individuals. It adds to the burden, as well, and at the same time you're trying to deal with the crisis, and now you've got – to be fair to them, you've got to, you know, try to bring them up as quickly as possible.

In this case, the first thing a new board faced was the dealing with Astaldi, which is – I mean, they really had to rely on faith, and so I very much appreciate what they went through and thank them for the trust they had in me and – but it was a very difficult situation. And I think I've said earlier that, you know, I always think that a new board member takes about two years to become fully operational. I mean, they got up to speed pretty fast. They asked a lot of questions. And we had to show them, you know, we had thought through this issues – things, are working through them. And I think we have an excellent board.

The only suggestion I would make is that I think that the owners should have representation on the board. I strongly feel that they should have a couple deputy ministers on the board so that it adds to the communication. Now, I understand, years ago, they did have deputy ministers on the board. I mean, when I was running Fortis, I always had a couple of my people on the boards to ensure that the communication was never missed.

MS. MUZYCHKA: Right.

MR. S. MARSHALL: So I don't quite understand the rationale of not having a few key people from government on the board. I would encourage that.

MS. MUZYCHKA: Okay. And whose decisions is that? To appoint the members to the board?

MR. S. MARSHALL: That's the government or –

MS. MUZYCHKA: Government's.

MR. S. MARSHALL: – you know –

MS. MUZYCHKA: So they could appoint a deputy minister if they (inaudible) –

MR. S. MARSHALL: I don't know if there's any legal restriction or not. I – you know, like, it's not my area 'cause I haven't pursued it but –

MS. MUZYCHKA: Yeah.

MR. S. MARSHALL: I think the time I had the two deputy ministers there in the crisis, it was very beneficial. They could help me, you know, get the message through to the government, and I didn't have to worry about sometimes about, you know, Finance knowing about something because the deputy Finance minister was there. And they made a good – great contribution. They – I must say that I thank them very much for their effort.

MS. MUZYCHKA: Okay.

THE COMMISSIONER: Can I just butt in for a minute if I can, Mr. Marshall.

One of the – we've had evidence from an individual who was an expert on governance and including with utilities, and he had suggested that one of the concerns about putting deputy ministers on a board for a Crown corporation might be that it's not intimidating to other board members, but it might suggest that those board members have more of a role or more importance in the decision-making than would the others. And this was one of the concerns that was expressed about having somebody from the owner, from a government for instance, on the board.

Is there any comment you'd like to make about that?

MR. S. MARSHALL: I think that's a general concern. But like I said, I had – in my prior existence, you know, when I ran many utilities in different parts of North America and the Caribbean, I always had two, three people there and yes, that can – initially that can be a little bit intimidating, but I think the benefits far outweigh it. That way no one could – nobody can complain that we didn't know, you know?

MS. MUZYCHKA: (Inaudible.)

MR. S. MARSHALL: It's difficult to maintain good communications to the owner all the time and I found it was very, very beneficial.

Beneficial to the other directors too, because they could ask those individuals, you know – because the government is the owner.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: And so, ultimately, we're accountable to them.

In my case, I have, you know, direct reporting to the Premier and to the minister of Natural Resources. It's beneficial, but there's so much things on the go, if things get missed and go through the cracks, and I think that – I really believe that I benefited from having those deputy ministers on my board in a crisis and I really believe that my many years with many utilities throughout the Fortis empire, that it was very beneficial.

MS. MUZYCHKA: Okay.

I just want to explore some of the issues you discussed with us in your interviews regarding governance issues when you first came on board with Nalcor. And you had mentioned that in terms of reporting, you had the separate boards and different components to the Muskrat Falls Project and each board knew a little bit and nobody actually had the big picture, and how you saw that and what you did to address it.

MR. S. MARSHALL: Yeah, I think I'm on the record as saying this is the most over-governed situation I've ever seen and I still say that. And part of it, you got all these different boards, different parts of the Muskrat Falls thing driven by, supposedly, financial oversight and this sort of thing. And if I had to go to every board meeting and every committee meeting of the board, I would've done nothing but. And so I came around to the solution – first of all, let's get all these boards together in one big session.

MS. MUZYCHKA: So what were the boards? Just, you know –

MR. S. MARSHALL: You had the board of – I can't even remember them all now.

MS. MUZYCHKA: Okay, so you had –

MR. S. MARSHALL: We had the main board, the Nalcor board, we had a board for LILCo, we

had a board for the management of Muskrat Falls, we had a board for –

MS. MUZYCHKA: Hydro?

MR. S. MARSHALL: – they're on the list here somewhere.

MS. MUZYCHKA: Yes, so –

MR. S. MARSHALL: Hydro –

MS. MUZYCHKA: – each of the (inaudible) –

MR. S. MARSHALL: I can't even remember the names of them, that's how bad it is.

MS. MUZYCHKA: Right, okay. So each component has its own incorporated entity and had a board.

MR. S. MARSHALL: Right. And so you had – some people were on two or more boards, you had some people on one board and they would see their tiny bit of it. And it just saved me time, if nothing else. But also I think it's a great benefit to each one of these people to see the big picture.

So we started having one big session and so everybody saw it all, and I think they benefited from that, they certainly got – the feedback I got was how much they appreciated seeing where all of this fitted together. But, you know – it was done for a very selfish reason, really, to save me time, to start with. But it's worked out very, very well. I must say that –

MS. MUZYCHKA: Is that how you streamlined it? I mean all these boards exist as –

MR. S. MARSHALL: Right.

MS. MUZYCHKA: – they did before.

MR. S. MARSHALL: We have one big session, they all – they come in to hear the whole thing and then you have a little, sort of, almost a pro forma meeting of the different boards; certain things you got to do, you know, approve the budget, that sort of thing. But it's all in the context – and the big picture (inaudible) been explained to them.

MS. MUZYCHKA: They have one maiden board meeting with all the boards.

MR. S. MARSHALL: It's not (inaudible) official board meeting, it's a –

MS. MUZYCHKA: Or a meeting.

MR. S. MARSHALL: – Lower Churchill Project group meeting.

MS. MUZYCHKA: But it involves the directors –

MR. S. MARSHALL: It involves the directors of all the companies.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: And we have to manage with their – the senior management of all the companies. And so, you know, Gilbert would do a presentation, now Jim would do a presentation, you know, and the questions are asked, I participate.

MS. MUZYCHKA: So your executive will participate as well.

MR. S. MARSHALL: Oh, they all participate, yeah.

MS. MUZYCHKA: Okay. And you've seen that to have enhanced the knowledge base for all of the individual board members (inaudible).

MR. S. MARSHALL: Well, it certainly benefited me, but I think if you ask those board members, I think they would all agree that they really know, (inaudible) part of it and they understand where everything fits in.

MS. MUZYCHKA: Yes, okay.

We've had past board members testify about the challenges of being on the board of Nalcor, this includes the amount of time that they spent doing board work for no compensation. And in some period of time, certainly at Nalcor where there was an inadequate number of people on the board, a lack of commination from Nalcor to the board and inadequate breadth of competencies on the board. So we've heard these various comments.

Do you think that the issue of lack of breadth of competencies on the board has been addressed?

MR. S. MARSHALL: I have an excellent board. I think the board we have now is a good a board you are ever gonna get on a Crown corporation in Newfoundland.

When I met with the Independent Appointments Commission earlier on with – I took, you know, they had aspirations of bringing in CEOs of, you know, major utilities across Canada. I said: You're never gonna get them. You know, and it's not – it's just like myself, I have no interest in being on a board of a Crown corporation. I know how difficult it is, we spent our life dealing with boards; by the time we retire we are fed up with it.

So most of the people going on boards tend to be, you know, lower down the organization, they're more interested. There's so few CEOs to start with. So I think, you know, you get some good people, and we've been lucky, we've been fortunate. But you're going to – what you're going to do is go to Newfoundlanders who are prepared to give their time. They're not driven by money. That doesn't mean you shouldn't be paid. I'm adamant that, you know, you shouldn't be treating this as a charity. These people are not there for the money, and when I was invited on – to be on boards, I mean, the money is – the only reason I do it is interest. These people there – that doesn't mean you shouldn't pay them.

MS. MUZYCHKA: No.

MR. S. MARSHALL: I mean, people should be treated – I think it's part of – treat with respect. You know, you're asking these people to spend all their time on this activity, and they work hard, and they're exposed to criticism and all other things. They should be compensated – no ifs, ands or buts. But no, it won't motivate – the people who are going to be motivated by money, they probably don't need it anyway. But that doesn't mean you shouldn't pay them; you should.

MS. MUZYCHKA: Do you have a sense as to what they should be paid?

MR. S. MARSHALL: Well, a Crown – you got to go by what's in the market. I mean, today, I

think the average compensation on a public corporation in Canada is around \$200,000 a year. That's just based, you know –

MS. MUZYCHKA: Is that for the chair or for the board members?

MR. S. MARSHALL: That's generally what a – you know, the board members – I'm on the board of another public corporation and, you know, it's around that level. Then you get extra for being on the different committees. That's the going rate.

Obviously, Crown corporations are much, much lower. Just pay what's going for Crown corporations, really.

You know, there's other ways of dealing with some of these things, too, you know, like – not to digress too much, but I was invited out last year to talk to the board of BC Hydro about, you know, experiences out here and whatnot, and they have in their Site C, which is on the go now, in addition to the board, the board engages a special technical committee, which they draw people from around the world to advise them. And that was a good idea. I don't know how they're compensated, but I'm sure they are compensated. You're asking people from different parts of the world come in and advise the board.

MS. MUZYCHKA: Right, so these would be outside contractor-types.

MR. S. MARSHALL: Right.

MS. MUZYCHKA: Right – or independent consultants.

MR. S. MARSHALL: Right.

MS. MUZYCHKA: They're not board members, but are – their role –

MR. S. MARSHALL: Right.

MS. MUZYCHKA: – is to advise.

MR. S. MARSHALL: Yeah. So, you're on – you have an existing board membership, because you got a special project, you know, you set up an advisory committee to the board.

MS. MUZYCHKA: Yes, and some of these stuff is highly technical.

MR. S. MARSHALL: And so, a friend of mine who was – had been CEO of a big construction company, asked me to come up and talk to them. This shows, you know – that's a great way of dealing with it. I think it's highly to be recommended.

MS. MUZYCHKA: The board would set their own compensation. Is that correct?

MR. S. MARSHALL: Yeah, in the private sector, the board sets its own compensation, but it goes and looks at what the market is and what – you know, everybody targets on median, unless you're a bigger company or you're in a more risky business, this sort of thing. It's tied today in terms of stock options, for example – not as much stock options anymore, but stock grants, performance share units, and the whole ways of compensating. So, I mean, some people now make more money being on board than they ever made being CEO.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: I don't recommend that.

MS. MUZYCHKA: And it's also the board that sets the compensation for the executive.

MR. S. MARSHALL: They do set – and we follow the same process. We go hire a consultant, find out what the going rate is, and I'm a strong believer in paying the going rate. The trouble that you have in a Crown corporation is that, you know, you're – that's very difficult to do. The compensation we'd pay at the senior executive level in Nalcor, we can't attract anybody from the outside, the exception being old retirees like me who come in and volunteer their time almost.

MS. MUZYCHKA: Okay.

Do you see any conflict in your own role as a board member and as a CEO?

MR. S. MARSHALL: Absolutely not.

MS. MUZYCHKA: Okay, so when –

MR. S. MARSHALL: That's –

MS. MUZYCHKA: – there's things –

MR. S. MARSHALL: That's the standard in the industry. I mean, and in the US it's still standard to have the CEO as chairman of the board.

MS. MUZYCHKA: Okay, so I guess in items involving, you know, executive compensation, you'd recuse yourself from discussion –

MR. S. MARSHALL: Right.

MS. MUZYCHKA: – on that.

MR. S. MARSHALL: And you have – usually the chair of the HR committee – like I chair the HR committee (inaudible) company online in Calgary, and we go through all that.

MS. MUZYCHKA: Okay.

Now is your role as a board member, as the CEO of the company, any different than the role of the other board members, or do you have the same sort of input and responsibility?

MR. S. MARSHALL: My role is different, obviously, and is recognized, and there's usually a session where I'm excused, so there's an in camera session, that's normal, as well. Everybody recognizes that, but it's – I think the CEO has to be on the board. That's the standard practice. I don't – I've never seen it where he wasn't –

MS. MUZYCHKA: Right, okay.

MR. S. MARSHALL: – or she wasn't.

MS. MUZYCHKA: What kind of communication happens between the appointing body and the board to ensure that they're – any gaps in competencies are being met. So I'm assuming that the government goes to the Independent Appointments Commission and asks for a selection of individuals if, say, a vacancy appears on the board.

How does that –

MR. S. MARSHALL: I'm not –

MS. MUZYCHKA: – process work?

MR. S. MARSHALL: I'm not totally conversant in that. You know, I leave it up to the chairman to do all of this stuff, and I know we have particular constraints at Nalcor, and – so –

MS. MUZYCHKA: But, I guess the question is how is that addressed or is that a focus –

MR. S. MARSHALL: What –

MS. MUZYCHKA: – of when –

MR. S. MARSHALL: Yeah.

MS. MUZYCHKA: – you appoint board members that, look, we just had a retiring –

MR. S. MARSHALL: Well, we went through it in terms of we started off with just two outside the board, we had – actually had three. We had one other outside board member in the crisis situation, John Green, but the board – you know, you have some basic functions of the board you want to deliver on.

Certainly you have to have an audit committee, an HR committee and the governance committee.

MS. MUZYCHKA: Right.

MR. S. MARSHALL: And there's a lot – a fair bit of work in each one of those areas, and so you look for – you try to look for people with a particular expertise in those areas to start with, and the governance committee then that takes charge of, you know, who should be on the board, what – and expertise they're lacking. So I know our Governance Committee is quite active, looking at that, and I'm assuming, almost in a sense, I should know more but –

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: – I got enough to do without worrying about, you know, the appointment of the board. But, you know, they'll –

MS. MUZYCHKA: Do you generally –

MR. S. MARSHALL: – go to the government and suggest that we need board members and –

MS. MUZYCHKA: But who in government? What – like, would you go to the Department of Natural Resources? Would that be a natural fit?

MR. S. MARSHALL: In most, sort of, standard administrative things – I don't know what the legislation says – but in most day-to-day administrative functions, I normally – we normally go to the Minister of Natural Resources. Yeah, that's where we file most of our reports to, right? So in administrative purpose, it's clearly Natural Resources, but I'm not sure what the legislation says.

