



COMMISSION OF INQUIRY
RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 37

Commissioner: Honourable Justice Richard LeBlanc

Wednesday

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CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc
presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right. Good morning.

Before we begin this morning, I indicated that I would be making a decision with regard to how we were going to deal with the water management process. And so I plan to give that information to the parties today.

So water management on the Churchill River has been identified as a matter for consideration by this Commission of Inquiry. I have raised and identified concerns about any risks regarding the control of the flow of the river and its potential impact on the operation and output from the Muskrat Falls generating station as an area the Commission of Inquiry would look into.

My purpose in doing so is to determine how this particular issue was assessed and considered at the time of and up to the sanction of the Muskrat Falls Project by the Government of Newfoundland and Labrador as well as by Nalcor Energy.

In order to deal with evidence on water management, it has become obvious to me that much of what needs to be presented would be privileged information, in that there is solicitor-client privilege attached to it. Evidence that is subject to solicitor-client privilege can be legitimately withheld from a Commission of Inquiry. For this Inquiry, both the Government of Newfoundland and Labrador and Nalcor Energy have provided documentation, including solicitor-client privileged information related to the water management issue to us, which remains subject to privilege pursuant to Section 24.1 of the *Public Inquiries Act, 2006*.

As a result, it is the Government of Newfoundland and Labrador and Nalcor Energy that controls my ability to assess what I believe is important and relevant evidence on this issue, as both can rely on solicitor-client privilege. To

understand the position taken by government and Nalcor on water management and what consideration was given with regard to water management prior to the sanction of this project, it is imperative that I receive this information as evidence, notwithstanding the fact that it is subject to that solicitor-client privilege. Litigation privilege is also potentially applicable.

In order to have this evidence presented to the Commission, notwithstanding the privilege asserted, the Commission has endeavoured to try to find a way to satisfy the government and Nalcor that the information presented would be protected. I too wish to avoid potentially negatively impacting the position of the government and Nalcor on this issue, particularly with ongoing litigation taking place.

In this regard, I am mostly concerned about any possible impact on the ratepayers and taxpayers of the province already faced with the cost burden of this project.

In considering the development of a process to deal with water management, I have insisted that there be at least some ability for the interest of the public to be represented as part of the process, other than just by having Commission counsel present. This has been indicated to both Nalcor and the government. With the agreement of both, the public's interest will be represented in this process that I will be setting out – that representation being by the Consumer Advocate and his counsel during the process, with them having the ability to explore any concerns or questions, including questions provided by counsel or other parties with standing.

My first review – my final review and assessment of the water management issue will be made part of my report, to be filed at the conclusion of these proceedings. That report will ultimately be made public. In that report, I will be cautious to ensure that nothing is disclosed that could impact any existing legal position or strategy in place with regards to that water management issue.

The process will be as follows:

One, the water management issue will be dealt with in camera. Notwithstanding this, not all

exhibits used during the in camera session will be confidential exhibits. Those already in the public domain or not subject to any privilege will certainly be public exhibits and will be available on the Commission's website.

Secondly, counsel for the following parties will be in attendance at these – at the in camera hearing: Commission counsel, the Province of Newfoundland and Labrador, Nalcor Energy, the Consumer Advocate and Todd Stanley.

Three: Parties represented by these counsel, including the Consumer Advocate, can be in attendance, but all counsel and parties attending will be subject to strict confidentiality agreements for the in camera hearing.

Four: Counsel for other parties with standing before this Commission may provide the Consumer Advocate, or other counsel to be present, with questions that they would like to have asked of the witnesses to be called at the in camera hearing. The Consumer Advocate or any counsel will not be permitted to report the answers back to counsel for other parties, as such will be covered by the confidentiality agreement.

Fifth: Transcripts for the in camera hearing will be transcribed by Commission staff only, and all confidential exhibits will be sealed to protect disclosure from anyone.

Sixth: The witnesses to be called during the in camera hearing would be as follows: Philip Raphals, Todd Stanley, Peter Hickman, Gilbert Bennett and Dennis Browne. With these witnesses, the exhibits and the exhibits to be tendered, the Commission will have the benefit of different views on the water management issue.

Finally, the in camera hearing will take place on November 30, 2018.

Again, while I would've preferred a much more open and public hearing on this issue, to deal with it at all, I've had to recognize that without the agreement of the Government of Newfoundland and Labrador and Nalcor, I would not be able to assess what is potentially an important aspect related to the Commission's terms of reference.

Finally, I would add that my ruling on this process applies only to the water management issue. It will have no bearing on any other application presented for an in camera hearing.

So that is the manner in which the water management will be dealt with.

Mr. Budden, I believe you had indicated you may wish to be heard on this?

MR. BUDDEN: Mr. Justice, do you wish for me to speak from here or from the podium?

THE COMMISSIONER: If you could go to the podium, I'd appreciate it.

MR. BUDDEN: Sure.

Thank you, Mr. Justice, for the opportunity to respond on behalf of my client: the Concerned Citizens Coalition. We acknowledge the difficulties that you face in dealing with this particular issue, and it may be a harbinger of some of the issues that we have yet to deal with with this Commission.

The Concerned Citizens Coalition would like to express its disappointment with the ruling. We are skeptical that the Public Inquiries Act allows for the exclusion of a party. It certainly is not explicit on the face of the act, and even if some of the texts, (inaudible) in particular, give support for the argument that it is possible to exclude a party, we would suggest that that should only follow a hearing at which all parties are given the opportunity to speak and the possible – possibility of least-draconian alternatives are explored.

So we wish to respectfully express our position on this at this point, and that's – and I appreciate the opportunity to do so.

THE COMMISSIONER: Thank you very much. Is there any other counsel that wishes to express a view on this?

All right, obviously, Mr. Budden, I can assure you and your clients that I have given this very serious consideration. This has been a matter that has been in, you know, on the Commission's agenda for some time. We've been trying to work this out.

As I say, my ability to control the presentation of privileged information is almost nil, and without the agreement of the Government of Newfoundland and Labrador and Nalcor Energy, I would not be able to assess this, other than by the process that we have undertaken.

I would encourage your clients and any others, members of the public to contact the Consumer Advocate or counsel for the Consumer Advocate or any other counsel to be in attendance at the hearing if they have questions they would like to have asked so that I can have an opportunity to assess that information as well.

At this stage, November 30 is fast approaching, and I will say – I will add one other thing. This is not totally news to the parties counsel, because we have met previously, and I have indicated where – what the situation was and which way we were leaning. So I've certainly heard the comments from that meeting that we've had, and I've heard the comments again this morning.

It's unfortunate that we have to deal with water management in this particular way, and I reckon back to what I said a few minutes ago with regards to the issue of the fact that this does not apply or this should have no bearing on any other applications that presently exist on in camera hearings. We're going to have to be dealing with those, and in fact, we are dealing with that on Saturday morning coming.

All right. Having said that, Mr. Learmonth.

MR. LEARMONTH: Thank you. The witness today will be Robert Thompson.

However, before Mr. Thompson is sworn, I would like to enter the following Exhibits into the record: Exhibits P-01035 through P-01049, Exhibits P-01052 through P-01057 and P-01059 through P-01135.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Okay. Mr. Thompson do you affirm –

THE COMMISSIONER: All right. Mr. Thompson do you wish to be affirmed?

Okay.

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?

MR. THOMPSON: I do.

CLERK: Please state your name for the record.

MR. THOMPSON: Robert Thompson.

CLERK: Thank you.

THE COMMISSIONER: Okay. Just give me one minute, Mr. Learmonth.

All right. Go ahead, Mr. Learmonth.

MR. LEARMONTH: Thank you.

Mr. Thompson, you live in St. John's?

MR. THOMPSON: Yes.

MR. LEARMONTH: Yes. Please provide us with your education since you graduated from high school.

MR. THOMPSON: Sure. I graduated from Memorial University with a Bachelor of Arts in political science and history in 1980. I did graduate studies in public administration at York University and in business administration at Memorial University.

MR. LEARMONTH: Yes. And what is your work history after you finished your education?

MR. THOMPSON: Sure.

I went into the provincial public service out of university and started with the Department of Rural Development and went through quite a number of positions and different departments. If you'd like me to review them all, I –

MR. LEARMONTH: You entered the public service in 1982, is that –?

MR. THOMPSON: Correct, yes.

MR. LEARMONTH: 1982. Well, just – no, I just – just give us a brief summary.

MR. THOMPSON: Sure.

MR. LEARMONTH: You started with the Department of Natural Resources, and then – just give us a brief summary –

MR. THOMPSON: Okay.

MR. LEARMONTH: – of the steps (inaudible)
–

MR. THOMPSON: So I started my career with the Department of Rural Development – and just to note the Department of Career Development and Advanced Studies, Education and then Intergovernmental Affairs. My first, I guess, executive assignment was with the Cabinet Secretariat in resource and economic analysis then deputy minister of Tourism, deputy minister of Health and then clerk of the Executive Council in 2003. It was in 2007 I left that position for a period of time to be the secretary to Cabinet for health issues and then returned – or I started with the Department of Natural Resources in late 2008 and was there until late 2010.

MR. LEARMONTH: That was as deputy minister?

MR. THOMPSON: Yes, that's correct.

MR. LEARMONTH: Yes.

MR. THOMPSON: Sorry.

MR. LEARMONTH: Yeah.

MR. THOMPSON: And then after that period of time, that was two years, I went back to the Cabinet Secretariat as clerk of the Executive Council and ended my career with the provincial government there in 2013.

MR. LEARMONTH: Okay.

So you retired, and you're employed elsewhere at this –?

MR. THOMPSON: Correct.

MR. LEARMONTH: Yes.

So you were the clerk of the Executive Council, secretary to Cabinet, at the time of sanction of this project in December 2012?

MR. THOMPSON: That's correct.

MR. LEARMONTH: Yeah.

The first item I want to deal with is a document that you – in the binder at Exhibit P-01135, which is at tab 110, Mr. Thompson. And I want you to take us through this document in which you state your understanding of the role of the clerk.

And before you do that, I just have a few questions. This document –

MR. THOMPSON: Sorry, I'm –

MR. LEARMONTH: Have you got it? Tab –

MR. THOMPSON: Okay.

MR. LEARMONTH: – 110?

MR. THOMPSON: Oh, 110.

MR. LEARMONTH: Yeah.

MR. THOMPSON: I'm sorry. I have it up here on the screen, perhaps that's okay.

MR. LEARMONTH: Yeah, but you take your time to –

MR. THOMPSON: Okay (inaudible) –

MR. LEARMONTH: – locate it. It might be easier.

MR. THOMPSON: Okay.

MR. LEARMONTH: You got it?

Okay, so this is on page 2. This is a – the document is entitled: The Role of Clerk of the Executive Council and Secretary to Cabinet, dated August 5, 2012 [sp 2013]. And you prepared it. What were the circumstances under which you prepared this document, Mr. Thompson?

MR. THOMPSON: Okay. So I knew I was leaving the post, and I had resigned/retired at the time, and I was working my last several weeks and I wanted to leave a document for my successor to – sort of a how-to manual of how to settle into the role, what the parameters and the variety that existed in the role so that she could begin work, I guess, with a running start.

MR. LEARMONTH: So this is your own work product is it?

MR. THOMPSON: Yes, it is.

MR. LEARMONTH: Yeah. And just explain before we get to some of the specific headings. Is the clerk the top civil servant?

MR. THOMPSON: That's right.

MR. LEARMONTH: Yeah.

MR. THOMPSON: Yes.

MR. LEARMONTH: And does the clerk have contact with all departments? In other words, do all departments funnel information and requests to the clerk's office that – on matters that have to go to Cabinet?

MR. THOMPSON: Yes. The information flow is through the Cabinet secretariat, and the clerk sits at the – as the chief civil servant in the Cabinet secretariat. And then that information makes its way to the Cabinet.

MR. LEARMONTH: Yeah. So the clerk should know more about what's going on in the various departments than any other single person in the civil service. Is that fair to say?

MR. THOMPSON: In its broadest terms, yes. But –

MR. LEARMONTH: Yeah.

MR. THOMPSON: – not necessarily in depth.

MR. LEARMONTH: No. But I mean overall.

MR. THOMPSON: Yes.

MR. LEARMONTH: You would have contact with all the departments.

MR. THOMPSON: Yes.

MR. LEARMONTH: Yeah. All right. So just take us through this document starting on page 10. And the page references are on the top right-hand corner –

MR. THOMPSON: Right.

MR. LEARMONTH: – of the document. Okay, so –

MR. THOMPSON: Yeah.

MR. LEARMONTH: – deputy minister to the premier. Just advise us of that role.

MR. THOMPSON: Right.

MR. LEARMONTH: About that role.

MR. THOMPSON: So this is – when I'm asked to describe the role of clerk, I normally have it in three parts. So this would be the first, role of deputy minister to the premier. There's no formal designation as such, but it's – this position operates, in many respects, like a deputy minister of a department to their minister. Deputy minister to the premier has a similar relationship. So there's an expectation that the clerk will stay on top of the premier's priorities, make sure that the public service is acting on those priorities, funnel information to the premier on progress steps along the way.

It's not the only source of information of course, but it's a necessary role to make sure that those priorities are being attended to and that you have a familiarity where there are perhaps road blocks or issues that need to come to the attention of the premier. So that's one of the main roles. And then in that capacity, from time to time to provide advice, as to how the overall agenda of the government might be advanced.

MR. LEARMONTH: And is it – on page 11 you deal with the – you state that it's essential for the proper co-ordination of government business that the clerk has regular meetings with the premier?

MR. THOMPSON: Correct.

MR. LEARMONTH: Is there a schedule set up for that or is that just something done when the need arises – having a meeting?

MR. THOMPSON: Well, it varied during my period in the role and I'm sure it varies from premier to premier. I was recommending here that a schedule be established, and so for a period of time while I was clerk, there would be daily meetings – typically it ended up being three or four times a week – but we tried to establish a schedule. When that's not occurring, then, my guess is that there are two or three meetings a week, but they're perhaps on request.

So to make sure that when you pile up your list of issues and when you think that a meeting is necessary with the premier, you request one, and then it may occur at any time in the premier's schedule. But the frequency and the – of contact is important.

MR. LEARMONTH: Yeah.

But the frequency of the meetings would be determined by the premier, I take it? There'd be some variation –

MR. THOMPSON: Ultimately, yes, the premier's own style, and certainly I would be recommending regularity in that.

MR. LEARMONTH: And – once again, on page 11, the third full – second full paragraph – you state that: "Ideally each meeting with the Premier will have an agenda and the Clerk will note the directions and decisions being sought."

MR. THOMPSON: Right.

MR. LEARMONTH: Is that practice followed – there is an agenda and then there are notes taken?

MR. THOMPSON: The – it was followed quite regularly and diligently at the outset and then it became more ad hoc; so maybe the agenda might be my notes of what I needed to discuss, and then I bring that to the meeting, share that with the premier, and then we'd run through that and then take, you know, notes on the margin of that paper in order to go away and deal with it. So there wasn't a – there aren't files with lots of minutes of those meetings. Most of those

meetings, in the end, would have occurred in handwritten notes.

MR. LEARMONTH: Yeah. And, just as an aside while we're on this subject – we have received some of your handwritten notes, up until I think 2011, but not thereafter.

MR. THOMPSON: Right.

MR. LEARMONTH: Your notes after 2011 – can you give us any information as to where they might be or what you did with them when you left?

MR. THOMPSON: Okay, so the notes that I did take – you're referring to what I would call my black book notes.

MR. LEARMONTH: Yes.

MR. THOMPSON: And that was a continuous series of notes on a variety of different meetings, not just the ones with the premier, of course. And the meetings with the premier, though, would – at the outset – would often be with a special file and there would be an agenda in that file and I would record my notes actually in that file, not necessarily in these black books. So there are different places to look, and I don't know – for those early days and those more – that more formal process of recording on those files, those files would be in government records somewhere; I didn't maintain those.

So the records I disclosed to you, or to the Commission, up to 2011, were all the ones that I still had in my possession when the Commission was started and when the request came to disclose documents, I turned them back to the government and to the Commission. But I have no idea where similar notes are, black book notes, between 2011 and 2013. They may still rest within the government but I didn't retain them when I left.

MR. LEARMONTH: Okay.

Now is the keeping of a black book, as you refer to it, is that a requirement of –

MR. THOMPSON: No.

MR. LEARMONTH: – a senior civil servant, or an optional –?

MR. THOMPSON: It's optional; there's no standard for taking notes.

MR. LEARMONTH: Okay. Very well.

Okay, so that's the first relationship; I think you said there were three general relationships that –

MR. THOMPSON: That's right.

MR. LEARMONTH: – you think of when you speak of the role of the clerk. So that's the relationship with the premier; what's the next?

MR. THOMPSON: Well, the formal role of Cabinet process and record-keeping – and that would be the entire flow of information from the various departments into the Cabinet and that would be – in other words the flow of Cabinet submissions or memoranda to Cabinet and the review of those within the Cabinet Secretariat to provide commentary and analysis to committees of Cabinet; the distribution of that material out to Ministers; and then the consideration of those papers within the Cabinet meetings.

And then of course, the recording of decisions of the Cabinet and turning those into minutes of Cabinet and orders of council. So that whole flow of important documentation – that's a central role of – the clerk oversees that and the work is undertaken by the staff of the Secretariat. So that's the second role.

MR. LEARMONTH: Okay.

And the third role?

MR. THOMPSON: The third role is the – called head of the public service. Again, it's not a formal designation, but we use that term to identify another, sort of, personality, if you like, within the role of the clerk. And that's to insure that the public service has a general state of readiness to undertake the agenda of the government, and so that would include things like: organizational structure; it would include human resource development; leadership development; and policy capacity.

So making sure the public service has – is in good shape, and can adjust to new directions in government and – especially during transitions, when there is a change of party governing; making sure that the public service has prepared well for a change and then briefs the incoming government so that things can carry on. So all of that would be head of the public service.

MR. LEARMONTH: Okay. So is there anything else?

MR. THOMPSON: Oh, that, those are –

MR. LEARMONTH: Those are the three categories.

MR. THOMPSON: Yes. Yeah.

MR. LEARMONTH: Okay.

I just want to take you to a certain parts of this document at P-01135, page 17 – if you could turn to that.

The heading Deputy Minister of Finance, you state: “With the possible exception of the DM of HRS, the most important relationship is between the Clerk and the DM of Finance. This relationship needs to feed information back ... at least weekly”

Can you explain why that is such an important relationship?

MR. THOMPSON: Sure.

The deputy minister of Finance – that position's responsibilities also have a government-wide point of view. From a budgetary perspective, all budget documents flow into the deputy minister of Finance – and then the budget monitoring. So the current financial health of the government is all within the purview of the deputy minister of Finance; our credit rating, our reputation in markets, all of those things.

So having an excellent rapport and a regular channel of communication with the deputy minister is just an essential part of being able to feed through, then, to the premier any issues that may be arising.

MR. LEARMONTH: And can we assume that you wrote this when you were about to retire?

MR. THOMPSON: Yes.

MR. LEARMONTH: Was this a reflection of what you actually did when you –?

MR. THOMPSON: Yes, yes.

MR. LEARMONTH: To the best of your ability, anyway.

MR. THOMPSON: And parts of it might be a reflection of what I think is best practice and, of course, over a seven-year period when I was in this position, you may have been in and out of best practice at certain – at different times, but it's a reflection of my experience and my understanding of best practice.

MR. LEARMONTH: Yes. Because, I guess, time constraints would play some role. If you were very, very busy you may not be able to be as –

MR. THOMPSON: Of course.

MR. LEARMONTH: – attentive to these duties.

MR. THOMPSON: Yeah, my recollection is that I would likely have been in contact with the deputy minister of Finance on a weekly basis; not necessarily a structured meeting, but in a variety of different ways.

MR. LEARMONTH: Yes.

Next, please turn to page 18, and the heading, just near the top, is Major Natural Resource Projects and Nalcor. So this is a specific paragraph. I'm just gonna read that into the record:

“Although the Clerk has no specific line responsibility for major natural resource projects or Nalcor, these projects and Nalcor's involvement in these projects are central to the success of the government and the province's economy. Therefore the Clerk is expected to maintain a high degree of familiarity with these files, enter into routine dialogue with the DM of NR, and periodically meet with the DM and the

CEO of Nalcor to review forthcoming activities (especially to ensure the Premier is briefed on key milestones, that project decisions fit into the Cabinet schedule, and to trouble-shoot interdepartmental difficulties). In particular, there is an ongoing interdepartmental DMs committee on the Lower Churchill Project that has proven to be an excellent way to coordinate activities of this critical file, and to ensure every department is aware of the priorities of the Premier.”

Now, that specifically deals with – well, Nalcor and major natural resource projects. Can you explain why this is an important part of the role of the clerk?

MR. THOMPSON: Sure.

Primarily because major natural resource projects and the role of Nalcor in that is such – is the premier's – or one of the premier's highest priorities. They have a big impact on the province's finances and on economic development and jobs and so forth. So naturally, being a high priority, it's important for the clerk to maintain a level of understanding and familiarity with the key issues. So it really falls – it's a very specific and large example of the earlier point to maintain a watch on the key priorities of the premier and be ready to brief and respond as necessary.

MR. LEARMONTH: So are you – when you were the clerk, did you discharge your obligations under – as stated in this heading –?

MR. THOMPSON: Yes, I did.

MR. LEARMONTH: You did. So you kept in touch with Nalcor?

MR. THOMPSON: Yes, and quite often it was Nalcor getting in touch with me or me being involved in groups with the deputy minister of Natural Resources and people from Nalcor. I think you'll see that through emails and meetings notes that that happened on a regular basis.

MR. LEARMONTH: Okay, we'll get into that later.

All right, thank you very much for explaining that role to us.

Now, there are a number of documents that are in the binders that I want to take you through; it may take a little bit of time, but I think given the importance of the role, I think it's important that we go through them. First is – the first document I want you to refer to is tab 1, which is Exhibit P-01034, and I want you to turn to page 69, please.

MR. THOMPSON: Sorry?

MR. LEARMONTH: Page 69 –

MR. THOMPSON: Okay.

MR. LEARMONTH: – of that document.

MR. THOMPSON: Okay.

MR. LEARMONTH: Now, this is a letter that you wrote to a number of individuals, who are identified on the letter, concerning the Labrador Hydro Project Coordinating Committee. Can you give us some background as to why this committee was established?

MR. THOMPSON: Sure.

The – of course, the government – one of the government's priorities and the premier's priorities was to have a development on the lower Churchill River. And we recognize from the outset that this would require not only action by Hydro or the Energy Corporation, at the time, but also coordinated action and oversight and monitoring by a variety of departments. And so the technique that we chose to coordinate that to have good communication flow and identify issues that may need action was a committee like this – a senior level coordinating committee that would have good information but also share that information so that we could have an appreciation of the whole project.

MR. LEARMONTH: Okay. So was that committee established under – on the direction of the premier?

MR. THOMPSON: I think that's – yes, that's what the letter says. I'm sure that that's accurate.

MR. LEARMONTH: Yeah. So that'd be Premier Williams.

MR. THOMPSON: Correct. Yes.

MR. LEARMONTH: Yes, yes.

Now, there are – in Exhibit P-01034, there are numerous minutes of various meetings and they're self-explanatory; I don't want to go through them in detail. However, I understand that this – the work of this committee, sort of, lapsed and that it had to be re-established at some point –

MR. THOMPSON: Correct.

MR. LEARMONTH: – it just sort of withered away I guess. It didn't –

MR. THOMPSON: Yeah, I don't recall the – that there was a reason why it stopped meeting. But I presume it was a fall-off in the activity level and then when activity levels started to become more frequent the need for the committee re-emerged.

MR. LEARMONTH: Yeah. And if we just turn to tab 6, which is Exhibit P-01038. This is an email – April 11, 2007, from you to various people who, I guess, were on the committee.

And you're saying: "Given the accelerating nature of the Lower Churchill project and the importance of being coordinated to meet necessary deadlines, at the request of the relevant Ministers we are ... re-establishing –

MR. THOMPSON: Right.

MR. LEARMONTH: – the Lower Churchill Coordinating" So this was the revival or re-establishment –

MR. THOMPSON: That's correct.

MR. LEARMONTH: – of the –

MR. THOMPSON: Yes.

MR. LEARMONTH: – committee?

And can you tell us what – generally, what type of work was done or matters were considered by the committee after it was re-established?

MR. THOMPSON: The – well, this email, of course, states at the end of the first paragraph that, “At the first meeting we will receive an overview and update of the environmental assessment process.” And that topic became, perhaps, the – well, one of the largest and most frequently raised issues at the coordinating committee. Nalcor was – or the Energy Corporation, at that time, was getting ready to submit environmental assessment documents, applications. Maybe they already had. I don’t have that time frame in my mind. But that would certainly be one reason.

And second would be the advanced stage of preparation of the Energy Plan and the – and within the Energy Plan, there was guidance and direction regarding the Lower Churchill Project.

So that, and perhaps other things, all came together to justify the re-establishment of the committee.

MR. LEARMONTH: Okay, and how long did the committee continue on its work after it was re-established?

MR. THOMPSON: It – well, it continued for the full time that I remained in the government.

MR. LEARMONTH: Okay, there were different people –

MR. THOMPSON: Yes.

MR. LEARMONTH: – who replaced some who had retired or left, but it continued right on –

MR. THOMPSON: (Inaudible) –

MR. LEARMONTH: – until you – until your retirement?

MR. THOMPSON: So for the period of time that Gary Norris was the clerk of the Executive Council, it continued on, and I know that because as deputy minister of Natural Resources for part of that period, I was a participant on the committee from that position, and then when I

went back as clerk, we continued to meet as well.

MR. LEARMONTH: All right. Thank you.

Please turn to tab 2, which is Exhibit 00962.

Yeah, this is an email from you dated May 4, 2006, to Terry Paddon, who was the deputy minister of Finance, correct?

MR. THOMPSON: Right.

MR. LEARMONTH: Now, you’re asking him – you say: “Have you been consulted on the financial capacity of the govt to finance the Lower Churchill project in some fashion should we decide to go it alone. The govt is planning to make an announcement on Monday, and I need to know whether you have any issues.”

MR. THOMPSON: Right.

MR. LEARMONTH: So why would that have been a concern of yours back in – on May 4, 2006?

MR. THOMPSON: Okay. So this email was likely written during a Cabinet meeting.

I – one of my roles as clerk was to sit in on Cabinet meetings and record the minutes, and so this – there was a discussion this day on this topic, and I have some of my notes from the relevant black book, so to speak, are – exist as well on that meeting.

And so during this meeting there was a – perhaps for the first time, I’m not sure – I heard that there was a likelihood that the government – you know, Cabinet may wish to not, you know, have partners that may have emerged from this EOI process. We haven’t –

MR. LEARMONTH: Yes.

MR. THOMPSON: – discussed that yet, but –

MR. LEARMONTH: Yeah.

MR. THOMPSON: And that maybe it would be the project proponent and take on more financial risk as a result. And so because that was evidently – by this email – there was some

newness of that notion for me, I wanted to have a – some feedback from Terry Paddon as to whether or not he had been included in any assessment of the financial issues related to that.

MR. LEARMONTH: Did you receive an answer from Mr. Paddon?

MR. THOMPSON: I don't recall that I did. I certainly haven't seen any documentation.

MR. LEARMONTH: No.

MR. THOMPSON: And it may be that I followed up with him verbally afterwards.

MR. LEARMONTH: Yes.

Now, just – you mentioned the EOI process, and I know that on May 8, 2006, that the government announced that it was gonna go it alone, and that was following a review of the EOI process. We've had some other – some evidence on that from other witnesses, but maybe you could just take a minute and explain how that process –

MR. THOMPSON: Sure.

MR. LEARMONTH: – worked and the ultimate result of the –

MR. THOMPSON: Sure.

MR. LEARMONTH: – of the process?

MR. THOMPSON: (Inaudible) –

MR. LEARMONTH: The outcome of the process?

MR. THOMPSON: Sure.

During the first couple of years of the new administration under Premier Williams, maybe the first year, there was an uncertainty about what is the way we – the government would proceed to tackle and organize in relation to exploring opportunities around the Lower Churchill.

And so the idea of inviting expressions of interest from private parties, from – as it turned out – from utilities or other provinces and, well, any party that is willing to become a proponent

and put forward a proposal – and that could be in partnership with the Government of Newfoundland or not – we wanted to see what serious interest existed in the world to do that.

So the EOI – the expression of interest process – was started, and at this stage here, we're at a stage at the very end of that process after proposals have been received, a short list had been identified, evaluations had been done and the results were being presented to Cabinet.

MR. LEARMONTH: Yes. And you – did you participate in the process in which Cabinet analyzed the responses to the EOI?

MR. THOMPSON: No. As I recall, my participation was at the very outset and setting up the process, perhaps, you know, helping to write or comment on the actual requests for – or – requests for expressions of interest. But after that the analysis of the proposals was done by a committee involving Nalcor – or Hydro, certainly – and the –

MR. LEARMONTH: Yup.

MR. THOMPSON: – at the time the Hydro – the Lower Churchill Project office. And there may have been other people from government, but I wasn't involved directly.

MR. LEARMONTH: Yeah. But we've had evidence from that from Mr. Williams as to how it – how the process –

MR. THOMPSON: Okay.

MR. LEARMONTH: – worked, so – well, thank you for giving us that information.

Next, please turn to tab 3, which is Exhibit P-01035. This is a document apparently prepared by you on August 8, 2006, and sent to Chris Kieley –

MR. THOMPSON: Right.

MR. LEARMONTH: – and Ed Martin.

MR. THOMPSON: Right.

MR. LEARMONTH: On whose direction did you prepare this document? Like, why was it prepared, what were the circumstances?

MR. THOMPSON: Okay, so these are comments that I was forwarding on to Chris and to Ed Martin in relation to an early draft of the energy – what became the Energy Plan. And so I'm not sure that I had any direction to prepare these comments other than Chris and Ed circulating their draft to me and then, I guess, providing those as part of the overall team in government.

