



COMMISSION OF INQUIRY  
RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Phase 2

Volume 65

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*Commissioner: Honourable Justice Richard LeBlanc*

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**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, Mr. Marshall, you remain under oath at this time.

Mr. Williams, when you're ready.

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

Good morning, Mr. Marshall.

**MR. S. MARSHALL:** Good morning, Mr. Williams.

**MR. T. WILLIAMS:** My name is Tom Williams and I represent a group called the elected government officials for a period of 2003 to 2015, with the exception of former Premier Dunderdale, who was represented by Ms. Best, who was last questioning you.

And I want to start off kind of where we left off with some of the line of questioning that Ms. Best was pursuing with respect to oversight and things related to that. And in your evidence on Friday that you had made reference in your direct testimony, when looking at issues that arose at Muskrat Falls and had arisen over the last number of years – and have I understood you correctly, you indicated that you didn't feel they were related to governance or oversight-related issues. Would that be correct?

**MR. S. MARSHALL:** No, I haven't pointed to any oversight issues.

**MR. T. WILLIAMS:** Okay.

And did I – I understand you had used the term governance in a number of instances and oversight on others, and sometimes I kind of took it to be interchangeable. And given your evidence yesterday that you felt that Nalcor played an – play a major role in oversight. Am I

correct in saying that your interpretation of governance and oversight is somewhat similar?

**MR. S. MARSHALL:** Yeah. Those terms are used – can be used in a number of different contexts. Sometimes people talk about governance in terms of, you know, overseeing management, sometimes you talk about, you know, your overall oversight of the project. So the term is used not precisely all the time.

**MR. T. WILLIAMS:** Okay.

Now, with respect to Nalcor's relationship with government – and I mean both presently and in the past; we've had a lot of evidence with respect to that. And a number of government officials, as well as a number of bureaucrats, as well as a number of Nalcor officials who have given evidence at the Inquiry, have indicated that they saw the relationship between government and Nalcor as – and I'm paraphrasing to some extent, but they described it as an extension of government. Others described it somewhat like another government department with expertise in a particular field. And I – Mr. Thompson, former clerk, described it as an integrated team.

Would that be a similar manner in which you understand the relationship between Nalcor –?

**MR. S. MARSHALL:** Well, let me express it in the way I think it should be and maybe talk about the way it is.

**MR. T. WILLIAMS:** Okay.

**MR. S. MARSHALL:** The way it should be, I mean a Crown corporation is a creature of government. Government owns it. It's created to have special expertise and a certain independence to operate. So, in that context, the government should be able to rely upon the Crown corporation to provide whatever is necessary in terms of executing their mandate.

The oversight from government should come through their board of directors, which is appointed by government, and, additionally, through direct contact with the CEO to the premier and the ministers responsible. So that's the way it should be.

**MR. T. WILLIAMS:** Okay.

**MR. S. MARSHALL:** The way it is, is that there's all kinds of interchanges. You know, the Oversight Committee is a special creation. There's meetings between the executive and deputy ministers. And before – when I came along there was also all kinds of interchanges between different departments in government and different parts of the Nalcor organization.

So if you distinguish between what I think it should be and what it has been in practice, then I think we'll be okay, but I would have a better understanding of it, of the thing.

**MR. T. WILLIAMS:** Okay, and probably not a big difference between the two.

**MR. S. MARSHALL:** No, there's – I think there's not a big difference between the two. You know, it –

**MR. T. WILLIAMS:** Functionally, though, as it currently stands.

**MR. S. MARSHALL:** Yeah, Nalcor is not intended to be a government department.

**MR. T. WILLIAMS:** No, no.

**MR. S. MARSHALL:** I mean it's created because it requires special expertise in operating in a business setting. So, in that sense, it's not like a government department. It is a creature of government and government should be able to rely upon it for special expertise, but then there's interaction.

You know, you take for example, in terms of, you know, loan guarantee and borrowing. There you got – you know, Department of Finance has to be intimately involved in terms of the equity that the government has to provide to Nalcor; again, different parts of government have to be intimately involved.

So there's functions where, you know, you go to the shareholder – in this case the government – and you're looking for money or something, then they're behaving, not in an oversight, but in their own function of raising the money –

**MR. T. WILLIAMS:** Independent.

**MR. S. MARSHALL:** – and doing those sorts of things, talking to bond-rating agencies.

**MR. T. WILLIAMS:** Okay, so you've mentioned that government should be able to rely on Nalcor with respect to numbers. And I presume that with respect to the accuracy and the voracity of the information being supplied by Nalcor, government should be able to rely on that as –

**MR. S. MARSHALL:** Yes.

**MR. T. WILLIAMS:** – being accurate, to the extent that it's being supplied at the time.

**MR. S. MARSHALL:** Yeah, it can be accurate. To the degree it can be accurate they should be able to rely upon the Crown corporation, yes.

**MR. T. WILLIAMS:** Okay. So do you see any necessity for government to have to go in and start double-checking –

**MR. S. MARSHALL:** No.

**MR. T. WILLIAMS:** – the things that Nalcor give or second-guessing the experts? And where I'm leading is that there's – and it was brought up yesterday, and I'm not sure if it was brought up with Ms. Best or others. But there's been a suggestion that, you know, well, maybe government should've been in here and they've should've been double-checking the base cost estimates for building the powerhouse, for building the transmission lines, for building the dams, the switching yards. Do you see any role for government to be doing that?

**MR. S. MARSHALL:** No.

**MR. T. WILLIAMS:** Okay.

And you wouldn't expect they'd have the expertise, I would suggest –

**MR. S. MARSHALL:** That's correct.

**MR. T. WILLIAMS:** – to be able to do that. Okay.

In the case of Muskrat Falls Project, prior to sanctioning the project government did retain the expertise of MHI at what was, I believe,

Decision Gate 3. And around the same time, Nalcor had retained Westney Consulting to do some risk analysis. Now, there have been issues that have been brought up, in fairness, with respect to the scope of that work and the involvement, but would you see government having retained an expert, such as MHI, to review these numbers as being reasonable oversight at that time – point in time?

**MR. S. MARSHALL:** No. What I would expect, the government appoints the board of directors, which is their representatives, to oversee the corporation. They may – and to the degree they need special expertise at that level –

**MR. T. WILLIAMS:** Yeah.

**MR. S. MARSHALL:** – the board should be free to engage the special expertise.

Government, however, you know, should closely monitor the situation because they have to provide the equity and be in close contact, and the CEO should be in close contact with the premier, you know, as representative of the owner. But it shouldn't be necessary for the government itself to go out and engage consultants to oversee this; this should be mandated to the board of directors. That is their representatives. The board of directors represent the owners.

**MR. T. WILLIAMS:** So –

**MR. S. MARSHALL:** They're appointed by government. And if the government, as the owners, feel that they need to do something, they should talk to the chairman and suggest to the chairman, engage special expertise here. You know, we want additional comfort. And the owner can do what it wants, really.

**MR. T. WILLIAMS:** Sure.

**MR. S. MARSHALL:** If it wants more comfort, by all means commission things, but it should not – should be necessary to do so (inaudible).

**MR. T. WILLIAMS:** So you don't see necessarily any role for government to have to go retain outside experts to double-check that, you know, information being supplied by Nalcor.

**MR. S. MARSHALL:** It should not be necessary but they should absolutely have the right to do so, and if they require further assurance, to go and do so.

**MR. T. WILLIAMS:** Okay. And while we're on the topic of oversight, I just want to review with you some of the evidence that was given, and I don't know if you had an opportunity to view. There's – one of the Commission's own experts, Dr. Guy Holburn, has given evidence with respect to oversight and elements of oversight. And when I had an opportunity to question him on examination, I listed off for him a number of elements of what I suggested were oversight. And I'd just like to list those off for your benefit, for your comment.

The issues that I had raised were: Officials within the Department of Finance, Natural Resources and Justice, Validation Estimating that were involved, Westney Consulting, Manitoba Hydro International, SNC-Lavalin, Nalcor's project team, Nalcor's executive team, Nalcor's board of directors, Nalcor's internal and external auditors, the federal government independent engineer, the province's Auditor General and the Oversight Committee. And when I put these to him he acknowledged that they would form, to one – some degree or another, an element of oversight.

**MR. S. MARSHALL:** That's correct.

**MR. T. WILLIAMS:** Now, in fairness to you –

**MR. S. MARSHALL:** And I've been clear that I thought this was the most over-governed situation I've ever seen.

**MR. T. WILLIAMS:** Exactly, and you took the words out of my mouth, because I was going to quote you from your Telegram article that – where you'd said the most over-governed project ever.

**MR. S. MARSHALL:** Ever I've ever seen.

**MR. T. WILLIAMS:** So would you agree with me that you were satisfied that there could be no more oversight provided by government or there was even more oversight provided –

**MR. S. MARSHALL:** I don't think –

**MR. T. WILLIAMS:** – than would be required.

**MR. S. MARSHALL:** I don't think government can do a lot.

**MR. T. WILLIAMS:** Okay.

**MR. S. MARSHALL:** The trouble you get into is like when you have too many cooks in the kitchen. When you have too many people going around ferreting out different parts of information, first of all, it can be a distraction to the management team; you spend all your time feeding the system and not focusing on the job you should be doing. And that's why, for example, I wanted to make sure we had good, you know, periodic reporting. You satisfy everybody.

So there's a mechanism that's been created to do all these things and at some point in time you have to rely upon it. And if you look at the corporate sector, you look at corporate failures, the Enrons of the world, SNC-Lavalin scandal; I mean they had blue-ribbon boards of directors. So you're always going to be exposed to a management team. If your management team, executive team is not – leadership is not doing their job, it's very, very difficult.

**MR. T. WILLIAMS:** Okay.

Well, I want to turn now to where some of the problems maybe lie with respect to the Muskrat Falls Project; we've spent a number of months trying to isolate issues.

In terms of the cost overruns, you were quoted back in June of 2016 as saying: "I'm not at all surprised that the cost is where it is ... original estimates were low.

Now, we've had extensive evidence that was brought in through SNC-Lavalin. They were hired at the very early stages of this project to do a detailed cost estimate. They spent months assembling it and they provided it. Where do you feel or what role do you feel that SNC – and I'm not suggesting only SNC –

**MR. S. MARSHALL:** Yeah.

**MR. T. WILLIAMS:** – we'll move on to others. But what role do SNC-Lavalin play in

coming up with what's obviously proved to be an inaccurate base cost estimate?

**MR. S. MARSHALL:** I think I've indicated as late as yesterday, in relation to this SNC report, that I felt at the time that they were the principal architects of the estimate. I may have been right, may have been wrong, but that's what I felt at the time. And I still do feel that they are the principal architects of the estimate. That's where it starts.

**MR. T. WILLIAMS:** Yes.

**MR. S. MARSHALL:** The baseline, which is built upon then, by the management and other assumptions.

**MR. T. WILLIAMS:** So that would be in part – and, again, I only suggest in part – where we got off the – well, got off on the wrong foot with the base cost estimate, being that there was a fair amount of reliance. And I would suggest to you that it would've been fair for Nalcor to put a fair bit of reliance on an estimate they received from world-renowned experts like SNC.

**MR. S. MARSHALL:** That is correct.

**MR. T. WILLIAMS:** Okay.

In respect to the selection of Astaldi as the main contractors on the project, again, you were quoted as saying – and this was at a Speakers' Series at Memorial back in February of last year. And I just want to read to you a couple of quotations from your remarks there.

You said: They "are good contractors; Astaldi is a world class contractor. They never worked in this environment. They've built hydro plants in South America and Chile. And, as we've seen this past year, once they got the experience, when they got" on "the right people working" it together, we achieved "remarkable results. Nobody could have done better than Astaldi this year ...."

And then you went on to say: Given that hindsight is a wonderful thing – and, clearly, nobody could have forecast their financial troubles, do you think – I'm asking you, I'm sorry. Do you think it was reasonable for Nalcor,

at the time in which they accepted the bid, to choose Astaldi as their contractor at that time?

**MR. S. MARSHALL:** Yes. If Astaldi had been the only low bidder, I think you'd have a different situation. But you had two bids roughly close – Salini in Italy as well. So there was an indication that, you know, this wasn't a totally far-out bid.

**MR. T. WILLIAMS:** Okay.

Given the things that we know now with respect to their slow start, their financial troubles and a number of issues – and I'm not going to take you through them all – would you believe – or would you agree with me that Astaldi certainly have a role to play in shouldering some of the blame to where we are today.

**MR. S. MARSHALL:** Absolutely.

**MR. T. WILLIAMS:** Okay.

All right, in respect to the Nalcor team, in your direct evidence on Friday you spoke very highly of the leadership team. In fact, when you took over as CEO in 2016 you came in you made very little changes at the top of the leadership team of the individuals who were there. We do know some left but not necessarily left at your suggestion.

You indicated here at the Inquiry that you felt that many of the project team skills that people had for the oil and gas sector were transferrable, at least to the generation sector, but you felt that in the area of transmissions, they lacked and could've done with additional skills, right?

You said on Friday past: If I was going to build another hydro project, I would have no problem taking them on. So do you feel today, given everything that we've gone through – we've gone through, you know, SNC-Lavalin having played a role in this; we've gone through Astaldi having played a role in this. Yesterday you acknowledged the issues with GE and some of the corporate issues that they've had playing a role in this. Obviously, we've acknowledged that there's fault with Nalcor. Can we shoulder the blame of this project on any one group?

We've identified Astaldi, we've identified SNC, we've talked about Mr. Martin ad nauseam, we've talked about Nalcor, isn't the problems with Muskrat Falls a multi-pronged issue? That there's no one who can take single blame for this and that, as you said yesterday – and I was – it was nice to hear you acknowledge. At one point you said, we're all to blame. And I know it's a generalization and you said sometimes you get – you shouldn't be doing that, but you said we're all to blame. Can I get you to comment on what (inaudible)?

**MR. S. MARSHALL:** Yeah, I think I generally agree with what you said. I think the only difference is this: The execution – there's many people to blame. In terms of the decision to go forward with it, I think you got to focus on – and I said before the essence of the boondoggle is to go forward with this particular project. I think that's what I would focus on, decision to go with this project.

**MR. T. WILLIAMS:** Okay. And we'll turn to that –

**MR. S. MARSHALL:** Not the execution. The execution had many players who you can assign blame to.

**MR. T. WILLIAMS:** So, I guess, maybe just to touch on that while we're there is that you acknowledge that's a policy decision of government.

**MR. S. MARSHALL:** I think it's a policy decision. It should certainly be a policy decision. And –

**MR. T. WILLIAMS:** Government are wholly in their right to make that decision.

**MR. S. MARSHALL:** Absolutely. That's what we elected these officials for.

**MR. T. WILLIAMS:** Yeah.

And we had evidence at the very early stages in Phase 1 of the Inquiry of the history of Muskrat Falls; we went back to the very beginning. And I guess, more recently, if we take it from the time of Churchill Falls, if we go – start from the late '60s, there have been various government administrations that have analyzed the Muskrat

Falls Project and everybody with a view to try to move forward with the project, and various obstacles were arisen at various times.

If we take the perspective that we only build for what we need, when do we ever do Muskrat Falls or where – when do we ever do Gull Island? If we took your perspective saying we could do Isolated Island and just fill the one requirement we need, where do we ever get an opportunity to say let's do Muskrat Falls or let's do Gull Island?

**MR. S. MARSHALL:** It goes back to the responsibility of the parties involved. If the responsibility lies with Nalcor, the utility, that's what you do. You only do it to meet your needs. If you're the government and public policy, you make other broader decisions.

And when you decide to do that, you recognize the risk and you try to minimize those risks by, you know, what mechanisms are available to you, including entering into fixed contracts. I mean when they developed the Upper Churchill the risks were laid off on Hydro-Québec, not on the developer, because the long-term fixed-priced contract.

So, it depends on where you're focusing, just on Nalcor and their responsibility – and I tried to make this point earlier, where you talked about the project development team or you talk about the government. The government has every right and should look at developing the resources of the province. And they – when they decide to develop hydro resources they should look to Nalcor for specialized expertise. But they may decide that, you know, this was maybe not required to meet the energy needs of the province, but they want to see it developed.

**MR. T. WILLIAMS:** Okay, so – and there's other opportunities over and above just the required energy needs. There's, obviously, economic benefits to doing these projects if you can capitalize on export markets.

**MR. S. MARSHALL:** Absolutely. Sure.

**MR. T. WILLIAMS:** So at the time the decision was made here, you know, some of the evidence was that we were fortunate enough to be able to establish an Aboriginal agreement, we

were able to get a federal loan guarantee, we had some of the lowest interest rates in history for financing of the project, we were able to satisfy the environmental needs and we had information from Nalcor, who had studied it, that this was the lowest cost option.

So based on those five factors, would you not agree that it would be a reasonable decision, albeit risk, and I agree, but with risk comes reward?

**MR. S. MARSHALL:** I don't agree it was – well, I mean, I'll break it down a little bit.

**MR. T. WILLIAMS:** Okay.

**MR. S. MARSHALL:** I don't agree it was the least-cost option. I don't accept that, okay? And this is where I think the thing got confused. If the government had clearly decided we want to develop Muskrat Falls as a matter of public policy, by all means, that's what you should do, but don't go out portraying it as the least-cost option.

**MR. T. WILLIAMS:** But that clearly is what they were advised.

**MR. S. MARSHALL:** That's what –

**MR. T. WILLIAMS:** I mean –

**MR. S. MARSHALL:** – they were advised.

**MR. T. WILLIAMS:** – I think we've established –

**MR. S. MARSHALL:** (Inaudible.)

**MR. T. WILLIAMS:** – rightly or wrongly, we'll fight –

**MR. S. MARSHALL:** I think –

**MR. T. WILLIAMS:** – and maybe the Commissioner can straighten that out.

**MR. S. MARSHALL:** Right.

**MR. T. WILLIAMS:** But at that point in time when this project was sanctioned –

**MR. S. MARSHALL:** Right. I think, well, if that advice came from Nalcor, then it was bad advice.

**MR. T. WILLIAMS:** Okay.

Okay, I want to turn with respect to the Inquiry. And you had given some evidence on Friday with respect that you had encouraged the Premier, back in November of 2017, not to proceed with the Inquiry, at least at this point in time. What do you see as the risks of doing an Inquiry at this stage in the project?

**MR. S. MARSHALL:** No, I think I'm going over the same ground many times, but the biggest risk is the distraction of – two big ones: Distraction of the executive management team, taking up a tremendous amount of time and attention, and so the job they should be doing at a very delicate point in time, they're focusing on something else; the other thing is that other vested parties who have an interest in this – you know, your contractors – could use it as an opportunity to gain an advantage – tremendous advantage. Those are the big two.

**MR. T. WILLIAMS:** Okay.

And have you found it to be a substantive disruption to your team while –?

**MR. S. MARSHALL:** Yes, it has.

**MR. T. WILLIAMS:** Okay.

And I don't want to get in – we dealt with it yesterday, I don't want to get into the cost issue, but has Nalcor been able to assemble a cost factor as to what the efforts for the Inquiry have (inaudible)?

**MR. S. MARSHALL:** We just have – again, we discussed this yesterday that we have the direct cost. I mean that's – those are tracked.

**MR. T. WILLIAMS:** Okay, and what would that be at this point in time?

**MR. S. MARSHALL:** I think they're several millions of dollars.

**MR. T. WILLIAMS:** Okay.

Okay, I want to turn now from the past to the future, and in terms of trying to assess where we're going – and the Inquiry is going to be looking at this aspect as well. And I want to put to you evidence that we've had to date from the Commission's expert Dr. George Jergeas. And I believe you indicated in your earlier testimony, if I got your quote correctly, you said: Yeah, that's a very practical guy. I agreed with him a lot.

And when I questioned him with respect to some of his evidence, I asked him – I put to him his definition of success. He spoke of megaprojects and he's an expert in that field. And when he defined success he stated: It's usually judged on the gap between the initial budget and actual performance, and we expanded upon that and we spoke about it. And I'd just like to read from his transcript.

So I went on from there and said – and these are my words: Okay, with respect to expanding on that topic, I mean can we judge success at this point in time? We're sitting before a Commission of Inquiry, the project is not finished. It's substantially finished, 95 per cent range, but we haven't flipped on the switch for first power yet. We're talking about a project that's going to have a 50- to a hundred-year potential lifespan. So can we judge the success or failure of a project at this point in time, or do we need to see what it actually results in?

Here's his response. He said: This is why I brought up the Sydney Opera House project. Now we judge it as a success. I can give you another example – two more examples. We had a project in Calgary called – I'm not sure the project, I didn't catch the name of the project. And he said: Don't worry about that one. It was on time, on budget. Unfortunately, with geology, it could not produce oil, or little oil – not the designed capacity because of the geology of that one in that area. On time, on budget, did produce oil or little – park that.

I'll give you an earlier example of a hundred per cent cost overrun – a hundred per cent. It produced oil and more, recovered everything. They were a bit lucky. Oil prices went up. They were high. Which one is successful? You tell me. I think the one with the cost overruns was more successful. Now, I pray that something is



going to happen in the economy that this project being – speaking of Muskrat – when it’s finished, a few years from now all of us will say it was a successful project. I really want this to happen because I appreciate the effort of all these hard-working people, very qualified people and put in a situation that happened and we could have done nothing – done something earlier.

So I say to him, final remark was: So what would you say to the naysayers who, at this point in time or in the past, have said we should never do this project? What would your response be?

And his line was: I think five years, 10 years from now, 20 years from now they’ll say, wow, that was probably a good decision.

What are your comments on Dr. Jergeas’s opinion on success?

**MR. S. MARSHALL:** My opinion, quite clearly, is that the project should never have been started. It placed an inordinate risk on the people of this province and a burden on the ratepayer. Whether in 40 years you turn around and say all things panned out to be a success, could very well be; success is a matter of definition. Could it be a success in 40 years, 50 years? I’ll be dead in 40 or 50 years.

