COMMISSION OF INQUIRY
RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1	Volume 30

Commissioner: Honourable Justice Richard LeBlanc

Thursday 1 November 2018

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

THE COMMISSIONER: Morning everyone.

Sir, you remain under affirmation at this time.

And Ms. O'Brien.

MS. O'BRIEN: Thank you.

Just before we continue with the cross-examination of Mr. Sturge, I have a request to enter one further exhibit: that would be Exhibit P-00883.

THE COMMISSIONER: All right.

That will be entered as marked.

And when you're ready Ms. – Mr. Budden.

MR. BUDDEN: Good morning, Mr. Sturge.

MR. STURGE: Morning.

MR. BUDDEN: I'd like to pick up where we just about left off yesterday. Remember we were looking at an exhibit that was a presentation that was made in April of 2010.

MR. STURGE: Yes.

MR. BUDDEN: And you spoke of it being made at a Cabinet retreat. The exhibit that was just entered, Exhibit 00883, appears to be your notes from that meeting. On the right hand side, under – do you have that in front of you, 00883?

MR. STURGE: I do, yes. Yeah –

MR. BUDDEN: Okay.

MR. STURGE: – I do.

MR. BUDDEN: On the right hand side, I see the handwriting "LCP update meeting"; and perhaps, can you just read us what's there on that – on –

MR. STURGE: Yeah, let me see if I –

MR. BUDDEN: – following that?

MR. STURGE: – can interpret it. And it wasn't a Cabinet retreat it was a bit more narrower than a Cabinet but it was the premier and the minister.

MR. BUDDEN: Okay can you just take it from the top and read –

MR. STURGE: Yeah, so I'll just read it in. So it says: "The Rooms." So that's where we met. It said: "Nalcor: Martin, Bennett, Sturge, Kieley" – that would be Chris Kieley – "Province: Premier" – so at that point it would have been Premier Williams and Minister Dunderdale. The next name is – would be Gary Norris, who was a clerk at the time; Brian Crawley, would be chief of staff; Elizabeth Matthews was communications in the premier's office; Robert Thompson, who was the deputy of Natural Resources; and Charles Bown, who was the assistant deputy minister at the time.

MR. BUDDEN: Okay.

MR. STURGE: And then the points here, and these were, I guess, notes that I made to myself of to-dos. The first one was: "Premier asked for us to look at a NL investment fund." The second one was: "Premier asked for an analysis of economic benefits/treasury impacts for the LCP – wants Atlantic/Canada economic benefits for Federal meeting next week." The next one is a to-do, it says: "Premier wants us and Brian" – that would be Brian Crawley – "to get together with Terry Paddon to sort out the equity issue." And then the final one is: "Charles" – that would be Charles Bown – "trying to set up a meeting with Paddon on Monday," so.

MR. BUDDEN: Okay. Thank you.

Perhaps we can go back to Exhibit 00206, Madam Clerk? And scroll down to page 17, please.

We've just heard your notes from that meeting, and I realize this – again, this was many years ago and –

MR. STURGE: Yeah.

MR. BUDDEN: – the notes are fairly bare bones, but is there anything in there that refreshes you as to, perhaps some of the discussion there around that top –

MR. STURGE: No, I don't think there's anything there on that. I mean, the few things I had written here were more to-dos for me to take away from the meeting versus sort of a transcript of what was discussed in the meeting. So –

MR. BUDDEN: Okay, so –

MR. STURGE: – I don't see anything there related to the P75 that would be relevant. I don't think so – no.

MR. BUDDEN: So the discussion around – if there was a discussion around that, perhaps tying in to those handwritten notes – you cannot recall here at this moment, anything about that discussion?

MR. STURGE: I can't recall the discussion, but I suspect if it's – if it was, you know – if it's as it was here on the slide, that it would've been mentioned that that was the P75 at the time. And I'm assuming that the comment – whoever wrote this comment – was probably some of the discussion that took place, I would assume. That's why –

MR. BUDDEN: But you do not, at this moment?

MR. STURGE: I don't recall it – no.

MR. BUDDEN: Sure.

MR. STURGE: Specifically, but –

MR. BUDDEN: I don't suppose you happen to recognize that handwriting?

MR. STURGE: If you just – could you go to the front page again – of the deck?

MR. BUDDEN: Yeah – scroll back to page 1, please.

MR. STURGE: It's a name there – somebody's name. I can't – I don't recognize it though.

MR. BUDDEN: Okay, we –

MR. STURGE: I don't –

MR. BUDDEN: – can pursue that with other witnesses, but –

MR. STURGE: – recognize it – yeah.

MR. BUDDEN: – since you were there, I just wondered if there was any possibility you did.

MR. STURGE: Yeah, it would clearly probably be one of these people, but I –

MR. BUDDEN: Sure, fair enough –

MR. STURGE: – couldn't identify.

MR. BUDDEN: Okay we can leave that aside now and move on to another topic.

As you no doubt recall, you and Ms. O'Brien spent some time yesterday in working through that $300 to $600 million figure –

MR. STURGE: Yes.

MR. BUDDEN: – you recall that discussion?

MR. STURGE: I recall that – yes.

MR. BUDDEN: So obviously you were aware of the removal of the 306 – $300 to $600 million of risk as a response to the UARB decision?

MR. STURGE: No, I don't link it to that. I – my recollection of the 3 to 600 is it was trying to quantify what contingent equity might be –

MR. BUDDEN: Okay.

MR. STURGE: – versus – I wasn't linking in my own mind anyway, that clearly to a strategic risk.

MR. BUDDEN: Okay. But it was removed as a response to the UARB decision in subsequent negotiations with Emera.

MR. STURGE: Yeah, I don't know if the 3 to 600 contingent equity was removed because I – because we continued to carry contingent equity, it's just that we now hadn't quantified what that might be. Now, as I described yesterday, whatever cost overruns came had to be contingent equity.

MR. BUDDEN: Okay – to your knowledge was that risk ever noted in the risk register maintained by Mr. Meaney? Was it Mr. Meaney? Yup.

MR. STURGE: I don't know if it would – it might have been in the context of availability of equity, you know. It could have manifested itself that way, because that's really what it was – was the province gonna have equity available for cost overruns?

MR. BUDDEN: Okay. What's the purpose of a risk register such as is being maintained by Mr. Meaney?

MR. STURGE: Now, Mr. Meaney wouldn't have maintained the LCP risk register.

MR. BUDDEN: Okay. We'll get to that. But –

MR. STURGE: Yeah.

MR. BUDDEN: – as a – I guess more fundamentally, what is the purpose of a risk register?

MR. STURGE: It would be to track what are the key risks. And you'd typically talk about, you know, how you are planning to mitigate that or are you mitigating it? Are you accepting the risk? Are you transferring that risk to somebody else? Who owns the risk? Those types of things would be typically in the risk register.

MR. BUDDEN: So Mr. Meaney would not have – you indicated, and we'll get to this – and again, you spoke about it –

MR. STURGE: Mm-hmm.

MR. BUDDEN: – yesterday – but any risk related to the Lower Churchill Project would not have been noted in the register that Mr. Meaney would be charged with maintaining?

MR. STURGE: Well, he would – he wouldn't have himself maintained any risk registers, 'cause he would have ensured that each business unit has a risk register, which, in this case, LCP would have. So I don't think he would have been necessarily vetting whether they had the right risks entered as much they had a process to assess risk and track risks.

MR. BUDDEN: Okay. So his title was chief risk officer?

MR. STURGE: Right, yeah.

MR. BUDDEN: Okay. He was the – your subordinate who was responsible for maintaining a register or registers of risk?

MR. STURGE: I don't know if maintaining – I mean, his accountability would have been to ensure there was a – sort of, a corporate process whereby each business unit maintained a risk register.

MR. BUDDEN: Okay.

MR. STURGE: And each did. And LCP would have. In quite some detail, I suspect.

MR. BUDDEN: How was he – how would he ensure that? Just, like, walk us through the –

MR. STURGE: Well, there –

MR. BUDDEN: – process in actual terms.

MR. STURGE: There would have been some coordinating process around ERM, around ensuring that it's there. But he wouldn't have been looking at their risk register and saying you have the right or wrong risks and you've assessed them right or wrong. He wouldn't have been doing that really for any business unit. And that accountability for all the business units really sat with the business unit. Because the – I mean, ultimately, each of the business units leads – owns those risks. And what he was doing is really facilitating the process to help them do that.

In the case of Lower Churchill he really didn't have to do anything, 'cause they had already been doing their own thing. So (inaudible) –

MR. BUDDEN: I'm confused here. So he's the chief risk officer but he had no responsibility for ensuring that risk was properly noted or a register was being maintained?

MR. STURGE: He had an accountability to ensure that each business unit was maintaining a risk register, but he had no accountability – line accountability – for ensuring that the risks they had in there were the appropriate risks. That was the accountability of the business.

MR. BUDDEN: Did he have accountability to say whether they were recording risks at all?

MR. STURGE: Well, I think his accountability would have been to ensure that they had a process and they were managing a risk registry.

MR. BUDDEN: Okay.

How would he do that?

MR. STURGE: In the case of Lower Churchill, it would have been, you know, we knew they had a risk function. It was separate from anything he was doing, and that would have satisfied or ticked that box that they were doing what they needed to do to manage risk.

MR. BUDDEN: So all he needed – you're saying that his duty would have been satisfied and you, as his superior, your duty would have been satisfied by somebody at the Lower Churchill Project saying: don't worry about risk, we got it.

MR. STURGE: So effectively, the way it worked, the business unit – each business unit owned their risk.

And I think Lower Churchill was even further separate from that in that they actually had a fairly established risk function that reported on the line up through the business, whereas the other business units were probably less mature in terms of having a team of people managing risk, so they probably needed a little bit more guidance in terms of setting up a process. But they still owned the risks in each of their business units.

MR. BUDDEN: Perhaps we can go to 797, Exhibit 00797.

THE COMMISSIONER: Tab 5.

MR. BUDDEN: Yes.

What is this? This exhibit?

MR. STURGE: It's a corporate organization chart.

MR. BUDDEN: Okay.

And I see – this is a sub-chart so to speak, we've –

MR. STURGE: Of finance. Yeah, finance. Yeah, finance.

MR. BUDDEN: Yes, okay. So finance. We see you.

MR. STURGE: Yeah.

MR. BUDDEN: VP finance and CFO. That's you. Then we go over to manager of – (inaudible) I'm going the wrong way. We go the other way; we see general manager commercial and financing risk – commercial and financing –

MR. STURGE: Yeah.

MR. BUDDEN: – that would be R. Hull.

MR. STURGE: Rob Hull, yeah.

MR. BUDDEN: And who do we see right below him?

MR. STURGE: Right below him is Jim Meaney, and his title was corporate treasurer and chief risk officer.

MR. BUDDEN: Okay. So what is the purpose of maintaining a chart like this?

MR. STURGE: Well, his accountability was –

MR. BUDDEN: Zooming out from him for a second.

MR. STURGE: Oh, okay.

MR. BUDDEN: What's the purpose of a chart –

MR. STURGE: The purpose –

MR. BUDDEN: – such as this?

MR. STURGE: The purpose of this would be to lay out who's accountable for various functions throughout the organization and your reporting structure, effectively.

MR. BUDDEN: Okay.

And it's important to have such a chart?

MR. STURGE: Yes.

MR. BUDDEN: Okay.

That's essential to corporate governance.

MR. STURGE: Yup.

MR. BUDDEN: Okay.

And you would have known that at the time? That it's important –

MR. STURGE: Yeah. Yeah.

MR. BUDDEN: – to maintain. Okay.

So – and the purpose of it is, as you say, is accountability?

MR. STURGE: Yeah.

MR. BUDDEN: Okay.

So I take it from this that when it comes to risk, the person who would be accountable would be Mr. Meaney?

MR. STURGE: I'll answer that probably the same way I just did in that he's accountable for ensuring that there's a corporate process and the process is that each business unit has a risk register. They manage their risk. He has no accountability for managing risk in each business unit – that is clearly a line responsibility for each business unit.

MR. BUDDEN: Where is there a chart that shows me that?

MR. STURGE: I don't know if there is one that shows that, but I think if you look at what he does, it was –

MR. BUDDEN: (Inaudible.)

MR. STURGE: It was clear – (inaudible) gonna see it on a chart, but –

MR. BUDDEN: It's obvious what's happening here. I guess what I'm asking about is where, in terms of the corporate governance of Nalcor, is it spelled out – the – what you've just described.

MR. STURGE: I can't recall. There might have been a – and the ERM thing at this point in our evolution was fairly –

MR. BUDDEN: (Inaudible) for one second. Is there anywhere in the corporate governance –?

MR. STURGE: There might have been an ERM policy –

MR. BUDDEN: Just let me finish. Anywhere in the corporate governance of Nalcor that it's spelled out what you've just said about what the responsibilities of the risk manager are and are not?

MR. STURGE: I can't think on an org chart or anything like that. I don't know.

MR. BUDDEN: Okay.

MR. STURGE: But I'll give you another example. Like, if you look underneath, right to the far left-hand side here, you'll see Kent Legge, and the rest of his chart is not shown, but one of the things he would have had there is supply chain.

MR. BUDDEN: Yes.

MR. STURGE: But supply chain there was not Lower Churchill supply chain. It was clearly everything else. So there was a number of things here that were separate.

MR. BUDDEN: I'm not worried about Mr. Legge right now. I'm –

MR. STURGE: I know.

MR. BUDDEN: – worried about risk. And again, I'll suggest to you that what we have here is a chart that purports to show the governance structure of Nalcor including lines of accountability, but in fact, it's essentially fictional when it comes to risk. Would you agree with me?

MR. STURGE: No, I don't think it's fictional, but I would say that it was clear that the Lower Churchill were doing their own thing on risk and we had no oversight over that.

MR. BUDDEN: Where is that clear?

MR. STURGE: I can't point to anything right now, but I know in my own mind it was clear.

MR. BUDDEN: Leaving aside your mind, is there anywhere in the governance structure of Nalcor, at any level – public, private – where it is written down, what you've just said, as being clear?

MR. STURGE: I –

MR. BUDDEN: Anywhere.

MR. STURGE: As I sit here today, I can't. But I'm sure I can produce something at some point that would lay out, you know – 'cause if you look at the way it was set up, they had their own risk policy. They didn't fall in under Nalcor risk policy. They had all their own policies.

MR. BUDDEN: Where is that spelled out?

MR. STURGE: I don't know if I can point to it, but …

MR. BUDDEN: You're the chief financial officer. You're the vice-president for finance. Risk is important (inaudible) –

MR. STURGE: But I didn't set up the structure of the Lower Churchill.

MR. BUDDEN: No, but you worked within a structure –

MR. STURGE: Yeah.

MR. BUDDEN: – of governance then, and –

MR. STURGE: Just let me give you an example of this, sort of – and it might help on this.

When the Lower Churchill was created, I had corporate accountability for information technology and it became clear as the project evolved that, while I may have thought that the Lower Churchill IT was rolling in under corporate, it wasn't. And I would say in dribs and drabs this started to flow out that became apparent that IT was – they were gonna do their own IT, they weren't following anything we were doing. They were doing their own thing and, again, –

MR. BUDDEN: Just like with risk.

MR. STURGE: Same thing happened – same thing happened with supply chain, the same thing happened with how finance sort of got structured in that, it was this scope, but it wasn't project controls, for example. So those things evolved over time and I don't know if you're gonna find it all written down, but that's how it evolved.

MR. BUDDEN: Okay, I have no doubt about that, I believe you. That clearly is how it evolved. My question is more – okay, firstly, is it proper to have an entire parallel structure –

MR. STURGE: Well –

MR. BUDDEN: – that's not written down?

MR. STURGE: You know, I –

MR. BUDDEN: Do you believe that's proper?

MR. STURGE: No, I mean, I think they've probably got their own governance documents that the project describes how they do their own things.

MR. BUDDEN: You think so?

MR. STURGE: I suspect they probably do.

MR. BUDDEN: But you don't know, do you?

MR. STURGE: I can't say for certain, no, I can't say.

MR. BUDDEN: So you've been CFO of Nalcor for 12 years –

MR. STURGE: Mm-hmm.

MR. BUDDEN: – since it began, and you cannot tell us here under oath whether they had a spelled out process by which what you're saying was reduced to paper.

MR. STURGE: I can't, but, you know, I'm not accountable for the project so they may have documentation. So I can't really speak to that they wouldn't somewhere have their structure laid out. I could say they would or wouldn't.

MR. BUDDEN: This is an exhibit, it says right here that you are VP of finance and CFO. It says below that somebody else is the general manager for commercial and financing, and somebody else below that is a chief risk officer.

MR. STURGE: Mm-hmm.

MR. BUDDEN: And not five minutes ago, you said the purpose of a chart like this was to show lines of accountability. You remember that? So you are accountable, aren't you?

MR. STURGE: Not for risk on the Lower Churchill. I'm not – actually, I'm not accountable for risk on any business unit.

MR. BUDDEN: You're not?

MR. STURGE: No.

MR. BUDDEN: You're the CFO.

MR. STURGE: I'm not accountable for risk. Risk is a line function, and each business unit lead would be accountable for its own risk management.

MR. BUDDEN: And where does it say that?

MR. STURGE: I don't know if I can point to that, but it's clear in our structure that the business unit – 'cause risk –

MR. BUDDEN: How is it clear?

MR. STURGE: I can't – I just can't point to anything sitting here at this minute, but it is clear.

MR. BUDDEN: Would Deloitte have known, your external auditors, that you weren't responsible for risk for the Lower Churchill Project?

MR. STURGE: Pardon? Would …?

MR. BUDDEN: Would Deloitte, your external auditors, have known that you, vice-president finance and CFO, were not responsible for maintaining a risk register for the Lower Churchill Project?

MR. STURGE: I think they would probably be surprised to find that I – if I was. You know, I just –

MR. BUDDEN: If you were?

MR. STURGE: Yeah, I don't – that's not – wouldn't be my function to maintain their risk register.

MR. BUDDEN: They would be working from the same chart that we're working from, right? I mean, this is an exhibit at a public inquiry.

MR. STURGE: Yeah, I don't think, though, you can just take this chart because, as I just pointed out, there's examples right through this that are inconsistent. Like, I gave you the supply chain example, the IT example, there's a whole host of examples here where I have accountability, but it's not accountability for everything. And the Lower Churchill evolved very differently than –

MR. BUDDEN: We know that.

MR. STURGE: – the rest of the business.

MR. BUDDEN: There's nothing – nobody is disputing that, at least I'm not.

But what I'm getting at is that – do you not see, as chief financial officer, as a CA, as a certified public accountant, that there is – that it is proper that the official public governance chart correspond with reality? Is that important or is that –

MR. STURGE: And I –

MR. BUDDEN: – not important?

MR. STURGE: – think it does, but I just don't think you can take this chart and say that it explains every mechanism of how the organization works. I don't think that's correct.

MR. BUDDEN: Because it doesn't correspond with the reality of how the organization worked. Correct?

MR. STURGE: It generally does, but I don't think – you know, in any organization you can take these charts and you can generally see how accountability works, but there's lots of other pieces that you need to put together with that to understand, actually, how it plays out and works.

MR. BUDDEN: The Lower Churchill Project was a pretty big piece of Nalcor, wasn't it, like most of it?

MR. STURGE: Absolutely.

MR. BUDDEN: So, most of Nalcor – the governance structure existed in some sort of parallel universe separate from the one we see here at Exhibit 00797? Yes?

MR. STURGE: Yeah, I mean, they had a parallel structure that was probably not much different than this.

MR. BUDDEN: Okay, well (inaudible) it's not much different, but where is it? We don't have it here.

MR. STURGE: Well, there are charts for the (inaudible) Lower Churchill (inaudible).

MR. BUDDEN: Okay.

MR. STURGE: The Inquiry, I'm sure, has those.

MR. BUDDEN: And there's a chart or a document that says risk management for the Lower Churchill Project shall exist separate and distinct from that of Nalcor as a whole?

MR. STURGE: I suspect there's a – there's policies that describe their risk-management processes. I'm pretty certain there is.

MR. BUDDEN: How are you certain? You've seen them?

MR. STURGE: I may have seen – somewhere in documents here, there's – there are risk-management reports and things.

MR. BUDDEN: That says that the risk-management structure of the Lower Churchill Project is separate and distinct from that of Nalcor as a whole? You say – you're under oath. That's (inaudible).

MR. STURGE: I can't say 'cause I don't know what documents they had. They have a huge number of documents about processes. So I can't say whether – what they have or not, really.

MR. BUDDEN: I mean, but you're not a stranger here. You are the CFO of Nalcor. Were then, are now.

MR. STURGE: Absolutely, absolutely. But it's – you gotta understand, it's very clear, and that the Lower Churchill had a whole set of – and I can only give you a few examples to try to explain how this plays out.

MR. BUDDEN: I'll stop you there. You say it's clear.

MR. STURGE: Yeah.

MR. BUDDEN: It's clear to you. It's clear to Mr. Martin. It's clear to Mr. Bennett. Would it be clear to other than maybe 10 or 15 people in this whole world?

MR. STURGE: Well, I think if you look at organization charts, you know, you can get a good sense for things. But I don't think an organization chart unto itself tells you everything how it operates. And I don't know if it ever really meant to.

MR. BUDDEN: Do you think – I mean do you not think an organizational chart should reflect the reality for at least 90 per cent of the operations of the company?

MR. STURGE: Yeah. I think it does, but I think the Lower Churchill is not a normal piece of the company. It's a development project. So, by and large, the operational parts of the business, I think there's a fairly level – consistent level of consistency across those. But I think when –

MR. BUDDEN: And again –

MR. STURGE: – you get to the development project it played out totally different.

MR. BUDDEN: And again, when you say clear, I was asking you the question and we got sidetracked. It was clear to you and Mr. Martin and I just named a couple of others – other than say 10 or 12 people in this entire world, would it have been clear to anybody else? Clear?

MR. STURGE: I couldn't say, you know. I mean – I know it – how it became clear to me was not probably really organized and the example – I found out – I had corporate accountability (inaudible), and I found out one day that the Lower Churchill had hired an IT manager.

MR. BUDDEN: First you knew of it?

MR. STURGE: First I knew of it.

MR. BUDDEN: Okay.

MR. STURGE: And I know it – so an example of how this evolved. I don't know if I ever had a discussion around supply chain and – but it just became obvious that they were doing their own supply chain.

MR. BUDDEN: Okay. And their own risk management?

MR. STURGE: And their own risk management.

MR. BUDDEN: Okay.

MR. STURGE: And I have the example on finance as well where I was in discussions with Ed actually, talking about what the structure would be around –

MR. BUDDEN: Ed Martin?

MR. STURGE: Yeah – around finance and setting up a finance function. And in the middle of all those discussions I was having with Ed, I was forwarded an email one day from one of my direct reports who had an email coming from the project that announced that they hired an accounting lead reporting to someone in the project. First I had heard of it. And right in the middle of when I was having discussions around – so you know, all these things were evolving and it wasn't necessarily a – you know, I think, all of us were finding out bit by bit as to how this was going to be structured. And it's not just me, I'm sure there's other corporate functions here that have separate stories like that, you know.

MR. BUDDEN: Yeah, no doubt.

I'm just gonna tie together a few threads here. So you will confirm that you did not know, say, at the time of sanction, that the Westney report had identified this risk of $497 million? That was unknown to you?

MR. STURGE: I wasn't aware of it, no.

MR. BUDDEN: And it would not have been recorded by Mr. Meaney and his risk register?

MR. STURGE: He wouldn't have been aware of it either.

MR. BUDDEN: Okay. Nor were you aware that at DG3 that the schedule completion date of July 2017 was subject to a P1 risk factor?

MR. STURGE: Not aware of that, no.

MR. BUDDEN: Totally unaware of that? I asked an earlier witness about the impact of that; I'll ask you.

Grant Thornton have suggested that to get from a P1 to a P50 on scheduling would've required, I believe, they said another 11 to 21 months to complete the project. So let's take a year – and I guess my question is: What would be the impact on either the AFUDC or the IDC? I don't really appreciate the – in this case, which is most appropriate but are we –

MR. STURGE: (Inaudible.)

MR. BUDDEN: – what would be the – just let me finish – the impact on either of those in (inaudible) –

MR. STURGE: I don't know if I can quantify it here.

MR. BUDDEN: – by delaying the project for a year?

MR. STURGE: I guess if the scenario is that the construction period went from five years to six years –

MR. BUDDEN: Yeah, not July '17, July '18.

MR. STURGE: Yeah. So you'd have a longer construction period and invariably you'd have more IDC during that period (inaudible) –

MR. BUDDEN: Considerably more on a project on this scale. You would agree?

MR. STURGE: Yeah, considerably. I don't know how I'd define that, but it would be, you know, be a significant amount, obviously –

MR. BUDDEN: It'd be in the hundreds of millions.

MR. STURGE: – for the amount of funding we got here. Again, I'm just afraid to say that because I don't know if I – if that's true or not. I don't know.

MR. BUDDEN: Does it sound – I mean, does it sound approximately right somewhere in the – that's a pretty broad range – somewhere in the hundreds of millions? It's a big number.

MR. STURGE: Yeah, I just can't give you a number 'cause then you're going to turn around later and say my number's wrong, so …

MR. BUDDEN: I won't do that. (Inaudible.)

MR. STURGE: No.

MR. BUDDEN: But you would acknowledge that it is a big number, somewhere in the hundreds of millions, in all likelihood?

MR. STURGE: It's a number that would be significant enough that it would, I think, show up in the estimate, yes.

MR. BUDDEN: Yeah. But it wouldn't have shown up if we consulted the risk register that Mr. Meaney was maintaining.

MR. STURGE: Mr. Meaney wasn't maintaining the risk register.

MR. BUDDEN: Or the risk – well, Mr. Meaney was the chief risk officer; presumably he was maintaining risk registers. But there would be no reference to this risk of a project delay and the consequent costs in anything he was maintaining.

MR. STURGE: Not in what he was maintaining, 'cause –

MR. BUDDEN: Because he wasn't aware of it.

MR. STURGE: – he wouldn't have been maintaining the risk register for the Lower Churchill.

MR. BUDDEN: Well, at least we've established (inaudible) –

MR. STURGE: But I think, you know, it goes back to the discussion that seems – and I think there's an important point is that: The Lower Churchill managed their own risks; they had their own consultant, Westney, managing that risk for them, and I think it's becoming apparent that the distribution and access to Westney documentation was tight. And I think it's becoming apparent from others who've sat here that it's not just me and Jim Meaney that probably wouldn't have seen that – it was broader than that.

MR. BUDDEN: Okay. I guess what puzzles me, Mr. Sturge – you are the chief financial officer for Nalcor.

MR. STURGE: Yes.

MR. BUDDEN: At this time, pre-sanction, most of Nalcor was the Muskrat Falls, Lower Churchill Project. I know you did other things, but that was where most of the activity was, most of the value of Nalcor was.

Are you with me so far?

MR. STURGE: Yeah, I don't know if it's totally most of the value. I mean, there's still – it's a pretty significant, sizeable operation that had lots of moving pieces too, so there was probably a lot of dollars in the Lower Churchill but there was still a lot of risks from reliability and supply.

MR. BUDDEN: Oh yeah, but the Lower Churchill is where most of the value of Nalcor would've been, most of the activity – you're with me so far? You don't disagree with that, surely?

MR. STURGE: Dollar value I'd agree, yeah.

MR. BUDDEN: Yeah.

MR. STURGE: Yeah.

MR. BUDDEN: So you are the chief financial officer and vice-president for finance, and yet a whole chunk of what would ordinarily – I would suggest – be your responsibility by this chart, has been taken away from you?

MR. STURGE: You could put it that way. You know, there's probably a scenario where you could've had the Lower Churchill risk reporting up through corporate risk. I suppose you could've had that scenario, but it wasn't, you know, so –

MR. BUDDEN: No, and there's nothing in any governance chart that we're aware of that says that – that says Lower Churchill feeds up through a separate line of authority.

MR. STURGE: I'm not sure of that. I think if you can look at the Lower Churchill organization charts you will see their risk function somewhere in their line (inaudible) –

MR. BUDDEN: But as we've established, there's nothing you can point to that says that within the governance of Nalcor that that is spelled out. That it – somehow there's a line here that goes other than from Mr. Meaney through Mr. Hull on to you, as CFO.

MR. STURGE: Only, as I said, if you look at the Lower Churchill structure, you'll see that they have a risk function that reports up through Gilbert – ultimately up through Gilbert.

MR. BUDDEN: And it's explicit in that structure –

MR. STURGE: Yeah.

MR. BUDDEN: – let's get to Nalcor's in a second –

MR. STURGE: Yeah.

MR. BUDDEN: – it was explicit in that structure that that is outside of this chart?

MR. STURGE: Mmm.

MR. BUDDEN: Explicit –

MR. STURGE: I would think it is, just by the fact that it's reporting up through the line function.

MR. BUDDEN: But it's explicit on paper, somewhere, that that is outside of the governance structure set out in 00797.

MR. STURGE: Mmm, explicit – you know, it's in the org chart; I'm pretty certain they'd have their function there.

MR. BUDDEN: Okay, well we may get to that.

MR. STURGE: Yeah.

MR. BUDDEN: How could you have tolerated such a thing? You're the CFO.

MR. STURGE: Well, you know, I don't know if the word "tolerate" – I mean, I think in any organization, I mean – and there's no – when you structure an organization, I don't think there's any such thing as the right structure or the wrong structure. I think if you look at any organization –

MR. BUDDEN: However, I would suggest to you, there is such a thing as a duty to have an explicit structure; one that is there on paper for anybody to see, who has a right to see it.

MR. STURGE: Yeah, and I think it was. Because if you look at the Lower Churchill, you will see the function is there that clearly were the accountability of the Lower Churchill. I'm pretty certain you will see that.

MR. BUDDEN: And where on 00797, again, does it say that the Lower Churchill does not respond – does not go through the chain of authority to you? It doesn't, does it?

MR. STURGE: No, but it also doesn't say that the accountability for risk in Newfoundland Hydro is my accountability, you know, so I mean – and it doesn't say that the risks for Churchill Falls are my accountability or not.

MR. BUDDEN: Okay, was the risk for Newfoundland Hydro your accountability?

MR. STURGE: No, the line accountability for the risk (inaudible) –

MR. BUDDEN: That's a separate corporation, though, right?

MR. STURGE: Yeah, whether there's a separate corporation I don't think is the issue. I think it's a separate business, part of the – CF was a separate – I don't think anyone would've expected that issues around reliability and risks in Churchill Falls were my accountability.

MR. BUDDEN: Did you have professional or ethical concerns about this at the time?

MR. STURGE: No, I don't think I had ethical concerns about it, because as I was, sort of, trying to explain, any organization – there's no right or wrong on organization structures. It's what – ultimately the CEO – and a very good example, our current CEO has got a somewhat different organization structure than our previous CEO had. Is one more right or wrong? I don't think so. It's just – it's a reflection of how that individual sees the ultimate business being managed.

And in the case of risk here –

MR. BUDDEN: But even CEOs have to follow rules. They may have the right to change them, but they have to follow them. You would agree with me there?

MR. STURGE: I don't –

MR. BUDDEN: (Inaudible.)

MR. STURGE: – you say rules, I don't know – you know, I mean, would be the policies in the organization perhaps.

MR. BUDDEN: Yeah, like a policy like –

MR. STURGE: Yeah.

MR. BUDDEN: – Mr. Meaney answers to Mr. Hull who answers to Mr. Sturge.

MR. STURGE: Yeah.

But I think the important thing here is not whether I was accountable for the risk of the Lower Churchill, but that somebody was. And that somebody was clearly identified as the person who leads the Lower Churchill. And in some regards, how could I manage the risks to the Lower Churchill when the person who had line accountability for the business. Like, wouldn't that seem strange, that I'm managing the risks of the business of – for which this person is accountable for? That would seem strange as well.

MR. BUDDEN: Well, not necessarily but let's go to 00877. I'll return to this but there's a couple more things I want to look at.

THE COMMISSIONER: 00877?

MR. BUDDEN: The 00877, Sir, is –

THE COMMISSIONER: Tab 33.

UNIDENTIFIED MALE SPEAKER: Thank you.

MR. BUDDEN: Ms. O'Brien spoke to you about this yesterday. I'm going to use it as a point of departure but perhaps you could read the upper right-hand side under the date August 8, 2012, the little note you have there, it's short.

MR. STURGE: There's "LCP capex – very strange process – I (and most of the finance team) have still yet to see the DG3 capex in any level of detail – appears that Ed/Project Team are keeping them close."

MR. BUDDEN: Why is that very strange?

MR. STURGE: Because we were in a process where we were about to – you know, we were getting close on closing the federal loan guarantee at this point. And Canada still had yet to see the numbers. We had no ability to share those numbers until we had approval to share them and at this point we were getting well advanced and our concern was that we were soon going to have a surprise for Canada.

Because I think it was generally known that the number had gone to 6.2 billion, you know, well in advance of this date but had yet to been rolled out broadly.

MR. BUDDEN: How was it well known? This was before sanction? 6.2 billion –

MR. STURGE: Yeah, I know but I think at this point, internally anyway, it was known that the number was 6.2. I –

MR. BUDDEN: It was what?

MR. STURGE: I think at this point we all knew the number was 6.2 billion but all we had seen was, sort of, the build up of the change from DG2 to DG3. But we (inaudible) yet seen the detail of how that played out and how it gets rolled out to Canada.

MR. BUDDEN: Okay.

MR. STURGE: And I think that was the point I was making there.

MR. BUDDEN: Okay. Well, let's hold that thought but move on to the next exhibit I'd like to discuss, which is 00880. That's 36 – tab 36.

On the left-hand side under LCP Cost Estimate there's a notation there which I believe is dated 12th of September, 2013.

MR. STURGE: That's correct, yeah.

MR. BUDDEN: Okay.

Just read what you have there please.

MR. STURGE: So this one says: "LCP Cost Estimate" it says "Ed has had multiple meetings with the project team on the status of the capital cost estimate but has not included me in any of these – he clearly does not want me to know" – the status – "where the estimate currently sits." "As of right now all"– I know is – "I am aware of is DG3 6.2 billion."

MR. BUDDEN: Okay. First –

MR. STURGE: This was post-sanction, now.

MR. BUDDEN: I know that. Just a few months post-sanction. But firstly, why did you make that note?

MR. STURGE: Because we had been going through a process – and just to put this in a little bit of context –

MR. BUDDEN: Please.

MR. STURGE: – we had been going through a process where we knew at financial close we needed to do a cost update for Canada. And – so Canada had the 6.2, but one of the conditions of financial close is that we now needed to do a cost and schedule update for Canada at the same – at financial close. So we had been pushing Ed and Gilbert at this point for some time to get us a cost and schedule update.

And it seemed to be going quite slow. I didn't seem to be – thinking there was much traction we were getting in terms of getting that advanced. And at this point, I guess the note I made to myself along that journey of trying to get the number of – I – 'cause I knew Ed had had meetings with the project team. Which told me that he was in some way probably discussing these matters, but we were still waiting.

MR. BUDDEN: Were you, like, angry, troubled (inaudible).

MR. STURGE: I was frustrated probably at that point because I had a sense that this wasn't probably getting the priority it should. And, you know, and as this played out, it was probably - and there's some follow-up emails I had with Ed probably in October – Ed and Gilbert – saying we need to get this, it's becoming – on a critical path. And I think it ultimately became mid to third week of November when we finally got those numbers.

And we were, you know, really up against a deadline with Canada then. And so, you know, it was a sense of frustration not just with me, I expect the whole team was frustrated at that point that we'd been looking for these numbers since probably mid-summer.

