



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 42

Commissioner: Honourable Justice Richard LeBlanc

Tuesday

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CLERK (Mulrooney): Please be seated.

THE COMMISSIONER: Morning. Okay.

Ms. O'Brien?

MS. O'BRIEN: Thank you, Commissioner.

Good morning, Mr. Harrington.

Madam Clerk, can we please bring up Exhibit P-01183? This would be tab 36 in the book before you, Mr. Harrington.

So when we broke off yesterday, there was some – I was asking you some questions regarding review and validation of your work on the estimates, both for the reserve amount and for the contingency. What this document here is – it's a Decision Gate 3 Key Deliverables List. This one says B1, approved for use and implementation, on the front of it, but it is not actually the final version of this document. This is a draft. I just want to make that clear.

Could we please go to page 14?

So this document generally sets out what the deliverables were required for Decision Gate 3. Would you agree with that, Mr. Harrington?

MR. HARRINGTON: Yes, at the time, yes.

MS. O'BRIEN: Okay. Mr. – yes. We have had a number of people say they're –

MR. HARRINGTON: Sorry.

MS. O'BRIEN: – having trouble hearing you.

MR. HARRINGTON: Yes.

MS. O'BRIEN: So the mic – as best as you can, if you can speak directly into the front of it.

MR. HARRINGTON: Right.

MS. O'BRIEN: So – thank you.

One section of this report – there's a number of sections there of things that are required, but one section – and it's the one I have up here, 7.4, covers third party reviews.

MR. HARRINGTON: Right.

MS. O'BRIEN: Now, at this point – this is just a draft, but at this time there are – it looks like five different third party reviews being anticipated.

MR. HARRINGTON: That's correct.

MS. O'BRIEN: Okay. So one was an "IPA Pacesetter Evaluation."

One – the next is "Independent Readiness Review for Decision Gate 3." Is that an internal review? Or can you just explain what that is? 'Cause I see there's "Cold Eyes Review" at the bottom, too, and I'm just trying to understand: What's the difference between the second and the last on the list?

MR. HARRINGTON: I believe the second one, it refers to the IPR, because Independent Project Review: IPR.

MS. O'BRIEN: Okay. Well – okay.

MR. HARRINGTON: And the gap closure plan is, you know, something that follows an IPR.

MS. O'BRIEN: Okay.

MR. HARRINGTON: Yeah.

MS. O'BRIEN: And then it says "Public Utilities Board Review Complete (DG2 decision)." So you weren't at this time anticipating another PUB review, were you? It was just the Gate 2 work.

MR. HARRINGTON: No.

MS. O'BRIEN: Okay. And "Navigant DG3 Review Complete," and the final one is a cold eyes review of the DG3 cost estimate. What – and what were you referring to there?

MR. HARRINGTON: I believe we were referring to the check estimates that had been carried out by Peter Mulcahy, Des Butt and Peter Hewitt. They were the check estimates.

MS. O'BRIEN: So they were done on the base estimate?

MR. HARRINGTON: Yes.

MS. O'BRIEN: Okay.

All right, now, it does seem – when we bring up the Navigant report – and can we do that quickly, please, Madam Clerk, P-00042, page 7. I don't believe you're going to need the actual document in front of you, Mr. Harrington, for this.

MR. HARRINGTON: Okay.

MS. O'BRIEN: If we can just – this is the – this is the Navigant report that was done and presented at the PUB.

MR. HARRINGTON: Okay.

MS. O'BRIEN: Okay.

But here – this is in the Executive Summary and Key Findings, and it does say here, you know: “Decision Gate 3 (DG3) – Project Sanction is the next step ... DG3 requires the advancement of project activities and work streams to a level of progression which provides the certainty needed to sanction or go ahead with the Project. Nalcor has retained Navigant to conduct an initial review using DG2 estimates. This report presents Navigant's findings related to Nalcor's recent DG2 decision. Navigant will provide a second report using DG3 project cost and schedule information as input to the DG3 decision.”

So certainly, it appears from this that, at this time, Navigant, at least, was expecting to have a further engagement for DG3, is that right?

MR. HARRINGTON: That's what it say, yes.

MS. O'BRIEN: Okay, and that would be consistent with the draft DG3 deliverables document we just looked at?

MR. HARRINGTON: Yes. I don't know the date of this –

MS. O'BRIEN: Of the Navigant report?

MR. HARRINGTON: Yeah.

MS. O'BRIEN: Oh, we can certainly get you that. It's on the front, but it would – this was filed with the –

MR. LEARMONTH: 2011.

MS. O'BRIEN: Well, September 14, 2011, from the page – first page.

MR. HARRINGTON: And this one isn't dated, the draft, right? The Decision Gate 3 deliverable – I'm just saying – making sure that they were aligned. The ...

MS. O'BRIEN: Okay.

Do you recall there being a plan to bring Navigant in to do a review of – for Gate 3?

MR. HARRINGTON: I think there was, because it was listed here, a review complete.

MS. O'BRIEN: Okay, do you recall that though?

MR. HARRINGTON: I don't, no.

MS. O'BRIEN: Okay.

Do you have any knowledge as to why Navigant was not called back to do the DG3 review?

MR. HARRINGTON: I don't know. I didn't deal with Navigant.

MS. O'BRIEN: Okay. So whose responsibility would that have been to decide whether or not to bring in Navigant to do a review and validation of the numbers going into DG3?

MR. HARRINGTON: I don't know. I don't want to speculate, but it was above me.

MS. O'BRIEN: Okay, so it would be senior to you. So we're –

MR. HARRINGTON: Yeah.

MS. O'BRIEN: – talking about a decision that would have been made by Gil Bennett or Ed Martin?

MR. HARRINGTON: Or possibly CFO, I don't know.

MS. O'BRIEN: Or possibly Derrick Sturge is what you're saying.

MR. HARRINGTON: Yes, because it – I think Navigant also did more than just project stuff. They did wider stuff, right?

MS. O'BRIEN: But for DG3 that would have just been project work, I take it.

MR. HARRINGTON: I don't think so. No, they may have done review of other things – CPW, that type of thing. I don't know.

MS. O'BRIEN: Okay, so it's – there's –

MR. HARRINGTON: I don't know. That's the answer.

MS. O'BRIEN: All right, so you don't know why the decision was made not to bring Navigant back.

MR. HARRINGTON: That's correct.

MS. O'BRIEN: Okay.

So if we go back to P-01183 here we see here one of the – the next one there is the IPA review. Now, we know that IPA did a pacesetter evaluation that was completed for Decision Gate 2. According to this document, the plan was to bring them back to do a review for Decision Gate 3. Do you know – we know that they ultimately were not brought back. Is that right?

MR. HARRINGTON: They weren't brought back but I'm looking here at – it doesn't say DG3, it doesn't say anything.

MS. O'BRIEN: Well, it does say the Decision Gate 3 Key Deliverables List.

MR. HARRINGTON: Well, that could be the DG2 one, couldn't it?

MS. O'BRIEN: The document that's called Decision Gate 3 Key Deliverables List?

MR. HARRINGTON: Yeah, but it also has Public Utilities Board DG2 decision.

MS. O'BRIEN: Yes, it does specify there.

MR. HARRINGTON: Yeah.

MS. O'BRIEN: But I understand the rest. Please take your time to look at this document.

MR. HARRINGTON: All I'm saying –

MS. O'BRIEN: – Mr. Harrington –

MR. HARRINGTON: Yeah.

MS. O'BRIEN: – because I certainly understand it to deal with the Gate 3 key deliverables.

MR. HARRINGTON: Right. So all I'm saying is it doesn't say specifically DG3. That's all I'm saying. So I don't know – can't say for sure whether that was the plan.

MS. O'BRIEN: Okay. So you don't know whether or not it was the plan. Can we bring up P-00807 please?

MR. HARRINGTON: Which is ...?

MS. O'BRIEN: It's a government briefing note.

MR. HARRINGTON: Okay.

MS. O'BRIEN: So, Mr. Harrington, you don't recall any plan ever to bring in IPA for a DG3 review?

MR. HARRINGTON: I can't recall. No.

MS. O'BRIEN: And who would have been involved in making that decision?

MR. HARRINGTON: I guess the people who were organizing all of these reviews.

MS. O'BRIEN: And –

MR. HARRINGTON: Not necessarily me.

MS. O'BRIEN: Okay, so not necessarily you. Are you saying it wasn't you?

MR. HARRINGTON: Well, I organized the DG – the IPR.

MS. O'BRIEN: Okay.

MR. HARRINGTON: So what I'm saying is I'm not responsible for all of these things.

MS. O'BRIEN: Okay. So you're not – weren't responsible for IPA.

Can we go to the bottom of page 2, please, Madam Clerk?

So this is a direction note – a decision note for government. And, I think, we'll get the date of it, but this is moving in to – I should get the date of it, sorry to be – oh, it's at the bottom?

UNIDENTIFIED MALE SPEAKER: Yeah.

MS. O'BRIEN: Thank you. So this is May of 2011.

MR. HARRINGTON: Okay.

MS. O'BRIEN: And I should have here – the bottom of page 2, right here. Okay.

So it says here – this is talking about the due diligence and what Nalcor has done. And then it says: "In addition to the above, Nalcor is also planning to undertake additional due diligence as follows" And, again, this is completion of a project cost analysis by IPA that specializes in the review of large-scale projects.

So you would agree with me that this document at this time, in May 2011, IPA had long since completed its review of Gate 2?

MR. HARRINGTON: Correct.

MS. O'BRIEN: Okay.

So, here, this document says that Nalcor is also planning to undertake a review of the project cost analysis by IPA. Would you agree with me that that suggests that Nalcor is planning to have them review the Gate 3 numbers?

MR. HARRINGTON: That's what they understood to be the case, yes. That's what's written, yes.

MS. O'BRIEN: Okay.

And you have no knowledge then of why government understood that to be the case?

MR. HARRINGTON: I can't recall any involvement in that.

MS. O'BRIEN: Okay.

And I take it you don't know then why IPA was not brought back?

MR. HARRINGTON: I don't really know.

MS. O'BRIEN: Okay.

Can we bring up P-01185, please, Madam Clerk. This is in tab 48 of the book before you, Mr. Harrington.

MR. HARRINGTON: Forty-eight – excuse me.

MS. O'BRIEN: So this is the final document of the –

MR. HARRINGTON: Could you just wait a second, if –

MS. O'BRIEN: Sure.

MR. HARRINGTON: Yes, I've got it.

MS. O'BRIEN: Okay, so this one is – this is the final signed-off version. It says here this supersedes an earlier document. It includes project execution key deliverables only.

MR. HARRINGTON: Mm-hmm.

MS. O'BRIEN: If we go to page 12, please; so here we see instead of five things listed under the third party reviews now in the final document, we're down to only two. And those would be, I guess, the IPR and the – and now we have the Manitoba Hydro review.

MR. HARRINGTON: Yes, that's a new one, isn't it?

MS. O'BRIEN: That's a new one, yes.

MR. HARRINGTON: Yes.

MS. O'BRIEN: So we're down to two. So – but I'm understanding from your evidence that you had no involvement in the decisions that were made to change the list.

MR. HARRINGTON: We just reflected them in the document.

MS. O'BRIEN: Okay.

Now, I know you heard Richard Westney's testimony, or at least parts of it. And I'm going to put some of that evidence to you and to see if you agree with the – with Mr. Westney's evidence on this particular point.

He gave some evidence around project assurance. And I'm just paraphrasing here but he said, generally, look, if you were an oil company deciding whether or not to go ahead with a project, and you had a number of projects in your portfolio and whatnot, you may do a project assurance or due diligence review, and let's call that, you know, up to a level 10. And then he said for a Crown corporation, you know, a utility project, one would expect that level of due diligence or project assurance to be higher, and he said – I think he said, like, up to the number 15.

Now, the numbers, Mr. Harrington, 10, 15 – I don't want you to get hung up on that, I don't think it particularly matters. But, generally, would you agree that the due diligence or project assurance that would be expected for a Crown corporation project, a utility project where this is the one significant project in the company's portfolio – that one would expect, reasonably, a higher level of due diligence or project assurance than would be expected, say, for a large oil company looking to undertake, you know, another project in its portfolio?

MR. HARRINGTON: I would – I'd say that they'd be close because you're talking huge expenditures here. So, you know, be it an oil company or be it a utility company, I think the degree of due diligence required is commensurate with the risks you're prepared to take.

MS. O'BRIEN: Okay, so I guess the same question could be asked about risk appetite then, because would you think that the risk appetite – you know, the idea – and it's put forward in the Grant Thornton report and has been put forward by a number of people that when you have one project that is essentially the big one significant project for a company, and when we're talking

about a Crown corporation, a province with half a million people and what that investment means in terms of the finances for the province, that one might expect the risk appetite to be lower than it would be for even a similarly sized project for a large oil and gas company that has a significant portfolio of projects and much more money to finance those projects.

MR. HARRINGTON: Yes, I would say so. Yes.

MS. O'BRIEN: Okay.

So, in light of that, if it's lower risk appetite, you would expect higher level of due diligence?

MR. HARRINGTON: Yeah, due diligence for a \$6-billion project, right? That's what you would require.

So I think, you know, the level of due diligence is commensurate with the amount of money that you're prepared to spend.

MS. O'BRIEN: And nothing to do with your risk appetite?

MR. HARRINGTON: Oh, of course, that plays into it.

MS. O'BRIEN: So then lower risk appetite – would you equate that to higher due diligence?

