



COMMISSION OF INQUIRY
RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 2

Volume 67

Commissioner: Honourable Justice Richard LeBlanc

Friday

5 July 2019

CLERK: 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. T. WILLIAMS: Good morning, Commissioner.

THE COMMISSIONER: Mr. Williams, when you're ready.

MR. T. WILLIAMS: Okay.

Good morning, Premier Ball.

MR. BALL: Good morning.

MR. T. WILLIAMS: Premier, my name is Tom Williams. I represent a group known as the Former Elected Government Officials for the period of 2003 to 2015, with the exception of former Premier Dunderdale, who is represented by Ms. Best who finished up questioning yesterday.

Premier, I'd like to start off with one issue that arose yesterday in your direct testimony with Mr. Learmonth and, again, with Mr. Smith. And we did spend a lot of time on it, but I do want to go back to it because I think it's important. And that's with respect to your initial meeting with Mr. Martin, and I believe that was in early December of 2015.

And in your direct testimony – and we've kind of passed through it very briefly – you had made mention that you've met with them, and it came to your attention that there was issues with Astaldi. And it's first – you'd – kind of first time you'd been aware of it, and you asked, you know, had – how long have this been around and you had referenced that the previous – that Mr. Martin had indicated the previous administration were aware of issues, and they'd like – in Mr. Smith's cross-examination, you went a little further in terms of clarification, and you stated

that you couldn't say for sure as to numbers being referenced.

Now, before I put my question to you, is – I want to let you know that we've had a fairly significant amount of evidence on this before the Inquiry. Most recently, your own Minister of Natural Resources, Siobhan Coady, had referenced evidence very similar to yours. In a cross-examination, I spent some time taking her through that. At the end of her examination, she allowed that she couldn't state that Mr. Martin had indicated that he had given any numbers to the previous administration, purely only that there was an issue with Astaldi.

We know from the evidence that you gave yesterday it was brought to your attention that the briefing notes that were given to you by Nalcor had no reference to numbers initially. And that the Oversight Committee in the fall of 2015 did not specify numbers with respect to the Astaldi issue. And, in fact, Mr. Martin's own testimony, which he gave before the Commission in June, on June 12 of 2019 this issue came up by questioning by Mr. Learmonth.

And I'd like to just read to you a portion of the transcript of his testimony when this issue came up and it was addressed. And he stated: "And, once again, you start laying numbers out there without the – it just doesn't work. So the way we handled it in that particular case was to be clear to the elected officials that that was not in there. And they asked tremendous questions, obviously, about what could it be and where it could go? And, frankly, I just had to talk them through that: Here's what we know – in that particular instance – but I can't give you a number. I just can't do it.

"And that's why I think it was reasonable – it was a reasonable approach to how we would do it so that government would be informed. But we just – I just can't – we just couldn't come up with the numbers. It's just not there because we didn't know where it was going to end up."

Having put that evidence to you, and there was other evidence later in the fall by Astaldi – I don't want to get into a debate about all the details of the conversation – but the question I have to you is that you can't state that Mr. Martin stated any numbers to the previous

administration, only the fact that there was an issue with Astaldi. And we know there was numerous issues. There was scheduling. There was productivity. There was a number of issues on the plate with Astaldi of the two-year period.

MR. BALL: Yeah, so my recollection of the December 4 meeting with Mr. Martin – and you're right, it wasn't in the presentation, which surprised me, the fact that something of this magnitude wasn't in the presentation that was given, when there was a fair amount of detail on other levels and other subjects in the presentation. So what we're dealing with here is the exact number.

What he did tell me when he raised the issue verbally of a \$200-million issue with Astaldi, is his comment to me was he had had this discussion and shared this with the previous administrations. So, you know, for me, when someone says to me you've got a – verbally, you've got a \$200-million problem, and then he would make a statement that, you know, they've shared this and had discussions with the previous administration, I would assume from that conversation that the same conversation that he was now having with me would be something that he would've shared with the previous administration.

I didn't ask him: Did you actually tell the previous administration was this exactly \$200 million, or was this another number that you would've shared? That is not a discussion that we – that I asked him at the time.

MR. T. WILLIAMS: Okay. So I want to clarify this, 'cause it's originally – this morning CBC was reporting that the previous administration had been sharing information which, technically, is accurate. But the image is being left out there – and I want to clarify that – is that Mr. Martin's own words, he would know the discussion he had with Premier Davis. Premier Davis never suggested he knew the number in his evidence. Mr. Martin is stating, I couldn't tell them numbers.

So your position is a presumption. You can't say that he told them numbers. In fact, the numbers that you were getting were changing fairly rapidly.

MR. BALL: Which was part of the problem, so you're correct in saying that, you know, did he tell me that I told Mr. Davis or the previous administration, was that the language that he would have used, that I told them that it was \$200 million or I told them that it was 250 or 150 or 300 million, this number was moving.

So I didn't ask him and he didn't tell me the level of the information that he shared with them –

MR. T. WILLIAMS: Yeah.

MR. BALL: – although he was willing to share \$200 million with me and when in this – when you're having the conversation and then you'd say, well, I shared the information with the previous administration, I think it's fair to assume at that point there was a number that would have been given.

But I didn't ask him –

MR. T. WILLIAMS: I'm gonna –

MR. BALL: – I didn't ask –

MR. T. WILLIAMS: – take issue with you on that. You're saying it's fair to assume. Is it fair to assume when the person who spoke the words is on the record, under sworn testimony, saying he didn't say that? He said the evidence – and this was confirmed by the minister of Natural Resources – that he mentioned there was an issue with Astaldi. And we know there was numerous issues with Astaldi.

So isn't it quite possible that he brought, just as probable if not more probable, that he brought the administration's attention, look, we have issues with Astaldi. Astaldi's own letter which is in evidence here states – Exhibit 03087, which is the letter that went to Mr. Marshall who would then been the CEO – states that the earliest they said that Nalcor only knew back in October 7, 2015.

So isn't it more likely that he raised issues with them but may not have set a number? 'Cause you can't say he set a number, can you?

MR. BALL: I can't say that he said 200 million. All I can say was the information that he was

sharing with me, he said that they had a discussion with the – on this issue with the previous administration.

MR. T. WILLIAMS: An issue with Astaldi.

MR. BALL: Yep.

MR. T. WILLIAMS: Okay.

With respect to issues pertaining to rate mitigation, you stated publicly – both before the Commission and as well previously – that your government has given the commitment to the people of the province that ratepayers will not see a doubling of the rates, albeit there will some increases that would probably naturally have come regardless of Muskrat Falls. And, furthermore, there's been a commitment there won't be an increase in taxes.

And the quote that I'm referring to is your April 2019 press release. And I'm quoting, you said: I promised Newfoundland and Labradorians that they will not bear the burden or higher electricity rates or taxes as a result of Muskrat Falls. My government will deliver on that” Do you still feel fairly confident that your government can deliver on the promise that there will not be the doubling of rates or the increase of taxes? That you're going to take efforts so they won't see that?

MR. BALL: I am very confident that the ratepayers or the taxpayers will not see doubling of rates within this province as a result of Muskrat Falls Project.

MR. T. WILLIAMS: Okay.

And we know some of the measures that you're looking at in terms of – I know it's going to the Public Utilities Board as well. But, again, in the same press release – and the Minister of Natural Resources confirmed – you're looking at issues around savings realized from Newfoundland Hydro, reinvesting of Nalcor dividends. And I would think that could be substantial, given we're looking at in terms of both of the oil and gas industry. Would you agree with me on that?

MR. BALL: The number we've used is \$200 million.

MR. T. WILLIAMS: Well, could we not see even larger potential from the oil and gas? I mean, last year, the Minister of Natural Resources stood before the microphone indicating that we've had a record year. We had \$1.38 billion in bids on the offshore; we had a record bid of \$621 million on one parcel.

I mean, we had to be very optimistic about monies that are going to come from the offshore meaning it's – there's – well, there's no certainty and I appreciate that; we can't put a fixed number on it. There's great potential for growth in the offshore and revenues to Nalcor as a result of that. Would you agree?

MR. BALL: I hope that we get billions of dollars from our offshore. What we're talking about is a rate mitigation plan that will need to be in place by 2021.

MR. T. WILLIAMS: Yes.

MR. BALL: And that's just a couple years away. So when we put in our rate mitigation plan we did so on the forecast that we would use \$200 million, which would be available in Nalcor dividends. To suggest that those dividends would be much higher than that, I don't think would be a responsible position to take.

Right now, we believe that there will be \$200 million that would be available from Nalcor. I hope the number is much higher so that Nalcor themselves could have their own rate mitigation plan. The information that we have right now would not suggest that they're in a position to come up with \$725.9 million to support the cost of Muskrat Falls in 2021.

MR. T. WILLIAMS: And I appreciate that you can't put a larger number on that, but I think if we go back as far as the original Energy Plan, the Energy Plan stated in it that we are going to try to use non-renewable resources to help develop renewable resources. So this has been a hope and a wish and a plan for a long period of time, would you not agree?

MR. BALL: I don't make decisions on hopes and wishes. What I base it on is the evidence that we had. When this project started, it was \$6.2 billion. I think we all know the reason why

we're in this Inquiry today is \$12.7 billion. The information that I feel comfortable with is that we will have \$200 million available to support a rate mitigation plan that we will need within the next 18 months.

MR. T. WILLIAMS: Okay, but I guess I'm going to leave this after this, but the optimism that I was suggesting those years ago is coming to fruition. Like, I mean, right now we're seeing record development and plans for the offshore.

So, granted, we won't see those revenues for, you know, a number of years – could be two, could be five – and we do have to take short-term measures, but there is hope that we will be able to use those type revenues to offset expenses with respect to this project.

MR. BALL: I don't deposit optimism in the bank account of this province. We bill and support and market this province, yes, on a lot of optimism that we want to support with and market in this province to our offshore. But this project was never started to take dividends from our offshore, this was supposed to be self-supporting. Nowhere in the plan in the early days, when this was sold to the people of the province, were they expecting a rate mitigation plan of over \$200 million in dividends that would have to come from year one.

So all I'm saying is we have put in place – the discussion started about the doubling of electricity rates. It was not part of the plan. The plan has shifted. We now have to put in place an aggressive rate mitigation plan, of which \$200 million would come from dividends of Nalcor.

MR. T. WILLIAMS: And you've promised the people of the province that we wouldn't see this doubling of rates and you're putting in a plan to address that. Correct?

MR. BALL: I am.