MR. BUDDEN: Okay. So you were yet again still out of the loop? You're CFO, you're vice-president of finance, but you're out of the loop.

MR. STURGE: Yeah.

MR. BUDDEN: Okay.

MR. STURGE: Yes.

MR. BUDDEN: Did you ever – I mean you're complaining here to yourself. Did you ever complain to Mr. Martin about being out of the loop?

MR. STURGE: Yeah, we've had discussions over time, but, you know, things happen quickly and sometimes you find out after the fact that there's discussions taking place and – and I know on this particular one I had a number of follow-ups of: we need to get this number, we need to get this number. And we eventually got it. But it was very late in the process.

MR. BUDDEN: Was there an element of cover-your-ass in keeping a note like this? For you?

MR. STURGE: No, I don't think I ever wrote this thinking we were gonna be sitting here five years later. So it wasn't that sense. It was trying to – me document my thought process as to how this was evolving more than anything.

MR. BUDDEN: Okay.

Beyond being frustrated, were you uneasy about being marginalized, being out of the loop?

MR. STURGE: I don't know if uneasy was the word. I was – you know, I mean – for me, in this particular case, I needed to get the data and it was a frustration that it was taking a long time to get the data and – you know, so I mean, I didn't have an uneasiness that what I was gonna get – was anything wrong with it. But it was a frustration, clearly.

MR. BUDDEN: Did you –

MR. STURGE: And I know the whole team was frustrated at this point.

MR. BUDDEN: Were you ever uneasy that your governance functions, as chief financial officer, as vice president of finance, had been compromised by being out of the loop?

MR. STURGE: No, I don't think I felt that way. I mean –

MR. BUDDEN: This is an important question.

MR. STURGE: Yeah. I don't think I felt – I mean, in any organization, and I don't think ours is any different, you know, you've got to build a trust – people, that people are doing the right things. You can't, you know, a big organization like this, you can't individually yourself always be able to say that the capital cost is right or the load forecast is right. You've got to be able to trust the system and the process. And if you can't, then you got a fundamentally flawed organization, so –

MR. BUDDEN: (Inaudible.)

MR. STURGE: – so I had no reason not to trust the numbers I was getting. But, you know, it was, at times a strange process.

MR. BUDDEN: Yeah, and it's a process that didn't disclose to you, the chief financial officer, hundreds of millions of dollars in risk. That's a flawed process, isn't it?

MR. STURGE: Yeah, you know, and it's a valid – listen, I've done a lot of thinking about this over the last little while as I've listened to the whole thing play out and – you know, it's – and I watched the board go through that same process of were they aware of these things and, I suspect we'll have the same discussion with some government folks. And I saw it with the MHI folks and – you know, so to me it's clearly – and I can't say there's any bad intent in any of that. But I think what it points to is there was clearly things around the capital cost, around the risk related to it, around contracting, was kept very tight.

And that may have been for good reason. But it – and that's just sort of fact, that it was kept very tight and, you know, I suppose in one sense you could step back and I think Mr. Owen has perhaps talked about it a little bit – where, you know, you could envision that in the DG3 sanction package, in the board packages, that there would be a, you know, whether we include the strategic risk or not, whether we use P50 or P75, you know? You – maybe you'd expect that there'd be a sort of more broadly-based discussion of those factors and pros and cons; why we landed. But, you know, I sort of pulled my little bit of hair I got left out thinking about this, and gone back through a lot of the board packages, and I really can't find much discussion about some of those things; some of those very things that have become central to the whole discussion here, right? I can't find much –

MR. BUDDEN: Yeah.

MR. STURGE: – myself. But that's not to say that what was done was wrong, 'cause, like, I really can't say that. But I –

MR. BUDDEN: (Inaudible) the Commissioner will ultimately say.

MR. STURGE: Yes, absolutely, but –

MR. BUDDEN: Let's leave that speculation –

MR. STURGE: Yeah.

MR. BUDDEN: – aside for a minute.

Do you believe, in retrospect, that your ability to exercise your governance functions were compromised by being kept in the dark about these very important details: about risk, about –

MR. STURGE: No, I don't think I could go that far because, you know, I don't have ultimate accountability for every decision in the organization. I mean, that ultimately resides with the CEO. So –

MR. BUDDEN: What do you think your accountability was?

MR. STURGE: In terms of this project, you know, I think we all expect that the data we get is accurate, and I can't say it's not accurate. And –

MR. BUDDEN: But –

MR. STURGE: – you know, in some regards –

MR. BUDDEN: – you can't say, even now, that the data you were given in 2012 –

MR. STURGE: I don't –

MR. BUDDEN: – wasn't accurate?

MR. STURGE: – think I could, clearly. I can clearly point to there were pieces of data that I wasn't aware of.

MR. BUDDEN: Big ones.

MR. STURGE: Big ones? Big ones.

MR. BUDDEN: So I'd suggest that if you're given a price tag of 6.2 billion –

MR. STURGE: Yeah.

MR. BUDDEN: – and there's huge associated costs that you haven't been made aware of, such as half a billion dollars in strategic risk –

MR. STURGE: Yeah.

MR. BUDDEN: – all the costs associated with the AFUDC arising out a one-year project delay, the piece that you are privy to is incorrect, isn't it? I mean, by –

MR. STURGE: Yeah, but –

MR. BUDDEN: – inference?

MR. STURGE: – the only reason I'm hedging, and it's not 'cause I'm – I don't wanna commit to it, the only reason I'm hedging is that there may be very good reasons why the strategic risk was dealt with like it was in contingency. And there may be another total piece of that P1 thing that I'm not aware of that –

MR. BUDDEN: And may you have a very good reason to –

MR. STURGE: – you know?

So there may be a – somebody else may have information around that that may change the whole narrative of how that's being discussed here. I don't know that. So I'm –

MR. BUDDEN: You're the CFO.

MR. STURGE: Yeah.

MR. BUDDEN: Can you think of a good reason not to disclose half a billion dollars in strategic risk?

MR. STURGE: I don't know because, you know, ultimately, I'm – knowing how Ed operated –

MR. BUDDEN: Leave aside that, can you think – I mean, you were a formed, experienced –

MR. STURGE: I –

MR. BUDDEN: – person before you ever met Ed Martin.

MR. STURGE: So, to answer your question, I think – if you're asking me what the best process would have been, is that there should have been a more open discussion of the 500 million and reasons for inclusion or exclusion probably more properly documented, and leave it at that, because I can't say if it should've been or not. But probably a more open discussion.

MR. BUDDEN: You spoke about trust a moment ago but isn't the role of a chief financial officer to go beyond trust? I mean, sure, I mean our day-to-day relations –

MR. STURGE: I don't think so.

MR. BUDDEN: – we trust people, but we hire accountants to give us that extra level of certainty –

MR. STURGE: Yeah.

MR. BUDDEN: – do we not?

MR. STURGE: Yeah, no – I don't think my role – if I got any additional obligation to provide anymore certainty then anyone else in the organization. I think I've got a defined set of roles, other people have the same level of accountabilities. I don't think mine is any higher standard then anyone else in the organization.

MR. BUDDEN: Whoa, you are the chief – the chief financial officer, you're not just financial clerk.

MR. STURGE: Yeah, but there's all sorts of things in the organization, and I'll give you an example, like I've got all sorts of people working for me and they produce reports, data, and I can't categorically say that every piece of information those people produce is right or wrong. It's just absolutely not even –

MR. BUDDEN: Of course.

MR. STURGE: – it's not practical.

MR. BUDDEN: But you can categorically say that an appropriate process was in place and was followed. That's not asking too much.

MR. STURGE: Absolutely, so I would rely on the process in place and I would rely on the quality of the individuals doing that work and I clearly rely on that.

MR. BUDDEN: And even now you stand behind the process that was in place in this 2010-2012 period, for identifying risk?

MR. STURGE: I can't speak to the quality of the LCP risk process, I can't.

MR. BUDDEN: Even as the chief financial officer of Nalcor, you can't speak to the quality of the Lower Churchill risk process.

MR. STURGE: I can't, I can't. Because I had no involvement in it, it was operated totally as a project piece of work. No corporate involvement whatsoever.

MR. BUDDEN: All right, I won't pursue that any more.

MR. STURGE: I couldn't say it was a good process or not, I have no reason to believe it wasn't because they had –

MR. BUDDEN: Even now you don't have a reason to believe it wasn't?

MR. STURGE: No, I really can't. I don't want to take one piece of data and use that one piece of data to disparage the whole entire process that might've been there. You know, I don't think that would be fair.

MR. BUDDEN: Okay.

MR. STURGE: Yeah.

MR. BUDDEN: So you were in Toronto, you're meeting with the financiers, floating this – was it the largest bond in Newfoundland history, to that point? You said it was the largest bond.

MR. STURGE: It would have been the single largest infrastructure financing in Canada, I think, at that point.

MR. BUDDEN: So the single largest infrastructure financing in Canada and you went into meetings with those people saying that the price tag to build this dam in Labrador and all the associated structure was $6.2 billion, that's what you represented.

MR. STURGE: From my best information that I had.

MR. BUDDEN: Your best information.

And as chief financial officer, presumably, they relied on you as somebody who would have the best information. You with me so far?

MR. STURGE: Just to clarify a little bit, the lenders – it wasn't really the lenders who were having that discussion, with Canada we had that discussion.

MR. BUDDEN: Okay, but you're with –

MR. STURGE: The same (inaudible).

MR. BUDDEN: It doesn't really matter, does it?

So even though you were Nalcor vice president of finance and CFO, it was unknown to you that the cost estimate did not include a half million dollars in strategic risk, and God knows how much in all scheduled risk. That was – can you confirmed for the record that was unknown to you?

MR. STURGE: That would be unknown to me, yes.

MR. BUDDEN: If you had been made aware of those risks through the operation of, what I would suggest be the normal operation of that governance flow chart, could you have gone into those meetings and pretended the project had a 6.2 million price tag – billion.

MR. STURGE: Well, I – and again, you –

MR. BUDDEN: Think about that.

MR. STURGE: – use that word normal operation 'cause I think the way it operated was the way it intended to operate. In the case of that particular discussion – so we would've sat in front of Canada and the project team folks would've been with me. They would've presented the capital cost and responded to questions of Canada, but Canada didn't – they weren't relying on me for the capital cost estimate.

MR. BUDDEN: You were in the room.

MR. STURGE: Yeah, but they weren't relying on me. They would've put more reliance on the project team because they're the folks that developed the estimate.

MR. BUDDEN: But if you'd known that those numbers were not correct, would you have had an obligation, a professional obligation, to say so?

MR. STURGE: I don't think any of us would knowingly bring or present incorrect numbers.

MR. BUDDEN: I'm asking about you.

MR. STURGE: I wouldn't present incorrect numbers if I knew they were wrong.

MR. BUDDEN: So if you had been in the know, you would've left the room or spoke up or disassociated yourself from the misrepresentation?

MR. STURGE: If I knew that we were clearly trying to mislead with numbers, I would have, yes.

MR. BUDDEN: Okay.

MR. STURGE: But in the case of Canada, they also had the independent engineer who was – so they weren't getting – they weren't just taking those numbers because I was in the room and saying that they were credible. They weren't taking Paul Harrington's word for it, they were doing their own piece of work from an independent engineer perspective as well.

MR. BUDDEN: Okay. Y

You also attended – this'll be really my last question for you – you also attended a – you no doubt remember this – public meetings, AGMs and so forth. You recall that, you were there?

MR. STURGE: I would've been to every one of them, yeah.

MR. BUDDEN: Yeah, and you recall –

MR. STURGE: (Inaudible.)

MR. BUDDEN: – some of the – Mr. Vardy, you know Mr. Vardy?

MR. STURGE: Yes.

MR. BUDDEN: Respect Mr. Vardy?

MR. STURGE: Yes.

MR. BUDDEN: Mr. Vardy asked very detailed, probing questions about those cost estimates. Do you remember that?

MR. STURGE: I don't remember the specific questions, but I do remember him asking a number of questions, yes.

MR. BUDDEN: Okay. Did you ever, at the time, have an uneasy sense that he was being misled?

MR. STURGE: I didn't because – for two reasons. One is that Ed answered questions at the AGM, and, secondly, I was never in a position – Ed would've always had much better information than me on the capital cost estimate, so I would have no reason to doubt that Ed's view and what he was saying about the capital cost estimate was credible.

MR. BUDDEN: Okay.

MR. STURGE: Because you know, Ed would have had the benefit of the one-on-one discussions with the project team. He would have had the benefit of a better view of where contracts were coming in and all those things, so I would have no reason to doubt what Ed was saying was –

MR. BUDDEN: Yes.

MR. STURGE: – correct.

MR. BUDDEN: So my final thing, just to reiterate this, are you comfortable, in retrospect, that you carried out your duties as vice president of finance and CFO of Nalcor with appropriate diligence?

MR. STURGE: I'm comfortable what I did was appropriate for what I had to work with, yes.

MR. BUDDEN: And if you were misled, who was it that misled you?

MR. STURGE: I don't know if I was misled.

MR. BUDDEN: Even to this day you don't know if you were misled?

MR. STURGE: I think there were pieces of information I didn't have. I will admit that. And others obviously didn't have those pieces of information as well. Whether anyone – I mean, misled is a strong word, and that's the only reason I'm –

MR. BUDDEN: Okay, well –

MR. STURGE: Misled has a connotation of someone purposely trying to stray you in this direction versus this one –

MR. BUDDEN: Okay, well, let's say misled accidentally or otherwise. Did Mr. Martin mislead you accidentally or otherwise?

MR. STURGE: I don't know if he misled me, but he – there were pieces of information he would have had that I didn't have.

MR. BUDDEN: Okay.

MR. STURGE: You know –

MR. BUDDEN: And do you believe that as CFO of Nalcor – as chief financial officer – you should have been in possession of that information at the time?

MR. STURGE: You know, I think in a perfect world, there's a lot of – there probably should have been a broader discussion around all those issues, yes, I –

MR. BUDDEN: And that's as far as you'll go?

MR. STURGE: Yeah.

MR. BUDDEN: All right.

Thank you.

THE COMMISSIONER: Edmund Martin?

MR. SMITH: Good morning.

MR. STURGE: Good morning.

MR. SMITH: Harold Smith for Edmund Martin.

My understanding is that you were employed by Vale Inc. as a CFO?

MR. STURGE: I was the CFO of Voisey's Bay nickel –

MR. SMITH: (Inaudible.)

MR. STURGE: – which, at that point, was a subsidiary of Inco, before Vale, but the same entity, yes.

MR. SMITH: Okay.

And were you involved in the construction projects of Voisey's Bay nickel.

MR. STURGE: No. Well, in an indirect way, because Voisey's Bay nickel at that point was a development project, so we were probably not different than the position that Lower Churchill Project was in in probably the 2009-'10 period, you know? Yeah.

MR. SMITH: And would they have been structured with, you know, a construction team, or a project team and –

MR. STURGE: Yeah. So the way it was set up is – I was in the corporate group of Voisey's Bay nickel, and I had a team that would have looked at some of the managing – the accounting, the IT, financial planning. There was a separate project team, and that project team was led by someone out of Toronto, and they managed their entire operations. So it's not unlike the way the Lower Churchill was set up. It was very arm's-length from the remainder of the entity. Yes.

MR. SMITH: And when – and to your knowledge did the project team have its own risk analysis approach and management?

MR. STURGE: I'm assuming they did. I can't say categorically, but I know they were stand-alone from everything from an accounting perspective, and they were –

MR. SMITH: So I take it it wasn't a great shock to you to have the project team operating, essentially, independent of the CFO, except in those areas where your knowledge and experience –

MR. STURGE: Yeah. I would have perfectly expected that the project team would be somewhat independent. It's always sort of on those fringe areas – are they in or out. Yes.

MR. SMITH: Now, in the context of that knowledge, okay – the concepts of tactical risk, strategic risk or contingency – would you have been involved in them –

MR. STURGE: No.

MR. SMITH: – with the Vale team?

MR. STURGE: No, I wasn't. No.

MR. SMITH: And were you involved with those issues with respect to the Lower Churchill project?

MR. STURGE: Not directly, no.

MR. SMITH: No.

MR. STURGE: No.

MR. SMITH: So when you indicated yesterday that – or at least I wrote a note that you –

MR. STURGE: Yeah.

MR. SMITH: – did indicate that you felt that tactical risk and strategic risk were the same – are you speaking from –

MR. STURGE: Yes.

MR. SMITH: – experience and knowledge?

MR. STURGE: Yeah. And I can't remember the exact comment, but in my – in a simplistic way – in terms of how they get funded, in my context, they're the same. But I take it that you're correct that the nature of what's included in each bucket is likely different. Yes. Yes.

MR. SMITH: Now, yesterday, you also were questioned fairly heavily on the – excuse me – the negatives as opposed to win-wins in relation to – sorry – P-00876. Page 16.

UNIDENTIFIED MALE SPEAKER: Six.

THE COMMISSIONER: Tab 32.

MR. SMITH: And I'm focusing on the lines 13 to 19.

MR. STURGE: Sure.

MR. SMITH: Okay.

And one of the issues that came up was is it publicly known what might be the average available power that could be offered? And do you know what the average power output of the Muskrat Falls Project would be?

MR. STURGE: Four point nine terawatt hours –

MR. SMITH: Four –

MR. STURGE: – I think is the number.

MR. SMITH: Four point nine terawatt hours.

MR. STURGE: Yes.

MR. SMITH: And how many terawatt hours are dedicated to the Nova Scotia Block?

MR. STURGE: Nova Scotia Block, in the first five years, would be 1.2 terawatt hours, and then it becomes one terawatt hour. Yeah.

MR. SMITH: And what's – what would be the necessary part of that block to service Newfoundland?

MR. STURGE: In the initial forecast, it was, I think, in the range of two terawatt hours. But I'm pretty certain that has dropped since, as load has dropped off.

MR. SMITH: So if we know what the average is in productivity, and we know what's committed, we probably should know reasonably well what the average –

MR. STURGE: What's available, yeah.

MR. SMITH: – that's available, correct?

MR. STURGE: Yes.

MR. SMITH: So that's publicly known.

MR. STURGE: Generally, I would say –

MR. SMITH: Yeah.

MR. STURGE: – yes.

MR. SMITH: I don't mean that –

MR. STURGE: Yeah.

MR. SMITH: – Joe Citizen everywhere in Newfoundland would know it, but it's not hidden?

MR. STURGE: Not hidden, no.

MR. SMITH: No.

Can I have P-00097, page 6, please?

Scroll down to "Management Reserve."

Now, it's my understanding that, in the concept of strategic risk or tactical risk, some of it is placed in contingency, which goes into the actual number, which we have; it's 6.2 billion. And then, in the context of was what happening on Muskrat Falls, there was a management reserve or, if you will, monies available to deal with strategic risk. And looking at the definition of management reserve, I draw your attention to: "The Management Reserve is also used to handle the impact of strategic risk."

So management reserve – you wouldn't put strategic risk in twice, would you, if you have a management reserve?

MR. STURGE: I wouldn't think you'd put anything in twice.

MR. SMITH: No.

MR. STURGE: I agree, yeah.

MR. SMITH: Okay.

MR. STURGE: Yeah.

MR. SMITH: So the issue is, really, that you were unaware that a management reserve had been established for the Muskrat Falls Project?

MR. STURGE: And again, this is – are you talking DG2 or 3?

MR. SMITH: Well – DG2, DG3.

MR. STURGE: Yeah.

MR. SMITH: Okay?

MR. STURGE: Yeah. I don't ever recall us saying this is an amount of management reserve.

MR. SMITH: No.

MR. STURGE: That I don't recall.

MR. SMITH: Okay. Now, I –

MR. STURGE: But as I indicated to Ms. O'Brien yesterday, I understand the concept, yes.

MR. SMITH: The source of the 497,000 – or 497 million strategic risk was apparently a study from Westney.

MR. STURGE: It seems to be the case, yes.

MR. SMITH: Yeah. That's what –

MR. STURGE: Yeah.

MR. SMITH: – you know, testimony was about –

MR. STURGE: Yeah.

MR. SMITH: – yesterday. Now, the Westney study, was that done prior to sanction?

MR. STURGE: I'm assuming it was. I –

MR. SMITH: Yeah. You don't know?

MR. STURGE: I couldn't say.

MR. SMITH: Okay.

MR. STURGE: But I'm assuming –

MR. SMITH: I'm just trying to –

MR. STURGE: Yeah.

MR. SMITH: – to determine –

MR. STURGE: Yeah.

MR. SMITH: – the level of knowledge you actually –

MR. STURGE: Yeah.

MR. SMITH: – have –

MR. STURGE: Yeah, I –

MR. SMITH: – of how it works.

MR. STURGE: I'm assuming it was, but I couldn't categorically say it was, no.

MR. SMITH: Okay.

And do you know whether – and maybe a much more specific question – do you know whether this project was sanctioned ignoring 497 million or whether the 497 million had been managed?

MR. STURGE: I – again, I couldn't categorically say that when the Gatekeeper made the decision to sanction the project that it was made in the context of knowing the 497 is there. I couldn't say that wasn't the case, no.

I didn't know it, but I couldn't say the Gatekeeper didn't take that –

MR. SMITH: No.

MR. STURGE: – into consideration.

MR. SMITH: What I'm trying to get to is that you didn't know about 497 million. That's very clear from your evidence yesterday.

MR. STURGE: Yeah.

MR. SMITH: But you also don't know whether or not that risk was managed by the project team to a lower –

MR. STURGE: I – (inaudible)

MR. SMITH: – to a – some lower –

MR. STURGE: I couldn't say that I – I'd have to agree with you. I didn't – they may have very well. I couldn't say.

MR. SMITH: And similarly, in the P1 schedule issue, do you know if the project was sanctioned on a P1 schedule?

MR. STURGE: Only from what I'd been told in the Grant Thornton report. That is the only sort of point of – data point I have on it.

MR. SMITH: Right. But you don't have independent knowledge other than what you read (inaudible) –?

MR. STURGE: No. And I'm taking that as face value.

MR. SMITH: So if the Grant Thornton report was wrong, your information is wrong?

MR. STURGE: Yeah.

MR. SMITH: Correct?

MR. STURGE: Yeah, absolutely. I have no other point of reference on it.

MR. SMITH: And I think it will come out, you know, in subsequent evidence that the P1 was not the schedule that was used for the sanction. I think that's the case. But you didn't – you don't (inaudible) –

MR. STURGE: No, I can't say.

MR. SMITH: Okay. In relation – and, if you would, perhaps we can look at – I think it's P-00871, I think. Yes, P-00871.

Now, is –

THE COMMISSIONER: Tab 29.

MR. SMITH: Tab 29.

MR. STURGE: Yeah, I've got it, okay.

MR. SMITH: Looking at this exhibit – and you went through it with Ms. O'Brien yesterday. Was this during the negotiations of the Emera arrangements?

MR. STURGE: This would have been at the very early stages of that last three-week period that we were finalizing the details, yes.

MR. SMITH: Okay. And this – you could characterize the discussion as negotiations?

MR. STURGE: Oh, absolutely. This – none of this, I think was – this was looking at options, yeah. It was back and forth at that point, yeah.

MR. SMITH: So when we look at negotiations –

MR. STURGE: Yeah.

MR. SMITH: – a subject I know a little bit about – would it be expected that the parties would put their final position early on in the negotiation?

MR. STURGE: No. My experience in negotiation would be that positions come on and off the table throughout the process as circumstances change, and things that you offered early, as something else changes, you may pull back. So yeah, I mean that's just – I think every negotiation would look like that somewhat.

MR. SMITH: So this would be purely just a snapshot in the early part of the negotiation? Just a snapshot in time?

MR. STURGE: This piece, yes.

MR. SMITH: Yeah, this piece.

MR. STURGE: Yeah 'Cause I even see pieces here – like, it talks about P3, that ultimately didn't happen. So it was – it reflected a discussion at that point in time. You're correct.

MR. SMITH: Thank you, Sir. That's all the questions I have.

THE COMMISSIONER: Thank you. Kathy Dunderdale?

MS. E. BEST: Good morning, Mr. Sturge.

MR. STURGE: Morning.

MS. E. BEST: I'm Erin Best –

MR. STURGE: Yes.

MS. E. BEST: – counsel for Kathy Dunderdale.

Madam Clerk, if you could please pull up Exhibit 00879?

So we discussed these yesterday. These are your notes, right?

MR. STURGE: Yes.

MS. E. BEST: Okay.

And specifically, you have some notes there from a December 10, 2012, meeting with the premier –

MR. STURGE: Yes.

MS. E. BEST: – right? And I'd like to put these notes in context.

So I'd actually like to start with the notes that you have here from – that you can see the heading Emera meeting, the second half of the page. Now, that Emera meeting was the same day, right?

MR. STURGE: It was the same day, you're correct, yes.

MS. E. BEST: But later.

MR. STURGE: Later, later.

MS. E. BEST: So the very last bullet point on this page, from this meeting. I believe it says: "Sounds like Emera is getting very frustrated with the NS government. Relationship between Emera and NS seems to be very frosty."

Is that what you have there?

MR. STURGE: That's what it appears to be, yes.

MS. E. BEST: Thank you.

So with that in mind I'd like to go back to the notes that you took at the meeting with the premier's office – at the premier's office – above and the last bullet point that you have there, and it speaks of the premier going out to make a call to Darrell Dexter, right?

MR. STURGE: That's correct.

MS. E. BEST: Who was premier of Nova Scotia at the time, right?

MR. STURGE: That's correct, yes.

MS. E. BEST: Okay.

So I spoke to my client about this last night. She recalls this meeting. She recalls calling Nova Scotia premier Darrell Dexter to get a resolution of the outstanding issue with Nova Scotia and Emera as you state there, and he didn't know what she was talking about. He had no idea. He said he'd try to get some info and call her back in an hour.

Now, would that have been surprising to you, that he didn't know anything about the situation?

MR. STURGE: I'm not sure, 'cause I would never have any Nova Scotia government contact, but given what was going on here, it would seem surprising that Nova Scotia would be unaware, but I – you know, that's just a sort of a speculation on my part.

MS. E. BEST: Okay.

So is it possible that your comment at the top of the page, you were talking about Nova Scotia politicians?

MR. STURGE: And that was my response to Ms. O'Brien yesterday. Because I really couldn't be a hundred per cent certain, because there was a lot of things, moving pieces at that point in time on both sides. So I can't categorically say what I was thinking there.

MS. E. BEST: Okay.

But would you agree that –

MR. STURGE: But it's possible, yes. It's possible.

MS. E. BEST: – it makes it make some sense –

MR. STURGE: It is possible, yes.

MS. E. BEST: – now that we understand the context?

MR. STURGE: Yes. Yes.

MS. E. BEST: Okay.

Thank you, that – those are my questions. Thanks.

THE COMMISSIONER: Okay.

Former Provincial Government Officials '03-'15?

MR. T. WILLIAMS: Morning, Mr. Sturge.

MR. STURGE: Morning.

MR. T. WILLIAMS: My name is Tom Williams, and I'm representing a group known as the former government officials 2003 to 2015, with the exception of former premier Dunderdale.

Some of the questions I have this morning are more along the lines of the team approach and that you had described that, and it didn't probably come out as much in your direct evidence as much in your interview.

MR. STURGE: Okay.

MR. T. WILLIAMS: And I think you kind of set that up early stages of your interview, and I noted, at the early stages, you often referred to I did this or I did that, then you qualified it, and you said well, I shouldn't really say I; it's my team.

MR. STURGE: Yeah.

MR. T. WILLIAMS: Can you give me a little bit of background with respect to the Nalcor finance team that you refer to. Who would be involved in –?

MR. STURGE: Yeah, so the team would have been – I mean, you know, there's a lot of people, but the core people involved in this file would have been me, Jim Meaney had a – played a significant role, largely around – do you want me to describe their role or just give their names or …?

MR. T. WILLIAMS: Well, you can – yeah –

MR. STURGE: Yeah.

MR. T. WILLIAMS: – give their role just –

MR. STURGE: Yeah.

MR. T. WILLIAMS: – in terms of (inaudible) –

MR. STURGE: So Jim Meaney was on the financing side, involved heavily in the commitment letter initially, did a lot of work around that. Then got heavily involved in – really led the financing – the RFF process and negotiations with the lenders.

Auburn Warren would have been the manager of Investment Evaluation. He would have been heavily involved in financial modelling of the Lower Churchill and really was, sort of, the point person on the federal loan guarantee with me.

And then Rob Hull would have been really involved in some of those things but primarily his role was on negotiating the Emera agreements and negotiating the NL agreements, effectively the commercial agreements between the project and Newfoundland Hydro. And that was their – essentially, their roles.

MR. T. WILLIAMS: Okay.

And then you went on to indicate that the Nalcor team didn't work totally independent. They worked with partners and then the discussion moves on to Department of Finance officials –

MR. STURGE: Yeah.

MR. T. WILLIAMS: – of government and PwC – the –

MR. STURGE: Yes.

MR. T. WILLIAMS: – Pricewaterhouse group –

MR. STURGE: Yes.

MR. T. WILLIAMS: – as well.

MR. STURGE: Yes.

MR. T. WILLIAMS: So can you elaborate for me a little bit about the workings of, what I'll call the larger team. You know, how the interactions as between your department, which I'll call the finance side of Nalcor, as well as the Department of Finance through government.

MR. STURGE: So –

MR. T. WILLIAMS: And –

MR. STURGE: Yeah.

MR. T. WILLIAMS: – we'll move on to PwC. Just the government and Nalcor (inaudible).

MR. STURGE: Yeah, so on the government side we would have had – you know, and it really depended on the issue – we would have worked closely with either Finance or Natural Resources and, in some cases, both. In the case of the Emera agreements, I think that was more of a Natural Resources engagement. I know Robert Thompson, Charles Bown heavily involved on that. And they would have probably been the two – and Todd Stanley at points, as well.

MR. T. WILLIAMS: Okay.

MR. STURGE: And when it came to anything from a financing perspective, I would have been heavily engaged with Terry Paddon, but it would have flowed down through the organization, at times, maybe Bob Constantine. Subsequent to Terry would have been Laurie Skinner as the deputy minister. And they would have been heavily involved with us as we went through credit rating agencies, work we were doing with PwC and those types of things.

And then the next one I'll talk to is the federal loan guarantee, because on that one, it wasn't as much Finance. It was more – I think the province had designated Charles Bown as the provincial contact on it. And that was probably more reflection of the fact that on the federal side the contact was the deputy minister of Natural Resources Canada, so it was sort of a deputy-to-deputy type of thing.

On that one – I probably described it in my interview – Charles and I were sort of attached at the hip on that one, and that – you know, I was sort of driving the – what we needed to do from a financing perspective. Charles was the primary contact with Canada, coordinating things back through the civil service and that type of thing. And I – and there wouldn't have been a meeting we had that he and I wouldn't have been there. In many cases, he would have one of his deputies or maybe someone from Justice there.

And then the other piece is on the Newfoundland agreements. So that would be the whole series of agreements between Hydro and the project. And on that, Rob Hull led it, but at the table on that one –

Oh, and before I do it – I just want to go back. On the FLG – Newfoundland also had their own legal counsel. So Borden Ladner Gervais, BLG, were at the table representing the province.

On the Newfoundland agreements, Rob Hull led the process with the team of, you know, people from Hydro and Nalcor with him. In that one in particular the province was heavily involved, so there would have been folks from NRCan constantly at the table on that one. And the province had also engaged White Ottenheimer Baker as their legal counsel, who would have been – I think John Baker probably was right through that process.

So there was heavy engagement on all those pieces. So –

MR. T. WILLIAMS: On interaction with the province –

MR. STURGE: Yeah.

MR. T. WILLIAMS: – all the way through the process.

MR. STURGE: Yeah. And it depended on the issue. It varied who it was and how it played out. But it was right through, yeah.

MR. T. WILLIAMS: Okay. So if we can go back to the early stages. I know you brought us through the –

MR. STURGE: Yeah.

MR. T. WILLIAMS: – basically the full project, but the early stages, I noted that – and in your testimony you had stated that he said listen, we worked well with Terry Paddon on the project, so it wasn't just us. Bob Constantine was probably involved as well. These would be the key people. You know, we were all aligned. They were heavily involved in the work that we were doing with Pricewaterhouse.

MR. STURGE: Yeah.

MR. T. WILLIAMS: So can you give us a little bit of history on the involvement – well, first of all, let's start with: What roll did Pricewaterhouse play, in the early stages, prior to –

MR. STURGE: So Pricewaterhouse –

MR. T. WILLIAMS: – DG2, we'll say?

MR. STURGE: – in the early stages, would've been doing two basic functions. One was, sort of, helping us getting our financial models in order to – a quality that we could take the lenders. But the more important piece, probably, was the strategy around financing, assessing the province's capability to put equity in, talking about things like, you know, the types of PPAs, the structured PPAs. They had a fair bit of input into what the regulatory structure needed to look like and those types of things.

MR. T. WILLIAMS: So I trust that, in any discussion regarding the financing the project, whether it be DG2, DG3, the province's injection of equity for be a crucial piece of that – those –

MR. STURGE: Yeah, that was –

MR. T. WILLIAMS: – discussions?

MR. STURGE: Right from the get-go, that was always a piece that was critical.

MR. T. WILLIAMS: And would it be fair to say that that wasn't something that fell under the gambit of Nalcor? You would be reliant on the Finance staff – the Department of Finance to do the assessments on equity, what their contribution would be, if they could afford it, those type things?

MR. STURGE: Totally reliant on Finance. We had no ability ourselves to assess that. That really had to be a Finance assessment, yeah.

MR. T. WILLIAMS: And I understand, from your direct evidence yesterday, that that was an ongoing process of, we'll say, from 2008 right up to DG2 in 2010?

MR. STURGE: Absolutely, and beyond, really.

MR. T. WILLIAMS: And would it be up to Finance to assess whether or not they would be making a debt injection in terms of their equity contribution or cash injection in assessing the province's ability to make those payments?

MR. STURGE: Absolutely, yes.

MR. T. WILLIAMS: Okay. And again, it would be the provincial team, that you've described earlier, from the Department of Finance that would've been involved in this?

MR. STURGE: That's correct, yes.

MR. T. WILLIAMS: So moving forward with the Finance piece, is it fair to say it would be a joint effort all the way up?

MR. STURGE: Very much, yeah.

MR. T. WILLIAMS: Okay.

MR. STURGE: Yeah. I mean, Finance would've been in the room with us, in the last day, when we priced the deal. So, you know, so …

MR. T. WILLIAMS: So they would've been there for the start, and they would've been there 'til the end?

MR. STURGE: Yeah.

MR. T. WILLIAMS: In different capacities –

MR. STURGE: Yeah.

MR. T. WILLIAMS: – I'm trying to say.

MR. STURGE: And I can't say they're at every meeting, 'cause that's not correct, but at key points along the way there, they were engaged, yes.

MR. T. WILLIAMS: And in terms of who had the lead on it – obviously, you've described a very close consultation process all the way through. But when it came into – to finalizing the financing piece, which would include the province's equity injection, would Nalcor have played the lead role in carrying those – setting up the meetings, you know, making arrangements?

MR. STURGE: We would've played the lead role, yes.

MR. T. WILLIAMS: Okay. So we would expect that it would be Nalcor that we would see in the forefront, yet any consultations would be as a result of joint work between the province and Nalcor?

MR. STURGE: Yes, and some of the key – you know, some of the key junctures along the way – and the two I point to always are the credit ratings in '11 and '12, because that's when, really, you know, your thought process crystalizes, and those are the parts of – the province was heavily, heavily involved in.