MS. MUZYCHKA: Okay. So – and then are they involved in hand-picking, or do they make recommendations? Do you get a chance to vet any potential candidates?

MR. S. MARSHALL: Yes. In the ones that we've gone through, what would happen was that the minister would sometimes send me a list and say – of people saying, you know, do you have an objection to any of these people? These people that have been brought forward? Then you have the appointments committee, and it ultimately comes back to the government to make the appointments.

And so, you know, I'll go down the list, and there's people that have objections to what I've noted. Sometimes they listen to me; sometimes they don't. But, you know, I have input, and they can choose to accept it or reject it.

MS. MUZYCHKA: Right, okay.

When Mr. Paddick testified, he indicated that Nalcor would face challenges in appointing a qualified board in the future. Do you share that view?

MR. S. MARSHALL: Yeah – sorry. Repeat that, please?

MS. MUZYCHKA: He indicated that Nalcor would face challenges in appointing a qualified board in the future, (inaudible) –

MR. S. MARSHALL: You're always going to have challenges. Like I say, the – first of all,

there's a great demand for board members, especially people who have extensive experience. In much bigger corporations, the most highly qualified can pick and choose, and normally they all focus on entities that they have some interest in.

Like, in my case, I'm on this board in Calgary; it's in the natural gas sector, global. You know, it just gives me an eye on energy throughout the world –

MS. MUZYCHKA: Mm-hmm.

MR. S. MARSHALL: – on construction practices and those sorts of things, and so I'm there as – for interest.

MS. MUZYCHKA: Okay.

So I guess it's an ongoing challenge with –

MR. S. MARSHALL: It's going to be an ongoing challenge –

MS. MUZYCHKA: – Crown corporations.

MR. S. MARSHALL: – but you can get some good board members. And we've got a board now that's an excellent board, in my view, as good as any board I've seen.

MS. MUZYCHKA: Okay.

What communications do you have with the board chair outside of board meetings? Are you in regular contact with him or –?

MR. S. MARSHALL: It depends on the circumstances. I mean, if there's nothing happening, you know, I mean, I might go a month or more without communicating. Usually, in preparation for the meeting, there's a conversation. A lot of the committees I don't go to, because I just simply haven't got the time.

Like, you know, if the Governance Committee is meeting, I'm not necessarily required there, so – but if they ask me to go, I'll go. Even the – say, the Audit Committee (inaudible) Derrick would go, the chief financial officer would go and find the information. I mean, there's only so many things I can go to, right?

MS. MUZYCHKA: Right.

MR. S. MARSHALL: In the corporate sector I would go to all of the board meetings because I would just have one board and, you know, the regular quarterly meetings I'd go. But in this case there are so many of them that I simply cannot do it.

MS. MUZYCHKA: So you would communicate with the chair for your information?

MR. S. MARSHALL: My – the chair speaks for the board, I speak for the corporation; we speak to each other.

MS. MUZYCHKA: Right, okay.

MR. S. MARSHALL: But other board members, especially committee chairs, if like for example you're dealing with compensation issues, it's not unusual for Jim to come and speak with me, and say Mike Roberts who's the VP in charge of HR, if they're working on something to come and have a chat.

But between – unless there's something unusual happening, if – and it usually is something unusual, especially with the government, in which case the chairman and I will have conversations about what's – how to proceed with this sort of thing.

MS. MUZYCHKA: You mentioned when we were talking about board composition that it would be useful to have, say, an ADM for Finance or Public Safety and Justice. Would you consider civil servants who weren't in those higher positions to –?

MR. S. MARSHALL: Oh, absolutely. But I'm saying that those are key areas. You know, the troubles we've had in the past, you know, as people – somebody in Finance would say: Well, I didn't know that. And you – first when you go in to these situations you make the assumption that they speak to each other.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: But you very quickly discover that sometimes, you know, one department doesn't talk to the other very much.

And so it's useful to have – you know, in our case, I mean, the key departments are Finance and Natural Resources. They're the two key ones. Like I say, earlier on when I asked for it I actually got the deputy of Justice and she was a great asset. So I'm not excluding people.

MS. MUZYCHKA: No.

MR. S. MARSHALL: It's just that I think those two areas would probably, generally speaking, be the most useful.

MS. MUZYCHKA: Right, I guess from the perspective of what they can bring to the board in terms of expertise –

MR. S. MARSHALL: Right.

MS. MUZYCHKA: – and knowledge –

MR. S. MARSHALL: And the communication to the owner. Make sure the owner –

MS. MUZYCHKA: And then –

MR. S. MARSHALL: – understands, in depth, the issues that are being debated –

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: – and the discussions that had been had.

See, right now we – I'm used to working for the board and I have my subsidiaries working for the board. But here, as you know, we have oversight committees, which have been talked about a lot. I was there, I think, two years before I discovered that my executive was going and meeting with the other deputies in a meeting, so there's meetings on the go all the time.

MS. MUZYCHKA: (Inaudible.)

MR. S. MARSHALL: We set up – you know, make sure we had Deanne Fisher set up and coordinate communications with the government –

MS. MUZYCHKA: Okay, just stop there for a moment, Mr. Marshall.

You mentioned that you didn't realize that the deputy ministers were meeting with your executive.

MR. S. MARSHALL: Right.

MS. MUZYCHKA: And so were you surprised when you learned that?

MR. S. MARSHALL: Yeah, I thought, you know – you got the Oversight Committee making all these regular other sessions, I mean, what else do they want to achieve here? I mean, in a lot of cases, what all these groups are doing is rehashing what we tell them and putting it in another form. Why not deal with it directly? Why not have some of these departments on the board, and they would know directly and away we go.

MS. MUZYCHKA: Did you address that issue with respect to the meetings and so on between the government ADMs and the – or the deputy ministers and your staff? Did you change or introduce a process by which this would be managed?

MR. S. MARSHALL: I'm just – I don't – enough issues – if the government wants to be talking to different groups, go ahead.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: Right. That's not a big point with me. I'm just saying that there's all kinds of communication between the corporation and government on the go, and there's still – still things get missed –

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: – in the cracks, which is the last thing you want to happen as a CEO. You want to make sure that your owner is kept well informed.

MS. MUZYCHKA: Okay. And I guess that goes to your question of the amount of over-governance that you see.

MR. S. MARSHALL: Yeah.

It's – you're repeating the same thing. The other thing we did when we went in there, we had all

of this reporting on the go, so – and John MacIsaac was very helpful with this. I said: John, we got to standardize what we're telling people, because one group wants one format and one wants another. So over some time we settled on a standardized report we should give to the Oversight Committee, and we gave it to the group meeting of the board. You know, make sure they all have it in the format where they understand it. I mean, there's no point in throwing the data – thousands and thousands of data – onto the wall. I mean, people need to understand. So how do you translate all of this data into information that gives insight, which is what you're looking to these people for?

MS. MUZYCHKA: Right. So I guess the Oversight Committee would require a different type of information than, say, the independent engineer, who's reporting to –

MR. S. MARSHALL: The engineer – the independent engineer is a different, you know, (inaudible).

MS. MUZYCHKA: He's a different entity, yes.

MR. S. MARSHALL: But, you know, I think that once you get a good reporting document, that will satisfy most of the purpose. They might want some supplemental thing, but – so we spent some time in trying to standardize that to get the information in the most understandable form, the most useful form.

MS. MUZYCHKA: Okay.

How do you see government's role in terms of how you move forward operating this project? They're not on the board. You communicate with them through the Oversight Committee. I gather you –

MR. S. MARSHALL: I don't.

MS. MUZYCHKA: You don't, but the organization. When I say "you," sometimes I don't mean you personally. I mean the –

MR. S. MARSHALL: Right.

MS. MUZYCHKA: – the company. But, you know, how do you see government's role in this? I mean, there's differing views. Some

might say that they should have little role and just be told what they need to know when they need to know. Or should they be more involved in terms of – not so much decision-making, but be aware of the decisions? Do you have any thoughts on that?

MR. S. MARSHALL: Governments are the owner. They're entitled to all the information they want. That's the first rule.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: Second rule is that we have an obligation to keep them posted on significant events and that's done in a number of formats. I mean, our primary mechanism of reporting is through our board. I mean, they're appointed by the government.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: They should be, in normal course, the owner's primary connection with management.

MS. MUZYCHKA: And does the board report to government?

MR. S. MARSHALL: The chairman should be – and he does, you know, he speaks with the government. Again, the chairman speaks for the board. You can't have people all over the place, you know. It's clear I speak for the corporation; the chairman speaks for the board. We both interact with government, (inaudible) interacts in terms of the bigger issues in – especially on governance.

MS. MUZYCHKA: And who is the point of contact at the government who receives this information? Because if –

MR. S. MARSHALL: Normally, I'd say –

MS. MUZYCHKA: – (inaudible) –

MR. S. MARSHALL: – for most administrative purposes, it's the deputy minister of Natural Resources. But recognizing that I am appointed by the Premier and the Premier is the head of government. You know, again, in a corporate setting, the CEO of the subsidiaries would always communicate to me as CEO of

Fortis. So I communicate a lot with the Premier. We don't spend a lot of time together, but I'm certainly at his call. And so my primary communications is with the Premier and the minister of Natural Resources.

Now, there are other specific issues – like, for example, Finance – where I'll be called in to talk to the Finance minister and his staff. This week I was called in to do a presentation on their behalf to the bond-rating agency. So there are other functions we serve on a needs – as-needed basis. But, certainly, the Premier's office, minister of Natural Resources and occasionally the Finance department – I'm trying to think if there are other – my staff also interacts at times with (inaudible) of compensation, right, for example, government compensation policy. That tends to be my VP of human resources.

So there are other contacts and we try to coordinate the best we can, but the concern is always that something does genuinely slip through the cracks.

MS. MUZYCHKA: Yes, now, I think we heard some evidence – at the time of sanction, in terms of communication or miscommunication that certain departments such as Finance may have been aware of the budget number and the change in the DG3 budget number, but actually the Premier's office may not have been aware or the Department of Natural Resources may not have been aware.

So how do you deal with that as a Crown corporation reporting to the government and there's a multitude of departments who may or may not communicate with each other?

MR. S. MARSHALL: Well, that's why I'm suggesting you should have a couple of deputy ministers on the board. I think that would help a lot.

MS. MUZYCHKA: That would help in terms of closing –

MR. S. MARSHALL: I think that – if there's one thing I'd like to see changed, I'd like to see that. That would help the communication a lot because like I said, my primary interaction is with Natural Resources and the Premier's office, but Finance is a big element of that, so – and the

premier is too – visiting with your staff – too busy, so –

MS. MUZYCHKA: Mmm.

MR. S. MARSHALL: – but I interact a lot with the Premier also – myself, anyway.

MS. MUZYCHKA: And, I guess, from your perspective and the corporation, it's better to have one point of contact being the communicator with the owner, such as yourself.

MR. S. MARSHALL: Right.

When I went there first it was all over the place. You know, people from different departments were phoning different departments within the corporation for information. And I had to go down to see the minister, and she would give me a document and say, well, look, you're saying this. The document I never – I had never seen. So I said, look, we got to get it better coordinated. So I said, it's – for all these sorts of things.

I mean, the Premier and the ministers, they can talk to whoever they want. And generally the deputy ministers, you know, know that they're executive is always available to them. But you got to have some coordinated communications.

And it's helpful, like, Deanne Fisher, you know, does a great job. She is in constant communication with the Premier's office and the Natural Resources' office. If they want something, they go to her. They don't have to fish around and say, well, phone – try to phone some manager of accounting. They can go to Deanne and say, you know, Deanne, I need information on this. And Deanne will go and track it down for them and get it back to them, and then we know what's being communicated.

MS. MUZYCHKA: Right.

MR. S. MARSHALL: And if there's an issue with that, typically, she will check with me and say, look, if this is some issue-sensitive – is this okay? And invariably it's okay. Well, at least we know what's going on, between the two of us.

MS. MUZYCHKA: Okay.

So is that – has there been a standard of communication now been implemented as between Nalcor and the government since you – ?

MR. S. MARSHALL: Actually, it's not written in the policy, but it works very effectively with – through Deanne, normally.

MS. MUZYCHKA: So you have one point of contact representing the government contacting –

MR. S. MARSHALL: You actually have people in government – if somebody, you know, like an assistant deputy minister wants something and probably doesn't know where to go, rather than fish around and try to find somebody, she can just – they know they can go to Deanne, and Deanne will sort of track it down for them, and it's coordinated and away we go.

MS. MUZYCHKA: Okay.

So, I guess, that represents a change since you were appointed as CEO as to how –

MR. S. MARSHALL: And I can't really speak to how it was before my time, but when I went in there it was chaotic, but a lot of things were going on. So I can't really speak to how it was operating previously. But I know the situation I found was unacceptable.

MS. MUZYCHKA: Okay.

We'll just move now to some cost reporting issues.

We know that at Decision Gate 3, at the time the project was sanctioned, the estimate was \$6.2 billion before financing. It wasn't including the AFUDC or interest during construction, and at that time first power was scheduled for mid-2017; shortly after that the date was moved to December 2017. And you've said publicly that the original capital cost analysis, estimates and schedule was very aggressive and overly optimistic and just didn't account for many of the risks that were known or should've been known at the time.

Can you tell us what led you to that conclusion?

MR. S. MARSHALL: Well, at that stage there's a number of factors. So when I'm in there in mid-2016 looking at the cost of completion –

MS. MUZYCHKA: Right.

MR. S. MARSHALL: – it's about the cost – the original cost estimates. So, here we are, almost half finished, and the cost to complete is about the original estimate, so that tells me, without much analysis, that the original cost estimates are way off. That's the first thing.

Second thing is that when I looked at – saw those numbers, even before I knew anything about Muskrat Falls, just – you have a sense, looking at what's going on in the industry, how much things are costing. We don't need particular details of a project.

For example, today, you're not going to build a hydro plant for less than \$7 million a megawatt, right? Because we know what Muskrat Falls is costing, we know what Site C has been projected at. So, anybody comes along with a number less than \$7 million a megawatt, they say, man, that's not right. You know, they must have some kind of special circumstances way beyond belief.