MR. T. WILLIAMS: And as you just indicated you're very optimistic you're going to be able to do that, right?

MR. BALL: I am –

MR. T. WILLIAMS: Okay.

MR. BALL: – as a result of restructuring of financing we're going to need with the federal government. They've agreed to engage here expeditiously. Those engagements are what we're involved in right now and \$200 million in dividends from Nalcor.

MR. T. WILLIAMS: So what would you say to all the fear mongering that's going on out there by the naysayers saying: Oh, rates are going to double, rates are going to double? You're able to say to the people of the province today on the last day of Phase 2: You don't have to worry about your rates doubling. Is that correct?

MR. BALL: I have said that many times.

MR. T. WILLIAMS: Okay. Thank you.

In terms of further rate mitigation, Mr. Marshall and his testimony over the last number of days has raised issues with respect to concerns he had regarding the size of the project. And he put a fair bit of emphasis in respect to the matters pertaining to the transmission side of the project and he focused on that a fair bit.

In addition, in recent months and weeks, there's been some public attention over concerns from workers from Newfoundland Hydro who have expressed concerns with respect to the possible selling off of interest of transmission lines related to Muskrat Falls and other development areas. And there's concerns with respect to whether or not government has any intention of selling off the assets or a portion of the assets, whether it be to Fortis Inc., to Hydro-Québec or anybody else.

Does your government have any intention of selling off any of the assets of Muskrat Falls or any other hydro projects in order to raise revenues –

MR. BALL: There –

MR. T. WILLIAMS: – to offset financial issues?

MR. BALL: Yeah, so I think what we're talking about here is part of the work that's being done at the Public Utilities Board. There was some suggestions there by one of the consultants that

were doing some work as part of this review, be it Liberty or Synapse, that this was a possibility.

We are not having discussions about us selling off Hydro assets to Newfoundland Power. That – this was an example of some of the work that the PUB was doing as part of their review, and I think this is what caused, you know – raised some questions around this. We actually wrote a response back to the union who were concerned about that time, and I think the time frame of that response would've been around April of 2019.

MR. T. WILLIAMS: Okay, so we can take confidence in the fact that your government has no intention to do that?

MR. BALL: That's not discussions that we're having.

MR. T. WILLIAMS: Okay.

With respect to the calling of the Inquiry itself, in Mr. Marshall's direct testimony, when he was questioned on this, he indicated that in November of 2017, he encouraged you – and that's his words, not mine – I encouraged him, I think he said, on a couple of occasions not to call the Inquiry at that point in time. He stated that the Inquiry would add tremendous disruptions to the operations of Nalcor at a very hectic time in the middle of the project.

Additionally, we know that Westney Consulting also looked at this issue, and some concerns that they had expressed in their report in June of 2018 was the impacts that the Inquiry would have on the project team in terms of loss of motivation, impacts it could have on ongoing contracts and loss of relationships with contractors; one term is executive and corporate paralysis; damage to Aboriginal relationships, issues around which we've – the Commissioner has had to deal with; commercial sensitivity, given ongoing Astaldi disputes and arbitrations; the ongoing water rights litigation piece, which I don't plan to go into, but obviously we're turning the page on that, hopefully, and seeing a good side, but there's still the right of a repeal; and in fact the costs – what this costs to Nalcor itself, which hasn't been finalized, but it's in the tens of millions of dollars.

Yesterday, you spoke so highly of the issues of – and your sensitivities to risk and what the risk project – the risk factors are on this project. What about the risk of calling an inquiry in the middle of a project when you have all those factors to consider? How do you outweigh that with the issue of timeliness, as you spoke to yesterday?

MR. BALL: Well, you – when you – what this Inquiry is about is, you know, finding out what really happened to this project to go from \$6.2 billion through \$12.7 billion, so then it really comes down to timing. Yesterday, I made some comments that the project was over 90 per cent complete, so – and the ability to actually recall and make sure that resources, the people – those people that were engaged in making the decisions were still available. And as you would know, if there's claims coming on this project, this would take many years before it was finalized, so, you know, I just made a decision right now that this was the appropriate time to do it. I think it was important for the people of this province.

I could also say there was a risk in loss of confidence that we would not have the ability to take on other projects in the future, basically having to deal with some of the issues around Muskrat Falls, the Muskrat Falls Project. So it was important for me to get this piece of work done so that we could get the early recommendations, if indeed there's any major project, not just hydroelectricity development. But it was about learning lessons from where we are, and also it was about protecting Newfoundlanders and Labradorians.

We all know that within the Upper Churchill project – I mentioned this yesterday – that for many years there's been a lot of discussions and, I think in some cases, may – misinformation that wasn't available to the people of the province about what happened on the Upper Churchill. I think now we've taken the opportunity, and with the Muskrat Falls Project, I think once and for all we will have – make sure that all those myths are dismissed on this project, accurate information, clearly identifying what happened to this project from beginning to end.

MR. T. WILLIAMS: So all of those issues could be accomplished having the Inquiry at the

end of the project as well. The main difference is the timing issue that you've – you raised.

So in balancing the risks that I've outlined versus the timing, you felt the timing was more important than the associated risks that I've outlined?

MR. BALL: Well, one of the things that you did outline was the outstanding claims that could potentially come out of the – this project. That could take years before those final decisions are made, and for me, having people available, we've all heard people make decisions or make comments at this Inquiry that, well, they couldn't remember what happened at that time. And we all know, with the passage of time, that would become more obvious and would become a larger problem.

So the fact that people that were engaged, decision-makers, were available to speak to this Inquiry was important to me and it was important to the people of our province. And, you know, the work that I do is – from time to time, you have to make decisions and you listen to people in this province. And it was a – there has been a significant number of people that have reached out and said, you know, we need to deal with this, we need an inquiry. And I made a decision in September that this was the appropriate time.

And some of the things that said that would happen at Nalcor, and as we come down to the final days, we're not seeing that happen at Nalcor. We're not seeing massive amounts of people leave the project. I think there's people at Nalcor today, they want to finish strong and they want to make sure that they come to the – they get to the end of this project in a very strong fashion.

MR. T. WILLIAMS: Okay, and you've opened up the door to where I want to go next because I think that's important. Because Mr. Marshall gave evidence with respect to that, about where we are and finishing strong. And, my words not his, but he seemed to be optimistic on that aspect. I don't think I'm misquoting him.

I put it to him – and I don't intend to taking you through all of these, but I put to him a number of quotes, of positive comments that he has said

and some of the changes in his language regarding boondoggle, the possibilities of getting over that. Again, I'm surmising on that, but I do want to put to you just two quotations as – when you speak of Mr. Marshall and where we now.

On April of last year, April 19 of 2018, he was quoted in a *CBC News* article as stating: I'm a lot happier now than I was two years ago. "We came into a situation that was a crisis. We've worked our way through it. Any megaproject in the world would be happy to be where we are" now.

In addition to that, your own – and he is your CEO, selected by your administration – as well as your own chair of the board of Nalcor had some very strong comments on that, and I want to put those to you, as well. When I asked him about where he saw the outlook of the project going, both in the short and the long term, here is his response. And I want to read it out for your benefit: I think we're going to finish strong, and, you know, well, if there is sort of take-away from all of this, it's what we call a self-fulfilling prophecy. I am a firm believer that people get up in the morning and they're driving to work and thinking, well, what do I have to do today, what's my timeline to do it, how much money do I have to spend to do it, am I going to do it diligently. They don't do the opposite. People don't get up in the morning and get a Starbucks and get in the car and go, how can I screw up today? It's not human nature. Human nature is I'm going to do a good job.

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

So I think that we can get there so that everyone is cheering for you, instead of trying to cut the legs out from under you. And people can go to

work again, and people can put on their résumé that they worked at Nalcor, because now they're wondering whether it's better to say I had a two-year holiday in my résumé than I worked at Nalcor. Like, it's where we've got to get, right? I think once we're all on the same bus, cheering for the same outcome, then we can turn this around, and it will prove to be a project that – you know, look at the Upper Churchill, however many years are now in, 50 or 60, and we've put in place an asset management program to ensure that's got a long life.

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

Based on that comment, I'd ask you for your opinion that while we do have short-term challenges – that I think everybody is acknowledging – do you have an optimistic outlook for what this project can bring to this province for the next five, 10, 20 or 100 years that it may exist?

MR. BALL: Early in, I'm going to think – and maybe it was – maybe 2013 or sometime, I made a speech – I gave a speech to – I think it was to the Rotary Club, and once this project had gone past sanction, I wanted this project to be successful. I didn't start out my career in politics as leader of the Opposition, then becoming Premier of this province in 2015, to celebrate the fact that this project had potentially – be a failure. That is not where this started.

I think every single Newfoundlander and Labradorian would want to see this to be successful. Unfortunately what I have to deal with is the potential of what would have been doubling of electricity rates without mitigation, which is not what we were told. We were told the project would be \$6.2 billion; we're at 12.7.

We were never told that this project would be nearly 30 per cent of the net debt of this province just six, seven years later. That was not information.

If I had known that information – or if Newfoundlanders and Labradorians or some of the people that you were just quoting had have known that back in 2012 and '13, I don't think we would be sitting here today with this project done the way it is. No one was expecting the fact that you were either going to pay the full (inaudible) of \$12.7 billion whether you use the power or not.

So, we didn't start out – I didn't start out to celebrate the failure of a project. I wanted this to be successful. And in the long term, I still want it to be successful. But we had to deal with the next 10 years with a rate mitigation program that will be subsidized primarily by dividends from Nalcor to over \$2 billion. Well, this is far from over, and even though in the long term, there might be benefits to this project – I hope there is – but in the short term, we still have a lot of money that will need to be injected into this project to keep rates affordable and to keep this province in to a point where we're actually compete and attract business here. This is what I'm dealing with and this is hopefully some of the lessons or recommendations that will come from this Inquiry: What do we do in the future? You know, what is the history for 2041? And this – will this be a story that in 10 or 15 years' time will be a good news story for Newfoundland and Labrador?

All I know is that within the next 10 years, we have to continue to put in a rate mitigation program to keep rates affordable in this project, and that was never the plan from the beginning.

MR. T. WILLIAMS: Okay.

But wouldn't you agree with me that in a long-term project like this – and I acknowledge the challenges that we have in the immediate future on this – but are you not looking – I mean, you're Premier of the province; we have to look to the future. Are you not looking past the end of your nose if you say, well, we just got to – because we got challenges in the next two- to five-plus years that we can't look at a long-term projects for the benefit of the province?