MR. T. WILLIAMS: Okay.

You made mention as well, during your testimony with respect to getting ready for the DG2 approvals, that you held meetings with the banks and some of the bond rating agencies in Toronto.

MR. STURGE: Yeah.

MR. T. WILLIAMS: And I think you mentioned that Mr. Paddon was in attendance –

MR. STURGE: That's correct, yes.

MR. T. WILLIAMS: – for those meetings as well.

MR. STURGE: Yes. Myself, Terry and Mark Bradbury, our treasurer at the time.

MR. T. WILLIAMS: Okay.

So they would have attended jointly, and the purpose of those meetings would have been what?

MR. STURGE: Well, it was sort of two fold. It was to, sort of, brief the lending group and the rating agencies on where we saw our path headed in terms of the project development.

But the more important discussion around that point really was around equity. Really, it was around ensuring that – and that's why Terry was with us, you know, because we really had to bottom out whether the – where the equity capabilities sat. So that was probably the most important part of those meetings.

MR. T. WILLIAMS: Okay.

And if you could explain for me, and I don't –

MR. STURGE: And I think somewhere – I hate to mention notes again, but I've probably got notes of those meetings.

MR. T. WILLIAMS: Okay.

So they would be notes – a paper trail of the meetings involving the provincial government and yourselves –

MR. STURGE: Yes.

MR. T. WILLIAMS: – in respect to financing issues?

MR. STURGE: Yeah, and those are largely described in the DG2 package, so you probably won't see anything different there.

MR. T. WILLIAMS: And that DG2 package that you'd indicated, and I think – I don't have it directly in front of me – but I think your language was: we put in a ton of work on that.

MR. STURGE: Yeah.

MR. T. WILLIAMS: There would've been (inaudible) the province in respect to that, as well?

MR. STURGE: Yeah, we would've had a, you know, fair bit of – I mean, it came together pretty quick in terms of, you know, getting a line and going to Toronto to have those meetings, but I think we met with all the right people and, I think, got the right input.

MR. T. WILLIAMS: And I'm kind of talking in the global sense now.

MR. STURGE: Yeah

MR. T. WILLIAMS: When you're having these meetings, these early stage meetings, the pre-DG2 –

MR. STURGE: Yeah.

MR. T. WILLIAMS: – meetings, would these be to get a sense or a feeling from the financial institutions as well as the banks as to what they would be prepared to advance in respect to financing on the project?

MR. STURGE: Well, you know, at that point – at DG2 we weren't actually asking the bank – because you know, it's hard to show up and say here's, sort of, conceptually what we want to do. What do you think? I mean, they'd need to do a lot more work to really give a perspective, and we weren't really asking that.

But what we were saying is, you know, conceptually here's what we're looking at. I think we got some feedback on the general availability of debt financing in the market, and we got some good feedback on where the province is and what factors could influence the province's ability to put equity in.

MR. T. WILLIAMS: So I trust between the 2010 and 2012 period – the DG2 to DG3 approval stages –

MR. STURGE: Yeah.

MR. T. WILLIAMS: – that things were gearing up fairly substantial, that you were getting a lot more information with respect to –

MR. STURGE: Absolutely.

MR. T. WILLIAMS: – you know, numbers, and there was an ongoing reassessment and reassessment of costing –

MR. STURGE: Yeah.

MR. T. WILLIAMS: – as well as financing requirements.

MR. STURGE: Yeah. I mean, the financing thinking at DG2 was not as mature – nearly as mature as it became through 2011 and '12, absolutely.

MR. T. WILLIAMS: And I trust that the level of scrutiny required at DG2 would not be the same as would be required at DG3, obviously.

MR. STURGE: Oh, absolutely. Yeah. Yeah.

MR. T. WILLIAMS: And the finalizing of numbers – whether it be financing numbers, costing numbers – would be of a larger review stage at that before you got into the very finite analysis of costing, financing, equity – those aspects.

MR. STURGE: Yeah. I don't – I think you're – we couldn't have sanctioned the project in 2012 on the basis of the level of financing work we'd done at DG2, for example. We just wouldn't have had done enough for –

MR. T. WILLIAMS: So when –

MR. STURGE: I think we'd done enough for DG2 but not for DG3. We wouldn't (inaudible) –

MR. T. WILLIAMS: Okay. So at DG3, when you go back to the banks, and you go back to the bond rating agencies, you have a lot firmer package I trust? (Inaudible) –

MR. STURGE: Absolutely.

MR. T. WILLIAMS: Okay.

And would that package then have to require what – I appreciate that your division wasn't responsible for base costing or estimates. Would you need to have that information available for the banks at that stage, at DG3?

MR. STURGE: Yeah. And then at that stage the – because the level of cost then drove a couple of things. It drove, you know, the debt-service coverage ratios and the – how they would assess the risk of the project, but also, it drove the level of equity. So it was important.

MR. T. WILLIAMS: So when you're meeting with the banks – and you mentioned, I think, there was a separate group that would deal with the costing issue. That wouldn't fall under your aspect. But the whole issue of – it was a two stage – while distinctly different, there was two aspects that the financial institutions would have to look at. They would have to look at costing, and then they would have to look at financing that cost. Would that be a fair assessment of the process?

MR. STURGE: You know, I don't think the lenders themselves would have done a deep dive on the cost. I mean, they were – they had no expertise to, themselves, critically say whether it was right or wrong either. I mean, in some regards they had to trust us on that, but their trust in us on that was – you know, I mean, they do a sufficient amount of diligence, but they're not themselves – but how it played out is Canada hopefully did that work, and Canada did it with the perspective of the independent engineer.

MR. T. WILLIAMS: And maybe you could – we'll move on to that – maybe you can explain that, 'cause I was missing that piece yesterday.

MR. STURGE: Yeah.

MR. T. WILLIAMS: You know, you think when you're going out to get a mortgage on a house –

MR. STURGE: Yeah.

MR. T. WILLIAMS: – they won't give you the mortgage without the appraisal.

MR. STURGE: Yeah.

MR. T. WILLIAMS: They make sure that the money they're advancing –

MR. STURGE: (Inaudible.)

MR. T. WILLIAMS: – is sufficient for the cost, so I can't see how –

MR. STURGE: Yeah. So just to use your analogy. So you go out to get a loan, and your father is going to guarantee your loan. So at that point they give you the loan, but they're going to do the diligence not on you; they're going to look at your father's financial situation, you know?

MR. T. WILLIAMS: Sure. Yeah.

MR. STURGE: And that's essentially what happened in a nutshell, you know.

MR. T. WILLIAMS: Okay.

And now, let's take it back, because yesterday – and I may have misunderstood your evidence, and listen, clarify me if I'm wrong, but I thought we were talking about the shadow assessment. And to satisfy the federal government loan guarantee –

MR. STURGE: Yeah.

MR. T. WILLIAMS: – one of the three elements we had to do – three elements, if I remember correctly, was the regional partnership –

MR. STURGE: Yeah.

MR. T. WILLIAMS: – the carbon issue, as well as the fact that this was a standalone project, so that we had to be able to establish if we couldn't get the federal loan guarantee, we could do this in and of itself, and I would think that the issue of the loan guarantee wouldn't be there for the banks and that we were able to reach that pinnacle. Is that correct?

MR. STURGE: That is correct, and the whole issue of assessing, you know, whether it could stand alone on its own was important to Canada, but it was equally important to us, because we did not have any guarantee that we were getting that federal loan guarantee until the bitter – it could have fallen apart at any point and almost did several times.

MR. T. WILLIAMS: Okay.

MR. STURGE: So we had to be prepared to finance it without a guarantee as well.

MR. T. WILLIAMS: Okay.

But I trust there has to be some due diligence by TD, Scotiabank, Bank of Montreal, RBC – these groups that are going to extend literally billions of dollars – that we have to come in here with a cost estimate that's three times the value of the project that (inaudible).

MR. STURGE: It was, but it played out in a strange fashion just because of the structure.

So TD, their diligence in the final structure – they would – their only diligence really would have been is the guarantee enforceable, do they have the AAA credit ratings. The diligence, which was significant, would have been – would have taken place by Canada, because ultimately, Canada took the risk, and it was Canada that would decide, ultimately, whether we are in default or not, so they had to hammer on that and had the risk.

But Canada did the diligence. So Canada would have had their legal counsel, their financial advisors and the independent engineer as their team helping them assess the risks of the project.

MR. T. WILLIAMS: Okay.

MR. STURGE: Yeah.

MR. T. WILLIAMS: And I'll probably move to that as the next step, but just to leave – while we talk about the banks, what kind of due diligence work does a credit rating agency have to look at in terms of substantiating cost factors when assessing whether or not, you know, a lender is prepared to advance money?

MR. STURGE: Yeah, I think the credit rating agencies – again, they're not equipped. I mean, they're not experts in the capital costing, so to some extent, they have to rely on the numbers they're given. They have the – I mean, they have enough wherewithal to make their own assessment, but I don't think it's an assessment of the quality that the independent engineer would have ultimately gave Canada as the lender.

But I think from a rating perspective – I mean, where the rating really set is – the rating came together on two pieces. One was that we had a cost-flow mechanism that gave us certainty to recover the cost and, secondly, that the province was backing the equity. Those ultimately became the two key factors that the rating agencies moved on.

MR. T. WILLIAMS: So with respect to the moving forward to the federal loan guarantee – 'cause that seems to be the blanket that covered everything off. And that they were going to – at the end of the day, they could possibly be the ones that could be called with respect to the finance.

MR. STURGE: They held the risk, yeah.

MR. T. WILLIAMS: They held the risk?

MR. STURGE: Canada did, yeah.

MR. T. WILLIAMS: So what due diligence would they do, and how long did that process take for them – from start to finish kind of – to do the assessment?

MR. STURGE: Canada?

MR. T. WILLIAMS: On Canada.

MR. STURGE: So Canada would've – you know, they – I mean, there was various stages. They would've done a period of two or three months of due diligence in 2011, in making the decision to give us the guarantee, and then they would've went through – I would say – I would categorize it as they're sort of doing diligence continuously throughout the term-sheet negotiation.

MR. T. WILLIAMS: Okay.

MR. STURGE: Because they had their financial advisors; they were reviewing our models; they were replicating our models; they had their own legal advisors who had pretty deep financing experience. And that would've played out through the term sheet. After the term sheet, once we got into 2013, they would've now had their independent engineer on board, who would've been doing a much deeper dive on all of the execution, costing, schedule, you name it.

MR. T. WILLIAMS: I trust that when we say independent engineer, we're not talking one person with a hard hat. He would have a team (inaudible) –?

MR. STURGE: Yeah. It was MWH at the time, and they would've had a team of people. They would've had a lead person, but they were a large entity, yes.

MR. T. WILLIAMS: Okay, and they would've then met with the project management team of Nalcor with respect to diving into the numbers?

MR. STURGE: They would've looked at all – at cost; they would've looked at financial models; they would've pretty well looked at everything. If you look through their independent engineer report, it was pretty, you know, expansive in terms of the range of things it looked at, yeah.

MR. T. WILLIAMS: So at the end of the day – and I believe you said – was it when (inaudible) December of 2013 when financing was finally put to bed?

MR. STURGE: Financial close in 2013, yes.

MR. T. WILLIAMS: So as of December of 2013, the federal government had satisfied themselves that they had gone through all elements of this project, and based upon their assessment, they were prepared to extend a letter of guarantee – and I'm talking very simplistic terms –

MR. STURGE: Yes.

MR. T. WILLIAMS: – I realize – but they were prepared to cover the costs of that project if the event the province was default?

MR. STURGE: They were willing to take the risk, yes.

MR. T. WILLIAMS: Okay.

MR. STURGE: And they would've had the benefit of the independent engineer report at that point, yes.

MR. T. WILLIAMS: Okay.

And the financial institutions – being TD, Scotiabank, RBC, BMO and all the other individual lenders – would've relied on that assessment for their portion of the monies that they would invest?

MR. STURGE: They didn't as much rely on this estimate as – it was more – probably put that they didn't have to rely on it. They had to rely on the strengths of the guarantee and the enforceability of the guarantee and that type thing, so –

MR. T. WILLIAMS: Okay.

MR. STURGE: – but knowing that Canada would've, behind the scenes, had done that work.

MR. T. WILLIAMS: All that work, okay.

MR. STURGE: (Inaudible.)

MR. T. WILLIAMS: There's been some suggestion – I'm moving away from –

MR. STURGE: Yeah.

MR. T. WILLIAMS: – that line of questioning now.

There's been some suggestion early in the Inquiry that the Muskrat Falls Project was a done deal, right from the start, from, you know, 2003 onwards, this was full steam ahead, we're gonna do this, do what we gotta do, to make this project work.

In your direct evidence, you allowed that, even in your early stages, you were looking at other alternatives, that you kind of had it – an open book to – of options to look at.

Would that be a fair assessment?

MR. STURGE: Yeah, I mean, I think, yes, there were other options looked at, and I think – you know, I don't think it was any secret that there was a will to develop the Lower Churchill if it made sense.

You know, I mean, I – to say it –

MR. T. WILLIAMS: But if it made –

MR. STURGE: – otherwise –

MR. T. WILLIAMS: – sense?

MR. STURGE: But it made sense.

MR. T. WILLIAMS: Okay.

MR. STURGE: So you know, I mean, I think we all went through the highs and the lows of the Lower Churchill over a period of six or seven years, and I don't think – you know, for someone who lived through it, I never felt that this ever – ever – was a slam dunk, you know.

MR. T. WILLIAMS: I think you mentioned in your direct evidence, in that you didn't feel – you didn't know which way – or you were doing assessments on aluminum smelters; you were doing assessments on Gull Island; you were doing assessments on Muskrat.

MR. STURGE: Yeah.

MR. T. WILLIAMS: But that it wasn't 'til the term sheet was actually signed with Emera that you had a sense of confidence, that you knew the project that you were going ahead on – I think, to use the words in your interview with – at that point, it was all decks on hand – all hands on deck, sorry.

MR. STURGE: Yeah, yeah. I mean, that was the first time we had any degree of certainty or clarity, and even then, we had still a lot of risk, but I think – you know, at that point, I think the general feeling was that if the business case that supported DG2 continued to generally in directionally – in that same direction, that it should be a similar outcome at DG3, directionally.

But I don't think anyone knew that for certain, and there was still a lot of moving pieces that needed to be dealt with, you know?

MR. T. WILLIAMS: Okay.

MR. STURGE: But there was more certainty than ever at that point.

MR. T. WILLIAMS: Than ever at that point. And that would've been at what date?

MR. STURGE: That would've been November 2010, at that point.

MR. T. WILLIAMS: Okay.

MR. STURGE: That was probably the – you know, and from August at that point, I think – from the point we started that discussion with Emera, I think we could see the end was, you know, you could see the end – at that point, you could see that we were probably gonna get to a conclusion with Emera, but up 'til that point, it was total uncertainty.

MR. T. WILLIAMS: Okay. And around that period of time was when the project moved through DG2 –

MR. STURGE: Yes.

MR. T. WILLIAMS: – I trust, in December, and we've touched about the issues on management reserve and you didn't have any knowledge of that at that point in time, obviously, or up until the point

MR. STURGE: Yeah.

MR. T. WILLIAMS: – of the Grant Thornton report. Do you know whether or not any elected government officials would have had any knowledge of that management reserve at that point in time?

MR. STURGE: You know, and I've asked myself that question, because – and I think Ms. O'Brien asked me yesterday – as I don't recall being in a meeting where it was discussed, or I would have been aware of it myself, you know? So I – in that case, I can't, but I can't say that they weren't aware, but I can't say yes, I was in a meeting where they were told of it.

MR. T. WILLIAMS: Okay, yeah. And the last question I have – Mr. Budden spent a fair amount of time on his cross-examination with respect to the risk structure and whether or not there was concerns regarding the risk structure.

Are you aware of whether or not there has been any change in the corporate risk structure since Mr. Martin has left, Mr. Marshall has taken over – has there been any change to the corporate structure –

MR. STURGE: Not from a risk perspective, no. It still reports up through the project where the ultimately – you know, ultimately the accountability resides with Gilbert (inaudible).

MR. T. WILLIAMS: Okay. In terms of the senior corporate team, being yourself and others –

MR. STURGE: Yeah.

MR. T. WILLIAMS: – has there been any substantial changes in that format since?

MR. STURGE: Nothing substantial. Some duties have moved around, but it's essentially the same people in the seats, yeah.

MR. T. WILLIAMS: In the position.

Okay. Thank you very much. That's all the questions I have.

THE COMMISSIONER: Thank you.

Julia Mullaley, Charles Bown?

UNIDENTIFIED MALE SPEAKER: Commissioner, counsel for them is not present.

THE COMMISSIONER: Oh, okay.

Robert Thompson?

MR. COFFEY: No questions.

THE COMMISSIONER: Okay.

Todd Stanley, Terry Paddon?

MS. VAN DRIEL: I think that's on or –

MR. STURGE: Yeah, I think it is, yeah.

MS. VAN DRIEL: (Inaudible.)

MR. STURGE: No, it's off now.

MS. VAN DRIEL: And now it's on, thank you.

Good morning, Mr. Sturge.

MR. STURGE: Good morning.

MS. VAN DRIEL: My name is Gerlinde van Driel. I'm counsel to Terry Paddon and Todd Stanley, and I just have a few questions or maybe clarifications here.

So your evidence is, as I understand, we've heard it a few times, that you had no involvement in the assessment of capital costs?

MR. STURGE: Correct, yes.

MS. VAN DRIEL: Correct.

And when – if Mr. Martin said this is the capital cost, you accepted that?

MR. STURGE: Generally, yes. I had no reason not to.

MS. VAN DRIEL: And whether or not that would have included this concept of strategic risk costs or tactical risk costs, you didn't deal with that?

MR. STURGE: No.

MS. VAN DRIEL: No.

So when – at DG2, you were told – or you understood that the capital cost was five billion?

MR. STURGE: Yes.

MS. VAN DRIEL: Right.

And then at DG3 you were told the capital cost was 6.2 billion?

MR. STURGE: That's correct, yes.

MS. VAN DRIEL: Right.

So what I'm leading into is that we've heard a lot of talk about this contingent equity, and it appears to have been identified at DG2 to be between 300 and 600 million.

I'm just interested in knowing where did this number come from? Who determined this number?

MR. STURGE: You know, I'm not a hundred per cent certain, but I think it may have been some combination of PwC and Westney? I – and I think there – they may have done some work in terms of projects that get financed – sort of, what range. That was my understanding, but I can't categorically say that's the case –

MS. VAN DRIEL: Okay.

MR. STURGE: – but it – 'cause it was a long time ago, but it came somewhere out of that type of discussion.

MS. VAN DRIEL: So it's not in a –

MR. STURGE: But my understanding –

MS. VAN DRIEL: Sorry.

MR. STURGE: – it wasn't meant to be strategic risk, but I have a sneaking suspicion others may feel differently on that, I don't know.

MS. VAN DRIEL: Right, yeah. But it's not a number that came from government to you?

MR. STURGE: No, no.

MS. VAN DRIEL: No. Okay, so my other question is – so we now have this contingency identified between 300 and 600 million, and I believe, even at DG3, it was estimated to be around 500 million. It's – I think it's –

MR. STURGE: Are you talking about the strategic –

MS. VAN DRIEL: I'm still –

MR. STURGE: – risk?

MS. VAN DRIEL: No.

MR. STURGE: No?

MS. VAN DRIEL: I'm still talking just contingent equity.

MR. STURGE: I don't recall at DG3 there ever being a number placed on contingent equity. I don't recall that.

MS. VAN DRIEL: No?

MR. STURGE: No.

MS. VAN DRIEL: Okay.

So tell me, at what point do we dip into this contingent equity?

MR. STURGE: We dip into contingent equity, essentially, when – so I'll give you a simple example just to make the math work.

If the project cost is 6 billion, and you financed it – and I'm not using exact numbers here, for simplicity – and you financed it with – or maybe I will, just for simplicity – 6.2 billion. And (inaudible) – well, let me use the real numbers at DG3, so I'm not – if you use 7.4 billion, with financing costs added to the 6.2 billion, and we know that of that 5 billion was gonna be debt – so another 2.2 billion had to come from equity – some combination of Nalcor, Emera.

The minute that –

UNIDENTIFIED FEMALE SPEAKER: Sorry, 2.4 billion.

MR. STURGE: Two point four – (inaudible) – somebody's keeping me – now you know why I can't add. So 2.4 billion.

And the minute that you have a cost overrun – so the minute that the final forecast cost goes above 7.4 billion, that additional has to be then funded by equity. So the debt is capped, and anything beyond that is equity.

MS. VAN DRIEL: All right.

So how does it work from the moment, say, the estimated cost, 6.2 billion in –

MR. STURGE: Yeah.

MS. VAN DRIEL: – at DG3 – at sanction, even. So how does it work? We have heard evidence that the cost was funded –

MR. STURGE: Yeah.

MS. VAN DRIEL: – and then – so once it is funded, how does it work on a – you know, in terms of a cash-flow basis or how do you divvy out the money that has come in?

MR. STURGE: So you mean the flow of cash from the province or…?

MS. VAN DRIEL: Yes.

MR. STURGE: Yeah. So what happens is there is a schedule of expenditures and then – and for each of those monthly expenditures, there would be a calculation based on the formulas and the financing agreements of how much is equity, how much is debt. And if you're already into a cost-overrun situation, at some point in that – during the year, usually in December of the year – you're funding what is called a COREA, which is the cost-overrun account.

So the project entities would make a cash call every month – two cash calls, really: one would be to TD as the collateral agent for – to draw down a portion of the debt funding; the second one would come to Nalcor for equity. And then we would then turn around and make a similar corresponding request to the province for equity equal to that.

MS. VAN DRIEL: Right, so at the current time, have we already dipped into this contingent equity?

MR. STURGE: Oh, yes. I mean, we would've been funding contingent equity as far back as 2014. Effectively, the first time we had a cost update in – it was June or September of 2014, which I can't remember exactly. At that point, the final forecast cost would've went above 7.4 billion, and we would've then been funding any additional as equity.

MS. VAN DRIEL: So –

MR. STURGE: And prefunding it then.

MS. VAN DRIEL: So going back for a moment to DG5 – sorry, DG – we don't – we are not – hopefully never going to be there.

MR. STURGE: That's the decommissioning.

MS. VAN DRIEL: Yeah, that's decommissioning, sure.

No, DG2. What was the equity at that time that the province was going to contribute based on the figures of DG2?

MR. STURGE: At DG2, the numbers we were looking at – and I talked a little about yesterday – the numbers at DG2 were around three billion, we were looking at, at that point.

MS. VAN DRIEL: The –

MR. STURGE: Three billion at DG2.

MS. VAN DRIEL: Okay, three billion in equity all coming from –

MR. STURGE: Equity, yes.

MS. VAN DRIEL: Yes.

All coming from government?

MR. STURGE: It could've ended up being a combination of some from Nalcor's existing operations, but effectively, yes, government, yes.

MS. VAN DRIEL: Okay.

So we saw some notes earlier this morning from you, and it was a note of April 23 –

MR. STURGE: Yes.

MS. VAN DRIEL: – 2011. And thee was a meeting of the premier, the – yourself, I think, was there.

MR. STURGE: Yeah.

MS. VAN DRIEL: Anyway, it was your notes of that meeting.

MR. STURGE: Yes.

MS. VAN DRIEL: But there was a note –

MR. STURGE: Yeah.

MS. VAN DRIEL: – where it wasn't so much about the content of the meeting. It was more like a to-do list –

MR. STURGE: Yeah.

MS. VAN DRIEL: – or things to be looked at. And one of the notes, of course, I was struck by, was that – talk to Terry Paddon on the equity piece.

MR. STURGE: Yeah.

MS. VAN DRIEL: What was that about?

MR. STURGE: Yeah, so what was happening at that point in time – that was April 2010, so we would've had a meeting with the premier and the minister and others, and one of the things we would've likely talked about in that meeting would've been that concept of trying to suss out what was the maximum amount of equity the province could put in at that point. And this would've been – I suspect what was happening here is the premier said: We need to bottom out that number, so, you know, go and, you know, meet with Terry, see if you can bring this to a conclusion, this sort of discussion, right?

MS. VAN DRIEL: Right, yeah, and to your – can you remember, was that brought to a conclusion (inaudible)?

MR. STURGE: I remember – I'm pretty certain we did have a meeting with Terry after that, and hopefully it did be brought to a conclusion because we ultimately went to the lenders and the rating agencies in September of that same year. So at some point we would've arrived at that was a reasonable approach, yes. Yeah.

MS. VAN DRIEL: Right, do you remember what the number was?

MR. STURGE: Well, the number we ultimately went to the rating agencies with was the three billion.

MS. VAN DRIEL: Okay.

MR. STURGE: Yeah. Now, at this point of – and I'm just trying – the only reason I hesitated, then, is this is April 23, and we were still probably just coming off the moving away from Gull to Muskrat, so we were probably a little bit in between at that very point. But we were now starting to move towards the Muskrat number, yes.

MS. VAN DRIEL: Okay.

These are all my questions. Thank you.

MR. STURGE: Thank you.

THE COMMISSIONER: All right, Consumer Advocate?

MR. STURGE: Your mic. Good morning.

MR. HOGAN: Good morning. My name is John Hogan. I'm counsel for the Consumer Advocate.

I just want to go back and talk – ask you a few questions first about the recall power.

MR. STURGE: Sure.

MR. HOGAN: You're familiar with that.

MR. STURGE: Yeah.

MR. HOGAN: You talked about it yesterday with Ms. O'Brien.

Do you know when the date when Nalcor – I guess it would've been Hydro at the time – obtained that recall power?

MR. STURGE: I think the original – and I wasn't at Hydro when that happened, but I think the original agreement was, I recall, 1998, and I think there were maybe one or two renewals of that, and then the final one with Quebec expired in 2009 – April 2009. I think it had been a three- or four-year deal at that point. So there may be a couple of – but I think 1998 –

MR. HOGAN: The first agreement was 1998.

MR. STURGE: '98, I recall.

MR. HOGAN: And then so it's not a permanent agreement. It's – this has been –?

MR. STURGE: I think it had terms of three or four years and – you know.

MR. HOGAN: Okay.

So first, 1998, and do you know when the revenue first started flowing for that recall power?

MR. STURGE: I suspect it was around '98, I'm thinking. You know, I can't say that for certain, but I recall it was somewhere around there that it was initially put in place.

MR. HOGAN: Right. And, sorry, when did you start at Nalcor or Hydro?

MR. STURGE: I left in '96 and returned in 2006. So it would've been while I was somewhere else.

MR. HOGAN: So around – what's your knowledge of where that revenue went to? I'm wondering if (inaudible) –

MR. STURGE: So what was happening with that revenue at that point is the province – or Nalcor – or Hydro, at the time – was paying a dividend to the province, pretty well equal to that recall. It was just a flow-through effect –

MR. HOGAN: So the cheque, for lack –

MR. STURGE: Yeah.

MR. HOGAN: – of a better word, came into Hydro?

MR. STURGE: The revenue came to Hydro from Hydro-Québec, and we would have – whatever the net – because we had some power-purchase expenses related to it, so the net probably would have (inaudible) –

MR. HOGAN: So the dividends that were being paid to the government was essentially the value of the recall revenue?

MR. STURGE: Essentially, yes.

MR. HOGAN: Essentially.

MR. STURGE: Yeah.

MR. HOGAN: Okay. Was there anything else that was factored in that or was that what it was?

MR. STURGE: Whatever costs we would've had related to it, and there wouldn't have been a lot of costs. It would have been the power purchase.

MR. HOGAN: And do you recall what it was annually?

MR. STURGE: My recollection is that it was – when I came in 2006, it was somewhere between 45 and 48 million, I think, somewhere around there.

MR. HOGAN: Is that –

MR. STURGE: A year.

MR. HOGAN: And so would the dividends have been this – that same number?

MR. STURGE: Yeah, around that number.

MR. HOGAN: Okay. And you said there was a request made by Nalcor to the government to stop sending the dividends?

MR. STURGE: That's correct.

MR. HOGAN: For seed money?

MR. STURGE: For the fund development.

MR. HOGAN: Of Nalcor?

MR. STURGE: Yeah. Yeah.

MR. HOGAN: And that did happen?

MR. STURGE: That did happen.

MR. HOGAN: Do you know around what year that happened?

MR. STURGE: The first request on that would have been, I'm thinking, like, early 2006. It was just before I got there, so I'm thinking maybe February, and I think we may have paid maybe one month in – yeah, we may have paid one or two months in 2006, and from then on, we haven't paid any dividends.

MR. HOGAN: And did you pay the dividends on a monthly basis? Is that how it worked?

MR. STURGE: I believe they were monthly. But again, I wasn't there, so I'm not –

MR. HOGAN: Right.

MR. STURGE: – (inaudible) but I think they were, yeah.

MR. HOGAN: And since the dividends have stopped, have they been reinstated?

MR. STURGE: No, because we continue to use that money for reinvestment.

MR. HOGAN: Okay. And does any money flow from government into Nalcor for investment purposes?

MR. STURGE: Oh, absolutely. We would have had, you know, over the course of – I would say since – the first approach we made to government on equity was, I'm thinking, 2008, and maybe the equity flowed in 2009, and it was originally driven by the oil deals.

So I think Hebron might have been the first approach we made to government and – (inaudible) of the Hebron investment, yeah.

MR. HOGAN: Okay.

So you gave some numbers yesterday to Ms. O'Brien about the value of the assets maybe when you got there compared to now. Can you just refresh those numbers?

MR. STURGE: The total assets have gone – the total asset base has gone from two billion to 18 billion, and included in the 18 billion is the Maritime Link, as well, so …

MR. HOGAN: Okay. But it's fair to say that since you've been there money has stopped flowing from Nalcor to the government, because the dividends have stopped, and the reverse has happened: money is now flowing from government into Nalcor?

MR. STURGE: That's correct. I don't think it's due to me, but that's –

MR. HOGAN: No, I didn't – did I say due to you? Since you've been there. Okay.

MR. STURGE: Just for clarity.

MR. HOGAN: No. That's fine.

And Ms. O'Brien asked you about the value of the assets, so what's the value of the debt for Nalcor?

MR. STURGE: So the debt of Nalcor – so there's 32 pieces –

MR. HOGAN: Thirty-two pieces?

MR. STURGE: There's two pieces, really. There's only two elements of the business. So on the LCP side, the debt is 7.9 billion. So the five and then the 2.9 in 2017. On the Hydro side, the debt is about a billion five, a billion six, I think.

MR. HOGAN: So what would be the total Nalcor debt?

MR. STURGE: So in total it would be – you add those two together, we're about 9.6, 9.5 billion.

MR. HOGAN: And do you recall what the Hydro debt would have been, say, 2006?

MR. STURGE: When I came there it was actually – it actually was higher, and it dropped after I got there. Then again, I can't take credit for it, but it did.

MR. HOGAN: It's a fact.

MR. STURGE: But it was around 1.4 billion, I think, at that point, and it was – probably had it capped out at that level.

MR. HOGAN: So assets have done up, but debt has risen as well?

MR. STURGE: Absolutely, yeah. As has equity.

MR. HOGAN: Sure, okay.

Yesterday you said the transmission costs on that recall power through Quebec was about 20 or 21 million.

MR. STURGE: Yes, yeah.

MR. HOGAN: Okay.

So do you know when that was initially booked, that value?

MR. STURGE: So –

MR. HOGAN: Like, when did you start booking it for the full year? That's my understanding, that's the value for the year is it?

MR. STURGE: Yes, that's an annual base and it's a regulated number by the Régie.

The first time – well we entered into the agreement in 2009, and I know it well, because I was leading the negotiation with Quebec at the time. It was April 1, 2009, we would have started that booking.

MR. HOGAN: So before that was it just sold –?

MR. STURGE: So prior to that, up until the end of March 31, 2009, when the contract expired, we would have sold power to Hydro-Québec at the Quebec-Labrador border for roughly four cents a kilowatt hour.

MR. HOGAN: Is it sort of like a spot market process? Is it the same as the –

MR. STURGE: You know, it was a price that sort of got fixed. So it wasn't linked to the market, and what had happened is that contract was entered into in probably 2005 maybe – 2005 or '06. It must be '06, because before I got there – '05 was before I got there.

But it was based on probably – maybe reflective of the market at the time.

What had happened is, in the intervening period while we were getting four cents, Hydro-Québec were probably getting at that point, eight or nine cents for power in the market. So there had become a disconnect between what we were getting and what they were getting.

MR. HOGAN: By 2009, you decided to book the whole 300 (inaudible)?

MR. STURGE: Well, so it's a little bit more complicated than that.

So the recall expired, and we entered into a negotiation with Hydro-Québec about, you know, how do we now move this forward to the next phase, and – you know, and our view is we wanted to start having a price that was more reflective of the market price versus a fixed price that may or may not be.

So we wanted to have that market piece, and you know, we were back and forth on lots of proposals on that with Hydro-Québec, you know, different options. At the end of the day, I think Hydro-Québec was willing to give us probably at market price, with some discounting for different factors and things, but they still wanted to sell it to us at the border.

So I mean, you know, it goes back to this issue of market access, really. So we made the decision somewhere throughout that process to actually apply for transmission through Quebec, and we got it, and it was really sort of a no-brainer in some sense in that we knew that path existed, 'cause Quebec had it today, so when we applied to HQT, they had little reason not to give it to us, so they did provide us with that booking.

We booked it – we booked the transmission, 265 megawatts from Labrador to New York, and then we made the decision, concurrent with that, not to renew with Hydro-Québec and to actually bring the market – or power to market ourself.

MR. HOGAN: Right.

MR. STURGE: And we did at that point through Emera; Emera was our agent at that point.

MR. HOGAN: So I'll ask about Emera.

MR. STURGE: Yeah.

MR. HOGAN: So what was the year that was – that decision was made –?

MR. STURGE: That was in – that decision was made in – ultimately in February, March 2009.

MR. HOGAN: You booked the yearly transmission. Is it done on a yearly basis, or was it –?

MR. STURGE: No, no, we get – I can't remember how we bill it, but it's – I don't think we would've booked the full transmission 2009. I think it would've been a partial year.

MR. HOGAN: Do you do that now though?

MR. STURGE: Yeah, we – every year now, you know, we have $20 or $21 million of transmission (inaudible) –

MR. HOGAN: So it's done on a yearly basis, my – is my question –

MR. STURGE: Yeah, I'm not sure if it's paid yearly, but it's – the cost is – you know, it's based a number per megawatt hour booked.

MR. HOGAN: Can you decide to stop that if you want, or is that – are you locked in for –?

MR. STURGE: No, we lock in on a term. I think our existing one was renewed a few years back, and it might be five years, or it might be 10. I can't – but you book it for a period of time.

MR. HOGAN: There is a booking –

MR. STURGE: There is a period –

MR. HOGAN: – that will end?

MR. STURGE: Yeah, yeah.

MR. HOGAN: Okay.

Just – the Commission, I don't think, has heard about the use of Emera to – as your agent –

MR. STURGE: Yeah.

MR. HOGAN: – to sell power.

Can you just describe that?

MR. STURGE: Yeah, so what happened in 2009 is – so up 'til 2009 we were doing the (inaudible) – you'd deliver the power to the border, Hydro-Québec takes it and it was a simple transaction. So –

MR. HOGAN: Didn't matter to you where it went?

MR. STURGE: Didn't matter, and we didn't have – we weren't scheduling dispatching power, it was just whatever we had.

