



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 38

Commissioner: Honourable Justice Richard LeBlanc

Thursday

15 November 2018

CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open. The Honourable Justice Richard LeBlanc presiding as Commissioner.

Please be seated.

THE COMMISSIONER: Good morning.

Mr. Learmonth.

MR. LEARMONTH: Could I just enter two new exhibits, please?

THE COMMISSIONER: Just give me one second.

Okay, go ahead.

MR. LEARMONTH: They are P-01187 and P-01188.

THE COMMISSIONER: All right, those are entered then as numbered.

MR. LEARMONTH: Thank you.

THE COMMISSIONER: Sir, you remain affirmed at this time, and, Mr. Simmons, when you're ready.

MR. SIMMONS: Thank you, Commissioner.

Good morning, Mr. Thompson.

MR. THOMPSON: Good morning.

MR. SIMMONS: When we left off yesterday, I'd asked you a few questions about the Public Utilities Board process. We'd worked around to the review that the Public Utilities Board was doing. I want to pick up there now with Exhibit P-00077, please. It's not in your binder.

MR. THOMPSON: Okay.

MR. SIMMONS: Yeah. And this is the November 2011 Nalcor submission to the Public Utilities Board; should appear on your screen there shortly.

MR. THOMPSON: Okay.

MR. SIMMONS: Do you recall having an opportunity to review a draft or drafts of this submission before it was submitted by Nalcor to the PUB?

MR. THOMPSON: I don't recall it clearly, but I think that I did. I think I saw somewhere in the material that it had been sent, either to myself or Charles, for a review, but I don't have a clear recollection.

MR. SIMMONS: Right. So whether it was your office or Natural Resources, there would have been an opportunity to review this before it was finalized and submitted by –

MR. THOMPSON: I think so, yes.

MR. SIMMONS: – Nalcor to the PUB. Yeah.

MR. THOMPSON: I think so.

MR. SIMMONS: And what would have been the purpose of that opportunity being given either to Cabinet Secretariat or Natural Resources?

MR. THOMPSON: Well, as I mentioned yesterday, that on at least some of the material that was put before the PUB, Nalcor asked us to review it, have a look at it, determine if we had any comment to add to make sure that, I guess as a quality check, quality review and make sure that we were saying things that we both understood to be accurate and reflected the intentions and the purpose behind the project in general.

MR. SIMMONS: And taking that opportunity to do that kind of review, of course, would have informed government of what the content of the submissions were going to be –

MR. THOMPSON: Sure, absolutely.

MR. SIMMONS: – that Nalcor was going to submit to the Public Utilities Board. And if there were any concerns that anyone in government had about the, either the accuracy or the appropriateness of those submissions, would there be feedback back to Nalcor about that?

MR. THOMPSON: Well, if such concerns arose, we would provide feedback, yes.

MR. SIMMONS: Yes, okay. All right.

Let's go to page 167, please. There's actually two volumes to the submission and page 167, if we scroll down a little, is the start of Volume 2, and in Volume 2 I'm going to take you to page 231, first, please. Scroll down to the bottom half of the page. You can stop there.

There's a section here, section 4.7 called Risk Management, and it continues for several pages and we'll go over two pages to page 233, please. Scroll down to the bottom half of the page. Okay, you can stop there.

Now, there's a heading there that says: Tactical Risks, and line 5 above that reads: "Tactical risks and strategic risks are differentiated below." So, whoever in government was reviewing this prior to submission, I'm going to suggest, would have been aware that Nalcor was informing the Public Utilities Board that risks were put in these two categories: tactical and strategic.

MR. THOMPSON: Correct.

MR. SIMMONS: Yeah, so that wouldn't have been a surprise too, if we think of government in the big sense, that wouldn't have been a surprise to government that this was the approach that was being taken.

MR. THOMPSON: That the information was supplied to us and it was – we had possession of it. I agree with you.

MR. SIMMONS: Sure, okay.

Now tactical risks are described there. They're broken down into Definition Risks and Performance Risks. Do you recall around the time of, either Decision Gate 2 or the Public Utilities Board review, being aware of this concept of the difference between a tactical risk and a strategic risk?

MR. THOMPSON: No.

MR. SIMMONS: You don't?

MR. THOMPSON: No.

MR. SIMMONS: Okay.

So tactical risks are described there, and if we go to the top of the next page, page 234, you'll see that strategic risks are described.

MR. THOMPSON: Right.

MR. SIMMONS: The first bullet is: Background (external) Risks, and it says: "These are typically associated with changes in: scope, market conditions, location factors, commercial or partner requirements and behaviours."

The second bullet says: Organization or internal risks. "These risks are typically associated with an asymmetry between size, complexity, and difficulty of projects and the organization's ability to deliver."

Now, yesterday, you did tell us that you had a conception of there being a difference between risks that were addressed by a contingency within the capital cost budget –

MR. THOMPSON: Correct.

MR. SIMMONS: – and things that would have to be paid out of contingent equity that the province was assuming responsibility for. Do I have that right?

MR. THOMPSON: Not exactly.

MR. SIMMONS: Okay.

MR. THOMPSON: We certainly understood that there were risks that were being managed –

MR. SIMMONS: Yes.

MR. THOMPSON: – and that contingency was set aside for those risks and –

MR. SIMMONS: Yes.

MR. THOMPSON: – that there's always the possibility that –

MR. SIMMONS: Yes.

MR. THOMPSON: – upon execution that there could be cost overruns and that the government would have to stand behind that, so it was in that latter context, a more general context –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – that we understood, as owners, the province would have to stand behind and contribute contingent equity.

In addition to that, there were many discussions of risk.

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: I can't recall that those discussions on the topics of those risks, whether it was explicitly pointed out to us –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – that they were being dealt with in the contingency estimate or were regarded as outside, but I can tell you that I certainly – or I believed that they were contained within the contingency estimate.

MR. SIMMONS: Okay, all right.

So in this submission then, there is a distinction here between tactical and strategic risk.

MR. THOMPSON: Yes.

MR. SIMMONS: If we go to page 247, please?

So this is a section of the submission in volume 2 headed: Component B. And I think what this is referring to is there were several components that made up the capital cost estimate. Component B here is described as the estimate contingency.

And if you – we scroll down to the bottom of the page, please? Actually, let's go up to line 9 if we could? Okay.

So line 9 there begins saying: "For the Project a probabilistic estimating basis has been used in line with the AACE International Recommended Practice ... with the assistance of Nalcor's risk management consultant, Westney Consulting Group."

So you were aware, I heard you say, that Westney was involved as a consultant for the project.

MR. THOMPSON: Correct.

MR. SIMMONS: And here this is being publicly disclosed –

MR. THOMPSON: Right.

MR. SIMMONS: – in this submission by Nalcor.

And then it says: "The general approach is depicted in Figure 22."

So can you scroll down to show us all of Figure 22, please? And it's described as: Estimate Contingency Setting.

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: And it shows a flow chart with different blocks there. And if you look in the middle, there's a section, a block that says Tactical Risk Assessment which flows into Tactical Risk which flows into Estimate Contingency.

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: So do you see anything there saying that the strategic risk is being included in the estimate contingency?

MR. THOMPSON: No, I don't.

MR. SIMMONS: Okay.

So looking at this presentation of the way the capital cost estimate was being constructed –

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: – and the contingency was being constructed, would you agree with me that this says that the tactical risk is being included, but the strategic is not?

MR. THOMPSON: I would agree with you that there's a – there are two categories above: one tactical, one strategic and that strategic is not presented in this chart.

MR. SIMMONS: Okay, the next page, page 248, please.

So the – starting at the top of this page there's a section that says basis of estimate. And it says, again: "In June 2010 Westney were engaged to support Nalcor in completing a tactical risk assessment"

If we go down to line 5, halfway through, it says: "The results of this initial risk analysis resulted in a recommendation to use 16 percent of the base estimate as an appropriate P50 Estimate Contingency for the Muskrat Falls and Labrador-Island Transmission Link projects" and I'll stop there.

MR. THOMPSON: Mmm.

MR. SIMMONS: Again, this is public disclosure of Westney's involvement in the risk assessment process. Do you agree with that?

MR. THOMPSON: Correct.

MR. SIMMONS: Can you recall, from any knowledge you might have had of this submission, of being aware that there was a public statement here that P50 was being used for the estimate contingency in that work?

MR. THOMPSON: So I have a general recollection, yes, that we were briefed by Nalcor on more than one occasion that there was a contingency estimate. The 16 per cent sort of makes sense to me in my recollection, so that – and that amount would decline over time as engineering estimates – more engineering was done.

I wouldn't – or on P50, the use of that probability level, we may have been briefed on that. And this would show, of course, that we had a document that had it in it. So that's not unfamiliar to me but I don't recall detailed discussions of alternative probability levels and which one is best. That is not something I do recall.

So I wouldn't be at all surprised that we were briefed on that this – or it was told to us that there was a P50 estimate.

MR. SIMMONS: And, as well, the document you are looking at is a public document. It was made public at the time it was filed –

MR. THOMPSON: Correct.

MR. SIMMONS: – on the PUB website, so it was open for anyone, including –

MR. THOMPSON: Absolutely, absolutely.

MR. SIMMONS: – anyone in government to read this and see what was being used.

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: Okay.

And just to round out the estimate percentage, if you go down to line 12 there's a reference there to some reasons why the estimate – the contingency was reduced from – initially from 16 per cent to 15 per cent.

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: And I think we've heard earlier that that was a number that you understood was used at DG2.

MR. THOMPSON: Correct.

MR. SIMMONS: Right, okay.

The next page, page 249, please.

So at the top of this page there's a section dealing with strategic risk. And if we look at – I'm just going to pick up at line 5 there in the sentence that began: These efforts.

"These efforts have resulted in positive progress that have caused Nalcor to decide that a reserve amount above and beyond the 15 percent tactical contingency amount was not required at this time but will be considered further as part of the DG3 decision."

Now, this is a statement made under the heading Strategic Risk Management and Mitigation Progress at Decision Gate 2. So do you read that as a public statement of this document by Nalcor that the strategic risks identified earlier in this document are not included in the capital cost estimate?

MR. THOMPSON: Yes, I do.

MR. SIMMONS: Okay.

And in – at line 1 in the title there, there's a footnote up there which says 23. Can we scroll down to that footnote, please, at the bottom of the page?

And the reference there is to CE-52. Would you know what that is a reference to?

MR. THOMPSON: No.

MR. SIMMONS: Okay.

Let's go to Exhibit P-01050, please. And, again, this one isn't in your book, Mr. Thompson.

Okay, so this is Exhibit P-01050 and the heading on the top right says: Muskrat Falls Project – CE-52 Rev. 1 (Public). So I'm going to suggest that this is a response to a request for information that was submitted by Nalcor to the Public Utilities Board as part of the review process.

MR. THOMPSON: Right.

MR. SIMMONS: And you can find it on their website today. This one is a public version; there's also a confidential version of this document.

So scroll down just a little, please? Stop there. So under the heading, Background, I'm just going to pick up in the second paragraph there: "As part of its project work leading to DG2, Nalcor undertook an independent project review by external parties with expertise in mega project management and risk assessment.

"This work was completed during the summer of 2010, allowing time in the project development for any recommendations to be considered and acted upon prior to a decision at DG2. One of the reviews was a Risk Assessment undertaken by the Lower Churchill Project team in conjunction with Westney Consultants."

So does that sound familiar to you as your understanding of the process that Nalcor had engaged in –

MR. THOMPSON: Yes –

MR. SIMMONS: – up to DG2?

MR. THOMPSON: Yes, it does. And so we were briefed on the process of bringing in these external consultants to review Nalcor processes, to raise the level of assurance at procedures being used and the quality of the estimates were good. So this is a good description of what we would've been briefed on at the time.

MR. SIMMONS: All right.

MR. THOMPSON: Or the story I'm still, you know, carrying in my head from that time.

MR. SIMMONS: Right.

And, again, there's a reference there to Westney Consultants involved –

MR. THOMPSON: Correct.

MR. SIMMONS: – in that process. You see that.

MR. THOMPSON: Yes.

MR. SIMMONS: Scroll down to the –

MR. THOMPSON: I'm – sorry, I'm not suggesting I read this text and that's my recollection, but more from the general briefings –

MR. SIMMONS: Yes.

MR. THOMPSON: – that we received.

MR. SIMMONS: Okay.

Can we see the bottom part of the page, please?

So, again, here it says Tactical Risks and there's definitions, and Strategic Risks and these – there are definitions.

MR. THOMPSON: Right.

MR. SIMMONS: I'm going to suggest these are the same ones that we looked at in Nalcor's submission, yeah, from this document.

Now, go to page 2, please.

So at the top of page 2 begins: “When considering the level of strategic risk reserve for the Project, progress made on mitigating and/or eliminating the strategic risk exposures was substantial.” And it goes on to describe some things that were done to mitigate or eliminate strategic risk exposure.

Now, scroll down, please, further. Stop there. I’m gonna read you the paragraph beginning “With the extent” there.

“With the extent of the mitigation activities undertaken and in progress, ...” the “probabilistic cost reductions in the order of - \$400 million being available and a P50 strategic exposure of \$290 million (in the range of \$187 million (P25) to \$413 million (P75)), Nalcor executive determined that it was not appropriate to create a positive or negative strategic reserve amount at DG2.”

So would you agree with me again that this is another public statement that a strategic reserve amount is not being included in the capital cost estimate that was being considered at DG2?

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: Yes?

MR. THOMPSON: Yes.

MR. SIMMONS: And further, that there’s an explanation here of what the assessed range of strategic risk had been, being in the range of 187 million at P25 to 413 million at P75.

MR. THOMPSON: Yes.

MR. SIMMONS: Yeah. So that’s publicly disclosed and would have been available to anyone in government to read in this document and see.

MR. THOMPSON: Correct.

MR. SIMMONS: Okay. So there is a confidential version of the same exhibit at P-01003 please.

CLERK: 1003?

MR. SIMMONS: Yeah, P-01003. I think that’s the number. Yes. Okay.

So this document at the upper right says: “Muskrat Falls Project – CE-52.” It doesn’t say public; it’s got confidential across it. And the first two pages – I’m going to suggest to you the first two pages are the same as the one we just read. (Inaudible).

There is an appendix B to this document. It starts at page 9, please. Scroll down to the next page, start of page 10.

So this is an appendix. It’s got Westney Consulting Group Inc. at the bottom. It says: “Risk Analysis Results for the Option of Muskrat Falls First plus the Island Link June-July 2010.”

Can you tell me whether the confidential version of this exhibit was disclosed to anyone in government? Or –

MR. THOMPSON: I don’t recall.

MR. SIMMONS: – do you know?

MR. THOMPSON: I don’t recall seeing this.

MR. SIMMONS: Okay.

MR. THOMPSON: And I don’t know whether it was disclosed to anyone else.

MR. SIMMONS: Okay. In this report, if you go to page 38, please.

So this is a page from Westney’s work that’s headed Strategic-Risk Assessment. On the right there’s a block that’s headed Assessment Results; Strategic Risk Exposure, and it states: “The Strategic Risk Exposure is the range of the costs that might be incurred that currently would not be incorporated into the estimate.”

And if we scroll down a little, please. Stop there.

It gives ranges in dollar amounts for both P25 and P75 either for unmitigated risk and for mitigated risk. And the mitigated risk number is 187 million to 413, you’ll see are the same ones that were in the public exhibit that we looked at a moment ago. See that?

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: Okay.

MR. THOMPSON: Yes.

MR. SIMMONS: So this is support for that statement that was made publicly.

So you don't know whether or not this confidential version of the exhibit was disclosed to and known to anyone within government?

MR. THOMPSON: No, and I'm also confused by the numbers. Do you mind if I tell you about my confusion?

MR. SIMMONS: Yes, please, yeah.

MR. THOMPSON: Seeing that you've shown it to me.

MR. SIMMONS: Yes, sure.

MR. THOMPSON: Is that there's a gap between the unmitigated and the mitigated risk exposure that wasn't in the previous document –

MR. SIMMONS: Yes.

MR. THOMPSON: – that you showed me, so I – that confuses me, but I'll just note that to you in passing.

MR. SIMMONS: All right.

Now, having seen the statements that were made in the public exhibit, if there was any concern about the basis for those statements or any desire to see the basis or to further analyze or double-check them, there would have been an opportunity for anyone in government who was aware of that to ask for this report if they didn't have it.

MR. THOMPSON: That's an accurate statement.

MR. SIMMONS: Yes.

And you don't know whether any – well, you don't know whether government received it, or you don't know whether any request was made?

MR. THOMPSON: That's correct.

MR. SIMMONS: Okay. All right.

So let's take a look at the actual report, then, issued by the Public Utilities Board, which is at P-00052, please. Scroll down a little. Can you stop there?

So this report, the date is there March 30, 2012, and you're familiar with the report we know. It was probably looked at fairly carefully in your office, I would suggest.

MR. THOMPSON: Certainly more carefully in the Department of Natural Resources –

MR. SIMMONS: Yes.

MR. THOMPSON: – but I also read it, yes.

MR. SIMMONS: Yes, okay. And let's go to page 60. Scroll down to the bottom. Okay, stop there, please.

So we're picking up here at a section called Capital Cost Estimating Methodology and the very last couple of lines read: "A contingency amount of 15% was selected by Nalcor following a risk analysis performed for Decision Gate 2 which included a review by the Westney Consulting Group" – that's the same information we saw in Nalcor's submissions.

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: If we go over to the top of the next page, please.

"Westney recommended a contingency of 16% but Nalcor decided that 15% would be appropriate as, in its view, there had been progression of the project definition since Westney's recommendation." Same as we saw.

Then it says: "Westney had also recommended the creation of a strategic reserve for the Decision Gate 2 cost estimate. The amount of this reserve was set out in a confidential exhibit reviewed by the Board and MHI."

So from this statement, we know that both the board and MHI were aware of the quantification

of the estimate of strategic risk. Do you agree with me?

MR. THOMPSON: Yes.

MR. SIMMONS: And that's publicly stated here in this decision.

"This recommendation was not accepted by Nalcor as in its view there had been a reduction in the key risks identified by Westney since its recommendation as a result of factors such as the commitment by the Federal Government for a loan guarantee and the selection of a conventional technology for the HVdc transmission line."

So at this point, the Public Utilities Board is publicly recognizing that those – that there's no strategic reserve created in order to address those strategic risks that had been quantified by Westney.

MR. THOMPSON: Correct.

MR. SIMMONS: So was that a fact known to government at that time?

MR. THOMPSON: Well, it was known to government in the sense that it was in this report.

MR. SIMMONS: Yes, okay. Which is a public report that government commented on quite extensively afterwards.

MR. THOMPSON: Yes.

MR. SIMMONS: So I think we have to say –

MR. THOMPSON: Yes.

MR. SIMMONS: – that it was a fact known by government.

MR. THOMPSON: Yes.

MR. SIMMONS: Okay.

So I think – can we conclude, then, that as of March 2012 when this report was issued, that it was not only publicly known, but it should've been known to government that Nalcor was approaching the risk issue by categorizing risks

as both tactical and strategic. Would you agree with that?

MR. THOMPSON: As presented in these reports, that's accurate.

MR. SIMMONS: Mm-hmm. Well, if people in government weren't aware of it, they certainly had full opportunity to be aware of the fact –

MR. THOMPSON: Okay. And –

MR. SIMMONS: – (inaudible).

MR. THOMPSON: – (inaudible) reports. Absolutely.

MR. SIMMONS: Right, and that the capital cost estimate did include an allowance for tactical risk, which at that point was identified as 15 per cent.

MR. THOMPSON: Correct.

MR. SIMMONS: A fact known to government. And that strategic risks had been quantified by Westney for Nalcor, with numbers put on them.

MR. THOMPSON: Yes.

MR. SIMMONS: Yes, okay.

And that Westney's quantification of that strategic risk was not included in the capital cost estimate that was being considered at DG2.

MR. THOMPSON: Correct.

MR. SIMMONS: Okay.

So, after that point, after March 30, 2012, are you aware of any kind of statement or representation from Nalcor that it had changed its approach to strategic risk and whether quantification of strategic risk was now going to be included in the capital cost estimate?

MR. THOMPSON: So, before I get to that particular question, the – we would have expected as well from Nalcor, in the course of meetings, dialogue back-and-forth, presentations, that if this was a key decision variable that needed the attention of the shareholder, that it would have been brought up

in briefings for discussion to make sure it was a clear – that we understood the definitions, the distinctions, and the – and absorbed the impact of the considerations that were underway.

So I testified already that I don't recall those kinds of direct decision or deliberations on the difference between strategic risk and tactical risk and – in those meetings. I certainly don't recall them and I don't carry that as a recollection from that period of time. So, these – this information is clearly in these reports and –

MR. SIMMONS: Hmm.

MR. THOMPSON: – and we're full agreement on that.

But in terms of the decision variables, the key matters that the CEO was bringing to the government, this didn't – the discussion of risk factors was evident and is in my recollection for sure, in these discussions. But not the formatting and kind of data that we've talked about in these reports.

So, now I'm saying that as a preface, I've lost the core of your question. So perhaps you could repeat it.

MR. SIMMONS: Right. Let me just take it in pieces then.

MR. THOMPSON: Okay.

MR. SIMMONS: You're not saying that government did not know what Nalcor's approach to strategic risk was as of March 30, 2012? It's publicly stated in these documents –

MR. THOMPSON: And I accept that, completely.

MR. SIMMONS: – it's publicly stated in these documents.

MR. THOMPSON: Absolutely.

MR. SIMMONS: Right.

MR. THOMPSON: And we had the opportunity –

MR. SIMMONS: So –

MR. THOMPSON: – to read these –

MR. SIMMONS: Yeah.

MR. THOMPSON: – and there's no question that government officials would have read these reports.

MR. SIMMONS: So my question is: Did anyone ever tell you or –

MR. THOMPSON: Right.

MR. SIMMONS: – are you aware of it being reported to anyone else –

MR. THOMPSON: Right.

MR. SIMMONS: – that that approach changed?

MR. THOMPSON: No, I have no recollection that anyone ever told us –

MR. SIMMONS: Right.

MR. THOMPSON: – that that approach changed, no.

MR. SIMMONS: Right.

Were you ever – do you recall ever being told at any point that, oh, we are now going to start including strategic risk in the capital cost estimate?

MR. THOMPSON: No.

MR. SIMMONS: So by the fall of 2012 – this was the spring of 2012, March of 2012. By the fall of 2012, when work is being done working up towards the sanction decision, that – what we refer to as Decision Gate 3 –

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: – did you have any reason to think that Nalcor's approach to how strategic risk was being treated was any different than what had been publicly communicated earlier?

MR. THOMPSON: As a category of analysis or a decision variable, that, in my recollection – that that wasn't an object of discussion –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – at this particular point.

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: So further to that, there was nothing communicated to us about – as I recall, about the handling of strategic risk.

MR. SIMMONS: Okay, all right.

Can we go just briefly to the Grant Thornton report at P-00014, please? And that's tab 111 in your binder. We're just going to go to page 9 which is one of the ones Mr. Learmonth referred you to.

So at page 9 here, you were referred to I think it's line 4. And there's a sentence in lines 4 and 5 that says: "Nalcor excluded approximately \$500 million of strategic risk exposure from the capital cost estimate for the CPW calculation."

And the word that Grant Thornton uses is "excluded." It's actually not removed. They don't say Nalcor removed 500 million of strategic risk from the capital cost estimate, they say they excluded it.

MR. THOMPSON: Yes.

MR. SIMMONS: Isn't that completely consistent with the approach that we saw described in the submissions to the PUB and in the PUB report that we just referred to?

MR. THOMPSON: I think that it can be read consistently with that, yes.

MR. SIMMONS: Okay.

So had you been – when you received this report, had you turned your mind back to what had been publicly disclosed and reported up to March of 2012 in the PUB proceedings, would you have been surprised to see that statement there that this was the same approach that was being taken at DG3 as had been taken at DG2?

MR. THOMPSON: My only surprise would've been that the – as I mentioned a moment ago that as a key decision variable, as a key object of being briefed –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – on the risks associated with the project, we hadn't talked about it and been briefed about it in these terms. So when I read this, I – it was a new – it seemed like new information to me.

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: But I agree with your premise that if we then looked at these documents and pieced that together, that there would be some consistency in that.

MR. SIMMONS: Okay.

Okay, only a couple of other things I want to ask you about – just a question about the contingent equity. In your examination, yesterday, I think there'd been some discussion around there being a \$300- to \$600-million dollar figure at one point that was in play for contingent – for evaluation of contingent equity.

And you'd also described how eventually the government did – although you described it as being government would have been on the hook for the cost of completing the project. In any event, there was a formalization of that and an acknowledgement that it would have to put in the contingent equity.

MR. THOMPSON: Correct.

MR. SIMMONS: I've got that right so far.

MR. THOMPSON: Yes.

MR. SIMMONS: Okay.

So did government ever actually do anything to quantify its exposure to payment of contingent equity independently?

MR. THOMPSON: Other than being – of course, being aware of the risk analysis and being briefed on that, that Nalcor had commissioned, and then being aware –

MR. SIMMONS: Mmm.

MR. THOMPSON: – of the assessments that were being done in the independent reviews of

the quality of the estimating and risk assessment and being satisfied that we were – that these independent reviewers were having a look at that. We did not do, as far as I can recall, any additional estimation of what risks may exist above the estimate because, as I said, we believe that the risks were being quantified within the contingency estimate.

And that if the project construction costs exceeded that during construction that we would have to, of course, stand behind that prospect. But that the risks were being fully captured within to the best of the ability of the team preparing the estimates that were being captured within the capital cost estimate.

MR. SIMMONS: Okay.

So I'm going to describe what government did to assess its exposure to contingent equity as being a qualitative assessment, that it looked at the factors – the factors, but not a quantitative assessment which would have attempted to put a number on it.

MR. THOMPSON: Well, to the extent that the independent reviewers, if you're saying they did a qualitative assessment, then I'd agree with you. And then the discussion of risk factors that we may have had in meetings and presentations directly with Nalcor, to the extent that they were non-quantified in terms of what they would result in, they were qualitative, yes.

MR. SIMMONS: Right. Okay.

And I'd also like, then, a different topic, to refer to Exhibit P-01069, please, which is at tab 35 of your binder. You'd given some estimate yesterday about the Department of Natural Resources doing its own internal evaluation work of the conclusion that the Interconnected Option was the preferable, least-cost option –

MR. THOMPSON: Correct.

MR. SIMMONS: – over the Isolated Island Option?

And if we go down to page 3, please, attached to this, this is part of the presentation that was I believe you said, prepared within Department of Natural Resources.

MR. THOMPSON: That's correct.

MR. SIMMONS: Right?

Now, this is the second slide and there are a number of bullets that list various topics. Are these all the issues or topics that were internally reviewed within Natural Resources that related to this decision to prefer Interconnected over Isolated?

MR. THOMPSON: As I understand it, these were all the topics that our – the two economists that we had working on it reviewed, yes.

MR. SIMMONS: Right. So that included things like the electricity forecast, the oil price outlook, fuel costs –

MR. THOMPSON: Right.

MR. SIMMONS: – generation expansion scenarios, economic assumptions: a range of things.

And if we – I got a question for you about page 4, the next page. This is the one that deals with electricity forecast.

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: Scroll down a little bit so we can see the bottom of the page. And there's a graph there on the left headed: Provincial Load Forecast. It has two lines on it, a blue one and a red one. There's a key on the bottom of the graph. The blue one is labelled as NLH –

MR. THOMPSON: Mm-hmm.

MR. SIMMONS: – and the red is labelled as DNR. And then if you look to the right, the bottom bullet on the page says: "DNR does not have separate forecast for Island Interconnected. DNR & NLH forecasts for total NL are consistent."

So what can you tell me about work that the Department of Natural Resources did to prepare its own load forecasts for the Island –

MR. THOMPSON: Yeah, I can't –

MR. SIMMONS: – or the province?

MR. THOMPSON: I can tell you that it was one of the functions that they carried out –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – but I can't tell you about the methodology.

MR. SIMMONS: Mm-hmm.

Okay, so who did that function within Natural Resources? Who was responsible for that?

MR. THOMPSON: I'm not actually sure which individuals.

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: But we did have as a – these economists: Gerard Collins, Paul Parsons. There was Wayne Andrews, there was also an electricity policy division, so which officials actually carried out the analysis, I can't tell you for sure.

MR. SIMMONS: Can you tell me what the purpose was of the Department of Natural Resources having its own capability to conduct electricity load forecasts?

MR. THOMPSON: To have, I guess, a separate intelligence –

MR. SIMMONS: Mm-hmm.

MR. THOMPSON: – base on which to assess, not only matters that are coming before the PUB or put forward by Hydro, but generally as part of provincial government economic forecasting.

MR. SIMMONS: Mm-hmm.

And do you have any recollection of this communication – of this conclusion being communicated to you, that the DNR and NLH forecasts, at least for the total province were, in fact, consistent at this time?

MR. THOMPSON: Well, I have a recollection of this entire presentation –

MR. SIMMONS: Yes.

MR. THOMPSON: – being made available to me, but I have no recollection focussing in on this particular bullet.

MR. SIMMONS: Yeah.

When we look at the graph there, the two lines are very close, which would suggest that they were very consistent in their forecasting –

MR. THOMPSON: Looks to be, yes.

MR. SIMMONS: – for the load. Okay. Good.

Okay. Thank you, Mr. Thompson, I don't have any other questions.

MR. THOMPSON: Thank you.

THE COMMISSIONER: Okay.

Concerned Citizens Coalition?

MR. BUDDEN: Good morning, Mr. Thompson.

MR. THOMPSON: Good morning.

MR. BUDDEN: As I believe you know, my name is Geoff Budden, I'm the lawyer for the Concerned Citizens Coalition and as you may know as well the coalition consists of a number of individuals who, for some years now, have been critics of the Muskrat Falls Project.

MR. THOMPSON: Yes.

MR. BUDDEN: I believe you probably know some of them.

MR. THOMPSON: Yes.

MR. BUDDEN: You would know Mr. David Vardy?

MR. THOMPSON: Yes.

MR. BUDDEN: How do you know Mr. Vardy?

MR. THOMPSON: Well, I knew him when he was CEO of the Marine Institute as well as deputy minister of Fisheries and then in other capacities since.

MR. BUDDEN: Okay. And you would know Mr. Ron Penney as well?

MR. THOMPSON: Yes.

MR. BUDDEN: Okay. How do you know Mr. Penney as well?

MR. THOMPSON: Well, I first met him when he was deputy minister of Justice but then perhaps knew him more as – when he was city manager.

MR. BUDDEN: Okay. So these are individuals who I presume, and correct me if I'm wrong, but you would've regarded them as, you know, serious people, knowledgeable about public policy and –

MR. THOMPSON: Yeah.

MR. BUDDEN: – governmental issues.

MR. THOMPSON: Yeah.

MR. BUDDEN: Okay. And people you whose opinions you would generally respect?

MR. THOMPSON: Yes.

MR. BUDDEN: Okay.

Do you recall participating on a panel with Mr. Penney? This would have been at the Harris Centre back in 2011.

MR. THOMPSON: Yes.

MR. BUDDEN: And there's, I believe, both of you and a federal official and that the topic was public service of the future.

MR. THOMPSON: I remember the session; I didn't remember the topic.

MR. BUDDEN: Okay.

MR. THOMPSON: Yeah.

MR. BUDDEN: But does that sound about right to you?

MR. THOMPSON: Oh, yes, yes.

MR. BUDDEN: Okay. And do you recall any remarks, speaking very strongly in favour of the Muskrat Falls development?

MR. THOMPSON: No, I don't recall but if that was topical, no doubt I would've been laying out the key factors behind government's policy, yes.

MR. BUDDEN: Okay, what – the way Mr. Penney recalls it is you spoke after him. He had made some remarks critical of the project and you in turn spoke very strongly in favour of developing Muskrat Falls.

MR. THOMPSON: Now, that you remind me, that does ring a bell, yes. And I would have done that, yes.

MR. BUDDEN: Sure. Were you speaking in your personal capacity or as clerk of the Executive Council and were you clear at that time?

MR. THOMPSON: Was I clear?

MR. BUDDEN: Yeah, were you clear –

MR. THOMPSON: About?

MR. BUDDEN: – when you were speaking. In what capacity you were speaking.

MR. THOMPSON: Well, I was on the podium as – in my role as clerk of the Executive Council, so I would have certainly borne that in mind when I was speaking.

MR. BUDDEN: Sure.

This would've been well before sanction. This was June of 2011, I believe. And I guess I would suggest to you or I'd ask you: Was it appropriate for the clerk of the Executive Council to be arguing in favour of the Muskrat Falls development while it was still a matter of public debate in this period before sanction?