MR. BALL: I am probably one of the most optimistic people in this room. I am 62 years old. If I didn't believe in the future of this province, I wouldn't be Premier of this province today. That is the reason why I'm here. I've accepted this challenge willing with the support of the people of this province. So I believe the future is optimistic for Newfoundland and Labrador? Of course I do. But I'm not going to sit here today and say that we have an optimistic future simply because of the Muskrat Falls Project.

MR. T. WILLIAMS: And I'm not suggesting –

MR. BALL: We have many other reasons to be optimistic, and that is a job that I am doing to support economic development and bring jobs to Newfoundlanders and Labradorians. If I had to do this project from the beginning, yeah, I'm not so sure we would have got to the start line like it is today; maybe the construct would be very different.

So this is not about being optimistic. I'm probably one of the most optimistic people in this room simply – to be Premier of this province, it's why I'm doing this job.

MR. T. WILLIAMS: So you would agree with me, in cluing up, that we can't assess the success or failure of this project sitting here before it's ended?

MR. BALL: I certainly cannot suggest that on – with this Inquiry or the work that we've done will actually determine what this project looks like in 2057. I'm not here to do that. What I'm here to do is to suggest that we need rate mitigation, and what I'm here to say is the project that this Inquiry is about is not the project that we were told it would be in sanctioning back in 2012 and '13.

MR. T. WILLIAMS: Okay. Thank you, Premier.

THE COMMISSIONER: All right.

Julia Mullaley, Charles Bown.

MR. FITZGERALD: Thank you, Commissioner.

Good morning, Premier Ball. Andy Fitzgerald, I represent Charles Bown and Julia Mullaley.

MR. BALL: Andy.

MR. FITZGERALD: You're familiar with those two individuals –

MR. BALL: I am.

MR. FITZGERALD: – I take it?

We've had evidence at the Inquiry – and I have a couple of questions I want to get into with you – that in June of 2011, the Tory administration decided to send a reference question to the PUB with respect to the least-cost option. I'm sure you're familiar with that. However, we've also had evidence at this Inquiry that there was other advice given by the public service to the government at the time in relation to what an independent review might look like.

And I'm going to ask that the clerk put up P-00807, please. It should come on your screen, Premier. Okay.

Now, page 1 of this document, it's dated May 11, 2011. This would be before the PUB reference. It's entitled, "Muskrat Falls Independent Review Decision/Direction Note."

And if we could just go down to page 1 here – or page 2, sorry, of the document. Thank you.

And just to give you some background, Premier, this was a document that was prepared by Department of Finance officials, Mr. Paul Myrden, and also it was – sorry – it was approved by Mr. Bown at Natural Resources, and Mr. Terry Paddon at Department of Finance, senior deputy ministers in the government.

You'd be familiar with those individuals –

MR. BALL: I would.

MR. FITZGERALD: – I would take it? Yes.

Have you ever seen this before?

MR. BALL: I haven't seen this, this Decision Note, but I – I mean, if I could take a quick look at it here (inaudible).

MR. FITZGERALD: Well, I'm going to take you through it –

MR. BALL: Okay, thank you.

MR. FITZGERALD: – I think it might be easier for that purpose.

The “**Direction / Direction Required:** Whether to approve the selection and retention of a qualified consultant to provide an independent review and report on the detailed project analysis prepared or commissioned by Nalcor, including an assessment of the various risks associated with the Muskrat Falls Hydro Development Project ... and their potential implications for the Province.

“Finance and Natural Resources are supportive of the proposed initiative as it represents both good business practice as well as an enhancement to the existing robust due diligence process.”

If we could go to page 4, please? The last page? There we go. Thank you.

And this is what I indicated to you earlier: prepared by Paul Myrden; approved by Terry Paddon/Charles Bown; was reviewed by the ministers Marshall and Skinner; and it's signed off there on May 10 and May 11, 2011.

If we can just go up to page 3, please, under Scope? Thank you.

“The retention of an independent consultant by the Province would be intended to obtain a new MFP project specific assessment of both the fundamental assumptions underlying the project development plan and the detailed accompanying analysis completed by Nalcor or its agents and advisors. It could also include an assessment of the due diligence completed to date including a report on the rigour of this process. It would be a risk-based assessment which would focus on the various types of project risk and the potential implications for the Province.”

It continues: “While preliminary in nature, the risk assessments that might be included in the consultants' mandate could include the following: Design and engineering risk.

Construction risk. Generation / technical risk. Market risk. Financial risk. Contractual risk.”

And below: “These themes will have to be expanded into a detailed statement of work which will be required as a pre-condition of negotiating the retention of a consultant.”

Would you agree with me, at the outset, this appears like a fairly all-encompassing recommendation? We need to know what the risks of this project are.

MR. BALL: In 2011, I think this would be a fair assessment that this independent consultant would provide some oversight and advice into what would be legitimate concerns at the time.

MR. FITZGERALD: And I'm gonna take you even further than oversight, if could just go down to the process.

Thank you.

About halfway through the paragraph, Premier, they talk about: “The pool of such potential candidates would appear to be limited by the fact that at least two are conflicted as a result of existing relationships with Nalcor. This would rule out Deloitte, as Nalcor's auditor, and PWC, as the current consultant to Nalcor on the Lower Churchill project generally. This leaves Ernst & Young, KPMG and possibly Grant Thornton as potential candidates.”

So, were you aware that as early as March 2011, the public service – Department of Natural Resources and Department of Finance – were recommending to the political masters for an Ernst & Young, Grant Thornton-type review? Were you aware of that?

MR. BALL: No, I wasn't.

MR. FITZGERALD: Would you agree with me that – well, we know happened that – when you took power, Ernst & Young went in and did a fairly deep dive and we discovered a lot of – a lot of items. We've also discovered in this Inquiry, when Grant Thornton went in, that there was a P1 schedule, possibly P3 if getting completed on time. And there were other issues with respect to risk being quantified.

Would you agree with me that this was a missed opportunity by the previous administration to get ahead of this in May 2011, get someone in there like a Grant Thornton or an Ernst & Young before we spent so much money?

MR. BALL: Yeah. There was a couple of things I know reflecting on that time frame, prior to sanctioning. I know – as Leader of the Opposition, I was actually calling for, yeah, some more oversight. I’ve actually called to have – bring – even the people that provided advice, to bring them in front of all MHAs for questioning as well, so that we could draw out some answers about this decision was made.

And at the time, for me – at that point, I was asking for the PUB to be more involved.

MR. FITZGERALD: Mmm.

MR. BALL: And we all know what happened with the PUB but – and that would’ve given the PUB, I guess, you – for me, it would – the PUB would’ve had authority then to draw on whatever experts –

MR. FITZGERALD: Yeah.

MR. BALL: – that they felt necessary to actually provide the necessary oversight in this project.

MR. FITZGERALD: But we – in this note, I would suggest – and it’s clear – the words PUB don’t even appear.

MR. BALL: No.

MR. FITZGERALD: So the public servants, Natural Resources and Finance, the impartial public service, Mr. Bown and Mr. Paddon, they were of the view that we need someone from the outside taking a look at this just like your government all – subsequently authorized Ernst & Young, and the Commission had Grant Thornton go in the end.

But – wouldn’t you agree that’s reasonable and prudent advice on the part of a public servant?

MR. BALL: I think it was a massive decision to make. I don’t see where this here would’ve been

– I don’t see where this would not have been a good option at the time. I think –

MR. FITZGERALD: Yeah.

MR. BALL: – this would’ve been useful. And given – given the magnitude of the decision and the impact – potential impact in the province that this project was – was about to have.

MR. FITZGERALD: Right. Given what we know now, it’s a significant – this the first time you’ve read this note?

MR. BALL: Yeah, it is. In 2011, I wasn’t getting many decision –

MR. FITZGERALD: No –

MR. BALL: – notes from government.

MR. FITZGERALD: – obviously.

MR. BALL: That’s – no.

MR. FITZGERALD: What’s your opinion on this Decision Note?

MR. BALL: You know, I think – you know, to me – at that point, you know, what my focus was on the bringing the PUB back in and taking a strong look at that. And, you know, to me, this looks like a reasonable approach at the time.

MR. FITZGERALD: Thank you.

Mr. Budden asked some questions to you with respect to the, I guess, impartiality or neutrality of the public service when you came to power. It’s my understanding that your evidence is you had no issue there with the professionalism of the public service, or the transparency of the public service when you took power?

MR. BALL: No, many of the public service that would have been working with the previous administration are still working, you know, with our government and – very loyal, very committed. I think one of the things that coming in to government and being Premier was – one of the things I found quite amazing is the work that the public sector workers, that they would do.

And I would say, I've been – I've always been amazed when I see the level of hours that they put in, the work that they do. And I go out of my way, every opportunity that I get to – especially the people that I engage with on a regular basis – to actually let them know that we appreciate, on behalf of all residents of the province, the work that they do.

MR. FITZGERALD: With respect to – and obviously, the Premier, you recognize how the process works in this situation here with this Decision/Direction Note. The advice was provided to the ministers; the ministers signed off on it; subsequently, there was a decision made – Premier's office, whatnot and – to go with the PUB instead.

But, ultimately, there was no more the public service could have done here than advise of a potential course of action. Would you agree with me?

MR. BALL: I think, you know, given the construct of this Decision Note, this is about what the public sector could do at the time.

MR. FITZGERALD: That's right. Because ultimately, they – the masters of the decision-making process are yourselves. Correct?

MR. BALL: Exactly.

MR. FITZGERALD: Do you have any sympathy about the position the public servants have been put into by being thrown into the middle of this Inquiry? When ultimately they were doing their job to the best of their ability and their decision-making power was pretty much limited to just providing advice and recommendations.

MR. BALL: What I would say is, is as a result of the Inquiry, it is given the public of this province an opportunity to get a better understanding of the work that the public service was doing. And I think this Decision Note is a great example of some of the warnings and the advice that were being given to the decision-makers at the time, that was ignored before the final decision was made.

So, yes, I do. I understand that there's, you know, quite a bit of time and work that would go

into preparing, you know, to sit in front of an inquiry. But yet, we look at a Decision Note here, which I think (inaudible) vindication in any way, but, I mean, I think it reinforces that – the independency of what the public service were doing. They were there to actually provide advice.

Whether a politician or decision-makers actually take that advice, sometimes can be very frustrating. I think this here is an example of some of the signals that the public servants were sending to the decision-makers at the time.

MR. FITZGERALD: Thank you, Premier Ball.