So in 2009, we made the decision to book our own transmission. So now the concept is that same power would flow over that transmission line into Massena; so now we would need to have an infrastructure, so we would need to have, you know, licences to get into those markets. We would need to have a marketing or trading desk infrastructure. None of which we had at that point.

So what we did is we made the decision to – and we interviewed, not just Emera, we interviewed four or five different people who could provide that service, and we went with Emera. And that was actually the first contact – commercial contact we really had with Emera. And Emera then became our agent. So they had an entity that did energy marketing and had all the licence into the US. They had the energy-trading desk, so they effectively took our power and marketed it into the US for us for a fee.

MR. HOGAN: For a fee.

MR. STURGE: Yeah.

MR. HOGAN: So they sell it for X and you sell it – you get X minus Y.

MR. STURGE: Yeah, so we're effectively paying them a fee for their trouble and to use their infrastructure and –

MR. HOGAN: Yeah.

MR. STURGE: – and the benefit of their licence.

MR. HOGAN: So do you know what that fee is?

MR. STURGE: I can't recall offhand now. It wasn't a huge amount of money, no.

MR. HOGAN: So now, you did say at some point over the last day and a half –

MR. STURGE: Yeah.

MR. HOGAN: – that Nalcor did develop its own energy-marketing department.

MR. STURGE: It did, yeah.

MR. HOGAN: So what's the – just explain why that was developed when you had Emera as your agent?

MR. STURGE: Yeah, so the logic on that was – is that – and the intent always was to develop an energy-marketing group on our own. And I think the move to Emera was a bit of an interim measure, because we'd made this decision in a short order not to renew with Quebec, and we needed somebody who was established.

So it did two things for us, one is that it satisfied the short-term need, but probably more importantly it – as Emera were doing this then we had a small team of energy marketing people starting to get really embedded with Emera and learn from Emera. So we were starting to get a bit of knowledge transfer from Emera. And at some point – I think it was around 2015 – we didn't – and we had planned this, so leading up to 2015 we had been building out our own infrastructure for energy marketing. Recognizing that at some point we're not only going to have the recall block, but we'd have a sizeable block from Muskrat to market.

So we built out our own infrastructure, and I think it was 2015 the relationship with Emera ended.

MR. HOGAN: Okay, so you don't use them for the recall marketing.

MR. STURGE: We don't use them at all.

MR. HOGAN: How big is the energy department, marketing department at –?

MR. STURGE: It's about, I'm saying, 15 to 20 people, that tight range.

MR. HOGAN: Okay. All right.

I just want to ask a couple of questions about the aluminum smelter –

MR. STURGE: Yeah.

MR. HOGAN: – efforts.

MR. STURGE: Yeah.

MR. HOGAN: I think you said Mr. Martin directed you to take that on – that file on.

MR. STURGE: He had asked me to look at it, but I think what had happened is we may have had – we may have been approached by some aluminum smelters. And I think before I had the file, Jim Keating had it for a short period of time, and Ed had asked me to take it, yeah.

MR. HOGAN: Are you aware if anyone at government directed Mr. Martin and Nalcor to look after that, or to examine that issue?

MR. STURGE: I'm not aware but I wouldn't be surprised. But aluminum companies could've approached the province as well, you know, so I don't know where those initial –

MR. HOGAN: I'll just put this to you, it seems a little –

MR. STURGE: – contacts came from.

MR. HOGAN: – cart before the horse to me.

Two things: I would suspect that Nalcor's role should be to fill the energy needs of the province and the government's role should be to, you know, make attempts to diversify the economy, create energy needs; not Nalcor to create the needs.

MR. STURGE: Yeah, I don't know. You know, I mean, in this case it was – I mean, clearly when you look at the obligation to serve in the province, there is that obligation. When we started looking at Gull, clearly that was something beyond just the obligation to serve, it was – we were now developing a project to be a provider of electricity, way beyond the domestic obligation to serve.

MR. HOGAN: I understand that and if you found an export –

MR. STURGE: Yeah.

MR. HOGAN: – for it, great. But why create the export? And why is that –

MR. STURGE: I don't know –

MR. HOGAN: – Nalcor's job?

MR. STURGE: I don't know if we were creating it as much as – you know, when you look at developing that size of block of power, you gotta have a combination of – I don't think that there was going to be one customer on that. I think if Gull ever happened it was going to be a combination of maybe three or four customers, of which aluminum could've been one. So at that point we were just exploring opportunities.

But I wouldn't have been surprised – and I don't know if this was the case or not – that the aluminum companies would've approached us. I suspect there was a bit of that as well.

MR. HOGAN: From your knowledge, no direction from government on that?

MR. STURGE: None that I'm aware of, but you know, that's not to say that one of those folks didn't initially approach government and government forwarded it our way, I – it's possible I suppose.

MR. HOGAN: Now, we know – and through your evidence, I think, as well – that the Quebec route collapsed around 2009.

MR. STURGE: I think – I would say it sort of – it was on – in 2009 it was starting to go on life-support and it collapsed in 2010.

MR. HOGAN: 2010, okay. Yeah, 2010 – fair enough.

Are you aware, prior to that, of any offer from Hydro-Québec for Nalcor to build transmission lines through Quebec? So Nalcor would build the transmission lines?

MR. STURGE: Nalcor (inaudible) build the transmission lines? I'm not aware. I think – I mean, the whole discussion we were having with Quebec was more around through their open access process and they would build transmission lines and we may pay a portion upfront and then some through the tariff.

MR. HOGAN: That they – now, if there's no room on the lines, then Quebec obviously isn't going to give Newfoundland and Labrador access if there is none.

MR. STURGE: No.

MR. HOGAN: So an option would be for someone to build lines.

MR. STURGE: Yeah, and that's really part of the assessment process. So what happens is we would've went to Hydro-Québec TransÉnergie and we would've said – and I think there were several options – we might've said: Give us a study for 28,000 megawatts and 3,000 megawatts and 25,000 – whatever that range we provided.

So they would then go away and do a system study, and they would look at our product, where it's going from point A to point B, they would study that; what that means for their system. And if they have access available on their system, they would be obligated to provide that. And if that's not sufficient, they have to do a new build, then they would do that. And then they would come back to us and say –

MR. HOGAN: Sorry. They would do the build? Is that what you're saying?

MR. STURGE: They would do the build, yeah. And they would –

MR. HOGAN: For your energy? For your –

MR. STURGE: Yes.

So they would own it, and we would – might be some combination of us paying them an upfront amount and a tariff – ongoing. But they would do the build, yeah. And they would've come back with us and said: In response to your request A, B, or C, here's the financial arrangement in terms capital costs and tariffs.

MR. HOGAN: But you don't – you're not aware of any plan where Nalcor would do the build of transmission lines?

MR. STURGE: I don't recall us ever looking at ourselves building through Quebec. I don't –

MR. HOGAN: And that –

MR. STURGE: – (inaudible) wasn't discussed. I'm not aware of it.

MR. HOGAN: Maybe this number might ring a bell.

When former Premier Williams gave evidence, he mentioned a number of $3 billion; the discussion is about something with Hydro-Québec. And now, when I asked him about it he said he couldn't really remember what the 3 billion was for. Does that – you – your eyes sort of went up –

MR. STURGE: And Gilbert –

MR. HOGAN: Yep.

MR. STURGE: – is the guy who really knows this. But I'm generally aware that there was a 3 billion number that was, sort of, equated to one of Hydro-Québec responses to us, in that general range.

MR. HOGAN: So what was it then? Was there a deal – not in place – was there a deal on the table for 3 billion for something to go through Quebec?

MR. STURGE: No, Hydro-Québec – and again, I'm starting to get beyond my expertise now –

MR. HOGAN: Sure.

MR. STURGE: – so I'm gonna stop it soon.

MR. HOGAN: If there's someone else to ask, we'll ask them –

MR. STURGE: But Gilbert really – Gilbert is the expert on this and managed that whole file.

But they would've come back to us and said, here's – in response to your application, here is what we're proposing. And then there's a number of things that go into that. There's, you know, what new build they would have. It's – you know, are they fairly or adequately looking at and giving us the benefit of the existing capacity they have. And I think there was some discussion in that space that maybe we weren't totally aligned in terms of – that they were being fair on that, but that's as far as I can go.

MR. HOGAN: There's – something is ringing a bell about some project at a $3 billion value.

MR. STURGE: Yeah, there was something like that, yes.

MR. HOGAN: Yeah.

MR. STURGE: Yeah.

MR. HOGAN: Okay.

MR. STURGE: And that – I think that was one of the outcomes, but I don't want to go any further.

MR. HOGAN: We'll ask Mr. Bennett. Okay.

Ms. O'Brien asked you a few times and spent some time on it, the EEA.

MR. STURGE: Yeah.

MR. HOGAN: I'm not going to spend too much time on it, but someone said – and Ms. O'Brien put it to you that it was a win-win for both sides, went back and forth about pros and cons. At the end of the day, this is a numbers game, so I'm wondering if you can quantify the win for Nalcor in terms of numbers in that agreement.

MR. STURGE: I don't think I can quantify it. We looked at –

MR. HOGAN: It is about export sales, so –

MR. STURGE: It is about export sales, yeah.

MR. HOGAN: – there can be a number put on it at some point.

MR. STURGE: Yeah, you could – you know, I mean you'd have to make some assessment of how often you thought that Emera would accept our bids versus going to market. You know, so you would have to create a scenario: you know, do they accept it on all the times; do they accept it half the time?

MR. HOGAN: So was that done?

Any analysis saying, you know, we –

MR. STURGE: Can be certain there was work done around what it could mean for us, but we weren't entering into it as – if we got upside from, it was good, but we weren't saying that this was going to produce this, because it –

MR. HOGAN: So –

MR. STURGE: – really was upside.

MR. HOGAN: So to your knowledge there was no analysis done where it would have been –

MR. STURGE: Yeah, no. I wouldn't (inaudible) –

MR. HOGAN: – this is sort of our best-case financial scenario and our worst-case financial scenario if we enter into this agreement.

MR. STURGE: No, I wouldn't agree with that, because I think we would have looked at it from the perspective is that our alternative is that all this energy flows across the Maritime Link, flows through and goes to New England. So we –

MR. HOGAN: Yeah. No, I don't want to get into what Ms. O'Brien – I understand –

MR. STURGE: No.

MR. HOGAN: – that you could have sold it before, and now you –

MR. STURGE: (Inaudible.)

MR. HOGAN: – can sell it, and you have some certainty. But there was no, as far you know, financial analysis –

MR. STURGE: No, no, I can't say –

MR. HOGAN: Yeah.

MR. STURGE: – there was – no. No, I can't say that, no.

MR. HOGAN: Okay.

MR. STURGE: But we wouldn't have counted on it, for example. We would have had some assessment of what this could mean for it, but we wouldn't have been taking it to the bank as – you know, and relying on it, for example. It was upside.

MR. HOGAN: Do you know if the project would have proceeded if you hadn't been successful in getting the federal loan guarantee?

MR. STURGE: I think we would have, and you know – and the issue – so – and it's a complicated answer, so I need to give you a few slices of it. One is that we got the credit ratings, so the credit ratings said that we were investment grade, and they're solid investment grade ratings.

MR. HOGAN: Did you get those with the DG3 numbers? I just want to …

MR. STURGE: We did, yes.

MR. HOGAN: You did. Okay. Yeah.

MR. STURGE: We refreshed them with DG3.

So if you look at the things that drove those credit ratings – and I think it was Mr. Williams I mentioned this to – the two key factors were – one is the cost recovery mechanism that the province put in place, and the second is that the province was still funding equity. So those two things would still be in place so there's no reason to believe that we wouldn't have financed it. The cost would have been higher, right?

MR. HOGAN: The cost would have been higher?

MR. STURGE: So you would then have to go back and rerun your CPW, because you're now financing at what we would have estimated to be probably another, you know, two to 2½ basis points. So there would have been a higher cost, no doubt about it.

MR. HOGAN: I just wanna pick up on something, then. You said the, you know, the government had – you had that commitment for the ratepayers to, basically, provide security for the project, right?

MR. STURGE: Effectively provide commitments that were key in getting the ratings, yes.

MR. HOGAN: What were the other commitments, other than the ratepayers were the security for the payments?

MR. STURGE: So in terms of the lending itself, I mean – so if you look at it from Canada's perspective, the key things Canada would have looked at –

MR. HOGAN: No, I don't wanna look at it from Canada's perspective. I wanna look at it –

MR. STURGE: From …?

MR. HOGAN: – from the bank's perspective.

MR. STURGE: Well, from the – well, the – from the bank's perspective, though – the bank didn't look at it, 'cause the bank's only consideration was the quality of the guarantee, was it enforceable? So –

MR. HOGAN: Okay.

MR. STURGE: – the banks –

MR. HOGAN: So who cared –?

MR. STURGE: – (inaudible).

MR. HOGAN: That commitment letter, you said yesterday, was a key piece; you might have said it was the key piece – the commitment letter from the –

MR. STURGE: Yeah.

MR. HOGAN: – government saying that –

MR. STURGE: It was –

MR. HOGAN: – gonna be backstopped –

MR. STURGE: – a pretty important –

MR. HOGAN: – by the ratepayers.

MR. STURGE: – piece, yeah.

MR. HOGAN: So Canada relied on that?

MR. STURGE: Absolutely.

MR. HOGAN: Okay.

MR. STURGE: And the rating agencies would have relied on that.

MR. HOGAN: And the rating agencies –

MR. STURGE: Now, Canada did more than rely on that, because Canada, then, effectively said that, spinning out of that two-page commitment letter, there were a host of other agreements – or equity agreements. So it triggered a number of things.

MR. HOGAN: Well, let's sum that up, right? The 6.2 – or the $7.4 billion project –

MR. STURGE: Yeah.

MR. HOGAN: – single-largest financial structure in Canada, I think is what you said this morning.

MR. STURGE: The single-largest infrastructure financing, yeah.

MR. HOGAN: Yet the most important piece, and really the only piece of security, was the ratepayers.

MR. STURGE: It was a key piece.

But before I leave at that, I'm just – I'll give you another example of – there was a project – and the project that had been in the market just before us was a project in Ontario called Lower Mattagami developed by a partnership, selling power ultimately into the Ontario Power

Authority. And it was really relevant to us, because every time we went to the rating agencies, or the banks or lenders this was their most recent reference point of a large hydroelectric project.

And if you – as you look through that project, it's got a lot of the things that we've got. They would have a 50-year PPA with Ontario Power Authority, and what the 50-year PPA effectively does is it – it's structured a little bit differently than ours, but what it effectively does, it – is it – it says that – it's based on market pricing, but then there's a top-up on market pricing to ensure that it meets the debt-service coverage ratio.

So effectively, what the PPA does is it guarantees the debt-service coverage ratio required for financing. So in that sense, it's not really that much different than the structure we got in place.

MR. HOGAN: No, so – but I'm (inaudible) – I represent the ratepayers on – the Island ratepayers here.

MR. STURGE: Mm-hmm.

MR. HOGAN: And what I'm hearing is that the most important piece was the security given to Canada that the ratepayers would fund the project. Correct?

MR. STURGE: It was a very important piece, yes.

MR. HOGAN: And the second piece I'm hearing is even if we didn't get the federal loan guarantee, you would have funded the project anyways, putting the ratepayers on the hook for more money. Is that fair to say?

MR. STURGE: Only if the CPW still worked.

MR. HOGAN: Yeah, only if the – right.

MR. STURGE: Yeah.

MR. HOGAN: But at the end of the day, the dollar didn't matter as long – because the ratepayers were funding it. The federal loan guarantee didn't matter to the ratepayers –

MR. STURGE: Yeah.

MR. HOGAN: – because they were – it mattered that the cost would be lower, I understand that, but they were going to fund the project, right?

MR. STURGE: They were going to fund the project, because it was being built for ratepayers –

MR. HOGAN: Yeah.

MR. STURGE: – right? So if you sort of step back in the regulated world, and you look at Newfoundland Hydro, anything Newfoundland Hydro does, they do it solely because it's to benefit the ratepayer.

MR. HOGAN: But dad signing off on the mortgage isn't – is good for dad, because dad has someone else paying it?

MR. STURGE: Yeah, but still the benefit still has – there isn't really nowhere else for it to come except for a ratepayer, really.

MR. HOGAN: Well, I mean, maybe Nalcor had money; maybe the government had money. I mean, that's –

MR. STURGE: So just take – let's take an example here. Let's take Newfoundland Power as an example. I just use that because it's an investor-owned utility that we'd be familiar with. They would – as an investor-owned utility, they'd go out in the market, and they would get credit ratings, and the credit rating there is based on, largely, the same type things. It's based on the fact that it's a regulated entity and it has an ability to recover.

MR. HOGAN: Yeah.

MR. STURGE: Okay? Now, there is a risk on that, because there is some risk that they don't get recovery. So – but it's the same fundamental backstop that they borrow on. It's the basis that the shareholder puts equity in; they get an equity return; the customers pay the bills.

MR. HOGAN: But we'll leave it at that.

So – but there was no talk with the banks or with Canada about security through export contracts, because there was no export contracts, right?

MR. STURGE: There wasn't, but we purposely made the point – and the view is that from export perspective the banks won't – or in this case, Canada – they won't give much credit to any contracts unless they're long-term contracts.

And –

MR. HOGAN: Yeah, but they didn't exist.

MR. STURGE: They didn't exist.

MR. HOGAN: They didn't exist.

MR. STURGE: Because we were planning to go to market with the power.

MR. HOGAN: (Inaudible.)

MR. STURGE: And we purposely designed a thing around if the business case is supported – if the CPW is supported by just building Muskrat, then we didn't want to interfere with the exports sales at all with that. That was –

MR. HOGAN: So let's just – I want to – I think you said yesterday, and this is what you're talking about, you were going to go to market with it as opposed to have firm contracts, which gave you, what, more flexibility? It was a better option?

MR. STURGE: Yeah, because you know, if you look at that block of power, how it is initially structured, is over time, the excess we had from Muskrat continued to decline as we needed it on the Island, so we had to be careful about locking it into too long a term (inaudible) as well.

MR. HOGAN: Well, that confuses me for this reason –

MR. STURGE: Okay, maybe I can help you.

MR. HOGAN: Yeah.

We heard a lot of evidence about efforts made – and Premier Williams spoke a lot about it – efforts made to go to New England, go to Maine, go to Vermont, go to New York. You spoke about a cable through – under the Hudson River to get export contracts. Now, the position – years were spent on export contracts – trying to get 'em. Years. And now the position of Nalcor is – market's better. Spot market is better. Why did that change?

MR. STURGE: Yeah, no, I think the difference there is that most of those discussions were taking place in the context of Gull Island. So in the context of Gull, we needed the large anchor clients and just going to market. The only reason we can go to market now is because the predominant user of this project is the Island – the domestic customer. And the extra power is excess to their needs, so on that basis we can take it to market. If we were using this to finance the project or justify the project – we just couldn't take the project to market. You would have to have long-term contracts.

MR. HOGAN: That was going to be my next question. Would a financial institution finance a project with spot market?

MR. STURGE: No.

MR. HOGAN: No.

MR. STURGE: No. You would have to have – it could be a common – a mix of the portfolio but you would have to have one or two anchors that were long-term contracts.

MR. HOGAN: And again in this case the anchor was the ratepayer.

MR. STURGE: In this case the anchor is the ratepayer

MR. HOGAN: Yeah. Okay. How – do you know how many megawatts the Labrador Island Link is?

MR. STURGE: Believe it's 900?

MR. HOGAN: And how many megawatts coming from the Muskrat Falls generating station?

MR. STURGE: Peak capacity is 824.

MR. HOGAN: Okay. So how do you fill the line with the other 76 megawatts? Do you know that?

MR. STURGE: I'm stepping outside my bounds now – but the only thing I will say is it's not 824 every hour of the day, right? So, you know, and that's just the nature of our business is that you always end up building things for the peak but you always don't need the peak. Like, we build our system for the peak load on the coldest day of the winter but if you look at how much of that system we use in the middle of July – much less. So it's all about the peak really and you're building for peak.

MR. HOGAN: A peak would never go above 824 because that's all Muskrat can generate.

MR. STURGE: Yeah. I don't know the –

MR. HOGAN: That's engineering (inaudible) –

MR. STURGE: – technicalities of why – you know – I don't know if you build for the exact amount, I mean, Gilbert I'm sure can help on that one.

MR. HOGAN: Despite those credit agency presentations – Commissioner, do you want me to keep going – I'm going to be another few minutes but –

THE COMMISSIONER: Keep going.

MR. HOGAN: – we've gone for – over two hours. Keep going? Okay.

Who would do those presentations?

MR. STURGE: The credit rating presentations – who actually presented them – presenting of them or preparation do you mean?

MR. HOGAN: Presenting them.

MR. STURGE: Presenting? So it would have been the team of us and I think – just let's – can we flip to one of them that might help– the DG3 one. Might help me (inaudible). Let me see.

MS. O'BRIEN: There's one on October 2012.

MR. STURGE: Yeah, that'd be (inaudible).

MS. O'BRIEN: That's 00854.

MR. STURGE: 00854.

MS. O'BRIEN: And tab 26.

MR. STURGE: Yeah, so if you look at this, it's got a list of the folks that attended. And what would have happened there, I would have been sort of the lead on this file. So I would have presented part of it. Paul Harrington, in this case, would have presented all of the project execution. So if you look on the next slide you see the outline sections, section 4, Project Execution and Capital Costs, Paul would have presented.

MR. HOGAN: Yeah.

MR. STURGE: And then various other people would have presented, like Commercial Structures, Key Agreements – Rob Hull would've dealt with that one. Government Support, Charles slash Laurie Skinner would've spoke to that. Financing Strategy would have been some combination of Jim and Auburn, and I think Auburn dealt with Financial Metrics. So it was a number of people spoke, but –

MR. HOGAN: You were in charge.

MR. STURGE: I was sort of the lead person there.

MR. HOGAN: So who – you mentioned, who would have prepared the presentation?

MR. STURGE: So the presentation would've been prepared largely by that group and a broader group of advisors and it would have been prepared over like, a month period. We put massive amount of work into it, testing drafts, doing dry runs, you know, getting feedback from our advisors as to what rating agencies are expecting, and –

MR. HOGAN: Just members of the financial team?

MR. STURGE: No, in the case of part 4, Project Execution and Capital Costs, that would have been prepared by Paul and his team, yeah. So, you know, our advisors may have given some feedback originally in terms of the things they had in there are either things that the rating agencies won't want to see, or there's things that the rating agencies will want to see that you didn't have in. So there would have been that back and forth.

MR. HOGAN: Now Ms. van Driel, I think, was asking you about how you get the money from government –

MR. STURGE: Yeah.

MR. HOGAN: – overruns and – when you get it from TD or there's overruns, you go to government, you said the schedules are prepared. So the schedules should show what?

MR. STURGE: So at any point in time there would be – based on the latest cost estimate – there would be a spend profile by month right out to the end of the project, of how much cash is being spent each month.

MR. HOGAN: Yeah.

MR. STURGE: And then matched up with that would be a financing profile of – based on the debt/equity ratios and when you've exceeded those or whatever, how much is debt and how much is equity each month.

MR. HOGAN: So who prepares the schedules?

MR. STURGE: The schedules, the capital cost profile would come out of the project team –

MR. HOGAN: Yeah.

MR. STURGE: – 'cause they know when they're spending it. The overlay then in terms of the equity and debt, that would come out of Jim Meaney's finance team.

MR. HOGAN: Who approves them before they go to government and TD?

MR. STURGE: Jim would be the signoff on the cash call, effectively, Jim (inaudible).

MR. HOGAN: Not you, you don't –?

MR. STURGE: I ultimately, am sending it to government, but I'm not checking the numbers, I'm relying on Jim's team.

MR. HOGAN: You rely on Jim's team.

MR. STURGE: And no reason not to do that.

MR. HOGAN: And so who takes it to government? How does it get to government? Who does it (inaudible)?

MR. STURGE: So the way it goes to government is there's someone in the corporate – so a cash call comes up from Jim Meaney's finance team to Nalcor and one goes to TD as a collateral agent who are then – then there's a whole set of paperwork behind this – and they would release funds from the debt that they hold and it would come back.

On the equity side, it would come as a cash call from the – for each individual project entity – Muskrat, LTA, LIL – it would come up to Nalcor and then on to the province.

MR. HOGAN: So in to the Department of Finance?

MR. STURGE: No, it would go to Natural Resources, 'cause –

MR. HOGAN: (Inaudible.)

MR. STURGE: – they would be our –

MR. HOGAN: That's their department.

MR. STURGE: They'd be the budget holder for us in government.

MR. HOGAN: Now I heard some evidence about how members of Nalcor's executive team have a direct path to the premier's office – I'm probably being – putting words in peoples' mouths – are you aware of that or do you have any comments about that?

MR. STURGE: Yeah, you know, I –

MR. HOGAN: And skip the – sort of just – going over the head of Natural Resources.

MR. STURGE: – I watch that.

MR. HOGAN: Yeah.

MR. STURGE: No, I have a different perspective on that 'cause, in one regard, I – you know – I think you'd argue that if – if we're building this project, of this magnitude and we weren't meeting and updating the minister and the premier on a regular basis, you'd be kind of shocked, really. You know? I mean – I think that was – but my recollection of those meetings, and one of those I think is somewhere in my notes – is, I would say, for 2007 to '10, at least twice a year we were going off-site. One of those is described here. And the typical sort of attendees would be the premier, it would be Minister Dunderdale, it would've been the deputy of Natural Resources at the time, the Clerk of the Executive Council, some folks from the premier's office.

So it would have been – it wouldn't have been – I don't recall many meetings just like – or any, really – one-on-one with the premier. I don't recall that it would always been premier, minister. You know, I don't recall too many of that nature.

MR. HOGAN: Was there any back and forth when you would send those requests for funds to government?

MR. STURGE: No. Once – I mean, once we sanctioned and this process was laid out, it was a pretty standard process. It worked like clockwork, you know.

MR. HOGAN: So any time you sent a request the money came in.

MR. STURGE: Well they had no choice, really, you know, I mean.

MR. HOGAN: Yeah. Well, I mean, they could have questioned the numbers – do you really need this much –

MR. STURGE: Yeah, I mean I – you know, they weren't really in a position to question the monthly payment breakdown either because it was, you know – they had to place some reliance that we were doing – because it was laid – it was specified pretty clearly in the financial agreements –

MR. HOGAN: (Inaudible.)

MR. STURGE: – so it's not like it was us making it up, right?

MR. HOGAN: No, no, no.

MR. STURGE: And there were a bunch of certified – like the package that goes to the province, and I think it might be somewhere here – I saw it floating around – it's a pretty detailed package that goes to the province and I think it goes – same package goes to the oversight committee now, I'm pretty certain.

MR. HOGAN: Okay, but I mean it would have been up to them to question you or not question you. You're just saying that they didn't question you, the cheque came, right?

MR. STURGE: Yeah. Yeah, and they would have no reason to.

MR. HOGAN: You refer to the term equity when you get that money from the government.

MR. STURGE: Yeah.

MR. HOGAN: And you were asked yesterday by Ms. O'Brien how government got that money: Was it cash in the bank or did they borrow? And I think you said you didn't really know.

MR. STURGE: I knew at one point they were talking about having – funding a portion of it with cash. And I subsequently seem to recall that maybe all that cash wasn't available and so maybe they were borrowing more than they thought, but I'm not certain.

MR. HOGAN: You just – I just sort of see that term equity, if they are – if the government is borrowing it's a bit misleading to the public. Do you agree or disagree?

MR. STURGE: If you look at it holistically like that –

MR. HOGAN: I am looking at it holistically.

MR. STURGE: – then there is more debt, yeah. But from a – you know, we're looking at it from the project and how the project views it, it is pure equity.

MR. HOGAN: From Nalcor's perspective.

MR. STURGE: From Nalcor's perspective, yeah.

MR. HOGAN: From the public perspective, not –

MR. STURGE: Broader, holistically, yeah, there is probably more debt than the 7.9 I've talked about –

MR. HOGAN: Okay. Thank you.

MR. STURGE: – potentially.

MR. HOGAN: Mr. Williams was asking you about the DG2 numbers and I think you said, you know, you couldn't go to the bank with the DG2 numbers – the financial institutions, that wasn't sufficient. Is that what you said?

MR. STURGE: Well, yeah, I don't – well, I think two things are: We wouldn't want to go with DG2 numbers, I don't think anyone would; and secondly, I don't think that we had sufficiently fleshed out the financing at DG2, you know, to the extent you'd need to go and sanction and ultimately get financing.

MR. HOGAN: So that's interesting because Nalcor went to the PUB with DG2 numbers, so I'm wondering how you can reconcile that. You can't – it's not good enough to get the financing, but it's good enough to do a CPW analysis to get it approved.

MR. STURGE: Well, you know, I mean it was good enough to make the concept selection and – but …

MR. HOGAN: But how could it be good enough to make the concept selection if the numbers weren't fleshed out to the point that the banking institutions would look at it. Because what you're saying there –

MR. STURGE: Well, not only would the banking – they weren't fleshed out enough that we – I mean we knew that there was a lot more work to be done before sanction. I think that's no secret. You know –

MR. HOGAN: So why not wait for DG3 to go to the PUB?

MR. STURGE: I can't speak to that. All I know is that the decision was made to go at that point in time and you go with what you had. But I think, you know, if you look at – the one thing I do recall from that period is – as I remember Ed's view was that – and I don't think he had a view one way or the other as to whether it was right or wrong, but I think he – I recall clearly his view was that if we are going to the Public Utilities Board on this, we have to have clarity when we go through sanction. So we can't go through sanction and then be in a bit of a dust cloud as to whether we are actually really sanctioned or not, so I think that was sort of – sticks in my mind.

MR. HOGAN: You didn't have any input into going to the PUB?

MR. STURGE: Not the decision to go or not go, no.

MR. HOGAN: No. Did you have any discussions about it?

MR. STURGE: I was brought in to – along with a bunch of other people when the province was drafting the –

MR. HOGAN: Terms of reference, yeah.

MR. STURGE: – question in May-June 2011, me – and not only me, a bunch from people Nalcor were asked to provide input on the document.

MR. HOGAN: Yeah. So what sort of input did you and your team, or whoever was –?

MR. STURGE: I can't remember what specifically I would've provided, but –

MR. HOGAN: Nalcor would've had input.

MR. STURGE: – there would've been a series of meetings and Natural Resources and Justice would've asked us that.

MR. HOGAN: So Nalcor had input into what was being put to the PUB by the government?

MR. STURGE: They certainly would've seen it, yeah.

MR. HOGAN: Okay.

MR. STURGE: Yeah.

MR. HOGAN: Mr. Williams, when he was asking you about Canada agreeing to – I think what he said was: Prepare to extend the guarantee.

MR. STURGE: Yeah.

MR. HOGAN: Right?

MR. STURGE: Yeah.

MR. HOGAN: So I mean I think it's pointless that they were satisfied in the soundness of the project.

MR. STURGE: You would hope so.

MR. HOGAN: Yeah.

MR. STURGE: Yeah.

MR. HOGAN: My question is there's more to it than that, though, because my understanding the Government of Newfoundland and Labrador provided indemnifications to Canada. Are you aware of that?

MR. STURGE: Yeah, I mean, it's – so Canada – so there's – I mean this is a complex web here but, effectively, how it all –

MR. HOGAN: See, that's my point, it's not as simple as Canada signing off on it. They had other security, didn't they?

MR. STURGE: They did but it was, essentially – so what they had is they knew the cost recovery mechanism. They knew the province was committing to equity. They had done the work, their own diligence on the project and the costs and the business case and those types of things, but the indemnities were more around – if the province says that they're going to provide equity and they don't provide equity, or if the province says here's a regulatory framework that we're going to base this on, and then we just unilaterally decide to change that in five years' time, there's consequences of that.

MR. HOGAN: But there was more comfort level than that, though, if there's indemnifications provided, isn't there?

MR. STURGE: Well, I don't know if there's any more than that. I think the indemnifications were more around here's the things that we're giving you, and if we don't do those things, here's the bad things that will happen, you know.

So it's more like if you say I'm going to give you a commitment – not a loan – not to do something, and then you go and do that very thing that you committed not to do, then it sort of goes without saying that the house of cards could start to tumble at that point, you know.

MR. HOGAN: We'll leave it at that.

Now, you said a couple of times you felt out of the loop and frustrated. A couple of issues you mentioned specifically: The federal loan guarantee and the DG3 numbers.

MR. STURGE: No, not on the federal loan guarantee itself, because I was –

MR. HOGAN: Okay, the announcement of it then, the (inaudible) issue.

MR. STURGE: No, more the – just getting the capital costs going into it, because I was well in the loop on the (inaudible).

MR. HOGAN: No, I know you did a lot of work on it –

MR. STURGE: Yeah.

MR. HOGAN: – but the email that we looked at yesterday, the gong show email, I think that was sort of saying that –

MR. STURGE: Yeah, so I think – so Auburn was – as I recollect it, was saying that he heard that what he thought was going to be an announcement on the federal loan guarantee. And I was surprised because I didn't – wasn't expecting that and I said you sure it's not this other announcement of – because I think Ed and the premier were announcing the DG3 capital costs at the end of October and it turned out to be that's what it was.

So – but, so I was surprised that – and I said you're sure that's the case, because I didn't think on the federal loan guarantee I'd be out of the loop.

MR. HOGAN: Okay.

So, in any event, were there any other items that you can recall now, after probably having thought about it last night as well, that you felt frustrated and/or out of the loop on?

MR. STURGE: It was mostly – mostly all I can think is the capital because, you know, as a general rule I think it was a pretty open discussion of most things. The Emera thing, all that piece was good open discussion, lots of people involved. To me, it was really the capital cost was probably one area that I saw that was a tight group.

MR. HOGAN: And who was the tight group?

MR. STURGE: Tight group, I think it was the CEO and some of the senior guys on the project team. I'm assuming Gilbert was in that but I'm not even certain. I can't state it categorically.

MR. HOGAN: Okay.

And the senior project team members would be Mr. Harrington –

MR. STURGE: Oh and probably Lance and Jason, those team, you know.

MR. HOGAN: So that was –

MR. STURGE: They would've been the people that Ed would have relied on to –

MR. HOGAN: Half dozen, small group of people we're talking now.

MR. STURGE: Pretty small, yeah, but …

MR. HOGAN: Yeah.

So you – what's your understanding of the CPW analysis? You mentioned it then when you were talking about the PUB.

MR. STURGE: So it would be looking at various options and it would be looking at – try to cost out the future cost of each of those options and effectively discounting those back to a current day number and trying to find the least cost of the options.

MR. HOGAN: Okay.

So what goes – what are the inputs?

MR. STURGE: The key inputs, they vary in importance but capital, operating costs, financing costs, the load, fuel costs – what am I forgetting here – those types of things, you know.

MR. HOGAN: Big-ticket items obviously mattered.

MR. STURGE: Big ones.

MR. HOGAN: Yeah.

MR. STURGE: Yeah, big ones.

MR. HOGAN: Bigger the number, the bigger the CPW?

MR. STURGE: The bigger the number – well, some items had a bigger impact on the individual composition of the CPW; like, fuel is bigger on one, capital is bigger on another and so on, yeah.

MR. HOGAN: Right, so did you have any dealings with the inputs specifically for the purpose, let's say, of the PUB presentations?

MR. STURGE: PUB?

MR. HOGAN: Well, that's when we started really looking at the CPW –

MR. STURGE: Yeah, but you're thinking CPW in general.

MR. HOGAN: Well, someone sent the numbers to the –

MR. STURGE: Yeah.