MR. HARRINGTON: Well, a lot of due diligence, yes. Yeah.

MS. O'BRIEN: So – but higher due diligence?

MR. HARRINGTON: Well, you know, it's difficult to – these are fine lines between, you know, due diligence. Well, how do you measure due diligence? Is there a metric? I don't know.

MS. O'BRIEN: Well, we can look at the – here we see the level – from looking at these two documents, it seems like the level of review that Nalcor chose to – finally undertook as opposed to what they initially planned to undertake, went down.

MR. HARRINGTON: Well, in numbers, but perhaps not in content.

MS. O'BRIEN: Well, we can look at the content, but you certainly agree it went down in numbers.

MR. HARRINGTON: Oh, of course. I can't disagree with that.

MS. O'BRIEN: Okay.

Let's look at some of the review that was undertaken by MHI.

Now, there's been – I don't know if you've been following the evidence, but there has been some considerable questions asked about MHI's scope of work and, in particular, who gave direction to remove a piece of that scope of work that had to do with risk review of the management reserve and the strategic risk.

Can we please bring up P-01178, please? Tab 18 of your book, Mr. Harrington.

MR. HARRINGTON: That's coming up, is it?

MS. O'BRIEN: Yes.

So this is an email from you on April 4, 2012, to various other people, including Gil Bennett. And this is attachments – the attachment to this document is: "SCOPE OF SERVICES - Government of Newfoundland - Muskrat Falls DG3 review PH."

So is that "PH" you?

MR. HARRINGTON: That's correct.

MS. O'BRIEN: So these – what we have here is your comments to the MHI proposal.

MR. HARRINGTON: If you go down, there may be other comments to it. I don't know.

MS. O'BRIEN: Okay, but – "Please find my comments to the MHI proposal" – I'm just reading the first line there.

MR. HARRINGTON: Oh, sure. Yeah. Yeah, but –

MS. O'BRIEN: Okay.

MR. HARRINGTON: – all I'm saying is there may be other people commenting on it as well. So I don't know.

MS. O'BRIEN: Doesn't appear to be from this email.

MR. HARRINGTON: Okay, as I say, I didn't ...

MS. O'BRIEN: Okay.

So if we can just go – Mr. Bown has referred it to you –

MR. HARRINGTON: Yeah.

MS. O'BRIEN: – "For review and comment." Okay, can we please go to page 6?

MR. HARRINGTON: Well, Mr. Bown passed it to Mr. Bennett, right?

MS. O'BRIEN: Yes, and –

MR. HARRINGTON: And then Mr. Bennett passed it on to me.

MS. O'BRIEN: Right. And so this is your response back –

MR. HARRINGTON: Yeah.

MS. O'BRIEN: – with PH written on it, right?

MR. HARRINGTON: Yeah.

MS. O'BRIEN: Your comments?

MR. HARRINGTON: Yeah.

MS. O'BRIEN: Okay.

So the question has been raised as to who removed this scope of work risk analysis review.

MR. HARRINGTON: These were my comments, yes.

MS. O'BRIEN: Okay, so you're the one who requested that that scope of work be removed.

MR. HARRINGTON: I suggested it, yes.

MS. O'BRIEN: Okay.

MR. HARRINGTON: And if you look at that particular one, there isn't a strategic risk assessment update of the Holyrood Thermal Generating Station plans; that's why I took it out.

MS. O'BRIEN: Pardon?

MR. HARRINGTON: There isn't a strategic risk assessment of the Holyrood Thermal Generation plans.

MS. O'BRIEN: That was a different scope of work –

MR. HARRINGTON: Okay.

MS. O'BRIEN: – that's up here. This scope of work that's removed, that was formerly number 10 – you've left that one.

MR. HARRINGTON: Okay.

MS. O'BRIEN: The one you've removed –

MR. HARRINGTON: Oh, okay. Yeah.

MS. O'BRIEN: – was the former number 11 – that was: "Risk Analysis review." Okay?

MR. HARRINGTON: Yes, because we hadn't finished it. Yeah.

MS. O'BRIEN: So my next question was going to be: Why you wouldn't – why you didn't want MHI to review your risk analysis work?

MR. HARRINGTON: I just, you know, we had a lot of work on the go and we hadn't finished the risk assessment at that point in time.

MS. O'BRIEN: Okay.

Why not wait until it was finished and then have MHI review it?

MR. HARRINGTON: Because they were under a time-squeeze, as far as we were told.

MS. O'BRIEN: And who told you that MHI was under a time-squeeze and wouldn't have time to wait and see your risk analysis?

MR. HARRINGTON: Because I saw the dates that were proposed in the proposal.

MS. O'BRIEN: So did you raise with anyone – did you raise with Mr. Bown, or anyone at –?

MR. HARRINGTON: I'd suggested that was something that we couldn't possibly do in this – in the time frame.

MS. O'BRIEN: Okay.

Who did you suggest that to, Mr. Harrington?

MR. HARRINGTON: I gave my comments back to Mr. – whoever was on the email.

MS. O'BRIEN: Okay. But you don't – you don't actually give that explanation, because it's – because you're concerned about time. You've just crossed it out.

MR. HARRINGTON: Well, if we read it.

MS. O'BRIEN: Okay.

MR. HARRINGTON: I was concerned about the – that they: "... should focus on the updated CPW analysis using updated numbers. This has to be an apples to apples comparison so the expansion plan used in this review has also to exclude the Maritime Link as per the DG2 review. This will make this review more straightforward and achievable in the timeframe."

So the time frame that was laid out was very tight for us. We had previously been very occupied in information requests going backwards and forwards. This was very time consuming. Here we had a limited window to be able to get this done, so consequently we wanted to focus in on avoiding things such as reliability and basis of design, because that was fixed.

So that was my –

MS. O'BRIEN: Mr. –

MR. HARRINGTON: – that was my kind of context to that.

MS. O'BRIEN: Okay.

Mr. Harrington, we're talking here about the most significant megaproject that this province has ever undertaken.

MR. HARRINGTON: Sure.

MS. O'BRIEN: We're talking about a very small province, half a million people in this province.

MR. HARRINGTON: That's correct.

MS. O'BRIEN: And we're talking about the level of review and due diligence that should have been done on the work that you and your team were putting together prior to anyone making a decision to go ahead and sanction this project.

Now, we've just seen that the level – the list of reviewers was reduced down to two. One being the Independent Project Review – and we're gonna talk more about that this morning – and the other one being MHI's review. And now you're saying that because there was a timeline you did not think that they should review your work on risk analysis –

MR. HARRINGTON: I think it's strategic risk. They reviewed it on tactical.

MS. O'BRIEN: Okay.

MR. HARRINGTON: Because, as I mentioned previously, the –

MS. O'BRIEN: Because of the time.

MR. HARRINGTON: – strategic – pardon? No.

MS. O'BRIEN: Because of the time.

MR. HARRINGTON: And the strategic risk hadn't been completed the time that they were there.

MS. O'BRIEN: Do you think the people who made the decision here understood that if they just waited a little bit more time they could have a full and proper review of your work?

MR. HARRINGTON: So –

MS. O'BRIEN: And when I say "your," I mean you and the other members of the team that were doing it.

MR. HARRINGTON: So the way that this worked is Mr. Charles Bown asked Mr. Gilbert Bennett for comments. I was asked to provide my comments from my perspective, as a project director, looking at the work scope that we had, the time frame that we were trying to work to, and I provided my comments back. So, you know, my comments going back via Mr. Bennett to Mr. Bown, you know, they can say: Well, we don't agree with that. Or they may say: We do agree with that. That's – you know, if I'm asked for comments, I'll provide comments.

MS. O'BRIEN: Okay. And your comments were I don't want to have the strategic risk review work reviewed.

MR. HARRINGTON: I didn't want – no, I didn't say that. I said it shouldn't be included in the scope of work because they couldn't complete that scope of work.

MS. O'BRIEN: Okay.

MR. HARRINGTON: Because we hadn't finished it.

MS. O'BRIEN: Okay. Well, we will look at that.

I think if we see – can we just bring up P-01180, please?

MR. HARRINGTON: Which is ...?

MS. O'BRIEN: This is another email here from Brian –

THE COMMISSIONER: Tab 21.

MS. O'BRIEN: Tab 21.

MR. HARRINGTON: Okay.

MS. O'BRIEN: And so in this one here we see that Brian Crawley – and the attachment is there – but this is where we see that Brian Crawley sends the – your version of the scope of work back to Charles Bown. Okay? So – and it does

indicate in this email that Mr. Bown and Mr. Martin have been discussing.

So I just wanted – this is just for completeness. This is to close the loop to the – your –

MR. HARRINGTON: Could we look at it, please?

MS. O'BRIEN: Yes, of course.

MR. HARRINGTON: So this is obviously other people's – well (inaudible) –

MS. O'BRIEN: Yes. But at this point – the point here is at this point –

MR. HARRINGTON: (Inaudible) – yeah.

MS. O'BRIEN: – the strategic risk review, the risk analysis review, is removed from this document.

MR. HARRINGTON: Well, this is not the same document as the last one, is it?

MS. O'BRIEN: No, it's put together, but it shows that the – that scope of work was removed.

MR. HARRINGTON: Could we just go through it carefully, please? Stop there, if you don't mind.

MS. O'BRIEN: Okay.

MR. HARRINGTON: Could we go up again, just so I can get the full thing?

MS. O'BRIEN: Yeah.

MR. HARRINGTON: “The review shall include an assessment of the Cumulative Present Worth Analysis of the Projects including a reasonableness assessment of all inputs into that analysis.” That includes the capital costs. “The test of reasonableness for this assessment is generally defined as following Good Utility Practices.”

So that's – they're looking at all inputs: a reasonable assessment of all inputs into the analysis of the CPW.

MS. O'BRIEN: Mm-hmm.

MR. HARRINGTON: So that's, you know, that's pretty broad.

MS. O'BRIEN: Okay.

So we're gonna see –

MR. HARRINGTON: And can I – if I may? The CPW considered tactical risk, because that – it's the \$6.2 billion that they were looking at.

So you know, that talks about the input, the 6.2 billion capital cost input, into the analysis for the CPW. And as I mentioned previously, the strategic risk report, we didn't get 'til after they'd left.

MS. O'BRIEN: Yeah, nobody ever reviewed that.

MR. HARRINGTON: No.

MS. O'BRIEN: No one ever reviewed it.

MR. HARRINGTON: Well, it was provided to executive.

MS. O'BRIEN: Okay, there was no independent –

MR. HARRINGTON: External, no.

MS. O'BRIEN: No, there was no external review done.

MR. HARRINGTON: Other than MHI themselves – oh sorry, (inaudible) Westney themselves, right?

MS. O'BRIEN: Okay, so there was no external review of – independent review of that work?

MR. HARRINGTON: Yeah.

MS. O'BRIEN: And we're looking at the reasons for that, okay?

MR. HARRINGTON: Yeah.

MS. O'BRIEN: So right now, the document that we've just looked at is you suggesting – you making the recommendation to remove that

scope of work from MHI's scope of work, and I understand your evidence is that you were concerned about time frames.

MR. HARRINGTON: And it wasn't ready.

MS. O'BRIEN: Okay, well, we're gonna look at when it was ready.

MR. HARRINGTON: Yup.

MS. O'BRIEN: Okay.

So then, we also know that you – we have a number of emails here that show you were concerned, raise – were raising other concerns about MHI doing their work, and – can we bring up P-01181. This is at tab 23, April 20, 2012.

And this is – there is a number of emails that show this, Mr. Harrington, and I'm not gonna go through them all in details; I'll highlight them. The emails do speak for themselves.

But I just want to confirm that it really seems to you that you were very concerned here, and you say it here in this email directly, that the critical issue for you was the "MHI requirement for information to be provided to them. This is wrong, and is an IR in reality.

"MHI should meet with our team and review the data and documentation not have it all sent to them.

"They are in audit mode and not review mode."

Can you just explain, for the Commissioner, what was your concern here?

MR. HARRINGTON: Well, my concerns were we – you know, the project team was under a lot of, you know, pressure at that point in time to get deliverables done. I'd seen how it worked previously under the PUB requirement, and you know, that was a long drawn out effort.

Information requests were submitted, they would be dealt with within the team and given back to the PUB and then back to MHI. In this situation, what I wanted to do is try and short circuit that type of review so that we would do it, basically, across the table with each other.

So we'd have the documentation available to them, so they could be presented with it so that we'd cut out all of that long, drawn out, backwards and forwards with information request, because information requests can sometimes get misunderstood and misinterpreted. So my view at that point in time was this will be more efficient if we do it face to face.

MS. O'BRIEN: Shouldn't the DG3 review be at least as thorough as a review at Gate 2?

MR. HARRINGTON: That wasn't my particular call. This was an audit – or this was a review that was put in place, and you know, they had just finished the DG2 review, so they had just finished an awful lot of review of how our processes worked and how our risk analysis was carried out, how our scheduling was done.

And it was based upon the information at DG2, and it was very thorough. So I think this was a build – I viewed this as a build on the DG2 rather than a from-the-bottom-up type of review, and I think that's reasonable.

MS. O'BRIEN: Can we bring up P-00813, please?

THE COMMISSIONER: Tab 24.

MS. O'BRIEN: So this is April 26, 2012, Brian Crawley to you, MHI scope ph. So this is some more comments from you, and here it is – I think it's being forwarded.