So, there's always a general rule of thumb: it looks right or not. When this is not accurate within plus or minus 20 per cent – but, you know, you have to just, like, eyeball. Like, anybody in St. John's buying a house would have a sense of what does a house go for down in the northeast, you know?

So, that didn't look right, and –

MS. MUZYCHKA: Were there many options, back in 2012, in terms of hydroelectric projects being built that would have given a better gauge as to what the cost might be?

MR. S. MARSHALL: We would –

MS. MUZYCHKA: Because you mentioned Site C.

MR. S. MARSHALL: Well, I don't know about '12, but I know that, you know, we were building Waneta in British Columbia, which was

a, you know, \$1 billion project. We're building that for three – so, that's about 330 megawatts, and we were building it for \$1 billion. So that's a multiple of three.

But that was – there was no reservoir work. We were building (inaudible) existing – no one was ever going to build anything cheaper than that just for – just a basic power plant. So, you know, any civil works was going to be an addition to that. Transmission lines were going to be expensive. But you add it all up. It was telling me – and I think when the premier – current Premier came to see me, I think I told him that it was going to cost \$10 to \$12 billion.

MS. MUZYCHKA: Okay.

We've heard evidence that, in the years following sanction, there were lags between when updated forecast numbers were known internally to Nalcor, and then when they were put out to the public or to the government.

In your opinion, how often should you be giving cost forecast updates?

MR. S. MARSHALL: It depends if you're seeing changes.

MS. MUZYCHKA: Even if you're not certain – because there was also some evidence that needed to be (inaudible).

MR. S. MARSHALL: Well, it's a couple of things that – you know, I would go back to it, and – I don't know if it would help (inaudible) digression – but if someone were coming along looking at a plant, and you copied Decision Gate 3 and whatnot, we didn't – we never used that. We – but (inaudible) I understand the concept.

But at that stage, you know, when you got maybe 20 or 30 per cent of the engineering done, I wouldn't say that, you know – any estimate you're going to give me – yeah, 20, 30, 40 per cent. So if you come with a number of 6 billion, in my mind, that could be, you know, 7.5. It wasn't going to be much less than 6 billion, I've never known something to come in much cheaper than what was (inaudible). But – so, the emphasis is on the degree of precision of that estimate.

MS. MUZYCHKA: Yes, and we –

MR. S. MARSHALL: In my mind, there'd be no precision to it at all, right? So, I might have fallen in the trap too that, you know, if the price was at 6.1 billion and now it's 6.3 that, well, gee, that's totally to be expected. So you have a different view of it, depending on your experience level and your competence. And I had the – I did actually listen to some of what Mr. George Jergeas had to say.

MS. MUZYCHKA: I was just going to say –

MR. S. MARSHALL: A very practical guy, and I had to – find myself agreeing with him a lot. Now people would think there's a lot more precision to this process than there is. And, you know, in our role – my role, you know, we would say Waneta was on time and budget, but we pretty well had it all done before we started. We had all the engineering done, we had – I think we'd drawn out the bids for the contractor and everything. Because (inaudible) a couple of years delay – because I refused to go along with the project where I didn't have control over the government, we were insisting on 51 per cent. So all this work had been done.

And when Mr. Jergeas said, you know, the secret in this is getting the engineering done, so the estimate is reliable. The other thing I would add is that, you know, these things – because there's a lack of precision, they have off-ramps. I mean, if you can maintain flexibility, and I can – see, we talk about the projects we do. We don't talk about the projects that we didn't do, that we cancelled at the last moment because we had opportunity to when the costs were starting to rise.

And I know in British Columbia, the same time we were doing Waneta, we got another project, which we owned fully, and we were looking at sizing it and doing engineering on it, and it involved dealing with the states of Washington and Oregon. And so, they were wanting more changes to it. We kept making changes, and we were almost ready to go. We were almost getting these jurisdictions to go change their legislation when we said, stop, we better go back now and review all these costs.

And when they went through it again as a very reliable engineering firm, the name would be familiar to you, but it doesn't matter, and the costs came in about 70 per cent than they had estimated a few months earlier, because things had been changing, no one had stopped the process. But in our case, we were lucky. We hadn't committed. With the capital project, we did.

MS. MUZYCHKA: Okay.

So there was – hadn't gotten to the point of no return, essentially?

MR. S. MARSHALL: Well, that's what I tell people. And, you know, I always train my executive team – flexibility is important. When you look at it, the future is always uncertain. Any estimate is going to be wrong. So to a degree, you maintain a flexibility, and anytime they cancel, I take that option over anything else. If I got to sign on the dotted line today when things are uncertain, and lock into it, you know, that's really something I don't want to do. I want to maintain my flexible stance until I have to absolutely commit.

MS. MUZYCHKA: Okay. So I guess in this case, just as an example, when bids were coming in and significantly higher than what the DG3 estimate was, that may have been a time to re-evaluate.

MR. S. MARSHALL: I think it was too late. I think it was made clear – I haven't seen much of the Inquiry, but I think it's fully clear that once you entered into the financial close, you were committed.

MS. MUZYCHKA: Yes, but if you knew that before financial close –

MR. S. MARSHALL: Yeah, if you know –

MS. MUZYCHKA: – bids were received –

MR. S. MARSHALL: Yeah, you –

MS. MUZYCHKA: – before financial close.

MR. S. MARSHALL: – you know, if you were doing it for yourself and you carried it along and you had the opportunity to not be rushed, you

know, you'd sort of go in there and see what you can fix first. You go to the – maybe you go to tender on a major contract, before you actually commit. If that came in as much higher than your estimate, you'd say: Something wrong here, I better stop, reassess it.

So – now that's something that people don't value: flexibility. 'Cause you're gonna be wrong. Any estimate is going to be wrong, we know that.

MS. MUZYCHKA: Especially if it's based on 40 per cent engineering.

MR. S. MARSHALL: Yeah. You know, you don't want to be at that. There's a perception among some of these people, that precision – they go with this precision of plus and minus 5 per cent or – it ain't there. They're deceiving themselves. And most of the people, you know, higher in the industry, they know this is just an estimate.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: Don't bet the shop on it.

MS. MUZYCHKA: Just going back to the advising or reporting of changes in forecasts. How frequently should something that like be made? Quarterly, monthly?

MR. S. MARSHALL: Well, there's always a quarterly reporting. My general period of reporting in any corporation I've been in is quarterly. Typically, anything less than that, there's a lot of noise. So that's one thing. Normally, the reporting is quarterly. Again, if something unusual happens of significance, you make – you report that.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: It's important – like, when we were doing things, we don't fix on one number. One number is not – the way you would do it, you would go in – you establish a range. Then, you would look at what are the – you look at a major variance – variances possible, you look at doing an analysis of what – you know, if, say, the price of oil goes up, if the price of cement goes up, right? So the board is familiar with if it sees cement prices rising, interest rates

rising, they know the sensitivity. It's a sensitivity analysis.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: It's another way of approaching this. I think that Emera has told you they didn't do this sort of – the gate decision-making thing neither. And that's the way we would – it's a much more cautionary approach, but show the board sensitivity analysis. So, you know, if one factor changed, not – it's gonna change anyway. It's not causing you go to the board every day as the interest rates change.

MS. MUZYCHKA: Right.

MR. S. MARSHALL: You know? But if something major changes – (inaudible), you just – I'd contact the chairman, we send a note to the board that there is going to be a meeting; you send a note saying: Look, this is a major event, you should know about this.

MS. MUZYCHKA: Right. And it may inform any future decisions that they maybe asked to –

MR. S. MARSHALL: Right.

MS. MUZYCHKA: – make at a later date.

MR. S. MARSHALL: Right.

MS. MUZYCHKA: Okay. Alright.

I am going to bring you to tab 31 which is P-03779, and that is in book 2.

This is a memorandum from Tanya Power about the preparation of internal management outlook files with final forecast costs. The purpose of the exercise, I guess highlighted the difference between the final forecast cost and the AFE numbers. And the AFE number obviously is a public number. Sometimes this information differs with the information that's shared with the Government of Newfoundland and the board of directors. These reports all predate your tenure.

When Ms. Power testified, she gave us an overview as to how the project control processes currently work within Nalcor. The question is: Is it correct that the best forecast figures today go

directly into the project control summary report or does it – is it still based upon the AFE information?

MR. S. MARSHALL: We report the AFE, we also report, you know, what we think it's going to cost. If there is a difference between the two, then you have to note that. But generally, they are in alignment anyway so there's a – I don't really –

MS. MUZYCHKA: 'Cause the sense we had was that some of these – some of the information that was prepared internally didn't make it into the project control documents that then informed other reports that were being produced for outside agencies or for – like, for example, to the Government of Canada.

MR. S. MARSHALL: Yeah.

MS. MUZYCHKA: So, I guess the – you know, we had this discussion with Mr. Bennett, in terms of the construction reports which were modelled on information that came through the project control system. And these reports were, you know, a set format and they contained certain information, but they didn't truly reflect the information that was known in terms of new budgets and forecasts which required, you know, substantially large infusions of money and revisions to the AFE.

So I guess – you know, the point is that: Would you consider it appropriate for figures that are produced internally not to make it into the formal reporting documentation?

MR. S. MARSHALL: Well, different reporting currently is for different purposes, I mean. I don't know what's going on in different parts of the organization, but what I do focus on is that when the information goes off at my level, you know – for example, you know, we might – people below me might have a certain view of the cost of the Inquiry. But, ultimately, when it goes above me, is what I might – I exercise my judgment. Whether it's in or out is not as important as we know what's in or out.

So, if the AFE doesn't include \$1 billion for the Inquiry, well, say it doesn't include \$1 billion for the Inquiry. So, is – I'm not hung up on the

format; what I'm really hung up on is that people understand what's being said.

MS. MUZYCHKA: Right. So that the information should be available in some other format if it's sufficiently –

MR. S. MARSHALL: Yeah. There could be analysis done below me to have different formats and everything else. So, this is why I'm keen on the information going up the organization, should be consistent what the – you know, the executive view is.

MS. MUZYCHKA: Okay. I'm gonna to turn your attention to tab 15, it's P-04034. That will be in binder 1. This is a collection of notes and questions the former minister of Finance, Cathy Bennett, assembled about the June 2017 AFE –

MR. S. MARSHALL: Right.

MS. MUZYCHKA: – update. And we turn to page 2, she has many notes written in the margin. One of her questions is budget 2017 allowed for capital cost – let me see where that is on the sheet.

MR. S. MARSHALL: Right. I see it.

MS. MUZYCHKA: You can see it? Okay.

“Budget 2017 allowed for capital cost of \$9.85 billion. Minister of Finance was advised that no surprises were expected. What changed in this past quarter?” And then she has a note in the margins saying: Stan, and with quotation marks, ‘I'm not sure where you got that number.’

Do you know what this means? Or what source of the 9.85 number (inaudible).

MR. S. MARSHALL: Yeah. You asked me during the interview and first I was stumped by it, but my – I think about it – I think what happened was that year, the Finance Department chose to tack on – I think it was \$200 million in the estimates I was giving them. 'Cause – but you're free to pick your – I give them the information and tell them that certain numbers were uncertain. If they want to add some money on to it, they did. I said – when I saw the nine – I think this is the answer – when I saw the 9.85, I said that's not any number I ever used. But then

I think we sorted it out between ourselves, that it was the number they – they had tacked on to something – to the far estimate I'd given them, which is fine.

MS. MUZYCHKA: They, being the government?

MR. S. MARSHALL: They, being the government.

MS. MUZYCHKA: (Inaudible.)

MR. S. MARSHALL: So, I didn't recognize it.

MS. MUZYCHKA: Okay. So, that wasn't a number that come from you?

MR. S. MARSHALL: No.

MS. MUZYCHKA: All right.

MR. S. MARSHALL: I think that's the answer I – that's the only explanation I can think of looking back a couple of years.

MS. MUZYCHKA: All right.

Ms. Bennett testified that she was disappointed to be hearing about a new cost figure. And in her memo, it says she had been assured there'd be no surprises. Do you –?

MR. S. MARSHALL: I remember talking to her and saying – and that was, I think, earlier in the year, that, you know, I was gonna do another cost update. I didn't expect any surprise at that point in time, which is true, but I guess a surprise to me and a surprise to her would be different things, but – 'cause I had given them commentary about, for example, the Astaldi update that they – you know, the cost associated with the demonstration.

The only real surprise to me when I gave that update – what I expected was that \$100 million coming out of the transmission project was why I got a little upset, you know.

MS. MUZYCHKA: That was a surprise to you?

MR. S. MARSHALL: Pardon?

MS. MUZYCHKA: That was a surprise?

MR. S. MARSHALL: That was a surprise to me, yeah. Going back – something going back to 2015 and, you know, it hadn't been included in the 2016 update. But the other thing – so everybody knew that 2016 number was – had a lot of variability in to it, especially as the year went through, we had demonstrations and whatnot.

So I was a bit surprised that the \$100 million was attributable to 2015, but other than that, yeah, I told her in – earlier on, I didn't expect any surprises. It was true at that point in time.

MS. MUZYCHKA: Okay.

She testified she wanted to know the most up-to-date figures, as minister of Finance, and that she didn't mind hearing a range of possibilities if a precise number was impossible and that she felt there was resistance to sharing that type of information. Do you –

MR. S. MARSHALL: Yeah, this is a problem I had with Finance. I was down there this week and give the thing, I said like you guys you're used to recording to history where you do it to the second decimal point. I'm looking at the future where it's so uncertain.

So when I say to them, you know, when you asked me for an estimate, it's an estimate. I give you the best number. Sometimes I'm low. For example, when we talk about mitigation, they wanted to include that in the budget. And I said don't do it. I said, it's so variable; it could be anywhere from zero to \$300 million. I said, don't lock yourself into a number.

And they, you know, persisted, well, we need to put a number in here and everything else. I said, well, look, it's totally uncertain. It depends when the LIL comes up, depends on the price of oil, depends on the weather in Newfoundland and the weather in Nova Scotia. It's just no way of – with any certainty, to come up with a number.

So then they forced – you know, persist and you say, look, okay, pick a number. Take \$200 million.

MS. MUZYCHKA: Was that the –

MR. S. MARSHALL: They used that and then they said, well, you deceived me. No, that's not true, they –

MS. MUZYCHKA: You were wrong.

MR. S. MARSHALL: – but they'll say you're wrong, right?

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: Right. But I told you – when you try to convey the message, but they're used to having a certain degree of precision that's impossible in the stuff we're doing, it's simply impossible.

