



## COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

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Transcript | Phase 2

Volume 66

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*Commissioner: Honourable Justice Richard LeBlanc*

Thursday

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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, good morning.

Mr. Learmonth.

**MR. LEARMONTH:** Yes, the witness for today is Dwight Ball. Mr. Ball will be sworn, I believe.

Before proceeding to that, I'd like to ask that the following exhibits be entered into the record: P-04361 to P-04413, and, as well, confidential exhibits C-84 to C-95.

**THE COMMISSIONER:** All right. And I understand that some of those confidential exhibits actually are confidential in the sense that they're not even being shared with the parties. Some of them relate to the claims of contractors, the breakdown of the \$10.1-billion cost, and I forget what the other one is.

But, anyway, these are documents that I have had occasion to review and decided that these will not – that these would be outside of the sphere of what should be provided to others. Some of them are, actually, going to be provided to you, but there's a few that are going to be confidential for the purposes of the Commission.

All right, so, Mr. Ball – Premier Ball, you can stand up, please, if you would.

And do you wish to be sworn?

**MR. BALL:** Yes.

**THE COMMISSIONER:** Okay, just take the Bible in your hand, please.

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

**MR. BALL:** I do.

**CLERK:** Please state your name.

**MR. BALL:** Dwight Ball.

**CLERK:** Thank you.

**THE COMMISSIONER:** All right, Mr. Learmonth.

**MR. LEARMONTH:** Yes, I think it's well known, Mr. Ball, that you've been Premier of Newfoundland since your government was formed on December 14, 2015. Is that correct?

**MR. BALL:** It is.

**MR. LEARMONTH:** And for that period, you've also been the Minister of Labrador and Indigenous Affairs. Is that correct?

**MR. BALL:** It is.

**MR. LEARMONTH:** Yes.

Please provide us with some information, in summary form, of your education after high school and your work history before you entered politics.

**MR. BALL:** Okay.

So my post-secondary education is as a pharmacist. I spent over 30 years as a community pharmacist, as president of the Canadian Pharmacists Association. Added to that, I got involved in providing services of personal care homes for seniors across the province and some real estate development in various areas of the province.

**MR. LEARMONTH:** Okay.

Now, I have some information on your political career. I'll put it to you and see whether you agree that it's correct or at least close to correct.

Did you first run as the Liberal candidate in the District of Humber Valley in 2003, in the general election in 2003, but lost by less than 200 seats to, I think it was, Kathy Goudie?

**MR. BALL:** I did.

**MR. LEARMONTH:** You did. And Kathy Goudie resigned her seat before the end of her term. And is it correct that you won a by-election for the District of Humber Valley on February 13, 2007?

**MR. BALL:** I did.

**MR. LEARMONTH:** And then, were you – is it correct that you were defeated in the general election on October 9, 2007, in the same district, Humber Valley?

**MR. BALL:** That's correct.

**MR. LEARMONTH:** Yeah.

And then in the 2011 general election you won the seat of Humber Valley and has held that position, that seat, ever since?

**MR. BALL:** That's correct.

**MR. LEARMONTH:** That's correct.

Just a few other points that – is it correct that on January 3, 2012, you became the leader of the Official Opposition?

**MR. BALL:** That's correct.

**MR. LEARMONTH:** And then in November 2012 you won the leadership position of the Liberal Party. Is that correct? In November 12 there was a leadership and you won –

**MR. BALL:** Yes.

**MR. LEARMONTH:** – the leadership contest?

**MR. BALL:** Yes.

**MR. LEARMONTH:** And then you won the November 30, 2015, election – general election and then you've continued on ever since. Is that correct?

**MR. BALL:** It is.

**MR. LEARMONTH:** And, well, just to make it obvious, though, you were re-elected in the 2019 general election.

Okay. Thank you.

There are some documents that I want to go over with you, but before we do that I would like you to give us some information on the impact or effect that the Muskrat Falls Project has had and continues to have on the financial or fiscal position of the government. Can you give us some information on that topic, please?

**MR. BALL:** Yes, of course.

So if you look at the Muskrat Falls Project, I think, first of all, if you think about as a province since Confederation and all the work that's been done in building all the assets that we would have in Newfoundland and Labrador, we've accumulated the net debt of about \$13.8 billion. So to put the Muskrat Falls Project in context of where we are with net debt in our province, nearly 30 per cent of the net debt within our province, \$3.8 billion right now, is connected directly to the Muskrat Falls Project. So it shows how profound the impact it would have on the net debt of our province in just a short period of time and with one project.

Added to that, if you look at the increase in rates and to think that we would've been in a position, without mitigation, to have rates in our province of nearly 23 cents per kilowatt hour, which would be the most expensive rates that we would see in any Canadian province, it would mean that we are not competitive. So the money that we have to spend to mitigate rates within Newfoundland and Labrador is money that could be spent on other services like health care, education, infrastructure and so on. So that is the impact of the project in its current state is having in our province.

**MR. LEARMONTH:** Okay.

Now, on the topic of rate mitigation, we know that government has referred the subject to the Public Utilities Board and the Public Utilities Board is undertaking a top-to-bottom review of that subject. So we're not going to – this Commission is not going to undertake a parallel review, it would be a waste of resources, time and money.

But there are a couple of questions I want to put to you on rate mitigation and that. And, in doing that, I'd like you to first refer to book 2, or binder 2, tab 98 of your documents.

**MR. BALL:** Tab number 90?

**MR. LEARMONTH:** Ninety-eight and that is Exhibit P-04313. Do you see that, Mr. Ball, 98?

**MR. BALL:** Yes, I do.

**MR. LEARMONTH:** Okay.

This is a reference entitled: Reference Questions on Electricity Rate Mitigation for the Board of Commissioners, the PUB. This is a document that was referred to Cabinet and considered by Cabinet.

Was this the beginning of the formal process to initiate a review of the rate mitigation question?

**MR. BALL:** At the beginning for the PUB involvement there have been a number of committees that would've been doing some work in advance of this, but this was the reference question that we decided to put to the PUB.

**MR. LEARMONTH:** Yes.

And if you turn to book 3 of your list of documents, in tab 123 – 23, this is Exhibit P-04322. Do you see that, Mr. Ball?

**MR. BALL:** Tab – what was the tab?

**MR. LEARMONTH:** It's tab 123.

**MR. BALL:** I have it on my screen there. Yeah, okay.

**MR. LEARMONTH:** It may be tab –

**THE COMMISSIONER:** It'd be, actually, tab 23.

**MR. LEARMONTH:** It may be 23.

**MR. BALL:** Yeah, tab 23. Thank you.

**MR. LEARMONTH:** Yeah, well, the one we didn't – I guess we ran out of –

**MR. BALL:** Ones.

**MR. LEARMONTH:** Yeah, so –

**MR. BALL:** Thank you. Yes, I –

**MR. LEARMONTH:** Tab 123.

So this is a document prepared in April 2019 for the public, I guess, to discuss the issue in general terms. Is that correct?

**MR. BALL:** It is. This would've been our rate mitigation plan.

**MR. LEARMONTH:** Yes.

And then if we turn to tab – book 3, tab 125 – or 25, however you want to describe it –

**MR. BALL:** Sure.

**MR. LEARMONTH:** – this is Exhibit P-04325. And if we could turn, first, to page 2 of this document, at the bottom, the following quote is attributed to you: "I promised Newfoundlanders and Labradorians ... they will not bear the burden of higher electricity rates or taxes as a result of Muskrat Falls. My government will deliver on that promise by increasing revenues, reducing costs, and continuing our work with the Federal Government to achieve the best possible outcomes for the people we both serve."

Now, is that an accurate quote of something that you said?

**MR. BALL:** It is.

**MR. LEARMONTH:** Okay.

Now, before I go into some of the figures, I guess the broad question is the – if the ratepayers aren't going to pay for Muskrat Falls and if they – taxpayers are not going to receive an increase in their tax rates, where's the money going to come from because it's not going to fall out of the sky?

**MR. BALL:** Yeah.

**MR. LEARMONTH:** Can you provide some explanation of that, Mr. Ball?

**MR. BALL:** Yeah. So we started that when we did the work – was, you know, what is the top number, what is the amount that we would need and that turned out to be just under \$726 million.

There was enough money in the savings at places like Holyrood, electrification of some buildings that we would have in our province.

So it brought down from – just under 726 down to about \$200 million. And this was the gap –

**MR. LEARMONTH:** Excuse me, if I could just assist people. If we turn to page 1 of this document, I think these figures are identified there. Just so people would be able to follow –

**MR. BALL:** Page 1?

**MR. LEARMONTH:** – it better. It's at page 1 of Exhibit P-04325. Sorry to interrupt you.

**MR. BALL:** Yes, exactly. So if you follow the math on this, you go from \$725.9 million and leaves a gap really down to – and you see the number of initiatives there that we've been planning to do. It really leaves us to a gap of some \$200 million. And based on the interim reports by the PUB that were released late December of 2018, it said there the significant – most significant potential that we would have is to restructure some financing with the federal government.

As part of the Atlantic Accord negotiations, we raised this issue of restructuring some of those loans and that they've agreed to do that. And we have work now that's ongoing and we have a full group of people that's completely dedicated to working with the federal government to get this done. And if you remember, back at the Atlantic Accord announcement, they agreed that we would do this expeditiously. The PUB themselves said that they needed this work done in advance of their final report.

**MR. LEARMONTH:** Yes.

So if we take – just referring again to page 1 of Exhibit P-04325, it stated just below the middle: "To manage electricity rates, approximately \$725.9 million is expected to be required to address Muskrat Falls costs in the first full year of electricity generation."

And then the next paragraph, "To address this cost, the proposed framework includes: NL Hydro Net Operations Savings and Revenue" \$178 million.

So if we subtract the 178.2 from the 725.9, then in the first full year of electricity generation, we're looking at a shortfall of \$547.7 million. Do you agree with that?

**MR. BALL:** I do.

**MR. LEARMONTH:** Yeah.

And just to summarize what you said, is it the objective of the – of your government to discuss restructuring of the federal loan guarantee and the obligations and covenants under the federal loan guarantee, so that the payments due to Ottawa under the federal loan guarantee will be reduced and that the effect of that will be to reduce the cost? Is that a general way we can put that?

**MR. BALL:** In a general sense, that's the concept.

**MR. LEARMONTH:** Okay.

And those discussions are ongoing at the – as we speak – well, I don't know as we speak, but they're ongoing at the present time. Is that correct?

**MR. BALL:** It is.

**MR. LEARMONTH:** I wanted to ask you some questions about the year 2041. We all know that that's a very significant date for the province because the contracts with Quebec – or Hydro-Québec – expire on that date. And I wanted to know whether – even though it's only 2019, whether government is addressing the issue of, you know, what will happen, what are the potential outcomes of the expiration of the Quebec – Hydro-Québec contracts in 2041. Can you give us some information on that?

**MR. BALL:** I think when it comes to 2041, for all of us in Newfoundland and Labrador, there's no year that will be more profound. There's not a year in our history that we would not be looking forward to. But in terms of the negotiation and what 2041 would look like, there is no negotiations around 2041 that we're currently involved in.

I'm really looking forward to the next phase of this Inquiry and some of the work that will be

done in Phase 3 around 2041, and I think Newfoundlanders and Labradorians are looking forward to that as well.

**MR. LEARMONTH:** Yeah.

**MR. BALL:** But there's no current negotiations.

**MR. LEARMONTH:** Okay, so it would be fair to say government is alert to the consequences and the importance of 2041, but as of yet, there's no meaningful work that's been undertaken?

**MR. BALL:** Not related to 2041. And, of course, we put in place various memorandum of understanding with Quebec on transportation, and that we worked together on the Labrador Trough. But related to 2041, no, there's no discussions.

**MR. LEARMONTH:** All right.

Now, I wanted to ask you some questions on the methylmercury issue. Minister Coady gave her evidence on that and I took her through documents. And are you familiar, generally, with the evidence that Ms. Coady gave on the methylmercury issue?

**MR. BALL:** Yes, I am.

**MR. LEARMONTH:** And do you agree that, initially, government accepted the April 2018 recommendation of the IEAC to carry out wetland capping of the reservoir as a remediation measure?

**MR. BALL:** I agree with that.

**MR. LEARMONTH:** All right.

And do you agree that on January 14, 2019, government was advised by Nalcor that it was no longer feasible to carry out the wetland capping remediation work. At that point it was just too late and that was subsequently – the fact it was too late was subsequently confirmed by SNC-Lavalin. Do you agree with that generally?

**MR. BALL:** In mid-January the confirmation there would have been about pre-impoundment and that would have been the first that we would have heard – that I would have heard about the window had closed around pre-impoundment.

Up to that date, we were committed to do this, along with the work that would have been done with the fish habitat conservation plan.

And that was, you know, our thoughts through all of this and it was very frustrating for me to find out that that window had been closed around pre-impoundment. So I immediately engaged officials to look for what a new approach would be and other opportunities.

**MR. LEARMONTH:** Yes.

Now, there is, I understand, some possibility that some superficial measures could be carried out in wetland capping after impoundment of the reservoir, but they would be superficial or minimal. Can you make any comment on that statement?

**MR. BALL:** Yes, I would. It's – you know, when you look at the capping and the impact that it would have on methylmercury, the overall impact would have been intangible when you look at somewhere between 1 and 2 per cent. I've been keenly watching and closely watching all the data on methylmercury with the new monitoring plan that we would have in place.

So we've been watching that, and certainly the plan – even though the benefits would've been intangible and very minimal, we were still prepared and wanted to – and I know Nalcor wanted to, I wanted to and I know the minister's comments the other – a few days ago, properly reflects the view of government, that we wanted to do wetland capping, even though the impact would've been intangible. There was still a lot of anxiety and stress that had been created by people who had been watching this closely and that was a commitment that I made and one that I wanted to follow through on.

**MR. LEARMONTH:** All right.

Now, Ms. Coady, if you're familiar with her evidence, said that government's delay in directing Nalcor to carry out wetland capping remediation measures was not intentional. That position that: Was it potential, was put to her and she said, no, that's simply not the case.

Do you agree with what Minister Coady said on that, that it was not intentional to delay the

direction to Nalcor to provide wetland capping until it was too late to do so?

**MR. BALL:** I absolutely agree with that. There was nothing intentional. No plan to delay capping – wetland capping.

**MR. LEARMONTH:** Okay.

Well – and I think – I believe, to be fair, to summarize Ms. Coady's evidence as to the cause of this failure, was that with gaps in communications among government departments or gaps in information within the Department of Municipal Affairs and Environment.

Would you agree with that? Or, if not, clarify your position.

**MR. BALL:** Yeah, so I would've been through a number of presentations on methylmercury and the impacts of methylmercury in our plan. And at no point was I ever given any information to say that the window had been closed and that the fish habitat plan was moving forward.

Nalcor had asked for a permit back in July of 2018, and so if there was a gap to be found here or work that was not completed it would've been in Municipal Affairs and Environment.

**MR. LEARMONTH:** Yeah.

And were taken by surprise when you found out that the time had passed?

**MR. BALL:** Very much surprised.

**MR. LEARMONTH:** Okay. Because that interfered with the plan that you had decided to implement – you, as Premier, decided to implement, together with the support of Cabinet. Is that correct?

**MR. BALL:** Well, the commitment that I had made to the Indigenous – regardless of the impact being tangible or intangible, it's a commitment that I wanted to see through and follow through on. And so we've engaged the Indigenous groups right now in conversations that we best – we can actually look at what the next steps would be and how to deal with this.

**MR. LEARMONTH:** Yes.

And Mr. Stan Marshall yesterday indicated that there were ongoing discussions with the Indigenous groups with a view to settling this issue. Are you aware of those ongoing discussions?

**MR. BALL:** I am.

**MR. LEARMONTH:** Okay.

**MR. BALL:** And so the idea there is to actually share the most updated information that we have, that we've collected within the reservoir and downstream, on methylmercury. Compared to what we would have anticipated, given the Calder model back in 2015 to where we are now today, we are not seeing any spikes or increases in methylmercury.

But Mr. Marshall is right and correct, we've had the conversation. He is now going to start getting involved in the conversations with the Indigenous groups.

**MR. LEARMONTH:** Okay, well, I'm not going to press you any further on this because I don't want to do anything or attempt to illicit any information that could possibly have an adverse effect on these ongoing negotiations. So I'm not going to press on that. The counsel for the Indigenous groups and other interested parties may, but I'm just going to leave it at that. Hopefully there'll be a successful resolution to those discussions.

Just before we get into the documents, there's a couple of other topics that I want to discuss with you. The – it's based on the documentation that we reviewed that the – well, it's clear that the total cost of the Muskrat Falls Project will be paid by the ratepayers under the existing agreements – I realize they're subject to renegotiation, but under the existing agreements.

But we also – it also becomes apparent that there's no mechanism or process under which the amount of these costs can be reviewed before these – the costs are charged to the ratepayers. I'll give you an example. Let us say – and this is just hypothetical for the purpose of explaining the question, that – let's say Nalcor decides that one-half of their executive salaries

are going to be charged as a cost to Muskrat Falls, and one-half of the cost of operating their head office on Columbus Drive is going to be charged to Muskrat Falls.

One would expect that there would be some process whereby some entity, whether it's the Public Utilities Board or some other entity, would be able to review these costs to decide whether they are appropriate and fair because they are going to be borne by the taxpayers. Nevertheless, in the federal loan guarantee, and as I understand in the other financing agreements, there is no such mechanism, with the result that it would appear that Nalcor can charge whatever it wants and there's no way that their decision on quantum can be reviewed.

Can you give us some information on that topic generally, Mr. Ball?

**MR. BALL:** Yeah, so the structure of the Power Purchase Agreement was, you know, something that was – I asked quite a few questions on back as leader of the Opposition, having access to what that Power Purchase Agreement. Because we were acutely aware that any cost of the Muskrat Falls Project at the time – because the project needed – in order to get financing, needed a guaranteed revenue stream and that guaranteed revenue stream was put in place by a Power Purchase Agreement.

So, regardless, if Newfoundlanders and Labradorians use – regardless of the amount of power that they use, they were going to pay the full freight, the full cost of the Muskrat Falls Project. So that was always a problem for me when I – you know, it was kind of an unusual situation that you were going pay for the whole project whether you used the power or not, but the structures around financing was put in place and it required a guaranteed revenue stream. There was actually legislation that was put in place back prior to sanctioning that allowed this to happen, that there be actually no competition for this power in the province as well.

So it's a structure that was put in place; you know, limited opportunities to actually change this without doing a complete overhaul. But what I will say is this is one of the reasons why we've taken the decision to actually do a rate mitigation and bring power rates back to 13.5

cents, as opposed to where they would be currently at around 23 cents.

**MR. LEARMONTH:** Yes.

Can I summarize what you're saying in this way: That there are covenants and obligations in the documentations that the province signed with Newfoundland – with Canada for the federal loan guarantee, and there are also covenants and obligations that Nalcor – or the province, we'll say – Nalcor has signed with other lenders that allow Nalcor to charge what it sees fit to the ratepayers. And that unless there's an agreement with Canada and the private lenders that the government, on its own, can't set up a process or mechanism to review these costs, is that – have I got that right?

**MR. BALL:** Yeah, I think the easiest thing right now – because, you know, at the end of the day Newfoundland and Labrador would be responsible for the cost of the project. So there was a guaranteed revenue stream that would have been required to get this financing to support the construction of the Muskrat Falls Project.

So the route that we have taken is put in place a rate mitigation so we could actually keep rates down. So, you know, while the project is being constructed right now, I mean who knows where – what options would be available in five, 10 years' time. But, currently, as it exists today, a guaranteed revenue stream needed to be in place and that was the whole concept of the Power Purchase Agreement.

**MR. LEARMONTH:** Yeah.

So that can't be –

**THE COMMISSIONER:** Can I – excuse me just for a second. So, just so I can try to understand this, because this is an area that I'm really concerned about. So in the circumstances here, I understand how they're – you know, the agreements basically call for a guaranteed revenue stream. My query is whether or not the determination of what that guaranteed revenue stream is, is a matter that can be reviewed.

For instance, that – as I understand the documents, the financing documents and



whatever, there are costs that are associated with determining what that guaranteed annual stream is. And it's the issue of those costs that I query about whether or not there is a – there is some sort of a process that can be established to – for somebody to review those costs. I'm not talking about the need for – potentially for a PUB or something but there – like, at this point in time right now, it is – there is a degree of discretion or judgment left to Nalcor Energy with regards to those costs.

And I'm just wondering whether or not the government has been or is aware, or will be looking at any potential that might exist for review of those costs to ensure that the Muskrat Falls costs that are being claimed – and I'm not suggesting that Nalcor is going to do something totally untoward here, but I think there's – the ratepayers deserve some sort of protection in the circumstances.

So my query is whether or not there's some opportunity there for some degree of review, oversight, some aspect of supervision of whatever those costs are that are going into that guaranteed rate stream.

**MR. BALL:** So if I got your question or your comment correctly, I think what I'm hearing is if this was in a normal utility world, what you would be seeing is you would see those costs regulated. So you'd have to actually prove that the cost was directly attributed to the cost of generating that power and then that cost could be passed on to the –

**THE COMMISSIONER:** Right.

**MR. BALL:** – to the ratepayers. You know, could that – is that something that could be looked at, you know, in the future, based on where we are now in the construct of the financial agreements? It is my understanding that given the Power Purchase Agreement, there is a revenue stream that's required to support the financiers of the project.

**THE COMMISSIONER:** Right, but all the revenue – all the guaranteed revenue stream does, it normally pays debt, but it also pays – it's more than just the debt. And that's why I'm wondering whether or not there's any room – and I may be totally out to lunch on this, but I'm

wondering whether or not there is any room for some consideration of the basis for that generated – that income stream that you're talking about.

Anyway, I just – obviously you – your view is that there's nothing that can be done at this stage to review that?

**MR. BALL:** I wouldn't want to say that there's absolutely nothing and close the door on it. You know, if it's borne by ratepayers, eventually then would have to be picked up, the cost, by taxpayers. And so what – the position that we've taken is to actually mitigate the rates to ratepayers at this point.

**MR. LEARMONTH:** Yeah, but the cost would still have to be borne by someone in the province, so – but – do I have it correct that – and I know you're just speaking of your understanding, but that because these covenants dealing with this stream of payments is in the agreements with the federal loan guarantee and the lenders, that they would have to agree to something – to a change in order to introduce a review process for cost?

**MR. BALL:** There would – I think there would be an agreement. And I guess I just take it back and look at any so-called mortgage that was put in place; before you get a mortgage someone is going to want to know that you could actually support the mortgage. And it's no different than the financing of this project – even though it's a big mortgage – that you would need to be guaranteed that the ability of the province is that you can pay for this. And that's kind of the view that's been taken; even though it's simplistic in my comments though, that I would make about this today, that is kind of where it is right now.

**MR. LEARMONTH:** Yeah.

**MR. BALL:** That you pay for all the power, you pay for the full cost of the project through the –

**MR. LEARMONTH:** Yeah.

**MR. BALL:** – through the rate structure from Nalcor to Hydro.

**MR. LEARMONTH:** So just to use the mortgage analogy that you spoke of, that if I

have a mortgage with a financial institution, I can't change the terms of repayment or any other terms without the approval of the lending institution. Is that your understanding of the situation we're in?

**MR. BALL:** That would be my understanding.

**MR. LEARMONTH:** Okay. Thank you.

Mr. Ball, can you give us some information on the fiscal position of the province when your government was first formed on December 14, 2005 – 2015. What did you find when you took power?

**MR. BALL:** Oh, what I found out is that the election victory on November 30 was short lived. Coming into the Premier's office very early in December, you know, one of the things that happens, you come in as premier-elect, so there's actually no Cabinet that's in place.

So what happens during the transition, there would be a number of all your departments and, you know, key agencies – people like Nalcor and others – would come in and they would, kind of, give you the state of the union of where their particular responsible departments would be. And very early from the Department of Finance I learned that there would've been a requirement to get some \$400 million for December. We needed to borrow that, so that was something that needed to be done swiftly.

Secondly, is that if you looked at the budget of 2015-'16 that would've been put in place by the previous administration – and during the election and through that year there was no mid-year update, and we were all led to believe, as a province, that the deficit would be around the \$1.1 billion. That turned out to be – very early I was told that that deficit would be \$1.9 billion and that if nothing was done going into Budget 2016-'17, the deficit would be \$2.7 billion.

So you see where I'm coming from. We need \$400 million to get through December. \$1.1 billion was anticipated in the budget forecast that we were currently in; four months left in that year and that was going to go from \$1.1 billion to \$1.9 billion and nothing done for the following year, it would be \$2.7 billion.

Added to that we had all our public service agreements that would've been expiring and to – added to that again, we had, in the federal loan guarantees with the Muskrat Falls Project, there would've been a requirement to come up with some (inaudible) and \$75 million in December of 2016 that would need to be paid to support some of the cost overruns that would go into an escrow account. So the first few days in the Premier's office was – it was a busy place.

**MR. LEARMONTH:** Yes.

And how soon after you formed your government on December 14, 2015, did you become aware of the Astaldi problem?

**MR. BALL:** Well, as I said, during the transition you would have all your various agencies in. And Nalcor would've been one of the agencies that would've been in early, and they came in on December 4. So there was a presentation that we were given about where things were, you know, primarily with the Muskrat Falls Project, but other lines of business associated with Nalcor were also discussed.

But in the presentation there was no mention of the – in any dollar sense, of what was required to support an issue that was arising with Astaldi. So there was a verbal comment that was made by the CEO at the time, Ed Martin, to say that there was some \$200 million to address an outstanding issue with Astaldi. And I was also told that there were discussions that had been ongoing for 12 to 18 months at various levels with Astaldi. And this took me by surprise, simply because in September of 2015 I had asked for an update on the financial affairs of the province to the former premier, but I also asked for an update on the Muskrat Falls Project. And we also had updates in September of 2015 that took us to the \$7.6 billion, I think, at the time.

So, here we are just a few weeks later, knowing that there had been work and discussions already unfolding with Astaldi, and Mr. Martin also told me that in the spring of 2015 he had given this information to the previous administration.

**MR. LEARMONTH:** Yes.

If we turn to tab 56, that's in book 1 of your documents. It's Exhibit P-04328.

Tab 56, yeah.

Do you have it, Mr. Ball?

**MR. BALL:** I do.

**MR. LEARMONTH:** All right.

Are you familiar with this document? It's a financial overview prepared by Nalcor on December 15, 2015.

**MR. BALL:** Yes.

**MR. LEARMONTH:** Now, if you could turn to pages 52 just – beginning at 52 to 61 of this document, there's discussion under the heading on page 52: "Current State – Lower Churchill (Phase 1)." And the discussion of the Lower Churchill Phase 1 goes on to page 61, but I haven't – I can't find any reference to the Astaldi problem that you just mentioned.

Do you agree that there's no mention of the Astaldi problem, to any extent, in this document, even though it's dated December 15, 2011?

**MR. BALL:** Yes, and about 11 days prior to this, I would've had a similar presentation that would've been given to me by officials at – from Nalcor. And in the same document that I had, there was no direct mention in the presentation, except comments that were made verbally, about the \$200-million Astaldi issue.

**MR. LEARMONTH:** Right.

Now, I realize – and you've indicated that there were a number of items of concern when you took power. Where did the Astaldi problem rank, generally, with the concerns you had about the financial situation that you inherited?

**MR. BALL:** Well –

**MR. LEARMONTH:** When I say you, I mean your government, obviously. Yeah.

**MR. BALL:** Right. It certainly became a priority because, you know, throughout all of this, as we – we weren't expecting this problem to be this significant. I mean, I think all of us – I think even in the September time frame, there was reference to some work that needed to be

completed with Astaldi, but to the point where there was \$200 million that would've been required and that there were negotiations and discussions that would've been ongoing for a year, year and a half.

I think any – to be transparent in all of this, I think this is information that would've at least been provided in this deck – in this presentation, or at least been given in a more substantive way to the people of the province in the September update.

**MR. LEARMONTH:** Yes.

And the September update you're speaking of, that was the revision AFE 2. It was for \$7.65 billion, correct?

**MR. BALL:** It is.

**MR. LEARMONTH:** That's what you're referring to.

All right, tab 57 of the same book. It's Exhibit P-03451. This is a December 21, 2015, release of Natural Resources.

And it refers to – oh, it says – Minister Coady is quoted as saying in the third paragraph: **"The Oversight Committee, comprised of senior government officials and formed in 2014, conducted a review of the Muskrat Falls Project cost and schedule management processes ...."**

So you're familiar with this – with EY's review of the cost and schedule management processes that had been prepared, I believe, in October (inaudible)?

**MR. BALL:** Yes.

**MR. LEARMONTH:** Yes.

And can you confirm that that report was split into two and that what was released, as described in this exhibit, was just the executive summary?

**MR. BALL:** That's correct.

**MR. LEARMONTH:** That's correct.

And the other information, which Nalcor claimed to be commercially sensitive, was not released until a later date, I think it was March 30, 2015 – '16. Is that correct?

**MR. BALL:** Yeah, it is correct. And just for clarification, this was a piece of work that would have been done by the Oversight Committee some time in 2015.

**MR. LEARMONTH:** Okay, thank you.

Next is at tab 58. It's Exhibit P-03452. This is a release from the Executive Council and Natural Resources on the same day as the previous exhibit, December 21, 2015.

In paragraph 2 – the heading is “**Government Opens Books on Muskrat Falls Project.**” Two paragraphs later, you're quoted as saying: “**“Given cost overruns, schedule changes and baseline updates on the Muskrat Falls Project, it is prudent for the Provincial Government to review the project's cost and schedule to determine if there are any critical risks moving forward. Ernst & Young will undertake a comprehensive, independent review and identify opportunities for corrective action, if necessary. This type of due diligence is not uncommon in major capital projects and we are moving ahead with the work immediately.”**”

So this is only a week after your government was formed. Why did you feel that it was important at this early stage to undertake such a comprehensive review of the Muskrat – financing of the Muskrat Falls Project?

**MR. BALL:** It's somewhat connected to the discussion that would have occurred on December 4 in our transition presentations. So waited to get a Cabinet in place on December 14 and Minister Coady would have been sworn in as minister.

But also, you know, given the fact that there were surprises at the December 4 meeting, I think putting someone like EY in there to do an independent review was about transparency and making sure that the most relevant and up-to-date information around cost and risks – cost and schedule and associated risk – that we needed to get an handle on this, because we

really needed to figure out, first and foremost, you know, what was really going on in this project. And this would have been the first step.

And also, you know, for the executive – CEO and the executive team at Nalcor, I asked them to co-operate. I did meet with them on December 20 and let them know that we're going to do this. And I asked them to co-operate and not to resist that EY would be in there and to share the information, simply because this report could actually validate the work that they had said they were doing.

Because in the December 4 meeting they said the project was going well. So, you know, my comment to the CEO and the chair of the board at the time is, if indeed that's the case, well, all this will do is validate the work you're doing, so you need not be worried about an independent review.

**MR. LEARMONTH:** Yeah.

So would it be fair to say at this time you didn't feel that you had – that you may not have had the total picture and you just wanted to get an independent review so you knew where government stood on the Muskrat Falls Project in terms of the schedule and cost?

**MR. BALL:** You know, that's correct and, obviously, I was aware that as we were seeing costs increasing and now knowing that it was, you know, going to go up from the – move from the 7.6 number that was given out – given to the province in September, realizing that all of this cost would be borne by ratepayers. So it was important to me that we get a handle on this as quickly as possible.

**MR. LEARMONTH:** All right.

Tab 60 is Exhibit P-03571. This is an email from Ed Martin of Nalcor to Julie Mullaley and Charles Bown, dated January 22, 2016.

Now, at this point, can you confirm that the – EY had been retained, formally, I think, in early January and that the – their work was ongoing at this time. Is that your recollection?

**MR. BALL:** Yes.

**MR. LEARMONTH:** Yeah.

Now, in this document Mr. Martin says: “Here is the version for the Premier. I had to modify Option 1B – I had the wrong numbers in there, just noticed on a quality check.” And this has to do with the Astaldi situation.