But this is a note from you, I believe, here: Attached – I think that should be my comments – I have limited computer availability here so could not do track changes so had to resort to different fonts, and anything that should be deleted, I have marked in blue italics and words added in red.

I want to make sure that this is a review not a technical audit at a high level and have emphasized the reasonableness of the inputs to derive the least cost and CPW. Hope this makes sense.

I also have changed the review requirements that MHI identified – I think, to date, it should say – and information to be made available in St.

John's during the review. I want to make sure that they do not walk away or request drawings, data and information.

So why was it that you didn't want them to walk – I assume walk away with or request drawings, data, and information?

MR. HARRINGTON: Can we go back?

MS. O'BRIEN: Yeah, it – that one is tab 24.

MR. HARRINGTON: Mm-hmm.

I wanted them – again, going back to that – you know, the statement I've just made – I wanted them to work with our people. So I didn't want – I wanted them to stay in our offices, work with our people and get the answers that they needed, not take stuff away and come back again.

MS. O'BRIEN: Why would you not want them – if they felt to do a thorough review they wanted to take the documents away and come back with them –

MR. HARRINGTON: That's –

MS. O'BRIEN: – why wouldn't that be –

MR. HARRINGTON: Well, that's what –

MS. O'BRIEN: – why wouldn't that be permissible?

MR. HARRINGTON: That's what happened in the end. That's what happened in reality. They did –

MS. O'BRIEN: But why did you not want it to happen?

MR. HARRINGTON: Because I wanted it to be more – I wanted them to sit in our offices and work with our people and not go away back to Manitoba and do that work. I wanted it to be done here in St. John's, in our offices, together. That's what I wanted.

MS. O'BRIEN: Why? Because you'd have more –

MR. HARRINGTON: It's more efficient to do it that way. That's my view.

MS. O'BRIEN: Why not let the reviewer decide what they believe to be –

MR. HARRINGTON: Well, they did (inaudible) – I wanted it to be that way, but it didn't work out that way.

MS. O'BRIEN: Okay.

Can we go to P-00816, please? This is June 15.

So this is when – I believe –

THE COMMISSIONER: Tab 31.

MS. O'BRIEN: Yes, sorry. Thank you, Commissioner. Tab 31.

Page 3, please.

Okay. So this is – just to come up to the top here so we can see – this is from you, an email from you to various other people who are listed here – all Nalcor people.

MR. HARRINGTON: Mm-hmm.

MS. O'BRIEN: But on page – so this is getting ready to meet with MHI. You write: "We should be respectful, helpful but we should not offer anything outside of the Terms of Reference and Scope of work without internal agreement, if they ask for something then Gilbert, Brian or I will step in if needed. We can let them look at most things at the high level and if they want to burrow down deeper then we shall have to caucus on that. We can play it by ear in the meeting and take the lead as shown above. So only bring along high level documents as indicated above. Hope this helps. Paul"

So can you please explain for the Commissioner why you were giving that direction to the Nalcor team who was going to be meeting with MHI?

MR. HARRINGTON: Yes. And I think MHI made some reference to some of their people who'd come to the – to have meetings with our people, that they hadn't been given the Terms of Reference and they were going into great details on engineering matters and, you know, we agreed that we weren't going to be doing that.

So this is, basically, to Bob Barnes and, you know, asking him to make sure that from his engineering perspective that he doesn't go into those great – into the weeds, I think I called it.

MS. OBRIEN: And why, if MHI wanted to go into the weeds, why wouldn't you allow them?

MR. HARRINGTON: Because –

MS. OBRIEN: They were there doing a review for the Government of Newfoundland and Labrador.

MR. HARRINGTON: Well, it was the Terms of Reference and, you know, I think, Mr. Snyder mentioned it previously, that he had some of his people who had strayed away from their scope of work. And, you know, we had experience of that; that was tying a lot of details up into an engineering matter that was tying people up who should be doing other things. And it was outside the Terms of Reference.

MS. OBRIEN: Can we go to P-00817, please?

MR. HARRINGTON: Tab?

MS. OBRIEN: Tab 34. So this is the PowerPoint presentation. We referred to this yesterday, Mr. Harrington. This is the slide 12.

MR. HARRINGTON: Yup.

MS. OBRIEN: So this starts on August 7 with Brian Crawley writing you to ask if you were okay with a slide deck, that's attached, going to Charles Bown. "It is what we provided to MHI. We should also bring Gilbert into the loop."

And then the deck is attached.

MR. HARRINGTON: Right.

MS. OBRIEN: And if we go to page 14, please, Madam Clerk?

So this is one of the slides in the deck that Mr. Crawley is proposing handing along to Charles Bown.

MR. HARRINGTON: Yes.

MS. OBRIEN: And it does talk about schedule exposure risks, performance list – these are strategic risks beyond estimate contingency. That's what that slide addresses.

MR. HARRINGTON: That's correct.

MS. O'BRIEN: And then if we can go to P-00818, which is tab 35. Oh, sorry, am I on this one? Yes. You respond, "Brian I have taken slide 12 out of the deck you sent me - I do not believe we actually shared this with MHI."

Okay. And that's what you sent to Mr. Crawley.

MR. HARRINGTON: That's what I believed, yes.

MS. O'BRIEN: Why would you want to take out a slide that addresses strategic risks, risks that you have said a number of times in your evidence that they were to be funded by contingent equity, which was to be provided by the Government of Newfoundland and Labrador? Why would you take – want to remove that slide from a slide deck going to Charles Bown at the Government of Newfoundland and Labrador?

MR. HARRINGTON: Because I thought – incorrectly – that when the presentation had been made by Mr. Kean to the MHI representative, at least Al Snyder was one of them, then I thought that he didn't include that slide. But, you know, I don't disagree with Mr. Kean's testimony that he actually did; he's confirmed that. So my belief was wrong.

So I just thought that, you know, if we had not have done that, so I asked – well, I'm sure Mr. Crawley would have asked Mr. Jason Kean did you or didn't you. I don't know what was sent to Charles Bown at the end of the day.

MS. O'BRIEN: I can confirm for you that Government of Newfoundland and Labrador, to the best of our searching, never received that slide.

MR. HARRINGTON: All that deck?

MS. O'BRIEN: No, that slide.

MR. HARRINGTON: Okay. Well, perhaps he shared my belief then.

MS. O'BRIEN: Why – regardless of what MHI saw or didn't see on a screen, why would that matter? We're talking here about what information should be provided to Charles Bown.

MR. HARRINGTON: Why I just said that I thought we – he didn't – we didn't actually include that in the deck that was presented.

MS. O'BRIEN: But why does that matter?

MR. HARRINGTON: That was my belief. I know –

MS. O'BRIEN: But why does that matter to what information Mr. Charles Bown should see?

MR. HARRINGTON: Well, if we hadn't even included it in the MHI review or the MHI presentation, then we shouldn't be misleading Mr. Bown to say that it was included. That was my point.

MS. O'BRIEN: Couldn't you not do that with just sending Mr. Bown the information saying, by the way, not sure that we gave slide 12 to MHI?

MR. HARRINGTON: But I didn't send this to Mr. Bown. I sent it to Mr. Crawley.

MS. O'BRIEN: No, but you removed the slide.

MR. HARRINGTON: Because I believed that we had removed it.

MS. O'BRIEN: Okay.

MR. HARRINGTON: And, obviously, we hadn't because Mr. Kean testified to that.

MS. O'BRIEN: Can we go to P-01190, please?

THE COMMISSIONER: Tab?

MS. O'BRIEN: Tab 58.

THE COMMISSIONER: Fifty-eight, yeah.

MR. HARRINGTON: Fifty-eight. Okay, give me a chance –

MS. O'BRIEN: Okay, this is August 2012, again: Reasons for cost growth. And this is an email from you, again, to Brian Crawley, Gil Bennett, Dawn Dalley and Jason Kean. "I have worked on the deck that Jason developed to explain the cost growth since DG2 and have had to add a few slides and take out a few points that could trigger a reaction from NS, NL or the Feds - Ed is always asking how we can explain how we could not predict the DG3 costs - so I have tried to answer that question - Comments, I may need to run with this at short notice."

What reaction were you concerned about triggering from the Government of Newfoundland and Labrador?

MR. HARRINGTON: I can't recall. Really can't recall six years ago. No.

MS. O'BRIEN: Well, clearly there was something, hey? You wouldn't have written it at the time if there wasn't?

MR. HARRINGTON: Can I look through the deck and I'll –

MS. O'BRIEN: Oh yes, it's there in tab 58, please, take your time.

There's nothing in these decks, or when we see the deck that's ultimately sent on to government, there's nothing in there about the strategic risks.

MR. HARRINGTON: Yeah, because it's talking about the DG3 estimate overview. That's what it's talking about.

MS. O'BRIEN: Okay.

MR. HARRINGTON: So what they were interested in at the time, how did we get from 5 billion to 6.2 billion? So that was the purpose of that.

MS. O'BRIEN: Okay. You – have you had an opportunity to check what you needed to check?

MR. HARRINGTON: Yeah, I – it's not ringing any bells with me.

MS. O'BRIEN: Okay.

Now, you have said a number of times that the – we've – there's been discussion about why the work that Westney did and the slide deck entitled: Analysis of Potential Management Reserve and Lender's Owner Contingency for the Lower Churchill Project May 23 to June 4, 2012.

MR. HARRINGTON: Sorry, my train of thought was still on that. Could you repeat that, please?

MS. O'BRIEN: Absolutely.

There's been a number of questions asked and evidence covered in this hearing room as to why the work that Westney did at Gate 3 that got turned into their slide deck that's been entered as P-00821 and it's entitled: Analysis of Potential Reserve and Lender's Owner Contingency for the Lower Churchill Project, May 23 to June 4, 2012 – why that slide deck was not provided to MHI.

MR. HARRINGTON: My –

MS. O'BRIEN: So –

MR. HARRINGTON: My understanding of that is that the work that was ongoing wasn't completed until later that year.

MS. O'BRIEN: Okay.

MHI's report is actually dated October – I believe October 26, 2012.

MR. HARRINGTON: Yeah.

MS. O'BRIEN: Okay.

And we see that – if we can bring up P-00832, please, Madam Clerk?

This is when that work was finally complete – September 19 – so over a month before MHI's report was submitted. And if I could just bring up another slide, 'cause when you first – when Nalcor first received that draft, and there really wasn't that much – there was no change in the substantive comment of it – it was first received

on – if we bring up P-00828 – on August 22, 2012.

MR. HARRINGTON: Mm-hmm.

MS. O'BRIEN: So you had the final report, certainly, over a month before MHI completed their work. You had a draft report and, again, we can – you know, it's – the Exhibits are entered; the comparisons can be made. The substantive work is still the same. So you did have that information. And you could have provided it to MHI, could you not have?

MR. HARRINGTON: So when – I have to remember now – when were MHI actually in our offices doing the review?

MS. O'BRIEN: Well, you could've emailed it to them.

MR. HARRINGTON: It wasn't my place to email them. I wasn't dealing with MHI.

MS. O'BRIEN: I understood you saying that MHI wasn't given this material because it wasn't ready.

MR. HARRINGTON: It wasn't final.

MS. O'BRIEN: But it was final over a month before MHI finished their report.

MR. HARRINGTON: Well, not – well, September 19 – but they, you know, their report was going backwards and forwards between Mr. – well, the Government of Newfoundland and Labrador and themselves. They (inaudible) the work was complete. They'd got the data. They'd moved on.

MS. O'BRIEN: You could have provided it to them.

MR. HARRINGTON: On September – when they'd finished their – when they'd already finished their review?

MS. O'BRIEN: Well, could you not have provided it to them?

MR. HARRINGTON: Could've done, but didn't.

MS. O'BRIEN: Okay.

And I put it to you: You didn't, not simply because it wasn't in final form, as it clearly was, but because they didn't ask for it and you took the position that if they didn't ask you weren't providing it. Is that not right?

MR. HARRINGTON: Well, yeah, that was probably in my testimony that, you know, we provided information that they requested. If they didn't request something then we weren't going around offering anything to them. They had a list of things that they wanted and we provided those.

MS. O'BRIEN: Okay. So you had a "don't ask, don't tell" sort of policy when it was –

MR. HARRINGTON: I wouldn't characterize it like that.

MS. O'BRIEN: Okay. Well, I just – I mean, you said that if they didn't ask for it you didn't provide it.

MR. HARRINGTON: Well, they come in, they do their work; they identified to us the drawings and documents that they would like to see and if they ask for that drawing or document we would provide it.

MS. O'BRIEN: What if they don't know it exists, but you do and you know it's relevant to the inputs to the CPW analysis, for example?

MR. HARRINGTON: But MHI were perfectly aware of the strategic risk that was carried out by Westney, because they did it in DG2.

MS. O'BRIEN: But how did they – how would they know that the work had been done in DG3 if you didn't provide it to them or you didn't tell them about it?

MR. HARRINGTON: Because we were working on it. So, you know, if they ask for a document or drawing we give it to them. They didn't ask for it. They knew that there was strategic risk analysis because they'd seen it in DG2.

MS. O'BRIEN: So you're –

MR. HARRINGTON: So they were perfectly aware that it existed. It needed to be update; it hadn't been updated yet. So that's it.

MS. O'BRIEN: How do you know they were perfectly aware it existed, 'cause that's not their testimony, so how do you know they were perfectly aware?

MR. HARRINGTON: In DG2 – course they were, it was in their report.

MS. O'BRIEN: We're talking about the DG3 work, Mr. Harrington.