MS. MUZYCHKA: Right, but you can –

MR. S. MARSHALL: And so you're not trying to be evasive, you're trying to help them. You're trying to say don't lock yourself into the number, it's just totally unreliable.

MS. MUZYCHKA: But I guess that – excuse me – goes against the norm of budgeting and finance to have some certainty –

MR. S. MARSHALL: Right.

MS. MUZYCHKA: – as they –

MR. S. MARSHALL: So that's why as we went through this process, I said, look, what we propose to do – and we went down to the regulator with this – let's – we know that it can be some saving. It could be – so let's create a pot and we'll put the money in – whatever savings we'll put in the pot and you, the government, can do with it what you want.

MS. MUZYCHKA: So it's like a management reserve.

MR. S. MARSHALL: In a reserve. Like, you know, with so much uncertainty. And now I heard the minister say – minister – former minister Bennett says that, you know, she thought we were gonna use the – she was suspicious 'cause we were using money. It was the reverse of that. We said, look, we don't know the amount of savings. We'll put it in the pot, you decide. But we don't, you know – but, no, they insist on using a number and then we

get ourselves into a brief because we used a number and it's wrong and everybody looks bad.

MS. MUZYCHKA: Okay. So I guess that's the challenges of trying to manage a project of this size in terms of financial certainty.

MR. S. MARSHALL: Right. And especially with government. Governments are, you know, they're big organizations. From year to year, there's not many changes except for price of oil, and they can explain that. But in our world, you might – especially now that we're trying to bring a big project on stream and, you know, so much uncertainty about all these things and savings, there's no number that's gonna be reliable.

MS. MUZYCHKA: But how do you deal with that then, as –

MR. S. MARSHALL: You –

MS. MUZYCHKA: – the CEO?

MR. S. MARSHALL: – try to express to them, as I said earlier, about any estimates. You know, you tell them – try to explain a range. You explain the – some kind of – in the analysis and make a decision – sometimes a sensitivity analysis, you know, if – like, if cost of borrowing is this, then you're gonna make money; if it's this, you're going to lose money. And so it's nothing we can control, interest rates, so – you need to try to explain the risks involved, and the uncertainty. Business is uncertain. Accounting is after the fact. And I think Mr. – and Mr. Jergeas has said any number divisible by five is a rough guess.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: And I agree with that fully. You know, that's the real world.

MS. MUZYCHKA: But there has to be a means by which an owner, a government, can plan and prepare for the contingencies.

MR. S. MARSHALL: Right.

MS. MUZYCHKA: So, giving them a range, I think is important, as well as identifying the contingencies and the potential exposure, the

probability that this may occur, may not occur so that they can prepare for it.

MR. S. MARSHALL: Right. It's the understanding that's important, not any one number, but the understanding of sensitivity, things you control, the things you can't. So when you make a decision, it's an informed decision. And so, when things change, we can understand why it changed and act accordingly. And, you know, the – as the owner – and I was in the owner's position most of my life – that, you know, I have to prepare – look at the analysis that was done, probe questions and say, okay, there's a risk; is it a risk I'm prepared to take? That's business. Sometimes you win, sometimes you lose.

MS. MUZYCHKA: Okay. Just going to bring us to tab 27. It's P-04353. And this is the Muskrat Falls project update of June 22, 2017. So this is an update that you gave when you first came on board. And if we look at slide 11 ... What happened?

MR. S. MARSHALL: Page 11?

MS. MUZYCHKA: Actually, it might not be the correct one. I'm looking for the operation and maintenance costs that was –

MR. S. MARSHALL: That would be 2017.

MS. MUZYCHKA: It might be. I might have the wrong exhibit. So we had a difference of 34 million annually.

MR. S. MARSHALL: That should be 2017, not there in that.

MS. MUZYCHKA: Yeah, I think you're right. It's the incorrect – okay, so we'll park that question for the moment.

MR. S. MARSHALL: Actually, just ask the question, I can probably answer it without referring to the exhibit.

MS. MUZYCHKA: There was a difference in the –

MR. S. MARSHALL: O&M.

MS. MUZYCHKA: – the price, the O&M. It went from 20 –

MR. S. MARSHALL: Mm-hmm.

MS. MUZYCHKA: – or 34 million to 120-something –

MR. S. MARSHALL: Mm-hmm.

MS. MUZYCHKA: – million, 129, I believe.

How is it that we can account for such a big difference in the –

MR. S. MARSHALL: Well –

MS. MUZYCHKA: – O&M costs?

MR. S. MARSHALL: – okay. First of all, in 2016 I didn't even have a chance to look at the O&M. I mean, I say we're in crisis and I was just trying to do the best I can to portray the big picture. So I didn't even look at the O&M in 2016. Took whatever was there and we just left it.

As we headed into 2017, now more time, one of the things I did want to look at was – 'cause we were looking at rates, was O&M. And I asked John MacIsaac to do – to go and get us a good estimate, and John went out and looked at industry norms, you know, HVDC and those sorts of things. And he came back with a number somewhere around \$100 million annually, which – I looked at the number and said that's a big jump, what's?

So the first thing I did I went and see Derrick. I said, Derrick, any idea what's 35 – you know this number? And he said that even when that number was put in at the time, it originally felt – it was felt to be low, but he was directed to use it. So even back then, it was low, but – so John used a number based upon going out and surveying best practices. And so – and then there were some differences due to the fact that when you go look at other jurisdictions, they have certain differences in terms of, for example, water tax. Here we have a water tax, other jurisdictions don't. So we had to tack that on here. But for purpose of comparison, it was excluded. Same thing with the payments to the

Aboriginals or the Innu under the IBA. So that's unique to this so that's added on.

So that's the estimate we come up to in 2017. We backed off since because we're trying to save money, trying to see if we can cut back. It's hard to think the estimate, especially if you're doing something for the first time. Very unique operation so very difficult. The other thing is that you're trying – when you look at these big projects, sometimes you try to levelize the O&M. For example, at Churchill Falls, we have a, you know, an ongoing maintenance program, and to levelize it, you try to put it into a reserve, and some years, you use it all; some years, you use more; some years, you're less.

So – and in the first early years of life of a new project, it balances (inaudible). Like, this is the bathtub curve. I think John – the first few years tends to be high because you got, you know, early burnouts of things and learning experiences, then it levels off and later in life it rises again as the equipment gets older. So you're trying to come up with a levelized number sometimes. Here we're trying – now that we've backed off, we're trying to say, okay, we'll skimp a little bit in the early years and see if we can make do. But we – nobody really knows 'til we set this thing in operation.

MS. MUZYCHKA: Is there a higher amount resulting because of the division of the two projects, or did that make any difference?

MR. S. MARSHALL: No, once we come to operation, it's always going to be one.

MS. MUZYCHKA: So it's all combined together anyways.

MR. S. MARSHALL: Well, it's always going to be one operation.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: So the splitting of the project had nothing to do with that.

MS. MUZYCHKA: Okay.

Some might have –

MR. S. MARSHALL: That's like in early years – I mean, in the early years, you're bringing in a lot of new equipment; you're training a lot of people, you know. So – but you try to levelize that. You try to say, well, we recognize that and just come up with an average number.

MS. MUZYCHKA: Okay.

Are there any decisions that you believe you wouldn't take unless you consulted first with government?

MR. S. MARSHALL: Sorry?

MS. MUZYCHKA: Are there any decisions with respect to the project that – I mean, you as the CEO have the ultimate decision-making authority as to how you proceed and so on. Is there any decisions that you wouldn't make without first consulting with the government?

MR. S. MARSHALL: Well, any significant decision, you have to go to the board, first of all –

MS. MUZYCHKA: Right.

MR. S. MARSHALL: – and not the government. No, we try to keep the government posted on – and the board. I mean, my first reporting obligation is to the board. But like I said, there's a lot of communications with the minister and the Premier as well. So I certainly wouldn't want to be caught offside making a big decision without their knowledge.

MS. MUZYCHKA: Right.

MR. S. MARSHALL: I mean, and that's for approval. I would certainly want them to know.

MS. MUZYCHKA: You still feel you have the power to make the decision, but if you advise the government in advance, it was more to allow them to be aware.

MR. S. MARSHALL: Yeah, normally what happens, not only here, but in most corporations, I mean, on an annual basis, management goes to the board with a budget. Once it's in the budget, then the management – and especially – CEO has the right to authorize anything in that budget, and then, of course, as you go down the

chain, there's – more and more we're limited. But if it's in the budget, then the CEO is authorized to expend it.

If I wanna spend anything significant that's not in the budget, then I go back to the board to get approval for that. And as – like I say, in the days when it was Fortis, you'd go back to the parent company and make sure they're on side 'cause they might have to raise the capital to provide that.

So they're very practical line of authorization.

MS. MUZYCHKA: Okay.

Do you get directives from ministers?

MR. S. MARSHALL: Very occasionally. I think I'm on record as saying that, you know, the role of government generally is try to get you to do what they want without being responsible for it.

MS. MUZYCHKA: Right, okay.

MR. S. MARSHALL: That's the first rule of government.

MS. MUZYCHKA: Yeah.

MR. S. MARSHALL: So, you know, there's lots of times there I get pressures to do things, and I'd say well, you know, you want me to do that, put it in writing. Tell me to do it, and I'll do it. And then it's I don't hear from them anymore, so ...

But that's normal, you know, it's – goes with the territory.

MS. MUZYCHKA: Okay.

Are there instances where you have gotten directives, though, that weren't in writing?

MR. S. MARSHALL: I've been pressured to do things but I – if I didn't want to do it I wouldn't do it unless I got it in writing.

MS. MUZYCHKA: Okay, so things like costs, if they wanted you to cut costs in some direction, would that – you would –

MR. S. MARSHALL: Well –

MS. MUZYCHKA: – want –

MR. S. MARSHALL: – if –

MS. MUZYCHKA: – that to come –

MR. S. MARSHALL: – if they were –

MS. MUZYCHKA: – in writing?

MR. S. MARSHALL: I mean, the Finance Minister's always after me to cut costs and cut costs. I mean, I try to accommodate as much as I can. I mean, that's my role. My role is to make sure that, you know, anything I don't have to spend I don't spend, and usually I deliver more than I promise; hopefully I do anyway.

So I think the last few years he sort of backed off. He knows that I'm going to do it anyway.

MS. MUZYCHKA: Okay.

Now, on the issue of contingency, we know from the work we've done to date that Nalcor, at the time of sanction, separated its risks into strategic and tactical, and that only – and that it only included a contingency for the tactical risk in its base estimate, and we knew that was roughly \$368 million or so.

We also know that when Nalcor did the QRA of the tactical risks, that the number they chose was a P50 level of probability. We also know that when you did your first update, you moved to a P75 level. So, do you recall when you made the decision to use a P75?

MR. S. MARSHALL: I didn't recall. I had to go back and check, but from the records, it seems to be in 2016 when – the first update.

MS. MUZYCHKA: Okay, and what were your reasons for using P75?

MR. S. MARSHALL: Well, very practical. In my prior existence, I never used the sort of (inaudible) – you know, this sort of quantitative risk analysis was done on a lower level. This is just one tool that went into the preparation of a budget for a project. You know, in a lot of cases

our own engineers would do it, you know, do some Monte Carlo analysis at their own desk.

MS. MUZYCHKA: Is that something you had been familiar with prior to coming aboard?

MR. S. MARSHALL: I knew they're – like, some of our real keen engineers were doing it, but it never went to the board. I've never taken it to a board in my life until I came to Nalcor.

No, these were tools that are built into it. So you're asking for, you know, a risk assessment, you're asking for a sensitivity analysis, and so it gets built into it. And when I go to a board, all this gets put into the judgment and whether – rather than focus on whether it was P49 or P50, you go in and inform them.

So we never used the statistical – the strategic risk and tactical risk at all – never used that. What we would do is say, okay, here's our budget for the project. We think there's lots of risk here, we – in our own – because there's a number we give to the project team and typically they were all contract. I probably – in my prior existence, I have, you know, my chief engineer and a few other people who oversee this. They would have a number that we were going to hold them to, but they would know that within the corporation, there's – if you want to call it a reserve. We never talked about a reserve –

MS. MUZYCHKA: No.

MR. S. MARSHALL: – you know, it's an estimate that we have. We knew that there were certain sensitivities and we're ready for it.

And I suppose if you want to use analogy with what you have here, if we had a Fortis parent, they might have – we might have a different number, too, right? But – so we never really used that methodology in terms of going forward with it to the board.

MS. MUZYCHKA: Right. But when you came on board, you saw that there were risks.

MR. S. MARSHALL: Right.

So going back to 2016, which – I did have to check what I did in 2016 or '17. So when I was working towards assessment in June of 2016, I

had my team come in and I had it all come in with all their reports. I sat down with them looking at the risks, looking at the estimates and all sorts of things.

And basically I said to them, you know, how are we tracking recently? I mean, not going back to the beginning of the project, but in recent days how are we tracking? And the answer seemed to me he (inaudible) suggesting a P75, so I said, okay, P75 it is. There's no rocket science to this, you know. What seems to be our most recent experience? Let's use it.

MS. MUZYCHKA: Right. You may as well choose a number that's more reflective of the reality.

MR. S. MARSHALL: Yeah, I'm a very practical guy. And, you know, this isn't rocket science; I mean, you're making judgment calls.

And the other thing is you don't want to use a P90. I mean, the other thing you don't want to do – because government wants, sometimes, and there are other – not only government, other groups think that they want a number that will never be exceeded. Well, that's not useful neither.

I mean, if this thing is – you go out and say this thing is going to cost \$50 billion and you got the government running off in a different direction, that's not going to be helpful. So you're using your best estimate and trying to tell them what the risks are. And so, in this case, looking at where we were in 2016 – and, again, this is really rough. I had to indicate to them that Astaldi was a big risk; we didn't even know we were going to get the cash in 2016, let alone the rate. And we had no idea that we were gonna get this business – this interruption at the site. We didn't know we were gonna have the stranding on the conductor. You know, this is early days. We were just still in chaos.

But we had to get some number in which to work on. And that's what 2016 was. So in terms of the Ps, okay, we just looked at it, say where are we, let's take that number. That's what we're using right now.

MS. MUZYCHKA: Okay.

Now, in your June 2017 update, were you including strategic risks in your numbers?