**MR. T. WILLIAMS:** But you’re not ruling it out, are you?

**MR. S. MARSHALL:** No, of course not.

**MR. T. WILLIAMS:** Okay.

**MR. S. MARSHALL:** I mean, there’s benefits coming from this. And as I said one of the biggest benefits is that we’re training a new generation of Newfoundlanders. So if we could use those expertise, say, for example, in negotiations with Quebec for 2041, it could turn out that, you know, this will be okay.

And that’s what I’m trying to do. I’m trying to do the best we can, as I – and I expressly said this when I used the word, boondoggle. I said right now it’s a boondoggle; the challenge is to see that if we can turn it around so that at the end it won’t be a boondoggle.

**MR. T. WILLIAMS:** Okay, and we’ll come to that one.

The next quote I’d like to put to you is your current board chair, Mr. Brendan Paddick.

**MR. S. MARSHALL:** Mm-hmm.

**MR. T. WILLIAMS:** And I put the same type of question to him at his testimony. And I asked him, “what’s your outlook for the project, both short and long term?”

And he said – and, again, excuse me for – it’s a bit of a lengthy quote, but he said: I think we’re going to finish strong and, you know, if there’s one sort of take-away from all of this, it’s what I’ll call a self-fulfilling prophecy. I’m a firm believer that people get up in the morning and they’re driving to work and thinking about what to do and what I have to do today, what’s my timeline to do it, how much money do I have to do it, am I going to do it diligently. “They don’t do the opposite. People don’t get up in the morning, get a Starbucks and get in the car and go how can I screw up today? That’s not human nature ... Human nature is I’m going to do a good job.”

But if it gets to a point where a transport truck blows over in Wreckhouse and that’s Nalcor’s fault, it’s raining on May 24 weekend and that’s Nalcor’s fault, and nobody wants to succeed for whatever reason – political reasons or special interest groups or whatever – guess what? It’s not going to succeed. If anything comes out of this Commission, hopefully it’s just – it’s a chance to start over, put on the jersey and want Nalcor to get back to what it used to be, which was a very respected part of the community and an important part of the community.

So that I think if we get there, everyone is cheering for you instead of trying to cut the legs out from under you, and people can go to work and people can get on their – put it on their résumé that they worked for Nalcor, because now they’re wondering, is it better to say I had a two-year holiday in my résumé than I worked at Nalcor – like, that’s where we’ve got to get, right?

And I think once we’re all on the same bus, cheering for the same outcome, then we can turn

this around and will prove to be a project that – you know, look at the Upper Churchill, however many years we are now, 50 or 60 and we put in place an asset management program to ensure that it's got a long life.

Yes, there's all kinds of naysayers or people with opinions on whether it's a good deal, bad deal or rewriting history as how it came about. But, hopefully, the history of this one can be that we built an asset to be very proud of, that made us self-sufficient for centuries to come, that positioned us to be in a position to export power, control our own destiny. We had billions of dollars of economic benefit to flow to the province and it should continue to flow to the province. We've all got to want it to work, that's the main message. If nobody wants the thing to succeed, it hasn't got a chance.

Do you take issue with his comments in that regard?

**MR. S. MARSHALL:** I would certainly agree with the chairman that we – what we're trying to do is re-establish Nalcor as a trusted, respected organization. I would say, however, that when we're engaged in a project like the one we are, if we're going to be successful, we have to start with a realistic assessment of where we are. There's no point in getting out there and saying, you know, we're doing the work of God.

So this is when I went in and faced the employees. And, of course, they now have been severely criticized back in 2016. The morale is extremely low. I'm not going to start off with cheerleading. I'm going to say: Folks, here's where we are. Here's my view of it. What I want and what I'm asking you to do is put your shoulder to the wheel, work with me and finish strong. Because at the end of the day, people judge about how you finish, not how you start.

So as long as we're clear on the two – difference between the two, look, yes, there's a morale issue, and you got to try to improve that, but it always starts with a realistic assessment of where we are, not some cheerleading out there saying, you know, we're the best and brightest. We start off by saying we got a severe problem and we're going to try to solve it and do the best we can.

**MR. T. WILLIAMS:** Okay, if I could put to you just – and cluing up here – some of your own comments. And to that end, in terms of where you have been presently and in the recent past – and, again, last year, in February 2018, while speaking at Memorial, you indicated: “We're within the parameters I talked about both in terms of time and money. It was an outstanding year. It's a tribute to those people who worked on it whether they are our employees, contractors or Aboriginal partners – everybody worked together. I say to them your best defence in the inquiry is how you perform in 2017. You can do this .... And I want you ... to understand that.”

And you went on to say: “If someone could build a hydro plant, and level out your cost” over the “next 40 years, say, 7 cents a kilowatt hour, you'd take it. So, the problem here is not the cost of Muskrat Falls. It's a very attractive plant in its own right. Even with the cost overruns, the price of energy at Muskrat Falls” is attractive.

Would you agree that's an optimistic outlook?

**MR. S. MARSHALL:** I said it then and believed it then. I say the same thing today.

**MR. T. WILLIAMS:** Okay.

**MR. S. MARSHALL:** But, again, one of my big mistakes here is the people look – always look at Muskrat Falls and forget about the transmission and transmission cost. So I agree with all this.

**MR. T. WILLIAMS:** Okay.

**MR. S. MARSHALL:** I've said it many times; I'll just repeat it again today.

**MR. T. WILLIAMS:** Okay. So I'm going to put just two more back to you –

**MR. S. MARSHALL:** Okay, go ahead.

**MR. T. WILLIAMS:** – to get your comment.

You also indicated, in fairness to you – and your boondoggle line has gotten lots of attention. But you've said – and, again, I'm quoting: “Things change; it doesn't have to be a boondoggle

forever. Sydney Opera House was called a boondoggle when – no longer viewed that way. There's things we can do to mitigate the cost of this. There's other advantages we could achieve. In 20 years ... the Upper Churchill comes back to us. The skills we are going to acquire now with High Voltage DC. All these controls, all this experience we'll have" all "the cables – will be useful when" this "happens because it gives us more options. So, don't despair. We're making progress – making real progress. But it's a marathon, not a sprint. And for goodness sake, stop focusing on the minutia, and look at the big picture."

Now, that sounds like the words of a man who has optimism for the future of a project.

**MR. S. MARSHALL:** I had to be optimistic or I wouldn't have taken on the job.

**MR. T. WILLIAMS:** Okay.

All right, the last one. On April 19, 2018 – it's *CBC News* article – you stated, "I'm a lot happier now than I was two years ago." And some might have said you were grumpy two years before.

"We came into a situation that was a crisis. We've worked our way through it. Any megaproject in the world would be happy to ... where we are."

That being said, would you agree with the opportunities in the world that we exist right now with green energy, with the availability, now, to export off the Island without having to go through Quebec, with the opportunities of expanding markets, while soft now, that there is optimism for this project in the future. We are – none of us have a crystal ball, but there's been so much negative, you know, air about this, I'd like your opinion on it.

**MR. S. MARSHALL:** Yeah, again, I've tried to point out the benefits of the thing as well, which is in your quotes, and I certainly see those and will try to capitalize on those. So I stand by all the quotes you've –

**MR. T. WILLIAMS:** Okay –

**MR. S. MARSHALL:** – (inaudible).

**MR. T. WILLIAMS:** – well, that's all I ask.

Thank you.

**MR. S. MARSHALL:** Okay.

**THE COMMISSIONER:** All right, thank you.

Julia Mullaley, Charles Bown.

**MR. FITZGERALD:** No questions, thank you.

**THE COMMISSIONER:** Thank you.

Robert Thompson.

**MR. COFFEY:** Good morning, Mr. Marshall. My name is Bernard Coffey. I represent Robert Thompson.

**MR. S. MARSHALL:** Mr. Coffey, good morning.

**MR. COFFEY:** What I wanted to focus on was some comments you've made in the couple of days you've been testifying. At various times, you've referred to – or you were referred to ideas of tactical risk and strategic risk and contingency and so on. And I believe in terms of tactical risk and strategic risk, you indicated that the first time in your career you encountered, like, those particular phrases was when you arrived at Nalcor.

**MR. S. MARSHALL:** That's correct. Well, yes, in the context of (inaudible).

**MR. COFFEY:** Yes, those particular phrases –

**MR. S. MARSHALL:** Right.

**MR. COFFEY:** – and in the context in which Nalcor uses them. Could you tell the Commissioner, please – because I mean, your professional experience, business experience spans well over 40 years. And as I understand it, you've operated or, you know, been involved in operations all across North America into the Caribbean, correct?

**MR. S. MARSHALL:** Correct.

**MR. COFFEY:** Could you explain to the Commissioner how it is at your level, and even

looking back as you went up through the ranks, how the idea of contingency – you know, what is being phrased here tactical and strategic risk – how you’ve dealt with it or how you’ve understood it over the years.

**MR. S. MARSHALL:** Okay. I think, you know, my experience would be consistent with the way the chap from Emera described it. You know, they do (inaudible).

**MR. COFFEY:** Mr. Huskison.

**MR. S. MARSHALL:** Right.

**MR. COFFEY:** And I have referred the, Commissioner –

**MR. S. MARSHALL:** (Inaudible.)

**MR. COFFEY:** – witnesses to –

**MR. S. MARSHALL:** Right. So utilities are –

**MR. COFFEY:** – about that.

**MR. S. MARSHALL:** – more conservative to start with.

**MR. COFFEY:** Sure.

**MR. S. MARSHALL:** And –

**MR. COFFEY:** How does it work? If you want –

**MR. S. MARSHALL:** The general approach, if we’re doing a project, would be you go out; your engineers, internally, do the studies. They engage other external firms, engineering firms and whatnot. They start to bring it together, see if it’s a viable. So while it’s not the formal, you know –

**MR. COFFEY:** Mm-hmm.

**MR. S. MARSHALL:** – gate process, the result is the same. You start off with a general estimate, see if it’s – you screened out where there’s work proceeding, whether or not, and you carry on doing more refinement to it. The only internal part of your organization, and they’re engaging consultants.

Before it comes to the executive level, it’s got – you go through that and come – so it comes to the executive saying, okay, we think this is a viable project, and here’s our estimates at the point in time, here’s the work that needs to be done, to be done to refine –

**MR. COFFEY:** Mm-hmm.

**MR. S. MARSHALL:** – those estimates, here’s things we can mitigate whatnot, and so then the executive starts to work with the engineering teams. The financial people were involved to see how you might finance this. In the case of – if you’re – usually happening in one of the subs, which would be an equivalent situation here –

**MR. COFFEY:** Yes –

**MR. S. MARSHALL:** – you know, the government –

**MR. COFFEY:** – sure.

**MR. S. MARSHALL:** – and the owner –

**MR. COFFEY:** Exactly.

**MR. S. MARSHALL:** – you engage the parent. You say: Look, can this be financed? Are you prepared to take the risk? And then you look at assigning the risk between the owner and the sub. And the owner will say: Okay, we’ll take care of this risk. Here’s the parameter in which you are going to proceed.

**MR. COFFEY:** Yes.

**MR. S. MARSHALL:** Okay? So there might be things, you know, some risks which are clearly outside of the control of the organization. If you’re outside the control of the organization, you – the parent have to know about it –

**MR. COFFEY:** Yeah.

**MR. S. MARSHALL:** – because the parent say: Okay, we recognize that you can’t control this.

**MR. COFFEY:** Mmm.

**MR. S. MARSHALL:** This is something that we’re prepared to assume.

**MR. COFFEY:** The risk for the parent –

**MR. S. MARSHALL:** Right.

**MR. COFFEY:** – (inaudible).

**MR. S. MARSHALL:** So the risk – that equates to the strategic risk and tactical risk –

**MR. COFFEY:** Yes.

**MR. S. MARSHALL:** – really. So while the terms are different and the processes are different, the result tends to be the same. It was clear to me that we – who assumes the responsibility for what, in terms of risk, and the best one is if you look at what I've been talking about – strategic risks, risks over which your organization has –

**MR. COFFEY:** Yeah.

**MR. S. MARSHALL:** – no control – then the owner has to assume that risk, really.

**MR. COFFEY:** Yes.

**MR. S. MARSHALL:** Okay, and the owner has to say – has to understand they're there, and dictate to the sub that yes, we, as an organization, are prepared to assume that risk. And you do a sensitivity analysis to see, you know, what would happen if the price of oil or the price of electricity rises or falls. And – so then, eventually, you reach the stage where the executive is on side, your risks are defined, the returns is estimated. We would take it to a much more refined level of engineering before we go forward, in a utility. We're much more conservative, and then we would do – then we would check it again before we go forward with the board.

**MR. COFFEY:** I'm sorry, what?

**MR. S. MARSHALL:** We do a – check it again –

**MR. COFFEY:** Yes, go ahead.

**MR. S. MARSHALL:** – and I've described it – instances out west where we'd pull the plug on a –

**MR. COFFEY:** Mm-hmm.

**MR. S. MARSHALL:** – a project at the last minute after we went back and asked different firms to review their estimates, because we know they can change and whatnot. And they came back; I think it was 70 per cent over budget over the previous estimate and we just canned it, right?

So, along the way, everything gets defined in terms of the costs. And when you reach a fairly high level of engineering progress, you would pull the trigger, and also recognize whether you have the opportunity offerings. Are there opportunities here to stop the thing, you know, after we start, if we find out – if you go to tender, for example, and the tenders are coming in higher than we estimated, do we have the opportunity to stop, reassess.

And we've deferred projects, and projects have been deferred because of things outside of our control. For example, in Central America, one of our projects, the US environmentalists took us off and it took – we were delayed two years because we had to go to the Privy Council in the UK for a judicial decision. So we were delayed two years.

But – so there are things outside of our control but – and which would create the (inaudible), right?

**MR. COFFEY:** Yeah.

**MR. S. MARSHALL:** So hopefully that helps you.

**MR. COFFEY:** Yeah.

**MR. S. MARSHALL:** While the terminology and the process might be slightly different, the outcome and the approach is the same. You know, you're finding things as you go along. I think the big difference is that in this case, you know, you – you're being offered, at some stage, federal loan support, which may not always be there and you're sort of trying to capture that.

**MR. COFFEY:** Yes.

**MR. S. MARSHALL:** And once you sign that, you get recognized that you are committed.

**MR. COFFEY:** Now, before we leave that aspect of the matter, you say fairly refined engineering. And, again, I'm not going to suggest that there's a particular percentage associated with – you know, with that level, but what kind of range are we talking about of engineering and costing being done?

**MR. S. MARSHALL:** I think your – the witness in –

**MR. COFFEY:** In the context of (inaudible).

**MR. S. MARSHALL:** George Jergeas would have captured my thoughts –

**MR. COFFEY:** Okay.

**MR. S. MARSHALL:** – in terms of, you know, he didn't really believe these precision estimates of, you know, different stages, that you'd want to get pretty close to, you know, 80 per cent in engineering done before you have an estimate you can really rely upon as being within, say, 10, 15 per cent, and recognizing the risks then could be outside of that, right? But, again, you – it's important that you understand the risks and whether it be in or out and who's assuming them.

**MR. COFFEY:** Now, in the context in which it's, you know, the Muskrat Falls – well, the Lower Churchill Project and the Muskrat Falls occurred and here, from your perspective, whom was it incumbent upon to communicate or articulate what the risks were and the ranges they were to government?

**MR. S. MARSHALL:** I've been clear, I think. In principle lies – the prime responsibility lies with Nalcor in terms of going forward. I think the government had the responsibility to – whether it's a matter of policy they want to proceed with it, then they could rely upon Nalcor to provide the best information they could.

**MR. COFFEY:** Now, this morning, I think you said – in response to a question Mr. Williams asked you said: To the degree information can be relied on, government should be able to rely on that information – on the information provided to government by Nalcor.

Now, what I want to focus on is to the degree the information can be relied on, okay? Because that's – here in the context of, you know, cost estimates and schedule estimates, from your perspective who – in the context of Nalcor and government, whom was it incumbent upon to communicate clearly or describe clearly the degree to which the information can be relied upon?

**MR. S. MARSHALL:** Yeah.

**MR. COFFEY:** These cost estimates –

**MR. S. MARSHALL:** Yeah.

Nalcor, in presenting the numbers, should also outline the risks involved –

**MR. COFFEY:** Yes and –

**MR. S. MARSHALL:** – and, you know, the degree of precision involved, like I said, (inaudible) analysis as it were. So they should go with a full presentation, as you would to your board of directors. Go to government and say: Here it is. Here's what we know –

**MR. COFFEY:** Yes.

**MR. S. MARSHALL:** – the best information we have, recognize that, you know, the forecasts are always going to be wrong.

**MR. COFFEY:** Yes.

**MR. S. MARSHALL:** They understand that. So that's the obligation. Now, my own experience in going to talk to government, sometimes you go in and you tell them and you tell them again, and you tell them again and they don't understand what you're saying. That's where things break down. It's just, you know, they don't have the background to understand a lot of the issues.

**MR. COFFEY:** Well –

**MR. S. MARSHALL:** Pure and simple.

**MR. COFFEY:** Yes, and here in this context. We have heard in the past – I believe in Phase 1, but we've heard references to – I think, from the Premier Dunderdale at the time, Mister –

Minister Kennedy at the time, they wanted the number, give me a number, or phrased to that –

**MR. S. MARSHALL:** Right.

**MR. COFFEY:** – phrased to that effect. You would – do you understand the context?

**MR. S. MARSHALL:** Yes, I understand it fully well and –

**MR. COFFEY:** Yeah.

**MR. S. MARSHALL:** I've had many situations where I've been asked the same thing and did my utmost to resist.

**MR. COFFEY:** Yes.

**MR. S. MARSHALL:** And now find that I'm being described as being uncooperative and giving – you know, you try to give a – that there is no number that you can rely on with certainty – understand that. If they insist on a number and, you know, you are working for them, you do the best you can but you tell them, look, if I were you I wouldn't rely on that number.

**MR. COFFEY:** And...

Now, in this context – you know, government in this context, as I understand it, covers both, you know, the career civil servants, where people work for the civil service, as well as the politicians, okay? And I believe on Friday, at one point in passing, you asserted, or used the words to the effect of I'm not a political guy, okay?

Now, in the context here, what did you mean or what do you – what is that concept? When you use that phrase, I'm not a political guy, what do you mean? What do you convey –?

**MR. S. MARSHALL:** I think there are a couple of aspects of that –

**MR. COFFEY:** What do you mean to convey to the Commissioner?

**MR. S. MARSHALL:** Okay.

**MR. COFFEY:** Yeah.

**MR. S. MARSHALL:** First, I'm not aligned with any political party.

**MR. COFFEY:** Yes.

**MR. S. MARSHALL:** You know –

**MR. COFFEY:** And that's really –

**MR. S. MARSHALL:** Right.

**MR. COFFEY:** – kind of basic partisan politics, yes.

**MR. S. MARSHALL:** Right. And the other thing is that I recognize that politicians have valid concerns being politicians.

**MR. COFFEY:** Yes.

**MR. S. MARSHALL:** You know, politicians have to be popular, for example. I don't care whether I'm popular or not.

**MR. COFFEY:** Okay.

**MR. S. MARSHALL:** Right? So, my approach to the problem is not to garner popularity, but to execute what I'm there to do, whether it's popular or unpopular. And when I speak, I try to be sensitive to the needs of the politicians, but I tend to be direct. The same thing, I'm not a politician. So there's two aspects of it, one is the very narrow, are you a member of any political party

**MR. COFFEY:** Yes. Yeah.

**MR. S. MARSHALL:** I think we can accept that.

**MR. COFFEY:** Yes.

**MR. S. MARSHALL:** But the other one is that, you know, if I wanted to be a politician, I'd go into politics. I'm not of that stripe.

**MR. COFFEY:** Yes.

**MR. S. MARSHALL:** You know, I want to be direct; I want to get on with my job, recognizing – but I do recognize, you know, they have their valid concerns. So I try to be respectful and try to accommodate the needs to the degree I can by

staying out of controversy – not always successful. And I try to advise them on things which are politically (inaudible) view might be politically sensitive, so they are aware. So that's what I mean, it's a different approach.

**MR. COFFEY:** Now, following on, on that, would you think that it would be or might be, perhaps, difficult, for example, for a politician of whatever political party to communicate to the public that a project of a significant size didn't have a particular cost associated with it like a certain number, that it would be a range. For example, yesterday you did indicate, well, to use the range of, oh, it's the \$6 billion – and that was the kind of estimate – your view would be, well, at that stage it would be \$6 to \$7 billion.

**MR. S. MARSHALL:** Right.

**MR. COFFEY:** So in that context would you be telling the politicians that this is going to – and the bureaucrats that this is going to cost \$7 billion, or the estimate is 6 but I'm thinking 7?

**MR. S. MARSHALL:** I would tell the politicians, yeah. I frequently tell the Premier what I'm thinking.

**MR. COFFEY:** Yes.

**MR. S. MARSHALL:** But, again, it's different being – you know, I had to – and that's – I think that's my responsibility at that level and to the board as well. I tell my board, you know, what I'm thinking, anticipating. I cannot quantify at this point in time, I cannot give you why I think this way fully, but it – you know, it's usually intuition, which is a combination of experience and those – and of things you see.

You know, you're sort of giving them – giving you heads up that this is what I'm thinking, this is what might happen.

**MR. COFFEY:** Now, if – would you expect, you know, that, for example, the civil servants from Natural Resources and Cabinet Secretariat, Finance, Environment – would you expect them or have expected them to understand, for example, distinctions between tactical and strategic risk?

**MR. S. MARSHALL:** No.

What – I'd want them to understand –

**MR. COFFEY:** Yeah –

**MR. S. MARSHALL:** – what's behind it.

**MR. COFFEY:** Oh, yes, the –

**MR. S. MARSHALL:** Yeah, but the terms and, you know –

**MR. COFFEY:** Not the – whether or not –

**MR. S. MARSHALL:** They're not works of art neither anyway –

**MR. COFFEY:** Yes.

**MR. S. MARSHALL:** – right, so ...

**MR. COFFEY:** And perhaps I'll just, without taking you to the – an exhibit or two I was going to, papers by Hollmann, which I've referred to before – I'm sorry, you said they're not terms of art, or what was – could you just expand on that?