MR. HARRINGTON: And I'm talking about – they were perfectly aware that the project team would carry out strategic risk analysis, 'cause we did it at DG2.

MS. O'BRIEN: So how were they perfectly aware you did it at DG3?

MR. HARRINGTON: Because they knew that we updated things.

MS. O'BRIEN: And did –

MR. HARRINGTON: Well, I assume that, so I shouldn't speculate.

MS. O'BRIEN: Okay. So you shouldn't speculate. You don't know what they knew.

MR. HARRINGTON: But –

MS. O'BRIEN: But –

MR. HARRINGTON: – I knew they knew at DG2.

MS. O'BRIEN: Yes, but you don't know what they knew about the DG3.

MR. HARRINGTON: Well –

MS. O'BRIEN: And your policy –

MR. HARRINGTON: – for sure.

MS. O'BRIEN: – was that if they didn't ask for it you didn't provide it.

MR. HARRINGTON: Well, that's right, you know, if they asked for things we'd provide them. If they don't ask for things we don't provide them. But we don't hide anything from anybody.

MS. O'BRIEN: But you don't volunteer things.

MR. HARRINGTON: Well, it's not my place to volunteer these things. I'm not dealing with MHI, you know, that's dealt with by, you know, in this case it was the Government of Newfoundland and Labrador.

MS. O'BRIEN: Okay.

Can we please go to P-01174, please?

THE COMMISSIONER: Tab 8.

MR. HARRINGTON: 2010, right?

MS. O'BRIEN: Now, we're actually going back a bit in time, Mr. Harrington. I'm going back to IPA.

MR. HARRINGTON: Eight years ago, yeah.

MS. O'BRIEN: This is back at Gate 2, but we know that IPA was not asked back to do a review of Gate 3, and I just wanna look at what happened with some of their work in Gate 2.

So here we have – and this is I believe tab 8, I think the Commissioner just said that – this is September 27, it's from Jason Kean to Deepesh Singh, who I understand – he was with IPA, is that right?

MR. HARRINGTON: Yes, I believe so.

MS. O'BRIEN: Okay. And it's copied to you. And Mr. Kean is sending IPA some proposed changes to their report.

MR. HARRINGTON: Yes.

MS. O'BRIEN: And now, the – we can see here, and when we look at the documents, these are changes I believe that you and Mr. Kean worked on together.

MR. HARRINGTON: Correct.

MS. O'BRIEN: And IPA did two reports, two slide decks for you at Gate 2, I believe. One very lengthy one and then one shorter one that was being done for public disclosure, and that one was, I believe, provided to the board and in the Decision Gate package and whatnot. Is that correct?

MR. HARRINGTON: That's correct.

MS. O'BRIEN: Okay, so this is the shorter one that would've been going to the board, for example –

MR. HARRINGTON: Mm-hmm.

MS. O'BRIEN: – that we're looking at here.

Can we go to page 5, please, Madam Clerk?

And I just wanna look at some of the changes that you were suggesting here. So this, on the left-hand side, this shows what IPA had put in their – as their key findings: "However, team misalignment on several key project elements presents risks and challenges going forward; As owner ramps-up the team and contractors mobilize in the next few months, lingering team issues will magnify risks and potentially erode benefits and Best Practices applied thus far."

And then when we go up here – and it's a little hard to see. I'm gonna ask Madam Clerk if she could please make it a little bit bigger for me. And if you just look at some of the – these are the comments, the suggested changes that you and Mr. Kean are noting.

So there's a few I just wanna look at. If we look at Number 3, you've changed that wording and suggested: "Experienced, high-involved Project Team in place, however, results of team surveys identified several opportunities to enhance overall team functionality / effectiveness going into FEL 3 (e.g. clarify roles and responsibilities, execution strategy)."

And then the other bullet point that they had, you're suggesting it be changed to: "As Nalcor ramps up its project management team in preparation for the EPCm consultant's mobilization in Q1-11, a focus," – I don't know what that means – "a focus, concerted effort must be directed towards ensuring overall team

alignment and integration in order to avoid the risk of erosion of the benefits of Best Practices applied thus far.”

And then you make some suggestions about: “... including a reference to a high-level of owner involvement and the potential benefits it brings?”

And this is “Paul’s note” so I believe that would be you: “Could we say ‘Improving team alignment and team functionality is critical for success in the coming phases and presents risks and challenges for the Project team to address.’”

So I don’t wanna get into a big debate on the specifics of the words and the edits. But I’m gonna put to you that the changes that you and Mr. Kean are proposing here – and they are changes to IPA’s Key Findings, which are over here. I’m gonna put it to you that they –

Whoops, yeah, make it a little bit bigger, I wanna be able to see both sides there. Thank you. No, down please. Okay.

I’m gonna put it to you, Mr. Harrington, that these go beyond just checking facts or correcting facts or ensuring that the reviewer has all the relevant facts to their findings. This, I would put it to you, goes to changing the messaging of those facts, and really putting – you know, removing some of the negative words and replacing them with positive words. It really goes to massaging the messaging.

Do you believe that it – that’s appropriate for you to be doing, as the project director, when you have a consultant who’s been asked to come in and do an independent review and they present to you their draft findings? Do you believe it’s appropriate for you, then, to suggest changes that aren’t fact corrections or additional information, but they really are changes amending the message of the findings?

MR. HARRINGTON: Well, I wouldn’t necessarily agree with everything that you’ve said regarding messaging. I – this is a proposal, I think the – if we can go back to the email.

Could we go up to the email, please?

MS. O’BRIEN: Yes, it was suggested edits. Is that what you want to point out?

MR. HARRINGTON: No, I’d just like to look at it, if you don’t mind.

You know – “... we have proposed several changes for your consideration”

MS. O’BRIEN: Mm-hmm.

MR. HARRINGTON: “While we wish to” – accurately – “reflect IPA’s findings from review,” – so that’s our stated objective – “we wish to characterize them as items not preventing us from concluding FEL 2, rather ... that must be a priority focus as the EPCm consultant is engaged.”

So, “Please review and advise whether these proposed changes are acceptable. If at all possible, we would like to have a revised report”

So there’s no direction here. This is – yeah, we’re looking at this, this is going to go public. You know, we wanna make sure that if the wording that they can accept doesn’t change the basic message that their trying to send, then, you know, that’s our viewpoint. We’ve asked – we’ve been asked for comments, we provide them back. And at the end of the day, Deepesh Singh said: No, we’re gonna stick with these comments as they are.

MS. O’BRIEN: Yes, they didn’t accept all your changes –

MR. HARRINGTON: And we didn’t object.

MS. O’BRIEN: – certainly those – the ones that I’m pointing to. I acknowledge that they didn’t in the final.

MR. HARRINGTON: No.

MS. O’BRIEN: But my question to you is not about whether IPA accepted them or didn’t accept them. I want to have your comment, for the Commissioner’s benefit, as to the – your views on the appropriateness of you making those suggestions to a consultant.

MR. HARRINGTON: So I don't know whether it's different in other industries, but certainly in, you know, the project world, we get documents for review and comment constantly from consultants, from almost anybody. The Ernst & Young report was provided to us for comment, the independent engineer's report was provided for comment. We get comments from consultants – engineering consultants that are submitted to us. And we provide those comments, you know.

And it's up to the – as far as we are concerned, you know – we can provide our perspective on things, we can provide those comments back to the author and if the author considers them appropriate – some cases – in many cases, you know, the author sometimes gets things wrong. Because they're not there on a continual basis with us; they may be there for a, you know, a week like the IPR team, and they have a very limited, kind of, access to all of the information.

So, you know, as it's been pointed out before, sometimes they get a hold of the wrong end of the stick. And that's when we try to provide our perspective back to them. So if the author agrees with them – and there's no coercion, there's no pressure put on the authors here to accept our comments as stated. If they don't accept them, we're fine with that too.

MS. O'BRIEN: But do you not see that when you have consultants who are doing work and they're hoping to get the next job, as consultants often are, that there is a – whether there's not a direct pressure, there is an indirect pressure on them to accept the massaged message from the client.

Do you acknowledge that there is an indirect pressure there on consultants?

MR. HARRINGTON: I would not at all. Because these people –

MS. O'BRIEN: Okay.

MR. HARRINGTON: – are professionals. IPA, if, you know, if they didn't want to put something on their letterhead coming back to us, they would not do it. And that goes for almost any author of a professional level.

MS. O'BRIEN: Okay.

MR. HARRINGTON: In my opinion.

MS. O'BRIEN: Now, when you say – you just used the words “we” there in your response to the question, and I just want to clarify that that's you. Because I do need to clarify that not everybody that we've spoken to shares the same view as you do.

MR. HARRINGTON: Okay.

MS. O'BRIEN: Some people believe that – some people have said that they, you know, to correct errors and to make sure they have all the facts, they review draft reports for that. But they do not make comments that go to, you know, the actual opinion itself and the wording of the opinion itself. So I just wanna make clear there that what – that evidence, that you've just given the Commissioner, is your own personal perspective.

MR. HARRINGTON: That's correct.

MS. O'BRIEN: Okay.

And so ultimately this is IPA who – they didn't come back for DG3. And when we do compare the final, they didn't accept –

MR. HARRINGTON: Yeah. And I don't think you can –

MS. O'BRIEN: – your suggestions.

MR. HARRINGTON: – draw a conclusion just because they didn't – you know, that we turned them down again. I – you can't make that (inaudible).

MS. O'BRIEN: Okay.

If we can go now, please, to – we're gonna talk about the IPR. Can we please go to P-00493?

THE COMMISSIONER: That's not in your book.

MR. HARRINGTON: Oh, is it not?

THE COMMISSIONER: No.

MS. O'BRIEN: No. This is the DG2 Charter. I just wanna bring it up quickly when we're talking about – I'm just gonna bring you quickly to one page. This is the Decision Gate 2 Independent Project Review Charter. If we just go to page 2. I just want to give some context for my questions. Sorry, page 4.

Just look at what the purpose of the review is. This talks about the objectives of an IPR, and it's to provide – the first objective is: "To provide external challenge to the project team at each Decision Gate" And it goes on from there. But it's those words "external challenge" that I want to discuss with you.

I think at page 4 of this document it also addresses – or maybe later on in the document it also addresses membership. I don't need to, in particular, bring it up, but it's somewhere there in the document. Who chose – and I believe you gave this evidence already – but is it you who chose the members of the IPR review team –?

MR. HARRINGTON: I recommended them.

MS. O'BRIEN: Yes, at Gate 2 – and at Gate 3?

MR. HARRINGTON: I think that was – in Gate 3, it was probably in consultation with Mr. Owen.

MS. O'BRIEN: Okay.

MR. HARRINGTON: Yeah. So we talked.

MS. O'BRIEN: Okay. And when you say there was a recommendation, either you or in consultation with Derek Owen, who were you recommending to?

MR. HARRINGTON: It would be ultimately the Gatekeeper or the VP – they're the customers here.

MS. O'BRIEN: Oh, so the – so Gil Bennett or Ed Martin?

MR. HARRINGTON: Yeah, they would have to say: Yeah, that looks okay. Yeah.

MS. O'BRIEN: Okay. So Gil Bennett or Ed Martin you mean specifically?

MR. HARRINGTON: Yes, correct, yeah.

MS. O'BRIEN: Okay.

So we know that at Gate 3 we had Derek Owen, we had John Mallam, we had Dick Westney and we had Tim Leopold.

A quick question with Tim Leopold: I know he worked on the Maritime Link because, you know, we've seen org charts to that effect, and that he even had a – we have one where there's a dotted report line to you. But did he join the Emera team before or after sanction? Do you know that?

MR. HARRINGTON: Could I just go – wind that tape back a bit. You said Tim Leopold had a dotted line, reporting line to me?

MS. O'BRIEN: Yes. Now, it's after – it's in 2013, and I'm just wondering: Do you know when he started to work on the Maritime Link?

MR. HARRINGTON: I, you know, I respectfully think that's an incorrect statement.

MS. O'BRIEN: We'll get the Exhibit.

MR. HARRINGTON: Okay.

MS. O'BRIEN: But I – the question it's – I mean, I've seen it. But it's – it had to do with –

MR. HARRINGTON: So just to, sort of, clarify. So you're saying that Tim Leopold, on an organization chart for LCP, has a dotted line to me?

MS. O'BRIEN: I think it has to do with the Maritime Link and –

MR. HARRINGTON: I think you may be mistaken and that may be Gerry Brennan.

MS. O'BRIEN: Okay, we'll certainly check that out. But I did – I do recall Ms. Ding showing it to me, but I will certainly confirm with her and we'll clarify that point.

But I – that was, certainly – whatever I believe I saw – was a 2013 document. So I don't know when Mr. Leopold started working on the

Maritime Link. Do you acknowledge he did work on the Maritime Link Project?

MR. HARRINGTON: Yes, he was part of NS – whatever – Nova Scotia group.

MS. O'BRIEN: Okay. And do you know if he was working on that project prior to Decision Gate 3?

MR. HARRINGTON: That I don't know. I don't know.

MS. O'BRIEN: Okay. All right.

MR. HARRINGTON: But the reason why he was selected was because Emera were a partner with us. So we felt as though it was a good gesture to have them involved in the DG3 IPR.

MS. O'BRIEN: Okay.

MR. HARRINGTON: That was my recollection.

MS. O'BRIEN: All right.