MR. LEARMONTH: Now, the – we know the Energy Plan was released to – I think it was approved by Cabinet in September 2007 and released to the public on or about September 11. So there was a lot of work done on that, and –

MR. THOMPSON: Correct.

MR. LEARMONTH: – what was your involvement or role –

MR. THOMPSON: Sure.

MR. LEARMONTH: – in the development of the Energy Plan?

MR. THOMPSON: Sure. Similar to this document here, with my comments attached, I would've seen perhaps several drafts of the Energy Plan. I may have been involved in meetings and discussions about concepts as they were unfolding. I didn't have a direct role though in participating with the writing team or in the analysis. I would see the drafts and, as I said, provide my comments. And – yeah, so that's the level of involvement that I had.

MR. LEARMONTH: And Chris Kieley was the deputy minister of Natural Resources?

MR. THOMPSON: Correct, yes.

MR. LEARMONTH: So he would have direct supervision of the work on the development –

MR. THOMPSON: Yes.

MR. LEARMONTH: – of the Energy Plan?

MR. THOMPSON: My – you're right –

MR. LEARMONTH: (Inaudible.)

MR. THOMPSON: – direct. But the Energy Plan development was, in my recollection, sort of an equal effort by – or an integrated effort by the department and the Energy Corporation.

MR. LEARMONTH: All right. And just – I don't wanna go into it in detail, but if you look at tab 5, that's just another example of the work you – it's Exhibit 01037. That would just be further work that you did on the Energy Plan, your commentaries and so on? Tab 5, pages –

MR. THOMPSON: Yeah, very, very similar to the other notes. I'm sorry.

MR. LEARMONTH: Yeah, so you're – it's just an ongoing work in progress, and you're giving your comments as you go along, correct?

MR. THOMPSON: That's correct.

MR. LEARMONTH: Yeah.

Next, turn to tab 8, Exhibit P-01040. This is an email – well, you're congratulating Mr. Bown – Charles Bown.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: Now, at the time, you would've been the deputy minister of Natural Resources, is that correct – 2009?

MR. THOMPSON: This – yes, that's correct.

MR. LEARMONTH: Okay, so then Charles Bown would've been associate deputy minister or assistant deputy minister at this time?

MR. THOMPSON: One or the other, yes.

MR. LEARMONTH: One or the other.

MR. THOMPSON: Yes.

MR. LEARMONTH: Yeah. Okay.

So he – the email to you and others says: "Gary / Robert / Ed;

“Minister Dunderdale has signed the Lower Churchill lease meaning that it has now been executed,” and you’re congratulating him.

Just to give us a little background on that, is that the lease the followed the termination or end of the Newfoundland and – Lower Churchill Development Corporation lease?

MR. THOMPSON: I don’t retain in my mind the details around what was in the lease, but I think you’re correct, and so that was an important milestone in getting all the groundwork done to take on the project.

MR. LEARMONTH: Yes. Right.

The next tab 9 is a series of emails here. The one at the top, page 1 is – it’s Exhibit 01041, I should have said – May 25 2009.

Now, this has to do with Newfoundland and Labrador Hydro’s restructuring? Did you have any input into the – into that matter?

MR. THOMPSON: Most of the work related to restructuring occurred before I arrived back in the department, but this would have been the – I guess, the implementation stage.

MR. LEARMONTH: Yes.

MR. THOMPSON: Let me just read this; take a moment.

MR. LEARMONTH: Sure, take your time.

Thank you.

MR. THOMPSON: So, okay, the – this actually wasn’t the organizational restructuring because that had already occurred and the creation of Nalcor and its brand and so forth.

What I understand this – on this day, there are – it’s about the decision to improve Nalcor’s capital structure and the kind of return on equity that it would be allowed to pursue in the future. And so that’s the restructuring that, I believe, the heading refers to – not organizational, but capital structure.

MR. LEARMONTH: Yeah. So that would have been, of course, after the – Nalcor had been branded and so on?

MR. THOMPSON: Right.

MR. LEARMONTH: So that was something after that.

Okay, so your participation in that was minimal, would we say?

MR. THOMPSON: Well, yes, except in terms of the, you know, the extent of analysis and so forth, it would’ve been minimal; but there was a plan that, you know, to make sure that Nalcor had an appropriate capital structure to take on a large project, and to be – appear in a very credible way to financial markets and lenders and so forth.

And so, as part of the strategy, I would’ve been aware that this is where we were heading and we would’ve worked with Nalcor to get ready any appropriate documentation to go to the Cabinet, and for public release. So involved in the implementation of that strategy.

MR. LEARMONTH: Okay.

Next, please turn to tab 10, Exhibit 01042, which is an email – August 4, 2009 – from you to Charles Bown, Pierre Tobin. The subject: shareholder senior advisor. And you’re – this is your email, and you’re –

MR. THOMPSON: Right.

MR. LEARMONTH: – you’re suggesting some kind of a shareholder – the appointment of a shareholder senior advisor to generally provide some level of oversight over Nalcor, is that correct?

MR. THOMPSON: That’s right.

MR. LEARMONTH: Yeah.

So why, back in – on August – in August 2009, did you feel the need to take the initiative on developing an oversight role –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – for government over the activities of Nalcor?

MR. THOMPSON: Sure.

Well, in general terms, oversight of Crown corporations is an important issue, and between '03 and '07 – I can't remember which year – we – the government as a whole, when I – and certainly I was in Cabinet Secretariat and deeply involved in it – put in place the *Transparency and Accountability Act*.

MR. LEARMONTH: Mm-hmm.

MR. THOMPSON: And part of that dealt with the way that departments and ministers would exercise their role, oversight included, of Crown corporations, particularly through business planning, strategic planning and annual reports and many other elements.

So when I came into the Department of Natural Resources in late 2008, I would've been familiar with the – all the concepts that we needed to be alert to in overseeing a Crown corporation, and it occurred to me in – I guess in the first six months or so, 'cause this email is – is that August 4?

MR. LEARMONTH: Yes.

MR. THOMPSON: Yes – that we have – you know, this is a very large enterprise. We're taking on a very complicated project – not just Lower Churchill though, of course, but also the investments in the oil and gas sector and – not to mention, just the very important enterprise, which is Hydro delivering electricity to the people of the province.

So I was questioning whether or not the department, as it exists at the time, had enough capacity to cope with, you know, the large volume of activity, to keep on top of the – all the roles that the minister, as the main – as representing the shareholder, needed to play, and so it was necessary to build our capacity in that area, and that was what is being expressed here: let's create a one-year contractual position to make sure we're doing this well and doing it accurately and correctly.

And the one year – of course, I would've anticipated we'd need this on an ongoing basis, but it's easier to create a one-year contractual position than it is a permanent position, so this would've been a start.

MR. LEARMONTH: So can I say or can I – can we assume then, from what you're saying, that when you went into the department you saw that there was a deficiency here and that you – this was an attempt to fill that –

MR. THOMPSON: Yes and perhaps an –

MR. LEARMONTH: – deficiency or –?

MR. THOMPSON: – emerging issue –

MR. LEARMONTH: Yeah, yeah.

MR. THOMPSON: – that would create a deficiency. Remember, at this point in time it was still early days in the growth of the Nalcor asset base and the diversity of its operations.

MR. LEARMONTH: Yeah.

MR. THOMPSON: But, yes, you know, we were identifying that gap.

MR. LEARMONTH: Yeah. and then if we turn to tab 11, which is Exhibit 01043, we see a – that you – well, Mr. Charles Bown developed the job description for the senior advisor and then you're replying to him on October 8, 2009, "We are lining up very close on this."

And if we turn to this draft document on page 3 at the top, 3.4, just going to read that, "Based on the approved framework, develop a Shareholder handbook outlining the Minister's responsibilities as Shareholder and how the annual review cycle would work, including roles and responsibilities for other positions within Department." And it could also identify "... items that would require Cabinet approval, need for consultation with Minister of Finance, role of Department of Justice, items that require Board approval, the way shareholder communications should occur to formalize decisions and directions, and other appropriate matters."

So that is, I think you'll agree, is an oversight description of a –

MR. THOMPSON: Correct.

MR. LEARMONTH: – proposed oversight role. Now, we don't have – what happened with this proposal or suggestion?

MR. THOMPSON: Well, the position was created –

MR. LEARMONTH: Yeah.

MR. THOMPSON: – and filled and the individual started work, and I remember interacting with her in the department. But if you're asking specifically about what happened to the handbook, I don't recall that. We have asked the Commission to see the – or the government to see if we can find the –

MR. LEARMONTH: Yes.

MR. THOMPSON: – records of the individual who occupied the role –

MR. LEARMONTH: Yes.

MR. THOMPSON: – and we haven't seen those records yet.

MR. LEARMONTH: That was Ms. Pennell, was it?

MR. THOMPSON: Right, Tracey Pennell.

MR. LEARMONTH: Tracey Pennell, yeah.

MR. THOMPSON: So –

MR. LEARMONTH: But we haven't found anything. This sort of died on the vine, we'll say.

MR. THOMPSON: Okay, I don't know that to be the case; I just don't have any recollection of it.

MR. LEARMONTH: Well, we didn't – I didn't see it.

MR. THOMPSON: Okay.

MR. LEARMONTH: I mean, maybe it's there but we haven't – I haven't been able to locate it.

But so this is an initiative for oversight and, as you know, this Commission is –

MR. THOMPSON: Yes.

MR. LEARMONTH: – looking at oversight.

MR. THOMPSON: Uh-huh.

MR. LEARMONTH: And so the question is that, like, this proposal will say on its face: looks like a very good suggestion to set up a protocol for reporting and so on.

MR. THOMPSON: Uh-huh.

MR. LEARMONTH: And I just wonder what became of this proposal? I mean I know you said that Ms. Pennell was hired for one year, but where did this go? What ended – how did it end up, this whole proposed shareholder's handbook and so on?

MR. THOMPSON: So I remained in the – what date was on this? October 8, 2009. So I remained in the department for just a little bit over a year. And as I mentioned, Ms. Pennell was hired and began work, and whether or not a particular handbook was prepared, she was employed in the oversight and the – making sure that we had documented the appropriate – our role appropriately in relation to the kinds of decisions that needed to be made and the information provided to Cabinet.

MR. LEARMONTH: Yeah.

MR. THOMPSON: So in general terms I can tell you – this is my recollection – that she was doing that work in conjunction with Charles Bown, myself and others. But I can't speak to any, you know, of the specifics of things that she may have worked on.

MR. LEARMONTH: Yeah. Because when I look at this I say: Okay, I want to see the handbook.

MR. THOMPSON: Sure, sure.

MR. LEARMONTH: And I haven't seen it so ...

MR. THOMPSON: Yeah.

MR. LEARMONTH: And just to follow up, on tab 14 it's just another, you know, variation or draft of the – from Mr. Bown on the shareholder – on the job description.

But anyway, you can't give us any more information as to what happened and why it wasn't developed and why it wasn't pursued and –?

MR. THOMPSON: No, I can't provide any more information on the handbook. I can – I'd like just to repeat that. I know, though, work occurred in the job function because we hired her and I remember her being active in these roles.

MR. LEARMONTH: Yeah.

Would this have gone to Cabinet? This –

MR. THOMPSON: The – could be –

MR. LEARMONTH: The proposal to hire Ms. Pennell –

MR. THOMPSON: No, no.

MR. LEARMONTH: It wouldn't –

MR. THOMPSON: That would've been a departmental decision; possibly with approval of, you know, whatever central agency may approve the positions – as a human resource matter, but not as a Cabinet – piece of Cabinet information.

MR. LEARMONTH: And – but so what happened after the one-year engagement? She was retained for one year, was she, Ms. Pennell?

MR. THOMPSON: Yes, but –

MR. LEARMONTH: So what happened after that?

MR. THOMPSON: I don't recall. I just don't have a recollection. I'm sure Mr. Bown would be able to tell you about that.

MR. LEARMONTH: Okay. Fair enough.

We're just looking back now to tab 12, which is Exhibit 01044. This has to do with that proposal

whereby New Brunswick was going to sell most of its hydro assets to Hydro-Québec. Were you involved in that? And if so, can you advise me why that was a matter of interest to the province?

MR. THOMPSON: Sure.

Well, we were involved to the extent that we were gathering information for the minister and the premier in relation to what we were hearing in the news about the – about this potential deal. And also, we were in contact with the Government of Nova Scotia to understand their perspective, and to communicate that internally and to supply any additional analysis or support that might be necessary.

MR. LEARMONTH: Okay.

And that proposal didn't go through – the proposed sale of the assets.

MR. THOMPSON: Yeah. That's correct.

MR. LEARMONTH: I think Premier Williams said that that was important because there was some concern that if Hydro-Québec got control of the transmission lines in New Brunswick that could have some bearing on our province's ability to –

MR. THOMPSON: No question. Yeah, we – the government in general perceived it as a strategic issue that may get in the way of us, Newfoundland and Labrador, realizing our overall plans.

MR. LEARMONTH: Yes, okay.

Now, tab 16, this is a report – 01048 is the Exhibit number – this is a paper on – from the *New York Times*: “A Canadian Provincial Leader Seeks U.S. Support for 2 Hydro Projects.”

Do you know why the premier, in November 2009, was going to New York to seek support for the two hydro projects? Presumably – well, Gull Island and Muskrat Falls.

MR. THOMPSON: Sure.

MR. LEARMONTH: Yeah.

MR. THOMPSON: Yeah.

Well, in general, during this period of time, the – Nalcor and the government in support of it, were involved in looking at options for access to the marketplace, whether that be markets in Canada or markets in the United States. And consistent with that, we would also be looking for – or communicating to capital markets, and it was deemed important that the premier be present in New York to generate publicity, to speak directly to people primarily in the financial markets and, you know, to generate good positive publicity around the projects and the capacity within the province to supply energy solutions to the United States.

MR. LEARMONTH: Okay.

At tab 17, there's some reference here to Professor Wade Locke. Now, what was Professor Locke's role with government? I know they had contracts from time to time, and they also spoke on various topics and he seemed to have had a very close relationship with government?

MR. THOMPSON: Yeah. I –

MR. LEARMONTH: Well, I – that's one observation, I mean you may have –

MR. THOMPSON: Sure. Well –

MR. LEARMONTH: – a different one, but just give me some information on that please.

MR. THOMPSON: Sure.

Well, of course, Dr. Locke is an economist and professor at Memorial University, and he engages in consulting work and generally in commentary on public policy. So from time to time, he would call the department; perhaps Charles Bown, once or twice he called me, maybe others. Sometimes it was to obtain information that he needed in relation to his research; sometimes it may be to share some observation or a piece of research or a slide deck that he might be making – using for a presentation.

And so it was that kind of familiar relationship of sharing information back and forth. And I

wouldn't call it close, I would call it, you know, from time to time we would have those communications.

MR. LEARMONTH: Okay, thank you.

Now, tab 18, this is a resolution that was prepared the time that the Régie in Quebec turned down the –

MR. FITZGERALD: Commissioner?

THE COMMISSIONER: Yeah.

MR. FITZGERALD: Mr. Learmonth is referring to the tabs and not the Exhibit number.

MR. LEARMONTH: Okay, sorry, 01052.

So just to put this in context, in May 2010 the Régie turned down the appeal from TransÉnergie – by Nalcor of the TransÉnergie decision, and I guess this was an announcement or reaction to it.

MR. THOMPSON: Correct.

MR. LEARMONTH: At that point, was that the end of Gull Island or was there still some consideration being given to Gull Island?

MR. THOMPSON: I don't recall that it was regarded as the end of Gull Island, but certainly it was a huge issue standing in the way of developing that project, you know, having access to Quebec and Gull Island were kind of a match, and so the chances of developing Gull first were significantly diminished at this point.

MR. LEARMONTH: Yeah.

And just so people will be able to follow this. At tab 19, there's a Department of Natural Resources summary of the decision of the Régie; this is dated May 18, 2010.

THE COMMISSIONER: P-01053.

MR. LEARMONTH: P-01053, yes.

The next document I want you to refer to is tab 21; it's Exhibit 01055. And this has to do with the Lower Churchill Construction Projects Benefits Strategy and there's an email – a couple

of emails on page 1, and then starting on page 3 you have the Lower Churchill Construction Projects Benefits Strategy.

Can you give me some background on this? And also a comment, if you can, on the reference – on page 5 of this report – to Gull Island, which suggests that even on this date Gull Island was still on the table?

MR. THOMPSON: Sure.

MR. LEARMONTH: Could you give us some background on that, please?

MR. THOMPSON: Okay.

The context of a benefit strategy for the Lower Churchill Project is that a government – whenever it's dealing with a proponent in the private sector, part of the negotiation of – before approval to proceed would include a commitment by the proponent of the kind of benefits that would be conferred. You know, we want to know what kind of labour benefits, perhaps financial benefits and other kinds of benefits will accrue to the province and make sure that the proponent delivers upon that during the life of a project.

So we're simply, here, translating that general policy into the Lower Churchill context. And even though we're – you know, had worked very closely, and almost like an integrated team at times, between the Department of Natural Resources and Nalcor, on this occasion, this was a strategy that was very much like an agreement with Nalcor that as Nalcor builds these projects – both Gull and Muskrat Falls – whenever they are likely to occur and in whatever sequence – this is the benefit strategy, the set of commitments, that Nalcor would make sure are delivered, would be monitored over time; the government would monitor it.

So this is a very important document in order to communicate then to the public that the government was keeping focused on making sure that whatever was to occur occurred with a, you know, high degree of benefits in a variety of areas.

MR. LEARMONTH: Okay. Would this document have been prepared by government

alone or with input from Nalcor? To your recollection.

MR. THOMPSON: We – okay, the department was the main generator of this document, but of course, we would have prepared it with Nalcor, because Nalcor – in a different context, we'd be negotiating towards a document with a proponent. In this context, it was more collaborative, but certainly they would have participated.

MR. LEARMONTH: All right.

Next, please turn to tab 22, Exhibit P-01056. This is a request for proposals issued for the Lower Churchill Project. Could you give us some background on this document, Mr. Thompson?

MR. THOMPSON: Okay. I just wanna have a look at it.

So this is the news release related to the request for proposals for the engineering and project management services for the Lower Churchill Project.

MR. LEARMONTH: Yeah. And ultimately, SNC-Lavalin was the successful proponent –

MR. THOMPSON: Right.

MR. LEARMONTH: – or bidder?

MR. THOMPSON: Yes.

MR. LEARMONTH: And they signed a contract on –

MR. THOMPSON: Yes.

MR. LEARMONTH: – I think, February 1, 2011.

MR. THOMPSON: Okay.

MR. LEARMONTH: That's what that process is about?

MR. THOMPSON: That's correct, yes.

MR. LEARMONTH: Yeah. Fine, thank you.

Tab 23, Exhibit P-01057. Just wonder – there’s – this is an email from you to Charles Bown and Ken Morrissey saying: “The Telegram and the Opposition parties have missed the real meaning of the Lower Churchill Benefits Strategy that I released on July 14, 2010.”

Why did you find it necessary to comment on that? And how did you feel that *The Telegram* and the Opposition parties have – had missed the real meaning of your –

MR. THOMPSON: Okay.

MR. LEARMONTH: – of the lower benefits – Churchill benefit strategy.

MR. THOMPSON: Okay.

So just to clarify, that first line would not be my communication to Charles and Ken. That would be the first line of a letter to the editor from then-Minister Dunderdale. So this was a draft letter to the editor. But still, your question is: Why would we, the government –

MR. LEARMONTH: Yes.

MR. THOMPSON: – have felt that way.

MR. LEARMONTH: Yeah.

MR. THOMPSON: And as I recall then, in the intervening period between when the benefit strategy was released and I guess the day when we wrote this, there was a – perhaps we regarded a misinterpretation of the significance of the benefit strategy and the kind of impact that it would have, and we wanted to clarify that.

MR. LEARMONTH: Okay.

Tab 24, Exhibit 01058.

MS. O’BRIEN: This exhibit has not yet been entered.

MR. LEARMONTH: Okay.

MS. O’BRIEN: (Inaudible.)

MR. LEARMONTH: 01058. Do you have that, Mr. Thompson?

MR. THOMPSON: Yes, I do.

MR. LEARMONTH: Yeah.

Now, this is – we’ve had some evidence and discussion about this issue about the roughly \$600-million cost of replacing the precipitators and scrubbers –

MR. THOMPSON: Right.

MR. LEARMONTH: – on Holyrood. Do you have any knowledge of that, or did you have any knowledge when you were in government?

MR. THOMPSON: I’m aware of it, and I understand its role in the project.

MR. LEARMONTH: Yeah. And we know that the \$600-million cost, or thereabouts, was added as an input to the Isolated Island thing, which if it hadn’t been added, you know, may have affected the –

MR. THOMPSON: Correct.

MR. LEARMONTH: Yeah, you understand the – I’m just giving you the background of it.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: So why was it that in this situation – this is August 12, 2010, so this is when the term sheet was under negotiation. So why would Nalcor be providing notes to government for a briefing session for the premier? Because that’s what it says here. “Minister: Here are some notes on this morning’s briefing for the Premier provided by Nalcor on LCP issues.”

MR. THOMPSON: Okay. So, no, the – that’s not accurate, because these are my meeting notes from my attendance at that meeting. Minister Dunderdale wasn’t in attendance, so I was communicating to her my notes of what happened.

MR. LEARMONTH: Okay. So this wasn’t information provided by Nalcor?

MR. THOMPSON: No. Now, Nalcor is, I think – used a briefing deck and made a presentation to the premier. And so I attended, and I –

MR. LEARMONTH: Yeah.

MR. THOMPSON: So certain of these things clearly originated with Nalcor, but these notes would also describe things that came up in discussion.

MR. LEARMONTH: Okay.

So did Nalcor have a close relationship with the premier at this time?

MR. THOMPSON: Well, all throughout this period there is an effort to meet with the premier, regularly, and make sure that there was good communication and alignment between the premier's own sense of what the strategy should be and what Nalcor was doing, sometimes to get guidance and, indeed, approval on certain issues, yes.

MR. LEARMONTH: Yeah. So would you attend some of these meetings or all of these meetings with the premier and Nalcor?

MR. THOMPSON: In the role as deputy minister?

MR. LEARMONTH: Yes.

MR. THOMPSON: Okay. I would frequently attend these meetings. So when Nalcor would show up to brief the premier, certainly with a deck, certainly, you know, a lot of information being conveyed on an important issue, I would generally be invited, as would the minister.

MR. LEARMONTH: But generally there'd be times when you would not be invited, as far as you know?

MR. THOMPSON: I don't recall any, but there may have been, sure.

MR. LEARMONTH: Okay, thank you.

Tab 25, Exhibit 01059. Just as a matter of interest, you say here – this is an email from you to Kathy Dunderdale, dated September 30, 2010. That was nearing the end of the negotiations. The term sheet had been – you say: “Ed called. Meeting went well. They swallowed the negative message on additional investment but still want some alternative.”

Do you know what that is about?

MR. THOMPSON: Okay, in general I do.

MR. LEARMONTH: Okay, can you ...?

MR. THOMPSON: Sure.

The – so in the course of negotiations, there was a discussion of whether or not Emera would be permitted to invest additional capital in the project, and I believe that this is the issue that was under discussion. Now, I could be wrong, but I believe that that was it. And there was some form of message being sent back or, you know, a counter proposal or position that Nalcor was delivering at the table that clearly had been discussed with the government prior to the delivery of that message. So after that message had been delivered, Ed Martin would've called me to say how that part of the meeting went. He said it went well.

Now, the word “swallowed,” I just want to put that in context. That was that they absorbed it and understand our position and want to help address it. So it wasn't – it doesn't connote anything else other than that they took it onboard and now that – but they still want some alternative. That's what we say at the end of the line.

MR. LEARMONTH: Okay, so the word swallow could've been accepted, as opposed –?

MR. THOMPSON: Correct, yes.

MR. LEARMONTH: Okay.

MR. THOMPSON: Yes.

MR. LEARMONTH: Page – tab 26, Exhibit 01060, is an email from you to Vanessa Newhook.

By the way, who is Vanessa Newhook?

MR. THOMPSON: She was the assistant deputy minister of Royalties and Benefits.

MR. LEARMONTH: Okay, and you're referring here to – you say that: “Nalcor has produced, and updated over time, an analysis of Island power rates,” et cetera, and then you're

saying at the end: “The task is to review the data, assumptions and modeling techniques used by Nalcor and determine whether the analysis is sound. This determination should also identify whether other option besides continued operation of Holyrood have been reviewed and properly assessed.”

Now, you – this task that you’re referring to, was this task ever carried out?

MR. THOMPSON: Yes, it was.

MR. LEARMONTH: Is there any documentation to support –

MR. THOMPSON: Yeah. It’s –

MR. LEARMONTH: – that position?

MR. THOMPSON: – throughout here.

MR. LEARMONTH: Okay. So that was done?

MR. THOMPSON: Yeah. And if you don’t mind, I’d like to speak about this in some extra detail.

MR. LEARMONTH: Please do.

MR. THOMPSON: Put it – yes.

So, prior to this email being written, there was a – I would call it a major briefing for the premier and the minister, in which I participated, provided by Nalcor.

Now, the PowerPoint deck that was used for that meeting was dated September 23, and I just know that because I’ve been reviewing documents that have been disclosed to the Commission, and that was the – it was within that presentation that Nalcor, essentially, was communicating the conclusions of its options analysis for dealing with the projected shortfall in energy in the province in 2015 and beyond and, in that, as well, outlining what it felt would be the scope and structure of proceeding with Muskrat Falls development, the deal with Emera and so forth. So all the key elements were there.

It wasn’t the first time that key elements had been discussed, because there were other briefings, but this was a significant meeting

where they felt that they had completed their analysis and wanted to make this known clearly to the government that this is the recommendation from Nalcor.

So I took that briefing deck, and when I went back to the department – and I don’t actually recall the date of the briefing, but, certainly, this would’ve been very soon after that – and we had a high level of – I guess, a good relationship and rapport. We always felt that Nalcor was forthright in all of the analysis that it was doing. We always had ample opportunity for questioning and diving deep in these meetings with Nalcor, Ed Martin and his officials.

But given the significance of this issue at this time, I also wanted to have the economists in the Department of Natural Resources go through this with as much interrogation as they could to ensure we understood how it was modelled, the data inputs and so forth. We didn’t go, of course, into testing the engineering and the capital cost estimating; that would’ve not been a capacity we had in the department. But in certain – in terms of analyzing the options analysis and the CPW differences between Isolated Island and the Interconnected Option and those kinds of issues, we had that capacity. So I wanted to make sure we were doing that separately, so at least, from my own point of view, I could be confident in saying to the minister, if necessary, whether or not all of this added up.

So that was the purpose of giving that to the group, and there are, you know, lots of emails here in this package about the dialogue that went on. I don’t know if they’re in this package but they’re in the exhibits disclosed to the Commission about the dialogue that went on between these economists and Nalcor investment analysis people. I know there’s – and then the briefing deck that our people in Natural Resources produced that – and they briefed me on two or three weeks later.

MR. LEARMONTH: Would the people that you are refereeing to in the Department of Natural Resources have the ability or background to do their own CPW analysis to ...?

MR. THOMPSON: Yes. And they did.

MR. LEARMONTH: Okay. And who are those persons?

MR. THOMPSON: They're Paul Parsons and Gerard Collins.

MR. LEARMONTH: Paul Parsons and Gerard Collins. What were their positions when they did this work?

MR. THOMPSON: I forget the position titles but they were in the Natural Resource economics.

MR. LEARMONTH: Okay. And you're saying they produced reports which have been disclosed to the Commission.

MR. THOMPSON: Yes, they did.

MR. LEARMONTH: Okay.

MR. THOMPSON: There's a briefing deck in the material.

MR. LEARMONTH: But what about capital costs? You know that that's an issue.

MR. THOMPSON: Oh, sure, yeah.

As a – I've reviewed it recently, the briefing deck, and they do, of course, look at the cash flows associated with capital cost and they're aware of the plus/minus variation that could exist, and we can talk about that if necessary. But the – but they – it isn't a deep dive into the nature or the reasonableness of the techniques used by the engineers to do that. That's not something we're doing. Certainly, it was a feasibility level study as well.

So their work was more around the reasonableness of assumptions like oil prices, Island load and exchange rates and then the technique by which all of this was brought together in a CPW analysis.

MR. LEARMONTH: Yeah, because the capital cost estimate was an important and a significant input into the CPW analysis.

MR. THOMPSON: Yeah. Yes, it was. And they identified this as one of the risks, yes.

MR. LEARMONTH: Yeah. But they didn't have the capacity, from what you're saying, I think, that they didn't have the capacity or background or experience to, we'll say – you used the word deep dive – to do a deep dive into the capital costs –

MR. THOMPSON: That's right.

MR. LEARMONTH: – and analyze them.

MR. THOMPSON: There's no question, we were relying at that point on the quality of the work that was going on within the project team in Nalcor and the – we were satisfied with the kinds of assurances that we were being provided that Nalcor was using appropriate external consultants, cold eyes reviews, those kinds of –

MR. LEARMONTH: Yeah.

MR. THOMPSON: And perhaps we'll get into more of that, but –

MR. LEARMONTH: We will, yeah.

MR. THOMPSON: – at that point, that – we were relying upon those assurances in relation to the capital costs.

MR. LEARMONTH: Okay, thank you.

Now, the next exhibit I'd like you to look at is tab 27, Exhibit 01061. This is an October 5, 2010 email to Mr. Parsons, Vanessa Newhook and Gerard Collins. And I think they're – Mr. Collins and Mr. Parsons were two of the people you said were doing this –

MR. THOMPSON: Correct.

MR. LEARMONTH: – review.

So you're saying: "When asking questions on what options went into the Isolated Island scenario, pls enquire whether the following" – issues – "were taken ..." et cetera: options, et cetera, 1, 2, 3. And then also ask: "how recent the cost estimates for the various projects in the isolated island scenario; and ... given the long time ... whether the price forecasts for oil" et cetera.