MR. THOMPSON: Well, the context in which that session occurred, as I recall, was a discussion, really, about a separate matter – about public service of the future. I didn't – I would not have expected Mr. Penney to raise the issues related to Muskrat Falls.

So when he – I’m going by your statement of that he spoke first, ‘cause I don’t recall that. If he had to have spoken first and identified certain issues to the audience, it would’ve been a fair thing for me to do, possessing information about the policy of the government, to also talk about that.

MR. BUDDEN: Okay. But you not only talked about it – as I understand from Mr. Penney – you argued in favour of proceeding with the Muskrat Falls Project.

MR. THOMPSON: Well, to talk about the position of the government would’ve been to talk about why it should proceed, because that was the position of the government. The government was in favour of it.

MR. BUDDEN: Okay.

So, even in this period, pre-sanction, you’re suggesting that that was the government policy to proceed with Muskrat Falls?

MR. THOMPSON: Well, I know what you’re saying, but, in DG2, the government had endorsed moving forward through DG2 to DG3, and in that process, we were always open to receiving analysis and evidence that might alter our conclusions. So, I was reflecting on the policy of the day, and not assuming, in any sense, that the project was inevitable, but rather, reflecting the policy of the day.

Now, of course, I don’t remember the detail of things that I may have said on that day, and if you have those details, let’s have a discussion, but that’s the context in which I would remember it.

And I try to be a careful spokesperson, even if I was reflecting why the government felt that this was a good policy for the province, I would’ve tried to reflect that, rather than to be engaged in any sort of partisan or deliberately advocacy position. It would’ve been reflecting the policy of the government.

MR. BUDDEN: However, at this very same time – I mean, within days – the government was also referring the – making a reference to the PUB, which, essentially, was asking the PUB to recommend between two options, only

one of which involved proceeding with Muskrat Falls. The other, of course, being the Isolated Island Option.

And – so, I’m rather surprised that you would refer to this as government policy to proceed with Muskrat Falls, while at the very same time, this reference is being made. So, what do we make of that reference?

MR. THOMPSON: I think you’d probably agree that, if we looked at the documents around the time, the government had accepted Nalcor’s recommendation that this was the preferred option, and that therefore it should proceed through DG2 and for more engineering to be done, more appropriate review to be done. So this was the government policy.

But I was still very interested in having the two options tested, and that was the – essentially the reference to the PUB is that, even though we may prefer one, please examine these to make sure that the foundation in which this preference has been articulated holds up.

MR. BUDDEN: And you see no contradiction between the clerk of the Executive Council, in one venue, arguing in favour of project, and in another venue, a quasi-judicial board making determination between the two options.

MR. THOMPSON: The – no, and as I said, I would have been reflecting the policy of the provincial government at the time.

MR. BUDDEN: Okay.

Okay, well, that leads us, perhaps, to the next matter I’d like to discuss. Could you please call up Exhibit 01113, Madam Clerk?

This is one – a number of these exhibits are exhibits that would have been put to you yesterday that I –

MR. THOMPSON: Okay.

MR. BUDDEN: – just wish to revisit.

You would recall this, no doubt. It’s an email that you sent to Premier Dunderdale back in the spring of 2012. I’m interested in the second point or perhaps the final one: “won’t be

deterred on MF by detractors pursuing narrow and petty agendas.”

Who were you referring to here, Mr. Thompson?

MR. THOMPSON: As I said yesterday, I’m not sure particularly who I was referring to. The word detractor meaning someone who was opposed to the pursuit of the project, so it perhaps could have included a large number of people. Mr. Penney and Mr. Vardy, others, were certainly detractors, but – so they could have been. But I actually don’t have a recollection of who I was referring to.

MR. BUDDEN: Okay. You’re not, here, I guess, criticizing their arguments, I would suggest; you’re criticizing their agendas. What did you mean by “narrow and petty agendas”?

MR. THOMPSON: So the context of this email overall, as I mentioned yesterday, was the premier was going to be meeting with the Nalcor board. She – I was, as I often would, assist her, and assist ministers in the past, focus their thoughts for an event. And so this would have reflected the – I’m sure it would have reflected the tone of the time when – in terms of the way that the government was dealing with the overall Muskrat Falls debate.

And you know, it’s not – those are not words that I would have used in normal context. And it’s unfortunate that I have to focus on these here today, because they don’t reflect the kind of way that I would regard anyone, you know, in terms of a criticism about them individually or their agendas. But –

MR. BUDDEN: Mr. Thompson –

MR. THOMPSON: Yes.

MR. BUDDEN: – you’re here defending words that you never expected to have to publicly defend. So I guess I’m asking you what did you mean by “narrow and petty agendas”?

MR. THOMPSON: Well, I don’t recall exactly what I meant at the time, but all I can think about is that the – some of the detractors – some of the opponents of the project were, of course, influenced considerably by the perception of massive risk, that it was a project that had a huge

upfront capital cost, whereas the alternative had less upfront capital cost and more reliance on –

MR. BUDDEN: And you regard –

MR. THOMPSON: – fuel.

MR. BUDDEN: – that as a narrow and petty agenda?

MR. THOMPSON: No, no, no. I’m setting a broader context.

MR. BUDDEN: Okay.

MR. THOMPSON: And so the effort to push forward because of that – I would have never regarded that as a narrow or petty issue. The perception of risk and the impact that it would have on the provincial government’s finances should something like a massive cost overrun occur is a valid and worthwhile argument to make. I wouldn’t have any problem with that at all.

And so the government, when it was analyzing the statements and the efforts by opponents of the project to understand what they were saying, I don’t think ever took issue with that perception of risk. But rather, then, it was turning to the question, what is it that they’re saying that adds up to this perception of risk? What are the components that may not have been – of the analysis of the Muskrat Falls Project – the fuel forecast, the load forecast, the other issues – what are the issues that they are talking about, and can we develop – or are there flaws in the analysis that Nalcor has done or that we have had other consultants do?

So we were – we assessed and looked into, peered into, discussed what it was that we could learn from that.

And during this process, the government and Nalcor – we didn’t identify any of those, you know, particular issues or pieces of analysis that we found that convincing in the sense that they created a gap or a hole or a significant problem in the analysis.

So that was the general way that we felt about people who were advocating against the project. Now, how that analysis, that sense of what they

were saying, turned into these two words, I can't say. It's in –

MR. BUDDEN: Well, I would like to talk about how it – that.

MR. THOMPSON: Sure.

MR. BUDDEN: Because what you said sounds very noble, but I'd suggest there's nothing particularly noble about these words.

MR. THOMPSON: No.

MR. BUDDEN: And here you are. You are clerk of the Executive Council.

MR. THOMPSON: Mm-hmm.

MR. BUDDEN: The senior person in the public service of the Province of Newfoundland with, I'd suggest, a duty to provide non-partisan advice.

MR. THOMPSON: Correct.

MR. BUDDEN: Sober, reasoned, carefully thought-out advice.

MR. THOMPSON: Yes.

MR. BUDDEN: Is this – meet that standard?

MR. THOMPSON: So I can't recall why this – why I used those words. I can't give you an explanation for it.

MR. BUDDEN: Do those words meet the standard that a clerk should be measured by?

MR. THOMPSON: I was assisting the premier at the time prepare some notes, and perhaps – in the, you know, the rush to do it – I would have used different words if I'd had more time. I can't offer you a better explanation.

MR. BUDDEN: But you would concede these words do not meet the standard one would expect of the clerk of an Executive Council advising a premier.

MR. THOMPSON: The – well, it depends upon the meaning that I had behind them. If there was an analytical basis to say that an

agenda was narrow or petty, then perhaps they would be appropriate. But I can't recall the fact base or the evidence or the issues that I was thinking about at the time. I've supplied you with what I recall of our general assessment of what – at least Mr. Vardy and Mr. Penney – might have been saying at the time. But other than that, I can't draw the two together.

MR. BUDDEN: They're irreconcilable.

MR. THOMPSON: I think that they are, yes.

MR. BUDDEN: Yeah.

MR. THOMPSON: When I reread this, I couldn't recall an explanation for saying that.

MR. BUDDEN: Sure. And I guess my final question of – “won't be deterred.” Deterred from what?

MR. THOMPSON: The – okay. That's an easier question to answer, because the – well, the government was anxious to hear about substantive issues that may have been gaps or holes or things that have not been properly analyzed. If those gaps or holes or substantive points were not there, if they were absent, then a – then just the tension or the pressure that may exist in a public domain would not be enough, you know, unless it was supported by good analysis to keep the government moving forward with the proper steps towards project realization.

So the board of directors, I guess – I would imagine I was thinking at the time – needed to be assured, by the government, that the government had some resolve to keep on moving along that deliberate path and wouldn't be pushed off it unless there was a substantive reason to do so. So it's in that sense that the word –

MR. BUDDEN: Okay.

MR. THOMPSON: – “deterred” would've been used.

MR. BUDDEN: You were – to step back a little bit in time, you were, I understand, from December 2008 to December 2010, basically all of – for all 2009, 2010, you're deputy minister of Natural Resources. Am I correct on that?

MR. THOMPSON: Correct.

MR. BUDDEN: Okay.

We've heard evidence from Premier Marshall – former Premier Marshall in particular, but I believe others as well – that the premier of the day – and that this wasn't just Premier Dunderdale, but it went back through Premier Williams – who of course is premier at this time – Premier Grimes, Premier Tobin – that the practice had been to keep the Lower Churchill file in their office. I believe that's the term I heard.

Does that sound familiar to you?

MR. THOMPSON: Well, I'd use a broader term, perhaps, to make sure that there's a direct window for government on the management of this project, yes.

MR. BUDDEN: Okay. What exactly do you mean by that –

MR. THOMPSON: Okay.

MR. BUDDEN: – “a direct window for government”?

MR. THOMPSON: So preceding the Williams government the – and this is the time period that I know a little bit about but I wasn't directly involved in – there was a project management office – the Lower Churchill project management office established within Hydro, but it was – it had one or maybe more appointments to it from the provincial civil service and it was regarded that the guidance for that office would come primarily from the provincial government. But that would be the – that office would steer and be mainly responsible for the strategy and the development of or – and the process that by which the Lower Churchill Project or projects might be –

MR. BUDDEN: Sure.

MR. THOMPSON: – taken forward.

And so – yeah, so there was an effort by the government, even at that day and perhaps before, to maintain that window inside Hydro, in this case on the Lower Churchill, to make sure it

was close to the government. And that would mean both the minister of Natural Resources and the premier, of course, you know, and their staffs.

MR. BUDDEN: Sure.

We've heard evidence as well that the board of directors of Nalcor and, I believe, of Hydro as well were appointed directly by the premier's office. Does that square with your experience?

MR. THOMPSON: Well, all appointments are ultimately approved by the premier and, of course, by the Cabinet.

I don't recall the process by which these names were selected and put forward. In Cabinet Secretariat we would've processed the orders that – orders-in-council that would have affirmed their appointments. But I don't recall the particular selection process.

MR. BUDDEN: And the – my understanding as well that Mr. Martin –

MR. THOMPSON: I should say, sorry, I wouldn't have been involved in the particular selection process.

MR. BUDDEN: Sure. Even when you're DM of Natural Resources?

MR. THOMPSON: Correct.

MR. BUDDEN: Correct.

And likewise, I understand – and correct me if I'm wrong – it was a little before your time, perhaps, but I suspect you would know. Our understanding is that Mr. Martin was essentially appointed – well, he was hired by the board but that the approval for that came from the premier's office.

MR. THOMPSON: Right.

MR. BUDDEN: Does that square with your experience?

MR. THOMPSON: So I was clerk of the Executive Council when he was appointed and there was a search process; I wasn't involved in it. And if I recall correctly, it's the act that

governs Newfoundland and Labrador Hydro requires an appointment by the board with approval by the Lieutenant Governor in Council and indeed the premier, of course, would pass his view on that.

MR. BUDDEN: Sure.

MR. THOMPSON: No question.

MR. BUDDEN: And our understanding as well – and again, correct me if I’m wrong – but at least my understanding is that while there would’ve been a – there would’ve been more contact between Mr. Martin and the premier, perhaps, than there would’ve been between Mr. Martin and the minister of Natural Resources?

MR. THOMPSON: You know, that may be the case and certainly the premier was involved in approving that – I would suspect the minister of Natural Resources was involved at some point as well because there was – but I just don’t know because I wasn’t involved –

MR. BUDDEN: Sure.

MR. THOMPSON: – in that final selection.

MR. BUDDEN: Sure.

If we’re thinking in terms of lines of ministerial responsibility, lines of deputy minister responsibility –

MR. THOMPSON: Yes.

MR. BUDDEN: – who would’ve been, I guess – which – who would’ve been the minister for Nalcor? Who would’ve been the minister for the Lower Churchill? (Inaudible) –

MR. THOMPSON: The minister of Natural resources.

MR. BUDDEN: Okay, even though that minister had no apparent authority over the appointment of the board, over the approval of the CEO of Nalcor –

MR. THOMPSON: Yeah, there’s –

MR. BUDDEN: – didn’t maintain responsibility for the file; that was primarily run out of the premier’s office.

MR. THOMPSON: The premier’s office, as in many priority files across government, will exercise oversight and direct involvement, and the Lower Churchill was absolutely one of those – extensive oversight and direct involvement. But the minister of Natural Resources with a legal responsibility for oversight of Nalcor was also involved.

So I know the import of your question, and there’s no question that the premier’s – premier and the premier’s office throughout this whole period had a substantive role in guiding – including the minister of Natural Resources. And that would not be unusual for other projects or other policy files that have the direct interest and priority of the premier.

MR. BUDDEN: Sure.

Where does that leave you as deputy minister in your, I guess, your – with respect to your obligations to provide oversight over this Crown corporation; of this development project? Does that limit your authority or handicap you in your attempts to exercise your oversight authority?

MR. THOMPSON: I never felt that it did. The – I was able to always carry out the dialogue with Nalcor; the feedback I was giving to Nalcor. I would – there will always be, on some files, some issues maybe the premier’s office had less interest and I’d only deal with the minister on a matter. But on a file like this one, if I had to provide advice, I’d provide that advice to the minister and then with the concurrence of the minister we would make sure that that advice also went to the premier. Because it would not make sense to take – to pursue a direction to – yeah, to pursue a new direction –

MR. BUDDEN: Mm-hmm.

MR. THOMPSON: – or give direction to Nalcor on a matter without also bringing the premier and the premier’s office into the circle. Sometimes that guidance would come directly from the premier’s office to us as well. So it operated back and forth and as a team.

But I didn't regard it as a constraint on the role of the deputy minister, no.

MR. BUDDEN: Did you at that time have concerns about this – I would call it – an unclear chain of command; that it might lead to an absence of oversight perhaps, you know, left hand not quite knowing what the right hand is doing?

MR. THOMPSON: No. No, actually we – because of the close involvement of the premier's office, there was an added responsibility on us all to have frequent, routine and fulsome communication with each other. And what I mean by that is that there would be occasions, for example, when the premier might call Ed Martin directly and have a conversation; very frequently I would hear from Ed Martin after those conversations: Talked to the premier; here's what happened. Then I certainly could inform the minister, unless she was already in the loop on that.

Similarly, when the – when Ed would seek a meeting with the premier and the minister, I would be included and sometimes we would determine that a meeting is needed with the premier and we would include Ed. Now, that may not have happened 100 per cent of the time, but that was the normal way that we would make sure that there was clear communication.

I do realize that in some previous testimony it was stated that officials in the Department of Natural Resources were told by Nalcor officials, after the fact, something that the premier may have provided direction on. So that wasn't my experience. It may have been the experience of other officials within the department, but I always felt that we had a very, you know – a well practiced routine, kind of, all in communication.

MR. BUDDEN: Okay.

But you are aware – you anticipated my next question. You're aware obviously of what Mr. Stanley and others have testified to?

MR. THOMPSON: Yes.

MR. BUDDEN: And again, while you may not personally have experienced problems with this,

can you not see how it might be problematic that the minister of Natural Resources is finding out from the head of a Crown corporation about discussions he has had with the premier?

MR. THOMPSON: I don't agree that that was what Mr. Stanley said, that the minister of Natural Resources –

MR. BUDDEN: No, I'm not saying that's what he said, but that's what you just said.

MR. THOMPSON: No – oh – if the premier had a conversation with Ed Martin, then, rapidly, the communication would fold in. So I don't see it as problematic, because if the premier wants to talk to someone, the premier can do that. Similarly, the minister would have had direct conversations with Ed Martin without the knowledge of the premier and no doubt that got filled in after as well.

So I'm trying to describe to you something a little bit more fluid than that and open and not creating problems. It's possible that – or it would have been my responsibility if there was some key project decision to ensure that my staff – so the assistant deputy ministers and others in the department who needed to know to follow through on something – were informed. If they felt they were under-informed, perhaps I would bear responsibility for that, but I don't know that that's the case.

MR. BUDDEN: Though it begs a question if you yourself are finding out about it through other people, how can you be sure you're even getting all the information?

MR. THOMPSON: Well, first of all, we had an effective way of communicating with each other, so I generally felt confident that that was the case. I never felt that there was any effort to customize the flow of information, to shade and colour information that I was receiving that maybe the premier had communicated to Ed Martin, and it was seldom that it occurred that way, but certainly, direct conversations did occur.

So number one, I would have felt confident in the kind of information I received from Ed, and secondly, I always had the opportunity to confirm that in additional meetings with the

premier's chief of staff or maybe even with the premier himself in a broader meeting depending upon the issue.

MR. BUDDEN: Okay.

Would you agree, however, that, as a model of governance, it's problematic? It may work with you guys – individuals – but as a model of governance –

MR. THOMPSON: Well, I understand your question, and – but I think that you have to allow here for the reality of the way that, you know, a team of people are attending to a project.

So we have the formal lines of authority, specified in the legislation, and we have requirements for preparing budgets and business reporting and orders-in-council, and all of those get observed appropriately, but on a day-to-day basis, when you're dealing with issues that essentially are going on within a team, the fact that you will have cross-communication like that, that, in the end, adds up to an effective and efficient team, I don't see a problem with that.

MR. BUDDEN: So long as it adds up to an effective and efficient team?

MR. THOMPSON: Absolutely, yes.

MR. BUDDEN: Yeah.

MR. THOMPSON: Yes.

MR. BUDDEN: So I guess a return to that – do you not see how it might be problematic in terms of models of governance?

MR. THOMPSON: I would see it as problematic if this crossing of communication was actually in some form a power play or had defects in it that – where people were competing with each other, but that was never the sense in this team. So I don't see that it had those flaws.

MR. BUDDEN: Okay. Even now, in hindsight, you don't see that it had flaws?

MR. THOMPSON: Well, I don't see that the model of communication that we had with each other and that team, at a senior level, had flaws. I presume what you are holding in the

background of that, and maybe you have a follow-up question, is our communication flow on strategic risk and other things into –

MR. BUDDEN: And other things.

MR. THOMPSON: – the government.

MR. BUDDEN: Yes.

MR. THOMPSON: So perhaps you could frame-up your question.

MR. BUDDEN: Okay.

Well, do you – without me getting into the specifics, 'cause we have a fair bit to cover, do you not see, now, in hindsight, in retrospect, that certain things were missed, that there were miscommunications that perhaps might not have happened in a more conventional model of governance?

MR. THOMPSON: Well – okay. So are you referring to what I referred to earlier as a lack of communication from Nalcor regarding the issue of strategic versus tactical risk and the 1 per cent probability on schedule. Is that what you're referring to?

MR. BUDDEN: Well, I'll take that for an example, yes.

MR. THOMPSON: Okay, because that's a very specific –

MR. BUDDEN: Okay. Well, speak to that.

MR. THOMPSON: Okay.

So that wasn't an issue of communication that we've been talking about so far. This – that issue is an issue of what Nalcor chose to communicate into the government, okay?

So this is something that – as I've described – I don't believe that the communication that Nalcor provided to the government included a description of the distinctions between strategic and tactical risk and how they played into the capital cost estimate in a way that we would have focused on it now the way we've come to learn it from the Grant Thornton report. So I believe that's the case, and similarly, that's the

case with the 1 per cent of probability of hitting the schedule.

MR. BUDDEN: If I may stop you there.

MR. THOMPSON: Yes.

MR. BUDDEN: Does that not perhaps illustrate the problem when you – you may assume, as deputy minister, look, the premier's office are looking closely at this. They may assume –

MR. THOMPSON: No.

MR. BUDDEN: They may assume that the – Natural Resources are looking closely at this, but in practice, nobody is looking closely at it within government.

MR. THOMPSON: Actually the opposite, because when we were – we would generally gather together the many different layers of meetings, but key meetings would involve the premier, the minister of Natural Resources, the clerk and the deputy minister and sometimes others.

And so quite often, especially the important briefings, we would receive this as a team. There were other meetings in the department, directly with the Department of Natural Resources, clearly, so the opportunity to share that information was clear, and I don't think we made those kinds of assumptions.

If there was a key decision variable that we needed to know about to factor into guidance about the project, we – that would not – we would not have assumed that someone else is knowing and taking care of it, because it – this communication was shared within the team.

MR. BUDDEN: Okay. Did your – did the Department of Natural Resources in this era, or to your knowledge, I suppose, any other branch of the public service, ever perform its own analysis with respect to, say, the availability markets for Lower Churchill power and an analysis independent of anything Nalcor made have done?

MR. THOMPSON: The – so Nalcor, of course, was engaging in market analysis and testing the market and communication with the market –

MR. BUDDEN: Yes.

MR. THOMPSON: – over several years, and that was their job to do, so we relied upon them to do – excuse me – analysis and the actual implementation of it.

I can't recall of a separate study that we would have done. It may have been, but I can't recall.

MR. BUDDEN: Okay.

Can you recall any separate studies in, perhaps, the demand load forecast for the Island? Was there any separate analysis done within your department, separate from that performed by Nalcor?

MR. THOMPSON: Yes, as Mr. Simmons was just highlighting, we did a load – we do – I think the department regularly did a load forecast, and that was displayed in the briefing deck from October of 2010.

MR. BUDDEN: Okay.

What is your understanding as to why the government chose not to pursue the private development of the Lower Churchill as was contemplated by the EOI process?

MR. THOMPSON: So let's – it takes us back to '05, '06.

MR. BUDDEN: Yes

MR. THOMPSON: And of course, there was an evaluation of the multiple proposals that –

MR. BUDDEN: There – 20-something, I believe. Yeah.

MR. THOMPSON: Yeah. And shortlisted.

And then – so I wasn't directly involved in the analysis of the alternative, the competing options, but of course, I did hear of the explanation of those options. And the explanation and the briefing to Cabinet was, in the end, as best I recall, that – the – it was a risk-reward analysis, and that the analysis of the private-sector options – or the – well, the options where Newfoundland and Labrador would not be the main proponent – were ones that lowered

the risk financially and – but also lowered the returns.

MR. BUDDEN: Okay.

MR. THOMPSON: And the option related to the provincial government being the main proponent through Hydro was one where the risk – in the presentation that was made the risks were higher, but all – there was an analysis that showed that it was – they were manageable and could be managed. And that in return for that, the reward, they return to the province. And at that time, from an export-oriented case, it was mainly a financial return to the province was much higher. So that was the essence of the analysis.

MR. BUDDEN: Okay so it was a risk-reward analysis.

MR. THOMPSON: Right.

MR. BUDDEN: Okay.

Obviously, this pre-sanction period was a period where the economic prospects of Newfoundland were better than they –

MR. THOMPSON: Yes.

MR. BUDDEN: – than they are now. However, even then, clearly, governments have limited resources, limited means of meeting its needs. And I guess what I'm wondering about here – we see these letters of commitment, these backstopping of the project, letters of guarantee to the federal government and so on – was there ever an analysis performed as to the extent to which Newfoundland had the means to backstop this project? Like, was it ever anybody said, look, we can do this to a maximum of 2 billion or 3 billion or 1 billion?

MR. THOMPSON: Mm-hmm.

MR. BUDDEN: Was any such analysis, to your knowledge, ever performed?

MR. THOMPSON: Yeah.

So just to capture our sense of it at that time, when the – when looking at the two options, because this – it's a comparison between two

options that's salient at the outset. The analysis was showing a \$2-billion CPW preference for the – in favour of the Muskrat or the Interconnected Option.

And so our starting point for reviewing this was that the alternative was actually a higher cost option, exposing ratepayers and taxpayers to – potentially taxpayers to a higher level of risk than the Infeed Option. So that was the starting point, and as you'll recall there were – and others have testified to this, there were – that's just an analysis of the least-cost option for supplying power to the ratepayers of the province.

The Infeed Option contained other layers of value which we recognized as really important policy goals. And some of them were non-monetary value, others had financial monetary value, such as the carbon issue and also the monetization of excess power which, of course, at that time was regarded as a highly valuable potential for that project. And then there were, you know, other, as I said, non-monetary; you know, the reputation of the province as a contributor to issues related to climate change. And that would have a payoff and impacts related to industrial policy.

So this was our starting point, that we had a \$2-billion CPW preference and all these other layers of value and so – and a reasonably robust economy that was generating, you know, debt reduction. So this was the environment that we were in.

And so that, combined with the fact that we felt that we were satisfied with the quality of the processes being used by Nalcor in the capital cost estimating and, ideally, building the project within that, we felt that we had an excellent foundation. This is how we felt at the time, this is an excellent foundation.

MR. BUDDEN: Sure, okay.

MR. THOMPSON: So that – all that being said, did we do an analysis of what would be the limit, the maximum amount? We did not take an analysis like that; our analysis was really which is the better option to contain the impact on ratepayers to the minimum possible impact.

MR. BUDDEN: Sure.

Okay, so it's a wide-ranging answer and an interesting one, but I take it, in answer to my specific question, perhaps in large part because you're satisfied with Nalcor's own analysis about their exposure, Newfoundland entered into and committed itself to these guarantees without ever having done an analysis as to the possible maximum exposure that we, as a province of limited means, could take on.

MR. THOMPSON: The additional point that's – and perhaps –

MR. BUDDEN: So the answer to my question perhaps.

MR. THOMPSON: Yeah, the framing of your question is not one that I entirely agree with, because the analysis that was done by Nalcor, and then confirmed by others that the Infeed project was the better project for ratepayers and it minimized the exposure to ratepayers, that was the analysis that was done and then reconfirmed by other reviewers.

So inherent in that was the analysis that we felt limited the impact on ratepayers and thus limited – and there had to be a supply decision made. So this is part of the context that we were living with at the time. We couldn't move beyond a certain date or else risks would build up for people needing a supply of energy. So we had a time-based issue as well, and one that said a supply decision needed to be made.

In making a supply decision, the analysis was focused on what is going to be least impact on ratepayers. And that would inherently mean the least risk to the provincial economy and the Treasury if one were to spin that out in the way it has been. So that was the analysis that was done. Did we do additional analysis of the kind you were asking about? No, we didn't.

MR. BUDDEN: Okay.

MR. THOMPSON: Mmm.

MR. BUDDEN: I'll focus for a moment on your role as – with respect to the Cabinet Secretariat. So, just as a preliminary question: What is the

role of the clerk of the Executive Council within the Cabinet Secretariat?

MR. THOMPSON: Well, it would be the chief administrator of the Cabinet Secretariat, and supervising all of the personnel of the Secretariat and associated entities and divisions, if that's what you mean. Or do you want me to re-describe?

MR. BUDDEN: No, that's fine.

MR. THOMPSON: Okay.

MR. BUDDEN: Yeah.

MR. THOMPSON: Okay.

MR. BUDDEN: So – and I assume part of the authority, the responsibility of Cabinet Secretariat is to act as oversight over all branches of government and Crown corporations.

MR. THOMPSON: To exercise oversight, yes.

MR. BUDDEN: Okay, sure.

Perhaps, we can call up Exhibit P-00014, Madam Clerk? And that, of course, is the Grant Thornton report which you, again, discussed yesterday. And it's page 34 that I'm interested in.

We're going to focus on one part of this report before we move on, but there is one thing here that I think is important. I'll summarize for you. I'm interested in the section that begins at Findings and Observations.

And what this is, Grant Thornton's essentially, their critique of part of the load forecast. And you're familiar with this, I assume? You would've read this?

MR. THOMPSON: I've read it, yes.

MR. BUDDEN: Sure.

And if you've read it, you would've – you would see that Nalcor, in doing its load forecast, had a choice, I suppose, between macroeconomic data from which to extrapolate its load forecast, and they chose the

macroeconomic data generated by Newfoundland's Department of Finance –

MR. THOMPSON: Right.

MR. BUDDEN: – rather than that generated by the Conference Board of Canada and one instance in Stats Can. and the other. And, perhaps, if we scroll down to the very bottom of that page you can just read, just to lead to my next question, lines 29 to 33. Perhaps you just read that for us.

MR. THOMPSON: Sure. The – starting on line 29?

MR. BUDDEN: Yes, please.

MR. THOMPSON: Okay.

“It appears that Nalcor has followed good utility practice regarding the use of macro-economic data sources; however, we note that there were alternative sources of information at that time (i.e. CBOC and Statistics Canada). We understand that the macro-economic data was provided to Nalcor by the GNL – Department of Finance. Additional sources of information (i.e. CBOC and Statistics Canada) does not appear to have been utilized.”

MR. BUDDEN: Okay, so I'll stop you there.

So we heard evidence the day before yesterday from Mr. Humphries. And he conceded, I would suggest – and if anybody disagrees, they can challenge me – that the forecast, the load forecast that was made in 2012, even by 2017 was way off. They were anticipating growth of 0.8 per cent a year. It's now projected – by 2017 it was projected through 2040 to be 0.1 per cent a year. So quite a dramatic difference.

And that in turn, I would suggest, is based in large part by the – Nalcor's choice to use Government of Newfoundland and Labrador macroeconomic data. So, I guess, I have two questions for you.

Would not a proper oversight regime have perhaps focused on whether the macroeconomic data generated by the Province of Newfoundland Department of Finance was in fact well chosen, well selected macroeconomic data properly

founded? And would it not also have found that Nalcor was making the wrong choice in choosing consistently the most optimistic macroeconomic data from which to forecast?

MR. THOMPSON: So the two points you are connecting here, the role of the Cabinet Secretary providing oversight –

MR. BUDDEN: Yes.

MR. THOMPSON: – and it's the specific choice of which forecast to use for load forecasting, are so far apart that it's impossible to really argue, I think, an oversight connection between the two. So that would be my first point.

MR. BUDDEN: Okay.

MR. THOMPSON: Yeah. The spread and the massive amount of detail that goes on in the government is too far apart.

But the second point is that – well, I can't give you any insight into the pros and cons of choosing one or the other and which one is better. It's not my expertise. And we do rely upon the Department of Finance of course for its forecasts that – to underlie the budget and the economic forecasting that the government issues at budget time.

So, clearly, we have confidence and faith in the work that the Department of Finance is doing. But I wouldn't be able to go further than that to comment on the choice of forecast that underlay this.

MR. BUDDEN: Sure. So your answer – just to sum up – is that whatever oversight role that the secretariat may have had would not have been so specific as to examine these potential errors or compounding of errors?

MR. THOMPSON: We would not have exercised that detailed level of oversight on a matter so far from the broad administration of the flow of decision making in government, which is where our focus is. And the line of accountability, of course, would more so run through the Department of Natural Resources, over then through Nalcor. So there's a lot of paths to get –

MR. BUDDEN: Sure.

MR. THOMPSON: – to go through before you get here.

MR. BUDDEN: Okay. I'd like to move on to the Public Utilities Board.

Firstly, the meeting that both you and Mr. Wells have testified about, which as I understand involved Mr. Wells, yourself and a Mr. Taylor, I believe?

MR. THOMPSON: Yes.

MR. BUDDEN: The premier – and Mr. Taylor was the premier's chief of staff?

MR. THOMPSON: Correct.

MR. BUDDEN: Okay. I guess my first question – it was explored yesterday in detail as to whether the meeting was or was not appropriate and so forth. My question is a little more specific.

What was the premier's chief of staff even doing at that meeting?

MR. THOMPSON: Well, my recollection of the meeting – and I have some notes, as I noted yesterday, that help to illustrate it – was to collect information about the PUB's perspective on why Nalcor was delayed, the impact that that was having on its schedule, and to better understand how the purposes behind some of the RFIs, and so that we could package all that together as we were preparing to, ultimately, had to make a decision on the extension of the time frame available.

And so the premier's chief shared, you know, an interest in that information, of course, and I now have to speculate in retrospect that he asked if he could attend to be equally well-informed. I can't recall the specific conversations, but that's the explanation that would make most sense to me in retrospect.