Now, we've already talked about, you know, Derek Owen; you heard some of his testimony. I mean, Derek Owen had been engaged by you as a project consultant from very early days, so he certainly had input. And he was doing ongoing work with the project. We know that between Gate 2 and Gate 3 John Mallam was actually doing work for the project. And we know that Dick Westney and his company had been doing work for the project.

So when we look at the object here to provide an external view, can you please – you know, when I look at those members, it raises the question of whether any of them were truly external to the project. And I'm wondering if we could get your comments on that, please?

MR. HARRINGTON: So is this – can I – this is DG2, right?

MS. O'BRIEN: Yes.

MR. HARRINGTON: So you mentioned Tim Leopold.

MS. O'BRIEN: Yes.

MR. HARRINGTON: He's DG3, right?

MS. O'BRIEN: I understand that, but the comments that we just looked to at page 4 – sorry, Madam Clerk, can you please go to page 4?

MR. HARRINGTON: But the people that –

MS. O'BRIEN: These are – this is – I can go to the DG3 one but I think it's – it remains the same. This is: "The general objections of an IPR"

MR. HARRINGTON: So at DG2 – I'm just trying to get this square, if I may. At DG2, Derek Owen was involved, right, he'd – you know, he hadn't been working on the project at all at DG2, other than providing some high-level information. So he –

MS. O'BRIEN: We've looked at his contracts –

MR. HARRINGTON: Yeah.

MS. O'BRIEN: – they're in evidence –

MR. HARRINGTON: Yeah, yeah.

MS. O'BRIEN: – that he was providing some consulting services and assistance –

MR. HARRINGTON: Yeah.

MS. O'BRIEN: – to you right from the early days.

MR. HARRINGTON: Yes.

MS. O'BRIEN: Okay.

MR. HARRINGTON: And then we had Dick Westney.

MS. O'BRIEN: Yes.

MR. HARRINGTON: We had a gentlemen called Bernie Osiowy, he was from Manitoba, so he was completely external from the project; he had a lot of Hydro experience. And we had John Mallam.

So that was the team that was put together –

MS. O'BRIEN: Yes.

MR. HARRINGTON: – and it was felt that, yeah, they're not running the day-to-day aspects of the project and we all felt that these people were professionals. They could provide an objective view as to where we were as a project team. So that was DG2.

Are we aligned on that? Yeah, okay –

MS. O'BRIEN: Mm-hmm.

MR. HARRINGTON: – good.

So at DG3, we wanted to keep that continuity, so we had John Mallam who retired but was still, you know, very knowledgeable. We had –

MS. O'BRIEN: At – sorry, at DG3?

MR. HARRINGTON: DG3.

MS. O'BRIEN: I understand Mr. Mallam's testimony is that he was brought in to work on the project between DG2 and DG3.

MR. HARRINGTON: Yes, yeah.

MS. O'BRIEN: Okay.

MR. HARRINGTON: And then we had Dick Westney.

MS. O'BRIEN: Mm-hmm.

MR. HARRINGTON: We had Derek Owen as the lead and then we had Tim Leopold, who was kind of representing our partner, Emera, in this process, so he was separate.

So, again, none of those people were doing – other than perhaps, you could argue that John Mallam, you know, was involved a little bit in the project, but the rest of them had no day-to-day activity on the project.

So that – you know, this – an IPR is – I seem to remember Dr. Flyvbjerg making a reference to it. He said you can have an external – you can have two types of review. You can have the audit type review, which is, you know, totally external, very intrusive, takes a lot of time, or you can have a more friendlier version, which is

called a peer review. And that peer review is probably more aligned with what we see with an IPR these days. And, in fact, sometimes they call them a cold eyes review.

So I don't see any discrepancy between the words that are here and the team that was put together, really. They did provide external challenge 'cause they weren't working on the project. They weren't – they weren't, you know, doing the day-to-day business that we were doing. So that's why – that's my answer.

MS. O'BRIEN: Okay.

Can we bring up P-00498, please?

THE COMMISSIONER: Tab 63.

MS. O'BRIEN: Oh yes, thank you. I didn't have that note.

So this is an email back and forth between you and Ron Power, and this is for the DG3 IPR. And the email chain actually starts out with some comments here from Derek Owen about who might be appropriate on the DG3 team. And he is looking at having government – a couple of government representatives on the team. Okay? Or a few anyway.

And so then that comes back and that gets circulated around by you:

“Here's what Derek is proposing -

“The Emera Rep would have a transmission focus

“The Gov Rep would have a HSE, Regulatory, Quality focus”

The rest would be technical, execution and whatnot.

And then Mr. Ron Power writes to you: “Paul - I have” – some – “reservations regarding the Government rep. To date, we have had some issues with provincial government staffers who, for whatever reason, are not aligned with our project delivery objectives. Suggest ...” – that the – that, I think – “any involvement of government be kept minimal. Perhaps HSE and

Quality are better looked at by someone else??"
Question mark.

And you come back:

"Agreed

"Gov person is dropped"

So what was the difficulty that you were experiencing with provincial government staffers who were not aligned with your project delivery objectives?

MR. HARRINGTON: I don't know – that's – you'd have to ask Mr. Power.

MS. O'BRIEN: Well, you agreed with him, so –

MR. HARRINGTON: No, I didn't –

MS. O'BRIEN: – I'm asking you.

MR. HARRINGTON: – I just said, you know – yeah, it's – okay, we're not gonna have any government involvement because, you know, that was it. And we just moved on (inaudible).

MS. O'BRIEN: Why? Why were you not gonna have any government involvement?

MR. HARRINGTON: I don't think we had any government people put forward. So it wasn't –

MS. O'BRIEN: What do you mean? You were to go – you could go out and get these people. The initial suggestion was to have people from government. Mr. Power raises concerns that you haven't been able to get government staff members who are aligned. You agree with them and drop government people from the list.

MR. HARRINGTON: Yeah. So, I mean, I didn't put any great thought into it, to be honest. I just said: Okay, you know, government people are not gonna be involved, so we'll move on.

MS. O'BRIEN: Well, you're – you have the decision on this more than Ron Power. Ron Power reports to you.

MR. HARRINGTON: Yeah.

MS. O'BRIEN: Okay.

MR. HARRINGTON: So I took his input and there's Gilbert Bennett and Brian and other people copied on there. So we probably had a talk about it and say – you know, are we likely to get any, you know, get any government person to be able to take this on? I think there was a feeling that, you know, within government there was not any individual who had the HSC in quality project type experience that would be beneficial and useful.

MS. O'BRIEN: Well, that's not what Mr. Power puts out in this email.

MR. HARRINGTON: Yeah. But I don't know what was in his mind when he wrote that.

MS. O'BRIEN: Well, what we do know is what he said, is that they have been not aligned with your project delivery objectives.

MR. HARRINGTON: Well, I didn't know what they were.

MS. O'BRIEN: And you don't recall having any discussion with Mr. Power –

MR. HARRINGTON: No.

MS. O'BRIEN: – as to –

MR. HARRINGTON: No.

MS. O'BRIEN: – his concern with government staff for alignment?

MR. HARRINGTON: No, I don't.

MS. O'BRIEN: Okay. And in the result, though, you did agree with him and you –

MR. HARRINGTON: Yeah. We just dropped it.

MS. O'BRIEN: – you dropped government people from the review?

MR. HARRINGTON: Yeah. Yeah.

MS. O'BRIEN: Yes?

MR. HARRINGTON: Yeah. Then we –

MS. O'BRIEN: Okay.

MR. HARRINGTON: – submitted that up the line and that was approved.

MS. O'BRIEN: And up the – and approved by whom?

MR. HARRINGTON: By Gilbert and Ed Martin. They're the ultimate customers here.

MS. O'BRIEN: Okay.

So we do know that the DG3 IPR team did present a final report. They did their work. And we – I'm gonna now take you to the emails where you're suggesting changes to that report.

Can we please go to P-00508? Tab 33.

MR. HARRINGTON: Tab – say again?

MS. O'BRIEN: Thirty-three.

MR. HARRINGTON: Thirty-three. Thank you.

MS. O'BRIEN: Hmm, I have it here as tab 33. It doesn't appear to be tab 33 in my book. So let me just –

THE COMMISSIONER: 00508 is tab 42.

MS. O'BRIEN: Thank you, Commissioner.

Mr. Harrington, did you hear Mr. Derek Owen's evidence with respect to this email?

MR. HARRINGTON: Yes. And the emails that led up to it.

MS. O'BRIEN: Okay. And so we won't go through them all in detail. But essentially just – I'm gonna summarize the evidence that the Commissioner has heard to date. And just put the question to you that way.

But essentially, the – you here, in this email here that's currently up on the screen on September 3, 2012 – you say: "We are proposing some wording for the draft IPR report ... following our meeting later on Friday with Ed"

Now, the first question for you is why were you referring to it as a draft report? The report itself

was marked final, and we have heard from two members of the IPR team that they did indeed consider it their final report when they presented it.

MR. HARRINGTON: Okay.

I think I'd like to try and present the timing of some of this, 'cause it's important for the Commissioner to understand.

The first presentation of the IPR report was to the project team at our offices on Torbay Road. That was around about 8 o'clock or 8:30 on Friday the 31st of August. That – you know, it's a 50-slide deck; takes about two and a half, possibly three hours to get through. We hadn't seen the report before then. I hadn't seen the report before then. So that took us from 8 o'clock 'til around about 11. We then had to get over to Hydro Place to present to Mr. Martin and Mr. Bennett and the rest of the team, and that was at 12:30. So very – you know, almost back-to-back meetings here.

So as I listened to Mr. Derek Owen's testimony of October the 17th, he does talk about that it's normal practice for – before going to the Gatekeeper, that the project team would have an opportunity to review the deck, provide feedback to the team regarding things such as: you got hold of the wrong end of the stick, you misunderstood something or you didn't have full possession of all of the facts. That was, kind of, paraphrasing what he said. So we didn't have that opportunity because of the nature of the back-to-back meetings. So consequently, didn't have an opportunity to provide that information back to the IPR team. It was just from one meeting to the next.

So yeah, I – we thought it was still open for commentary and I did that over that weekend. So September the 3rd, which is the Monday – but I also spoke to him, I think, in-between time. Saying look, you know, we got some things that we think you need to consider, and we got some things we'd like to propose to you and we've sent those two slides – slide 13 and 40.

MS. O'BRIEN: Okay.

MR. HARRINGTON: And I think they're attached here. So slide 13 is talking about –

MS. O'BRIEN: Okay, so I'm just gonna go back to my question. So the question was: Why did you consider it a draft report? And I –

MS. HUTCHINGS: Commissioner, I'd like to interrupt because the witness was giving his answer, and I understand that he wanted to go back to the slide and explain something further and I don't think he's been given an opportunity to finish his answer.

THE COMMISSIONER: Ms. O'Brien?

MS. O'BRIEN: I think the transcript will show my question to him was: Why he considered it to be a draft report, when we've heard that it was marked final and the other two witnesses said they considered it a final report?

I think he did just give his answer to that question. Going to the slides themselves, you know, I think he's about to go on – I do have other questions for him. But I do believe he had provided his answer. I mean, the idea here is I ask questions and I'm –

MR. HARRINGTON: (Inaudible.)

MS. O'BRIEN: – supposed to get answers to those questions.

THE COMMISSIONER: One second now. So I guess my question would be, Mr. Harrington: Is the reference to the slides themselves really a part of your answer as to why you thought it was a draft report?

MR. HARRINGTON: Yes, it is.

THE COMMISSIONER: All right. Well, go ahead then –

MR. HARRINGTON: Okay.

THE COMMISSIONER: – and continue to explain it.

MR. HARRINGTON: All right, thank you.

So on slide 13, what we wanted to do is provide information that we thought was important for the IPR team to know, that the – that there are other economic analyses that would be carried on.

So that's going back to the statement from Mr. Owen when he mentioned, you know, if they hadn't – if they misunderstood or didn't have possession of all of the facts. So what I wanted to do here is to provide him with some more information that would be, we felt – or I felt, more complete.

THE COMMISSIONER: All right, so this goes to your motivation in making the changes. But I guess the question that Ms. O'Brien asked is – again, goes back to why you felt it was a draft report.

MR. HARRINGTON: Okay.

THE COMMISSIONER: So can we – maybe if we could just get back to that –

MR. HARRINGTON: Okay.

THE COMMISSIONER: – answer that question and then we can go on to the slides to talk about your motivation with regards to the changes.

MR. HARRINGTON: Well, in that case, I'll, you know, I'll defer and let Ms. O'Brien –

THE COMMISSIONER: Okay.

MR. HARRINGTON: – continue.

MS. O'BRIEN: (Inaudible) of course if I don't ask a question that Ms. Hutchings believes should be asked, she will have an opportunity when she questions her client.

Okay, so looking at this – so you have said why you considered it to be a draft report. And so you do make suggestions to the changes, and those have been reviewed here already, at some length, and of course the changes there, are there in print, and I don't intend to go over them.

But, ultimately, that Mr. Owen and, particularly, Mr. Westney refused to make those changes, right? They – the – Mr. Owen considered it to be – he uses some very strong words there – unethical, and I understand that that was communicated back to you and you ultimately agreed, or let it go?

MR. HARRINGTON: So if I may, I – regarding the draft report thing again, if I may, there was – and I don’t see the email here, there was an email from Mr. Owen and he referred to it as a draft report in one of his emails to me. So that was also kind of building on the fact that, okay, it says final, but we didn’t get a chance to, you know, provide feedback.

So – and I don’t see the email here, but I’m pretty sure I read it, not so long ago, where he refers to it as a draft report, as well.