MR. S. MARSHALL: (Inaudible) saying – not the term I use. I’m just giving my best estimate. I’m trying to tell it to anybody who asks what’s in there and what isn’t.

MS. MUZYCHKA: Now, there’s some things that you did exclude from your numbers. I believe you excluded the reservoir clearing –

MR. S. MARSHALL: Yeah, like, that’s –

MS. MUZYCHKA: – costs.

MR. S. MARSHALL: – a good example, see –

MS. MUZYCHKA: Environmental –

MR. S. MARSHALL: – you can argue all day whether you’re gonna do it or not; it doesn’t matter as long as you tell it – was it in or out. Everybody understands that.

In terms of, say, moving the soil, I made it quite clear – it’s not in there and I’m not doing it. Period. So if you want to move that – and that’s the other thing (inaudible) understand. If your owner is gonna change the scope of what you’re doing, that’s not a cost overrun.

MS. MUZYCHKA: No.

MR. S. MARSHALL: If I’m building a house and I get a price from the contractor, and you get a fixed price and you’re building the house, and if the owner comes along to say, oh, by the way, I want you to do landscaping, too, and the contractor says, okay, I’ll do your landscaping; he charges you more for it, is that a cost overrun? No. That’s a change in scope.

So it was never – in the earlier work, it was never contemplated that you’d clear the reservoir or take the soil out. That’s clear. There was an environmental assessment done that wasn’t required. If the government, as the owner and the legislator in the province, wants to do that, by all means, go and do it. I’m not doing it because, ethically, I think it’s the wrong thing to do. I’m not gonna do – I made it clear. I’m not gonna do anything I think is wrong or make things worse.

So, but if you wanna do it and somebody else wants to do it, tack on your extra 700 or a billion dollars and go ahead and do it. But it’s not a cost overrun. It’s a change in scope of what the owner wanted.

MS. MUZYCHKA: What about the environmental methylmercury protests and the protest costs? You didn’t include that in your risk –

MR. S. MARSHALL: I included something for doing some work on – small amount for doing some capping. I did.

MS. MUZYCHKA: Okay. What about –

MR. S. MARSHALL: I’m not sure in 2017. It’s there today or has been for a year or so. I can’t remember if it’s in 2017 or not, quite frankly.

MS. MUZYCHKA: Okay. The – and you mentioned earlier you wouldn’t put the costs that are estimated for the Inquiry into your estimate, either.

MR. S. MARSHALL: We put in a small amount. There’s a good – here’s a good thing. When you’re doing estimates, I mean, it’s one thing to try to estimate the price of cement. I mean, you know, we have ranges, we have experience. It’s another thing to try to estimate the costs if something’s unusual, like the Inquiry, because they’re not direct. Any significant impacts would be indirect. You can never quantify them, anyway.

So I – rather than try to confuse people, I say, well, put in, say, my direct costs from the Inquiry – I don’t know what’s in there; \$5 million or something – and just say that there’s nothing else in there besides that. When the risk people come along with an analysis saying that it could be \$200 million, okay, I understand where you’re coming from. I think that working closely with the Commission, we can mitigate that a lot. I’m not putting in \$200 million and people running off in a panic. You know, the important thing is we understand what’s in, what’s out and why – and what you’re doing to make sure that you’re – you think you can do it for a smaller number.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: Understanding is much more important than any particular, you know, number in the air.

MS. MUZYCHKA: So you –

MR. S. MARSHALL: That's what we're aiming for. We're aiming for people to understand what these sensitivities are, what our (inaudible) at a point in time, if there's uncertainty here – you know, like I said, black swan events, you know, we'll deal with them. Understanding is what we're aiming for.

MS. MUZYCHKA: Okay.

We've heard from Mr. Martin and members of the project management team. They've raised the concern that if you go out there with a larger contingency amount, and then you disclose your estimate for the project including a large contingency, the contractors will see how much money is there for them and will spend. This has, you know, been described as the red-meat syndrome. I don't know if you've heard of that before. And there's an argument that you don't even want the project management team to know of the contingency so that it doesn't get used. Because, if you do, as you mentioned, if you put a \$50-billion price tag on something, well, then you're going to spend that amount of money. What's your sense of – or response to those –?

MR. S. MARSHALL: There's a lot of validity to what they're saying. You don't want contractors knowing. If you've got a specific contingency for their work, you don't want them knowing that.

MS. MUZYCHKA: Right, okay.

MR. S. MARSHALL: Because there's always gonna be disputes. I mean, that's the norm for the business. But, like I said, the methodology that I'm used to is a bit slightly different, and you're not going to disclose any of it anyway, but the project management team is given a number, okay, here's the number you're expected to execute for. They don't need to know what maybe the parent, or in the corporation above them, is – has in their business plan. And the government might – you know, the parent might have a slightly different

number. They shouldn't be told that. They don't need to be told that.

Now, this case, the government needs to know, and the people need to know, because of the circumstances we're in. So a big, overall-reaching number is fine. They need to have that number. But you don't want to get granular at all. When you get granular, especially now that you're indicating that you're near the end of the project. At the beginning of the project, you might have a lot – a big pocket to put things in, you know, we can detect it. And this is why in the 2016 update, I didn't want to put a number in and exclude everything I had here for Astaldi, because they would back engineer a number, and I was breaking it down by different parts of the project.

So you got to be circumspect here. So you're – it's a balance, you wanna – you certainly want the owner to know the big number. But when it comes to the very granular – what's the contingency on – well, right now I'll say the balance of plant, you know, you don't want to give them the balance-of-plant numbers and the balance-of-plant contractor comes in and says: Oh, that's mine; you've got it in your budget anyway, it doesn't cost you anything.

MS. MUZYCHKA: Right. So, but there's a balance then between –

MR. S. MARSHALL: Right.

MS. MUZYCHKA: – you're saying not to calculate it or disclose it, but that may not be the number that gets disclosed.

MR. S. MARSHALL: Right. I know that we were giving numbers to the Oversight Committee and then they were gonna put them on their website. And neither I was – I wasn't a happy camper. You know –

MS. MUZYCHKA: So can you explain –

MR. S. MARSHALL: – this is risking –

MS. MUZYCHKA: – the Oversight Committee –?

MR. S. MARSHALL: – yeah, there was an incident early on, maybe two years ago, when,

you know, they were asking for the contingencies, which we're happy to provide, but then they're gonna put it on their website, and I didn't want individual contractors knowing what individual contingencies were.

MS. MUZYCHKA: No, of course. But they could've kept that information as commercially sensitive.

MR. S. MARSHALL: Yeah, the Oversight Committee is pretty large with the – now, I don't know how many people are on it now, I don't know, 15? I don't go. So there's about 15 people, I think. It's changing all the time; people are coming on and going off. So it's not like a small group of people that's constant.

MS. MUZYCHKA: Okay. But that doesn't –

MR. S. MARSHALL: So we – you know, what we wanna do to legitimately govern, we want to be open and as far transparent as we can, but we have an obligation to make sure that the costs are not – you know, all this disclosure, not taking advantage of it for – you know, to the detriment of the people of the province. And we've talked about it in the Commission. We're working with the Commission quite closely. We're very cognizant of that. And we're not that we would – don't want to tell the people, it's just that we also have an obligation to keep the cost as low as possible.

MS. MUZYCHKA: Right, which would be to people's advantage.

MR. S. MARSHALL: Right, to their advantage.

MS. MUZYCHKA: Right.

So when we talk about the red-meat syndrome, that's more of an issue with contractors knowing what their individual particular contract reserve is –

MR. S. MARSHALL: Yeah.

MS. MUZYCHKA: – as opposed to a large contingency. I mean, it would be difficult, I would think, that a particular contractor would know on a project of this size what sort of reserve would be associated with it.

MR. S. MARSHALL: Right. In early days, you know, it's not – you know, you know the overall contingency is, 'cause you throw a number out that was probably going to cost so much. In the big – maybe if it was a huge contractor, he might be able to back up – let's – saying: Most of this is mine.

MS. MUZYCHKA: Yeah.

MR. S. MARSHALL: And as you come to completion with it, there's very little left to do, where the overall contingency becomes the contingency of one contract, so you get a bit more circumspect there. So it changes on – depending on the circumstances.

MS. MUZYCHKA: Right.

And we did hear some evidence from professor Flyvbjerg back in Phase 1 and he addressed the issue of red-meat syndrome and actually suggested that it's not as big a concern as some might think because with effective management, that particular issue can be addressed.

Do you agree with that?

MR. S. MARSHALL: To the degree that I've just spoken about, you know. Don't forget: In the public eye, it's different than the private sector. I mean, here there's all kinds of ATIPPA requests. I mean, we're inundated every day with people coming in, requesting of this and how much are you paying that and – so it's much more difficult to protect data and confidential information in our setting than it is in the private sector.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: So I think I've explained it in terms of – you know, depends –

THE COMMISSIONER: So –

MR. S. MARSHALL: – upon –

THE COMMISSIONER: – so, just so I understand exactly what you're saying here is that, if you have a large number, and I understand your point about the fact that when you getting to the end, you only have one or two

contractors left, that's not too hard to figure it out.

MR. S. MARSHALL: Right.

THE COMMISSIONER: But at the beginning, certainly when you're – you know, you're going to an owner, looking for sanction, and you know what your risks are and you know what your number is, you don't intentionally go to the owner and give them a smaller number without advising them what the risks are because you're concerned that contractors are gonna know what that risk is.

MR. S. MARSHALL: The contingency should be in the bigger number anyway if they're going to the owner, because contingency – for the most part, it's gonna be used.

THE COMMISSIONER: Right. Okay.

MS. MUZYCHKA: Okay.

THE COMMISSIONER: Just wondering now if we should take our afternoon break here or –?

MS. MUZYCHKA: Yes. I'm about to move to a new section.

THE COMMISSIONER: Okay. So let's take a break then for 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Okay, Ms. Muzychka.

MS. MUZYCHKA: Okay, before we leave the contingency discussion we just had, I want to put to you a scenario back in 2013. I know this was before your time, but we've seen evidence – and it was referenced as well in the Grant Thornton report – that in April of 2013 Nalcor knew that their contingency allowance that they had put in their estimate had been blown, and that the contracts that had been let at that point,

or bids that had been received, brought them \$600 million over the budgeted amounts.

And we know that, of course, financial close discussions were in place in November and December 2013 and government was never notified of the fact that contingency was gone and that the contracts were coming in at – or the bids were coming in at much higher than what had been budgeted for. And yet, the only number that government was aware of was the 6.2 and then, subsequently, the \$6.5 billion.

Would you have notified government of the change in the use of the contingency in April of 2013 prior to financial close and the –

MR. S. MARSHALL: I'll give you my answer but I only have to assume that what – all the facts you gave me are correct.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: My answer is that was a significant change. I would have notified the government.

MS. MUZYCHKA: That would constitute a significant change.

MR. S. MARSHALL: Right.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: At that point in time. I mean, you know, it's not the actual knowledge, but percentage and at the point in time – critical point in time –

MS. MUZYCHKA: Well, if the owner is of the view that this project is going to cost us \$6.2 billion –

MR. S. MARSHALL: Hmm.

MS. MUZYCHKA: – and that there's a \$300-and-some-odd-million contingency built in –

MR. S. MARSHALL: Right.

MS. MUZYCHKA: – it would be a significant –

MR. S. MARSHALL: Yeah.

MS. MUZYCHKA: – piece of information.

MR. S. MARSHALL: Anything that would impact their decision-making, they should be told.

MS. MUZYCHKA: And you would have told –

MR. S. MARSHALL: You know, the only problem I had with it, you know, I wouldn't want – if I was the government, I wouldn't have anticipated that 6.2 was a firm number. At that stage of the thing I knew – I would have known that it was, you know, an estimate, and that maybe – I can probably budget for it – not necessarily expect, but probably budget for something 20 per cent higher, if I was at the government level.

MS. MUZYCHKA: Yes, but do you know if that conversation was had with the government –

MR. S. MARSHALL: I don't think it was.

MS. MUZYCHKA: – as to how firm that number is.

MR. S. MARSHALL: Yeah.

MS. MUZYCHKA: I mean I guess that would depend on what information they had –

MR. S. MARSHALL: Right.

MS. MUZYCHKA: – as to how firm that number –

MR. S. MARSHALL: Yeah, I don't know anything of what went in – very little of what went in 2013. I wasn't there.

MS. MUZYCHKA: No, fair enough.

And I think – you know, the main thing I wanted is to get your perspective on whether or not you would have disclosed this kind of information to the government.

MR. S. MARSHALL: No, in the private sector we have – talk about information (inaudible) we know is. But, you know, is it significant? You know, does it impact what a shareholder would do, you know, share price. So that's a test, you

know. It's significant from the shareholder point of view.

MS. MUZYCHKA: All right.

We talked about this briefly, about Westney had done an analysis, 2018 QRA, and had included in that amount a budget of about \$135 million for the cost of the Inquiry. And we also heard you say – well, you weren't going to put that number into your budget estimate. And you may have chosen to put a couple of million dollars, which you figure might have accounted for what exactly? How do you see the potential costs of the Inquiry?

MR. S. MARSHALL: I say put in the direct costs and I think we're over that in terms of trying to get all this information out and those sorts of things. But that's not significant, you know, several millions of dollars.

Like I said, the important thing – and I'll use an example. It is so uncertain. The important thing is that is this possible? Yes, it's possible. Do we know the probability? Not really. We have no idea what the probability is, but the important thing is that we know it, it's set before us that we're going to work together to see if we can make sure it doesn't happen.

MS. MUZYCHKA: Right.

MR. S. MARSHALL: But the big thing is we – you know, it's there, we know about it. No one is hiding anything and it influences our decision-making. And that's what you're trying to get at. You know, what's important for us to know in terms of making our decisions.

MS. MUZYCHKA: Okay.

Do you think these costs would have been less if the Inquiry had been called after commissioning?

MR. S. MARSHALL: Oh, I – look, I – it's no secret; I encouraged the Premier not to do it during construction. You know, the risk – there's a risk. Why take it? The big risk is the distraction of the management team.

I mean we are inundated. I mean we can't handle it anymore. It's not only the

commissioning but we have this regulatory review, we have the all our sorts of thing going on that we have to do on a daily basis; you know, reporting different groups. At the same time, we have a big project we're trying to complete.