MR. BUDDEN: Sure. Can you at least say whether it would have been your request that he be there?

MR. THOMPSON: No, I can't say – I don't know if it was my request or whether he exhibited an interest in being there.

MR. BUDDEN: Okay.

Why would it be necessary to have both the clerk of the Executive Council and the chief of staff to the premier at a meeting just to determine, you know, what appeared to be patently obvious from the correspondence, Nalcor wasn't providing information to the PUB? Like, why does that require either of you there, let alone both of you?

MR. THOMPSON: So, of course, it wouldn't necessarily need both of us, but – and that's why I suspect that there was an interest in attending so he could also appraise the information that we were receiving. So that – I can't go beyond that in explaining why his attendance was there.

Now, why we would need the meeting at all, is your second question. And it's, as I explained, we needed – we felt we needed at that time, a really clear understanding of this so that we would have excellent information and insight into the pressures that the PUB were feeling. It would give us insight, as well, into – we were hearing from Nalcor, of course, about the burden of work and the – why it was taking so long to deliver it.

Well, let's hear exactly from the PUB that, yeah, on those same questions so we would have an excellent appreciation of that topic. And there's really no mystery in that; we were after information.

MR. BUDDEN: I find it mysterious, to be frank, that that level of government resources would be committed to a meeting that – to find out why the PUB was unhappy with Nalcor's production.

I would suggest to you, might there have been other purposes to both of you being there. To perhaps get some other sense of where the PUB were standing, perhaps to put some sort of pressure on Chairman Wells?

MR. THOMPSON: Absolutely not.

MR. BUDDEN: Okay, you're certain of that?

MR. THOMPSON: Absolutely not.

MR. BUDDEN: Okay. Speaking for yourself, but you have no idea why Mr. Taylor was there.

MR. THOMPSON: Well, if he had exerted any pressure of the kind that you're talking about, knowing exactly how we should behave in that circumstance, I would've cut him off, but I don't recall anything like that, and certainly there's nothing recorded in my notes like that.

MR. BUDDEN: Okay.

Perhaps we can go to Exhibit P-01100, 1-1-0-0, and this is again one that you touched on yesterday. And I'm less, I guess, interested in the exhibit but I thought we'd haul it up, too, if you needed refreshing, but in answer –

THE COMMISSIONER: Tab 71.

MR. BUDDEN: Pardon?

THE COMMISSIONER: It's tab 71.

MR. BUDDEN: I'm sorry, tab 71.

In answer to a question put to you by Mr. Learmonth, you answered something to the effect that – quote: From the outset, the government was pursuing policy objectives and commissioning the PUB to do this review, didn't detract from these objectives.

Do you recall saying that?

MR. THOMPSON: Yes, sort of, but I'm not getting the context.

MR. BUDDEN: Okay, and, to be frank, I wrote down the answer. I was more struck by – I'll just read it again and I'll tell you – I'll ask you my question. Perhaps that will give you the context you need.

You said, and again your answer was, and I didn't note the question in any detail: From the outset, the government was pursuing policy objectives and commissioning the PUB to do this review, didn't detract from these objectives.

And I'm just wondering, I guess, what were these policy objectives –

MR. THOMPSON: Sure.

MR. BUDDEN: – that sort of stood apart from commissioning the PUB?

MR. THOMPSON: Sure, the – pursuing this project had a variety of good policy outcomes across several domains. In the area of environment, it would produce a – an electrical grid that was virtually free of all greenhouse gases, a hugely important objective of the government, and that would enable us to establish a better reputation for industrial development as well, and it would avoid the position of carbon costs and painful regulation as well, which are alternatives, of course. So that was one very large policy objective of the government.

Second was the – and this is closer to the electricity component – is the enhanced reliability –

MR. BUDDEN: Mmm.

MR. THOMPSON: – of the electrical system, which when we, of course, came to regard in subsequent years as hugely important because of the consequences of what happened in 2014.

I – there was another that – well, the economic development objectives, generally, for the benefits of the – spin-off benefits of the project, but that wasn't a – that was important, if one was to – whatever project one was to pursue. And there's one I'm missing –

MR. BUDDEN: Okay.

MR. THOMPSON: – which I can't bring to mind.

MR. BUDDEN: I get the sense of it, yeah.

MR. THOMPSON: But those are the kind of – yes, yes.

MR. BUDDEN: So what I'm hearing from you is that the government was interested in knowing which was the least-cost option, but that wasn't necessarily determinative of where the government was going.

MR. THOMPSON: No, it wasn't determinative of all the policy objectives that we held. And, I think, the least-cost alternative was essential to achieve. If we didn't – if this wasn't the least-cost alternative, the government needed to rethink whether it was still the right overall policy to pursue.

And the fact that it had a substantial CPW preference, you know, blended very well into the overall set of policy objectives. But it was important to test that to make sure that that was an accurate assessment of the least-cost issue because if that failed, it was a difficult case to make just on the back of the other objectives.

MR. BUDDEN: Sure. It's going to be a hard sell if –

MR. THOMPSON: Sure

MR. BUDDEN: – it wasn't the lowest cost option.

MR. THOMPSON: Absolutely.

MR. BUDDEN: Okay.

Could we perhaps call up 01088, Madam Clerk? Again, this is a PUB-related question. And –

THE COMMISSIONER: Tab 54?

MR. BUDDEN: What this is, of course, is an email thread between yourself and Gilbert Bennett and Ed Martin and Charles Bown, all of whom are familiar – and Derrick Sturge, all of whom are familiar to us by now. And I guess what my question is, is this: Why is a party to an independent review playing such a central role in framing the terms of the review? Do you not find that odd?

MR. THOMPSON: The – well, it wasn't odd in this sense that we did want to have their opinion, their input into it, but they certainly had no role in finalizing it. It was the government's decision to come up with the final terms of reference.

Nalcor, as a key player, with a lot of expertise, you know, would – we would benefit from their wisdom and so why wouldn't we access it. So, from that point of view, it was a good thing. It also would help us make our reference precise,

but in the end it was government's final decision. So it's in that context that we did not see it as inappropriate.

MR. BUDDEN: Okay.

At several points in your evidence yesterday you referred to various cold eyes reviews that were done.

MR. THOMPSON: Yeah.

MR. BUDDEN: You mentioned Validation Estimating. You recall that?

MR. THOMPSON: Yes.

MR. BUDDEN: You mentioned, I think, Navigant as well.

MR. THOMPSON: Right.

MR. BUDDEN: And as I took your evidence, I took it you were saying, look, we didn't actually see these reports but Nalcor told us they existed, quoted from them. And from all of that, because we trusted Nalcor, we were reassured that they were on the right track when it came to their cost estimates and so forth. Is that a fair summation of your evidence?

MR. THOMPSON: I'm not sure I said the word trusted.

MR. BUDDEN: I believe you did say trust, but –

MR. THOMPSON: Okay, perhaps I did. Because it connotes a – taking something without wanting to have some additional layer of review, which of course is what we did.

But you're correct in everything else that you said, that we were briefed – and we were briefed not only about the, you know, affirmations of the quality of the work. Certainly we were briefed on that. But we were also told that these reviews are very helpful in identifying where the team or the processes or the estimates may be lacking for that stage of review, and it enables Nalcor to address those gaps –

MR. BUDDEN: Sure.

MR. THOMPSON: – early in the process. And when they have – in fact, have been briefed about certain of what those flaws were, I can't recall that.

MR. BUDDEN: Okay.

MR. THOMPSON: Mm-hmm.

MR. BUDDEN: The reason why I'm going there – I don't know if you've had the opportunity to review the evidence of Mr. Kean. Did you see his evidence?

MR. THOMPSON: Bits and pieces.

MR. BUDDEN: Sure. Okay.

You may recall that Mr. Learmonth pushed him pretty hard with respect to what Mr. Learmonth and myself would suggest was a fairly selective quoting of the validation –

MR. THOMPSON: Yes, I remember.

MR. BUDDEN: You remember that?

MR. THOMPSON: Mm-hmm.

MR. BUDDEN: And the upshot of it was that the way – I would suggest the way that Nalcor, through Mr. Kean or others, reported it to you was perhaps not the whole story of that Validation Estimating report. Do you recall that, and would you agree with that?

MR. THOMPSON: I recall the exchange they had, but I'd need to see the quote again in order to give you an opinion about it.

MR. BUDDEN: Okay, well, I'm less concerned, I suppose, with doing a second dive into that, though we will if we have to. But you do recall Mr. Learmonth saying that Nalcor were working from a draft report for Validation Estimating –

MR. THOMPSON: Yes.

MR. BUDDEN: – and that – and I assume government was never aware it was a draft report that was being quoted to you?

MR. THOMPSON: Yeah, I don't recall that. Yeah.

MR. BUDDEN: Okay, and the evidence seems to suggest that, at least in documentary terms, it was never disclosed to you. You may also recall that the report – in one instance, a very positive quote from that draft report was highlighted and provided to you folks about it being one of the best-costed –

MR. THOMPSON: Yes.

MR. BUDDEN: You remember that quote?

MR. THOMPSON: Yes.

MR. BUDDEN: But you may also remember Mr. Learmonth putting various other more cautionary notes from that Validation Estimating report to Mr. Kean and Mr. Kean acknowledging that they were never passed on to government. Do you recall that?

MR. THOMPSON: Yes, I do. I don't recall how much the cautionary notes qualified the positive note. I just don't – did it negate the – or did it – were they separate issues? I don't recall what was – or I didn't see what was presented. So that's my only caution here, is that I agree that that exchange occurred, but I don't know the extent to which it qualified or negated the affirmative or the positive quote –

MR. BUDDEN: Sure.

MR. THOMPSON: – that was put to me – which was.

MR. BUDDEN: Well, if you accept – and again, as other counsel have said, if I'm wrong, then the whole answer is meaningless. But if you accept that it was a significant discrepancy between what was reported to you and what the actual report said, it remains true that you folks never asked to see the reports.

MR. THOMPSON: It does remain true that – I can't recall ever seeing that report.

MR. BUDDEN: Okay.

And the reason you didn't ask to see them was because you trusted that Nalcor was giving you guys the straight goods?

MR. THOMPSON: We had confidence that we were being briefed accurately about the contents of these reports.

MR. BUDDEN: Okay. We're talking about billions of dollars here.

MR. THOMPSON: Correct.

MR. BUDDEN: Perhaps the most important capital project that the Government of Newfoundland has ever undertaken.

MR. THOMPSON: That's right.

MR. BUDDEN: Okay. Is it not too much to ask that government use its oversight role to actually read the reports that Nalcor is relying on?

MR. THOMPSON: No, if – it would have been a good idea to read them. We also felt that we were getting straight goods from Nalcor, and it was – there were many, many, many briefing points; this was one.

We – I mentioned to you that Nalcor did acknowledge to us that the consultants also found areas in the project team and processes that needed to be improved, so there was no hiding of that fact, but on the specific qualification of that quote, it would have been reasonable, for sure, to see the whole quote. But I still don't know from what you've said to me how much it negated the affirmation that they were telling us about.

MR. BUDDEN: And again if it turns out to be insignificant, then this is a wasted five minutes, but assuming it is significant, the failure to actually review the report, would you concede, was a significant failure of oversight?

MR. THOMPSON: No, I'd judge it more as a significant failure of whoever briefed us to put forth a positive quote without the matching negation of that or qualification of it. So if we were – if we walked away from those briefings with an over-interpretation of the assurance and the affirmation that that consultant provided, then that would be problematic, I agree.

MR. BUDDEN: Okay.

And I would suggest this to you, that obviously government at certain point, you know, one has to rely that you're getting the –

MR. THOMPSON: That's right.

MR. BUDDEN: – straight goods.

MR. THOMPSON: That's right.

MR. BUDDEN: But when you hit the billions of dollars, perhaps you've passed the point where you can rely?

MR. THOMPSON: Well, of course that wasn't the only reliance that we had, because we relied upon – the fact that those reviewers were in there, of course we accepted that. And then we also – we did the analysis within Natural Resources in October of 2010. We commissioned the PUB – well, almost without restriction – to do an analysis of that data. We knew that Navigant was doing a report at the same time and that these reviewers for Nalcor were doing further DG3 reports, and then the MHI review was also commissioned by government.

So the fact that we didn't read and didn't ask for specific reports on specific topics at a certain point in time, I agree with you in retrospect that perhaps it would have been useful information, but given the overall breadth of things that we felt were in place to give us confidence in the process and in the estimates, we felt we were in a good place.

MR. BUDDEN: Though some of those reports – for instance, the PUB one – their conclusion was hardly supportive of Nalcor, was it?

MR. THOMPSON: Well, it was – it said that it did not have enough information, present-day information, when they were looking at it in order to draw conclusions about the reference question. That was what they – that was their main point.

They also highlighted what they felt were risks and uncertainties. And their consultants concluded that the project was in good shape, with also identifying, perhaps, risk and

uncertainties. And the – so all of that together didn't add up to an incorrect decision that had been made to prefer the DG2 – the preference for the interconnected at DG2, we felt that there was still a solid basis for proceeding through DG3.

MR. BUDDEN: Sure.

But you would concede that the Joint Review Panel, as well as the PUB, were both, perhaps, red flags that Nalcor hadn't developed this to the extent that they were representing they had.

MR. THOMPSON: Based on the information we had at the time we disagreed with the panel's assessment of one point. And I would have to see the response to go into detail, but also the panel was called in for a further study and the government and Nalcor were committed to further study, and indeed that occurred. So it was in – we noted it, we examined the flag that was being raised and felt that the extra steps that were being taken were completely sufficient to address it. That's how we felt at that time.

MR. BUDDEN: Didn't you keep doing further studies until you got one that agreed with your starting point?

MR. THOMPSON: No, that would be inaccurate.

MR. BUDDEN: You think.

MR. THOMPSON: Absolutely.

MR. BUDDEN: Okay.

Let's move on. I only have two more brief areas, Mr. Commissioner. Perhaps we could call up Exhibit 00206. And just to – if you've been following the Inquiry you may have seen this article before.

MR. THOMPSON: Sorry, if I could – could I comment on that last question just briefly?

Our view of the accumulation of studies is that they kept on confirming each other and there was no – there wasn't a process of not getting the answer that we were looking for, that's inaccurate. The studies were generally confirmatory of each other.

MR. BUDDEN: Okay, well, that's a matter of fact and we'll leave it for now.

MR. THOMPSON: Sure.

MR. BUDDEN: What this is, is we understand from other witnesses, particularly Derrick Sturge who had brief notes of it, was a briefing that took place at The Rooms on or shortly after this date, April 23, 2010. And, again, I won't refer to Exhibit 00883 but from that exhibit – which would be Mr. Sturge's notes – our understanding is that that was attended by – with respect to Nalcor – Messrs. Martin, Bennett, Sturge and Kieley. And from GNL there would have been the Premier Williams, Minister Dunderdale, Gary Norris, Brian Crawley, Elizabeth Matthews, yourself and Charles Bown, so a fairly small group.

Do you have a present recollection of that meeting?

MR. THOMPSON: Yes, I have a recollection of the group gathering at The Rooms, yes.

MR. BUDDEN: Sure, okay.

What we have here is the Nalcor presentation with a number of handwritten notes on it, and as you scroll down through the document you'll see more of them. Perhaps you can bring us to page 17, Madam Clerk? This is what I'm most interested in.

Firstly, Mr. Thompson, do you recognize this writing?

MR. THOMPSON: I'm not certain but I think it's Gary Norris's writing, but I'm not certain of that.

MR. BUDDEN: Okay, but that's – it's not yours?

MR. THOMPSON: Right.

MR. BUDDEN: Okay.

I'm interested in that what we have here is – again, it's a presentation on the Lower Churchill. We have Scenario Economics – Key Assumptions and General Assumptions for all cases, and there's a – the printed text says "P75

capital cost estimates.” And then perhaps you can read what is written – handwritten to the right of that, please?

MR. THOMPSON: “more stress placed on the project costs – very conservative approach.”

MR. BUDDEN: Okay.

Do you have any recollection, any independent recollection, here today about the – any conversation around that P75 cost estimates?

MR. THOMPSON: No, I don’t.

MR. BUDDEN: Okay.

If I were to suggest to you that out of this meeting at The Rooms there was – that Nalcor went into it recommending a P75, there was suggestions of pushback at that meeting that P75 would lead to a too expensive project cost and that it should be lowered. Does that refresh your memory in any respect?

MR. THOMPSON: No.

MR. BUDDEN: Okay so you have absolutely no recollection whatsoever of a discussion around P75?

MR. THOMPSON: Of a discussion like that, I don’t have any recollection of a discussion like that.

MR. BUDDEN: Okay.

MR. THOMPSON: Was there other evidence to say that?

MR. BUDDEN: Well, we have heard from witnesses, we will hear from witnesses. I’m just putting it to you to see if that’s what you –

MR. THOMPSON: Oh, no, I have not.

MR. BUDDEN: Okay.

Perhaps we could next come to P – Exhibit P-00130 and it’s at page 159. This is the DG – I believe it’s DG3 but it’s – in any event, it’s a Nalcor document. And it’s at page 159 that I’d like to bring us to.

Yeah, it’s a DG3 project cost. And if we go here we see under Management Strategy: “Leverage Quebec versus NL debate to rally support for this venture.”

Do you see that –

MR. THOMPSON: Yes.

MR. BUDDEN: – Mr. Thompson?

Okay. And what do you make of that?

MR. THOMPSON: I need a moment to run through this document.

MR. BUDDEN: Sure.

MR. THOMPSON: Is that in my binder?

MR. BUDDEN: No, I do not –

THE COMMISSIONER: (Inaudible.)

MR. BUDDEN: – believe –

THE COMMISSIONER: You’ll have to – maybe you can just go to the beginning of the document and just go slowly through it so that Mr. Thompson could familiarize himself with it?

MR. BUDDEN: Yeah, it’s that particular page and carrying – if you go slightly –

THE COMMISSIONER: Go –

MR. BUDDEN: – down.

THE COMMISSIONER: – back to page 1.

CLERK: Page 1?

THE COMMISSIONER: Please, yeah.

MR. THOMPSON: Well – oh, sure, it’s –

MR. BUDDEN: It’s a 300-page document (inaudible).

MR. THOMPSON: Okay, so this is Nalcor Energy’s Decision Gate 3 Project Cost and Schedule Risk Analysis. Okay. Okay.

And I understand the context of the document. It's not something I would have seen at the time, but I – wondering if we could go to the – so I could understand the risk –

MR. BUDDEN: Yeah.

MR. THOMPSON: – that this is a commentary upon.

MR. BUDDEN: Well, I think it's –

MR. THOMPSON: Because at that –

MR. BUDDEN: – a bit broader than that or it's not only to focus on the risk as such. And if we go to –

MR. THOMPSON: But the – what you just pointed me to was under the column Risk Response, so I'm wondering what risk it was responding to.

THE COMMISSIONER: Okay just go to the –

MR. BUDDEN: Okay, well, I –

THE COMMISSIONER: Maybe what we should do is just go the beginning of the section. So if you could go to page 159, please?

MR. BUDDEN: Yeah.

THE COMMISSIONER: And just go back and let's see if we can find the beginning of this section?

MR. THOMPSON: Updated Key Risk Status Report from a 24-May Workshop.

MR. BUDDEN: Yes.

MR. THOMPSON: And what –

MR. BUDDEN: And if you scroll back to that section you will see that is a comment, I believe, or it leads to a comment from Ms. Dalley, Dawn Dalley.

CLERK: That's page 150 –

MS. O'BRIEN: Fifty-eight.

THE COMMISSIONER: One fifty-eight.

MR. BUDDEN: One fifty-eight it begins, is it? Yeah.

MR. THOMPSON: Okay, so Risk Lead: Dawn Dalley, Non-governmental organization and stakeholder protest. Okay, so that's the risk that they're identifying.

“As a result of a lack of proactive stakeholder engagement, stakeholders may be misinformed on matters relevant to them, leading to/resulting in adverse community relations and protest against the Project.”

Okay. And so then I think the –

MR. BUDDEN: If you scroll down a little further.

MR. THOMPSON: Okay, so this would be the – one, two, three, four – the fifth management strategy in a list of strategies to respond to that. Okay, so now I understand the context.

MR. BUDDEN: Yeah.

And we're left with that notation “Leverage Quebec versus” – Newfoundland – “debate to rally support for this venture.” This, of course, is a Nalcor – a document of a Crown corporation that obviously was a Crown corporation of the Province of Newfoundland.

MR. THOMPSON: Right.

MR. BUDDEN: Yes. I would suggest –

MR. THOMPSON: Sorry, it was – can you repeat that last point?

MR. BUDDEN: It was a Crown corporation of the Province of Newfoundland.

MR. THOMPSON: Yes, yes.

MR. BUDDEN: Yes.

So what we have here – I would suggest – is Nalcor, as part of their, I guess, promotional or PR strategy, noting: “Leverage Quebec versus” – Newfoundland – “debate to rally support for this venture.”

MR. THOMPSON: Right.

MR. BUDDEN: I would ask you whether you regard that as a proper thing for a Crown corporation to be engaging in.

MR. THOMPSON: To include that on a list of responses to that particular risk; for a Crown corporation to have it in this document – I can see how one might interpret that as going too far.

MR. BUDDEN: Okay.

MR. THOMPSON: And the, you know, and the management of intergovernmental relations is something that rests with the provincial government. It's clearly that, you know, that Nalcor would've been well acquainted with the point of view of the provincial government at that time and one of the benefits that the government saw in this project would be to – that it wouldn't have to address the situation in dealing with Hydro-Québec or the Government of Quebec.

So I can see where the knowledge content or the point of view may have come from, but I can also see your point about whether or not it's questionable for it to be in a Nalcor document.

MR. BUDDEN: It's not really proper for a Crown corporation to engage in that kind of campaign, is it?

MR. THOMPSON: Not for Nalcor to do that, no.

MR. BUDDEN: Okay.

We've also heard evidence that Nalcor sent briefing material to government – to the government for use by its MHAs; the term "hit squad" was used in parliamentary debate against Opposition Members. Do you recall that evidence?

MR. THOMPSON: No.

MR. BUDDEN: Okay.

(Inaudible) that evidence has been before – and again, would you regard that as a proper role for a Crown corporation?

MR. THOMPSON: To use a commentary like this?

MR. BUDDEN: Well, not like this but they sent other briefing notes – the purpose of which, the evidence revealed, was to provide government Members with rebuttals to use in the House of Assembly –

MR. THOMPSON: Sure. So –

MR. BUDDEN: – within the, I believe, the sanction debate.

MR. THOMPSON: Mmm.

So what happened at – in this period – and as the communications team within the government and the communications team within Nalcor were preparing for different – to manage different issues or responses, or to prepare for future-oriented communication, there would be a close level of consultation; then there would be a – okay, if we need to prepare seven things, three over here, four over there, we – to spread the workload to – and it was developed from a team point of view.

So what probably happened here was that there was a merging of identity in the preparing for some of that. We're operating from a single plan that government would've been satisfied with, but then assigning roles out. So in that context, while it certainly has that appearance of that it being unusual for Nalcor to supply information in that context, it occurred as a result of the distribution of workload that I'm describing to you.

MR. BUDDEN: Okay. It hardly is proper, though, is it?

MR. THOMPSON: Well, it's hard to characterize it as improper in the sense that we had, you know, a limited number of people working on a very aggressive timeline to get materials prepared for the House of Assembly debate, for speeches, for other purposes. And they tended to work together as a team. So it would be hard to be judging it in retrospect as improper – as a complete characterization of it.

But in the sense that it's unusual that something like that may appear under the heading with the Nalcor banner, I agree with that.

MR. BUDDEN: This was on Nalcor letterhead. Essentially it was briefing material from Nalcor, a Crown corporation –

MR. THOMPSON: Yeah.

MR. BUDDEN: – for the purpose of partisan debate in the House of Assembly.

MR. THOMPSON: But I don't think it diminishes my point that there was a distribution of workload.

MR. BUDDEN: But does it not speak to my point, which is that it is improper –

MR. THOMPSON: Again –

MR. BUDDEN: – to politicize a Crown corporation?

MR. THOMPSON: Well, I'm not sure that it politicized a Crown corporation. We were – there was a game plan to execute against – some of these were government messages that Nalcor adopted into its lexicon and was producing a document that had that in it.

MR. BUDDEN: You're the clerk – but you were the clerk of the Privy Council and you did not –

MR. THOMPSON: Executive Council.

MR. BUDDEN: – you would not – Executive Council, my mistake –

MR. THOMPSON: Mmm.

MR. BUDDEN: – you would not regard that as improper that Nalcor, on Nalcor letterhead, was sending a message to the – a hit squad of government MHAs to use in the –

MR. THOMPSON: Well, you have to –

MR. BUDDEN: – partisan debate?

MR. THOMPSON: Hit squad aside, I'm not sure what's meant by that. But the – if I'd seen it

at the time on Nalcor letterhead it probably would've been my preference not to see it there, but I can understand how it emerged in the context of tight deadlines and people working as a team.

MR. BUDDEN: Okay. Were you part of that team as well?

MR. THOMPSON: Which team?

MR. BUDDEN: The team that would inform a partisan debate in the House in that fashion.

MR. THOMPSON: There is – when a debate in the House of Assembly is going to occur there is room for preparation of materials by non-partisan public servants, and they should –

MR. BUDDEN: Yes, of course.

MR. THOMPSON: – generally be – you know, pertain to the policy matter at hand, have good quality information, an excellent fact base and it can even shape up this information in terms of what are the most important policy benefits and the arguments in favour and what are the arguments against alternatives, as long as they – consistent with the policy. We would rely upon a political communications staff to add partisan or –

MR. BUDDEN: Or perhaps if a Crown corporation –

MR. THOMPSON: – overtly political content.

MR. BUDDEN: – is at hand, that would work as well.

MR. THOMPSON: Pardon me?

MR. BUDDEN: Or perhaps if a Crown corporation is at hand, that would work as well.

MR. THOMPSON: That's a glib comment. (Inaudible.)

MR. BUDDEN: Thank you.

That's it.

THE COMMISSIONER: Okay, I think we'll take our break now.

It's five to 11 and we'll be 10 minutes and we'll come back. And next will be Edmund Martin.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Edmund Martin?

MR. SMITH: Good morning, Mr. Thompson, Harold Smith for Edmund Martin.

MR. THOMPSON: Hello.

MR. SMITH: My first question, I guess, is what's your understanding of the purpose of doing a risk assessment?

MR. THOMPSON: To determine what the likelihood is, you know, in general –

MR. SMITH: Yeah.

MR. THOMPSON: – as a theoretical concept –

MR. SMITH: Right.

MR. THOMPSON: To determine the likelihood of your goal being achieved within the parameters that you've set out to achieve it.

MR. SMITH: Now, and when we look at the risk assessment of September 15, 2012, that's P-00833, Madam Clerk.

Direct your attention to page 2. And in page 2 of this – of the risk assessment that has been placed in evidence, I draw your attention to the – I guess I'll call them flags, okay, arrows or flags. And there's a description in each section, I'm going to run – take you through some of them –

MR. THOMPSON: Sure.

MR. SMITH: – and to sort of identify what we understand or what I understand as the reason for a risk assessment; in other words, determine what the risk might be and then enter upon a process of mitigation of those risks so that they

take – you take those risks out of the project, if you can.

MR. THOMPSON: Right, right.

MR. SMITH: Okay?

MR. THOMPSON: Agreed.

MR. SMITH: Would you agree with that?

MR. THOMPSON: I would.

MR. SMITH: Yeah. And my understanding is that Mr. Martin and his team, okay, would engage in many discussions over the course of this critical period, DG2 through DG3, on risk, and discussing what they're doing to mitigate the risk.

MR. THOMPSON: Yes.

MR. SMITH: That fair?

MR. THOMPSON: Yes.

MR. SMITH: Okay.

So the situation we have with respect to the risks are, you know – and they're summarized here. And I'm going to pick up the Schedule Risk Exposure is one of the ones that you had identified, and I think Mr. Learmonth had identified: "There is potential time or schedule risk exposure beyond the plan, due to the weather and the volume of work in the powerhouse. The current schedule assumes aggressive performance in powerhouse concrete, and a few sections of the transmission line are challenging."

So he's identifying certain risks and those risks, again, show up – and if we can just scroll down to page 5 you'll see that the potential schedule risk time extension is identified as \$184 million. Right?

MR. THOMPSON: Right.

MR. SMITH: And now we go back. Do you recall if there were any discussions with the project team or Mr. Martin about the efforts they were doing to mitigate against the schedule risk that was identified by the Westney people?

MR. THOMPSON: I have a general recollection that schedule risk was a topic of conversation, and that efforts were being made to contain it within the – to the original estimate. I don't recall the details of those discussions or being briefed on what Nalcor specifically (inaudible). I just don't have that recollection.

MR. SMITH: Not that they didn't tell you, you just don't have that recollection today.

MR. THOMPSON: Correct.

MR. SMITH: Is that correct?

MR. THOMPSON: Yes, correct.

MR. SMITH: Do you recall any discussion about authorizing work at the site pre-sanction?

MR. THOMPSON: Yes.

MR. SMITH: Okay.

And do you know what the nature of some of that work was?

MR. THOMPSON: No, I don't recall.

I have reviewed documents in preparation for the Commission that had occurred, but I'd have to go back to those documents to have a look.

MR. SMITH: Okay.

I'm going to try and just ask about the establishment of camp on site.

MR. THOMPSON: Right.

MR. SMITH: Was that done prior to sanction?

MR. THOMPSON: Now, you can say it, yes, that would be one of those items.

MR. SMITH: Okay.

And what they're called – large volume excavation. Is that –?

MR. THOMPSON: I don't recall that, so no.

MR. SMITH: You don't recall it? Okay.

So there were things done to ameliorate the schedule risk that you do know that that was done.

MR. THOMPSON: Yes.

To be honest, I'm sure if it was to ameliorate schedule risk or to start on time to maintain schedule, I'm not sure how –

MR. SMITH: To maintain (inaudible).

MR. THOMPSON: – how one would describe that.

MR. SMITH: Fine. And schedule risk also involved weather windows. Did you understand that?

MR. THOMPSON: Well, clearly, I would have understood that weather was an important factor to take into account in building the schedule, but I don't recall anything beyond that.

MR. SMITH: Okay.

I'll take you to the next one. It's like a – Skilled Labour Availability Risk at page 3.

"The current estimate is based on labour rates agreed for the Hebron project. It is likely this project will compete with Western Canada for labour. The proposed wage rates are lower, but have larger union benefits than Western Canada resulting in lower take-home compensation. In addition, completion bonuses are being planned in Western Canada."

Now we turn, once again, to page 5. And Westney looked at the potential of a completion bonus at 82 million. Do you know if there was an – ever agreed completion bonus for the – in the collective agreement for the workers at Muskrat Falls?

MR. THOMPSON: I don't recall that, no.

MR. SMITH: If I suggested to you there wasn't, that wouldn't be a cost, would it?

MR. THOMPSON: If there was no completion bonus, that's true.

MR. SMITH: Now looking at Potential Skilled Labour – Wage Rate of \$70, does that reflect the Hebron project or an inflated amount over the Hebron project?

MR. THOMPSON: I don't know.

MR. SMITH: Okay.

So, again, that's a projection. And at the time of this report, the collective agreement, the special project agreement for the building of the generation station was not yet signed.

MR. THOMPSON: Right.

MR. SMITH: Okay. So once it was signed, that would identify what the wage rate would be?

MR. THOMPSON: Right.

MR. SMITH: And only where that wage rate – there's a \$70-million charge here for a wage rate over and above the Hebron, because Hebron was in the cost estimate, right?

MR. THOMPSON: Okay.

MR. SMITH: So, once again, that was a projection. And once the collective agreement was signed, that may have disappeared?

MR. THOMPSON: I understand your point.

MR. SMITH: Right.

MR. THOMPSON: Mm-hmm

MR. SMITH: So when we keep talking about \$497 million, no one really knows whether that \$497 million existed at the time of the sanction of the project, do they?

MR. THOMPSON: I – so I don't know whether it existed or not.

MR. SMITH: No.

MR. THOMPSON: I mean I didn't prepare for this detailed discussion in coming here today.

MR. SMITH: Yeah.

MR. THOMPSON: But I understand your point that if those risks were mitigated prior to sanction date, then they wouldn't exist at that sanction date. I understand.

MR. SMITH: Yeah.

MR. THOMPSON: If that's your point, then I understand it, yes.