MS. O’BRIEN: Okay, there are a number of emails in evidence on this topic, so ...

MR. HARRINGTON: And could we pull them up? Is that –

MS. O’BRIEN: Well, you can do that with your counsel –

MR. HARRINGTON: Okay.

MS. O’BRIEN: – if needed, right –

MR. HARRINGTON: Yeah.

MS. O’BRIEN: – when you come to.

MR. HARRINGTON: Yeah, okay.

MS. O’BRIEN: But I think, right here, the point is: Do you recall feedback coming to you that the IPR team – Mr. Westney and Mr. Owen – were ultimately not prepared to make the changes that you wanted them to make?

MR. HARRINGTON: I got it from Mr. Owen.

MS. O’BRIEN: Okay, and you got the message that they didn’t – they were not willing to make the changes you wanted them to make.

MR. HARRINGTON: Well, not only that. They weren’t even willing to enter into a dialogue on certain things.

MS. O’BRIEN: Okay, and they weren’t willing to change what they considered to be their final report, right?

MR. HARRINGTON: That’s correct, yes.

MS. O’BRIEN: That’s correct, okay.

Now, when we look – one of the recommendations that they made, and I can just bring it up I think here, it’s just the recommendation – this is their recommendation. They recommended – and it was – they – you had suggested a change from recommendations to observations, but they did leave it as recommendations.

MR. HARRINGTON: The reason for that is the slide itself was headed – not this one, ’cause this is a combined one. If you go back to the original one –

MS. O’BRIEN: Mm-hmm.

MR. HARRINGTON: – the heading of the slide is findings and observations.

MS. O’BRIEN: Okay, all right. So –

MR. HARRINGTON: So I felt – and the nature of the sub-bullets – to me and to some of the people we talked to afterwards, felt as though they were observational and findings in nature rather than strict recommendations.

MS. O’BRIEN: Okay. So that –

MR. HARRINGTON: So that was the reason for that change.

MS. O’BRIEN: Okay.

And – well, they left it as “recommendations” so I’m gonna use that word. “The IPR Team concurs with the expectations set by the LCP Project Execution and Risk Management Plans that adequate provisions for Management Reserve and Schedule Reserve be included in the Project Sanction costs and schedules.”

So they were – you know, we’ve had evidence from both of them that they believe that that should happen, that the project – the sanction costs and schedule should include adequate provisions for management reserve and schedule reserve. And do you agree with me that that was one of the recommendations?

MR. HARRINGTON: That was – it’s there, yes, yes.

MS. O'BRIEN: Okay. And ultimately that was not done. Is that right? That recommendation was ultimately not accepted?

MR. HARRINGTON: Well, if I may comment on that.

MS. O'BRIEN: Sure.

MR. HARRINGTON: So what the IPR team were concurring with was the expectation set out in the LCP project execution and risk management plans. And I've checked those documents, and they clearly state the management reserve is separate from the project capital costs.

MS. O'BRIEN: Yes, we know that. But this is talking about –

MR. HARRINGTON: So –

MS. O'BRIEN: – project sanction costs.

MR. HARRINGTON: So they would come – yeah, but they, you know – but this is all – but project sanction cost was \$6.2 billion.

MS. O'BRIEN: Well, let's look at – just, if I may – I understand what you're saying –

MR. HARRINGTON: And 6.2 billion –

MS. O'BRIEN: – the capital cost –

MR. HARRINGTON: Sorry. \$6.2 billion – so they were concurring. And that was what I was trying to get to them, to open up a dialogue with – that they were making – they were concurring with something that didn't really exist. Because the LCP project execution and risk management plans clearly state that the project capital costs reflect the estimate escalation plus contingency. And contingency does not include management reserve. And that's, you know, that's clear.

And that's the reason why this particular point – we wanted to talk to them about it. But they closed the door on us and they didn't want to do it. So we felt that that statement was incorrect.

MS. O'BRIEN: Okay.

But note – I'm just going to get you to acknowledge, for a moment, that talks about project sanction costs and schedule, not the capital costs. Will you agree with me on that?

MR. HARRINGTON: But the project sanction costs are the capital costs.

MS. O'BRIEN: Well –

MR. HARRINGTON: \$6.2 billion is what – is that – you look anywhere and that's –

MS. O'BRIEN: Oh, we know that's what government –

MR. HARRINGTON: – the project sanction costs.

MS. O'BRIEN: – went out with, yes. But can we bring up P-00890, please?

So this is one of the presentations that you made – the slide decks that we've looked at it. This is the sanction decision. Can we please go to page 15? And there's any number of documents that we could look at, but here we go.

"Cost estimate is broken down into 4 parts," right? One: Base estimate – this is project estimate, right, project estimate, base estimate. Two: estimate contingency. Three: strategic risk exposure, which is contingent equity with the shareholder. Four: escalation allowance.

"Original Control Budget available to the Project Team:" base estimate, number one; estimate contingency, number two; escalation allowance, number four.

So I take your point that the control budget, or the capital cost estimate available to the project team does not include strategic risk, but there is nothing here to say it shouldn't include a schedule reserve. But the project estimate, your own slide presentation includes, in project estimate, strategic risk exposure. And what the IPR team was – their recommendation, if we just raise it – read it on its words, on its face, is that the project sanction cost and schedule should include adequate provisions for management reserve and schedule reserve.

MR. HARRINGTON: And that's contingent equity, and that's with the – that management reserve is excluded from what I have control over, which has been very clear, and that's up to the Gatekeeper and the shareholder.

MS. O'BRIEN: Okay.

MR. HARRINGTON: So yes, \$300 million to \$600 million was identified, right? And it was identified, you know, within all of the documentation that was provided. We've seen it already that, you know, the mean was \$497 million on a range of \$300 million to \$600 million; that was clearly communicated, but it's not included in the capital costs that are declared out there. But was – were people made aware of it – \$300 million to \$600 million? Absolutely.

MS. O'BRIEN: Okay. Who did you make aware of it?

MR. HARRINGTON: It's in all the documentation.

MS. O'BRIEN: What documentation?

MR. HARRINGTON: The cost and schedule risk analysis.

MS. O'BRIEN: It's not in the documentation that went to the board.

MR. HARRINGTON: It was – \$300 million to \$600 million –

MS. O'BRIEN: At Gate – at DG3?

MR. HARRINGTON: I believe so. That was the –

MS. O'BRIEN: Okay. The – this – looking at –

MR. HARRINGTON: But I didn't present to the board, so I don't –

MS. O'BRIEN: Okay.

MR. HARRINGTON: – I can't really answer that one, but did, you know, Gilbert Bennett and Mr. Martin know that there was a \$300 to \$600 million strategic risk exposure? Absolutely.

MS. O'BRIEN: Okay. So let's talk about what went to the board, because the IPR team is recommending that the project sanction cost include the strategic risk exposure –

MR. HARRINGTON: And so –

MS. O'BRIEN: – that's what it says –

MR. HARRINGTON: Yeah, and my –

MS. O'BRIEN: – okay?

MR. HARRINGTON: – interpretation of that is project sanction costs at the \$6.2 billion, 'cause that's what goes out there, that's what people hear –

MS. O'BRIEN: Well, it's –

MR. HARRINGTON: – \$6.2 billion.

MS. O'BRIEN: It's not your decision as to what people hear, what the public hears. That wasn't your decision to make, was it?

MR. HARRINGTON: That's true. That's true, yes.

MS. O'BRIEN: Okay. So the IPR's recommendation was that the project sanction costs include the management reserve.

MR. HARRINGTON: So –

MS. O'BRIEN: Right?

MR. HARRINGTON: – people need to understand that it includes all of those things.

MS. O'BRIEN: Okay. So that was their recommendation. Now, let's see who got their report. So you made a recommendation, you asked them to change their report; they didn't change their report. Who did you allow to see their report? Did you provide it to the board?

MR. HARRINGTON: I wouldn't do that. Not my place.

MS. O'BRIEN: But you could have put it in the Decision Gate 3 support package; you could have put the IPR's report in the Decision Gate 3 support package that went to the board. Similar

to – as the IPR’s report was included at Gate 2 – you provided that information to the board of directors at Gate 2 –

MR. HARRINGTON: But –

MS. O’BRIEN: – but you didn’t provide it at Gate 3, why?

MR. HARRINGTON: In the decision support package –

MS. O’BRIEN: Yeah.

MR. HARRINGTON: – it clearly stated that there was a strategic risk of \$300 to \$600 million.

MS. O’BRIEN: We’re talking about Gate 3, and I want to know why the IPR report – that we’ve just looked at –

MR. HARRINGTON: Yeah.

MS. O’BRIEN: – why the IPR’s report at Gate 3 was not put in the decision support package that went to the board when it had been provided at Gate 2. The similar report they did at Gate 2, that was provided to the board, but at Gate 3 it wasn’t. Why not?

MR. HARRINGTON: ‘Cause Gate 3 – between Gate 3 and Gate 2, we went down from a huge amount of documentation, down to a very short amount, piece of information. And, you know, that information, the gatekeeper decided it wasn’t required to be included in there. But in the decision support package under step 2 there’s reference to the IPR that all items have been closed out.

So we can’t forget one thing, that the IPR team made one very clear and unconditional statement that the project team that they had reviewed and the work that had been done, met or exceeded the requirements for a sanction decision. That was a clear statement. They didn’t say, on condition of this or condition of that. It was a very clear statement from the IPR team.

MS. O’BRIEN: I’m just gonna –

MR. HARRINGTON: Very clear.

MS. O’BRIEN: – I’m gonna go back. My – I’m putting to you that the IPR’s report at DG3 should have been provided to the board.

MR. HARRINGTON: Well, that’s your opinion.

MS. O’BRIEN: Okay. You don’t agree with it?

MR. HARRINGTON: Not necessarily –

MS. O’BRIEN: Okay.

MR. HARRINGTON: – because I’m not responsible for what goes into the board papers. I really am not.

MS. O’BRIEN: Okay, are you responsible for following Nalcor’s documentation about process?

MR. HARRINGTON: Well, everyone is.

MS. O’BRIEN: Okay, well let’s look at P-00502, please?

THE COMMISSIONER: It’s not in your group – you’ll have to look at the screen.

MR. HARRINGTON: Okay.

MS. O’BRIEN: Okay, this is the “Decision Gate 3 Independent Project Review Charter”; it’s signed off – you’ve signed it off, right?

MR. HARRINGTON: The charter for DG3, yes.

MS. O’BRIEN: Yes – okay, so that’s it.

MR. HARRINGTON: Mm-hmm.

MS. O’BRIEN: You’ve signed it, Mr. Bennett has signed it and Mr. Martin has signed it, right?

MR. HARRINGTON: Correct, yes.

MS. O’BRIEN: Okay, can we go to page 6, please? The last paragraph reads, “The IPR is regarded as an opportunity to assess readiness, to challenge the project team, and provide assurance that the project will deliver the required business results. The findings, observations and recommendations from IPR, as

well as a gap closure plan, will be included in the Decision Gate Support Package when submitted to the Gatekeeper.”

So the documentation said that it should’ve been included in the package. It wasn’t included in the package. My question to you is: why not?

MR. HARRINGTON: Well, it was submitted to the Gatekeeper. The IPR – that deck was presented to the Gatekeeper.

MS. O’BRIEN: Was it presented to the board of directors?

MR. HARRINGTON: Well, it didn’t say that but it’s – you know, in the board of directors, if you look in the decision support package, it refers to a sign-off by all of the project team at step 2, that the gap closure plan is being closed and it’s done.

MS. O’BRIEN: Was the IPR’s final report –

MR. HARRINGTON: No.

MS. O’BRIEN: – and – including their recommendation that management reserve be included in the project sanction cost – was that provided to the board?

MR. HARRINGTON: No.

MS. O’BRIEN: Okay, and to your knowledge, was it provided to anyone in government?

MR. HARRINGTON: I don’t know –

MS. O’BRIEN: Okay.

MR. HARRINGTON: I have no idea.

MS. O’BRIEN: Now, Mr. Westney’s comment – he made – gave us some evidence about the IPR work that was done, and he has given the Commissioner some evidence regarding his experience with IPR teams. And he gave some further evidence comparing this IPR review to others that he had done, and he said it was on a very short timeframe, a very pointed list of questions that did not permit general feedback.

And on his scale of project assurance that I reviewed with you earlier, you know, his scale

of 1 to 15, he – I believe he put this IPR level of review at about a – you know, a level 1. So I think his – as I understand his comments, he wasn’t saying that it wasn’t a value – there wasn’t any value in the exercise. But he felt it was a very low level of assurance, and I think he – I understood from the answers to his question, that – to my questions – that he wanted to point this out to the Commissioner in his evidence because he has been watching the evidence being presented here at the Commission of Inquiry, and he has been surprised at the level of reliance or focus that various witnesses have put on the IPR review.

So – and you and I have already looked at this morning, you know, when it came down to DG3 there was two reviews: the IPR review and the MHI review. And he’s saying it was really, ultimately, a very low level of review. That’s Mr. Westney’s testimony and based on his experience.

I’d like to give you, Mr. Harrington, an opportunity to comment on that. What level of review or assurance did this particular IPR review give?

MR. HARRINGTON: So, the IPR, you know, the IPR scope of work was – is pretty standard here. It’s not intended to be anything more than, is the project team ready to pass through the next Gate?