MR. BALL: Thank you.

THE COMMISSIONER: All right, thank you.

Robert Thompson.

MR. COFFEY: No questions.

THE COMMISSIONER: The Consumer Advocate.

MR. PEDDIGREW: Good morning, Premier Ball.

MR. BALL: Good morning.

MR. PEDDIGREW: A few questions for you today; Chris Peddigrew, on behalf of the Consumer Advocate and the ratepayers.

Some questions first, I guess, in follow-up to some things you've been asked about over the past day and a little bit. The target rate of 13.5 cents for rate mitigation, I'm just wondering – and I know you were asked some questions about the origin of this number. So was this a number that, I guess, was arrived at thinking of what the ratepayers could bear or was it – I guess I'm just wondering where that – the origin of that number.

MR. BALL: You know, my understanding is, given the natural – you know, what we've seen in increases in rates, this is a number that we would have used, expecting where the rates could potentially be in the 2021 time frame.

MR. PEDDIGREW: Okay.

So it's where you thought they might go and use that as a ...

MR. BALL: Yeah.

MR. PEDDIGREW: Okay.

The future role of the PUB – and we know that the PUB doesn't have a say in terms of the impact of the Muskrat Falls Project on rates, but how do you envision the role of the PUB in terms of future rate setting and ...?

MR. BALL: You know, for me, this – you know, the Public Utilities Board for domestic rates within our province is – they're the group that have had a long history of actually doing this service for people in the province. So, you know, for me, there's no reason for me to suggest and there's no recognition of any other group that could do it better than the Public Utilities Board. This is what they've been doing and it's certainly my intention to keep using the board when it comes to setting rates for the people of the province.

MR. PEDDIGREW: So even though, I guess, they've been cut out in a sense from having decision-making authority, you still view them as a source of information, expertise that can help you as a government make decisions?

MR. BALL: We do and it's one of the reasons why we went back to the PUB just within the last few months to add support to some of the decisions that would have to be made.

MR. PEDDIGREW: Okay, just changing topics here. You had written the board of Nalcor – the former board of Nalcor – in relation to bonuses to be paid to executives, I believe, and I believe you were Premier at the time. And can you just explain a little bit about your rationale for making that request to the board.

MR. BALL: 2016 time frame, we were seeing – I think the requests at the time was somewhere between \$1.4 million or something in bonuses that would be paid out. The contracts were with Nalcor and so what we did – the purpose of the letter is, given the environment that we're dealing with, we felt – and given – I will say, you know, typically when someone gets a bonus, you get a bonus because you've been successful

at something. And what we were seeing here was a project that was actually – saw increasing costs.

And given where we were and some of the decisions that we had to make in Budget 2016, I reached out to the chair at the time and asked if there would be a suspension, a reconsideration of those bonuses that would be paid out, realizing that the contracts that would be implemented would be the responsibility of the board.

MR. PEDDIGREW: And what was the board – I mean, ultimately, my understanding is that the bonuses were paid. The board, I guess, didn't follow your request, but what was the response given for why?

MR. BALL: I think there was an opinion that they sought and got some legal advice, if indeed this is something that they could do. And they felt that this is not something that they could do, that indeed they had to go ahead and honour what the performance or what the bonuses would be, and those bonuses eventually got paid out.

MR. PEDDIGREW: Okay.

And I guess in terms of the relationship between the shareholder and the then-board, did that cause any damage do you think? Or was it – you know, clearly you made a request that wasn't followed. I'm just wondering about the impact that that had on the relationship between government, the shareholder and the board at the time.

MR. BALL: I wasn't surprised at the decision.

MR. PEDDIGREW: You were expecting it.

Going back to your most recent budget – so there was a line item in the budget for – I believe it was a million dollars for, I think, it's a thousand homes, \$1,000 per home for heat pumps. Do I have that correct?

MR. BALL: Yes, that's a program for – that we've put in there for homeowners to have an opportunity to support their homes with heat pumps.

MR. PEDDIGREW: Okay.

And is – I mean I guess that’s a method or a mode of conservation demand management, CDM. And so I did ask Mr. Marshall some questions about that – Mr. Stan Marshall, when he was on the stand – and he indicated that, you know, he sees CDM as – you know, he wouldn’t want to rely on it for how much capacity you have – in case it doesn’t work, you still need the capacity – but as a method for, you know, perhaps reducing energy use, sure.

I guess I just wonder your government’s views on CDM and the role it will play in maybe curbing electricity use. And was that the motivation for the – for this budget item we referenced?

MR. BALL: It is. It was for me. I mean there’s no doubt, I mean no matter – if you have electricity, it’s a cost to the homeowners, a cost to families in the province is – you know, I think no matter what the resource is, we should use it wisely. And you know, with this opportunity to have families or individuals or consumers – have this opportunity to actually reduce their heating costs by installing things like those heating pumps, mini-splits or whatever people – whatever the decision people would make, we just want to make sure that they had that opportunity.

MR. PEDDIGREW: And –

MR. BALL: And the other thing, I guess, I might add, it would help keep people on electricity as opposed to moving to other sources of energy.

MR. PEDDIGREW: Okay.

And before I ask my next question, this is something I’ve been looking at in some of the recent CBC News articles. And I do – I give you the same caution, I guess, that Mr. Budden gave you in questions yesterday. So before you answer it, we may need some direction from the Commissioner. It’s not about necessarily water management per se, but it is about something that’s been put out there as a method of rate mitigation, being the ability to tax power that’s being exported from the province.

And I guess that issue aside, whether we can or can’t do that – and I know that’s something you may not want to opine on. But I guess my question is, you know, if, for instance, we do that and we were to export power to Hydro-Québec and tax it in some way, wouldn’t that mean we’d have to do the same with power going to Nova Scotia through the Maritime Link? And would that – well, does the – I guess the – having the Maritime Link, would that be an impact?

And before you answer it, I –

MR. BALL: Yeah, my understanding with – and this has been – I’m not sure it’s been tested but it’s been discussed many times for sure. And, you know, my understanding is that is you just simply can’t tax one jurisdiction. If there’s a tax you have to tax, you know, all jurisdictions. But that’s been my understanding of what that taxation would have to look like, that you would end up having to tax your – even your own consumers within your own province.

MR. PEDDIGREW: So any sort of thought of doing that through Hydro-Québec, we would have to look at the implications through the agreements with Emera and Nova Scotia?

MR. BALL: That’s my understanding.

MR. PEDDIGREW: Premier Ball, Mr. Learmonth was asking you some questions yesterday and the Commissioner came in with a question as well about the ability of anybody, the ratepayer or somebody else, to challenge what is a cost of the Muskrat Falls Project, and whether there is an ability – and, I guess, maybe as an exaggerated example, just for purposes of illustration.

But if – you know, clearly, concrete that goes into the powerhouse, that’s a cost of the Muskrat Falls Project, or the wages to somebody who puts that concrete in, that’s clearly a cost to the Muskrat Falls Project. But if a bunch of executives from Nalcor wanted to take a cruise because they worked really hard and they said, well, you know, we worked really hard so it’s tied to the Muskrat Falls Project, clearly that’s an exaggerated example of something that the ratepayers would rightly not want to pay for.

But in between those two extremes, if there was something that some people felt was a cost to the project, other people did not, my understanding is there's no ability to – for the ratepayers, say, to challenge what might be attributed as a cost and therefore paid by the ratepayer. Do you – are you aware of anything in the legislation that would provide a method for challenge?

MR. BALL: The only thing that I'm aware of is that, you know, this particular project – and I know exactly where you're going, 'cause I've, you know, had those questions myself – is that this particular project would not be as part of the – would be exempt from the regulated. So that's pretty much all I could say about this. It's not something that can be reviewed by the PUB, but I do understand your concerns.

MR. PEDDIGREW: Okay.

And my understanding is that arises from – and again, I'm not asking you for a legal opinion – but the Muskrat Falls Project exemption order that – dated November 29, 2013, that exempts the project from – I mean, to me that's the basis for which we don't have an ability to challenge.

You would agree with that?

MR. BALL: I agree with that.

MR. PEDDIGREW: Okay.

Is there any thought process now about that – you know, this is something that may start to come up, you know, as to whether something is a valid cost to the project. Is government giving any consideration to a mechanism for dealing with that if it becomes an issue of dispute?

MR. BALL: I thought about – you know, we thought about this and, you know, so this is really coming down to rates again. So if you had the exemption, you know, and I guess one of the best examples that people would've used is the cost of putting up this dome and the cost of taking it down. Does that properly reflect the cost and should it be borne by ratepayers? That's an example?

MR. PEDDIGREW: Right.

MR. BALL: And that's more of a –

MR. PEDDIGREW: Good example, yeah.

MR. BALL: – example in real time. So whether that can be done, I think what people in – so therefore the cost of that would still be in the project. So at some point it would've been a cost that would've had to have been picked up by the project, not passed on to the ratepayers if, you know, I follow your line of questioning.

So what we decided to do is put the rate mitigation plan in place. So we could've reduced the rates, but the cost would've been still over in Nalcor, as an example. So the easiest thing for us to do at this point so to make it less complicated, was to put in place a rate mitigation plan, 'cause those costs were still not going away –

MR. PEDDIGREW: Right.

MR. BALL: – so we put the rate mitigation plan in place to get it back to an affordable 13.5 cents.

MR. PEDDIGREW: Okay. So you may have heard the phrase before, to get through the back door what you can't get through the front door.

MR. BALL: It's kind of the process.

MR. PEDDIGREW: Yeah.

Some questioning yesterday, Premier Ball, from Ms. Best, about I think in response – the answer you gave to one of her questions was that you thought the cost estimates were low, from the very beginning. And she asked you then did you have any insight as to why that may be. And you said no. And I realize you weren't involved in the cost estimates, but I would like to take you to an exhibit just to ask you a couple of questions and – Madam Clerk, P-00049, please, which, Premier Ball, is the Manitoba Hydro International –

MR. BALL: Okay.

MR. PEDDIGREW: – “Report on Two Generation Expansion Alternatives.” And page 199, please.

Thank you.

If we go down just a little bit further. So – sorry – the table is – just if we go up a little bit – capital costs for the infeed option. Then if we scroll down to the paragraph below the table, Manitoba Hydro International here, Premier Ball, says, “Capital costs are a significant input to the CPW analysis. The impact of changes in capital costs on the CPW results was tested. For example, if the Labrador-Island Link capital costs increase by 25%, the CPW differential in favour of the Infeed Option would be reduced by,” almost \$400 million,” and if the Muskrat Falls Generating Station capital costs increased by 25%, the CPW differential in favour of the Infeed Option would be reduced by \$577.0 million.”