MR. HOGAN: You know, someone sent numbers –

MR. STURGE: Yeah, so the process – and I think it was described in Goose Bay, but the CPW analysis was owned by the system planning group and they ran it to using a model called Strategist, which is the Ventyx piece – owned by Ventyx – and that's a pretty standard process. They would have collected inputs from right across the organization on financial matters, load matters, reliability, you know, forced outage rates and all those types of things around different plants.

Of those inputs they would have collected, the ones that my group would have provided would have been the oil price forecast from PIRA, they would have provided financing assumptions that we would have got from Conference Board of Canada and other places – electricity price forecast from PIRA. And we would've provided the PPA calculation, because normally what happens in the strategist model, you load in your capital cost and then that produces the profile of expenditures.

MR. HOGAN: But you said your group was responsible for the oil forecasts.

MR. STURGE: The oil forecast would have come through (inaudible).

MR. HOGAN: So, I'm – maybe you don't know, maybe it's not your area of expertise, but we've had a lot of conversations, it sounds like you've been following the Inquiry about 50-year forecasts for oil.

MR. STURGE: I've heard that discussion, yeah.

MR. HOGAN: Yeah. So what's your comment on it?

MR. STURGE: So, you know, and I thought about that one too because, you know, the issue here is that if you're going to look at it – an asset that's got a life of 50-plus years, it's hard to justify that asset on the basis of looking at 15 or 20 years. And then the other side –

MR. HOGAN: What asset are we talking about here?

MR. STURGE: The Lower Churchill, right?

MR. HOGAN: Okay.

MR. STURGE: So then the flip side of that, so you look at sort of the profile, what effectively happens is the Lower Churchill – you build an asset in year one and it effectively satisfies all your generation needs for the next 50 years. So to be comparable to that, you have to look at – so what are the other combination of assets and development plans that give you that same 50-year benefit? And in the case of the Isolated Island, it's a series of things that happen along that 50 years.

So to say – so to take 20 years and just cut it off, what'd effectively then says – be saying is that in one scenario you're building 50 years of generating capacity. In the other case, you're not building 50 years 'cause you've got a series of assets being built along the lifetime. So to make a comparable, I don't really see how you can do anything but sort of look at (inaudible) –

MR. HOGAN: So, it's because – and I was talking to MHI about this – it's because Lower Churchill is 50 years, we use 50-year oil forecasts for the Isolated Island Option.

MR. STURGE: Well, I think that you gotta be comparable.

MR. HOGAN: And that's fine but is that the answer?

MR. STURGE: I think – yeah, because if we were looking at should we build a wind project – two wind projects, which might have a 20-year lifespan, then we'd probably be looking at a 20-year horizon, right? Just 'cause of the lifespan of those assets, but because of the lifespan of one of those assets, you'd be terribly penalizing that asset that provides 50 years of load growth if you didn't look at the full period. So –

MR. HOGAN: But you're also penalizing the Isolated Option, aren't you –

MR. STURGE: No, I don't –

MR. HOGAN: – because it's not 50 years?

MR. STURGE: I don't know if you are because you're still looking at the cost over that period. And, listen, I don't think anyone would disagree that the further you get out the more riskier or more difficult it gets.

The only thing I will say though that because all these costs are discounted back, the further you get out, the impact of a dollar in year 50 is much less than a dollar in year one. So, the impact on the CPW is much mitigated the further you get out too, you know.

MR. HOGAN: Just wanna get back to the – one of the inputs on the CPW for the Isolated Option. It sort of stands out to me, and some other people have raised it with me, is that there's a $600 million expenditure for scrubbers at Holyrood. You –

MR. STURGE: Generally familiar with it, yes.

MR. HOGAN: It's a fairly (inaudible) –

MR. STURGE: Don't ask me to describe what it is, but …

MR. HOGAN: Well, I understand it's there for environmental purposes.

MR. STURGE: That's –

MR. HOGAN: So –

MR. STURGE: – my understanding, as well.

MR. HOGAN: Okay.

I also understand, in some submissions to the PUB, is that this was kept in – this is Nalcor's position is that they were kept in because it's consistent with the policy direction in the Energy Plan to put them in. So they're included. So –

MR. STURGE: They were – I believe they're included, yes.

MR. HOGAN: My question then is, I take that to mean they're not necessarily necessary. I don't know if there's a better way to put that. It's just a policy decision to leave them in. Do you know anything about that?

MR. STURGE: I can't you help much on that one, no.

MR. HOGAN: Yeah.

All right. That's all the questions I have.

Thank you.

THE COMMISSIONER: Thank you.

Okay, let me just get the lay of the land here where we're going.

Emera Inc.?

MR. O'KEEFE: No questions, Mr. Commissioner.

THE COMMISSIONER: Yup.

Former Nalcor Board Members?

MS. G. BEST: Just a couple of questions.

THE COMMISSIONER: Okay.

So just stay tight for a second.

Derrick Sturge?

MR. BUFFETT: (Inaudible) few questions. Not many.

THE COMMISSIONER: Not many?

Okay, and, obviously, Nalcor. So, yeah, I forgot about Nalcor. So, we're definitely here for the rest of the morning.

Okay, so let's take our break for 10 minutes, and we'll come back shortly.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right.

So Newfoundland board members?

MS. G. BEST: Good morning, Mr. Sturge. My name is Glenda Best, and I'm the solicitor for the former board members of –

MR. STURGE: (Inaudible.)

MS. G. BEST: – Nalcor.

I just have a couple questions with you. I understand that you were involved – had significant involvement with the board of directors?

MR. STURGE: I would have attended the majority of the board meetings, yes. Yeah.

MS. G. BEST: Okay.

And you also sat and participated in the Governance Committee and the Audit Committee?

MR. STURGE: That's correct, yes.

MS. G. BEST: Thank you.

My understanding, from the board, was that at the time that they were appointed, there were very little documents or procedures or protocols in place for the board at Nalcor and that those were developed by yourself and Mr. Clift during the course of his tenure with the board.

MR. STURGE: I would say that's a fair assessment, yeah. Yes.

MS. G. BEST: Okay.

And have the – to your knowledge – are you still actively involved in the board of directors?

MR. STURGE: Yes.

MS. G. BEST: Okay.

MR. STURGE: I attend meetings still, yes. Yeah.

MS. G. BEST: Okay.

And so do they continue to operate with the same documents, procedures and protocols that were put in place by the prior board?

MR. STURGE: Essentially, yes. Yeah. I mean, we may have refined as time passes, but essentially that was the core it was built on, yes.

MS. G. BEST: Okay. Thank you.

And with respect to the board members themselves, did you ever have any concerns that they weren't carrying out or taking their duties and responsibilities seriously?

MR. STURGE: I never observed that. That's for sure.

MS. G. BEST: And that – it would include in the committees that you were involved in?

MR. STURGE: Absolutely, yes.

MS. G. BEST: Okay.

And with respect to due diligence in their fiduciary duty to Nalcor, did you have any concerns that they were not taking these issues seriously?

MR. STURGE: Nothing that I observed.

MS. G. BEST: Okay.

And with respect to the information that was before the board, you would have had access to that same information – is that correct? So if there was presentations before the board –

MR. STURGE: I would –

MS. G. BEST: – you would –

MR. STURGE: – say 99 per cent of it, except if there was issues around compensation or something like that, perhaps, but by and large, yes, same information.

MS. G. BEST: Okay. Thank you.

And with respect to the number of meetings that the board held, were you involved, when you were with Voisey's Bay, with the board of directors at all?

MR. STURGE: Not – it was a subsidiary of a parent company at that point, so it was a little bit of a different arrangement, so …

MS. G. BEST: Okay.

MR. STURGE: Yeah.

MS. G. BEST: Mr. – I believe Mr. Marshall or Mr. Clift testified that, during the course of their tenure, they would have anticipated about four meetings a year – about 48 meetings in total and that they had attended over a hundred meetings? Would that be consistent with your recollection, as well?

MR. STURGE: I know – and I know for a fact, in 2012 – there were over 20 meetings alone in 2012, the year of sanction.

MS. G. BEST: Yes.

MR. STURGE: So the hundred probably makes sense, yeah.

MS. G. BEST: Okay. Thank you.

Those are all the questions –

MR. STURGE: Okay, yeah.

MS. G. BEST: – that I have.

THE COMMISSIONER: Thank you.

All right. So I think Nalcor Energy. I don't know how I could have forgotten you.

MR. SIMMONS: I'll take that a good way.

THE COMMISSIONER: Oh, yes. Definitely.

MR. SIMMONS: Good morning, Mr. Sturge.

MR. STURGE: Morning.

MR. SIMMONS: Dan Simmons, Nalcor Energy.

I want to ask you a few questions about the organization charts, 'cause you've been asked a fair bit about this.

MR. STURGE: Yes.

MR. SIMMONS: Can we start first with P-00793, please?

THE COMMISSIONER: Tab 1.

MR. STURGE: Tab 1, yeah.

MR. SIMMONS: Okay. All right.

So first of all, there are – do you have any idea how many charts there are that make up the set of organization charts for Nalcor Energy back in 2012? Is it…?

MR. STURGE: I'd say there's 25, 30 pages perhaps or more –

MR. SIMMONS: Okay.

MR. STURGE: – is my guess.

MR. SIMMONS: And this one here. It starts – this one starts with the board of directors on the top and has President and CEO Ed Martin down below. Off in the right-hand corner, there's A1. Is this the top-level chart in the organization?

MR. STURGE: This would be the executive group, yes.

MR. SIMMONS: Okay.

So for each of the subsidiary boxes here below, starting with president and CEO, and then for the vice-presidents down below, is there then a subsidiary chart that shows the structure below each of those people?

MR. STURGE: There would be for each, and in some of the bigger ones, there'd be multiple levels of charts, yes.

MR. SIMMONS: Okay. For example, let's go to 00794, please, which is tab 2.

This one here – in the upper right-hand corner, this has A2 there, and the top box on this chart is President and CEO Ed Martin, and there are a whole range of different vice-presidents listed in the row below him and also one general manager. So would these all be separate and distinct areas of responsibility, with the vice-president in charge reporting up to the president and CEO?

MR. STURGE: Yeah, so this chart would be the executive level and then their – it looks like their direct reports, so one level below. So it would be my direct reports and then so on. It would be to just bring it down that extra level, yeah.

MR. SIMMONS: Right.

And so then, in turn, when we go 00797, which is tab 5, which is the main one you've been questioned on, this is the chart that has your vice-president, finance, and CFO level at the top. It has C1 up in the right-hand corner. So each of those vice-president levels would have a similar chart to this, which would provide more detail about who the people are lower down in the hierarchy reporting up that vice-president.

MR. STURGE: That's correct, and in many of those, just because they have a lot more people, there would be probably bigger charts than the charts in mine – I would have, but yes.

MR. SIMMONS: Okay.

Do you know if this set of charts that you've referred to, the 25 pages or so, does that include the similar structure and organization for the Lower Churchill Project?

MR. STURGE: I seem to think their charts are somehow separate. 'Cause I know these are published on our internal website. I'm not certain the Lower Churchill ones are. I'm not certain.

MR. SIMMONS: So we only have several of these charts in as exhibits –

MR. STURGE: Yeah.

MR. SIMMONS: – right now, and I can't say there's been many more –

MR. STURGE: Yeah.

MR. SIMMONS: – that have been produced to the Commission. So you're not personally familiar with the set of organization charts for the Lower Churchill Project, are you?

MR. STURGE: I would've seen it from time to time, but I wouldn't – if you asked me to sort of redraw it today, I don't think I could from memory.

MR. SIMMONS: Okay.

So for these charts we do have, I'm looking at 00797 here, is the intention of this chart and the information on it to provide a full description of the roles and responsibilities of each position identified?

MR. STURGE: No, each of those would still have position descriptions, and then there would be, you know, a whole series of policies and procedures that also sort of operationalize how all these things work together.

MR. SIMMONS: So, for example, when we look at the corporate treasurer and chief risk officer position occupied here by Mr. Meaney, can we just look at the title of that position and draw conclusions about what the scope and range of responsibility of that position is, or do we have to look elsewhere in order to find out that kind of detail?

MR. STURGE: I think you got to look – I think there's not just to that position. I think any of these, really, and Rob Hull's might be another example of – we'll say – commercial financing, that can mean a lot of different things to different people, but it's in a certain context, in this context, right? So…

MR. SIMMONS: So in relation to the chief risk officer role, I think you – what I've understood from you've said so far, is that the chief risk officer's role is not so much to assess what the risks are, but is to make sure that the processes are in place in the areas of the company under his jurisdiction to ensure that risks are being assessed and addressed. Is that –?

MR. STURGE: That's correct, and at the time of this I think the general assessment would've been that the processes that the Lower Churchill had in place probably would've been better than anywhere else in the organization.

MR. SIMMONS: Mm-hmm.

MR. STURGE: That was the general sense.

MR. SIMMONS: Yes.

MR. STURGE: Just because of the focus they had put on it.

MR. SIMMONS: Okay.

And aside from the chief risk officer's role, which I'm – says partly included ensuring that these risk processes were in place. Was there any other function within Nalcor where there would be any periodic check or assessment of whether risk was – of whether the risk work down in the units was being done adequately?

MR. STURGE: I guess the biggest check is the internal audit function, which is – if you look at how internal audit – they would do an annual and five-year work plan and it's totally driven off of risk registers. So they would take risk registers from each business –

MR. SIMMONS: Mm-hmm.

MR. STURGE: – and from those risk registers they would then design their audit plans –

MR. SIMMONS: Mm-hmm.

MR. STURGE: – based on the, you know – getting coverage across all of the business units, but also focusing on the highest risks in each business unit.

MR. SIMMONS: Okay.

Does the – and does the audit function fall in the structure under Mr. Meaney as chief risk officer, or does it fit in somewhere else?

MR. STURGE: No, at this point it reported to the CEO.

MR. SIMMONS: Yeah, okay. Well, let's –

MR. STURGE: Or it took to the board, to the Audit Committee, in fact.

MR. SIMMONS: Okay.

So we can just go back for a moment to Exhibit P-00793, which is tab 1 of your binder. So this is the top-level chart, with the board of directors at the top, and I see in the next level Audit Committee is there in a box with a line accountability straight up to the board of directors.

MR. STURGE: Correct.

MR. SIMMONS: Yeah. Okay.

So back to 00797, again, please, so your tab 5. You were asked some questions by Mr. Budden, I believe, suggesting that this organization chart did not reflect the reality of the way risk was managed inside the organization. Is that a fair characterization of the information that you can take from looking at these organization charts?

MR. STURGE: No, I thought it did reflect it 'cause you have to look at it in the context of the Lower Churchill as well.

MR. SIMMONS: Mm-hmm.

MR. STURGE: It's not just this singular chart –

MR. SIMMONS: Mm-hmm.

MR. STURGE: – of how it's being managed.

MR. SIMMONS: Okay. So –

MR. STURGE: And I think in many of these – all these positions, really, if you asked anybody what do you think this position does, if you canvassed the room here, you might get 15 different answers –

MR. SIMMONS: Mm-hmm.

MR. STURGE: – of what they think that position might include, and none of them might be right. You know? It's just …

MR. SIMMONS: So the project, then, the Lower Churchill Project – the Lower Churchill Project was actually set up – it was an organization set up for the purpose of first assessing and then developing the project on the lower Churchill River.

MR. STURGE: That's correct, yes.

MR. SIMMONS: And is it correct that it has been set up as a – not an autonomous organization, but a degree – an organization – grouping within Nalcor that has a fair degree of autonomy in how it shapes its own structure.

MR. STURGE: I would say compared to other business units at this point, yes, yeah.

MR. SIMMONS: To the point where it has a physically separate office space from the rest of Nalcor, even.

MR. STURGE: Yeah, and they have, generally, their own policies and procedures, which may or may not align with Nalcor's policies and procedures.

MR. SIMMONS: Right. And those policies and procedures were developed specifically for the tasks and responsibilities that have been assigned to the Lower Churchill Project.

MR. STURGE: Primarily, yes.

MR. SIMMONS: Is that correct?

MR. STURGE: Yeah.

MR. SIMMONS: Okay.

Let's just take a look at one of them, please: P-00097. And I don't think you have that in your binder, but you've been referred to it already.

MR. STURGE: Okay.

MR. SIMMONS: So this is – and if we scroll down a little bit, please, and just stop there for a moment. This is called Gate 2 Project Risk Analysis. Above that it says: "Nalcor Energy: Lower Churchill Project." And it has a long number there assigned to it.

Is this the type – is this a document that you would have seen or would have had occasion to have access to in the course of your responsibilities?

MR. STURGE: No, this would strictly be a project-execution document.

MR. SIMMONS: Right.

If we scroll down a little bit, please. Okay, if we can stop there. There's a table there which seems to indicate the status of different revisions of the documents, the dates that they were prepared, the sign-off provisions for who prepares it and who approves it. Do you see that?

MR. STURGE: Yes.

MR. SIMMONS: In this case, Mr. Kean, the person who prepared it, he worked on the project.

MR. STURGE: That's correct, yes.

MR. SIMMONS: And Mr. Harrington, he's the project director on the project.

MR. STURGE: That's correct.

MR. SIMMONS: So this – that's consistent –

MR. STURGE: That's correct.

MR. SIMMONS: – with your view that these are internal to the project.

Now, this one deals with a project risk management.

Can we go to page 8, please? 'Cause you'd been asked a question about – I think about what – how risk was being managed in the project. This item here, item 5 on page 8, it says "Reference Documents," and it lists a number of things here. There's a "Project Risk Management Plan," there's "Project Execution Risk and Uncertainty Management Guidelines," there's a "Risk Management Philosophy," there's a "Gate 2A Risk Management Plan" and a "Project Risk Analysis Update" from fall of 2009.

Do you know, are these documents that are developed and are internal to the project, similar to the one that we are looking at here?

MR. STURGE: All of those would be project-specific documents, yes.

MR. SIMMONS: Right. So if we want to know more about how the structure inside the project had been set up for the management of risk –

MR. STURGE: (Inaudible) –

MR. SIMMONS: – I'm presuming these would be (inaudible).

MR. STURGE: – look for direction on it, yes.

MR. SIMMONS: Okay. Thank you.

Now, I have to go back to the Energy Access Agreement, I'm afraid, just for a few questions. And we'll take a couple minutes 'cause I think we need to understand a little bit more about how that works.

So, first of all, can we bring up, please, P-00462. This is the agreement itself, and it's mainly just for the purpose of identifying it so we know what we're talking about here.

Okay, this is the Exhibit P-00462, and if we scroll down, it says – down a little farther – "Energy Access Agreement," and down a little more, April 23, 2015 [sp "April 13, 2015"]. And if we look at the indication here on the screen of how many pages there are, it appears that there's 246 pages in this document.

MR. STURGE: Yes.

MR. SIMMONS: Can we go, please, to – just go to page 68. Sixty-eight is the signature page, so there are at least 68 pages of text making up the full terms of the Energy Access Agreement and how it's going to work. So I'm not going through all that with you. Fortunately, we do have some summaries of what's contained in it.

Can we go, please, to Mr. Brockway from Grant Thornton's report at P-00453 and page 26?

Did you have an opportunity to hear Mr. Brockway when he gave his evidence on this report?

MR. STURGE: I did, yes.

MR. SIMMONS: Yes.

MR. STURGE: Whether I remember that piece – but I did generally see it, yes.

MR. SIMMONS: Okay.

On page 26, there's a heading here: "Regulatory Process, EAA, and EAA's Impact to NL's Ratepayers & Taxpayers" and the EAA I understand to be the Energy Access Agreement that we've been talking about.

Please scroll down. Okay, you can stop there.

So beginning at line 20, there's a statement there which – and at line 21, which starts to present "A summary of the significant terms in the initial EAA, as quoted from the Morrison Report, are as follows …." And there's a number of bullets on this page and the next which describe the terms.

And go, please, to the top of the next page, page 27. And the second bullet says: "Nalcor commits to provide NSPI" – which I think is Nova Scotia Power –

MR. STURGE: Correct, yeah.

MR. SIMMONS: – "with a rolling 24-month forecast of expected available non-firm energy on a monthly basis …." Now, can you tell me what your understanding is of what non-firm energy is?

MR. STURGE: So it would be – and, again, getting a little bit out of my area –

MR. SIMMONS: Mmm.

MR. STURGE: – but it would be energy in excess of what would be that level of energy that you can bank on to use and require. It would be excess.

MR. SIMMONS: Right, right.

Would you understand non-firm energy to be energy that you can't count on being able to deliver at any particular time?

MR. STURGE: That would be my general understanding, yes.

MR. SIMMONS: Right.

And would that then have implications for whether it's possible to enter into any long-term arrangements to commit to supply anyone with non-firm energy?

MR. STURGE: Generally, you couldn't with non-firm. Unless it's firm, you couldn't enter into a firm arrangement, yes.

MR. SIMMONS: Okay. All right.

So this appears to be the reference – the description of the forecast that you were asked about earlier.

MR. STURGE: Yes. Yes.

MR. SIMMONS: Now, the next bullet says that: "Once per year, in the month of June, NSPI has the option to issue a solicitation for non-firm energy for the following Contract Year, and Nalcor commits to bid into that solicitation, based on Nalcor's May 31 Forecast, up to a maximum of 1.8 TWh …."

So NSPI has the choice of whether they want to solicit energy, and what Nalcor has done has said: We'll bid, right? So is that consistent with your understanding of the way the agreement works?

MR. STURGE: Yes, it is. Yes. Yes.

MR. SIMMONS: And then scroll down, please, a little bit.

And then the next bullet says: "In NSPI's solicitation, Nalcor may bid any price for its energy, up to and including the MassHub price from ISO New England, or the higher price of any alternative liquid market opportunity available to Nalcor."

So has Nalcor committed here to bid any particular price or does it have a discretion as to what price it's going to bid, as long as it doesn't bid above either of the two restrictions that are listed there?

MR. STURGE: Yes, it has – we have that flexibility to bid, yeah.

MR. SIMMONS: Right.

So considering that this was non-firm energy, what other alternatives did Nalcor have for sale of the energy that's now subject to the Energy Access Agreement?

MR. STURGE: If it's non-firm, it's really – I mean, the only realistic market is the open market, realistically.

MR. SIMMONS: Right. Yeah.

And which open market where? Where would the – what access did Nalcor have to get there?

MR. STURGE: Likely through the same mechanism, through New England.

MR. SIMMONS: Right. So it would be going through – into New England, through Nova Scotia using the Bayside route and the MEPCO route through Maine –

MR. STURGE: Yes.

MR. SIMMONS: – in order to reach those markets.

MR. STURGE: That's correct.

MR. SIMMONS: Now, are those the markets where you – pricing is determined with reference to the Mass Hub price?

MR. STURGE: Yeah, Mass Hub would be the point just outside Boston, which is probably the primary pricing mechanism in New England.

MR. SIMMONS: Right. Right.

So apart from the EAA, was – effectively the best price Nalcor could expect to get for this excess energy would be the Mass Hub price less the transmission cost of getting it there?

MR. STURGE: That would be your best price if nothing else was in place, yes.

MR. SIMMONS: Okay.

Now, this provision says that Nalcor can bid up to the Mass Hub price or up to the higher price for any alternative liquid market opportunity available to Nalcor. So my question is: By agreeing to this pricing arrangement, was Nalcor giving up any opportunity to get a better price than it could get from NSPI under this arrangement?

MR. STURGE: I don't believe we were, no.

MR. SIMMONS: And you – can you come up with any scenario that you'd be familiar with that would've allowed Nalcor to get a better price than what's described here?

MR. STURGE: For non-firm power I can't. I mean, if it was more firm power, then there's a different scenario, but in a non-firm context where you're – you know, you're operating that average firm issue, I can't see any other better option than the open market.

MR. SIMMONS: Mm-hmm. Okay.

So, to step back to the forecast now, Nalcor has agreed to give a forecast of what's expected to be available, NSPI gets to issue a solicitation that Nalcor has to bid to, and Nalcor can bid any price up to these maximums. Is – does the forecast have any influence here that you can see on whether Nalcor is able to get as good a price under the EAA as they could've if the EAA wasn't in place?

MR. STURGE: No, 'cause the price is set – it is set by supply-and-demand issues, but there are broader supply-and-demand issues in that market versus anything that we would influence.

MR. SIMMONS: Right. Okay.

And aside from whether there was any adverse price impact, which I gather there wasn't, are you aware of anything else associated with the EAA that has an adverse impact on Nalcor compared to if the EAA wasn't in place?

MR. STURGE: There's nothing I'm aware of but …

MR. SIMMONS: One item you were questioned on earlier – this came out of a reference in the Morrison Park report – was committing to offer – to make offers to sell this energy to Nova Scotia Power instead of entering into long-term contracts for it. Now, are – in all of the discussions that you may have had with others inside Nalcor, did you hear anything to suggest that there would've been any opportunity to sell this particular non-firm type of power under long-term contracts?

MR. STURGE: Nothing I've heard in any – you know, we regularly do 10-year forecasts of –

MR. SIMMONS: Mm-hmm.

MR. STURGE: – projections and our basis here is always to price this piece of revenue off of market prices. So we've never looked at anything other than that, so…

MR. SIMMONS: All right. Okay.

Can we go to page 28, please? Scroll down. Okay, stop there, please.

So we're still in the – Mr. Brockway's report here. I'm going to just read from line 8 down to line 12, and this is where Mr. Brockway states: "The signing of the EAA provided a contractual guarantee from Nalcor and Emera to NSPI and NS's ratepayers to surplus market-based energy being available for purchase. While the EAA did not provide a pricing guarantee and the bid price from Nalcor would likely be the prevailing market price, it provided NSPI with a right of first refusal to market-priced power while not locking NSPI into any electricity volume obligations."

So Mr. Brockway has characterized the EAA – the effect of the EAA agreement of being a right-of-first refusal. Is that consistent with the way you would describe it?

MR. STURGE: I would say generally, yes.

MR. SIMMONS: Okay.

And if you look down, then, to the next heading starting at 16, it says: Impact to NL's taxpayers and ratepayers, and Mr. Brockway has stated: "Since NL's native loads would take priority over the energy to be exported to NSPI as required by the EAA, there are no impact to NL's ratepayers."

Are you aware of any impact to NL's ratepayers as a result of the EAA?

MR. STURGE: No.

MR. SIMMONS: No.

MR. STURGE: The only potential impact could be if this source of revenue at some point gets brought into rate mitigation, and then it could be a benefit, but as it sits today, no.

MR. SIMMONS: Can we go, please, to Exhibit P-00876? That's the Morrison Park report to the UARB.

THE COMMISSIONER: Tab 32.

MR. SIMMONS: Page 8, please.

So at the top of that page, it says: "In effect, the Energy Access Agreement provides an option to NSPI and its Nova Scotia ratepayers, without additional costs as compared to the absence of the Agreement. As contended by NSPML during the Maritime Link hearing, this option may have been present all along because of the nature of the Maritime Link and the location of Nova Scotia in the transmission path, but the Agreement provides legal certainty with respect to the existence of the option."

Is that a fair characterization of (inaudible)?

MR. STURGE: That would be my general understanding of it, yes.

MR. SIMMONS: Yeah. Okay. Good.

Okay, I'd only one other picky point to ask about, point of clarification. Exhibit P-00871, please.

You were –

THE COMMISSIONER: Tab (inaudible).

MR. STURGE: You've been asked a couple questions on this document. You've explained it before. In the bottom, there's a reference to P3, and it says: Receipt of P3 Financing. I just wanted to confirm, we're not talking about a probability of anything when we say P3.

MR. SIMMONS: No.

MR. STURGE: We're talking about public –

MR. STURGE: Public-private partnership (inaudible).

MR. SIMMONS: Public-private partnership.

MR. STURGE: Federal program.

MR. SIMMONS: Okay. Good.

Thank you.

No other questions, Mr. Sturge.

Thank you, Commissioner.

THE COMMISSIONER: Thank you.

Derrick Sturge.

MR. BUFFETT: Morning, Mr. Sturge.

MR. STURGE: Morning.

MR. BUFFETT: I just have a – very few questions.

You signed the – a DG3 document, I think, along with a lot of other people.

MR. STURGE: That would be correct, yes.

MR. BUFFETT: When you were signing that, what did you understand your signature was connoting to those that would be looking at the document?

MR. STURGE: So there was a – and I think I had this discussion in the Grant Thornton interview, and I think there was a document that the project team had provided that I think I may have provided to Grant Thornton, and it was a presentation that laid out for each individual signing what their signature meant. I don't know if we need it or not, but in any case, it laid for each person the specific things, and from mine, I think the descriptor would've been something along the lines of the previously defined things that were under my accountability. And there was a list attached of DG3 deliverables.

So, mine would've been – as would've been others, we would've been saying that the things that we're accountable for, we're now basically certifying to the Gatekeeper that those things, we feel, are ready to move forward. And with the collection of all of those signatures, I guess, then, the Gatekeeper would say that he is satisfied to move forward.

MR. BUFFETT: Okay.

So every person's signature on there was not verifying the entirety of the package, just their portions.

MR. STURGE: That's correct, yes.

MR. BUFFETT: Okay.

I just want to deal very briefly with the Emera situation. I wonder if you could, in general terms, give us an indication as to how decisions on issues with Emera were made, what the decision-making process was; and in terms of who led the discussions with Emera or the negotiations of Emera, did that change at any time; and, if so, when and what was the change?

MR. STURGE: I think there's sort of two elements to that is that sort of the, you know, day-to-day engagement with Emera evolved as we went from the MOU to the term sheet to the formal agreements, and at various points in that, I would've been the primary person doing it, at points Rob Hull would've been the primary person; but I think from a decision-making perspective – and I don't think this is really different – any difference at all between Emera and Nalcor, in essence, is that for both the companies, my observation was that the deal was of such significance that the CEOs of both companies were at the table and were fully engaged. And any – I don't think any decisions were made, ultimately, that either of the CEOs didn't sign off on.

So, I don't – you know, that was my observation right through the piece, you know, I don't think there was –

MR. BUFFETT: The –

MR. STURGE: – it all went to the CEOs.

MR. BUFFETT: Your note that was placed in evidence, I believe it was an October 27 meeting.

MR. STURGE: Yes, yes.

MR. BUFFETT: You know, it's been talked about here. You list the people who were at the table at that stage in Halifax, and Mr. Martin was there and Mr. Huskilson were there – the two CEOs.

MR. STURGE: Yes, yes.

MR. BUFFETT: Okay.

MR. STURGE: And that would've been – I mean, right through the term sheet development, the CEOs were engaged. Subsequently, we – as we did the formal agreements over a period of about 18 months, negotiating teams would go off and negotiate, they'd come back and every, I would say, three weeks, the CEOs would get together with their teams and resolve issues, make decisions, move on again. So, I think in both companies there was fairly high level alignment –

MR. BUFFETT: Okay.

MR. STURGE: – on all the decisions.

MR. BUFFETT: All right.

The DG2 and DG3 support packages.

MR. STURGE: Yes.

MR. BUFFETT: Would you have prepared them?

MR. STURGE: No, I wouldn't have, even though I think that I was – somebody had mentioned earlier that I was the author of those, I wasn't. Both of those came out of the project team.

MR. BUFFETT: Okay.

MR. STURGE: And they would've structured what goes in and they would've solicited input, some of which may have came from my groups –

MR. BUFFETT: Okay.

MR. STURGE: – but we didn't control it.

MR. BUFFETT: That's the way it worked. Okay.

MR. STURGE: Yeah.

MR. BUFFETT: And did you happen to see the evidence of Mr. Derek Owen, who testified?

MR. STURGE: Generally I did, yes. Yes.

MR. BUFFETT: Okay. He made a reference at some point – and you may know more about what I'm talking about than I do, actually. He made a comment about information being supplied to him by Derrick Sturge or someone in his department.

MR. STURGE: Yeah, my recollection –

MR. BUFFETT: What can you tell me about that?

MR. STURGE: My recollection is that somebody asked – one of the legal counsel asked Mr. Owen how could he make the statement that there was a general awareness of the equity level for government if he hadn't interviewed anyone from government, I think, was the issue. And he said he had spoke to me, and then the follow-up was: Well, but you hadn't spoke to anyone in government.

And I think the reason he probably could take that comfort from me is that I think my interview – and I checked my records on this – my interview with the IPR was on September 15 of – this was 2010; it was DG2, and I had spent September 13 and 14 in Toronto with Terry Paddon at the rating agencies that we talked about earlier. So I was well familiar with that issue, as was Terry, so I probably could give him the comfort he needed at that point.

MR. BUFFETT: And did you actually speak with him, do you recall?

MR. STURGE: I remember – I was interviewed with – I was interviewed by Derek Owen and the team, the IPR team, at DG2.

MR. BUFFETT: Okay. Okay.

MR. STURGE: And I think that would be the reference that he's probably referring.

MR. BUFFETT: At DG2. Were you involved at the DG3 stage with –

MR. STURGE: I was interviewed –

MR. BUFFETT: – the IPR team?

MR. STURGE: I was interviewed at DG3. I think Jim Meaney and I were both interviewed by Derek Owen and probably someone else on the team, but it was in the context of the status of FLG financing at that point.

MR. BUFFETT: Okay. And there were – there was a presentation made at – by the – that Derek Owen team at DG3. Were you part of the people to whom that presentation was made?

MR. STURGE: No. No.

MR. BUFFETT: You weren't.

MR. STURGE: No, I wasn't.

MR. BUFFETT: Okay. That would've – so if there were senior executives of Nalcor to whom that presentation was made, you would not have been one of them.

MR. STURGE: I wasn't in that meeting, no.

MR. BUFFETT: Okay.

We've heard some references to meetings with the premier or premiers, and some of them would be offsite. Can you tell me, would these have been meetings that you would've been the arranger of?

MR. STURGE: I don't think ever I was the arranger. I mean, they (inaudible) –

MR. BUFFETT: Okay. How would you find out about them?

MR. STURGE: The contact generally would be from the premier's office or the minister's office potentially to Ed or the CEO. I shouldn't say just Ed –

MR. BUFFETT: Okay.

MR. STURGE: – 'cause it would – 'cause that would continue to today. And it would be a contact with the CEO, who would then collect up who he thought would be – should be appropriate to attend the meeting.

MR. BUFFETT: Okay.

I'm going to ask you a question now that was put to you by Grant Thornton. Essentially – I don't know if I have it verbatim, but essentially it was this: Was there ever a time that you were asked to do something that you didn't want to do or felt uncomfortable in doing, and what was your reaction when you were asked that?

MR. STURGE: Yeah, so Grant Thornton did ask me question – or they asked others, but they asked me that question, and I responded that there were a couple of instances that – and clearly I am still in the employ of Nalcor, so obviously, it all played out fine.

But the only two that came to mind were – I recall at one point in, I'm thinking, 2014-'15. It was somewhere post-sanction. I know there was a discussion around – I think the project team had suggested that a portion of the LTA capital costs – the Labrador Transmission Assets – should be potentially moved out of the Muskrat envelope and into the Gull Island envelope, which was still a – very much a – not an active file for us and it just didn't seem to make sense. And I don't think – nobody pushed hard, but it was a suggestion –

MR. BUFFETT: What was your reaction to that?

MR. STURGE: My reaction was that it didn't make any sense and, you know, I just couldn't support putting the costs against a project that wasn't an active project.

MR. BUFFETT: Okay. Anything else?

MR. STURGE: The only other one that came up several occasions was – somewhere it's probably recounted in my notes, but there was a – at a point through 2013 – the end of 2012 into 2013, there was a strong suggestion to try to award the financing to CIBC. And I don't exactly where this was coming from. I don't believe it was Ed. I believe it was probably the province, but again I don't – you know, it's one of those things you don't exactly know where it's coming from.