**MR. S. MARSHALL:** Well, they mean different things to different people. There's no one definition in this context at all.

**MR. COFFEY:** Okay.

**MR. S. MARSHALL:** Again, I think George Jergeas referred to this as well and I very much appreciated his presentation. I see he adopted my reference to the Sydney Opera House as well.

**MR. COFFEY:** Thank you very much, Commissioner.

**THE COMMISSIONER:** Thank you.

**MR. COFFEY:** I appreciate it, Mr. Marshall.

Thank you.

**MR. S. MARSHALL:** Thank you.

**THE COMMISSIONER:** All right, Consumer Advocate.

**MR. PEDDIGREW:** Good morning, Mr. Marshall.



**MR. S. MARSHALL:** Good morning.

**MR. PEDDIGREW:** Chris Peddigrew representing the Consumer Advocate and the ratepayers of the province.

Got some questions for you today, I guess, on some things that – or have been touched on and just some follow-up, as well, to questions from the last few days of evidence that you've given.

On the issue of the HVDC expertise – and I guess you're – you know, your sort of – your breakdown then is not just a hydro project, it's a construction project for the facility at Muskrat Falls, but then you have the transmission aspect and the requirement for HVDC expertise. So when you arrived at Nalcor, did you – was there anybody in particular that had that HVDC expertise or was it completely lacking or –?

**MR. S. MARSHALL:** No, there were consultants working on the job, especially from SNC-Lavalin. There's some very specialized engineers there who understood quite clearly and that's what we're relying on.

**MR. PEDDIGREW:** But that's with SNC you say?

**MR. S. MARSHALL:** Pardon?

**MR. PEDDIGREW:** You say with SNC?

**MR. S. MARSHALL:** I think it was SNC, yeah.

**MR. PEDDIGREW:** Okay. Yeah.

And so anybody within Nalcor, or was it just through people that Nalcor had contracted?

**MR. S. MARSHALL:** No, Nalcor had never been engaged in HVDC.

**MR. PEDDIGREW:** Okay, so nobody with Hydro either, as well?

**MR. S. MARSHALL:** No.

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** Not to my knowledge.

**MR. PEDDIGREW:** Right, right. Okay.

Not that you came across when you –

**MR. S. MARSHALL:** No.

**MR. PEDDIGREW:** Some questions yesterday that came up about rates and the figure of 15 cents, just to backtrack for a moment. So I guess there's some – been some suggestion, through some of the questions or some of the materials that rates, you know, steadily increase. And I guess over the course of a long period of time, yes, rates will eventually go up.

But, you know, over the past 10, 11 years rates have been fairly stable in this province. Would you agree with that? I think they've – the information I have anyway is back in 2008 they were about 9.5 cents and right now they're about 11.39 cents.

**MR. S. MARSHALL:** Yeah, if you're not expanding your electrical system –

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** – as a utility, generally speaking, rates are very, very stable, and things like oil in this case are taken out through a special mechanism.

**MR. PEDDIGREW:** Yeah.

**MR. S. MARSHALL:** So the base rates don't change because the oil part of it is covered in a special mechanism, right?

**MR. PEDDIGREW:** Okay.

So if the price fluctuates, it's built-in, not –

**MR. S. MARSHALL:** Generally speaking, if you're not growing, you know, everything is stable because an increase in rates are usually driven by a new big investment.

**MR. PEDDIGREW:** Right. Okay.

And so this figure of 15 cents that was talked about yesterday – and, well, rates are going to 15 cents anyway – where did that line of thinking come from?

**MR. S. MARSHALL:** Well, again, it comes back to – if you recognize that Holyrood was entering the end of its useful life, it had to be replaced by another major investment; that would have driven it. That’s what I was talking about.

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** So, as I said, Holyrood has been there for many, many years and it did – then depreciated, but now the time come to replace it, and that’s – as I said, that’s what drives big increases in rates usually, when you have to make a big investment.

**MR. PEDDIGREW:** Right.

And so, I guess, just going from 11, 11.5 around what it is now, up to 15, would be a pretty substantial increase, relatively speaking, to what the rates are. And there’s the issue of rate shock, I guess, you’re – you know, you’re familiar with that term, of course.

**MR. S. MARSHALL:** Right.

**MR. PEDDIGREW:** And that would be, you know, a large increase off whatever the rate is now.

**MR. S. MARSHALL:** Right.

**MR. PEDDIGREW:** And so if there was a requirement for an investment in Holyrood to refurbish it or replace it for – if it was an Isolated Island Option, I mean, would the cost of that – would it spread out so as not to, necessarily, result in a 15 per cent increase so quickly?

**MR. S. MARSHALL:** The increase is not 15 per cent. (Inaudible.)

**MR. PEDDIGREW:** Sorry, 15 cents.

**MR. S. MARSHALL:** Right.

**MR. PEDDIGREW:** A rise –

**MR. S. MARSHALL:** Yeah.

**MR. PEDDIGREW:** – of 15 cents.

**MR. S. MARSHALL:** The normal regulatory practice is that we don’t have a big bump like that, you, you know, would agree with the regulator. You try to do smooth increases. Because I said it earlier, you know, it’s not so much the absolute level of rates that causes the grief with the consumer, but how fast they’re increasing.

**MR. PEDDIGREW:** Yeah.

**MR. S. MARSHALL:** So, you try to smooth out the rate increases – you would.

**MR. PEDDIGREW:** Okay.

So, I guess, the talk about it going to 15 cents, that would be subject, in the normal course, to PUB approval, would it not?

**MR. S. MARSHALL:** Oh yeah, but only thing, they have to recognize that rates were going to go up, because of the need to replace Holyrood.

**MR. PEDDIGREW:** Right. Maybe not to 15 cents; certainly over – I mean, at some point in the future, they’re going to hit 15 cents or more, but it necessarily, would not have been – I mean, now they’re still at 11.39, so ...

**MR. S. MARSHALL:** Yeah. No, it’s a major increase. I mean, you’re talking about, you know, billion dollars increase anyway. So, there would’ve been a substantial increase, and you’d look, maybe, at phasing in over three or four years.

**MR. PEDDIGREW:** And something that would be subject to PUB approval.

**MR. S. MARSHALL:** Yes.

If you’re doing it just solely as a regulated utility.

**MR. PEDDIGREW:** As a regulated – right, okay.

**MR. S. MARSHALL:** Right.

**MR. PEDDIGREW:** Outside the Muskrat Falls –

**MR. S. MARSHALL:** Right.

**MR. PEDDIGREW:** Right.

And so there were some questions yesterday about the Canadian average per kilowatt hour being 13 cents. And so, is it fair to say that – I’ve heard this phrase more in this Inquiry than I’ve ever heard it before, I think, about the apples to apples comparison.

And so, would it be fair to say that comparing Newfoundland, say, to other parts of Canada may not be an apples to apples comparison insofar as we are, as a province, much more reliant on electric baseboard heating than other provinces would be?

So, the impact of a kilowatt-hour increase might be more substantial here for the ratepayers?

**MR. S. MARSHALL:** It’s always difficult to compare jurisdictions. I wouldn’t do it on a basis of other use – but on the basis of – you know, sources of generation, different tax regimes. You have to make sure, for example, that one includes taxes and then, you know – so, you’re trying to balance all these things –

**MR. PEDDIGREW:** Yup.

**MR. S. MARSHALL:** – to get the best comparison you can. I wouldn’t focus on the actual use. If you’re trying to look at the absolute rates, then you look at absolute rates. What it’s used for is a different consideration.

So, you look at Canada. You know, you’ve got Hydro-Québec, which has a great legacy of hydro, and BC as well. You know, they’re going to keep rates down.

**MR. PEDDIGREW:** But I mean –

**MR. S. MARSHALL:** So, you have a distribution in Canada and why.

**MR. PEDDIGREW:** Okay.

But in Quebec, there’s a lot of homes that are heated by natural gas as well, right?

**MR. S. MARSHALL:** Not a lot of – heating you mean?

**MR. PEDDIGREW:** Yes.

**MR. S. MARSHALL:** Not a lot.

**MR. PEDDIGREW:** No?

**MR. S. MARSHALL:** No.

**MR. PEDDIGREW:** Okay.

So, from – but, I guess, from the point of view of the ratepayer here, a lot of homes are heated by electric baseboard heating. So –

**MR. S. MARSHALL:** Yes.

**MR. PEDDIGREW:** – an increase in the price per kilowatt hour would have a great impact here versus –

**MR. S. MARSHALL:** I mean –

**MR. PEDDIGREW:** – other provinces.

**MR. S. MARSHALL:** (Inaudible) – yes.

**MR. PEDDIGREW:** Other provinces may not be so reliant on electric baseboard heating. The price of the kilowatt hour increasing wouldn’t necessarily have the same impact.

**MR. S. MARSHALL:** On the consumer right? That’s true.

**MR. PEDDIGREW:** On the consumer.

Mr. Marshall, do you know, like, in the lead-up to – and I’m not sure if you were at Fortis at this time or not – but in the lead-up to the sanctioning of Muskrat Falls, was there any discussion between Newfoundland Power and either the government, or Hydro or Nalcor, about the idea of the Muskrat Falls Project? Was Newfoundland Power ever consulted about their thoughts on whether pursuing the Muskrat Falls Project was a good idea?

**MR. S. MARSHALL:** I’m not aware. I wasn’t at – when they had that PUB inquiry, Newfoundland Power participated as I recall. But there was no –

**MR. PEDDIGREW:** Can you recall if Newfoundland Power participated in the PUB process back in 2012?

**MR. S. MARSHALL:** I think they were a party, as I – I think they were a party that would be on it.

**THE COMMISSIONER:** I don't think so.

**MR. S. MARSHALL:** Really?

**THE COMMISSIONER:** I don't think they were a party before the PUB. You mean on the set – for the (inaudible).

**MR. S. MARSHALL:** Okay. Well I stand corrected.

**MR. PEDDIGREW:** Yeah. The lead up to the sanction. Yeah. Prior to sanction. I don't believe there were –

**THE COMMISSIONER:** I think what happened was – just to fill in the story – what happened was we've had evidence from somebody from Newfoundland Power who's indicated that there was a wish and there was an expectation that a certain process was going to be followed. Unfortunately because of time restrictions that process couldn't be followed and Newfoundland Power decided that as a result of that, and because it felt it could make no meaningful contribution, it stepped aside.

**MR. S. MARSHALL:** Okay. I stand corrected.

**MR. PEDDIGREW:** That's okay.

**MR. S. MARSHALL:** I thought they were a party to that proceeding, but....

**MR. PEDDIGREW:** Yeah. It's a long time ago and there's been a lot of information. But so, other than that process do you know were Newfoundland Power approached by or asked for their views on (inaudible).

**MR. S. MARSHALL:** I can't remember any sort of major – there may have been some contact, you know, individual level. I don't know but – no, there's no (inaudible) that I'm aware of.

**MR. PEDDIGREW:** Okay.

And did Newfoundland Power, do you know, did they – and again, if I'm relating this to your

time at Fortis – but do you know did Newfoundland Power seek to have input into whether – given that it would be Newfoundland Power's customers who would be impacted?

**MR. S. MARSHALL:** Well, this is why I assumed they would be a party to the thing. That they'd want to be involved. But apparently it didn't work – the process didn't work out so they – they – they weren't involved.

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** Normally they expected to be involved, anything that affected rates in Newfoundland.

**MR. PEDDIGREW:** Right.

All right. Just moving on now, Mr. Marshall, just to some of the evidence you've given already about the other options. And I'm talking now about the option you said you would've – I think you sort of looked at it from a high level. But it's something that looked interesting enough to you that – to, I guess, at least express your opinion that it looked like it might be a good option, which would be the combination of expanding capacity at Bay d'Espoir and probably Cat Arm, incorporating wind to gain electricity to I guess, use up that capacity. And some simple cycle gas turbines.

And so that was – and I guess this goes back to some of the questions Mr. Williams was just asking you on the reference in the Electrical Power Control Act as well to lowest possible cost with reliable service and, you know, the mistake that you – I think you said the mistake that was made was going ahead with the project in the first place.

And so my question, I guess, is given these other options – you know, the scenario you put forward about those three things, so Bay d'Espoir, Cat Arm, wind and gas – that was not the Isolated Island Option that was put to the PUB and it was ultimately compared to Muskrat Falls. And so from the point of view of having to consider the lowest possible cost and reliable service, do you think the scenario that you've put forward is something that should have been either analyzed more fully or put towards the PUB for them to opine?

**MR. S. MARSHALL:** Yes, so that – as I pointed out, you know, when you look at the actual cost to the consumer in Newfoundland from Muskrat Falls at Soldiers Pond (inaudible) before we got sense, it’s hard to find any alternative that would be as expensive as that.

**MR. PEDDIGREW:** Yeah.

**MR. S. MARSHALL:** So I’m sure that we could come up with a cheaper alternative.

**MR. PEDDIGREW:** Right. And –

**MR. S. MARSHALL:** And the one I proposed is the one I’m looking at, just eyeballing it, general knowledge because I had asked our people to have a look at it and assess.

**MR. PEDDIGREW:** Right.

And do you see that there would have been value in having a PUB process to review, not necessarily just one option versus another but –

**MR. S. MARSHALL:** Yeah.

**MR. PEDDIGREW:** – anything different combinations of scenarios that might result in lowest possible cost with reliable service?

**MR. S. MARSHALL:** This goes back – it depends where you’re coming from. If this was a public policy decision, which to my mind to go with Muskrat Falls had to be, then there’s no role for the PUB unless the government asks for it, right, specialized expertise.

If you’re relying totally on this as the lowest-cost alternative utility, of a utility, sure, the PUB would be involved. So it depends upon how you frame it, to start with.

**MR. PEDDIGREW:** Right, and I think that’s an interesting point, it depends on how you frame it. And, yeah, if it was a policy decision – and it was a policy decision government selected and they can, I guess, subject to being defeated in the next election, they can make whatever decision they want –

**MR. S. MARSHALL:** That’s right.

**MR. PEDDIGREW:** – within the bounds of the law, but – and that would suggest to me that, well, Muskrat Falls was a policy decision, but it was certainly – when it was framed as two comparisons, well this is a lower cost, although to – I mean, that takes it out of the realm of a policy decision. That sort of puts it out to the public as being, well, look this is the best option for the public and the ratepayer. Would you agree with that?

**MR. S. MARSHALL:** I agree. In fact, when the current Premier came to see me, when he was in Opposition, I said to him, look, it doesn’t matter the question you ask, the answer was always going to be Muskrat Falls because of the policy decision. Study all you want, it was a policy decision, it was a policy decision, and the decision is made.

**MR. PEDDIGREW:** I just want to take you now, Mr. Marshall, to some comments from Paul Humphries. He gave evidence in Phase 1. And I’m just going to read out some of – I guess the reason I want to ask you this is Mr. Humphries seems to have had some views on whether Bay d’Espoir, Cat Arm, wind may have been a viable option or not, and I wouldn’t say it’s at odds with what you put forward but it’s – I’d just be interested in your comments on Mr. Humphries thoughts.

So, Mr. Humphries said – and Mr. Learmonth was asking the questions to Paul Humphries and asked him about Bay d’Espoir, Cat Arm and increasing capacity. And he said: “So all they bring to – the value they bring initially is capacity, the extra megawatts to get you over your peak. Not ‘undifferent’ than what a combustion turbine does. And these developments would be considerably more costly than a combustion turbine as well, if you were just treating them for capacity.

“From the perspective of wind, again, I’ll hearken back to my previous discussion on the concerns with – my concerns with wind, and I think Hydro’s concerns with wind on the stability issue and the analysis that was done up to – in 2012 by both ourselves and Hatch – particularly the Hatch analysis. That – the Hatch analysis indicated that, from the perspective of it

preventing spill and those types of things, that there was no increased – or ultimately significant increased risk of spill for the addition of wind. And I think they went up – probably even up to 400, 425 megawatts. You’d have to get up beyond that level before there was a risk of additional spill.”

And then he goes on to say: “As I said before, my issue with wind is on the lower end of the stability piece, and right now we’re down at 300 megawatts. And until you can get the level of operating comfort, or whatever it takes, to show that we can – we could operate above 300 megawatts, I see not a whole lot of benefit to the Cat Arm and Bay d’Espoir projects, simply for capacity. If you want – if you need capacity, add combustion turbines. At some point in the future, and even on the Interconnected case at some point in the future, these units will likely get developed and added.”

So, Mr. Humphries seems to be saying that there may not be a lot of benefit to Cat Arm and Bay d’Espoir. Do you have any comments on that?

**MR. S. MARSHALL:** Yeah, I disagree with that. It’s not the first time I disagreed with some of my employees.

**MR. PEDDIGREW:** No. And I’m just interested as to why you disagree.

**MR. S. MARSHALL:** Yeah. The problems you identified are – I would agree with. But the optimal system – if you have an isolated system, the optimal is always going to be some combination of hydro and other. Other being something which has a low capital cost because, you know, you are providing – trying to meet that peak.

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** There’s no question that the absolute cheapest way to meet peak is a combustion turbine, a simple combustion turbine – not combine the cycles, simple combustion turbine. Like the one we have subsequently installed at Holyrood –

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** – 125 megawatt turbine. You use it – I use one. So, that the – if you’re just interested in just capacity, combustion turbine, no question. You can look at wind, wind doesn’t add any capacity.

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** If you put a new unit in a spare, you don’t add any energy because there is no spilling on the go.

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** But what the combination of wind and hydro does is allow you to store electricity basically as water. And it’s that Hatch that I showed you can get up to 300 megawatts. Well, 300 megawatts of wind with a 30 per cent load factor, gives you close to a terawatt hour, which is almost – which is 60 to 70 per cent of what Holyrood produced in an average year. So you can get the energy from the wind, primarily. Depending on what you do at Cat Arm. Cat Arm does spill periodically, so you could get some more energy there.

I think that would still be – in my honest opinion, I think if I’m doing it today, that’s what I’d ask my planners and engineers to do. Give me this and come back to me and I’ll give you some further refinance. It depends on your assumptions, too, right.

So you can get these type of people, they can go off on tangents for you. For example, if you asked them: what is the lowest cost all accumulative over 40 or 50 years? And there are all kinds of assumptions that – they come back with something. Okay, the (inaudible) on but in 2041, like, the energy doesn’t cost me anything. Does that change your view? Oh, of course it does. Then they go back and give you another scenario.

So lots of times the answer depends upon the question you ask and how you frame it –

**MR. PEDDIGREW:** Yes.

**MR. S. MARSHALL:** – and the assumptions, right. So I have a great respect for Mr. Humphries. He’s very good.

**MR. PEDDIGREW:** But you disagree on this point.

**MR. S. MARSHALL:** And – but I would have him go back and do some more work.

**MR. PEDDIGREW:** Okay.

And that's, I guess, my next question then. So, certainly, if you were faced with this decision pre-sanction, that scenario is something you would've wanted analyzed in detail, the Bay d'Espoir (inaudible)?

**MR. S. MARSHALL:** I can't see any scenario in which I would've done Muskrat Falls; the risks are too high. Even if all the knowledge is showing that it was the lowest-cost alternative, I still wouldn't do it.

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** Because it's based on a lot of assumptions that would change over the next 30 and 40 years.

**MR. PEDDIGREW:** But the people to say we need to do something. We were going to run out of power, we had to do something.

**MR. S. MARSHALL:** Yes, you had to do something.

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

**MR. S. MARSHALL:** You're absolutely right.

**MR. PEDDIGREW:** And I guess what I'm putting to you, or what I'm asking you – you may have already answered it. Is the Bay d'Espoir, Cat Arm, wind combustion turbine, that's something you would've wanted looked at very closely?

**MR. S. MARSHALL:** Right, and I position myself, recognizing that 2041 is coming. So my decision would (inaudible), would also include thoughts, as you know –

**MR. PEDDIGREW:** I was just going to ask –

**MR. S. MARSHALL:** – if what I'm doing is useful beyond 2041. So wind, like I say, generally the turbines only last 20-odd years. So

you pay for them – so they won't be around after 2041. And that's fine, because now you got other sources of energy. You get passed Bay d'Espoir with (inaudible) because, like, if you're going to export (inaudible) export power, it firms up initial energy from Muskrat, adds value to it. So it would have value beyond 2041.

The gas turbine is depending on how much you use them. If you didn't use them very much and they're still around, you can use them and refurbish them and they're still beneficial beyond 2041.

So those are the sorts of things that went in – would go into your thinking.

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** The other thing would be, again, flexibility. You know, do you –

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** – do you have to – can you have off-ramps, change it as you go along?

**MR. PEDDIGREW:** Much easier to do it and – than our current situation.

So, yeah, one other – one of the comments you made yesterday was about options to mitigate that weren't necessarily carried out. I just want to read out something you said. So, we're talking about the estimates here. You say the estimates were low, the risks were not recognized properly. If any time you build something three times bigger than your needs, you're speculating. You're taking a big risk.

If you build a house three times the size you need and you plan to rent out the later two-thirds and you can't rent it out, you know, it's no difference. If you build something suitable to your needs, the risk is low. When you build something beyond your needs you're incurring a great risk that you can mitigate. I mean, you could've gone out to Emera and negotiated for the power at the same rate you're paying or somebody else, you could – there are ways of mitigating but this was not done.

So, two questions from that, Mr. Marshall, just – if – when you say you could've gone to Emera

and negotiated power at the same rate you're paying, just – what did you mean there? Could you elaborate on that?