So the cost estimates – you were focusing on the cost estimates for the Isolated Island scenario.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: Not the Muskrat Falls Project, is that correct?

MR. THOMPSON: Well, my question though was on how recent are the cost estimates. I knew that the cost estimates related to Muskrat Falls were recent because that's where the team was putting in a considerable amount of work. But I didn't know how recent the cost estimates were on the Isolated Island, so that would be useful to know.

MR. LEARMONTH: Useful, okay. For comparison purposes I guess with the Muskrat Falls option?

MR. THOMPSON: Yes.

MR. LEARMONTH: Yes, all right.

MR. THOMPSON: And to look at the quality of the data.

These are the kind of questions that we felt it was necessary to pose, you know, all of these in the various emails to ensure that we had a critical understanding of what Nalcor was presenting to us.

MR. LEARMONTH: Yes. And at tab 28, Exhibit 01062, you send an email on August 6 to the same – well, a number of persons. You say: Thanks. The questions look to be comprehensive. However, I don't think you need to interrogate all the cases. Case 1 and one other case (whichever one is the MF/Island Link/spill case) are the only two cases that need to be examined. This allows us to focus directly in on the comparison between lowest cost isolated Island case and the barebones Island Link case.”

Now, this is just – this is in October 6, 2010, before the term sheet with Emera and Nalcor was signed. So why, at this point, had you apparently excluded other options? Why had you narrowed it down to just two choices?

MR. THOMPSON: Okay. So I'd have to try to, you know, recapture what was on my mind at

that time, and I don't know distinctly, but the – certainly, we would've received the briefings from Nalcor about their – the options analysis that they had gone through and the reasons for setting aside other options than these two for the detailed comparison.

And I would hazard to say that we were satisfied with the explanations from Nalcor at that stage. And I was wanting our folks in the department to carry out an efficient review process, and so I was suggesting that they focus on the two that were really going to determine the ultimate decision – or the two best options.

In saying that, the – Paul and Gerard, they actually did include some relevant data and assessment of, at least, a couple of the other options in the briefing deck that they brought back. And that was great; that was fine. They were able to get it done in the same amount of time.

MR. LEARMONTH: But I suggest to you that it would've been reasonable for government to not accept this information from Nalcor. Not on the basis that you necessarily distrusted them. But delve into it and do your own study and get your own information as to way other options were excluded at this very early stage in the game. I suggest that that would've been a reasonable step taken by government in discharging its oversight duties –

MR. THOMPSON: Yeah.

MR. LEARMONTH: – and, you know, to protect the public from –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – potential errors.

Do you have any comment on that?

MR. THOMPSON: Well, again, it's hard to recapture exactly what we thought at the time.

But my best explanation of it would be that – as I mentioned – we were satisfied with the explanations and the answers to questions that we would've posed in previous meetings. And secondly, you have to recall that the Nalcor team and – or the, you know, the Nalcor team, the

government team, were operated often as an integrated team in the sense that we were pursuing a, you know, some common objectives. We had good relationships and we're – as I said – we're forthright and we had a good rapport, and we relied upon the Nalcor team often for insight and for accurate and – accurate, timely, good information. And it may be that we, at that point in time, had felt that we really needed to focus on the two best options.

MR. LEARMONTH: Mmm.

MR. THOMPSON: That's my best effort on that question.

MR. LEARMONTH: But isn't there a danger in that in – you know, this is the biggest project or expenditure the province has ever considered. You have a Crown corporation that is, you know, pushing for this. And at this stage, even in 2010, wouldn't it have been reasonable to step back and say, look, given the consequences of this and the effect that, you know, an unfortunate outcome, cost overruns, can have on our fiscal ability, we got to stop and take a hard look at this and test the information that we're getting from Nalcor to see whether it can be verified.

I mean wouldn't that have been a reasonable, prudent step for government to take, given that it had an oversight role –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – to protect the taxpayers?

MR. THOMPSON: Yeah. I hope you'd agree that that's what we were doing in the main – in this particular exercise. We – I think though on the issue of focusing mainly on the two options, rather than the options that had been set aside, I just have to answer again that we – it would appear that we – that the government was comfortable with the set aside. And, you know, there's a more perhaps detailed discussion to be had about the nature of the information that Nalcor was providing to us and why we might have been confident or –

MR. LEARMONTH: Mmm.

MR. THOMPSON: – comfortable or satisfied with that information at the time.

Certainly, there were already external consultants that had done reviews of Nalcor's work; I can't recall whether they apply to the issue of options analysis. But, in general, the government would have been – was being assured at that time that there were external eyes on the experience, the quality of Nalcor's work and that was giving us additional reason to be satisfied, at that time.

MR. LEARMONTH: Yeah, but did you ask for copies of the external reviews to support their –

MR. THOMPSON: I don't recall asking for copies of those –

MR. LEARMONTH: Yeah.

MR. THOMPSON: – external reviews.

MR. LEARMONTH: So what I'm saying, Mr. Thompson, is that you were simply – government was simply accepting whatever Nalcor told you with very little review. I know you did – you said Mr. Parsons and you did some internal review, but in terms of capital cost estimates and something with not very little review, with no review. And I suggest to you that that's – that was a very risky decision to make.

MR. THOMPSON: Yeah, I don't agree with that summation.

MR. LEARMONTH: No, okay.

MR. THOMPSON: I believe that we did good work and we were satisfied with the work that was being done by Nalcor. We did a focused but very good review of the CPW comparison.

MR. LEARMONTH: Yeah.

MR. THOMPSON: And we also did, of course, more work after that, so – that is with independent reviews.

MR. LEARMONTH: So are you saying that – we'll get into this later, but in October 2010, are you saying that the level of oversight that

government was – had undertaken over Nalcor was acceptable?

MR. THOMPSON: Well –

MR. LEARMONTH: And reasonable?

MR. THOMPSON: – in the context of the time, we would have felt satisfied and felt it was reasonable.

MR. LEARMONTH: Yeah. Well, I have no doubt that you felt it was reasonable.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: But the question is, even looking back at it, do you believe, now, that it was reasonable to put so much – to put 100 per cent reliance on Nalcor?

MR. THOMPSON: Well – do I feel it was reasonable?

MR. COFFEY: Commissioner, if I could, perhaps because it's a wide-ranging question. If he's talking about 2010, fair enough, if it's focused on that. But Mr. Learmonth is seemingly going to – stretching it out into a general question.

MR. LEARMONTH: No.

MR. COFFEY: And as long as Mr. Learmonth makes it clear, if he's talking about September, October 2010, versus the whole period from 2010 through 2012. That's all.

MR. LEARMONTH: Well, I think I made it clear. I was talking about at this time. I don't think there's need for any clarification. I'm talking about at this time. And I said we'll get into the –

THE COMMISSIONER: At this time being?

MR. LEARMONTH: 2010.

THE COMMISSIONER: Right.

MR. THOMPSON: Sure.

MR. LEARMONTH: Yeah. And I'm saying looking back to –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – to 2010 –

MR. THOMPSON: Sure.

MR. LEARMONTH: – do you believe that it was – that government role – oversight role was being properly discharged in terms of the information you were getting from Nalcor?

MR. THOMPSON: Yes, I do.

MR. LEARMONTH: You do.

So it was just accept what they're saying –

MR. THOMPSON: No.

MR. LEARMONTH: – and you didn't think there was –

MR. THOMPSON: No. No.

MR. LEARMONTH: – any need to do much more than that.

MR. THOMPSON: No. See, that's a characterization of what I said that I don't agree with.

MR. LEARMONTH: Well, I want to know exactly what your position is on that.

MR. THOMPSON: Sure. Okay. So let me go a little bit broader again.

Government has created a Crown corporation called Nalcor. It's appointed board of directors to play the role that a board of directors should, of course, and I know you'll have questions on the board –

MR. LEARMONTH: Right.

MR. THOMPSON: – of directors, which is fine. But the board of directors is appointed by the shareholder, by the government and has a role to play, and we expected and relied upon them to play that role.

The government plays a part in appointing the CEO, and the CEO is accountable and therefore aligned with the government as well.

We had – we knew from, you know, many, many meetings over this period of time, you know, of several years building up to this period around 2010, that the – that we’re aware of the kind of team that was being built in Nalcor, and, again, we’re pleased with the quality of the team that was being built up. And then we did have the affirmations of that, at least, that were communicated to us from external reviewers. So this was the place where we sat when we were going in to this August-to-December period in 2010. And so the options analysis was becoming clear to us, perhaps as early as August, and then we had the presentation towards the end of September.

And what I can say to you is that we felt that the options analysis that excluded other things, other than Isolated Island and Interconnected, was a good analysis. We were satisfied with it and we felt that we had been given good information and, indeed, at that point in time, we relied upon it.

It did get tested – this was the start of a process as well. This was the DG2 stage –

MR. LEARMONTH: Right.

MR. THOMPSON: It was, you know, agreement in principle with Emera. It was feasibility level or concept study with a limited amount of engineering being done with lots of time to come to, of course, gain more confidence in all of the work that Nalcor had done. But sitting there at that time and looking at the words that I wrote in that email, I think, would reflect sort of the accumulation of what I’ve just described.

MR. LEARMONTH: All right.

Did you ever, at this time in 2010, DG2 – did you ever ask to see these external reviews that Nalcor was talking to you about or telling you that they had?

MR. THOMPSON: I don’t recall ever asking to see them and I believe that we relied upon their briefings to us about them.

MR. LEARMONTH: Yeah.

Why wouldn’t you ask to see the source material for their – like, their risk reviews and capital cost estimates and so on?

MR. THOMPSON: Oh, again, putting myself back in that time, which is hard to do, I can only say that we felt comfortable and/or – and satisfied with the level of detail that Nalcor was providing to us, given all the other levels of scrutiny that were occurring. So that would probably explain why we didn’t ask for those reports.

MR. LEARMONTH: What other levels of scrutiny are you referring?

MR. THOMPSON: Well, what I mean are the board of directors and the external consultants that we know had been engaged and were satisfied with the – as well, the multiple meetings that we were having with Nalcor and the opportunity to ask questions and get answers and develop, you know, a better understanding of the analysis that had been done. So that was the – that’s the body of knowledge that we had and felt satisfied with at the time.

MR. LEARMONTH: And, of course, you were part – you and – government and Nalcor were, as you described, an integrated team?

MR. THOMPSON: In many respects we were.

MR. LEARMONTH: Yeah.

Is that a problem? If you’re part of an integrated team and there’s an oversight role for one of the members of this integrated team, isn’t that a bit of a contradiction?

MR. THOMPSON: No, I don’t think so. Clearly, the government was a – its policy was to find a way to develop the Lower Churchill that – well, that had been its policy for – over multiple governments and, certainly, the government at that time. And in carrying that policy there are broader goals and objectives than least-cost energy, which is clearly significant and fundamentally important, but there are economic benefits and – or the related environmental goals and so forth.

So, you know, we are a policy partner, if you like, in this overall initiative. So in the sense I

say integrated team, you know, it's hard to divorce those broader goals from the specific energy delivery goals of Nalcor. So that's the sense in which I think there's an integrated team.

And so that then – in needing to move in unison and stay focused on the goal together, it doesn't mean we integrate personnel down at the engineering level, it means that we have a variety of roles that we try to integrate at the top. And we get – and we have a lot of experience dealing with each other in meetings, through dialogue, through deep questioning. And that's the sense in which I mean it and I don't think there was a contradiction in that.

MR. LEARMONTH: Well, anyway, we'll get into this later. We're just –

MR. THOMPSON: Sure.

MR. LEARMONTH: – in 2010, so we'll just –

MR. THOMPSON: Well, if I may add as well, I think that the review that we did internal to the department in October of 2010 is a good example of how we can separate the roles, because we wanted to have a separate analysis of the quality of that. And there are more examples of that, in terms of the independent reviews later.

But – so we can separate the roles. And, quite often, we would, during meetings – because we would bring different perspectives to the table, the questions we would ask of Nalcor – for example, about the impacts of the project that perhaps would pertain to goals and issues that the government were more concerned about than Nalcor may have been internally – helped us better understand what they're proposing and take a critical eye on it.

MR. LEARMONTH: Yeah.

Well, anyway, we'll – as I say, we'll talk about that later.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: Just going to tab 30, which is Exhibit 01064, and you're talking about this integrated-team approach with Nalcor.

I just notice in this email from Paul Parsons dated Friday, October 8, 2010 – he says: “Just a quick follow-up. As we discussed, myself and Gerard have a really good meeting this morning with Steve Goudie at Nalcor to discuss more of the project analysis. We went through a slide presentation” and he says could not take copies away – take away copies.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: I mean that doesn't suggest to me that that's an indication –

MR. THOMPSON: Right.

MR. LEARMONTH: – of co-operation.

MR. THOMPSON: Right.

MR. LEARMONTH: If you're part of an integrated team, and one of the members of the integrated team is not allowing you to take copies of documents –

MR. THOMPSON: Mmm.

MR. LEARMONTH: – that suggests to me that the relationship is not quite as harmonious as you make it out to be.

MR. THOMPSON: No, I don't think that that's accurate because the – in the days that followed that, all of that got sorted out. And the explanation that was coming over from Nalcor was that they – and remember this was – may have been the first time that they were actually sending over detailed data files to the government on a variety of matters. And these were the things that they wanted to – that were commercially sensitive.

And there's always been a feeling within Nalcor – and I guess shared by the government perhaps in a different way but certainly shared – that these documents should not be exposed to a release under the Access to Information act. So this was the issue that they were concerned about. So once that was resolved within, I guess, a few days or a day or two of this email, all of the information was flowing back and forth to the government without any barrier.

MR. LEARMONTH: Okay.

So what information was that?

MR. THOMPSON: Well, it was – I presume it was that slide deck, but there were also the – in one of the emails, I’m not sure which exhibit it is, but there are eight links – seven or eight links at the bottom to the detailed information on cash flows and, you know, fuel price forecasts, the capital cost estimates. All of that information was there for our economists then to use as they proceeded to model the CPW.

MR. LEARMONTH: Okay.

Now, did you ever, you know, up ’til the signing of the term sheet – we’ll keep it focused on that, in that time period.

MR. THOMPSON: Sure.

MR. LEARMONTH: Was any review of the capital cost estimates ever done by government, to your knowledge?

MR. THOMPSON: No.

MR. LEARMONTH: No, okay. Why not?

MR. THOMPSON: We were satisfied that Nalcor had a good team and had done a good job on the capital cost estimates. We didn’t, at that stage prior to DG2, decide to do it.

Now, whether we had an active discussion about it and decided not to, or whether we just felt inherently satisfied, I don’t recall that. But we knew that there were – the stage of DG3 would improve the engineering and thus the capital cost estimate to a much greater degree of precision. So, of course, we were aware of that as well.

MR. LEARMONTH: But you’re – the government’s making announcements to the public about –

MR. THOMPSON: Yes.

MR. LEARMONTH: – a \$5 billion cost.

MR. THOMPSON: Right.

MR. LEARMONTH: So shouldn’t government take steps to, you know, do an independent

review to make sure that that’s a reasonable cost estimate?

MR. THOMPSON: So I’ve been thinking about this question because – and one way to assess it is to compare it to what the government might do with a hospital construction project, with which I’m familiar. And, generally, we would go to a – an engineering consulting firm, engage them in the development of a capital cost estimate and they would submit it to us – of course, brief us on the scope and scale of the project and if there was to be an announcement, we’d be relying on the capital cost estimate of the engineering firm.

And so in the context – and that would be an external company, but nonetheless we felt that – we would feel in that context that the reputations of qualified engineering consultants working on the terms of reference that we provided them would provide us with a useful estimate for public communication.

And here in this context, we had Nalcor, a Crown corporation, its – with a board of directors, shareholder alignment, you know, the team operating in alignment and that – with highly qualified people that – and there had been these cold eyes reviews by other consultants – so it was – that was the context in which we – again, interpreting with hindsight, I suppose – felt satisfied to release this to the public.

MR. LEARMONTH: Okay, a couple things.

First of all, you keep on talking about these cold eyes reviews.

MR. THOMPSON: Sure.

MR. LEARMONTH: But you never saw them.

MR. THOMPSON: Correct.

MR. LEARMONTH: You never asked for them.

MR. THOMPSON: We were briefed about them.

MR. LEARMONTH: Yeah, you were told about them.

MR. THOMPSON: Correct.

MR. LEARMONTH: Yeah.

And are you equating approving a construction of a hospital with approving a megaproject, which could have a big impact on the fiscal position of a government?

MR. THOMPSON: No –

MR. LEARMONTH: I mean, are you saying it's the same thing?

MR. THOMPSON: No, of course not.

MR. LEARMONTH: Well –

MR. THOMPSON: I'm trying to use it as a metaphor to – just to illustrate how the government might rely upon and then communicate to the public.

MR. LEARMONTH: Yeah.

Well, you know, I suggest to you that – I accept, for the sake of this question, that that's what you did.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: But I'm suggesting to you that that was a very naive approach to take, at this stage, even in November 2010. And you don't agree with that, you think everything was fine, do you?

MR. THOMPSON: I think we were satisfied at the time, yes.

MR. LEARMONTH: Yeah, you were satisfied.

MR. THOMPSON: And that –

MR. LEARMONTH: Okay, I concede that you were satisfied –

MR. THOMPSON: Yes.

MR. LEARMONTH: – okay, I concede that you were satisfied, but I'm suggesting to you that there was no rational basis for your satisfaction.

MR. THOMPSON: I understand your point.

MR. LEARMONTH: Do you agree with me?

MR. THOMPSON: No.

MR. LEARMONTH: No, okay.

Next, we'll go to tab 33, please, Mr. Thompson, which is Exhibit 01067.

Okay. Now, on page – 01067, page 3.

Well, an entire document – who prepared this document, you?

MR. THOMPSON: Yes.

MR. LEARMONTH: Okay. Now, on page 3 there's nothing indicated for capital costs. And this is dated October 25. So that's a month or so before. So at this time you didn't know what the capital cost estimate that Nalcor had would be?

MR. THOMPSON: No, not necessarily. I would have known if I had perhaps had other documents at my side, but this was a running draft and so I – my habit is to just put Xs in place where other data may – or other words may need to be filled out.

MR. LEARMONTH: Where you're gonna fill it in later.

MR. THOMPSON: Right.

MR. LEARMONTH: Yeah. Okay. Now, would the information contained in Exhibit 01067 have been provided by Nalcor?

MR. THOMPSON: Let me have a look through it.

MR. LEARMONTH: I mean, where did you get the information to prepare this paper?

MR. THOMPSON: Oh. Some of it certainly from Nalcor, but really this is a reflection of the overall strategy of the government as well. And of course at the core of it is the Nalcor analysis and in that paragraph around what capital cost and financing would be. And of course it – you know, there are a lot of players here as well in

Natural Resources and Nalcor. So it would probably be both.

MR. LEARMONTH: Okay. Well, any information that Natural Resources got would have come from Nalcor, correct?

MR. THOMPSON: On capital cost estimates, yes.

MR. LEARMONTH: And otherwise?

MR. THOMPSON: Well, in developing a strategy for the overall project, the – for example, the – did we deal with Aboriginal issues? Yeah – Innu Nation agreements need to be ratified. So this is something – that’s an issue that the government actually had a lead hand in and not Nalcor.

MR. LEARMONTH: Yes, yeah.

MR. THOMPSON: So that’s what I mean.

MR. LEARMONTH: I acknowledge that. On the Aboriginal issues, yeah.

MR. THOMPSON: Right.

MR. LEARMONTH: But the other information would have come from Nalcor. Is that correct?

MR. THOMPSON: Number 6, project not sanctioned for construction is a – more of a – is not a Nalcor-based issue. It’s, you know, something –

MR. LEARMONTH: No. Okay, well...

MR. THOMPSON: Yeah.

MR. LEARMONTH: But I’m talking about the core information –

MR. THOMPSON: Yes, of course.

MR. LEARMONTH: – would have come from Nalcor.

MR. THOMPSON: Yes.

MR. LEARMONTH: Yes. Thank you. At tab 34, Exhibit 01068, this is just a speech that – I

guess you prepared a speech for Premier Williams on – this is dated October 25, 2010?

MR. THOMPSON: No, I don’t think that this was my preparation. This would have likely been prepared by one of the communications officials. But I was taking this excerpt from it and communicating it to my counterpart – then-counterpart in Nova Scotia for information purposes.

MR. LEARMONTH: All right.

Tab 36 please, Exhibit 01069.

Now, this is October 26, 2009, from Paul – I don’t know who Paul is. Would you –

MR. THOMPSON: It’s Paul Parsons.

MR. LEARMONTH: Paul Parsons to Charles Bown, information package. Would this have been an information package provided by Nalcor?

MR. THOMPSON: No, it was the result of the analysis that was done internally in the department, that we spoke about earlier.

MR. LEARMONTH: Okay.

MR. THOMPSON: And so information within it, of course, was sourced from Nalcor, but the PowerPoint deck and the conclusions in it were the ones that were arrived at by Mr. Parsons and Mr. Collins.

MR. LEARMONTH: So the information would’ve been received from Nalcor and then this document would’ve been prepared?

MR. THOMPSON: Correct.

MR. LEARMONTH: Okay.

Now, what information did government have on October 26, 2010, with respect to LNG, storage regasification and switch to Holyrood to natural gas. What studies had government undertaken on those matters?

MR. THOMPSON: I didn’t prepare for that question before I came here so I can’t tell you. Certainly the issue was a live issue at the time,

and whether the department had carried out studies separate from Nalcor, I don't know.

MR. LEARMONTH: You don't know.

MR. THOMPSON: I can't recall.

MR. LEARMONTH: Yeah.

Okay, at tab 36, Exhibit 01071; this is an email from you to Kathy Dunderdale. The last paragraph says – this is October 29, so that's while the term sheet was being negotiated, "Emera are a little miffed that we knew NS was engaging an advisor and we knew the name."

Do you know what you're talking about there? Oh, excuse me – do you know what Mr. Bown is talking about there?

MR. THOMPSON: The only general recollection of what that meant at the time that at the – someone from the – at the negotiating table had communicated back to Charles that Emera were aggravated, I guess, or were surprised that we had known something about what the Nova Scotia government was doing then, before they did. Or that we knew it at all and they perhaps – they thought we shouldn't know it.

MR. LEARMONTH: Next document is at tab 37, Exhibit 01072. And this is a – well, the beginning of it is an email from Charles Bown to you, October 30.

He says "Robert, I've completed a re-write of the executive summary to better articulate the story. Please take a read to see if it holds together. I'm getting a little punchy and I can't make sense of this anymore."

I just want to turn to page 21 and 22 of – well, first, page 21 of Exhibit 01072. So this is a – can you tell me your understanding? Like, who prepared this document and who's redlining it? Are you able to look at it and tell me, by referring to the email – the covering email?

MR. THOMPSON: Sure, the – so in context here, the document, of course, is a draft of the Decision Gate 2 summary recommendation. So this would have been the summary of information that the Nalcor CEO would've been presenting to the board of directors, and

ultimately to the government, to gain approval for Decision Gate 2 – passing through Decision Gate 2. And Nalcor would have prepared the base document.

MR. LEARMONTH: Okay.

MR. THOMPSON: I don't know who within Nalcor, but they would've prepared the base document. And it looks like it was given to Charles, at least on this occasion, for a – to review. And Charles had chosen to review it by actually rewriting and offering specific edits. And I would say in context, these are probably Charles's – the red line and the deletions and so forth are probably Charles's proposed edits.

MR. LEARMONTH: Yeah.

And, once again, just turning to page 21 and 22, there's a reference to the: External Review – Independent Project Analysis and on page 22: External Review – Independent Project Review. And, once again, you said earlier that to your knowledge, government never received copies of the consultant's reports or external reports ever.

MR. THOMPSON: I can't recall that we did.

MR. LEARMONTH: Ever.

MR. THOMPSON: I can't recall that we did.

MR. LEARMONTH: Okay.

MR. THOMPSON: Okay.

MR. LEARMONTH: But don't you think it would be prudent for anyone reviewing such a presentation, when you have a direct reference to documents and you're relying on them to some degree to say: Well, let's have a look at those documents. Don't you think that would be a reasonable course of action for someone editing a presentation by Nalcor, such as this, to take?

MR. THOMPSON: Well – so you're asking me if it would've been reasonable for – before editing this document for Charles to request those documents.

MR. LEARMONTH: Yes.

And I will – I know that you could say, well, you could ask Charles Bown that, but I'm saying –

MR. THOMPSON: No, no, I'm not going to go –

MR. LEARMONTH: – putting yourself in his position.

MR. THOMPSON: Yeah, yeah.

MR. LEARMONTH: I find that –

MR. THOMPSON: Yeah.

MR. LEARMONTH: (Inaudible.)

MR. THOMPSON: So I don't see any edits to those two paragraphs.

MR. LEARMONTH: No.

MR. THOMPSON: But in general –

MR. LEARMONTH: When you see them – what I'm saying is if you look at this report and you see these things, I suggest to you that the first reaction of someone doing a critical review would (inaudible): look, I want to see those documents.

MR. THOMPSON: Yeah, well, you know, there's lots of hypotheticals here in the sense that Charles may have had a lot of exposure to those documents, either in briefings with Nalcor, maybe even seeing them. I just don't know –

MR. LEARMONTH: Okay.

MR. THOMPSON: – and I can't recall. So it's hard for me to –

MR. LEARMONTH: Yes.

MR. THOMPSON: – say whether at this moment he should have –

MR. LEARMONTH: Okay.

MR. THOMPSON: – asked for those documents.

MR. LEARMONTH: Okay, that's a fair – I should be putting it to Mr. Bown, not you, because he's the one who did the review. Yeah.

Now, the next page I want you to turn to in Exhibit 01072 is page 23, please. Now –

MR. THOMPSON: I'm sorry –

MR. LEARMONTH: Page 23, Exhibit 01072. It's your tab 37, Mr. Thompson.

MR. THOMPSON: Okay.

MR. LEARMONTH: Now, here's a reference. It says: "A contingent equity commitment of \$300-600M from the Province is also considered prudent and necessary. This should be in addition to the" – whatever blank – "million in base equity from NL as noted" above.

Now, I'll just – I know we discussed this at the interview –

MR. THOMPSON: Mmm.

MR. LEARMONTH: – but I'll just give you a little bit of background. That there was a report that Nalcor had obtained before DG2 from an external consultant recommending a \$300 to \$600 million strategic risk.

In a preliminary document Nalcor had prepared, they had put \$300 million in for strategic risk. Then there's some evidence – it doesn't really matter what caused them to do it, there's some evidence that it was a request from Emera to take it out. But, in any event, the \$300-million amount was not included in the \$5-billion amount that was announced to the public for the Emera – the cost estimate for the province for the Emera-Nalcor arrangement was not included.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: Were you aware of that?

MR. THOMPSON: Was I aware at the time that the 300 was not included?

MR. LEARMONTH: Yeah.

MR. THOMPSON: I was aware that that kind of estimate or that there would be potentially a need for more equity from the province, and that we needed to commit in general –

MR. LEARMONTH: Yeah.

MR. THOMPSON: I'm perhaps going ahead in time a little bit but, in general, the shareholder, the province, needed to stand behind the project and the possibility that contingent equity, therefore – which was, you know, equity in addition to what the capital cost – or if there were cost overruns, that contingent equity might be necessary, was something that we knew – I knew at the time. But we regarded it as a matter of committing to, you know, the financing of the project, committing that we would stand behind the project.

So it was in that context that we understood what this meant. We didn't know at the time that perhaps this should be included inside the capital cost estimate and presented that way. We – I didn't know that at the time.

MR. LEARMONTH: Do you think you should've known it?

MR. THOMPSON: Yes, I do.

MR. LEARMONTH: Yeah.

MR. THOMPSON: Yes.

MR. LEARMONTH: Do you think Nalcor should've told you about it?

MR. THOMPSON: Well, yes. And, of course, in expecting that – you know, thinking today about what I should've known at the time, I think that there should've been a discussion of the right way to present this inside a capital cost estimate and government should've been able to give that a consideration about the pros and cons of having it inside the capital cost estimate or the right treatment of that – of that estimate. I think we should've, yes.

MR. LEARMONTH: Yes.

And the suggestion I'm making is that whether Nalcor decided to add it on to the 5 billion and come to you and say it's 5.3 billion – whether

they did that – or they came to you and said: Here's our capital cost estimate of \$5 billion; by the way, there's another amount here and we're telling you so you can deal with it.

I'm suggesting that either one of those possibilities would've been acceptable. Do you agree?

MR. THOMPSON: I'm sorry. You're suggesting that either could be acceptable?

MR. LEARMONTH: Yes.

MR. THOMPSON: Well –

MR. LEARMONTH: In terms of disclosure to government.

MR. THOMPSON: Well, perhaps.

The – certainly, Nalcor always did talk to us about risks and the fact that risks were generally contained – dealt with within the contingency estimate and that the contingency estimate would decrease over time as the amount of engineering increased.

MR. LEARMONTH: Hmm.

MR. THOMPSON: And so what I think we were carrying around on our heads – and I – really, I speak for myself – was that the risk of a construction cost overrun was being addressed in the contingency estimate. Now, we of course weren't – we weren't under any illusion that that was a guarantee, and so, therefore, there's always the possibility that there would be construction cost overruns even beyond the ...

MR. LEARMONTH: (Inaudible.)

MR. THOMPSON: And so we had discussions like that, okay?

MR. LEARMONTH: (Inaudible.)

MR. THOMPSON: And perhaps the 300 to 600 million came up in a discussion like that, because, indeed, it's there, and so we would've read that at the time. So I'm not sure if I'm answering your question. I'll just stop there.

MR. LEARMONTH: Well, the – well, it’s not for me to decide. Like, for example, Terry Paddon said he knew about this 300 to 600 million, but he thought it was included in the 5 billion.

MR. THOMPSON: Yeah. I can’t say that with the same certainty, that that particular number was included, that I knew it was – or suspected it was included, but I certainly thought that the main construction risks were being dealt with inside the contingency, which was inside the capital cost estimate.