And as I pointed out when Ms. Coady was testifying, there’s another version of this slide deck at tab 62, which is not redacted, whereas the one in this is. So we’ll turn to tab 62 and this is the Muskrat Falls update. It’s Exhibit P-04294, dated January 2016.

So was this presentation, which deals with the Astaldi issue, something that government – that you, as Premier, or others in government asked for? Or was this something that was supplied on the initiative of Nalcor alone?

**MR. BALL:** Probably a bit of both, although I am not sure if I would’ve reached out or if the minister would’ve reached out to have this Cabinet presentation. But, you know, it’s something that by now, given that this would’ve been in mid-January that, you know, Cabinet was now aware of, and I guess there was a decision made to actually bring this presentation to Cabinet.

**MR. LEARMONTH:** All right.

And at this point, were you – you said earlier that you understood the problem earlier to be in the range of \$200 million. And then if we turn to page 20, we see on P-04294: Why \$250 to \$300 million, and then there’s references to 250 to 3 and then there are some other figures throughout this.

Then if we go to page 22: Potential parameters of a settlement, “Option 2 - Continue with Astaldi as is, with assistance; ... Estimated net additional cost to Project \$430-575 million.” So that’s quite different from \$200 million.

Did this – was there any explanation for the fact that this – these figures, as they were presented to you, changed so quickly in such a short period of time?

**MR. BALL:** The explanation would’ve been given, you know, by the work that would’ve

been done, you know, through Nalcor and, by now, EY. You know, they were in there, as well.

But I think what was – that I found most perplexing was the fact that even with the number of whatever they were – if it was 200, 400, 600 – there was still no guarantee that this was going to solve the Astaldi problem. And so, at this point, we’re now into discussions about negotiating mandates and, you know, negotiating strategies and so on. And I was not convinced that whatever number you put here was going to solve the Astaldi problem, not convinced that there would not be another supplier, or another contractor out there that might have a similar problem.

So this presentation here was something that we brought to Cabinet, as well as some of the committee meetings. And it was really part of where Nalcor was looking for a negotiating mandate at the time – or the CEO was looking for a negotiating mandate at the time, which I was refusing to give to him.

**MR. LEARMONTH:** Okay.

Tab 61 is Exhibit P-04293. This is an email from January 24, 2016, from Tim Murphy. I understand Mr. Murphy was your deputy chief of staff at the time. Is that correct?

**MR. BALL:** Yeah, that’s correct.

**MR. LEARMONTH:** Yeah.

So it’s an email to you, copied to Kelvin Parsons, your chief of staff at the time. It’s a memo, a confidential memo, entitled: “Food for Thought Memo re: Tuesday’s P&P” – planning and priorities – “Meeting.”

Do you recall receiving this document, P-04293?

**MR. BALL:** I do.

**MR. LEARMONTH:** Okay.

And what did you make of it? How did you react to it?

**MR. BALL:** I think Mr. Murphy did a great job. Very unusual to see someone who’s your deputy chief of staff who is really – you know, his

office is in your office and so we would meet on a regular basis.

But I thought Mr. Murphy did a great job in summarizing his own thoughts and views on what he thought, because he would have been involved in many of the meetings that we would have been having with Nalcor and other officials at the time. So I think he did a great job and he also went – he took some time to actually look at the financial stability of Astaldi as a global company as well. So all of this is mentioned in this document to me, which it was unusual but I think he did a great job.

**MR. LEARMONTH:** Yeah.

And it was unusual because a deputy chief of staff in this situation would normally have a verbal communication. Is that correct?

**MR. BALL:** That would be the process.

**MR. LEARMONTH:** Yeah.

So you felt that the statements made by Mr. Murphy were overall reasonable?

**MR. BALL:** Very much. And I think it really, you know, said to me the urgency that the deputy chief of staff, who had some experience – you know, this is an individual who would have come from some work within the oil and gas industry, had been around in government in a previous life. So Mr. Murphy saw this issue as urgent enough and priority enough that he took the time to actually put together this document.

**MR. LEARMONTH:** Yeah.

And in situations, generally, where people usually report verbally and then for whatever reason they report in writing, do you agree that that indicates a very serious issue from the point of view of the person preparing the memorandum?

**MR. BALL:** So this is January 24 so, you know, we had been in government, you know, by now for less than two months. The – you know, what was really interesting about this letter and the summary that he would have shared with me – his views that he would have shared with me –

there was another letter that came from the clerk at the time, Julia Mullaley, similar in nature.

And so when you see two letters, one from your clerk and one from the deputy chief of staff, you know very well that there's a lot of concerns about the information that has been shared with us, and to the point where they want to put that in a letter.

**MR. LEARMONTH:** Yeah and I believe Ms. Mullaley, when asked about that letter that she sent – I think it was January 26 – she said it was unusual for her, in her position as clerk, to write such a letter as opposed to communicate the information generally. So that same consideration applies to Mr. Murphy's letter. Is that correct?

**MR. BALL:** Absolutely.

**MR. LEARMONTH:** Okay.

Tab 63 is Exhibit P-03086. It's an email, February 26, 2016, from your chief of staff, Kelvin Parsons, to you and Tim Murphy. This is a – Mr. Kelvin Parsons's record, memorandum of what was said at a meeting of 3½ – 3-plus hours with Ernst & Young following a Cabinet meeting on February 25, 2016. Are you familiar with this document?

**MR. BALL:** I am.

**MR. LEARMONTH:** Yeah. I won't take you through all the contents of this but what, if any, effect did this memorandum have on your understanding of the depth of the problem at Nalcor and, in particular, with Astaldi?

**MR. BALL:** So by now, February 25, you know, obviously we're getting a better grasp on what the impact of Astaldi was having on the project. And so this information, this letter, this summary, once again, was put together because there would've been a follow-up call with the CEO, Ed Martin, and that I would give him a debrief based on the meeting that I had with EY.

And at this point we're still talking about a negotiating strategy, a negotiating mandate and my view was, you know, that I did not want Ed Martin to be the only person negotiating on behalf of Nalcor with Astaldi. What I wanted

was someone else in the room. In my view, he would've been the architect of the contract that would've been put in place with Astaldi.

So we're now talking about how we get beyond and how we support Astaldi, if an agreed – if, indeed, this was the agreed-upon approach. And so, right now, this would've led to a discussion that I would've had with Ed Martin about a negotiating strategy which would lead into a mandate.

**MR. LEARMONTH:** All right.

On page 2 of this document, the fourth paragraph says: "EY's estimate is the problem with Astaldi is in the range of \$600-\$800 million. Nalcor has been referring to a \$650 million issue."

So just to get back to the earlier point that you touched on that, originally, when you formed your government, your thought was it was \$200 million, and now we're seeing a figure again of 600 to 800. And then it says: "Nalcor has been referring to a \$650 million issue."

These are quite – there's quite a big swing in these numbers, is there not, particularly from the \$200 million that you were first advised?

**MR. BALL:** It sure is.

**MR. LEARMONTH:** And what, if any, impact did that have on you, this big swing?

**MR. BALL:** So, by now, February 25, as I said, you're really starting to question what's happening with processes, what's happening with transparency, what's happening with due diligence. And so, as I said, if indeed the agreed-upon approach would be to continue to work with Astaldi – is – I was, you know, now past the point where Nalcor would be doing this on their own.

**MR. LEARMONTH:** All right.

And there's a – from the third paragraph from the bottom on page 2, it says: "Not only was there no Management Reserve included in the budget, Nalcor's view is the amount of money available for the MF project is unlimited given

that Nalcor believes Government will provide whatever funding is required. That has been the practice and experience until now."

Did that expression cause you any concern?

**MR. BALL:** Well, it did. I think most people, when you look at major project development, you know, there's always, you know, contingency funds that would be available, you know, to deal with some unforeseen increase in costs or so on. But this, once again, was – and I guess I was reminded at the time, too, back prior to sanction when we were all told that there was a lot of planning, a lot of due diligence that went in – that had gone in place to prepare for this project to be successful.

So, now, I'm finding that simple things like contingency funds and so on, that these kinds of normal processes were not in place.

**MR. LEARMONTH:** Yeah, yeah, yes.

And I know that there's a number of documents that have been prepared dealing with your press releases when you were leader of the Official Opposition before the December – November 30, 2015, election. And is it correct, when I read through those, that you had a continual concern about transparency and cost and schedule when you were leader of the Official Opposition?

**MR. BALL:** You know, I did and even at one point, you know, I'd asked for, you know, sort of to convene a special hearing within the House of Assembly where people have actually provided information on the project would be brought to the House of Assembly so that they could be – their questions could be asked.

You know, that, of course, didn't happen. And this would have been all part of sanctioning because you're – for me the view was if we – if this project goes over budget, it's always going to be borne on ratepayers within our province. And, you know, at the end of the day that was the most important thing to me was making sure that those costs would be as low as possible, that we could get this, you know, project completed without having significant impact on rates.

**MR. LEARMONTH:** Okay.

On page 3 – 5 of this exhibit, P-03086, at the bottom it says: “**Premier’s Follow-up Call with Ed Martin – Premier to provide debrief.**” So there was a recommendation that you call Ed Martin. Did you accept this recommendation and call Mr. Martin, to the best of your recollection?

**MR. BALL:** Yes, I did.

**MR. LEARMONTH:** Okay. What did you say to Mr. Martin?

**MR. BALL:** Well, at this point, you know, we were – again, we were talking about a negotiating strategy. And I had asked him, you know, to prepare a negotiating strategy but, once again, reiterate it to the point that when the negotiations, if indeed they were to occur, that Mr. Martin would not be doing this by himself.

**MR. LEARMONTH:** All right.

And was it your view – I know – it’s clear from reading this – that exhibit I just left that EY was concerned that this problem had been around for 12 months or 18 months, and that there was no plan provided by Nalcor to deal with this in a fulsome manner. Was that part of the concern that you had also?

**MR. BALL:** I was concerned about that. I was also concerned of the fact that we’re actually putting money on the table. There was no validation of any claim that would’ve been required. We were told that there was a solid contract in place, so my view was if you’ve got a solid contract in place, you know, why are we talking about money when there’s actually no claim in place by Nalcor?

So there was a number of concerns for me but, you know, this is just a few of the points that I was constantly reminding Mr. Martin of.

**MR. LEARMONTH:** And Mr. Stan Marshall, I think, made it clear in his evidence that notwithstanding the fact that there was a, you know, a contract that favoured Nalcor, in terms of their discussions with Astaldi, that the problem was that Nalcor was out of money and that the parent company in Italy was in – was undergoing restructuring. So –

**THE COMMISSIONER:** Astaldi was out of money.

**MR. LEARMONTH:** Astaldi, right.

And – so was that your understanding, there was a problem that there was just no money, regardless of the strength of the contract?

**MR. BALL:** My understanding was no one was talking about insolvency, except for Ed Martin. You know, any conversations, you know, that, you know – or feedback that I would’ve been given, it was about the insolvency of Astaldi. But what we wanted to focus on was a contract that was in place and the fact that, you know, on December 4 one of the opening comments would’ve been that we have a solid contract.

So, you know, why is that we’re putting and talking about – with this kind of money and hundreds of millions of dollars that we would be putting on the table when we don’t have a claim. So that was – you know, once again, going back to the negotiating strategy and mandate that I keep referring to.

**MR. LEARMONTH:** Yeah.

And in addition to the work that EY had been doing on this review of the cost and schedule, is it correct that there was a separate retainer of EY to advise government specifically on the Astaldi problem?

**MR. BALL:** Yes.

**MR. LEARMONTH:** Yeah, okay.

Next, please turn to tab 64, which is Exhibit P-04295. This is a February 28, 2016, email from Tim Murphy to Paul Hickey, who was a partner at EY.

It says: “Paul – FYI, Minister Coady, Kelvin and Ed will be having a courtesy meeting with the Italian Ambassador and Astaldi reps on Tuesday, March 1.

“Tim.”

Were you aware that a meeting took place and present were the Italian ambassador to Canada? He flew down from Ottawa and met with



Minister Coady and others. Were you aware at the time that that meeting was taking place?

**MR. BALL:** Yes, I was aware.

**MR. LEARMONTH:** And what did you think of it?

**MR. BALL:** Well, it's – you know, it's not – well, I mean, the ambassador did, as a courtesy, stop and visit, you know, did come to see me as well. So it's not unusual for when the ambassadors are in town that they would meet with the Premier and, you know, we'd chat about, you know, the country that they represent; I would chat about our province.

In this particular case here, I think the Italian ambassador was motivated to come and talk about Astaldi and, you know, took the liberty of actually, from my understanding, you know, talk about how the relationship could be impacted. You know, even the national relationship could be impacted between Canada and Italy, based on this Astaldi contract on – for Muskrat Falls.

**MR. LEARMONTH:** Well, did the intervention, if you want to use that term, of the Italian ambassador have any bearing on the government's position on the Astaldi problem?

**MR. BALL:** No.

**MR. LEARMONTH:** No, okay.

And you weren't present at the meeting, is that correct?

**MR. BALL:** Not present at this one, but I did meet – he did drop by the office and I did have a chat with him there. And he did remind me, too, about how important this contract was. You know, what is interesting in this, just a few days after, I was with one of my staff and we were checking in for a meeting in Toronto, and the Italian ambassador just happened to be in the lobby and, once again, took the opportunity to remind me of how important this contract was, you know, to his country.

**MR. LEARMONTH:** So was that a coincidental meeting?

**MR. BALL:** It was – I found, given the time of the day, it was probably not coincidental.

**MR. LEARMONTH:** Thank you.

Tab 66 is Exhibit P-04297, March 4, 2016, email from Siobhan Coady to Kelvin Parsons. It says: "Hi Kelvin

"Ken Marshall, Chair of Nalcor, has sent another updated document that he wants printed" et cetera.

Now, you said that you were dealing with Ed Martin around this time. Was Ken Marshall, then chair of the board, also involved in discussions about the Astaldi problem?

**MR. BALL:** Not so much about the Astaldi problem. There would've been conversations that the chair would've been involved in about Astaldi, but not to the degree that the CEO Martin would've been involved in.

**MR. LEARMONTH:** Okay.

Now, I mentioned Mr. Martin. Where there any other persons at Nalcor who were involved in discussions with the government about the Astaldi problem from the time you took – your government was formed, until the departure of Mr. Martin on April 20, 2016? Was it just Mr. Martin or were there others who, from time to time, were involved in these discussions?

**MR. BALL:** In the December 4 meeting, if I remember, there were – there would've been officials from Nalcor in that meeting during transition. And from time to time I remember maybe a couple meetings when other staff members would've been there with Mr. Martin.

**MR. LEARMONTH:** All right.

But Mr. Martin was the main spokesperson. Is that correct?

**MR. BALL:** Yeah, it is.

**MR. LEARMONTH:** Tab 67 is Exhibit P-03364. Can you confirm that this was the first draft of the interim report on EY on the – on its review of the project cost schedule and related risks?

**MR. BALL:** Yes.

**MR. LEARMONTH:** It's the first draft? Yeah.

Did you discuss this first draft with Nalcor at this time?

**MR. BALL:** I can't remember but I can't imagine that we would not have. This would've been something that we would've shared with Nalcor at the time.

**MR. LEARMONTH:** Yeah.

Now, we've gone through – there are some items that are of some considerable concern in this report. Do you agree?

**MR. BALL:** I do.

**MR. LEARMONTH:** Yeah. So did that have any effect on your understanding or level of concern about the situation at Nalcor?

**MR. BALL:** You know, I think by now, you know, we knew that the reasonableness of the cost and schedule, you know, would be impacted. The quantitative risk analysis we refer to here, you know, was important. So, by now, I think, given the fact that we've been dealing with this for a few months, you know, not overly surprised, you know, with the conclusion or the concluding comments in the recommendations, but yet, you know, still disappointed that this information would not have been publicly shared prior to this.

**MR. LEARMONTH:** All right.

Tab 68, Exhibit P-03589 is a Briefing Note, Confidential and Commercially Sensitive. It was prepared by Nalcor as indicated on page 4 on March 7, 2016.

The title is: "Implications of Cancelling or Significantly Delaying the Muskrat Falls Project." I take it that at this time, in March 2016, government was considering the option of either cancelling or significantly delaying the Muskrat Falls Project. Is that correct?

**MR. BALL:** You know, I think when we made comments we wanted to make sure we explored as many options that we had available: you

know, splitting up the project, just finishing the transmission line, leaving the generation and so on. You know, but we knew, or I felt at least, that there really wasn't much of an option once the project was sanctioned, given the, you know, the legal commitments that have been made, the commitments that had been made to Emera, the federal loan guarantee being in place, also the money that was spent already.

And not all the money that was spent or committed was actually, you know, at the project site. Some – there was some work that was being done in other countries. And the fact is the reliability if – we had seen and experienced DarkNL so reliability within the system, you know, was obviously a problem as well.

So shutting the project down with, you know, billions of dollars spent and committed, legal agreements in place with Emera was not seen to be an option.

**MR. LEARMONTH:** And what about the covenants in the federal loan guarantee documents whereby Ottawa would have, if the government had discontinued the project –

**MR. BALL:** Yeah.

**MR. LEARMONTH:** – had the right to come in and complete the project and then send the total bill to the province.

**MR. BALL:** Yeah.

**MR. LEARMONTH:** Did that have any bearing on your decision?

**MR. BALL:** Of course it did.

**MR. LEARMONTH:** Yeah.

**MR. BALL:** Yeah.

**MR. LEARMONTH:** And we see on page 5 of Exhibit P-03589 there's reference to page 5 to 19 of this document which has been redacted. And these were legal opinions so you – can you, without going into any of the details of what is said in the legal opinions, can you confirm that the government sought legal opinions as well as

made a, you know, a business judgment on this matter?

**MR. BALL:** I think some of the legal opinions that we're talking about there – not quite sure to what extent they were, but I think they would've been done by Nalcor at the time –

**MR. LEARMONTH:** Right.

**MR. BALL:** – but I'm not quite sure. But I think, you know, with the opinions and given the commitments, and the legal requirements and the legislative requirements that were put in place, I think most people would agree that, you know, once we got past the sanction and now we're into a point where there's billions, you know, committed, it would've been very difficult to turn back.

**MR. LEARMONTH:** Yeah.

And Stan Marshall, when asked about the possibility of cancelling the project or making a recommendation, he said he looked at it, but he thought – he came to the conclusion very quickly that it wasn't really an option. Did you – was your assessment of the situation along the same lines as that of Mr. Marshall?

**MR. BALL:** It was.

**MR. LEARMONTH:** Thank you.

Tab 69 is Exhibit P-03834. This is a Summary of EY Interim Report, March 2016. So this is just a summary of the report that I referred to in an earlier – earlier.

If we go to page 9 of Exhibit P-03834 we see that this presentation was received by the clerk of the Executive Council. Approval was given to release the EY interim report.

So do you know whether this report went to Cabinet or whether it just stayed with the Executive Council and that the only thing done with it was an approval to release it to the public?

**MR. BALL:** Yeah, well, I would expect with the MC there that this is something would've went to Cabinet.

**MR. LEARMONTH:** Okay.

Why did you feel that it was necessary to release the report to the public?

**MR. BALL:** When we – so this would've been the – okay, this – okay, this would've one – this would've been the report that on December 21, if you remember, we talked about was started by the Oversight Committee. I think this is the report that we're referring to?

**MR. LEARMONTH:** No, I think this is the final report, the next report.

**MR. BALL:** Okay, so this would've been the one that we had started –

**MR. LEARMONTH:** Yeah.

**MR. BALL:** – around – yes, of course.

**MR. LEARMONTH:** Yeah and I referred you to the draft dated March 2016 –

**MR. BALL:** Yes.

**MR. LEARMONTH:** – there.

**MR. BALL:** Yeah.

**MR. LEARMONTH:** Yeah.

**MR. BALL:** So, you know, our intention, when we started this process in December 21, would be to release this publicly so there was information. I mean, going through this exercise, which would've been like over three months at this point, it was – there was always mention about with – particularly with EY, there seemed to be a resistance in actually getting information. And so –

**MR. LEARMONTH:** From Nalcor?

**MR. BALL:** From Nalcor and –

**MR. LEARMONTH:** And EY had expressed that point to you?

**MR. BALL:** They did. And, you know, they talked about governance issues, they talked about the reasonableness of the cost and the schedule and the associated risk. And, you

know, there was almost a view that, you know, the – that there was unlimited money from government.

We did hear words and comments that would've come back and that, you know, if you questioned, you know, the – Nalcor, is – there was almost a view that, you know, we know this best and, you know, we don't need another consultant to come in and actually take a look at our work. So we had made a commitment back when we started this process that, indeed, we would release whatever information we had about this report publicly.

**MR. LEARMONTH:** Why do you think it's important to keep the public up to date of matters such as this?

**MR. BALL:** Well, it's about transparency and I think, you know, EY had been involved. You know, we didn't bring EY – EY had been involved in the Oversight Committee for quite some time prior to even the government change, so we just continued on the work that was being done and making sure that we get this information out there publicly.

**MR. LEARMONTH:** All right.

Tab 70 is Exhibit P-04298. This is a document that was prepared by Minister Coady and sent to you on March 11, 2016. And on page 2 we see it's entitled memo to the Premier, re Muskrat Falls options.

At this time were you seeking opinions from Minister Coady as to what options existed for the Muskrat Falls Project?

**MR. BALL:** Not seeking options, but of course we had a close relationship and working relationship with Minister Coady and I think this really illustrates the level of frustrations. We're now into, you know, four months and this really represents, I think, the levels of frustrations that you're seeing with the department and she would've been working with this very closely, very priority for her, and these were changes and some suggested changes that she was recommending.

**MR. LEARMONTH:** Yes. And you considered them, did you?

**MR. BALL:** Oh, yes.

**MR. LEARMONTH:** Yeah.

Tab 71, is Exhibit P-04329. It starts off at the top with an email from James Meaney – he was the vice-president of finance for the – in some particular capacity for the Muskrat Falls Project – Power Supply I think it was – anyways, to Derrick Sturge who was the CFO. And then in the middle – go a little bit down on page 1 – there's an email from Paul Harrington dated March 16, 2016, to James Meaney, copied to various individuals in Nalcor – at Nalcor.

Now, on page 2 of this document – well, actually on page 1 there's a reference to the fact that – he says, "We met with the Premier, minister Coady, Julia and the chief of staff group with EY (leather, Hickey, Calver)," they were representatives.

And then Mr. Harrington says on page 2, the second paragraph: "Quite frankly I saw the Premier looking hard at Leather during his attempts at justifying the report and the statements in it and I believe that Leathers stature was reduced in his eyes. Ed was direct, respectful and totally professional and laid out the rationale for the management response, which was kind of understood by the minister but it was clear that there was a distinct gap between opinions of EY and Nalcor that would be problematic."

So Mr. Harrington is making the observation that, I guess, you had concerns with Mr. Leather's comments at this meeting. Can you comment on Mr. Harrington's observations as he states it in this email?

**MR. BALL:** Well, one of the reasons why we were in this meeting was – once again, was making sure that both EY and Nalcor were sharing information. And the comments that were made by Mr. Harrington about Mr. Leather certainly did not reflect my view of Mr. Leather. He came in as part of the EY team and so he was doing his job with EY, but to say that he was lowered in stature was certainly not something that was on my mind at the time.

My job in that meeting, as Premier with EY and Nalcor in the room, was to challenge both

groups – challenge the officials there from Nalcor and from time to time I would challenge EY as well to make sure we got to a good decision. But the stature of Mr. Leather was not reduced by any body reaction or – so the comments here, I guess, (inaudible) get to the point that Mr. Harrington makes was – did not – was not indicative of the –

**MR. LEARMONTH:** Right.

**MR. BALL:** – of my feelings about –

**MR. LEARMONTH:** And if we go to page 1 of that document, this – Mr. Meaney is saying in his last sentence of this, “Apparently Leather from EY was way out of line....”

What would you say about that observation?

**MR. BALL:** For me it’s – I would challenge both groups there. If someone makes a comment that I thought was out of line, well, I’d call them out on it. But I can’t remember anything that Mr. Leather would’ve said that was way out of line.

**MR. LEARMONTH:** Did you have confidence in Mr. Leather?

**MR. BALL:** I had confidence in the group of EY that were doing the work and –

**MR. LEARMONTH:** Yeah. Yeah.

**MR. BALL:** – so he was part of that team.

**MR. LEARMONTH:** Yeah. Okay.

And then on page 2 – just turning back to page 2 – there’s an email – of this document – March 16, 2016, 9:38, James Meaney. He says: “Do we really want to be in the same room with these guys tomorrow AM when GNL releases their report and the media gong show ensues....might be tempted to tell them to go,” F-A-R-K, “fark themselves.” That’s fairly strong language. I think “fark” is a substitute for a more descriptive, four-letter word. But, anyway, it says “fark.”

Was this comment reflective, in your assessment, of the attitude that Nalcor had towards EY?

**MR. BALL:** My experience given – you know, being in the room by – at this point three or four times when EY and Nalcor officials would’ve been in the room at one time, it was – seemed to me I was always constantly having to remind the officials at Nalcor to share the information; that EY is really an extension of government and we’ve asked them to go in and do this review of cost and schedule and associated risks.

So they’re an extension of us and it seemed to me I was having to constantly remind people at Nalcor at the time to share the information, to work with them, to co-operate with them. And, once again, reminded them that this group is in there, if you’re proud of the work that you’re doing, this will only validate the work that you’re doing.

And I think at this point I would like to say there’s a lot of good people that work at Nalcor. There’s a lot of good people that work on that project, and I know many of them. But at the executive level, we were not seeing the level of co-operation with consultants, you know, that I would’ve liked to see at the time. And so I was constantly reminding people to co-operate and if you’re right, this will validate your work.

**MR. LEARMONTH:** Right.

Tab 73, which is Exhibit P-04300. This is March 18 – we’re moving along now – from Minister Coady to you and others in government.

Minister Coady writes: “Good evening all -

“I think this letter to Astaldi better reflects on discussions of the other night and resets the tone. I spoke with Ed earlier this evening and he seemed accepting of EY’s involvement - even if it took a while to get there.”

So do you agree that at this point that at least Mr. Martin was – seemed to be accepting the reality that they – that, you know, EY was a legitimate participant in this process?

**MR. BALL:** I did. I think you – we’re finally getting to the point now where we’re talking about how a discussion should occur with Astaldi and, you know, Ed was of the view, you know, throughout all of this that he wanted to come with money, and we were at the view: You

said you've got a good contract in place, you know, let's – there's no claim, make them justify the claim, validate the claim. And that's what this letter is all about.

**MR. LEARMONTH:** Yeah.

At some point in his evidence, Mr. Martin said that he had received, I'll say, a mandate to negotiate and that there was a fixed amount that he had – there was a limit to it, whether it was \$400 million or \$500 million, I'm not exactly sure – but that he had been authorized by government to settle, and that he felt that he had the authority to settle for whatever amount was given to him. But he did say, in fairness to him, that he wouldn't have accepted – he wouldn't have settled without going back to government to get confirmation or reconfirmation.

My question is: At any time before Mr. Martin's departure on April 20 did you or anyone else in government, to your knowledge, give authority to Mr. Martin to settle a claim – the claim with Astaldi for a certain amount?

**MR. BALL:** No.

First of all, it was a number that we – that Mr. Martin could never say would solve the problem. And, as I said earlier, we could've put any number there. There was no indication that this would solve the Astaldi problem at the time. And so this all started – and, you know, my concern was – and I expressed my concerns to Mr. Martin at the time – that you had negotiated this contract in the beginning, you were the architect of the contract. So I had concerns of putting in – putting the same person in the room to negotiate an amendment to the contract without giving us any indication that you could actually solve the problem with an unlimited amount of money.

So I always said, first of all, you could be in the room, you could be leading those discussions but there must be other people in the room. So share with us your negotiating strategy and, from that, a negotiation mandate would be put in place, and we just never got there.

**MR. LEARMONTH:** Yeah.

Because Mr. Martin also said that there was a point when he was actually sitting down at a table and carrying out negotiations with Astaldi when he got a phone call from someone in government telling him to stand down, to discontinue negotiations. Can you give us any information on that – the evidence that Mr. Martin gave on that point?

**MR. BALL:** I'm not aware of any phone call that would've been given to Mr. Martin. I would question, however, if he was in negotiating without a mandate.

**MR. LEARMONTH:** Right.

He would've been because he didn't have a mandate.

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

**MR. LEARMONTH:** Yeah.

Tab 74 is Exhibit P-04301. Now, this is an email from Ed Martin to Julia Mullahey and Minister Coady, copied to others at Nalcor. It refers to, on page 2, a draft letter to – from the Muskrat Falls Corporation to be signed by Ed Martin to Filippo Stenillis, Astaldi S.p.A – that's the parent company. So I guess at this point Mr. Martin was sending a draft for government's comment to see whether it was appropriate to send it out. Is that correct?

**MR. BALL:** Yes.

**MR. LEARMONTH:** Okay.

Okay, well now – binder 2 now, Mr. Ball, at tab 1, Exhibit P-01984. Can you confirm that this was the final version of the report of EY on the project cost schedule and related risks review?

**MR. BALL:** What was the tab number again?

**MR. LEARMONTH:** Tab number 60 –

**THE COMMISSIONER:** Tab 76.

**MR. LEARMONTH:** – 76.

**MR. BALL:** Seventy-six?

**MR. LEARMONTH:** Yeah.

We referred earlier to a March draft.

**MR. BALL:** Yes.

**MR. LEARMONTH:** Can you confirm that this was the last report they sent?

**MR. BALL:** Yes, it is.

**MR. LEARMONTH:** It is? Okay.

Tab 77, Exhibit P-03368, the second – this is an email from Paul Hickey, a partner at Ernst & Young, to Tim Murphy and others at EY. This is an internal document; it wasn't sent to government. But in the bottom of page – the second to last paragraph on page 1, Mr. Hickey states, "Our perception is that Nalcor won't allow EY to be involved in the Astaldi matter as directed by the Premier. We are concerned" about now – this suggests that – well, may suggest that Mr. Hickey is saying that you were directing Nalcor to allow EY to be involved but Nalcor was resisting that, or, you know, resisting that recommendation if that's what he intended to say. Is that correct?

**MR. BALL:** It seems to me when you read his words there that is what he was intended to say.

**MR. LEARMONTH:** But is that a correct observation?

**MR. BALL:** You know, there was no doubt that, you know, from both Mr. Martin and from EY over the course of these, you know, these few months I would have heard from both parties. And there was a sense that was kind of a common theme throughout all of this is that there was a resistance within Nalcor to work closely with EY even though they were directed and asked, you know, by us, by government, to go in and do the review.

**MR. LEARMONTH:** All right.

Tab 78 is Exhibit P-03453. This is a release from the Department of Finance April 14, 2016 entitled 2016 Budget Speech Restoring Fiscal Confidence and Accountability. If we turn to page 5, there's a discussion about Nalcor.

Now, we've heard from Minister Coady that she didn't become aware of this – of the contents of

this release until the morning of April 14 when it was about to be released and that she was surprised that there were comments about Nalcor and that these comments had not been run by her for her comments before the document was prepared.

Do have any recollection of that?

**MR. BALL:** I do simply because she – you know, we had this discussion after this. I was aware of the Budget Speech. Now, there was a number of iterations that would have been passed through Finance. I can't say for certain that I had seen every single iteration of the Budget Speech prior to the announcement. But I think in this particular case here, I mean I think it's fair to assume and say that, you know, one minister – you know, if there was something in there about a specific department, it wouldn't have been unusual to actually share that information. And neither is it unusual for a Budget Speech to be delivered and not everyone is acutely aware of every single line –

**MR. LEARMONTH:** Yeah.

**MR. BALL:** – that would be in the Budget Speech. But I think in this particular case, this was our first budget and I think sharing the information with the appropriate minister, like Minister Coady, at this time would not have been inappropriate.

**MR. LEARMONTH:** So Ms. Coady's reaction was reasonable in your opinion in all the circumstances, since the Department of Natural Resources was the department to whom Nalcor reported or to which –

**MR. BALL:** And, you know, we would've been expected to respond publicly, you know, prior to –

**MR. LEARMONTH:** Yeah.

**MR. BALL:** – or after the Budget Speech for sure. So anything, you know, that would've been in the Budget Speech like this related to the department would've been fair, I think, to have those discussions.