You know, Mr. Westney took the work, to do the IPR, he saw the scope of work that he was doing, he didn’t point out at that time, oh I don’t think that it’s adequate or I don’t think that, you know, we should be doing this, you need to do more, and I –

MS. O’BRIEN: Would –

MR. HARRINGTON: – don’t wanna be involved.

MS. O’BRIEN: – sorry, in fairness, would Mr. Westney have known what else was going on –

MR. HARRINGTON: Can I finish?

MS. O’BRIEN: – in terms of review?

MR. HARRINGTON: Could I finish?

MS. O'BRIEN: Yeah, but I just wanna ask you that question. Would Mr. Westney have known what other levels of review or due diligence or assurance were being done?

MR. HARRINGTON: Well, he could've asked.

MS. O'BRIEN: But you don't know –

MR. HARRINGTON: But he didn't.

MS. O'BRIEN: – that he knew.

MR. HARRINGTON: He took the work.

MS. O'BRIEN: Again, I think – I don't wanna mislead you on Mr. Westney's evidence. I don't think he was saying that this IPR, there wasn't some value to it, he was just surprised at the level of reliance people were placing on it, given what he – that he considered it to be a fairly low-level review.

MR. HARRINGTON: Look, well you know, that's kind of hindsight, isn't it, to say, oh well, you know, looking back now I realize that, oh, so much importance is being put on it.

This was an IPR, it was one tick in the box, right? We had a whole set of deliverables that you've seen, right, in the decision support package because we – it was decided not to include all of that documentation. So, it's a traffic light approach.

So, if this, you know, the IPR's done, it's a tick in the box, right? I don't see – I don't agree that necessarily – that the IPR was anything more than what it was designed to be, which was a review of the readiness of the project team – not of the economic analysis of the project or any of the other things that were, you know, happening at that point in time – they had a – they were looking at the project team, is the project team ready?

I've done IPRs myself and that's what you do.

So now, he's saying, oh, well, it should've been something else, it should've been added there, you should've been more – so that, you know, that's kind of hindsight in my opinion.

MS. O'BRIEN: Mm, I don't – I know that – I don't – he's saying that he's – as I understood his evidence, he was saying he's been surprised by the evidence coming out here, that there wasn't more, but he didn't know at the time what more there would be, and I assume that wouldn't have been his responsibility.

MR. HARRINGTON: Well – you know, he's entitled to his opinion and he's expressed his opinion.

MS. O'BRIEN: Okay.

MR. HARRINGTON: And so be it.

MS. O'BRIEN: And do you believe there was adequate third party assurance reviews of this project before it went through Gate 3?

MR. HARRINGTON: It's – I don't make – I'm not the decision-maker. I do not make those decisions. The –

MS. O'BRIEN: So you don't have an opinion on that?

MR. HARRINGTON: Could I finish, please?

MS. O'BRIEN: Sure.

MR. HARRINGTON: Right. The decision-makers – government and the Gatekeeper and the executive decide what they need to convince themselves that this project should proceed. My job as project director is to provide the deliverables that they say they need. That's what I do. That's what the team does. So if they require us to go through, you know, another review, we'll do it. Bring it on. That – but – they didn't do that.

MS. O'BRIEN: (Inaudible.)

MR. HARRINGTON: They said, okay these are the – these are the reviews that you have to take care of – so we did take care of MHI and the IPR – and that's what was done.

MS. O'BRIEN: Okay, so I understand you're not going to give an opinion as to what – whether that was adequate. Your answer is it wasn't my responsibility.

MR. HARRINGTON: (Inaudible.)

MS. O'BRIEN: They told me what needed to be done and –

MR. HARRINGTON: Yep.

MS. O'BRIEN: – I made sure that was done.

MR. HARRINGTON: Exactly. And – that's exactly the situation.

MS. O'BRIEN: Okay.

THE COMMISSIONER: Might this be a good place to break, seeing we started a bit early this morning –

MS. O'BRIEN: Yes, thank you.

THE COMMISSIONER: – we'll take our break now. So we'll take 10 minutes now and come back – so 10 minute break.

MR. HARRINGTON: Okay.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right, Ms. O'Brien, when you're ready.

MS. O'BRIEN: Thank you, Commissioner.

I'm going to ask to bring up Exhibit P-01224, please. I assume it's been entered. This is the org chart, and I'm just going to show you Mr. Brennan's name is on it and Mr. Leopold is there as a report. Can we go to page 2 – sorry, page 3.

So here we have Mr. Leopold there is a director of engineering. He is reporting to senior project manager G. Brennan and that who has – he has a dotted line report to you.

MR. HARRINGTON: That's what I say.

MS. O'BRIEN: Yeah.

So it's not a direct, but it's up through that channel.

MR. HARRINGTON: Well, I actually have no control over Mr. Leopold at all. The dotted line, it's important to –

MS. O'BRIEN: Yes, please do.

MR. HARRINGTON: – it doesn't follow. I don't have that line, you know, I don't have that line right through to him. Because it's the Joint Development Agreement that – between Emera and Nalcor – that the project director of the Lower Churchill Project has certain rights and privileges with the project manager of the Maritime Link.

And it's to do with things like contract awards, we'd have a due diligence obligation, things like that. So that's the nature of that reporting line, Commissioner.

MS. O'BRIEN: Okay.

Thank you.

Commissioner, there was not an order to enter that exhibit so I'd ask to have it entered P-01224, please.

THE COMMISSIONER: Okay, that'll be marked as P-01224.

MS. O'BRIEN: Okay. Thank you.

All right. Can we go to P-00864, please?

THE COMMISSIONER: And again, that's not in your book.

MS. O'BRIEN: I think it's P – I've had this problem before, P-00894 I believe.

My apologies. Yes, sorry. I seem to have an error that I keep copying and pasting in my notes.

So this is the paper that you did on the project sanction decision – or the paper that you worked on with Jason Kean and others. Can we please go to page 17 please?

So I've covered this a bit with Mr. Kean, I want to just talk a little bit about schedule. So, the – this last paragraph really discusses some of the time risk analysis, so it says: "As with all QRAs undertaken by Westney, the DG3 QRA included a full assessment of all identified strategic risks related to both cost and time, and were modeled using Westney's risk modelling techniques. The time-risk analysis highlighted ... that there was a low probability of achieving a July 2017 First Power date as was currently being targeted; rather the risk-adjusted schedule suggested the potential of an 11 to 21-month delay for First Power (P25 to P75) beyond the scheduled duration post sanction of 58 months **In other words, the QRA revealed that there was a very low likelihood of achieving First Power by the target date of July 2017.** Nalcor Executive acknowledged that the schedule was very aggressive but wanted to drive the contractors to provide their best efforts to meet the target dates. This approach did not change until the main civil contract (CH0007) bidders provided their bids and schedules. At this point, the First power date was then moved from mid-2017 to late 2017."

Mr. Harrington, I just wanna point out – in his testimony, Mr. Kean made a correction to this. Although the main civil contract bid wasn't provided until April of 2013, he said that the date that the power date was moved was actually a couple of months before that. I think he said February of 2013.

MR. HARRINGTON: Yeah. And that could be that we got bids in, which presented that information.

MS. O'BRIEN: Yep. So, I just – he did make a correction to that, and I just didn't want to be misleading –

MR. HARRINGTON: That's fine.

MS. O'BRIEN: – in presenting it here now.

And so then he refers to the schedule – up there he referred to the Figures 10 and 11, so those follow in the paper – and this is the – Figure 11 is the one that shows this P1 schedule date that we've heard so much about.

And then if we continue on, in paragraph 19 it discusses it a bit further. It says: "The QRA indicated ... there was a low probability that a mid-2017 First Power date would be met. As such, the PMT recommended to Nalcor Executive that a provisional schedule reserve allowance should be made to account for the difference between the target date and the probable date. Given the desire to achieve the best possible date, Nalcor Executive wanted to maintain the Target Milestone Schedule, and thus no schedule reserve allowance was made to accommodate the residual risk exposure identified in the QRA."

There – and then it goes on. There were "growing levels of negative publicity" from these –

MR. HARRINGTON: Mmm.

MS. O'BRIEN: – "... those groups who were against the Project and with costs having grown from \$5 B at DG2 to \$6.2B at DG3. In short, Nalcor Executive felt that the timing was not right to change the First Power date until the contractors' schedules were available and therefore a target date of mid-2017 for First Power was set, which would support the Shareholder's public statements that power from" the "lower Churchill River would flow to the island in 2017, a date which had already slipped from the 2016 target envisioned at Decision Gate 2."

So those were – that's the information that was given in the papers that you provided.

So, reading this, you know, these sections, I understand from those, Mr. Harrington, and please confirm that I'm right – that this P1 analysis that Westney did was communicated to the Nalcor executive?

MR. HARRINGTON: Yes.

MS. O'BRIEN: Okay.

And that would Mr. Gil Bennett and Mr. Ed Martin?

MR. HARRINGTON: That's correct, yes.

MS. O'BRIEN: Okay.

Do you know if it was communicated to Mr. Derrick Sturge? Do you have direct knowledge?

MR. HARRINGTON: I don't have direct – no.

MS. O'BRIEN: Okay.

And I understand from this paper that the project management team recommended that a schedule reserve allowance be made but that the Nalcor executive decided not to at DG3. Is that –?

MR. HARRINGTON: That's what it states, yes.

MS. O'BRIEN: Okay.

Can we go to P-00506, please? And I know that's what it states, but I'm just confirming that that's true to the best of your knowledge, information and belief.

MR. HARRINGTON: To the best of my knowledge.

MS. O'BRIEN: Okay.

So this is – we've also had some testimony on that – and this is –

THE COMMISSIONER: Forty-three.

MS. O'BRIEN: Yes.

MR. HARRINGTON: (Inaudible). Thanks.

MS. O'BRIEN: This is an email that you sent to Mr. Owen following the – I think it's actually down here; it's really hard to read these, because they're kind of mashed together. It starts down here, your email where you were concerned, I think, when Mr. Owen had raised the P1 in the meeting with Mr. Bennett?

MR. HARRINGTON: Yes.

MS. O'BRIEN: And so I believe we've covered that, but here it says – there's a comment there, bottom email – it should say that Jason was rerunning the work, somewhere here.

MR. HARRINGTON: It's in the brackets.

MS. O'BRIEN: Yes, thank you.

“Jason is having the schedule analysis updated.” So that's what you were telling Mr. Owen on September 4, and then I believe further up here I think it refers to a rerun at some point.

Anyway, I've referred to it in the evidence before.

MR. HARRINGTON: Okay.

MS. O'BRIEN: So now if I go to P-00130 – so I understand that some rerun or a reanalysis of the schedule was done in early September of 2012, is that right?

MR. HARRINGTON: Yes.

MS. O'BRIEN: Okay.

MR. HARRINGTON: I think we've discussed that.

MS. O'BRIEN: And I think it is covered in P-00130, which is the QRA report for DG3.

MR. HARRINGTON: Right.

MS. O'BRIEN: And if we go to page 326.

So this is – Jason is going, on September 5, to Jack Evans of Westney just – “To help with our discussions this PM, I am attaching an email train from Tony and myself.

“My fundamental question is: ‘Does our current knowledge of the project, increase the’” – P-factor – “‘of our base planning schedule?’ I believe the answer is yes, however” we are “now at P20 or P30?”

So he's positing that. And if we just go to page 321, please? So that was on the 5th.

And it appears that that work was redone, now, on September 10. But I think, on the 6th, we see this letter back from Mr. Evans and he's done the results – the work – and made the – done the changes that were referenced in the earlier email, and he's confirming that right now, in terms of full power, anyway, it's still at a P3 level.

And I – Mr. Kean has testified that, you know, it wasn't the significant change that he thought it

might be and it turned out to be a change of about 2 months.

MR. HARRINGTON: On the P50.

MS. O'BRIEN: On the P50. Yes.

MR. HARRINGTON: For first power.

MS. O'BRIEN: For first power. Yes. And –

MR. HARRINGTON: So that would –

MS. O'BRIEN: – overall there wasn't much of a change. And is that consistent with your understanding?

MR. HARRINGTON: That was my understanding. Yeah.

MS. O'BRIEN: Okay. All right.

So ultimately, that – the schedule that was used in the CPW analysis, I understand, were these – the dates as shown in Westney's – the P1 first – what Westney had shown as a P1 first power and a P1 full power, and I know there was some – those were the dates that were used in the CPW analysis. Is that correct?

MR. HARRINGTON: That's my understanding. Yes.

MS. O'BRIEN: Okay. And you – I think, at that time, when you did the CPW analysis, you were actually making – you thought sanction would come a little earlier in October, maybe, of 2012? Do you recall the sanction date –?

MR. HARRINGTON: I don't recall, actually.

MS. O'BRIEN: Okay. I think it's covered in some of the documents. Do you recall there being a – the sanction came a little later than it was initially anticipated?

MR. HARRINGTON: I remember that, yeah. But –

MS. O'BRIEN: Okay.

MR. HARRINGTON: – the timing of these two things, I'm not sure of.

MS. O'BRIEN: Okay. And do you recall that there was some concern – because the sanction date was starting, there was some concern – look, if we were going to hold this schedule, we've got to get some of this early work going now, because we don't want to lose this schedule, and there's important, you know, weather windows and such that had to be held?

MR. HARRINGTON: That is correct. Yes.

The contracts you're talking about are the access or (inaudible) road, the temporary camp and the bulk excavation that would need to be awarded prior to sanction in order to avoid losing a construction season.