MR. SMITH: Yeah. In other words, the estimate of 497 million not being placed in – and you testified to this on the first day, your first day – not being placed in the estimate of the project really depends on whether the (inaudible) sorry, 497 million was actually existing at the time of sanction of the project.

MR. THOMPSON: Right. So I understand your point and I agree with it that we would've expected Nalcor to brief us on the risks as they existed. And my testimony yesterday was that if it was the quantification, and it was a real risk that was needed to mitigated, then we should have known about it. If they were being mitigated it's – and it disappeared, then that's a good thing.

But I – and I don't recall the flavour of our discussions, though, in detail about which risks were mitigated and which ones weren't. I just don't have recollection of that.

MR. SMITH: And did – do you recall Mr. Martin ever guaranteeing that \$6.2 million was the final and absolute and only number that will ever be related to this project?

MR. THOMPSON: I recall him having confidence in the estimate.

MR. SMITH: Yes.

MR. THOMPSON: But, no, a guarantee, no.

MR. SMITH: No. And, in fact, I believe he mentioned on many occasions that there are risk factors that we just don't know that could happen.

MR. THOMPSON: Yes.

MR. SMITH: And can create cost overran.

MR. THOMPSON: Correct.

MR. SMITH: And the cost overran was expected to be covered as an – just that, an overran and covered in the contingent equity to be –

MR. THOMPSON: Correct.

MR. SMITH: – provided by the Province

MR. THOMPSON: Correct.

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

THE COMMISSIONER: Kathy Dunderdale?

MS. E. BEST: Good morning Mr. Thompson.

MR. THOMPSON: Hello.

MS. E. BEST: Erin Best, counsel for Ms. Dunderdale; we've met.

Yesterday, you gave some evidence about the level of oversight by government and I believe you said that it was appropriate and reasonable.

MR. THOMPSON: Right.

MS. E. BEST: So my question is: Was Premier Dunderdale, as she then was, appropriately involved and engaged in that oversight?

MR. THOMPSON: I think so. The – my recollection is that, while she would not have attended every meeting that the clerk or the deputy minister of Natural Resources may have had, or the minister for that matter, she was regularly kept informed about the progress of the project and certainly would have been involved in some of these meetings where risks were discussed. So my sense is that the premier was appropriately involved, yes.

MS. E. BEST: Thank you.

And can I take also from your evidence from earlier today that the consistent involvement of the premier and the premier's office heightened the level of oversight or put an extra level of pressure on Nalcor and kept them on their toes, I guess is a way to put it?

MR. THOMPSON: Well, that's fair. The stakes get raised the higher – and the higher hierarchy that one is doing a briefing and to have accurate and complete information, I would agree with that, yes.

MS. E. BEST: Thank you.

I just want to speak about strategic risk for a minute. So I believe your evidence yesterday has been that back in around 2010 to 2012 – so DG2 and DG3, in-between there – if Nalcor had removed \$500 million strategic risk from the capital cost estimate, I believe you said that would have caused you some concern, but that you weren't aware of any removal of the strategic risk at that time, right?

MR. THOMPSON: I wasn't aware of it as a – I wasn't carrying a present awareness of it at that time as a category, as a defined element of calculating the capital cost. That was my test. And I think you can extend that to say I wasn't aware that something had been excluded or removed, right.

MS. E. BEST: Thank you.

So now, today, we seem to have some evidence that strategic risk was not in fact removed, but that it was determined by Nalcor that strategic risk would not be included for certain reasons, including significant attention being paid to risk mitigation. So my question is: Does this help to explain why up until you read the Grant Thornton report you never felt this concern about removal of the \$500 million strategic risk figure?

MR. THOMPSON: So if it was the judgment of the CEO leadership – or, sorry, the Nalcor leadership – that it wasn't necessary to quantify this to the government and the way we see it in the Grant Thornton report, because risks were being actively mitigated and, indeed, being taken off the list, then I can see how they may have formed that judgment. So I'm so looking forward to hearing testimony on that topic. But the way you've put it to me and the way I responded, yeah, yes, I can understand that.

MS. E. BEST: Okay, thank you.

Those are my questions.

MR. THOMPSON: Thanks.

THE COMMISSIONER: All right, Former Provincial Government Officials '03-'15.

MR. T. WILLIAMS: Good morning, Mr. Thompson.

MR. THOMPSON: Hello.

MR. T. WILLIAMS: Tom Williams, I represent the group of elected former government officials from the period of 2003 to 2015 –

MR. THOMPSON: Mm-hmm.

MR. T. WILLIAMS: – with the exception of former Premier Dunderdale. I have a couple of questions and I guess they're a little scattered given the extent of your evidence over the last day, day-plus, but I want to go back to the early stage where we spoke of the EOI process.

MR. THOMPSON: Right.

MR. T. WILLIAMS: And I think we've referred that it was around 2005, 2006 if –

MR. THOMPSON: Right.

MR. T. WILLIAMS: – I'm not mistaken. Can you give me a little sense of the involvement – how involved that whole process was at that point in time and what the underlying purpose of calling the EOI was?

MR. THOMPSON: So by involved, do you mean how comprehensive was that process?

MR. T. WILLIAMS: Exactly. How involved the process was and not only the calling of the EOI, but the assessment of the – of that –

MR. THOMPSON: Okay.

MR. T. WILLIAMS: – of the submissions.

MR. THOMPSON: Okay.

So the purpose of the process was to generate as many viable and – alternatives for developing the Gull Island and Muskrat Falls as possible to really open it up beyond, let's say, current

thinking to whatever good ideas may be held within development engineering firms not just in Canada, but around the world. And then to evaluate those to see if something emerged as a – not just a viable option, but one that produced the kind of benefits for the province that the government wanted to see delivered. So that was the purpose. There was no commitment that there would definitely be one of these selected and that depended upon the analysis, of course.

So there was extensive effort that went into developing the request for expressions of interest done by a team that involved both Hydro and government employees and then, it went out into the marketplace. The first stage was 20 or so responses and then a short list was developed. And I think, if I recall accurately, at that stage these proponents were asked to develop more detailed proposals, and those proposals were evaluated.

Now, I wasn't involved in the actual evaluation of those alternatives but, as I mentioned earlier, I did see the briefing that came back from the assessment team and it was a reasonably detailed assessment of the pros and cons of the shortlisted options, but against this – let's call it the base case of developing it with Newfoundland and Labrador as the proponent. So, at that point, this alternative, this consistent alternative comparing it to all three cases, had emerged as a standard of comparison.

And so I would call the process comprehensive, you know, that it was analyzed by appropriate people, particularly within Hydro, and, again, with some participation by provincial government officials but I don't recall who. And that we felt that it was a good, reasonable process. And, of course, Cabinet was briefed and a decision was made.

MR. T. WILLIAMS: And would government have been open to consideration of proposals with respect to both the Gull Island aspect as well as the Muskrat Falls aspect of the project?

MR. THOMPSON: Well, it was perhaps more conceived at the time that Gull Island would be the first project developed, if not both simultaneously. So there was certainly no preference for a Muskrat-first option at the time.

MR. T. WILLIAMS: Okay.

And the reason I say that, and you probably led into it as a preface to the fact, that there had been some suggestions early in the Inquiry with respect to the fact that look, Muskrat Falls – from the time the Energy Plan came out and even before that, that Muskrat Falls was the preferred option. It was – the language is go it alone, no holds barred and that we were just moving ahead with this project.

Can you give me your opinion if – from your experience, you know, in the early years, let's say, you know, up to – let's even –

MR. THOMPSON: Sure.

MR. T. WILLIAMS: – you know, 2008, 2009, what your opinion is in terms of that kind of commentary?

MR. THOMPSON: That wouldn't be accurate at all. The engineering and – or the early engineering and the project development definition that was submitted for environmental assessment was for both projects and – without necessarily depicting which one would go first, but it was certainly for both. The Energy Plan, as well, reflected that.

And all of – or a significant amount of the market access work, including applications for transmission through Quebec and the discussions with potential customers in the Canadian and America markets, all held open and maybe even assumed and were preferred Gull Island going first, as it would have been on a cost-per-unit basis, the less expensive source of power and, therefore, the opportunity for the greatest return to the province, if all of those pieces could be put together. So there was never, in my recollection, a Muskrat-first preference.

MR. T. WILLIAMS: And in terms of all those pieces coming together, what is your understanding as to what – at what stages could government walk away from this project?

MR. THOMPSON: Well, really –

MR. T. WILLIAMS: You know, we had a sense that it was going ahead regardless but, I mean, we know the Decision Gate process was

in place. At what – how late in the game would government been able to pull the pin on this project if they deemed it necessary as a result of studies or considerations?

MR. THOMPSON: Right.

Well, the – certainly, at any point for sure up to DG3, and potentially afterwards as well. I wasn't involved for very much of the post-DG3 period so I can't tell you when that window would have closed.

MR. T. WILLIAMS: Yes.

MR. THOMPSON: But there was always an opportunity to go in another direction.

But I'll add one other point. You know, the government was clearly a proponent in moving forward with the project for all good reasons and needed to be aggressive in pushing that policy goal that – and for all the benefits I've described going forward, but at the same time, being cautious and critical and self-reflective about whether it was going to succeed, whether it was viable, whether – in the end as we focused on Muskrat and infeed, whether it was the least-cost for the ratepayer.

So we had these two roles or purposes to protect at all times and, indeed, we did act in both ways. So while many times we were aggressively pushing forward trying to maintain schedule, because if this was going to be a – or if this was gonna be built for all the right reasons, we needed to preserve the greatest amount of value in the project.

And that – in part, that would arise by maintaining the schedule, but we would have never have lost the focus on ensuring that it was – all the decisions were made for the right reason. And if those decisions crumbled, or the risk became too great and it was – and our assessment of that became too great, the government, certainly up until DG3, and perhaps beyond – had the ability to reverse course.

And I think the government stated that – I can hear Premier Dunderdale ringing in my ear about, you know, if we can – you know, please, you know – we need the input on gaps and flaws

that exist in the project. We need to know these things.

MR. T. WILLIAMS: From your perspective, with respect to the ongoing assessment evaluation of the project, you know, all the way through to DG3, were you satisfied that there was sufficient independence and objectiveness in terms of the assessment both by government as well as Nalcor?

'Cause we've had some, you know, chat about biases, whether it be political biases or optimism bias – things of this nature. What is your assessment in terms of the objectivity and the independence of the parties involved in moving the project along over the course of, you know, four or five years?

MR. THOMPSON: Well Nalcor's – the quality of Nalcor's work, we felt – you know, it was the core proponent. The provincial government, of course, being a partner in that. But as the core proponent, one can't say that they are independent because they were the proponent. But we always felt their work to be objective and we were satisfied with the quality of it.

The – then we were, as well, satisfied that they were bringing into play consultants to do – well, to have input. So they were accessing sources of expertise outside of the company and some consultants to have the – what we've called cold eyes reviews and then independent review as well. Then – and subsequently, of course, the government initiated independent reviews.

So with all those layers, and no doubt others besides, that we felt satisfied that the project had independent review through the course of time.

MR. T. WILLIAMS: Okay, during your course of employment with government at this level, I believe you served under the tenure of two premiers, would be –

MR. THOMPSON: As clerk.

MR. T. WILLIAMS: As clerk?

MR. THOMPSON: Yes.

MR. T. WILLIAMS: And three ministers of Energy – or Natural Resources I should say, excuse me – would've been –

MR. THOMPSON: Well I – when I was in that department, it was just the one minister – Minister Dunderdale – and there were other ministers when I was –

MR. T. WILLIAMS: Clerk?

MR. THOMPSON: – clerk, yes.

MR. T. WILLIAMS: Okay.

Can you speak to me with respect to your experience regarding the level of engagement of the elected political figures that you dealt with closely on this project? Obviously, we've had, you know – there's strong involvement here of Nalcor, but can you give me a sense of, you know, how involved – well, not only government departments but the elected government officials – with respect to how this project was moving, you know, the review of the project – as I said, the level of engagement of elected officials.

MR. THOMPSON: The – do you want me to refer generally or to specific individuals?

MR. T. WILLIAMS: Well, whatever you prefer. Which –

MR. THOMPSON: Sure.

Well, in general I found that the – all of the politicians – premiers and ministers – were actively engaged because this was a priority of the government. And – so they were engaged on following through on the mandate that had been given to them in the election but then subsequent – you know, from the premier to the ministers as well, and there are mandate letters that were generated around this – so clearly as a priority, one would expect the ministers to be actively engaged and they would be held to account by the premier in that regard.

They attended, as I noted, many, many meetings; were briefed. I observed all of the – Premier Williams, Premier Dunderdale, and also Ministers Byrne – for a short while in the early period – and Minister Kennedy and Minister

Skinner as actively engaged in briefings, asking – always asking – you know, critical questions, initially to understand, of course, what was being presented and then to test what if: what if this, what if that.

So that's the general nature and officials would have engaged in those conversations as well. So, in general I'd describe that as: everyone was engaged that way.

People had different styles –

MR. T. WILLIAMS: Sure.

MR. THOMPSON: – and some may have been more interested in ensuring that there was good adherence to the guidance of the government, that, you know, about what we were trying to achieve and others may have drilled more into specific areas to extract, you know, test the person – the consistency of a statement down to a deeper level, so that was stylistic. But they were all involved.

MR. T. WILLIAMS: Was that a common occurrence? I know you mentioned yesterday when we spoke to the issue of oversight, and Ms. Best mentioned it this morning, that one of the elements that you saw as oversight was the involvement of the political –

MR. THOMPSON: Yes.

MR. T. WILLIAMS: – figures involved in this and you made reference at one point to Minister Kennedy, I think, at one point but –

MR. THOMPSON: Yes (inaudible).

MR. T. WILLIAMS: – did you experience regular engagement like that at meetings, was there push-back, was there questioning, was there, you know, drilling down into the issues at cabinet tables or Nalcor meetings, things of that nature.

MR. THOMPSON: It was a good team in the sense that there was respect for each other but yes, definitely, there was push-back. And when I say push-back I mean penetrating questions, trying to explore the risks that were associated with the proposal, understanding the scale and the nature of those risks is what you're

promising going to happen? On what do you – you know, what are the assumptions you're making that make you believe that that's going to happen? I mean we – there's – every briefing would have contained questions like that.

MR. T. WILLIAMS: What is your perception of government's sensitivities to issues such as overruns and rate implications for the populous basically? Were these issues that were of – on the forefront?

MR. THOMPSON: Oh, sure.

The government was always interested in knowing what the rate implication was of the proposed. So the CPW difference indicated which project structure would have an – or which would have a more or less impact on rates and that through logic. But even in going through DG2 and DG3, the government was asking Nalcor to prepare a more precise estimate of what the rate impacts would be on the consumer. And they were – you know, the extra level of difficulty, of course, in producing a rate analysis, but that was done.

MR. T. WILLIAMS: And was that done at regular stages throughout the –

MR. THOMPSON: I –

MR. T. WILLIAMS: – rate piece?

MR. THOMPSON: You see, it wasn't a constant feature of every briefing, but I do know – or I recall that it was a feature of the – leading up to DG2 and DG3 because – and for – if nothing else, for the reason that this was an important communications issue so – because the public, the ratepayers, will want to know, okay, you want to do that project, but what's the impact on –

MR. T. WILLIAMS: Okay.

MR. THOMPSON: – the cost of heating my home.

So, for that reason, the government was asking for a rate analysis as well.

MR. T. WILLIAMS: Yesterday, Mr. Learmonth put to you during your direct

examination that maybe government was naive. The term he used was the government being naive in putting that much trust in Nalcor. Did you ever have any reason during your tenure to have any concerns that there was elements of mistrust, that you were being given misinformation or to question any of the dealings that you had with either executive officials or anybody that you dealt with at Nalcor?

MR. THOMPSON: No and, of course, I reject the notion of naive. And I didn't have any reason to think that Nalcor was being anything other than forthright and we had a good communications rapport with them.

MR. T. WILLIAMS: Now that you're removed from government, and removed some period of time, looking back at the project – you come across as a very straightforward and bright individual – do you have any serious concerns with respect of how government dealt with the approval process of this project from your involvement, both as a – what we'll call a deputy minister and as well as the clerk of the Executive Council through your tenure at government?

MR. THOMPSON: No, I had no concerns about how we managed with the information and the processes that we established at the time. I have no concerns that we (inaudible) ourselves appropriately. I'm still, you know, looking forward to all the evidence that shows why the construction overruns occurred, but in terms of what we did with the material and information and the processes we had at the time, I think they were appropriate.

MR. T. WILLIAMS: Okay. Thank you.

That's all the questions I have.

MR. THOMPSON: Thank you.

THE COMMISSIONER: Okay, Julia Mullaley, Charles Bown.

MR. FITZGERALD: Good afternoon, Mr. Thompson.

I'm Andy Fitzgerald. I'm on for Charles Bown and Julia Mullaley.

Just a few questions; I'd like to see Exhibit P-01038, please. That's tab 6.

MR. THOMPSON: Six.

MR. FITZGERALD: And this was taken – you were taken through this by Mr. Learmonth. At the bottom of the page, the email – no, right there: "There will also be a Ministerial Coordinating Committee and it will be convened once a month or more frequently if necessary to provide direction."

Did this ever occur?

MR. THOMPSON: I don't recall the ministerial committee ever meeting.

MR. FITZGERALD: I guess, what was the purpose for your suggestion in this email? I guess, there must have been some discussion about a ministerial meeting – committee.

MR. THOMPSON: Yes.

A general recollection that when it was decided to reconvene the committee, no doubt the premier was part of that discussion, and asked that there be a mirror ministerial coordinating committee. That's what I kind of reconstruct in retrospect. And so that would have been communicated to the deputy minister so that they understood that.

But for some reason, and a reason I can't recall, the momentum never developed and the – to have the ministerial coordinating committee meet and it didn't. So the only coordinating mechanism I can recall like that is the deputy minister wanted it.

MR. FITZGERALD: Thank you. I just wanted to clarify that.

P-01069, please, which is tab 35. You can just put it all on the one page there. Okay, perfect.

Mr. Thompson, what was the purpose of this document?

MR. THOMPSON: This was an order prepared by DNR officials, Natural Resources officials, as a review of the – essentially, the modelling and assumptions that Nalcor had prepared up to that

point in time on option analysis and, in particular, preferring the Infeed Option over the Isolated Island. We wanted to know separate from the way that Nalcor had constructed this analysis together, whether these assumptions, the modelling approaches, made sense so we could have additional confidence in the work that Nalcor had done.

MR. FITZGERALD: This was done internally by government and not by Nalcor?

MR. THOMPSON: Correct.

MR. FITZGERALD: So this –

MR. THOMPSON: Of course we had to consult with Nalcor. The economist did consult with Nalcor to interrogate the issues and the assumptions and better understand them. Then they took those points and Nalcor's data and reproduced CPW as well as tested some sensitivities. And that's displayed here in the presentation deck.

MR. FITZGERALD: So the Department of Natural Resources reviewed the CPW? Correct?

MR. THOMPSON: Correct.

MR. FITZGERALD: And did some result sensitivities?

MR. THOMPSON: Correct.

MR. FITZGERALD: And Wayne, and Gerard and Paul are all members of the Department of Natural Resources?

MR. THOMPSON: Yes, they are.

MR. FITZGERALD: So, this was a government document?

MR. THOMPSON: Correct.

MR. FITZGERALD: And a government exercise?

MR. THOMPSON: Correct.

MR. FITZGERALD: P-00807, please, tab 58. Can you scroll down, please? This is the

decision note. It was signed off by Mr. Paddon and Mr. Bown –

MR. THOMPSON: Right.

MR. FITZGERALD: – with respect to independent review. Are you familiar with this?

MR. THOMPSON: Yes. Yes, I reviewed it.

MR. FITZGERALD: And you anticipate that this went to premier but not to Cabinet?

MR. THOMPSON: I anticipate that because everything that goes to Cabinet generally results in – if the document is on the agenda it generally results in a minute of Cabinet. So if this didn't have – so I'm going by logic –

MR. FITZGERALD: Yes.

MR. THOMPSON: – that if this didn't result in a minute, then it was likely discussed with the premier.

MR. RALPH: (Inaudible.)

MR. FITZGERALD: Mr. Ralph just indicated to me that they've checked and it had – it did go to the premier's office.

MR. THOMPSON: Okay.

MR. FITZGERALD: So your recollection is right on.

In listening to your evidence it sounded to me that there was an issue of an independent review. And one of the reasons that the decision was made by government to use the PUB is that there would be an added layer of independence –

MR. THOMPSON: Correct.

MR. FITZGERALD: – in terms of they would hire their own experts as opposed to government hiring an expert that government got to choose.

MR. THOMPSON: That's correct.

MR. FITZGERALD: And so that went into the logic.

MR. THOMPSON: Correct.

MR. FITZGERALD: It's also my understanding that the government did not direct the PUB to pick its own expert; they could have picked whatever expert they wanted.

MR. THOMPSON: That's right.

MR. FITZGERALD: Exhibit P-00055, please. I do not believe this in your material but it is a – or maybe it is. No, it's not. But it's a very short exhibit. No, I have the wrong number on this, maybe 00056.

THE COMMISSIONER: What specifically are you looking –?

MR. FITZGERALD: The email I'm looking for, Justice – and I apologize – it was an email between Maureen Greene – she was being briefed by, I believe, it was a Mr. Martin. And it had to do – and it was in July of 2011 and it had to do with the PUB reaching out to government because the PUB was having some difficulty getting documents from Nalcor. And there was a discussion – a phone call made directly from the chair of the PUB to government.

And I wanted to bring this to Mr. Bown's attention. It came out in the evidence of Mr. Wells for sure, because I certainly asked him about it. I thought it was P-00055, but I stand to be – obviously it's not.

But I probably don't even need to take you to the Exhibit, Mr. Thompson –

MR. THOMPSON: No.

MR. FITZGERALD: – given the – just the context.

Were you aware that in July of 2011 that the PUB had actually reached out to government in terms of issues it was having with Nalcor in terms of document production?

MR. THOMPSON: I don't recall the conversation but now that you stated I – it has a ring of familiarity and I'm not surprised that they would've reached out.

MR. FITZGERALD: And, I guess, the reason I'm bringing that to your attention is because Mr. Budden was asking you – inappropriate,

inappropriate several times in his questioning, but I wanted to know if you were familiar with – that it was really the PUB who went directly to government first as opposed to government going directly to the PUB.

MR. THOMPSON: Well – thank you.

And that would, perhaps, fill in some of the blank in-between the start of the reference and the meeting that we requested with Mr. Wells.

MR. FITZGERALD: Were you also aware that in July of 2011 the PUB got involved – sorry, when government got involved and was engaged by the PUB that subsequently documents started to flow thereafter?

MR. THOMPSON: In general, I recall that. I don't have specific recollections.

MR. FITZGERALD: Okay.

And in terms of government officials meeting with the PUB from time to time, I note yesterday you were trying to find an example and you used the word "regulation."

Would it be something along the lines of: If the government was considering a review of the automobile insurance cap, would government then meet with the PUB, give them a heads-up, here's what's coming, we'd like you to review this?

MR. THOMPSON: That's a good example, yes. And I recall the review and that – and I'm not surprised that we would have – or the department would have had a discussion with the PUB prior to that.

MR. FITZGERALD: I would suggest that there might be other reasons why you'd want to have a discussion as well in terms of wanting to make sure the PUB had the resources it needed to do its job.

MR. THOMPSON: Yes.

MR. FITZGERALD: You didn't want to operate in a vacuum obviously –

MR. THOMPSON: Correct.

MR. FITZGERALD: – if they needed more resources government would need to provide it.

MR. THOMPSON: That's a good point.

MR. FITZGERALD: Mr. Simmons brought you to the PUB report and there was a discussion by you in your evidence of key variables. You said that you would expect the – Nalcor to bring key variables to your attention –

MR. THOMPSON: Mm-hmm.

MR. FITZGERALD: – even if it was, I guess, in a report on page 274 –

MR. THOMPSON: Correct.

MR. FITZGERALD: – or whatever page it's on.

Would you consider the \$500 exclusion and/or removal of strategic risk to be a key variable?

MR. THOMPSON: Framed that way, absolutely. We would've expected something that was occurring like that – a removal or exclusion from the capital cost estimate – to be something that would be material to a decision.

MR. FITZGERALD: You wouldn't expect this to be in an exhibit to a report to the PUB. You would expect the entity you're dealing with to bring this to your attention.

MR. THOMPSON: Well, we wouldn't expect Nalcor to rely upon the department to ferret out that detail and bring it up for discussion. If it's an important issue we would rely upon Nalcor to frame it up for us in one of these briefings. That's not to deny that the – that that information existed in that report –

MR. FITZGERALD: Mm-hmm.

MR. THOMPSON: – and government had access to it. But to your point, for sure, we would've expect – and that's the kind of burden of appropriate briefing and decision-making that we'd have on all public servants as well.

MR. FITZGERALD: Would you also agree with me that a 1 per cent chance of meeting first power on July 2017 would also be a key variable

that you would expect your policy partner to bring to your attention?

MR. THOMPSON: Yes.

MR. FITZGERALD: In your evidence you often referred to briefings, there was a high-level of integration with respect to the officials from government and officials from Nalcor trying to move the matter forward.

Given this high-level of integration between the entities, did this give you any further level of assurance that you would be completely briefed?

MR. THOMPSON: I think so. I mean, we've used the word "integration" a lot without defining it –

MR. FITZGERALD: I agree.

MR. THOMPSON: – and so I wouldn't want to characterize it as we had an organizational –

MR. FITZGERALD: No.

MR. THOMPSON: – chart and we had two teams –

MR. FITZGERALD: No.

MR. THOMPSON: – that had formal hierarchical relationships. What we had was a set of people in – officials that blended together as a team, communicated well and were pursuing some common objectives with different roles then on that team. And perhaps, I'd call it, less integration as we went down into the organizations in terms of the frequency of meetings and the guidance of the – sorry – of the core objectives.

So I just wanted to highlight that –

MR. FITZGERALD: Fair point.

MR. THOMPSON: – I wouldn't want to over-interpret –

MR. FITZGERALD: Yeah.

MR. THOMPSON: – the word "integration."

MR. FITZGERALD: Yeah.

MR. THOMPSON: We did have teams that were more highly integrated on different projects. For example, on the negotiation of the Hibernia South Extension, royalties and benefits, we actually had Nalcor – or sorry, Natural Resource officials and Nalcor officials integrated into a team and they actually moved out of their offices to a different place and they worked day in, day out together. So that's the ultimate definition of integration. So it's a different kind so –

MR. FITZGERALD: Yeah, and I accept your evidence too. And I would suggest that the Exhibit I referred to you earlier where your department – well, the Department of Natural Resources at the time – obtained information from Nalcor so it could rerun a CPW and can look at sensitivities. So you were conducting checks and balances on Nalcor –

MR. THOMPSON: Correct.

MR. FITZGERALD: – contrary to some of the questions that have been asked at this Inquiry.

MR. THOMPSON: Right. So – and I'm not sure if I actually answered your integration question, or did I?

MR. FITZGERALD: I was satisfied with it.

MR. THOMPSON: Okay.

MR. FITZGERALD: Thank you, Mr. Thompson.

In terms of the communication system, Mr. Budden asked you some questions about the communications system; he asked whether it was flawed. Would you agree with me that any communication system can only work effectively if the parties in that system are providing full and frank disclosure at all times?

MR. THOMPSON: Yes.

MR. FITZGERALD: Nalcor and a particular the project team had a number of engineers, there were accountants as well and they were working as a group. You're familiar with that?

MR. THOMPSON: Yes.

MR. FITZGERALD: There was a Lower Churchill Project team?

MR. THOMPSON: Yes.

MR. FITZGERALD: Did the fact that there were so many professionals involved in this team, five or six at that level, lead to any additional assurance by the government that they would keep checks and balances upon each other to make sure you were getting full and complete disclosure at the governmental level?

MR. THOMPSON: Well, certainly we would be aware that they have professional obligations and duties to observe and would carry that out, but I think perhaps what was more present on our mind was that they existed within the corporate structure of Nalcor that had, you know, a good overall planning system. We felt it had a good culture and – with key decisions flowing up through appropriate processes to – through the CEO to the board of directors. Board of directors being the first line, if you like, of governance oversight.

So we felt confident that a good structure had been put in place to – and it would – and a structure like that – culture and formal structure – would ensure that – you know, that was our hypothesis and our observed experience: that it would ensure that we would we get high-quality information and good briefings.

MR. FITZGERALD: So you have a board of directors that's appointed and has a duty to act in the best interests of the corporation?

MR. THOMPSON: Right.

MR. FITZGERALD: You also have a CEO below that who's going to carry out the mandate of the board –

MR. THOMPSON: Correct.

MR. FITZGERALD: – and who will be answerable to the board?

MR. THOMPSON: Mm-hmm.

MR. FITZGERALD: And below that you have a number of professionals –

MR. THOMPSON: I should say a CEO answerable to government, as well, because of the joint-appointment nature.

MR. FITZGERALD: Fair play.

And below that as well you have a number of engineers and other professionals that are all working together and have their own ethical obligations.

MR. THOMPSON: Yes.

MR. FITZGERALD: So that's the context you were dealing with when you were dealing with Nalcor.

MR. THOMPSON: Yeah. And we wouldn't have been, of course, blind to the possibility that corporate culture can lead, you know, a company – or to have a – or a different agenda, but our view was that that wasn't the case.

MR. FITZGERALD: Yes.

MR. THOMPSON: Our view was that the corporate culture was reinforcing the joint agenda that we had together.

MR. FITZGERALD: In terms of civil service, you joined in '82?

MR. THOMPSON: Right.

MR. FITZGERALD: And you left in 2013?

MR. THOMPSON: Right. Thirty-one.

MR. FITZGERALD: Wasn't going to do that to you.

MR. THOMPSON: Oh, I thought –

MR. FITZGERALD: I guess you had a learned experience and a vast experience of operating in the civil service over the last number of years. More rigorous now to become a member of the civil service than it was when you first joined?

MR. THOMPSON: I'm not sure rigorous is the word. I mean, the – there's an application process for positions and a –

MR. FITZGERALD: That's my next question.

MR. THOMPSON: Yeah.

MR. FITZGERALD: Is it more competitive –

MR. THOMPSON: (Inaudible.)

MR. FITZGERALD: – in light of the fact that we have more –

MR. THOMPSON: No.

MR. FITZGERALD: – people that are going to university, more people that are becoming experts and specialized.

MR. THOMPSON: I think the labour market, you know – and the qualifications of the labour market has – have escalated over time, so I'm not sure if it's – certainly the – if what your point is is the average education level within the public service much higher today –

MR. FITZGERALD: Mm-hmm.

MR. THOMPSON: – than it was in 1982, I would agree with that wholeheartedly, yes.

MR. FITZGERALD: And generally speaking, would – in your experience, has that led to a greater quality of decision-making and governance and oversight throughout the organization, throughout the government?

MR. THOMPSON: I would like to think that it has. Certainly the processes and procedures that contribute to good decision-making have been added to over the years, and good process, on its own, often makes for good decision-making, but the public service and the successive governments have tried to bake in the positive learnings from what processes work well.

It's not to say that it always results in good decisions, so there's no guarantees, and sometimes the formal processes are not observed, but in general, I think that we have reasonably good processes for decision-making, yes.

MR. FITZGERALD: Thank you very much, Mr. Thompson.

MR. THOMPSON: Thank you.

THE COMMISSIONER: Todd Stanley, Terry Paddon?

MS. VAN DRIEL: Good morning, Mr. Thompson.

MR. THOMPSON: Good morning.

MS. VAN DRIEL: My name is Gerlinde van Driel, and I represent Terry Paddon and Todd Stanley.

I just have a few questions on the line of questioning that was conducted yesterday by Barry Learmonth, and that has to do with the various concepts that we have again heard over the last day and a half: concept of contingent equity –

MR. THOMPSON: Mm-hmm.

MS. VAN DRIEL: – estimate contingency, strategic risk, tactical risk –

MR. THOMPSON: Mm-hmm.

MS. VAN DRIEL: – numbers associated with strategic risk, in the amount of 497 million rounded up to 500 million, and also contingent equity, in particular, that was put to you yesterday in the amount of 300 to 600 million.

And maybe, Madam Clerk, you can bring up document 01072, page 23. I don't know the tab number, Mr. Thompson.

Right, at the top of that page, just to put it into context for you, so –

THE COMMISSIONER: Tab 37.

MS. VAN DRIEL: So you were referred to this page yesterday by Mr. Learmonth, and I understand that the line of questioning was along the lines of 300 to 600 million contingent equity was put in there by Nalcor.

MR. THOMPSON: Mm-hmm.