So my advice to the Premier is: Don't do it, wait until – I recognize that, you know, the people of the province need an answer, wait until it's over. I don't – you know, I'm not an expert in inquires but, typically, it's after the fact you do it, then there's no risk of influencing and then going forward. But I also understand the Premier's position. I mean he – there was an outcry to have an inquiry.

So I don't fault the Premier at all. I mean from my selfish point of view, it'd be much better if we waited until after the fact, didn't have to worry about all these things. He felt, you know – and it's his judgment call – that, you know, the people need it now, so we do it now.

MS. MUZYCHKA: Okay.

Having said that, it did go ahead during the project execution phase, so Westney, in its report – and it's at tab 21 of your book, volume 2, it's Exhibit P-03669. And then, if we go to page 21, they have identified some steps that can be taken for mitigation at the bottom.

So it's like taking “steps to minimize impacts on PMT. Pursue efficient, impartial process; Educate all associated parties on the potential impact of the inquiry; Wait to conduct the portion of the inquiry that impacts execution until after the project is complete; Ensure clear communication and direction from Inquiry commission to Nalcor project team and assess and manage project team health to the extent possible.”

Do you know if any of these mitigations – mitigation suggestions were ever executed? So we know that you did go to the Premier and suggest that he delay the Inquiry.

MR. S. MARSHALL: No, I didn't go to Dwight.

MS. MUZYCHKA: You didn't go to the Premier?

MR. S. MARSHALL: No, before it was called.

MS. MUZYCHKA: Oh, before it was called?

MR. S. MARSHALL: Before it was called, he – we talked about it and I said, look, I understand the need for it –

MS. MUZYCHKA: Right, okay.

MR. S. MARSHALL: – but, you know, there's no benefit to me to having it now. I can't see any benefit to anybody really. I know, you know, we have to have it, so why don't we wait until it's done.

But, you know, there was so much clamouring or demand for an Inquiry, I understand why he did it, you know. I'm sure, you know, the Inquiry itself would've felt that, you know, they could have a much more fulsome discussion if we were finished so we that wouldn't be prejudiced. And none of us want to be hiding anything, but there is a commercial sensitivity and we have to do it because we're trying to minimize the impact.

MS. MUZYCHKA: I guess there's a fair amount of political pressure to –

MR. S. MARSHALL: Yeah. You know, I mean I'm not a political guy. I mean, you know, but you can under – I'm saying from my position I can understand why he did it. You know, he – for example, the risks there; who knows if Stan Marshall, when he gets on the stand he blurts something out that's going to cost us half a billion dollars. You know, I mean I wouldn't intentionally do that.

MS. MUZYCHKA: No.

MR. S. MARSHALL: But I couldn't answer some question – disclose something which prejudices our case and something like that because the risk, but we try to do the best we can.

MS. MUZYCHKA: Okay.

All right, I'm going to move now to talk about some of the environmental concerns. And we had some evidence last week, during the week, regarding – we had an environmental panel and

we heard about the IEAC and its recommendations. So I know you touched on it briefly in your evidence before, but what are your thoughts on the recommendation for the targeted soil clearing? So you said you just wouldn't do it, it's not something you believe would be –

MR. S. MARSHALL: I said right from the get-go I wasn't going to do it.

MS. MUZYCHKA: It's not ethically –

MR. S. MARSHALL: I think as – you know, ethically, I couldn't do it. I firmly believe that it's of no benefit, carried a great risk and would make the things worse. So, ethically, you know, and – I couldn't do it.

MS. MUZYCHKA: What about wetland capping?

MR. S. MARSHALL: Wetland capping; the evidence that in – at the IEAC – well, really, there's no evidence that would – scientific evidence that would do any good, but the cost was low. And we were waiting for recommendations from the – coming out of the Inquiry, and we were also doing – trying to complete some studies, which we did ultimately complete.

In 2018 I became concerned that, you know, we couldn't really do it anyway without the recommendations, but I said, look, we might as well go ahead and do some capping, you know, get it out of the way. So I asked Gilbert. I said: Gilbert, go in, you know, and spend \$15 million to cap it. And he applied to the Department of Environment; we never got approval for that.

MS. MUZYCHKA: Did he get any response?

MR. S. MARSHALL: Eh?

MS. MUZYCHKA: Did he get a refusal?

MR. S. MARSHALL: Not that I'm aware of.

MS. MUZYCHKA: Or there was no response given?

MR. S. MARSHALL: I don't think – I couldn't speak for Gilbert. I'm not aware of any of the response. So I mean –

MS. MUZYCHKA: So –

MR. S. MARSHALL: – he made an inquiry. Now, in the meantime –

MS. MUZYCHKA: But he applied to the government for –

MR. S. MARSHALL: He applied to Department of Environment –

MS. MUZYCHKA: – an approved permit –

MR. S. MARSHALL: – for a permit to cap – to do the capping. And I had sort of given him a budget of \$15 million because we had talked about, I think, the numbers that we looked earlier, but I can't remember exactly offhand. It was something like that.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: Don't forget, now, we had already capped – in terms of what had initially been proposed I think the initial budget up to \$15 million. Initial flooding, we covered – 20 per cent of that wetland in the area has been flooded, over a year. So that was done, we're ongoing – monitoring program. But I just took the position that, you know, even though I felt we're wasting the money, quite frankly that, you know, it's better to go ahead and spend it and get it over and out of the way. But we did have to get Environment approval for that, which we didn't get.

And, in the meantime, more evidence was coming in which, in my view, is conclusive: There's absolutely no need to do this. I mean, we had the modelling thing came in. We had – the stations we had in operation in 2018 showed no change in methylmercury levels and the subsequent report. There's one report there by – I can't remember the name of it now, but he said that there's extremely low probability that methylmercury – extremely low probability – is it the Dinn report, maybe – extremely low probability that there'll be any significant change in methylmercury levels.

And that was based on – don't forget we've – now we've already flooded 25 – 20 per cent – I'll say 20 per cent of the wetland area. Most of the leaching of methylmercury happens in the first year. We got that on – we got that there. There's no change. So, in my mind, it's conclusive that there is no – there will be no significant change in methylmercury levels.

And I, quite frankly – maybe it was my mistake – I just assumed that the people in government were looking at this and the science – there's no scientific reason to do this and they were concentrated on the science. And when it came in, everybody sort of assumed that now is no need to do this, but never consciously decided. And maybe it's my fault; I should've followed up this thing and pursued it further, but it's hard to do that when you're – it's clear that you're going wasting the money.

MS. MUZYCHKA: Have you –

MR. S. MARSHALL: But I was prepared – in 2018 I was prepared to spend \$15 million to do the capping. So when it arose – and I quite honestly assumed that the Department of Environment were doing the right thing, looking at the science. They're studying the science and that, you know, now it's coming in that it's clearly no reason to do this, and there's no scientific evidence to suggest that it would have any benefit, even here in the Inquiry.

Then I understood – not, what was I going to say – then I heard towards the end of the year, or maybe earlier in the new year – it must've been late in the year that they were intending to give directive. And at that point in time I said, you know, we should tell the government, you know, really that the window for this has pretty well closed. We'll see what we can do.

I think we – I'd have – the (inaudible) looked at – had a look at doing something in the winter or maybe early spring and it was going to be of no benefit anyway and it was just going to be a risk to human life, you know, to do that, that time of the year. So I met with the Premier and suggested – you know, I said, look, if we're going to spend this money, let's see if we can use it for some useful purpose.

So with his permission I approached the Innu Nation, first of all, and met with them in early April, presented them with where we were. We had a good discussion and we agreed that they should carry on with, you know, the other groups and the Premier. Unfortunately, we had the election and it was only in the last few weeks – you know, it came up in this Inquiry, got it started – you know, raise it, right, when they – I think it was the deputy minister of Environment was here.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: So, again, with the Premier's concurrence, I contacted the other groups and raised it with them early in this week. Some discussion on Sunday, some on – anyway, early this week. And the parties were interested, you know, let's see if we can – God only knows, you know, there's good reasons to use money and now we have good scientific evidence that, you know, this is not necessary. So it's not a matter of us trying to avoid spending it, it's really a sincere attempt to let's see if we can make – use it for some useful purpose.

So there are discussions. I don't know – I mean, no one has committed to anything. I've offered to do a presentation to them and they're interested in that. And so, again, it's – I can't go beyond that. I don't want to commit anybody, but it's not lost on anybody. We're trying to resolve this in a reasonable fashion to the benefit of everybody and that's all I can say.

MS. MUZYCHKA: Okay.

At this stage, if the government were to decide to go ahead with wetland capping, what would they have to do in order to make that happen before impoundment?

MR. S. MARSHALL: Well, if you want to do – it'd have to be anything, just a token gesture. I mean you – I can go out tomorrow and dump sand on certain areas of the swamp and it'd look like I'm doing something but, frankly, speaking – but, first of all, there's no evidence, scientific evidence, it will do any good anyway. So that's the problem we're in.

So you go up and do it. You know, if I was ordered to do it, I'd go and do it. No – it won't cause substantial harm. The real risk now, of course, is that the time to do this is when the area is dry, late summer. And as everybody knows, the reservoir is scheduled to start rising in the middle of July. A bit later now because we've held off until we had this conversation with the groups. And to honour our licence with the federal government we have to fill the reservoir, I think it's between the middle of July and the end of September, and it takes about four weeks to do that so ...

Yeah, we're trying to be open to everybody again and trying to be helpful to everybody. You know, I – in retrospect, I may – I could've gone and pressed the point more, just get the permit and go and do it and be done with it. And I'm sure the Department of Environment was looking at the science, you know, and it's hard to fault people.

Now, they didn't understand – as I understand it now and I didn't – wasn't aware of it, but as I understand now that they weren't aware that, you know, there's a – just, really, this window to be effective – now, I shouldn't say effective because it's not going to have any effect anyway. But to – you know, to do it safely, what we had hoped to do, that you do it when the area is dry, which is the same time we should be filling the reservoir.

MS. MUZYCHKA: Right. So, essentially, the window of opportunity has closed –

MR. S. MARSHALL: The window of opportunity to do this –

MS. MUZYCHKA: – practically speaking.

MR. S. MARSHALL: – safely in – to do exactly what was ordered, is closed, unless you want to delay for a year.

MS. MUZYCHKA: So that would be the net result then, that the flooding of the reservoir –

MR. S. MARSHALL: Yes, on our – because on our licence with the federal government, we can't fill a reservoir (inaudible) after the end of September.

MS. MUZYCHKA: Right.

So if it – if there were to be capping and there would have to be a delay in the filling of the reservoir, which would then push that into the next –

MR. S. MARSHALL: Yeah, you could – depending on the weather, you might be able to do something. Like I say, these things are weather dependent. We got a lot of rain up there recently. In order to do it safely, you need it dry – fully dry land. What it comes down to.

THE COMMISSIONER: So just to – I'm mindful that – and I may have to change some things here now, but – because we are talking about something that some of the groups that are concerned about this issue are not permitted to cross-examine on because I've limited the number of people – as I have for all of the witnesses – I just didn't think this was going to arise.

But aside from that, so what you're really saying to me at this stage is that discussions have begun with the three Indigenous groups about the possibility of spending that money that would have been spent on capping in some other, more – in some other way –

MR. S. MARSHALL: Right.

THE COMMISSIONER: – whether – okay. And so that has started; you had discussions with the Innu, they seem to be interested. What about the Nunatsiavut Government and the NCC?

MR. S. MARSHALL: Three groups – I've talked to the three groups.

THE COMMISSIONER: Oh, you have, okay.

MR. S. MARSHALL: And I don't want to – you know, I can't speak for them, I just –

THE COMMISSIONER: Right.

MR. S. MARSHALL: – I raised the issue with them, and offered to – you know, explain the science more fully to them, and see if we can't find a way that the money can be used beneficially.

THE COMMISSIONER: Okay.

MR. S. MARSHALL: So, Mr. Commissioner, you know, I don't want a conflict raised with them. They're probably going to discuss it with their members, and – but it's an effort to be consistent with the science, use the money wisely, ensure that, you know, everything is done for the best reasons.

THE COMMISSIONER: So the money that we're talking about here would have been the money you said was – you had put it already in the budget for wetland capping, so it's already –

MR. S. MARSHALL: That was under discussion.

THE COMMISSIONER: Okay, but I guess what I'm trying to figure out is: Is it going to impact – potentially impact the 10.1?

MR. S. MARSHALL: No – well, it could, I mean – but you got to look at the magnitude of what we're talking about and the overall things, you know? So there's certain contingencies in there. Whether this will affect the overall thing – if it does, it'd be minor.

THE COMMISSIONER: Okay. All right.

MS. MUZYCHKA: As of last week, or even earlier this week, the Premier – it's been reported in the media that the issue of capping was still an open possibility.

MR. S. MARSHALL: Right, and then they've, in fact, asked me to have a look at it and you can do minor things, right?

MS. MUZYCHKA: Mmm.

MR. S. MARSHALL: And so we could pursue that. But – and that was, I think, maybe before I engaged with the – had engaged with all three groups. I'm not sure.

MS. MUZYCHKA: Yeah, if you look at tab 34 of your book, it's Exhibit 04360. That is a report by the CBC dated June 25, 2019. So that may or may not have predated your discussions, but if you go to page 3, the last paragraph under virtually undetectable methylmercury, he's quoted as saying, "safety concerns are part of the

hold up – waiting to form an implementation plan with the Indigenous groups another. So far the Innu, the constitutional landholders, have agreed but Ball says they're waiting to hear from the other two."

And then he's quoted: "'Then we need to ask ourselves what are we mitigating against?' he said, noting that capping will have less than a two per cent impact on methylmercury increasing." I guess that's echoing what you have just been saying –

MR. S. MARSHALL: Yeah, I guess –

MS. MUZYCHKA: – is that –

MR. S. MARSHALL: – it's very different when things aren't going on at the same time.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: So he was (inaudible) this week, so this was – interview was on the 25th. So what the Premier is saying is actually right and the issue has been raised and we're having ongoing discussion.

MS. MUZYCHKA: All right.

Now, just going back to 2016, you were with Nalcor several months before the protests occurred in October. Do you think that you could have done more to meet Indigenous groups halfway in terms of mitigating the risks of protests?

MR. S. MARSHALL: I could claim that I could. You know, it – what I do know is that, you know, when I went in there, I'm not sure if it evolved but it was clear, you know, we had issues with the Aboriginal community. And someone had told me – and I'm not sure if it was government or people inside of Nalcor – that, you know, we were to stay away from these things because they were, you know, involved in land claims and whatnot.