**MR. S. MARSHALL:** Well, I don't think the opportunity is big there, you know, because there wasn't a lot of firm power to be had. But you could've, you know, got a fixed rate, for example. At the time, rates were higher and you could say – 'cause you – the concept was you're going to sell this excess energy –

**MR. PEDDIGREW:** Yeah.

**MR. S. MARSHALL:** – and the assumption was the rates are going to be higher. Well, you could've had them bear the risk by saying, okay, I'll send you excess power at a rate of 7 or 8 cents, which would've been reasonable back then, right?

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** You still would've been losing a lot.

**MR. PEDDIGREW:** Right, but not as much as if it –

**MR. S. MARSHALL:** But it's –

**MR. PEDDIGREW:** – were –

**MR. S. MARSHALL:** – but it's better than –

**MR. PEDDIGREW:** – where it is now –

**MR. S. MARSHALL:** – 2 per cent than we're getting now, right? But I wouldn't want to overstate the potential there because, like I say, there's not a lot of excess firm energy available from Muskrat.

**MR. PEDDIGREW:** All right. That may change but at the time ...

**MR. S. MARSHALL:** Right.

**MR. PEDDIGREW:** Yeah.

And then you say that there are ways of mitigating this but it was not done. So was it only that Emera scenario that you're talking about or were there other ways that it could've –

**MR. S. MARSHALL:** No, I just use that as an example of, if possible, that you might have available to you. I don't know if it would have been available or not, but I just demonstrate it as an example.

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** And they may have done that, I don't know, explored that.

**MR. PEDDIGREW:** So on the topic of Emera, so there are some questions yesterday about their equity position. And so if you could just, I guess for the benefit of the ratepayer, elaborate on that.

What is, if you could break down, that equity position that Emera has in the –

**MR. S. MARSHALL:** Well, again, I'm not an expert on this financing, it's pretty complex.

**MR. PEDDIGREW:** Yeah.

**MR. S. MARSHALL:** So, I apologize if I make errors here, but the fundamental underpinning was that Emera was going to build the Maritime Link, and if you look at the Maritime Link and the Labrador Link, that, yeah, Emera's investment was going to be about 49 per cent of the total. So (inaudible) arrangements about putting in the equity, right, based upon the balance of the cost of the two. And from Emera's perspective, the Maritime Link is regulated.

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** They're earning return on it. From Nalcor's perspective it's not regulated. It's not a regulated asset. The LIL is not a regulated asset in either jurisdiction, but Emera in the financing wanted to contractually treat it as if it was. And that's where you get this, the equity they're going to put into the LIL to meet the balance would earn a regulated-type return.

**MR. PEDDIGREW:** Right, okay.

**MR. S. MARSHALL:** Which is a lot more than the interest rate. And so it turns out then, 'cause, you know, it's around 8 – I don't know what



Newfoundland Power earns these days, but around 8 per cent, say.

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** Whereas you're borrowing at, you know, just over 3 per cent. So the equity was going to be expensive, but maybe it was necessary to get the project done, right.

**MR. PEDDIGREW:** And I – that was –

**MR. S. MARSHALL:** So –

**MR. PEDDIGREW:** – my question (inaudible).

**MR. S. MARSHALL:** – but that accounts for the distortion between, you know, the Muskrat, strictly Muskrat Falls portion –

**MR. PEDDIGREW:** Yeah.

**MR. S. MARSHALL:** – and the LIL, because you're imputing a high interest rate for the equity, and you're treating it as if it was a regulated asset when it's not. I mean, if it, if you have – if you're going out and building an unregulated asset, you don't impute this –

**MR. PEDDIGREW:** Rate of return.

**MR. S. MARSHALL:** – rate of return, right? So it's convoluted and complex. But, generally, that's the overall description, sort of thing.

**MR. PEDDIGREW:** Okay. And how much equity has Emera put into (inaudible)?

**MR. S. MARSHALL:** I can't remember the exact amount.

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** It was a balancing based on (inaudible) costs in the Maritime Link plus the LIL.

**MR. PEDDIGREW:** Do you have a ballpark on it?

**MR. S. MARSHALL:** I think it was around – I think about half a billion dollars, but I can't say for sure in any event.

**MR. PEDDIGREW:** All right.

**MR. S. MARSHALL:** In the equity portion, because it's financed, you know, primarily with debt, most of these things. I could be wrong there, but it's (inaudible) hundreds of millions, anyway.

**MR. PEDDIGREW:** Hundreds of millions, okay. And they're going to get a rate of return somewhere in the 8, 8½ per cent range on that.

**MR. S. MARSHALL:** Right.

**MR. PEDDIGREW:** Okay. And so besides –

**MR. S. MARSHALL:** I should go check that, but anyway.

**MR. PEDDIGREW:** Yeah, no, and –

**MR. S. MARSHALL:** Just take it again (inaudible) –

**MR. PEDDIGREW:** – just based on your recollection.

**MR. S. MARSHALL:** – (inaudible) the risk involved in that estimate, right?

**MR. PEDDIGREW:** Yeah, okay.

And other than the money for the overall project, you know, Labrador-Island, Maritime Link that came from Emera, is there any benefit to having them as an equity partner, or was it strictly the money up front?

**MR. S. MARSHALL:** My understanding, the thing could not have been done without Nova Scotia involvement.

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** The first thing, right. The federal loan guarantee.

**MR. PEDDIGREW:** So besides that.

**MR. S. MARSHALL:** So the federal loan guarantee was a driver here –

**MR. PEDDIGREW:** Yeah.

**MR. S. MARSHALL:** – and you had to have Nova Scotia involved. And it may have been a factor in the federal – feds getting – giving you the guarantee.

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** I don't know. But there's no benefit beyond that – the money. You know, because the money is there.

**MR. PEDDIGREW:** Yeah.

**MR. S. MARSHALL:** Expensive, but –

**MR. PEDDIGREW:** Yeah. So getting projects –

**MR. S. MARSHALL:** Seems (inaudible) required to do the deal so ...

**MR. PEDDIGREW:** Right.

So besides getting the deal done, you don't see, from your point of view, any benefit of having them in as a –?

**MR. S. MARSHALL:** There's no – they have no operating involved in the LIL.

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** So there's no benefit from that perspective.

**MR. PEDDIGREW:** Right.

Any downside besides the – having to pay them the rate of return?

**MR. S. MARSHALL:** No, I can't think of any benefit or detriment.

**MR. PEDDIGREW:** Okay.

So, Mr. Marshall, a few questions about the recall power – the 300 megawatts.

And so, I guess, this – is that the source of the power that had been brought down the LIL –

**MR. S. MARSHALL:** Yes.

**MR. PEDDIGREW:** – last year? Okay.

And so I know there were some questions to you about the amount of power that was brought down, and there might've been more capacity to bring more power down, more energy down, but, I guess, not wanting to trip the line less was brought – so about how much was brought down last winter?

**MR. S. MARSHALL:** I can't remember the exact amount. At times we were up to 150 megawatts, and the gross savings – you know, the economic savings is around – you know, \$36 million includes some small amount coming in from the Maritime Link as well, but that order of magnitude.

I think, towards the end, we're operating 75 megawatts.

**MR. PEDDIGREW:** Okay.

And if that –

**MR. S. MARSHALL:** But that was constrained, like I said, by reliability constraints on the Island, right?

**MR. PEDDIGREW:** What's that, sorry?

**MR. S. MARSHALL:** That was limited by the reliability constraints on the Island.

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** You didn't want to trip the line on the Island.

**MR. PEDDIGREW:** Okay, okay.

And so the – I guess, the power that was brought down, then, from – if it was not brought down, it would be sold through Hydro-Québec? Is that –?

**MR. S. MARSHALL:** It's sold by Energy Marketing in Nalcor, using access through Quebec.

**MR. PEDDIGREW:** All right, and –

**MR. S. MARSHALL:** Reserve through Quebec.

**MR. PEDDIGREW:** And at one point – so Energy Marketing in Nalcor, now, is, I guess,

the agent, for want of a better term. But at one point, it was Emera who was Nalcor's agent for selling through Hydro-Québec. Is that –?

**MR. S. MARSHALL:** Correct.

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** I think – yeah, before my time, but I seem to recall there was some kind of an Emera deal, as well, at the point in time. I think it was before Nalcor developed the expertise to do the – to participate.

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** (Inaudible.)

**MR. PEDDIGREW:** And so our ability to sell power through – we have access to how many megawatts to sell to Hydro-Québec?

**MR. S. MARSHALL:** I think we have reserve capacity through Quebec, about – I think it's 250 megawatts.

**MR. PEDDIGREW:** And is that the same all the year through, or is it less in the wintertime or –?

**MR. S. MARSHALL:** I think it's all the time.

**MR. PEDDIGREW:** All the time, okay.

**MR. S. MARSHALL:** As a reserve.

**MR. PEDDIGREW:** And so the – yes, going back to the power that's brought down to the Island and the 300 megawatts of recall power, is there any other potential source of power to be – like, the Twin Falls power, is that always used in Labrador, or is that something that could be brought down eventually?

**MR. S. MARSHALL:** Well, the Twin Falls is all – Twin Falls is dedicated to the iron mines, but if there's anything available, you would have it, right?

**MR. PEDDIGREW:** Okay, it's something that could be brought down.

**MR. S. MARSHALL:** If we have it available.

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** It's typically all used in Western Labrador.

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** And in the winter months in Labrador, there's very little excess power available so ...

**MR. PEDDIGREW:** Right. Yeah, okay, that makes sense.

So I guess my question is once Muskrat Falls is up and running and producing at full capacity, and then we have the excess power of 300 megawatts from the Upper Churchill and what if – you know, anything at all that might be from Twin Falls – probably not very much by what you're saying – can –

**MR. S. MARSHALL:** Twin Falls is – because that's – it gets merged into CF(L)Co's. You don't even talk about it just –

**MR. PEDDIGREW:** Okay, so just –

**MR. S. MARSHALL:** – (inaudible).

**MR. PEDDIGREW:** – ignore that. So talk about the 300 and then Muskrat Falls at full capacity. Could all that power be brought down through the Labrador-Island Link and, I guess, whatever was not used on the Island, dispersed through the Maritime Link? Or is there not enough capacity for that? Does some of it have to go back through Hydro-Québec?

**MR. S. MARSHALL:** Well, the capacity on LIL is 900 megawatts. You know, normal capacity.

**MR. PEDDIGREW:** Yeah.

**MR. S. MARSHALL:** Export capacity to the Maritime Link is 500, but it's – you know, firm, because it's two lines. Again, the definition of firm, normally, you would say is 250. It's half that, right? So you have to share between the two. So it depends how much gets used on the Island, but – and if you look at Muskrat Falls, I mean, at peak it generates 824 megawatts. So at

peak it's using the full – almost the full capacity of the LIL anyway.

**MR. PEDDIGREW:** Right. And so the 300 excess would have to then go back through –

**MR. S. MARSHALL:** Most of that gets used in Labrador.

**MR. PEDDIGREW:** Okay.

I just want to ask you now about the term pancaking. Is that a term you're familiar with?

**MR. S. MARSHALL:** In rates, yeah.

**MR. PEDDIGREW:** Yes, yeah. And how – could you explain what that means and is there a difference through sending power through Hydro-Québec versus sending it down through Nova Scotia, New Brunswick to access the –

**MR. S. MARSHALL:** Pancakes in – pancaking in rates usually means that you've got – if you're reserving capacity on the transmission system, and you're going through multiple jurisdiction, each jurisdiction puts their pancake on it.

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** So if you're going through several of them you – by the time you get to the ultimate user, you've paid several different rates.

**MR. PEDDIGREW:** And is there any difference in terms of how much we would get charged if it went through – power went through Hydro-Québec or if it went through the Maritime Link if we were trying to access –?

**MR. S. MARSHALL:** We're actually paying for a specific reserve in Quebec. We pay it whether we use it or not.

**MR. PEDDIGREW:** Pay whether we use it or not, okay.

**MR. S. MARSHALL:** Right.

**MR. PEDDIGREW:** And what about down through – to access the Northeast US?

**MR. S. MARSHALL:** You can have different arrangements. You know, sometimes, like, for example, you can – if you don't have the reserve, you can use it if it's available. But if you don't reserve it, there's no – may be no capacity available. Every jurisdiction has different rates. So it depends where the power is going and how you're trying to deliver it.

**MR. PEDDIGREW:** Is one way more financially attractive than the other? Quebec versus Maritime?

**MR. S. MARSHALL:** Overall, it really depends. There shouldn't be a substantial difference, I don't think. Might be on a given day, but overall.

**MR. PEDDIGREW:** And has there been any talk amongst the Atlantic provinces about removing the pancaking as between the provinces? Is that something that's been considered?

**MR. S. MARSHALL:** No. It has been talked and I've anticipated this myself is – you know, talking on like Canadian provinces about new transmission grid, but no talk on where about this pancaking thing.

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** Again, if you build a new line, you can reserve capacity on the line and then you're not paying the posted rate –

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** – you're just reserving the line.

**MR. PEDDIGREW:** Okay.

And how – when you reserve capacity on the line, how do you – what do you pay to get that reservation?

**MR. S. MARSHALL:** Well, it's negotiated. It's negotiated with the owners of the system. It's about the same way we negotiated with Hydro-Québec.

**MR. PEDDIGREW:** Okay.

So the issue of bringing power down from the Upper Churchill to displace fuel at Holyrood, so, essentially, I guess you'd just make an economic analysis that we can bring the power down from Upper Churchill for this much. Fuel at Holyrood is more expensive, therefore, get rid of it.

**MR. S. MARSHALL:** Yeah, it's a no-brainer. Well, you know, when we went on this exercise, there was a couple of benefits, right? One was, you know, was energizing the line, sorting out the problems with the hardware and software; getting our people used to operating on those systems – HVDC. In terms of the economic saving, you know, we're – like I said, lots of times we're assigning that power, say, for, you know, two cents, whereas at Holyrood, it depends on the price of oil but you can probably save, at today's prices, close to 13 cents.

So it's a great economic benefit to bring power down and displace the oil at Holyrood.

**MR. PEDDIGREW:** Okay. That makes sense.

So the issue of shutting Holyrood down, the information I've heard – I don't know if you've heard differently – but that the existing life of Holyrood is still about 2025, 2028. Does that sound –?

**MR. S. MARSHALL:** Sorry?

**MR. PEDDIGREW:** The existing life of Holyrood, is it until about 2025 or 2028?

**MR. S. MARSHALL:** Power plants are like airplanes. So if you're prepared to pay the cost of maintenance –

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** – you can almost have an indefinite life. So, generally speaking, it's reached – it's reaching the end of its useful life, unless you're prepared to use – put a lot into it; however, you can keep it on a certain standby basis for a long period of time. And the best example I have of that is in PEI where we kept an old similar plant going for years.

**MR. PEDDIGREW:** Okay.

And, so, I guess any decision to actually close it down, that's something that would have to go through the PUB as well?

**MR. S. MARSHALL:** That's correct.

**MR. PEDDIGREW:** And so what type of information would the PUB be looking for to, I guess, approve or shut it down altogether?

**MR. S. MARSHALL:** They'd be looking at the cost of keeping it going. They'd be looking at the reliability of the system without it.

**MR. PEDDIGREW:** So, other options to serve as backup?

**MR. S. MARSHALL:** And they would look at the – you know, what reliable standard do we want? So you make a judgment call what's a reasonable level of reliability? Is it met without Holyrood? Then you're fine to shut it down. If it's not met without Holyrood, do you want to keep it open or do you want to put in simple gas turbines?

**MR. PEDDIGREW:** So, certainly, the PUB would be looking for what other – what the plan is to replace it if they were going to approve shutting it down.

**MR. S. MARSHALL:** That's right. But it – with a lot of uncertainty, again, you know, the thing – one of the lessons I've always preached is, you know, we don't have to make a decision now. You'll know a lot more in a couple of years than you know now.

**MR. PEDDIGREW:** Right, so –

**MR. S. MARSHALL:** So the easiest thing to do is to say, okay, let's – as we get close to 2021, let's decide whether we want to shut it down or not. It's not a big deal to keep going another year.

**MR. PEDDIGREW:** Sort of park that decision for now and see –

**MR. S. MARSHALL:** Right.

**MR. PEDDIGREW:** – how things pan out.

**MR. S. MARSHALL:** There's other things changed as well and an example I use, what if Kruger shuts down?

**MR. PEDDIGREW:** Yeah.

**MR. S. MARSHALL:** Right? Now –

**MR. PEDDIGREW:** How many megawatts of power would that give us access to?

**MR. S. MARSHALL:** I think they have – the power at the Deer Lake, I think, is – again, it's going to be a number floating around but tens of megawatts. You know, I think it's from, I don't know –

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** – somewhere in between 1,500, I think.

**MR. PEDDIGREW:** Things that could have an impact on what the – or how the PUB would make a decision in relation to –

**MR. S. MARSHALL:** Right but it also, you know, depends upon – then you – you know, capacity – of extra capacity factors, stuff like that, right?

**MR. PEDDIGREW:** Okay.

And as far as you're aware, there's no application been made and no application presently contemplated to the PUB to shut down Holyrood?

**MR. S. MARSHALL:** No but everybody knows what the plan is.

**MR. PEDDIGREW:** But nothing has been –

**MR. S. MARSHALL:** No, I don't we've made a formal application, but I could be wrong on that one too.

**MR. PEDDIGREW:** Okay.

Mr. Marshall, just a few questions about conservation demand management. And I want to ask you this question; I'd just like to bring you to an exhibit that is already in evidence, so Exhibit P-01530, Madam Clerk, please?

**THE COMMISSIONER:** Tab (inaudible).

**MR. PEDDIGREW:** So I don't know if you're familiar with this document, Mr. Marshall. It's a Knight Piésold report that was commissioned by the Consumer Advocate in relation to the PUB hearings back in 2012.

**MR. S. MARSHALL:** Mm-hmm.

**MR. PEDDIGREW:** That was not ultimately filed with the PUB, but it was a commissioned report. So page 28 of this document – I guess while we're waiting for it to load up there – so there's been, you know, various evidence throughout the Inquiry about the fact the CDM was not given a lot of consideration in the lead up to the sanction of the project.

And if we just scroll down a little bit – here we go. So under the table there, Mr. Marshall, it says: The analysis shows that the preference as between Isolated Island and Interconnected, “the preference is not particularly sensitive to an increase in Muskrat Ralls and LIL project costs, but relatively sensitive to projected fuel costs. Aggressive conservation can play a ... significant role in bridging the gap between the two options as well.”

So, I know there was a question to you yesterday about CDM and how it can factor in. And I think the refrigerator example was given to you and you –

**MR. S. MARSHALL:** So I think –

**MR. PEDDIGREW:** I think your –

**MR. S. MARSHALL:** Yesterday, I had a few questions about –

**MR. PEDDIGREW:** Yeah, sure.

**MR. S. MARSHALL:** – (inaudible). So this was an analysis looking at the present worth of some options.

**MR. PEDDIGREW:** Yes – yeah, if we go to –

**MR. S. MARSHALL:** Okay.

**MR. PEDDIGREW:** – 5.3.1 up above talks about –

**MR. S. MARSHALL:** And –

**MR. PEDDIGREW:** And I believe it's sensitivity –

**MR. S. MARSHALL:** Okay.

**MR. PEDDIGREW:** – of fuel.

**MR. S. MARSHALL:** All right.

**MR. PEDDIGREW:** Okay.

And just the comment there, though, that I'm interested in your thoughts on is that conservation demand management, so: "Aggressive conservation can play a very significant role in bridging" – or bringing – "the gap between the two options" – closing that gap. And I believe that the basis for that is that the Isolated Island Option was so sensitive to the price of fuel.

**MR. S. MARSHALL:** Yes, that doesn't surprise me at all.

**MR. PEDDIGREW:** Right.

And so any thought about conservation demand management and –

**MR. S. MARSHALL:** Yeah, I – you know, over the 40 years, I keep hearing about this and, you know, so I understand the concept and everything else. I don't give it as much credence as the consultants do normally, and that's because you go through all these exercises, sometimes for conservation, then on a very cold day in winter, everybody decides, forget about this, I'm turning up my thermostats.

**MR. PEDDIGREW:** Right.

Yeah, and that's fair enough. I mean (inaudible) –

**MR. S. MARSHALL:** And, you know, you conserve one day, it doesn't mean you're going to conserve next year or tomorrow, right?

**MR. PEDDIGREW:** Yeah.

**MR. S. MARSHALL:** So I –

**MR. PEDDIGREW:** What about things like heat pumps that, you know, I understand now –

**MR. S. MARSHALL:** Oh yeah, you can – like, well, heat pumps are a good example. For example, I had one. I was the guinea pig for Newfoundland Power (inaudible) first one –

**MR. PEDDIGREW:** Okay, all right.

**MR. S. MARSHALL:** – much to my chagrin. But today they (inaudible) want simple air-to-air heat exchangers. They were very tremendous for saving costs, but on a very cold day in winter, what do you do? You turn on the electric heat.

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** So that's a perfect example of what I'm talking about.

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** They can save on energy but they just add to your problem that they make the system more picky, because as you – as the temperature differential between inside and outside increases, they become very inefficient.

**MR. PEDDIGREW:** So you're –

**MR. S. MARSHALL:** And most of them have backup electric heating, either in the –

**MR. PEDDIGREW:** Yeah.

**MR. S. MARSHALL:** – unit itself or, in my case, I have electric heat in every room.

**MR. PEDDIGREW:** Okay.

So your experience, you don't think – I guess, in your experience, you don't think that CDM necessarily yields the results that –

**MR. S. MARSHALL:** It – they're great for conserving energy, they're not so good at shaving your peak.

**MR. PEDDIGREW:** At what, sorry?

**MR. S. MARSHALL:** Shaving your peak, you know, putting on the capacity you need. And the other example I give you is one I referred to the

other day when we start lots of these projects and you start –

**MR. PEDDIGREW:** (Inaudible.)

**MR. S. MARSHALL:** For example, a conservation effort was made to replace with more energy-efficient fridges. We paid people to buy energy-efficient fridges, and what'd they do, they kept the old fridge and put it in the basement for their beer.