MS. VAN DRIEL: And then the next question was: But the 300 to 600 million was not included in the \$5 billion cost estimate. Were you aware of that was the question. You said: I was aware, in general, of that kind of estimate.

And my question to you first is: What did you mean by kind of estimate?

MR. THOMPSON: I was aware, in general, that an amount was being considered as the – a prudent amount contingent equity that we might need to indicate as – that might be there for cost overruns. But I also – and I think I said this yesterday – regarded that as a very general concept and not as an estimation of the risk that should be included inside the capital cost estimate.

MS. VAN DRIEL: Right, that's what you said.

MR. THOMPSON: Yes.

MS. VAN DRIEL: Yes. As a matter of fact, you said you didn't have a present-day recollection of the contingent equity, you just looked at this document and it was represented as a figure for contingent equity –

MR. THOMPSON: Right.

MS. VAN DRIEL: – at that time.

MR. THOMPSON: Correct.

MS. VAN DRIEL: Correct. And I think your evidence was as well that, for you, contingent equity was more of a financing concept.

MR. THOMPSON: Right. I've had a chance to look at this document that you've exhibited and I believe that this paragraph is part of the financing section of the document rather than the capital cost.

MS. VAN DRIEL: Right.

MR. THOMPSON: So that sort of reinforced –

MS. VAN DRIEL: Reinforced –

MR. THOMPSON: – my point.

MS. VAN DRIEL: – what you said yesterday. And also you said that the – for that reason, the contingent equity is really not part of the cost estimate.

MR. THOMPSON: That's how I would have regarded it, yes.

MS. VAN DRIEL: Right, yeah.

And so I guess the reason why I'm raising this with you, because I think over time there has been some confusion crept in, different concepts are being thrown around, different –

MR. THOMPSON: Yes.

MS. VAN DRIEL: – numbers are being thrown around. And, in particular, yesterday, Mr. Learmonth said to you that Mr. Paddon said that he knew about the 3 to \$600 million contingent equity, and that Mr. Paddon thought that it was included in the 5 billion, and you said, well, I cannot say it with that same certainty.

MR. THOMPSON: Right.

MS. VAN DRIEL: And what I want to state for the record, that Mr. Learmonth was incorrect in his characterization of what Mr. Paddon had said during his testimony.

What was put to Mr. Paddon, at the time, was that there was a 3 to \$600 million risk, strategic risk, as it had been represented by Mr. Learmonth, and that he had to assume that this was the strategic risk amount, and that he also had to assume that because Mr. Learmonth had information in that regard that the 3 to 600 million strategic risk had been removed from the cost estimate. And, of course, Mr. Paddon was not aware of that, he didn't really know the concept even of strategic risk, let alone management reserve –

MR. THOMPSON: Mm-hmm.

MS. VAN DRIEL: – and, like you, expressed a concern if something had been removed, that would be a concern because the reasonableness of the final cost estimate was very important to government. Would you agree with that?

MR. THOMPSON: Mm-hmm, I would.

MS. VAN DRIEL: And why would you agree with that, that that was so important?

MR. THOMPSON: For a couple of reasons. We wanted to know, with the greatest confidence possible, what was the cost estimate for this project. We wanted to have a single

number that represented absolutely the best expertise of Nalcor and its consultants, as a shareholder, and the impact on the shareholder. But it also then became a communications point –

MS. VAN DRIEL: Right.

MR. THOMPSON: – that we wouldn't want to communicate to the public anything other than the accurate and appropriate estimate.

MS. VAN DRIEL: Yeah, that's right because the accurate, not just from a communication but going back to the accurateness of the cost estimate, of course, had or could have real impact on the shareholder where the shareholder had given basically a completion guarantee –

MR. THOMPSON: Yes.

MS. VAN DRIEL: – with no known amount at the time.

MR. THOMPSON: Yes.

MS. VAN DRIEL: So Mr. Paddon actually said that he was not aware of the number of what was the estimate contingency included in the \$5 billion.

MR. THOMPSON: Okay.

MS. VAN DRIEL: So I just want to state that for the record because all these concepts are being thrown around, sometimes they get a bit confused.

MR. THOMPSON: Okay.

MS. VAN DRIEL: Okay, that's good.

That's all I have. Thank you.

MR. LEARMONTH: Just for the record, I want to state for the record, that I don't agree with the way Ms. Van Driel has characterized information I put to the witness. I disagree with her.

THE COMMISSIONER: In any event, thank you, Ms. Van Driel.

MS. VAN DRIEL: Well, I just want to respond to that. That I actually went to the webcast of Mr. Paddon's testimony because I wanted to be sure that what I was saying this morning was correct.

THE COMMISSIONER: Yeah, I think the two of you are saying the same thing here, because I think what Mr. Learmonth is saying is that you're mischaracterizing what he put to Mr. Thompson, but, in any event, I know what was said by Mr. Paddon and I'll decide that myself.

MS. VAN DRIEL: Right. Thank you.

THE COMMISSIONER: Thank you.

Next, Consumer Advocate?

I don't know if it's sort of luck or whatever, but you seem to be the one that gets closest to the noon break each time, so I want to assure you that you have as much time as you need.

MR. HOGAN: Yeah, thank you.

Mr. Thompson, my name is John Hogan. I'm counsel for the Consumer Advocate –

MR. THOMPSON: Good morning.

MR. HOGAN: – represents the ratepayers, about 300,000 ratepayers. So you can see their interest in the proceedings, obviously.

Now, you've been testifying for a day and a half so I'm going to move around a little bit and –

MR. THOMPSON: Okay.

MR. HOGAN: – sort of follow up and clarify some questions that maybe some of my learned friends have already asked. And I'm going to start with a few topics that Mr. Budden and, I think, Mr. Williams asked you about as well; back to the EOI process.

So, we've heard that the – I guess, I'll call it the SNC Quebec-Ontario bid was looked at – you looked at it. And I haven't been able to get from anyone yet – I've asked a lot of people – what that bid actually was. And before you say you can't remember, I'm just gonna point to P-00265, if we can, please, page 2.

THE COMMISSIONER: Tab 112.

MR. HOGAN: I said it because I know it was a long time ago, so I just – maybe this will jog your memory.

Okay, so you see almost there at the end, it says: "Quite clear the Ont/Que proposal is the best so far." So that's pretty clear, but can you recall what the proposal was in any detail?

MR. THOMPSON: If I can just take a moment –

MR. HOGAN: Yes.

MR. THOMPSON: – to review these.

So, the Ontario-Quebec SNC proposal – I don't recall details, you know. There was a, I guess, a joint venture of some kind that – so they were collaborating together on a unified proposal. The best I can recall they wanted to develop both projects. They wanted to give some certainties around market access and a return to the province and benefits to the province, but beyond that I can't recall details.

MR. HOGAN: Okay. And when you were talking about analysis of the bids, you said it was – I'm using this word – the benchmark was sort of a risk-reward analysis?

MR. THOMPSON: At the meeting where it was all presented, yes.

MR. HOGAN: And who – was this presented to Cabinet? Did Cabinet make the decision, ultimately, to go it alone?

MR. THOMPSON: Yes, it did.

MR. HOGAN: Okay, but Hydro were the ones that did the analysis and made a recommendation to Cabinet to go it alone?

MR. THOMPSON: As best I recall, the team that did the analysis had some provincial government officials on it, but I don't recall who they were.

MR. HOGAN: Okay, and you don't recall who at Hydro, or who at government?

MR. THOMPSON: Well, I think, certainly Gilbert Bennett was involved, but there may have been – certainly may have been other people. And there may have been external people as well. I'm pretty sure that information is around, but there may have been external people as well.

MR. HOGAN: So the recommendation from Hydro was for Hydro to develop the Lower Churchill?

MR. THOMPSON: No, the recommendation from the team –

MR. HOGAN: The team, okay, sure.

MR. THOMPSON: Right – was for that, yeah, it be developed by the province with Hydro as a proponent.

MR. HOGAN: And what sort of discussions do you recall about risk reward, being that we're all in on Hydro doing it – going it alone? It's all a risk – potential risk to the taxpayer or the ratepayer. The SNC Quebec-Ontario bid is no risk, I would suggest, because the government is not funding it.

Where was that discussion?

MR. THOMPSON: The discussion is summarized in a briefing deck that's among the exhibits and that I've reviewed in the last several weeks, but I can't point you to which one it is. So if we wanted to have a really precise discussion of what the analysis was and how it was presented to Cabinet, it's best that we go there.

But the one point I'd make on what you said is that I don't think any of the proposals had no risk for the province, and ultimately, the commercial arrangements that get entered into are – you know, the core point is about how risk gets shared. And so we probably would have been able to assess risk in general as one proposal being less or greater than another, but to say that another proposal had no risk, I think, would – in general, in going too far.

MR. HOGAN: Okay, but the go-it-alone was the riskier option?

MR. THOMPSON: That's what the analysis that was presented to Cabinet said. But it also said that there were strategies to mitigate the risk. The analysis – and again, I only recall it because I read it in recent weeks. The analysis identified what those risks were and there was a briefing on how, in general, the risks could be mitigated. So there was a clear flavour for that whole topic in that presentation.

MR. HOGAN: So is it fair to say it was a policy decision by Cabinet then to go with the risk-reward they felt presented more reward? I mean, that was the decision that was made obviously.

MR. THOMPSON: More reward in balance with the – their perception of how the risk could be managed, yes.

MR. HOGAN: Okay.

And I'm just sort of thinking about this now. I mean, when the EOIs were done, it was for Gull and Muskrat, is that right?

MR. THOMPSON: I think so.

MR. HOGAN: So there was no EOI done for just Muskrat when there was pivot away from Gull Island, was there?

MR. THOMPSON: No.

MR. HOGAN: And should – could there have been? I mean, there was still excess energy, surplus power to export. I'm wondering if maybe an EOI could have been done and given another option rather than the Maritime Link.

MR. THOMPSON: I don't think so. I mean, at that stage the core motivating factor for making a decision was the supply of energy – electricity to people of the Island, and a decision needed to be made. Also, at that stage, of course, the – Hydro-Nalcor had undertaken considerable amount of engineering on both scenarios, environmental assessment and so forth.

MR. HOGAN: So you're so far down the path on Gull and Muskrat – it was easy to keep going with just Muskrat.

MR. THOMPSON: I'm not – I don't think that we even considered going to expression of

interest at that time. It was a logical progression –

MR. HOGAN: Right.

MR. THOMPSON: – to stay with Nalcor and proceed into that phase.

MR. HOGAN: Okay.

I don't think you've been asked about water management yet. I don't know if you're aware; I can – I'm only limited in the questions I can ask you about this, but you're – are you aware of this issue generally?

MR. THOMPSON: Yes.

MR. HOGAN: Okay.

You recall it; it was discussed throughout your tenure?

MR. THOMPSON: Yes, yes.

MR. HOGAN: Do you know, during the term sheet negotiations with Emera, if this was an issue?

MR. THOMPSON: I don't recall. I don't recall that it was.

MR. HOGAN: You don't recall that it was?

MR. THOMPSON: No.

MR. HOGAN: So you wouldn't be able to recall if it was disclosed to Emera that this was an ongoing issue, or do you know if Emera was aware that CF(L)Co did not sign the Water Management Agreement?

MR. THOMPSON: I have no insight into what happened at the negotiating table on that issue.

MR. HOGAN: Okay.

Was it ever discussed – are you – were you part of any discussions about the risk of the water management issue?

MR. THOMPSON: Well, I would have been involved in meetings where the strategy related to water management was discussed – the

strategy related to legislation, or regulation, and the development of a water management agreement and how it would possibly need to go before the PUB.

And within that, of course, there was the issue of how strong is the legal analysis, that this is an appropriate way to go.

So I was involved, and I understood the strategy and the fact that the legal analysis backed it up. But I can't dive deeper than that –

MR. HOGAN: Okay –

MR. THOMPSON: – with any (inaudible).

MR. HOGAN: – so it was discussed; it was a risk, and to your recollection, you, or government, was satisfied that the risk had been mitigated?

MR. THOMPSON: I think it's fair to say that the legal analysis that supported the strategy was felt to be sound and could be – and should – and therefore the strategy should be pursued.

MR. HOGAN: Okay. I'll leave it there. Thanks.

You'd been asked a lot about strategic –

MR. THOMPSON: Yes.

MR. HOGAN: – risk and tactical risk, contingent equity – so I'll leave all, you know, the \$500-million – three, \$600-million issues out, but at the end of the day – I mean, is your understanding that the contingency equity meant that the government would pay for all the cost overruns, if there are any, and whatever they may be?

MR. THOMPSON: Correct.

MR. HOGAN: I'm not putting a number on that. I mean, that could – that's – theoretically, it's a huge number; it would go on forever and ever, right? Were you concerned with this – and it's been called a blank-cheque approach?

MR. THOMPSON: See, we didn't conceive of it in that way. And as I mentioned earlier, we were very affected by the CPW preference for – and felt that – the government felt that it was

acting so evidently and clearly in the interests of ratepayers by choosing the future-development option that would produce lower long-term electricity rates for consumers, that that was the core analysis that was necessary to make a decision, because a decision had to be made about supplying the Island with electricity into the future. So that was the core decision.

I've mentioned all the other layers of benefits, which I won't go into now, but just to reiterate that those were extra reassurance that the option being chosen brought with it value of many different kinds. So it's the combination of all of those that was the assessment.

Now, were there – we needed to do this – carry out this project. Nalcor needed to carry it out with the utmost professionalism, skill and attention to coming up with a great capital cost and then adhering to it.

And so there was a lot of attention paid by government in meetings, briefings and then, ultimately, in independent reviews to getting confidence in that process, so that the overruns, if they were to occur, will be contained to a manageable size. So that was the perspective we had.

MR. HOGAN: So the perceptive was you were fiscally sound enough to manage the overruns? You weren't concerned about (inaudible) –

MR. THOMPSON: And that contributed to confidence as well. I would agree with you that the government was – fiscal situation was improving, at that time, throughout that period, and the long-run forecast, of course, of oil prices, which we know changed – perhaps reinforced that analysis as well, as did other external commentators on the provincial fiscal situation.

MR. HOGAN: So – I'm glad you brought that up, because I – if we can bring up P-00962 – I mean, the fiscal situation of the province. This – and I think you referred to this yesterday. This is an email from yourself to Mr. Paddon in May of 2006.

“Have you been consulted on the” – sorry – “financial capacity of the govt to finance the

Lower Churchill project in some fashion should we decide to go it alone.”

2006. I don't think – we haven't heard evidence that a financial analysis was done in 2012 about whether the government can finance the project. So was a reason that the financial analysis was not done was because the fiscal situation had improved?

MR. THOMPSON: Can you repeat the first half of your question?

MR. HOGAN: Yeah. This is 2006. Your question is: Can we afford to go it alone?

MR. THOMPSON: Right.

MR. HOGAN: Specifically, has – you know, do you have the financial capacity to do it?

MR. THOMPSON: Right.

MR. HOGAN: Seems less of a concern in 2012 when it was sanctioned.

MR. THOMPSON: Right.

MR. HOGAN: Is one of the reasons it was less of a concern is because of the fiscal situation in the province, as opposed to 2006?

MR. THOMPSON: The – well, by 2012, there had been many soundings into the financial markets about the province's capacity to handle this project, direct consultations with rating agencies and lenders and, perhaps, other mechanisms. And Mr. Paddon will be able to – I'm sure his testimony addressed that, and there are records on it. So – but at this point in 2006, we're in a different place, yes.

MR. HOGAN: Of course.

MR. THOMPSON: And we're just emerging from, you know, a time when there was a considerable focus on deficit reduction; there was – had been a public service strike that related to that. We were certainly optimistic 'cause we had the projections of how oil revenues might behave as – not just as oil prices increase but rather as production ramped up as well and as we hit certain milestones in the royalty regime, because as you hit certain

production milestones, especially in Hibernia, the royalty kicks up to a much higher level. So we were aware of those things as well.

So we – but we weren't necessarily benefiting from those at this point in time. So – but the only – so it'd be a logical thing to ask the deputy minister if he'd been consulted on the financial capacity. So that's a bit of background as to why I would've asked –

MR. HOGAN: Okay.

MR. THOMPSON: – that (inaudible).

MR. HOGAN: I'll just look at the Joint Review Panel report, please, at P-00041. I think it's page 13.

THE COMMISSIONER: Page 13.

MR. HOGAN: I just – page 13, sorry.

Yeah, the first full paragraph there, about halfway down. "The Panel therefore recommended that the Government of Newfoundland and Labrador carry out separate formal financial reviews before sanctioning either Muskrat ... or Gull ... to" – sorry –

MR. THOMPSON: Sorry.

MR. HOGAN: – you can just – yeah, there you go – "to confirm whether the component being considered for sanction" –

MR. THOMPSON: Sorry, can you point me to where you're –

MR. HOGAN: Yeah.

MR. THOMPSON: – reading?

MR. HOGAN: So the first full paragraph which is: "Because of this"

MR. THOMPSON: Okay, sure.

Thank you.

MR. HOGAN: About halfway through. Yeah, right there.

MR. THOMPSON: Okay.

MR. HOGAN: So it recommends a financial review – a formal financial review; I think Mr. Paddon's evidence was there was no formal financial review done.

Do you have any response to that?

MR. THOMPSON: So this is calling for a formal financial review "to confirm whether the component being considered for sanction would in fact deliver the projected long-term financial benefits." So this is a different kind of review than the one we've been talking about. You know, the affordability or the ability of the province to finance it is a different concept than the one –

MR. HOGAN: Okay.

MR. THOMPSON: – being referred to here.

MR. HOGAN: So the concept I was talking about, though, to your knowledge there was no review done, was there?

MR. THOMPSON: The – no, the – to the best of my knowledge, the sounding with the markets –

MR. HOGAN: Yes.

MR. THOMPSON: – the internal assessment that the province does with its own financial advisors as it heads into annual budgets, the feedback from rating agencies, was the kind of analysis that was done.

That's my recollection.

MR. HOGAN: Okay, and what about this one, the – for "long-term financial benefits"?

MR. THOMPSON: So this would be to confirm whether the components would, in fact, deliver the projected long-term financial benefits. There was analysis, yes, on that. There were benefits assessments and they were quantified in terms of direct, indirect and induced impacts financially, labour force impacts, and all of those sorts of things. So that analysis was done. I can't fit it in time sequence with this, but I do recall it being done.

MR. HOGAN: Okay.

If we could go to P-00849, please, which is tab 67. The email from yourself to various individuals, I just – you want to take a second and read that to get the context.

MR. THOMPSON: Sure.

MR. HOGAN: Specifically I want to look at bullet number three:

“The Panel says that government” – I think that means the Joint Review Panel – “should complete a formal review BEFORE the project is sanctioned to ensure it is financially sound. ... normal business practice.” And you said: “The people of the province should have full comfort that there are four levels of further review before we sanction the project.” – internal in Nalcor, internal to government, independent review by Navigant and the PUB review.

So you recall this?

MR. THOMPSON: I’ve reviewed it –

MR. HOGAN: Okay.

MR. THOMPSON: – for preparation for the Commission, yes.

MR. HOGAN: So is that your – I mean, you’re saying that that’s your position: how the people should feel that there was a review done because of these four specific reviews?

MR. THOMPSON: Well, I was saying at the time – and of course, this was the preparation of core messages that might be used for communicating to the public. And so these were four points that I felt that described the kinds of review that were under way.

MR. HOGAN: And I understand this was done in 2011. But looking back now – I mean, I would suggest the PUB review was not done – to the public’s satisfaction, anyways – and I don’t actually think we’ve seen an internal government review. All we’ve heard is words like “comfort level” with what Nalcor has done.

So is that fair to say that two of these four were not done?

MR. THOMPSON: No, that wouldn’t be true.

MR. HOGAN: Okay.

MR. THOMPSON: So the PUB review was already under way, if I understand the date – if I could have a look at the date again, please.

MR. HOGAN: Okay, well, we could debate whether the PUB was satisfactory to you or to government or to (inaudible) –

MR. THOMPSON: Well, sure, of course we could.

MR. HOGAN: Yeah.

MR. THOMPSON: But the point we’re making is that there was a review – an unconstrained review, really, of – except that it was being focused, of course, on DG2, which had been the government’s intention, really. But the review was under way and that the PUB could test all the assumptions and the risks associated with it and we were hoping and expecting that they would. So that review was under way.

The internal to government review is also – was also done, and of course this was August 2011, so I would’ve had a recent memory of the internal review that we did within the Department of Natural –

MR. HOGAN: So what is that internal review? Like, is there a document that says we reviewed the numbers?

MR. THOMPSON: We’ve reviewed it several times today. That’s the briefing deck that resulted from the analysis that Natural Resources officials did of the DG2 material that Nalcor had presented to us in September, early October.

So I would’ve had a recent memory of that having been conducted and also, of course, the ongoing meetings, dialogue, questioning. So that would’ve been a message to say that we aren’t just accepting blindly what Nalcor is saying to us; we wanted to communicate to the public that we were on top of the estimates and the evolution of the project and we’re critically reviewing it as well. So that’s embedded in what that line means.

MR. HOGAN: Okay.

If we can turn to P-01067, please?

THE COMMISSIONER: Tab 33.

MR. HOGAN: So this is October 2010. Does this email refresh your memory? And then we can look at –

MR. THOMPSON: (Inaudible.)

MR. HOGAN: – the document, maybe.

MR. THOMPSON: Okay.

MR. HOGAN: Do you know what this is? If we just turn to page 2 –

MR. THOMPSON: Yeah.

MR. HOGAN: You do?

Okay, I actually want to ask you a couple of questions about what's on page 4. Scroll down please. It says questions – so are these your questions that you want answered?

MR. THOMPSON: These – as I – best I can recall, because this, I think, was the first draft of this particular note –

MR. HOGAN: Yeah.

MR. THOMPSON: – and then it evolved and so I would've identified questions at the end that may – the answers to which might form the content of additional bullets up (inaudible) –

MR. HOGAN: Drafts – future drafts?

MR. THOMPSON: Right.

MR. HOGAN: Okay. So maybe you can – you know, it might be in other drafts, but I just wanna ask about the first question: “What happens if oil prices do not increase as predicted? Will NL ratepayers be paying too much?”

So can you talk generally about that and I know in your interview with Mr. Learmonth you did question using oil prices that are forecasted 50-plus years and you had at least enough concern with it that you wanted to go back to Nalcor to get some clarification.

So what's your recollection about the oil prices and the forecasting that's gone so far into the future?

MR. THOMPSON: Well, when we saw the long-term oil projection, naturally – as we did on many, many other aspects of the information being given to us – we asked why this long-term forecast was being used. Whether it was an appropriate way to forecast what – and we all recognized – Nalcor did, as well as we did – that it's – the ability to predict with accuracy that far out is very low. But nonetheless to evaluate options, you know, in this case the comparison between the Interconnected and the Isolated, one has to choose a forecast, perhaps then do sensitivities on it, to test whether your decision choice is still a good one and – so that would be the kind of answer that we would have received from Nalcor. The reason that this question is here wouldn't be because we hadn't canvassed the issue, but rather that it might be a matter that we were covering in this note.

MR. HOGAN: So what is the effect on ratepayers? If oil prices do not increase as predicted?

MR. THOMPSON: Well, depends upon which way they go, of course. At the time, there was certainly a body of opinion that said that oil prices would stay high and grow higher, and then that would have increased the preference for the Interconnected Option. And if oil prices were to go low, and stay low, or have a constant – if they were constantly underestimated – or overestimated for whole forecast period, it's possible that our decision to prefer the Interconnected Option might have been wrong. But we performed sensitivities on that in order to try to reach a balanced view.

MR. HOGAN: Oil prices go down, CPW for the Isolated Option comes down, correct?

MR. THOMPSON: Yeah.

MR. HOGAN: Okay. That sort of ties into the one, two, three, four, fifth bullet –

MR. THOMPSON: Sorry, sorry – the preference for one project over the other changes?

MR. HOGAN: Yes.

MR. THOMPSON: Right.

MR. HOGAN: It says normally utility planning is for 10 to 15 years. Why is this project using a 30- to 50-year horizon? It might tie into the oil question a little bit, but what's your comment on that?

MR. THOMPSON: Well, first of all, I – of course – these questions were being put there in order to see if we are gonna – we should communicate against these points; because some of these are important, they're direct issues that we would have canvassed internally and so, should we be outlining these in this document.

So my own view on the difference between 10 to 15 years and 30 to 50 years – first of all I'm not even sure if I would have been correct to say that the – you normally you settle these 10 to 15 – but let's assume I was correct and knew that at the time. It's a –

MR. HOGAN: You got them from somewhere. I don't think you would have made it up, would you?

MR. THOMPSON: Well, sometimes in drafting a first draft, one does say things that can get corrected after so – that's why they're drafts. But the point is, let's not –

MR. HOGAN: Okay.

MR. THOMPSON: – make that the main point. Your question is why does my view on the, I guess, the utility or the value of using a 30- to 50-year horizon and – as I understand it, as I recall discussing it at the time, we would – you know, these are long-lived assets that produce value over a very long period of time and so therefore, it's useful in this kind of decision-making to project over that period of time to get a good – to compare the analysis over the kind of time frame that the asset would be available. So that's my recollection of the (inaudible.)

MR. HOGAN: And that asset being Muskrat Falls?

MR. THOMPSON: Yes.

MR. HOGAN: Right.

And this sort of goes back to my question about financial risk for overruns, and you said you're comparing one to the other, the Isolated versus the Interconnected.

MR. THOMPSON: Right.

MR. HOGAN: But the Isolated would've been done in – you know, throughout a longer period of time, which I think would be beneficial for several reasons; one, they're smaller projects, less risk of overruns. It also gives you time to re-check your forecasts – your oil prices, your demand –

MR. THOMPSON: Mm-hmm.

MR. HOGAN: – your population –

MR. THOMPSON: Mm-hmm.

MR. HOGAN: – et cetera, et cetera.

MR. THOMPSON: Yep.

MR. HOGAN: So, why wasn't that given more focus on that analysis, as opposed to just saying, well we have to do a 50-year project. Because you don't have to do a 50-year project. You can do a 10-year project and revisit –

MR. THOMPSON: Right.

MR. HOGAN: – the demand in 10 years.

MR. THOMPSON: Right, so, what underlies your question, of course, is the assessment of the bucket of risk associated with going with a big capital cost project up front, or spreading that out over time, and that in itself is a really valid question to discuss and debate, as we did at the time, and people will take different views on that question, of conservative versus a different kind of assessment of whether – what kind of risk is appropriate to take on?

And of course, in choosing to go with a more – with an approach where one – Isolated Island, where you spread out the capital projects, that they're smaller, each one is smaller in nature, was – raises the possibility that you're, from day one, choosing the more expensive option.

So we had to face up to that risk as well, that – how much risk is associated with choosing the option, at that time of the project configuration, that actually appears to be more expensive, and therefore would – I'll just finish –

MR. HOGAN: That's fine.

MR. THOMPSON: – and therefore result in higher costs for ratepayers. So we did not ignore that question, but it's – one has to make a judgment on that question.

And so then, when one looks at the risks associated with the oil price forecast, 'cause that's the most significant part of, perhaps, risk aspect, and there are the other important risks in that scenario, and large capital projects, for sure, all – and some of the risks are shared between both options; a risk in one would be the – a risk in the other.

But one has to say that – one has to conclude that the risk is so large and it can't be managed then – in relation to the Interconnected Option, that – let's choose the option that, at this present day, looks more expensive.

MR. HOGAN: But isn't it less risky to not put all your eggs in one basket, and I mean that's –

MR. THOMPSON: Well –

MR. HOGAN: – just sort of –

MR. THOMPSON: Well, this is the very point – and I agree with you that this is a very important discussion to have, and we had it.

MR. HOGAN: Well, I guess that's my question, did you have it and –

MR. THOMPSON: Yes, yes.

MR. HOGAN: – did anyone express the views that: let's go with the smaller projects over the longer period of time to avoid demand risks, oil price risks, population risks –

MR. THOMPSON: So did we have that –

MR. HOGAN: – overrun risks for one large project?

MR. THOMPSON: Oh absolutely. Absolutely. Those would have been part of the meetings that we had. And then we had, of course, the other reviews that would have given us input on whether the options analysis and the forecasting were reasonable and justified. And so that's how we ended up at the decision that we did.

MR. HOGAN: Okay. So you were alert to it and the decision was made, obviously.

MR. THOMPSON: Right, right.

MR. HOGAN: Okay, thanks.

MR. THOMPSON: And we thought at the time for sure – and it's an open question still I suppose in some respects – was it the best long-term decision for ratepayers?

MR. THOMPSON: Okay.

THE COMMISSIONER: Can we just take our break here. Is this a good spot to break?

MR. THOMPSON: That's fine.

THE COMMISSIONER: Okay. So we'll take our noon break here and return at 2 o'clock.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right, Mr. Hogan, when you're ready.

MR. HOGAN: Mr. Thompson.

If I could please look at P-01073, please?

THE COMMISSIONER: 01073?

MR. HOGAN: Yes, that is –

THE COMMISSIONER: Tab 39?

MR. HOGAN: Probably just look at the screen. It's a very quick email, November 2010 from yourself to Charles Bown: For com –

communications purposes I assume that means – can we provide likely or expected rate per kilowatt hour “on isolated island and island link scenarios in 2016. Likely not but I was asked.”

Can you – does this ring a bell? Can you describe what’s going on here?

MR. THOMPSON: Sure.

So this is November 8, 2010, and would’ve been the lead-up period to, I guess, public release or an announcement of the DG2 preference and the Emera agreement. And this would’ve been for one of the communications documents that we – was seen to be appropriate, that is to convert the analysis that Nalcor had done into a – something that could be understandable in terms of rate per kilowatt hour, so, you know, to be more informative for consumers.

I guess by the last part of the statement, where it says: Likely – “Likely not but I was asked” is that I’d formed an impression along the way that this was a difficult analysis to do to convert the wholesale electricity price from the CPW analysis into the final consumer rates, and that – and we were pressed up against a late period, you know, we were getting close to announcement. So that was the context of –

MR. HOGAN: So likely not. It’s because you’re asking late and it’s difficult to do?

MR. THOMPSON: Yeah, I think so. And if – can we get it prepared in time to, you know, rely upon it, have all the, you know, validation done of whatever analysis is necessary.

So I was assuming it was going to be a large piece of work but, nonetheless, let’s find out.

MR. HOGAN: You – and I take it this is only one email, I know –

MR. THOMPSON: Yeah.

MR. HOGAN: – but do you remember if you got an answer?

MR. THOMPSON: You know, I think that we did. My general sense of recollection is that for the DG2 announcement that there was something in there translating it into rates.

MR. HOGAN: And do you remember which one was higher or low? I won’t ask you, unless you remember what the numbers are.

MR. THOMPSON: No, I’m confident in saying that the –

MR. HOGAN: Yeah.

MR. THOMPSON: – Infeed Option was lower.

MR. HOGAN: Okay.

And I’m just sort of curious now, is that – was this process, was this analysis not an ongoing thing? Because at the end of the day I’m sure the public mostly cared about what they were going to be paying.

MR. THOMPSON: Right.

MR. HOGAN: Was that analysis not ongoing throughout the whole process to tell the public it’s going to be 10 cents, 11 cents, nine cents for this one versus that one?

MR. THOMPSON: Well, yeah, it’s – in terms of it, whether or not it was ongoing, it wasn’t a regular feature that was updated on a regular, say, monthly or quarterly basis. It was seen to be an exceptional analysis, an important one but an exceptional one I think, because as I recall the difficulty of producing it and with confidence, you know, the wholesaler had to make speculation about what the PUB would allow in normal circumstances, what Newfoundland and Labrador – Newfoundland Power’s rate impact would be and now I’m getting into an area outside of my expertise.

So because there was steps like that, and because the CPW comparison leading us to a decision on the correct preference was directly translatable, I think it was directly translatable into how it would impact ultimately on rates that the same preference would flow through into the impact on consumers.

MR. HOGAN: So it’s fair to say the analysis was focused on the CPW.

MR. THOMPSON: Yes.

MR. HOGAN: The lowest CPW would theoretically translate –

MR. THOMPSON: With confidence that that would flow through into rates in a kind of similar proportions.

MR. HOGAN: The focus was on the CPW as opposed to the rates.

MR. THOMPSON: Yes. The focus –

MR. HOGAN: The theory that the lowest option would lead to the lowest rates.

MR. THOMPSON: Correct, yes.

MR. HOGAN: Okay.

MR. THOMPSON: Yes, that's fair.

MR. HOGAN: But, again, the focus was not on kilowatt hours numbers, was it, it was on the CPW.