But I believe it was somewhere in the province there was some strong suggestion, if we could, award it to CIBC, and –

MR. BUFFETT: And what was your reaction to that?

MR. STURGE: And I – absolutely no. We'd run a fair competitive process, and said no to it. And it died, and I never heard of it after that.

MR. BUFFETT: Okay. All right.

MR. STURGE: But those were the two examples that sort of stick with me as …

MR. BUFFETT: Okay.

MR. STURGE: And I don't believe Ed was pushed on that. I think Ed asked me because I believe he thought that question would come from the province.

MR. BUFFETT: Okay.

Whenever you met with the rating agencies, there was always a provincial presence there. That's what I took from your evidence. Do I have that correct?

MR. STURGE: When we met on the Lower Churchill, it was. We may have met on Hydro, other things, there may not have been. But for Lower Churchill –

MR. BUFFETT: No, no. I'm talking about the Lower Churchill.

MR. STURGE: Yes, yes.

MR. BUFFETT: Okay.

And would that have been the same with the banks?

MR. STURGE: Generally, yes, but the banks may have come to see us unsolicited at times so –

MR. BUFFETT: Okay.

MR. STURGE: – (inaudible) –

MR. BUFFETT: All right.

MR. STURGE: – met with them.

MR. BUFFETT: Okay.

MR. STURGE: But generally – when we met with the banks in terms of the financing for the RFS, yes, yes, it was. That was the case, yes, during the 2013 period.

MR. BUFFETT: Okay.

MR. STURGE: Those are all the questions I have.

Thank you, Mr. Commissioner.

THE COMMISSIONER: Redirect?

MS. O'BRIEN: Thank you.

I don't have much, a few questions, though.

In your cross-examination, you mentioned a project in Ontario, I believe. You said the Lower Mattagami?

MR. STURGE: Lower Mattagami, yes.

MS. O'BRIEN: It wasn't a hydroelectric project that I was familiar with, so I think I've looked it up: M-A-T-T-A-G-A-M-I?

MR. STURGE: That sounds about right, yes.

MS. O'BRIEN: And a 270 megawatt?

MR. STURGE: I think there was various renditions of it, but that might've been one piece of it, yes.

MS. O'BRIEN: Okay, seems to be it was three units being refurbished around that time. Does that sound right?

MR. STURGE: Yeah, I think there were some additional units as well. I think they were expanding it. There was an older facility that was being expanded.

MS. O'BRIEN: Okay, we'll get the details on it. I just wanted to make sure I had the right unit.

MR. STURGE: I think it was about a $3-billion project, I think, somewhere around there.

MS. O'BRIEN: Okay.

And – so you thought it was around three billion?

MR. STURGE: It was around three billion.

MS. O'BRIEN: Okay.

And Mr. Smith was just asking you about your work at Voisey's Bay and in terms of how their development project worked there, in terms of your involvement in it as VP finance, but I just want to clarify. You were only there at Voisey's Bay during the pre-sanction phase?

MR. STURGE: I was only there – they hadn't sanctioned when – 'cause the project – Inco had disbanded the project so it never got to the sanction phase.

MS. O'BRIEN: Okay, so you don't know – wouldn't be able to speak to what involvement the VP finance –

MR. STURGE: So whether it would've changed after, I don't know.

MS. O'BRIEN: Okay, would've had been involved in as the project continued. Okay.

Next, can we bring up P-00879?

So this is this note. Ms. Best – I questioned you on it; Ms. Best questioned you on it; probably others did as well. And this has to do with the note there about how – "really hitting me how little some of the political folks know about the" project.

Without getting into this – the details of this specific day, this – whatever you had in your mind whenever you wrote this note. And when you look back as you're sitting here today –

MR. STURGE: Yeah.

MS. O'BRIEN: – and giving your testimony to the Commissioner, do you ever recall having a thought – you know, having thoughts about, gee, I don't think the political people here really, you know, have a very good knowledge about what we're doing?

MR. STURGE: I would say generally not, but there were probably the scattered occasion where I'd be in a meeting and something would click and it would hit me. Maybe a similar comment, but the thought wouldn't go – the thought was two contexts to it, is sometimes it would hit me that things I would have expected maybe some politicians to be aware of, they weren't aware of. And it always hit me as: were they briefed properly? You know? And I never really could reconcile that in my mind. Was it because they didn't understand it, or was it just because – a lot of things moving fast, and catching up with things?

And it's not an easy role, either, because, you know, as much as we're immersed in this every day, you're a minister in government – I've always sort of tried to reconcile in my mind how you do that role, and you're expected to have a deep knowledge of all these areas, yet you got a broad range of files. Probably no different than our board in some regards, so.

I've often tried to reconcile that in my mind, how – you know, is the expectation that the level of depth of understanding of some political, elected leaders of all of these detailed contracts; I never could really reconcile that in my mind, but I've – occasionally it's hit me that: do people not know things because they weren't told, or just didn't understand it? I mean – I don't know.

MS. O'BRIEN: Okay. All right.

MR. STURGE: But I don't say that's – I don't think that would be a broad statement, but I would – may have observed that occasionally.

MS. O'BRIEN: Okay.

Any specific people or instances that you're remembering?

MR. STURGE: One comes to mind that hit me once, and it's probably in my notes. One comes to mind. I remember at one point we were in a Cabinet meeting and I think we were approving the equity agreements, actually, in 2013. And there was a discussion around those agreements and consequences of the province not meeting its obligations, those types of things, and it sort of hit me that the general level of deep understanding of that – there was probably a bit of confusion over what, you know – and it sort of hit me that things that were obvious to me and probably obvious to many others, but, you know, just – that one hit me, I remember –

MS. O'BRIEN: In terms of the full impact –

MR. STURGE: Yeah. Yeah –

MS. O'BRIEN: – of the commitment.

MR. STURGE: – as to whether it was really understood across everyone, you know? And I'm sure by the time we left it was, but probably not in the first instance. But that's just an example, you know. I don't want to harp on that one, but it's just one that comes to mind.

MS. O'BRIEN: Okay.

One of – if we could just go to P-00877.

THE COMMISSIONER: Tab 33.

MS. O'BRIEN: Thank you, Commissioner.

So this is a note, and again, I questioned you on it and then others did in redirect, and this has to come with it. This is your very strange process note about the capex.

MR. STURGE: Yeah.

MS. O'BRIEN: And I believe as you were being cross-examined, you said essentially that this – you were frustrated at this time, you knew that the project team had the capex, they had the estimate, it had not yet been provided, you didn't have any details of it, you knew Canada didn't have any details of it.

MR. STURGE: And we didn't have the go-ahead to yet communicate with Canada, was really the issue that was surfacing there, right?

MS. O'BRIEN: Okay. And I believe and just want to confirm that you said you didn't get it, Canada didn't get it, until November?

MR. STURGE: No, in this particular case here – that was the other one, 2013, which I can go back to. This one was sanctioned and I think the rollout to Canada probably happened within 10 days to two weeks after I wrote that (inaudible).

MS. O'BRIEN: Okay, that they had it at that time.

MR. STURGE: Yeah.

MS. O'BRIEN: Okay, so it was just – it was where you were talking about it, was just before financial close that they didn't get it until November.

MR. STURGE: Yes, yes.

MS. O'BRIEN: So – and that was for the cost updates, since the sanction to the financial close.

MR. STURGE: Bring it to 6.5 billion, yes.

MS. O'BRIEN: So, I mean, they would've had – and then financial close happened on December 13?

MR. STURGE: That's correct.

MS. O'BRIEN: So they would've really –

MR. STURGE: And effectively they issued a guarantee on November 29, so…

MS. O'BRIEN: Okay, so November 29, so they really only had a matter of weeks to review that estimate prior to making that decision.

MR. STURGE: Yes.

MS. O'BRIEN: Okay.

MR. STURGE: And the one thing that was important there is that timing did become important and locally it worked out fine, but we were negotiating the COREA at that same point with them, so we were anxious to get whatever the new cost estimate was as the base starting point for the COREA, which ultimately they did agree to. So the COREA started at 6.5, not 6.2. But it was important from that perspective.

MS. O'BRIEN: Okay, thank you.

Can we bring up P-0097, please? And can we go to page 8? Oh, we're on page 8.

So this is here under the section "Risk Management for the Project."

MR. STURGE: Yeah.

MS. O'BRIEN: It says: "Risk management is a critical governance structure for Nalcor Energy. Specific project-level risk management processes, tools and resources have been implemented for the Project underneath the umbrella of Nalcor's corporate Enterprise Risk Management program."

MR. STURGE: Yeah.

MS. O'BRIEN: So this was a document, I think, Mr. Simmons brought you to –

MR. STURGE: Right.

MS. O'BRIEN: – in his cross-examination, and I've been understanding you to say that, you know, risk was done on the project separately and Mr. Simmons brought you through all the different risk documents –

MR. STURGE: Right.

MS. O'BRIEN: – that we'll have a chance to explore in more depth later on. And I understood you were saying these are very – it was very separate from what you were doing, from – enterprise risk was very separate from the – what was happening on the Lower Churchill Project.

MR. STURGE: How it –

MS. O'BRIEN: Is that – sorry, did I understand you?

MR. STURGE: Yes, yes.

MS. O'BRIEN: Yeah?

MR. STURGE: That's right, yeah.

MS. O'BRIEN: So then how does that reconcile with this saying it's under the umbrella of a corporate enterprise risk management program?

MR. STURGE: Yeah.

MS. O'BRIEN: 'Cause that's you, isn't it?

MR. STURGE: Yeah. So what this is saying is that there's a corporate enterprise risk management program that requires each business unit to have its risk register. What they were saying here is that the process that they had in place ticked off that corporate requirement to have a risk program in place.

MS. O'BRIEN: But I understood you saying earlier the – you know, Jim Meaney, the chief risk officer, he was kind of doing those things for all other elements of Nalcor's business units, but he really wasn't doing anything with it.

MR. STURGE: He wasn't here, no.

MS. O'BRIEN: Okay so is that really under the umbrella?

MR. STURGE: So the corporate policy that he was operating said that each business unit has to have a risk register. And with the other businesses, you know, they were working through each risk register. In the case of Lower Churchill where they had a whole, totally separate process, what this was saying is that their process that they've described here meets that corporate box for having achieved the ERM requirement.

MS. O'BRIEN: Well, would someone, then, from your team, someone from corporate enterprise risk, be reviewing that to ensure that it met your requirements?

MR. STURGE: No, that's – no.

MS. O'BRIEN: Well, how do you know it ticks the box if you don't look?

MR. STURGE: Well, I mean, the requirement is that they have a process. So we were aware they had a process. And –

MS. O'BRIEN: But that's all? That was it? For inquiries, do you have a process? Yes?

MR. STURGE: And, in fact, at this point, I think their processes were way more mature than the balance of the organization 'cause we were fairly early in the ERM development at this point. So if in anything their processes would've been, I'd say, much more robust than the balance of the organization.

MS. O'BRIEN: But that's, I guess, my – how do you know that if you don't ever look at what they're doing?

MR. STURGE: Well, he would've had a general awareness of what they do. But it didn't take much to conclude that because the level of rigour around the balance of the organization at that point was fairly immature, I mean, it was just really starting. So we knew that all the work that they were doing and the fact that they had detailed risk registers was way ahead of where the balance of the organization was at that point, though probably not today.

MS. O'BRIEN: So are you comfortable in this risk management for the project being designated as something under an umbrella that you are responsible for?

MR. STURGE: No, not that I'm responsible for, but that it met the corporate requirement to have a risk process, and they were doing their thing that satisfied that requirement.

MS. O'BRIEN: But you were responsible for corporate enterprise risk management?

MR. STURGE: I wouldn't agree that I had any accountability for what they were doing.

MS. O'BRIEN: But the question is: Did you have any accountability or responsibility for corporate enterprise risk management?

MR. STURGE: Corporate enterprise risk management, yes.

MS. O'BRIEN: Okay.

MR. STURGE: Yeah.

MS. O'BRIEN: And are you comfortable with this statement, that what they were doing on project risk was under that umbrella that you were responsible for holding?

MR. STURGE: It was under that umbrella, but we had no accountability for assessing what they were doing. That's what – how I would (inaudible).

MS. O'BRIEN: Okay. Thank you.

Those are my questions.

THE COMMISSIONER: Okay, thank you much, Sir. You can step down.

We'll take our break now and come back at 2 o'clock this afternoon.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is now in session. Please be seated.

THE COMMISSIONER: Good afternoon.

All right. Next witness, Ms. O'Brien.

MS. O'BRIEN: Thank you, Commissioner.

Our next witness will be appearing by Skype. Before I allow them to set up the link, I'm going to ask to enter the exhibits P-00855 to P-00866; P-00869; P-00870; and P-00872.

THE COMMISSIONER: All right.

And the witness is?

MS. O'BRIEN: Paul Lemay, and Mr. Lemay is actually in Montreal, appearing with us via Skype connection.

THE COMMISSIONER: All right.

All right, Paul Lemay.

MR. LEMAY: Good afternoon.

Can you hear me?

MS. O'BRIEN: Yes. Yes, we can hear –

MR. LEMAY: (Inaudible.)

MS. O'BRIEN: We can hear you, Mr. Lemay. It's Kate O'Brien speaking; can you hear me?

MR. LEMAY: Yeah.

MS. O'BRIEN: Great.

Madam Clerk is going to ask you to affirm your evidence.

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

MR. LEMAY: Yes, I do.

CLERK: Please state your name for the record.

MR. LEMAY: I beg your pardon?

CLERK: State your name for the record?

MR. LEMAY: Paul Lemay.

CLERK: Thank you.

THE COMMISSIONER: Ms. O'Brien.

MS. O'BRIEN: Thank you, Commissioner.

I have to ask to take a short break because I've left some of my questions upstairs.

THE COMMISSIONER: Okay.

MS. O'BRIEN: In – I'm gonna ask if – if you just give me a moment, I'm gonna ask the CAO to go grab them and then I'm gonna make a request about Mr. Lemay's hearing.

Mr. Commissioner, we're asking today to do Mr. Lemay's evidence in two portions. The first portion would be in a public hearing, as we're in right now, in which I would lead Mr. Lemay through the majority of the questions I have for him, actually, and then once I'm done that, the other parties would be able to cross-examine him.

There is a small area of questioning for Mr. Lemay that one of the parties have identified to us as being commercially sensitive, in that it could impact an ongoing – some ongoing litigation and dispute. It's only a small area of questioning; Mr. Learmonth and I gave their request very serious consideration and we narrowed it down, and it's my opinion and that of Mr. Learmonth that this area is commercially sensitive as per the guidelines that you've given us, and so our request would be that when I –

after the public hearing is done, then we go into an in camera hearing at which point the webcast would be turned off, the public would be excluded from the hearing room, but the legal counsel who are here today would be allowed to attend and stay.

I would then take Mr. Lemay through that area of confidential questioning; then the other parties would have an ability to cross-examine on that. So that's the request going to you.

THE COMMISSIONER: All right.

Do any of the parties' counsel have any comments with regards to this? I'm assuming there's probably been some discussion that's taken place on this; so in the circumstances I've given direction to Commission counsel with regards to what I would consider to be commercially sensitive information. And obviously it's information that if made public, could ultimately negatively impact one of the parties – not in the sense of reputation or anything of that nature, but in the sense of actual cost and/or liability.

In the circumstances, both Commission counsel have reviewed this as I understand it; have come to the conclusion that it is appropriate, that whatever this topic is will be done in camera, and in the circumstances as a result of that I will allow that to take place, and when we do get to that part of the evidence – which I understand will be separate from the main part of the evidence – we will be removing people from the – or asking people to leave the hearing room who are not counsel – and also basically ensuring that the webcast is turned off.

Again, it's one of those things that has to happen, where making it public is problematic in the sense of, as I said, litigation, whatever. It doesn't mean that this Inquiry won't be considering that information; it's just with regards to withholding it from the public's eyes.

Mr. Ralph, you're standing at this stage?

MR. RALPH: Yeah, Mr. Commissioner, just to point out that there's been no discussion, I don't think, with counsel – I'm not sure, certainly there's been no discussion with me. Again, I understand that they have to do this, and I take no objection to it, but just to point out that I don't think any counsel were privy to that discussion.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MR. RALPH: No, I don't (inaudible).

MS. O'BRIEN: Commissioner, I do believe that there was a letter that was sent out to all counsel, so – a memo – so I can clarify that. But I did – certainly our intention was to inform all the counsel, and I do understand we provided them with two copies of the witness interview transcript – one with the sensitive information highlighted and one without, so they would know what was what.

So I'm just – maybe if I could just turn around and canvass everyone here to ensure that everyone is aware of this, because it's obviously important.

THE COMMISSIONER: Go ahead.

MS. O'BRIEN: If anybody else did not (inaudible).

MR. RALPH: That's fine, Commissioner (inaudible). I will have a look now. It's here somewhere.

THE COMMISSIONER: So in other words, Mr. Ralph, it might be something you missed as opposed to something we missed?

MR. RALPH: Absolutely, no question. Wouldn't be the first time.

THE COMMISSIONER: All right.

All right, so as I said, we will do that part of the hearing in camera –

MS. O'BRIEN: Okay.

THE COMMISSIONER: – and you'll let us know when that time comes.

MS. O'BRIEN: Thank you.

THE COMMISSIONER: Okay.

MS. O'BRIEN: Okay, Mr. Lemay, I'm going to start by asking you some questions about your background, your work experience and your educational background. We have a copy of your CV – or your résumé. It's been entered as Exhibit P-00066, so Madam Clerk is going to bring that up.

It's tab 12, I understand, Mr. Lemay. You're going to have a book of documents there. This I believe would be tab 12 in that book of documents. And you may, as you're giving the Commissioner a bit of history of your background, feel free to refer to that document.

And I'm going to ask you to bring up your work history, your experience up until the point you joined the Lower Churchill Project, please.

MR. LEMAY: Thank you.

I will say good afternoon to the distinguished members of this Commission.

I am a civil engineer; I have some 47 years of experience in construction, and among this time I have spent 30 years estimating. For that period of estimating I worked seven years for Kiewit Construction; I've worked five years for Bechtel; and then I worked some 10 years, almost, for Hydro-Québec on the James Bay Project; and the last eight years was with the Muskrat Falls Project as an employee for SNC. Up to very recently, about one month ago, on the 14 of September, my PAA – personal authorization to work has be terminated, prematurely.

It was supposed to end on December 31 of this year, but it was terminated by Nalcor prematurely. I was a bit disappointed about that. So I – especially that – maybe it's a coincidence, but it came as a surprise to me.

MS. O'BRIEN: Okay.

And I'll get to the time of your termination with the project in a few moments. Right now I really want to focus on your background and in particular, we're going to get to it, but you were the lead estimator for SNC-Lavalin for the Lower Churchill Project, and so in looking at your résumé that's been filed here, I'd really like to highlight for the Commissioner your past experience in estimating, and in particular your past experience in estimating for hydroelectric projects.

So based on what you've just said, I understand your CV goes all the way back to 1978. Now, are you an engineer, are you trained – do you have an engineering degree?

MR. LEMAY: Yes, I have a status of an engineer that was given to me by the Order of Engineers of Quebec, in 1984.

MS. O'BRIEN: Okay. So you've been an –

MR. LEMAY: (Inaudible.)

MS. O'BRIEN: – so are you able to call yourself a professional engineer?

MR. LEMAY: Yup.

MS. O'BRIEN: Okay.

So since 1984 you've had that status, and I know you mentioned, obviously, some big names: Bechtel, Kiewit. For – they – when we look through your résumé here, can you just highlight for us the projects that you would have worked on doing estimating? Has your whole career been in estimating, or did you move towards that area?

MR. LEMAY: Since I start working for Kiewit, it was as an estimator.

MS. O'BRIEN: Okay, so you started working for Kiewit – this would be in 1990?

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay. So you've been an estimator since 1990. And –

MR. LEMAY: Yes.

MS. O'BRIEN: – and in terms – since that time that you've been doing estimating work, have you done estimating on a variety of types of projects?

MR. LEMAY: Not that many; it was mainly hydroelectric projects, except for Bechtel – it was an aluminium plant.

MS. O'BRIEN: Okay.

And you were with Bechtel from 1997 to 2002, is that right?

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay, so you were doing an aluminium plant for those years, but other than that, all your history since 1990 has been with doing estimating on hydroelectric projects.

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay. And have they all been in Quebec?

MR. LEMAY: Yes – (inaudible) yeah, James Bay, yes.

MS. O'BRIEN: And also –

MR. LEMAY: Mostly –

MS. O'BRIEN: – and also the Lower Mattagami Project in Ontario, as well. Is that right?

MR. LEMAY: Yeah, that was a – the – small period of six (inaudible).

MS. O'BRIEN: Okay.

MR. LEMAY: At – in estimating of that (inaudible). Sorry about that.

MS. O'BRIEN: No, that's fine, thank you.

So, when – how did you first get in involved in the Lower Churchill Project?

MR. LEMAY: Well, I was called by some HR people at SNC; they asked me if I want to take the lead up at Muskrat Falls Project in Newfoundland.

MS. O'BRIEN: Okay, so at that time you were not working for SNC-Lavalin, though, were you?

MR. LEMAY: No.

MS. O'BRIEN: You're working at Kiewit.

MR. LEMAY: I was working for Kiewit.

MS. O'BRIEN: Okay.

MR. LEMAY: In Lower Mattagami Project.

MS. O'BRIEN: Okay. So someone from SNC-Lavalin reached out to you and asked if you'd be interested in working on this project.

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay.

And – when was that? When did you first join the project?

MR. LEMAY: That was in May 2011.

MS. O'BRIEN: Okay.

So, you were asked – I said earlier, you were asked to join as SNC-Lavalin's lead estimator, is that right?

MR. LEMAY: Yes.

MS. O'BRIEN: Okay.

And, just at a high level, we're gonna – in a few minutes I'm gonna get you to go into the detail of what you were doing, but just at a high level first, can you please explain to the Commissioner what a lead estimator does?

MR. LEMAY: A lead estimator prepare an estimating team, and give the ground rules for the estimate, and establish the estimating schedule – the time we have to do the work – and follow the scope of the work that it is, to terminate the estimate in a certain period of time.

MS. O'BRIEN: Now, are you aware of the Decision Gate process?

MR. LEMAY: Which one?

MS. O'BRIEN: The Decision Gate process – are you aware of that process? Decision Gates?

MR. LEMAY: No. No.

MS. O'BRIEN: Okay.

Were you aware – if I say Decision Gate 3, does that mean anything to you?

MR. LEMAY: I know about – they call that DG3, which was the part that I was involved in determining the estimate for Dec 15, 2011.

MS. O'BRIEN: Okay.

So yes, so that was DG3. So Nalcor has a Decision Gate process, and it had a variety of these gates, and –

MR. LEMAY: Yeah.

MS. O'BRIEN: – the one you were involved with was its Decision Gate number 3, and I know you did the estimate for that, and we're going to talk about that. But before Decision Gate 3, there was an earlier Decision Gate – Decision Gate 2 – that was passed through in November of 2010. Now, the Commissioner has already heard evidence that an estimate – a capital cost estimate – had been prepared for Decision Gate 2.

Did you have any involvement in preparing the capital cost estimate for Decision Gate 2?

MR. LEMAY: Not at all.

MS. O'BRIEN: Okay.

And of course when you arrived in the project, in May 2011, that was after they'd passed through that Gate.

MR. LEMAY: That was what?

MS. O'BRIEN: They'd already passed through that Gate, when you arrived in May 2011.

MR. LEMAY: Yeah.

MS. O'BRIEN: Okay.

Okay, so we're going to focus on the Decision Gate 3 estimate. Now, we have heard that the Muskrat Falls Project was divided into a series of components. So there was, like, the Muskrat Falls generating station itself, the dam itself and the buildings around the dam. We know there was switchyards and converter stations, there was transmission lines that went through Labrador, big DC transmission line right across the Island of Newfoundland and Labrador. And there was also what they call the SOBI, or the Strait of Belle Isle cable, this underwater cable that passed between Labrador and Newfoundland.

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: Which components were you responsible for preparing the estimates on?

MR. LEMAY: The whole – I was involved with the three component: C1, which is the generating station where the powerhouse is; C3 – C3 are all the substation that starts from Churchill Falls and ends to Soldier Pond in Newfoundland, St. John's.

MS. O'BRIEN: Okay.

MR. LEMAY: And C4; C4 is the transmission line. And the SOBIs, I was not involved in SOBIs at all.

MS. O'BRIEN: Okay. So you were responsible for essentially doing all of the estimate, with the exception of the undersea cable.

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay. All right.

Now, we have – we know that – and when I interviewed you, Mr. Lemay, we went over it in some detail. But there was a series of Decision Gate 3 deliverables that had to be prepared for the Gate. And during our interview, I asked you to look at that list and identify which of the deliverables you were responsible for? Do you recall that?

MR. LEMAY: Yes, I do.

MS. O'BRIEN: Okay.

And I understand that the only deliverable that you were responsible was for preparing this DG3 estimate to an AACE Class 3 standard. Is that right?

MR. LEMAY: Sorry, we've got some disturbance on the transmission.

MS. O'BRIEN: Okay.

I just wanted to confirm that the only deliverable that you were responsible for, in the list that we looked at, was delivering the estimate for the project at an AACE Class 3 level of accuracy. Is that right?

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay.

And you –did you have any involvement in preparing a schedule for the project?

MR. LEMAY: No. That scheduling was not my – in my scope.

MS. O'BRIEN: Okay.

And I think you said this already, but the due date for this DG3 cost estimate from SNC-Lavalin was December 15, 2011. Is that right?

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay. So you got hired in May, and at that time you knew you had to have the estimate ready by mid-December.

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay. Can we please bring up P-00865?

Mr. Lemay, this is the Project Controls Management Plan. It should be at tab 11 of your book? And can we go to page 41?

And, Mr. Lemay, if you could go to page 41, and when I give you a page number, I'm referring to the red numbers.

MR. LEMAY: I know.

MS. O'BRIEN: Okay.

MR. LEMAY: Page 41. Sorry, Miss, won't be long.

Yes, I'm here at page 41.

MS. O'BRIEN: Okay.

So the document that we have here is a Project Controls Management Plan. It's a document that was prepared by Nalcor for the Lower Churchill Project. Have you – I know I sent you this document in assisting you in preparing for today, but prior to that, had you ever seen this document?

MR. LEMAY: No, I did not.

MS. O'BRIEN: Okay.

And I asked you, in particular in your preparation, to review this section 12, which starts here on page 41, called: Estimating and the Cost Baseline. Did you get a chance to review that?

MR. LEMAY: Well, I read the section.

MS. O'BRIEN: Okay.

MR. LEMAY: But like I told you, I had not seen that document before yesterday, so –

MS. O'BRIEN: Okay, I understand.

MR. LEMAY: (Inaudible) no right way to know what was written there, but what was your question again?

MS. O'BRIEN: Yeah. Okay, so I just want to – just because – I know you haven't seen the documents, but I thought you may be still familiar with some of the information in the document. And there's a section here, 12.3 Estimate Components. And go down, there was a section 12.4 Estimate Class, Accuracy and Contingency Setting and – in section 12.4.

And section 12.5 is Estimating Methodology. So it talks about how the estimate is to be developed.

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: And 12.6 is – talks about Estimate Structure; in other words, how the estimate is supposed to be structured. The – were you familiar with the information that is in this document, even if you hadn't seen the document itself? And in particular I'm talking about these sections here on how the estimate was supposed to be structured and the methods that were supposed to be used.

MR. LEMAY: Well, of course I like, mentioned, I have not previously read this paper, but I'm aware of the structure of the estimate by having the chance in my career of doing several of those. And reading through those information, the document yesterday, it looks really similar to what I'm used to in these situations.

MS. O'BRIEN: Okay. So you hadn't seen this document before but, certainly, at least with these – for these sections here, and particularly the work that you were doing, there was no surprises to you?

MR. LEMAY: No.

MS. O'BRIEN: Okay.

MR. LEMAY: Exactly. No surprising the various step of it.

MS. O'BRIEN: Okay.

And I don't want to suggest that you were responsible for everything in section 12, but for the things covered in section 12 that you were responsible for can you confirm that you followed the methodology and the structure, et cetera, that is expected by section 12?

MR. LEMAY: Yeah, almost. It's pretty close to what is being said there and we have follow – tried to follow it as much as possible, this procedure.

MS. O'BRIEN: Okay.

Is there – and maybe as we go through, if there was exceptions to that, you can point those out to me, but I'll give you an opportunity to do that a little bit later in the testimony, okay?

MR. LEMAY: Mm-hmm. Okay.

MS. O'BRIEN: Okay.

So we have the document here, but I'd like you to start by giving us a description about how you went about preparing the estimate for the Muskrat Falls Project.

MR. LEMAY: What – can you be more precise on what information you (inaudible), exactly?

MS. O'BRIEN: Yes, absolutely.

So you get the job in May 2011, you know you have to have an estimate prepared by December 15 so what were your first steps? For example, did you have to go hire a team or was the team already in place? Did you break it up into, you know, you do the estimates on aluminium and you do the estimates on steel? And, you know, how did you go about organizing the work?

MR. LEMAY: Yeah, exactly. First thing to do was to prepare a – unite an estimating crew and find the estimator. And while I was doing that I had to prepare, as well, the estimate ground rule that tells each estimator certain parameter to follow so nobody goes in all direction, you know? Whether it is for information on indirect costs for the staff or the temporary buildings and stuff like that, I indicate to each estimator to follow the same parameter.

MS. O'BRIEN: Okay.

And did you get to select the people who would be working on the estimate or were they already in place and hired when you got there?

MR. LEMAY: No, we have to select them.

MS. O'BRIEN: Okay.

And were the people who were working on the estimate all people from SLI, from SNC-Lavalin? Or were they – or did the team also include people from Nalcor or even some third parties?

MR. LEMAY: Some were from SNC and some other were from – what we call on the street an other contact, some contact that I had myself in this domain. Like, for example, the people who I have engaged for doing excavation and earthwork is a consulting firm in Quebec City. And for the concrete estimator I find somebody in United States that was very familiar with the Vancouver Site C project, but this came through a reference with somebody working for SNC.

MS. O'BRIEN: Sorry, I missed that last part. The person who you got, who'd worked on the

Site C Project to help with the concrete estimation, what did you say about them?

MR. LEMAY: No, I said that the person that I have engaged to do the concrete estimate had some experience on the estimation of the Site C Project in Vancouver. He's an American person but he is in – living in Washington and so he's close to Vancouver. So he had a good experience in that project, which is another hydroelectric project.

MS. O'BRIEN: Okay.

Now I know – my notes here say that there was a company, Daubersmith, who was used?

MR. LEMAY: Yes, Jim Daubersmith.

MS. O'BRIEN: Jim Daubersmith. It's a person, okay. And was that the – is that the American with the experience in the concrete?

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay.

And so you had people on the estimate working from SNC, but you also had a few third parties we'll call them. So – and these were contacts of yours.

MR. LEMAY: Yes.

MS. O'BRIEN: Okay. So this Jim Daubersmith who assisted with the concrete, you said somebody else, another third party, assisted with the estimate on the excavation. Would that be CGC Consulting?

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay.

And another name I have here is DESFOR consultants. Does that mean anything to you?

MR. LEMAY: Yes, this firm was involved with the clearing of the trees for the transmission line.

MS. O'BRIEN: Okay. And is that similar as for Daubersmith and CGC? Was this another contact of your – that you reached out to get some specialist assistance on that portion of the estimate?

MR. LEMAY: I don't make the (inaudible) to do with Jim Daubersmith and DESFOR?

MS. O'BRIEN: Pardon?

MR. LEMAY: What is your question again? Because you –

MS. O'BRIEN: I just wanted to know, was DESFOR – was – I understood you to say that you reached out to Jim Daubersmith to get assistance on the powerhouse.

MR. LEMAY: On the concrete estimate, yes.

MS. O'BRIEN: Okay. And you reached out to CGC Consulting to get assistance on the excavation.

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay. And did you also reach out to DESFOR consultants to get assistance with the right-of-way clearing for the transmission lines?

MR. LEMAY: No, DESFOR was a suggestion from other people from SNC to come and join us on the estimating team.

MS. O'BRIEN: Okay, all right.

So the people doing the estimates, so those three third parties and then individuals from SNC, and then you led up the effort, you were the lead estimator.

MR. LEMAY: Yes.

MS. O'BRIEN: Okay.

And, generally, the – you've given us some sense of, obviously, the experience of Daubersmith, you said, and also CGC. We know what your experience was on hydroelectric projects. What about the other people from SNC-Lavalin who were working on the estimate with you? Were these people who had previous experience estimating – previous experience estimating with hydroelectric projects?

MR. LEMAY: Yes, the people that I have – that they joined us that was working for SNC were from the Calgary division of hydro.

MS. O'BRIEN: Okay.

MR. LEMAY: And they were doing the architectural, the mechanical and electrical. And they had various expertise, not only in the hydroelectric, but in several other industrial category.

MS. O'BRIEN: Okay.

And now when you were working and preparing the estimates – so prior to December 15 – where were you physically working from? I know you live in Montreal, but were you working in Montreal or were you working here in St. John's?

MR. LEMAY: I was working in St. John's at Torbay Road on the SNC premises.

MS. O'BRIEN: Okay. And the other people who you've described as working on the estimate, where were they working from?

MR. LEMAY: The people from Calgary – the three people from Calgary flew into St. John and they stayed for the duration of the estimate. And Jim Daubersmith came, on request, for a specific meeting that we have, reviews and everything, but he was preparing his estimates from his end after he came in St. John, gather all the drawing, the information and returned to do the estimate. Same thing with the consultant CGC from Quebec City, they came in for – in St. John to get their information and go back to their own office. And they came back later on at an internal review that they had mid-November.

MS. O'BRIEN: Okay and what about DESFOR, the same for them?

MR. LEMAY: Yeah, yeah. Sorry.

MS. O'BRIEN: So they came –

MR. LEMAY: (Inaudible.)

MS. O'BRIEN: They came, spent some times in St. John's, but they did –

MR. LEMAY: Yeah.

MS. O'BRIEN: – the bulk of their work from their main office.

MR. LEMAY: Yeah, and they were flying back and forth sometimes.

MS. O'BRIEN: Okay.

And, now, during this period, who did you report to? Who was your direct boss?

MR. LEMAY: I had two person I was reporting during that period: is Stan Wynne and André Saint-Jean. Unfortunately, each two person had – would leave the project prematurely because of a health problem. So I had another person from SNC, Mahmoud Berjaoui, who came at the end to take the place of Stan Wynne.

MS. O'BRIEN: Okay.

MR. LEMAY: And after that, after 2011 of course, I was reporting, starting January 1 – not first but (inaudible) January, I was reporting directly to Jason Kean from Nalcor.

MS. O'BRIEN: Okay.

So just up – I'm just going to focus. On the period up until you submitted the December 15 estimate –

MR. LEMAY: Yeah.

MS. O'BRIEN: – I understand you were reporting directly to someone within SNC-Lavalin?

MR. LEMAY: Yes.

MS. O'BRIEN: Your boss was at SNC-Lavalin. And I understood –

MR. LEMAY: Yeah.

MS. O'BRIEN: – you had two bosses who had to leave because of health reasons.

MR. LEMAY: Yeah.

MS. O'BRIEN: And then just before the estimate was due, there was another SNC person brought in that you reported to.