**MR. LEARMONTH:** Now, Ms. Coady also said that this – the release of this information

and other releases about the budget triggered a very, you know, a very firm response from Mr. Martin. Apparently, he was out of town and he called Ms. Coady at her home number and expressed great concern. He was upset about this information going into the public.

Did Minister Coady advise you that she had received this reaction from Mr. Martin?

**MR. BALL:** I was aware of that, and, you know, when I look in the context of the statement here that was made by – that was made about Nalcor in context of 2016 budget –

**MR. LEARMONTH:** Yeah.

**MR. BALL:** – I would think those comments would've been pretty mild given the impact that it was having on the province. So I think it was a little overly sensitive –

**MR. LEARMONTH:** Yes.

**MR. BALL:** – you know, given the state of the affairs within the province and within Nalcor. So the expectation here was, you know, just to bring Nalcor in line to some of the expectations that we were seeing in other areas of government.

**MR. LEARMONTH:** All right.

Tab 80 is Exhibit P-00408. This is an email from Ken Marshall to you and others, Minister Coady, April 20, 2016, 8:55 a.m.

Now, before I ask you to comment on some of the contents of this email, I'd like you to give us, in summary form, your recollections of meetings and discussions which you had with Ed Martin prior to April 20 dealing with his – which finally resulted in his departure.

Now, we have – we know that there's a report of the Auditor General and I'm not going to suggest that we get into a rehearing of all the circumstances because that report was accepted by government, so – but I would just like to have your take on the discussions that ensued between you and Mr. Martin prior to April 20.

**MR. BALL:** Yeah.

So, this is April 20, Wednesday morning, of course, and after the budget in the previous week, Mr. Marshall had reached out to me, as he did to the minister of Finance, at the time, and the Minister of Natural Resources, and he reached out to me and it was the CEO, Mr. Martin, that was requesting a meeting.

I understood he was out of the province, and so we decided that we would actually meet on Sunday evening, and so I met with the CEO, along with Minister Coady and our chief of staff on April – that would've been the 17th. And so that was a meeting then and he was concerned about comments in the budget, amongst some other things, on the evening of April 17.

**MR. LEARMONTH:** All right.

And was your next meeting with Mr. Martin before April 20?

**MR. BALL:** Yeah, so coming out of the meeting on April 17 we had a frank discussion, a respectful, I would say, professional discussion. And at that meeting there was no doubt that Mr. Martin was concerned about some of the things that he'd heard about Nalcor. And the discussion was along the lines, you know, that he was asking me to publicly support Nalcor and his leadership as CEO.

He had said also he could leave and the third thing that we discussed was he could actually stay a year and we'd get into some kind of transition. So now we're talking about parting ways and there was an ultimatum and I felt that this is where it was going if I did not publicly support and that's not something – I made it quite clear – that I was prepared to do. The words and language that it would've – I would've used in the meeting, that I'm not prepared to be the cheerleader for CEO – or for the CEO or for Nalcor at this point.

So we agreed. What I asked to do was take this away and would – that we would then meet again on Tuesday, April 19. And that was the second meeting that I had with Mr. Martin.

**MR. LEARMONTH:** And what transpired at that second meeting on April 19?



**MR. BALL:** That second meeting on April 19 – once again, we just revisited the – and summarized what happened on Sunday night. And that I made it quite clear that I was not going to be the cheerleader that he was expecting me to be for him or for Nalcor at this point, that we did have some serious issues that we needed to work through and that we agreed that he would step down as CEO of Nalcor the following morning.

**MR. LEARMONTH:** Yes.

Now, we know that on April 20 there was an arrangement in place whereby Mr. Martin had a press conference at Nalcor's office and you and Minister Coady had a concurrent press conference at the Confederation Building. And that Mr. Martin apparently said he was stepping down for personal reasons or something along those lines, and that – and then you – at your press conference, you indicated simply that he was stepping down.

Now, as I said, we're not going to go into all the details of this, but all these circumstances are dealt with in the report of the Auditor General, which is filed at P-0406. And will you confirm – I think I mentioned it earlier, but can you confirm that government accepted the conclusions of the review of severance prepared by the office of the Auditor General dated February 2017?

**MR. BALL:** We did.

**MR. LEARMONTH:** Okay.

**THE COMMISSIONER:** What was that exhibit number again, Mr. –

**MR. LEARMONTH:** It was at Exhibit P-04306 and it's at tab 84.

Now, returning to this exhibit that I mentioned earlier, which is at tab 79, P-00408, this is an email from Ken Marshall. And in the second-to-last paragraph on page 1 he says: "Third, the Board will be discussing an en masse resignation in light of these matters."

Were you aware, before you received this email from Mr. Marshall, that the board of directors had decided to resign en masse in light of the

matters presumably at perception that government didn't support Nalcor or the board? Were you aware of this or did this take you by surprise?

**MR. BALL:** I was not aware that the board would be resigning en masse.

**MR. LEARMONTH:** Okay.

So you were surprised then?

**MR. BALL:** I was surprised. I mean these people are – you're in place to, you know, to do some work on behalf of the people of the province, and the fact that they would step down en masse was a surprise.

**MR. LEARMONTH:** Okay.

And prior to April 20 had you been engaged in any discussions with Stan Marshall about him replacing Mr. Martin as CEO? And, if so, give us particulars of those discussions.

**MR. BALL:** So, I know Stan Marshall from a professional sense in his work at Fortis over the years. I did meet with him as leader of the Opposition, but I really didn't know him as – you know, as an individual, except for the work that he would do – that he done within Fortis.

So I did reach out with him weeks prior to this and ask him – he was out of town, I was out of town and we were, you know, trying to get together to have a discussion. And coincidental in all of this – and it really it is a coincidental meeting because that meeting was set up for April 18 in my office. And so, at that point, I was talking about governance, I was taking about, you know, what would happen, some of the things, advice, suggestions, that he would have been able to provide to me.

And so we had a discussion and I did take the opportunity to talk about, in the meeting that I had the night before, not in detail, but if in fact if we needed a new CEO, what his thoughts would be, and if indeed if he knew of anyone. Given the fact he had considerable experience in the utility business, given his years there with Fortis, if indeed it was anyone that he would know that might be of interest and had the expertise, if indeed we needed a CEO.

So there was no decision at that point made to move out Ed Martin, but I wanted to have a chat with, you know, Mr. Marshall, at the time –

**MR. LEARMONTH:** Yes.

**MR. BALL:** – about that.

**MR. LEARMONTH:** Okay, was that just a discussion that led nowhere or were there any conclusions reached or agreements reached?

**MR. BALL:** So he said – yeah, so he said he would think about it. And so I did call him back that night, knowing that, you know, there was another meeting coming – I had no idea what would happen the following night – if we could actually come to a resolution with Mr. Martin or not.

So I did ask him. I called him back on that – the 18th to 19th or that evening of the 18th, and I asked him if he had thought of anybody and he said he couldn't think of anybody that would be in a position to do this. So I asked him – you know, you've had a good life in this province, the province has been kind to you and I asked him if this was something that he would consider.

He did think about it and I said: You know, if I need a new CEO, is this something that you would think about? And he said, yes, this is something he would think about and would probably do.

**MR. LEARMONTH:** Okay and then after Mr. Martin stepped down or departed, then you arranged for Mr. Martin [sp. Marshall] to take over as CEO.

**MR. BALL:** I had another conversation with Mr. Marshall and then we agreed to make arrangements to put him in as the incoming CEO of Nalcor.

**MR. LEARMONTH:** All right.

Tab 85 is Exhibit P-04307. This is a submission to Cabinet re: "Additional Federal Loan Guarantee for Muskrat Falls" Project. The issue, which is stated on page 1 of P-04307, is: "Whether to approve an additional federal loan guarantee agreement for the Muskrat Falls

project, extending the guaranteed debt by \$2.9 billion and providing partial relief on the cost overrun escrow account (COREA) payments."

So why was it necessary for government to go back to Ottawa and ask for a further federal loan guarantee at this time?

**MR. BALL:** Yeah, so, at this point, what we had in place was a federal loan guarantee of \$5 billion and this would – this was used to support debt.

**MR. LEARMONTH:** Okay. So you needed more money and you needed it at a better interest rate.

**MR. BALL:** Yeah. This would have given us a guarantee.

**MR. LEARMONTH:** Okay. And it was – just for those who are interested, on page 53 to 58 the orders-in-council has confirmed these arrangements with Canada were issued.

Next, I'd like to go to tab 88. This is Exhibit P-00127. It's a June 23, 2007 [sp. 2017], Muskrat Falls Project Update. On page 12, Mr. Ball, there's a – the updated estimate is stated to be \$10.11 billion. To your knowledge, has there been any change in that estimate since June 23, 2017?

**MR. BALL:** No, there's been no change.

**MR. LEARMONTH:** And are you aware of any change that may be forthcoming?

**MR. BALL:** No. The Oversight Committee, they would file reports and – so if you remember back the year previous to this, there was a – it went to 9.1, really, from the 7.65 to \$9.1 billion, but we knew back in June of 2016 that the work had to be done with Astaldi, and there were some other risks that were identified, and this is now all reflected in the June –

**MR. LEARMONTH:** Yeah.

**MR. BALL:** – 2017 update.

**MR. LEARMONTH:** Yeah.

And we know that there were negotiations carried out by Mr. Stan Marshall and his team for the Astaldi situation. We know that on July 1, 2016, there was a bridge agreement and then a final agreement effective December 1, 2016.

Were you kept up to date on the developments of the discussions that led to these agreements, or is it something that Mr. Marshall did on his own after receiving authority from you?

**MR. BALL:** No, I was kept up to date, and I think it's fair to add that in June of 2016, at that update, the project was 48 per cent complete, and in June of 2017, the project is now 75 per cent complete. So, you know, we were kept updated of all the events along the way throughout that year.

**MR. LEARMONTH:** Were you satisfied with the level of reporting that was put in place by Nalcor after Mr. Marshall was installed as CEO?

**MR. BALL:** I am, and so the relationship, you know, with Mr. Marshall was, you know, one if there was risk or something that government needed to be aware of, you know, he certainly made that known to us. And, you know, typically, that – when he came with anything that could be a potential problem, he would have come with a solution. He'd thought it through to the point there would have been a solution that he would have had in mind as well.

**MR. LEARMONTH:** Okay.

Does that approach contrast – or is there any contrast between that approach and the approach that you observed before Mr. Marshall was made CEO?

**MR. BALL:** You know, for me it was –

**MR. LEARMONTH:** Yeah.

**MR. BALL:** – and, you know, right now, when I look at the relationship between, you know, government – in particular, me – I speak as Premier – and, you know, a lot of times you'd be asked, you know, why would the premier be involved? Well, you know, any time you have, you know, nearly 30 per cent of your net debt of your province, you know, associated with one project, it's important that the premier of the

day, you know, kind of have your finger on the pulse.

And so the relationship with Mr. Marshall is quite different. It's – he makes me aware of anything that could be on the horizon in terms of associated risk and, as I said, typically comes with a solution in hand.

**MR. LEARMONTH:** All right.

Tab 91 is Exhibit P-04309.

This is a July 28, 2017, letter from you to Michel Tremblay, SNC-Lavalin. And can you – are you familiar with this letter?

**MR. BALL:** I am.

**MR. LEARMONTH:** Okay.

Paragraph 2, I think, states the – or one of the reasons for writing the letter. Can you just tell us the circumstances that justified your sending this letter to Mr. Tremblay on July 28, 2017?

**MR. BALL:** Yeah. So what I remember about this is if on October the 26th in 2017 we had a very long meeting with (inaudible) Indigenous groups where the formation of the IEAC, the Independent Expert Advisory Committee, dealing with methylmercury.

So, one of the commitments that I had made to the Indigenous groups at that meeting is – because there would've been impoundment that was required – we were told at the time the impoundment needed to happen at a certain level to protect, you know, some of the assets that were currently under development at the Muskrat Falls site. The commitment that I made was in the following year in 2017 in the spring that that water would then be lowered. And so at this point the water had not been lowered, and we were told by Mr. Bennett that there were concerns by SNC-Lavalin, the impact of lowering the water.

Now, going into the meeting with the Indigenous groups I had met with Mr. Bennett. I just didn't go in and make this commitment without knowing this could be done. So I had reached out to Mr. Bennett in the fall of 2017 to see, indeed, if we had this part of our discussion

that this commitment could be met. And so now I was going back to SNC-Lavalin to get their – to get a response from them why it is they were suggesting this couldn't be done.

**MR. LEARMONTH:** All right. And so that was an item of concern for you, obviously, or you wouldn't have written the letter.

Then if we go to tab 92, which is Exhibit P-02625. This is the August 2, 2017 reply of Michel Tremblay.

Did Mr. Tremblay's reply satisfy and properly address your concerns?

**MR. BALL:** Yeah, it did, and what I – one of the things I wanted to make sure would've been around the North Spur – this is not something that was connected to that. He made it clear that it wasn't.

Also, I wanted to make sure that SNC-Lavalin would've been prepared to meet with the Indigenous groups, and they did. And they – I offered up that opportunity. We were able to get the – some of the water released in the impoundment area at that time, so it really didn't become much of an issue after that.

**MR. LEARMONTH:** All right. Thank you.

Tab 93, Exhibit P-03902. This is from Paul Carter, who is the chair of the Oversight Committee, to various people in government. And it attaches at page – starting at page 2, the: "Muskrat Falls Project: Assessment of implementation of EY Interim Report recommendations."

So this was the third report prepared by EY that provided a commentary on whether the recommendations in the second report had been properly implemented. Is that a fair way to put that, generally?

**MR. BALL:** Yes, it is.

**MR. LEARMONTH:** Yeah.

**MR. BALL:** This is a follow-up –

**MR. LEARMONTH:** Yes.

**MR. BALL:** – on the interim report of 2016.

**MR. LEARMONTH:** Yeah.

And it was generally favourable to Nalcor, do you agree?

**MR. BALL:** It was.

**MR. LEARMONTH:** Yeah.

And if we look on page – August – page 32 of this report, August 31, 2017, letter from Mr. Marshall, a very brief letter where he acknowledges the – he says, "The EY report recognizes the good work and the progress completed to date by the Lower Churchill Project team." And that appears to be a fair comment based on the contents of the report. Do you agree?

**MR. BALL:** I do.

**MR. LEARMONTH:** All right.

Now, tab 96 is Exhibit P-04311. This is a document that was sent to Cabinet, as I understand it, and it deals with the formation of the Commission of Inquiry into the Muskrat Falls Project.

Now, first, can you advise why government felt it appropriate to call for this Commission of Inquiry before the project had been completed? What circumstances existed that you felt justified making that decision before the project was completed?

**MR. BALL:** It was something that I'd been thinking about for quite some time. We needed to wait, I felt, until the project was far enough advanced that it really would not have significant interference with the day-to-day activity at Nalcor. So that was something that was considered. I also wanted to make sure that – from the information that, you know, those it would've involved would've been readily available. That – I think if you're dealing with this, I think there's – you know, over time there's always a sense of, you know, recall that becomes an issue with some people.

So given the fact that people were available, that it still would've been fresh in the minds of

people, given the fact this was a public concern and with the project nearing completion, I just felt at the time this was the appropriate thing to do. And I would also say that, you know, we've had a long history of the Upper Churchill and I felt that, you know, many of the details around the Upper Churchill were left for people to fill in the blanks along the way.

I think this Inquiry will identify very specific and very factually, you know, what happened with the Muskrat Falls Project. So I think it's important for – not just for the current environment, but for the history of our province.

**MR. LEARMONTH:** Okay.

Now, Nalcor obtained a report from Westney where there was an estimate that it might – the Commission, being called at the time it was, might add \$135 million to the cost of the Inquiry. And that wasn't based on any – that's just an estimate.

**MR. BALL:** Mmm.

**MR. LEARMONTH:** Did the fact that there might be cost consequences added – cost overruns on the project because of the calling of the Inquiry, cause you any concern? Or were you aware of that possibility when you called the Commission?

**MR. BALL:** You know, of course you think of all of that. And, as I mentioned earlier, it was important that we get, you know, very good, accurate information. And so the timing of this, I think people would – you know, could always question, you know, what the appropriate timing would be.

I just felt that given the project near completion, and given that it would be fresh in people's minds and getting this information done and getting it out there, I think, you know, for us, it was, really, about competence to and making sure that as Newfoundland and Labrador that we actually can do and take on significant projects within our province. But there's lessons that will be learned from the recommendations that will potentially come from this Inquiry.

**MR. LEARMONTH:** Yeah and I think you touched on this but one factor, I would suggest

to you, in favour – there may be many against, but in favour of calling the Commission of Inquiry – was that a lot of the key players on the project management team and so on were independent contractors and – who presumably will be departing after. And they may not be available, or as easily available, should an inquiry take place down the road.

Is that what you were alluding to in your first reply?

**MR. BALL:** Yeah, I think for all of us over time, that our memories – you know, the closer that we are to the subject that we're discussing, our minds are sharper and our ability to recall specific events is – will be expected to be better.

**MR. LEARMONTH:** Right.

Those are my questions, Mr. Ball. Thank you very much.

**MR. BALL:** Thank you.

**THE COMMISSIONER:** All right, I think we'll take our morning break here then, and we'll be in cross-examination after that.

So 10 minutes.

**CLERK:** All rise.

### Recess

**CLERK:** Please be seated.

**MR. LEARMONTH:** If I could just add that, by agreement of counsel, Ms. Urquhart is going to go after Mr. Budden, if that's acceptable.

**THE COMMISSIONER:** Okay.

So, if I forget that, somebody just remind me as we go through.

**MR. LEARMONTH:** All right.

Thank you.

**THE COMMISSIONER:** Thank you.

All right.

The Province of Newfoundland and Labrador.

**MR. RALPH:** Good morning, Premier Ball.

My name is Peter Ralph.

It's nice to speak to you again. I think we meet periodically in my capacity as a lawyer for the Department of Justice. I think it's important that it's understood in this context my job is not to represent you but to represent the government, perhaps best understood by the concept of the Crown.

Now Premier, since you became premier in 2015, obviously, this project has been a preoccupation of your governments, both your governments. Is that fair to say?

**MR. BALL:** It is.

**MR. RALPH:** And I guess it's also fair to say that, perhaps, an inordinate amount of time – of your time and energy of yourself and Cabinet, and your Cabinet, and public officials – has been spent dealing with this project.

Is that fair to say?

**MR. BALL:** Well, since I became premier in 2015, it's very difficult for me to compare it to anything else. It's –

**MR. RALPH:** Right.

**MR. BALL:** – pretty much all I've known since 2015.

**MR. RALPH:** Fair enough.

Now, the focus of my questions will be on the role of the civil service, and I think, you know, that role – some of questions will revolve around the Oversight Committee, and I guess specifically about the purpose of the role of that Committee.

Now, as you know, a hydro megaproject is a very complex thing in terms of design, financing and construction. And, I think it's fair to say that generally speaking the day in and day out work of government and the civil service does not typically involve the design and financing of billion dollar projects.

Is that fair to say?

**MR. BALL:** That's fair.

**MR. RALPH:** That being said, I mean, the government is involved in some of the largest construction projects in the province, outside of the Muskrat Falls Project.

Do you agree?

**MR. BALL:** They are.

**MR. RALPH:** And, I guess, in that sense, we do have some experience with oversight of construction projects?

**MR. BALL:** We would.

**MR. RALPH:** And, as I understand it, within the Department of Transportation, specifically public works, there are officials there who work with architectural and engineering firms to design buildings, roads and other public works.

Do you understand that to be the case?

**MR. BALL:** I do.

**MR. RALPH:** And these officials are responsible for preparing cost estimates for construction projects, and they often, if not usually, do so with the assistance of private engineers and architects.

Do you understand that to be the case?

**MR. BALL:** It is.

**MR. RALPH:** And, in fact, it's often the case that an engineering firm or an architectural firm is retained by government as an independent project manager to oversee construction projects.

Are you aware of that role?

**MR. BALL:** I think that's a fair reflection. I'm not so sure I'd say often, but it occurs.

**MR. RALPH:** Right. So perhaps the more expensive and complex projects –

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

**MR. RALPH:** – an independent person is brought in to oversee the construction. And that person's role will be – would perhaps, in part, be to inform government, as owner, of the risks involved in the project, be it the cost or schedule.

Is that fair to say?

**MR. BALL:** It is.

**MR. RALPH:** Now, with regard to the Muskrat Falls Oversight Committee, I'm going to discuss kind of two roles that – there maybe more but these are two I'd like to put to you. And the first, perhaps, we can describe it as being, largely, a role of communicating – communication between Nalcor and government, and perhaps between government and the public, regarding what's happening with the project.

**MR. BALL:** The Oversight Committee?

**MR. RALPH:** Yes.

**MR. BALL:** Not so sure I would call it communicating.

I think from where the role of the Oversight Committee is exactly that: to supply, you know – to provide oversight on the work that's being done and to issue – like we would see here, and as you would know, there would be a number of bureaucrats that would be involved with the Oversight Committee. And so they also represent the public view, as well, and some of the people we've brought there in recent months have had some experience in some larger projects, as well.

**MR. RALPH:** Fair enough.

You know, yourself, Cabinet Ministers and senior officials are very busy people, and so the job of, I guess, getting information about the project has to be delegated to others in terms of cost risks and schedule risks. And those people, I guess, in turn, come to you and let you know exactly, periodically, what's happening.

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

**MR. RALPH:** Is that fair to say?

**MR. BALL:** That's fair.

**MR. RALPH:** And then they, in turn, put reports regarding what they've learned – they post those on a website for public consumption. It's fair to say? And that's what I mean by, sort of, a communications role.

**MR. BALL:** Sure.

**MR. RALPH:** Now another possible way to, sort of, look at their role, and I don't think this one is an appropriate way of looking at, but perhaps, it's – is considering that the Committee's job is to kind of keep Nalcor's foot to the fire, to make sure Nalcor remains within budget and on schedule. And I put to you that likely is not an appropriate role for the Oversight Committee.

Would you agree or disagree with that sentiment?

**MR. BALL:** I would disagree with some of those comments. I think the – you know, when you look at the chair of the Oversight Committee that we have in place now, previous chairs, you know, they would have had the experience. There would've been people there that would've, you know, obviously represent the public, as well.

So keeping your feet to the fire, I think if you look at a project that has a significant impact, as I've mentioned earlier, quite a few times today, 30 per cent of the net – almost 30 per cent of the net debt of the province, I think. As much oversight, has been my view – that you can have those kinds of oversight along with the checks and balances that should happen with – inside of government, we do borrow a substantial amount of money to support that project.

So, you know, I think some of the people, and the people that we've put on the Oversight Committee are – you know, have the experience to actually provide that level of oversight. And it's like some cases, you just need sometimes someone coming in that are just not so deeply connected to the day-to-day things that happens within an organization will actually get that fresh view – often represents that of the public.

And that is some of the work that we see unfolding at the – with the Oversight Committee. And of course, we had the independent engineer that often meets with our Oversight Committee, and they're there on behalf of the Federal Government as well. So I – you know, I see the role as significant and, you know, we've been able to actually enhance that role quite a bit since 2015.

**MR. RALPH:** Okay. Fair enough.

So, I'm going to read now to you some of Mr. Marshall's testimony – I think it's from July 2 – when we discussed this, as well, during his testimony, the role of the Oversight Committee.

And he said – this is at page 45 – I mean, obviously, government is the sole shareholder of Nalcor, right, and had responsibility with regard to what's happening with this project.

And Mr. Marshall goes: Absolutely. And so the needs are on what the risks are.

And he says: Absolutely. And how those may play out.

And right now that's in large part being satisfied by the Oversight Committee.

And he said, I don't think it's very effective.

In what regard?

I don't think the skills are there; I think they're just relaying on reports from Nalcor, and all they're doing is asking questions and rehashing it.

You don't have the expertise, and I'm not sure at the end of the day that government is going to have to – at the end of the day, the government is going to have to rely on Nalcor, you know. It's like leadership: if the leadership is no good, all else fails. People talk about, you know, corporate governance, you know, look at all the great corporations that have failed; they have tremendous boards and yet they have failed because of lack of leadership. You know, I think I've expressed my views about the way I feel about this.

I think it is absolutely sensible that the government had great oversight of this project; the vehicle has to be something like Nalcor: you know, put good directors in there, directors will need a specialized expertise that they can engage that as special advisors. But it is a day-in, day-out process. You know, whether it is meeting with, you know, deputy ministers or whether Oversight Committee – I mean, the most you're going to achieve that's just ask a few questions and getting the same report coming out of Nalcor. That's my practical point of view.

I said to him: So fair enough. So I see what you're saying is that Nalcor is the – is oversight for the Government of Newfoundland.

Mr. Marshall: Nalcor has to be the principle vehicle of oversight. It has to be.

So government is not going to be in a position to provide effective oversight of that project.

Mr. Marshall: No, not directly, no. It has – I mean, that's why you created Nalcor and that's what Nalcor should bring – should be doing. You have checks and balances; you have an independent board. And the board – independent board, because of the specialized project like Muskrat Falls, that they would normally engage specialized advisors to them.

An interesting sort of perspective on it. Obviously you may not share his, you know, ideas about the Oversight Committee, but it seems to me what he's suggesting is that in terms of oversight, really, effective oversight comes from the board. If you have the qualified people on the board, that's where you expect to see oversight. And I think oversight – what he means in terms of keeping the foot to the fire.

Would you agree with that – with his ideas on that?

**MR. BALL:** I think it's been, number one, leadership is critically important. I think that was a comment that, you know, Mr. Marshall had made. So leadership – it really starts with leadership. That's what sets the tone. The board plays a critical role, and I am – I for one – we put our board through the appointments – through an Independent Appointments



Commission, and the board is providing great oversight.

But that doesn't necessarily mean that outside oversight that we've seen on the Muskrat Falls Project with the group of people that we have there and the experience that we have – and if you look at the chair, this is, you know, someone that would have been around this project from the beginning – the previous chair would have been around this project from the beginning. So this creates the continuity that we have inside our government that there would be no interruptions. We could get an interruption from the chair, let's say, but we have continuity with the Oversight Committee even though the board is there. So I really think that, for me, what this illustrates is the importance and the impact that this project would have on this province.

We would not have these kinds of oversight committees on other infrastructure work that you just mentioned – projects that would happen within TW. But on a project that's having such a profound impact, you know, I see the work of the Oversight Committee to be important. I – you know, obviously they – I meet with them regularly, and the board does a great job, and I think our leader or CEO is doing a great job.

So in my point of view, having those three things working, I think it adds value. If you – I think it would probably speak for itself when you look at the project has been much more stable since we've enhanced the role of the Oversight Committee, added some new people through that. We put in place a full board that's working effectively, and so I think that is reflected on the stability of the project at this point, compared to where it was in the summer of 2016.

**MR. RALPH:** Okay.

And you just used the abbreviation, I think, TW, and I understand that would be Transportation and Works. Is that right?

**MR. BALL:** Yes.

**MR. RALPH:** Okay.

Now, when you came to power, it's fair to say that – this is 2015, when you were first elected –

your government first takes power. You weren't sure if you were being given an accurate picture of cost and schedule from Nalcor. Is that fair to say?

**MR. BALL:** I had questions going into 2015. That is the reason why I wrote the former premier in September of 2015. So I just needed an – that I felt that I wanted an update. We are preparing our own platform. As an example, I wasn't sure on two fronts: one, the Muskrat Falls Project and, secondly, the overall general finances of the province. So, you know, I was wary of what it is we'll be facing if, indeed, the government did change. And, you know, those suspicions were quickly put to rest within hours of, you know, walking into the premier's office.

**MR. RALPH:** Now, at that point, September 2015, the Oversight Committee has been in place for approximately 18, 19, 20 months. The first report was July 2014. And the fact that perhaps you didn't feel like you had an accurate picture of the project when you first came in to power, you know, would that be a reflection of the work of the Muskrat Falls Oversight Committee? Would you consider that to be a failure of the Oversight Committee?

**MR. BALL:** No, I would not consider that – I would not want to put that level of responsibility on the Oversight Committee. I think there was a combination of things. I think when you look at the work of EY, look at the information, you know, that wasn't being shared, you know, publicly, and there's no doubt the Oversight Committee would work within Nalcor. But, you know, since 2015, they've been able to identify, you know, risk and – you know, would make us aware of risks.

So there are a number of components of this, given the change in leadership, the change in the board, a strengthened Oversight Committee. I think those three components has actually stabilized, you know, the project to a large degree. And given the fact, as I will keep repeating, that this project – you must finish strong. This province has a lot at stake in this project, and ratepayers – right now, if we were talking about 23-cent-per-kilowatt-hour rates in this province, I will tell you there would be – a lot of people would be wondering about the

affordability of this province (inaudible) they're living in.

So, you know for me, you know I'm gonna be – I'll be firm in saying that, you know, we've got strong leadership, we've got a new board, an effective board in place, and the Oversight Committee is in a better place. And in order for us to finish strong, I think all those three components –

**MR. RALPH:** Right.

**MR. BALL:** – are essential.

**MR. RALPH:** And the point, I guess, I'm trying to make is, in terms of – well, let's use the example of wanting to finish strong.

And so what would be the committee's responsibility there? I understand that, you know, they are identifying risk, they're sharing that with government. But in terms of making sure things are going okay on the ground, for example, with regard to GE Grid or whether things are happening appropriately at the site, I mean, there's a very limited role, I'd suggest, with regard to the committee. Is that fair to say?

**MR. BALL:** No. You know, I meet with this committee on a regular basis. and, you know, regardless of how strong the leadership is, if it's the leadership within your premier, the leadership within CEO – the CEO of Nalcor – and regardless of who that is, I'm gonna make sure that I'm in a position to challenge whoever the CEO is, of Nalcor, and I would do – be no different, you know, quite frankly, with some of the other agencies as well.

So if I get pieces of information from the Oversight Committee, pieces of information from, you know, other areas and people that I would talk to, it puts me in a better position to be informed and have the ability to actually either, you know, challenge the CEO. And the CEO of – and I have often said that, you know, we may not necessarily agree on everything – we respect each other – but if there's a way for me to get information, you know, from the Oversight Committee, well, you know what, I need every piece of advice that I could get in order to make sure that this project finishes strong.

**MR. RALPH:** Okay.

So, just a few more questions, the last one focuses basically on the sort of impact the Inquiry has had on civil servants. And, you know, I think Nalcor officials have talked about the same thing – about the stress that – no one likes to have – having their job scrutinized, and I guess when it's done in a public fashion, it's particularly difficult. And I think you would've spoken with public officials yourself about some of the stress that they are experiencing as a result of the Inquiry. Is that right?

**MR. BALL:** I think all of us, you know, when you sit in these chairs, regardless of what chair it is, any time you represent a province or department that has this much at stake, I think there's a level of stress and anxiety that goes with that job, and – but I also know that as you prepare for questions around the Inquiry, we're all better informed and we do a better job in the work that we're tasked and asked to do.

So, in preparation for myself for this Inquiry, I mean, there's no doubt there's things that just reading through the – you know, the pages and pages of information that was available, that we are more prepared today to actually even finish the project, even though we're almost there.

**MR. RALPH:** Yes.

**MR. BALL:** In a strong way.

**MR. RALPH:** And in my dealings with officials' work on the project, they're producing documents, they're reviewing documents, and, in fact, that part of their work is in addition to the normal duties, whether they are Deputy Minister of Finance or Environment. And so there is that sort of added level of stress with regards to the amount of work. I mean, I'm sure you appreciate that that's the situation.

**MR. BALL:** I do appreciate that. And, I mean, the same officials – there's no question that we – I'm very proud, by the way, of the number of deputies and ADMs that would've been placed, that, you know, been participating in the Inquiry. You know, they have done – you know, they have done a good job in preparing, and it really speaks I think to the public sector in a general sense, the great work that they do, and

sometimes it's not what they know – and I don't think that we actually appreciate, in many ways, the work that goes on within the department and I can – or in various departments.