MR. THOMPSON: That wasn't the unit of analysis that was as used.

MR. HOGAN: Wasn't used. Okay, that's a good way to put it.

Thank you.

If we could please look at P-01094; you've been asked a lot about this and the reference to the PUB and why there was only two options as opposed to an open option. So I'm not going ask you specifically about that –

THE COMMISSIONER: Sixty-two?

MR. HOGAN: Sorry. Do you have it, tab 62?

THE COMMISSIONER: Yeah. Are we on 01094?

MR. HOGAN: 01094.

MR. THOMPSON: Okay.

MR. HOGAN: Still waiting?

Okay, so like I said, I'm not going to ask you about that analysis but I am curious – well, it

says: "Will we be limited to 2 supply options or 5?" We now know it was two options. Correct?

MR. THOMPSON: That were submitted to the PUB? Yes.

MR. HOGAN: Who made that final decision on limiting the two options? Did it rest with Cabinet or did it rest with the premier?

MR. THOMPSON: I don't –

MR. HOGAN: Or did it rest with Nalcor?

MR. THOMPSON: Oh, it didn't rest with Nalcor, it rested with the government as to – you know, the decision-maker on a matter like this would have, certainly, been the premier or included the premier and the minister. It's very unlikely that this decision would've been made without the concurrence of the premier and the minister.

MR. HOGAN: Definitely the premier and probably the minister.

MR. THOMPSON: No, both.

MR. HOGAN: Okay. Cabinet?

MR. THOMPSON: I don't recall if this went to Cabinet, this decision went to Cabinet, I just don't recall. So it may not have been, but then again let me – you know, so I have to work from logic and processes to try to give you an answer –

MR. HOGAN: Yeah.

MR. THOMPSON: – 'cause I don't recall, but if there was an order-in-council issued with the reference, and I guess there was, then the order-in-council would have been generated, more than likely, based on a Cabinet discussion.

MR. HOGAN: Let's talk about it generally.

MR. THOMPSON: Yes.

MR. HOGAN: Decisions were made on this project for – over the course of a number of years.

MR. THOMPSON: Yes.

MR. HOGAN: Sometimes they're orders-in-council, I assume.

MR. THOMPSON: Yes.

MR. HOGAN: Which means what, that Cabinet would have discussed it?

MR. THOMPSON: Okay, not universally, not –

MR. HOGAN: Okay.

MR. THOMPSON: – all the time. So in general, I think what – let me deal with several parts of this.

Many times Cabinet was briefed on the progress of the project. I don't know – five, 10 times, maybe more, on the progress of the project. Some of those briefings may have included decisions for guidance to Nalcor, so there may be a minute of Cabinet that expresses that the Cabinet, you know, agreed that the best course of action was the following, in general terms. Certain decisions may have required an order-in-council such – like this one. If there was –

MR. HOGAN: If.

MR. THOMPSON: – to be an order-in-council to – under an act, to issue the reference to the PUB, it very likely occurred as a result of a Cabinet discussion. And the reason I say very likely, rather than 100 per cent, is that there were occasions, mainly in around appointments – the appointments process – where an order-in-council could be issued under the prerogative of the premier and we would, and that wouldn't necessarily be subject to a Cabinet discussion. So when I think about the appointment of deputy ministers, for example – would be an example of that.

So with only that little bit of uncertainty, you know, this is a, if there was an order-in-council issued on this it was very likely that it's the result of a Cabinet discussion.

MR. HOGAN: Okay. So some decisions were made with Cabinet approval, and some were made with just the premier making a decision.

MR. THOMPSON: Often guidance, which – sometimes important guidance, of course, would have been made with the – by the premier in discussion with the minister and officials.

MR. HOGAN: Okay, thank you.

I think your evidence yesterday, with regards to the PUB when they – you were asked about limiting the two specific options. I think – you correct me if I'm wrong, but I think you said one of the reasons to limit it was to – because of scheduling.

MR. THOMPSON: Yes.

MR. HOGAN: You didn't want to give them too many options because it would take longer. Is that correct? You said that?

MR. THOMPSON: Well, there's the time frame within which the government's hope and expectation that the PUB reference could be completed was arrived at, in part, by the issue of schedule. That was a consideration at that time, given that it was early 2011, when this active consideration was being made.

MR. HOGAN: Okay. My question then is MHI was hired by the government in March of 2012, and didn't file their report until October 2012, I believe. So that's six – seven more months.

MR. THOMPSON: Right.

MR. HOGAN: So, how do you reconcile that extra time with trying to limit the time for the PUB?

MR. THOMPSON: One review was DG2 data and the other was on DG3.

MR. HOGAN: Okay. So that's – the DG2 timeline was March 2012 and you would give MHI more time to do DG3.

MR. THOMPSON: Well – of course, by a certain point within 2012, maybe midway through, DG3 data would have been completed with enough comprehensiveness to give to MHI to do that independent review. So that would have been operating, generally, with the schedule, rather than extending the schedule.

MR. HOGAN: Okay. Thank you.

So I wanna go all the ways back to the Régie applications.

MR. THOMPSON: Mm-hmm.

MR. HOGAN: Do you recall specifically what the government was requesting from *Hydro-Québec* through those applications? And I mean in terms of, what was the capacity request?

MR. THOMPSON: There were so many requests that I can't give you the quantities right now, no.

MR. HOGAN: Okay. 'Cause it's my understanding that the lines were actually full. You had the Upper Churchill going through there, that's over 5,000 megawatts. We've heard some evidence about the \$3 billion number; I've heard it from two witnesses.

Does that ring a bell to you at all? Was – and I'll put it in a little bit more detail, that potentially, there was an offer from *Hydro-Québec* or Quebec that Newfoundland could build transmission, because there was no available transmission in Quebec?

MR. THOMPSON: No, that line rings a bell, but I'm not really the best person to ask that question.

MR. HOGAN: So what part rings the bell? The \$3 billion or the offer to build transmission?

MR. THOMPSON: No – all of that.

MR. HOGAN: Okay.

MR. THOMPSON: But my major recollection of this – this part of the overall story is that Nalcor held the belief, the province held the belief, that there was available transmission capacity that wasn't being made available to it, at an appropriate cost. And – there was – you know what? I am already too far into –

MR. HOGAN: Let's put it this way –

MR. THOMPSON: – an area that I don't know enough about.

MR. HOGAN: – if there wasn't available capacity, you wouldn't expect *Hydro-Québec* to make way for you.

MR. THOMPSON: Wasn't ...?

MR. HOGAN: If there wasn't available capacity. You wouldn't expect them to build new capacity, would you?

MR. THOMPSON: As a statement of logic disconnected from the actual facts, I would agree with that.

MR. HOGAN: Okay.

MR. THOMPSON: Right.

MR. HOGAN: Again, sorry. I'm – my timeline – I'm jumping around here, but I'm trying to pick up – follow up on some information you gave yesterday. You said there was public pressure in 2011 to do an independent report.

MR. THOMPSON: Yes.

MR. HOGAN: Do you recall that?

MR. THOMPSON: Yes.

MR. HOGAN: So where are you getting information about the public pressure? Was this internal polling by the government?

MR. THOMPSON: No, it was my recollection of the public environment in the three to six months after the DG2 Emera announcement. That there was more and more commentary and building in the public, in the media and commentators about the desirability of doing an independent review.

MR. HOGAN: Okay, so it was a feeling – general feeling by you and other members of the government?

MR. THOMPSON: We perceived this mounting sense among parts of the community in that regard – yes.

MR. HOGAN: Okay. And I'm gonna put this to you, I mean, I see your role – that there's a political slant to it.

MR. THOMPSON: I wouldn't phrase it that way.

MR. HOGAN: How would you phrase it?

MR. THOMPSON: A political awareness, a keen appreciation of political context.

MR. HOGAN: Okay, fair enough. And fair enough, you read the tea leaves and said politically, we should do an independent review in 2011.

MR. THOMPSON: Well it was a shared belief –

MR. HOGAN: Yeah.

MR. THOMPSON: – within the group, yes.

MR. HOGAN: Mmm. And some of those groups are politicians?

MR. THOMPSON: Oh yes – yeah. Absolutely, yes.

MR. HOGAN: And there's an election upcoming in 2011.

MR. THOMPSON: Yes.

MR. HOGAN: So is one of the reasons – and I asked Tom Marshall about this, and he agreed with me that Muskrat Falls was the main issue for that 2011 election. Do you agree with that?

MR. THOMPSON: Yes, that is my recollection as well.

MR. HOGAN: And then – so there's a decision made to go into the election, to do this independent report – you're hearing what the public has to say. 2012 comes and there's a decision not to allow the PUB to finish – or to give the PUB an extension. So I'm stepping back – and from a political perspective, I'm wondering: was the decision made to do the independent review to get through the election, but then that promise wasn't followed through on in 2012?

MR. THOMPSON: I can't comment on what the political, you know, the electoral calculus was. That wasn't part of the kind of information

base I would've had at all. All I can tell you is that there was a felt need to do this. There was a, you know – there's this growing sense of need for an independent review that was detached, if you like, from Nalcor itself. And the government said this is a sensible thing to do.

MR. HOGAN: And then we can argue again about whether that PUB review satisfied that independent review –

MR. THOMPSON: Yes – yes, sure.

MR. HOGAN: – decision.

MR. THOMPSON: Did you wanna do that now?

MR. HOGAN: Yeah, well would – I mean, I don't know, maybe you said. You think that PUB review in March of 2012 satisfied the independent review that was pushed forward in 2011?

MR. THOMPSON: Well, it was –

MR. HOGAN: Given what the PUB said and that they didn't have enough information to make a decision. So yeah, you can comment on that.

MR. THOMPSON: Well the word independence – let's focus on that. We felt initially, as I mentioned yesterday, that at the beginning of 2011 – end of 2010 and at the beginning of 2011 – that the government was of the view that the closest –

THE COMMISSIONER: Can I just stop you there?

I've got a concern now about this afternoon and about us finishing. You've already given this evidence before.

MR. THOMPSON: Yes, yes, I –

THE COMMISSIONER: So what I'd like you to do this afternoon, if you could – and understand that I will be looking at your evidence as a whole when I assess it –

MR. THOMPSON: Yes.

THE COMMISSIONER: – is to try to confine your answer to the question that’s being asked. Like, in this particular case you were asked the question: In your view, was the PUB review the independent assessment that you had thought it was going to be?

I understand your point about independence and all that sort of thing. So if you could bear with us this afternoon –

MR. THOMPSON: Of course.

THE COMMISSIONER: – okay? So let’s just get to the answer. I understand – you’ve already given me a lot of the contextual information.

MR. THOMPSON: Of course.

THE COMMISSIONER: I’ve got that; I don’t need that repeated a hundred times.

MR. THOMPSON: Of course.

THE COMMISSIONER: Okay? Go ahead.

MR. THOMPSON: Could you repeat the question then, please?

MR. HOGAN: Sure.

The 2011 decision to push or to do an independent review then became the decision to send it to the PUB. Do you think that the 2012 – March 2012 PUB decision satisfied that push for an independent review?

MR. THOMPSON: The conduct of the review was an independent review.

MR. HOGAN: Okay, do you think the answer satisfied – gave you a yes-or-no answer?

MR. THOMPSON: No, it didn’t.

MR. HOGAN: Okay.

MR. THOMPSON: The PUB’s own report didn’t.

MR. HOGAN: Okay, thank you.

If we just turn to P-00041, please – this is the Joint Review Panel report – page 342 – 342, please. Scroll down a little bit. Keep going.

Okay, I may have the wrong page but I don’t necessarily need it.

Do you – my question is: The appointment process for the panel members in this, were you a part of that?

MR. THOMPSON: This is the EA panel?

MR. HOGAN: Yes.

MR. THOMPSON: No.

MR. HOGAN: You had no involvement in that whatsoever?

MR. THOMPSON: None that I recall at all.

MR. HOGAN: Do you know how the members of the panel were chosen?

MR. THOMPSON: I don’t recall.

MR. HOGAN: Don’t recall.

Earlier today, the Nalcor submission to the PUB – you recall going through that – you said it was reviewed by government. I’m wondering if you can give me a name of who was assigned the task to review it and sign off on it.

MR. THOMPSON: The report, as I recall, was shared with the Department of Natural Resources for review, but as to who reviewed it, I’d suggest that you ask Mr. Bown. I wouldn’t know exactly who reviewed it.

MR. HOGAN: So you don’t know if it was him or the minister, can’t say?

MR. THOMPSON: I can’t say.

MR. HOGAN: Okay.

Do you know if there was a rigid protocol in terms of documents that were being sent from Nalcor to the Department of Natural Resources as to these certain people have to review it and this certain person has to sign off them?

MR. THOMPSON: I don't recall a protocol

MR. HOGAN: What about when you were there?

MR. THOMPSON: Well, the documents would generally come to myself or Charles. And so then, if we needed additional people to review it – so perhaps not a protocol, but that would've been the norm.

MR. HOGAN: Okay. So I mean would it be the minister that would have to sign off or the deputy minister?

MR. THOMPSON: On what?

MR. HOGAN: Pardon me?

MR. THOMPSON: Sign off on what?

MR. HOGAN: Documents that came through Nalcor for approval.

MR. THOMPSON: Oh, no, we would often give comments directly back to Nalcor. As you've seen, many comments are kind of drafting comments, technical comments or questions sometimes, we wouldn't go through the minister to get signed off on those.

MR. HOGAN: Okay.

I saw a couple of documents today; I can just show you one as an example: P-01003. Do you remember looking at this one?

MR. THOMPSON: Right.

MR. HOGAN: And P-00130, these are just examples. I want to ask you a question about the confidentiality stamp. Again, this one confidential. Was it practice for any documents coming from Nalcor to government to be labelled as confidential?

MR. THOMPSON: I don't recall whether it was a practice, but it wouldn't be unusual certainly.

MR. HOGAN: It would be unusual to be marked confidential?

MR. THOMPSON: It would not be unusual –

MR. HOGAN: Not be –

MR. THOMPSON: – for it to be marked confidential.

MR. HOGAN: Do you have any concern with who's – or do you know who's making the decision to mark it confidential?

MR. THOMPSON: Not specifically, no.

MR. HOGAN: And did you have any concern that it was being marked confidential and therefore maybe the public wouldn't be able to see these documents?

MR. THOMPSON: Didn't have that concern in the context of them sharing it with us and for the dialogue between Nalcor and the government, no.

MR. HOGAN: So who at government could see a confidential document?

MR. THOMPSON: Well, it didn't have a highly defined security classification and assessment. We didn't give security clearances of any kind to individuals. So, it was – we used our own judgment as to whom we shared it with.

MR. HOGAN: So, it's a bit loosey-goosey in terms of what that confidentiality mark means?

MR. THOMPSON: Yeah, we gave it to people who were employed by us and that we trusted as public officials.

MR. HOGAN: The person with the document in their hand was really making the decision about who he or she would share it with.

MR. THOMPSON: In general –

MR. HOGAN: Yeah.

MR. THOMPSON: – but if they had to stamp confidential, you'd use, you know, a general – an appropriate level of consideration in who you shared it with.

MR. HOGAN: Back to the PUB. You were asked why the DG3 numbers didn't go to the PUB. Was there any concern or did anyone express any concern, that you're aware of, that

the PUB wouldn't find the Isolated Option was the least-cost option once they had the DG3 numbers?

MR. THOMPSON: Sorry, I lost the first part of your question, my apologies.

MR. HOGAN: The DG3 numbers didn't go to the PUB.

MR. THOMPSON: Right. Yes.

MR. HOGAN: And you gave evidence about why.

MR. THOMPSON: Right.

MR. HOGAN: And that's fine. Do you recall anyone expressing concern that the PUB would find the Isolated Option as the least-cost option?

MR. THOMPSON: No.

MR. HOGAN: That (inaudible)?

MR. THOMPSON: I don't recall anyone saying that.

MR. HOGAN: I asked former Premier Marshall about 2011. I put it to him that it was a bit of a hectic year politically. Do you agree with that?

MR. THOMPSON: Yes.

MR. HOGAN: Okay.

There's a lady whose name I've seen on a few emails here today by the name of Diana Dalton. Does she ring a bell to you?

MR. THOMPSON: Yes.

MR. HOGAN: Who was she?

MR. THOMPSON: She was the deputy minister of Natural Resources.

MR. HOGAN: Okay, now, she – how did she come to be hired?

MR. THOMPSON: The – so I left the Department of Natural Resources. We did an interim appointment with Richard Wardle and

then we began, you know, looking for a replacement.

And we may have hired an executive search firm, I can't recall. We probably did at that, because we would do that from time to time. And I'm speaking from the point of view of the clerk of the Executive Council and having responsibility for recommending to the premier the filling of deputy minister positions.

And so she was working in Nova Scotia at that time and she would have made herself known to the executive recruiter is how I remember it. I didn't know her prior to that point in time so she would have been, you know, self-identified or someone perhaps referred us to her.

MR. HOGAN: Okay and I don't think she lasted very long, is my understanding.

MR. THOMPSON: No, that's right.

MR. HOGAN: Do you know why she didn't last very long?

MR. THOMPSON: Well, I do have some recollections and I – you know, this enters into an area of – you know, assessment of the human resources and an individual's performance. Is that the sort of thing you'd like me to go through here now?

MR. HOGAN: If you can tell me in a sentence why. Did she leave on her own?

THE COMMISSIONER: Well, just a minute now. So are you telling me, Mr. Thompson, that – maybe – would you be satisfied with the question of whether she went – whether she left the job on her own or if she was replaced or ... because I don't really want to get into the personal –

MR. HOGAN: Not personal, I want to know why she left. I want to know because I have some follow-up questions depending on the answer.

THE COMMISSIONER: Well, it cannot be answered without basically potentially harming the reputation –

MR. HOGAN: Yes.

THE COMMISSIONER: – of this individual?

MR. THOMPSON: Well, I'm not sure about that. I –

MR. HOGAN: Let me ask – can I ask this question and you can –

THE COMMISSIONER: Yes, go ahead.

MR. HOGAN: Did she express different views than other government Members in terms of how this project should be viewed?

MR. THOMPSON: No. No.

MR. HOGAN: It wasn't anything like that?

MR. THOMPSON: No, nothing to do with the project.

MR. HOGAN: Okay so she wasn't someone that was pushing back in one direction and –

MR. THOMPSON: No, no, no.

MR. HOGAN: I just have a couple more notes I want to refer to, your notes. P-00265 please, page 6.

THE COMMISSIONER: Tab 112.

MR. THOMPSON: Okay.

MR. HOGAN: This – these are your notes, correct?

MR. THOMPSON: Yes.

MR. HOGAN: So this was November 2006. If you can just read out the – where the parentheses start on the bottom – parentheses DW?

Can you read that into the record, please?

MR. THOMPSON: Sure.

MR. HOGAN: Seeing as they're your notes.

MR. THOMPSON: "DW – I prefer the Maritime route just to escape the involvement w/ Quebec. Its obviously cheaper to go through Quebec, but ... I am a 'build it and they will

come' thinker, and we will take advantage of short-term sales contracts."

MR. HOGAN: So I assume that DW is Danny Williams?

MR. THOMPSON: Correct.

MR. HOGAN: So he's saying that it's cheaper to go through Quebec, which we've heard about, that that wasn't an option eventually, but is he saying that he would've went through – done the Maritime route regardless of cost here?

MR. THOMPSON: The – it's not a hundred per cent clear that he was –

MR. HOGAN: Well, let's try and see if you can remember then.

MR. THOMPSON: Yeah, I can't remember. I can just try to reconstruct –

MR. HOGAN: Yeah.

MR. THOMPSON: – based on the words here, and my sense –

MR. HOGAN: So go ahead. Take your time.

MR. THOMPSON: Yup.

So – and I think he may have testified to this as well, but there was a sense that, of course, evading the leverage that Quebec can exert on the – on Newfoundland and Labrador geographically is a policy goal; it's a good thing in general.

It may come at the expense of not having the least expensive route to market, but that it – that the benefit of taking the alternative route – and in this case, he was speculating about taking advantage of short-term sales contracts for high revenue, which is one way to look at, you know, potential sales – would earn a sufficient revenue to be worth the overall prize, if you like.

MR. HOGAN: Okay.

And we know that there's no sales contracts signed other than the one with Emera, right?

MR. THOMPSON: Correct.

MR. HOGAN: Okay.

So we've talked about bias as well. I mean, this is 2006. Did this, you know, did this create a bias in government and in Hydro at the time, I guess, that let's build it and they will come?

MR. THOMPSON: Well, this wasn't, of course, a directive.

MR. HOGAN: No, I understand.

MR. THOMPSON: And –

MR. HOGAN: It's that thinking at the time in 2006, though.

MR. THOMPSON: Sure, it reflected the premier's thoughts that day, and I think my notes were fairly accurate of what was said, and I did like to try to transcribe some of these in order to make sure I was able to keep a recollection of what was said.

And it reflected – no question it reflected his desire to not be leveraged by the Province of Quebec. But it – and if that's what you mean then – and then it did reflect that – certainly the – over time, the stages that we went through of, you know, very thorough and critical analysis of what is the most viable and least-cost project, et cetera, were – would have negated any bias towards one development route, I would suggest to you.

MR. HOGAN: I'm a little less concerned about the Quebec part. I'm more concerned about – there was a very quick pivot away from Gull and Muskrat towards Muskrat for domestic use, and this doesn't talk about domestic use. That's really –

MR. THOMPSON: No, it doesn't.

MR. HOGAN: That's my concern is that, you know, was there a hope and a plan – and not criticizing it – to build the Lower Churchill Project, to export it, and then – when it couldn't be done, then the substitute was, well, let's just do it for domestic needs, because we want to do the project.

MR. THOMPSON: I see. I never thought about it that way.

The development of Gull was thought about with and without infeed options as well, and so I don't think that you can say that the Infeed Option then became a convenient way to get a project underway anyway. It was always present as a possibility, and then, of course, loomed into something that became linked fundamentally because of the need to supply the Island.

MR. HOGAN: Okay.

If we could just go to page 7, please.

And again, the bottom right corner, if you could – officials left – and then it says DW again. So if you could just read that into the record, please.

MR. THOMPSON: Okay, “at first EM” – who I presume is Ed Martin – “did not support Maritime route, but we asked him to have another look at it, they worked the numbers, and now he's come back with an assessment that says it can be done, linked to replacing Holyrood. It's a great team over there.”

MR. HOGAN: Any recollection of this?

MR. THOMPSON: From rereading it?

MR. HOGAN: Yeah.

MR. THOMPSON: Yes.

MR. HOGAN: Okay. Can you elaborate on it at all, what was going on there?

MR. THOMPSON: Well – yes. I'll just give you more context. Of course the Nalcor officials had left the Cabinet room for – and this is the statement that the premier would have made to his Cabinet colleagues. And reflecting on how – it appears that there was some encouragement from the premier to the – or from government – to Nalcor to have a close look at the Maritime route, and then – and they did. And they found that there's a configuration that has some – that looks positive, and thus it's probably an option.

MR. HOGAN: But there – was there some configuration that didn't work initially? 'Cause that's what it sort of sounds like – “did not support Maritime route at first.” So obviously at some point Mr. Martin had looked at it and said:

I don't agree with this. And we don't know what that is but –

MR. THOMPSON: No. I can't recall that, but you're right, and that's a logical inference here.

MR. HOGAN: Okay.

MR. THOMPSON: Mm-hmm.

MR. HOGAN: And you're not going to be able – I don't know if you'll answer this, but you know, the assessment works when we take Holyrood out, so my question is – you know, is that being taken out just to make the Maritime route look like a good option?

And we've – I would suggest that replace Holyrood sort of became the mantra as a communications piece for years. We have to do this because we have to replace Holyrood, and I read that and say: I don't know if we needed to replace Holyrood; it looks like it was created to make the Maritime route work.

MR. THOMPSON: Yeah.

That's not the way I've regarded it. That's not the recollection I hold in my head, not from this specific meeting, but in general, that the replacement of Holyrood was a result of the supply analysis, particularly, the one that was tabled in – oh, I forget the year – but that projected the shortfall in 2015. That created the need for an action, and then it became fundamentally linked.

But as I'm sure you – the idea of doing an infeed and dealing with the end-of-life of Holyrood, it was a longstanding issue and not one that just came up at this time.

MR. HOGAN: Okay.

All right, that's all the questions I have.

MR. THOMPSON: Thank you.

MR. HOGAN: Thank you.

THE COMMISSIONER: Thank you.

Emera Inc.?

MR. O'KEEFE: No questions, Commissioner.

THE COMMISSIONER: Thank you.

Former Nalcor Board Members?

MS. G. BEST: Hello, Mr. Thompson. My name is Glenda Best, and I'm the counsel for the Former Nalcor Board Members. I just have a couple of questions for you.

We've looked at – and I don't need anybody to – I don't need these brought up now – P-00395, which was the letter from Mr. Clift to you, and we also looked at P-01113, which was I guess a list of topics for Premier Dunderdale to discuss or – with the board.

MR. THOMPSON: Yes.

MS. G. BEST: Did you have any direct contact with the board of directors, either in your capacity as DM of Natural Resources or as executive?

MR. THOMPSON: Almost no contact.

MS. G. BEST: And communications between Nalcor and the government, do you know who was responsible or who handled those communications in general?

MR. THOMPSON: CEO, mainly. Of course, we had contact with many other officials but very, very seldom with the board.

MS. G. BEST: Okay.

And with respect to the concerns that the board raised in relation to expertise and compensation, did the government have any concern that until those matters were addressed that the board wasn't acting in its fiduciary capacity with respect to the ...?

MR. THOMPSON: No, we didn't have a concern that the board wasn't discharging its duties and responsibilities. We did – or at least I did share the concerns that were noted by Mr. Clift and felt that they would aid the board in carrying out those duties. So, it's a nuance but we didn't fear that the board was operating – was not operating appropriately, no.

MS. G. BEST: Okay. And you had mentioned a couple of times that really the oversight for the government, the first step in that oversight was the board.

MR. THOMPSON: Right.

MS. G. BEST: And did you have any concerns that the board then wasn't providing adequate oversight?

MR. THOMPSON: We didn't have any cause for concern in my recollection.

MS. G. BEST: Okay. Thank you very much.

MR. THOMPSON: Thank you.

THE COMMISSIONER: Newfoundland light and power?

MR. KELLY: Good afternoon, Mr. Thomson. Ian Kelly for Newfoundland Power.

I have a couple of questions surrounding the reference to the Public Utilities Board and I would like to start the discussion by looking at the timeline. And to do that, can I take you first to Exhibit 01088?

THE COMMISSIONER: That's tab 54.

MR. KELLY: And if we could scroll it up on the screen a little bit – there we go.

When Mr. Learmonth was asking you, you pointed out to him that this, if I followed correctly, was the first time there was a reference to a public utilities reference and, in fact, you said to him: Look, it was as early as in April that we started to think about it. Correct?

MR. THOMPSON: Yes.

MR. KELLY: Okay. Now, if you look under Options for Consultant, the third bullet down is: PUB under mandate to hire experts only. What did you mean by that: under mandate to hire experts only?

MR. THOMPSON: Well, first thing, it's – as the preface to the note says – it's some generic thoughts. So, these were a discussion starter.

The reference to the PUB was that it was an option to engage the PUB in this process to – with the mandate to hire experts only. One could read that – and I'm interpreting something I don't have a recollection about it at that time, in my memory right now, but one can interpret that as with a – let the PUB hire the experts, but limited to experts without public hearings. That's one interpretation.

MR. KELLY: And that's how I read it.

MR. THOMPSON: Right.

MR. KELLY: Was that your intention at the time?

MR. THOMPSON: I don't recall if it was my intention at the time, but I am not sure if I can create any other logical interpretation of it at this time.

MR. KELLY: Fair enough.

MR. THOMPSON: Yeah.

MR. KELLY: Okay, we're on the same page.

Now this is the 4th of April – sorry, the 14th of April in 2011. So let's go next then to Exhibit 00807.

THE COMMISSIONER: Tab 58.

MR. KELLY: And if we go to the very bottom of that document, which is page 4, you'll see that this is the ministerial statement where Ministers Marshall and Skinner were contemplating that this review would be done by a government hired expert, correct? Correct?

MR. THOMPSON: Yes.

MR. KELLY: And that is then May 10 and 11 of 2011.

MR. THOMPSON: Correct.

MR. KELLY: With a broad scope that's set forth on page 3.

MR. THOMPSON: Right.

MR. KELLY: Correct?

Okay. Now then, let's go to Exhibit 01092, which I think is your tab 62.

THE COMMISSIONER: Tab 60, I think it's tab 60.

MR. KELLY: Sorry, okay.

And this is December – sorry, May the 12.

MR. THOMPSON: Yes.

MR. KELLY: And at that stage, if you have a look at that document, it is pretty clear you're still thinking about a non-PUB reference. This is kind of consistent with Ministers Marshall and Skinner's approach.

MR. THOMPSON: That's right, we're still trying to sort out the pros and cons of the different options and this lays out the logic if one was not to go with the PUB.

MR. KELLY: Okay.

If you go to the next exhibit, 01093, which is the 17th of May, at that stage you're looking at which projects had been previously exempted.

MR. THOMPSON: Right.

MR. KELLY: So still no decision on whether there's going to be a PUB reference, correct?

MR. THOMPSON: I don't recall the date the decision was made but that looks like to be accurate.

MR. KELLY: Okay. And just to clarify one point, you'll see the third bullet down under list of projects: "Rose Blanche (Newfoundland Power) – due to its size it did not trigger PUB scrutiny, so no exemption required."

In fact, that's incorrect, Newfoundland Power being a regulated utility, the Rose Blanche generating project was fully reviewed by the PUB.

MR. THOMPSON: Okay.

MR. KELLY: Would you be aware of that?

MR. THOMPSON: No, I'm not and I wouldn't have been at the time as well.

MR. KELLY: Okay. And then if I take you to page – to the next exhibit, 01094. This is the next day.

MR. THOMPSON: Mm-hmm.

MR. KELLY: Do you have that one?

And it now looks very much like a decision is being made on or about the 18th of May to refer to the Public Utilities Board.

MR. THOMPSON: Correct.

MR. KELLY: Okay.

Now, then, let's go next to Exhibit 00846. And if you go to the end of this first, just so you get the time frame, this is May 26, 2011, and this is the document because – sorry, that date is on page 3 before the attachments. This is the direction note for the reference to the PUB.

MR. THOMPSON: Okay.

MR. KELLY: Agreed?

MR. THOMPSON: Yes.

MR. KELLY: Okay.

Now, on the first page of the document the third bullet from the bottom: By this point the premier has already "committed to some level of involvement for the Board in deciding the issue of whether the Lower Churchill is the least-cost alternative for Island ratepayers."

So, first of all, can we agree that the premier has already announced some form of PUB involvement?

MR. THOMPSON: I would – the text says that, I would concur with it, but I don't have an independent recollection of that.

MR. KELLY: Fair enough.

Now, then I want to take you, on this document, over to page 4. And you'll see here that there's going to be a reference of these two projects and

about one, two, three, four, five, six lines down: “... both of which shall be outlined further in a submission made by Nalcor Energy (“Nalcor”) to the Board of Commissioners of Public Utilities”

Now, we know because it’s in the material, I believe, as Exhibit P-00077 – Mr. Simmons took you there earlier – that that submission is two volumes and in the order of some 300 pages.

MR. THOMPSON: Right.

MR. KELLY: And anybody with regulatory experience would have known that it would take months to prepare such a submission. Was there any discussion with Nalcor in terms of making this reference –

MR. THOMPSON: Mm-hmm.

MR. KELLY: – how long it was going to take them to prepare this submission which was contemplated by the reference?

MR. THOMPSON: Oh I believe there was, I have a general recollection that there was, but I can’t remember the specific conversations.

MR. KELLY: Do you remember them telling you this is going to take months to do?

MR. THOMPSON: No, I wouldn’t have had the conversation with Nalcor. I would expect that the Department of Natural Resources did, so I can’t answer the question of what they would have said to them.

MR. KELLY: So you, yourself, did not have any discussions with Nalcor over how long it would take them to do this submission.

MR. THOMPSON: You’re asking for a precise recollection and I can’t give you one. I don’t have that.

MR. KELLY: Do you even have a general recollection?

MR. THOMPSON: I don’t have a recollection of asking that or getting an answer and, therefore, I can’t assess your point.

MR. KELLY: Okay, well, here’s the reason I’m asking the question, because that seems very odd to me for this reason.

MR. THOMPSON: Mm-hmm.

MR. KELLY: First of all, you’ve told us a few moments ago that the timeline for the Public Utilities reference was determined by the schedule.