MR. LEARMONTH: Okay.

MR. THOMPSON: Yes.

MR. LEARMONTH: And in any event, can you confirm that you would’ve expected Nalcor to have provided you with this information in detail when they came to you and said the capital cost is 5 billion at this stage?

MR. THOMPSON: Well, as I said, they did talk to us about the ever-present risk, I suppose, of not even staying within the total capital cost and that the province needed to stand behind that –

MR. LEARMONTH: Hmm.

MR. THOMPSON: – and that 300 – and my recollection or my general recollection is that \$300 million to \$600 million was a prudent amount of funding to recognize that – or to be put in a category called contingent equity. But we regarded that as more – sorry – we regarded that more as the owner standing behind the project, rather than an estimated and focused and real possibility that was – should be baked into – inside the capital cost. We didn’t regard it that way.

MR. LEARMONTH: Well, did you think that the 300 to 600 million or, say, 300 million was included in the \$5 billion capital –

MR. THOMPSON: No, no.

MR. LEARMONTH: – cost estimate or not?

MR. THOMPSON: No.

MR. LEARMONTH: You didn’t think it was?

MR. THOMPSON: No.

MR. LEARMONTH: So you knew about it. You knew about the existence of this range.

MR. THOMPSON: I can only reflect on the documents in front of us, because I don’t have a present-day recollection of the 300 to 600 million number. But I can’t evade the fact that we knew about it because we reviewed this document.

MR. LEARMONTH: Okay.

MR. THOMPSON: Mmm.

MR. LEARMONTH: But you don’t – you can’t say whether you thought it was – well, like Mr. Paddon said, he thought it was included in the 5 billion.

MR. THOMPSON: I can’t say that. No.

MR. LEARMONTH: No. Okay.

THE COMMISSIONER: We will take our break here now then, Mr. Learmonth.

MR. LEARMONTH: Okay. Thank you.

THE COMMISSIONER: So let’s take 10 minutes here now.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right. Mr. Learmonth, when you’re ready.

MR. LEARMONTH: Yeah, thank you.

Now, Mr. Thompson, we were talking about that \$300 to \$600 million figure –

MR. THOMPSON: Right.

MR. LEARMONTH: – strategic risk.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: But do you remember testifying on that point at the interview you gave?

MR. THOMPSON: Yes.

MR. LEARMONTH: Yeah. I suggest to you your evidence is inconsistent.

MR. THOMPSON: Oh, okay. Let's sort it out.

MR. LEARMONTH: Okay. I'm just going to read to you from page 38 on of what you said.

So my question is: But we have evidence from Nalcor project team that a strategic risk allowance of approximately 10 per cent, which had been recommended to be included in the DG2 numbers by Westney, had been deliberately dropped by Nalcor in order to respond to an address Emera's concern regarding its ability to sell the strategic risk concept to the Nova Scotia UARB. In other words, the 5-million figure, and you say: Mm-hmm.

And then I say: That was disclosed – 5 billion. 5-billion figure that was communicated to the public as being Newfoundland and Labrador's share of the cost. And you say: Mm-hmm.

At the time that the term sheet was announced, the strategic risk allowance had been removed from that by Nalcor in order to satisfy the concerns of Emera. That's the information we have. And you say: Mm-hmm. And I say: The implication being that if the 10 per cent or thereabouts had been included, the figure would have been higher than 5 billion, and you say: Mm-hmm. And I say: Were you aware that Nalcor had removed its strategic risk allowance of approximately 10 per cent from the \$5-billion figure that was announced to the public in November – on or about November 18.

You say, yeah, I have no recollection. You know, this – so this – so that whole description of that is foreign to me today. And then you say – and then I say – this is on page 39 – but – so you don't have any recollection of that at all? Answer – your answer: No recollection of that. And I say: Okay.

I say: Well, if at the time – you're a senior civil servant – if you'd been aware of that at the time, would that have been of any concern to you? Answer: well, I certainly want – I'd certainly want to know about it.

And I say: Yeah. And you said: And you know, I'd have questions about this. What you just said, in this sense of the estimate, the capital cost estimate needs to be what it should be and not something less than it should be. So – and it would not be an appropriate procedure to contain that within Nalcor and not disclose it to the government, nor would it be an appropriate procedure for the deputy minister to know it and not disclose it to the minister or the premier, so the context in which I – so that's the context in which I would review it.

Question: And is that because based on your experience, it's always important for politicians when they're announcing the cost of things to be (inaudible) honest? Mr. Thompson: Absolutely. Disclosing it, absolutely.

MR. THOMPSON: All right.

MR. LEARMONTH: So that's a little different from, I think, what you said earlier.

MR. THOMPSON: Everything you just read I agree with, so if I was inconsistent, let's sort it out. I don't – yeah. So please, go ahead.

MR. LEARMONTH: Well, do you acknowledge that – based on what I've just showed you – that your earlier evidence was inconsistent?

MR. THOMPSON: I'm not sure what I said earlier was inconsistent with that, so perhaps we should go –

MR. COFFEY: Commissioner, perhaps – Commissioner, Bern Coffey. Perhaps Mr. Learmonth could identify the inconsistency in particular –

MR. THOMPSON: Right.

MR. COFFEY: – as opposed to just vaguely saying it's inconsistent.

MR. LEARMONTH: Well, you gave a long explanation saying that, you know, that you were aware of the \$300,000 or \$600,000 'cause it's in this document?

MR. THOMPSON: I said that, yes.

MR. LEARMONTH: But when you were interviewed, you had no recollection of it whatsoever.

MR. THOMPSON: Well, I don't think at that – in the interview, that you – it was highlighted for me, and thus I wasn't even aware of what was in this document, that 300 to 600 million there.

MR. LEARMONTH: So that's your explanation for any –?

MR. THOMPSON: No, no. Let me clarify it further, sure. Because I – the – if we were aware, and I say –

MR. COFFEY: Yes – Commissioner, if I could. I just searched the interview, and the word 300, you know, with a dollar sign, does not come up.

THE COMMISSIONER: Right.

MR. COFFEY: So if the 300 to 600 million was referenced during the interview, perhaps Mr. Learmonth could point the witness to it.

MR. LEARMONTH: Well, certainly reference to 10 per cent amount –

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. LEARMONTH: I haven't checked it, so –

THE COMMISSIONER: Go ahead with your question, Mr. Learmonth.

MR. LEARMONTH: Okay. So do you acknowledge there's an inconsistency between what you said in your interview and what you said today?

MR. THOMPSON: No, 'cause I'm still not sure what I said that was inconsistent, and so if I can try to knit the two together, perhaps.

MR. LEARMONTH: What –

MR. THOMPSON: The question you asked me during the interview was: was I aware that they had taken out this 10 per cent or the –

MR. LEARMONTH: Strategic risk.

MR. THOMPSON: – what we now know – what I now know is called the strategic risk. No, I was unaware of that. Absolutely unaware.

Today, I'm sitting here, and I see this 300 to 600 million, and I know that that was a defined item called strategic risk based on estimates that were done by one of the consultants for Nalcor. I know that today in a clearer way, and it's in this document, which we reviewed. I now have to say I guess we did know it at the time, that it existed, okay, that this number existed. But that doesn't improve my actual – my memory of it. It just means that I can logically conclude that it's there.

And then I would add to that that the – we didn't know – and I – that – even if I had a recollection that this 300 to 600 million existed in this – inside this concept of contingent equity – even if I remembered that, it still – the gap is this – that we didn't know that this perhaps was included in the capital cost estimate and had been taken out. We didn't know that, so hopefully that brings it together for you.

We didn't know that at the time, and so I would stand by my point that I – it should have been something that we knew with greater clarity –

MR. LEARMONTH: Yes.

MR. THOMPSON: And if we knew it at the time, it would have caused a considered discussion about the appropriate treatment of it.

MR. LEARMONTH: Okay. And so the only way you could know about it would be if Nalcor told you.

MR. THOMPSON: Correct.

MR. LEARMONTH: And they didn't, is that what you're saying?

MR. THOMPSON: I'm saying that they didn't tell us that context – that this was inside the estimate and was taken out.

MR. LEARMONTH: Okay.

And you didn't know whether it was included in the estimate or not?

MR. THOMPSON: That's my recollection. I did not – that we did not know, that's right.

MR. LEARMONTH: Okay.

MR. THOMPSON: Does that resolve the inconsistency for you?

MR. LEARMONTH: Mm, well, it's not for me to decide, but –

MR. THOMPSON: Okay.

MR. LEARMONTH: I'll leave it for now.

MR. THOMPSON: Okay.

MR. LEARMONTH: We may come back to it later.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: Okay, now we can go to tab 38, which is – tab 38, Exhibit 00220.

Can you – this is October 30, 2010. So once again, we're before the term sheet was signed. Can you give me some background on what this document concerns?

MR. THOMPSON: Okay, so this is an email from myself to then-Minister Dunderdale, and it's discussing a cost-sharing framework that was being negotiated between Nalcor and Emera, and I was updating the minister on the progress on that item.

MR. LEARMONTH: Okay. And there's a reference there to a – the key issue is whether Emera can bear a 15 per cent cost overrun in the Maritime Link?

MR. THOMPSON: Right.

MR. LEARMONTH: What was – how – why was that a matter of concern at the time?

MR. THOMPSON: Well, risk sharing was an issue within the negotiations and so clearly Emera was trying to limit the risk that it would be responsible for. Nalcor, no doubt, was trying to ensure that Emera was bearing the responsibility for the appropriate share of risk. And they were trying to come together on the right language and the right deal.

MR. LEARMONTH: But what was the discussion on risk sharing?

MR. THOMPSON: Well, it pertained to – as I understood it, it pertained to potential overruns and who would – and which company would be responsible for funding those overruns.

MR. LEARMONTH: Okay.

At tab 41 – which is document 01075, Mr. Thompson, November 10 – could you just check that document and see whether there's any reference to this \$300- to \$600-million strategic risk?

MR. THOMPSON: I don't think. Without reading it in detail, I'm actually pretty sure that it's not there.

MR. LEARMONTH: Well, why wouldn't it be there? If it was in the earlier document, why wouldn't it continue to be something that you would include in these documents?

MR. THOMPSON: No, this is a different document.

MR. LEARMONTH: I know it's a different document.

MR. THOMPSON: Oh yeah.

MR. LEARMONTH: But why isn't there a reference to the \$300-million to \$600-million figure in there?

MR. THOMPSON: I would have to speculate as to why we didn't put it in there. We were –

MR. LEARMONTH: Oh, it's you. Excuse me, it's you – it's not we. You sent this email.

MR. THOMPSON: Yes. Well, I only use the word – term, we, because it was circulated to others who contributed edits to it as well.

MR. LEARMONTH: Okay.

MR. THOMPSON: But the – we were trying to communicate a narrative about the bigger issues and the – I guess the achievements that would occur with the – with this project if it proceeded forward. And thus I would have to speculate that I – we – if we considered it, then we didn't regard it as part of that narrative that we wanted to communicate in general.

We may have regarded it as – you know, again, if we considered – as many things are not included here – as just one of the many things that are not included. But perhaps we didn't even look at that as an item to include. I just have to speculate because I don't know.

MR. LEARMONTH: But it's \$300 to \$600 million.

MR. THOMPSON: Yeah.

MR. LEARMONTH: It's not an insignificant amount.

MR. THOMPSON: I would add that the – and I hope I can make this clear as well, that the – we regarded contingent equity, the concept of contingent equity, as a financing concept rather than as a capital cost estimate concept. And so what I mean by that is that the, you know – recognizing that the project could always have overruns even beyond the contingency that was built, you know, we had to accept that that was a possibility –

MR. LEARMONTH: Mm-hmm.

MR. THOMPSON: – and thus – and had to tell Nalcor and then, of course, many other stakeholders, such as the federal government and lending agencies, that we were prepared to stand behind it. And so if you we're going to stand behind, then we needed – that the equity we would contribute was called contingent equity.

So that was the context in which we understood it.

MR. LEARMONTH: Mmm.

MR. THOMPSON: We didn't think about it at the time – I didn't anyway – as a concept of – that goes into calculating and communicating the capital cost estimate.

MR. LEARMONTH: Well, just hold on a second, please, if I can –

MR. THOMPSON: Sure.

MR. LEARMONTH: – I think, correct you. This discussion about contingent equity and (inaudible) didn't arise until November 2011.

MR. THOMPSON: But that's the way it's described in the Decision Gate 2 document that we just looked at. It's called contingent equity and so if we were discussing it at the time, that's how we would've regarded it.

MR. LEARMONTH: Okay. Well, anyway, can you just – so I make sure I understand your answer: Why was it in one document, the earlier document, and why was it removed from this document?

MR. THOMPSON: No, that's – it's not accurate that it was removed from this document –

MR. LEARMONTH: Oh, does it appear in it?

MR. THOMPSON: Well, that – it doesn't mean it was ever in it and then it was removed.

MR. LEARMONTH: Okay.

MR. THOMPSON: This document was a fresh document prepared –

MR. LEARMONTH: Okay.

MR. THOMPSON: – based on our sense of what narrative we wanted to tell about the accomplishments of the project. And a piece of data – an important piece of data – in another document prepared by Nalcor –

MR. LEARMONTH: Yeah.

MR. THOMPSON: – for its board, there's no guarantee that we would have lifted that for any

– into this document. It's too – while they were occurring at the same time, they were for slightly different purposes.

MR. LEARMONTH: Well, you put it in for one purpose, but not for the other purpose?

MR. THOMPSON: But we didn't write the other document, we only wrote – I wrote this – the initial draft of this document. I wasn't the author of the other document.

MR. LEARMONTH: Yeah, but you would've known about the other document?

MR. THOMPSON: Yes.

MR. LEARMONTH: And I was questioning why you wouldn't have ensured that that important information –

MR. THOMPSON: Yeah.

MR. LEARMONTH: – was not in the document.

MR. THOMPSON: I've given you the best explanation I can.

MR. LEARMONTH: Okay. You don't have anything more to say about it.

MR. THOMPSON: No, no.

MR. LEARMONTH: Okay, thank you.

Please turn to tab 42, which is Exhibit 01076.

Now, this appears to be Mr. Bown is writing a letter from the board – I guess that's the board of Nalcor. Why would he be doing that?

MR. THOMPSON: Yeah, it does strike one as unusual at face value. And the context in which I would regard this is that, you know, this was – would be this integrated high-level team approach that we were leading up to a point in time when approvals of the board of directors and the Cabinet would be necessary to proceed through the Decision Gate.

And that Charles was loaning assistance, if you like, to Nalcor to sketch out the kind of letter that would be good to receive from the board to

government because a lot of time goes into ensuring that – and not just that a letter, once it's received is reviewed, but rather that the letter that's being sent contains all the necessary information so that when it's reviewed it has – you know, we don't go through multiple layers of back and forth. So it's in – I interpret his effort in that context.

MR. LEARMONTH: Well, I suggest to you that when you say it's unusual, that's the best way to describe it. That a member of government –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – is preparing a letter for the board of directors of Nalcor –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – to send to government. I find – I suggest that that's a very unusual situation.

MR. THOMPSON: Okay.

MR. LEARMONTH: And I suggest to you that it shows the degree of high level of integration between government and Nalcor –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – which I suggest should not have existed. And what's your comment on that?

MR. THOMPSON: Oh, I don't agree that it should not have existed. The fact that we were – had a high level of alignment and collaboration, and were able to move together as an effective team, increased the overall – our ability to be efficient and to be aligned. So that was a good thing.

We, of course, always tried to remember our duties as shareholder and as government protecting the public interest and we had to, of course, move back and forth between these roles and we did. On this occasion, as I said, what might seem unusual on the surface has a context that's deeper than that.

MR. LEARMONTH: Well, do you want to explain it again because I didn't understand your answer. I understood what you said, it was unusual, but what you said about that and possible justification for it, I didn't understand. Could you repeat it?

MR. THOMPSON: Sure. This was a letter that needed to come from the board of directors to the government so that the government could generate an approval at the DG2 stage, and so Charles was lending a hand. It was collaborating with Nalcor to make sure that the letter that ultimately was sent was something that contained all the information that the government would need to – you know, for Cabinet consideration. So that's how I interpret his lending a hand within the context of the overall team.

If – that's November 11 so I don't recall what else was going on at that time, but that's my best recollection and context for this letter.

MR. LEARMONTH: And you still say it's unusual.

MR. THOMPSON: On face value, at that superficial level, it's unusual. But when you understand the context and then the kind of team we were, you know, working in, I understand why he would have done it.

MR. LEARMONTH: Well, why didn't you give that explanation when I asked you at the interview? The explanation you just gave said it was at a superficial level.

MR. THOMPSON: Well, I thought that I actually did give the additional explanation. I probably didn't use the word superficial, but I would today to enhance that explanation.

MR. LEARMONTH: All right, thank you.

Tab 44, which is Exhibit 01078. This is November 16, 2010, just two days before the term sheet. So why are you sending this to Elizabeth Matthews?

MR. THOMPSON: I'm not sure exactly why, but I think that she may have written me an email or phoned me to say, sort of, what are the top five points – 'cause she asked for five – that

are key benefits for the project configuration that was then in its final stages of being informed up, and so I communicated back to her.

And Elizabeth Matthews was the director of communications in the premier's office and, you know, was – generally, she would turn to senior officials for inputs on key messaging for the government, for the premier. And so I was supplying her with some thoughts.

MR. LEARMONTH: Mmm, okay. That's a normal part of your job?

MR. THOMPSON: Oh, it happened frequently, yes.

MR. LEARMONTH: Okay.

Tab 45, please. That's Exhibit 01079.

So I'll ask you the same question. Can you look at this document and tell me whether there's any mention of the \$300 or \$600 million amount that we discussed earlier?

MR. THOMPSON: I don't see any reference to it.

MR. LEARMONTH: And do you have any explanation?

MR. THOMPSON: It would be the same explanation as earlier that I don't know whether it was even considered for inclusion and it probably wasn't. We had, by then I'm sure, established a high-level set of points that we wanted to communicate and, evidentially, that particular point from the Decision Gate document wasn't one of them.

MR. LEARMONTH: Okay.

There's an email at tab 47, Exhibit P-01081.

MR. THOMPSON: Right.

MR. LEARMONTH: And that's from Charles Bown to you and others. And your reply was: Great points. Do you see that Mr. Thompson?

MR. THOMPSON: Yes.

MR. LEARMONTH: Yeah. So what is this in the – he says, some initial thoughts: Starting in 2014, are looking at a new generation every 2-3 years to meet growing demand to replace “After 2020, our small hydro options run out.”

Do you know what he means by that?

MR. THOMPSON: Well, I assume he means that after that date we have no other options for small hydro within the list of projects that were designated as might occur under an Isolated Island Option. I don’t know that to be the case, but that’s what I think he’s saying.

MR. LEARMONTH: That’s the way you take it, yeah. Okay.

Tab 50, which is Exhibit 001083, please.

This is a November – December 6, 2010, and this is a reference to the loan guarantee. Were you in – was this the early stage of the negotiations for the federal loan guarantee, to your knowledge?

MR. THOMPSON: Okay, so the loan guarantee, the request for it, the concept of it, the efforts to attract the attention of the federal government to supply it had been ongoing prior to this, but this now is a trip to – preparation – sorry, let me – I just want to take another moment.

MR. LEARMONTH: Sure, take your time.

MR. THOMPSON: Okay. So, yes, so it’s certainly early days and what I’d call perhaps the very serious phase of negotiating the loan guarantee. But the team that went on to Ottawa immediately after the DG2 announcement, and prior to Christmas, you know, were there to – they were there on a communications effort to make sure that federal stakeholders were aware and had an opportunity to ask questions about the project, but also to start, you know, securing support in the context of a loan guarantee. And that ultimately led to negotiations.

MR. LEARMONTH: Okay. Were you involved in those negotiations?

MR. THOMPSON: I was involved minimally at one or two critical meetings, but the bulk of the negotiations did not include me.

MR. LEARMONTH: (Inaudible.)

MR. THOMPSON: And I think on this date, or around this date, I had transitioned back to the Cabinet Secretariat as well.

MR. LEARMONTH: Okay.

And please turn to tab 52, which is Exhibit P-001086.

Now, this is a communication from – it was an email from Dawn Dalley of Nalcor, to government. I mean, was it usual practice for Nalcor to give suggestions to government as to how to put messages out to the public? Communications?

MR. THOMPSON: Oh, it would be the subject of – not unusual at all for us to share in communications messages back and forth and sometimes, you know, the wisdom of the team is better than of individuals, so some of that was just team collaboration and other times, one or the other – the government or Nalcor – might have had special information or expert information that we needed to contribute to the other, so it wouldn’t have been unusual at all.

MR. LEARMONTH: It was just part of the, you know, you’re a team – an integrated team so you share in the information.

MR. THOMPSON: Yeah.

MR. LEARMONTH: Okay.

Okay, tab 53, Exhibit 01087, I just want to – this is an April 7, 2011 release from Natural Resources concerning the decision of – another decision of the Quebec regulator. I thought the decision of the Quebec regulator was earlier than that? Was there more than one?

MR. THOMPSON: I don’t recall the dates.

MR. LEARMONTH: You don’t remember – okay.

Now, we've talked about this integrated team and that your satisfaction with the level of oversight –

MR. THOMPSON: Mmm.

MR. LEARMONTH: – that government was giving, you know, in 2010. So I want to turn you to tab 54, Exhibit P-01088.

Now, in this email, a little bit above the middle of the page, this is from you April 14, 2011, so well past the term sheet, to Ed Martin, Charles Bown, Gilbert Bennett: Independent Study.

You say, “Here are my generic thoughts: ... Core terms of reference: Taking as a given certain assumptions” – pollution abatement, et cetera, “NL consumers should bear full cost of supply ... to NL customers; industry standards for reliability as applied by Nalcor.”

Second, “The ‘consultant’ shall review Nalcor’s revenue and cost estimates of the isolated Island and Muskrat Falls options, including a review of assumptions, demand forecasts ... costing”

“... consultant will draw conclusions about the reasonableness of the revenue and cost estimates of the two option.”

And then you have Options for Consultant: Feehan/Locke, Deloitte, PUB, Wood Mackenzie, Conference Board.

So at this stage if you trusted Nalcor as much as you say you did, why did you think it was necessary to have an independent review done of, among other things, the cost estimates?

MR. THOMPSON: Sure.

Well, thought a lot about this period of time since the interview, you know, sort of the announcement – the DG2 announcement – and then by April – April, May – we were considering a – an independent review and then, of course, handing over that review to the PUB.

And what I think happened during this period of time is that, at the beginning of that period of time, the government was satisfied with the kind of work flow – work that was going on within Nalcor, the team that it had established, the

external reviews that it was commissioning and that it was bringing in and – so – and I said that earlier, that we were satisfied with that. And so that was our mindset at that time – let’s say, going in to January, February.

But at around that time there was evolving a – some pressure in the public to, you know, some – criticism of the approach that was being taken and the risks that were evident to some people. And there was a – of course – and again, I don’t – I forget all the dates when all of this occurred, but there was a sense that there should be an independent review of the work that had been done to date.

And so the government’s – therefore, its perspective on this would have gone from that kind of existing position, the way we ended DG2, to a new place that, you know, there’s a sense of public pressure, a desire to have an independent review, a – there’s this level of concern that we need to address and so the idea of an independent review started to emerge. Now, Nalcor had always assured us that there would be an independent review and those were the kinds of consultants they were bringing in – excuse me – Navigant would be an example, which – I forget the date they started, but that would be an example of a Nalcor-hired independent review.

But the – nonetheless, the government determined that we need to – what are the options? So they were asking what are the options for an independent review, this might be something that we need to do. So it’s all of that context that results, I think, in the April 14 email where I was sharing with others – with Charles Bown, with Ed Martin and Gilbert Bennett – some thoughts to get the discussion started of what a Terms of Reference might look like and some of the options for hiring a consultant.

MR. LEARMONTH: And what provoked that? Public pressure?

MR. THOMPSON: I think that the sense in the public domain about the concern about the capital costs and risks associated with it and the desire to have more review done to make sure that we were on the right track, yes.

MR. LEARMONTH: But government didn't have any concern?

MR. THOMPSON: Government didn't – government was satisfied with the track that we were on, including the forthcoming independent reviews, but as –

MR. LEARMONTH: Which – (inaudible) – which independent reviews?

MR. THOMPSON: Well, the types of independent review that Nalcor had been doing all along, certainly two reports: the IPA and IPR in September of 2010, which we've discussed. That kind of thing. And – now – and I don't recall whether the Navigant review, which occurred during 2011, was already being discussed. I just don't recall that.

But that's the kind of independent review that was – that Nalcor was commissioning, and – so yes, I think – and I'm reconstructing a little bit my memory here, I have to admit, but I think that we were satisfied, but then we – then we're responding to this felt need and this concern that was emerging in the public for more review to raise confidence in the public domain, and that's where this came from.

MR. LEARMONTH: So did – was that your idea to –

MR. THOMPSON: I can't say –

MR. LEARMONTH: – embark on this –?

MR. THOMPSON: – it was my idea. You know, this was a lot of people in this discussion, group discussion, Cabinet discussion, discussion with the team, so I don't know where the idea emerged.

MR. LEARMONTH: When you refer to the team, what team are you referring to?

MR. THOMPSON: Well, in general, the – from – including the premier, the relevant ministers, senior officials and the Nalcor senior folks. That would be the – when I say team –

MR. LEARMONTH: So when you refer to the team, you're talking about –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – not only the civil service, but the politicians and Nalcor?

MR. THOMPSON: Well, we would of course have included and sounded out Nalcor in that regard, because there were timing issues to observe as well, and we wanted to make sure we had Nalcor's input. Now, they clearly, ultimately, did not make the decision to do this government-funded or independent review. That was a government decision.

MR. LEARMONTH: Yeah. A Cabinet decision?

MR. THOMPSON: I don't recall whether or not the terms of reference went to Cabinet, but they may have. I don't – I didn't see those documents.

MR. LEARMONTH: I mean, in addition to this – and we'll get to that – there was a strong recommendation from Minister Skinner and Mr. Marshall –

MR. THOMPSON: Yeah.

MR. LEARMONTH: – for an independent review also.

MR. THOMPSON: Yeah. I see that as a part of the evolution of this independent study idea. So perhaps we'll go through those documents.

MR. LEARMONTH: We'll get to that –

MR. THOMPSON: Yeah. Yeah.

MR. LEARMONTH: – in a little while. Yeah.

And then tab –

MR. THOMPSON: Can I point – sorry, if I may – point out that – one thing in that email: the PUB under mandate to hire experts only. So the idea existed at that stage of it going to the PUB, 'cause it's – that idea, as you – you know, kind of went on a path of consideration, which is where we ultimately ended up, but I just wanted to highlight that it was in this note.

MR. LEARMONTH: Yeah, but the PUB review wasn't on the table at this time, was it?

MR. THOMPSON: It's in my email.

MR. LEARMONTH: The PUB reference was in June.

MR. THOMPSON: It was an option in my email.

MR. LEARMONTH: Yeah. Okay.

But was it considered by government at that time, or is this a thought of yours?

MR. THOMPSON: I don't actually recall that, but it was certainly – came into discussion once it was in this email.

MR. LEARMONTH: All right.

Now, the next document is at tab 55, which is Exhibit P-01070.

MR. THOMPSON: Right.

MR. LEARMONTH: Are you familiar with this document?

MR. THOMPSON: May I have a look at it?

So I'm only familiar with it having read it in the last several months, but I don't recall it from the time.

MR. LEARMONTH: Yeah. Well this seems to be something from Derrick Sturge would it be?

MR. THOMPSON: You mean the attachment?

MR. LEARMONTH: Yeah. It refers to Derrick. I take it – I'm not sure of that, but.

MR. THOMPSON: I'm just not locating the part where it says it's from Derrick.

THE COMMISSIONER: It's on the first page, about three-quarters of the way down. It's not (inaudible) –

MR. THOMPSON: Oh yes, I'm sorry, yes. I've attached the latest version from Derrick.

THE COMMISSIONER: Yeah.

MR. THOMPSON: I just – so I don't know if it originated or Derrick was working on it, but yes, this version came from Derrick.

MR. LEARMONTH: Okay. And this is stating the position of Derrick representing Nalcor, not to refer it to the Public Utilities Board, is that correct?

MR. THOMPSON: Let me have another look. Do you want to direct me to where it says that rather than me scanning?

MR. LEARMONTH: Towards the end. If you want –

MR. THOMPSON: Sure. Okay. So I understand.

MR. LEARMONTH: Page 3 he's pointing out the dangers of having it reviewed.

MR. THOMPSON: Sure, yeah.

MR. LEARMONTH: So I suggest this is a suggestion by Nalcor that you not refer it to the PUB?

MR. THOMPSON: That was their position, yes.

MR. LEARMONTH: That's correct, yeah. Tab 56 please? It's Exhibit 01089. Now this is, we're talking again and this is May 10th of the – this issue about referring it to the PUB and – just as a general question, why – if government is thinking about referring something to the PUB, that's a government decision.

MR. THOMPSON: It is, yes.

MR. LEARMONTH: Why is Nalcor consulted on it?

MR. THOMPSON: The – you know, we had a team that talked about all these issues, and to get Nalcor's view on it made perfect sense. In the end, they don't carry the responsibility for the decision, but to have their input is – would be normal course on these things.

MR. LEARMONTH: Okay.

MR. THOMPSON: And a review process that was not anticipated, in the format that we ultimately landed on, would naturally – or could have an impact on project schedule. So we – perhaps that might've been the most important point that we wanted to know at that stage, and in general, get their views on the matter.

MR. LEARMONTH: Okay, so you see nothing unusual about that, or –

MR. THOMPSON: No.

MR. LEARMONTH: – irregular about –

MR. THOMPSON: No.

MR. LEARMONTH: – that? No.

Okay, so this was dated – the last document (inaudible) May 11. Now, if we go to page – tab 58, which is Exhibit 00807, please. Are you familiar with this document?