And I know – you know, I get the opportunity of working, you know, at the – as Premier of this province, and I see the work that they do and the hours that they put into this, and there's no question that, you know, in preparation for this Inquiry there was a considerable amount of preparation that would need to be done, and I'm very thankful for that because the important thing in here is – for me is what's at stake. And we had, since 2015, to finish this project strong. And I think at the end of the day, you know, that is exactly what will happen, and it will exactly – and it will happen simply because the work of the public sector as well.

**MR. RALPH:** Thank you, Premier.

**MR. BALL:** Thank you.

**THE COMMISSIONER:** Thank you.

Nalcor Energy.

**MR. SIMMONS:** I believe Ms. Urquhart might be next, Commissioner, but –

**THE COMMISSIONER:** Oh, before Mr. Budden. Okay.

**MR. SIMMONS:** Oh, I'm sorry. After Mr. Budden.

No, we have – in any event, we have no questions for this witness.

Thank you.

**THE COMMISSIONER:** Okay.

All right.

Concerned Citizens Coalition.

**MR. BUDDEN:** I think we're thinking, Mr. Commissioner, is that Ms. Urquhart would follow me.

**THE COMMISSIONER:** Yes.

**MR. BUDDEN:** Okay.

**THE COMMISSIONER:** That's fine.

**MR. BUDDEN:** Thank you. Sure.

Good morning, Mr. Ball.

**MR. BALL:** Good morning.

**MR. BUDDEN:** As you know from our brief conversation earlier, my name is Geoff Budden, and I'm the lawyer for the Concerned Citizens Coalition. And the coalition, itself, is a group of individuals who, for many years, have been observers and critics of the Muskrat Falls Project. Some of them are probably known to you: Ron Penney, David Vardy, Des Sullivan and there are – there are many others.

So, the first question I have for you is – now we're into the fraught territory now that – of water management. So before you answer this you may wish to get direction from the Commissioner, but the question is as follows. On June 21, *The Telegram*, Evening Telegram reporter David Maher quoted you as saying that the recent Quebec Court of Appeal decision “gives CF(L)Co the rights to manage water on the Upper Churchill, therefore not having a negative impact on Muskrat Falls. I'm very relieved, I will say.”

My first question to you is, were you accurately quoted by Mr. Maher in that story?

**MR. BALL:** I think that reflects the comments that I would have made.

**MR. BUDDEN:** Okay.

My second question to you, and this is one again where you may wish to pause before you answer it. Is it your understanding and belief that this decision, if it survives appeal, will allow CF(L)Co to enter into a water management agreement with Nalcor that allows for the maximization of the noted capacity being 824 megawatts of Muskrat Falls?

So –

**MR. SIMMONS:** So, Commissioner, I'll intervene there. I think this is starting to tread

pretty clearly into the area of the in camera session that's planned to deal with water management, and specifically to address whether there are any impacts on the evidence that was called in the testimony presented last fall on water management arising out of the decision of the Quebec Court of Appeal. So it seems to be getting to the subject matter of that session.

**THE COMMISSIONER:** Is there anyone else who'd like to speak to this?

**MR. O'FLAHERTY:** Mr. Commissioner, good Morning.

My understanding of your ruling on this matter – I wasn't here when the ruling was made but with how it's been communicated to me was that what would be allowable would be questions about whether or not Mr. Ball was accurately quoted in the article and what the source of the information that he provided was but it would not be dealing with the actual legal implications of the decision as the matter is still within the appeal period and it's, obviously – that was my understanding, at least, of your ruling.

**MR. BUDDEN:** Sure. I realize –

**THE COMMISSIONER:** It's just I – I think I should hear from Mr. Ralph first and then I'll (inaudible).

**MR. BUDDEN:** Oh, I'm sorry. I didn't realize. I thought you were looking at me.

**MR. RALPH:** Commissioner, I would agree with the sentiments of Mr. Simmons and also Mr. O'Flaherty, but I understood that the questions for the Premier would be very limited on this. And if it goes any further than that, I would suggest that you're in the realm of solicitor-client privileged information is particularly sensitive given the nature of this issue and, you know, I think that the questions that Mr. O'Flaherty has suggested, Commissioner, yourself indicate would be appropriate is fine but to go further would be, I suggest, not appropriate.

**THE COMMISSIONER:** Mr. Budden.

**MR. BUDDEN:** I would put it like this, Mr. Commissioner. The – Mr. Ball made the comment, while we are all very sensitive to not wishing to prejudice the position of Newfoundland in any future litigation or negotiations, the comment never the less is out there. It was voluntarily made, and I think it's – since Mr. Ball, obviously – and he is the Premier – felt it appropriate to make such a comment, I think it flows, obviously, from that, it's necessary to understand when he meant by it.

And my final question in this thread would be the basis for the comment, but I think it follows, I would suggest, logically, from what he said. We need to know precisely what he meant by that. So that's simply the nature of my question, this is why he's relieved. Is this his understanding?

**THE COMMISSIONER:** Right. I don't disagree with you, Mr. Budden, generally speaking. I think what I'd like you to do is actually put your third question before your second question, because I would prefer to know where Premier Ball got his information first. If he indicates that it was from legal sources, in other words something that could be privileged, then in the circumstances, while that doesn't necessarily bind the Commission, it is something that I would be concerned about and that's why I'd doing an in camera hearing.

So, I think I was pretty clear the other day that I would permit questions with regard to Premier Ball's statement and the basis of it, but I did not want to go to a point where we would – he would actually having to be disclosed legal advise that was given to him. He may well have been advised by political people or whatever, that's – there's no privilege attached to that.

**MR. BUDDEN:** Sure.

**THE COMMISSIONER:** It's the legal part that I'm more concerned about than the wording.

**MR. BUDDEN:** Sure. Yeah.

I'm aware of the, you know, the delicacy of it, which is why I advised him to not answer right away, so ...

**THE COMMISSIONER:** I appreciate that, yeah.

**MR. BUDDEN:** Sure. Okay, I will do that.

What is the basis for the understanding and belief underlying that comment?

**MR. BALL:** So when the decision was made public there was significant, of course, national and provincial interest. I was asked to respond to the media about the decision. And so before responding to the media at the time, what I did was called some people at Nalcor. They weren't the legal group at Nalcor but they had been in contact and, you know, what I understood people that would've been able to actually give some information related to this.

So it was individuals at Nalcor that I would've spoke with. It wasn't the legal team at Nalcor or those that would've involved representing CF(L)Co.

**MR. BUDDEN:** Sure.

Can you tell us who those people were?

**MR. BALL:** At Nalcor?

**MR. BUDDEN:** Yes, please.

**MR. BALL:** Yeah, so what would've happened, there would've been a call that would've went in with Deanne Fisher and she took some time then to go and speak to some individuals at Nalcor. And then the information was relayed back to me and that was the information that I relayed publicly in the interview that I did.

**MR. BUDDEN:** Okay.

Mr. Commissioner, with that in mind, I would ask to return to my question. And I'll read it again and, again, pause so we're all refreshed on it because then you can rule whether the witness should answer it or not.

The question was: Is it your understanding and belief that this decision, if it survives appeal, will allow CF(L)Co to enter into a water management agreement with Nalcor that allows for the maximization of the noted capacity, being 824 megawatts, of Muskrat Falls?

**MR. SIMMONS:** Commissioner, if I might, the question goes beyond just asking about the effect of the decision from the Quebec Court of Appeal. The answer, a full answer to that question, would require getting into discussion of water management on the river, how water management might work, what might – concerns might have to be addressed about management, those sorts of things, which was the subject matter of the in camera hearing in the fall.

So I'm afraid that the question, the way it's put, is asking for a broader analysis than is appropriate to undertake here now, considering that there was a very deliberate decision to move that sort of analysis in camera last fall.

**THE COMMISSIONER:** Mr. Ralph.

**MR. RALPH:** Commissioner, the only thing I'd like to add as well, I mean there is an agreement in place and the PUB hasn't opposed the agreement so I think that's important to point out.

**THE COMMISSIONER:** Right.

Well, yeah, I mean my understanding – and one of the points this was going to make – is that there's already a water management agreement that is in place that was – that went through the PUB because SNC, of course, wouldn't be involved at the time. But – so I'm not sure the premise of the question is exactly right.

But, you know what, Mr. Budden, I don't have –

**MR. BUDDEN:** I can reword it.

**THE COMMISSIONER:** I don't have a problem with you asking Mr. Ball what information he got from Nalcor.

**MR. BUDDEN:** Okay.

**THE COMMISSIONER:** Or from, Ms. Fisher, who supposedly spoke to officials at Nalcor –

**MR. BALL:** Yeah.

**THE COMMISSIONER:** – who were not legal people.

**MR. BALL:** Yeah.

**MR. BUDDEN:** Perhaps you can answer that question?

**MR. BALL:** Yes.

So the basis would've been around the declaratory judgment that – based on two things: Continuous, you know, energy, and interruptible power.

**MR. BUDDEN:** I'm having trouble hearing you, Mr. Ball.

**MR. BALL:** Oh sorry.

**MR. BUDDEN:** Thank you.

**MR. BALL:** So it would've been around a declaratory judgment. I think most people would know that this was an opinion that was asked by Hydro-Québec back in 2013 and the decision was made in – or in the summer of 2016. The appeal was subsequently filed by CF(L)Co.

There was really a difference of opinion. This is, you know, the information that I would've had. There was a difference of opinion around continuous energy. Hydro-Québec took a position, CF(L)Co took a position and then on interruptible power, there were differing opinions at the time. And Hydro-Québec proactively asked, you know, for – to give – for the court to exercise their opinions at the Trial Division. At that point it was – you know, what I understand, the – it was kind of in favour of CF(L)Co – or Hydro-Québec. Under appeal, you know, we got to the judgment, the decision that we were aware of just a few weeks ago.

So that would have been the basis of the discussion and – but, clearly, the information that came back to me also said that this will put to rest the idea of water management on the Churchill River. So that was the information that came to me and that's the information that I relayed through the interviews that I would have did with the media here in our province.

**MR. BUDDEN:** Okay.

So – and, again, you may wish to pause before you answer this one. So, to go – return to your quote, you said the decision gives CF(L)Co, quote, “the rights to manage water on the Upper

Churchill, therefore not having a negative impact on Muskrat Falls ....” And I presume by that you mean not having a negative impact on Muskrat Falls' ability to generate power as the – has been proposed by Nalcor.

**MR. BALL:** Yeah, given the understanding and, you know, I think it's been already mentioned about, you know, the PUB and the water rights management that's been put in place through the – I think it's the Electrical Power Control Act within the province. So, you know, that work, as we understood, was already done.

So the comments that I would have made would have been – would have reflected on the discussions that I would have had with Nalcor. And, you know, I will repeat that, you know, this is subject to appeal, as we know, and we're currently in that appeal process.

**MR. BUDDEN:** But as of now, as of July 4, 2019, any concerns you had have been relieved?

**MR. BALL:** You know, if you listen to folks that, you know, would have looked at this, you know, some people would not have had any concerns even before this decision was made. So, you know, it's – I think the fair thing to do right now is, given where we are, given the fact that this is subject to appeal, you know, any decisions that, you know, would have been made on that, my comments to the media reflected those – the information that would have been provided from Nalcor at the time.

**MR. BUDDEN:** Okay, thank you.

I'm going to move on to another area now. And you stated in an interview with Commission counsel – and, again, earlier this morning – that during your time in Opposition, you, quote: Weren't satisfied with the level of transparency that was occurring with respect to the project.

And my question is this: Who was it that you thought wasn't being transparent and in what general ways?

**MR. BALL:** What I was referring to there was really going back to the discussions that I would have had on December 4 during the transition. Also, to – if you look at, you know, the working questions that I would've asked about getting a

session within the House of Assembly so that people, individuals that had led in, that Nalcor had used to actually support the decision, getting those people into a public forum so questions could be asked. Because my concern was, really, the impact on ratepayers within our province and making sure that everyone had the appropriate information prior to this project being sanctioned.

So I had concerns about having the project sanctioned in Newfoundland and Labrador and not having a firm partner sanctioning this project within – in Nova Scotia. I felt then that it actually reduced and put ourselves in a less than negotiating arrangement with Nova Scotia. Nova Scotia needed to be involved before the federal loan guarantee could've been – you know, could've been finalized.

So there was a whole bunch of things that was occurring back in my days in Opposition and if you remember, led into the filibuster in – which was some 86 hours –

**MR. BUDDEN:** Mmm.

**MR. BALL:** – as leader of the Opposition. So there was quite a bit of work that we would've had done in Opposition, wanting to see more transparency. And so, you know, quickly after coming in to forming government within December 2015 it's when we brought in EY. And this was based on some of the information that would've been provided to us verbally by CEO Martin at the time.

**MR. BUDDEN:** Yes.

So have you felt that the processes, as you experienced them while in Opposition – and I've read your debates in the House. You certainly did articulate, at various times, your concerns about lack of transparency. Who did you feel was causing this lack of transparency?

Obviously, individuals set up processes. Which did you – were you thinking in terms of the politicians opposite you, Nalcor, the civil service? Who did you hold responsible for this lack of transparency you're experiencing?

**MR. BALL:** Well, at the time, I mean, as leader of the Opposition I mean, my focus would've

been on the government of the day. And after forming government and working closely with, you know, officials at Nalcor, it would've been more connected to, you know, people like the CEO and some of the executive team at that point.

So this is where I had concerns. In Opposition, my job then would be to – as in my role, as leader of the Opposition, would be to keep the government accountable. And in government, as Premier of the province and with my team and ministers, it was important then that they would keep boards and agencies or corporations like Nalcor – keep them accountable. So the transparency, I think, kind of changed. If you're Opposition, it would be more focused on government. If you're in government, it would be more focused on making sure that the information, in a very transparent and accountable way, is flowing in the government, and I've said many times this morning that I had concerns about that early in this mandate.

**MR. BUDDEN:** Yes, and we'll return to some of those.

We just heard, of course, Mr. Ralph's questioning about the public service, and we all recognize that in our system, the public service is apolitical, or at least the ideal is an apolitical ideal. Did you have any – but the reality is, of course, you inherited a public service that had worked closely with the previous government on sanctioning the project.

Did you have any concerns at all about whether you were able to get or getting complete and candid advice from the public service once you came into office? Had you any concerns at all there?

**MR. BALL:** For the most part, I work very closely with the public service. I – in terms of having financial information and so on, there was no concerns that the public service was withholding information from me; I didn't really have that kind of experience. And so from that aspect of it I think those that would've been directly connected to Nalcor, as an example, in the area of Finance, in Natural Resources, that the information that they would've had available to them was certainly something that would've been shared with me.

**MR. BUDDEN:** Okay.

Madam Clerk, please call up P-00926, and what this is, while it's being called up, this is a Nalcor document from the period leading up to sanction, so we're going back a couple of years, but it's an important point. And it includes what apparently are briefing notes for government MHAs to take into the debate in the House. And it's page 34 I'm most interested in, Madam Clerk, if we can go to that?

Perhaps you could read for us starting at "House of Assembly debate." If you could read that into the record, please, Premier Ball?

**MR. BALL:** Pardon me?

**MR. BUDDEN:** Could you read what you see in front of you from House of Assembly debate, could you read that into the record for us?

**MR. BALL:** Okay, so it says the "House of Assembly debate; Sample messaging for" the "hit squad."

And this presentation, I'm not sure if you had said in your opening comments, would've been done by Nalcor?

**MR. BUDDEN:** That is correct. It's on Nalcor letterhead, as you can see down below.

**MR. BALL:** Yeah.

**MR. BUDDEN:** If you could read that first bullet point please?

**MR. BALL:** Yeah, thank you. So it says in sample messaging: "The Liberals have no credibility when it comes to the Lower Churchill, and neither do the NDP. Their own federal parties support it. They are just interested in opposing for the sake of opposing it."

**MR. BUDDEN:** Okay, you can stop there.

So, this is what – as you were on one side of the debate in the sanction debate, this is what the MHAs on the other side – how they're being briefed by Nalcor.

Firstly, did you have any knowledge or even suspicion that Nalcor were in the trenches, so to speak, in this partisan sanction debate?

**MR. BALL:** No, I did not. This is the first time I would've seen this.

**MR. BUDDEN:** Okay. What do you think of it?

**MR. BALL:** You wouldn't see this today.

**MR. BUDDEN:** Okay. Why not?

**MR. BALL:** Because it's not something that I would ever take to my MHAs.

**MR. BUDDEN:** Okay.

And what would you think about a Crown corporation briefing your MHAs in such a fashion?

**MR. BALL:** It's not their role.

**MR. BUDDEN:** Okay.

And it's not appropriate, is it?

Okay.

It was three years later, of course, before you actually occupied the premier's office. And regardless of what you did or didn't know about this, sort of, openly partisan stuff, you obviously would've formed some impressions along the way of Nalcor and of Ed Martin.

So, I guess my question is: Coming into the premier's office – we'll explore what happened after that, but stepping in to the premier's office, what confidence did you have that Ed Martin and Nalcor, collectively, were going to be able to give full and candid advice as to all aspects of the Muskrat Falls Project?

**MR. BALL:** One thing that I didn't want to do was prejudice, and – so I came in with an open mind and give people the benefit of the doubt and base my experience and decisions on my own personal interactions. And that's the approach that I took, and it's the approach that I still – that I will still take. You know, first and foremost, give individuals the benefit of the doubt, and consider the role that they play



because, number one, you know, it's just not about the individuals, whether they're actually performing duties in their capacity in the role that they would have. So – and keep an open mind. And that's the approach that I took coming into government in 2015, and it's pretty much the way I operate in government right now.

**MR. BUDDEN:** Sure.

And I appreciate that. I mean, it's – you know, I can see the wisdom of it, but going forward with a blank slate is one thing. But in your mind, did you have any, I guess, concerns or suspicions or alertness around the quality of the advice you were getting from Nalcor?

**MR. BALL:** Well, my – any advice – you mean prior to the election in 2015 or after the election? Because we did have some meetings with Nalcor, as Opposition, looking for information.

**MR. BUDDEN:** Sure.

**MR. BALL:** But are you suggesting – you're thinking about after?

**MR. BUDDEN:** When you became premier, what I'm trying to get a sense of – what was your view of Nalcor? Did you trust them completely? Did you already have reservations?

**MR. BALL:** No, it wasn't unlimited trust. I mean, I think I've made my comment quite clear this morning that in the first meeting that I would've had on December the 4th, I became aware, not through the content of the presentation, but what was happening, what came to light in just verbal comments about a \$200-million problem that had been recognized for 12 to 18 months. And there were already a number of meetings with, you know, high-ranking officials at Astaldi. So there was no question, if you want to say it, that the antennas went up, and I became acutely aware that I need to actually put a bigger focus and make this a bigger priority for me.

**MR. BUDDEN:** Fair enough.

Obviously, as the new premier, you're getting all kinds of advice, solicited and unsolicited. Let's go, perhaps, to some of the unsolicited advice.

Perhaps we can go to P-02145, Madam Clerk. And what this is, while it's being set up, it's a latter you would've received on, I believe, March 1, 2016. And it was from two of the individuals who are officers of my client: Ron Penney and David Vardy.

**MR. BALL:** Yeah.

**MR. BUDDEN:** First, did you know who –

**THE COMMISSIONER:** This is in tab 126 of volume 3 if you wanted to look at it there, but it –

**MR. BALL:** Yeah.

**THE COMMISSIONER:** – will be on the screen as well.

**MR. BALL:** Yeah.

**MR. BUDDEN:** I'm only going to briefly refer to it, but it is there in volume 3, if you want to call it up.

**MR. BALL:** Yes.

**MR. BUDDEN:** Okay. Before this, what knowledge did you have of Mr. Ron Penney and Mr. David Vardy? Did you know them at all or know of them?

**MR. BALL:** I knew Dave Vardy more than I did Ron Penney, although I did get a chance to – part of the Beaumont-Hamel trip last year, Ron Penney was on that trip with me. So I, you know, obviously I knew the individuals.

**MR. BUDDEN:** Okay.

**MR. BALL:** What was the tab again, sorry?

**MR. BUDDEN:** One –

**THE COMMISSIONER:** Twenty-six.

**MR. BUDDEN:** If we go to the second page of that, I'm going to paraphrase a little bit to move it along. This correspondence called on you, Premier Ball, to appoint what they call a blue-chip panel of experts independent of government and independent of Nalcor, to – quote – “assess both the cost of stopping the project and the cost

to complete it, as well as to conduct a benefit cost analysis of the options available to government.” So – end quote. So what they’re calling on you to do here, I suggest, is to appoint experts to say: Look, is it proper to continue with this project, or are we better off mothballing it and moving on in some other way? So that was the advice that these individuals, at least, were giving you.

What consideration did you give to seeking such independent expert advice, be it from EY or be it from some other agency or experts, as to the wisdom of a stop-go analysis?

**MR. BALL:** So we – I do remember this letter and I think Minister Coady probably might have had a similar letter, although I’m not sure. But I –

**MR. BUDDEN:** Mm-hmm.

**MR. BALL:** – do remember a discussion that I would’ve had about a blue-ribbon panel. But I think, you know, if you look at the previous questions that I asked, is – you know, one of the things is, you know, you had an Oversight Committee that, you know, people would’ve questioned, I guess, if you listened to some of the comments. You would’ve had a board, a very strengthened board, that we put in place through the Independent Appointments Commission. These were people from all walks of life, and if you look at the résumés that we have on our board today, they’re very strong résumés. These are individuals from our communities that have strong connections to either business or community and so, you know, we have a very strong board in place and we have a new leader in place.

We brought in EY early on to try and take a look at what was happening around the schedule cost and associated risk, also around governance and in the recommendations coming out of EY. I can’t remember any time the recommendation would’ve been to set up such a panel, but I was comfortable, given the strengthened board, new leadership – and, keep in mind, all of this happened within about four or five months of the change in government. We had a new board in place. We went through the IEAC, which took some time, to strengthen that board from, you

know, outside, and we had an expanded Oversight Committee.

So I felt, at the time, given the changes that we had made, this was the appropriate amount and that could actually – you know, provide the level of oversight –

**MR. BUDDEN:** Sure.

**MR. BALL:** – and advice that we needed.

**MR. BUDDEN:** The – I guess that’s – it’s interesting information, we’ll get to some of that, but that’s really – that’s already a decision that’s been made: We’re going to continue with Muskrat Falls.

What I’m asking you, I guess, is a little bit more fundamental question: Did you consider following the advice of Mr. Pardy and – Mr. Vardy and Mr. Penney and many other people at the time, at least some other people –

**MR. BALL:** Yeah.

**MR. BUDDEN:** – that said look, it’s not too late; we got to have a fresh-eyes look at whether or not to proceed with this project or abandon this project?

**MR. BALL:** Yeah.

So, of course, and I had mentioned that earlier that this was one of the considerations. Do you, you know, re-scope the project, as an example, transmission versus just generation?

**MR. BUDDEN:** Sure.

**MR. BALL:** You know, use Upper Churchill power. All of these things, what opportunities, options do we have within the province in providing the energy.

The reliability, I mean, let’s not forget that we’ve been through DarkNL. I think the letter – I haven’t read it today, but I think this letter did point to that, if I remember correctly. But, you know, we’ve been through a number of, you know, situations in the province and DarkNL would’ve been one of them that had led to a review, I think that was done by Liberty at the time, through the PUB.

**MR. BUDDEN:** Yeah.

**MR. BALL:** And the PUB were involved.

So the decision to move forward, I think I've addressed that earlier, given the fact that we had billions of dollars either spent or committed, we had a reliability issue, we had a federal loan guarantee and we would've been still responsible for the billions that have already been spent and we had commitments made where we would see delivery of major components of this project that would've been delivered to the province and we would've been able – have to accept.

So, given the billions that have already been invested in this, you know, shutting the project down without answering all those questions, we did not see that as a viable option at that time.

**MR. BUDDEN:** Okay. I'll return to that. But before I do, let's call up 02390 – and again, you would've look at this earlier today with Mr. Learmonth, but I want to return to it for a specific point.

**THE COMMISSIONER:** That would be tab 80 in book 2.

**MR. BUDDEN:** My interest here lies from page 3 onward, Madam Clerk. So I'll just review this because it was up this morning, but just for continuity. This is a briefing note from Nalcor to the government, indirectly. And the significance of it is really set out here in the title, which is: Implications of Cancelling or Significantly Delaying the Muskrat Falls Project.

And, Issue: "What are the implications for the Government of Newfoundland & Labrador ('Government') making a decision to cancel or significantly delay all or a component of the Muskrat Falls Project (the 'Project'), and providing the associated direction to Nalcor Energy?"

And we'll skip to the punchline. What this report – Nalcor basically finds in this report that this project must and should continue.

So Nalcor's advising to continue with Nalcor's project. That's the conclusion, isn't it?

**MR. BALL:** If Nalcor is advising to continue with Nalcor's project is when you think about again, what's at stake here, this is, at this point, significant provincial commitments. The Government of Canada has been committed. There is legal, you know, obligations about supply of energy to Nova Scotia. So even though Nalcor was doing the construction, the responsibility was on the governments to meet up to the commitments that they would've had, either legal, legislatively and so on.

So to just draw a connection that Nalcor was saying, continue on with my project, there was much more at stake than that. And so, that would not have impacted or affected my decision simply because Nalcor says we want to move on with a project. That was not my thinking at all.

**MR. BUDDEN:** Sure.

**MR. BALL:** My thinking would've been, you know, what is the impact if we don't move on with this project and we're still on the hook for billions of dollars that we would've had to repay. And still would've not had answers to the reliability.

**MR. BUDDEN:** Sure.

I guess I'd put it like this. The decision had been made to proceed with the project in 2012. You had concerns at the time. You expressed them. Here you are, you couldn't do a thing about it at the time because you were in Opposition. It's now three years later and you're in government. Either way, a hard decision has to be made. As just a few months later, Stan Marshall said, it's a boondoggle. It was an over build and so forth, so there's that reality. There's also the reality you're right, that if the thing is cancelled there'll be costs that are gone forever, contracts that need to be addressed somehow and so on.

But my point is this: It's a hard decision, I concede that, but our concern is that the decision is being informed by Nalcor but, unlike what my clients were requesting, there's really nobody independent on the other side to say yes, proceeding is gonna be rough, yes, stopping is gonna be rough, but stopping might be a little less rough.

Did you consider the wisdom of perhaps informing the decision in that manner by somebody who was outside the loop, outside the echo chamber, as the – as Nalcor arguably were within that echo chamber?

**MR. BALL:** Yeah, I think for me to just, simply because I was leader of the Opposition, to go out and say we're shutting this project down, we're cancelling this project down, I think that would've been really driven – if you look at Nalcor suggesting they do this because of a Nalcor project, I think it would've been me just doing this for political reasons and I was not prepared to do this. I really went in there, took a look at this, and, you know, once we got past the federal loan guarantee, at that point I felt the province was probably a little too far in then to turn back. I think even, you know, Stan Marshall, when he went in, in maybe in June of 2016, and with the experience that he would've had, and I think he probably made a comment by saying that he quickly said that, you know, we're too far into this.

You know, at the end of the day, is – we had billions of dollars at stake that we could not simply just walk away from. There were commitments that were made to Nova Scotia to supply power within those agreements, and we had the, you know, the federal government involved as well, and we still had – I don't think any of us will forget the issues around DarkNL, so there were reliability issues.

So you are right. These decisions are hard –

**MR. BUDDEN:** Mm-hmm.

**MR. BALL:** – but they must be made.

**MR. BUDDEN:** And again, this is my final comment here before I move on, because I think we've exhausted this, but I would make the point again: This hard decision is not being informed by anybody from outside, any kind of independent assessor or any kind of independent blue-chip, as my client said, panel.

So you're getting advice saying look we have to continue because of all these obligations, but here we are in 2019 looking at, you know, decades of mitigating at hundreds of millions of dollar a year, so, might that not possibly have

been foreseen in 2016 if an independent voice had come into the debate, and the hard decision might've gone – might've been hard but might've been less hard?

**MR. BALL:** You know, my view on that is you would have spent the money somewhere else, because if right now we're into rate mitigation, simply shutting the project down and walking away, sending people home from work and so on, would not have made the problem go away. You would have still been on the hook for billions of dollars that the province would have had to repay if you had shut it down. And then you would have had environmental issues that you would have been able – you would have had to deal with – with concrete in the Churchill River, as an example.

So, you know, it might seem that, you know, yeah, given the politics and all of this, it might have been easy to walk away. But, really, when you came down to the analysis, that when you look at where the commitments were, where the needs were, that this decision to actually continue on really wasn't a difficult one. And I think Stan Marshall reiterated that – you know, a comment similar to that when he took an analysis of where we were.

The issue here wasn't we now find ourselves in the middle of 2016 and what do we do with the project. The real question for me was at the beginning – should we ever start this project. And it's like if we're – if we don't – if we should not have started it, I had lots of questions about starting this project and the cost implications that it would have had on the province.

But the fact is now you have this. You have this project, and you have to deal with it. And now we saw no other choice but to continue on.

**MR. BUDDEN:** Okay. I'll move on.

You've testified – and I won't ask you to go over the details again – but you had a little surprise when you arrived at that December 4 meeting and the surprise was that you had become aware for the first time of the need to renegotiate Astaldi and other elements of what appeared to be cost overruns that had not been publicly announced.

Can you think of any reason relating to governance why those things could not or should not have been announced prior to you coming into office – any reason they (inaudible) have been announced in the months preceding the election, for example.

**MR. BALL:** So when you – I don't know the reason that it would not be publicly disclosed. You know, when you look at the project at \$6.2 billion from sanction, creeping up to where it was 6.9, then the 7.6 and now, in early – in late 2015 and December 2015, we find ourselves – that there's more money that was – would have been required – also the fact that we didn't know if this would solve the problem.

**MR. BUDDEN:** Mmm.

**MR. BALL:** So the fact that this should have been publicly disclosed I think in September – I think there were comments about an issue around Astaldi that were part of the – in the public realm at the time. But they were not quantified and that I had difficulty with.

**MR. BUDDEN:** You think it could have been done and should have been done.

**MR. BALL:** I think from a transparency point of view we took a very different approach back in 20 – you know, '16 – in June – of late June 2016 when we said the project would have been \$9.1 billion. We also added at that time the cost to, obviously, service that. And even to when we got to 10.1, we – in June of 2016, we made it quite clear that this is not the end; we need to actually figure out and find a solution for some of the risks that we're identifying in June of 2016.

So in June of 2017 when we released the last budget and schedule, all of those risks were identified and so where we are now in terms of costs and schedule – and you know, I ask this on a regular basis to our CEO and the answer has always been the same, is that we are still on budget and we're still on schedule with the latest budget that was put in place in June of 2017.

**MR. BUDDEN:** Sure.

I'm gonna ask you – this ground has been covered so I'm just going to jump around a little

bit – but when discussing Mr. Martin's role in the Astaldi negotiations, and I guess the limitations which you imposed on his ability to proceed in those negotiations; you made an interesting comment – I didn't write down verbatim but it was something like: I was now past the point where they were going to be doing this on their own.

What was the thinking behind that? There sounds like – I may have read too much into it, but it sounds like a tone of frustration, a tone of being burned...you're now past the point.

**MR. BALL:** I'd been dealt a surprise in December the 4th with the \$200 million and that had kind of crept up to, as we mentioned earlier, to numbers in the \$800 million and that would have been with Astaldi. So, you know, there's no sense – there's, you know, there's – for sure the antennas were going up and, you know, I needed to make sure – and even my concern at the time was how do we get this contract. I mean at this point we are one-third of the concrete poured and two-thirds of the labour, you know, budget gone; so that was concern for me.

So if – someone who designs this contract and I think it's fair to say that you – now you want to renegotiate or mend the contract, you would want – I never said: you wouldn't be in the room. I never said that CEO Martin would not be in the room; what I said is that you would not be negotiating this alone.

**MR. BUDDEN:** Yeah.

**MR. BALL:** And –

**MR. BUDDEN:** Fair – no, that's what I took what you said.

**MR. BALL:** Yeah, and I asked for a negotiating strategy first before – in other words, how are you going to solve this problem; what's your strategy to solve this problem and – before you get a mandate. And once we arrived to the point where we have a strategy and a mandate, then we will decide on actually who negotiates that – knowing from day one that he would be in the room, but he would not be there alone.