And it goes on to talk about “If ... the Labrador-Island ... Link and the Muskrat Falls Generating Station costs increase by 25%, the ... Infeed ... would be reduced by \$975 million.”

So, clearly, the question was, well, why were – why was the estimate low? I mean, would – reading something like this, does this give you any insight? You said yesterday you had no insight into that.

Does this give you any insight?

MR. BALL: It’s a bit of a flashback, actually, because I do remember this from my days in Opposition. So it’s the work that Manitoba Hydro would have had done. It does. I mean, obviously it clearly outlines the impact of seeing escalating costs.

MR. PEDDIGREW: And just – you mentioned there about your time in Opposition. I do have a couple of questions for you about that as well.

So, there’s been some discussion already this morning about the PUB process that did take place prior to sanction, however you want to characterize that – whether it’s abbreviated or truncated or whatever – but it was not a full, regulated PUB review of all options.

Another issue back in 2012, I think, was the debate – or some would say a lack of the debate

in the House of Assembly, and I’d like to take you to Exhibit P-04386.

THE COMMISSIONER: That’s going to be in your book at tab 26, binder 1.

MR. BALL: Binder 1, tab 26.

MR. PEDDIGREW: Okay.

If we scroll down a little bit.

So, this is a press – a news release entitled, “Premier makes a joke out of Muskrat Falls debate.” And there’s some quotes attributed to yourself here, Premier Ball, if we go down to the second paragraph.

It just says, “The Premier had many options ...” – and this is in relation to Premier Dunderdale – “The Premier had many options to debate this project in the House, but chose the most limited form possible,” said Liberal Opposition Leader Dwight Ball. ‘There should have been a full debate on Muskrat Falls, but Government is maintaining its trend of secrecy and lack of transparency and selectively choosing what the people of Newfoundland and Labrador will know about this boondoggle of a project.’”

So, it goes on there and you’re basically speaking to, I guess, what you felt was an insufficient level of debate in the House of Assembly, and I’d just like to ask you: what were you seeking at that time and what, in your view, transpired?

MR. BALL: Yeah. It would have been historic – I think there’s probably once in the history of the province that something like this would have occurred before. So what we were looking for, was to get the people that were providing advice – the consultants, and helping inform the decision-makers. We were about – if you look at December, I think, this is really literally days away.

So, we were looking for advice and looking for an opportunity to actually question those people that would have provided advice, and have them

appear in front of the House of Assembly – in front of the special debate.

MR. PEDDIGREW: And you're talking about the advisors and experts that government were relying on to support the project.

MR. BALL: Right. Or – any experts that we, you know, could actually potentially bring in to help make the best decision. We actually went to a degree of even writing the CEO of Nalcor at the time. We had wrote the Minister of Natural Resources – the premier themselves – to try and make sure – and this was really about getting information and providing the public an opportunity to actually see first-hand, you know, how this decision was made before – prior to sanctioning.

MR. PEDDIGREW: And what ultimately transpired in terms of the House of Assembly?

MR. BALL: What ultimately transpired was there was – there is such a thing as a private Members' debate which typically happens on a Wednesday afternoon from 2 – or 3 to 5 – a couple of hours. That is eventually where this debate landed.

And so no opportunity for members of the House of Assembly to ask the types of – questions from the types of experts – it was just really the political environment that we normally – we would normally see on a Wednesday afternoon at the House of Assembly.

MR. PEDDIGREW: And how would this private Members' process take place on a Wednesday afternoon?

MR. BALL: You know, typically, if you're a government and with – in 2012 with a strong mandate, this passed.

MR. PEDDIGREW: Seeing some of the information I've been reading the past couple of days as well, is you were making reference in some of the debates – and I think I saw it in a news article too – the cost of 8.7 billion. I don't know if that was a typo I saw, or – do you remember making reference to 8.7 billion at the time?

MR. BALL: When was that?

MR. PEDDIGREW: It would have been around this time – around late 2012, and prior to sanction. It may have been a typo.

MR. BALL: Yeah.

MR. PEDDIGREW: I just – I saw it there and just wanted to ask you about it.

MR. BALL: I do remember reading that somewhere in this information – just not exactly sure where it is and in what context that would have been made.

MR. PEDDIGREW: Okay.

MR. BALL: Mmm.

MR. PEDDIGREW: I asked Mr. Marshall – Mr. Stan Marshall a couple days ago just about the – he had made a comment about we all bear responsibility, and it's – I guess it's been in the press a little bit. And I just – I don't think Mr. Marshall – just for fairness to him – I don't think he was suggesting that the public is entirely to blame. I don't think that was his suggestion. But I do think he was attributing: Look, you know, we all have an obligation as citizens to probably speak up on issues. And I guess there's some merit to that statement.

But, I guess having said that, I may not necessarily agree with the amount of blame, you know, he may attribute to ratepayers or the public. And I go back to some of the questions you had earlier just about the – I guess the PUB process that did take place, the lack of debate in the House of Assembly. The fact that, you know, I don't think anybody really had a true picture of the impact on our net debt that this project – even at \$6 billion, you know, we're 30 per cent at \$12 billion – I don't know how the math exactly works out, but it would still end up being a 6.2, a very substantial percentage of our net debt as a province.

And so, looking back at all that, I mean, do you think the public had a full picture of the implications of this project prior to sanction?

MR. BALL: I don't think the public had a full understanding – and I can understand this about what the potential impact could be. And I think that is probably what got missed more than

anything, is to go from 6.2 to where we are today. You know, there were people out there saying that this could potentially go to, you know, \$12, \$13, \$14 billion. I remember those –

MR. PEDDIGREW: Yeah.

MR. BALL: – people making those comments. But I think generally – and, you know, I travelled the province extensively at this time – that wasn't the sense that we were getting, you know, when you go from communities where there was a lot – there were a lot of people, you know, wanting to see this project start. And I think they were convinced and believed that, you know, this could be done for \$6.2 billion.

And I remember some of the early, you know, research that would've been done in terms of the favourability of this project. It was quite high at the time. But it was high simply because of, you know, the information that was being shared and the potential benefits. I don't think anybody was thinking about if this project got to be – in general – there were people out there concerned about it – but if this got to \$12.7 billion what the impact would've been. Plus the economic times were different too. I mean, when you look at what was happening to the prices of oil. You know, things were going pretty good in our province back then.

MR. PEDDIGREW: Yeah.

MR. BALL: We were seeing surpluses of well over \$2 billion. So there was a lot, I guess, to be optimistic about because the money was rolling in. And the take on this here is it was almost of the view where: Well, even if it does go up, you know, we'll have lots of money to be able to deal with it. And nobody forecasted what we would've seen. And back in 2016, as an example, just weeks coming into and forming government we saw oil prices at \$26, \$27 a barrel. No one was ever talking about a number that low back in 2012.

MR. PEDDIGREW: Right.

And I think you mentioned as well, you know, there were people who were outspoken about the project and the – I guess the risk of the cost increasing. But, again, to expect the average taxpayer, the average ratepayer – busy lives,

jobs, children, activities – to delve into these very complicated issues. I mean, one thing I've learned through this Inquiry is how complicated the utility industry business is, and it's many layers, many facets. To expect a member of the public to truly delve into – I mean, we rely on our politicians to explain these things to us and to explain them in a transparent and fulsome way. Would you agree with that?

MR. BALL: I would agree with that. I mean, there's a lot of information for people to absorb on – you know, first of all, I mean, it's difficult to relate to a billion dollars. What does that mean? People – you know, you'd understand \$100 or \$1000 but to relate to a billion dollars, you know, to, you know, people in our province, that's very difficult to comprehend. And, you know, at a time where we were seeing billions of dollars in surpluses, it was almost as if, you know, we can take this on, and if it does go up, well, the money is there to actually support it.

MR. PEDDIGREW: And that leads to my next question just about Mr. Marshall. Stan Marshall, as well, made some comments about, you know, the cost as well and just his approach would've been to proceed more incrementally and sort of build as we need, and retain – I think his key message was retain flexibility. And so if, you know, we get so far into something and we realize, well, we don't need it, we can jump off, there's an off-ramp and we're not committed to something as high a cost as the Muskrat Falls Project.

But I just wonder: Could you give some indication of, I guess, the implications of the cost of the project now? I know we're doing rate mitigation, but – and some of the money that has to be used for rate mitigation – so oil and gas dividends and other funds that are being directed towards reducing rates – they're coming from somewhere. And so what are some things that we as a province are doing without – what would be on your wish list of things that if you weren't using the money for rate mitigation what are some things we might have and what for?

MR. BALL: Well, first of all, when you look at the list of things that you'd like to be able to provide for people of our province, you know, any time we get into a budget exercise, you always start – if we land on a budget of – with

revenue in, you know, \$7.5 billion in expenses, you know, and eight plus – the requests would be in the many billions more to actually provide services. You need – all you need to do is drive around our province and look at the – to look at the 10,000 kilometres and the bridges that would need to be repaired, and I think that would probably, you know, be your first place. You look at health care, you look at education, of course, we all wish we had more money to put in those programs.

So if we take, you know, \$200 million that could've been used, you know, for – to support health, education infrastructure. You know, that is – you know, these are what I say loss opportunities, and in some ways that \$200 million – there are lost opportunities. We could use that money for economic development in rural Newfoundland and, you know, even in St. John's and Northeast Avalon.

So, there are lost opportunities because that money could be spent to do other things if we did not have to put it into rate mitigation.

MR. PEDDIGREW: All right.

And, then, my last question to you is about 2041, and I realize this is going to be a topic in Phase 3, but I am interested in your thoughts on it. So, there's no discussions right now ongoing about what might happen in 2041; but, I guess: What do you envision as an appropriate time frame for starting those discussions and how they might be commenced?

MR. BALL: All I know is every time the calendar day – we turn that calendar or we move into a different year, we're moving closer to the opportunities that will come in 2041. And, you know, at some point there will be discussions that will need to start on 2041.

What that time frame is, is – I'm not here to say what that is today, but it will have to be dealt with. And there is a, you know, significant amount of power that we have available to us on the Upper Churchill and probably more opportunities. So, at some point – those discussions are not active, discussions that we are having now, but they will happen and they will happen, I think, well in advance of 2041.

MR. PEDDIGREW: Having many years, I would imagine, in advance. I mean, so it's not that far around the corner, really. It's, you know –

MR. BALL: No.