MR. THOMPSON: I've reviewed it in the last several months.

MR. LEARMONTH: Okay, well, it's a document prepared by Paul Myrden, Department of Finance; approved by Terry Paddon and Charles Bown. And I know that you're not in the Department of Natural Resources anymore; you're the clerk at this time.

MR. THOMPSON: Right.

MR. LEARMONTH: And it's approved by Terry Paddon and Charles Bown and signed off, ministerial review, by Mr. Skinner and Mr. Marshall. Now, this is a very strong recommendation for a detailed independent review.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: Just take the time to go through it and see whether you agree with the way I've characterized it.

MR. THOMPSON: Oh, I do.

MR. LEARMONTH: You do. And this is not just a superficial – or what's that term everyone uses – high level –

MR. THOMPSON: Right.

MR. LEARMONTH: – this is a thorough review of, among other things, the cost estimates.

MR. THOMPSON: Right, there's a specific paragraph I think, that – or list of design and engineering risks, construction risks –

MR. LEARMONTH: Yeah.

MR. THOMPSON: – et cetera. Yes.

MR. LEARMONTH: It's very detailed. Do you agree? And comprehensive –

MR. THOMPSON: I think that would be a fairly comprehensive review of the work done to date.

MR. LEARMONTH: Yes. And this is coming from the minister of Finance and the minister of Natural Resources. And can you tell me – I presume that this would've, at least, got to the premier's office, if not the Cabinet. Is that a fair assumption?

MR. THOMPSON: Yeah, decision notes like this one were typically for the premier's direction. Sometimes they would be routed to Cabinet for discussion as well. So it's more than likely that this would've certainly landed on the premier's desk, yes.

MR. LEARMONTH: Yeah. So what happened when it landed on the premier's desk?

MR. THOMPSON: Excuse me.

So the – what I – first I want to characterize it in the context of the evolving discussion. So there were notes back and forth; there were likely meetings where these things were being discussed. So I, you know, put this in the context of, you know, okay, so let's get a briefing note, let's put them on paper; from the government perspective, what is perhaps, you know, a comprehensive option and get some guidance on the matter.

So that's the nature of it. Have I answered your question?

MR. LEARMONTH: Well, I wanna know what happened to it.

MR. THOMPSON: Oh, I'm sorry. What happened? Well –

MR. LEARMONTH: I mean, this wasn't just filed away. This was –

MR. THOMPSON: No, no, no.

MR. LEARMONTH: – sent up to –

MR. THOMPSON: So –

MR. LEARMONTH: – the chain of command, I imagine.

MR. THOMPSON: The fact that there – well, I anticipate there wasn't a minute of Cabinet delivered on it, so it may not have had Cabinet discussion, and it probably did have discussion with the premier. And, as I said, this is part of the evolution of this issue that where we ultimately landed was a reference to the PUB.

So the recommendation in this would have evolved to that difference place, which was let's not do it this way, but rather refer the independent study to the PUB and not have it done by government-contracted consultant.

MR. LEARMONTH: And – but you must have met with the premier on this?

MR. THOMPSON: I likely did, because that was the kind of role that I –

MR. LEARMONTH: Yeah –

MR. THOMPSON: – would've played at that time, yes.

MR. LEARMONTH: At the beginning of your evidence, you gave us a ...

MR. THOMPSON: I agree. Oh, yes.

MR. LEARMONTH: And if you apply what you wrote in that document that you prepared –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – one would expect that you would've met with the premier about this.

MR. THOMPSON: Yes, I agree with that.

MR. LEARMONTH: Do you remember meeting with the premier?

MR. THOMPSON: No, I don't.

MR. LEARMONTH: You have no –

MR. THOMPSON: I met with her so regularly –

MR. LEARMONTH: Yeah.

MR. THOMPSON: – and consistently and with the whole group around these matters at that time. I don't recall any of the individual meetings.

MR. LEARMONTH: But this is a significant issue, isn't it?

MR. THOMPSON: Well –

MR. LEARMONTH: Two senior ministers making a recommendation for an independent review?

MR. THOMPSON: Well, it's like the hundred other significant issues that would've been dealt with, you know, in other departments as well, in terms of it being a note.

What I do recall, with reasonable clarity, is that there was an ongoing deliberation within the government about how to respond to this issue of concern that some kind of additional review needed to be done. And this was – as I see the documents outlined in front of me, this was one stage in that ongoing discussion.

MR. LEARMONTH: Okay.

But – so you think you would've met with the premier to discuss it –

MR. THOMPSON: I think so.

MR. LEARMONTH: – but you have no recollection of it?

MR. THOMPSON: No, I don't.

MR. LEARMONTH: And no record of any such meeting?

MR. THOMPSON: Well, if there's no record that's showing up here, I have no record of it.

MR. LEARMONTH: Okay.

Well, just before we leave this – I just wanted to turn to page 2 of Exhibit 00807, and in this document – just noteworthy that it says at the bottom of page 2: “In addition to the above, Nalcor is also planning to undertake additional due diligence as follows:

“Completion of a project cost analysis by Independent Project Analysis Inc., an international organization that specializes in the review of large scale projects.”

That was never done. Did you know that?

MR. THOMPSON: I'm sorry, it wasn't appearing on my screen. I have to –

MR. LEARMONTH: But –

MR. THOMPSON: Okay, yeah.

THE COMMISSIONER: Okay, whereabouts on page 2 then?

MR. LEARMONTH: Page 2 at the bottom.

MR. THOMPSON: Okay. So that wasn't done?

MR. LEARMONTH: No.

MR. THOMPSON: Okay.

MR. LEARMONTH: You didn't know that?

MR. THOMPSON: Well, actually I – it makes – I'm reminded of – you remind me of that now. I did know that in the reviewing of these documents.

MR. LEARMONTH: So you –

MR. THOMPSON: I didn't know it at the time.

MR. LEARMONTH: Yeah. You didn't know it at the time?

MR. THOMPSON: No.

MR. LEARMONTH: Well, that's another one of those documents that maybe you should've had a look at, don't you think? Or asked for?

MR. THOMPSON: Well, I thought about that as well, and, you know, the – when this note was written, the whole issue of additional reviews that needed to be done was on the table, and the government took responsibility for the reference to the PUB and then ultimately the other documents that were prepared prior to the DG3. I don't know, and didn't track, I guess, what – as the clerk – what was going on inside Nalcor's cost estimating. I know today – as you noted – that IPA wasn't contracted. I do know that others were.

So I don't really have a view on, you know, on whether that was appropriate because maybe they did contract the correct array of consultants. But I really can't pass an opinion on that.

MR. LEARMONTH: What other consultants are you referring to?

MR. THOMPSON: As I've come to understand that they engaged IPR and they engaged Westney and they – that – I don't know about Validation Estimating, but they also, of course, did the Navigant review after this date.

MR. LEARMONTH: Yeah. But you did – your – you learned a lot of that from reading the Grant Thornton report, isn't that true?

MR. THOMPSON: And the documents that have been disclosed.

MR. LEARMONTH: Yeah. But the Grant Thornton report provided you with a lot of that information?

MR. THOMPSON: I read that report along with all these other documents.

MR. LEARMONTH: Okay.

Tab 61, this is an email you sent to a number of people on May 17, 2011. So why are you

referring to – at this point I take it you're considering whether you should refer the matter to the PUB, is that right?

THE COMMISSIONER: P-01093.

MR. THOMPSON: Right.

So the email was sent to me from Milly Brown who was one of the communications people in the premier's office. And she had some questions, and I was giving her information on matters related to residential rate regulation.

MR. LEARMONTH: Okay.

So this time you were considering whether to refer it to the PUB, is that right?

MR. THOMPSON: Oh yes, if it hadn't been announced by this date, we were still in that consideration – exactly.

MR. LEARMONTH: Okay.

Tab 63, Exhibit P-01095; can you identify the document attached to this email?

MR. THOMPSON: Excuse me. That's a draft of the terms of reference for the PUB.

MR. LEARMONTH: Okay.

And, once again, you're asking for or receiving Nalcor's comments on the wording of the reference? Is that right?

MR. THOMPSON: Yes.

MR. LEARMONTH: Yeah.

So at what point was the decision made to refer the question to the PUB?

MR. THOMPSON: Well, in the evolution of this dialogue the – and I actually don't remember which meeting it was but I do – this is one recollection I do have of the debate that was going on over time, was a consideration that hiring an independent consultant directly by the government was a good idea, but it would not have the additional character of independence in setting the terms of or of hiring the expert

consultant, and that there was a desire to have the PUB involved as well, of course.

And perhaps we could bring these two points together by referring the responsibility for doing a review to the PUB, and the PUB then choosing its own firm, expert reviewer. And that that would enhance the independence of the process by having those two layers that, you know, the – those two layers that I've described.

So that was – that occurred during the process that it was the premier's decision supported by relevant ministers, Ministers Skinner and Marshall, as I recall, and then the decision was made. Now, whether that was – went to Cabinet or not I don't recall, but it was clearly the government's decision in that respect.

MR. LEARMONTH: Yeah.

But why would you – why would government refer a matter to the PUB when it knew that the only figures that had been finalized by Nalcor were DG2 figures which represented, we'll say, 5 to 10 per cent of the project definition – the engineering and the project definition.

What would be the point of referring that to the PUB as opposed to waiting until you had the DG3 numbers with a much higher level of project definition? What is the point of referring it to the PUB as it was done on – in June 2011 with the DG2 numbers only?

MR. THOMPSON: Well, the point of view of the government had evolved over that two- or three-month period in – to try and respond to the level of public concern that was arising, to take the review that would be done and make that an independent process. And when I say the review that would be done, I'm referring to the kind of ongoing review occurring within Nalcor and Nalcor-hired consultants.

And, indeed, Nalcor continued – you know, they hired Navigant anyway and Navigant reviewed the DG2 to give another –

MR. LEARMONTH: Yeah.

MR. THOMPSON: – independent perspective on that.

It seemed quite reasonable to do it, and it would also – we certainly hoped, the government hoped – address whatever public concern was there about the quality of the decision-making that had occurred at that time.

MR. LEARMONTH: Okay, but can you answer my question? Why didn't you wait until you got the DG3 numbers when you had a much higher level of project definition, as opposed to referring it to the PUB when only DG2 numbers with 5 to 10 per cent of project definition and engineering had been completed? Why wouldn't you wait?

MR. THOMPSON: Yeah, I'm not sure if we actually conceived the question that way at the time. The immediate issue in front of us was independent review of the decision that had been made at DG2, and so that was what we were addressing.

MR. LEARMONTH: No, but do you understand my point?

MR. THOMPSON: I do, but you're conceiving the question in a way that we may not have at the time. If you're asking me for our opinion now as to why we didn't wait – is that what you're asking?

MR. LEARMONTH: Well, I asked you, at the time –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: I asked you at the time why you didn't have the sense, we'll say, to wait until you got the DG3 numbers?

MR. THOMPSON: The perceived need for this review was one that was perceived to be required at the time, so that was why we did it. It didn't foreclose the possibility of review of DG3 which, of course, did occur, but we –

MR. LEARMONTH: How did it occur?

MR. THOMPSON: By the government contracting MHI to review the DG3 capital cost estimate and other issues.

MR. LEARMONTH: But they didn't.

MR. THOMPSON: Well, okay, I guess we'll come to that.

MR. LEARMONTH: Yeah, we will.

MR. THOMPSON: And I –

MR. LEARMONTH: Yeah.

MR. THOMPSON: Now you're – so I just want to stay focused on your question –

MR. LEARMONTH: Okay.

MR. THOMPSON: – which is that at – we were dealing with an issue of should we do an independent review at this time. And there was a lot of concern, or desire, to include the PUB to add that – the important character of independence and that was the decision that the government made at that time.

MR. LEARMONTH: Okay.

THE COMMISSIONER: It's now 12:30. Did you want to break here, or did you want to go on for a bit, Mr. –?

MR. LEARMONTH: Can I go another five or 10 minutes?

THE COMMISSIONER: Sure.

MR. LEARMONTH: Okay.

Now, the PUB reference, we touched on this earlier, Mr. Thompson, why was, what I would describe as, the narrow question put to the PUB as opposed to doing what was done in Nova Scotia, which was referring the matter – they referred the matter to the UARB and said you tell us what the least-cost option is. Therefore the UARB was open to the URB to obtain experts, to rule out certain – all kinds of possibilities –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – as opposed to having a very narrow choice? What was the thought process in doing it the way that your government did.

MR. THOMPSON: Well, the government I worked for. The –

MR. LEARMONTH: What’s that?

MR. THOMPSON: I said the government that I worked for.

MR. LEARMONTH: Oh, yes. Okay, yeah.

MR. THOMPSON: Thank you.

MR. LEARMONTH: That was implied in my question, but anyway, thank you for the correction.

MR. THOMPSON: No problem.

The – I’m sorry, now I’ve lost your question a little bit. So could you repeat it, please?

MR. LEARMONTH: Okay. The UARB was given a choice; they were given a question which allowed them to consider all –

MR. THOMPSON: Yes.

MR. LEARMONTH: – the options.

MR. THOMPSON: Yes, yeah.

MR. LEARMONTH: Our PUB was not given that choice.

MR. THOMPSON: Yes.

MR. LEARMONTH: The choice given to our PUB was to choose between –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – the Isolated Island Option and the Interconnected Option –

MR. THOMPSON: Yes.

MR. LEARMONTH: – Muskrat Falls. Why did government –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – to your knowledge, restrict the scope of the PUB’s review to the extent that it did?

MR. THOMPSON: The government was satisfied at the time that the options, analysis and the setting aside of the longer list was done well; done appropriately. And therefore the largest value, at that point in time, was engaging the PUB to look at the – which of the two scenarios: Isolated or Interconnected, was the preferred one? And get everything focused on that because if there was a flaw with that it would open up – and the government was open to hearing that there was a flaw. It wanted to know as much as it could about the quality of the work.

We were satisfied that it was good, but listen, let’s open it up to the full light of scrutiny and if there is a problem that was exposed in an analysis that would be useful to have. But certainly – so we’re satisfied, and, of course, this would be a more efficient review, time wise, if the matter was focused on these two.

And some of the documents show that we were concerned about schedule and that an efficient time frame for an external review – or if it was inefficient, if it went on a long period of time, it would have the possibility of interfering with project schedule and, as we know, a delay in project schedule creates higher cost.

MR. LEARMONTH: Who told you that there would – it could cause – any delay could cause a problem with –

MR. THOMPSON: In dialogue with Nalcor.

MR. LEARMONTH: Nalcor –

MR. THOMPSON: And they were the owner of the project schedule and indeed they showed – they, you know, would show us, you know, when they would like to, you know, their target date for sanction –

MR. LEARMONTH: Yeah.

MR. THOMPSON: – the target date for construction and first power, and they – so that seemed like a credible point.

MR. LEARMONTH: Mm-hmm.

MR. THOMPSON: So I’m saying to you that I can’t weigh for you, on retrospect, how much these different points went into – to answer your

question, but I can tell you these factors were present.

MR. LEARMONTH: Yeah.

But I'd ask you why the rush given the fact that Emera, which was part of this arrangement, didn't refer the matter to their PUB – or their government didn't refer it to their UARB, I should say – until January 2013?

MR. THOMPSON: I don't recall how we factored in the UARB timing and Emera's timing. I just don't recall. I just – focusing on how we sized it up at that time.

MR. LEARMONTH: Yeah, but do you see the point? I mean, you're in a rush to do this –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – or your government is; not your government, the government you work for is in a rush to get this work completed by the PUB.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: But you know that nothing can happen until the Nova Scotia UARB deals with the Emera application. So what's the point of having an accelerated process when you know that nothing can happen until the Nova Scotia situation –

MR. THOMPSON: Yeah

MR. LEARMONTH: – is clarified?

MR. THOMPSON: I don't know that that was – they – our knowledge at that time of the UARB process. I just don't have the documents or the recollection on that point.

MR. LEARMONTH: Well, it would've been easy to find out.

MR. THOMPSON: Perhaps it would've, and we may have known, but I just – I can't answer your question because of that.

MR. LEARMONTH: Okay. Very good.

Well, maybe we can break now if that's convenient?

THE COMMISSIONER: Yes. Okay.

So we'll break now and come back at 2 o'clock then.

CLERK: All rise.

MR. LEARMONTH: Just before we go, I just want – there's some exhibits that I was reminded I should've put in.

THE COMMISSIONER: Okay.

MR. LEARMONTH: They're just some new ones.

THE COMMISSIONER: Okay.

MR. LEARMONTH: So can I do that now?

THE COMMISSIONER: Yes, go ahead.

MR. LEARMONTH: Exhibits P-01034, P-01058 and P-01165 through P-01167.

THE COMMISSIONER: Okay. So they're in the booklets now, or they will be?

MR. LEARMONTH: I don't think they are yet. But –

THE COMMISSIONER: Okay.

MR. LEARMONTH: – they will be before we reconvene after lunch.

THE COMMISSIONER: Okay. All right, good. We're adjourned then 'til 2 o'clock.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right.

All right, Mr. Learmonth.

MR. LEARMONTH: Thank you.

Mr. Thompson, can you turn to tab 68, that's Exhibit P-00043. Are you familiar with this document?

MR. THOMPSON: Yes.

MR. LEARMONTH: Okay.

Can you tell me the background – your recollection of the background for this presentation to Cabinet?

MR. THOMPSON: Well, I forget the date, but at any rate, at about this time it was necessary, mainly related to the issue of the financing of the project, to put before Cabinet the need to sign a letter of commitment to assist the financing, as it says, of phase one.

MR. LEARMONTH: Okay.

And these were commitments given including a commitment to recover – to cover contingent equity? If you turn to page 3, the – in the middle: “In summary, the Commitment Letter states Government’s intent to do the following.” Just read the first two paragraphs of that to yourself.

MR. THOMPSON: “Approve the creation of any Nalcor subsidiaries required for the development and operation of the Project and ensure that the subsidiaries have sufficient borrowing powers to support its implementation;

“Provide the Government investment into the Project, which includes the amount determined during the financing process (currently estimated at \$1.5 to \$2.0 billion – see Financial Considerations section for more detail) and any additional Government investment needed to address any contingencies required to ensure Project completion.”

MR. LEARMONTH: Yeah.

So do you agree this was, in other words, a completion guarantee that the federal government required in order to fund the project? They needed a guarantee that the government would backstop any cost –

MR. THOMPSON: That we would stand behind it and – that’s right – and provide sufficient equity to make sure that that was done – the completion was done.

MR. LEARMONTH: At the time this was dated actually, August 31, 2011, did you see any risk or did you have any concern about this being – this commitment being made –

MR. THOMPSON: No –

MR. LEARMONTH: – to Nalcor – it was followed up by an October 18, 2011, letter from Premier Dunderdale to Edmund Martin stating the terms of it. Did you have any – were you aware of any concerns that were expressed about the –

MR. THOMPSON: This was –

MR. LEARMONTH: – risk in providing this letter?

MR. THOMPSON: This was, you know, part of the overall strategy, you know, this stage we knew would be coming. We – it was – there was no additional perception of risk in the execution of it, given that it was always – we had been seeing this forthcoming, so, yeah, the project of course had its risks, but this was not a step that we didn’t expect, and therefore, there was no incremental risk because of this step.

MR. LEARMONTH: Okay.

So that was a risk that had been identified prior to the date it was passed by Cabinet – prior to the date that this presentation was made to Cabinet, so it wasn’t considered to be any new element of risk.

MR. THOMPSON: The signing of this letter was not regarded as a new element of risk, because we saw that it was a part of the overall strategy that we anticipated executing.

MR. LEARMONTH: Okay.

Tab 70, which is exhibit P-01099.

Now, this is an email, Robert Thompson to Robert Thompson, so is this a memo to yourself, more or less?

MR. THOMPSON: No, it's likely I was either at home sending it to myself at work or vice versa, so I could work on it later.

MR. LEARMONTH: Okay.

So once again, why would you be drafting what appears to be a letter from Nalcor to the PUB?

MR. THOMPSON: Let me have a look at it.

MR. LEARMONTH: I think that's what it is.

MR. THOMPSON: So I'm not certain that I was drafting. I may have been, but it may have been sent to me by someone else, and I was forwarding it to myself at home to review it later, perhaps, or something like that, so I'm not certain that I was the drafter of this.

MR. LEARMONTH: Why would you have received it?

MR. THOMPSON: Well, in dealing with the PUB, Nalcor and the government shared information to stay aligned, to make sure we were in – understanding the progress of the hearings and, you know, the kind of submissions that Nalcor was putting forth, and so a response to the PUB from Nalcor about any concerns and the progress of the hearings or the submission of information would have been something that would have been shared for information, possibly for feedback as well.

MR. LEARMONTH: So is this just another example of the integrated team approach?

MR. THOMPSON: Yes, there – certainly collaboration, yes.

MR. LEARMONTH: Yeah.

So there was no separation in the team members, that being government and Nalcor, even for the PUB reference?

MR. THOMPSON: Well, the – we continued on, of course, to operate as a closely collaborative team throughout this entire period and that included, from time to time, the communications back and forth – when Nalcor was communicating with the PUB, certainly – it certainly was an – I would regard it as an

exception rather than the rule, because while we did review certain correspondence, we didn't take charge of any of the detailed responses. So, yeah. But so it's – it is another example at that higher level.

MR. LEARMONTH: Okay.

And then tab 71, this is a – have a look at that – that's November 1, 2011, when the matter was before the PUB. It looks like it was a draft of a letter that Nalcor's sending to the PUB, and for some reason, they have to give your okay to it. That's 01100.

MR. THOMPSON: Right.

MR. LEARMONTH: So once again, I know I've asked this many times –

MR. THOMPSON: Sure.

MR. LEARMONTH: – but why would Nalcor need your sign-off to send a letter to the PUB?

MR. THOMPSON: Well, there had been some concern expressed by the PUB about the schedule and the, perhaps, the lateness that Nalcor – or – of submissions coming in from Nalcor. Certainly the government was encouraging Nalcor, perhaps pressing Nalcor, to ensure that it was on top of this and meeting a good schedule.

So in that context it's not surprising that – in this case, I guess, it was Gilbert Bennett or Dawn Dalley – was forwarding something to us to make sure we could glance at it before it was actually sent, to make sure we were all aligned.

MR. LEARMONTH: Well, why would you have to be aligned? I mean, Nalcor was sending it to the PUB, why would government have to be aligned with it?

MR. THOMPSON: Well, I'd have to surmise in retrospect that, you know, first of all, we shared a lot of these kinds of communications back and forth because, ultimately, they would go to the public, and so this is just another example. Perhaps they also wanted to know that the communication to the PUB was meeting the high expectation that we had for Nalcor.

MR. LEARMONTH: Please repeat that? What did you say?

MR. THOMPSON: Perhaps that they were also sharing with us to make sure that they were, in this letter, meeting the high expectation that we were – our encouragement and our expectations for them to get on top of this, to deliver material on time, let's make this as, you know, as collaborative with the PUB as possible. Those were the kind of messages we were sending Nalcor, so I'm just surmising that perhaps they shared this letter with us in order to stay aligned on that concept.

MR. LEARMONTH: And in terms of the PUB reference, I take it that government's position was it was sort of business as usual. The integrated team would carry out the work, and they didn't have any concerns about separation –

MR. THOMPSON: Okay, so –

MR. LEARMONTH: – between government and the PUB? I mean the government sent the reference to the PUB.

MR. THOMPSON: Right.

MR. LEARMONTH: The proponent is Nalcor.

MR. THOMPSON: Yeah, I understand your point.

MR. LEARMONTH: Did you not see that perhaps there should have been some separation? That government should have, once it sent the reference to the PUB, stand back and let the process take its course?

MR. THOMPSON: Well, we didn't see it exactly that way. From the outset, government was, you know, pursuing policy objectives and – of a variety of kinds – within its project and a major part of that was Nalcor's work and effort.

And we wanted Nalcor to be the driver of all the information that needed to be provided to the PUB, but the fact that we had commissioned it didn't – commissioned the PUB to do this independent review, didn't remove us from the fact that we have an ongoing relationship with these broad objectives and that we would want

to maintain a degree of collaboration and communication throughout the piece.

So, in that sense, it wasn't unusual or unexpected. It was, to some extent, the continuation of the collaboration that we've been doing. But the bulk of the work here at this stage was definitely from within Nalcor and directly to the PUB.

MR. LEARMONTH: Now, we've had evidence – you may be aware of it – of a meeting that you apparently had with Andy Wells.

MR. THOMPSON: Yes.

MR. LEARMONTH: And another gentleman, Brian Taylor, was it?

MR. THOMPSON: He accompanied me, yes.

MR. LEARMONTH: Yeah. And where was the meeting?

MR. THOMPSON: My recollection is that it was in the boardroom probably on the ninth floor of the Confederation Building.

MR. LEARMONTH: And this was while the matter was –

MR. THOMPSON: Yes.

MR. LEARMONTH: – the reference was before the PUB?

MR. THOMPSON: I think it was in September of 2011.

MR. LEARMONTH: Yes. So who called the meeting?

MR. THOMPSON: I would have, or through my office, reached out and requested the meeting.

MR. LEARMONTH: So you felt free to set up a meeting with the chairman of the Public Utilities Board?

MR. THOMPSON: Yes.

MR. LEARMONTH: Okay.

Well, how – what gave you confidence that that was the proper thing to do?

MR. THOMPSON: Well, okay, so I'll explain the full context. The – there has been – and I don't know if there continues to be, but certainly before I went to the Department of Natural Resources and while I was there – periodic communication with the PUB about forthcoming matters that the province was – you know, where the province was taking action. We wanted the PUB to know something was coming. That gave the PUB an opportunity to give us feedback as well.

MR. LEARMONTH: Mm-hmm.

MR. THOMPSON: Most of those communications – and I'm talking not about Lower Churchill here but other matters – were handled by – in my recollection, by Charles Bown. So –

MR. LEARMONTH: Yeah and they were procedural or scheduling matters. Correct?

MR. THOMPSON: No, they might be an indication of an exemption or a regulatory – you know, regulation or something related to a regulation that the government was contemplating. And there might be a –

MR. LEARMONTH: Can you explain that better for me?

MR. THOMPSON: Yeah.

MR. LEARMONTH: A regulation ...

MR. THOMPSON: I'm trying to dig for a specific example and one is not coming. But there will be – are times when the government may pass a regulation and it may have to have an effect on rates. And so we would want to – or sometimes there might be a communication, a conversation, sometimes by telephone, that – for an exchange of information on that before the government takes its action. So I'm just trying to set up a context for you that there had been a history of such – not frequent, it was episodic. It was not frequent or routine, but nonetheless it had occurred.

And so it was in that – in the spirit of that kind of communication that when we were in September that we thought it advisable to – for me to reach out and have a conversation because the issue that was in play was this growing consensus on the part of the PUB certainly, that Nalcor was, you know, dragging its heels might have been the perspective, that it wasn't delivering an adequate amount of information on time as had been promised. And this was leading to the possibility or the likelihood that the PUB would want an extension in its – in the time frame – in the deadline for submitting a report.

So, internally in the government, our view was: We need to know more about the PUB's point of view on this. They – you know, we were hearing about it; I forget how we were hearing about it, probably in the media. But we need – we need a direct communication to ensure that we're understanding the PUB's full point of view so that that information could be used to reach a decision at the appropriate time as to whether or not there'd be an extension.

And so it was in – it was for that purpose that the meeting was set up and we had a discussion about the PUB's point of view on how – on the process to date.

MR. LEARMONTH: Well, number one, I don't understand your reference to that regulation stuff you talked about before, but we'll let that go. I don't see how that has anything to do with it, but we'll let that go.

MR. THOMPSON: I – well –

MR. LEARMONTH: So why would you –

MR. THOMPSON: I'm sorry.

MR. LEARMONTH: Go ahead.

MR. THOMPSON: Yeah, the only reason I raised that is to illuminate the fact that there are, from time to time, direct conversations between the government and the PUB about matters that may be coming before the PUB. So it wasn't an unusual conversation or thing to reach out and ask for a meeting where we could exchange information.

MR. LEARMONTH: So you're saying that the government, before the reference, had contacted the members of the Public Utilities Board when a matter was before it, as it was sitting in a rate hearing or anything like that?

MR. THOMPSON: No, I'm not saying that. I'm saying that it – my recollection is that when – on instances where this happened, it may be a matter that – of a regulation that the government is considering that may have an impact on the PUB's rate and regulation.

MR. LEARMONTH: Yeah.

MR. THOMPSON: And we wanted them to know and –

MR. LEARMONTH: Yeah.

MR. THOMPSON: – there was an information exchange. That's what I mean. And it was in the spirit of that, an information exchange, that we thought it was appropriate or certainly – yeah, certainly appropriate to have a conversation with the chair on this occasion to get more information about their perspective on what appeared to be delays.

MR. LEARMONTH: So you're suggesting that consulting the PUB on a proposed regulation would be the same thing as contacting the PUB chair and asking him to come to the Confederation Building for a meeting while an application, a reference, was before the board. Are you saying that those are like situations?

MR. THOMPSON: They're – well, of course, it was a reference, not an application. But it was – they're alike in the sense that we had, from time to time, conversations about matters of mutual interest to share information. So that's the only context in which I mean it.

MR. LEARMONTH: Okay, well ...

So you called the meeting. Why did you call the meeting? Why didn't the Department of Natural Resources, who had sent the reference, call the meeting?

MR. THOMPSON: I don't recall exactly why. Certainly, I knew Mr. Wells. Not well, but I did know him. And perhaps in the group of people

who could reach out, I may have been the most appropriate because of that.

MR. LEARMONTH: Yeah, did you – were you instructed to make this an issue?

MR. THOMPSON: It was known that I would. Certainly, the ministers, and I believe the premier, knew that I would, but we shared this view that we needed more information to inform what was likely to be a decision we would have to make.

MR. LEARMONTH: Well, who instructed you to make this initiative?