**MR. BUDDEN:** Sure.

In Minister Coady's memo of March of 2016 one of the options presented was dismissing the CEO and the board. So, that clearly was within the – and I know a different route was taken at that time, but it was clearly within government's contemplation, as early as March 1st, to move on from Mr. Martin – move on from the board. Correct?

**MR. BALL:** Yeah. And I think – when I was asked that question earlier today is, you know, I think this spoke to the level of frustration that the minister was having. I think this, you know fairly reflected, you know, other ministers and, you know, my own sense as well, but at that point it was early March and you know we were still doing our assessments on where we were and I had discussions – you know, Minister Coady was responsible for Nalcor; she was the department that would have been responsible, so she expressed her concerns to me and I think it was becoming very frustrating for her at the time.

**MR. BUDDEN:** Sure. We heard all kinds of evidence in – particularly in Phase 1, about how the lines of control or communication or direction between government and Nalcor in the previous governments had seemed to have flowed through the premier's office rather than through the Minister of Natural Resources.

So, your comment there strikes me as interesting. Who did you think really had the call as to whether to retain Mr. Martin or move on from him? Whose call was that?

**MR. BALL:** Conversations would happen. I mean, I would meet with the minister – in this case with the Minister of Natural Resources. You know, if it affected Finance I would meet with that minister. Sometimes, you know, three or four of us would meet because Nalcor impacted many departments – Finance, Natural Resources, Municipal Affairs and Environment – that we just mentioned.

So, it would depend on what the department was. But, you know, really in – we would analyze, you know, when decisions like this would be made. So, you know, for me to go and say okay, we're just going to replace the CEO, we're going to replace the board – as an example, the Minister of Natural Resources

played a very active role, you know, when putting in the interim board and so on, so, and – 'til the IEAC had done their work and you know, so she is still the minister responsible, and if at any point there is a meeting that I would have with the CEO of Nalcor, you know I'm going to inform the appropriate minister. Sometimes it would be Finance. Sometimes it would be Natural Resources, you know, of what that meeting was all about.

**MR. BUDDEN:** So, you would not make a decision with respect to Mr. Martin's future or the tenure of any CEO without bringing your Minister of Natural Resources in on the process.

**MR. BALL:** Yeah. They would be kept in the loop.

**MR. BUDDEN:** Sure.

**MR. BALL:** And likewise, by the way, in reverse of that, I mean, they would have meetings that they would have that I would not be there, that that information and – that would come out of those meetings would be shared with me as well.

**MR. BUDDEN:** So, you wouldn't expect to get an email from Minister Coady saying – oh, by the way I've just let the CEO go. You wouldn't expect that?

**MR. BALL:** That would surprise me, and I think it would surprise her if it was in reverse.

**MR. BUDDEN:** Yes. Fair enough. Yet he was gone by barely a month after that memo from Minister Coady. Were you sorry to see him gone?

**MR. BALL:** You know, for me this was not about the individual.

**MR. BUDDEN:** And I don't mean that in a personal way. Were you sorry to see him gone as CEO? Did it disappoint you that he was no longer CEO?

**MR. BALL:** I had a job to do; it was to make sure that we put – that we had the leadership in place, that we had a board in place; so for me it really wasn't about individuals. I mean anyone that would sit into a room and watch someone

walk out, I mean, that's not a moment you celebrate.

**MR. BUDDEN:** Hmm.

**MR. BALL:** You know, people's lives are impacted here, there's families that are impacted. But a decision had to be made and I could not go out and be a cheerleader or a supporter – which I was asked to do – and that was the ultimatum that was given to me. I was not going to do that.

**MR. BUDDEN:** Yeah.

**MR. BALL:** And so the decision and so – happy to see someone go, it wasn't like that. It's – you've got a job to do, I've got to now put a new leader in place and at some point we're going to strengthen the board, and we've got to protect the people of our province, you know, from a project that we saw – and I think Mr. Marshall mentioned yesterday he framed it up as a crisis – my job was to deal with the Muskrat Falls Project on top of all the other issues in 2016 that we were dealing with in this province – and there were many.

**MR. BUDDEN:** Understood.

From the outside looking in – you know, those of us who followed the events through that – those few days – it appeared reactive and chaotic in the sense that it wasn't an announcement that the CEO has resigned and a new CEO has been appointed. It's all played out in public in what appeared to be an unscripted, rather chaotic way.

Might not the government – knowing that there was an unhappiness in Mr. Martin – might not the government had been proactive rather than leaving it to him, I guess, to rush back from his vacation, demand a vote of confidence, and the next thing there's this drama that unfolds in public.

**MR. BALL:** I certainly wouldn't frame it up as being chaotic. When you look at the changes that have been made really from January of 2016, and now we find ourselves in around the April 20 time frame so we quickly had a seat, I think, within – we'd just come off a budget – in less than a week, we just had Budget 2016 that had been out, now we're into a situation where

the CEO is moving out, we got a new CEO in place swiftly.

We put in – we had a new board that was in place before that week was over, if I remember correctly. So I would not consider that, you know, chaotic. We were fully in control and we had the CEO in place, we had a new board in place. Even with the board resigning en masse, we put a new board in place swiftly. So I think our response time was very appropriate and very direct given the circumstances that we were into.

**MR. BUDDEN:** You would concede it was reactive rather than being proactive?

**MR. BALL:** What I would say is we had a discussion and the outcome of the discussion was that we were gonna put in place a new CEO. I think anybody that – nobody in this province – if the CEO walked out, nobody in this province would've expected that within a matter of, you know, hours really, that we're gonna see a CEO replacing – a replacement like Stan Marshall as a new CEO of Nalcor. So you can call it reactive, if that's the word you want to use. I want to say that, you know, we appropriately responded to what we were dealing with.

**MR. BUDDEN:** Okay, fair enough.

Stan Marshall was persuaded by his evidence, perhaps somewhat reluctantly – he seemed to be enjoying Belize and perhaps didn't want to spend his winters in Newfoundland – but anyway, he did. If he had decided not to come to Nalcor, I presume you had a plan B?

**MR. BALL:** We would've, you know, whatever – I'm not going to get into what plan B would've been. Plan –

**MR. BUDDEN:** I'm not asking for individuals. I'm trying to get a sense of the process.

**MR. BALL:** I – you know, like I said, plan A worked.

**MR. BUDDEN:** Okay, fair enough.

We've heard expert evidence from Dr. Holburn plus lots of evidence from the former board, the pre-April 19, 2016, board. The evidence would suggest – and for the Commissioner to decide –

but I would suggest that the evidence would suggest that board was thin. It was – there were fewer people on those boards than good governance would suggest. It was lacking in certain critical areas of expertise and taken on the whole, appeared not to be up to the task of providing the oversight one would expect from a board of a major Crown corporation.

And obviously – and my question to you is, what awareness did you have of those deficiencies, and how important was it to you to put in place the concededly much more robust board that is presently there?

**MR. BALL:** It was very important. I had met with the previous chair and there were discussions about adding individuals to the board even, I think, that would've been very early. But you know, regardless of my comments on, you know, what the expertise would've been, the abilities would've been, I don't think it would be fair for me to comment on that.

We have a new board in place, one that's doing a great job, and they've been put in place now through the Independent Appointments Commission. If you look at the résumés, I think it kind of speaks for itself and –

**MR. BUDDEN:** Okay. Fair enough.

We have heard from multiple witnesses including Dr. Holburn, including Mr. Marshall himself, that it is unusual not to pay members of the board of directors of a major Crown corporation such as Nalcor, and that it is a departure, I would suggest – the evidence suggests, from best practices. My question to you, does your government intend to change the policy and pay the board members of Nalcor what would be considered an appropriate salary or compensation for their pretty significant duties?

**MR. BALL:** What I would say is, is really comment on your first comment which was you know, it's unusual. Well, the situation in the province is unusual. And so when those board members – they voluntarily stepped up, because it went through the Independent Appointments Commission – they took the time to actually put their résumés on that website. And I think they

recognize the unusual situation that we were dealing with within the province.

And we have not had any discussions about, you know, where we would be in terms of remuneration and so on with that board. I just think they're doing a good job and they stepped up and offered their services based on the experience that they would've had. And I think a lot of them really stepped up because they're Newfoundlanders and Labradorians for the most part, and to provide the level of advice, you know, that the board was – would've needed at that time.

**MR. BUDDEN:** Fair enough.

**MR. BALL:** And still need.

**MR. BUDDEN:** Okay. A question or two about the EY review. I'm talking about the initial one that you initiated pretty much as soon as you were in the Premier's office. It was obviously intended to be a major review of certain aspects of the project without a consideration of other aspects. How were the terms of reference arrived at for that EY review?

Like – the focus was on certain things, cost and schedule, not on other things like future load forecasting, load demands, those kind of things. How were the terms of reference arrived at? And by whom?

**MR. BALL:** Well, EY had already been in place and they were used by the Oversight Committee. So this was, you know, in some ways, you know, they were there. The learning curve for them on some of the work that would've been done at Nalcor was a – was less of a learning curve. So we brought them in because the – you know, what we wanted to deal with at the time was that – in terms of the terms of reference that you asked, is, you know, are the costs reasonable? Is the schedule reasonable? And what are the associated risks?

So we were not getting involved in load and those sorts of things that you just mentioned. That would've been a – obviously, a much different group at the point, you know, given where we were. So, the terms of reference because we saw that as a priority at the time to,



you know, to try and get a handle on cost, schedule and associated risk.

**MR. BUDDEN:** Sure.

Perhaps, Madam Clerk, we could bring up Exhibit P-01988. And what this is – I'm not sure if you have that in front of you or not.

**MR. BALL:** No.

**THE COMMISSIONER:** 01988 – I don't think so. I think that's going to be on your screen.

**MR. BUDDEN:** Yeah.

What this is, Premier Ball, is a presentation that Mr. Marshall gave at MUN in February, I believe of 1988 [sp. 2018] and the title is – 01988, Madam Clerk, that's 98. And the title is: Understanding Muskrat Falls – and there we go. And if we can scroll down to page 26 of that, Madam Clerk, I'd appreciate it.

There's a couple of things about this that I want to draw attention to. Well, first thing, this is the load forecast. And, as you can see, the – or I'll explain to you, the green line represents the forecast at sanction, which is for steady and continuous growth and our power consumption here on this Island. And the blue one is the revised forecast as of June 2017.

Approximately five years later, as you can see, the blue line – and what Mr. Marshall confirmed is the current forecast – is for really no growth. We're going to be stable consumers of electricity, but the growth that was anticipated five years before is not happening.

And my question for you is – this is just one aspect of the business case and realize that perhaps, in some ways, that's what this Inquiry is doing. But did you, at any point before calling this Inquiry, see any wisdom at all in revisiting some of the assumptions of the business case as a possible guide to modify the project or focus the project? Did you see any wisdom at all in that?

**MR. BALL:** So just – you just frame up that question again? You –

**MR. BUDDEN:** Sure.

This is just an example of an instance where the business case, the – one of the foundations of the business case, as was understood at sanction, has turned out to be quite wrong. And there is other evidence, I would suggest, that has emerged through this Inquiry that some of the other assumptions made at sanction also were wrong.

And my question for you – I mean you've obviously called this Inquiry, which is a fairly exhaustive look at some of these things, but at any point in the early part of your first term, was any consideration at all – if not a stop-go analysis, at least an analysis of certain aspects of the business case of the project so as to inform how the project might proceed. Did you see any benefit or wisdom in that?

**MR. BALL:** Well, when you look at it – and you mention the assumptions that the business case would have been made on in the early days prior to sanction. I mean you had currency issues, you had currency pricing, you had oil pricing. If you were to look at the forecast back at sanctioning – where they thought oil would be today – was probably in the \$120, \$130 range, as an example.

So, you know, a lot of the assumptions, as you correctly point out, that were made and were put in the business case back in, you know, 2012, you know, really did not – I mean, there was a predication there – and I remember I used to ask a lot of questions about this – a prediction that oil would not go down for about 50 years. And at the point I used to point out, I think – at that point in our history, oil had only been over \$100 for like 44 months or something; it was a very limited amount of time. So the assumptions that the business case was built on, I thought, in many cases they were flawed.

But we are still at this stage, in 2015, with the project, with considerable commitments in the billions of dollars range. Now, we had to move on and, you know, get the project finished. And now we're at a stage where if there's – I mean, I guess – you know, what would you do, your question would be – what do you do with the excess power? Again, does it – it is around, you know, more development in terms of industry development or is it export?

You know, what do you do with this? Do you try and firm up power so you get better value for it? You know, that's some of the work, you know, that's being done, you know, within Nalcor. And we've got the PUB as involved, you know, as well right now, in terms of rate structure and so on.

So, you know, these are all – you know, speaks to the many moving parts that this project has. It has a profound impact, as I've said many times this morning, not just on the cost but also on, you know, assumptions that you just raised here.

**MR. BUDDEN:** Sure.

If we look down, there's one other thing on this page that I'm interested in: "Note: May 2017 load forecast is based on a targeted rate of 18 cents/kWh in 2020 escalating at 2.2% thereafter."

We're heard evidence that – out of your own mouth this morning that the – I guess, the true value of that power, or at least the true market price, would probably be upwards of 23 cents a kilowatt hour. Yet, the government is – has a targeted rate, a mitigated rate, I suppose one would say, of 18 cents.

And my question is: Why 18 cents at 2.2 per cent as opposed to some other number? What's the thinking behind that?

**MR. BALL:** The 18 cents you mean?

**MR. BUDDEN:** Yes.

**MR. BALL:** So we're mitigating to 13.5, right?

**MR. BUDDEN:** Pardon?

**MR. BALL:** We mitigate to 13.5 under the plan that we're putting in place.

**MR. BUDDEN:** Okay. And what's the rationale behind that then?

**MR. BALL:** Because it had to be affordable and – I think, you know, a lot of cases when you look at the history of the project and where this was – where the marketing plan was in the beginning, even in the early days, even at sanction, they were predicting energy rates to be

around 15 and 16 cents. And, at that point, I think a lot of people, you know, within the province, you know, found that number seemingly – at least by the support that it would've had – that that number was something that they could live with. I'm not sure if that was as a result of it seemed to be years away, but now, even if we were at a stage right now where this project was delivering power at 16 cents, I think that for a lot of people in this province, it would not be affordable.

So, the 13.5 cents for us, the decision that we made kind of reflected where we think, you know, the province would need to be, number one, for affordability; and number two, to be competitive as a place to attract businesses, you know, to our province and provide growth and opportunity for, you know, the people. It really comes down to being competitive as a province.

**MR. BUDDEN:** So I would characterize like this, I guess, if you'd agree or disagree: The government has made a public policy decision to, essentially, override the purchase – Power Purchase Agreement, and say, no, the costs of Muskrat Falls – they're not going to be passed on to the ratepayers in totality. A significant chunk of that will be – instead be borne by the taxpayers collectively.

**MR. BALL:** Well, it's not a – it's not from taxed income. What it is – you know, when you look at where we are, there's \$200 million worth of dividends that would come from Nalcor that would actually flow in to support rate mitigation.

There's, you know, as has been mentioned already, some \$200 million of the \$726 million that's required that would come from restructuring the federal financing, and there's some other – we make mention of savings from Holyrood fuel costs and so on. So, this is how we get to a 13.5 cents per kilowatt hour. The other option would be to put rates up, and we don't think that that is a reasonable option for this province today.

**MR. BUDDEN:** Sure.

Has thought been given to, perhaps, tasking the PUB with looking at it more broadly; like, how power is delivered here? In the pre-Nalcor

world, of course, things were done differently. Has thought been given to tasking the PUB in a more broader way with investigating whether distribution can be handled more efficiently or effectively cheaper?

**MR. BALL:** Well, I think if you look at the interim reports that would've been provided by Liberty and Synapse back late December in 2018 – and they were reviewed at the request of the PUB, the Public Utilities Board, within our province – you know, they address and they talk about issues like that, so it'd be interesting.

I'm curious, myself, to, you know, see in the final analysis when the final reports are delivered, you know, what options have they put forth. I mean, we've asked them to look at, you know, time-of-day usage, you know, what – options like you just mentioned there. So I'm expecting and anticipating that, you know, many of those areas would be addressed and probably come forward with, you know, some ideas that, you know, we'll be able to take a look at.

**MR. BUDDEN:** So the government still has an open mind about how exactly this mitigation is going to be financed?

**MR. BALL:** We want to make sure that we use every single avenue we have to keep rates as low as possible for people in this province.

**MR. BUDDEN:** Sure.

Madam Clerk, could you call up P-04298, please? And it's –

**THE COMMISSIONER:** Tab 70, book 1.

**MR. BUDDEN:** It's page 2 that I'm looking at here, Madam Clerk, if we could scroll to the second page? Yeah, that's good.

So this, again, is early days, March of 2016, and this is a memo or a correspondence from Minister Coady to yourself. And what I'm interested in here is 1d and it's talking about various options. This is: "I believe there are two good options available to us on Muskrat Falls: 1. Based on preliminary report by EY" – and it's d I'm interested in – "Expand oversight adding independence and expertise ...."

And then we scroll to the very final page of that five-page exhibit. We see a number of names there, all of whom are of – or at least many of whom are knowledgeable and accomplished people. I note one and it says Davis Vardy, but I would suggest that's obviously Dave Vardy who's one of the principals whose name we discussed a moment ago. So it's a – you know, it's a fairly blue-chip panel. We see Stan Marshall on it, Vic Young, Linda Inkpen and others, all accomplished people.

So here's where I'm going with it: This was on the government's radar as early as beginning of March of 2016, the need to beef up the Oversight Committee by adding independence, which didn't exist; it was a committee of public servants and expertise, which also didn't exist. They, again, were a committee of public servants without expertise, other than their considerable expertise in governance.

And my question for you is this was, in fact, done – or a version of this was done – but it wasn't until at least a year later. Why did it take so long to put into action what was clearly on your government's radar in beginning of March 2017? Why wasn't it – this not done until the spring of – March 2016? Why was this not done until the spring of 2017?

**MR. BALL:** Well, one of the names would jump off the page there – I think that came in less than a year; it was really less than a couple of months – Stan Marshall became –

**MR. BUDDEN:** Of course.

**MR. BALL:** – the CEO.

It's – this would've been something that we were looking at. We wanted to make sure that the Oversight, you know, Committee was expanded. And this really is the minister; she would be working very closely with me on this, you know, so I'm not going to comment on, you know, why it took a year. The fact is we got it done and we got a new board in place within a month of this.

And we went through the IAC process to get the expanded board that we have in place right now, and I'm not sure what the length of time would've been to get the first independents on

that Oversight Committee. You're saying it's a year and I'll take your word for that, but we did put, and were successful, in putting a number of successful people in the province on that Oversight Committee. And some of them are still there and, just recently, there was some additions made to that board as well.

**MR. BUDDEN:** Yes, it's not the result that I'm questioning, it's the timelines.

**MR. BALL:** Yeah, well, it's – you know, it's like everything, it's – you know, these things take time. I'm not sure why it took 12 months. It did, obviously. Is it something that we could've responded to earlier, or should've responded to earlier? You know, I'll take your opinion on that. And I'm not going to disagree that we would've liked to have people in place.

None of these people here, as far – I don't know if these people were approached and able to or willing to serve. I would not know that. I know that within a year we had expanded oversight, added independence and that independence is still in place on the Oversight Committee.

**MR. BUDDEN:** Yeah. Not within a year, slightly longer than a year.

**MR. BALL:** Was it a year?

Okay, thank you.

**MR. BUDDEN:** Thank you.

Finally – this is really my final question, and it's to do with the North Spur. We heard Mr. Marshall made it plainly obvious in his evidence that he had no intention of revisiting the North Spur, in terms of commissioning any kind of further analysis or review of the safety and stability of the North Spur.

And yet we continue to have reputable scientists – they may be right, they may be wrong, but they are reputable scientists: Dr. Gordon, Dr. Elfgrén, Dr. Bernander and others – who continue to have publicly expressed doubts, write letters – send letters to your minister, give public talks about their concerns about the stability and safety of the North Spur. And other individuals, such as Mr. Penney and Mr. Vardy who have, I would suggest been, on many

issues, as were you, proven right about Muskrat Falls-related issues while Nalcor was perhaps proven wrong.

So – and they continue to express concerns, as do many other private citizens. And, of course, the people living downriver from the dam are represented here, so they will – their lawyer will more than capably express their concerns, but they have concerns too.

So I guess my question to you, you're the man at the top here; you're in charge of this province and of Nalcor, indirectly. You have the power to appoint such an independent review to determine, once and for all, independent of Nalcor, whether or not there are legitimate stability and safety concerns with the North Spur. Will you do so?

**MR. BALL:** So when I look at the work and, you know, the analysis and, you know, the feedback that I've been getting – and these are engineering companies, and to suggest that an engineering company would be influenced, you know, by someone like Nalcor – you know, when these people put, you know, kind of their stamp and their analysis, you know, they do so with their professional reputation on the line. And there's been numerous number of reports that would have been done on the North Spur and it goes back for decades.

And so – and then there's ongoing assessments by groups like the Canadian Dam Association and so on. They come in and they actually monitor these sites as well. And so we have structures that would have been in place in this province right now for, you know, nearly 100 years. And, you know, I agree with you, there's been a lot of comments, public comments about the North Spur. If we were to go out and do actually more, people would be saying, well, now you're ignoring the work of these engineers.

So it really goes, I – from what I see, it sheds some light on, you know, some of the complex things that we have to deal with when we make those decisions. And at what point do you say, okay, we've assessed this enough, we've reviewed it enough and we've got to make a decision here.

And the reports that are coming back with the information that's shared with me says that this work is done to the standards, to the highest levels of standards. It's been reviewed, you know, by those engineers who put their reputation on the line. And it's just not one engineering firm, there are multiple engineering firms that would've looked at this. So, you know, that's – you know, I guess that's the best way I could answer that for you today.

**MR. BUDDEN:** You are aware that we have heard from witnesses at this Inquiry – and, again, Commissioner LeBlanc will make the determination, but our submission will be we've heard from witnesses, from experts, from Manitoba Hydro International, also a reputable engineering firm. And they were sitting in the very chair you're sitting in now and surrounding chairs, and they were, I would suggest, humiliated by the evidence that came out about how their independence, perhaps, had been – by the time the report left their desk and by the time it got finalized had – the meaning of it had been perhaps somewhat changed.

So, again, not a comment on the specific engineers to this project but it doesn't inspire a confidence, it doesn't reassure the people affected here to say: Don't worry, Nalcor has had good people look at this. We've heard lots of evidence here – I can name names; I've done it before – who have testified here that they were – they felt pressured or their reports otherwise were altered so the concerns remain unaddressed. You do have the power to address them so I'll leave it at that.

**MR. BALL:** Thank you.

**MR. BUDDEN:** Thank you.

**THE COMMISSIONER:** All right, it's 12:30 so we'll take our break.

And we'll start with the Grand Riverkeepers when we come back at 2 o'clock.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

This Commission of Inquiry is now in session.

Please be seated.

**THE COMMISSIONER:** Okay, Mr. Smith for Edmund Martin.

I understand there's been a change so you're going to go next.

**MR. SMITH:** Yeah.

**THE COMMISSIONER:** Yes, thank you.

**MR. SMITH:** (Inaudible) for a change.

Premier Ball, Harold Smith for Ed Martin.

**MR. BALL:** Harold.

**MR. SMITH:** I just have a few questions for you – not too many. And I'll begin by talking about the transition. And I understand there was a transition team in December of 2015 and that Mr. Martin presented to that team with some others of his executive.

**MR. BALL:** That's correct.

**MR. SMITH:** When – excuse me. When we go to that meeting, which I think was December 4, did Mr. Martin disclose that he had and/or told the previous administration about the Astaldi issue?

**MR. BALL:** That's my recollection of the amount – I'm not sure if he had said the amount but, certainly, that the Astaldi issue was something that he had informed the previous administration of.

**MR. SMITH:** And did he indicate to you that he had been in discussions with Astaldi trying to resolve the issue over a period of time?

**MR. BALL:** Yeah, if it was – not sure if it was on the December 4 date, but there was certainly discussions that would have happened on December 4 or subsequent to that – that these discussions had been ongoing for 12 or 14 months – or 12 or 18 months – and even to the point where it even highlighted the number of meetings and even with top officials like the CEO of Astaldi.

**MR. SMITH:** And when he did – indicated that he was in these discussions, did he also indicate that the position of Nalcor was still quite strong under the contract, but they felt that they had to, you know, keep Astaldi on the project and get the project completed?

**MR. BALL:** His comment was something like the – we have a solid contract. However, you know, there was – there were comments made about they didn't really – there was a sense of understanding productivity, how important the productivity was at the site and knowing that the labour costs – that they were spending more labour costs than they were actually meeting milestones where they should have been, based on the labour versus material or things like concrete that had been poured.

So those kinds of things were made as well, so it was really hard to connect. They saw the contract – the project going well but, yet, you're so far behind on your labour budget.

**MR. SMITH:** Yeah.

So, in other words, Astaldi's labour budget had been exhausted or nearly exhausted.

**MR. BALL:** I – yeah, if I remember correctly I think it was something like – I'm not sure which meeting this would have came up, but it was – it really kind of jumped off the page with me when you said – when it was said that there was one-third of the concrete poured but, yet, two-thirds of the budget spent.

And, you know, this would lead me to believe that productivity, as we mentioned already, was not something where we had a contract that would have been designed – which would have been what we would expect from a solid contract, that it would have been designed to the point where productivity would have been attached to the, you know, your labour budget.

**MR. SMITH:** So, if I can, did he provide any rationale for why you would require \$200 or \$250 million to maintain or sustain Astaldi when the contract was so strong?

**MR. BALL:** Well, I think this was part of the problem because we weren't even sure if \$200 million would actually solve the problem. As a

matter of fact, it was – that was said when the questions were asked, would this solve the problem, and there was no affirmation that this would solve the problem with Astaldi.

**MR. SMITH:** And I understand it that – but at that time, I think December, early December, and I believe there's another meeting a little later in late December – at that very important time – particular point in time, rather, it appears that your understanding is that he was not told to stop having discussions with Astaldi. That no one had, from government, made a phone call and told him to stop.

**MR. BALL:** Well, that wouldn't have been a question that I would have asked –

**MR. SMITH:** No.

**MR. BALL:** – if someone said stop negotiation or stop your discussions with Astaldi. That wouldn't have been a decision that I would have been able to make or would it have made a difference to the former administration.

**MR. SMITH:** Okay.

Now, I'd like you to look at P-03874.

**CLERK:** Pardon me?

**MR. SMITH:** P-03874. I know there's a zero there, but I –

**THE COMMISSIONER:** 03874.

**MR. SMITH:** – tend to ignore it.

**THE COMMISSIONER:** 03874 – it'll be on your screen.

**MR. SMITH:** Okay.

And we'll identify this as a letter from Julia Mullaley, January 25, 2016. And it's written to yourself as the Premier and she acknowledged, when she was testifying here at this Inquiry, that this is very unusual. You don't normally get letters from the chief of – not the chief of staff, I'm sorry, the clerk of the House. You don't normally get letters to inform you of certain things; that this was, you know, unique.

And I'm – the reason I'm raising this letter is that there's a couple of pieces of information that seem to try and put it in context, what and when or if government told Mr. Martin to stop his discussions or halt his discussions. And I pointed out to you, first of all, that in the first sentence: "As you are aware, on Monday, January 18, 2016 Nalcor advised Government that they were entering into discussions with Astaldi with the objective of negotiating a solution to issues raised by Astaldi with respect to cost and solvency." Okay?

And then further down in the second paragraph – if we could scroll a little bit, please. Thank you.

"A draft presentation was provided on Thursday, January 21, 2016 (revised Friday, January 22, 2016) outlining Astaldi performance to date, Nalcor's actions to address performance issues and Nalcor's position that while their contractual position is strong and issues are the result of Astaldi's actions, the implications of not supporting Astaldi could result in a very large exposure to the Project. The presentation further outlined the options considered with a recommendation that Nalcor work with Astaldi to reach a negotiated settlement which would require providing at least an additional \$250-300M to Astaldi."

Now, these are Ms. Mullaley's – you know, a note to you. So this had to have happened in some kind of reporting by Nalcor, probably Mr. Ed Martin to Ms. Mullaley. And it goes on – this letter goes on, and says – and towards the bottom, please. Okay.

It is therefore recommended that you bring in expertise "to complete an initial assessment of the issue including in particular, validating the urgency of the issue, the conclusion that there are concerns with the solvency of Astaldi and the related risks to the project. Further validation will also be required to assess the options and related legal and" –scroll up, please, okay – "financial risks and to provide a recommendation on how to move forward to manage the project and mitigate risk."

In order for that to occur, someone would've had to say to Mr. Martin, you know, withdraw from negotiations. Someone had to.

**MR. BALL:** For Mr. Martin to withdraw from –

**MR. SMITH:** Yeah. Well, it says you're going to have to have this all studied. You're going to have to bring in somebody to assess it. And I think a little further on we see, you know, in your own statements that you told Mr. Martin: Look, you know, you don't have the strategic – I don't see anything strategic. I don't see a mandate. I don't see – you ultimately told him these things and it appears that it results from this letter and another exhibit, which was referred to in your direct testimony, 03874.

So – and on those – on that basis, in terms of looking at the narrative of what the sequence is, it appears that there was a transition meeting in December. You took office sometime mid-December. There was a discussion between Mr. Martin and yourself and others, about the dollars that was likely, or what Mr. Martin had identified, at that point in time, that might, you know, solve it, but he didn't know for sure, but he was doing an estimate.

And it also appears from other testimony we've heard before the Commission that \$525 million was what Astaldi's position had become in those discussions; down to \$525 million. And he was looking at, in his own feeling, or, if you will, his strategy, was that that \$525 million should include all the knock-on effects. You know, all the – for the other contractors because of Nalcor's – or sorry, because of Astaldi's delinquency in fulfilling the terms of the contract. And he, like Mr. Marshall, took the view that Astaldi had to suffer some of the pain for some of the mistakes that they made and, therefore, they were offered five and a quarter. He thought he could get it for 250, 350, in that range.

So these discussions occurred, you know, very close on and very early in the mandate of the current government – or the government of that day, which was your government.

So, the position, it seems from reading the documentation, it appears that the discussions were ongoing and that was told on either the 4th, or a little bit later in December, and no one told Mr. Martin, at that point in time, that the discussion should end. These were exploratory discussions to see where we'd be or what might

be the solution. And it was only later when you brought Mr. Marin back in for another meeting, and I believe it was, if I'm not mistaken, around the 20th of December, there was a meeting whereby you announced that EY would be engaged to review the cost and schedule of the project.

And there was a discussion at that time, I think, and I'll ask you: Do you recall a discussion at that time that because of the discussions going on with Astaldi, it would be better if EY deferred Astaldi investigation and discussions until they tried to get – because it's hard to get a cost and schedule without a deal with Astaldi. You have to almost have a deal with Astaldi before you could get a handle on the cost and schedule.

So do you recall that discussion?

**MR. BALL:** Somewhat I do recall the discussion, but keep in mind, as I said so many times this morning, Mr. Martin was never given a negotiating mandate by me –

**MR. SMITH:** No.

**MR. BALL:** – and never provided me, by the way, with a negotiating strategy, which I asked for. Matter of fact, if you remember a comment that I made earlier today, in the briefing where I debrief and phoned Mr. Martin prior to a letter that had been put together by, I think it was Kelvin Parsons at the time, we had some comments about this today, and I actually called Mr. Martin after that meeting.

And so in the debriefing was – I asked him then to actually supply a negotiating strategy. And I'm not sure what the date would be but – when that conversation occurred – well, you see where I'm going with this. There was never a negotiating mandate that was ever given to me from Mr. Martin to continue the negotiation; even if there was a negotiation. And let's not forget, the negotiation was kind of vague because there was no guarantee that this was going to solve any problems.

So any Member right now or any individual could say that I have a potential solution here based on \$200 million, well, that number could've been \$100 million or \$400 million or

\$500 million for what we knew, because there was no negotiating strategy on how we could actually get to a solution.