MR. LEMAY: Yeah.

MS. O'BRIEN: Okay.

Did anyone – prior to you submitting your estimate on December 15, was there anybody at SNC-Lavalin who was responsible for checking your work? Overseeing your work? Checking the estimate?

MR. LEMAY: Yes, they had someone in Montreal that was giving me (inaudible) and looking – he was, you know, a person who works for several years and – but from Montreal, and he came at the end of the estimate to help us, you know, closing the estimate properly.

MS. O'BRIEN: Okay, and who was that?

MR. LEMAY: Gilles Simard.

MS. O'BRIEN: Okay.

Now, I said earlier that there was an estimate done for DG2. I know you said you had nothing to do in preparing that estimate, but did you use that estimate at all in your preparation of the DG3 estimate?

MR. LEMAY: Not really. I didn't have any information on that.

MS. O'BRIEN: Okay, so when you started doing your estimate, you started from scratch?

MR. LEMAY: What do you mean by scratch? I mean –

MS. O'BRIEN: Sorry.

Yeah. Sorry, I – when you started your estimate, you started with a clean sheet? So you didn't start from developing the – with the DG2 estimate; you started as if you were beginning a fresh estimate. Is that fair to say?

MR. LEMAY: Yeah, well, we had some identification of the different structure that needs to be built, like the powerhouse, the spillway – we had a kind of a – we call that a summary, a green sheet that enumerate the value structure to be built – and the transmission line, the length of that transmission line.

But it was, you know, minimal information. I had to sit down with people from Nalcor and start and establish, you know, the way that we got – prepare that estimate by structure, until the contract package are complete, so for the first exercise, from May, June 'til December, all the estimate was done and identified by structure.

MS. O'BRIEN: Okay.

So when you started preparing your estimate – and I understand you would have had a breakdown of the project, of the components and, obviously, what you were supposed to be estimating. But my question was really trying to get to, you know, what reliance if any did you put on the work that had been done for the DG2 estimate?

MR. LEMAY: No, you know, I really just look at the structure that we had to estimate, and I had an estimating schedule that tells me that I have 28 weeks in front of me to do that, and we're rushing to make sure that we meet this deadline.

MS. O'BRIEN: Okay.

All right. So from what I'm hearing from that you really did not use the DG2 estimate?

MR. LEMAY: No. Not at all.

MS. O'BRIEN: Okay. And I know you used – there's some discussion in the documents of a piece of software, I think, called Heavy Construction Software System. Is that familiar to you?

MR. LEMAY: Yes, it's (inaudible) what we call HCSS.

MS. O'BRIEN: Okay, HCSS. So what does HCSS do?

MR. LEMAY: Okay. HCSS stand, like you said, Heavy Construction Software System. This is the software that we use to enter all the information that each estimator prepare so we could have a clear cost of the job with all the details, each team and each crew's various information, so we need to have this software system to do an estimate of this magnitude.

MS. O'BRIEN: Okay, and so is it fair to say that all the information, all the pieces of the estimate, eventually get inputted into this software, and then this software is used to produce the final estimate? Is that a fair summary?

MR. LEMAY: That – exactly.

MS. O'BRIEN: Okay.

And would all the people have been – who were working on the estimate – all using this software?

MR. LEMAY: Mmm. Yeah, yeah, yeah. At the beginning, well, people didn't have all access to that, because there is one person who was making all the computer entrance, you know, so – his name was Bhasker Dubey.

MS. O'BRIEN: Okay.

MR. LEMAY: But – from the spreadsheet that each estimator were making of their Excel sheet. So they give the information to Bhasker, and Bhasker was entering the information into HCSS, so we don't have the – you know, three or four people entering information in HCSS and (inaudible) possibility of duplicating stuff.

MS. O'BRIEN: Okay. So this – I'm going to summarize that and just make sure that we – I have a fair summary. So you, as the lead estimator, you said you gave – set some ground rules for all the estimators –

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: – ground rules that they were to apply.

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: You would have given them some standard pricing for things such as indirects and, I assume, supply prices, for certain of the elements.

MR. LEMAY: Some material, yup.

MS. O'BRIEN: Okay. So you made sure all the estimators had the – were working from the same numbers and the same ground rules.

Then –

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: – they would have developed their portions of the estimates using Excel spreadsheets; those would have all gone to Bhasker Dubey, and he would have been the one responsible for inputting all of this information into the HCSS system. Is that correct?

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay.

MR. LEMAY: Yeah.

MS. O'BRIEN: Thank you.

And there is some discussion in this Project Controls Management Plan that we looked at a few minutes ago, of using industry databases to benchmark the estimate against other hydroelectric projects globally. And we do know that there are some companies that run these benchmarking databases, you know, where they collect data from projects, probably around the world, so you can, sort of, compare your estimates to what's in the database.

Did you do any benchmarking of your estimates to this type of a database or not?

MR. LEMAY: No, I – the benchmarking that I used for Muskrat Falls is what I have just lived in the past nine years in the two James Bay project, Eastmain-1 and Eastmain-1-A. So I think it was fairly fresh information for what we were going to build, so that was my benchmarking.

MS. O'BRIEN: Okay.

So that's based on your experience with some –

MR. LEMAY: Yes.

MS. O'BRIEN: – very substantial and recent hydroelectric projects in Canada?

MR. LEMAY: Yeah. It was my information that I just gone through there.

MS. O'BRIEN: Okay.

Mr. Lemay, can you please go to tab 1 in your book, Exhibit P-00855. I'm going to have you look at two letters, Mr. Lemay, and then I'm going to ask you questions on them both.

So the first letter that I'm – it's at tab 1; it's a letter dated July 27, 2011, and you're not on this letter, I know that. It's from Ron Power, who was with the Nalcor project team, and it's to Mr. Normand Bechard. And I understand Mr. Bechard was also working for SNC on the Lower Churchill Project during the same period you were, right?

MR. LEMAY: Yes.

MS. O'BRIEN: And what was Mr. Bechard's role?

MR. LEMAY: He was project manager.

MS. O'BRIEN: Okay.

So this letter here has to do with the 2011 Muskrat Falls geotechnical field program, and I'm just going to summarize the letter, but – Mr. Power is writing to Mr. Bechard in response to SNC-Lavalin's recent recommendation to Nalcor for a field geotechnical investigation at the Muskrat Falls site. And he's saying, you know: "Nalcor cannot support that additional fieldwork be undertaken at this time," and he's – requests that SNC-Lavalin "consider the addition of geotechnical investigative scopes within the contract packages to be awarded in 2012."

So this has to do with geotechnical work, clearly, that SNC-Lavalin was looking to have done at the Muskrat Falls site.

And the other letter I want to go to deals with the transmission lines. It's at tab 5 of your binder, Mr. Lemay. It's Exhibit P-00859.

MR. LEMAY: Yeah. I have it.

MS. O'BRIEN: Okay.

So this is – again, you are not on the letter – but this is a letter from Mr. Bechard to Mr. Power. This one has to do with geotechnical investigations, but this time with respect to the transmission lines. And he says: "As directed, the geotechnical investigation along the centerline to determine the foundation types at each tower location shall be included in the construction package …."

And he does go on here, and talk about, "However, we wish to inform that the … cost estimate for the construction of the foundations is based on the assumption that the geotech/site investigation for foundation selection is to be done ahead of floating" – that contract package – "to reduce the percentage of uncertainty in the choice of foundation types for tower locations. Therefore, during the contingency analysis for the overall estimate due consideration may kindly be given to cater for the above mentioned uncertainty and resulting possible additional costs due to changes in foundation types during the course of construction."

So, two letters here, both deal with geotechnical investigations, one for the Muskrat Falls site, as I understand it, and one for the transmission lines.

I know you weren't copied on these letters, Mr. Lemay, but did you have a chance to read them previously?

MR. LEMAY: Not before until I get the document you just show me.

MS. O'BRIEN: Okay.

Even if you weren't aware of the letters, were you familiar with the topics that were being covered in this letters? Were you familiar with the content?

MR. LEMAY: Yes, the geotechnical information, that was an important issue, and since we didn't have that many information on this issue, I have include a note in the estimate to cover the uncertainty that may arise from this situation of not having enough information on geotech.

MS. O'BRIEN: Okay.

What was the quality of the geotech information you had? And if you can give it a comparison, you know, to the quality you have, you know – was it, you know, as you would like it, or better than you – you know, better than you might normally have, or not as good as you might normally have. Can you give us some sense of, you know, based on your experience, what you would normally have to do, estimating for this type of project, how that – how the geotechnical information that you did receive, how that fit in?

MR. LEMAY: Well, usually we have – we would like to have as many boring holes along the transmission line and where the structure will be built, ideally, that's what we would expect but many times we don't have all these information, so we have to assume that the condition – if the condition, especially for the transmission line that is spread over 1,000 kilometres, we may have a few surprise even there, so we need to put an allowance for this uncertainty –

MS. O'BRIEN: Okay.

MR. LEMAY: – and that's what I did.

MS. O'BRIEN: And had you done estimating for transmission lines previously?

MR. LEMAY: Myself, no, but the person that I have hired for that has spent 30 years in the estimating – not 30 years estimating, 30 years on the transmission line construction, and the last five or 10 years of his career with Hydro-Québec, he was in their estimating department.

MS. O'BRIEN: Okay.

And so – I know you can't necessarily speak for him, but you might know if – did he have any concerns with the level of geotech information that he had in order to do his estimate? Or was he satisfied? Was it sufficient for him?

MR. LEMAY: Well, we would have to ask Normand the question, but I think he had a fairly good experience himself; if he doesn't have – like we've been discussing together – it's whether you are on the good grounds, on rock, or you are in the swamp. But it cannot be like this all the way along, so we will assume normal situation, and – or what is not going to be normal, we would have a provision – an allowance – that would help to cover these (inaudible).

MS. O'BRIEN: Okay. And we're going to talk about your allowance a little later on.

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: Okay, thank you.

Did you submit the DG3 estimate by December 15, 2011 as you were required to do?

MR. LEMAY: Yes, I do.

MS. O'BRIEN: Okay. And to your knowledge, did Nalcor raise any concerns about the estimate that SNC-Lavalin provided?

MR. LEMAY: When? As of in a certain – at a certain moment? When –?

MS. O'BRIEN: When you submitted the December 15 estimate –

MR. LEMAY: Well –

MS. O'BRIEN: – are you aware whether Nalcor raised – were you, at the time, aware whether Nalcor raised any concerns with what SNC had provided?

MR. LEMAY: No.

MS. O'BRIEN: Okay.

Now, I'm going to take you to a couple of letters; an email first. It's in tab 2 of your book; P-00856.

Now, I know you're not copied on this, Mr. Lemay. It has been provided to you, but this is an email from Jason Kean to Mahmoud Berjaoui, who I understand, this would have been your boss at this time, right?

MR. LEMAY: Which – what –?

MS. O'BRIEN: I'm at tab 2.

MR. LEMAY: I –

MS. O'BRIEN: P-00856.

MR. LEMAY: Fourth of January?

MS. O'BRIEN: Yes.

MR. LEMAY: No.

Yeah, Mahmoud was my boss, but at the same time, I was reporting to Jason Kean. Because when we returned from Christmas, early January, Nalcor asked me to bring my estimator in Nalcor side and help them from there to fine-tune the estimate until the sanction is pronounced.

So, mainly I was reporting to Jason, but of course Mahmoud was there, but I was not reporting to him, since every day I was next to Mr. Kean.

MS. O'BRIEN: Okay. But I understand 'til after you – after the Christmas break of 2011, you would have come back to work in early January 2012, right?

MR. LEMAY: Yeah.

MS. O'BRIEN: Okay. And you're saying that change happened, in terms of who your boss was, who you were reporting to, that happened when you came back after the Christmas break?

MR. LEMAY: Yes. Yeah.

MS. O'BRIEN: Okay.

So this is January 4, so you're just back, if you're back.

MR. LEMAY: Yeah.

MS. O'BRIEN: So, at this point, this would be right around the time that your bosses changed.

MR. LEMAY: Yeah. I have not seen – first of all, I have not seen the document you are referring to, okay? But, like you just said, I was in the process of moving on Nalcor side.

MS. O'BRIEN: Okay. And I'm gonna ask you a few more questions about that in just a moment.

So this email here from Jason Kean to Mr. Berjaoui says: "Our review to date of the 15-Dec-2011 cost estimate submission has identified a significant number of items that require clarification as well as a number of potential errors / omissions. We would like to meet with you and the Component PMs tomorrow from 1 - 2PM to review a list of key priorities areas that require immediate estimating focus in order to finalize a quality estimate."

And then he's given a list here.

MR. LEMAY: Okay.

MS. O'BRIEN: So, I understand that you did not receive this email, you weren't aware of it. Were you aware at around this time – did Mr. Berjaoui make you aware that Nalcor was raising these, you know, these concerns? These items that required clarification as well as potential errors and omissions?

MR. LEMAY: I do not recall that Mahmoud (inaudible) basically with me, showing me – said: Paul, we have to look at all these item, since I was in the process of being in Nalcor side and listening to Jason directive that – and, you know, starting from there, of course, we had – to me this – what I see there is part of the fine tuning that we have done with Nalcor.

MS. O'BRIEN: Okay.

And I'm just going to bring up one more document before we get to that. Can we go to P-00857?

Tab 3, Mr. Lemay.

MR. LEMAY: Yes.

MS. O'BRIEN: And this is a DG3 Estimate – Major Deficiencies List as of January 31, 2012, and there's a number of – I'm not going to read the document but I know you've seen it in advance; I provided it to you. There's a number of things listed here that were deficiencies that were identified.

And I understand Mr. Kean is going to tell us that this was a list that was generated after the meeting that he referred to in that email we just looked to from Mr. Kean to Mr. Berjaoui on January 4. Do you recall a meeting to get – where – a meeting with Mr. Berjaoui, with Jason

Kean and other project managers from the components to discuss deficiencies in the estimate?

MR. LEMAY: No, really, it's become a surprise to me because telling that we have major deficiencies is a huge expression for me. I was with (inaudible) and Mr. Kean on a daily basis, starting the second week of January. I don't recall Jason coming to me and say: Paul, you have major deficiency. I never heard that.

MS. O'BRIEN: Okay. And did you hear that from anyone else from within SNC-Lavalin?

MR. LEMAY: No.

MS. O'BRIEN: Okay.

And so you're saying that you came back after Christmas and then there was a change. So prior to Christmas I understand you were working on Torbay Road, but you were working in space that was – space that SNC-Lavalin had rented or that was all SNC-Lavalin people working in the space. Is that right?

MR. LEMAY: Yeah, well, at Torbay Road, if we – let's look at – we had a rectangular – you know, the top of the rectangular for a quarter, 25 per cent of the rectangular would be the Nalcor area. And the three-quarter of the rectangle is the SNC people.

So we were there and we moved – we physically moved –

MS. O'BRIEN: Okay.

MR. LEMAY: – in an area called the bullpen, where we are – all the estimator, four or five people in the same area. And that's what the bullpen was all about.

MS. O'BRIEN: Okay, so the bullpen area was kind of like open office space, was it?

MR. LEMAY: Yes.

MS. O'BRIEN: So everyone sitting at open tables.

MR. LEMAY: Yeah.

MS. O'BRIEN: And so the SNC estimators were moved there. Were Nalcor people there as well or was it just the SNC team?

MR. LEMAY: No, there was one person that was the assistant of Jason Kean; his name was Mark Turpin. So Mark was with us and he was leading the effort on behalf of Jason.

MS. O'BRIEN: Okay.

So who asked you to move, physically, your office space?

MR. LEMAY: My boss.

MS. O'BRIEN: And who was that.

MR. LEMAY: Mahmoud.

MS. O'BRIEN: Okay, so he asked you to move. And then you say at this time, though, your boss changed from Mahmoud Berjaoui to Jason Kean. Is that right?

MR. LEMAY: Jason Kean, yeah.

MS. O'BRIEN: And who told you that your boss was changing?

MR. LEMAY: Mahmoud – there was a – well, Mahmoud didn't say: Paul, now we're changing boss. He said I remain your boss, but now you will be reporting mainly to Jason. Mahmoud told me.

MS. O'BRIEN: And did he give you an explanation for that change?

MR. LEMAY: No.

MS. O'BRIEN: All right, so now you're all working there in the bullpen area. So tell us, please, about the work that you were doing during this period now, so January 2012 over the next several months.

MR. LEMAY: Okay. So I'm going to draw you an image of how it looks, okay?

It goes in four step: 2011 it was dedicated to the estimate, the base estimate. 2012, almost all that year was dedicated to the – fine tuning the estimate. And 2013, that was the contract package period; and 2014, then the construction start. So 2012 my estimator were on Nalcor site until June, July, and after we were done with that fine tuning exercise, we returned to SLI – SNC section, continuing helping the fine tuning, but from our side until December 12, 2012.

MS. O'BRIEN: So would – the fine tuning was done by December 2012, is that what you're saying?

MR. LEMAY: Yeah, well, most of the fine-tuning was done until June 2012, and the rest of the year Jason and his – that personnel finished themselves, you know, the numbers. I was not involved with the final numbers at all, but with the beginning of the contract package, that exercise, we were very busy of helping the people from Nalcor to write down these things and separate who goes in which package, or remove this item and put it in this package. So that's what we were occupied with –

MS. O'BRIEN: Okay.

MR. LEMAY: – for 2012.

MS. O'BRIEN: Okay. So up until, say, June – you know, January to June of 2012 you were refining the estimate. Can you give us a little more information about what refining the estimate involved? What were you doing?

MR. LEMAY: Well, refining the estimate, that means that we would – the goal, like I explained to you earlier, the structure – the project was on a structured kind of organization. We call that WBS, work breakdown structure. So we had to take these structure and start implementing them in the contract package that they would be a part of.

So that is the – what I call the fine tuning. And in the same time, you know, I remember one of the task has been to decide what type of dam we will build, the (inaudible) dam. It was going to be a hard dam or a concrete dam, so that necessitate quite a lot of meeting with the engineering. And, you know, these were the kind of exercise that we were involved, you know, with the Nalcor people and our engineering people too.

MS. O'BRIEN: Okay. And I know in the Project Controls Management Plan that we looked at earlier, there is a definition of this work breakdown structure. So that's – so you were – you – WBS, you're familiar with that term?

MR. LEMAY: Yeah.

MS. O'BRIEN: And so are you saying that's how you prepared your estimate in accordance with the WBS and then in – and then – and that essentially broke it down by components. Is that accurate?

MR. LEMAY: Yes. During that first period until – up to 15 of December, was all under that process, WBS.

MS. O'BRIEN: Okay. And so the major part of the refining process was to take – break it down from components and then put it into the contracting packages that were expected to be bid. Is that –?

MR. LEMAY: The structure – because the component doesn't explain C1, C3, and C4 always remain. But instead of being (inaudible), like I say, if I take the C1 sheet, we will see the powerhouse, the spillway, these structure – we would see package C07, CH – sorry – CH07, CH08, 9. So the name of the structure now become identified to a CH number sequence –

MS. O'BRIEN: Okay.

MR. LEMAY: – all the contract package.

MS. O'BRIEN: Okay, so that's what was going on in the fine tuning.

MR. LEMAY: Yeah. Yeah.

MS. O'BRIEN: Okay.

Now, during this period, what did you understand about SNC-Lavalin's standing as the EPCM contractor with Nalcor?

MR. LEMAY: I was not involved in any of these discussion or …

MS. O'BRIEN: Okay.

Are you aware of – were you aware at the time of any change in Nalcor – in SNC-Lavalin's standing as the EPCM contractor?

MR. LEMAY: No, not all – not during the 2012. I've been quite aware, later, that our mandate was terminated in April 2012, but nobody came to me, said Paul – the morning of April that this decision was made – now we have a different contract, and …

We knew – we heard that there were – something be different, you know, that something would change, maybe Nalcor would take (inaudible) portion of it, but we – I didn't hear anything definite.

MS. O'BRIEN: Okay.

And other than this change in who you were reporting to, that you've already described to us, in early 2012 – was there any change or difference in the way you conducted your work? Through this period up until the end of 2012?

MR. LEMAY: Can you rephrase your question? I don't want to misunderstand you.

MS. O'BRIEN: No, I'm sorry, let me do it again. So I know you say you later became aware that there was a change in SNC's contractual status as of April 2012, but you only found out about that later.

MR. LEMAY: Yeah. Yeah.

MS. O'BRIEN: Okay.

MR. LEMAY: Of course.

MS. O'BRIEN: And in terms of your day-to-day going to work, you've already described to us one change, and that was in January of 2012 when you were asked to move to the bullpen and to report to Jason Kean.

MR. LEMAY: Exactly.

MS. O'BRIEN: Right.

So you've already told us about that one. Other than that, were there any other changes in the way that you did your work?

MR. LEMAY: Not really.

MS. O'BRIEN: Okay. Thank you.

All right. Can you go to tab 6 of your book, please, Mr. Lemay? Exhibit P-00860.

This is a document that we received from SNC-Lavalin, and the front here is just a summary page, it looks like, but I want to go to page 2. So can you go to page 2, please?

MR. LEMAY: Which document is that?

MS. O'BRIEN: 00860, and it should be at tab 6.

MR. LEMAY: Six. Six. Okay. Okay. Yeah, okay.

MS. O'BRIEN: Okay.

So first, I just want to deal with the typewritten information on the page. Let's ignore the handwriting for a few minutes.

Ignoring the handwriting, is this a document that you recognize?

MR. LEMAY: I recognize the upper portion, of course.

MS. O'BRIEN: Okay.

And what do you recognize it as?

MR. LEMAY: It's the estimate price that we turned in to on 15 December, 2011: 5.1 billion.

MS. O'BRIEN: Okay.

So is this fair to say, that this is SNC-Lavalin's base estimate that they turned in on December 15, 2011?

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay.

And so is this a printout from the HCSS software?

MR. LEMAY: Yes, it is.

MS. O'BRIEN: Okay.

And up here in the right-hand – the, sorry, the top left-hand corner we see Bhasker Dubey's name, so that's Mr. Dubey who you referred to earlier, right?

MR. LEMAY: Yeah, right on.

MS. O'BRIEN: Okay.

And I can see up here the date. December 15 is up here in the top left-hand corner as well.

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: And we see here the various breakdown of it, but it ultimately comes to 5.1 billion and change.

MR. LEMAY: Yeah.

MS. O'BRIEN: Okay.

Now, the – when we look at this 5.1 billion and the break out here, am I right in seeing that there is two amounts being included for EPCM expenses and EPCM salaries?

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay.

And one of those is 69 million, and the other is 578 million or so.

MR. LEMAY: Oops. EP – surveying, EPCM – there is three, hein?

MS. O'BRIEN: Salaries – oh, there's three?

MR. LEMAY: Surveying – the 69 million is EPCM?

MS. O'BRIEN: It just says surveying services here. Is – are you saying you understand that to be EPCM?

MR. LEMAY: I just wanna make sure – 'cause the two item that I see there is 568 – (inaudible) I'm just – want to (inaudible) – sorry Ms. O'Brien.

MS. O'BRIEN: No problem, take your time.

MR. LEMAY: Okay. Yeah. EPCM, 69 million –

MS. O'BRIEN: Okay.

MR. LEMAY: – and the other one, 578. Yes.

MS. O'BRIEN: Okay.

And now, just for a moment, the EPCM amount – how did you – and those would be for the costs of SNC-Lavalin, is that fair to say? The expenses and salaries for SNC-Lavalin's work?

MR. LEMAY: Yeah, exactly.

MS. O'BRIEN: Okay. How did you come to estimate those amounts?

MR. LEMAY: I did not estimate those amounts. It was done by some other people from SNC direct. (Inaudible.)

MS. O'BRIEN: Okay. So who gave you the numbers to use?

MR. LEMAY: Normand Bechard and Mahmoud Berjaoui.

MS. O'BRIEN: Okay. So you didn't estimate those; they were provided to you. Okay.

MR. LEMAY: No. Yeah.

MS. O'BRIEN: All right. So I see here – it looks like here – and I understand this is not your handwriting at this – on this page.

MR. LEMAY: No.

MS. O'BRIEN: Okay.

Do you know whose handwriting it is?

MR. LEMAY: No.

MS. O'BRIEN: Okay.

MR. LEMAY: I don't (inaudible) that.

MS. O'BRIEN: That's fine. But it looks like that person has just taken the base estimate and backed out or subtracted the two SNC-Lavalin numbers, the two EPCM numbers, and come up with a 4.4 billion. Do you see that here?

MR. LEMAY: Yeah. Yeah, I can see that.

MS. O'BRIEN: Okay.

Now, I'm just – I understand from your pre-hearing interview, that – in preparing this $5.1 billion estimate, that you had instructed Mr. Dubey to include – I think in your interview you refer to it as a $300 million in contingency, and you asked him to spread it among the various packages, is that right?

MR. LEMAY: Yes, and no at the word contingency, I want to come back on that notion. I've used the word in our previous interview; I should have said allowance.

MS. O'BRIEN: Okay. And you spoke to me about this on Monday evening, right?

MR. LEMAY: Yes, exactly. So that is the amount that – the expression I should have used for the 300 million was an allowance. It was not a contingency.

MS. O'BRIEN: Oh –

MR. LEMAY: Contingency is another thing, and I am not being involved, it was done by Nalcor, you know, later, and with other item.

MS. O'BRIEN: Okay. Yes. Okay.

So – and I just want to clarify here. This 5.1 billion does not include the SOBI, right? Doesn't include the SOBI.

MR. LEMAY: No.

MS. O'BRIEN: Okay. All right

So when – you and I spoke on Monday evening, because I was – we were meeting in advance of your testimony here, and this was an issue that you raised to me, and when Mr. Learmonth and I interviewed you – we interviewed you in Montreal this summer, right?

MR. LEMAY: Yeah.

MS. O'BRIEN: Okay. And I understand that English is not your first language?

MR. LEMAY: Yes, it's not.

MS. O'BRIEN: That's okay. You're lucky to be able to speak more than one.

So – but we conducted that interview in English?

MR. LEMAY: Yes.

MS. O'BRIEN: Okay.

And during that interview, you used this word contingency, but I understood from our conversation Monday evening that you'd since been, you know, speaking about it and realized you'd used the wrong English word. And you gave a French word to me, what you would refer to it in French, and I don't remember now, so can you just tell me what that was?

MR. LEMAY: It was a provision.

MS. O'BRIEN: Okay. And what would be the word in French?

MR. LEMAY: (Inaudible). French is – a provision is an amount of money for a specific item.

MS. O'BRIEN: Okay. And – just going to watch, please – when I question you here in the hearing room – I know you have legal counsel present with you there in that room, don't you?

MR. LEMAY: Right now, yes.

MS. O'BRIEN: Okay, and it's your lawyers who are there with you –

MR. LEMAY: Yes.

MS. O'BRIEN: – but while I'm – which is perfectly allowable, that's fine – but when I'm questioning you, it's important that just you and I talk, okay?

MR. LEMAY: Okay.

MS. O'BRIEN: All right.

So, I'm just gonna go – can we bring up P-00865 and go to page 43? And this is this Project Controls Management Plan document that we looked at earlier, Mr. Lemay. So it's P-00865; it should be at tab 11 of your book, and I'm going to ask you to go to page 43.

MR. LEMAY: Page 43. In red?

MS. O'BRIEN: In red.

MR. LEMAY: Yeah. In the same one. How come I don't have that?

Okay, sorry.

MS. O'BRIEN: Okay. Do you see there's a drawing there, a little bar? A little graphic with a bar.

MR. LEMAY: Oh, I'm not at the right page, sorry, Ms. O'Brien.

MS. O'BRIEN: That's fine.

MR. LEMAY: I'm not at the right section.

MS. O'BRIEN: Page 43.

MR. LEMAY: (Inaudible) the one of yesterday, hein?

Okay, I've got it. We got the document just yesterday.

Okay, yes.

MS. O'BRIEN: Okay, I'm looking at this Figure 10, Project Estimate Components, and I understand –

MR. LEMAY: Yup.

MS. O'BRIEN: – it's the blue part here, the base estimate that you did, right?

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay, and it does say here, including allowances for identified but unquantified items. You see that?

MR. LEMAY: Yeah.

MS. O'BRIEN: So, I just want to clarify that what you're saying is that for this – for the – is this what you're referring to here when you're talking about allowances, now? The 300 million?

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay. So that's what you included. All right.

MR. LEMAY: Yup.

MS. O'BRIEN: Okay, can you please go to tab 4 of your book? It's P – sorry, 00858.

This is a Nalcor slide deck dated April 24, 2012, and it's called LCP "Task Force" Initiative.

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: And we've had some testimony in this hearing room already, that there was some work done on – in Nalcor, internally, and there's just one – I'd like you to go to page 2.

MR. LEMAY: Yeah.

MS. O'BRIEN: And first I should ask, prior to being provided with this document for your testimony here, had you seen this previously?

MR. LEMAY: No.

MS. O'BRIEN: Okay. That doesn't surprise me, but I just want you to go on page 2 because on this background slide here, it says – SLI is SNC-Lavalin – so: SLI EPCM contract awarded in February 2011; awarded to SLI based on estimate cost for the EPCM services at 2.5 million person-hours; package received in December 2011, approximately 5.5 million person-hours; misalignment with SLI proposal, essentially the same scope; not approved by Nalcor. And then there's a next slide that shows the breakdown of the estimate from the December 15 estimate that you were involved with.

So now, I know you said you were not – you did not do the estimate on the EPCM hours, but I just want to –

MR. LEMAY: Exactly.

MS. O'BRIEN: – ask, were you aware that there was a difference, according to this slide deck, there was a difference in – of 3 million person-hours as to what was put in as a proposal to Nalcor from SNC-Lavalin as to what was included in the December 15, 2011 estimate?

MR. LEMAY: Not at all.

MS. O'BRIEN: Okay. So you're not the right person to ask question about this to?

MR. LEMAY: Not really.

MS. O'BRIEN: Okay.

I'd like to go back now to a document we just looked at just a moment ago. If we could – just one moment, sorry.

If we could go back to P-00860, which is at tab 6 of your book, Mr. Lemay. We looked at page 2 already. Now I'm going to go to page 3. And this is a document, as I said earlier, it was provided to us from SNC and – but this is a document that's called: Nalcor DG3 Estimate - General Control Sheet.

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: Are you familiar with this document?

MR. LEMAY: Yeah, it's the general control sheet that we have worked with Mr. Kean, while we were in the bullpen.

MS. O'BRIEN: Okay, so this is a document you were working with during that bullpen fine-tuning period?

MR. LEMAY: Yeah, it said post 15 December 2011.

MS. O'BRIEN: Okay. And what we see here is some various components; we see – it looks like some adjustments on this, and it does say here down at the bottom: Sub-Total: JK's CHANGES, and there's some dollar amounts there.

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: Do you know who – or what JK means in this context?

MR. LEMAY: No, this – I can see there is a list of – that general control sheet, but there is 135 items in that document, and I don't recall, you know, that specific one. I know that the total means some cut that was made by Jason.

MS. O'BRIEN: Okay, so Jason Kean?

MR. LEMAY: Yeah, yeah, Jason. So for these total, the last pages reflects that total in change.

MS. O'BRIEN: Okay.

MR. LEMAY: So yeah, yeah.

MS. O'BRIEN: And we actually have a fuller document, it's certainly a similar document that's been –

MR. LEMAY: Yeah, yeah.

MS. O'BRIEN: – entered here, and that I provided you. It's been entered as P-00869, and then there's another – which – and another one that is – sorry, I've gotta get the other –

MR. LEMAY: (Inaudible.)

MS. O'BRIEN: – the other one is entered as P-00870.

P-00869, if we could just bring that up, please, Madam Clerk.

This one here, it looks as if it starts with number 1, so it looks like it goes right to the beginning –

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: – and it says: Post December 15 Adjustments to DG3 estimate.

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: And it goes down with a long list of the 135 –

MR. LEMAY: Six.

MS. O'BRIEN: – items.

MR. LEMAY: (Inaudible) 35, hmm.

MS. O'BRIEN: And it totals it off, and then it has a total number of changes.

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: And then we also had – if we could just quickly bring up P-00870. Again, similar type document.

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: But this one, it says there at the top that it's Post May 17, 2012 (Phase 2) Adjustments to the DG3 estimate.

So your – is it fair to say that these are generally the types of documents that you were working with in the bullpen?

MR. LEMAY: Yup.

MS. O'BRIEN: Okay.

MR. LEMAY: Exactly.

MS. O'BRIEN: So, the changes here, you're saying, these are the changes that you were working with Jason Kean on?

MR. LEMAY: Excuse me, would you repeat please?

MS. O'BRIEN: Are these – do these documents show the changes that you were working with Jason Kean on during that period?

MR. LEMAY: Exactly, yeah.

MS. O'BRIEN: Okay. And were you being consulted on these changes? I mean, was this a sense of the whole group working together and arriving at the appropriate changes to make?

MR. LEMAY: Of course, these changes, some time we had arguments on the amount to be used, and Jason has the last shot on the exact amount that he wants to see. So later on (inaudible) see a letter that explained some differences that we had together. And I believe you remember I sent the email dated April 23 mentioning – to give an example.

MS. O'BRIEN: Yes, we can go there now.

MR. LEMAY: Yeah, but –

MS. O'BRIEN: It's Exhibit P-00872 and it's in tab 15 of your book.

MR. LEMAY: P – tab – oh yeah. My tab numeration, this is not in line with … so I need to – do you have a copy? Maybe you can …?

MS. O'BRIEN: P-00872. Does your counsel have a copy there available for you?

MR. LEMAY: Yeah, yeah, yeah, yeah. Okay, I have it.

MS. O'BRIEN: Is this the email you were just referring to?

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay, can you tell us what this is and why you wanted to refer to it?

MR. LEMAY: It's a –

Number 1, "Total combined Nalcor/SLI vehicle fleet will be budgeted at 70 vehicles … Price of $35k each, with annual O&M … of $12k for 5 years."

So my price was around $100,000 for the pickup, for each pickup, for the five year. And Jason wants to put smaller (inaudible) $7,000, so I thought it was not enough. And after (inaudible) like I told (inaudible) we have the differences, Jason decide that, like you said, you can read on the top here: "On reflection from today's meeting, I have taken the following decisions that will become the basis of forward planning and the DG3 estimate. These items are not open for discussion." So that was the end of it.

MS. O'BRIEN: Okay. So are these areas this – and there's seven things on this list. So is it fair to say these are areas where you'd had some disagreement with Mr. Kean and this was him telling you that it was going to be the way he wanted it to be for these items?

MR. LEMAY: Exactly, Madam.

MS. O'BRIEN: Okay.

And now, some of these – were these – I mean some of these could be cases where you wanted a higher number and Jason wanted a lower number, but it could also be the case that you wanted a – Jason wanted a higher number and you wanted a lower number. Do you know, for these, what – you know, how – what category they were all in? Or was it a mix?

MR. LEMAY: Yeah, it was a mix, you know of – there was some time was like you said, higher and lower. So when you go through all these meetings several times, several times and argue here and there, so Jason has the last word on it. And I said: Jason it's your decision.

MS. O'BRIEN: Okay.

And so these went both ways. And then we looked at a sheet that had 135 items on it. This is down to a sheet of – in this email there's only seven. Does this represent the only seven where you had disagreements or would there have been other ones in that list of 135 where you had disagreement?

MR. LEMAY: Well, 135, this is fairly important, but mainly you know, those are the ones. We can talk about all of them, but –

MS. O'BRIEN: No, we don't need –

MR. LEMAY: Okay.

MS. O'BRIEN: – to talk about all of them.