MR. THOMPSON: Well, again, I don't know if it was an instruction as much as it was here we were in a meeting and then, yeah, Robert, you better go do that. But I don't know –

MR. LEARMONTH: Yeah, but who would've been this person saying, Robert, you better do that?

MR. THOMPSON: I don't know who was in the meeting, or the meetings, or the conversations. But as I said, it could have likely involved the premier, the ministers, other officials, but I don't have a recollection of that.

MR. LEARMONTH: Well, Mr. Bown had met with the chairman before, so wouldn't it be logical that he would have any meeting that –

MR. THOMPSON: Certainly –

MR. LEARMONTH: – government thought was necessary?

MR. THOMPSON: Certainly, if he had done it, it would've been logical, yes.

MR. LEARMONTH: Okay.

So you called Mr. Wells's office –

MR. THOMPSON: Yes.

MR. LEARMONTH: – and asked him to come into your office –

MR. THOMPSON: Yes.

MR. LEARMONTH: – for a meeting.

MR. THOMPSON: Invited him to.

MR. LEARMONTH: And he was there with – you were there with –?

MR. THOMPSON: Mr. Taylor.

MR. LEARMONTH: And who’s Mr. Taylor?

MR. THOMPSON: He’s the chief of staff –

MR. LEARMONTH: Yeah.

MR. THOMPSON: – to the premier.

MR. LEARMONTH: And what was the conversation at this meeting?

MR. THOMPSON: Well, my goal was, as I said, to gather information to better understand the thinking of the PUB as to why – well, there’s two things, their perception of the volume of work and the burden and whether that was going to cause a concern for the – for timing.

But within that context, the – Nalcor had also been sharing with us a view that some of the questions – I think they called them RFIs – from the PUB may be straying outside the terms of reference. And we didn’t have a particular view on that, but we – it was – would be interesting for us to know the PUB’s view on that matter, because if that was one of the things the – driving the timeline, it would just be good to know.

MR. LEARMONTH: Yeah.

MR. THOMPSON: So I raised both of these points, as I recall, in the meeting.

MR. LEARMONTH: Well, I suggest to you that the second line of inquiry was categorically, absolutely none of your business or government’s business –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – when this matter was before the PUB.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: I suggest that to you. What do you say?

MR. THOMPSON: I agree with you in this sense: that we would not have exerted any pressure at all to ask the PUB to conform to a certain line of questioning. I mean, they have the independence to do that and they’re well advised and they can do it.

To the extent that I raised it, it was to get a better understanding of how these RFIs linked to the terms of reference, and that enabled me to put in context the whole workflow to others within the government, so we were prepared to look at the issue of the extension.

MR. LEARMONTH: Well, if that – assuming that’s true –

MR. THOMPSON: It is.

MR. LEARMONTH: – why wouldn’t you contact the board’s legal counsel, who would be in charge of the RFIs – not the chair? You would’ve known that.

MR. THOMPSON: Yes, but I don’t recall the consideration that went into that. I don’t know if we landed on a direct communication with the chair as a first and only option, or whether we looked at other options. But at any rate, the decision we made was to do a direct contact with the chair. And, of course, he came to the meeting.

MR. LEARMONTH: Yeah, and how long did the meeting last?

MR. THOMPSON: I don’t know. Let’s say probably about half hour to an hour. I’m not sure.

MR. LEARMONTH: Well, he said it was much shorter than that.

MR. THOMPSON: Oh, it may have been. I don’t recall.

MR. LEARMONTH: Yeah, you don’t have any notes of the meeting?

MR. THOMPSON: I do.

MR. LEARMONTH: Where are they?

MR. THOMPSON: They're in the exhibits.

MR. LEARMONTH: Okay, now, you – do you agree that you were asking him –

MR. COFFEY: Yeah –

MR. LEARMONTH: – asking him about –

MR. COFFEY: – Commissioner, if I could?

I think the witness indicated that the notes are in exhibits. They are being exhibits because I identified them. Myself and my client identified them. They've been in the Inquiry's database for quite some time. But, in fact, I have it here on – I have the note on my screen right here on my own computer right now. So –

MR. LEARMONTH: Yeah.

MR. COFFEY: – there are notes that I understand Mr. Thompson made of his meeting with Mr. Wells. So –

MR. LEARMONTH: Well, that doesn't mean I have to bring them up right now? So I –

MR. COFFEY: No, fair enough.

MR. LEARMONTH: – don't know what the objection is for.

MR. COFFEY: But in answering or commenting upon or responding to questions, it is certainly helpful at times for a witness to have the notes made contemporaneously.

MR. LEARMONTH: Yeah, well, look –

THE COMMISSIONER: So let me just –

MR. LEARMONTH: – now this is an examination. You can raise that as much as you want in your cross-examination, that's fine. But I don't know why that is a basis to interrupt an examination.

THE COMMISSIONER: Okay.

Anyway, just to – and I don't want to cause further interruption, but I just want to express to

Mr. Thompson and others that we have now had well over 4.4 million documents in our database.

MR. THOMPSON: Mm-hmm.

THE COMMISSIONER: I have a staff of 16, including myself. So, you know, if – the obligation under our rules was for witnesses and their counsel to provide us with information related to documents; this was part of the standing application and part of the ruling that I gave with regards to the standing.

MR. THOMPSON: Mm-hmm.

THE COMMISSIONER: So I would've expected, and I am expecting, that the counsellor pointing us – assisting us by providing or pointing us to documents that may well be of some issue so that counsel can review them to see whether or not they're relevant or not for the Commission.

So I'm not going to discuss this any more. You can sit down, Mr. Coffey, and we'll just get going.

Let's go Mr. –

MR. LEARMONTH: Yeah.

THE COMMISSIONER: – Learmonth.

MR. LEARMONTH: So this discussion was about – you acknowledge that it was about the RFIs and whether the RFIs were relevant to the terms of reference.

MR. THOMPSON: Yeah. And I would have acknowledged in the meeting, I assure you, because I'm, you know, cognizant of the status of the PUB that we had no role in trying to customize or – but we wanted to understand how these RFIs were related to the mandate so we could gain that better understanding within the government.

MR. LEARMONTH: You thought that was your – that was a proper line of questioning at this time?

MR. THOMPSON: It was certainly useful information we thought, yes.

MR. LEARMONTH: No, did you think it was proper to make those inquiries at this time?

MR. THOMPSON: Well, I certainly wouldn't have had the meeting if I didn't think it was proper.

MR. LEARMONTH: Yeah, okay.

So you think it was entirely proper?

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: Okay.

Now, so there was a discussion about this and I understand – or Mr. Wells indicated that after he found out what you were talking about, these RFIs, that the meeting ended shortly thereafter with him saying generally that, you know, he was going to leave; he didn't want to talk about that. Is that correct?

MR. THOMPSON: Yeah. I don't recall that. I recall him expressing that it was none of the government's business what questions that the lawyers may ask.

MR. LEARMONTH: Okay.

MR. THOMPSON: And I accepted that.

MR. LEARMONTH: And he says – so that was the end of your discussion with him at that meeting?

MR. THOMPSON: Perhaps.

MR. LEARMONTH: Mmm. And he said that there was a Mr. Taylor in the room that – he made some comment about – Mr. Wells turned to Mr. Taylor and said: Aren't you concerned about the costs of this? And he said – Mr. Taylor told him that – he said he started laughing insanely, saying we're concerned about the optics.

MR. THOMPSON: I have no recollection –

MR. LEARMONTH: Do you recall that?

MR. THOMPSON: No, I don't.

MR. LEARMONTH: You have no recollection of that?

MR. THOMPSON: No.

MR. LEARMONTH: Okay. So you don't deny it could've been –

MR. THOMPSON: Of course –

MR. LEARMONTH: – could've happened?

MR. THOMPSON: – I wouldn't deny it. But I have no recollection of it.

MR. LEARMONTH: Okay. You have no recollection of it. Okay, that's fair enough.

The next document I want you to look at is – we're now in volume 2, so we're making some progress. Tab 73, which is Exhibit P-01102.

Just go over to me – for me briefly, again, why the question of an extension to allow the PUB to do – to take the time that they thought they required, why was that such a big deal?

MR. THOMPSON: Well, we – well, it's a big deal in the sense that any extension to this stage of the process of review would mean an – or one could be bumping into the project schedule. So it needed to be carefully considered. If that's your point, then that was why it was important. And clearly the government would want to know that there's a substantive rationale for the extension in order to grant it. And, indeed, we felt that it was – there was. So it was granted.

MR. LEARMONTH: Yeah. But you know – you remember what I mentioned to you about the Nova Scotia application?

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: So why was there any rush at all to get the board's report – the PUB's report?

MR. THOMPSON: I don't have a recollection of linking the two. We may have; we may have examined that carefully. But I just don't recall, so I'm not in a position to answer that question.

MR. LEARMONTH: Okay.

Tab 75, Exhibit 01103. Once again this is – seems to be some drafting of letters. I guess this would've been internal from the government, is that correct?

MR. THOMPSON: Right.

MR. LEARMONTH: And you were consulted in the drafting of the letter. Well, there's certainly nothing wrong with that I don't think.

Tab 78 – oh, no, excuse me, tab 76, which is P-01104.

Now, is this another internal document that you were sending to the PUB as opposed to one from – for Nalcor?

MR. THOMPSON: So this would be my two letters that I sent to the premier and to Brian Taylor, which he responded and I responded to Brian. So it was all internal.

MR. LEARMONTH: All internal. Okay, that's fine.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: Tab 78, Exhibit P-00395. At the bottom is a – of page 1 of 00395, Mr. Thompson, is a letter from Thomas Clift to you dated January 26, 2012.

MR. THOMPSON: Right.

MR. LEARMONTH: Are you familiar with this letter?

MR. THOMPSON: Yes.

MR. LEARMONTH: Okay. So he – Mr. Clift who is a member of the board of directors – is expressing concern, if not complaining, about certain matters dealing with the composition of the board –

MR. THOMPSON: Right.

MR. LEARMONTH: – and the remuneration, I believe, is mentioned there. And the fact that they don't have any expertise or they lack expertise.

Just take the time to read that letter – that email – and I'm gonna ask you whether you believe if there was merit to some of or all of the points that Mr. Clift is raising in this email.

MR. THOMPSON: Okay. Yes, I do think there was merit.

MR. LEARMONTH: Okay. And, you know, the, you know – at this time, the board is considering a megaproject that doesn't have anyone with any construction or project management experience on its own. You agree that that's a serious issue, is it?

MR. THOMPSON: Well, certainly in the context, you're using, I guess, different words than what Mr. Clift used, but I agree that his expression of concern about the skill gaps was an important issue and it should've been – it should be followed up on, yes.

MR. LEARMONTH: And what did you do about it – about receiving this email from Mr. Clift about the board of directors?

MR. THOMPSON: Well, I acknowledge the email, saying: "Let me look into these points and get back to you soon about starting a dialogue." So I was certainly interested in trying to seek resolution to the points he made, and over the course of time, you know, some months, there were – there was more active consideration given to additional members on the board of directors. And also we gave consideration to the compensation issue. Although, I don't think that that was ever resolved to Mr. Clift's satisfaction.

MR. LEARMONTH: But did you take that to the premier?

MR. THOMPSON: I don't recall who I took it to and how – all the steps in getting it addressed. In fact, it may have been sent over to the Department of Natural Resources and then they took it from there. It could've been any number of different paths, I just don't recall the path that it went on.

I do recall, though, as – because the emails are here, that I had later interaction with Derrick Sturge of Nalcor on the compensation issue and what, perhaps, the value that was set aside on the books at Nalcor for a possible compensation

policy. So, I know I was engaged to some extent in it, but I don't remember all of the paths.

MR. LEARMONTH: Well, I'll ask you another way. What, if anything, was done by government as a result of the concerns that Mr. Clift expressed in his email to you, which you said had merit? What did government do?

MR. THOMPSON: I don't recall the additional steps from there, so I can't fill in those blanks for you unless there was documentation. All I can tell you is the result. And I think there is, perhaps, a line that can be drawn between this communication and the result, which was more appointments. But I can't fill in the blanks in between.

MR. LEARMONTH: No, but I'm suggesting to you that this was a serious issue –

MR. THOMPSON: Right.

MR. LEARMONTH: – that government should have dealt with.

MR. THOMPSON: Right.

MR. LEARMONTH: And you've acknowledged that the concerns that he expressed, including the concern about not having expertise –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – for a megaproject on the board, you've acknowledged that that's –

MR. THOMPSON: Yes.

MR. LEARMONTH: – a legitimate or serious issue. So why – can you give me any explanation why government wouldn't get this and then address it by staffing the board of directors with persons who are qualified to properly analyze megaprojects; and megaprojects such as Muskrat Falls.

MR. THOMPSON: Okay. So what you're asking for is any knowledge I have of a consideration of the qualifications that needed to be – that we needed to see in individuals to assign to the board of directors. And I have no recollection of any dialogue or meetings or any

steps that were taken. And as with a lot of the material that you're questioning me about today, my recollections are framed around documents that I've been able to pull out context and, on this one, I don't have anything.

MR. LEARMONTH: Okay, so as far as you know government did nothing about it? As far as you know?

MR. THOMPSON: No, no, no. Clearly there had to be steps in between, there had to be dialogue, there had to be activity, I just don't know what it was.

MR. LEARMONTH: Well, how do you know that there was dialogue or activity?

MR. THOMPSON: Because the – there was an end result. There were appointments and there was further discussion on compensation. So, logically, that says to me there was activity, but I can't tell you if it was meaningful, substantive activity on your point or minimal activity. I just have nothing to fill it in.

MR. LEARMONTH: Okay.

Well, who was appointed that had experience in a megaproject – experience of any kind in dealing with a megaproject like Muskrat Falls? Can you name me the person –

MR. THOMPSON: No, I understand your point.

MR. LEARMONTH: – who filled that role?

MR. THOMPSON: I understand your point, and it is perhaps a different question, in the sense that –

MR. LEARMONTH: You know what the question was.

MR. THOMPSON: I was trying to go through it in the way you're asking me. And so in the end people were appointed, but, on the point you're raising now, are they or did they, these new people, have the kinds of experience that Mr. Clift were seeking? They were capable, very good people that were appointed, but I'd agree with you that they didn't have the – didn't fill the skill gaps or the knowledge gaps that Mr.

Clift was raising in this. I'd agree with you on that.

MR. LEARMONTH: Okay. Thank you.

Tab 79, Mr. Thompson, is an email dated December 12, 2012 from you to Dawn Dalley, Charles Bown, Don Burrage. You're writing Dawn Dalley, she's the public relations, I think, at Nalcor at time. Is that correct?

MR. THOMPSON: Correct.

MR. LEARMONTH: Yeah.

Now, the third paragraph from the bottom you're referring to p.53 – good slide.

MR. THOMPSON: Correct.

UNIDENTIFIED FEMALE SPEAKER:
Sorry, we don't know which exhibit is being referenced now.

MR. LEARMONTH: Okay, sorry, P-01107.

Do you see what I'm talking – referring to, p.53?

MR. THOMPSON: I do, yes.

MR. LEARMONTH: So it says: "... good slide, though I wonder can it be even more focused on gaining greater certainty about costs. This point is pretty clearly inferred on the engineering bullet, but is equally important regarding long lead procurement and the commercial/financing terms. It is important to build confidence about how much greater our knowledge will be about costs at the DG3 decision."

Now, we're up until very close to the – well, February 12, 2012, so the sanction decision is not too far off. At this point, was government still relying on this trust that Nalcor's information was accurate and complete on costs?

MR. THOMPSON: I wouldn't say trust. I would say that we relied upon Nalcor to be producing good quality information and we interrogated that as appropriate. But I'm not sure the question links to this. Or whatever – maybe I'm missing something.

MR. LEARMONTH: Well, it says: "It is important to build confidence about how much greater our knowledge will be about costs at the DG3 decision."

MR. THOMPSON: Okay.

MR. LEARMONTH: So you're suggesting that you have to have a greater degree of knowledge –

MR. THOMPSON: Okay, I see –

MR. LEARMONTH: – of costs at the DG3?

MR. THOMPSON: – your point. I see your point. So the meaning of this sentence is that at DG2 there was a much wider degree of risk or variance – potential variance – in the – and, if you like, confidence in the cost estimates. When much more engineering is completed – when at DG3 40 per cent, 50 per cent of engineering, whatever the right number is – then the confidence improves. So that's the – sense of the – that's the reason why I used the word confidence.

MR. LEARMONTH: But as you get through to DG3, shouldn't government's scrutiny of the costs increase? 'Cause you're getting close to a decision point.

MR. THOMPSON: And it did.

MR. LEARMONTH: How – what was the –

MR. THOMPSON: Well, through the independent reviews.

MR. LEARMONTH: Who did an independent review?

MR. THOMPSON: MHI.

MR. LEARMONTH: Oh, you're talking about the DG3 review of MHI, and you're calling that an independent review. Is that what you're referring to?

MR. THOMPSON: Correct.

MR. LEARMONTH: Okay. Thank you. You know that they didn't review costs or risks, do you?

MR. THOMPSON: Well – (inaudible).

MR. LEARMONTH: We'll get into that later.

MR. THOMPSON: Yeah, okay.

MR. LEARMONTH: Okay.

Now, at page – the next paragraph down, Mr. Thompson: “p. 55 – This slide needs to counter the ill-founded assertion from critics that the team at Nalcor has never built a project of this magnitude, thus does not have the experience to control costs and execute on schedule. The slide does not provide much evidence to contradict the assertion. To simply say 35 years of experience does not prove the point. What more can be said with greater impact?”

Now, what evidence was there that the Nalcor team did have experience on building a megaproject such as Muskrat Falls? Like, why is this an “ill-founded assertion”?

MR. THOMPSON: I was – I formed an impression by reading the slide that whatever words they had written perhaps underestimated the – what we – I certainly perceived to be the level of experience and skill within the team and felt that it could have been presented with more impact or more – perhaps even more accuracy.

I can't recall what particular points I had in mind but was encouraging Dawn to have a look at that and see if there was not a better way to express that point.

MR. LEARMONTH: Yeah. But you say it's a fact. Are you suggesting that it is a fact that Nalcor had sufficient hydroelectric experience to undertake a – the project team had sufficient hydroelectric power-development experience to undertake a project such as this? Are you saying that's a fact?

MR. THOMPSON: No, I didn't say that.

MR. LEARMONTH: Well – okay.

MR. THOMPSON: I'm saying that the – I felt that the amount of experience and skill in the team was at a higher level than what – than the perception was being let by what was in the slide, so I was encouraging Dawn to match what

my perception – perhaps she didn't share it. I'm not sure. I don't know what the result was, but that was the encouragement I was giving her there.

MR. LEARMONTH: Well, what was your knowledge of the level of skill that the Nalcor project team had in building and supervising the construction, generally, of a megaproject such as Muskrat Falls? What was your knowledge of their experience?

MR. THOMPSON: The – I can recall – not everything, of course, and I can't recall numbers of years of experience and so forth but I can recall being – having a generally high level of – high estimation of the kinds of experience from within – Mr. Martin, Mr. Bennett, Mr. Harrington and so forth and the other consultants that were being brought in to help design and – so – and then the affirmations of that that we were briefed on from other consultants.

And so that, as a package, is what would have existed in my mind at the time. And it formed the view that I was giving to Dawn.

MR. LEARMONTH: Well, at this time, did you have any knowledge as to how much experience the project team had in, you know, building or supervising the construction of a megaproject such as Muskrat Falls? Did you have any knowledge of that?

MR. THOMPSON: Well, I did have knowledge of it but it would have been in that general level of knowledge. I would not have gone and asked for the CV so I could inspect the specific projects and the durations and the roles. But I had a general knowledge from interaction with the team of the kinds of projects that they may have worked on before.

I'll give you an example. On a separate file, when I was in the Department of Natural Resources, we were renegotiating the contract with Vale, and – so I was the chief negotiator on that file, and we needed some expertise to help evaluate capital cost estimates and other factors so that we could be better prepared for negotiations, and we drew on the team, in particular Mr. Harrington and Mr. Kean, who provided us with excellent advice, and then through the course of an interaction like that – it

was actually my main exposure to those two individuals – I developed an understanding of the kinds of work that they had done.

MR. LEARMONTH: Was Vale building a hydroelectric dam?

MR. THOMPSON: No.

MR. LEARMONTH: Yeah. So what I'm suggesting to you is that while there was considerable experience –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – in the Nalcor project team –

MR. THOMPSON: I wouldn't argue that point.

MR. LEARMONTH: – on oil and gas projects –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – there was limited experience in hydroelectric projects. There was just one of them, I think Ron Power, that had some experience in the project management team. Were you aware of that?

MR. THOMPSON: I wasn't aware of Ron Power. I don't know who that is.

MR. LEARMONTH: Okay. But were you aware that the experience that the project team had in megaprojects was restricted, generally, to the oil –

MR. THOMPSON: Sure.

MR. LEARMONTH: – and gas industry?

MR. THOMPSON: Sure.

And I don't mean to be evasive at all, but the – I was aware that the core project management team – the people I've mentioned – were mainly from the oil and gas sector. But I wasn't aware of the – of how much hydro-related construction experience others on the team may have had, including consultants –

MR. LEARMONTH: Well –

MR. THOMPSON: – I didn't have the – any really detailed knowledge of that.

MR. LEARMONTH: Well, don't you think that's something you should have inquired into?

MR. THOMPSON: I had a high level of confidence, as I'm sure others did, that the team was acquiring all the necessary experience in hydroelectric construction.

MR. LEARMONTH: But you – so you don't think it was necessary to actually ask for their CVs and ask for their experience in hydroelectric projects?

MR. THOMPSON: I guess the fact that I didn't do that – I didn't perceive it as a need.

MR. LEARMONTH: Okay. Thank you.

Now, tab 81 – it's Exhibit P-00051, Mr. Thompson. It's the Government of Newfoundland and Labrador's response to the report of the Joint Review Panel.

What, if any, involvement did you have in the Joint Review Panel hearings and process?

MR. THOMPSON: Yeah.

My main involvement would have been briefings at the Lower Churchill coordinating committee, where this was a frequent topic of discussion in the lead-up to the hearings and during the course of the hearings.

MR. LEARMONTH: Yeah.

But do you know why – there were a number of recommendations that government did not follow –

MR. THOMPSON: Correct.

MR. LEARMONTH: – that the panel made and government didn't follow.

Were you involved in the decision-making process whereby the government refused or declined to follow certain recommendations of the Joint Review Panel?

MR. THOMPSON: I wasn't a primary, you know, driver of the text, for example, of the responses, but I would have reviewed this material, I'm pretty sure, before it was released.

MR. LEARMONTH: Okay.

But there was a recommendation, for example, 4.2, which is on page 1 of Exhibit P-00051: "The Panel recommends that, before governments make their decision on the Project, the Government of Newfoundland ... commission an independent analysis to address the question 'What would be the best way to meet'" the "domestic demand under ..." et cetera.

Government response – you can read through it; I'm not trying to rush you. But –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – government's response, on page 2 of P-00051 is: "The Government of Newfoundland ... does not accept this recommendation. The information provided by Nalcor to the JRP on the need, purpose and rationale for the Project provides an adequate basis to conclude that the interconnected Island alternative is the long-term, least cost option to meet domestic demand."

Do you know why government bluntly refused to accept this recommendation?

MR. THOMPSON: I only recall, of course, what I read here and it was that the government believed otherwise. I guess it didn't believe that the panel had reached a conclusion that accorded with the government's analysis of the same question.

MR. LEARMONTH: Yeah.

If government was sure that the – Muskrat Falls was the least-cost alternative, why immediately before sanction, say, in October, November, did it seek opinions on the advisability of – on natural gas and wind. If the decision had been made, if the government was sure of its position, why would those additional reports have been sought?

MR. THOMPSON: Okay, so that's a whole phase of activity, all of the additional reports in – during 2012. And to be frank, my recollection is the government was satisfied with the analysis that had occurred to satisfy these options. That it was seen to be an extra level of – it would provide an extra level of certainty to the public to see that this whole matter was analyzed again.

And indeed, if the government learned anything that was different from earlier analyses, that would be quite helpful to the decision-making. As it turned out, it didn't – whatever was found there didn't cause us to – the government to change its mind, but that's the context in which I view those additional reports.

MR. LEARMONTH: Okay.

Now, another one of the recommendations – I'm not going to go through all of them, but on page 3, Recommendation 4.5 – Full clearing of the Muskrat Falls reservoir: "The Panel recommends that, if the Project is approved, Nalcor be required to apply its 'full clearing' reservoir preparation option to the Muskrat Falls" project.

And so the response was: "The Government of Newfoundland and Labrador agrees with the principle of maximizing the utilization of the forest resource. With limited opportunities to use the resource, and the likely insignificant reductions in mercury levels" full "partial clearing, the Government supports partial harvesting" et cetera.

Do you know why the government didn't follow that recommendation because, as you know, that's still a very much a live issue.

MR. THOMPSON: Right. Well, the government didn't follow the recommendation for the reasons outlined there. There was both an economic – or principally the economic rationale to do it certainly wasn't clear. And I don't know if conditions have changed since, but that was – there was lots of discussion and analysis about that at the time, I do recall. And this is an accurate reflection of how we felt from an analytical point of view.

MR. LEARMONTH: Well, things have changed, do you agree?

MR. THOMPSON: Oh, I don't know.

MR. LEARMONTH: Oh, you don't know. Okay.

Tab 82; this is Exhibit 01109. Now, this seems to be some draft you made of – or some thoughts you had about the – how to handle the report of the PUB. Is that correct?

MR. THOMPSON: Yes.

MR. LEARMONTH: So is this a communication strategy?

MR. THOMPSON: No, it would – I think the first email, which is at the bottom, is the draft that would have – of a response that Glenda Power, who was head of communications in Cabinet Secretariat if I recall the timing right, would have prepared. And then the email on the top would have been a – some commentary on that draft.

MR. LEARMONTH: Okay. Thank you.

Tab 85, which is Exhibit 00741 – excuse me, tab 84 is Exhibit 00741. Now, you've seen this email before, have you, Mr. Thompson?

MR. THOMPSON: In the course of preparing for the Inquiry.

MR. LEARMONTH: Okay.

Now, just to take you through this – correct me if you think the way I'm stating it is incorrect – the decision of the PUB was delivered to the government on March 30, it's a Sunday night – excuse me, a Friday night at 10 a.m. And then we have Mr. Wilson of MHI sending a draft statement of scope of work to Charles Bown on April 3. Correct?

MR. THOMPSON: Right.

MR. LEARMONTH: Okay have you looked at the scope of work?

You look at it?

MR. THOMPSON: I glanced at it.

MR. LEARMONTH: Okay, well, look at page 5, Exhibit 00741.

MR. THOMPSON: Okay.

MR. LEARMONTH: In particular, well xi – Roman numeral xi, xii and xiii.

MR. THOMPSON: Okay.

MR. LEARMONTH: So, Mr. Wilson, on behalf of MHI, is sending a draft of the scope of work and xi – Roman numeral xi on page 5 says: "Risk Analysis review. Review Nalcor most recent risk analysis assessment for gaps, suitability to task, and appropriateness of reserve margins for costs estimate contingency."

Now – and "Information required: Strategic Risk Assessment Updated ... and Westney update if available." Now, don't you believe that was a reasonable point that the government should pursue in assessing the capital cost estimates for

MR. THOMPSON: It appears to me that it would be reasonable, yes.

MR. LEARMONTH: Okay.

Now, the – if we go to tab 86, which is P-00742, this is April 19, email from Charles Bown to Walter Parsons, and then there's another one back from Paul Wilson, and we see that this the – on page 2 of Exhibit 00742, I think, this is the sixth revision. I don't know where all the others are.

In any event, if you look at page 7, you'll see that the risk analysis that I referred to in the earlier document has been removed. And I mean removed this time. You agree?

MR. THOMPSON: I agree. I don't see the same words there.

MR. LEARMONTH: Well, do you see anything about risk analysis? Just turn back then if you want.

MR. THOMPSON: Sure. I (inaudible) –

MR. LEARMONTH: We just read it, right?

MR. THOMPSON: Sorry?

MR. LEARMONTH: Yeah. I don't see it anywhere in this document.

MR. THOMPSON: Okay, I accept your point.

MR. LEARMONTH: Okay. Do you know why that would have been removed?

MR. THOMPSON: No, I don't have any knowledge of why it's removed.

MR. LEARMONTH: No knowledge whatsoever?

MR. THOMPSON: No.

MR. LEARMONTH: Okay, so you didn't have any knowledge at the time, is that right?

MR. THOMPSON: That's what I believe, yes. It sounds like – it's a new issue for me in my recollection.

MR. LEARMONTH: When did you first learn of this issue?

MR. THOMPSON: I guess when reading the Grant Thornton report.

MR. LEARMONTH: Okay. But if we go to tab 90, which is Exhibit P-01115, this is May 8, 2012. The contract with MHI had not been completed yet. That wasn't done until June 5. So at this point, you're sending some comments on the scope of work, is that correct? Just look at page –

MR. THOMPSON: Yes, I –

MR. LEARMONTH: Scope of Services, scope of work.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: And there's nothing in there about risk analysis?

MR. THOMPSON: Okay.

MR. LEARMONTH: Well, confirm that for me, please.

MR. COFFEY: Commissioner, if this witness is going to be asked to confirm it, I'm going to ask that he be given sufficient time to do so.

MR. LEARMONTH: Well, I'm giving him time.

MR. COFFEY: Simply glance through a document that is pages and pages long at times, frankly, is unfair.

MR. LEARMONTH: Well, he can take as much time as he wants.

MR. COFFEY: Thank you, because you didn't last time.

MR. LEARMONTH: Well, I did this time.

THE COMMISSIONER: Listen, the two of you, stop it. Okay? Just stop it. Let's just keep going the way we're going here.

My suggestion, Mr. Coffey, is you wait your turn. You have something you wanna raise that's important, you stand up; I will look at you, and I will ask you to speak. Until then, don't.