**MR. SMITH:** Now, before we go there, it was very clear from the commentary, not only caught up in Ms. Mullaley's letter to you, but in his – in your own evidence as to what he told you in early December, and that was that he was in discussions. Now, you can characterize them as negotiation or you can characterize them purely as discussions.

I believe there seems to be a disconnect between what you mean by mandate, because there was – that was clearly made known to the government that he was in discussions and had been for several months. And the discussions were only to the point of trying to isolate what the number was in order to get the mandate.

**MR. BALL:** That's a very awkward way to enter into a negotiation –

**MR. SMITH:** Well, he wasn't negotiating. He was entering – he was doing exploratory discussions with Astaldi to find out where or what they were prepared to accept, and they only found that out in January, when it's five and a quarter.

**MR. BALL:** Well, we certainly didn't know that \$200 million was going to solve the problem, which was the focus of the discussions that we were having.

The fact is is if there were discussions, whatever he would've referred those or defined those to be, for 12 to 18 months, and my problem with it was for 12 to 18 months somebody was having discussions, negotiations – call it what you want. There was a problem here that was never exposed or told to anyone in this province and it's the \$7.65 million – billion dollars that was publicly disclosed in the September time frame in 2015 with an asterisk around Astaldi.

I had a problem with that and I was wondering, like we often hear in this situation, what the knock-on impact would be. Do we have another company out there that is now in a similar situation? And as I've mentioned this morning, the insolvency piece was only being discussed by Mr. Martin. The contractor themselves were



not talking about insolvency, they were talking about dealing with the contract. And we also – by February, I think it was around mid-February, we asked EY to do a piece of work into the global financial situation of Astaldi.

**MR. SMITH:** Could we have P-03571, please?

**THE COMMISSIONER:** Okay, I understand that there's a problem with some of the monitors, so I was sort of waiting to see what was going to happen, and I know you're in a bit of a rush, but can I just take two minutes just to figure out –

**MR. SMITH:** Sure.

**THE COMMISSIONER:** – how we can get those monitors turned back on so –

**MR. SMITH:** No problem.

**THE COMMISSIONER:** – (inaudible) refer to exhibits.

So we'll just take a minute now.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

**THE COMMISSIONER:** Mr. Smith.

**MR. SMITH:** Thank you.

**CLERK:** Please be seated.

**MR. SMITH:** Thank you, Mr. Commissioner.

Premier Ball, I did want to get an answer: Do you recall a discussion in and around the EY discussion that (inaudible) trying – you know, move very, very slowly with respect to EY and Astaldi?

Or, you know, that's the essential question that there was an attempt, you know, from – at least Mr. Martin has testified that there was – he felt that there was an understanding reached that EY would, you know, back off of Astaldi, trying to get the Astaldi program, you know, settled or fixed if they could find common ground. And

that would be essential for EY to actually make good on their investigation of the cost and schedule as to where the cost and schedule would be. If you didn't have the major contractor moving forward you would have difficulty making – doing that work.

**MR. BALL:** Yeah, so I do remember the impact with Astaldi, and I do remember a conversation that this could be done, you know, later on in the schedule, but I made it quite clear that the review would never be completed without having all the information with Astaldi.

There seemed to be a sense that, you know, they could come to a solution. I wasn't comfortable – by the way – that they could come to a resolution on this contract in such a time frame. We did bring in EY, as you know, to take a look at the global financial health of Astaldi. So – and as it happened, you know, none of this, you know, happened anyway, and so the solution of \$200 million or 250, 300 – whatever it was –

**MR. SMITH:** I –

**MR. BALL:** – never really turned out to be the solution that, you know, was suggested at the time.

**MR. SMITH:** Yeah, I'd just like to back up. Forget the 250, 350. I mean, numbers are – the numbers at that time, whatever they were, okay?

I'm really interested in whether or not there was a general understanding that Astaldi – you know, the investigation of EY into the Astaldi matter might be put on hold for a little while to see if they could get a deal, because with a deal, then EY could actually complete their work.

**MR. BALL:** So you – first of all, back to the other question around December 20, that meeting was about what we were going to do on the 21st of December, and that was actually bring EY in to open up the books on Muskrat Falls. So that was the purpose of that meeting with the chair and the CEO to sit down and give the direction to co-operate –

**MR. SMITH:** Right.

**MR. BALL:** – with EY.

**MR. SMITH:** I –

**MR. BALL:** And that was the purpose of that meeting.

So now we get into, as you say, in the following month and we're now talking about scheduling of the review, and so there was some suggestion that we lead Astaldi to a later part of the review to see if they could actually find a settlement. But, you know, as I said, you know, my level of confidence – given we were now into January – that that was going to happen, it was – I had not a lot of confidence that we could actually get to a successful resolution.

**MR. SMITH:** Okay.

So the reason I say that is that in – on January 22, okay, Mr. Martin forwarded a draft slide deck to Mr. Mullaley and Charles Bown of the Department of Natural Resources. And if we scroll up, please, Madam Clerk, into the document. Perhaps you could stop at page 8, please. Okay.

So this is slide deck presented to Cabinet I think at the Planning and Priorities meeting which was occurring in and about this time frame, 22nd, 23rd of January. And you'll see from the slide deck that – Nalcor Actions to Address Astaldi Issues: "Engagement at the highest levels of Astaldi and Nalcor continuously over last 24 months – minimum of 18 Meetings at Senior levels including 6 CEO meetings."

So there was, in fact, a recognition that discussions were ongoing between Nalcor and Astaldi, and my understanding is that no one from government told them to cease and desist until after Ms. Mullaley wrote her memo to you on January 25 when they suggested numbers in the neighbourhood of 250 to 350 could do it.

**MR. BALL:** Well, there you go, there's – the number keeps growing, and this was part of the problem. At no point did I ever say to – you know: Mr. Martin, you go ahead and continue on with your discussions, your negotiations – or whatever they were. Obviously, they weren't that successful because they were already 24 months, and if you think about it, that is really a year into this project. The sanction in 2012, we're now in year 2013 or in 2013. If you read

this document, 24 months later, 18 meetings senior officials, six CEOs and you couldn't find a solution to this problem.

And if this was such a solid contract –

**MR. SMITH:** Yeah, but there's more than one problem, Premier – there was much more than one problem. We've heard about those in the Commission. We've heard about, you know, getting them off the ground, getting the ICS situation resolved, et cetera. So we've heard a lot of problems but when we come down – and I'd ask you to now scroll down to page 9. Okay.

The current situation as of January '16 is, "Astaldi has not yet filed a formal claim, but has been constantly explaining their cost and solvency issues to us, and seeking to negotiate a" situation. This is as of January. Now, this problem was a solvency problem in order to finish the contract, okay? And so there was a lot of discussion, as I understand it from the evidence, that Astaldi, okay, were representing to the team – to Mr. Martin and others in the team – that they were having solvency issues and they had essentially exhausted the contract – the bid price of the contract.

So the options were either get – turf them off the site and get somebody else, okay, having spent the money for Astaldi contract and suffering the delays that it would take for – to demobilize and remobilize another contractor. And another contractor walking in the middle of somebody else's project – my understanding again, is that the likely basis upon which a second contractor would take over would be essentially a cost-plus arrangement; not a fixed price.

So my understanding, again, is that an analysis was done that even EY agreed with and that is that staying with Astaldi was the least-cost option at that time. Is that your understanding of the information you have?

**MR. BALL:** I can remember conversations with Westney but I'm not so sure where, you know, this is going because Astaldi was still there to finish the contract. It wasn't about – my issue really wasn't about taking Astaldi out, my issue was about who was going to negotiate the settlement. And I wasn't comfortable that the person that designed the contract should be the

person that's going to go in and try and clean up the mess that we were dealing with here.

That was the issue that I took and all I was asking was that if we can get to a mandate, that you could be part of the negotiation, but you had to have other people in the room. And we never did get there.

**MR. SMITH:** Now, that's a suggestion you've made several times in that Mr. Martin was the architect of the contract. Do you know that to be the actual case?

**MR. BALL:** Well, he was certainly familiar that this was a solid contract. He was the person that was in charge. He was the person that talked about how the productivity – that they were not aware of their productivity to the point where he made a decision somewhere in the previous months to actually take leadership from Nalcor, at Nalcor's expense, to add to the Astaldi team to actually bring and coach them along. So, obviously, he had tight connections to the contract.

**MR. SMITH:** But in terms of your knowledge, did he negotiate the original contract?

**MR. BALL:** Who signed the dots – and crossed the t's and dotted – and put the dots in place?

**MR. SMITH:** Well, there's a difference between who signs the contract, and you know that yourself, Mr. Premier, that contracts you sign – you may not have participated in negotiation, but you might have to sign them by reason of whatever piece of legislation that governs that particular document.

What I'm really specifically asking: Do you know as a fact that Mr. Martin negotiated the Astaldi contract?

**MR. BALL:** I'm sure as the CEO of Nalcor –

**MR. SMITH:** I'm not saying whether he's responsible or not, I'm just saying did he negotiate the contract?

**MR. O'FLAHERTY:** Mr. Commissioner, perhaps the witness could be allowed to answer the question. I think he wants to answer it.

**MR. BALL:** Okay.

What I'm saying is there – it was probably a team, not sure. My response to that would be as the CEO of Nalcor they would hold the responsibility for the execution of that contract. So, Ed Martin, if he was going to come in to us, like he did on many occasions, and say the project is going well, that we have a solid contract in place, obviously, the responsibility or the architecture and the understanding of that contract must've been with the CEO.

How you could actually say that you have a solid contract, yet we keep going back to a situation here where there's hundreds of millions of dollars at stake and we're losing schedule and we've had nearly 24 meetings over – you know, dozens or so meetings with the CEO and we have not had a resolution to the problem. I think that anybody that was sitting in my chair would certainly be acutely aware and raise some antennas that we got a problem that's going on here. And my responsibility was to try and deal with that as best I could.

**MR. SMITH:** In any event, Premier, it appears that at a point in time you had a discussion – and it's not clear when – that you wanted Nalcor to involve EY in the discussion, either with Mr. Martin or with the Nalcor team that was dealing with it. And you wanted them to be involved on two levels; one, to work on whether or not, with a strong contract, you still had – or still should negotiate with Astaldi, and if you should negotiate, what the strategy might be for that negotiation.

And then once you've worked out the strategy, try and get a financial mandate, not an exploratory one, but a financial one as to the amount and that Mr. – and the EY would be at the table with Mr. Martin. Now, do you know whether a negotiating strategy and/or mandate was agreed upon before Mr. Martin left office?

**MR. BALL:** Not that I'm aware of. And if you – I just want to remind everyone, too, is that if you go back to the letter that we discuss previously, which was a letter that would have been sent to Astaldi, you know, there was even resistance to actually get EY involved at that level, let alone get involved in a meaningful negotiating mandate.

So we were struggling to get Mr. Martin at the time to actually agree upon the letter that would be sent to Astaldi. He was taking the position that he wanted to put some money on the table before we knew this would be the solution, and he also wanted to put some money on the table before the claim was even validated. So there was a lot of issues going on and so we just took exception to this. And there was a resistance from Mr. Martin to get EY involved at that level.

**MR. SMITH:** Okay.

Could we go to page – excuse me, page 13: “Why Negotiate with Astaldi?” Again, a presentation made to the – you know, the policy and priorities committee, I believe it is called.

“Although our pure contractual position is strong, the implications of not supporting Astaldi could result in very large exposure to the Project if Astaldi is not able to complete the job due to insolvency or even if Astaldi does not complete the job in a timely manner due to cash flow issues.”

So they – whether they’re insolvent or whether they have cash flow issues, it was well known by this date and time that they – a lot of the guarantees that were negotiated originally with the parent company were in jeopardy. Not all of them, but some of them.

And then it says, “The risk of these exposures is high, and just ignoring them because the contract position is strong is not a prudent or acceptable way forward.” So, all along, Nalcor made it very clear that the contract in their mind was strong, but you can have a strong contract and still have no completion of the project, which could be quite serious to the province.

So they said that it was – the most effective way to minimize the risk and exposure is when we can see it ahead of us, is to do it up front as early as reasonably possible and have the highest ability to contain it. Now, what you’re telling me is that notwithstanding this presentation, the position was you must have EY; you must have, if you will, their development – or work with you to develop a strategy and a possible mandate, et cetera, and be at the table at the same time.

**MR. BALL:** That’s correct. And the analysis that had been done and the information that was provided, no one was suggesting that we go a different route and actually try and make this work with Astaldi.

Also, that was going – something that was going on at the same time was in preparation because I think Astaldi was now (inaudible) a reporting period and there were some questions around how they would report their own financial situation. So quite a few moving parts at this time, but we were still – it wasn’t about would we negotiate with Astaldi, the question was who would negotiate with Astaldi and my position was that Mr. Martin wouldn’t do this alone.

**MR. SMITH:** Now, you’re also aware that after Mr. Martin had departed and Mr. Marshall came in, Mr. Marshall has testified that he did not develop a strategy with EY, he did not have an approved mandate and he did not involve EY at the table. Why?

**MR. BALL:** Why not? You have an individual here who had a significant amount of experience, well respected, understood utilities, had been on a number of huge projects. He’d been in contact with me. EY was there, readily available if we needed EY. They could’ve been called in to support if that was needed. I put my confidence and faith in Mr. Marshall to actually lead those discussions, which he did, and brought it to a successful conclusion by December of that year, and that was a decision that we made.

**MR. SMITH:** So, from your perspective, that’s because Mr. Marshall took over the negotiations?

**MR. BALL:** They were successful.

**MR. SMITH:** Yeah, but he took over – you’re telling us that he actually took over the negotiations?

**MR. BALL:** I’m speaking, you know, what I know. Mr. Marshall is obviously involved – directly involved in this as CEO of Nalcor. And, you know, he kept in regular contact with me how negotiations were going and I think it was around – there was a bridging contract that was put in place which led to a conclusion and

successful negotiations. I think it might have been by December of that year.

**MR. SMITH:** Okay.

When Mr. Lance Clarke testified before this Commission, Mr. Lance Clarke said at page 30 of his transcript: “So, it seemed we were finally getting back through that phase, and that was in” – I’m sorry, this is towards – left-hand column towards the bottom third – “I’m sorry, I’m not great with dates – but that was in the spring, and Ed was still there. But then, very shortly after that, Ed left and – so we had leadership change. So, we were still left in limbo. And Mr. Marshall came in. We presented the project, went through everything with him, explained where we were.”

Of course, now there’s no mandate, there’s no strategy, there’s nothing developed, okay, where we were. And after that explanation he said to me, “I went to his office and I said – he said, so, how are things going with Astaldi, then, from what you’ve explained ....” Okay? “I said, they’re not” – that’s Mr. Clarke says, they’re not. So “we’ve been told to stop and we haven’t gotten back. He said, well, go. He said go now. He said, I’ll deal with this. He said, you need to get back to the table.”

So, effectively, Mr. Clarke, on behalf of the project management team, went back to the table to try and negotiate. That’s, you know, the facts as I understand them from the evidence. So, how does it – that you send in a – not the CEO, but the CEO sends in somebody from the project management team to negotiate with Astaldi with none of the restraints or constraints that you gave Mr. Martin?

**MR. BALL:** I think what we’re talking about here is at what point would the CEO insert himself directly, at this stage, into the negotiations. It’s not unusual, if you’re a president of a company, you send in your VPs or whatever they would be.

It’s, you know, we would – for instance, in my own office it wouldn’t be unusual for a deputy minister to go in and start negotiating and they bring it along – keep me informed. In this case, I’m guessing Mr. Clarke would have kept Mr. Marshall informed. And, at some point, the CEO would either go in and once we got to a

conclusion or if there was a problem that they would actually work to sort that out.

I’ve had to do that myself on a few occasions in negotiations. So, you know what Mr. Marshall decided to do with Mr. Clarke and the confidence that he had put into him – it was a decision, you know, and a negotiation that we would have left with Mr. Marshall. I can’t ignore the fact that within, you know, six months later that there was success in this negotiation and we got Astaldi in the place where, you know, they were able to, you know, virtually finish the project – not quite finish it, but virtually finish the project.

**MR. SMITH:** So the constraints were not critical for government to move forward and spend \$900 million?

**MR. BALL:** Nine hundred million compared to what? We had no idea what the, what, was. All we had was an arbitrary number that was put for – put to us by Mr. Martin in the past – it’s all we had to compare it to and we had no idea if there was success there or not. And, you know, so right –

**MR. SMITH:** And –

**MR. BALL:** – now we did get to successful negotiations with Astaldi.

**MR. SMITH:** And you’re suggesting, then, that the success of the negotiations for Astaldi was to complete their contract for \$900 million. Did that happen?

**MR. BALL:** It can – no, they didn’t complete the contract; I think people would know that. But what I do know is that we’ve had – at this point, we’ve had a \$10.1-billion, you know, budget for this project that’s been stable now for, you know, a couple of years, and that is a stark difference in what we were seeing in the past.

So, you know, this really comes down to did we get from where we were – and let’s not forget that in June of ’16 when this – when these discussions were ongoing, we had 48 per cent of contract completion; a year later, we were at 75 per cent complete.

**MR. SMITH:** Now, I just wanted to come back again. It said \$900 million was actually of the agreed-upon price, with negotiations under Mr. Marshall's team, okay? And we also know that it – did – and wasn't sufficient to get to the end of the project, okay? So it wasn't very certain in the end, was it?

**MR. BALL:** Well, I think there was some instruments that were in place to actually see the project to completion. I can tell you what was definitely uncertain was that \$200 million that was discussed in December 4 meant anything at all, and let's not forget this was after really two years.

So, essentially, one year from the beginning of this project, we were into serious discussions with the lead contractor. I had some concerns about that, that that happened as quickly.

**MR. SMITH:** And when we look at the discussions, quote unquote, okay, the discussions were delayed by how many months?

**MR. BALL:** The discussions with Astaldi you mean?

**MR. SMITH:** Yes.

**MR. BALL:** I think the first thing that happened, if I remember, there was a bridging contractor that – a bridging contract that was put in place, because this was really at a very critical time in the construction of this, of the project. So it was important to get through the summer of 2016, I guess it was, to get there, get into the fall, and then get to a – then – so then do a review on the success of Astaldi and the productivity.

And, from what I gather, the information that was given to me, that productivity increased and that we were able to actually get through that summer and get to a resolution to the problem with Astaldi in December of 2016.

**MR. SMITH:** I could debate a little bit on that but I won't. I'll stick to my plan and say to you that Mr. Martin was suggesting a resolution, my understanding is, that caused Ms. Mullaley to write you in January that he was suggesting a solution of \$350 million – in his mind or his

view – at that time. And he couldn't guarantee that that would actually do it.

In the construction business, that's a very unwise thing, as you probably know, to guarantee that it's only gonna be this number or that number, okay? And I think Mr. Marshall also testified that you never firm, you know, a number – you try and give a range, try and resolve it.

The question I have is that that was in the very early winter, if you will, of 2016, that for whatever reason Mr. Martin's team was shut down. They couldn't negotiate, they didn't have the EY analysis, they didn't have the risk report, they didn't have the mandate – with all those things they didn't have and they never got before Mr. Martin left. But the agreement, the procedure to start negotiations again, was effectively delayed almost five months.

**MR. BALL:** We got a bridging contract that would have went in place some time earlier than that to get them through that –

**MR. SMITH:** No, no, my understanding is that bridging contract – and I don't remember the –

**MR. BALL:** Yeah, I don't know the exact date.

**MR. SMITH:** July.

**MR. BALL:** July.

**MR. SMITH:** It was July. Not May. July. Okay.

So the bridging contract, if you will, the negotiations didn't even start towards bridging contract until Mr. Marshall came online and that was some time in mid-May, from what I gathered from his testimony – is that he started the – he sent Mr. Clarke out to negotiate in mid-May.

**MR. BALL:** Well, Mr. Martin didn't leave 'til April the 20th.

**MR. SMITH:** Right.

**MR. BALL:** So it's quite a bit of work if you're gonna bring in a new CEO, and I think this is great information, to think that someone could

come in and turn this around as fast as that in a period of weeks.

First thing, to strategically get in place a bridging contract that could actually lead you into the negotiation or discussion on what will lead you into the conclusion of this problem – so if you’re thinking that April the 20th ’til mid-May was a long period of time, I’m not so sure of what you think of 24 months of unsuccessful negotiations or discussions would have been. To me, that seemed like a long period of time.

**MR. SMITH:** In fairness, though, the 24 months was dealing with a whole myriad of different issues, not just what the claim was. The claim arose and the longer Astaldi stayed on site without arrangement, the bigger their claim became.

**MR. BALL:** Mr. Smith, there was no claim that could be validated. That was part of the problem.

**MR. SMITH:** If they didn’t have a claim, then we shouldn’t have been negotiating and giving them \$900 million. They had to have something to justify \$900 million. Did they not?

**MR. BALL:** There was no claim for the \$200 million. That was –

**MR. SMITH:** No, no, no.

**MR. BALL:** – part of the problem.

**MR. SMITH:** I just – turning it back to the \$900 million you gave, there had to be a claim for Astaldi, would there not?

**MR. BALL:** What we’re saying is that: There was actually no claim, and what Mr. Martin wanted to do at the time was put a couple of \$300 million on the table without any validation to the claim. The next step when Mr. Marshall was put in place, got to a bridging contract, you know, quite early, and then was able to actually negotiate a settlement to – so we can get the project, you know, to the end, to its completion.

**MR. SMITH:** Yeah. I’ll move on.

**MR. BALL:** Thank you.

**MR. SMITH:** I just to turn your mind a few minutes to the SNC-Lavalin risk report.

Could you tell the Commissioner how you came into procession of the risk report?

**MR. BALL:** Yeah.

So, there was – we became aware of this report through Nalcor, and the release of it was on the permission from SNC-Lavalin.

**MR. SMITH:** And what time frame are we talking?

**MR. BALL:** Oh, I can’t remember the time frame – when it happened. It’s – you know, it’s all on the public record.

**MR. SMITH:** Right.

And the risk report – did you determine that the risk wasn’t among the records of Nalcor?

**MR. BALL:** It – really, that wasn’t overly important to me amongst who had the records. It was a report that was done by SNC-Lavalin, I think, in 2013. That identified some issues around the cofferdam, Indigenous – so, we just, you know, simply had the report. It was done – for whatever reason, the report was done, and we just made a decision to release it publicly.

**MR. SMITH:** And releasing a three- or nearly four-year-old report was – certainly three-year-old report – was not considered misleading?

**MR. BALL:** They were prepared to – they were okay to release it. I don’t know what was misleading in it. There was nothing in it that, you know, would’ve seemed to me that was commercially sensitive. It’s no different than the report that EY had completed back, that I’ve just mentioned, in 2015 for the Oversight Committee that was withheld, and we ended up releasing on March the 30th of 2016.

**MR. SMITH:** You don’t see any issues with respect to a risk report based on a set of situations or circumstances of 2013 and releasing it in 2016? You don’t see any difficulty with that?

**MR. BALL:** I think there was examples of things in that – if I remember correctly, in that SNC report that actually did happen. They talked about protests. They talked about a cofferdam that would've needed grouting as an example. I think all of this was actually in that SNC report. So, to suggest that these were things that were not relevant to 2016, they were actually very relevant to what happened. If you remember, this is what led to the release of water in 2016, and it was around the grouting of the cofferdam. So, you know, some of the things that were there that were identified as risk, you know, actually did turn out to be things that really happened in real time.

**MR. SMITH:** With respect to the risk report, my understanding is that you – do you recall – and maybe I'll ask it that way – do you recall making statements in the press that Mr. Martin received this report?

**MR. BALL:** I can't remember if I did – if I made those comments or not. Maybe I did; maybe I didn't. But it was, you know, my understanding that it was given to Nalcor.

**MR. SMITH:** Okay. Your understanding it was given to Nalcor?

**MR. BALL:** That's –

**MR. SMITH:** From who did you get that (inaudible) understanding?

**MR. BALL:** I'm not sure. It probably would've come from SNC-Lavalin, but I'm not sure.

**MR. SMITH:** Okay. Were SNC-Lavalin in direct discussions with you?

**MR. BALL:** They were in direct discussions with me back in '17 about the –

**MR. SMITH:** '17. Yeah. So –

**MR. BALL:** – about release of the water. Yeah. So that was the only face to face meeting that I would've had with SNC-Lavalin, and that was about the release of the water that was impound in the fall of 2016.

**MR. SMITH:** My understanding though, you came into position of the SNC risk report in '16.

**MR. BALL:** True.

**MR. SMITH:** Okay. And you had no discussions directly with SNC until '17?

**MR. BALL:** I didn't have the discussions about the release of the document that was –

**MR. SMITH:** Okay.

**MR. BALL:** – not calls that I would've made.

**MR. SMITH:** Okay. So you had some of your staff deal with that?

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

**MR. SMITH:** So the information you had came from your staff with respect to whether Nalcor had the report or didn't have the report.

**MR. BALL:** I'm not sure who would've said that Nalcor had the report, whether they had the report or not. I'm not so sure – even I thought I saw comments maybe by Mr. Harrington that spoke to the SNC report. And maybe those were the suggestions there that they would've received a copy. But I'm not even sure what the chronology was. But I'm not sure if you're suggesting that Nalcor didn't have the report. I understood they did.

**MR. SMITH:** They did not have the report.

**MR. BALL:** Okay.

**MR. SMITH:** Mr. Marshall tried to find it for somebody in your office and testified that it wasn't there.

**MR. BALL:** Okay.

**MR. SMITH:** Couldn't find it. Okay?

**MR. BALL:** So Paul Harrington didn't speak to this report that he had seen it or not?

**MR. SMITH:** He hadn't seen it.

**MR. BALL:** Okay.

**MR. SMITH:** He spoke about it.

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



**MR. SMITH:** He hadn't seen it

**MR. BALL:** That's what I thought.

**MR. SMITH:** I'd draw your attention to 01677, Madam Clerk.

**THE COMMISSIONER:** That will be on your screen.

**MR. SMITH:** Page 125-26.

Okay. Just give me a second.

Little further down perhaps? Yes. Right there. Thank you.

Do you know who Mr. Card is? Mister – I think his name is Bob Card?

**MR. BALL:** No, I don't know.

**MR. SMITH:** Okay.

He was the head of SNC in 2013. And I'm bringing you to this question at line 36: "**So you don't remember handing Ed the report and him refusing to take it from you?**" And Mr. Card says: "*No, I couldn't imagine Ed having refused to take it. We weren't having – the relationship while we disagreed, I would classify it as cordial and adult-like. It would be hard for me to conceive me handing Ed anything and him saying I don't want*" it – or want that, sorry.

So the evidence suggests that the only opportunity that this report would've come into the hands of Nalcor directly is through Mr. Card; in fact, that was the evidence of one of the people from SNC. Now, Mr. Card, when interviewed by Grant Thornton, said, no, that's not the case, I didn't offer him. Mr. Scott Thon, who would be the other person that might've given it to the CEO, also said he doesn't recall giving it to him.

So the report, essentially, was never given to Mr. Martin or to Nalcor. It doesn't appear anywhere in your records. When you –

**THE COMMISSIONER:** Well, let's just properly put that in place, because there is evidence that the report was offered –

**MR. SMITH:** Offered –

**THE COMMISSIONER:** – to Paul Harrington, right?

**MR. SMITH:** That's fair. I'm not suggesting that. I'm just saying to – that he did comment on the report to the extent I don't want it, don't give it to me.

**THE COMMISSIONER:** Oh, I'm not speaking about the CEO, I'm talking about –

**MR. SMITH:** No.

**THE COMMISSIONER:** – because you had said, Nalcor, that it hadn't –

**MR. SMITH:** Well, yes. Nalcor meaning, in this case, the CEO –

**THE COMMISSIONER:** Mr. Martin (inaudible).

**MR. SMITH:** – to clarify.

So Mr. Martin was never offered it and didn't receive it and wasn't one of the people that was refused it, which I think Mr. Harrington testified that he had refused it because it was a draft at the time. If you go through the document and show the signoffs, it was only a draft at the time of the meeting between Mr. Card and mister ...

So the question I had for you is: Why would you go to the press and suggest, if you had no direct knowledge, Mr. Martin had the report? Why would you go to the press and suggest that he did?

**MR. BALL:** The – you know, at this point this was information from SNC-Lavalin that had done a risk report prior to – I guess prior to being taken off the site. I'm not even sure what the surrounding events would've been at the time. So there's – there was information in that, that would lead you to believe that this was – that SNC had done this report for some reason and that maybe it would've been to suggest to Nalcor these are risks that would maybe need to be considered. I'm not sure what the rationale would've been for SNC to do this.

**MR. SMITH:** Oh Mr. Marshall was quite suspicious that it suddenly showed up three years later, okay, at a time when SNC were looking at making a proposal to become the EPCM contractor once again. So he thought it was quite suspicious. And, at the time, in 2013, the removal of SNC as the EPCM, right – you know, they were doing –

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

**MR. SMITH:** – the engineering, but the PCM part of it, you know, this particular strategic risk report, which was unsolicited and was actually being performed by Westney, it appeared that the report from day one was suspicious. In other words, it was designed to try and convince the government – well, particularly, Nalcor – to bring them back, or not take them off, whatever the case.

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

**MR. SMITH:** You would agree with that possibility?

**MR. BALL:** You know, that could've been a possibility for SNC-Lavalin.

**MR. SMITH:** Yeah.

**MR. BALL:** What I do know that when they were taken out, there was no analysis on what the risk would've been by removing SNC-Lavalin from the EPCM – as being the EPCM on the Muskrat Falls, you know, Project. So, there was no analysis done at the time they were taken out, and I know that raised some questions for some people as well, whether that was the appropriate thing to do at the time.

**MR. SMITH:** And were you advised by your advisors that this report was an unsolicited report? This was not –

**MR. BALL:** Unsolicited –

**MR. SMITH:** – contracted for?

**MR. BALL:** Yes. No, I think I remember that SNC-Lavalin was saying that this was a report that they would've done proactively or ...

**MR. SMITH:** Now, a couple of issues to conclude, thankfully.

Rates – there's been a couple of exhibits which show, at least the government's plan, for rate mitigation, okay? So the first element of that would be – if you turn to 04325, I think, is the better of the two exhibits that contains this information.

**THE COMMISSIONER:** Okay, that's at tab 86 of book 2.

**MR. BALL:** Okay.

**THE COMMISSIONER:** I'm sorry, 25 of book 3. Pardon me.

**MR. SMITH:** Okay. Scroll down, please. Stop.

Now, just looking for your acknowledgement that the second bullet, the middle point, which is \$200 million in Nalcor dividends towards the rate management through the budget process and \$4.1 million in hydro surplus export sales, those two elements have, I understand it, been promoted by Mr. Martin on many, many occasions; that these two elements should form the basis of not the full mitigation, but a basis for inclusion in the mitigation.

**MR. BALL:** Mr. Marshall, you mean, or Mr. Martin?

**MR. SMITH:** Mr. Martin.

**MR. BALL:** Mr. Martin?

**MR. SMITH:** Yeah.

**MR. BALL:** I've never had a discussion around rate mitigation from Mr. Martin.

**MR. SMITH:** Yeah, okay.

**MR. BALL:** In Budget 2016, which was the one that they took exception to, we had actually had this discussion about putting in \$200 million into the budget that would use to prevent rates from doubling.

**MR. SMITH:** Now, we've had numerous discussions about the rates doubling and I'm not going to go there now, but it's difficult to see

how they're doubled from 11 – I think it's 11 now, 11 cents per kilowatt hour and the current information from the Public Utilities Board is 21.05 cents.

**MR. BALL:** That's not far off from doubling.

**MR. SMITH:** Okay.

Well, we also know that without Muskrat Falls, the rates would've climbed up to, perhaps, 15 cents because of the work done and the need to do something with Holyrood. So, the fact is that if the rates, without Muskrat Falls, would be hovering around 15, going to 21.05 is not double.

**MR. BALL:** Well, I think it's very clear from people that have –

**MR. SMITH:** It's going to cost more but it's not double.

**MR. BALL:** Yeah, I think it's very clear from people who would have analyzed the rates that there's no larger impact that we would have on rates in this province than the Muskrat Falls Project.