MR. PEDDIGREW: – 22 years can go by.

MR. BALL: I know that –

MR. PEDDIGREW: Yeah.

MR. BALL: Yeah, I agree with that. And as I said yesterday, my focus right now is on 2021.

MR. PEDDIGREW: Yeah. Yeah.

Okay. That's it.

Thanks very much.

MR. BALL: Thank you.

THE COMMISSIONER: Thank you.

All right. Innu Nation.

MS. BROWN: Good morning, Commissioner.

Good morning, Premier Ball.

MR. BALL: Good morning.

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

I have a few questions for you today. They're centred around the methylmercury issue that you have been asked about by – yesterday by my friend, Ms. Urquhart, and also about the IEAC at a high level.

So, yesterday you spoke about how, in 2015, a report called the Calder report was released. And you would agree that that report predicted the methylmercury levels caused by flooding the Muskrat Falls reservoir were going to be much higher than had been previously been anticipated. Is that correct?

MR. BALL: Yes.

MS. BROWN: And you're aware, of course, that the report caused serious concern, especially for people who eat country food and could be affected by these higher level of methylmercury.

MR. BALL: I am.

MS. BROWN: And you're also aware that Innu Nation members specifically, as the Indigenous rights holders in the Muskrat Falls area and as the Indigenous people in closest proximity to the reservoir, were very concerned about the report and these possibly higher levels of methylmercury. Is that fair to say?

MR. BALL: It is fair to say, to the point they wrote a letter to me, as I mentioned yesterday, just a couple weeks after the recommendations were released.

MS. BROWN: Right, and they wrote a letter earlier. And perhaps we can turn to that at P-02070. And this will –

THE COMMISSIONER: It'll be on your screen.

MS. BROWN: – come up on your screen.

So we see here it's a letter dated July 7, 2017 [sp. 2016]. It's addressed to you, Premier Ball, and it's from Grand Chief Anastasia Qupee – then-grand chief.

And if we look at the third paragraph here, I'll just read the first couple of sentences. It says: "Mista-Shipu – Churchill River Valley – remains an important area for Innu land use. We have constitutionally protected rights to harvest in the area, so mercury accumulation in the local food supply is a significant concern for our people."

You see that?

MR. BALL: I just – where are you to on –

MS. BROWN: That's the first sentence.

MR. BALL: Okay, I see. I got it, okay.

I do.

MS. BROWN: Okay.

And so you would have received that, I imagine, in July of 2016?

MR. BALL: Yes, I would have. Actually, just about a week or so prior to that I was actually talking to Chief Qupee on a trip to Labrador.

MS. BROWN: Okay, very good.

And so we see the concerns that I have mentioned reflected in this letter. Is that fair to say?

MR. BALL: Yes, yeah.

MS. BROWN: Okay.

And you've spoken about the steps that your government took to address the concerns that were raised by the Calder report. You've spoken about the workshops and then later striking the Independent Expert Advisory Committee. Is that correct?

MR. BALL: It is.

MS. BROWN: And I don't expect you to be familiar with the inner workings of that committee, but we've been hearing evidence, the Commissioner has been hearing evidence on this. And we've heard that the IEAC's expert committee considered the Calder report, as well as other research, and it did its own analysis to look at mitigation possibilities. Is that your understanding?

MR. BALL: That's my understanding.

MS. BROWN: Okay.

And we've also heard that the expert committee made unanimous recommendations on monitoring, management of human health, but not on mitigation. And that's something that you, of course, are aware of.

MR. BALL: I am.

MS. BROWN: You stated yesterday that it was your understanding that four of the six western scientists on the expert committee did not support and were not in favour of soil and vegetation removal. Is that correct?

MR. BALL: It is.

MS. BROWN: Is it your understanding that there were concerns raised by those scientists about possible unintended impacts of that soil removal suggestion? So, potentially more methylmercury being released by that option.

MR. BALL: Yes.

MS. BROWN: And you are, of course, familiar with the position that Innu Nation took on the mitigation option. Is that correct?

MR. BALL: I am.

MS. BROWN: And is it your understanding that Innu Nation opposed soil removal because of the risks associated with it – so this potential for greater methylmercury release into the water?

MR. BALL: That's my understanding.

MS. BROWN: Okay.

The Commission has been hearing evidence that the Calder report's model predictions have not been borne out by the recent monitoring results. Is that your understanding as well?

MR. BALL: It is. And those – that's – this data is publicly available.

MS. BROWN: Right.

And my friend suggested to you yesterday – Ms. Urquhart suggested to you – that that might be because this area of the river that is – of the reservoir that's currently flooded is where the spring freshet would get to on an annual basis. And so, you know, the suggestion is that methylmercury that was going to be released has already been released because this area has been flooded previously. Now, Premier Ball, I'm sure you'll agree with me that you're not an expert on methylmercury. Is that fair to say?

MR. BALL: I am not an expert on methylmercury.

MS. BROWN: Okay. And you know that Martin Goebel, who is your government special

advisor on methylmercury, he was here on June 20. You're aware of that?

MR. BALL: I am.

MS. BROWN: He was asked about this issue then, and his evidence was that this is a different type of flooding. It's static flooding rather than fluid flooding. And so that while the potential for methylmercury production at this level might be somewhat reduced, that reduction might actually be quite limited. And I imagine you would defer to him on that issue. Is that fair to say?

MR. BALL: Well, it is fair to say I think Calder – the Calder report, however, it did suggest that at this particular level of – even with spring flooding, we would've seen a spike in methylmercury.

MS. BROWN: Right.

And in addition to that, Mr. Goebel did say that the reason that we, you know – so the Calder model didn't look at a potentially lower production rate for this first part of the flooding. That's my understanding, and I'm sure somebody will correct me if I'm mistaken in that. So it didn't account for that differential, but what Mr. Goebel said was that the potential for methylmercury release, while it might be somewhat diminished because this area has been flooded previously, that diminishment from the usual amount of production would be fairly limited because we are looking at a different type of flooding. And so would you agree with me that Mr. Goebel would be the person we would turn to for that kind of analysis in this situation? Is that fair to say?

MR. BALL: Mr. Goebel and others, you know, that have been involved in this as well.

MS. BROWN: Wonderful. Thank you, those are my questions.

MR. BALL: Thank you.

THE COMMISSIONER: All right. Thank you.

Nunatsiavut Government is not present.

NunatuKavut Community Council.

MR. COOKE: Premier Ball, good morning.

MR. BALL: Good morning.

MR. COOKE: My name is Jason Cooke. I am the lawyer for NunatuKavut Community Council.

MR. BALL: Hi, Jason.

MR. COOKE: I have a few questions for you.

I think you gave in evidence already that throughout your time as Premier, you've also had the portfolio for Aboriginal Affairs. Is that correct?

MR. BALL: That's correct.

MR. COOKE: Okay. So, I assume when you took office and you were – assuming you were briefed on many things, but one would be the Indigenous Relations file. Is that fair?

MR. BALL: That's fair.

MR. COOKE: Okay. And in terms of NunatuKavut specifically, what were you briefed, what was your understanding of the relationship between NunatuKavut and the province when you came in as Premier?

MR. BALL: We didn't really get into a lot of discussion about what the relationship would have been like in the past. I knew there were some issues what – when I took on the responsibility for Indigenous Affairs, you know, my objectives – my objective would be to improve relationships with the Indigenous groups.

MR. COOKE: Right. And you feel you've achieved that?

MR. BALL: For the most part, yeah, I think I have achieved that.

MR. COOKE: And were you briefed at all on the relationship between NunatuKavut and Nalcor at the time?

MR. BALL: There were discussions about NunatuKavut and Nalcor, and I felt there was significant room for improvement.

MR. COOKE: Just to shift to the – some questions on the IEAC process. And I think of a lot people associate the formation of the IEAC with the response to the protest and coming out of a lengthy meeting you had with the three Indigenous leaders in October 2016. Correct?

MR. BALL: It would have been formalized then.

MR. COOKE: Yeah. But, in fact, it was contemplated prior to that. Correct?

MR. BALL: I understand it was – there was a recommendation coming out of the make – or a suggesting coming out of the Make Muskrat Right Campaign –

MR. COOKE: Mm-hmm.

MR. BALL: – that this is something that we should look at. And I know I had conversations with Minister Trimper at the time, who had some experience in a similar exercise of having a group like the IEAC get more involved in methylmercury.

MR. COOKE: Okay. And I'm just gonna take you to an Exhibit, it's P-04303. And I believe that is in your binder 2 at tab 81, Premier.

MR. BALL: Okay.

MR. COOKE: And you'll see the first page it's a – it's an email from Colleen Janes to then Minister Trimper, dated September 20, 2016.

And, if you go to page 2, you'll see what the email's attaching is a PowerPoint document titled Methylmercury - Next Steps, Department of Environment and Climate Change, September 2016.

MR. BALL: Okay.

MR. COOKE: Okay.

And I'll just take you to page 7 of that document, Premier. And this is the part which discusses the proposed next steps, so this was what was being proposed in September 2016.

The first is that Minister Trimper should meet with the three Indigenous leaders in October to

convey certain points. One is that, “Partial clearing of the reservoir is confirmed;” – and it says – “noting % achieved.” So I assume that means what’s been achieved to date.

MR. BALL: Mmm.

MR. COOKE: The second that: “No soil to be removed but willing to engage in any future soil removal study that aligns with recommendation 6.5 of the JRP” report.

And the third says: “Offer to work with” the “federal government in establishing an Expert Advisory Committee ... with provincial and federal regulators and the three Aboriginal organizations.”

So that’s really what ended up becoming the IEAC. Correct?

MR. BALL: It is.

MR. COOKE: Okay.

So, in terms of the protests in October 2016, you were aware that that, you know, part of what was motivating those protesting were ongoing concerns regarding methylmercury as a result of the project. Correct?

MR. BALL: And the impoundment, which was about to occur at the time.

MR. COOKE: That’s right. And I guess they’re interconnected, aren’t they?

MR. BALL: Yeah.

MR. COOKE: Yeah.

So in terms of your meeting in October 2016 with the three Indigenous leaders, what did you – what were you told about the methylmercury concerns by the three leaders at that time, at the meeting?

MR. BALL: The only information that was available at the time would’ve been that from the Calder studies.

MR. COOKE: Mmm.

MR. BALL: And so, obviously, there was a lot of anxiety and stress that had been created with the thought of seeing increasing methylmercury and the impact that it would have on country food and human health.

MR. COOKE: Okay.