Go ahead, Mr. Learmonth.

MR. LEARMONTH: Okay.

Okay, well, I want to give him time to read it.

MR. THOMPSON: Yeah. No, I – well, I haven't read it all in detail this occasion, but I take your point that those words are not there, but perhaps I could observe – and that this is not necessarily a replacement for your point – but in – on page 4, Roman numeral iii [sp iv], Review of Muskrat Falls GS, post-DG2 design changes, cost estimates and construction schedules, to determine their reasonableness as inputs.

MR. LEARMONTH: Yeah.

MR. THOMPSON: Now, does that infer – also look at the risk analysis to make sure that's reasonable? I don't know. If I was reviewing this at the time, for – to give feedback to Charles, I might infer into that. I can't do too much hindsight or retrospective speculation, but I might. So – but I agree with your point, that the words around doing a risk analysis are not there.

MR. LEARMONTH: Yeah. And you didn't know when you prepared this draft, that the risk analysis paragraph that I referred to, Roman numeral xi, had been in a first draft but had been removed. Is that correct?

MR. THOMPSON: I have no recollection of that.

MR. LEARMONTH: So Mr. Bown never told you?

MR. THOMPSON: I have no recollection that he did. That's right.

MR. LEARMONTH: Okay. Because, you know, MHI – their three representatives have testified that, you know, they put generally – they put that in, and then it was taken out, so they didn't do a risk assessment.

MR. THOMPSON: I understand what you're saying, yes.

MR. LEARMONTH: Yeah. You're aware of that.

MR. THOMPSON: I'm aware of it.

MR. LEARMONTH: You see the point? You may not agree with it, but you see the point?

MR. THOMPSON: No, I see your point. Yes, absolutely.

MR. LEARMONTH: That's an item of concern, is it not?

MR. THOMPSON: It would be an item of – so the fact that they proposed doing a risk analysis, and if the risk – and the risk analysis is a reasonable thing to do, and it being removed, if the intention there was to – for MHI not to do a risk analysis, not to review risk issues, yes, I think if that was made known to me I would regard it as a concern, yes.

MR. LEARMONTH: Yeah, because it's difficult to say in those circumstances, do you agree with me, that it would remain as an inferred term? You know, it's put in as an explicit term –

MR. THOMPSON: I understand your point, yes.

MR. LEARMONTH: – and then taken out.

MR. THOMPSON: Yeah. I understand what you're saying.

MR. LEARMONTH: Do you agree with me?

MR. THOMPSON: It would be difficult to regard it as an inferred term. Of course, I don't know whether they in fact did look at risk, and whether they inferred it in any way, but that's something I'm not aware of.

MR. LEARMONTH: Yup.

Okay, so that – tab 88, please, which is Exhibit P-01113.

This is an email, April 26, 2012. I just want – what – you're writing to Brian Taylor. That's Premier Dunderdale's chief of staff, is that right?

MR. THOMPSON: Actually, I'm writing to the premier there and copying it to Brian Taylor.

MR. LEARMONTH: Oh, KMD. Okay, sorry for that.

But towards the bottom you say – well, you say: "I hope Mary was able to get the material on the Nalcor board to you. Purely for your use in any informal talks to the board you may wish to extend. Here are just a few extra thoughts:" And then in the second-to-last is: "won't be deterred on MF by detractors pursuing narrow and petty agendas." What is this?

MR. THOMPSON: Right.

MR. LEARMONTH: What do you mean by that?

MR. THOMPSON: Yes. The – first when I looked at that email recently I wondered myself why I would phrase it that way.

The – I want to state first that, you know, generally the government never regarded people who had – who were advocating a point of view – as anything but legitimate, because they –

there was a point of view, and we needed to better understand it. And so as a consequence – but that’s not always the way government communicated publicly its views on that point. And as – the public context is often oppositional and can get chippy at times, so it’s perhaps I was phrasing this in a way that was reflective of that.

‘Cause what this whole email is about is really me saying to the premier you’re going to this function with these board members, here are some points you may wish to glance on. And it may – I may have been reflecting some of the tone of the time. But – so that’s the best context I can give you.

MR. LEARMONTH: Well, you wrote “narrow and petty agendas.”

MR. THOMPSON: I did, yes.

MR. LEARMONTH: Did you feel that people – detractors from Muskrat Falls – that some of them had narrow and petty agendas?

MR. THOMPSON: To be honest, no.

MR. LEARMONTH: No. So you don’t know why you wrote it?

MR. THOMPSON: My speculation on why I wrote it is as I said. It was reflecting the tone of the time.

MR. LEARMONTH: Well, anyway. Please turn to tab 91, which is Exhibit P-01116.

Now, this is Crown agencies – compensation for Crown agencies. Give me the context for this where you’re communicating on June 17, 2012. It’s quite a bit of time after you got that email from Mr. Clift. But anyway, your – what would cause you to embark on a discussion about board compensation for Nalcor members?

MR. THOMPSON: Okay. So the third email at the bottom of the page was me writing to Derrick Sturge. And it would appear that perhaps he phoned me or emailed me separately wanting to know an update on the issue of board compensation. So I was telling him there’s nothing new on this but picking away at it. So that indicates I was raising it from time to time to see if I could make progress. And Derrick

informed me back on June 15 that they had been accruing a provision on their books for directors’ compensation, and so I indicated back to him that, you know, I needed to put Nalcor’s situation in the context of other Crown agencies, and you know, we’ll work on this in the coming weeks.

MR. LEARMONTH: Did anything come of that?

MR. THOMPSON: My recollection in general is no, that it was very difficult at that time or anytime really to advance successfully the case that boards of directors – appointees to boards of directors should be compensated. Even though it’s a good idea, and it rewards them for the hard work that they do, and it’s a way to attract skilled board members, the general culture and policy then around compensation to boards of directors was otherwise.

MR. LEARMONTH: Okay.

So nothing came of it?

MR. THOMPSON: As far as I know that’s correct.

MR. LEARMONTH: Okay.

This is – next is tab 98, Exhibit P-01123.

Now, am I correct that you’re writing a speech for Ed Martin in this?

MR. THOMPSON: No. I – okay, let me have another look, and then I’ll fill that answer out.

Okay. So this is October 2, 2012. I can’t remember the occasion which the speech was gonna be delivered, but to me, this reads more like there’s a speech being written for the premier, possibly the minister, but more than likely the premier. A section of it is going to be written on – or going to be on the topic of Lower Churchill, Muskrat, that I’m – I am making at least a substantive edit to that speech text, and I’m bouncing it over to Ed to make sure that it’s, you know, it’s – that everything checks out, that we’re saying things accurately. So that’s my best guess at the context of that.

MR. LEARMONTH: Okay. So in other words, you're not writing a speech for Ed Martin.

MR. THOMPSON: No.

MR. LEARMONTH: You're writing it for someone else, and you're just checking out with Ed Martin to make sure it's factually correct?

MR. THOMPSON: And indeed, I'm not sure –

MR. LEARMONTH: Is that right?

MR. THOMPSON: – I was writing the whole speech.

MR. LEARMONTH: No.

MR. THOMPSON: It might have been just this as a substantive –

MR. LEARMONTH: Yeah.

MR. THOMPSON: – edit.

MR. LEARMONTH: Okay, that's fine. Thanks for the clarification.

Tab 99 is an October 28, 2012 – we're getting close to sanction – email from you to a number of people at both government and Nalcor. So, you know, you're –

UNIDENTIFIED MALE SPEAKER: Exhibit number?

MR. LEARMONTH: 01124.

You're – like why are you, you know, picking away at the language trying to improve it? Are you trying to make it sound better than it is? Or why are you making improvements to the – Nalcor's technical briefing deck?

MR. THOMPSON: Well, Karen O'Neill from Nalcor had circulated the deck. I guess it's Heather MacLean actually, who was another communications person, sent it to me. Quite often – certainly if I had the time – I would review communications materials because it's just a good practice. Making sure that the decisions that you know are being made and the policy directions you know are in the heads of the premier and the ministers, are reflected

appropriately in the communication materials, whether it be of departments or Crown corporations.

So it's in that context, I've read through it, identified a number of points that I thought could either perhaps correct it or better expressed, and made those comments.

MR. LEARMONTH: Okay. Tab 1 – it's 100 – it's 01125.

MR. THOMPSON: Right.

MR. LEARMONTH: You're saying – once again this is from Robert Thompson to Robert Thompson. Is that something you would – maybe you were at home and you wrote it.

MR. THOMPSON: Possibly, yes. At 9:43 a.m., so I wasn't at home at that time I doubt. Unless it was the weekend – who knows.

MR. LEARMONTH: Yeah, but you're referring to – you say in the second paragraph: “When the PUB reported on Muskrat Falls on March 30, 2012, using the same quality of information that the Nova Scotia utilities board is currently using for the Maritime Link, the PUB stated that ...” et cetera.

Are you suggesting that the Nova Scotia UARB, when it made its decision to sanction the Maritime Link, had the same, say, quality or level of financial information, cost estimates, before them as the PUB did?

MR. THOMPSON: Well, so first of all, the – some of – this reads to me as though I'm doing some writing in order to sort out some thought, you know. What's the context? What did the PUB say about the project? And what's the – how can it be compared in a broader context or how can it be understood?

So I'm not sure that there's anything official. I'm not sure if I would have even forwarded this on to anyone, but it was – I was working out some thoughts in my head. That's the way it reads to me.

So on that line, clearly, I had the perception when writing that, that the information being used by the Nova Scotia Utilities Board was

DG2 data and similar to what was put in front of the – or what was used during the PUB process. So that would've been the perception that I had at the time.

Did I know it to be true then? Do I know it to be true now? I'm not sure.

MR. LEARMONTH: Okay. So you don't stand by that.

MR. THOMPSON: No. No, no.

MR. LEARMONTH: Okay. That's fine.

Tab 103, which is Exhibit P-01128, Mr. Thompson.

MR. THOMPSON: Okay.

MR. LEARMONTH: Can you have a look at this document, and take a bit of time to read through it because I wanna ask you a few questions about it.

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. THOMPSON: Okay.

MR. LEARMONTH: Are you familiar with this document?

MR. THOMPSON: In reading it in recent days or weeks, I don't have a recollection of it from the time.

MR. LEARMONTH: Okay. This is dated November 27, 2012, so –

MR. THOMPSON: Right.

MR. LEARMONTH: – a couple weeks away from sanction.

MR. THOMPSON: Right.

MR. LEARMONTH: Do you – how did – what was the circumstances under which this document was prepared to your knowledge? It says it was prepared by Justice and Natural Resources.

MR. THOMPSON: Right.

So, the – this was of course predated, as it says in the note itself, in April 2012, Cabinet directed those two departments plus Finance, in consultation with Nalcor, to develop options for project accountability. And so there's an elapse of time – April to November – that it was being worked on or, you know, perhaps periodically, but nonetheless, around this time it – the subject matter was coming back, certainly to the premier's attention because this was a decision note or a direction note.

And the department, probably led by Natural Resources but it might have been equally, I'm not sure, brought back the work that they had done. They had consulted with, as I read in the note, with Bob Noseworthy, former chair of the PUB, and perhaps they'd done other kinds of research but, in any event, they summarized the options for ongoing project accountability and oversight and were – they made a recommendation, I believe, and they're seeking direction on that.

MR. LEARMONTH: Yeah.

MR. THOMPSON: Now, this is a – as I read it – a draft because it's not signed by the minister or ministers. So I don't know if – actually, that's a good – I don't know if you have a copy of the final one or whether it came forward, so we're looking here at a draft.

MR. LEARMONTH: Okay. No, this is all I have.

But something must have happened to cause Natural Resources and Justice to prepare such a document and it didn't just fall out of the sky.

MR. THOMPSON: No, it's – it was directed to occur in April 2012. And I think, though, that the specific timing of this would've been linked to the forthcoming DG3 consideration by Cabinet. You know, the folks in those departments realizing that this is an outstanding matter and should catch up if in fact it wasn't done on schedule, with the rest of the considerations. Because going through DG3 is a big issue and perhaps – or I would suspect – that many people had their mind on that very point. How is – how would project oversight work on a more formal basis once the construction phase starts.

MR. LEARMONTH: Yeah.

But I'm suggesting to you that there are some points in this that are significant.

MR. THOMPSON: Okay.

MR. LEARMONTH: They include in page 1, just – well, the middle of page 1 of 001128 says, “Mr. Robert Noseworthy, a former Chair of the PUB and an independent consultant engaged by NR,” – excuse me – “agrees that the Project cannot be regulated in the traditional regulatory sense by the PUB, but believes there has to be a significant and meaningful independent oversight over the costs related to the Project given the level of expenditures. Mr. Noseworthy further believes that since the ratepayer is required to cover all the costs incurred on the Project, it is incumbent on the Province to ensure that all costs are independently reviewed and released to the public in a report.”

Does that not strike you as a very sensible, sound recommendation?

MR. THOMPSON: Yeah.

I do – I agree, and it's similar to a recommendation or – that was in one of my briefing notes that we didn't cover here today, but back in the, kind of, April-May period in 2011.

MR. LEARMONTH: But – and there's other things too. I mean there's – on page 2 of 001128 at the bottom, “Two approaches are put forth for consideration ... NL Utilizes a Different Independent Engineer than Nalcor/Federal Government.” Nalcor could engage a different engineering firm to act as its advisor, provide an expert and independent perspective to government.

These strike me as very sound, solid, prudent steps. Do you agree?

MR. THOMPSON: I agree.

MR. LEARMONTH: Okay, but these steps – these points were not really followed up on, were they? I have no sense of ever seeing anything to suggest that these recommendations

–

MR. THOMPSON: Right.

MR. LEARMONTH: – were followed.

MR. THOMPSON: And I don't see any documents, as well, disclosed regarding these topics, so my recollection of them runs out. I don't know why – if no documents exists, why there was no record of decisions being made on this at that time.

So, I can't add –

MR. LEARMONTH: So you have –

MR. THOMPSON: – (inaudible).

MR. LEARMONTH: – absolutely nothing to offer by way of an explanation as to why – whether this was followed, or given any consideration, or thrown away, or whatever?

MR. THOMPSON: No.

I have no recollection as to how this was disposed of.

MR. LEARMONTH: Yeah.

And I mean, if you look on page 5, I mean, this wasn't just something that someone sat down and wrote up in their spare time. I mean, Natural Resources had engaged Bob Noseworthy, and he was a man of considerable reputation and experience in these matters –

MR. THOMPSON: Correct.

MR. LEARMONTH: – do you agree?

MR. THOMPSON: Yes.

MR. LEARMONTH: So Natural Resources in – is retaining Bob Noseworthy very late in the game – November 27, 2012 –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – yet nothing happened about this report.

The –

MR. THOMPSON: Will you be going to the next exhibit?

There's a little bit more of the story there.

MR. LEARMONTH: Okay.

Well, what is the rest of the story that –

MR. THOMPSON: Well, not the rest; it's –

MR. LEARMONTH: – (inaudible) you're talking – you're referring to 104, Exhibit 01129?

MR. THOMPSON: Yes, that's right.

It's – it was my response to Charles regarding this note. This was on December 5, indicating the note is in reasonably good shape and then commenting on the process for getting it considered – really, it's saying, unfortunately it may be too much to rush such a decision, because ideally it would have been appropriate to have this accountability and oversight process in place to be announced simultaneously with legislation that would go in the House.

So that's the only other thing I've seen about, you know, shepherding this issue along. I haven't seen anything else.

MR. LEARMONTH: But, you mean, you have a pretty good memory –

MR. THOMPSON: Much improved –

MR. LEARMONTH: – I'm surprised that you can't –

MR. THOMPSON: – by these documents, but not on my own, unfortunately.

MR. LEARMONTH: Yeah.

But you wrote that email? So –

MR. THOMPSON: I did.

MR. LEARMONTH: – and it just – your mind goes blank as to what happened after you wrote that email?

MR. THOMPSON: Yeah.

We haven't talked much about, you know, the – kind of the blizzard of activity that's ongoing and how easy it is to not recollect these specific things, and the thread that pulls them together over time. But, on this one, I don't have any additional recollection.

MR. LEARMONTH: Okay.

I'd like you to have a look at the Grant Thornton report. That's at tab 111, and it's Exhibit P-00014.

MR. THOMPSON: Okay.

MR. LEARMONTH: When did you first see this report?

MR. THOMPSON: When it was disclosed by the Commission.

MR. LEARMONTH: Was there anything that struck you when you read it?

MR. THOMPSON: Yes.

MR. LEARMONTH: What?

MR. THOMPSON: The finding – or the finding commentary on the issue of strategic risk and its omission from the capital cost estimate. That stood out.

MR. LEARMONTH: Why did that stand out in your mind?

MR. THOMPSON: Because it was not consistent with the way that – as I mentioned earlier – with the way that the capital cost estimate was structured. So this was different than my recollection.

MR. LEARMONTH: Okay and I just want to take you to page 9 of Exhibit P-00014. Line 4: "Nalcor excluded approximately \$500 million of strategic risk exposure from the capital cost estimate for the CPW calculation. We have been informed by Nalcor's Project Team, that strategic risk exposure was to be funded through contingent equity from GNL."

Is that what you are referring to?

MR. THOMPSON: Yes.

MR. LEARMONTH: Yeah. Now did you ever hear anything about a strategic risk exposure? I think the amount was 497,000. It's rounded up to 500 –

THE COMMISSIONER: 497 million.

MR. LEARMONTH: Million. Yeah.

MR. THOMPSON: So I don't recall, you know, the term strategic risk ever being formed into a common phrase that we would use in our discussions. So I don't recall that point. I don't recall strategic risk being \$497 million ever framed up with a quantitative, you know, component like that. I don't recall that. I do recall – as I've mentioned before – periodic if not regular discussions of risks that may occur and how Nalcor was addressing risks regularly over time.

But the discussions were generally focused on the risk itself. Here's this risk. Here's what we're doing. Here's another risk. Here's what were doing. And then the general point – as I made earlier – that projects can have cost overruns and therefore in our financing strategy we need to have a commitment letter like we discussed earlier and make sure that contingent equity flows into the project on such an occasion. So that was the bundle of – or the storyline if you like that I was carrying around in my head, and so this is that variance from that.

MR. LEARMONTH: Yeah. Now I'm not talking about – by the way – general risk that's whenever we speak about megaprojects I mean someone might say – well they're always going to go over budget. You know, generally –

MR. THOMPSON: No. I understand.

MR. LEARMONTH: – they do. Yes. I'm talking about a specific report that –

MR. THOMPSON: I know.

MR. LEARMONTH: – prepared by the external consultants that you've referred to often today –

MR. THOMPSON: But I would connect and just – I just wanna be precise – that I think that the risks that the Nalcor team may have been

raising with us in these meetings – the specific topics – may indeed be the risks that their consultants were referring to when they calculated the \$500 million. I don't know that to be the case, but they may have been because we were – they were referring to specific risks. But we never, in my recollection, had them calculated, you know, in a probabilistic way and exposed to us as a \$500 million strategic risk that perhaps should be included in the capital cost estimate. That's my point.

MR. LEARMONTH: Well, do you think that should've been disclosed to you?

MR. THOMPSON: Well, the way I've come to understand it through the Grant Thornton report and the testimony, it – I think so. It would've been a very useful discussion to have that I don't think that we did have in that sense.

MR. LEARMONTH: Well, are you saying categorically you didn't know about this strategic risk exposure of, say, \$497 thousand – million or \$500 million?

MR. THOMPSON: Yeah. I really want to say, yes, exactly, categorically, allowing for a faulty memory, but I'm pretty certain that I'd never heard it expressed that way.

MR. LEARMONTH: Okay, well, I just want to – like, as I said, this wasn't just a number that was picked up, this – out of the air, this was something that –

MR. THOMPSON: Sure.

MR. LEARMONTH: – was based on a report –

MR. THOMPSON: I understand that.

MR. LEARMONTH: – that Nalcor had –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – before sanction. And I want to bring it up so you can have a look at it.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: It's Exhibit – it's not in the documents, but it's Exhibit 00833. Okay.

I showed this to you at your interview, do you remember, Mr. Thompson?

MR. THOMPSON: I remember an S-curve.

MR. LEARMONTH: Yeah. Well, anyway, let's just go to page – and this report, you can be assured of this – this report, there were nine drafts of it; this is the last draft –

MR. THOMPSON: Yes.

MR. LEARMONTH: – which was received by Nalcor on or about September 15, 2012.

MR. THOMPSON: Right.

MR. LEARMONTH: So they had it at the time of sanction.

MR. THOMPSON: Sure.

MR. LEARMONTH: Okay.

So we can just go to page 5. And you reviewed this at the – your interview –

MR. THOMPSON: Correct.

MR. LEARMONTH: – you may recall that do you?

MR. THOMPSON: Yes.

MR. LEARMONTH: Yeah.

So this is where – how the \$497 million figure was calculated?

MR. THOMPSON: Yes.

MR. LEARMONTH: You recall that do you?

MR. THOMPSON: I do.

MR. LEARMONTH: Yeah.

Now, you're saying that you have no recollection of ever being made aware of either this document or of the figure – 497 million or 500 million – at any time before sanction, is that correct?

MR. THOMPSON: Well, we knew that the Westney Consulting firm was involved in – with Nalcor in their work. And we probably knew that they were doing risk analysis. But I've never been – we were never presented with this in my recollection. And then that's why it seems so jarring to read about it in the Grant Thornton report because I had no recollection of this.

MR. LEARMONTH: What do you mean exactly by “jarring”?

MR. THOMPSON: Well, it's the – it was news to me. It's not something that fit into the general, you know, narrative of what I remembered, you know, because you remember – I tend to remember things in, you know, in a narrative form and then if something is not – stands out as not belonging to that narrative it means that it was jarring to me. I didn't remember it.

MR. LEARMONTH: Did – do you believe that having received this report before sanction that Nalcor should've made government aware of it and its contents?

MR. THOMPSON: Yes.

MR. LEARMONTH: Yes. Okay.

Now, I'd also like you to – well, before actually we leave page 9 of Exhibit P-00014.

The next paragraph deals with this P-factor: “Nalcor selected a” – P-factor – “in calculating the tactical contingency included in their capital cost estimate” Et cetera.

Now, at anytime before sanction were you made aware of this P-factor approach?

MR. THOMPSON: Possibly, it's not – again, it's not something I'm carrying around in my memory, but in – there's a possibility, for sure, that we were informed that cost estimates were done based on probabilities. So I wouldn't rule out the possibility we were briefed on it, but it wasn't a big deal issue. We weren't tracking that issue. I wasn't tracking that as a detail that was important everyday to me.

MR. LEARMONTH: Well, would you agree that you were never briefed on it and didn't know anything about?

MR. THOMPSON: That would be too strong because I'm trying to judge things that – the many, many, many things I can't recall against the possibility that we were briefed that the estimates were probabilistic. So it's hard for me to agree with the certainty of that statement.

MR. LEARMONTH: You say – you said something slightly different in your transcript. You said on page 101 in relation to this: No, and I don't recall ever being briefed on or exposed to any analysis using probabilities and sorting out and making a decision on which one to use in the cost estimates.

MR. THOMPSON: Yeah –

MR. LEARMONTH: So (inaudible) –

MR. THOMPSON: – it's not – it's just a shade of difference in what I said today. I'm opening up a bit more today of the possibility that it occurred, but I certainly don't recall it.

MR. LEARMONTH: Okay. Well, why didn't you just say you don't recall it then?

MR. THOMPSON: Well, don't recall is being inferred sometimes as having a lot more meaning than sometimes it does, and so that's why I try to nuance my answers a little bit more.

MR. LEARMONTH: Okay.

Well, I don't wanna make a big deal, but you could've nuanced your answer at the interview, couldn't you?

MR. THOMPSON: Okay. I thought I did.

MR. LEARMONTH: Okay.

Now, page 64 of the Grant Thornton report, if you'd turn that up. At the bottom of page – tab 64 is a diagram. Some of it is sort of hard to read, but if you go on to page 65, please. I'm gonna read this: "The above image" – and that's the one I referred to on the bottom of page 64 – "notes that July 15, 2017 schedule was a P1. This meant that there was a 99% chance that the schedule for first power would not be met. The LCP Project Team noted that 'there was a lower probability that a mid-2017 First Power date would be met. As such, the PMT recommended

to Nalcor ... that a provisional schedule reserve allowance should be made to account for the difference between the target date and the probable date. Given the desire to achieve the best possible date, Nalcor Executive wanted to maintain the Target Milestone" – date – "and thus no schedule reserve allowance was made to accommodate the residual risk exposure identified in the QRA" – the quantitative risk assessment. And this is included in the 497 million that I referred to –

MR. THOMPSON: It is, yes.

MR. LEARMONTH: Yeah.

MR. THOMPSON: Okay.

MR. LEARMONTH: Now, the first – as I understand it, as of the date of sanction, government's position was we would have first power in July 2017. Is that correct?

MR. THOMPSON: Yes, that's what I recall. Yes.

MR. LEARMONTH: Yeah. And you didn't have any information to the contrary?

MR. THOMPSON: No, we didn't have this information, certainly.

MR. LEARMONTH: Okay.

Now, when you read this – did you first become informed of this when you read the Grant Thornton report for the first time?

MR. THOMPSON: Yes.

MR. LEARMONTH: And what reaction did you have to receiving this information?

MR. THOMPSON: Surprise.

MR. LEARMONTH: Surprise. Why?

MR. THOMPSON: Because I didn't realize that anyone had assessed the likelihood of meeting the July 15 date as such a low probability. That was – that's the surprise.

MR. LEARMONTH: Yeah.

And do you believe that that is information that Nalcor should've advised government of before sanction?

MR. THOMPSON: Yes.

MR. LEARMONTH: Yeah. And why would that be?

MR. THOMPSON: It's relevant in understanding, perhaps, a couple of things. One is the risks associated with the project and thus the capital cost estimate, but also, the way that the government may wish to communicate with the public and be transparent with the public is always best served when we have really complete, comprehensive information. Then government has the opportunity to discuss it and build it into how they wish to be transparent.

MR. LEARMONTH: Yeah. And in terms of transparency to the public, do you agree that the people of Newfoundland should've been aware of this – of the real cost including the strategic risk of 497 million at the time of sanction?

MR. THOMPSON: The – well, the general answer is yes. The – whatever the capital cost estimate is properly calculated should be the estimate that we communicate to the public. I am aware just reading through documents that Mr. Martin has some rationale for a different point of view. But that's certainly not the rationale I would carry on the first instance.

You know, this – whatever is the capital cost and whatever are the true risks and probabilities, that's the information that the public needs to – you know, for all the appropriate reasons.

MR. LEARMONTH: Yeah. And isn't it a cardinal rule that a politician would never wanna make a statement to the public on a matter such as this without complete information?

MR. THOMPSON: I think that's fair.

MR. LEARMONTH: Yeah.

MR. THOMPSON: And it is certainly part of the job of the deputy minister or someone in my position that if we knew something to the contrary, or something that needed consideration

before a statement was made, that we had the opportunity to have that conversation.

MR. LEARMONTH: Yeah. And I suggest to you that if you'd been made aware of this, even the day before sanction, you would've reported it to Cabinet.

MR. THOMPSON: Yes, yes.

MR. LEARMONTH: Yeah, the strategic risk –

THE COMMISSIONER: Can we just take our break here now, Mr. Learmonth?

MR. LEARMONTH: Yes.

THE COMMISSIONER: Okay, let's take our 10 minute break here. I just noticed it was 3:30 already.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right. Mr. Learmonth.

MR. LEARMONTH: Thank you.

There's an exhibit that was entered, it's 01168. It's not in a tab but I have a – I want to ask you a couple of questions about it. So I'm going to give you a copy of it, hard copy.

MR. THOMPSON: Okay.

MR. LEARMONTH: It'll come up on your screen there. I'm just going to approach you and give you that.

MR. THOMPSON: Thank you.

MR. LEARMONTH: Now, I may have referred you to one page of this in an earlier exhibit, I'm not sure. But, anyway, just take the time to read it and when you've gone through it, let me know and – because I know you didn't have it before, so don't feel rushed.

MR. THOMPSON: Okay.

MS. O'BRIEN: Just ask to have it entered as an exhibit.

MR. LEARMONTH: Yeah, so could that be entered as an exhibit?

THE COMMISSIONER: Yes, okay. It'll be entered as numbered.

MR. COFFEY: Commissioner, might I receive a copy?

THE COMMISSIONER: Yeah, it should be coming up on the screen. Do you have it there?

MR. COFFEY: (Inaudible.)

THE COMMISSIONER: And if you could scroll down through it just so Mr. Coffey could review it.

MR. THOMPSON: Okay.

MR. LEARMONTH: Okay.

Now, so this is a –

THE COMMISSIONER: Just one second, Mr. Learmonth.

Just so – I want to make sure Mr. Coffey gets an opportunity to –

MR. COFFEY: (Inaudible) I think, Commissioner, frankly, I can't read that fast. I mean I get some sense of what the headings are but –

THE COMMISSIONER: Can we have an extra copy for Mr. Coffey?

MR. COFFEY: That'd be very useful for me to have a paper copy.

Thank you, Ms. O'Brien.

Thank you, Commissioner.

THE COMMISSIONER: Okay.

Let me know when you're ready, Mr. Coffey.

MR. COFFEY: (Inaudible.)

Okay.

THE COMMISSIONER: Okay, go ahead, Mr. Learmonth.

MR. COFFEY: Commissioner, I want to thank you.

MR. LEARMONTH: Great, thank you.

So I'm referring to 001168, February 3, 2011; it's an email from Charles Bown to Richard Wardle. Who's Richard Wardle?

MR. THOMPSON: He was then the deputy minister of Natural Resources, if I recall.

MR. LEARMONTH: Okay. Now, this is a – speaks for itself – but it's a Shareholder's Letter of Expectations, which had been prepared by Mr. Bown. And if you can – if you turn to page – first to page 6, it was proposed that it would be signed by John Ottenheimer, then-chair of Nalcor Energy, and by the Honourable Shawn Skinner, minister of Natural Resources, correct?