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** Right? So it just adds to the problem. So you've got to be very careful of these energy conservation things. They – consumer behaviour may not be what you think it is.

**MR. PEDDIGREW:** No, certainly not. I mean –

**MR. S. MARSHALL:** That doesn't mean you shouldn't conserve. I mean (inaudible).

**MR. PEDDIGREW:** Yeah.

**MR. S. MARSHALL:** That's like what the –

**MR. PEDDIGREW:** But it doesn't mean we shouldn't try.

**MR. S. MARSHALL:** You should try. And for energy you're fine, but you got to realize that capacity – you might still need the capacity and consumers can be very fickle.

**MR. PEDDIGREW:** Right.

But I guess a properly designed CDM program that provides actual incentive to ratepayers is something that could work.

**MR. S. MARSHALL:** It would help, but I don't think – you know, in this case, you know you have to replace Holyrood and I think you (inaudible) made a big decision, at that point in time. On the margin, energy conservation is – would be very beneficial for energy, not for capacity. So with that caveat, you know, I agree with you in part.

**MR. PEDDIGREW:** Okay. You feel that you need capacity just in case it doesn't work?

**MR. S. MARSHALL:** Yeah, in case consumers decide they want to turn up the thermostat on a cold day.

**MR. PEDDIGREW:** Or keep a beer fridge?

**MR. S. MARSHALL:** And it's no good to say, well, you told me you were going to conserve.

**MR. PEDDIGREW:** Right.

All right, Mr. Marshall, I just want to take you to one comment. Mr. Williams asked you about this today as well, and I don't have it on the screen so just bear with me to just call it up. It's from your evidence yesterday. And it was just about the, I guess, the Muskrat Falls being everyone's fault. I think I know what you meant by that, but I just want to clarify.

Okay, so I'm just going to read out what you said yesterday and – so you were talking about big projects in the normal course that they follow and the blame game that happens at some point. And you said: You know, the people out there don't forget, the vast majority of people in Newfoundland supported this, and so when things started to turn bad as they inevitably will in something this size, problems – you know, it becomes, well, I was misled. I got to blame somebody. In fact we're all to blame, aren't we? You're all to blame, but the people at Nalcor are – many of them, the vast majority of them are just people doing an assigned task; they weren't involved in the initial decision. They were asked to do a job which they're doing honestly and to the best of their ability, and you're going to need their skills, rely on their skills.

So, I mean, I take your comment there that: Look, you can't blame all the employees at Nalcor. That's not fair. And I don't necessarily disagree with you on that. But I do, I guess, necessarily disagree that – you know, if you say well we're all to blame, I mean – when you say that, do you mean that the voters are all to blame and the fact that we elected a government that sanctioned this project based on a platform in 2011 that was largely built on the Muskrat Falls Project?



**MR. S. MARSHALL:** In part, in part. You know, we elect our governments. They are entitled to make public policy decisions. Sometimes we don't challenge them enough. I mean, it's not a jurisdiction that particularly welcomes challenge. So, yeah, to a certain degree, we all bear some responsibility.

**MR. PEDDIGREW:** I don't necessarily – as I said, I don't necessarily disagree with your comment about the degree of blame which should be put on the employees at Nalcor, but I would suggest the same thinking would go into, you know, ratepayers and taxpayers.

I mean, we elect public officials to make informed decisions, to consider all options, not necessarily narrow it down to the two that they did. And most people just don't have the time or the – mainly the time to truly consider, delve into these issues, form their own opinions. They trust what is said to them. And so from that point of view, I mean, would you agree that for the same reason that you can't necessarily blame the employees at Nalcor, but it's tough to blame the ratepayers and the taxpayers for – and I, you know, I take –

**MR. S. MARSHALL:** I think –

**MR. PEDDIGREW:** – issue –

**MR. S. MARSHALL:** – it's clear what we're all saying.

**MR. PEDDIGREW:** Right.

**MR. S. MARSHALL:** And we're just engaged in semantics.

**MR. PEDDIGREW:** Okay.

**MR. S. MARSHALL:** So to a lesser or smaller degree, there's all – anyone could say, yeah, somebody could've done something different.

**MR. PEDDIGREW:** Okay, and I think I knew that's what you meant. I just didn't want to leave it hanging there. I just wanted –

**MR. S. MARSHALL:** Right.

**MR. PEDDIGREW:** – some clarification today –

**MR. S. MARSHALL:** Right.

**MR. PEDDIGREW:** – so ...

Those are my questions, thank you.

**MR. S. MARSHALL:** Thank you.

**THE COMMISSIONER:** All right, thank you very much.

The Innu Nation.

**MR. LUK:** No questions, Commissioner.

**THE COMMISSIONER:** Okay.

Nunatsiavut Government is not present.

NunatuKavut Community Council.

**MR. COOKE:** Morning, Mr. Marshall.

**MR. S. MARSHALL:** Good morning.

**MR. COOKE:** Jason Cooke. I'm here on behalf of the NunatuKavut Community Council.

I have a few questions for you, and I guess just to start, you've given some evidence, kind of, and been asked questions generally about and – you know, the Aboriginal parties or the Aboriginal groups, but I'm gonna really focus on NunatuKavut, NCC –

**MR. S. MARSHALL:** Mm-hmm.

**MR. COOKE:** – in my questions. So – but I think you had mentioned in your initial direct evidence that when you came on, you had described – Nalcor was in a crisis mode, correct?

**MR. S. MARSHALL:** That's correct.

**MR. COOKE:** Yeah, and in – I – when I heard your evidence, you were saying that you kind of made a, I guess, a smaller executive team reporting directly to you, correct?

**MR. S. MARSHALL:** That's correct.

**MR. COOKE:** And that involved the creation of a new position: Nalcor executive vice-president.

**MR. S. MARSHALL:** Yeah, I created several new executive vice-presidents.

**MR. COOKE:** Yeah, and –

**MR. S. MARSHALL:** These are people had been vice-presidents, but now I created the executive role.

**MR. COOKE:** Yeah, and some of them took on new roles, and I think you –

**MR. S. MARSHALL:** All of them –

**MR. COOKE:** – gave –

**MR. S. MARSHALL:** – did, all of them did I think, or – yeah, to a lesser or greater degree.

**MR. COOKE:** And did each of them get a piece of managing some part of the Muskrat Falls Project?

**MR. S. MARSHALL:** Correct. Some of them got a big increase, like John MacIsaac, who hadn't been involved at all before. People like Derrick – Derrick was more on the periphery. His role didn't really change; it was just – I made it clear to him that he had to be more involved.

**MR. COOKE:** Mm-hmm.

And I take it this reorganization was based on – I think you said within the first month or so you were briefed –

**MR. S. MARSHALL:** Very –

**MR. COOKE:** – on –

**MR. S. MARSHALL:** Yeah, very early on.

**MR. COOKE:** Yeah, and you were briefed on various issues, I assume, about Nalcor's operations.

**MR. S. MARSHALL:** That's correct.

**MR. COOKE:** And I assume one of those was about relations with the Indigenous groups in Labrador?

**MR. S. MARSHALL:** That's correct.

**MR. COOKE:** Okay, so do you recall – first of all, who would've provided a briefing on that topic to you?

**MR. S. MARSHALL:** I can't remember who exactly did that one.

**MR. COOKE:** Okay.

**MR. S. MARSHALL:** I can't recall.

**MR. COOKE:** And what do you recall? What were you told about the relations at that time when you came on in 2016?

**MR. S. MARSHALL:** I was left with an impression, first of all, that we were being directed not to get too much involved, as a corporation, that, you know, we had to leave the primary role to the province. And I'm not sure who told me that and in what context, but that's certainly the – in my mind, is what I took away from it. And I was just briefed on the difference between the three groups.

**MR. COOKE:** And what – do you recall the difference, what difference –

**MR. S. MARSHALL:** Just described who they were. I had no idea – I had no knowledge of the Aboriginal situation in Labrador. And I made that clear.

**MR. COOKE:** And in terms of NunatuKavut specifically, what were you briefed about them?

**MR. S. MARSHALL:** It was just – at that point, it was just general description of who they were.

**MR. COOKE:** Mm-hmm.

And what were you told about the relationship between NunatuKavut and Nalcor at that time?

**MR. S. MARSHALL:** Well, it was generally – (inaudible). Generally, the relationship was not good. It was better with the Innu Nation. Innu Nation, they had come to an agreement. But there were ongoing issues. And then it – in addition to the three groups there was another group, sort of, land protectors who were just a – on their own. So it was actually four groups.

**MR. COOKE:** And I think you use – actually use the phrase you were told to – I think in your direct evidence – to kind of – or Nalcor was told to stay away –

**MR. S. MARSHALL:** In essence, and we had a person who was – shared responsibility with labour relations and, you know, on the peripheral dealt with Aboriginal issues. And – but there wasn't a concerted effort to establish relationship with them – ongoing relationship.

**MR. COOKE:** Okay.

And back to NunatuKavut, it was your impression – or were you briefed that the relationship was not a particularly healthy one at that time?

**MR. S. MARSHALL:** Yeah, but – I wouldn't confined to that one group. I'd just say that's overall the situation.

**MR. COOKE:** Sure.

**MR. S. MARSHALL:** Maybe the Innu Nation was a bit better than the rest of them.

**MR. COOKE:** Because Innu Nation had the –

**MR. S. MARSHALL:** The agreement.

**MR. COOKE:** – the Impact Benefit Agreement.

**MR. S. MARSHALL:** Right.

**MR. COOKE:** Okay.

And so obviously you made a decision to change that, in terms of Indigenous engagement. Can you tell the Commissioner a bit about what steps you took once you –

**MR. S. MARSHALL:** Yeah, I –

**MR. COOKE:** – once you took over?

**MR. S. MARSHALL:** – well, again, I put Jim Keating, who had been on the Oil and Gas side. I gave him some responsibility, you know, in terms of government relations and Aboriginal relations. Then I said we need to have somebody in Labrador that the groups could talk to. And so I made the decision to put somebody in

Labrador, specifically to address the needs of the Aboriginal community.

**MR. COOKE:** And it's in evidence already, but eventually, Nalcor and NunatuKavut negotiated a Community Development Agreement.

**MR. S. MARSHALL:** That's correct.

**MR. COOKE:** Okay. I'm just going to take you to that document for a moment, Mr. Marshall.

**MR. S. MARSHALL:** Sure, sure.

**MR. COOKE:** And that is at P – oh sorry – yeah, 01709.

**THE COMMISSIONER:** On the screen.

**MR. COOKE:** And so that's on the screen, Mr. Marshall.

**MR. S. MARSHALL:** Mm-hmm.

**MR. COOKE:** And I'll just take you to page 9 to start, just to confirm that on the Nalcor Energy side, that first signature is yours, correct?

**MR. S. MARSHALL:** That's correct.

**MR. COOKE:** And you recall signing this around – I think it's beginning of December 2017?

**MR. S. MARSHALL:** Yes, I do.

**MR. COOKE:** Yeah, and that was in Happy Valley-Goose Bay?

**MR. S. MARSHALL:** Yes.

**MR. COOKE:** Yeah. Okay.

Just go to page 1. And if we can scroll down, Madam Clerk, to the – under the, whereas, there's the five provisions there and these are the recitals. So it notes Nalcor is doing work in Labrador, B is about NCC and approximately 6,000 members. C says: "The Parties consider it to be in their mutual interest to partner in establishing a strategic relationship based on mutual respect and trust."

And so why did you see that in Nalcor's interest, Mr. Marshall?

**MR. S. MARSHALL:** Well, I think I've already said it. I didn't have any experience dealing with the Aboriginal community in Labrador, but I had considerable experience out west, particularly in British Columbia. And we had established a very good relationship and it was quite clear that was beneficial to both parties.

And, you know, we had a view of the – a company like Nalcor or anybody in the utility business it's very long-term assets. We're going to be around for a long period of time and, clearly, the Aboriginal community, they're going to be around for a long period of time.

So, at some point in time, you got to sit down and say: Okay, we need to have a good and healthy relationship here. It's going to benefit us both. Maybe we can't – and I remember, specifically, having this conversation with Todd Russell, you know, that sometimes there's very little you can do in the short term, but you got to start on the path.

And I was very much – I didn't think that we could make a lot of progress in short term, but I thought that we at least – at least we should start. And it turns out that, yes, we did make a lot of progress in short term and – but it's based on mutual respect and trust. It has to be.

**MR. COOKE:** Okay.

And I think Mr. Russell gave evidence in relation to the agreement that, in his view, that this is really – this was really the beginning of a relationship between Nalcor and NunatuKavut. Do you agree with that?

**MR. S. MARSHALL:** I would consider the beginning was when he came into my office and we had a chat, but that led to the agreement.

**MR. COOKE:** Okay, when was that, approximately, Mr. Marshall?

**MR. S. MARSHALL:** I think that was sometime – I wasn't there very long – in the summer of 2016. And he just, well, asked to see me and I think he asked – yeah, he asked to see

me. So we had a chat and that's the conversation we had. You know, I was anxious to improve the long-term relationship and forget about the short-term problems; probably neither one of us could do much about that, but if we started we could maybe make progress.

**MR. COOKE:** And is there any reason why – I mean, this agreement happened in December 2017. In your view, is there any reason why this kind of relationship document couldn't have been done much, much earlier, for example, prior to you coming on as CEO?

**MR. S. MARSHALL:** No, no reason I know of.

**MR. COOKE:** I want to ask you just a little bit about Mr. Martin, in his evidence, that he took the – he had stated that Nalcor in his time was really constrained, I think, by the province's position regarding NunatuKavut not having an accepted land claim. Is that consistent with –

**MR. S. MARSHALL:** Yeah –

**MR. COOKE:** – when you came in?

**MR. S. MARSHALL:** – and that's part of what my understanding, you know, about this and certainly the government – and legitimate from the government's perspective. I mean, they have to handle land claims, we don't.

**MR. COOKE:** Mmm.

**MR. S. MARSHALL:** So I understand the government's concern and – but that was a general – like I said, the general question I had is that we would basically would stay out of it.

**MR. COOKE:** So in terms of this agreement, then, did you need, or did Nalcor need the province's approval or consent to enter into this Community Development Agreement?

**MR. S. MARSHALL:** Again, because of the sensitivity to the government, I made it clear that I thought we had to do it this way and they acquiesced to the thing. So we did keep – they were aware of this clearly and we brought them on side.

**MR. COOKE:** Mmm.

**MR. S. MARSHALL:** But there's no formal acceptance, it was just sort of, you know, okay, go ahead and do it.

**MR. COOKE:** I want to shift gears a little bit, Mr. Marshall, to the issues around methylmercury and the mitigation measures –

**MR. S. MARSHALL:** Mm-hmm.

**MR. COOKE:** – and you gave some evidence in your direct on it. And I just wanted to start with the – when you talked about the soil removal option, your evidence was pretty strong and you actually, I think, used the word, ethical, that you didn't think it would be ethical to do the –

**MR. S. MARSHALL:** That's correct.

**MR. COOKE:** Yeah, and so could you elaborate on that?

**MR. S. MARSHALL:** Yeah.

Like, I guess, doctors have a code of conduct that say do no harm, the first principle, I think all of us in society as professionals share a similar obligation. So as an engineer, you know, I'm not going to do something which makes things worse. If I know that this is going to make the thing dramatically worse, then I'm not going to do it.

**MR. COOKE:** Okay. And so what's your basis for the fact that soil removal would make things dramatically worse?

**MR. S. MARSHALL:** Well, first of all, there's no benefit to it, that I know – aware. It's a big task. I mean, we had an estimate say \$700 million to remove it – it could be \$1 billion to remove it. Then you're going to create this massive pile of dirt, exposed to the soil, which exposed to the elements will leech out. And for that reason the Innu Nation opposed it dramatically. They didn't want – it's their land, they didn't want this big dump of soil in their land.

So once you expose soil in that way, there are all kinds of trace elements. We've talked about methylmercury. There's all kinds of trace elements in soil: arsenic – you name it. And

there is a leeching effect. And so it's not only methylmercury that could leech out –

**MR. COOKE:** Hmm.

**MR. S. MARSHALL:** – if you expose it in the rain or whatnot. So it's a situation where there's no benefit, very costly and a possible downside imposed by another – the primary Aboriginal group for the territory. So I'm not going to do that.

**MR. COOKE:** So –

**MR. S. MARSHALL:** I've made that quite clear right from day one.

**MR. COOKE:** Okay. And so in terms of – I mean, you're familiar with the IEAC –

**MR. S. MARSHALL:** Yes.

**MR. COOKE:** – and the process it went through. And one of its mandates were to explore the various options.

**MR. S. MARSHALL:** That's correct.

**MR. COOKE:** And – but I take your evidence as saying that really from your perspective that if the – even if there was unanimity on soil removal – and there wasn't –

**MR. S. MARSHALL:** Mm-hmm.

**MR. COOKE:** – I'm not trying to imply that there was – that you would've had – you would not have been in favour of that. Is that –?

**MR. S. MARSHALL:** If I was directed to remove the soil in that way, I would've resigned.

**MR. COOKE:** Okay.

And in terms of the alternative, which is wetland capping, in your direct evidence – and if I get it wrong – I think you identify some, from your perspective, some scepticism that it would actually be effective. Is that a fair characterization?

**MR. S. MARSHALL:** It's not an alternative, it's another – it's a separate –

**MR. COOKE:** Yeah, yes, yes, yeah –

**MR. S. MARSHALL:** – (inaudible) separate (inaudible) –

**MR. COOKE:** – yeah, from the soil removal. Yes.

**MR. S. MARSHALL:** Yeah. There's no sign or evidence that it would do any good. It was just sort of suggested that it might do some good by somebody. So you have no underlying scientific evidence that it would. But on the other hand, I mean, the cost was much lower. I couldn't envisage it doing much harm. If I was ordered to do it, I would've (inaudible).

I – last year, when I wasn't ordered to do it and didn't have a decision from the government on the IEAC recommendation, so I said, well, we might as well take it out of the way and so we applied for an environmental permit to do it, which we didn't get, so that's fine.

**MR. COOKE:** And I understand – and tell me if your understanding is different, Mr. Marshall. My understanding is that if wetland capping didn't commence by mid-July this year, then either it couldn't be done or it would affect impoundment. Am I correct on that?

**MR. S. MARSHALL:** Last year – like, to do the wetland capping, we'd have to do it when it's dry – the ground is dry. So that was last year. This year, we have to start flooding in July, so that's – it's really last year.

At the time, you know, we were looking at this thing, it was for 2018. And now, on the other hand, there were ongoing studies. Like, some of the reports weren't available when the IEAC finished up and so we've had – I think we got four studies finished since then that demonstrate conclusively that it's totally unnecessary.

**MR. COOKE:** Okay.

So putting aside whether it's necessary or not for – I just want to make clear on this. You can't do it now anyway, right?

**MR. S. MARSHALL:** Not in the way it was envisaged. Like, we – once when it became clear that we couldn't – you know, we didn't get the

approval last year, we looked at doing alternatives: You know, doing it over the winter and over the ice, trying to do something this year. It – you could do it – make a token effort only and you're risking people – like, if you're trying to operate in very unstable soil, you start risking people's safety. So as a practical matter, the window has passed, unless you want to postpone the project.

**MR. COOKE:** And in terms of – again, back to your direct evidence, what I understood in terms of the wetland capping issue was that you're – Nalcor is exploring with the Indigenous groups some kind of alternative to wetland capping that would use some of the – some or all of the resources allocated for the wetland capping. Is that correct?

**MR. S. MARSHALL:** That is correct.

**MR. COOKE:** Okay.

**MR. S. MARSHALL:** And (inaudible) scheduled to go back to Labrador next week.

**MR. COOKE:** Okay.

And so the hope from Nalcor's perspective is that Nalcor won't have to do any wetland capping, but that there will be some kind of –

**MR. S. MARSHALL:** Benefit to the groups concerned.

It became – as time went on and it became clear that – demonstrated clearly this was a waste of money, my view was that if you're going to – rather than spend the money, like, last year I would've – I directed Gil to go and spend \$15 million to do the capping. And we were getting these studies coming in and I said, look, you know, surely to goodness, you know, there's better ways to spend 15 – the maximum I ever envisaged was \$30 million.

That's – but to back up a little bit, when in December it was first quoted, you know, we envisaged doing all, but 20 per cent of the wetlands have been flooded now for over a year and whatever methylmercury was there is gone. So you can only do about 80 per cent of it anyway in the, you know, extreme case.

So the maximum was – estimate was \$30 million back a couple of years ago. But my expression was: Look, it's now proved conclusively it's a waste of money. Surely to God we're not going to do that, we're going to do something for the Aboriginal groups that will give them a true benefit from this in terms of their health.

So that's what's under discussion.

**MR. COOKE:** Thank you, Mr. Marshall.

**MR. S. MARSHALL:** Thank you.

**THE COMMISSIONER:** All right.

I think we'll take our 10 minutes here, and we'll follow up – is the Ekuanitshit here? I don't think, so the next one would be the Grand Riverkeeper and Labrador Land Protectors.

So we'll just take a break for 10 minutes and then they'll be on.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** Okay. Ms. Urquhart?

**MS. URQUHART:** Good morning, Mr. Marshall.

**MR. S. MARSHALL:** Good morning.

**MS. URQUHART:** Caitlin Urquhart, and I'm representing Grand Riverkeeper Labrador and the Labrador Land Protectors.

**MR. S. MARSHALL:** Mm-hmm.

**MS. URQUHART:** As you're aware, they're citizens' organizations based in Labrador that are dedicated to protecting the ecological integrity of the Grand River, or the Churchill River, as it's now known.

So I wanted to just start on the North Spur. So you've indicated your position around the North

Spur and I just wanted to sort of confirm that you'd acknowledge that there is a contrary view to the opinion of the panel.