But I just came to the conclusion that, you know, there's no way we can operate like this. We need to build bridges to the community. And I took the initiative to set up an office in Goose Bay that, you know, like – that the Aboriginal community can come in with their issues and we

can try to resolve them; so someone they can go to directly.

MS. MUZYCHKA: When did that occur?

MR. S. MARSHALL: That occurred early. I would say – I'd be guessing sometime, you know, as getting past June 2016.

MS. MUZYCHKA: Okay, so it was done shortly after you came on board.

MR. S. MARSHALL: In fact, one of the few things I concentrated on. And at the time – it's like bifurcation, when I announce these things people pooh-poohed them and say, you know, this is not going to make a difference. So when I said I was going to set up an office in Goose Bay so we can improve communications, nobody really thought it was going to be very effective. And – but I – you know, my door was open and the groups started to reach out to me and I talked to them about it.

And I remember talking to Todd Russell. Todd came in and I said: Todd, look, I'm not sure there's anything I can do in the short term, because these things take the building of trust over long periods of time, but I want you to know that we're committed to working the long term. So if we're going to work for the long term, we have to start somewhere. So I said this (inaudible) office, I encourage you to come in and talk to me and if you want me to come talk to your groups, by all means I'll do that. And that's – then we did the same thing with the other groups.

The Land Protectors wanted the – they came and had a demonstration in front of my office, demanding to see me and I wouldn't participate in that. I said, look, you want to see me any time, all you have to do is ask, you don't need to demonstrate. And so they came back and said that, you know, they'd like for me to participate in a healing circle; I think that was in December '16 or '17. And I said you establish the rules and I'll come. And I did and we had, you know, a good session and very emotional, as you can gather. So that started to establish a relationship with them. So you had to start.

MS. MUZYCHKA: Mm-hmm.

MR. S. MARSHALL: It was going to take time. And I'd like to think that we have done a much better job dealing with the Indigenous groups of Labrador. The same thing happened when we couldn't get our transformers in through Cartwright in the fall of 2016. Like I say, 2016-'17 was a horrible, horrible year. It was the most difficult year of my life. You know, it was horrible.

And so some of the things I haven't even raised now, like the transformers going into Cartwright. We were told we'd never get them in and the only way – we looked at all different alternatives to get them in. The only way to get those big power transformers – for the transformers to get through was to bring them to Cartwright. And we couldn't do it; we left them in Bay Bulls over six months. Starting again the next year, we worked with the groups in Cartwright and built up a certain relationship and we got them in there without incident when the people said it could never be done.

So there's only so much you can do in the short term but I think if you talk to, you know, the Innu Nation, in particular – because they're our official partners up there – I'd say that the relationship has improved substantially, you know. Like, we interact lots of times and as the – as the Commission has seen, when there's – the three groups don't always agree on things and so it's difficult to get four of us together and do things, so we talk about it. But I think we've improved substantially. There's lots of room for improvement and we're carrying on.

I said to them – I said, you know, we have to take the long-term view. I mean, your people are going to be here in 50 to a hundred years, Muskrat Falls is going to be here in 50 to a hundred years, so let's learn to live together and do the best we can. You know, we met our obligations.

I remember that we – took us – took – who was it, oh, one of the unions to – unfair labour complaint because we took – they weren't fulfilling their duty to train shop stewards and we lost, but we did our best effort and I think they appreciated that. We were trying to find out some members of the community for operators in the plant. I mean it's very difficult, right? And

start off maybe with a small number but – so there's no question, we're committed –

MS. MUZYCHKA: Right.

MR. S. MARSHALL: – to working with these groups, but it's – we can only do so much in a short period of time.

MS. MUZYCHKA: In – at the course of our interviews, we asked you about the status of your relationship with the Indigenous peoples in Labrador and you had told us a story of – or an event happening where you were invited to an event.

MR. S. MARSHALL: Yeah.

So starting off – when I started off, the grand chief, Anastasia Qupee, came in and whatever – her people – she was the grand chief at the time. She came in and I said that, you know, I had no experience dealing with Labrador Aboriginal groups. I said I had experience in British Columbia. In British Columbia we had a really good relationship. And I said that's my objective, to see if we can do that in Labrador. And I said I look to you to help me here, you know, to educate. You know, it's important.

And from that starting point she did. She did – and I remember standing up. She invited me up to the meeting of the elders up in Labrador, which is a group of the Innu Nation from Labrador, Quebec, and you didn't know what to expect. And when I got there, I – a bit apprehensive and they invited me in to speak to the group of elders.

And I said this about the grand chief, I said, you know, she agreed to teach me. I'm not sure if I'm a good student but she's tried her best. And he invited me to dinner and it was a very pleasant experience.

MS. MUZYCHKA: Mm-hmm.

MR. S. MARSHALL: And I know that we have a fair number of Innu Nation and other Aboriginal groups on the site and they always come over to me and we have a good conversation. And, yeah, I have a great respect for them and I've come to know them a lot

better. I started from zero but I'm starting to appreciate their position.

MS. MUZYCHKA: Do you know if they've ever invited any members from government to meet with them like that?

MR. S. MARSHALL: Well, when they – I got this invitation I phoned over to the provincial government and I said, well, what's this all about? Can you tell me what I can expect? And they said, we don't know, we've never been invited. So I take it from that, that it was a different situation.

MS. MUZYCHKA: Okay. All right.

Getting into the more troubling times in October when the protests were underway, if we'd just turn to tab 30, it's P-03663, book 2. It's a chronology of – or a collection of messages regarding the protests. It sort of tracks the events from – if we go to the last page is where it starts really, page 15.

And it would appear that it was written by Nalcor's communication team. Would that be fair?

MR. S. MARSHALL: As far as I know, this was a summary written by the communication team of the events that occurred. Yes, that's what this is. Scanning it, I have never seen it before. You asked me about it yesterday.

MS. MUZYCHKA: Okay. So –

MR. S. MARSHALL: I don't think – I can't really recall seeing it. I don't know.

MS. MUZYCHKA: Right.

But then perhaps you can take us through your recollection then of the events as they unfolded. Like, just, you know, from an overview of this, it appears that the first blockage of the gates occurred on October 16.

MR. S. MARSHALL: Yeah, I can't remember offhand the exact dates and the day-to-day sequence, but I tell you it was a horrible – again, part of this horrible experience in the first year. And so when the group entered into the – inside the gate, into the site, it became critical. Became

concerned, first of all, for the safety of all concerned –

MS. MUZYCHKA: Mm-hmm.

MR. S. MARSHALL: – protestors, as well as the other workers; a lot of heavy machinery in there, a lot of emotion.

And we asked for the RCMP's help and they basically wouldn't put people in there, so we were left on our own. And I remember being on a conference call on the Sunday morning where we had the RCMP in court trying to get them to act, and their position was that, you know, the RCMP right – has a right – has the obligation to enforce the law, but the actual execution is at their discretion. So that's the way it unfolded.

MS. MUZYCHKA: And we know that there was an application for a court injunction sought against some protestors on October 17, so the following day.

MR. S. MARSHALL: Because I remember – I can't remember the exact date. I'm –

MS. MUZYCHKA: So I'll just – yeah, I can just –

MR. S. MARSHALL: Yeah.

MS. MUZYCHKA: – highlight them from that (inaudible).

MR. S. MARSHALL: But, you know, I'm just telling you what – how I viewed this happening. And seriously concerned, first of all, for safety, not only of the protestors, but a lot of these workers were in there, transient and heavy equipment. There's frustration that the work was being interrupted. With the blockage, we couldn't get in vital supplies. We were in October and we were attempting to finish work going into the winter.

In particular, we had to get the cofferdam done in order to protect the site. You know, there's – trying to establish a level of ice on the river for the winter because, otherwise, it builds up downstream and creates a dam that – back up to the site. And in order to get working on the North Dam we had to have a dry riverbed into the coming spring.

So the most critical part of the work was building this cofferdam, making it secure. And so, as the demonstration went on, we were running out of diesel fuel, for example. And so, we decided to ration the diesel fuel; only those people working on the cofferdam were – had the fuel, other workers taken off site and flown home. We had no way to get more fuel in.

Eventually, we had – it just – we couldn't do anymore work and workers were going home. And eventually we got an agreement, and the RCMP did help out and act as negotiators and we were able to defuse the situation. So it was a very tense period. I think it stretched over, what is it, a number of days here from the 16th –

MS. MUZYCHKA: Roughly 10 days.

MR. S. MARSHALL: I was going to say roughly 10 days.

MS. MUZYCHKA: Sixteenth to the 26th, so it might be 11 days.

MR. S. MARSHALL: Right. So – but it's at a critical period for us, getting ready for winter.

MS. MUZYCHKA: So, essentially, they stopped traffic coming in to the –

MR. S. MARSHALL: Right.

MS. MUZYCHKA: – project.

MR. S. MARSHALL: So people couldn't come and go, materials and supplies couldn't come and go. It was a very difficult period.

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: And so then we were left – when we finally were able to secure the site again – and, of course, uncertainty surrounded it – now workers had gone home, contractors had demobilized in part; we lost a very critical several weeks.

So then they were left scrambling. They weren't sure the status of the cofferdam for the winter. We had to authorize additional work to put berms down below in case we weren't able to get an effective cofferdam. So we did a lot of

work that we had to do to make sure the site was secure and protected for the winter.

And we were working on the cofferdam and, of course, a cofferdam, when you build it, is a temporary dam; you expect some leaking and whatnot. So when we tried to raise it, it was leaking and we ended up trying to do the grouting in February.

I remember being up on the top of the dam there, I think it was in February, and you're trying to inject grout into the cofferdam. It was horrible. But it worked and coming out of that, you know, all groups really tried to work hard to make sure it never happened again. But I think it was the following spring then we had the transformers in, so everybody was very concerned it might get the same thing with the transformers. And I said they were – we were told by some people we would never do it, but we did.

MS. MUZYCHKA: Yeah.

MR. S. MARSHALL: So there's been improvement, a lot of improvement and you build, slowly, trust.

MS. MUZYCHKA: Yes.

Now, just going back to the initial period in October when the protests occurred, as I said, we know that court injunctions were sought against some of the protestors. Was this at your direction or you and the executive? How did – who made the decision to apply for an injunction?

MR. S. MARSHALL: (Inaudible) I would have.

MS. MUZYCHKA: Okay.

Was the Government of Newfoundland consulted or merely notified?

MR. S. MARSHALL: I'm not sure if that incident or something else – that we were in the process of arresting some of these groups – when I was contacted and saying – inquired whether we were doing this, that we should stop, and I didn't.

MS. MUZYCHKA: Didn't talk to them about it. You didn't talk to the government about it?

MR. S. MARSHALL: I had an inquiry from the government to stop it and I didn't.

MS. MUZYCHKA: Oh, I'm sorry, I missed that. Okay.

Do you think that the –

MR. S. MARSHALL: I took it as a request, rather than a directive.

MS. MUZYCHKA: Okay.

One possibility – or one might think that the seeking injunctions could have escalated the conflict between Nalcor and the protestors. How would you respond? Do you think that's fair or ...?

MR. S. MARSHALL: Looking back on it, we did the right thing.

You know, if the rule of law breaks down, what hope is there? Someone has to prepare to enforce the rule of law and, ultimately, we did that.

MS. MUZYCHKA: Okay.

Have you a sense as to the cost to the project arising from these protests?

MR. S. MARSHALL: We put something in there – again, it's like all these things, there's a direct cost, indirect cost to the work we did, the extra work we did, critical time of the year. As it turned out, it could have been a hell of a lot worse. I mean, if we didn't get that cofferdam working in the winter of '16, '17 we would have lost another year.

MS. MUZYCHKA: So –

MR. S. MARSHALL: And, you know, this site, if we – depending on the weather, we might have had a situation where in the spring of 2017 the works were flooded. And, as you know, the bottom of the draft tube is 30 metres below the level of the river. If the water got in there and ice, it would've been horrific.

MS. MUZYCHKA: So that was avoided because you were able to –

MR. S. MARSHALL: Be able to get it done –

MS. MUZYCHKA: – mobilize people and –

MR. S. MARSHALL: – and the weather co-operated and, you know, so it worked okay. It –

MS. MUZYCHKA: There –

MR. S. MARSHALL: – cost us.

MS. MUZYCHKA: There would have had to have been a cost because there was 10 days where there was very little going on, if you're going through the notes –

MR. S. MARSHALL: It's only 10 days but, like I said, workers were sent home.

MS. MUZYCHKA: Yes and there was a bare minimum of people working at the site to do what was necessary to –

MR. S. MARSHALL: Generally –

MS. MUZYCHKA: – maintain it.

MR. S. MARSHALL: – as the days went by, we shut down everything, except work on the cofferdam because we had no fuel –

MS. MUZYCHKA: Right, okay.

MR. S. MARSHALL: – for heavy machines and stuff.

MS. MUZYCHKA: So, you know, what kind of figure would you put on that, in terms of the 10-day disruption?

MR. S. MARSHALL: I think I put a figure into my estimates in 2017. I can't remember exactly what it was but, you know, like, who knows. You know, a hundred-million dollars – I mean it's in the numbers, anyway. I think if you look in that thing, I put a number in there, in – if you direct to me to the 2017 update in the materials, I can have a look at it and I can give you a better sense.

Do you know what tab that's under?

MS. MUZYCHKA: (Inaudible.)

THE COMMISSIONER: Is that 03768, tab 17?

MR. S. MARSHALL: Tab 17? Thank you.

THE COMMISSIONER: I'm not certain if that's it or not, but you could just check it.

MS. MUZYCHKA: Or (inaudible).

MR. S. MARSHALL: No, not 17.

THE COMMISSIONER: Not 17?

MR. S. MARSHALL: It could be 16.

MS. MUZYCHKA: Sixteen?

MR. S. MARSHALL: Yeah, 16.

MS. MUZYCHKA: Okay.

And that's Exhibit number 00127, the "Muskrat Falls Project Update" for June 23, 2017.

MR. S. MARSHALL: So if you look on page 12, we tried to put it together so as not – suppose some of this was – there was 40 million – sorry – \$400 million for the setup of claims for delays and changes. I would say included in that somewhere is about –

MS. MUZYCHKA: Just watch when you're speaking Mr. Marshall that you're at the microphone so that everybody –

MR. S. MARSHALL: Sorry.