MR. THOMPSON: Correct.

MR. LEARMONTH: Now, do you know what happened? Because we have no record that this document was ever signed or dealt with after February 3, 2011. Can you help us?

MR. THOMPSON: The – not specifically. I don't have a recollection of what happened.

But if I were to go searching for this document, not only would I look in the Department of Natural Resources, but I'd also look in the transparency and accountability division – I forget what it's called – of the Cabinet Secretariat, because in that location they tracked and monitored all of the strategic plans and annual reports and perhaps, as well, these shareholder agreements, in order to have a full archive of accountability-type documents related to the *Transparency and Accountability Act*. I'm not certain that would be there, but I would also look there.

MR. LEARMONTH: Okay, well, we've looked and looked and haven't found it.

MR. THOMPSON: Okay.

MR. LEARMONTH: That doesn't mean that our search was –

MR. THOMPSON: Sure.

MR. LEARMONTH: – perfect, but we'll take you up on that. But in any event, if we go to page – this is a – this letter speaks for itself, and it would have imposed a binding obligation on Nalcor to comply with the terms of it. Do you agree? If it had been signed?

MR. THOMPSON: It would have imposed?

MR. LEARMONTH: Yes.

MR. THOMPSON: Well, yes. Sure. Yes.

MR. LEARMONTH: Yeah, okay.

Now, if you go to page 5, "Reporting." It says: "The Shareholder and Nalcor Energy are committed to transparency and accountability to the public. The Shareholder" – and just for anyone who doesn't know, that's the government – "has put in a place" a "public reporting structure which is set out in the *Transparency and Accountability Act* and the *Energy Corporation Act*. Nalcor Energy agrees that it will meet these financial and performance reporting" questions. "If the Shareholder determines that changes to the reporting requirements are necessary, the Shareholder will communicate these."

Then it says: "It is agreed that there will be advance discussions and review of key documents such as Strategic Plans, Annual Reports ... budgets. These discussions will be completed sufficiently in advance of deadlines to ensure the opportunity for effective and timely input by the Shareholder."

"In addition to these financial and performance reporting requirements, Nalcor Energy agrees to provide information to the Shareholder related to the risks and opportunities anticipated in achieving financial forecasts and performance targets."

The next paragraph: "The parties agree that, as a matter of course, each will advise the other in a

timely manner of any issues that may materially impact the business of Nalcor Energy and/or the interests of the Shareholder."

Now, do you agree that if this had been followed up and this agreement had been signed, Nalcor would've been obliged by the terms of this agreement to provide you with the strategic risk report and other risk reports that I referred to earlier?

MR. THOMPSON: I think there's no question that they – that those risk reports and the particular feature that we looked at earlier –

MR. LEARMONTH: Yeah, that's P-00833.

MR. THOMPSON: Right.

MR. LEARMONTH: Yeah.

MR. THOMPSON: Well, whether the report in its entirety, but certainly the risk that it contains – the risk description it contains – would've been the kind of thing I believe should've been disclosed and would follow, generally, under this kind of parameter. I think the wording here is a bit general, because it's referring to corporate risks, you know, enterprise risks.

MR. LEARMONTH: Right.

MR. THOMPSON: But this – now, I'll also add that even despite the existence of this, there is still an obligation to share –

MR. LEARMONTH: Yes.

MR. THOMPSON: – important risks, and as I noted earlier, the description of that risk is something that I would've wanted to see disclosed to us.

MR. LEARMONTH: Okay, thank you.

Now, Mr. Thompson, I don't know if you're – did you see or hear of the evidence presented by Mr. Kast, Mr. Wilson and Mr. Snyder of MHI?

MR. THOMPSON: I did, but not in its entirety.

MR. LEARMONTH: No. But their position – and I think I referred to this earlier – was that they weren't required to review the risk

exposure; they were just required to look at the cost estimate as it was used as an input into the CPW analysis.

MR. THOMPSON: Right.

MR. LEARMONTH: And they drew some distinction on that phrase as opposed to doing a full-blown review of the cost estimates.

MR. THOMPSON: Okay.

MR. LEARMONTH: So in their result they didn't do a risk analysis or examined Nalcor's risk analysis; although, I do concede that if you read the report it sort of suggests that they –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – may have or said they did. But anyway, they didn't do it. We have that information from them.

Now, on that basis it looks like Nalcor's cost estimate –

THE COMMISSIONER: Excuse me, just for a moment.

MS. E. BEST: I'd just like to state for the record that I disagree with that characterization.

THE COMMISSIONER: Sorry, I didn't hear you.

MS. E. BEST: Oh, sorry.

I'd just like to state for the record that I disagree with that characterization of MHI's evidence, on that point.

THE COMMISSIONER: On the point about it not referring to the risk?

MS. E. BEST: Not to referring to the risk and the cost estimates and the reasonableness of those also not including any risk.

MR. LEARMONTH: No.

THE COMMISSIONER: Okay.

MR. LEARMONTH: Well, what I said is that they didn't – what I meant to say, if I didn't say

it, is that they – because that the risk assessment or analysis was removed from the scope of work, that they weren't obliged by their contract to do that work. And then I said that I do concede that, notwithstanding that, there is language in their report that would suggest that their saying that they did do that, and I think that's a fair characterization.

THE COMMISSIONER: Correct. Okay, so go ahead.

MR. LEARMONTH: Yeah.

THE COMMISSIONER: And I take your point, Ms. Best.

MR. LEARMONTH: Okay, so on that basis then there was never any review done of Nalcor's DG3 cost estimate. Does that give you concern? At the time of sanction.

MR. THOMPSON: Well, at the time, reading the MHI report, we would've felt that there was a review done of the cost estimate, and from the words that were presented in the report, we would've felt that there was an endorsement of the procedures or the reasonableness of the – at least the techniques and processes that Nalcor would've used to arrive at the cost estimate for that stage of engineering.

So we would've been satisfied that the review had been done. That's, I guess, the best I can say in response to that.

MR. LEARMONTH: Yeah, but we know it wasn't done.

MR. THOMPSON: Okay, so taking what you say to be the case – you know it wasn't done – then that would be a concern if it wasn't done, yes.

MR. LEARMONTH: Yeah – okay, because then the cost – in that event, the cost estimate of Nalcor at 6.2 would be the cost estimate that was used without an analysis of that cost estimate, is that right?

MR. THOMPSON: Yeah, certainly it would be a concern that the independent review – if it wasn't done, it wasn't done, and that would be a concern. We – yeah, the review of the base

estimate itself existed, I presume, as the – with Nalcor’s, you know, statements to us that it was a good estimate, we assume that it had been reviewed as well to give that independent assurance. But if it wasn’t, that’s a concern.

MR. LEARMONTH: Yeah. And throughout, did not – isn’t it true that Nalcor assured government that the cost estimates that they prepared and shared with government were conservative estimates?

MR. THOMPSON: The way that I recall it is that as the amount of engineering gets higher, the confidence we can have in the cost estimates gets greater, and therefore, the amount of contingency that’s necessary within the cost estimate will get lower.

And so as we were advancing, indeed, we – they were making statements to us that we should have more and more confidence in that estimate as we move along and that the consultants who they engaged to provide input to that would give them reassurance as well on that point.

MR. LEARMONTH: Mm-hmm.

Now, I asked you earlier – early today about the – your review on whether government provided sufficient oversight to Nalcor, and that was up ’til the time of the signing of the term sheet.

I wanna ask you the same question: Looking back, do you believe that the Government of Newfoundland provided reasonable and adequate oversight over Nalcor’s Muskrat Falls Project?

MR. THOMPSON: So we’re talking here about the DG3 stage?

MR. LEARMONTH: I’m talking about from between the time the term sheet was signed and the time the project was sanctioned.

MR. THOMPSON: Right.

MR. LEARMONTH: Whether the level or degree of oversight provided by government was, you know, reasonable, sufficient –

MR. THOMPSON: Yeah.

MR. LEARMONTH: – adequate –

MR. THOMPSON: Yes.

MR. LEARMONTH: – and so on.

MR. THOMPSON: I do believe it was reasonable and adequate. The – and I’ll just cover a few layers of that.

We had received, of course, the DG2 review from the PUB, from MHI, which, you know, had – we hadn’t really reviewed that in detail, but that was there. The MHI report was – gave rise to, you know, some – a – what we regard as a satisfactory examination, and as did the PUB report itself, with the exception that they didn’t draw a conclusion. And we understand the reasons for that.

The – also, there continued to be many meetings, throughout this period, directly with Nalcor officials, senior officials, mainly. We didn’t, of course, go and meet with engineering – the engineering team. But we were briefed regularly on the – Nalcor’s perception of risk issues that needed to be managed and the – and we were made aware of other inputs from consultants that they were engaging along the way.

Then we had the MHI DG3 review, which, again, added to our sense that the work that was being done was a good calibre work, sound and reasonable. And then we had these additional reports that were commissioned by the government to look at other options that had been set aside.

So yes, we felt that we were doing a credible job in providing independent oversight to the company and – or to the – on the project at that time.

MR. LEARMONTH: Yeah.

Well, you relied on Nalcor, and I suggest that based on the information that we discussed about the Grant Thornton report, you must feel letdown by Nalcor. Is that correct?

MR. THOMPSON: Well, I feel it’s something that we definitely should’ve seen, and I don’t have an explanation why it wasn’t presented to

us. So I'm really looking forward to hearing that explanation.

But, yes, I feel letdown at – certainly today.

MR. LEARMONTH: Yeah.

And I suggest to you that while government's, you know, view of Nalcor and that was, you know, honest –

MR. THOMPSON: Yes.

MR. LEARMONTH: – I'm not suggesting there was some –

MR. THOMPSON: No.

MR. LEARMONTH: – something nefarious or anything like that.

MR. THOMPSON: That's right.

MR. LEARMONTH: But I do suggest – and I want your comment – that I do suggest that the Government of Newfoundland was naive in the way they treated Nalcor; in the reliance that they put on Nalcor and just blindly accepting their facts on cost estimates and other matters. I suggest that there was a strong element of naïveté in the government – on the government in the way they handled this.

Can I have your response to that?

MR. THOMPSON: I disagree, for all of the – for the reason that of all the layers of oversight and activity, which I've already described. And I'll add the, you know, the point that new members of the provincial government team were added from time to time and needed to come up to speed on the project. And one example, in particular, would be Minister Jerome Kennedy, and the stage at which he came in, he wasn't as well informed about the project as he became. And I do recall him being – you know, needing to see and understand and grapple with all of the complexity.

MR. LEARMONTH: Mmm.

MR. THOMPSON: And so he set about doing that – so he had separate meetings with Nalcor, briefings, drilling into issues as best he might as

the minister, and then commissioned some of these – it was his effort, in a large part, or I should say, the Department of Natural Resources, to commission some of these extra studies. And I don't think that – I mean, that is an example of the general point I'm making. I don't think we can describe Minister Kennedy's efforts as naive in accepting Nalcor's data or opinions without scrutiny.

And so he was part of the team, that is the government team, that did these – that perceived the – I don't want to put words in his mouth for sure – but perceived the layers of interaction, dialogue and independent review as satisfactory, such that the government actually felt confidence in putting this to the public at that time.

MR. LEARMONTH: Yeah. But you didn't have all the information because Nalcor didn't give it to you.

MR. THOMPSON: So I'm not sure how that –

MR. LEARMONTH: Do you see the problem with that?

MR. THOMPSON: I'm not sure how that defines naive.

MR. LEARMONTH: Oversight?

MR. THOMPSON: I'm saying that we felt that we did a good job and we certainly weren't naive, you've – and that's what the – that's the word I'm contesting.

MR. LEARMONTH: Okay. Do you think you were a little bit too believing in Nalcor?

MR. THOMPSON: No, I think that if these issues are shown to have been – and to a large extent they are, because we didn't receive them; then these are things that should've been put in front of us. And I'm disappointed that they weren't.

But I don't – you know, you'll have to find out from other witnesses why that was the case and then draw judgment about whether that constituted too much – whether we were naive or otherwise. I'll leave that to others to judge. But I don't think so based on my recollection

and reconstruction of all the things that occurred at that time that that would be fair.

MR. LEARMONTH: So looking back on your role –

MR. THOMPSON: Yes.

MR. LEARMONTH: – you wouldn't have done anything different in terms of oversight of Nalcor?

MR. THOMPSON: I think that what we did was –

MR. LEARMONTH: No, just can you answer that? Yes or no?

MR. THOMPSON: I wouldn't – I'll answer that yes, because my fuller answer would've been I don't think we should've done anything different based on what we knew at the time.

MR. LEARMONTH: Okay.

Thank you very much, Mr. Thompson.

MR. THOMPSON: Thank you.

THE COMMISSIONER: Okay.

Government of Newfoundland and Labrador?

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: Nalcor Energy?

MR. SIMMONS: Thank you, Commissioner.

And good afternoon, Mr. Thompson. Dan Simmons for – counsel for Nalcor Energy.

Can I ask you first some questions about the relationship that you've described between officials and personnel in the government department that you were involved in – in Natural Resources, and then you were clerk of council – and corresponding personnel at Nalcor? Because we often talk of government as if it's a personified single unit –

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: – and Nalcor as if it's a personified single unit, but really it's individual people –

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: – who communicate with each other.

So first, while you were deputy minister of Natural Resources – which I understand you were up until late 2010, so you were there for the DG2 decision?

MR. THOMPSON: Right. For two years.

MR. SIMMONS: For two years.

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: During that time period, were there any prescribed protocols as to who from government could contact who at Nalcor, vice versa, or any particular channels that were in place, or was it a more free-flowing kind of communication between the two organizations?

MR. THOMPSON: So there was nothing prescribed. I think that people generally observed layers of – or making contact with people that had, sort of, the same status – CEO to deputy minister or minister and so forth down through the chain. But that was frequently – there's lots of communication through – direct contacts between layers of management as well. And so I wouldn't exactly call it fluid and free flowing, but nonetheless, there was no prescription as to how it should occur.

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: And so, frequently, I may contact somebody at the VP or a different level in Nalcor and, similarly, Charles might contact Ed Martin directly. So there was – you know, we didn't observe the hierarchy strictly.

MR. SIMMONS: Right, okay.

So from your seat, as the deputy minister, you would feel free to be able to contact Mr. Martin directly.

MR. THOMPSON: Yes.

MR. SIMMONS: Or any of the vice-presidents –

MR. THOMPSON: Yes.

MR. SIMMONS: – who you corresponded with.

MR. THOMPSON: Yes.

MR. SIMMONS: Even people below the vice-president level or would you (inaudible)?

MR. THOMPSON: Yeah, generally didn't.

MR. SIMMONS: Why not?

MR. THOMPSON: Generally wanted to make sure that my communication was going to the CEO or one of the vice-presidents and then they could communicate it to others. But I felt that it was open to me should I wish to do it.

MR. SIMMONS: Mm-hmm. Okay.

Do you ever feel any kind of reluctance to make any of those comments – contacts? Or if you needed information, you felt you could pick up the phone and you could send an email and look for it.

MR. THOMPSON: Absolutely, yes.

Mm-hmm.

MR. SIMMONS: Okay.

Now, at – when you were deputy minister, Mr. Bown was – and I apologize if I haven't got this straight – an assistant or an associate deputy minister?

MR. THOMPSON: He was an assistant deputy minister when I went to the department.

MR. SIMMONS: Yes.

MR. THOMPSON: And I think by the – yeah, by the – somewhere around the middle of my period there he was promoted to associate deputy minister.

MR. SIMMONS: Okay, so the structure was – would there be only one associate deputy minister?

MR. THOMPSON: Correct. Yes.

MR. SIMMONS: And then there would be multiple assistant deputy –

MR. THOMPSON: Right.

MR. SIMMONS: – ministers for different areas –

MR. THOMPSON: Yes.

MR. SIMMONS: – of responsibility in the department.

MR. THOMPSON: Yes.

MR. SIMMONS: So there – okay, all right.

But you say that even though he was in that position lower than you, your understanding was he would have the ability to contact Mr. Martin –

MR. THOMPSON: Yes.

MR. SIMMONS: – or other people within the Nalcor –

MR. THOMPSON: Yes.

MR. SIMMONS: – organization.

MR. THOMPSON: Uh-huh.

MR. SIMMONS: And from what you know of being there, that happened frequently, I think. Mr. Bown had frequent and direct contact.

MR. THOMPSON: It would be a regular thing. If he – if Charles had said to me I was talking to Ed, I wouldn't think anything of that.

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: It was a piece of normal business.

MR. SIMMONS: Right.

What about others within the Department of Natural Resources? Were you aware that there were other direct contacts that people would make to get information or consult or ...?

MR. THOMPSON: The – most of the communication was probably done with – between Charles and myself and others, but there would've been other contacts, for example, when it came to industrial benefits, our Royalties and Benefits officials would be in contact, I'm sure with Nalcor.

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: Our director responsible for transparency and accountability would've been in contact with their counterparts.

MR. SIMMONS: Right.

MR. THOMPSON: Our director of communications would've been in contact with her counterparts and on and so on.

MR. SIMMONS: So let me ask you personally then, when you were deputy minister, for comment on whether you ever encountered any difficulties, either contacting the people you wanted to contact personally, or getting the information you were looking for, or any resistance or reluctance to helping you in your inquiries.

MR. THOMPSON: No, no resistance or reluctance. There were certainly times when maybe a request was hard to fulfill by a certain deadline.

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: Or maybe there might be a question, is this – is all of that necessary, can I deliver maybe a part of it because it's readily available – those kinds of conversations.

MR. SIMMONS: Right.

MR. THOMPSON: But no resistance.

MR. SIMMONS: So there would be logistical impediments sometimes to providing information.

MR. THOMPSON: Correct.

MR. SIMMONS: And I'll suggest maybe even commercial sensitivity, things that would have to be overcome or worked around from time to time.

MR. THOMPSON: Oh, no question about that. Yeah.

MR. SIMMONS: Yeah.

And did Mr. Bown ever report up to you having any difficulties getting the access to the information that he wanted to get?

MR. THOMPSON: Nothing that I can recall.

MR. SIMMONS: No, right. And I presume that if others within Natural Resources were encountering problems, their reports would find their way up through, and if they weren't resolved at a lower level they'd eventually reach your office.

MR. THOMPSON: As it did in October of 2010 –

MR. SIMMONS: Yes.

MR. THOMPSON: – when – and we've examined that earlier today – when there was some initial difficulty obtaining information on the –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – DG2 analysis. But that was quickly resolved by elevating the discussion and then all the information was available.

MR. SIMMONS: Okay. Good.

Now, then, you moved to clerk of the Executive Council which was late 2010?

MR. THOMPSON: Correct.

MR. SIMMONS: And you were there 'til when in 2013?

MR. THOMPSON: September – or August-September of 2013.

MR. SIMMONS: So you were there for the DG3 decision and for sanction of the project.

MR. THOMPSON: Right.

MR. SIMMONS: Yeah.

So as clerk – so a similar set of questions. When you were clerk of Council what kind of contact or ability did you have to contact people directly in the Nalcor organization?

MR. THOMPSON: Well, really there was no limitation on the contact, should I wish to have it. My contact was regular but less frequent than when I was in Natural Resources.

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: And perhaps more generally I would have had contact with Ed Martin rather –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – and for sure, from time to time, with the vice-presidents, but less frequently than with Natural Resources.

MR. SIMMONS: Right. If you had a concern that there was any information you thought you needed that wasn't forthcoming, would you have had any reluctance to pick up the telephone or send an email message and look for it from Nalcor?

MR. THOMPSON: No, none at all.

MR. SIMMONS: So while you were clerk then, from late 2010 up until August or September of 2013, did you encounter any difficulties or can you recall there being any reluctance in – on the part of Nalcor in providing you with information that you were looking for from them?

MR. THOMPSON: No. No.

MR. SIMMONS: So anything that you wanted and asked for personally, one way or another, that those requests were satisfied.

MR. THOMPSON: Yes, I don't recall any reluctance and ... yeah, exactly.

MR. SIMMONS: Okay.

So in that time period then, from late 2010 to 2013, did any complaints find their way up to you? Aside from the PUB matter and satisfying their request from the PUB, any problems find their way up to you, either from Natural Resources or within Cabinet Secretariat or communications people or anyone else in government, saying we're looking for some information from Nalcor and we can't get it?

MR. THOMPSON: No.

MR. SIMMONS: Okay.

Now, while you were deputy minister of Natural Resources and when you were clerk of the Executive Council, I presume there would've been multiple presentations that you would've attended with other people from government where people from Nalcor were present and some of these decks were presented and people spoke to them.

MR. THOMPSON: Mm-hmm.

Yes.

MR. SIMMONS: Generally, in those sorts of forums, was that a forum where someone from Nalcor would present information, there's no opportunity for questions, just take it or leave it, or would it be more open opportunity generally to ask questions and get elaboration and to follow up on things that are presented?

MR. THOMPSON: No, always the opportunity to ask questions and to follow up.

MR. SIMMONS: Mm-hmm.

Okay.

In the lead up to the sanction decision, the several months – the six months prior to that – do you recall attending any presentations by people from Nalcor dealing with issues that were going to have to be considered in order to decide whether to sanction the decision?

MR. THOMPSON: I don't recall the specific occasions, but the emails that had been disclosed to the Commission contain references to – and

notes of meetings contain references to such occasions.

MR. SIMMONS: Right. Can you provide any comment on what you – how open you recall the communication being in those sessions in 2012 leading up to sanction?

MR. THOMPSON: Yeah, no change from what I've described.

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: It's always an opportunity for – when Nalcor was presenting, to, you know, interject or, you know, join the presentation and to have a discussion with more Q & A after the presentation.

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: So we never found any difficulty with that.

MR. SIMMONS: Okay.

Now, you'd spoken earlier about some, you know, reliance placed on some of the reports and evaluations that Nalcor had done –

MR. THOMPSON: Yeah.

MR. SIMMONS: – such as the work of IPA and the Independent Project Review reports. And you were aware as well that Westney was involved in doing risk work, and you would've understood it was risk assessment work they were doing –

MR. THOMPSON: Yes.

MR. SIMMONS: – was it?

MR. THOMPSON: Yes.

MR. SIMMONS: So –

MR. THOMPSON: Well –

MR. SIMMONS: I'm sorry.

MR. THOMPSON: – I'm sure that we were but I can't recall. I remember – what I do remember is Westney as one of the consultants.

MR. SIMMONS: I see.

MR. THOMPSON: Whether I sorted out exactly all the terms of reference for each –

MR. SIMMONS: Yes.

MR. THOMPSON: – I don't recall that.

MR. SIMMONS: Right, okay.

So would you agree with me, though, that through that time period, you and people in Natural Resources when you were there and those you reported to in Cabinet, you know, while you were clerk of Council, you would have been generally aware of the type of work that those consultants were doing for Nalcor because of what was reported up by Nalcor.

MR. THOMPSON: Correct.

MR. SIMMONS: Yes, okay.

Do you recall you or anyone ever asking for the reports that those consultants had done?

MR. THOMPSON: No, I don't recall.

MR. SIMMONS: So then, of course, if no one ever asked for them, there was never a refusal on the part of Nalcor to provide that information.

MR. THOMPSON: Yeah, so I don't recall asking for them. I do recall that we were briefed on them. Or we knew the names of the companies and we knew that results were being generated –

MR. SIMMONS: Yeah.

MR. THOMPSON: – and so – and some of those results were being discussed with us in meetings. The – certainly, I'd likely recall if we had asked for the report and were refused.

MR. SIMMONS: Yes.

MR. THOMPSON: That's likely something to recall. But if it happened, I don't recall it and so I don't think it had happened.

MR. SIMMONS: Okay.

Well, that would have been my next question. Had you been aware that – had you asked for it or you'd been aware that someone else in government had asked for one of these reports and it not been provided to you, is that something that would stand out in your memory?

MR. THOMPSON: It would stand out from the point of view that it would be such a break with the kind of communication –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – relationship that we had –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – that it would have needed to have been addressed.

MR. SIMMONS: Mm-hmm.

Okay, good.

Now, you've told us also that there was discussion about risks, project risks –

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: – that were potentially faced by the Lower Churchill Project. Can you tell me a little more about the context in which those discussions took place? Would that have been one on one between you and someone at Nalcor? Would it have been a part of these presentations?

MR. THOMPSON: Both.

MR. SIMMONS: What do you –?

MR. THOMPSON: Both.

MR. SIMMONS: You recall in both those?

MR. THOMPSON: Yeah.

MR. SIMMONS: Yeah.

MR. THOMPSON: And it would have occurred in presentations to – you know, including the premier or just directly –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – to ministers or just individual meetings that we may have had with Nalcor officials. And so I'm constructing kind of a composite memory here, not a specific one, that the topics that – where risk existed, whether it be labour availability or construction supervision or something about the HVDC and switching to – or a certain kind of technology –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – used on that. And I may be now – no, these are the kinds of issues that would have been raised.

MR. SIMMONS: Yes.

MR. THOMPSON: We would not have gone into a depth of analysis to weigh these issues. You know, so we wouldn't have spent a half hour, maybe not even 15 minutes on a –

MR. SIMMONS: Right.

MR. THOMPSON: – specific risk, but we would have been made aware, we would have been told about, in general, how Nalcor was trying to mitigate that risk. So we were aware of its existence and that it was something that was being chased down by Nalcor.

MR. SIMMONS: So were you satisfied with the amount of information that was being provided such that you didn't feel it necessary to dig any deeper or ask any more questions?

MR. THOMPSON: We were satisfied that these risks were being identified and attended to.

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: Yes.

MR. SIMMONS: Right.

And I think you said as well that you understood that while there would be a cost estimate for a project like this, there was never any guarantee that the project would actually be completed for the estimated cost.

MR. THOMPSON: True.

MR. SIMMONS: Okay. Yeah.

And was that a well-accepted proposition when you were –

MR. THOMPSON: It was a –

MR. SIMMONS: – in government?

MR. THOMPSON: – proposition we didn't want to see occur.

MR. SIMMONS: Correct.

MR. THOMPSON: It would have been a – we would have regularly, you know, tested, if you like, the resolve –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – of Nalcor or the level of confidence that they had of living within the capital cost estimate, asked them their level of confidence in it, expressed to them how important it would be. I can kind of hear Premier Dunderdale ringing in my ear on this –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – point, you know, about the level of, you know, seriousness of bringing the project in within the capital cost –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – estimate.

So it was – that was the nature of the –

MR. SIMMONS: Right.

MR. THOMPSON: – discussion.

MR. SIMMONS: So the type of risks that you describe that you did talk about a few minutes ago – things like labour availability and the choice of the HVDC line – did you understand that those were the sorts of things that could potentially contribute to cost overruns on the project or not?

MR. THOMPSON: Well, in my general recollection –

MR. SIMMONS: Mmm.

MR. THOMPSON: – is that we knew that these were risk issues –

MR. SIMMONS: Yes.

MR. THOMPSON: – but the – as I said earlier, the – what I'm carrying, and have been always carrying in my head, is that these risk issues were accounted for in the contingency that was allowed and which would get narrower over time. We didn't conceive of these risk issues as being accounted for separate from the capital cost estimate.

MR. SIMMONS: Okay.

Now, I've got a few questions for you about the Public Utilities Board process. You've described some of your involvement in that and I think you've told us that the – from your perspective, government personnel, I guess in Natural Resources, continued to work as part of a co-operative, almost integrated team with people from Nalcor –

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: – on project issues –

MR. THOMPSON: Yes.

MR. SIMMONS: – during that time?

MR. THOMPSON: Yes.

MR. SIMMONS: Okay.

How closely involved – or where – were the people in Natural Resources? But, of course, you weren't there at that time, were you?

MR. THOMPSON: No.

MR. SIMMONS: No, you were the clerk of the Council.

MR. THOMPSON: Right.

MR. SIMMONS: From what you know as clerk of the Council, how closely involved were people in government with the preparation of

information that Nalcor was providing to PUB?
Or do you know?

MR. THOMPSON: My sense of it was that they weren't involved in the preparation of initial drafts –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – but that there was a sharing of drafts. And I can't say whether it was on all documents or just some –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – but that there was sharing of these drafts before they would go to the PUB for feedback, for kind of the wisdom of the team rather than the – solely the – solely Nalcor. And I may have even been included – I think I was – in some of that on occasion.

MR. SIMMONS: Right.

So regardless of whether people in government contributed to the drafting of the material that went from Nalcor to the PUB, people in government were aware of the content of the material that Nalcor was submitting to the PUB by the sound of it.

MR. THOMPSON: So, yes –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – but that doesn't necessarily mean every single piece of content. I wouldn't go that far.

MR. SIMMONS: Right.

MR. THOMPSON: And I really don't know what percentage of the content we would have been aware of before it was tabled.

MR. SIMMONS: Right. Okay.

Mr. Commissioner, I'm going to be a few more minutes. I'm about to start going to some documents. I noticed it's about 20 after 4 so that might be a convenient time to break and pick it up in the morning, if that's satisfactory.

THE COMMISSIONER: Okay, so I want to make sure now – try to get a little bit of the lay of the land because you know it being the schedule.

So we have a full day for tomorrow. I'm just trying to get a feel from everybody. Do we think we're going to be able to do this tomorrow because, otherwise, I'd continue on until 5, but – shaking heads, yes?

Okay, so if this is a good place for you –

MR. SIMMONS: It is. Yeah.

THE COMMISSIONER: – then we'll break here now and we'll come back tomorrow morning. Should we –

MR. COFFEY: Commissioner, Commissioner, just in case, maybe 9 o'clock tomorrow?

THE COMMISSIONER: I was just going to make the suggestion. Great minds think alike.

So should we come back at 9 o'clock tomorrow morning then and start?

MR. SIMMONS: Yeah. That's satisfactory, Commissioner, yes.

THE COMMISSIONER: Okay, let's start at 9 tomorrow morning then.

So if you can come back at that time, Sir.

MR. THOMPSON: Thank you.

Sure.

THE COMMISSIONER: Thank you.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.