**MR. S. MARSHALL:** Yes.

**MS. URQUHART:** Okay. And, not necessarily that the North Spur will fail, but that further investigations are needed.

**MR. S. MARSHALL:** Mm-hmm.

**MS. URQUHART:** Okay.

And you indicated that Dr. Bernander had not visited the site, in your earlier testimony?

**MR. S. MARSHALL:** Not to my knowledge. I think he may have, early on, come in there without really coming in for a tour, and I think just, you know, coming to the area.

**MS. URQUHART:** Okay. So, Madam Clerk, if you can, please pull up P-00434, and this is a document entitled Response to and Comments on "Geotechnical Peer Review of Dr. S. Bernander's Reports and Analysis of the North Spur" from 2018. It'll be on your screen here.

And, Madam Clerk, if you can, please go to page 10. And just scroll down a tiny bit. The second paragraph here indicates: Dr. Stig Bernander "was subsequently invited to visit the Muskrat Falls' site and he extensively studied the area in October 2014 including air-borne travelling by helicopter, ground surveys by car and riverbank landings by boat."

Were you aware of that?

**MR. S. MARSHALL:** Like I said, I knew he'd been in the area, but he never come in and got official tour of the site or walked around.

**MS. URQUHART:** Okay. And you indicated that their – position is theoretical, and I just want to confirm that, you know, their theories are based on the study of actual landslides.

**MR. S. MARSHALL:** In Scandinavia, yes.

**MS. URQUHART:** Yes.

And has the peer review panel – have they been on site?

**MR. S. MARSHALL:** I don't know, quite frankly.

**MS. URQUHART:** So I'd like to speak about – or talk about the human health issues surrounding this project, and specifically the Human Health Risk Assessment Plan. And, Madam Clerk, if you'll, please go to P-03590 at page 2; and again, this'll appear on your screen.

So this is an Information Note from the Department of Environment and Conservation from 2016 and – Madam Clerk, if you'll, please go to page 2 – and it – that's perfect. It indicates here, the second paragraph, "In addition to the methylmercury monitoring and research being conducted by Nalcor, the NG is conducting their own human health research in Lake Melville and potential impacts to their communities." It goes on to indicate that "The NG feel the study demonstrates that significant increases in methylmercury inputs to Lake Melville will result (up to 380%) because of discharges from the Muskrat Falls reservoir. It is the NG's position that Inuit communities rely on Lake Melville for hunting and fishing."

So you were aware – you're aware of this position –

**MR. S. MARSHALL:** Yes.

**MS. URQUHART:** – that NG has taken?

And, Madam Clerk, if you will, please scroll down to the bottom of that same page. Perfect.

This final paragraph indicates: "The NG" – being Nunatsiavut Government – "has commented on several versions of the HHRAP" – which is the Human Health Risk Assessment Plan – "submitted by Nalcor since early 2015 and indicated the plan does not contain sufficient detail to enable a technical review."

Were you aware of that concern that – expressed by NG?

**MR. S. MARSHALL:** Yes.

**MS. URQUHART:** And you're aware that the HHRAP was approved in June 2016?

**MR. S. MARSHALL:** Not really, but I accept that.

**MS. URQUHART:** Okay.

And, Madam Clerk, if you will, please go to P-02064. And again, Mr. Marshall, this will appear on your screen.

This is a letter you were – page 22, please, Madam Clerk – that you were cc'd on. It's from Nunatsiavut, the then president – in August 2016, in which the Nunatsiavut Government is appealing the government's approval of that HHRAP.

You were aware of that, do you recall this?

**MR. S. MARSHALL:** Vaguely, yeah.

**MS. URQUHART:** Yeah.

Madam Clerk, if you will, please go to P-02070. And again, this'll appear on your screen.

This is a letter from July 7, 2016. Now, I note that this was sent to the Government of Newfoundland and Labrador and not to yourself, but I suspect that you would've been made aware of it. It's from Grand Chief Anastasia Qupee of Innu Nation, and it indicates here at – Madam Clerk, if you will scroll down a little bit, please – paragraph three:

"Mista-Shipu – Churchill River Valley – remains an important area for Innu land use. We have constitutionally protected rights to harvest in the area, so mercury accumulation in the local food supply is a significant concern for our people. That is why we participated fully in the environmental assessment of the Muskrat Falls Project, and concluded an impact benefits agreement with Nalcor. But, that was based on predictions that the level of methylmercury entering the Lake Melville food chain would not be significant. Now, we are being presented with different predictions and also with recommended options for prevention, mitigation and monitoring."



And, again, so this is indicating that, as you've referred to them, Innu Nation being your primary partner, is also expressing concerns about methylmercury in that time in 2016.

**MR. S. MARSHALL:** Okay.

**MS. URQUHART:** Do you recall that?

**MR. S. MARSHALL:** No, but that's fine. I don't recall this particular letter but –

**MS. URQUHART:** Sorry? Yeah –

**MR. S. MARSHALL:** I don't recall the particular letter but I accept it, you know.

**MS. URQUHART:** And you recall that there were – so I guess my – what I'm trying to establish is that at the time you were aware that Nunatsiavut, Innu Nation, NunatuKavut, Quebec Innu and local people all had concerns about –

**MR. S. MARSHALL:** Yes. I was briefed on the methylmercury issue, yeah, right at the beginning.

**MS. URQUHART:** Okay.

And, Madam Clerk, if you'll please go to P-01149 – P-01149 at page 112 – one hundred and twelve – so this is a document from October 2008 produced by then-Newfoundland Hydro. And it indicates here risk frame 19 is, the risk is “Non-aligned or non-government organization protest.”

The specifics: “Protest could come at critical stage of construction.” And if you scroll down a tiny bit there, just so we can fully see that last sentence there. So, “groups may actually perform protests on-site to disrupt/impede site access for owner/materials, etc.”

So this was a risk identified right from the early stages of the project. Does that accord with your understanding?

**MR. S. MARSHALL:** This is way before my time, but I would note that the worst case is probably not the worst case. They get a lot worse than that.

**MS. URQUHART:** Okay.

And, Madam Clerk, if we can please go to P-01769 at page 60 – and I'll actually note that this slide deck is from May 2017 and it's entitled Summary of Protests, Work Interruption/Distraction. And it goes from page 20 – or sorry, page 60 to page 69.

And, Madam Clerk, if you'll please scroll down to the next page, so this is a list of the – a summary of key protest events resulting in work interruptions. So these are specific ones in which either the site was blockaded, there was a site incursion or in some way impacted on work. And these, you'll note, go from 2012, 2013, 2015, 2016 – they go right throughout the construction life of the project. Is that – does that fit with your recollection and understanding of protests?

**MR. S. MARSHALL:** Again, that was before my time but that (inaudible) –

**MS. URQUHART:** But you would have been aware that there had been protests prior to your time.

**MR. S. MARSHALL:** Yes.

**MS. URQUHART:** And, Madam Clerk, if we can just go back to 02064, please? On page 38, now, if you don't mind? Now, this again, this isn't directed at you, but this is a letter – and if you'll scroll down, please, Madam Clerk. Just there – that's perfect.

So, this is from August of 2016 and it's got a small summary of some of the rallies and events that had been – that had either occurred or had been planned. So, some of these, obviously, for example, the Aboriginal Day Rally on June 21 was in Rigolet. So that wouldn't have impacted on the site but you know, the concerned citizens' letter writing campaign – these would have been things that you would have been made aware of, that would have been flagged as concerns or as part of a, sort of, growing movement against the project. Does that –

**MR. S. MARSHALL:** Some of these events I would not have been aware of but – that's okay too.

**MS. URQUHART:** Okay. But there were – you know, you had members of –

**MR. S. MARSHALL:** I – (inaudible) there was discontent. There’s no question about it.

**MS. URQUHART:** And you had members of your team who would have been following what was going on with these campaigns.

**MR. S. MARSHALL:** Presumably. Yeah.

**MS. URQUHART:** Okay.

And, Madam Clerk, if you’ll keep going in this document to page 43? This, again, is another letter from the Make Muskrat Right campaign – or Committee and, again, this was – this was a – directed to the Nunatsiavut Government but, again, I suspect that some of this information – well, would have been available – would have been known by folks within Nalcor.

If you can please scroll, Madam Clerk, I’d like to go to the bottom of this – yeah – that’s perfect. So, actually, scroll up a tiny bit. So, they had provided a survey – a summary and the community of Rigolet and it indicated 90 per cent of participants were concerned about the damming and 54 per cent of participants wanted to – the project shut down and it indicated, as well, some of the, you know, when folks were able to provide their own comments – some of the comments were – demonstrate at the site, stop production, stop the flood et cetera.

So, you wouldn’t – you would have been made aware that there was a sentiment within communities such as Rigolet and pursuant to Make Muskrat Falls – Make Muskrat Right campaign – there was a sentiment that people wanted to stop the flooding or stop the project prior to flooding.

**MR. S. MARSHALL:** Generally, yes.

**MS. URQUHART:** And Madam Clerk, if you can please pull up P-02745.

Now this is a – excuse me – this is a – apologies – letter from IKC-ONE, I don’t know if it’s IKC-ONE or IKC-O-N-E, anyhow – from a contractor dated August 27, 2013. So I indicate I – you know, understanding that this is before your time, but just wanting to give a bit more of a robust history on this. If – Madam Clerk, if we

can please go to page 69 and scroll down past the delays due to local hockey tournament.

If we go to February 23, 2013, there was a protest on the roadway and, Madam Clerk, if you’ll please scroll down to page 75, I’ll note that on January 11 – and keep scrolling, you’ll see the – there, 2013, there was an “Idle No More” protest, and Madam Clerk, if you’ll continue scrolling, we’ll see that there is a protest April 5-6, April 13 and 15, and April 18-20. Just kind of continue scrolling, you can – they’re the headings, yeah. So there indicates the various different protests that were happening.

So these were obviously before your time, but there were numerous protests. You were aware of that there were protests before your time that had delays on the project.

**MR. S. MARSHALL:** Correct.

**MS. URQUHART:** And Madam Clerk, if we could please pull up P-01977. And this is the SNC risk report from 2013. At page 16 please, Madam Clerk. And at the very bottom, the last note here – or risk here indicates, “Mobilization of community against the project.” And it indicates consequence very high and risk level very high. So you indicated earlier in your testimony that you had reviewed this report after it came to your attention, is that correct?

**MR. S. MARSHALL:** That’s correct.

**MS. URQUHART:** So you would’ve been aware that protests had been identified as a risk as early as –

**MR. S. MARSHALL:** Correct.

**MS. URQUHART:** – long as this.

And Madam Clerk, if we can also go to – sorry, go back to 01769, please, at page 117. And this is, again, the strategic – this is Nalcor’s strategic risk frame at risk 19, indicating non-governmental organization/stakeholder protests, and the risk description is: “As a result of a lack of proactive stakeholder engagement, stakeholders may be misinformed on matters relevant to them, leading to/resulting in adverse community relations and protest against the Project.”

And one of the consequences or impacts indicated here – and, again, this is September of 2012 – was “Demonstration or work stoppage.” So you would’ve been aware that that was a concern. When you started, somebody would’ve presumably noted that that was a risk that was –

**MR. S. MARSHALL:** Yes. I had a briefing on the Aboriginal issues.

**MS. URQUHART:** And the local community – lack of community support.

**MR. S. MARSHALL:** Generally yes.

**MS. URQUHART:** Thank you.

And I – just one other point that I wanted to address, and this was actually coming out of testimony from Gilbert Bennett. Counsel for Nalcor had pointed to the Labrador Woodland Caribou Recovery Team as an ongoing involvement of Nalcor on the issue of Caribou. Were you – are you aware of that at all?

**MR. S. MARSHALL:** The first I heard of it was when it came up during the hearing, someone referred it to me.

**MS. URQUHART:** Okay.

**MR. S. MARSHALL:** (Inaudible.)

**MS. URQUHART:** And, Madam Clerk, if we could please go to P-00352? And this is actually my client’s submission to the Inquiry. And this is really just for the benefit of the evidence and of the Commission to clarify this point. And Madam Clerk, if we could please go to page 60? And just scroll down slightly?

So I just wanted to point out here, at paragraph 252, that according to a CBC article from February 2018, the Labrador Woodland Caribou Recovery Team hasn’t met since 2011.

And as you’ve indicated, you hadn’t heard about it until during the hearings.

Those are all my questions. Thank you.

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

All right, Astaldi Canada Inc.

**MR. BURGESS:** Thank you, Commissioner. Good morning, Mr. Marshall. My name is Paul Burgess. I represent Astaldi Canada Inc.

**MR. S. MARSHALL:** Good morning.

**MR. BURGESS:** The evidence when you – that you gave earlier, Mr. Marshall, you talked about the low estimates that were prepared by SNC and Nalcor, and the low bids in particular in relation to the Astaldi contract. Just a couple of quick questions on that.

With respect to the low estimates that were prepared for the project by SNC and Nalcor, my understanding of your evidence was you couldn’t give an explanation as to why those estimates were as low as they were. Is that correct?

**MR. S. MARSHALL:** That’s correct.

**MR. BURGESS:** With respect to the low bids by Astaldi and Salini, you gave evidence that you attributed perhaps to the southern European companies’ different approach. Do you recall that evidence?

**MR. S. MARSHALL:** Yes, I do.

**MR. BURGESS:** And as I understand your evidence in relation to that, that was based purely on anecdotal information. Is that correct?

**MR. S. MARSHALL:** Yes, I made inquiries to some of the engineering – big engineering firms whether this was the case, and it seemed to be sort of an agreement that – it seemed to be something there along those lines. But, yes, primarily anecdotal.

**MR. BURGESS:** Okay.

Now, with respect to the Astaldi negotiations you talked about in relation to the Bridge Agreement and the completion agreement, you said that Astaldi had raised – I believe you used the phrase increased value component as part of their justification. Is that correct?

**MR. S. MARSHALL:** They emphasized – rather than talk about the contract that existed,

they kept referring to, oh, yes, let's talk about the value that – let's start quantifying the value we created and work back from there.

**MR. BURGESS:** But I would suggest to you, Mr. Marshall, that a large component of their justification for more money in relation to the contract had to do with the labour productivity. Is that not correct?

**MR. S. MARSHALL:** It would see to be.

**MR. BURGESS:** Okay.

If I could, Madam Clerk, bring up Exhibit P-03087. And, Mr. Marshall, this is not in your binder, so this will be on the screen.

And this is a letter, Mr. Marshall. It's dated April 26, 2016. It's addressed to you and it's from the CEO of Astaldi. If – you can perhaps direct the clerk to scroll down as you wish so that you can see the letter and tell me and the Commission if you're familiar with this letter.

**MR. S. MARSHALL:** I am familiar with this letter.

**MR. BURGESS:** Okay.

And this correspondence, which was addressed to you, goes through the history of the negotiations, but if we could refer to page 2, Madam Clerk, please. And the fourth paragraph down that starts off "Nalcor has been aware ...."

So that's in front of you now, Mr. Marshall, and it says: "Nalcor has been aware of the order of magnitude of Astaldi's claims since at least 7 October 2015, when Astaldi presented its Cost and Productivity Analyses, estimating the additional compensation required at that time ... to be over \$700,000,000 mainly due to the fact that the actual labour productivity rates of available manpower pursuant to the applicable collective agreement were unaccountably lower than the labour productivity assumptions considered by Astaldi based on similar projects performed in remote regions around the world. It appears that Nalcor was aware of this possibility at the time of contract formation and failed to disclose this information to Astaldi."

So that seems to be adopting what I just said was one of their main arguments for additional funds, correct?

**MR. S. MARSHALL:** Correct.

**MR. BURGESS:** And then, Sir, if I could direct you to the last paragraph on that page, and it states that: "On 21 March 2016, however, Nalcor's CEO," which would have been, I take it, Mr. Martin at the time. That was before your time, I believe, wasn't it?

**MR. S. MARSHALL:** Yes.

**MR. BURGESS:** "... required Astaldi to submit a 'without prejudice' justification for additional compensation." And that's a document I assume you're aware of. It was called Justification for incremental compensation. Do you recall that document?

**MR. S. MARSHALL:** Yes. Yes, I do.

**MR. BURGESS:** And in this letter, it indicates that – the next sentence goes on to indicate that the claim that Astaldi was putting forward was in the \$785.5-million range. You're familiar with that?

**MR. S. MARSHALL:** Yes.

**MR. BURGESS:** And in that justification for incremental compensation – I'm not going to go through it with you, Sir, but there was a number of details and bases for the claim, and labour productivity being one of them, but none of them in that JIC document – that I'll refer to it – was with respect to that increased value claim. Do you recall that?

**MR. S. MARSHALL:** Yes, I recall it, the particular claim.

**MR. BURGESS:** Right.

All right, thank you.

When you talked earlier today, and earlier in your evidence last couple of days, you said that there's a lot of blame to share and Nalcor certainly has its share of blame, correct?

**MR. S. MARSHALL:** Mm-hmm.

**MR. BURGESS:** Would you agree that the project management team has a level of blame to share along with a lot of others?

**MR. S. MARSHALL:** I'm sure there's all blame – someone has someone to blame, yes.

**MR. BURGESS:** Right. And you would acknowledge the project management team shares in that blame, correct?

**MR. S. MARSHALL:** Sure.

**MR. BURGESS:** Right. When you came in as the CEO, did you consider terminating the members of the project management team?

**MR. S. MARSHALL:** Yes, some of them.

**MR. BURGESS:** Okay, but you didn't do that?

**MR. S. MARSHALL:** No, I very quickly rejected that option.

**MR. BURGESS:** Okay. And I'm not going to go any further and I'm not going to ask questions with respect to – I want it on the record, as well, for the Commissioner's purpose, as well, with respect to the termination of Astaldi because as has been pointed out, there's commercial sensitivity and an arbitration ongoing.

The only thing, Commissioner, and the last point I wish to make, and it's not directly related to Mr. Marshall, but he is the last witness for Nalcor. When Mr. Scott O'Brien gave evidence, at the conclusion of his evidence and my questioning, there was two questions that I posed. It had to do with the percentage of the work left to do by Astaldi when they were terminated and the value of the contract that was awarded to Barnard-Pennecon for the completion of that work. At that time I believe it was late on a Friday, the Commissioner had asked that the matter be dealt with by Commission counsel, counsel for Nalcor and myself, and I've been informed this morning, in fact, that Commission counsel has dealt with Nalcor's legal counsel, and Nalcor's legal counsel has taken the position that it is commercially sensitive.

I don't know when or how you want to deal with that issue.

**THE COMMISSIONER:** Well, I think I've already taken steps to deal with it in the sense that I had requested – as a result of the question, but not specific to that question – I had requested Commission counsel approach Nalcor's counsel to obtain a breakdown of the \$10.1 billion number, which is the final number for the project, and as a result of getting that, and this is – it is going to be a confidential exhibit that will be placed before me and it will not be accessible to yourself, for obvious reasons, because there are issues that relate to Astaldi in that, but there are also other things that point out to me, basically, what the costs – what is making up that \$10.1 billion, and of course that includes whatever work is ongoing right at the moment.

So, I did take that additional step as well at that stage, so I know basically – I've been provided with enough information that I'm satisfied I know with – I know what makes that \$10.1 billion up, and I –

**MR. BURGESS:** Okay –

**THE COMMISSIONER:** – think – and I think I also know, aside from the question about how much work – percentage of work was left, I think I know how much was – what the contracts were for on – the ongoing contracts are.

So I think I have that information.

**MR. BURGESS:** So – but is – is that information then, you are ruling is commercially sensitive and will not be shared on those two specific questions?

**THE COMMISSIONER:** Correct.

**MR. BURGESS:** Okay. I wasn't aware.

**THE COMMISSIONER:** I just felt that, you know, the position that I was advised was that there was commercial sensitivity attached to this. So as a result of that, I decided that I'd take the measure of getting the breakdown of the \$10.1 billion, not just for that reason, there was another reason that I asked for that –

**MR. BURGESS:** Right.

**THE COMMISSIONER:** – and I do have it.

**MR. BURGESS:** Right.

The only point I will make is Mr. Power had given evidence that attributed numbers and percentages –

**THE COMMISSIONER:** He did.

**MR. BURGESS:** – but he wasn't certain on, and that –

**THE COMMISSIONER:** Right.

**MR. BURGESS:** – that was out there, and therefore will not go corrected if wrong.

That's on the –

**THE COMMISSIONER:** Corrected –

**MR. BURGESS:** – public record.

**THE COMMISSIONER:** Corrected publicly.

**MR. BURGESS:** Correct.

**THE COMMISSIONER:** Correct, right.

**MR. BURGESS:** And that's fine if that's your ruling, obviously, the –

**THE COMMISSIONER:** Yes.

**MR. BURGESS:** – that's your ruling.

**THE COMMISSIONER:** Well, you know again, Mr. Burgess, I'm very concerned here. Like, I'm trying to follow the Terms of Reference and at the same time give you the opportunity to ask questions that you would like to ask on behalf of Astaldi. But with the ongoing arbitration, as I've done with every other thing – every other contractor, I'm not going to put the contractor or Nalcor in any better position by virtue of what happens at this Inquiry, period. And that applies to these two questions.

**MR. BURGESS:** And that's fair enough, and that's why I put on the record that I'm not asking a lot of additional questions that I think

would stray into that area. Those are all my questions, and –

**THE COMMISSIONER:** I appreciate that.

**MR. BURGESS:** – thank you, Mr. Marshall. Thank you, Commissioner.

**MR. S. MARSHALL:** Thank you.

**THE COMMISSIONER:** Thank you.

Former Nalcor Board Members.

**MS. G. BEST:** Thank you very much.

Mr. Marshall, my name is Glenda Best and I'm counsel for the former Nalcor Board Directors, 2004 to 2016.

**MR. S. MARSHALL:** Good morning.

**MS. G. BEST:** Good morning.

I know you've been on the stand for three days and it's been a long and grueling process, but I just have a couple of questions with respect specifically to the board of directors. You didn't have any interactions at all with the former board of directors, did you?