MR. THOMPSON: Mm-hmm.

MR. KELLY: Yet this is a critical component of even starting the process before the PUB. And on any stretch of it, it would have taken months to do, and we know in fact it took Nalcor five months to do, until November 10. And given the integrated approach of discussion that you’ve told us about, you told Mr. Budden it was fulsome communication –

MR. THOMPSON: Mm-hmm.

MR. KELLY: – it puzzles me that there is no – you have no recollection or no –

MR. THOMPSON: Okay –

MR. KELLY: – recollection of this.

MR. THOMPSON: – so let me add an inference, then, because I only do that with – in the absence of a recollection.

MR. KELLY: Sure.

MR. THOMPSON: It’s quite logical, and I would expect that such a discussion occurred, that we received feedback from Nalcor on their ability to deliver, and that that would have been considered in writing these words. That’s all I can tell you.

MR. KELLY: Right, but you don’t know how long they told you then –

MR. THOMPSON: No, I –

MR. KELLY: – that it would take them?

MR. THOMPSON: No, I can’t recall that.

MR. KELLY: Okay.

Now, let me then take you to the next place I want to take you to in this exhibit, which is page 2. And you'll see the second bullet down is a reference to the insurance reference. And then the next bullet down is for that insurance reference: "Government appointed Thomas Johnson, as Consumer Advocate, to represent consumer interests during this review. A consumer advocate engages their own experts to review evidence and is able to challenge/question project assumptions."

So when the reference was started, I take it from this it was contemplated that the Consumer Advocate would be able to hire and call evidence through experts. Would you agree with that?

MR. THOMPSON: I – this is merely a statement that that's what happens. I don't even know today what we said about that in the terms of reference, you'd have to show me.

MR. KELLY: Okay.

Let me take you then to – over to page 3, and let's go a step further. And it – these are pros and cons now for this reference. So were you involved in establishing these pros and cons?

MR. THOMPSON: I believe this is a Department of Natural Resources note.

MR. KELLY: It is.

MR. THOMPSON: Right, so, no. I may have reviewed a draft that Charles may have sent me one, but I don't recall whether I did in this specific instance.

MR. KELLY: Okay, but this would be a key point. Now, this is a major change in strategy from we're not having a PUB reference to we're going to the PUB –

MR. THOMPSON: So that means –

MR. KELLY: So as part of this fulsome discussion, would you not have been involved in this?

MR. THOMPSON: Oh, yes. So you asked if I reviewed the note.

But – I was definitely involved in meetings over this course of time when the pros and cons of discussing the PUB versus a different kind of independent review was there. And I have general recollection of the meeting where it was decided to move on to the PUB.

MR. KELLY: Okay. Let's look at the cons first. The first one is the "Time frame will be very challenging for the Board" –

MR. THOMPSON: Mm-hmm.

MR. KELLY: – and "Could be criticized as not allowing sufficient time for adequate review."

So there are two schedule concerns right off the bat.

MR. THOMPSON: Right.

MR. KELLY: And since that was one of the cons, that's why I would have been curious that there was – no – there doesn't seem to have been this fulsome discussion with Nalcor over how long it was going to take.

MR. THOMPSON: Well, again, I'm not suggesting that there wasn't a fulsome discussion. I just can recall it.

MR. KELLY: Okay. Let's go to the third bullet under con: "Requires the Board to hold a public hearing." Why would a public hearing be a negative?

MR. THOMPSON: Well, in general it wouldn't be. I can only presume that here it was referring to a schedule issue, you know, in terms of the length of time it would take to do a review. But I'd be speculating that that was the reason that it was there.

MR. KELLY: But that seems an odd conclusion when the first two bullets talk about the schedule problem, and it almost seems like this bullet is intending to say: We don't want this to actually be a full-blown public hearing.

MR. THOMPSON: I agree with you. It's an odd – from that point of view I would agree with you that it's perhaps not a con.

MR. KELLY: Okay. Well then, let's go up to the pros, the first –

MR. THOMPSON: Mmm.

MR. KELLY: – is: “Fulfills commitment to have the Board involved” –

MR. THOMPSON: Mm-hmm.

MR. KELLY: – which is presumably the premier's commitment –

MR. THOMPSON: Right.

MR. KELLY: – we saw earlier.

But the second bullet is: “A Consumer Advocate will represent consumer interests and reduce the number of potential Intervenors.”

Now, intervenors are those with standing before the board –

MR. THOMPSON: Mm-hmm.

MR. KELLY: – who can ask questions. Why would it be a positive to reduce the number of intervenors?

MR. THOMPSON: Well, again, inferring and speculating backwards, I'd suggest that the theme that runs through this is all about the efficiency of the process and its relationship to schedule, and I would suggest that that line be interpreted in that regard.

MR. KELLY: Okay, but then, if efficiency and getting it done in a hurry is a real priority –

MR. THOMPSON: Mm-hmm.

MR. KELLY: – then it, again, surprises me that there's no recollection of discussions over how long it's going to take Nalcor to prepare the starting submission.

MR. THOMPSON: I don't think you should be surprised at my lack of recollection. I – because there's a lot that I don't remember from that period. If there's a document, it generally brings me back to it and helps me discuss it with you.

MR. KELLY: Okay. Let me put you to – put you now this question and see what you say.

MR. THOMPSON: What year was this again? Sorry, it was –

MR. KELLY: 2011.

MR. THOMPSON: 2011, yes.

MR. KELLY: You told Mr. Budden that it would be very difficult for – to support, to put forward the Muskrat Falls Project if it was not the least cost; it would be a hard sell.

MR. THOMPSON: Mm-hmm.

MR. KELLY: And you explained to the Commissioner why government wanted to do a second look through the PUB with that. If that was the objective, why would you not want a very robust, multi-party process in order to examine that question?

MR. THOMPSON: The answer to my question – the previous discussion – was that we did want to ensure that there was – the decision that was made was indeed the least cost. There's no question about that, that adding this additional level of review would add – create an opportunity for it to have that initial preference tested. And then now what we're talking about are the logistics of setting it up, and you're saying that a lengthier review with more intervenors might get to a better result on that question, and we were weighing the pros and cons of that. That's what's happening here.

MR. KELLY: But would you agree then that a more robust, open, multi-party process would have likely been more effective in terms of getting government what it wanted?

MR. THOMPSON: Well, so now you're asking for an opinion on the marginal value of adding in that, and there's no question that there is value in having more intervenors.

MR. KELLY: Okay. Because what we ultimately see is because the submission comes in so late from Nalcor that eventually there are no other intervenors with standing except the Consumer Advocate, who is instructed by government –

MR. THOMPSON: Mm-hmm.

MR. KELLY: – not to file an expert’s report, which undermines the whole concept of an independent review, which was what the objective was to start off with. Does it not?

MR. THOMPSON: You’d have to repeat that again, please.

MR. KELLY: Well, where the process ended up –

MR. THOMPSON: Mm-hmm.

MR. KELLY: – was, because of the delay in filing the submission, there were no other intervenors allowed with standing. The only other party with standing was the Consumer Advocate, who was instructed by government – the person putting – the entity putting –

MR. THOMPSON: Mm-hmm.

MR. KELLY: – forward the reference – not to file an expert’s report –

MR. THOMPSON: Mm-hmm.

MR. KELLY: – which largely undermines the value of an independent review, does it not?

MR. THOMPSON: Well, the view that the government had formed at the time is that it wouldn’t largely undermine it but that, rather, an effective review of the reference question could still be done because the expert – or the independent – or the consultants were hired, and they were conducting that review. The view was that the PUB itself could assess that material and other material and that the Consumer Advocate could assess that material as well.

So that was the view that was reached by the government, that they still believe that they would get an effective and useful review of the DG2 decision. If they felt that they were disabling an effective review, I’m doubtful that it would have been supported, but the decisions that were made to contain it within a certain time frame were taken on the basis that an effective review could still be done.

MR. KELLY: That answer you just gave was rather interesting, because you used the word that was the government’s view.

MR. THOMPSON: Yes.

MR. KELLY: Do you not see – you, as the witness sitting there –

MR. THOMPSON: No, no, I didn’t mean –

MR. KELLY: – that this –

MR. THOMPSON: – to dissociate myself from that, but – and I was part of those discussions, no question – but that was the view that was arrived at.

MR. KELLY: Okay. Thank you, Mr. Thompson.

MR. THOMPSON: Thank you.

THE COMMISSIONER: All right – sorry, Mr. Coffey.

MR. COFFEY: Good afternoon, Mr. Thompson.

Mr. Thompson, I’m going to more or less proceed chronologically.

Madam Clerk, could you bring up Exhibit P-01058, please.

THE COMMISSIONER: Tab 24.

MR. COFFEY: I apologize, Commissioner, I (inaudible) gotta get in the groove of that. Thank you.

Now, just one moment, please.

Now, Mr. Thompson, you were referred to this earlier, I believe, initially anyway, by Mr. Learmonth. It’s an email of August 2, 2010, from yourself to, then, your minister, Kathy Dunderdale, and copied to Mr. Bown. And you indicated to (inaudible) Mr. Learmonth – you pointed out there’s “some notes on this morning’s briefing for the Premier provided by Nalcor on LCP issues.”

Now, we've heard that the Régie decision had occurred or been brought down in May of 2010. This is now early August 2010, so what had happened in that intervening time?

MR. THOMPSON: Well, there's a – I can't tell you specifically –

MR. COFFEY: Yeah.

MR. THOMPSON: – but there was an assessment by Nalcor and the government as to, you know, the impact of that market – route to market being cut off. And simultaneously there was the issue of the supply decision for the Island. There were also preliminary discussions underway with Emera. So all of that was occurring simultaneously and this briefing starts to pull together some of those strands.

MR. COFFEY: And I take it that as you were reporting here in to Ms. Dunderdale, that you attended the meeting and were just giving her an account of it.

MR. THOMPSON: Correct.

MR. COFFEY: Okay.

If we could go then, please, to P-00216 and that is not on the list. The – and just as an aside – and Commissioner I'll mention it now as I've told Ms. Ding, I think, of your staff, that – and in fact the reason it's not on the list, I didn't ask to be put on Mr. Thompson's list is that at times when one is searching certain – using certain terms, even with the kiteworks documents – you're nodding (inaudible) aware of it. I'm sorry, I was not – I was certain you were aware of it – that certain fields will not come up, so – but that's why.

Okay, in any case, this is September 23, 2010, it's entitled: Island Energy Supply and Lower Churchill, Option Evaluation and Recommendation. And it's a 32-page – 32-slide document. You brought this up when Mr. Learmonth was asking you some questions.

Could you explain to the Commissioner, please – bearing in mind that you've recounted what happened on August 2 – what had happened then by September 23? What was the significance of this briefing?

MR. THOMPSON: So we understood that Nalcor was developing its analysis of these strands of Island supply decision, dialogue and opportunity with Emera in particular, and starting to focus on a Muskrat-only option to – as a solution in that respect.

And by September 23 they had completed their analysis and had landed on a recommendation to their board and to the government. And so this was our first look at I think what is the whole and complete set analysis – when I say complete, you know, it was a comprehensive analysis by Nalcor, supporting a recommendation that Muskrat be the next generation source for the Island and that a negotiation with Emera be concluded. That complemented that for all the reasons that are evident.

And it also presented us with a good overview of the options analysis. So I regarded this briefing as a, you know, kind of a cornerstone briefing that was going to ultimately lead to a Cabinet decision and – yeah, so that's the context.

MR. COFFEY: And just going to – if we go to slide 2, please, page 2.

It – the purpose of the – presumably the briefing is set out there: "Present an evaluation of Lower Churchill – Muskrat Falls as a preferred means of meeting the electricity needs of the Island, compared to other available options."

And then go to slide 3, please, page 3: the Presentation Overview. I presume this described what was – you're about to see –

MR. THOMPSON: Right.

MR. COFFEY: – or be presented. The Island demand analysis for capacity and energy; supply alternatives analysis and a recommendation.

MR. THOMPSON: Correct.

MR. COFFEY: And then page 4: Island Requirements Analysis – Capacity and Energy.

Page 5, please, again more: Island Demand Analysis – Capacity and Energy.

Page 6: Island – if you could, please – Island Demand Analysis – Capacity and Energy and so on. So we go through this – pages 7 and 8, if we could, just so you can just flip through them, please, Madam Clerk: Island Supply Requirements are set out over a 57-year period.

Then page 9, please. So here this is titled: Options for Meeting Island Supply Requirements, five options for evaluation. And perhaps you could just take Commissioner through those, just generally.

MR. THOMPSON: Sure.

Okay, so the number one option is the Isolated Island Option. Then there were several options that are enabled by an HVDC Link to the Island, those being the Muskrat Falls option development; the third overall option being the Gull Island-first option; and then the fourth being imports from Hydro-Québec through Churchill Falls; and then, finally, the fifth option being imports from New England via a Maritime Link – so purchasing via Maritime Link.

MR. COFFEY: So in the context then, of that briefing, I take it this was – Nalcor was bringing to the government's attention that these are the options we've looked at.

MR. THOMPSON: Yeah, so – that's right. It wouldn't have been the first time we were exposed to these options in a variety of context, but this was a summation of, I guess what Nalcor felt to be the five most feasible, logical options and their analysis of how they set aside some of them and went down to two for a more detailed look.

MR. COFFEY: If we go to page 10, I got – this is, I'm going to suggest, a graphic representation of the options set forth on page 9.

MR. THOMPSON: Sure. Yes.

MR. COFFEY: The different lines there are and in fact there's – it's numbered one to five.

MR. THOMPSON: Right.

MR. COFFEY: And then on page 11, please: Supply Alternatives Analysis: Criteria. And what was this meant to show?

MR. THOMPSON: This was – down on the left-hand column on the left-hand side it identifies the key criteria used for evaluating all of the options. So there was a consistency to the logic that was used across the options for – to arrive at a recommendation.

MR. COFFEY: And criterion included reliability, cost to ratepayers, environment, risk and uncertainty, financial viability of non-regulated elements. There's one, two, three, four, five different criterion.

And then on page 12, if we can go, please? These are the: Supply Alternatives Analysis: Assumptions. And they're – the parameter in the assumptions, in relation to each of the parameters, are set forth.

MR. THOMPSON: Correct.

MR. COFFEY: Do they not?

And then if we could go to page 13, please? The option in the Isolated Island, I take it as in an overall schematic way set forth.

MR. THOMPSON: Right.

MR. COFFEY: And then page 14, there was an Isolated Island Case: key indicators. And, again, they're all gone through.

Page 15, please? And I take it then, that this reflects at least the presenter's views of how the Isolated Island met or the relationship to the criterion.

MR. THOMPSON: Correct. This is, of course, a highly summarized –

MR. COFFEY: Yes.

MR. THOMPSON: – sense of it, and there would've been much discussion around these points.

MR. COFFEY: And page 16, please.

It says: Build program revolves – I'm sorry, Option: LCP – Muskrat Falls, Build program revolves around LCP and related HVDC. Again, a bare bone schematic and a time frame.

Page 17, Option: LCP – Muskrat Falls.

Again, Commissioner, I'm – I can go through these one to one but if we go through those, if you just kind of slowly click through them, please, so you can up on them perhaps five seconds at a time, yourself and the Commissioner to get some sense of what's there and what's covered.

Now, if we could go back then, please, to page 30.

Thank you, Madam Clerk.

This is slide entitled: Implications if LCP Muskrat Selected. It pointed out an earlier challenge to be met "is that the required revenue is higher than isolated island, despite superior long term value."

So that is spelled out there. In fact, there's a graph showing the value, isn't there?

And on page 31, there's: "Dealing with the Early-Year Challenge. "A range of tools is available to Nalcor and the Province, which will enable the early-year required revenue challenge to be met." And that is explained there isn't it, Mr. Thompson?

MR. THOMPSON: Right.

MR. COFFEY: And then finally a summary and recommendation on page 32.

–

So, Mr. Thompson, having seen that I'm going to then ask Madam Clerk to bring up please –

MR. THOMPSON: Can I – sorry, can I add one?

MR. COFFEY: Sure.

MR. THOMPSON: Earlier when you were asking me to describe the intention of this document I mentioned incorrectly that it was also going to present the matters related to the emerging deal or the arrangements with Emera.

MR. COFFEY: Yes.

MR. THOMPSON: Of course, it doesn't, it's just focused solely on the supply decision for the Island.

MR. COFFEY: Yes.

Now, if we could go, please, to Exhibit P-01060.

THE COMMISSIONER: Tab 26.

MR. COFFEY: Oh, yes. Thank you.

Mr. Thompson, this is your email of October 4, 2010 to Ms. Newhook and Mr. Bown and – so how did – if it did – how does this email relate to the slide that we just looked at?

MR. THOMPSON: The slide that we looked at is the direct – directly leads to this email, and when I refer to in the first line: "Nalcor has produced ... an analysis of island power rates with ... an infeed from Lower Churchill." It's essentially that slide deck that I'm referring to.

MR. COFFEY: And there's a reference there: "I will give you the graphic output of this analysis tomorrow." Is that the –

MR. THOMPSON: As best I recall that would've been the exact deck I would have given them.

MR. COFFEY: If you could bring up, please, Exhibit P-01188.

Now, Mr. Thompson, in answering questions and particularly Mr. Learmonth's in the beginning and then other counsels, you've indicated to the Commissioner that during – that after the October 4, 2010, after your email, that there was an analysis conducted within or by Natural Resources personnel.

MR. THOMPSON: Correct.

MR. COFFEY: And I can advise you, Mr. Commissioner, just as an aside, that upwards of a 100, I think, documents or emails – documents in total have been located. Some of them are repetitious or variances on others. They're in the process, I gather, I understand at my request had been vetted and, as necessary, redacted for entry as an exhibit, which I understand from Commission counsel will occur in due course.

I had advised Commission counsel I had no intent of going through each of the – we’d be here until next week doing it. But because they – I’m going to suggest – show in an iterative way how your – how Natural Resources personnel arrived at the October 26, 2010 deck, which you’ve already seen – or heard references to.

So, with that as background, I just – I was asked by Commission counsel if I wish to identify several or a couple, just for illustrative purposes today, and that’s where I’m gonna take Mr. Thompson to now – representative, in the sense of representative of the types of information exchanges that occurred between Natural Resources personnel and Nalcor’s personnel during that time frame.

So, this is P-01188, Mr. Thompson. You were not actually an originator of or a recipient of this email, but it’s dated October 14, 2010. It’s from Auburn Warren of Nalcor to Paul Parsons, Gerard Collins and Vanessa Newhook, and copied to other individuals at Nalcor Energy.

The subject is Re: Information Request – LCP DG#2 and Mr. Auburn writes to Mr. Parsons: “I will review your questions with the team in the morning and will let you know” the “expected timing.”

And if we could do down, please, Madam. Thank you. Mr. Parsons’ email that Mr. Warren was responding to, this is the same date, and he says: “Hello all, Myself and Gerard have had some opportunity to review the information sent yesterday. Again thank you for providing as it is very helpful. We hope that we can indulge you a bit further and request some additional information that we believe will help us with clarification. Specifically ...” and then there are six itemized questions.

Could you just look through, Mr. Thompson, look through those questions and give Commissioner your thoughts on what you understand was going on here.

MR. THOMPSON: So, the – our officials in the Department of Natural Resources had completed, I guess, a first overview of data or information that had been provided, and had identified additional questions that you wanted Nalcor to have – to answer or to provide

additional information on it, and these dealt with the kinds of, how the modelling had been done, were the assumptions that were used reasonable. They – it looks like that they were asking for some information to test some sensitivities as well.

So that’s – and that’s what I would’ve expected them to be doing based on the request that I made to them.

MR. COFFEY: Okay. And if we could just go down further, please?

And you just go up a bit, please, I apologize, and here – down a bit more at the bottom of the page, thank you.

On October 13, 2010, Mr. Warren had written to Mr. Collins and Mr. Parsons and Ms. Newhook, and indicated: “Good Day all.” And if you go down a bit more please, and he says here: “Further to our conversations, please find attached links to required files to be downloaded. As this is a secure process you will need to do the following:” – and he explains how you get access.

So – and keep going down please? And then here at the bottom, your “File(s) will be available for download until 11 January 2011” – and there are one, two, three – there are eight files, you know, which include everything from “Information Request Summary” to “2010 Isolated Generation Expansion Plan” to “2010 Labrador HVdc Generation Expansion Plan” et cetera.

So if we could go then to P-01187. And that is – I apologize Commissioner – that is a – tab 53. If you’d scroll down please. And – okay, thank you.

Mr. Warren on October 15, 2010 to Mr. Collins et al, indicating “Further to yesterday’s e-mail, please find attached a summary word document that responds to your particular questions and an excel file that provides requested details.”

And then if we go to the top of the page please. October 22, Mr. Parsons advises Mr. Warren, “Just a quick follow- up for clarification on the CPW and Revenue Requirement information provided.” And then there is a fairly detailed

question there, isn't there? If you look through it.

MR. THOMPSON: Yes.

MR. COFFEY: Technical detail question. So – again, Mr. Commissioner, as and when you – if and when you have time, I commend the review of the entire package to yourself and your counsel. But in relation then to that, if we can go then to P-01135?

THE COMMISSIONER: Tab 110.

MR. COFFEY: I apologize, not 1135. I apologize – I'm wrong about that. It's P-01167.

And – now this, Mr. Thompson, is a single page – October 26, 2010 – and I believe we have already seen the associated slide deck, which I believe – if I could just have a moment please, Mr. Commissioner.

Just a moment, Commissioner.

THE COMMISSIONER: (Inaudible.)

MR. COFFEY: Thank you.

If we could bring up P-01069. And, the first page of this document seems to be, Mr. Thompson, the same covering sheet except that your name is on the one we just looked at.

MR. THOMPSON: Correct.

MR. COFFEY: So you would have received a copy of this deck.

MR. THOMPSON: Correct.

MR. COFFEY: Mr. Thompson, at the time you would have received this deck in late October of 2010, I take it you would have reviewed it.

MR. THOMPSON: Right.

MR. COFFEY: And again, I'm not going to take you, you know, through each slide but I'm going to ask you what was your overall conclusion, having looked at it? What was your understanding of it?

MR. THOMPSON: Well, as with many things it's difficult to recapture exactly how it felt at the time but from looking at the content of it now, more recently, I can tell you that the – it looked like there was some reasonable analysis and understanding of what Nalcor had proposed to the government. It had tested many of the assumptions and it said that they were in general reasonable. It had identified at least two of the risks associated with capital cost estimate and the fuel forecast. These were risks that we had been briefed on, I'm sure, by Nalcor as well.

So, but the overall point is that it would have provided a sense of, you know, we – independently from Nalcor we had not accepted at face value the data and the modelling, the way they had constructed the case and we had done some concerted testing and challenging of that separately and that gave us additional comfort to continue to proceed.

MR. COFFEY: Now, if we could go please – or bring up please Exhibit P-01168? I apologize, wrong one.

THE COMMISSIONER: 168?

MR. COFFEY: No, it's the wrong one –

THE COMMISSIONER: No that's –

MR. COFFEY: – just give me –

THE COMMISSIONER: – that's 01188, so if we can bring up 01168 –

MR. COFFEY: Actually it's – no, it's actually 01168, yeah.

THE COMMISSIONER: 01168.

MR. COFFEY: This is it, yes. Thank you, Commissioner.

Now you were shown this by Mr. Learmonth yesterday, it's an email – or it begins with an email of February 3, 2011, from Mr. Bown to Mr. Wardle and the subject and the attachment are "Draft Shareholder Letter of Expectations" –

MR. THOMPSON: Right.

MR. COFFEY: – see that?

MR. THOMPSON: Yes.

MR. COFFEY: And – Mr. Thompson, I'd just ask you to read the text of the email out loud please.

MR. THOMPSON: Okay. "Dick; I'd appreciate your review of this document. As noted in the title, it is a letter of expectations from the Shareholder to Nalcor and is a new element in our corporate governance activities. This document is particularly important at this time as Nalcor is engaged in is planning activities and is also preparing its Annual Report for Transparency and Accountability. We have also prepared a Shareholder Handbook that is in final draft."

Would you like me to continue?

MR. COFFEY: Yes please.

MR. THOMPSON: Yeah. "My objective would be to have Robert review the letter after you have approved to ensure alignment with previous direction he provided to me. We would then discuss with Minister and consult with Nalcor before signing. Because this is strategic direction to Nalcor, Robert may want to have both these documents approved by Cabinet."

MR. COFFEY: (Inaudible.) So, at least the last sentence of the first paragraph of that email, it says: "We have also prepared a Shareholder Handbook that is in final draft." So having received that at the time, presumably you would have thought well – or would you have concluded that there is a shareholder handbook and it is – a final draft of it exists in that format?

MR. THOMPSON: Of course, I wasn't sent this email –

MR. COFFEY: I apologize.

MR. THOMPSON: – right? But –

MR. COFFEY: No, I'm sorry, if you had –?

MR. THOMPSON: Yes.

MR. COFFEY: And, Commissioner, again, as an aside, I have requested that the document search be done in relation to, you know, Ms.

Pennell's work product. I am advised – before we started this afternoon – that that is in a, again, a vetting process, and I asked some time ago, actually, and it's just now – it's gone through the vetting process.

But, again, Commissioner, and I don't know whether or not they found the shareholder handbook or not, I don't – I haven't been apprised of that yet.

MS. O'BRIEN: Yes, we've been aware these documents do exist in draft. To our best knowledge, they were never finalized or signed. We have had that shareholder handbook in vetting with government for some time. It is coming; it will be –

MR. COFFEY: Okay.

MS. O'BRIEN: – entered as a document, but these were only draft documents. Our best information from government to date is that none of these documents were ever signed off or finalized.

MR. COFFEY: Okay. I appreciate that (inaudible). So – and (inaudible) presumably pursue that a bit more with Mr. Bown. But, the point being, Commissioner, again, because of course Mr. Thompson presumably will finish testifying this afternoon; again, I'd ask that, you know, when the documentation does become exhibited that you examine it from the perspective of what it was that (inaudible.)

THE COMMISSIONER: Believe it or not, I'm gonna try to examine everything.

MR. COFFEY: I understand that, I do. But I did want to raise – I did want to, you know, raise it with you, Commissioner, that that is out there.

If we could go to, please, Exhibit P-01166. And it is – that's not on the list, but it's a very short – Mr. Thompson, I understand that this is a printout of a calendar – electronic calendar entry of yours for September 14, 2011, a meeting between 10 and 11 a.m. The organizer is indicated to be you; the subject is Mr. – Minister Skinner, Brian Taylor and Andy Wells.

MR. THOMPSON: Correct.

MR. COFFEY: So is that the meeting that you've been asked about with Mr. Wells?

MR. THOMPSON: Yes, it – I think it is.

MR. COFFEY: And Minister Skinner, though, did not attend.

MR. THOMPSON: Correct.

MR. COFFEY: If we could go, please, to P-01165.

Mr. Thompson, do you recognize what's on the screen there?

MR. THOMPSON: Yes, they're my notes of the meeting with Andy Wells.

MR. COFFEY: And could you, you know, as you go, please read down – read them out loud, please, and as you finish each entry or each paragraph, there are four of them there, perhaps comment upon –

MR. THOMPSON: Okay.

MR. COFFEY: – what's going on or what you recorded there.

MR. THOMPSON: Okay. So, there's four bullet points here, and they all appear to my notes on what Mr. Wells was telling us about the status of the reference process.

First item is that the: "Main submission promised by July 27..." I think it is, by Nalcor – I'll fill that in parenthesis. And "now they say they don't know when it will be ready."

The second bullet: "Range of accuracy on capital cost estimates."

The third bullet is: "Now we are 3 months behind, & track record may need more." I can interpret that later –

MR. COFFEY: Yes.

MR. THOMPSON: – if – I'll try if –

MR. COFFEY: Yes.

MR. THOMPSON: – you wish.

And the fourth bullet is: "May be a C.A. problem due to the confidentiality issue."

MR. COFFEY: Okay. So, could expand then upon the –?

MR. THOMPSON: Okay. So, as I said in previous testimony, we were looking for the PUB's perspective, Mr. Wells' perspective on the status of the delays, and that would, ultimately, lead towards a request for an extension of the reference timeline. And so these are some notes of the kinds of things that – information he imparted to us that I was seeking.

MR. COFFEY: And the third bullet, for example, "Now we are 3 months behind, & track record may need more."

MR. THOMPSON: I took him to mean – or I take it to me now, in retrospect, that he felt that the process would fall further behind than three months, based on what he had seen so far.

MR. COFFEY: And the reference, the second reference: "Range of accuracy on capital cost estimates." What was –?

MR. THOMPSON: Harder to suggest what it was that was meant, but he was certainly making a critical comment on the state of the capital cost estimates and, perhaps, the wide range of plus or minus that might exist around those at this stage.

MR. COFFEY: And the fourth one: Maybe a C. A. – Consumer Advocate maybe? Would that be maybe a C. A. problem?

MR. THOMPSON: It may indeed be, yes.

MR. COFFEY: Due to the confidentiality issue, are you able to –?

MR. THOMPSON: I can't really give much more insight into that.

MR. COFFEY: Okay. But suffice to say that this was your recording – summary fashion of what Mr. Wells was telling you –

MR. THOMPSON: Correct.

MR. COFFEY: (inaudible)?

MR. THOMPSON: Yes, that's right.

THE COMMISSIONER: Might this be a good place, Mr. –

MR. COFFEY: Oh, that'd be great, Commissioner.

Thank you.

THE COMMISSIONER: So, we'll take our afternoon break then for 10 minutes.

MR. COFFEY: I don't expect to be very much longer.

THE COMMISSIONER: Okay. Well, we'll take – well, did you want to proceed or did you want to take a break?

MR. COFFEY: No, no.

THE COMMISSIONER: Okay.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right.

Mr. Coffey, when you're ready.

MR. COFFEY: I'm ready. Thank you, Commissioner.

Exhibit P-01093, which is tab 61.

And if you could just scroll down a little bit, please? Right there. Thank you.

Mr. Thompson, you've referred to this earlier; this is an email from yourself to Milly Brown, Mr. Taylor and Kathy Dunderdale on May 17, 2011.

MR. THOMPSON: Right.

MR. COFFEY: "Answers to the Premier's questions on MF."

Question 1 – List of projects not subject to PUB oversight and Mr. Kelly pointed out to you, you perhaps erred in bullet 3.

MR. THOMPSON: Yes.

MR. COFFEY: But there's a list there. I'm not going to take you through each of them, but they do go back to, I believe – well, in articulated date – October 31, 2000, the second-last bullet and then other references to Bay d'Espoir and Holyrood.

MR. THOMPSON: Right.

MR. COFFEY: Now, during the time frame that we've been dealing with – from – well, put it this way from your time as clerk, 2003, until you left in August of 2013, retired – what was your understanding of what sorts of matters ended up being reviewed by the PUB in terms of hydroelectric projects?

MR. THOMPSON: Right.

MR. COFFEY: Or thermal generation projects for that matter?

MR. THOMPSON: Well, my sense, my recollection, generally is that I accumulated some knowledge over time on this matter. This particular list here I would likely have acquired from others in the Department of Natural Resources or Nalcor. It wouldn't have been knowledge that I would have had at any present moment during that time.

But right from, you know, the early years '05, '06, certainly when we were developing the Energy Plan, would have – there would have been a general understanding within the group that the type of project that – the Lower Churchill Project, number one, was specifically exempted from PUB review of a certain kind, I can't describe it precisely, but exempted, and that this was an exemption put in place some years prior to that, but that it was consistent with the overall approach of the government, over the years, at least certainly in many, many other projects, generation projects, that the government had exempted these from the, I guess, from the review by the PUB to the extent that whether or not to approve that they would

become the next generation or a source of generation into the Island system.

So we were carrying around the sense at that time that that, in general, this was something that had happened on any other project, that it had already been – the Lower Churchill Project had been exempted in the year 2000, I believe, and that given the nature of the – any likely development on the Lower Churchill forthcoming, that it would require similar treatment.

That was the assumption, the context in which we were operating. I think that the Energy Plan, while it doesn't specifically say that, it has phrasing in it that presents that general context as well.

MR. COFFEY: And again, up until, I'll suggest to you – well, prior to November 18, 2010, which is the term sheet announcement –

MR. THOMPSON: Mm-hmm.

MR. COFFEY: – were you – do you recall ever being made aware of any publicly expressed concern about the sorts of exemptions of – on PUB review that you've listed here?

MR. THOMPSON: No. I don't have any recollection.