And in terms of what the IEAC was – what they considered, and I’m gonna focus on the mitigation aspect of it because they have other – you know, they discussed human health effects, monitoring and the like. But I really wanna focus on mitigation.

As I see it, there were really three options that the IEAC was considering. One was essentially not to do any mitigation steps, so leave it be. The second would be wetland capping. And the third would be soil removal.

MR. BALL: Soil removal and capping maybe, or –?

MR. COOKE: Oh, I – I think it could be –

MR. BALL: Yeah.

MR. COOKE: – it could be a combination of those two.

MR. BALL: Yeah, I think – that was my understanding.

MR. COOKE: Yeah. And in terms of the soil removal, were you advised at all that – internally – that soil removal could trigger a new environmental assessment process?

MR. BALL: Yes, that – that had come up, that this would trigger a new environmental process.

MR. COOKE: Yeah. And I’m not gonna take you through the document, but it’s Exhibit P-03460. And we can go if you want, but in that – it’s a document prepared by Mr. Bown where he’s expressing the view that it would trigger certainly a federal environmental assessment process and perhaps a provincial one as well.

Is that consistent with your understanding?

MR. BALL: That was my understanding, yeah.

MR. COOKE: Okay. And so, just on the soil removal for a moment. Did you see Mr. Stan Marshall's evidence at the Inquiry this week?

MR. BALL: Didn't see all of it, I got bits and pieces of it.

MR. COOKE: Okay. So in terms of the soil removal option, Mr. Marshall was pretty clear that from his perspective, that it was a non-starter. And, further, that – he went so far to say that if he had been directed to do soil removal, he would have resigned. Are you aware of that?

MR. BALL: I am.

MR. COOKE: And did you first become aware of that at the hearing?

MR. BALL: That – the comment that if he was asked to do it he would resign, that's the first time I'd heard that.

MR. COOKE: Okay.

Had Mr. Marshall expressed to you prior to this week, though, that – his view on the option on soil removal, that for him it was essentially a non-starter?

MR. BALL: I think when it comes to soil removal – and we go back to the Innu and the recognized concept, they're the group with the recognized constitutional rights into the Muskrat Falls area and they had expressed a concern long before this, about the impact of soil removal.

Also, as we just spoke about this recently, that four of the six scientists were actually telling us it would potentially increase, therefore, an increased potential of health risk with methylmercury by soil removal. And the other question that was not answered would be: What do you do with the soil? It would actually stay in the proximity of the reservoir anyway. So there were a lot of concerns.

So, the idea of soil removal, I think that option of having soil removal was something that was less and less of an option over time.

MR. COOKE: I want to ask you some questions now about the IEAC in terms of the process and it's, I think, following up on some

of the questions Ms. Urquhart asked you yesterday. So the report is received in April 2018, correct?

MR. BALL: Correct.

MR. COOKE: Okay.

And so Ms. Urquhart asked you a question: Why hasn't the government provided a response? And I think your answer was: Well, we've been responding. And I think her question – or at least this is going to be my question, I think what she was looking for and I think what I'm looking for is when we say response we're thinking of something a little more formal, a document.

And I'll give you an example: The Joint Review Panel comes up with a report. The government goes through each recommendation. The government says we accept the recommendation and this is what we're going to do. We accept the recommendation in principle but we may do it a little differently. Or we reject or do not accept the recommendation.

So, based on that kind of document, we have not gotten a formal response from the Government of Newfoundland and Labrador to date, correct?

MR. BALL: The response would've been, you know, bringing the Indigenous leaders together – and I think it was around April 8 of 2019. There was a letter that I wrote to the Indigenous groups to actually put together a group to implement the recommendations of the IEAC, and so this would have been a very formal response. Matter of fact, it was a draft terms of reference that would've been provided for them to begin to work on and provide their input on those draft terms of reference.

However, I would say that during this time we were collecting – or collecting significant data around methylmercury and this decision would have been very important before you could actually formally make a decision on what you would do in the area. And as I've said, you know, many times, I think there's some 1,300 samples that have been collected, publicly available and we're not seeing the level of increases in methylmercury that Calder were predicting. And it was unfortunate because the IEAC, in the great work that they did, did not

have access to this information when the final recommendations were had. So it was important before we do anything finally that we actually had this data to be shared with all members as well. And I know some of them were monitoring this closely, with the methylmercury levels within the reservoir and downstream.

MR. COOKE: Okay. Just to close a loop on my last question, so there – other than what you stated in your answer, there won't be any other formal response from the province forthcoming to the April IEAC report?

MR. BALL: I think the formal response to the IEAC report is in – is that we need now the implementation committee to actually do the work. This was – this was the process as it was supposed to unfold from the beginning. The idea once the recommendations were in, we would then put in place an implementation committee to actually implement the recommendations whatever they would be.

We would need to make a decision, as an example, on what we would do around soil removal and – and wetland capping. And unfortunately, you know, we had some discussion yesterday where – about how all that unfolded.

MR. COOKE: Yeah. And I'd like – actually, that's a good segue 'cause I do have some questions about that. And so, let's maybe unpack the timelines here a little bit. So you get the report in – in April 2018. It seems from the evidence, and I'll take you to a couple of exhibits in a sec, that really it took until November 2018 for the government to really come to what the response would be of the report.

Is that consistent with your recollection?

MR. BALL: We – there was ongoing monitoring that was being done. There were obviously discussions, you know, with Nalcor, because if you remember the permit that they had applied for in January of 2018, it would've included an amendment to the Fish Habitat Compensation program, to add to that program wetland capping. So there were conversations that were being had with – and to the point where Nalcor actually applied for the permit.

I was actively monitoring the – what were – the data that was being collected in that – in the reservoir and downstream, as I've mentioned many times now. So there was – there was monitoring that was being done on a continuing basis and there were presentations that were provided to me. And I think the ones you're referring to would've been in November – in the November time frame which led into – as we unpacked the timeline here – to a January 9 Cabinet meeting.

MR. COOKE: Yeah. But I – and I wanna focus on the mitigation piece of it again, because you'll agree that when their – after report comes on – on April 2018, you know, that – you'll agree that mitigation of any is by necessity a time sensitive issue. Correct?

MR. BALL: What it is, pre-impoundment, is the time sensitivity around all of this. So what we're seeing here is the permit that was applied for. I only became aware of the timeline sensitivity since this came out through this Inquiry. I had not seen this application for the amendment until just – just recently.

MR. COOKE: Yeah, and I'm not sure before, and I stand to be corrected, but I – I'm not sure before Stan Marshall mentioned it this week that we were aware of this permitting issue in – I think he put it in July last year. So what do you –?

THE COMMISSIONER: There was other evidence –

MR. COOKE: Okay.

THE COMMISSIONER: – from the vice-president of Nalcor to the effect –

MR. BALL: Mmm.

THE COMMISSIONER: – that that –

MR. COOKE: Okay.

THE COMMISSIONER: – happened.

MR. COOKE: Thank you, Commissioner.

So what do you understand about the – now, about the permitting process that they went

through, because I take it they didn't ultimately get a permit from the province?

MR. BALL: I think they went through the correct process.

I think what happened here is that at no point in the number of presentations and meetings that I would've had were there any sense of urgency that was shared with me on getting the permit approved. And I think Mr. Marshall even made a comment that, you know, we – he probably should've brought this up.

It didn't happen, and neither did it happen with the officials, and the presentations that were given to me are publicly available and have been shared with the Inquiry here. And this is what has been very frustrating with me. I was always of the belief that through the Fish Habitat Compensation Plan, this would be done concurrently. I was not aware that this plan was completed in the fall of last year.

MR. COOKE: (Inaudible.)

MR. BALL: There was early indications that there could be overlap and probably lead into April and have this done before pre-impoundment, but I was – didn't know one until coming out of the Cabinet meeting on January the 9th, that this window for pre-impoundment wetland capping was closed. And immediately after that, I said: Go out and consider what options – and explore all the options that we have available to us for methylmercury mitigation.

MR. COOKE: And I think you used the word “frustrating” and I can understand why because your evidence is, you know, that it was only until July 2019 that you were told that they can't do it, so essentially that the horse is out of the proverbial barn by then in terms of wetland capping.

MR. BALL: Well, I think to be fair, it was – the report from pre-impoundment would've been in the January time frame. Then SNC-Lavalin immediately got engaged to look at what new approaches they could come up with, and then there became some safety concerns, this is the – this is what came back from SNC-Lavalin.

So there's no question, you know, my intention from day one was to do wetland capping, understand them – understanding that there would not see a significant decrease in methylmercury and probably have little effect, if any, on methylmercury. But the issue is, is that there were intangible benefits; knowing that people in this area had been exposed to, as I said, you know, some stress, anxiety, and you could sense that and you could feel it.

This was a commitment that I had made, but I also wanted to share the data and then we'd have both options that would be available to us. Unfortunately, we're in a situation where, you know, it became a safety concern of wetland capping post-impoundment. I was even led to believe that, at one point, post-impoundment was an option. And, of course, we now find ourselves in a situation because of safety concerns – you know, that is not an option.

MR. COOKE: I mean it seems, you know, that, you know, the IEAC report comes out in April, gets a lot of attention. This Inquiry is, you know, been under way, and it seems to me to be a pretty serious either communication breakdown or process failure that A, the Premier doesn't know that Nalcor apparently can't get a permit to do the wetland capping, and B, once you decide to do wetland capping, you're only told after that no, it's not an option. And I think you mentioned yesterday that it was Mr. Bennett, I think, advising some deputy ministers of that around that time.

So, do you accept that something went wrong there, something went wrong in terms of this not getting on your plate?

MR. BALL: The Lower Churchill – there's Lower Churchill meetings that occur on a regular basis, and I think in 2018, there were probably four or five meetings that would've occurred. This issue, as far as I know, didn't come up. This issue actually came up in the very same committee meeting, which would've been in January of 2019.

So to say that this is frustrating, that I was not reminded from, you know, Nalcor, I was not reminded my – by the own – by my own officials in Municipal Affairs and Environment, yes, it is frustrating.

MR. COOKE: Yeah.

MR. BALL: Because it was always my intention to do wetland capping, understanding that there were probably not a lot of tangible benefits to doing it, but it was something that we had consensus on coming out of the IEAC. Wetland capping, there was a consensus on.

MR. COOKE: Yes.

MR. BALL: Soil removal, we did not. And on this particular case, we had consensus and it was always my intention to proceed with wetland capping. Also, to take the information that we had, on the data that we had collected, that the IEAC did not have the privilege of having when they made their decision around wetland capping and soil removal.