**MR. S. MARSHALL:** No, I did not.

**MS. G. BEST:** That had resigned – okay.

You've talked to Ms. Best – Erin Best – yesterday about the need of the – of Nalcor to report to the board of directors and to have an easy flow of information and communication between the various components of the project. Were you aware that the board of directors of Nalcor Energy that resigned in 2016 have given evidence that they were spending between 80 and 100 hours per month with respect to board issues?

**MR. S. MARSHALL:** I didn't hear that but that wouldn't surprise me.

**MS. G. BEST:** And why wouldn't that surprise you?

**MR. S. MARSHALL:** First of all, it's – at that point, that juncture is (inaudible) – when I came

in it was in crisis, so when a company is in crisis, the board will spend a lot of time on it. The other thing, it was a very small board, so, you know, a very small board would've been a lot of work.

**MS. G. BEST:** A lot of work.

And would a commitment of that amount of hours be realistically maintained by board members?

**MR. S. MARSHALL:** No.

**MS. G. BEST:** Okay.

Were you aware that the board of directors had made – had approached the government to have additional board members appointed?

**MR. S. MARSHALL:** I've only heard that really through the Inquiry, although there'd been some indication in earlier discussions. Our board level, when we're looking for other directors that – you know, that'd been the process before that –

**MS. G. BEST:** Yeah.

**MR. S. MARSHALL:** – for extra directors.

**MS. G. BEST:** So when you became CEO, and there was an interim board appointed and subsequently a formal final board, did you have any problems in dealing with government in the appointment of the board of directors that now exists?

**MR. S. MARSHALL:** I wouldn't say a problem. Obviously, the board just resigned as I was going in.

**MS. G. BEST:** Mm-hmm.

**MR. S. MARSHALL:** And we had to very quickly put in, you know, a crisis board.

**MS. G. BEST:** Yes.

**MR. S. MARSHALL:** And that worked very effectively.

You know, in a crisis, you need a lot of focus, so that's why we brought in the deputy from Finance and deputy from Justice.

**MS. G. BEST:** Mm-hmm.

**MR. S. MARSHALL:** And they were very helpful.

Then it had gone to a process of, you know, the Independent Appointments committee. Things move very slowly in government.

**MS. G. BEST:** Okay.

And, I guess, then, following up on that, do you believe that the interim board was put in place by government because of communications that the company was, in fact, in crisis?

**MR. S. MARSHALL:** Yes. But we had to have a board.

**MS. G. BEST:** Mm-hmm.

**MR. S. MARSHALL:** And I pointed out to the government, it's unfair to bring in new board members, generally speaking, in that situation. But you know, I needed help in terms of communication. I needed somebody directly from government involved, so that we had a couple of other independent board members as well.

**MS. G. BEST:** Okay.

**MR. S. MARSHALL:** Three others, I think.

**MS. G. BEST:** Now, you talked a little bit, with Mr. Williams, about Crown corporations and how there are various factors that affect them. And one of the factors, I would suggest to you, that affect a Crown corporation are the opinions and decisions of the government.

Correct?

**MR. S. MARSHALL:** Absolutely.

**MS. G. BEST:** So, when there's a change in government, that has an impact on a Crown corporation as well?

**MR. S. MARSHALL:** Absolutely.

**MS. G. BEST:** Okay.

And with respect to information provided to the board and communications, were you aware or did you have any knowledge that there was a lack of communication between the board or the CEO and the – Premier Ball, prior to you being appointed – so the former board and the CEO?

Did you have any knowledge that there was a lack of communication between them?

**MR. S. MARSHALL:** No, I wouldn't say lack of communications. Like, you know, certainly would not raise the issue with me. Like I said, the former board were gone –

**MS. G. BEST:** Yes.

**MR. S. MARSHALL:** – so that may have been the case, but I wasn't aware of it directly.

**MS. G. BEST:** And one other question, then.

With respect to a board of directors, are they not entitled to rely on the information that's being provided to them by the CEO and by the project management team – the executive?

**MR. S. MARSHALL:** Yes, but they should also take measures, you know, to check on those, for example. You got an audit committee. An auditor goes in and assesses –

**MS. G. BEST:** Right.

**MR. S. MARSHALL:** – the audit. Normally, they – that reports to the head of the Audit Committee rather than the management. If the board wants to check on certain items, they can engage their own special advisors –

**MS. G. BEST:** Yes.

**MR. S. MARSHALL:** – for example HR issues, you know, the investigations (inaudible). But generally speaking, you know, they have to rely upon the management team.

**MS. G. BEST:** Okay.

So if a board would engage experts with regards to HR issues and with respect to financial issues and with respect to legal, in a circumstance like

Nalcor where there are numerous engineers, there are numerous expert reports that have been requisitioned, would you expect in that circumstance for the board to seek additional reports with regard to the engineering or the base estimates or any of that information?

**MR. S. MARSHALL:** Not directly. Like, you know, I serve as a director as well as a –

**MS. G. BEST:** Yes.

**MR. S. MARSHALL:** – manager (inaudible) circumstances, and the view I take is that as a – when I'm a director, in a director role: Is what management is proposing reasonable? It's almost like the Court of Appeal. You don't want to put yourself in the position of substituting, you know, the judgment of the Trial Division, you know, on matters of determining fact. So generally speaking, as a director you got to – is what management is proposing reasonable? It's not necessarily what you would do yourself.

**MS. G. BEST:** Right.

**MR. S. MARSHALL:** It's what management is proposing. Has appropriate advice – specialized advice been given? Are appropriate checks and balances in place? So it's more of, you know, checking rather than doing, right? You don't – the board cannot manage the company. And they're extremely reliant on the management team. And I said it before here, you've got many instances of corporate failure where you had a blue-ribbon board and, you know, the CEO went rogue or, you know, members of the management went rogue like, you know, in the case of Enron.

**MS. G. BEST:** Okay.

**MR. S. MARSHALL:** So it's very difficult for a board to put itself in the place of the management team.

**MS. G. BEST:** Right, 'cause they don't know what's happening on a day to day – what's happening on the ground –

**MR. S. MARSHALL:** Right. In – it's not their role. Their role is to – you know, is an oversight of management. Is management following the right process? Have they gone through the rigor



of testing their own assumptions with consultants? Is generally what management is proposing reasonable?

**MS. G. BEST:** Thank you.

So if a board of directors did the things that you're suggesting, that they checked to see whether or not the management team had used the right processes in what they were doing and the company still ended up in crisis, is that the fault of the board or of the information that was being provided to the board?

**MR. S. MARSHALL:** It would depend on the circumstances, obviously.

**MS. G. BEST:** Okay.

**MR. S. MARSHALL:** But if the executive is inadequate there's almost nothing the board can do. Other – you know, I shouldn't say – maybe rephrase that. It's not (inaudible) they can do, I mean, again their role is oversight.

**MS. G. BEST:** Right.

**MR. S. MARSHALL:** But the best oversight cannot overcome – for example, SNC-Lavalin, if you see where people went rogue, it's very hard to detect. You know, you're just checking. The role of the board is checking, making sure that things are – but there's no guarantee that they will detect what's going on in the management.

**MS. G. BEST:** So then if you're in a circumstance where a management team is relying on experts to provide them with information with respect to the project, so whether they're relying on SNC-Lavalin or they're relying on Astaldi to complete the project, and the management team is passing that information on to the board, then are the management team still responsible for any faults that arise as a result of that information (inaudible)?

**MR. S. MARSHALL:** The CEO is accountable for everything.

**MS. G. BEST:** The CEO.

**MR. S. MARSHALL:** Okay? But being accountable doesn't mean that he's culpable.

**MS. G. BEST:** Right.

**MR. S. MARSHALL:** You know, he – and that's the beauty of the corporate structure, it comes – the pyramid comes up to the CEO, and the board is a pyramid itself –

**MS. G. BEST:** Mm-hmm.

**MR. S. MARSHALL:** – to ensure that the CEO is not – (inaudible) has absolute power.

**MS. G. BEST:** Yes.

**MR. S. MARSHALL:** That makes the CEO accountable. Anything goes on in the corporation, they have to get an account of what happened, an explanation.

So I hope that answered your question, maybe I've lost track –

**MS. G. BEST:** No –

**MR. S. MARSHALL:** – of your question.

**MS. G. BEST:** No, that answers the question. And just one final question for you, Mr. Williams and some other individuals have asked you about Dr. Holburn's report –

**MR. S. MARSHALL:** Mm-hmm.

**MS. G. BEST:** – and what is good governance. And we know that you and Dr. Holburn seemed to disagree about the placement of government officials on the board of Nalcor. You're suggesting that you think it's appropriate and we know –

**MR. S. MARSHALL:** I think – I strongly suggest it. My view comes out of a very practical experience. Unless you sat on the board of a Crown corporation, you really don't understand how government works.

**MS. G. BEST:** Yeah.

**MR. S. MARSHALL:** You know, there's the theory and – you know, in my prior existence I always came up with Crown corporations and governments, and it's a difficult position, very difficult.

**MS. G. BEST:** Mm-hmm.

**MR. S. MARSHALL:** So I understand where Dr. Holburn is coming from, his – you know, he’s talking about good principles of corporate governance. But my strong recommendation is to have the minister of Finance there and (inaudible) would depend beyond that, you know, like the department – the deputy minister of Finance, and the deputy minister of energy, if the – if – depends on the qualifications of the person. (Inaudible) the circumstances that we’re in, the deputy minister of Justice was very helpful.

**MS. G. BEST:** Yes.

**MR. S. MARSHALL:** Because of this crisis you’re trying to work things through, you know.

The thing about all of this is you want a step, something that’s streamlined and it works and it’s effective. And there’s probably no one answer. Some of it depends on the exact circumstances. But what I do know is that a multitude of reporting mechanisms doesn’t work very well at all.

**MS. G. BEST:** Mm-hmm.

**MR. S. MARSHALL:** It’s like too many cooks in the kitchen. You know, if you’ve got the structure, make it work.

**MS. G. BEST:** What about the provision of minutes of a board meeting of Nalcor? What about if there was a process where they would be transferred or transmitted to the minister of Natural Resources or to the minister of Finance? Would that –

**MR. S. MARSHALL:** No, they’ve (inaudible) –

**MS. G. BEST:** – fulfill the role?

**MR. S. MARSHALL:** The minutes have to be, sort of, sanitized in all cases for a whole slew of reasons. No, that won’t do much. It just adds to the bureaucracy.

**MS. G. BEST:** And I said that was –

**MR. S. MARSHALL:** Actually, if you’re going to – I mean, the corporate structure depends upon a board of directors that’s effective to represent the shareholder. If a government wants to put in people who are not qualified, then they take the responsibility for that.

**MS. G. BEST:** Mm-hmm.

**MR. S. MARSHALL:** They should be putting in a board of directors who are highly qualified and rely upon them, to the degree – again, there’s always checks to be made. You want (inaudible), for example, want to check the CEO, make – that’s their check. And the minister of energy is, typically, responsible for the more procedural interaction with government. But this approach of – you know, have a multitude of reporting mechanisms, a multitude of your accountabilities that just – it just becomes a distraction.

**MS. G. BEST:** So on a board such as Nalcor we’ve heard that they ought to have had someone with megaproject experience. They ought to have someone with familiarity with –

**MR. S. MARSHALL:** You’re not going to get on –

**MS. G. BEST:** – (inaudible) –

**MR. S. MARSHALL:** You’re not going to get those people on a board of directors for a Crown corporation like that – in Newfoundland, anyway. I’m not sure anywhere. But as I said, when I went out to British Columbia to talk to the BC Hydro board about all this, they – what they have done, as a board, they have – the board itself engaged a group of expert advisors from around the world.

**MS. G. BEST:** Mm-hmm.

**MR. S. MARSHALL:** Recognizing that you’re doing a specialized project. In normal circumstances the board may function very well without them, but this is a very special set of circumstances and what they did out there was to bring in these experts and as a part of that, I was invited out to talk to the board and to –

**MS. G. BEST:** Mm-hmm.

**MR. S. MARSHALL:** – the expert panel.

**MS. G. BEST:** So then we look at the board and then we have the person that's reporting to the board, the CEO, does that person require utility or megaproject or hydro experience?

**MR. S. MARSHALL:** To run Nalcor without extensive executive experience – in other words, to put somebody in there who is not used to reporting to boards, is fatal.

**MS. G. BEST:** Mm-hmm.

**MR. S. MARSHALL:** To put somebody in there who has never run a utility or have been an executive of a utility, is fatal.

**MS. G. BEST:** Yeah. But I understand, for example, with Quebec Hydro, that the CEO of Quebec Hydro had come from aerospace or from oil and gas without utility experience.

**MR. S. MARSHALL:** No, the CEO of hydro (inaudible) –

**MS. G. BEST:** Quebec.

**MR. S. MARSHALL:** – Quebec Hydro came from Bombardier.

**MS. G. BEST:** Okay.

**MR. S. MARSHALL:** Quebec Hydro is a very stable, big organization. And that's the difference between doing it like a special project. Like I said earlier, the board wouldn't engage special experts in the normal course.

**MS. G. BEST:** Yes.

**MR. S. MARSHALL:** It's different in a very stable, big organization. You can bring – you know, there's a multitude of expertise below them.

**MS. G. BEST:** In dealing with boards and your experience, are you aware that the board of directors of Nalcor have the power within the legislation to appoint the CEO?

**MR. S. MARSHALL:** No, my understanding is the CEO is appointed by the government.

**MS. G. BEST:** Thank you very much. That's all the questions I have.

**THE COMMISSIONER:** Okay, thank you.

Newfoundland and Labrador Building and Construction Trades Council I don't think is here.

Dwight Ball, Siobhan Coady. Not here.

ANDRITZ, Grid Solutions, Barnard-Pennecon.

Newfoundland Power.

**MR. KELLY:** Good morning, Mr. Marshall.

**MR. S. MARSHALL:** Good morning.

**MR. KELLY:** Ian Kelly, Newfoundland Power.

Mr. Marshall, I just have two areas I want to explore with you a little bit. The first has to do with reliability discussion that you had with Mr. Collins. And you made a comment to him that one of your biggest concerns is sleet and wind, that combination. Just explain for the Commissioner why that's such a challenge.

**MR. S. MARSHALL:** Well, it's a loading on the transmission lines. When you're exposed to the elements over a long geographical area with a diversity of wind conditions and icing conditions, it's very hard to predict. And if you look at the history of major transmission line interruptions, those are the factors which have caused the most grief.

**MR. KELLY:** Right. And is it fair to say the combination of the two is the most problematic? In other words, I've heard the adage in the utility field that power lines can take a fair bit of ice, a fair bit of wind, but they don't do well when you have the combination of both.

**MR. S. MARSHALL:** Yes, both of them put stresses on the line and the towers, and so that they're additive.

**MR. KELLY:** Right. And so if you have a heavily loaded line that is then subjected to a lateral wind force, difficult problems can result.

**MR. S. MARSHALL:** That's correct.

**MR. KELLY:** Okay.

Now, Mr. Collins took you to Exhibit 03658, and to pages 300 and 301. If I just bring up those tables again, just to focus for you.

**THE COMMISSIONER:** That will be tab 23. Tab 23 in your book.

**MR. KELLY:** The pages again were 300-301. You'll remember he took you to these particular tables.

**THE COMMISSIONER:** That's going to be on the screen.

**MR. KELLY:** We don't need to spend a lot of time on this. Just wanted to get you refreshed.

The table's there on the screen, Mr. Marshall.

**MR. S. MARSHALL:** Oh, sorry. Okay.

**MR. KELLY:** And you'll remember these tables. And as Mr. Collins explained to you, these tables assume the loss of the LIL, but all other transmission and distribution remains in effect – transmission and generation.

**MR. S. MARSHALL:** Okay.

**MR. KELLY:** So if we had a scenario, for example, where the LIL was lost through the Long Range Mountains –

**MR. S. MARSHALL:** Mm-hmm.

**MR. KELLY:** – then we'd still have the transmission and generation elsewhere in the province to serve the province, correct?

**MR. S. MARSHALL:** Mm-hmm. Okay.

**MR. KELLY:** Okay.

So in that situation, we may have a loss of a number of towers. We've heard evidence that there are anti-cascading towers every 20 towers.

**MR. S. MARSHALL:** Yes.

**MR. KELLY:** So –

**MR. S. MARSHALL:** I'm not sure of 20 towers, but yes, that would be normal design approach.

**MR. KELLY:** Right, so if you lost one segment, that would be potentially 20 towers that would come down that would have to be rebuilt.

**MR. S. MARSHALL:** Correct. Mm-hmm.

**MR. KELLY:** Now, in that example, then – if I can just take you to the next page, page 301, the next graph – then you'd have a series of rotating outages that would be spread across the province to service the shortage, to have to spread the shortage.

**MR. S. MARSHALL:** It would depend what time of year that happened.

**MR. KELLY:** (Inaudible.)

**MR. S. MARSHALL:** It would depend on the time of year.

**MR. KELLY:** Yes.

**MR. S. MARSHALL:** I mean, on a warm day in April, you could serve the load.

**MR. KELLY:** Absolutely, and this assumes a cold day in winter.

**MR. S. MARSHALL:** Right. Well, on a cold day in the winter, you're not going to get a sleet storm in Long Range Mountains.

**MR. KELLY:** No, but you may have other problems that cause a disruption in the LIL.

**MR. S. MARSHALL:** Yes, it could be.

**MR. KELLY:** Right.

**MR. S. MARSHALL:** If you assume that the LIL is out on the coldest day in winter, and that's what this graph represents.

**MR. KELLY:** Right, and you'd have that then to be carried across the whole province to spread it over.

Now, come to my next scenario.

**MR. S. MARSHALL:** Not the whole province, but carry on.

**MR. KELLY:** Sorry, the Island part.

**MR. S. MARSHALL:** No, some of areas of the Island would be – because of transmission, the Straits might be – you know, you couldn't just share the outages, but anyway, carry on.

**MR. KELLY:** Fair enough. Fair enough. But it would be widely spread, is my point.

**MR. S. MARSHALL:** On the coldest day in the middle of winter, we'd have widespread outages.

**MR. KELLY:** Right.

Now, let's – let me take you to another scenario, which is that we have a sleet storm that hits the isthmus where all of the power lines are – the transmission lines have to come through that narrow corridor –

**MR. S. MARSHALL:** Mm-hmm.

**MR. KELLY:** – that would be, I suggest to you, a much more serious event because we would lose the ability to have potentially multiple transmission lines affected at the one time.

**MR. S. MARSHALL:** Could, but as you're close to the St. John's area, the fact is if you're going to have a sleet storm on the – in the isthmus, probably you're going to have it in St. John's and the – throughout the Avalon as well.

**MR. KELLY:** It could, but if you had the lines affected, that would affect the amount of power you could get into the major load –

**MR. S. MARSHALL:** Sure.

**MR. KELLY:** – centre of the Avalon.

**MR. S. MARSHALL:** Absolutely right. If you cut off the isthmus, and if everybody else on the Avalon is in tact, there's going to be a severe shortage of power.

**MR. KELLY:** Right, okay.

And just to help the Commissioner understand that, as I understand it right now, on the Avalon part we have about 700-plus megawatts of power, correct? In other words, we have Holyrood, gas turbine, Hardwoods, the Newfoundland Power plants, they add up to a little bit of –

**MR. S. MARSHALL:** That sounds about right.

**MR. KELLY:** – a little over 700 megawatts.

**MR. S. MARSHALL:** Mmm. Right.

**MR. KELLY:** Correct?

And when the LIL fully comes online, I understand Unit 3 at Holyrood will become a synchronous condenser so it'll be no longer available for generation. Do I have that correct?

**MR. S. MARSHALL:** You mean in the first instance or –

**MR. KELLY:** No –

**MR. S. MARSHALL:** – in the long term?

**MR. KELLY:** – as it is fully – as the LIL is fully commissioned.

**MR. S. MARSHALL:** I'm not sure that's the case –

**MR. KELLY:** Okay, then –

**MR. S. MARSHALL:** – 'cause we're installing synchronous condensers at Soldiers Pond. I'm not sure what the long-term view is for Holyrood.

**MR. KELLY:** Okay. In any event –

**MR. S. MARSHALL:** I think the long-term view is we're going to shut it down, but anyway, carry on.

**MR. KELLY:** In any event, if Holyrood were to be decommissioned –

**MR. S. MARSHALL:** Mm-hmm.

**MR. KELLY:** – and no longer available –

**MR. S. MARSHALL:** Mm-hmm.

**MR. KELLY:** – then we would be down to only about 200 megawatts on the Avalon Peninsula, correct?

**MR. S. MARSHALL:** That sounds about right.

**MR. KELLY:** Right, so that that would be – we’d now be in the position where it – if the – if we lost the transmission lines coming in over the isthmus, that would be a very difficult situation.

**MR. S. MARSHALL:** Absolutely.

**MR. KELLY:** Right, it’d be – the lack of power on the Avalon would be less than what was available in DarkNL.

**MR. S. MARSHALL:** Sure.

**MR. KELLY:** Right, and so that then takes us to the question of is it – what is Nalcor’s position as to the appropriateness of additional backup generation on the Avalon? Has Nalcor yet come to a position on that?

**MR. S. MARSHALL:** Well, certainly it adopted a position early on when they laid out what the Muskrat Falls Project was.

**MR. KELLY:** Yes.

**MR. S. MARSHALL:** The LIL on the Avalon is designed to a one in 500-year standard.

**MR. KELLY:** Right.

**MR. S. MARSHALL:** The rest of it, like, one in 150-year standard. These towers are quite robust. Once – to bring down those towers through any kind of storm is going to take a tremendous force, and there are other parts of the world that are reliant on those types of lines, anywhere you’re on an extreme. Like, what about the Bonavista Peninsula, they’ve always been exposed to (inaudible) lines –

**MR. KELLY:** Sure.

**MR. S. MARSHALL:** – and the Newfoundland power system. So on a –

**MR. KELLY:** Newfoundland Power –

**MR. S. MARSHALL:** When you go down the street –

**MR. KELLY:** – has a gas turbine there to provide backup generation.

**MR. S. MARSHALL:** Some in emergency.

**MR. KELLY:** Yes.

**MR. S. MARSHALL:** But – so it’s always difficult on the extreme edges of anything to provide for a lot of backup. The load is very robust. In the extreme cases you talked about, lots of blackouts, no question about that. It simply comes down to what reliable standard do you want and are you prepared to pay the price?