MS. MUZYCHKA: – can hear you.

MR. S. MARSHALL: Sorry.

Because every delay brings with it consequential claims from the contractors. You're going home, you know, you're talking about well over 100 million I'd suspect.

MS. MUZYCHKA: For the 10 day disruption?

MR. S. MARSHALL: Yeah.

MS. MUZYCHKA: And the knock-on effects of that, I guess, in terms of –

MR. S. MARSHALL: Yeah. 'Cause like I said we had to put extra – we had to do extra work; we couldn't finish the cofferdam. We stopped working on it, and then we had to do work in the winter. We had to put the burdens down below – crews going home – remobilize – time lost. It was significant. You know, that's a guess on my part, right, to state that – go back and see what I included there years ago, but it was significant.

But it could've been a lot worse.

MS. MUZYCHKA: Is it something that might have been foreseen? That, you know, protests and the individuals who are staunchly against this project –

MR. S. MARSHALL: There have been – and that's what – again, part of it, you know, some of these numbers included in delays from earlier in the year. There have been several other previous delays, not at the same order of magnitude.

MS. MUZYCHKA: Right.

MR. S. MARSHALL: So –

MS. MUZYCHKA: 'Cause we had the Nunatsiavut Government's Make Muskrat Right campaign that had –

MR. S. MARSHALL: Yeah. So –

MS. MUZYCHKA: – started.

MR. S. MARSHALL: – look, I don't want to second-guess people. I know that was – the relationship was strained. I don't know why. All I know is we put a big effort into improving that relationship, and it seems to have been working. I mean, there's a lot of room for improvement. When I say we – you know, I figure I have personally with at least – particularly with the Innu Nation and the NCC and the NG have been – I've invited them to come to site. I had one person show up.

And we started up recently, and it was received positively. So, bit by bit, we're improving the relationship.

MS. MUZYCHKA: Okay. Now with respect to the Oversight Committee and EY, we've touched on that briefly before, and you said you don't attend meetings or your don't have any involvement –

MR. S. MARSHALL: No.

MS. MUZYCHKA: – directly with them.

MR. S. MARSHALL: My input is – like I say, now we use the same reporting thing. You know, we want to make sure that the material going to them is wholesome and reflects the current status. And we give them – you know, we give – also important is to give some view going forward. So I think, you know, it's working fairly effectively from my perspective, but I don't attend; my executive does.

MS. MUZYCHKA: Okay. Do you –

MR. S. MARSHALL: It's probably good they can get their perspective anyway.

MS. MUZYCHKA: Yes.

Do you believe the Oversight Committee is effective?

MR. S. MARSHALL: Well, when you ask that question, you know, I mean it's not for my benefit.

MS. MUZYCHKA: No, of course not. It's –

MR. S. MARSHALL: So I can't judge. You really have to ask the government whether it's effective or not. The information now is presented in multiple ways.

MS. MUZYCHKA: I guess maybe effectiveness can be gauged in terms of the value to the government, but also in terms of the relationship between government and Nalcor as to dealing with the –

MR. S. MARSHALL: If it makes the government happy, I'm pleased to do it.

MS. MUZYCHKA: Okay, so in terms of facilitating the flow of information and having less stress over –

MR. S. MARSHALL: I don't think it's necessary. I think if you organized this thing properly –

MS. MUZYCHKA: As in how?

MR. S. MARSHALL: – like, you know, I mean the primary communications between the government and the management should be the board.

MS. MUZYCHKA: Right and we've talked about –

MR. S. MARSHALL: You need to make that board very effective. There's got to be good communications between myself and the minister and the Premier. I think we have good communications. We're all – both of us are working – or three of us are working together well. I mean there's always strains, and we have some good arguments, but they're always with the best intentions.

And we have – you know, I say, a communications person to handle, you know, all kinds of regular communications. She spends full time almost on the government relationship. My recommendation is to put more emphasis on improving the board, the board structure, like, having those two ministers sit on the board.

If that's – if that was the – if all this was done properly, there's no need for Oversight Committees meeting with deputies or any of that. It should be – and some people think that, you know, rather than put in a good structure, you know, do it all over the place, have 20 or 30 reporting mechanisms. You're better off getting one effective one. And there's always going to be at least two here because, you know, the CEO of Nalcor has to have a good relationship with the Premier and the minister. And, you know, it's frequently – I'm frequently getting calls; I frequently go in and give an update.

And the thing I could do with the Premier and the minister they can't do publicly is talk about how things are evolving, like, that's important; to give them the benefit of any oversight I – insight that I have that things like, you know, whether Astaldi is moved to the site or GE is not performing, or all those issues. I can talk about,

you know, where we are with it, what I plan to do about it, what my growing concerns are.

So I can be much more open than, say, the Oversight Committee is going to post it on the – their website. And that's important. And sometimes you need these confidential discussions between the senior people so that there is no surprises. And I spend a lot of time, when I'm with the Premier, talking about those issues. You know, he's asking me about where things are, where things are going. I mean, anybody can record where we are –

MS. MUZYCHKA: Okay.

MR. S. MARSHALL: – and what we plan to do next month, but the discussion about, you know, where we're going to end up, you know, that's –

MS. MUZYCHKA: Are the costs going to rise? Are we having –

MR. S. MARSHALL: Right.

MS. MUZYCHKA: – delays with, you know, (inaudible)?

MR. S. MARSHALL: Things that are, you know, not set in stone that, you know, we were working on and I can be completely open. And I'm completely open with the Premier and the minister they can't be with people who are publishing their report on their website. You know, it's just part of my obligation. There has to be a certain confidentiality at that level.

MS. MUZYCHKA: Okay.

Do you – had you been privy to the observations that EY had made in the course of their work with the Oversight Committee prior –

MR. S. MARSHALL: What –

MS. MUZYCHKA: – prior to you coming on board?

MR. S. MARSHALL: In a part. When I came on board, in discussions I was having with the Premier, he indicated that he had commissioned this report –

MS. MUZYCHKA: Right.

MR. S. MARSHALL: – and suggested I speak with them. And this was very early on and I – so I did arrange for a teleconference with – some of the individuals came in to the office, some were on the phone because I think some were in England and Australia.

And they gave me a presentation and they said they had to prepare a preliminary report. I asked for a copy of the preliminary report and they said, no, they couldn't give it to me because I wasn't their client, the government was their client and we'd see what'd happen. But they did give me the benefits of, yes, this is a report.

MS. MUZYCHKA: Their observations and how they –

MR. S. MARSHALL: Yeah, their observations and the –

MS. MUZYCHKA: – saw issues?

MR. S. MARSHALL: – recommendations sort of thing. I know there's one in the package here, they – I don't know if I ever – if that's what they presented to me or not. I can't remember now; like I said, early days and I was sucking through a firehose, you know, all the stuff.

But I do know that I spoke with them and I appreciate their insight and it certainly was reflected in the changes I made. I can't say that I accepted their recommendations – I addressed it a different way. For example, the bifurcation, the things I did were not due to their recommendations. But it's great having, going in there cold –

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: – having somebody who's been in there doing an analysis, third party. And they had certain observations and that impacted what I decided to do.

MS. MUZYCHKA: Right, so you did derive value from having benefit of their insight.

MR. S. MARSHALL: Yeah, but (inaudible) people going in and saying, for example, that they felt that, you know, they weren't

completely open, you know, and that they had difficulty to get information. Well, from that point on, I think we've seen that there was no difficulty getting information, you know.

I'm used to being in the utility industry where you live in a goldfish bowl and those who are entitled to information get it, with full co-operation. And so that was the message I sent: Going forward, those entitled to information would get everything, co-operatively.

And then the next involvement I had, the – as I was going through this – and, again, I'm trying to put this in the context of June 2016 and 2017. This was a horrible year, all the things we talked about were happening – crisis management. And I know the minister was anxious and the Premier was anxious that, you know, that this be – because it was a draft report – that there be, you know, a conclusion brought to bear and by all means.

So I said, you know, bring it to a conclusion, in which it did. And I was pleased that they were positive about it, but when the – I didn't know until I saw that. And they asked for comment and I gave them a few comments. And the big – and the only one I can remember is that in a draft they talked about governance. And I said: What do you mean by governance? I mean, are you talking about boards and that sort of thing? No, they didn't know nothing, but it was more broadly than that, about, you know, how you actually manage.

I said, you know, whatever the issue was, I said I agree with that and I – but it wasn't clear. And I think they made a change to make it clearer, but other than that, that was it.

MS. MUZYCHKA: Okay.

So the next oversight type of function was performed by the independent engineer but for a different purpose, to report to the Government of Canada. Do you believe that the independent engineer adds any value to the project, or is it simply something that is independent of what work you do?

MR. S. MARSHALL: Oh, I think that, you know – and, of course, he acts for the federal government who have money invested in this.

And, you know, so it's – I think it's essential from the federal government point of view.

MS. MUZYCHKA: Yes.

MR. S. MARSHALL: I had very little interaction with him. I – again, going back to what we were doing, so as we headed into 2017, now – once we settled with Astaldi, my next priority was see if I get some money to finish this thing.

And so my next real effort was put into going to Ottawa, meeting with the federal representatives, including the independent engineer. I think it's the only time I really met him. I think he may have been in the office once, but I remember meeting – he was certainly there.

And so what I was trying to do is, first of all, give him a full accounting of where we were, and I was here looking for \$3 billion or the right to borrow \$3 billion. And –

MS. MUZYCHKA: Three billion?

MR. S. MARSHALL: Three – yeah, about 2-point-something billion.

MS. MUZYCHKA: I thought you said million. That's why I wondered.

MR. S. MARSHALL: Eh?

MS. MUZYCHKA: I thought you said million

MR. S. MARSHALL: Maybe I did but it's certainly billions.

MS. MUZYCHKA: Billions, right. Okay.

MR. S. MARSHALL: Small bit of change. And so there was no guarantee we were going to get that. There was no – we didn't know the rate, for example, of the terms.

So I had a meeting and I also met with the – I think it was the ADM – federal ADM minister of Natural Resources in a separate meeting. And so I laid out – in a group meeting I laid out where we were and where I thought this thing was. And they listened intently and I was taken aside by the independent engineer and their legal counsel and whatnot, and I didn't know really

what to expect, but they basically said that they weren't totally surprised.

MS. MUZYCHKA: They weren't surprised about the need –

MR. S. MARSHALL: They weren't totally surprised and they said that, you know, that they were going to be supportive of the efforts to get the additional guarantee. So that was very important to me. At that point in time, I just didn't know if we were going to be able to (inaudible) have – you know, what we were going to do here.

And, of course, subsequently we got the guarantee. They ended up charging us a guarantee fee, but the rate was still lower than we anticipated, so we got some savings there.

MS. MUZYCHKA: Okay.

So the independent engineer – I guess, just by its title, independent and separate from Nalcor. We've seen some emails directed to Mr. Argirov, who was the independent engineer, from Mr. Harrington's private email account or personal email account. For example, I'm not sure if you're aware of an email he sent to Mr. Argirov in June of 2016, around the same time he was writing you the letter that we looked at earlier in which he was bemoaning the fate of the project should bifurcation occur.

Do you have any concerns with respect to the independent engineer's relationship with the project director, you know, making these kind of comments or having that sort of –?

MR. S. MARSHALL: I wasn't aware of that letter until it came before the Commission and someone brought it to my attention. So I wasn't aware of it at the time or it didn't come on my path. Paul didn't – certainly did not indicate it to me.

If Paul had not expressed his views to me beforehand and made it clear that he was opposed to what I was proposing, I would have been very upset. But he had done that and so I interpret that as notwithstanding that he was accepting my position and was carrying on, that he had – still had concerns. And if people have

concerns, by all means express them. You know, I could've been wrong.

MS. MUZYCHKA: But was it appropriate for him to have written to Mr. Argirov –

MR. S. MARSHALL: I don't know their relationship.

MS. MUZYCHKA: – and say that there –

MR. S. MARSHALL: Like I say –

MS. MUZYCHKA: – was, you know –

MR. S. MARSHALL: Yeah.

MS. MUZYCHKA: – risks to the project and things – people were going to quit and it was – you know, because he's then in the position of having to report to Canada and saying there is potential crisis around the corner.

MR. S. MARSHALL: People should express their views as long as – like I say, I would have been very concerned if he hadn't – if Paul hadn't expressed the views to me first and made it clear that there's a – it might've been a different tone. But he had talked to me about it, and the fact that he was still concerned about it and expressed it to somebody else – I wish he had told me that he has doing it, but he was strong willed and so be it. I'm not particularly offended by it.

MS. MUZYCHKA: Okay.

All right, the next section we're going to talk about –

THE COMMISSIONER: Well, I think it's 4:30 now, so maybe – I think this might be the place where we stop for the day –

MS. MUZYCHKA: Okay.

THE COMMISSIONER: – for the week.

So we have you on, I think, for Tuesday and Wednesday next week. How much longer are you looking at? Another half day?

MS. MUZYCHKA: I would think, between myself and a few questions from Mr. Collins, we should probably take until 12 or so.

THE COMMISSIONER: Okay, which should, I think, give us enough time.

I think one of the things I am going to do is, in light of Mr. Marshall's evidence so far with regards to environmental issues, I would ask Commission counsel to notify the three Indigenous groups with standing, as well as the Grand Riverkeeper/Labrador Land Protectors that I will allow them to have brief cross-examination on the evidence that Mr. Marshall has given, if they so wish.

MS. MUZYCHKA: Okay.

THE COMMISSIONER: All right?

All right, so we'll adjourn until Tuesday at 9:30.

MR. BUDDEN: Excuse me, Mr. Commissioner.

THE COMMISSIONER: Yes.

MR. BUDDEN: In light of those comments, this may be a case where, if possible, a transcript of today's proceedings, if it were made available on sort of the rush basis we sometimes see, that might be particularly helpful.

THE COMMISSIONER: Yeah, I will attempt to do what I can to do that. I got my fingers snapped the other day for making the comment that I did about the other transcripts. So I will make that request and we'll see if I can't get that provided.

Did you have something, Mr. Williams?

MR. T. WILLIAMS: No, just standing up there.

THE COMMISSIONER: Oh, okay.

MR. T. WILLIAMS: Goodbye.

THE COMMISSIONER: Thank you.

All, right goodbye.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.