**MR. SMITH:** Now, I guess my final question is rate mitigation has – is a little ambiguous. Is it the intention of government to have a 13.5-cent per kilowatt hour as the rate that everybody pays? Or is it to take the equivalent of the funds, okay, and distribute them back to the certain ratepayers, or all the ratepayers.

**MR. BALL:** You're talking about, would the money go back to Hydro, let's say, as opposed to a cheque that would go to the consumer?

**MR. SMITH:** Yeah. Well, I'm just trying to find out what rate mitigation actually means? Does it mean that the rate will be set, you know, after the advent of the rate mitigation at 13.5 and every citizen would enjoy the 13.5?

**MR. BALL:** Well, these are for Island customers only. This –

**MR. SMITH:** Yeah.

**MR. BALL:** – does not include Labrador, –

**MR. SMITH:** Okay.

**MR. BALL:** – as you know. And in certain areas of the province, if you're an industrial customer, there is a different rate, but this is really mitigating down to 13.5 cents and that would be mitigated not through a cheque to the consumer but it would be dealt with at the Hydro level –

**MR. SMITH:** Okay. Now –

**MR. BALL:** – or Newfoundland Power.

**MR. SMITH:** – at Newfoundland Power, wherever the –

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

**MR. SMITH:** – consumer buys its power. It could be –

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

**MR. SMITH:** – Newfoundland Hydro or Newfoundland Power.

So the answer to my question is simply that rate mitigation means every ratepayer will have the rate of – that they pay for power, mitigated.

**MR. BALL:** That's the plan –

**MR. SMITH:** That's the plan.

**MR. BALL:** – for the Island customers.

**MR. SMITH:** For Island customers.

**MR. BALL:** Right.

**MR. SMITH:** Thank you, Sir.

**THE COMMISSIONER:** Thank you.

All right. Thank you very much, Mr. Smith.

**MR. BALL:** Thank you.

**THE COMMISSIONER:** Kathy Dunderdale?

Oh, I'm sorry. Ms. Urquhart, Grand Riverkeeper. Sorry, told you you were gonna have to remind me.

**MS. URQUHART:** Good afternoon, Mr. Ball.

**MR. BALL:** Yes, good afternoon.

**MS. URQUHART:** I'm Caitlin Urquhart and I'm representing the Grand Riverkeeper Labrador and Labrador Protectors. And, as you'll know, they're two citizens' organizations based in Labrador aimed at protecting the ecological integrity of the Grand River now referred to as the Churchill River.

So I know you are familiar with these groups and you are aware that they – that my clients live in what's referred to as the flood zones, so the area downstream from the project which would potentially be flooded in the event of a dam failure. So, I want to start with that.

And, Madam Clerk, if you'll, please pull up P-03884?

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

**MS. URQUHART:** Yes.

So this is the independent engineer's report from November 2016. And, Madam Clerk, if you'll, please go to page 15, at the bottom. There's a discussion here – and I think I've done this before, so I'm gonna – it's the wrong page number. If you'll scroll down – actually, do you mind just scrolling up? It may be 14, at the bottom. It's – the title is North Spur. That's the one, actually. Right there.

So, this is – this portion of the report is referring to a January 2016 meeting that took place in Montreal in which the discussion was centred around geotechnical features of the North Spur. And particularly, it was noted – during this meeting – that very little information was being documented about the geological features and it was agreed that geological mapping of surficial geology – excuse me – and soil mechanics-related features would be done in the future. So this, obviously, was in January of 2016.

Were you aware of this concern that the North Spur geology wasn't being adequately mapped?

**MR. BALL:** No, this is the first time I would have seen this document.

**MS. URQUHART:** Okay. So, you wouldn't have had a review of the independent engineer's report?

**MR. BALL:** No, what I would have been told would have been the information that – you know, from people like, you know, Mr. Marshall and others that would have done reviews of the North Spur. And these reports would have been publicly available so the statements and comments that I would make would have been based on the feedback and the responses of the number of reports that would have been done.

**MS. URQUHART:** Okay. And, Madam Clerk, if you can, please go to P-04014. And, again, I expect that'll be – that'll be on your screen.

**THE COMMISSIONER:** Yes, that's going to be on your screen.

**MS. URQUHART:** So, this is an information note from Cabinet Secretariat from December of 2016, and this is an update from December – from the independent engineer. And, Madam Clerk, if you'll, please scroll down.

So the – there were sort of three issues that were noted: the Geological Mapping of the North Spur, Enclosure of the Powerhouse Unit 1, and Cofferdam Leakage. And I'm particularly concerned with the first one.

So, I'm just gonna read this first paragraph here. It indicates: "This was an item in the IE report for the July visit which noted that while geological mapping data of the North Spur was being collected during construction activities, it was recorded within field books rather than being transposed in real time to as-built maps as construction progressed. The IE noted that real time mapping is standard industry practice for this type of activity, and therefore felt that the manner in which it was being treated by Nalcor was deficient in this regard."

So you weren't – this wasn't sort of brought to your level –

**MR. BALL:** This –

**MS. URQUHART:** – this concern?

**MR. BALL:** – this, you know, paragraph that you’re talking about there, I do have some memory of this being raised –

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** – but it’s not something that I would have been, you know, following up on, but it’s something that I’m prepared to actually take a look at and see, you know, where the update in this is.

**MS. URQUHART:** Okay.

And my understanding – actually, Madam Clerk, if you’ll scroll down, please, the last paragraph of this sort of – just there, that’s perfect.

So I think this kind of wraps up this – my understanding is that this was an information note that was produced in December 2016 and then updated some time in 2017 – we can check the date of that at the bottom – but indicates here, “Paul Carter recommended that Nalcor provide required information to IE to close the geological mapping information gaps during the first day of meetings. Nalcor agreed that information requested by the IE during the meetings and site visit would be done as the meetings closed. Subsequent to the meetings, in Nalcor’s written response to the Committee on the July site visit report, Nalcor suggests that its ongoing practice” relating “to geological mapping is in line with” acceptable “industry practice.”

So I see this – and you’re free to give – I’d like to hear your interpretation, but I read this to say the IE has said this is not standard industry practice and Nalcor said: We think it’s fine.

And, you know, wondering what your take on –

**MR. BALL:** Yeah.

**MS. URQUHART:** – it is.

**MR. BALL:** So what I would do is – I’m not sure where this is today, but this is something that I’m willing to take back and just get some updated information, see where there is today.

**MS. URQUHART:** My question, though, is: Is this something – to me, I find it somewhat

alarming that the independent engineer has said that they’re not complying with standard industry practice. Your – executive director, pardon me, of the Oversight Committee is asking for this specific information and you get rebuffed by Nalcor saying: We’re fine, we think it’s okay.

**MR. BALL:** Yeah. So, like I said, this is something, you know, that I need to go back and take a look at and check it out. I mean, this really, you know, going to – really once again shows the importance of the Oversight Committee, based on the discussion that we had just earlier this morning. So, if there’s an issue there that needs to be addressed, it’s something that I’ll take a look at.

**MS. URQUHART:** And this is something that I did bring up, actually, with Paul Carter and folks of the Oversight Committee, and I asked them: In this type of situation, you know, what authority do you have to call on Nalcor to require them to produce these documents? And they felt that it was actually a decision that would go above them –

**MR. BALL:** (Inaudible.)

**MS. URQUHART:** – to the ministers and to the Premier. So I’m wondering, you know, this information was provided to you, as you see here, in a Cabinet information note and they are – the Oversight Committee is saying: Well, we didn’t have the authority to go above Nalcor and demand this information; that would be a political decision or a decision at least at the minister – ministerial level. And I’m wondering why that decision wasn’t taken?

**MR. BALL:** And I can understand, you know, your line of thinking here. I think it’s appropriate. And so as I said, is that, you know, I’ll do some – you’ll get some updating on this and see where it is, and we can actually report back, and there’s no question here that this is something that, you know, I want to wrap my head around and get some answers to.

**MS. URQUHART:** Okay.

And just sort of following on to this challenge, right, of there being information gaps and my clients have, on numerous occasions, felt that

there was gaps in information and they weren't being provided with robust information. And there continues to be a call, and I know that you – my friend, Mr. Budden, spoke to you about this, but for additional testing and analysis on the North Spur. And I just want to get your view on whether or not any further testing will be done on the North Spur.

**MR. BALL:** Well right now, what I know is that there has been a significant amount of work that's been done on the North Spur. Right now there's a questionnaire that I need to get answered to get an update on where this is. And just trying to figure out, you know, what happened and why this issue that the independent engineer has addressed and has been addressed with the Oversight Committee and I'll get some answers.

But right now, what I've been told with the North Spur is given the level of research, analysis, assessments that's been done by various numbers of engineering companies, who put their own professional reputation on the line. There are analysis that would occur 'ongoingly' with, you know, various – as I mentioned this morning, the Canadian Dam Association and so on, that these things are checked and assessed on a regular basis. And so from the North Spur, you know, that – I had been told that it really – that it meets industry standards –

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** – and I'm not an engineer, but what I've been told is that it meets industry standards. But, you know, I'll certainly follow up and get an answer to, you know, what this – about this issue here and what the impact that this mapping, the geologic mapping, would have on the integrity, as an example, of the North Spur.

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** Or, you know, what it is that this means to that development.

**MS. URQUHART:** And in terms of the additional analysis that, for example, Dr. Stig Bernander and Lennart Elfgren and others have indicated is required in order to properly assess the North Spur. I think you'd indicated earlier,

speaking about Nalcor, that, you know, if everything's done properly, why are you – you know, why wouldn't you want one more analysis that says, yes, this confirms that it's been done correctly. So why won't the government commit to doing another – doing those specific tests and analysis that have been requested by Elfgren and Bernander?

**MR. BALL:** Well, you know, in this particular situation, you get varying opinions from any number of people about – no matter what the issue is. And so the work that's been done – would have been done by engineering firms, as I understand it, that are credible, you know, within our country, and so they have went in, they've done their assessment, they've put their engineering reputation on the line, and it's been not just one or two, but there's been multiple, I think, you know, there's upwards – what I've been told – nearly 30 some kind of reports or assessments that would've been done, that are publicly available.

And so is 31 enough? Is 32 enough? You know, I am not sure, you know, at what point do you get to the point where you actually make a decision on how many reports you need to do. But this particular case that you are raising here today, this is something that I will look into.

**MS. URQUHART:** So, Madam Clerk, if we can please pull – call up P-00051.

And this is the Government of Newfoundland and Labrador's response to the Joint Review Panel. So, obviously this is before your time.

And, Madam Clerk, if we can please go to page 27. And scroll down to – sorry, keep going. It's actually – so this is the beginning of the recommendation around “**Human health and mercury monitoring**,” and there was some – obviously, a recommendation that this, if approved, Nalcor, in collaboration with Health Canada and the provincial health departments in consultation with Indigenous groups and affected communities would do both baseline and follow-up mercury testing.

And, Madame Clerk, if you'll scroll down please.

The response of government was to accept the intent. And in the second paragraph, we see here it just indicates: “The Government of Newfoundland and Labrador believes the proponent should take the lead with respect to issues related to mercury monitoring in people and the environment, including appropriate follow-up action that may be required to protect people from harm.”

So, I am wanting to confirm whether your government maintains that position that it's appropriate for the proponent alone really to undertake these studies and to be the lead on addressing methylmercury?

**MR. BALL:** You know what I understand, you know, this is something that's happening today, and in the – I think it was in June of 2016, when the environmental release – there was a recommendation or a condition there that would have meant on the Human Health Risk Assessment Plan – I think this was in June of 2016 – that compensation would've been provided.

I will say at this point that in 2017, there's been new monitoring that's been put in place. There's been enhanced monitoring that would've been in place in 2018, and what we're seeing by the data that's publicly available that we're not seeing at the 22-23 metre mark of the impoundment area that we're not seeing any increased risk of – or an increase levels of methylmercury, and therefore there's no expectation that – given where we are today, that there would be an impact on human health. And this is publicly available.

And I've got to give, you know, credit here to the IEAC that was put in place in 2016 for the public awareness that led to what we have in place today, from what I'm told, is one of the best monitoring systems that's available in the world.

**MS. URQUHART:** So, my question though is: does your government agree with or maintain the same position that was put forward in the government response at the – in the day that it's the proponent's responsibility to be the lead on the methylmercury issues, not, for example, a government department or some third party.

**MR. BALL:** Well, I think right now what we're seeing is that, from a government's point of view, there would have been direction that would have been given to – in this case – Nalcor, who would have had independent groups that are, you know, obviously been involved in the monitoring at the point. This is all – these are all publicly available data that's being received.

So whether it's, you know, government of the day that they would actually be doing this directly themselves or they would be actually having this, you know, done by a third party. I think there's probably room for a combination, and I know within our own Department of Municipal Affairs and Environment, they have been directly involved in some ways within – with the monitoring.

**MS. URQUHART:** And we've spoken at length about oversight and compliance mechanisms in the government – within government departments, and I'm wondering, when you came into power, what if anything was done to ensure that the responses and commitments from the Joint Review Panel and from the environmental assessment release were being complied with?

**MR. BALL:** Yeah. I think there's a number of follow-ups and monitoring that's being done in various departments. I did see an update just recently, because I think this question might have come up earlier on in the Inquiry; so I did see just recently an update, and there's been various updates that are available now on the work that's been ongoing with the monitoring of the recommendations from the Joint Review Panel.

**MS. URQUHART:** So, I'm wondering whether you took or you're aware whether your government took any steps to confirm or to change or update or improve the monitoring compliance framework that existed when you took power.

**MR. BALL:** You're talking about with the Joint Review Panel?

**MS. URQUHART:** So there is – obviously there's an environmental – a release, right, an undertaking to release the project from environmental assessment. And that was in

March 2012 that it was, the project was released from environmental assessment. So the government is the regulator responsible for ensuring that the proponent complies with the conditions of the undertaking.

So when your government – when you formed government, did you take any steps to confirm the status of compliance, to look at what monitoring and compliance mechanisms were in place at the time?

**MR. BALL:** Yeah, so I think the – what you would've seen from the various departments – that could've been Natural Resources, Municipal Affairs and Environment, I know Nalcor have been doing some monitoring. I just recently seen an update –

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** – which would include, I think, even as late as June –

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** – of an update on the work that would've been done in the various departments.

**MS. URQUHART:** So but you didn't take any steps between – so that was requested by the Commission. Between taking power in December 2015 to that update, there weren't any additional steps, any checks, any sort of compliance checks that were done, to your knowledge –

**MR. BALL:** Well, I think the best –

**MS. URQUHART:** – or on your instruction?

**MR. BALL:** Yeah, okay, so I think the best way that I could answer that would've been that's the responsibility of the Government of Newfoundland and Labrador as opposed to which government it is. Those responsibilities actually transition or transcend one government to another one. So, that responsibility was there to actually monitor the ongoing recommendations or the conditions that would've been put around the Joint Review Panel.

You know, I – you know, what I would say is that, you know, this government, the one that was elected in 2015, would have that same responsibility. I know that in June of 2016 on an environmental release there was a condition that Nalcor would provide compensation around the Human Health Risk Assessment –

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** – Plan. So that would be one –

**MS. URQUHART:** Now –

**MR. BALL:** – that I could make a reference to.

**MS. URQUHART:** I'll get into that for sure.

Madam Clerk, if we can actually please go to the Joint Review Panel, which is P-00041 at page 291. And just trying to see where it is here, sorry. I don't have – actually, I have the quote but it's – I'm not exactly – I don't – if you scroll down – what is it under?

It's under here somewhere, sorry. It is under this particular – the environmental management requirements, but I can't recall exactly – apologies.

**THE COMMISSIONER:** Is there a page number on your page?

**MS. URQUHART:** It is on this – it's under this heading, I just can't recall which because I had typed it out which now – then, when I look at it, it doesn't quite look the same. In any case, it indicates – oh, here we go. It's the second paragraph there, sorry:

“It is the view of the Panel that due to the long-term nature and complexity of the environmental management requirements for the Project, a mechanism is required to ensure compliance until there would no longer be a risk of adverse effects as a result of the Project. It is expected that this would be at least thirty years from the impoundment of the second reservoir.”

So, obviously, this is a long-term project, there are long-term implications and I'm wondering whether your government has done anything to address this sort of overarching idea of the long-term implications of this project?



**MR. BALL:** All I can say is that, you know, I'm aware that there's been recent updates that's been done on the monitoring of the – that was suggested by the Joint Review Panel.

**MS. URQUHART:** And were you aware – so that – the chart that I believe you're speaking of that's been brought forward at the Inquiry, so that sets out the 83 recommendations of the Joint Review Panel. But there are actually over 450 commitments that were made by Nalcor in the process of the Joint Review Panel and the EIS and the information requests and so on.

Are you aware of whether government has anything that actually looks at all of those commitments?

**MR. BALL:** Well, what I've been aware of is the update on the monitoring probably that you were just mentioning or referring to. That is a monitoring that I'm aware of.

**MS. URQUHART:** Right.

Madam Clerk, if you'll please call up P-02727 and, again, I think this is – I don't – I won't – that'll come up on your screen. This is the Women's Wellbeing in Happy Valley-Goose Bay: Findings of the 2018 Community Wellbeing Survey. And this is a briefing note, actually, that was prepared by the researchers for this Commission.

It was a survey that was done in November of 2018 and it was done by the Community Vitality Index Steering Committee with several community agencies, Indigenous organizations and governments, and researchers from the University of Guelph, the Labrador Institute and Dalhousie University. Have you seen this survey at all?

**MR. BALL:** No.

**MS. URQUHART:** Okay.

So I'm just going to direct you first to the – or the two key messages that are indicated here. So, firstly, "Ongoing monitoring and mitigation (using GBA+)" – which is gender-based analysis – "of the project's impacts is vital and has been overlooked by the proponents."

**MR. BALL:** Yes.

**MS. URQUHART:** And "Findings from the Wellbeing Survey initiated by the Community Vitality Index (CVI) Steering Committee show that there are limited positive effects being felt by women in the community." And "Most women survey respondents note that they are being detrimentally impacted by this project."

So you weren't aware of these findings?

**MR. BALL:** No.

**MS. URQUHART:** And it's in this document, as well as in the JRP report, but the – this survey was actually – the impetus for the survey was a recommendation of the JRP report. And it indicates that "If the Project is approved, the provincial Department of Health and Community Services, in consultation with Aboriginal groups, and appropriate government and community agencies from the Upper Lake Melville area, conduct a social effects needs assessment, including an appropriately resourced participatory research component, that would determine the parameters to monitor, collect baseline data, and provide recommendations for social effects mitigation measures and an approach to ongoing monitoring."

The study goes on to note that that particular recommendation hasn't been undertaken by any level of government. Is it the intention of your government to engage in any of that monitoring?

**MR. BALL:** Well, it's a requirement over the 30-year period (inaudible) and so it's obviously something that we're going to need to do.

**MS. URQUHART:** All right.

So we're going to move on to – you were talking – speaking earlier about the Human Health Risk Assessment Plan. And we heard earlier evidence from the – what I'm going to refer to as the environmental panel, but there were three senior bureaucrats who were speaking about their roles within Department of Environment. And they'd indicated that following the release of the Joint Review Panel report and the response of government, that government took the position or adopted the position that Nalcor took, which was that there would not be significant effects

beyond the mouth of the river. And I want to confirm whether that's your government's position, as well, today.

**MR. BALL:** You mean with methylmercury?

**MS. URQUHART:** Correct.

**MR. BALL:** Yeah, so I think the data that's in real time right now, that's publicly available based on monitoring that was done in 2017 – in 2018, is that I think if you look at the data – and I did get an update on this a few days ago – that it shows that there's no spikes in methylmercury that was anticipated when the Calder report was – became, you know, very public in 2015.

And so what we anticipated or what was expected to occur when the Calder report came out, the assessment done, but using the Calder model in 2015 – that those kinds of spikes are not what we're seeing in the reservoir in real time at Lake Melville or in the reservoir.

**MS. URQUHART:** And my understanding was part of the reason that groups were willing to agree to impoundment up to this point – what was the – this 25 metre point – was that it was referred to as the spring freshet mark. So, this is a portion of the reservoir that is regularly flooded and, therefore, the part of the reasoning of why this was acceptable was because it would – the majority of the methylmercury or the base components that are then turned into 'methylized' – into methylmercury are already – have already been released from that portion of the reservoir. Is that your understanding?

**MR. BALL:** If you look at the Calder report or the Calder studies, what they would have said that even at the same period of time, given where we are with the level of impoundment that we would have seen, that there would have been an increase in methylmercury. That increase would have been significant based on the Calder studies that were done.

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** And so – and that is at the current level that we're at and –

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** – or that the impoundment is at. And so what we're seeing now, when you compare the two at this level, is that we're not seeing the increase in methylmercury that had been predicted and forecasted by the Calder model back in 2015.

**MS. URQUHART:** Okay, but your – is my understanding correct that the level to which the reservoir is raised now, which is the 25-metre mark or somewhere between 23 and 25, that this is still the sort of spring freshet level which was – or at least my understanding is part of the reason why there was consent given for this to be raised to this level was because the methylmercury has already leached from, or will largely have already leached from this area.

**MR. BALL:** You know, what I know is you – if you compare the Calder model to what they would – to what was forecasted at this level, compared to where it is at this level with the new data and the new monitoring system that's put in place in the reservoir itself –

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** – is that we're not seeing those spikes.

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** So your question about spring runoff – this would have been at levels that you would have seen at spring runoff, but that level – that water would have receded and you would have been at a different level. And I – something, I think, comes to my mind that that would have been around the 18-metre mark – I'm not quite sure – 18-, 19-metre mark in normal river – in normal river flows in the summertime.

**MS. URQUHART:** Okay.

Madam Clerk, if you can please call up P-03590. That will be on your screen. This is an Information Note from August 24, 2016, and – from Department of Environment and Conservation. And just, again, we're sticking on this theme of the Human Health Risk Assessment Plan.

And, Madam Clerk, if you'll go to page 2, please, the bottom of the page, so just – this provides quite a bit of, actually, background about the methylmercury issue and whatnot. But one of the things that's indicated here was that NG had commented on several versions of the HHRAP that were "submitted by Nalcor since early 2015 and indicated" that "the plan does not contain sufficient detail to enable a technical review." And this sentiment was echoed or confirmed by the environmental panel that we had on June 20.

So do – was it your recollection that Nunatsiavut wasn't satisfied that the HHRAP had enough detail to – for them to properly comment?

**MR. BALL:** Well, I would, you know, obviously defer to what the comments would've been made by the officials at the time. What I do know is that when we – with the release of the Make Muskrat Right campaign back in 2015, then immediately in January of 2016, we started – I asked the minister at the time to start putting together some workshops so that we can actually, you know, get a handle on how to deal with methylmercury.

At that point, the first workshop was done in March of 2016 and the NG decided not to participate in that workshop, feeling that they would rely exclusively on the information that would've been provided by the Calder model. The next step to that would've been the release of the environmental assessment that you're making reference to.

I did meet with President Lampe in June of that year and asked him if we could actually get an independent facilitator for another workshop which occurred on August 4 of that year. And then we did some extra monitoring at that point and did some, actually, extra clearing, reservoir clearing. And so the details around the release of the Health Risk Assessment Plan, again, that's – you know what, those conditions were what – specifics that the NG is referring to. I would need to find out what they are.

**MS. URQUHART:** But you would've been aware – I mean, obviously, you met with President Lampe, so you were aware that there were concerns from Nunatsiavut that they

weren't satisfied, at least at that time, with the Human Health Risk Assessment Plan.

**MR. BALL:** The satisfaction, you mean, around methylmercury monitoring?

**MS. URQUHART:** Yes.

They weren't satisfied – well, they were trying to review the plan and felt that it didn't have sufficient detail. So you would've been aware, prior to approving the plan, that they weren't happy with it at that time.

**MR. BALL:** Well, the approval would've come from the Department of Environment at the time, and –

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** – that was Minister Trimper, and so that would've been the release that would've been granted by the minister at the time. So what the specifics were in that release, that is not something that I would be acutely aware of.

**MS. URQUHART:** Okay.

So that wasn't something that was expressed to you in your meeting with minister – or with President Lampe?

**MR. BALL:** And it – there might've been some discussions on some of that, but the focus on that meeting was to put together another workshop. I can't remember everything that we had talked about, but at that meeting the focus was getting a better understanding, getting the position of the NG at the time, getting them involved in another workshop. Because, you know, let's face it, we're now into 2016, if you just advance a few months after that, you know, we're into, you know, some significant protests that would've been occurring –

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** – in October that year. So what I really wanted to do was get the NG as part of our workshop and they did. They did participate –

**MS. URQUHART:** Mmm.

**MR. BALL:** – in August of that year.

**MS. URQUHART:** And the other thing – so there were significant protests that were spurred by the fact that there was about to be impoundment of the reservoir.

**MR. BALL:** That's true.

**MS. URQUHART:** Okay.

And, Madam Clerk, if you'll please go to P-02064 at page 22 – and this'll be on your screen. This is the Nunatsiavut Government's appeal of that Human Health Risk Assessment Plan. And that was in – sorry, page 22, please. It's – and this is part of it. It's – so obviously that – it's directed to Minister Trimper. You would've been cc'd on it. So you were aware in August of 2012 – or sorry, 2016 – that NG was not satisfied with the Human Health Risk Assessment Plan as it was approved.

**MR. BALL:** Well, this would've been after the workshop where – it would've been done on August 12. So the specifics that would've been occurring within the department, it's not unusual for the Premier to get copied on a lot of issues that would've been dealt with within the department.

**MS. URQUHART:** But, I mean, this is – we're talking about human health of Labradorians. I would expect that this is the – and this is in a time when Make Muskrat Right is going on, there's a number – there are letters being written to you from the public, from Rigolet. I expect that you would've been briefed on the fact that Nunatsiavut Government had appealed the decision to approve that plan.

**MR. BALL:** Yeah, what the outstanding conditions there or what – you know, what the basis of the appeal was, maybe it's in the letter here. And this is back in 2016, so it's a few years ago –

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** – and it's my first time seeing this, obviously, for a long time. So what those conditions – or outstanding conditions are, I would – maybe if we read the letter here, we'll

get a better understanding of what they would have been.

**MS. URQUHART:** I'm actually gonna move on, if you don't mind, to your – I don't – unfortunately, you don't have a copy, I don't believe, in your package, but I'm gonna move on to Nalcor's response to the appeal and just get your view on some of their positions.

So, Madam Clerk, that's 04288. And again, I believe this will be on your screen. And if you'll scroll down, please.

So this is – these are some comments on the appeal that were prepared by Nalcor, and I just wanted to go – Madam Clerk, if we can go to page 5 – and I just wanted to get your view on a few items here.

So one item was whether or not it was possible to mitigate after – mitigate methylmercury after impoundment. And there is a statement by Nalcor, in the second paragraph here, that “Nalcor did not identify any feasible way to reverse mercury contamination in the ecosystem once flooding takes place” is incorrect. At this time a feasible mitigation measure does not exist.” So this is essentially stating that the – following impoundment, there's no – there isn't a possible or feasible, sorry, mitigation measure available.

Is that your understanding?

**MR. BALL:** And this is the time frame of when, 2016 here or –?

**MS. URQUHART:** This would have been in August 2016 –

**MR. BALL:** Yeah.

**MS. URQUHART:** – yes.

**MR. BALL:** Okay. So this – at this point, the river was lowered again –

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** – and I think what – are we talking about – we're not talking about soil removal here, I think we're talking about removal of vegetation, right?

**MS. URQUHART:** So there would have been discussions – I mean, obviously, you’ve had several workshops on methylmercury and the Human Health Risk Assessment Plan has been approved, Nunatsiavut Government has appealed that plan and this is – these are comments that were being made by Nalcor at the time. And I don’t have any information whether this was provided to you, but I’m trying to get a sense of, at that point in time – since this is prior to impoundment, prior to the protests in 2016 – whether you would have been aware that post-impoundment, Nalcor took the position that there was no feasible mitigation measures available after impoundment.

**MR. BALL:** So the best way for me to answer that would have been either to take us to advance that forward to 2018 –

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** – and, you know, given the sensitivities of where we are – because, you know, if we’re talking about wetland capping here –

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** – as opposed to – for mitigation as opposed to full clearing of trees as – or vegetation as an example, is – it was always my intention when we moved to wetland capping that the direction was given by me to actually – everyone knew that I wanted to do wetland capping and clearly, that was going to be done, but I understood that this would be done along with the Fish Habitat Conservation Plan.

And, so I know this is not probably direct – I’m not so sure, you know, what they were when they were making this appeal in 2016. But clearly, I was not aware that with pre-impoundment – that this capping – that we had passed that stage in 2018 because mitigation efforts were supposed to be done in 2018, and that would’ve been wetland capping that I’m talking about now. And so it was only a few days after that when I became aware that we had passed that window in pre-impoundment, that wetland capping could not be done.

**MS. URQUHART:** Okay. And so, in that period in 2016, you would’ve been well aware

that there were significant concerns on the part of Nunatsiavut, NunatuKavut, and Innu Nation, as well as the Labrador residents – non-Indigenous Labrador residents – around impoundment, around the concerns around the project.

**MR. BALL:** That’s right.

**MS. URQUHART:** And, Madam Clerk, if we can, please go to 03459? I think this was – oh, I thought I had requested that for this one, but it’ll appear on your screen. It says from October 2016, October 18, there’s a letter here – if you’ll scroll down, please, Madam Clerk, thank you – to Todd Russell from Minister Trimper. And if you’ll continue scrolling ... So in this letter there is already an indication –, clearly, Nunatsiavut’s been requesting an independent expert advisory committee, the government is agreeing to look into that to start considering that and to take further steps to – towards mitigation measures to address the concerns. Were you aware of that at the time?

**MR. BALL:** Yes, I was.

**MS. URQUHART:** And you understood, at the time, that part of the reason or the importance of this independent advisory – expert advisory committee was that it would be independent of Nalcor?

**MR. BALL:** Yes.

**MS. URQUHART:** Okay. And, Madam Clerk, if we can, please go to 04252, P-04252. And again, this will appear on your screen.

So this is a Timeline of Methylmercury Actions. So there, the first one there is actually that methylmercury workshop that you were speaking of in March of 2016. Like – obviously, the release of the Human Health Risk Assessment – if we continue scrolling, please, Madam Clerk. Continue a little bit further. Great. So – oh, up a little bit.

So obviously October 26, 2016, the IEAC – it was agreed that the IEAC would be formed. It was my understanding it’s March 24, 2017, so some five months later the terms of reference were released. Is that correct?

**MR. BALL:** Yes.

**MS. URQUHART:** And by August 22, 2017, another five months later, the chair and members of that committee were selected?

**MR. BALL:** That's true. And the selection of the chair was not the responsibility of government. That was left to the members there, primarily the three Indigenous groups that participated as board.

**MS. URQUHART:** Okay.

And one month later, September 22, 2018 – or, sorry, 2017, my apologies – they released their interim recommendations. Is that correct?

**MR. BALL:** Yes, it is; three recommendations.

**MS. URQUHART:** Okay.

And then six months later on April 11, 2018, they released their final report?

**MR. BALL:** Yes.

**MS. URQUHART:** Is that correct? Yes.

We've also heard information that July – in July of 2018, Nalcor applied for a permit for wetland capping. Do you have any information as to why that wouldn't have been approved?

**MR. BALL:** No, I don't. It was my intention to actually do wetland capping. We could not do, you know, soil removal based on the fact that we had a number of the scientists at the time – four of the six who were making statements that if you had – if you did soil removal, you could potentially increase the level of methylmercury in the reservoir and downstream.

So it was always my intention to do wetland capping and – to the point where there were a number of presentations that would've been given to me and – this was always going to be done concurrent with the Fish Habitat Conservation Plan. And, we (inaudible) to the point where we took this to Cabinet in January the 9 of this year –

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** – and continued to proceed with wetland capping. A few days after that, I became aware that this was posing some problem and that the fish habitat, you know, program had been finished and that the – we're now having to explore what other options that we would have available to us.

**MS. URQUHART:** So, I guess I'm wondering: What's the process? So Nalcor submits its request for approval to do the wetland capping. At what point does – I'm just trying to understand how that falls through the cracks, how that doesn't get approved?