So, I agree with you.

MR. COOKE: Mmm.

MR. BALL: It was never my intent not to do wetland capping, and I agree with you that it is frustrating.

MR. COOKE: Okay, and so moving forward, you – your – you’ve mentioned the fact that you’ve met with the three Indigenous leaders in Labrador regarding the next phase from the IEAC recommendations. Do I have that right?

MR. BALL: Yes, you do.

MR. COOKE: Okay.

MR. BALL: And, you know, we’ve – we’re reaching out now to try and put together – I mean, schedules, you know, as you might expect, you know, are difficult, but we are, you know, proactively trying to get, you know, groups together. I’ve got Mr. Marshall engaged. You know, he is engaged in meetings as well with the three Indigenous groups. We want to work with them.

I just want to reiterate one more time: This is not a cost-saving exercise. We want to make sure that, you know, if we were to put any resources, financial resources, into wetland capping, we want to have those discussions with our Indigenous groups. And I will say, before I

finish on this line, is that – as the work of the IEAC – is the one thing that we must acknowledge: Given the fact that what they had was the Calder survey, which is what they made their decision on, thankfully the IEAC took an approach that I can – I say with a great degree of confidence that because of their work, we now have in place a world-class monitoring system for methylmercury. We’re seeing it measured at levels where other systems could never go.

So – and I credit the IEAC for that work.

MR. COOKE: Thank you, Premier.

MR. BALL: Thank you.

THE COMMISSIONER: All right, we’ll take 10 minutes now for our break and come back.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right.

Former Nalcor Board Members.

MS. G. BEST: Good morning, Premier Ball.

MR. BALL: Good morning.

MS. G. BEST: My name is Glenda Best and I’m counsel for the Former Nalcor Board Members, 2004-2016.

MR. BALL: Okay.

MS. G. BEST: I just have one area of questioning for you and that arose as a result of some questions asked by Mr. Peddigrew.

With respect to the bonuses that were paid by Nalcor to its employees in 2016, you had, of course, written a letter to Mr. Marshall, I believe, indicating that your preference would be that the bonuses not be paid. Do you recall discussions that you had with Mr. Marshall around those bonuses?

MR. BALL: There would've been a discussion, I think, even on the morning of April 20 in that email.

MS. G. BEST: Mm-hmm.

MR. BALL: It would've been there. And there might've been a call, I'm not so sure. But, I mean, it would've been unusual, I think. But I do remember that one occasion in the email that – April 20.

MS. G. BEST: Okay.

And, as you indicated to Mr. Peddigrew, the board of directors had received expert opinion with respect to the payment of the bonuses. Were you aware of that?

MR. BALL: What was that, sorry?

MS. G. BEST: Were you aware that the Nalcor board of directors had sought an opinion –

MR. BALL: Yes. Oh, yes.

MS. G. BEST: – as to their liability –?

MR. BALL: Yeah, I just mentioned that actually.

MS. G. BEST: Yes.

MR. BALL: Yeah.

MS. G. BEST: That's right.

And were you also aware – do you recall that Mr. Marshall indicated that if the province wanted the bonuses to be terminated or not to be paid out, that it would require an order-in-council from government?

MR. BALL: It – I can vaguely remember something like that. I'm not sure what the process was.

MS. G. BEST: Mm-hmm.

MR. BALL: But I know in the email on April 20 he had said that the decision was made based on the opinion that – the legal advice that they'd been given, that they were going to pay it out.

MS. G. BEST: Okay. But why didn't you proceed with an order-in-council? Or indicate to Mr. Marshall that you would take that route?

MR. BALL: Well, I think what, you know, my understanding then from the discussion that I would've had with him is that there probably would've been some other – you know, something else would've happened and it would've triggered something to actually recover that money. Whatever the process would've been, I'm not sure. But it was very clear that they were determined to pay out that money.

MS. G. BEST: Okay.

And are you also aware that the bonuses that were, in actual fact, paid out had been reduced by about 75 per cent of what was, in fact, owed to the employees under their contract?

MR. BALL: I'm not sure. I know there was a reduction – not sure. I didn't think it was 75 per cent, but I'm not sure what the reduction was but they were reduced.

MS. G. BEST: Okay.

Thank you.

MR. BALL: Thank you.

MS. G. BEST: That's all the questions I have.

THE COMMISSIONER: Newfoundland and Labrador Building Trades Council. Not here.

Newfoundland Power.

MR. KELLY: Thank you, Commissioner.

No questions.

THE COMMISSIONER: Okay, thank you.

Dwight Ball and Siobhan Coady.

MR. O'FLAHERTY: Thank you, Commissioner.

No questions.

THE COMMISSIONER: All right.

Redirect.

Mr. Learmonth.

MR. LEARMONTH: No redirect.

THE COMMISSIONER: Okay.

I'm not going to keep you long, Premier Ball, but I do have a couple of areas that I would like to ask a couple of questions about, and one area is really making a suggestion.

As Premier of the province, if you were today to be taking on a project that, as you indicate, would be 10, 20, 30 per cent of your provincial debt – net provincial debt, what type of financial analysis would you expect to have done by your officials before that would be done?

MR. BALL: I would use every single resource that I would have – that I could potentially find. I mean, there's a – there's resources out there that take on major projects. In this particular case, it was a province – we have a small province that had already – we were already experiencing financial difficulty. So to take – assume that kind of risk, whatever options and advice that I could find no matter where it was, before you take on any project having this kind of impact, I would be looking for whatever those options would be.

THE COMMISSIONER: What would you expect your Finance people to be doing, your people in your Department of Finance? I mean, I'm assuming there are people there who would – who are, you know, experts in the areas of finance, of impacts on – of debt, impacts on the ability to obtain debt. What would you expect those officials to do?

MR. BALL: Provide the advice.

THE COMMISSIONER: Okay.

I'm going to do something a little unusual for a Commissioner in the midst of a Commission of Inquiry this morning, and it's only because I think time is passing and there are things happening at the moment that I think require some potential, you know, attention. I'm not suggesting to you that I know everything, but based upon my review of things, I have a

concern right at the moment that I think it's right for me to raise with you at this stage.

You've been asked questions related to the issue of – any review of the costs that are the basis of what you've referred to as this stream of revenue that has to be – has to come from the project, and this results – and this was mentioned by the Consumer Advocate and by Mr. Learmonth. This relates to the exemption order that was granted in 2013 as part of the financial arrangements with Canada.

Now, I have no understanding or no – I'm making no finding with regards to how those costs are computed by Nalcor Energy right at the moment. And I also am aware of the fact that there is some certification of those costs that have to be undertaken by the independent engineer.

I'm still not satisfied that the independent engineer, nor Nalcor, are the right people to be protecting the interests of the ratepayers of the province who have to bear the full share of this. And while you are concentrating on rate mitigation, the fact is that those – if things stay the way they are, basically, rate mitigation assists the ratepayers, but perhaps money is being paid or will be paid that could be spent otherwise for some of the things that you've talked about this morning.

I'm looking at things such as costs related to operation and maintenance and things of that nature. And while there may presently be no ability to have oversight by the – or review by the Public Utilities Board as a result of the exemption order, at the very least you are in discussions with Canada on the federal loan guarantee. And I believe that my suggestion would be – and it may well be a recommendation that I'll be making later, but it may be too late at that stage – my recommendation would be that this is an area that perhaps you should consider having your officials look at and also to discuss with Canada.

Again, I'm not suggesting any malfeasance by anyone, but I do believe that the ratepayer of the province deserves some form of oversight with regards to the calculation of those costs that are basically going to form that stream of revenue that has to be repaid by the ratepayer. So I just

wanted to make that request for you to consider that at this particular point in time, because it may well be too late by the time I provide my report.

MR. BALL: I appreciate it and I understand your concern of what would be eligible costs that would be – that could potentially impact rates. I've thought about that many times.

THE COMMISSIONER: Okay. All right, good.

Thank you very much then, Premier Ball, for your time this morning.

That concludes Phase 2 of the Inquiry. And I, first of all, want to thank all counsel present. It's been – I've been pushing hard to keep to the schedule, and the co-operation that I've obtained from everybody has been huge and I really do appreciate it.

I want to make a couple of reminders at this stage of the game to counsel for the parties, that there was a notice that was sent out on February 4, 2019. It was – there was a subsequent amendment to it, but as things remain the same with regards to final submissions. So I am expecting that written final submissions will be provided to the Commission by August 5, 2019, at 4 p.m., and that any reply submissions are due on or before the 9th of August 2019.

As you're aware, final oral submissions – and I've now received an indication as to the number of parties – I have calculated that it will be about 25 hours of submissions if everybody uses their time, so we will be able to finish it in a week. We may have a couple of later evenings but that is set for the week of August 12 to August 16.

I've been asked – and, as I said, oral submissions, you know, are not mandatory, but many of you have indicated that you're going to be providing them and that's fine. I'm satisfied with that. I am asking that your submissions be as succinct and concise as is possible. You know, I can tell you that short and sweet is probably going to get far closer scrutiny from me than long and verbose. Not to say I won't be looking at it all, but I would appreciate, basically, conciseness in your argument and would remind you that I do not want to see

large, you know, excessive references to exhibits, particularly quotes from exhibits, where it can be boiled down to the actual area that you are quoting from.

The oral submissions are going to be time limited. I am providing the Government of Newfoundland and Labrador, as well as Nalcor Energy, with basically three hours; for all other parties with full standing with basically an hour to an hour and a half. And that includes, as well, the – Newfoundland Power, who has special standing. Those parties with limited standing also will have a limited period in which to provide their submissions.

We are proceeding to have a – two public forums that have now been – press releases released on with the assistance of the Harris Centre on July the 30 and August the 8; the first one being in St. John's, the second one being in Happy Valley-Goose Bay. So there will be an opportunity for the public to participate. Again, to – there will be time limits for obvious reasons, but I do want to give that opportunity.

I also have indicated in the release earlier this week that the Commission will also invite members of the general public to make written submissions should they wish to do so, but these have to be submitted on or before August 5, 2019. The only submissions that will be publicly placed on our website will be those from all of the parties with standing. And where the parties are referring to the issue of water management, I will be using my discretion to exclude that from publication, again, for obvious reasons that have been explained in this Inquiry.

So with that, I thank, again, everyone for getting us through Phase 1 and Phase 2 on schedule. And so we'll be back for Phase 3 on – in a week and a half.

All right, thank you very much.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.