MR. COFFEY: You have been asked about the sorts of, you know, reviews of the Muskrat Falls Project that you were aware of that went on. You've referred to them a number of times; I'm not gonna have you list them out again, but I'm gonna suggest to you as well – because you focused on, you know, reviews done by either Nalcor, Nalcor's retained experts, the government, the government's retained experts, the PUB, the PUB's retained experts, I'm gonna ask you to think about were you aware of things like the federal government's reviews –

MR. THOMPSON: Right.

MR. COFFEY: – and federal government credit-rating agencies and banks.

Perhaps you could tell the Commissioner about that.

MR. THOMPSON: Sure.

Well, in general, there was certainly other third parties doing reviews that weren't commissioned by the provincial government, but nonetheless occurred.

One would've been by the federal government, linked either to its decision on the environmental assessment panel recommendations or related to the loan guarantee, I can't remember which, but there was a – maybe there were two, I'm not sure, but there was certainly analysis by the federal government where they re-examined the business case, you know, the feasibility of this project and the value of the project, especially to Canada as a whole, and came up with a positive analysis.

Similarly, Wade Locke, who we've mentioned before –

MR. COFFEY: Yes.

MR. THOMPSON: – undertook his own analysis and, I guess, in the spirit of adding to the public debate, so this wasn't commissioned by the government. We were pleased, though, that he did and, indeed, that it was confirmatory of the direction that we were heading.

I'm – I wasn't involved in direct dialogue with banks or credit-rating agencies, but, of course, there were briefings for them and there were – and they would've taken this project into account, either specifically or generally, and making comments on the financing of the project or the impact that it might have on the province's finances. So there were a – this variety of additional context in which – which would've been noted by the provincial government as the time frame moved along.

MR. COFFEY: And then, finally, if we could bring up, please, Exhibit P-00265.

THE COMMISSIONER: Tab 112.

MR. COFFEY: Yes. I apologize, Commissioner. Thank you.

And in particular – just one second now, I'm just gonna – go to page 6, please.

Now, Mr. Hogan took you to this, in particular – but I’m gonna take you to the top of the page. So these are your notes, I take it, on a Cabinet meeting of November 14, 2006.

MR. THOMPSON: Right.

MR. COFFEY: And it’s a presentation on the Lower Churchill Project by E. Martin, which would mean Mr. Ed Martin.

So the remarks that Mr. Hogan took you to the at the bottom of the page here, on the right-hand side, were made in 2006 –

MR. THOMPSON: Correct.

MR. COFFEY: – in the context of the Lower Churchill Project. I’m going to suggest to you at that point in time it was in the context of the expressions of interest having been – come in, and I can’t remember if they’ve being analyzed by this point or not, but it’s back in that time frame.

MR. THOMPSON: Yes, this was a presentation on things like the Decision Gate approach, so it would – I think it was subsequent to the EOI presentation. But it would – it’s certainly in the same general time frame.

MR. COFFEY: And the bullet that begins about midway down the page – and I think I can read your handwriting: “on Mkt access, we have separated the Ont/Que agreement and we are dealing with them as equals. We are assessing the Maritime route; NB wants 600-800MW, & maybe finance 500-600MW on the back of the Holyrood regulated utility.”

So here you’re noting it’s – we are assessing the – Mr. Martin is speaking about assessing the Maritime route. So what did that involved? And at this point in time would it have been, I’m going to suggest to you, Gull Island first, at least?

MR. THOMPSON: Right, well, I can’t remember specifically, but likely it was and to be able to satisfy, for example, the New Brunswick demand and the Island demand it would’ve necessitated more than the availability of Muskrat Falls.

MR. COFFEY: And the reference to Maritime route, do you recall what route physically? And if you do, you do, if you don’t, you don’t.

MR. THOMPSON: No, I don’t.

MR. COFFEY: You don’t remember?

MR. THOMPSON: No.

MR. COFFEY: I’m gonna suggest – in any case, though, whatever actual particular physical path it took, it wasn’t gonna go through Quebec?

MR. THOMPSON: Correct.

MR. COFFEY: Commissioner, thank you very much.

THE COMMISSIONER: Thank you.

Redirect.

Mr. Learmonth?

MR. LEARMONTH: Mr. Thompson, I wanna ask you a few questions about this review that you spoke of in answering Mr. Coffey’s questions. The review – the thorough analysis that you say the government did of the presentation by Nalcor at DG2?

MR. THOMPSON: Right, yes.

MR. LEARMONTH: Now, I understand from the documents that this review was carried out in 12 days, between October 14 and October 26, when the deck was presented?

MR. THOMPSON: I think I requested it, of course, on October 6, if I – or 4th. My notes say – the email from me to Vanessa Newhook, and then it was completed on October 26.

MR. LEARMONTH: But the work appears to have started October 14 – that’s the email with Mr. Warren, right?

MR. THOMPSON: Well, the review of the deck that I gave the officials and the formulation of the questions that they did would’ve started earlier than that.

MR. LEARMONTH: Okay.

Who was involved in this analysis?

MR. THOMPSON: The three –

MR. LEARMONTH: What persons and what were their educations?

MR. THOMPSON: The – well, the two primary economists that were involved were Paul Parsons and Gerard Collins.

MR. LEARMONTH: And what are his qualifications?

MR. THOMPSON: The – well, they're economists in the department, and I didn't prepare, you know, background on what their qualifications are.

MR. LEARMONTH: Okay, so Paul Parsons. Who else?

MR. THOMPSON: Gerard Collins.

MR. LEARMONTH: Gerard Collins. Yes, anyone else?

MR. THOMPSON: Those are the two people who I believe worked directly on the analysis. There might've been others who reviewed it. I think we saw the name Wayne Andrews today; he was management level in the economics area of the department. And so Vanessa Newhook and Charles Bown may have reviewed the end product as well.

MR. LEARMONTH: Okay. What qualifications do these people – or any of these people have to review a CPW analysis or perform a CPW analysis?

MR. THOMPSON: I can't answer what their qualifications were – specifically, their educational qualifications. But this is the kind of material and the kind of analysis that they had done, I'm sure, on other occasions. And it wouldn't have been unusual to see that kind of analysis be presented within their department.

MR. LEARMONTH: I'm not asking you what would be unusual. I'm asking you whether, to your knowledge, if they did a CPW analysis?

MR. THOMPSON: Well, they would've – when we examined –

MR. LEARMONTH: Yes or no?

MR. THOMPSON: No, it's not a yes or no answer –

MR. LEARMONTH: Oh, okay.

MR. THOMPSON: – because they did MPV analysis for oil projects. MPV is a very similar concept to CPW –

MR. LEARMONTH: It's not a CPW.

MR. THOMPSON: Okay. Then you have a better expertise than I do and I wouldn't be –

MR. LEARMONTH: Yeah.

MR. THOMPSON: – able to answer the question then.

MR. LEARMONTH: Okay. So you don't know – you can't answer the question, is that right?

MR. THOMPSON: I can only say this is the type of analysis that I expect that they'd have the capacity to – and the capability to provide, yes.

MR. LEARMONTH: A CPW analysis?

MR. THOMPSON: Yes.

MR. LEARMONTH: You think they would've.

Did they have access to Strategists or any other program like that?

MR. THOMPSON: I don't believe they did.

MR. LEARMONTH: You don't believe they did.

So how could they do a proper analysis of it?

MR. THOMPSON: This is an area that I can't answer. I'd need to go back and –

MR. LEARMONTH: Well –

MR. THOMPSON: – examine that.

MR. LEARMONTH: Well, you know, Mr. Thompson, you sat in that chair and said they did a thorough analysis –

MR. THOMPSON: (Inaudible.)

MR. LEARMONTH: – and now you’re saying that you don’t know what they did.

MR. THOMPSON: I was very satisfied with the analysis they did because they produced something that said these are the CPWs calculated by the Department of Natural Resources. I can’t remember the exact conditions and methodology they used, but I’m just reflecting on the analysis and that it had a result that was useful, at the time, to give confidence about what Nalcor had done.

MR. LEARMONTH: Well, do you have the qualifications to decide whether the analysis they did was thorough?

MR. THOMPSON: Just my general experience with working on projects like this.

MR. LEARMONTH: Do you have the background and experience to decide whether the analysis they performed was a thorough analysis?

MR. THOMPSON: Well, that’s a very general question. I have a lot of –

MR. LEARMONTH: Well, it’s a very specific question.

MR. THOMPSON: I have a lot of experience in reviewing reports like this, but can I go inside the methodology, no.

MR. LEARMONTH: No. No, you’re not qualified.

MR. THOMPSON: Correct.

MR. LEARMONTH: Correct. Okay.

Now, in this (inaudible) – I’ll say in quotation marks – thorough analysis that you’ve described, was any analysis done about the – concerning

the ability of the – fiscal ability or capacity of the province to afford this project?

MR. THOMPSON: You mean, as part of this analysis?

MR. LEARMONTH: Yes.

MR. THOMPSON: That’s not something that the Department of Natural Resources would’ve done.

MR. LEARMONTH: So that wasn’t done.

And, just to confirm: My understanding is that there was no review, whatsoever, done of the capital costs, is that right?

MR. THOMPSON: As part of this analysis, no.

MR. LEARMONTH: Well, as part of any analysis by government?

MR. THOMPSON: Well, subsequently we did commission the PUB review and the independent review –

MR. LEARMONTH: No –

MR. THOMPSON: – and we – those were within the scope of the Terms of Reference.

MR. LEARMONTH: No, but I’m talking about inside government.

MR. THOMPSON: No.

MR. LEARMONTH: No, because no one inside government had the ability or background –

MR. THOMPSON: No, because we –

MR. LEARMONTH: – that would allow them to –

MR. THOMPSON: – built up the (inaudible) –

MR. LEARMONTH: Wait ’til I finish the question.

MR. THOMPSON: Oh, yes, Sir.

MR. LEARMONTH: Okay.

I'm suggesting to you that no one performed this analysis because no one in the government had the ability, capacity, background to perform a proper analysis of the capital cost analysis. Do you agree with that?

MR. THOMPSON: We didn't do an analysis because we built up the team that had the capacity within Nalcor, so in that context, I would agree with your statement.

MR. LEARMONTH: Okay, you – because that's what Terry Paddon told us.

MR. THOMPSON: Was his answer consistent with mine?

MR. LEARMONTH: It was a little more direct actually.

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: He said no one had the – they didn't have the capacity, that if they needed a – if they decided to have an analysis done of the capital cost, they'd have to go outside.

MR. THOMPSON: That's correct.

MR. LEARMONTH: Yeah, you agree with that. So this review that you've called a thorough analysis is – had nothing to do with capital cost, had nothing to do with the affordability of the project from the province's fiscal standpoint –

MR. THOMPSON: That's correct.

MR. LEARMONTH: – is that correct? Okay, thank you.

You referred to – in your question – in your answers to Mr. Coffey about Mr. Wells's interview with you –

MR. THOMPSON: Yes.

MR. LEARMONTH: – or meeting with you, you never mentioned, when you answered Mr. Coffey – and it's not contained in your notes – you never mentioned what you told us yesterday and particularly in your interview that you were questioning about whether the RFI's went beyond the scope –

MR. THOMPSON: Right.

MR. LEARMONTH: – that was permitted. You never mentioned that when you talked to Mr. Coffey.

MR. THOMPSON: No, because Mr. Coffey was asking me about my notes, so I only referred to what I had captured in my notes.

MR. LEARMONTH: Okay, well, why didn't you have that in your notes?

MR. THOMPSON: Well, that would've been something I was communicating as a question to Mr. Wells, and I've given you my recollection already of what transpired there. I don't know. I didn't capture any particular notes on that, but the notes I have are the notes that I have.

MR. LEARMONTH: Yeah, but they're incomplete are they? If they don't cover the (inaudible) –?

MR. THOMPSON: Oh, they're – they would be incomplete in that they did not capture that exchange, yes.

MR. LEARMONTH: Okay, now I want to clarify some of your answers you gave to Ms. van Driel today.

MR. THOMPSON: Sure.

MR. LEARMONTH: Can you turn to tab 37 – that's Exhibit P-01072, page 23. Okay, before we direct you to the passage, I (inaudible) – do you remember we discussed both at your interview, or certainly yesterday, an amount of 300 million to 600 million in strategic risk?

MR. THOMPSON: Yes.

MR. LEARMONTH: Do you remember we talked about that?

MR. THOMPSON: Yes.

MR. LEARMONTH: And I understood your answer to Ms. van Driel's question was that this reference on page 23 at the top of – to contingent equity – was not a reference to the strategic risk?

MR. THOMPSON: No, I wouldn't have – if I said that, I certainly didn't mean that.

MR. LEARMONTH: You didn't?

MR. THOMPSON: No.

MR. LEARMONTH: Okay. No, I think – 'cause I – well, I wanted to clarify that. So you acknowledge that this 300 to 600 million was the strategic risk?

MR. THOMPSON: I acknowledge it, 'cause I understand it to be now, yes.

MR. LEARMONTH: Yeah. Well, what do you mean by that?

MR. THOMPSON: What I mean is that – you need to guide me as to whether you want me tell you what I understood it to be at the time or what I understand it to be now.

MR. LEARMONTH: Well, I want you to tell me what you understood at the time.

MR. THOMPSON: Okay. We – as I've mentioned, we have – we didn't conceptualize and weren't briefed about the concept of strategic risk as – well, perhaps not even the term, I can't clearly recall that – but certainly the concept that there was a category called strategic risk that was being calculated and existed and potentially could be or should be presented as part of the capital cost estimate.

We were only briefed about risks, and that risk analysis rolled up into an estimate of contingency within the capital costs.

The \$300 to \$600 million that's referenced here, in a document that we would have had available at the time, we would have regarded as an estimate of the – a prudent estimate of contingent equity that might be needed if there was a cost overrun, but it wasn't, in our view, a – and I am repeating myself now but – a calculation of something that should have been presented inside the capital costs estimate.

MR. LEARMONTH: So are you suggesting that this reference to contingent equity was not a reference to a strategic risk amount that have been assessed?

MR. THOMPSON: Certainly, today, I realize that it is a reference to that. And so I'm not denying that that's the case.

MR. LEARMONTH: Yeah. 'Cause I just wanna – just to make sure, because I think you said something a little different in answer to Ms. van Driel's questions. I –

MR. THOMPSON: Well, if I did, then I certainly (inaudible) –

MR. LEARMONTH: I think you suggested this some unspecified amount for unknown cost overruns or something to that effect, as opposed to being something that had been identified in a strategic risk report. Did I get you wrong?

MR. THOMPSON: Yes, you did.

MR. LEARMONTH: You did. Okay. Now, I just want to make sure we're ad idem on this.

If you can bring up Exhibit P-00264, page 18.

Okay, the first page – we'll look at first page first. This is the Muskrat Falls, summary of pre-sanction, privileged and confidential. It's on Nalcor letterhead. Anyway, page 18, please? Page 18, okay.

Do you see the paragraph "By August 2010"?

MR. THOMPSON: Right.

MR. LEARMONTH: Okay, now: "By August 2010 cost projections for the preferred development concept were released with a development cost estimated at \$6.2 B inclusive ... " (inaudible) " ... Maritime ... In support of the estimate preparation, Westney were engaged to complete a QRA building upon the earlier analysis completed on the Gull Island development" et cetera.

And then, at the bottom of the page, do you see the paragraph: "The amount of contingent equity (i.e. management reserve) for the strategic risk identified by Westney was in the \$300 to 600 million range."

Again, I'm suggesting you that it's clear that the reference in the document I just referred to at Exhibit 01072, page 23, was a reference to this

contingent-equity management reserve for the strategic risk. Do you –

MR. THOMPSON: (Inaudible) –

MR. LEARMONTH: – agree with that?

MR. THOMPSON: I agree with you on that.

MR. LEARMONTH: Okay, so any interpretation that I put on your evidence this morning to the contrary, you're correcting now, are you?

MR. THOMPSON: Yes.

MR. LEARMONTH: Yes. Okay.

MR. THOMPSON: I – of course not meaning to correct my own statements. I believe what you're saying all through this piece.

MR. LEARMONTH: Yeah.

So this point about – when you got this document, you must have known that there was an amount of \$300 to \$600 million that had been identified by Nalcor as something that should be taken into account?

MR. THOMPSON: Well, that's not what I said. Okay, so there are – let me go at this one more time.

When we had this document in 2010, to the extent that we paid attention to this number in any level – with any level of focus, we would have understood it to be not part of the capital cost estimate –

MR. LEARMONTH: Mm-hmm.

MR. THOMPSON: – but rather a – some notion – I'll use that word right now – of the amount of overrun that we would have to backstop, that there might be contingent equity needed and that the – so it was from the point of view of the owner backstopping potential overruns, but that we didn't understand it to be, at that time, an amount that was calculated that should have been part of the capital cost estimate.

MR. LEARMONTH: Okay.

MR. THOMPSON: We didn't view it that way.

MR. LEARMONTH: Okay, you didn't understand that way –

MR. THOMPSON: Correct.

MR. LEARMONTH: – because Nalcor didn't explain it to you that way, is that –

MR. THOMPSON: That's correct.

MR. LEARMONTH: – right?

MR. THOMPSON: Yes.

MR. LEARMONTH: That's right. Okay, that's fine.

And I – just to correct some of the statements that Ms. van Driel made this morning, Terry Paddon did say, in his evidence, that he thought that the amount for strategic risk and tactical risk – any kind of risk – was included in the \$5 billion figure.

Yeah. Okay.

Now, there's a few other points I wanna bring up.

Mr. Budden referred to a document – he discussed a document but he didn't bring it up, but I just wanted – for completeness I wanted to bring this document up to show you a few things. This is about the reference that he made to the hit squad.

MR. THOMPSON: Right.

MR. LEARMONTH: And this is Exhibit 00926. Can we go to the first page, first?

Yeah. So this is the DG3 Alignment Session, August 3, 2012.

MR. THOMPSON: Right.

MR. LEARMONTH: Prepared by Nalcor. It says a Draft Confidential; I don't know exactly what that means but anyway. Now, starting on page 19 of this document, if we can go there, Issues and Messaging, so as we get into this it shows – here Nalcor is directing or at least

suggesting to government how to do messaging for the announcement of the sanctioning. Just as a general subject, do you find that irregular?

MR. THOMPSON: Not in the context which I explained to Mr. Budden, in that we're working together to, and especially the communications team, in order to distribute the workload, and there was quite a lot of workload leading up to the announcement deadline.

So I don't find it unusual that that communications strategy or proposals or other kinds of documentation might have come forward from Nalcor. We were sharing a lot of the effort.

MR. LEARMONTH: Regardless of what the content of the messaging was?

MR. THOMPSON: No, no I wouldn't say that. If we had seen, you know, certain kinds of content outside of Nalcor's mandate as originating as –

MR. LEARMONTH: Mm-hmm.

MR. THOMPSON: – the idea source, we might have taken exception to that. But the fact that we share the body of key messages –

MR. LEARMONTH: Yeah.

MR. THOMPSON: – and the communication strategy, that's not an unusual thing.

MR. LEARMONTH: Well, I'm going to take you through this –

MR. THOMPSON: Sure.

MR. LEARMONTH: – and then you –

MR. THOMPSON: Sure.

MR. LEARMONTH: – can see whether you do – how you judge this –

MR. THOMPSON: Sure.

MR. LEARMONTH: – based on what you just said.

So on page 20, Additional issues requiring discussion: "Strength of 'Quebec' messaging." Do you know what that's a reference to?

MR. THOMPSON: Well, it sounds like that it would – that a discussion is needed about how the government wished to emphasize or de-emphasize its messaging around the matter of Quebec and routing power around Quebec or not being – allowing Quebec to have any leverage over the development of the Lower Churchill.

MR. LEARMONTH: Yeah, so why would Nalcor be suggesting this is a part of the messaging strategy of government? Isn't that something government should be deciding?

MR. THOMPSON: Yeah, I agree that that's something the government needs to be deciding on and that Nalcor is putting it forward. It's, as I said, part of that team to make sure messaging isn't lost and a division of workload. It's – yeah, so I'd just stay with the same point.

MR. LEARMONTH: Well, so you think that's fine?

MR. THOMPSON: I don't think it's – in the context in which I think you're inferring it, you think that – as I said before, managing Intergovernmental Affairs is a –

MR. LEARMONTH: Yeah.

MR. THOMPSON: – responsibility of the provincial government and the – in no question that Nalcor – they would not make a decision on what kind of messaging would go forth on this issue.

MR. LEARMONTH: Yeah. But even for them to be making suggestions about raising as an issue, do you find anything wrong with that?

MR. THOMPSON: In the context of the times that we are operating and distributing the workload, it wasn't unusual that it would arise from that.

MR. LEARMONTH: So that's fine for you – with you?

MR. THOMPSON: In the context in which I suggested, yes.

MR. LEARMONTH: Well, is it fine or is it not?

MR. THOMPSON: Yes.

MR. LEARMONTH: It would have to talk about context. Do you think this is fine?

MR. THOMPSON: Well, yeah, I agree with it in the context in which I suggested.

MR. LEARMONTH: Yeah, well, can you just answer yes or no? Do you think it's fine or not?

MR. THOMPSON: Yes, in the context in which I suggested.

MR. LEARMONTH: Okay.

The next thing on page 21, there's – they're talking about when government will release capital costs. Why would that be an item that Nalcor should be advising government on?

And then they go on, on page 21, release of capital costs; page 22, release of capital costs, advantages of releasing costs, disadvantages of releasing costs. Isn't that something that government should be dealing with, not Nalcor?

MR. THOMPSON: Let me read down through it.

MR. LEARMONTH: And 23 also.

MR. THOMPSON: Okay, can I see the next page?

Okay, so – and if we could go back to the previous page, please. So the kind of the considerations – some of the considerations that are on this page are the kinds of considerations that would be more germane to government's perspective.

MR. LEARMONTH: That's right.

MR. THOMPSON: And Nalcor including them on this page is a reflection of the way that the – of the workload that's being managed and the integration between the communication team and really nothing more than that.

MR. LEARMONTH: Okay, so that's fine with you?

MR. THOMPSON: In the context in which I described it.

MR. LEARMONTH: Okay.

Now, on page 27, they're giving – Nalcor appears to be giving advice to government on the House of Assembly debate. Do you find that unusual?

MR. THOMPSON: So let me – I don't again – here now, I'm seeing more of the – and remembering more of the status of this presentation deck and the overall time that we were dealing with, in that we were heading for a House of Assembly debate and a variety of big communications milestones.

We needed a unified communications strategy, and I – perhaps this communications deck could've all just as easily been on government – with a government logo at the bottom as it could've been with a Nalcor logo, because it was a unified approach to all of this material.

And so in that context, it's – it was presented – you know, the perspectives of both Nalcor and the government were being presented.

MR. LEARMONTH: So Nalcor is presenting to government a perspective of government and Nalcor?

MR. THOMPSON: I can see that in here that many of the thoughts and ideas would likely have been mentioned or worked up with the participation of government communications people or other officials, and that they were documented in a deck that had Nalcor's logo at the bottom.

MR. LEARMONTH: How do you know that?

MR. THOMPSON: I'm just going by context.

MR. LEARMONTH: You're guessing.

MR. THOMPSON: No, I'm not guessing, I'm going by my general recollection. And as you're exposing me to this material the context is becoming clearer and clearer. Because I haven't

reviewed this deck in my preparation for today, so this is becoming clearer as you're presenting it.

MR. LEARMONTH: Okay, so now you're saying with certainty that this was – this is –

MR. THOMPSON: I'm saying with –

MR. LEARMONTH: Wait 'til I finish the question.

MR. THOMPSON: Yes, I'm sorry.

MR. LEARMONTH: Now you're saying with certainty, I suggest, that this slide deck, or series of slide decks, was a joint effort of government and Nalcor, the integrated team.

MR. THOMPSON: Mmm.

MR. LEARMONTH: Is that what you're saying?

MR. THOMPSON: I'm saying it with growing certainty and, for example, the – one of the clues that leads me to suggest that is at the bottom, the allotted speaking time, premier, minister, remaining members. This is a matter that was under negotiation by Minister Kennedy and the Opposition Members, it's not something that Nalcor would've turned its mind to. This is clearly, in my estimation, something that originated on the government side, but was being combined into this deck as a unified, overall strategy.

MR. LEARMONTH: Sir, I suggest you're guessing.

MR. THOMPSON: No, I'm not.

MR. LEARMONTH: You're making this up as you go along.

MR. THOMPSON: No, absolutely not.

MR. LEARMONTH: There's nothing – there's no – I suggest to you that it's totally unrealistic for you now to be presented with, and all of a sudden these thoughts come back to you which put everything in your context.

MR. THOMPSON: If I'd been presented with this deck before now, I would've been able to give you a more considered initial response. But this actually is an area where I can speak about it with a good degree of expertise, given my experience within government. And so that's – I'm pretty confident in my estimation of this.

MR. LEARMONTH: You are.

And, once again, page 28, same thing, there's advice being given on media technical briefing, DG3 deck containing CPW, benefits, et cetera. So I suppose your answer to that is the same, is it?

MR. THOMPSON: Of course a lot of that belongs on the – some of it belongs on the Nalcor side, if you like, and some of it on the government side, so it's more evidence of a unified approach.

MR. LEARMONTH: Okay.

What about – well, it's evidence of – you believe it's evidence. You're asking us to accept that it's evidence of a –

MR. THOMPSON: Yes. Yes.

MR. LEARMONTH: – unified approach as opposed to an initiative taken by Nalcor alone.

MR. THOMPSON: Growing more and more confident as you go page by page that that's the case.

MR. LEARMONTH: Yeah.

So who was on this team? Who on government would have been involved in this integrated team that would have – who would have had input into the presentation of this joint slide deck?

MR. THOMPSON: Well, this would be mainly the product of the communications individuals and maybe others who – that they consulted with. So people like Dawn Dalley, I recall – or I believe Glenda Power was still in the government at that time, there may have been others.

MR. LEARMONTH: Okay.

And once again you deny that you're guessing, right?

MR. THOMPSON: Yes.

MR. LEARMONTH: Yeah.

And there's on page 29 also: "Legislation will not be introduced until Fall session. This will be explained in technical briefings." And you're fine with all that are you?

MR. THOMPSON: Even this slide, my confidence grows at how I've described it as the case.

MR. LEARMONTH: Yeah.

Well, I suggest to you that what you're saying is the way it should have been, as opposed to the way it was.

MR. THOMPSON: No, that would be wrong.

MR. LEARMONTH: Yeah, well ...

Then House of Assembly debate, page 30, current status: Key ministers who need to be available for Question Period, call in shows, media, prime minister. You know, this is, once again, a very subject that would be – I suggest, have to be decided and approved by the House, the Leader of the House or someone in the Legislature.

MR. THOMPSON: No, this would be government, not House of Assembly. So these would be, no doubt, the plan of the government contributors to this overall plan.

MR. LEARMONTH: Okay.

Page 31, once again, they continue to give direction on the House of Assembly debate. And we're talking here about at the bottom, the hit squad –

MR. THOMPSON: Mm-hmm.

MR. LEARMONTH: – including Grimes 2000 deal. Are you fine with Nalcor sending this document suggesting a hit squad?

MR. THOMPSON: The – I only recall the hit squad reference from the documents that I've read in preparation for the Inquiry. And I don't recall it at the time, but I think that it was a colloquial name, perhaps a very bad name, chosen for that at the time.

MR. LEARMONTH: Well, what is a hit squad?

MR. THOMPSON: In this context?

MR. LEARMONTH: Well, of course. That's what we're talking about.

MR. THOMPSON: Well, it was a – as I have a general recollection of it, a group of officials – and I don't know who they were – who would need to respond quickly to analysis that to support the ongoing questioning that – or and – the raising of issues in the House of Assembly or the questions from the media, so issues management. This might be better framed as an issues management function to respond quickly with analysis to questions.

MR. LEARMONTH: But it's called a hit squad.

MR. THOMPSON: It's really an unfortunate name.

MR. LEARMONTH: Yeah.

And so why would the hit squad include the Grimes 2003 deal? Why would that be involved there?

MR. THOMPSON: My only recollection now is what I read. That was an issue that would arise regularly about how the current arrangement and structure of the Muskrat Falls development compared to the benefits of the province that would have accrued under the 2003 Grimes government deal.

MR. LEARMONTH: So why would that be relevant?

MR. THOMPSON: Because questions were being raised and the current government needed to be prepared to speak to it.

MR. LEARMONTH: So who at Nalcor, by the way, would have been – would have prepared this? You seem to have a great memory about this being a joint effort. Who would have been on the Nalcor side of the team?

MR. THOMPSON: Well, I know that the person in charge of communications in Nalcor is Dawn Dalley so I would suspect that she had a hand at – perhaps even a lead hand, along with people in government – in preparing this.

MR. LEARMONTH: And, once again, you can't tell me exactly who the people in government would be, can you?

MR. THOMPSON: I mentioned Glenda Power.

MR. LEARMONTH: Yeah.

MR. THOMPSON: Other names we've seen in the material that I do recall, people like Heather MacLean, but I – and she may have been involved in the preparation of this as well, but some of these people in communications come and go so – and I don't have a present recollection of exactly who would have prepared this.

MR. LEARMONTH: Okay and on page 34, back with the hit squad. You got that, Sir?

MR. THOMPSON: There it is now.

MR. LEARMONTH: So then let's just continue on with the recommendations of – for the House of Assembly debate.

“Sample messaging for hit squad: The Liberals have no credibility when it comes to the Lower Churchill, and neither do the NDP. Their own federal parties support it. They are just interested in opposing for the sake of opposing it.”

Do you think that's an appropriate comment?

MR. THOMPSON: Yeah, so actually now I'd refine what I said earlier about – because, of course, this document is inviting me to interpret what it all means. Hit squad probably wasn't as much about issues management in general, but maybe messaging that would be more political that would complement the overall communication strategy.

MR. LEARMONTH: So why are you refining it now, your comments now?

MR. THOMPSON: Because you've exposed me to a slide that I hadn't seen before and it gives me a – allows me to better interpret what is you're putting before me.

MR. LEARMONTH: And you have no problem with the use of the term hit squad?

MR. THOMPSON: I said that I did. It's unfortunate wording.

MR. LEARMONTH: And then – at page 35, you've got: “Sample messaging ... hit squad: 2003 agreement ... no ownership.” All these different points.

So I suggest to you that this is an excellent example of what we were talking about yesterday; is that Nalcor's in charge of this project from day one, and government is nothing more than a naive cheerleader to the work of Nalcor, to the extent that they're sending this stuff to government as part of a communications strategy.

MR. THOMPSON: Is that a question for me?

MR. LEARMONTH: Would you agree with that?

THE COMMISSIONER: Excuse me. Just – just before –

MR. T. WILLIAMS: I (inaudible) some objection –

THE COMMISSIONER: Could you turn your mic off – sorry – go ahead.

MR. T. WILLIAMS: I take some objection to the characterization that was just made by counsel. I mean, that's – this is a personal opinion, where he gets in referring to naivety and cheerleading squads. I mean, that is a gross overstatement of what evidence has been put before this Inquiry, and I don't think that's an appropriate question.

MR. LEARMONTH: Well actually, the word cheerleading was used by Todd Stanley. So it's not my original word.

MR. T. WILLIAMS: (Inaudible.)

This Commission of Inquiry is concluded for the day.

THE COMMISSIONER: Anyway, I think I have enough here at this stage of the game, to assess where – whether, you know, what government did or whatever – I still have more witnesses to hear from. I think I – I think you already put this to the witness, so I think I'm satisfied to go with that.

MR. LEARMONTH: Okay. I'll stop.

Thank you very much.

THE COMMISSIONER: All right. Thank you.

Thank you, Mr. Thompson. You can step down.

MR. THOMPSON: Thank you.

THE COMMISSIONER: So just an announcement about tomorrow. As you might imagine, the weather is not very good outside and we have a witness coming from outside of Canada, and we understand right now that he's stuck in Toronto. So what we have arranged for tomorrow, unfortunately, is for him to appear by Skype. He is not able – even if the flights come tonight, my understanding, from what I've been told, is that he can't get on the flights because other flights have been cancelled and he loses priority. So we will be doing Mr. Westney by Skype tomorrow and I just wanted to let everybody – be aware of that.

Are we starting at 9 or 9:30 tomorrow?

MS. O'BRIEN: Because we – because it – Mr. Westney's in Toronto, it's probably better if we start at 9:30, given it's gonna be an early time for him and he's probably had bit of back and forth to the airport today.

I do anticipate it will be the full day with him, so we may look at perhaps shortening the lunch break or something like that.

THE COMMISSIONER: Okay.

So we'll start tomorrow morning, then, at 9:30.

All right. Thank you very much.

CLERK: All rise.