**MR. BALL:** Well, first of all, my understanding is that this was an amendment to a permit that was all ready in place for the Fish Habitat Conservation Plan. And so what they wanted to do was amend that permit to allow for wetland capping and that was submitted to the Department of Municipal Affairs and Environment in July of that year. So why the approval wasn't given, it was not something that I was aware of until just a few months ago.

And – but throughout this whole process, there's been a lot of information that I was, you know, constantly involved in, in collecting around where the increases in methylmercury, if any, would've been in that reservoir. And consistently it came back that there were no spikes that were increases in methylmercury that would pose any significant issue around human health.

The other issue was that wetland capping, even though there was maybe not a tangible – you know, not a tangible – anything tangible to decrease methylmercury, there were intangible benefits, in my mind. There's been a lot of anxiety, a lot of stress that have been – that this has caused on people in this area. And even doing something intangible like wetland capping was something that I wanted to do, and I can assure you that, you know, Mr. Marshall wanted to do this as well.

**MS. URQUHART:** And so you indicated that sort of in response to that question, that consistently now, the new monitoring, the numbers are coming back and they're better than were – was anticipated, but that doesn't explain why it wasn't approved in 2018.

**MR. BALL:** Why the permit wasn't approved?

**MS. URQUHART:** Correct.

**MR. BALL:** Absolutely it doesn't explain that.

**MS. URQUHART:** Right.

**MR. BALL:** It's been increasingly frustrating for me when I find out that we could not do wetland capping simply because that permit was not approved, I had numerous discussions with – on the data around methylmercury levels in the reservoir and in Lake Melville, and the issue around having a permit never came up.

I was – I always wanted to do wetland capping. There was nothing here to purposely delay wetland capping. It was not the intent at all. It was something that I've always wanted to do.

**MS. URQUHART:** And so – sorry, you said you had numerous discussions – who – around this issue. Who were you discussing this with?

**MR. BALL:** There would've been presentations – and they are, you know, on the public record – that we would've had with the Department of Municipal Affairs and Environment.

**MS. URQUHART:** Okay, so, sort of, you're laying this at the feet of the Department of Municipal Affairs and Environment.

**MR. BALL:** What I'm saying is that there is an obviously – there's obviously a breakdown here. Nalcor must have known that we were prepared to do this and wanted to do it. They would not have applied for a permit.

**MS. URQUHART:** But they're – but it wasn't approved. Okay.

And I don't know whether you had – you know, to what extent you've been following the hearings, but we have seen indications that there have been emails, and there were emails in September and – sorry, August and September of 2018 from the chair of the Independent Expert Advisory Committee to senior officials within the Department of Environment asking, you know, to be able to speak to someone, to have – to be able to assist in some way, and with

the government coming to respond to the report. Were you aware of that?

**MR. BALL:** There were some emails that I recently became aware of that would've been, you know, back and forth related to the permitting and the response to the implementation of the four recommendations – of the final recommendations of the IEAC.

**MS. URQUHART:** Mm-hmm.

**MR. BALL:** And the – we were prepared to actually do the wetland capping, but I also want to go back to about the – about a couple weeks after the release of the recommendations, the Innu actually took exception and wrote a strong letter at the time, taking exception to the way some of this process unfolded.

So the whole idea behind the Independent Expert Advisory Committee was to find consensus and that it'd be evidence-based on the decisions that we would make, and it was very difficult to get to consensus. We did have consensus on capping, but the evidence, when you look at what was coming from 2017 and 2018 around the increased levels of methylmercury, would've shown that they're based on those early – these – the data in '17 and '18, that there was no increases in methylmercury, so therefore any impact would've been intangible, but it was still – I think, it was still something that I wanted to do.

**MS. URQUHART:** So, today, it's July 4, 2019. We are one year, two months and 23 days after the report was issued. Why is it that we don't have a response from your government?

**MR. BALL:** The report – you mean from the –

**MS. URQUHART:** The IEAC.

**MR. BALL:** Well, there has been responses. In April of this year, I wrote to all the Indigenous groups, trying to put a committee together for the implementation of the recommendations from the IEAC. We did have one meeting, and I know there's a number of meetings now that were – even as late as this week, we're still trying to set up meetings – schedules, you know, for many of the Indigenous groups are not always easy to get all three groups together.

We did have the one meeting, and there was a draft terms of reference that was shared with the Indigenous groups, and they all agreed to provide feedback, and we're still now in the process of trying to set up another meeting. With that all – with that said, I know that they – the CEO of Nalcor, right now, Mr. Marshall is having a discussions on, you know, what it is, what options do we have available to us when you look at – so this is not – I wanna say that this is not a cost-saving initiative on behalf of government or Nalcor.

You know, if there was money – or the money that was available for wetland capping is definitely money that we would wanna be used on Indigenous – you know, for benefits of Indigenous groups within Labrador. And these are discussions that we would like to have with the Indigenous groups to determine what the next steps would be.

**MS. URQUHART:** So I take it from your answer that your government has no intention to provide a formal, public response to the report and recommendations?

**MR. BALL:** Well, I – you know, I think, you know, what I wanna do is make sure we get the Indigenous groups at the table so that we can actually put in place – I've said this publicly – is that we can put in place an implementation committee so that this is not something that's mandated by government, that this is something that the Indigenous groups themselves can – as an example, community monitoring, which is one of the recommendations, that we need to get this implementation committee in place so that we can follow up on the recommendations that was made by the IEAC.

**MS. URQUHART:** So we're not gonna hear whether or not you're agreeing to the recommendations or where the government stands on any of those?

**MR. BALL:** Well, we – you have heard. It's, you know, what I've just mentioned around monitoring. We've already had – there's extra monitoring that's been done. We're prepared and want to – putting in place a community-based monitoring program. There's been discussions around, you know, what a health communication plan would be for various

communities. There's discussions around, you know, a food – you know, what would be required for communities for country food, as an example, and then how we deal with the issue around wetland capping and what that next step would look like. So these are things that we've made a commitment to.

**MS. URQUHART:** Those are all my questions. Thank you.

**THE COMMISSIONER:** All right, it's five to 4. We'll take 10 minutes here, now, and then next up will be Kathy Dunderdale.

**CLERK:** All rise.

### Recess

**CLERK:** All rise.

Please be seated.

**THE COMMISSIONER:** All right, Kathy Dunderdale.

**MS. E. BEST:** Good afternoon, Premier Ball.

**MR. BALL:** Good afternoon.

**MS. E. BEST:** I'm Erin Best and I'm counsel for Kathy Dunderdale. I'm not going to ask you too many questions, but there are a few things that I'm curious about.

So, I'm going to start with the issue of rate mitigation. Madam Clerk, if you could please pull up P-00254 – 254.

**THE COMMISSIONER:** That'll be on the screen.

**MS. E. BEST:** So you have a table there that we've looked at earlier in this Inquiry a few times, and it talks about some of the money flowing in to the province as a result of the Muskrat Falls Project in the context of the CPW. Have you seen this document before?

**MR. BALL:** Yeah, it's been a while.

**MS. E. BEST:** Okay. Thank you.



So, you can see there on the fourth line down: Dividends. And in the first column is the Isolated Island Option, so that's not what I want you to look at. The next column is the Interconnected Option, so that's the one – that's Muskrat Falls and you see there that dividends are \$22 billion, roughly. So, that's the money that government will receive indirectly from ratepayers.

You've said now that \$200 million in Nalcor dividends will go towards rate mitigation. So do you know – that \$200 million, is that – how does that compare to the total amount of dividends? Can you break that down for me? Describe what the \$200 million –

**MR. BALL:** Yeah, so the \$200 million would've come from Nalcor. Could be from, you know, the oil and gas, could be from some of the sale of, you know, power, as an example. But the \$22 billion in dividends, I think – we must remember that that was all – and from this particular slide here, that would've been based on increasing electricity rates within the province.

Because the pro forma on this here would've been that you would set a rate and then it would grow by, I think it was, 2 per cent every year. So in order to get the \$22 billion, it would mean that we would've seen constant increasing in rates; I think it was up to about 50 years.

**MS. E. BEST:** Okay, so there is – we can distinguish between the dividends that we see here on this page, and the dividends that you're talking about in your rate mitigation plan, in that the dividends you're talking about are not just Muskrat Falls dividends, they're dividends from Nalcor generally.

**MR. BALL:** Yes.

**MS. E. BEST:** Okay.

So do you have any idea – if this chart is not accurate with respect to the dividends over the 50 years, do you have any idea of what the dividends from just the Muskrat Falls Project are going to be over the next five years, 10 years?

**MR. BALL:** I think if you took the view that you were – you would continue to increase rates

every single year for the next 50 years, you could probably make whatever the dividends that you want. What we've seen, though, across the country and in the United States, as an example, we've seen a very stark difference in, you know, electricity rates. And the responsibility on us as a province is to make sure we remain competitive and that we, you know, keep in place affordable measures so – for energy rates.

You know back, I would suggest, when this was done, things like, you know, solar, wind energy, they would've – a much different place. And so this is one of the problems that you have when you base a pro forma on something like 50 years when, you know, in today's society with innovation and so on, we're quickly seeing changes where forecasting out 50 years is certainly not predictable anymore.

**MS. E. BEST:** So my question for you is: Is government planning to retain any of the dividends from Muskrat Falls, or will it – will they all go towards rate mitigation?

**MR. BALL:** Well, for Muskrat Falls right now in the early days, you know, we're going to – we need the \$200 million that would've been in dividends from Nalcor to put the – you know, to support rate mitigation. So we've taken this plan out for a number of years. So it's very difficult to determine a forecast, you know, what dividends will be available, whether it's from the Muskrat Falls Project or from the oil and gas, as an example. What I do know is that people in this province can't afford 23-cent electricity rates.

**MS. E. BEST:** Okay, I'm just asking about the Muskrat Falls dividends. I want to carve off the other ones; I'm not concerned with those right now. So, just those ones, are they all going to go back towards rate mitigation? Even if you don't know how much they are right now, has government committed to put all those dividends towards rate mitigation?

**MR. BALL:** You know, based on where we are now, in order to get a dividend you would have to increase electricity rates. And so I'm – I would have to take another look at this. I would question if even if dividends of this magnitude would even be available.

What I do know is this was based on increasing electricity rates every single year; I think the number was about 2 per cent every year for about 50 years. So I think making that assumption in 2019 versus whatever the date this here was, maybe 2012 or something, I think the world has changed since then and we're seeing electricity rates that are actually falling in many jurisdictions.

**MS. E. BEST:** Okay.

You see here as well, a couple of lines down, water rentals, and there's some revenue coming in to the province from water rentals. Is that also something that's going to be put towards rate mitigation and revenue?

**MR. BALL:** Well, once again, this is really charging Nalcor for water rentals –

**MS. E. BEST:** Yeah.

**MR. BALL:** – so it can provide a revenue stream in to government.

**MS. E. BEST:** Right.

**MR. BALL:** And so the money actually lands in to Nalcor and then to support rate mitigation, we would actually go in. So whatever the source would be – we don't go in and say give us the money for water rentals or – that's not our plan – give us the money from your dividend account, give us your money from your carbon – well, looks like a debit there – or give us certain areas or certain lines of revenue. We just – what we need was to be able to have a revenue stream to support rate mitigation, regardless of where it came from, from Nalcor.

**MS. E. BEST:** Okay.

So just to simplify a little bit, I think we're talking about the same thing, which is that if money is coming into the province through – for water rentals, then you're saying that you'll sort of just cancel that debt so as to mitigate rates.

**MR. BALL:** You know, what I'm saying is regardless of the source –

**MS. E. BEST:** Yeah.

**MR. BALL:** – we need money to mitigate rates. And so what I would – what I don't see us doing is saying, you know, take it from a particular category. Right now to mitigate from around nearly 23 cents down to 13.5 cents, you know, there's – in 2021 there's going to be a requirement for some \$726 million to support this project and it will have an impact on rates and regardless of where the dividend would come from for Nalcor, I would anticipate in the early years most of it will come from oil and gas.

**MS. E. BEST:** Mm-hmm.

Okay. Thank you.

Another item that you see there on that table is direct and indirect income that's flowing to the people of the province as a result of the project, and that's at \$5.777 billion. So this reflects the pay received by our own people who worked on the project. And I just wonder why, when you talk about the project, you seem to not consider or mention the value of this investment in the province, in our people.

**MR. BALL:** What I would say about the previous slide there too, this, I think, was based on a project that's somewhere around \$6.2 billion. And so when you think about the impact that having now – from government having to go out and borrow extra money, this is an impact on –

**MS. E. BEST:** But that extra money also comes back into the economy by paying workers, paying Nalcor; that's the category of funds that I'm talking about now, the indirect income.

**MR. BALL:** That's what you're talking about.

**MS. E. BEST:** Yes.

**MR. BALL:** No one has dismissed the fact that we've had some great people that have worked on construction; there was some – upwards of 5,000 people that was provided work there, but I would also suggest that if you're going to spend this kind of money on attracting an industry that would give you long-term benefits, you know, there are other options that you would have available to you as well. I'm not suggesting that –

**MS. E. BEST:** Such as what?

**MR. BALL:** It could have been anything. It could have been attracting another industry or it could have been –

**MS. E. BEST:** Like what though?

**MR. BALL:** Well, who knows – who knows what it could have been. There's – you know, the only option that you would have economic development is just not go and build a hydroelectricity dam.

**MS. E. BEST:** But it is a good option, isn't it?

**MR. BALL:** Well, I would suggest that if anything (inaudible) – is now contributes – or attributes 30 per cent of the net debt of this province, a province that's been around for nearly 70 years or 70 years and we're seeing 30 per cent of our net debt attributed to one project in the last seven years, given all the other development that would have occurred in our province to get 13.8, I would consider – I would say that this project has had a long-term profound impact on our province.

Not to suggest that many workers did not supply and provide benefits to the province over the construction period, but this was not developed to just provide work for the last seven years, this was built to provide some reliability and stability in the electricity system within our province at a \$6.2 billion budget and now we're at 12.7.

**MS. E. BEST:** Well, I do agree with you that from a long-term perspective, you know, we do have some debt. But wouldn't you also balance that against the idea of – and I think it's not me who coined it, but someone earlier in the Inquiry talked about, you know, owning a house versus renting an apartment. And in this – if you look – take a long-term perspective on things, we own a house now instead of renting an apartment forever. Isn't that a benefit as well?

**MR. BALL:** Could be but that's not to suggest –

**MS. E. BEST:** In the long-term?

**MR. BALL:** But that's not to suggest there weren't other options that we could actually

provide – because this was built to provide reliable electricity to our province over the long term. So that's not – what you're suggesting here that this was the only option. And at \$6.2 billion, it might have been a good option; but at \$12.7 billion, maybe not so good an option when you look at the impact that we had on the debt in our province.

And the dividends here that you see here were never intended to go back in to support rate mitigation. They were intended –

**MS. E. BEST:** Mm-hmm.

**MR. BALL:** – for Nalcor to actually provide other benefits like infrastructure, health care and education. This project was supposed to support itself through its electricity rates, and it's not going to be able to do that.

**MS. E. BEST:** Okay.

With that in mind and with Phase 3 of the Inquiry in mind, I ask you what does your government plan to do with respect to Gull Island?

**MR. BALL:** Well, as I've said, you know, so many times, there's a development out there that would have long-lasting benefits for Newfoundlanders and Labradorians. Right now, there's no customer for that power. And so, first of all, we know that the province would not have the necessary customer base to provide – to bring that power to Newfoundland and Labrador.

If there's a customer out there that would need Gull Island energy, of course, these are discussions that I think the responsible thing for me to do is to have had those discussions. I – there's no question within the Atlantic provinces, we – there's about 17 other megawatts of coal right now that would need to be replaced by 2030. If Gull Island could be that option to replace that, we need to have a discussion. But right now there's no customer for Gull Island power.

**MS. E. BEST:** Okay.

So if a customer does come about, as you say, because people could no longer build – burn

coal, then I guess will you be relying on – would you be relying on experts to determine whether or not it was a viable option to develop Gull?

**MR. BALL:** I think the responsible thing to do is when I look at natural resource development within our province, if it's hydroelectricity or if it's a mine, no matter what it is, is that we would take a look at it. That's not to say that, you know, there's something that we're doing or can do at this moment or – what I'm saying is that there's no customer –

**MS. E. BEST:** Mm-hmm.

**MR. BALL:** – that's looking for Gull Island power.

**MS. E. BEST:** Okay.

But if a customer did arise, there may be some likelihood that Gull will be developed in the future?

**MR. BALL:** I think the responsibility on – no matter who the premier is, if there's an option that we have available to us to bring benefit to our province, not to add extra cost to our province, we need to explore those options. What I'm saying is the customer base in our province doesn't need that power right now. I think through – there's been a number comments that would be made that even with Muskrat Falls, we only need one-third of that power.

**MS. E. BEST:** Mm-hmm.

I'd like to talk to you about 2041. You seemed to indicate this morning that 2041 was gonna be a good time for Newfoundland, that there's gonna be a benefit in 2041. Can you explain to me why?

**MR. BALL:** What I said this morning, as I think that everyone in the province looking forward to 2041 and – you know, there will be benefits that will back to CF(L)Co; therefore, you know, corporations like Nalcor, essentially the Government of Newfoundland and Labrador would see some benefits in 2041. But it's still early and there's no discussions that we're having about 2041 at this point. All I know is, is that every month we get close to 2041, there's value for Newfoundlanders and Labradorians.

**MS. E. BEST:** What is that value? What are the benefits?

**MR. BALL:** Well, hopefully, we would see increased revenue. Right now, it's about a fifth of a cent, so not a lot of money that are coming into Newfoundland and Labrador. So, whether we can get somebody – I guess we can, working with, you know, Hydro-Québec or whatever the route would be, there should be extra benefits and extra revenue that would be generated from getting obviously a new agreement in place in 2041, if not before.

**MS. E. BEST:** Mm-hmm.

And we would need a leverage to get a new agreement in place, would we? Negotiating leverage?

**MR. BALL:** A negotiating leverage? Yeah, we – the asset is there, so there's an agreement in place that expires in 2041.

**MS. E. BEST:** Okay, yes, but of course – well, actually, Madam Clerk, if you could, please pull up P-00061?

Have you seen this document before?

**MR. BALL:** This kind of looks like a document that was provided by the government at the day back in – here we go – 2012. I can remember seeing this. I haven't seen it in quite some while.

**MS. E. BEST:** Okay.

So, what – one thing that it talked about is it explains, of course, how CF(L)Co is owned by both Newfoundland and Labrador Hydro and – sorry, Québec Hydro – and actually, Hydro-Québec owns 34.2 per cent, so just over a third. Right?

So you would agree that CF(L)Co can't do anything that would reduce revenues and profits for CF(L)Co's shareholders unless the shareholders were in agreement?

**MR. BALL:** What was your question?

**MS. E. BEST:** Would you agree that CF(L)Co can't do anything that would reduce revenues

and profits for CF(L)Co, unless the shareholders agreed?

**MR. BALL:** I can't think of a scenario why CF(L)Co would want to reduce revenue.

**MS. E. BEST:** Exactly. Thank you.

So there's been some suggestion that in 2041 that Newfoundlanders are going to get lower power rates as a result of the asset coming back. Do you have any comment on that?

**MR. BALL:** Truthfully, I'm trying to get 2021, let alone 2041. I mean, obviously, there's a revenue stream that we should be able to take advantage of in 2041. But, right now, my focus on electricity rates in this province is 2021 and onward to 2030. And I will tell you, there's enough pressure in trying to keep rates down at 13.5 cents, let alone worry what it's going to be like in 2041.

**MS. E. BEST:** So if we're going to get revenues from power in 2041 from Churchill Falls, but there's no customer – I mean, or no known customer, where are the revenues going to come from?

**MR. BALL:** 2041 power is being sold now.

**MS. E. BEST:** Yeah, the additional revenues I mean.

**MR. BALL:** The additional revenues – there's an amount of power in the Upper Churchill in the 5,500-megawatt range.

**MS. E. BEST:** Yeah.

**MR. BALL:** And that power is currently being sold, you know, through Quebec.

**MS. E. BEST:** What I'm getting at –

**MR. BALL:** And we have some surplus power there, as well, that is sold through the Nalcor marketing arm.

**MS. E. BEST:** Okay, what I'm getting at is why do you believe – and I'm not being adversarial –

**MR. BALL:** No, no –

**MS. E. BEST:** – I'm just really asking the question: Why do you believe that we're going to be able to negotiate a better deal and that we're going to be able to get more revenues?

**MR. BALL:** Who knows? I mean, it's 20 years, 21 years away right now. It's very hard to determine what the energy supply or demand will be like in 2041. So it's – as I said, it's not something that I'm getting my head around right now of who is actually going to be plugging into Upper Churchill power in 2041 and beyond. As I said, my focus right now is to getting to 2021 and making sure that we have electricity rates affordable in this province.

**MS. E. BEST:** Okay. So we don't really know what's going to happen in 2041 or if there's going to be any benefit or, if so, how much.

**MR. BALL:** I would agree with that.

**MS. E. BEST:** Is that right?

**MR. BALL:** I don't know where we're going to be, actually, next week for that matter, but I mean I think you understand where I'm coming from here. Like, my focus is on 2021, completing the Muskrat Falls Project strong so there's no more further mitigation that's required.

**MS. E. BEST:** Okay. I won't ask you very much more about 2041 – just one more question though. If the power was to come in to – come to Island ratepayers, there would – from Churchill Falls – there would have to be additional transmission lines built as well, wouldn't there?

**MR. BALL:** Well, there's 900 megawatts of transmission lines and I think what you're almost doing by some of the comments, that you're actually probably saying that we should be plugged into Upper Churchill power right now, which some people would have considered to be a least-expensive option even at the time; just build a transmission line early and just plugging into Upper Churchill. I'm not so sure if that's what the suggestion would be, but you're right in saying that if we had to bring extra power in, above the 900 megawatts, we would need extra transmission.

**MS. E. BEST:** Thank you.

I want to ask you about Astaldi. You said this morning that when you took office you became very involved in the Muskrat Falls Project or something along those lines; it became a focus for you. And when you really wrapped your head around the Astaldi issues, did it – did you consider, at that time, encouraging the termination of the contract?

**MR. BALL:** There was consideration. I mean, I think we went through this a little while ago. You know, there was an analysis that would have been done, I think, by Westney – was a company at the time. You know, but clearly, I think we also knew that, you know, there would have been lots of logistical problems if – to switch out a major contractor at the time.

**MS. E. BEST:** Mm-hmm.

**MR. BALL:** So there was some consideration but we went through that analysis. I think Westney was the company that would have been involved in – with that analysis at that point.

**MS. E. BEST:** Okay and is that what – do you have any insight into what the Italian ambassador was trying to accomplish on his mission?

**MR. BALL:** What he –

**MS. E. BEST:** Was it to avoid the termination of the contract? Do you know?

**MR. BALL:** I think so. I mean, he was there, this was a major company from – you know, from what I remember, a company that was seen – was held in high regard in Italy. And I think his objective was to make sure that Astaldi would have stayed as the contractor on the Muskrat Falls Project.

Understand this was probably the first project that they would have done in Canada, so I think there was probably some reputation of not just the company, but I think he felt, maybe, the country itself. So, yeah, I think – I don't think there's any question that he wanted Astaldi to continue on doing the work at Muskrat Falls.

**MS. E. BEST:** This is – I know I'm going beyond what you know now, so you can not answer it if you don't want to. But I just need to ask: If the company was on the brink of insolvency anyway, why was it worth the trip?

**MR. BALL:** The trip?

**MS. E. BEST:** Yeah, from Italy.

**MR. BALL:** Oh, for the ambassador, you mean?

**MS. E. BEST:** Yes.

**MR. BALL:** I think he was the ambassador who lived in Ottawa.

**MS. E. BEST:** Oh sorry. Okay, well – but either way, why was it worth the trip?

**MR. BALL:** I think you're right. That's not a question that I can answer.

**MS. E. BEST:** You can't answer.

**MR. BALL:** I think that's probably best.

**MS. E. BEST:** That's fine.

**MR. BALL:** Yeah.

**MS. E. BEST:** Thank you.

I asked a similar question – now, I'm going to ask you about the overruns. Now, I asked a similar question to Mr. Marshall there yesterday, so – but this one is tailored for you.

When you – while you were in office, the cost of the project, I believe it escalated from about \$7.65 billion to \$10.1 billion. So big picture now, what do you understand to be the cause of those \$2.5 billion in overruns?

**MR. BALL:** I would suggest that the project was underestimated in the beginning.

**MS. E. BEST:** And why do you say that?

**MR. BALL:** \$6.2 billion, now we're at 12.7 and, of course, those early numbers were less – there was some financial charges that weren't included there. But – so it's – to go from 6.2 to

10.1, I think most people would look at this and say that the estimates were low in the beginning.

**MS. E. BEST:** Have – okay.

And I asked him as well: Do you have any insight as to why the estimates were low?

**MR. BALL:** No idea.

**MS. E. BEST:** Thank you.

**MR. BALL:** I wasn't part of that.

**MS. E. BEST:** Okay.

Instead of developing Muskrat Falls, do you think it would've been a better idea to continue to burn fuel in Holyrood?

**MR. BALL:** At the time, they were suggesting that fuel was going to be at nearly – if you look at it in today's dollars, it was going to be at \$130 a barrel. I wish it was at \$130 a barrel today; I think it's somewhere around \$63, \$64 or something.

So the assumptions that this was designed around, I think the question about would you replace green energy – would you replace oil with green energy when those options are available to you, of course you would. But we had other options and would it be some –

**MS. E. BEST:** What were the other options, sorry?

**MR. BALL:** Small hydro projects that would've been around the province, some of them were available. And so, you know, to answer your question, would you replace oil with green energy? Of course you would, but in this particular case here, it comes at a significant cost. And so then you've got to ask yourself: Is that worth it?

**MS. E. BEST:** Okay.

So I have a couple of questions that come out of that. I'd like to unpack what you just said.

So, first of all, you talked about the other options that we had and you talked about small hydro.

So you think that the alternative to Muskrat Falls would've been to develop small hydro?

**MR. BALL:** I think it was a combination. I'm not sure of what the alternatives were. It was a very – they were very reluctant at the time to consider many other options. I think that this was a project that people were eager to do and I think this was a solution to a number of problems as they saw. And at the time, they were prepared to, you know, go forward with the Muskrat Falls Project, and I'm not so sure any other option would've really mattered. And that's just my view.

**MS. E. BEST:** That's your view. How did you come to that view?

**MR. BALL:** Well, you just mentioned –

**MS. E. BEST:** That's been contradictory to all the testimony so far at the Inquiry.

**MR. BALL:** –well, you just mentioned earlier that, you know, maybe plugging into the Churchill would've been an option and bringing in that power. I'm not so sure there was any discussions around bringing in our own surplus energy that we had available to us, some 300 megawatts, and some 225 megawatts – some of that power probably could've been brought in if there was a transmission line, in preparation for 2041. I'm just talking about other options that might've been available that I'm not so sure were fully explored.

**MS. E. BEST:** Okay, but you haven't fully explored them either, have you?

**MR. BALL:** No, it's – as I said, this project was too far along to stop – billions of dollars. So there was no motivation for me to be looking for another alternative. That would've meant that I would've had to now work towards, you know, finding ways to actually pay back the money that was spent and the commitments that would've been made to complete the Muskrat Falls Project. So we didn't do any analysis on actually shutting the project down and looking for other options.

**MS. E. BEST:** Okay.

I'd also like to go back to how you mentioned about the fuel cost, which is now at \$60 and – or thereabouts.

**MR. BALL:** Sixty-odd.

**MS. E. BEST:** Sure. So – and I wanna talk about experts and reliance on experts, because earlier today, you've indicated a couple of times, I noted, that you have to rely on the expert opinions that you receive. I think you mentioned that that was the case with the North Spur, that's the case with methylmercury, just in the past hour.

So don't you think that the prior government should've – or the sanction government should've been allowed to rely on the expertise that they received with respect to the price of oil?

**MR. BALL:** Fifty years without any decreases, that it would go up every year for fifty years? I think even most of the experts would agree that that's – that those assumptions – given the fact –

**MS. E. BEST:** But hold on –

**MR. BALL:** – yeah.

**MS. E. BEST:** – a second, 'cause what 'most experts' are we talking about, because the expert that the sanctioning government relied on, that expertise was PIRA, which was the world-leading expert on the price of oil. So what expert would've been better?

**MR. BALL:** Well, so what we're talking about is the degree of probability – would oil continue to go up for 50 years and never go down?

**MS. E. BEST:** And are you an expert in that?

**MR. BALL:** I am not, but I know what the degree of probability is, and would I take the people of Newfoundland and expose them to billions of dollars in a project with a degree of probability that would've been fairly low at the time, and –

**MS. E. BEST:** So you did – you don't believe their – what – the expertise that they received?

**MR. BALL:** – what I do believe is, when I'm going to make significant decisions like this, I want a degree of probability of success to be much higher than the forecasting of oil never to go below \$100 for 50 years.

**MS. E. BEST:** Do you apply that principle with respect to probability to the other expert evidence that you receive?

**MR. BALL:** I put a fair amount of belts and braces around, and be very cognizant of not to make sure that we don't overreach. And, you know, keep that –

**MS. E. BEST:** How do you do that? How –

**MR. BALL:** (Inaudible.)

**MS. E. BEST:** – do you –

**MR. BALL:** (Inaudible.)

**MS. E. BEST:** – what are the belts on the expertise that you receive right now?

**MR. BALL:** Well, you know, no matter what it is, is – if you need to bring in extra consultants or extra experts you rely on whatever the evidence that you would have. But I think if you look back in the history of not just Newfoundland and Labrador, but globally as well, we haven't seen too many indications where we've seen oil above \$100 for a long period of time.

And that's the –

**MS. E. BEST:** But it was above \$100 at the time of sanction, or –

**MR. BALL:** And I think –

**MS. E. BEST:** – shortly before.

**MR. BALL:** And I think that's part of the problem, is that, you know, people lived in the present without – and really extended to where we were today, thinking that this would continue on forever. And unfortunately, that wasn't the case. I'm not here to suggest that I would not want to see oil, you know, at that level. I'm not here suggesting that this project – that I'm happy



to say that this project is costing this province billions of dollars. That is not my motivation.

I wish, and I said in earlier comments, back in 2013, I want this project to be successful. But I want it to come in without producing undue hardship on people in our province. And unfortunately that's not the way I see it today.

**MS. E. BEST:** Okay. My question was about experts though, and I asked what belts you put on your experts right now to make sure that their opinions are, in your mind, I guess, checked?

**MR. BALL:** We use, for our budget analysis, as an example, some of the same people that you would've just mentioned – PIRA – but when we're making those assumptions and those forecasts, we're not doing that for 50 years.

**MS. E. BEST:** Okay. What about the experts that you're relying on with respect to the North Spur and methylmercury? What are you doing to check those experts?

**MR. BALL:** So I think what we're doing is there's been a multiple number of engineering studies that would've been done by the prior administration. And you would be familiar with this and some of this information that's been available from the engineers that, you know, these dams, as an example, has been constructed, you know, in many areas.

This is not the first hydro development dam that would've been done. And so we rely on the engineers who actually designed those in a safe manner. And there are specifics and there are standards that would be in place to build those structures. And the reliance that I would put on those would be that those engineers are – they're educated, they're informed and they put their professional reputation on the line so that those structures are safe.

**MS. E. BEST:** Thank you. Those are my questions.

**THE COMMISSIONER:** Thank you Ms. Best. All right. It's almost twenty to five. So we'll break now and come back tomorrow morning. We have – I don't think we have any danger in not finishing tomorrow morning – or tomorrow. We're not gonna finish – there's no danger

we're not gonna finish, anyway, because, I mean, we'll finish no matter what time we have to go to.

But, I'm sort of thinking now that 9:30 should be safe for tomorrow. I'm just trying to make sure everybody's – who's left is just going to give me a bit of a heads-up to say – nobody's gonna take a day. Right.

Okay. So, I think we'll start tomorrow morning at 9:30.

All right.

**CLERK:** All rise.

This Commission of Inquiry is concluded for the day.