MR. LEMAY: We had variation here and there and we try to come up with an agreement but, you know, impossible to have everybody on the same track.

MS. O'BRIEN: All right.

And at the end of the negotiation, the back and forth and the fine tuning, were you satisfied that the – you were putting your name to this estimate, were you satisfied with the adjustments that had been made? Were you agreeable to them ultimately?

MR. LEMAY: Well, I have not seen the last sheet, you know, that resume all the change we made during that six-month period. So I cannot pronounce myself in that.

MS. O'BRIEN: Okay, so ultimately when this work was done you're saying you weren't provided with the final number?

MR. LEMAY: No, no. I have – I was not involved with the final number that Jason had decided to put that, gave the $6.2 billion that we saw in the website of Nalcor in December at the sanction –

MS. O'BRIEN: Okay.

MR. LEMAY: – in 2012.

MS. O'BRIEN: And of that 6.2 billion, a portion of that would have been for this – for the base estimate. Did you ever see the final number for the base estimate?

MR. LEMAY: No.

MS. O'BRIEN: Okay.

Can we go to P-00863, please, tab 9?

Mr. Lemay, do you recognize this document?

MR. LEMAY: Yes, I do.

MS. O'BRIEN: Okay.

This is a document you provided me during our interview, right?

MR. LEMAY: Yes, it is.

MS. O'BRIEN: I'm going to ask Madam Clerk if she can maybe make it a little smaller so we could see more of it on the screen.

Can you please explain to me what this is, and why you gave it to me at the interview?

MR. LEMAY: Okay, I wrote that the day before that meet just to have some clarity of the cost of the estimate at three different moment in time. And that's why I put that there, and – to show that as of June 2014, the total cost of the job always shown on the website of Nalcor was 8.3 billion.

The one was particular to that; then what you see down below is 37 per cent at 90 per cent of the awarded contract, so that means that by the end of 2000 – June 2014, most of the contract were awarded; the project was at 8.3 billion, and we know today where it is.

MS. O'BRIEN: Okay. And the numbers here, this – numbers for December '12 sanction and June 2014 – these numbers. Are these numbers you got from publicly available numbers from Nalcor?

MR. LEMAY: Yeah.

MS. O'BRIEN: Okay.

MR. LEMAY: Yeah, the 7.4 is the number that we see, yeah. On the next exhibit that you have, that – the document you gave me – is from that sheet, that blue –

MS. O'BRIEN: Okay, yes, you did provide it. It's been – I don't think we need to go there. It's from P-00864, it was from a sheet that you– a page that you got –

MR. LEMAY: Yeah.

MS. O'BRIEN: – from the Nalcor website, right?

MR. LEMAY: Yeah.

MS. O'BRIEN: Okay.

MR. LEMAY: So my number, and then I think comes those numbers.

MS. O'BRIEN: Okay. So that's where you got that – those numbers from.

So, at the bottom here, you say: class 3 estimate in our contract, range of minus 10 to minus 20, and plus 10 to plus 30. So this is –

MR. LEMAY: Hmm.

MS. O'BRIEN: – the range for the AACE class 3 estimate?

MR. LEMAY: Yeah. This is the AACE class 3 definition, that input varies at minus 20 to plus 30 per cent for the total cost of the project.

MS. O'BRIEN: Okay.

All right. So we know today we're out of that range from what the –

MR. LEMAY: Yep.

MS. O'BRIEN: – initial estimate was.

MR. LEMAY: Yeah.

MS. O'BRIEN: Okay. So was there any other – other than putting those numbers together, was there any other reason that you provided this document in the interview?

MR. LEMAY: Not – nothing in particular than this – the sheet, just – like I just told you, to show the differences at different moment in time, and the range that I wrote of the class 3 estimate was the class 3 estimate that we had in our contract, that we were involved with.

So, it says that 37 per cent is a bit more than 30 per cent. Not far, but it's not 30 per cent. It's just to indicate what AACE percentage are, and against what the numbers we see. So it's just a picture, you know, of the various parameter we had and where the cost of the job is at those three moments in time.

MS. O'BRIEN: And is the AACE estimate range, is that supposed to be compared with your estimate before you begin and then the actual cost once you're complete?

MR. LEMAY: Total, yes.

MS. O'BRIEN: Okay.

All right, thank you.

Commissioner, I just noticed the time; I don't know if this is a good time –

THE COMMISSIONER: We can take our afternoon break here, if it's appropriate.

MS. O'BRIEN: So, Mr. Lemay, we're gonna go take a recess for 10 minutes.

MR. LEMAY: Okay.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right, so to return – Mr. Lemay, I'm assuming you're there, and Ms. O'Brien.

MS. O'BRIEN: Thank you.

MR. LEMAY: Yes, I am, Sir.

THE COMMISSIONER: Thank you.

MS. O'BRIEN: Thank you, Mr. Lemay. Can you go to tab 7, Exhibit P-00861? And I'm going to start on the first page, or I guess the second page, and then we're gonna jump into – deep into the document.

But this is a document we have in our records; we only have a draft of it. Are you familiar with this document?

MR. LEMAY: Yeah, that is the document prepared by Jean-Daniel for the basis of estimate.

MS. O'BRIEN: Okay. So Jean-Daniel is Jean-Daniel Tremblay?

MR. LEMAY: (Inaudible.)

MS. O'BRIEN: Okay. And so he was an estimate coordinator with SNC-Lavalin, right?

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay. So this was a document that he was working on.

Did you have any input into this document, any – did you give him any assistance in drafting it?

MR. LEMAY: Of course, Jean-Daniel was consulting me on several items since I was, you know, aware of the whole estimate. And this basis of estimate is nothing else than the recitation of the estimate.

MS. O'BRIEN: Okay.

And am I right – or do you know – that this document was not ultimately finalized but it was done in draft by SNC-Lavalin and then a later document was created by Nalcor?

Are you aware of –?

MR. LEMAY: A later document created by Nalcor? I know we have (inaudible) the basis of estimate, but I don't know if Nalcor had fine-tuned that and – I don't know.

MS. O'BRIEN: Okay.

So for my purposes today, I'm just going to go – ask you to go to page 56 –

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: – and I know we're working with a draft here, but I just wanted – there's some – some information here I just want to take you to, and I just want to see if it's accurate, okay?

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: So I'm in this section here, saying owner costs.

MR. LEMAY: Yeah.

MS. O'BRIEN: "Owner costs are not included in the scope of the CCE basis of estimate (BOE) document."

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay. So are – is this list of things that would not be included in the $5.1 billion estimate that you submitted? Is that what this is?

MR. LEMAY: Exactly (inaudible).

MS. O'BRIEN: Okay. So this list says: "All contingencies."

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: And it also includes "Project risks and exposure."

MR. LEMAY: Exactly.

MS. O'BRIEN: Okay.

So did you have any involvement in doing any estimates about contingencies or project risks and exposure?

MR. LEMAY: No. I was not involved in these – all the items that are listed there that was Nalcor task to evaluate them. That was done during the fine tuning of the estimate but not by my crew.

MS. O'BRIEN: Not by your crew. Okay, so this whole list here – and it actually goes on to the next page there – so if you could just review those bullets, on page 56 and 57 –

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: – and I just wanna confirm that – the costs for none of these appeared in your $5.1 billion estimate, is that right?

MR. LEMAY: Let me read, please. I'll make sure I'll give you the right answer.

MS. O'BRIEN: Yes. Please do.

MR. LEMAY: All contingency, projects, land acquisition – mm-hmm – project (inaudible), escalation, labour rate – escalation of labour rate through the project … no, I have not include that. Inflation; air travel, related costs, (inaudible), financing, all risk, (inaudible) bond, contractor – no, nothing of that.

MS. O'BRIEN: Okay. All right.

So nothing here – and you're saying these were amounts that were going to be determined by Nalcor, is that what you said?

MR. LEMAY: Exactly. It's by the owner.

MS. O'BRIEN: Okay.

And did you or anyone on your team at SNC-Lavalin have any input into or give Nalcor any assistance in coming up with these items – the cost for these items?

MR. LEMAY: I don't know. I'm not aware if Nalcor had spoken to anybody of SNC, in particular – they may; they may not, but I'm not aware of any specific intervention.

MS. O'BRIEN: Okay. And so you didn't have any input, is that fair to say? You didn't –

MR. LEMAY: No.

MS. O'BRIEN: Okay.

MR. LEMAY: Exactly.

MS. O'BRIEN: Now, we've heard testimony that Nalcor engaged with Westney Consulting as a risk consultant and that Westney did a series of risk workshops in May of 2012 to assist Nalcor in identifying risks and coming up with costs, potential costs, that those risks might cause if they happened.

Were you involved in any of this – the risk workshop work that was done or led with Westney Consulting?

MR. LEMAY: None at all. I have not participated in any risk analysis or exercise.

MS. O'BRIEN: Okay. And are you generally aware of what's called the quantitative risk analysis, where you go through this process of identifying risk, putting dollar amounts to them then doing a Monte Carlo simulation. Is that – are you aware of that process generally?

MR. LEMAY: Not at all. I am not familiar at all with these item you just mention.

MS. O'BRIEN: Okay.

Is there anything else you can think of that was – that you did not include in your base estimate, that is not listed on pages 56 and 57 of this document?

MR. LEMAY: Going through it again … something that I did not or I should have –?

MS. O'BRIEN: No, just – anything else that you would think might be a cost, obviously, in your experience, but that you did not include in the base estimate, that's not listed here.

MR. LEMAY: Okay. I don't recall – I don't see anything in particular, like that.

MS. O'BRIEN: Okay.

MR. LEMAY: Nothing obvious to me.

MS. O'BRIEN: Okay, and I just want to make sure I understand from your earlier testimony; you said that after – that how Nalcor got from the base estimate to the $6.2 billion estimate that was used at DG3 – you don't know how that happened, you had no involvement in how that happened. Is that right?

MR. LEMAY: Exactly. Because I was involved – I knew everything happened up to 5.1 billion, which is 15 December 2011, but what was the number present at the sanction on December 2012, I was not part of those exercise.

MS. O'BRIEN: Okay.

And we've seen in evidence, and we'll see a bit more, Nalcor did some work, had some slide shows et cetera, that showed – demonstrated how the costs – capital cost estimate increased from the DG2 number, 5 billion, to the DG3 number, 6.2 billion. Did you have any involvement in preparing that presentation? In other words, any involvement in doing this analysis of how the estimate had changed, what had changed between DG2 and DG3?

MR. LEMAY: Not at all, Miss.

MS. O'BRIEN: Now we also know, from other evidence we've had here at the hearing, that Nalcor was doing a comparison of the Muskrat Falls Project, with what they call the Isolated Island scenario. So it was a generation plan that kept the Island of Newfoundland separated from the mainland, and from Labrador, and from the other parts of mainland Canada, and that they had – did estimates of the capital cost – capital cost estimates for the, you know, the additions to the generation system that would be needed if the Island stayed isolated.

Did you have any involvement in the – in any of those estimates?

MR. LEMAY: Not at all, Miss.

MS. O'BRIEN: Okay.

And, while you were doing – if you'll just accept for the moment that people – there were people who were involved in doing those estimates for the Isolated Island Option. Did you have any communication with those people to talk about: Look, this is how I'm doing my estimate, this is the price I'm using for this element; find out from them what pricing they were using, how they were approaching that estimate – did you have any communication back and forth with anyone working on the estimates for the Isolated Island Option?

MR. LEMAY: No, I – first time that I heard as about that Isolated Option, and I don't remember nobody coming to ask me any question in that sense.

MS. O'BRIEN: Okay.

So as far as you know, there wasn't any common ground rules that you're aware of that were happening between your estimating team and the people who were doing the Isolated Island estimating?

MR. LEMAY: Not as I know about.

MS. O'BRIEN: Okay.

Now, I assume – you said earlier, you had no involvement in developing the schedule for the Muskrat Falls Project.

MR. LEMAY: Hmm.

MS. O'BRIEN: I would assume that when you are doing an estimate – even a base estimate – you have to be working with a schedule to figure out how –

MR. LEMAY: Yeah.

MS. O'BRIEN: – you know, to do your estimate you have to have a schedule assumption.

MR. LEMAY: Yup.

MS. O'BRIEN: Is that right? Okay.

MR. LEMAY: Yeah. Though the – are you talking about the duration of the estimate, the schedule for the duration of the estimate? Or a schedule that I would have done for the work that will be execute?

MS. O'BRIEN: The schedule you would've assumed for the work to be executed in preparing your estimate.

MR. LEMAY: The duration of the estimate?

MS. O'BRIEN: The duration of the work.

MR. LEMAY: Oh, the work. Okay. Oh, you mean, for example, the powerhouse, the generation. I have prepare, of course, a schedule based on the duration of the project, and see if it fits between these period of time, especially for the quantities of concrete that we have to pour, so I have prepared a schedule, you know, that give me the 48 months of the period of time to do the powerhouse.

MS. O'BRIEN: Okay. And so what – when you were developing your estimate, what schedule – how long, what period of time were you working with?

MR. LEMAY: How much time I have taken to prepare that? I wanna make sure what your question exactly is?

MS. O'BRIEN: Okay. I know how much time it took you to prepare the estimate, 'cause you started in May of 2011 and you finished in December 15, right?

MR. LEMAY: Yeah.

MS. O'BRIEN: So I know that. What I'm looking at, was when you were doing your estimate, what assumption did you make about how long it was gonna take to build all these components?

MR. LEMAY: Well, I have done that, you know, during that period that we were doing the estimate, and when I came up that length that I ended up with, was something like 48 months, and it fits with the production that we had expected, you know. I said to myself, we're gonna be all right, it's tight at certain extent, but it's doable and we need to be, you know, alert that – of the schedule. And that's why I have expressed my concern to Jason Kean that during the fine-tuning of the estimate. At one point, Jason asked me: Paul, we have prepared a schedule by (inaudible) prepared by one of our (inaudible) –

MS. O'BRIEN: Yeah. No, I understand. I'm gonna just stop you there, I just want to make sure, I use – I just – I'm gonna focus the question a bit.

So you're saying, when you prepared your estimate, you said you assumed it was going to take 48 months to build the project?

MR. LEMAY: On the total project?

MS. O'BRIEN: Total project, 48 months, so that's four years.

MR. LEMAY: Yes, yes. The total project including the transmission line, and the substation, the powerhouse; so 36 months just for the concrete, and all the other activities would be over the 48 months, approximately.

MS. O'BRIEN: Okay.

MR. LEMAY: Could be a bit more, could be a bit less depending on the weather conditions and –

MS. O'BRIEN: Okay. And –

MR. LEMAY: – stuff like that, but –

MS. O'BRIEN: – and was –

MR. LEMAY: – we weren't talking about a six-year project, or a two-year project. It was more aiming on that 48-month project.

MS. O'BRIEN: Okay. And did you communicate that to Jason Kean or anyone else at Nalcor that that's what you were working with, a 48-month project?

MR. LEMAY: Not in particular because I have done that for my – with my own estimator to see if everything, you know, were jibing, you know, because I was not in charge of the schedule, but of course I checked if it's doable during that period. You know, otherwise, it would not be reasonable.

MS. O'BRIEN: Okay. So you used 48 months; you thought that was reasonable; you're not sure whether or not you communicated that to Jason Kean or anyone at Nalcor. It was a schedule you were using yourself for your estimate –

MR. LEMAY: Yeah.

MS. O'BRIEN: – and when it came to developing Nalcor's schedule – the schedule that they were using, you had no involvement in that schedule.

MR. LEMAY: No. No.

MS. O'BRIEN: Have I accurately summarized what –?

MR. LEMAY: Yes and no.

MS. O'BRIEN: Okay.

MS. MURPHY: Kate, it's – sorry, Ms. O'Brien, it's Sheilagh Murphy here, counsel with Mr. Lemay. I'm not quite sure he's understanding your question.

MS. O'BRIEN: Okay.

I just want to make sure that I – we have your evidence clearly, Mr. Lemay. So I'm going to break it into smaller pieces, say it, and then you can tell me if I'm correct. Okay?

MR. LEMAY: Okay.

MS. O'BRIEN: First, when you developed your estimate, you were making an assumption that the project would take four years to build. Is that right?

MR. LEMAY: That assumption came after we finished the estimate; we generate ours. We see the total of hours that the estimate has generated, we divide that by – or start with a certain period, it would be 36 months, 40, 48 months – and I check, if during that time we have enough people to do it, you know, because we have also to think about the camp – the size of the camp.

So, to do that job within the 48 months, 42 months, if we need a camp of 2,000 men, and we have the estimate at the beginning that is going to be a 1,500-man camp, we have a problem.

So those check of the schedule that I have prepared, that I'm talking about, is in that respect. It was just to double-check that I am not too far off. But I have not sent all these calculation on a regular basis or communicate them on a regular basis to Nalcor. You know?

MS. O'BRIEN: That's – thank you, that's helpful.

MR. LEMAY: So, it was a tool I was using, but something I was doing myself. 'Cause you ask me if I remember well, the beginning, if I did a schedule. So, of course, I check –

MS. O'BRIEN: Okay.

MR. LEMAY: – that we were all right with our duration.

MS. O'BRIEN: Okay. And so as part of your estimate, of course, you would have had to include the cost of the camp, right, where the workers are going to stay.

MR. LEMAY: Of course.

MS. O'BRIEN: And you've gotta make sure you have enough beds for the workers – the number of workers you need to sleep in.

Would you have also included a cost for – it obviously costs to keep a camp going, 'cause you have to have catering services there, you have to have power at the camp.

MR. LEMAY: Exactly.

MS. O'BRIEN: There's a cost to maintaining it. So, there's a cost to the trucks and such that you've talked about earlier, you've got to keep transportation on the site as long as you're under construction, et cetera.

MR. LEMAY: Yup.

MS. O'BRIEN: Would you have included in your estimate costs for keeping the camp going? Costs for –

MR. LEMAY: Yup. Yeah, you mean for the catering? We have include everything, Ms. O'Brien. Costs for building the camp. First of all, we got a cost for the temporary camp, then we have a cost for a permanent camp, for installing and dismantling the camp, and we have a cost for the utilities. So the water, you know, and – used water flows correctly, and all the catering for the workers, the cleaning of their rooms, and the transportation from the airport to the job, and to the job to the camp because the camp is – was a – some, like 8 kilometres, I remember was from the job site. So all these costs were in my estimate.

MS. O'BRIEN: Okay. And they were all based on approximately 48 months, is that right?

MR. LEMAY: Yeah. That's the duration, yeah, that I was – that ending all the time that would be reasonable to take.

MS. O'BRIEN: Okay.

And the question was, I guess, was did Jason Kean know that your costs were based on the 48 months?

MR. LEMAY: I think so.

MS. O'BRIEN: Okay.

MR. LEMAY: Of course, because we were seeing each other every day, and I must have said that at Jason several times.

MS. O'BRIEN: Okay.

Now, so I'm just gonna move now to just some other items that would have taken place after you – after the estimate was finalized.

So, we know that during – between DG2 and DG3, and for even after sanction, we've heard evidence already that Deloitte was involved to do some workshops to facilitate, I think they referred to it as project effectiveness workshops; workshops to facilitate the relationship between people at SNC-Lavalin and people at Nalcor, to help everyone work better together.

Were you involved in any of those workshops?

MR. LEMAY: No, I was not involved. I know they were there, but I have not been involved in these meeting. I might have attended a meeting at one – they had several meeting. I think I went at one of them, but not on the regular basis.

MS. O'BRIEN: Okay. And from your perspective, what was your working relationship with – what was it like with people at Nalcor? I mean, how – when you were there, you were doing the work, particularly in the bullpen and working together. Was it a good working environment or not?

MR. LEMAY: Oh, yes. Yeah, I had good relationship with people at Nalcor. They even keep me for 7½ year on the project. I really had a good relation with these people.

MS. O'BRIEN: Okay.

And you've talked a little bit about what your work entailed after June of 2012, when the fine tuning was done.

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: And I know then you were working on the contract packages and –

MR. LEMAY: Right.

MS. O'BRIEN: – breaking out the estimate for those, once all the –

MR. LEMAY: Mm-hmm.

MS. O'BRIEN: – contracts went out and such. Can you just briefly explain to us what you would have been doing as the lead estimator during the construction period? And it's not – I don't need particular examples but just generally what you would have done?

MR. LEMAY: So you mean, if we go back to what I have expressed earlier today, in four step: 2011, '12 for the fine tuning, '13 the contract package, 2014 – starting 2014, my work was to participate in the analysis of the request from the contractor at the site, for the change that happen.

So I was involved through the contract administrator of the contract package, to help them estimate the request that the contractor were giving to them to get paid. So – but this work has been done totally from Montreal's end, starting January 2014, up to very recently in 2018.

MS. O'BRIEN: Okay, so, yes. So you started your testimony today talking about 2018, so I'll – we'll go back there now.

I understand this September, you got a notice that you were no longer required with the project. Can you explain what happened there?

MR. LEMAY: Yeah, I received an email from my boss, and he told me: Paul, on the 14 of September – in one week, September 21, you are no – your PA is no longer valid. It has been prematurely ended, since it was supposed to finish December 31 of 2018.

So, I said, what's happening? I mean, everything goes fine since 7½ year, and all of a sudden you are telling me that. So we both agreed that there was something to do with the Inquiry.

MS. O'BRIEN: Okay, so we interviewed you in August.

MR. LEMAY: Yeah.

MS. O'BRIEN: Mr. Learmonth and I did, as I referred to earlier, and you – I understand you're saying you believe that you're – what you understood to be a premature termination, did you say you expected to work until the end of 2019 or 2018?

MR. LEMAY: '18. I had an authorization until December 2018, and there was a possibility because of the job is not finished, that I would be request for maybe another 6 or 8 months.

MS. O'BRIEN: So in –

MR. LEMAY: That was my impression.

MS. O'BRIEN: – into 2019, even, is that what you're saying?

MR. LEMAY: Yeah.

MS. O'BRIEN: Okay. And you believe that this has – that your premature termination has something to do with your involvement in the Inquiry.

Is this just, you know, a feeling you have, or do you actually have information that supports that?

MR. LEMAY: No, it's a feeling. I think the moment I got that information, it was only one month after we met each other, so I said well, maybe it's just a coincidence, but I was trying myself to find the reasons, maybe – maybe it's because of that, but I – this is a personal feeling.

MS. O'BRIEN: Okay.

Just a couple of last questions; one of the issues that has been raised is that SNC-Lavalin, on the project, had a very high turnover. So looking at the period of 2011, 2012, that there was a very high turnover of senior people from SNC-Lavalin, and this was, you know, a frustration of Nalcor is that, you know, people kept moving on, or rotating through the positions, and thus there wasn't a lot of stability to the project and the work that SNC-Lavalin was doing.

From your perspective, what was the turnover rate for SNC-Lavalin, and how did it compare to, you know, your other experience and other jobs over the years?

MR. LEMAY: I cannot talk about all the section of the SNC people that were in St. John's, but for my own range of action, like, in estimating, of course, I had seven or eight different person I was reporting to. But four of them were from SNC, and among those four, two had to leave the project because of sick problem, and the two other – Mahmoud, really – Mahmoud Berjaoui – was my boss for three weeks at the end of December 2011, then I was with Jason for almost – 2012 until July, and in July 2012, Mahmoud came for two, three weeks, and then he was replaced by Serge Guerette. And Serge was my boss for a full year, until September, October 2013.

So as of the SNC I couldn't call that a turnover – important is was some fatalities – two fatalities – and after that I got four other person to report to from Nalcor. Starting 2014 – Serge left in 2013 in September, then I got – I was reporting to Ken McClintock until Christmas 2013.

MS. O'BRIEN: And he was Nalcor.

MR. LEMAY: When I came to Montreal, I was reporting to Ed Bush from Nalcor for about one year, and after that (inaudible) for another year and a half, I believe so. And since the departure of Anthony, (inaudible) from Nalcor, was Tanya Power until last – 14th of September.

MS. O'BRIEN: Okay, so you went through Mr. McClintock, Mr. Bush, and then who was the next person, I – Anthony was –

MR. LEMAY: Anthony Embury.

MS. O'BRIEN: Okay.

MR. LEMAY: Embury. E-M-B (inaudible).

MS. O'BRIEN: Embury, and then Tanya –

MR. LEMAY: And Tanya Power.

MS. O'BRIEN: Okay, and Tanya Power. And those four were all Nalcor people?

MR. LEMAY: Yeah.

MS. O'BRIEN: Okay. And Serge Guerette was SNC-Lavalin?

MR. LEMAY: I beg your pardon?

MS. O'BRIEN: Serge Guerette.

MR. LEMAY: Oh, Serge, yes. Yes.

MS. O'BRIEN: He was SNC –

MR. LEMAY: I got four people from SNC.

MS. O'BRIEN: Okay.

MR. LEMAY: The first one was André St. Jean, for two, three weeks in June 2011, and he was replaced when he got sick by Stan Wynne, until end of November, middle of November 2011. Mahmoud came when he was –

MS. O'BRIEN: Yes. I understand. I just – now, I've got the names. And was there – in your experience, in terms of turnover, was that usual or unusual, or – can you give us a sense?

MR. LEMAY: Well, like I told you a few minutes ago, I could not call that a major turnover –

MS. O'BRIEN: Okay.

MR. LEMAY: – you know, really I had one boss was Serge Guerette and Jason Kean from Nalcor, for a good period, and Stan Wynne was maybe three months, and all the other was one year each. There was a turnover on the Nalcor side more than SNC if I can say something.

MS. O'BRIEN: Okay. All right –

MR. LEMAY: (Inaudible.)

MS. O'BRIEN: – thank you, Mr. Lemay, those are my questions. Other lawyers will have questions for you, okay?

MR. LEMAY: Okay.

MS. O'BRIEN: Thank you.

THE COMMISSIONER: Province of Newfoundland and Labrador?

MR. RALPH: No questions.

THE COMMISSIONER: Nalcor Energy?

MR. SIMMONS: Thank you, Commissioner, and good afternoon, Mr. Lemay. My name is Dan Simmons. I'm a lawyer from Nalcor Energy.

Just a couple of things I wanted to ask you about this afternoon, and the first is, you've described to us the work that you were doing in the estimating function. Who was carrying out the design – the engineering design work for the project while you were doing the estimating?

UNIDENTIFIED FEMALE SPEAKER: Excuse me, Commissioner.

MR. LEMAY: I don't – sorry – I don't hear you very much, Sir.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible) can't hear.

MR. LEMAY: Very well.

MR. SIMMONS: Okay –

THE COMMISSIONER: Okay. Maybe just try to speak up a little bit, so that Mr. Lemay can –

MS. O'BRIEN: I don't mind relinquishing my spot if that's helpful.

MR. SIMMONS: If that – okay, well, maybe I'll try it here –

THE COMMISSIONER: Try there, and just speak up (inaudible).

MR. SIMMONS: – and we'll see how it goes. Okay.

So Mr. Lemay, how does that sound?

MR. LEMAY: Better.

MR. SIMMONS: Good. Okay.

So I'm Dan Simmons. I'm lawyer for Nalcor Energy. Only a couple of things I wanted to ask you about this afternoon.

The first concerns the engineering design work. So did you have any involvement with the engineering design work that was being done by SNC-Lavalin?

MR. LEMAY: Not at all, Sir.

MR. SIMMONS: Okay.

And in carrying out your estimating work, did you have to rely on the engineering designs that were being done, in order to prepare the estimates for the construction work?

MR. LEMAY: Of course.

MR. SIMMONS: Was that design work complete when you started your estimating work?

MR. LEMAY: It was not complete, it was (inaudible) focus.

MR. SIMMONS: And when the estimate was finalized in December of 2011, how far along was the engineering design work then?

MR. LEMAY: Well, in terms of percentage or what?

MR. SIMMONS: Well, was it complete, first?

MR. LEMAY: It was not complete, a hundred per cent, that's for sure, but it was well advanced, to be able to put a reasonable price to the powerhouse.

MR. SIMMONS: Good. Can you tell me just a little bit about how you got information about the engineering design so that you could prepare an estimate for the construction of the project?

MR. LEMAY: Well, when I received the first set of drawing, we have the main dimension of the powerhouse, and the spillway, and we have a host of information to verify the quantity, because engineering are doing, as well, their take-off quantities.

And my estimator – my concrete estimator, for instance, Jim Daubersmith – was making his own take-off on each side. So what I want – I have these two things done separately, and they were checking on each other, so they end up with the same powerhouse quantities. So it jives fairly well.

MR. SIMMONS: Good. So if I understand correctly, you had to rely on the engineering work that was being done by SNC, but you and your team also did your own checks to make sure that things like quantities were going to match between your estimate and the engineering?

MR. LEMAY: Exactly, Sir.

MR. SIMMONS: Okay. You also mentioned that you did some benchmarking, and you said that you used the Eastmain-1 and Eastmain-1-A projects. Now were those hydroelectric projects?

MR. LEMAY: Yes, both.

MR. SIMMONS: Yeah. Did you do estimating work on those two projects?

MR. LEMAY: Yes.

MR. SIMMONS: And were they completed by the time you were doing the work on the Muskrat Falls Project?

MR. LEMAY: Yes.

MR. SIMMONS: Okay.

Tell me a little bit more, please, about what you did in order to do a benchmarking comparison of your estimate work to what you knew about Eastmain-1 and Eastmain-1-A.

MR. LEMAY: Okay. During the time I was at Eastmain-1-A, I keep track of the performance of the contractor. And the first four years was Eastmain-1. I was working for Montreal (inaudible), and I severally – several times go to the site and – to see the progress of the work.

In 2006 for Eastmain-1-A, I was on the site for five years in a row, and on a daily basis, I was able to check, you know, the progress and the performance of the contractor and number of people that were on the job – how many men-hour per square metre they were producing, how many cubic metre, what it was going out, you know. So I had kept these factors, these benchmarking, on a regular basis, and I used them to do my estimate for Muskrat Falls, since both of project are fairly distinct.

MR. SIMMONS: Thank you very much, Mr. Lemay. I don't have any other questions at this point.

MR. LEMAY: Welcome, Sir.

THE COMMISSIONER: Concerned Citizens Coalition?

MR. BUDDEN: Good day, Mr. Lemay. My name is Geoff Budden. I'm a lawyer for the Concerned Citizens Coalition, which is a group of individuals who for a number of years have been critical of the Muskrat Falls Project. Can you hear me okay?

MR. LEMAY: Yes, I do, Sir.

MR. BUDDEN: Okay. I don't have a lot of questions for you.

To start with, I understand you began working on the Muskrat Falls Project in May of 2011, is that correct?

MR. LEMAY: Yes, it is.

MR. BUDDEN: And at that point in your career, do I understand that you already had over 20 years of experience estimating for hydroelectric projects?

MR. LEMAY: Yes, Sir.

MR. BUDDEN: Okay. At the beginning of your being hired, back in 2011, how did you find the Nalcor estimating team, in terms of their experience of – experience and knowledge regarding hydroelectric project estimating?

MR. LEMAY: Estimating team from Nalcor were more of the level of managing. They had no estimator per se. We were doing the estimate, and these people were relying on us. There was one man that was their anchorman, was John Mulcahy from Nalcor – was a consultant for them, and John used to be president of McNamara, I believe so? And we were getting along very well together, and John did his own check and own estimate his side, and he was checking with me, and we were fairly close together.

MR. BUDDEN: You – I understand that when it came to – and I may – you may have to correct me here, but when it came to establishing labour productivity, you worked from some models that you had also worked with in hydroelectric projects in Quebec? Am I correct on that?

MR. LEMAY: Mm-hmm. Yeah.

MR. BUDDEN: Okay. What adjustments, if any, did you make for the fact that you were now working in Labrador, in the province of Newfoundland and not in the James Bay region of Quebec?

MR. LEMAY: Like I told earlier, to the Commission, my benchmarking was Baie James, and – project – and for Muskrat Falls, I have put an allowance for Muskrat Fall area, and it's more – it was more than – I (inaudible) – I used to like, see in James Bay. I mean, I put a factor that I was anticipating slower productivity in the Muskrat Fall area.

MR. BUDDEN: You say you put in a factor, or you used a factor?

MR. LEMAY: I put an allowance – an amount of money, you know, that was reflecting a possible lower productivity, or unproductivity, or labour pool availability, quality. I'm saying, look, (inaudible). But to identify these uncertain conditions that varies from one of the end of the country and the other area in Quebec, so to help the situation (inaudible) I will allow an amount of money that is part of the 300 million that we have cite earlier –

UNIDENTIFIED MALE SPEAKER: Okay –

MR. LEMAY: – to address this –

MR. SIMMONS: Mr. Commissioner.

MR. BUDDEN: Perhaps just stop talking for one second.

MR. SIMMONS: We may be straying into the area which we're going to deal with in camera –

THE COMMISSIONER: Okay.

MR. SIMMONS: – there. So –

THE COMMISSIONER: So, can we leave that 'til – a question that you might want to ask during the in camera session?

MR. BUDDEN: I certainly can.

THE COMMISSIONER: Okay.

MR. BUDDEN: Yup. It may have gone farther than I was expecting it to go in terms of the answer.

THE COMMISSIONER: I understand, yeah, no problem.

MR. BUDDEN: Mr. Lemay, it's nothing you did wrong but it is a question we will deal with in the second part of our session.

Perhaps we could call up Exhibit 00014, which is, of course, the Grant Thornton report, and proceed to page 64.

And scroll down please, Madam Clerk. That's good.

I'm going to read you a section, Mr. Lemay, and I would like your comment on it.

Am I going into an improper area again?

UNIDENTIFIED FEMALE VOICE: Sorry, I was (inaudible).

MR. LEMAY: Yeah.

MR. BUDDEN: Okay.

MR. SIMMONS: Yeah, (inaudible).

MR. BUDDEN: Sure.

MS. O'BRIEN: Commissioner, if I may make a suggestion, I know we are trying to keep to schedule here, but, you know, this was the first time we were looking at an in camera hearing. It's, I think, becoming clear to Mr. Learmonth and I that we would like to take some time to get a bit more organized on this, and I'm wondering if this might not be a good place to break?

THE COMMISSIONER: That's not what I wanted to hear.

MS. O'BRIEN: I know.

THE COMMISSIONER: Um –

MR. BUDDEN: I have no opinion on it, at all.

THE COMMISSIONER: Okay. So, we may as well get this straightened out now. I made an earlier ruling this afternoon, with regards to the in camera session. I'm not sure what the issue – specific issue – is. I'm starting to get an idea what it might be; and so we're just as well to use our time – it's 4:30 now.

The only thing I'm going to say is, is that tomorrow we're finishing this witness and also the other witness that we have scheduled. So, the plan should be to be here 'til we finish Mr. Skinner and Mr. Lemay tomorrow.

So, yes, we will break, and lawyers can have a discussion about the in camera session, about what we need to do and get it straightened out.

Mr. Lemay, I'm going to ask that we end the session right now, but tomorrow we will be having you back. Unfortunately, it's going to be very early for you tomorrow morning, because it means 7:30 in the morning your time. Are you an early riser, or –?

MR. LEMAY: Yes, I do.

THE COMMISSIONER: Perfect. So we'll talk to you tomorrow morning then, at same time, same place, at 7:30 in the morning, your time.

MR. LEMAY: 7:30 my time.

THE COMMISSIONER: Yup.

MR. LEMAY: Yes, Sir.

THE COMMISSIONER: That way you'll have a lot of time left in the afternoon and for the rest of the weekend.

All right, we're adjourned until tomorrow at 9 o'clock Newfoundland time, 7:30 Quebec time.

MS. O'BRIEN: Thank you.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.