**MR. KELLY:** Now, the cost as you indicated, if I followed you correctly, for about 125 megawatts of the gas turbine is about \$250 million.

**MR. S. MARSHALL:** That order of magnitude, yeah. It depends on –

**MR. KELLY:** That order of magnitude.

**MR. S. MARSHALL:** – what kind of infrastructure you had put it into and –

**MR. KELLY:** And –

**MR. S. MARSHALL:** So on a given day, like, sometimes you can order – you can acquire a used turbine and some – you know, roughly that order of magnitude.

**MR. KELLY:** Right and so if you wanted 250 megawatts you’d double the amount by \$500 million.

**MR. S. MARSHALL:** Hopefully, yeah.

**MR. KELLY:** Okay.

Now, the next question I wanted to explore with you a little bit is a process question. And you’ve made the point here that the government could well have decided to sanction Muskrat Falls as a public policy decision; in other words they could have looked at the interconnection issues, the greenhouse gas issues, the carbon pricing issues, the export potentials and economic benefits and

said we're going to go ahead with this project anyway.

**MR. S. MARSHALL:** Right. And it doesn't – just, for example, we want to develop the Lower Churchill, we're going to do it.

**MR. KELLY:** Exactly.

**MR. S. MARSHALL:** Right.

**MR. KELLY:** In which case as you said to one of the counsel, there'd really be no role for the Public Utilities Board at all.

**MR. S. MARSHALL:** That's correct.

**MR. KELLY:** Okay.

Now, let's assume, however, that the usual utility standard of least-cost reliable power was to be the principle to be applied. Is that a situation where you would need to engage the regulatory process?

**MR. S. MARSHALL:** Well that, again, depending on the – a matter of public policy. I mean the PUB is a creature of public policy. So what's driving this is the replacement of Holyrood, which is a fairly big part of the piece as you've already indicated.

The government could say we want now – if you're going to make this massive investment, we want other benefits and we don't care if its lowest cost option, in which case, there's no role for the PUB, right?

**MR. KELLY:** Right.

**MR. S. MARSHALL:** They could have said we want to use this now as an opportunity to bring gas ashore and start a natural gas business. Again, it's all waiting for the PUB, right? So the government first has to decide whether it's a public policy issue or not.

**MR. KELLY:** Right.

**MR. S. MARSHALL:** And that also decides whether it goes to the PUB or not.

**MR. KELLY:** Yeah, agreed.

Okay, now, if the government decides though that what it really wants to focus on is least-cost reliable power, in that situation is that a regulatory process?

**MR. S. MARSHALL:** In this case it would be because hydro is regulated.

**MR. KELLY:** And we had at least three options that have been talked about, if I put them this way: The Muskrat Falls option, the Isolated Island Option – as in the original Nalcor submission – and I'll call it the Marshall option which –

**MR. S. MARSHALL:** I'm (inaudible) sure they had that one. They had two (inaudible).

**MR. KELLY:** They had two before and now they have a third. So those would all be options, and I'm sure we can hypothesize potentially others, that would be considered in a regulatory process for resource planning. Is that correct?

**MR. S. MARSHALL:** If the government just said that we're not interested in making a public policy decision, we'll leave it to the utilities to decide, in that normal course, Hydro would apply to the PUB, bring forth their recommendation as to what that would be focusing on least cost, consistent with reliability. And the issue would've been debated and heard and the PUB would give their decision.

**MR. KELLY:** And that would be a full regulatory process –

**MR. S. MARSHALL:** Yeah, right, exactly.

**MR. KELLY:** – with participation by all of the stakeholders –

**MR. S. MARSHALL:** Right.

**MR. KELLY:** – in the process.

**MR. S. MARSHALL:** Correct. Correct.

**THE COMMISSIONER:** Can I just – if I could just interfere for just one second. So let's assume we have a project where – like this one. Because the evidence that I've heard is that, yes, it was a public policy decision by the government to look at the development of the

Lower Churchill River but, at the same time, they were also stating that it had to be – there had to be a business case, that it had to be what they referred to as the least-cost option. They weren't referring to what was in the actual act that talks about least cost, they were looking at least-cost option.

In those circumstances, do you see a role for the – is that one of those situations where regulation applies? Because it's not one or the other; in this particular case it seems to me, based upon the evidence that I've heard, is that it's both. It was a public policy decision to develop but develop only if it was the least-cost option.

**MR. S. MARSHALL:** Well, again, that's a decision for the government in the first instance, to say –

**THE COMMISSIONER:** Right. So let's assume they –

**MR. S. MARSHALL:** Right.

**THE COMMISSIONER:** – made that decision.

**MR. S. MARSHALL:** Right. So if they make a decision that, as you say, we've got – yes, we'd like to develop the Churchill River but anything you proposed as the least-cost option, then they can ask the PUB to review it and say, you know, Nalcor is not regulated, but this is a big decision here and we have no interest as a province, public policy thing, other than the least-cost option. But then you would have to process

**MR. KELLY:** In fact, that would be the normal, full-blown regulatory process.

**MR. S. MARSHALL:** That would be similar to what would be required if, as I said, Hydro were going to do it without government direction.

**MR. KELLY:** And there is a recognized utility process called the resource planning process or integrated resource planning.

**MR. S. MARSHALL:** Yes.

**MR. KELLY:** Correct?

**MR. S. MARSHALL:** Sure.

**MR. KELLY:** Correct, okay.

Thank you, Commissioner, those are my questions.

Thank you, Mr. Marshall.

**THE COMMISSIONER:** All right, thank you.

All right, Nalcor Energy.

**MR. SIMMONS:** No questions.

Thank you, Commissioner.

**THE COMMISSIONER:** Okay, redirect.

**MS. MUZYCHKA:** I have some questions, Commissioner.

Mr. Marshall, yesterday I believe you were asked by Mr. Smith with respect to the amount of engineering that had been performed by Nalcor before the bids were prepared – or the estimates, sorry, not the bids – the estimates were prepared by SNC-Lavalin. Do you recall that?

**MR. S. MARSHALL:** Yes.

**MS. MUZYCHKA:** And I think he directed you to an exhibit which showed that the amount of engineering may have been in the range of 50 to 55 per cent?

**MR. S. MARSHALL:** Yes, I remember doing that. And I thought it was lower than that but that's what was on that page.

**MS. MUZYCHKA:** Yes, okay.

Well, I just want to draw your attention to – and I'll ask Madam Clerk to bring up P-00094. And if we could just scroll up for the title of the document, this is the Decision Gate 3 Basis of Estimate document.

And if we go to page 27, and we'll see at the top that table 10-1, this is the "DG3 Project Cost Estimate – Attributes and Characteristics." And then if we look at the second block, "**Project Definition (i.e. level of engineering design complete)**," and if we go to part (v), it says:



“Expended engineering effort from 30% to 40% of total.”

**MR. S. MARSHALL:** Yeah, that’s just – as I just indicated, I thought it was at – it was this number.

**MS. MUZYCHKA:** Right.

**MR. S. MARSHALL:** But on that other page, they equated the engineering with the project definition and it was 59 per cent.

**MS. MUZYCHKA:** Right.

**MR. S. MARSHALL:** And so – but this is the number I had in my mind as having been done at Decision Gate 3.

**MS. MUZYCHKA:** Okay.

And when Mr. Kean testified – because he was heavily involved in that part of the process – he was asked – and I’m referring to is transcript at page 61. He was asked by Mr. Collins, “And now as I understand things, in a project of this size the engineering continues to evolve up to sanction and even after sanction, and so in order to produce a cost estimate you need to freeze the engineering at a certain point in time and the cost estimate generally reflects the engineering as it stood at a particular point. Is that right?”

And Mr. Kean said: “That’s correct. We’re usually – we try to – in that 30 to 40 per cent range, and you get the gross engineering and the gross system parameters to allow the estimators to prepare an estimate, and those might be – give you global viewpoint on tonnage and types of structures.”

And then he was asked by Mr. Collins: “When was the engineering frozen for the Muskrat Falls Project?”

And Mr. Kean responded: “It was frozen in that fall of 2011” – and he goes on to say – “to support SNC’s initial estimate submission on the 15th of December 2011, and there were some minor updates throughout the winter of 2012 as the system – concurrent with the Manitoba Hydro observations in the PUB report.”

So, it would appear from Mr. Kean’s evidence that the figure for the amount of engineering had been arrived at fairly early in the process, in about late December, late 2011, and that the amount of engineering was in fact between 30 and 40 per cent.

**MR. S. MARSHALL:** And that was the – up until yesterday, I saw that particular page, which I couldn’t really grasp how it got there. That was my understanding.

**MS. MUZYCHKA:** Okay.

I also want to go back over a statement that you made with respect to when you were asked about blame. And you made, you know, two observations. You said: Well, if it’s a public policy decision, well then the government should be the one to bear the blame for the decision, or take responsibility for the decision. If it had been based on the decision made by Nalcor, or if Nalcor were, you know, responsible for advising with respect to the validity of the project, the business case, then the blame would be on Nalcor executives.

**MR. S. MARSHALL:** Yes.

**MS. MUZYCHKA:** And we know that, based on your discussions over the last few days about the role of Nalcor, vis-à-vis government, as a Crown Corporation and, you know, the role of Nalcor to advise government in relation to the matters which Nalcor has special expertise, correct?

**MR. S. MARSHALL:** Yes.

**MS. MUZYCHKA:** We’ve heard evidence that the decision to move forward with the project, while a public policy decision, was also dependent upon passing the business case.

**MR. S. MARSHALL:** Mm-hmm.

**MS. MUZYCHKA:** And in this case, Nalcor was given the duty to put forth the business case and to satisfy government that, in fact, proceeding with the project as planned was, in fact, the least-cost option and the best case or the least cost of the various assumptions.

So, in that case, if the assumptions that were put forward by Nalcor were not based upon the appropriate parameters or the appropriate information, because you mentioned a number of alternatives, there was really only two options that were put before the PUB in terms of trying to determine whether or not the Muskrat Falls project was the least-cost option.

In that case, does that change your focus as to where the blame should lie? Where you have the government going through, it's almost a hybrid – it's a public policy but subject to advice from Nalcor as to whether or not it meets the appropriate business case.

**MR. S. MARSHALL:** Yeah. I'm not going to blame games. You know, I'm reluctant to go too far in this area but let's talk about, you know, the process.

If the government decides, in your example, naming a public policy decision that we want to – did up in Churchill, but you also want the least-cost alternative. The least cost is not really the best way expressing it because – if you are trying to do it as utility, as I pointed out earlier, you can make a certain set of assumptions to bring forward, you know, going over 50 years, this is the least-cost alternative going over 50 years; whereas if you say, what is the best utility alternative? Because you know that those assumptions are going to be wrong, but you know what they will be.

**MS. MUZYCHKA:** Mm-hmm.

**MR. S. MARSHALL:** And it goes back to what I said earlier about having the ability for off-ramps and whatnot, and that would – so you might want to be able to address your needs for the next five years. It may not be the least-cost alternative in the overall scheme of things, but it's a better solution, utility solution.

So, I don't – I'm very hesitant. Just one thing, least-cost alternative, what do you mean by that? It's much better to say – if the government had said, you and Nalcor come with what you think is the best utility alternative, recognizing you're trying to meet the needs of your customers in the least cost way, the assisted reliability. But flexibility is very important.

So, you could come with, like I say one (inaudible) we had no flexibility, based upon your projections for the next 60 years, which according to that calculation would be the least-cost alternative, but I would never go there. Especially if you recognize by 2041 you've got other power coming in and you fail to (inaudible). You don't put that in your calculation.

**MS. MUZYCHKA:** Right.

**MR. S. MARSHALL:** Right. So, least-cost alternative is not really – least cost over what period, for example. Least cost with what risks? So, if I captured all of this in, a good utility decision, than this clearly goes with Nalcor.

So, in some ways, what I'm using is the least-cost alternative, I'm just using an abbreviation to say well, really, the best utility decision.

**MS. MUZYCHKA:** Right, so –

**MR. S. MARSHALL:** Generally speaking, the least cost is the best utility decision, but in a case like this where you're making very long-term investments with very peculiar circumstances, maybe the best decision is just to address your needs until 2041 and forget about what happens after. I mean, if you look at some of these projections going out to 2060 and these sorts of things, I mean, what kind of reliance can you be on – based on that?

**MS. MUZYCHKA:** Yeah.

**MR. S. MARSHALL:** So, I hope I'm – I'm not trying to try to avoid your question, but I'm trying to make it –

**MS. MUZYCHKA:** No, no.

**MR. S. MARSHALL:** – clear to understanding (inaudible).

**MS. MUZYCHKA:** Okay.

I do have something else I want to ask you based on what you just said to – when you mentioned flexibility and off-ramps.

And when you came on the board in 2016 – (inaudible) on the board – when you came on board –

**MR. S. MARSHALL:** Right.

**MS. MUZYCHKA:** – in 2016, did you consider whether or not this project was past the point of no return?

**MR. S. MARSHALL:** Yes, but it was very briefly. It was very clear that once you start to get into this and all the contracts have been signed, it was very clear, almost right away, that there's no turning back.

**MS. MUZYCHKA:** Okay.

So, there – this – you didn't engage in any studies or –

**MR. S. MARSHALL:** It was totally unnecessary.

**MS. MUZYCHKA:** – boards or –?

And were there factors such as the federal loan guarantee or the role of Emera – were any of those things –

**MR. S. MARSHALL:** Well, the drivers –

**MS. MUZYCHKA:** – a factor in –?

**MR. S. MARSHALL:** – was that you already have these contractual arrangements.

**MS. MUZYCHKA:** With the contractors who are building.

**MR. S. MARSHALL:** And also with Emera.

**MS. MUZYCHKA:** With Emera.

**MR. S. MARSHALL:** You had to supply them with, you know, 150 megawatts for 35 years and other things, and they were investing in a – in their Maritime Link. You had to come up with 500 megawatts to replace Holyrood, plus another 150 megawatts to give to Nova Scotia for long periods of time. So, what was the alternative then? You were locked in.

You had the federal government there with – which said that if you didn't complete the project, they could step in and complete it. So, it was no turning back. In my view, once you sign – what I know now, once you sign the federal loan guarantee, you were stuck. And, of course, the contract with Emera was in the same time frame. One was, sort of, dependent on the other.

**MS. MUZYCHKA:** Okay.

So, that was – you came to that decision, I guess –

**MR. S. MARSHALL:** Very quickly.

**MS. MUZYCHKA:** – very quickly upon –

**MR. S. MARSHALL:** Yeah.

**MS. MUZYCHKA:** – (inaudible). Yeah.

**MR. S. MARSHALL:** I had a very quick look at it to find out what the contractual arrangements were, but beyond that, it didn't take rocket science to figure out you were stuck.

**MS. MUZYCHKA:** Okay.

That's all I have on redirect.

Oh, before I leave, I do have a couple of exhibits. They're four new – or seven – eight new exhibits, P-04421 to P-04429. And these are reference documents in support of the Grant Thornton report that we talked about on Monday – or Tuesday.

**THE COMMISSIONER:** Those will be entered as numbered.

I'm not going to keep you long, Mr. Marshall, but I do have a couple of questions for you.

I wanted to go back and talk a little bit about oversight again, and you indicated that – you didn't say in a perfect world – but the way I understood it in the perfect world: If the board was operating appropriately in the sense that it was getting good – full information, and if the government was getting full information from the CEO and whatever, then that would be enough for oversight or for governance. But that's premised on the fact that you can actually

come to the conclusion that a board and a government is being provided with full information.

**MR. S. MARSHALL:** Mm-hmm.

**THE COMMISSIONER:** So are you aware that this issue of – particularly with megaprojects, but large projects – that because of the experiences of governments, in particular, because many – in many times, the proponents of these are governments – that they have taken steps over and above relying on a board, relying on, you know, communication from the CEO – they have taken steps to be able to assess the operation of the project, the governance of the particular project.

And I'm thinking about, for instance, in Quebec. The process that they have for any contract that is over \$100 million, for instance. They have an established process in place. In Europe – and we're gonna hear evidence about this in Phase 3 – but in Europe there are various processes that are established with regards to oversight by either the legislature or alternatively, by a committee or group that are designated by the legislature to oversee the construction of a project, even by its own Crown corporation or, if it's not a Crown corporation, its own agency. Are you aware of any of those processes?

**MR. S. MARSHALL:** I'm aware of some of them.

**THE COMMISSIONER:** Okay.

**MR. S. MARSHALL:** And like I said, particularly aware of the BC situation where similar things are occurring that are – Site C is under construction. My concern when you got multiple lines of reporting is some confusion. And also, you know, it blurs the line of who's accountable for what. I much more prefer what they have in BC, where the board is responsible and they engage the special advisors.

**THE COMMISSIONER:** Okay.

So I guess what I'm looking at here is that you've indicated, for instance, there's no role for the board to be assessing whether or not an estimate is an appropriate estimate.

**MR. S. MARSHALL:** And that's why they engage a special committee –

**THE COMMISSIONER:** Right.

**MR. S. MARSHALL:** – in those circumstances.

**THE COMMISSIONER:** So in that case, they are actually assessing it.

**MR. S. MARSHALL:** Yes – it's – you got to distinguish (inaudible) – well, in a normal course, the Crown corporation operates a certain way. When they take on a major project, it's not expected that the board – the directors will have those specialized skills. But to fulfill their function, oversight on behalf of the owner, that they would engage the special line.

So, it's a question of do you – does the government engage those directly or it is more effective that you created a board, you're holding them accountable and they would engage it? So I think one of them produce the same result, where one gives a more clear view of who's responsible for what, right.

**THE COMMISSIONER:** Are you aware – and I understand that. And, in fact, that is one of the processes that is developed in some – one – at least one of the European countries. But, for instance, Norway, Great Britain, Denmark and others in Europe have established processes that are different from that. Are you familiar with those processes?

**MR. S. MARSHALL:** No. No, not really.

**THE COMMISSIONER:** Okay. So, you wouldn't be able to speak to their –

**MR. S. MARSHALL:** No.

**THE COMMISSIONER:** – liability here? Okay. All right.

And just one other comment that I wanted to take you back to was – you referred in answers to Ms. Best, Glenda Best on behalf of the Nalcor board members, about the facts that – the fact that minutes need to be sanitized in all cases. Like, one of the things that I've seen here, and you talk about trying to assess what, you know, what information is being provided and

whatever is that Nalcor minutes, from my point of view, are very sparse. At least they – the ones that I've looked at.

**MR. S. MARSHALL:** Yeah.

**THE COMMISSIONER:** I'm not sure what they're like now. I haven't looked at those, to be quite honest with you, with regards to detail. And so, if you get into a process of trying to assess what happened, there's no way – looking at the board minutes – that you're ever going to know what was actually discussed before the board and what was provided to the board.

And I recognize there's a need to sanitize for commercial privacy, interest or whatever, but when it comes to – like, what would be the problem with having two sets of minutes in the sense of having one that's sanitized that's going to be public and one that's not sanitized – that is, actually, going to be able to be used by somebody to assess what's going on?

**MR. S. MARSHALL:** In fact, we do.

**THE COMMISSIONER:** Okay. So, you do.

**MR. S. MARSHALL:** So, what – it's not two separate minutes. What happens is that the former minutes themselves are fairly succinct, and what I see at Nalcor is no different than what I saw in the private sector. It can be very succinct. But they refer, for example, to a proposal brought to the board, and so the records exist. I mean, Nalcor keeps great records.

So, rather than keep two sets of minutes you have a, you know, a very succinct set of minutes but those minutes will refer to reports that were presented, studies that were done, those sorts of things, and they are in – on file. I think you've seen, you know, we – from what I've seen, they keep all the records.

**THE COMMISSIONER:** Okay. So, you're a CEO, you're going to the board and you're reporting to the board: I'm not going to give you a number; I'm going to give you a range. And the board minutes don't even say that. How does that protect you as a CEO with regards to your obligation?

**MR. S. MARSHALL:** But the minister referred to a report that was given by the CEO.

**THE COMMISSIONER:** Right, yeah, they were.

**MR. S. MARSHALL:** In any report, the ranges exist.

**THE COMMISSIONER:** Right. If they did.

**MR. S. MARSHALL:** If they did, right. So you're not trying to – when you're going to the board, you're trying to give a, you know, summary of (inaudible). You have to still – all the information, you as an executive, have developed to make – to allow the board to make the proper decision. You want – especially in a public corporation where there's always ATIPPA requests and maybe you have two or three people on staff who do nothing but ATIPPA. It's very difficult to operate in the public sector that way as a corporation.

And – but the important thing from everybody's perspective is that there's a true record and that you know where it is. That's why, when I went for the SNC-Lavalin report and I asked our people to check our records, it wasn't there, I was quite comfortable it had never been put in the system.

**THE COMMISSIONER:** All right.

Good. Thank you very much, Mr. Marshall. I appreciate your time. So you can step down.

So, Mr. Ball – is he – I understand he's not available today?

**UNIDENTIFIED MALE SPEAKER:**  
(Inaudible.)

**THE COMMISSIONER:** Okay, so we'll be starting with Dwight Ball tomorrow morning at 9:30.

**MR. LEARMONTH:** Could we start at 9?

**THE COMMISSIONER:** Start at 9, did you say?

**MR. LEARMONTH:** (Inaudible) 9?

**THE COMMISSIONER:** Yes, okay. We'll start at 9 o'clock tomorrow with Mr. Ball, then. So 9 o'clock tomorrow morning.

All right. Thank you.

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.