So that's why we were quite surprised, shall we say, when Westney came back and said, oh, if you do that you don't make a whole lot of difference. That didn't make any sense to us, because the critical path goes through those particular things, which is riverside cofferdam, river diversion and then impoundment

So if one misses the first one, you go over to the next season because you missed it. And that is a knock-on effect to the schedule. So we were quite surprised – and I was quite surprised –

MS. O'BRIEN: I think you should say I, because Mr. Kean has testified.

MR. HARRINGTON: No.

MS. O'BRIEN: And he didn't express that surprise. So –

MR. HARRINGTON: Okay. Well, I was surprised that it didn't show that.

MS. O'BRIEN: Mm-hmm.

MR. HARRINGTON: But having said that, when I saw the email from Mr. Kean, he did seem to indicate that, with these changes on the front end, that he would see a P20 to P30 schedule.

MS. O'BRIEN: That's right, and then he testified that then they did the work, and it turned out he was wrong. It – that changed and –

MR. HARRINGTON: Yeah, well, what I'm saying –

MS. O'BRIEN: Yeah.

MR. HARRINGTON: – is he did have that view initially.

MS. O'BRIEN: Yes, and then he tested it, I guess, with Westney.

MR. HARRINGTON: Yeah.

MS. O'BRIEN: And it turned out he had an incorrect view.

MR. HARRINGTON: So when I said we, I think we all had that collective idea that it would because it logically should.

MS. O'BRIEN: Okay, but –

MR. HARRINGTON: So we couldn't – I couldn't really understand why it didn't.

MS. O'BRIEN: Okay, but that's what the analysis showed?

MR. HARRINGTON: That's what the stress test analysis showed, yes.

MS. O'BRIEN: Okay.

MR. HARRINGTON: Yeah.

MS. O'BRIEN: All right.

Okay, so ultimately, when the project went to sanction – whether it's a P3 or a P1 – would you agree with Mr. Westney that there's not a big difference between a P3 and a P1?

MR. HARRINGTON: Well, yeah, I would agree with that, but I would disagree with the fact that we felt – I felt – and others felt but – that it was an achievable schedule. We had a lot of work done by a very competent individual, Mr. Lee Stanton. He put together the 10,000-line target schedule. He's got a lot of experience worldwide in the ability to make these projects.

He's worked on – you know, in China on the Three Gorges; he's worked all the way across Canada, he's worked in the US. And he led the

development of the 10,000-line target schedule. What you're looking at here – and I think Mr. Kean may have made reference to it – is that this is a stress-test type schedule. So you take a 10,000-line schedule; you boil it down into something less than a 100 line items. It's very inflexible, so if you miss one or two days, automatically, it bumps along to the next season kind of thing.

So this – the purpose of this schedule stress test was to identify to us the things that we needed to do to avoid the very possibility of having a delay to the schedule.

So there were three things there identified. The first thing that was identified is the need to award these three contracts that I've mentioned. The second thing was labour availability, and the third thing was productivity. So we addressed the first one, which is the three contracts. Eventually we got board approval to do that.

Labour availability – I'd just like to put on record now –

MS. O'BRIEN: Mm-hmm.

MR. HARRINGTON: – that we have never had a problem with labour availability on the Lower Churchill Project. The mitigations that were put in place going back to 2008 were highly successful. That risk never manifested itself.

MS. O'BRIEN: Okay. Again –

MR. HARRINGTON: And thirdly –

MS. O'BRIEN: Okay. Yes, go ahead.

MR. HARRINGTON: If I may?

MS. O'BRIEN: Yes.

MR. HARRINGTON: Could I, please?

MS. O'BRIEN: Yes, you finish, and then I'll question.

MR. HARRINGTON: Okay. The productivity issue. Westney had a view that it wasn't possible to place – or to produce and place, on average,

12,500 metres cubed of concrete per month on a continuous basis to be able to meet the schedule.

Well, from SNC's point of view, they disagreed. They said it was achievable but aggressive. And the aggressiveness was not in the placement of the concrete; it was actually in the concrete-batch plant able to keep up with producing that amount of concrete for that period of time.

That was – that risk was identified to us. We made sure that, when we awarded the contract for that large – for the concrete placement, it was a dual-train unit, which meant that you had redundancy when it came to concrete production. So we did achieve those 12,500 meters cubed of concrete per month when Astaldi were turned around. And they continued that for at least two years.

MS. O'BRIEN: Okay.

MR. HARRINGTON: So you know, that's what – that's the – those were the risks that were identified to us. There was a cost put to them of a mean of, you know, \$497 million. And you know, even if we didn't achieve these things, the \$300 to \$600 million of management reserve was identified to project executive, and that's where I – that's where my communication line stopped.

MS. O'BRIEN: Okay.

You knew that you were working with what was being announced was a very aggressive schedule to say the least?

MR. HARRINGTON: It was an aggressive schedule, because it had had risks, right?

MS. O'BRIEN: Okay.

MR. HARRINGTON: And – but we were aware of those risks, and we were working them constantly.

MS. O'BRIEN: And I understand what you're saying, and you are doing a bit of a hindsight analysis, but you know, there is some benefits to that. I mean, when we're looking at the Inquiry's work, it's not that there's no role for hindsight. It's just that we have to be careful of how we use it.

But I understand that what you're saying is, look, we knew that these were risks. And we knew Westney said, you know, that, you know, the – when they did an analysis of risks and things that could affect your schedule, they thought you were working with a P1, P2, P3 schedule.

MR. HARRINGTON: Yes.

MS. O'BRIEN: Correct? Yes?

MR. HARRINGTON: Correct.

MS. O'BRIEN: Okay. But you're saying: but we were doing things to mitigate those risks.

MR. HARRINGTON: And we had confidence in the work that SNC had prepared on that very detailed schedule, because it wasn't just Lee Stanton coming down and putting bars on a chart. This is very sophisticated. It came from the 3-D CATIA model, which identified all of the powerhouse, spillway concrete requirements, going down to the actual concrete pour.

MS. O'BRIEN: Yeah.

MR. HARRINGTON: So once you get down to that very low level, you know, you know that you've got confidence that it's going to build up.

MS. O'BRIEN: So I'm just going to stop you because you are getting into a lot of – some Phase 2 work details I don't think we want to be covering in Phase 1 –

MR. HARRINGTON: But it was the – but the estimate was done in Phase 1.

MS. O'BRIEN: I understand.

MR. HARRINGTON: So what I'm trying to convey to you is that, you know, we had – we had one point of view, which is Westney's, based upon a simplified, you know, schedule, that we wanted to do a stress test on. And on the other side, we had – a person who built these things, time and time again, was telling us that it was achievable. So you know, it's somewhere in between.

MS. O'BRIEN: Okay. So you believe that you had successfully mitigated the risks?

MR. HARRINGTON: Not all of the risks, but some of the risks. We –

MS. O'BRIEN: So –

MR. HARRINGTON: – felt as though it wasn't a P1 schedule. I was – my own – you know, and this is deterministic, so I – you know, it was higher up that probability curve.

MS. O'BRIEN: But you didn't have anyone do an analysis of it?

MR. HARRINGTON: No, I didn't.

MS. O'BRIEN: Okay.

MR. HARRINGTON: But I had –

MS. O'BRIEN: Okay. So –

MR. HARRINGTON: I had confidence in the person who built that schedule.

MS. O'BRIEN: Okay. So you had confidence that you had identified the risks and they were adequately mitigated, so you had confidence that you'd be able to meet the schedule, as aggressive as it was?

MR. HARRINGTON: Yeah.

MS. O'BRIEN: Okay. And –

MR. HARRINGTON: Higher up the probability curve than the P1.

MS. O'BRIEN: Okay.

MR. HARRINGTON: You can't dismiss everything, right?

MS. O'BRIEN: Okay.

MR. HARRINGTON: I'm not that –

MS. O'BRIEN: And as it turns out – I know you've said – you talked about availability and things – so it turns out some – when we do look back in hindsight, there was some risks you had identified and mitigated, and they never did arise. So it turns out your mitigation was successful. Is that fair to say?

MR. HARRINGTON: But not only that. I would go back and say that we knew – we knew – that labour availability was not going to be a risk.

MS. O'BRIEN: Okay. Because you –

MR. HARRINGTON: At – at sanction. Because of the work that we'd done, prior to that, with the unions, with our – you know, we had a website called muskratfallsjobs.com. And within – and that was created in November of 2012. Within a couple of weeks or months of that, we had 2,400 people, you know, putting their CVs online, which were – you know, these are skilled people – that they could work on the project.

By May of 2013, we had 4,500, and by a year later, we had 17,000 people. So we knew that people wanted to work on this project.

MS. O'BRIEN: Mm-hmm.

MR. HARRINGTON: They were quite prepared to forego, perhaps, the extra money that they were getting on Western Canada because they were working perhaps a 14 and seven rotation where the seven days were their – you know, their – you know, to them.

So they were getting paid for those seven days and if they had to travel back from Western Canada, that would take a day either way. And if you got hit by weather, you would leave even more time.

So we were getting that feedback. People were saying, look, we wanna work on your project. The unions are telling us we've got people lined up ready to go. So I – we, you know – we were highly confident that that risk would not materialize. It didn't.

MS. O'BRIEN: Right, and in some risks – that one didn't materialize. Some risks you were highly confident wouldn't materialize did.

MR. HARRINGTON: That's the virtue of a megaproject.

MS. O'BRIEN: Right, so you just – when we look at the time in sanction, you're gonna – you know, you're taking – you were confident in

your review. You were taking a very confident view of it, and it turns out, in some cases, you were right, and in some cases, you were wrong.

MR. HARRINGTON: And that is why, Ms. O'Brien, is the – we didn't – knowing that, right, which was the labour availability was probably of that \$497 million that was identified as a – as the schedule – sorry, yeah, the impact of the schedule resist, you know, probably 100 to 200 million of it.

But we didn't say take that out. We said no, because something else will pop up to replace it. So 3 to 6 – 600 million, let's remember that, is almost 10 per cent of the total project capital costs. So I think that's a reasonable amount to set aside for strategic risks.

MS. O'BRIEN: Okay.

MR. HARRINGTON: In my opinion.

MS. O'BRIEN: Okay.

If we go to – I wanna talk a bit about the fuel.

In July of 2012, you asked Westney to give an opinion on the PIRA fuel forecast?

MR. HARRINGTON: I did.

MS. O'BRIEN: And – now, Mr. Westney has testified that this – his firm had never done that before.

MR. HARRINGTON: Sure.

MS. O'BRIEN: They weren't in the business of doing forecasting.

MR. HARRINGTON: But they were in the business of probability analysis, I think, he said.

MS. O'BRIEN: I think – yeah, so just – why did you ask Westney to do that work? Like why wouldn't you have gone to a Morrison Park or one – you know, any number of other consultants who regularly work in that area?

MR. HARRINGTON: Simply put, Mr. Ed Martin asked me can you get in touch with Westney and ask them to do a check.

MS. O'BRIEN: Okay, so it was Ed Martin who wanted Westney to do it? Okay.

MR. HARRINGTON: Mr. Martin, yes.

MS. O'BRIEN: And can we please bring up P-01159?

MR. HARRINGTON: Is there a tab or ...?

THE COMMISSIONER: There is.

MS. O'BRIEN: Tab 29.

THE COMMISSIONER: Yes, tab 29.

MR. HARRINGTON: Okay. I didn't hear that
Not there yet.

MS. O'BRIEN: There's a little bit of back and forth here but here – when Westney gave you their opinion – and here we see it – just – it's another email where you are suggesting changes to Dick Westney of the opinion, and I mean, your email here speaks for itself.

MR. HARRINGTON: I don't have tab 29.

MS. O'BRIEN: Okay. Can you see it there on the screen? It's just right up here. Just (inaudible) –

THE COMMISSIONER: So, it's actually 1159? Sorry, I thought it was 11 –

MS. O'BRIEN: I said tab 29 in my book. I don't know if it's correct though.

THE COMMISSIONER: Sorry, I put you to the wrong exhibit.

MR. HARRINGTON: That's okay.

THE COMMISSIONER: 1159 is actually tab – I don't think we have that one there. So I guess you have to look at it on the screen.

MR. HARRINGTON: Okay. Thank you.

MS. O'BRIEN: It's up here on the screen, so here's you – this – Westney sent you the report, and then this is you making some comments

back to him, and you are – you know, you’re suggesting some wording changes –

MR. HARRINGTON: ‘Cause I thought it was important to try and explain what they’d provided.

MS. O’BRIEN: Right. So you’re asking them to – you say: “You may even quote the MHI report,” and you know, there’s – the email itself does speak for itself, but I’m going to put it to you that here you are asking – you know, this is not – this is an example of you having gone to a – someone to ask them to give you an independent view of something.

MR. HARRINGTON: No.

MS. O’BRIEN: They’ve given you their review back, and you are making comments to them or suggestions to – changes to their work that really go beyond, like, correcting a factual error or I’m not sure you have all the relevant information here. You’re really suggesting wording for the reports – asking them to quote from another consultant and, you know, give some further views here. And I’m going to put to you that you’re asking them to make really sort of substantive changes to their opinion.

MR. HARRINGTON: So this has got nothing to do with an independent view.

MS. O’BRIEN: Oh –

MR. HARRINGTON: I’m asking them to do some work for us, and I’m asking them to say, you know, this is what I’d like you to do and this is what I’d also like you to include in your report. And – you know, so all I’m looking for is some information back and in some cases elaborate upon a point. Could you provide further comments? You know –

MS. O’BRIEN: “Could you quote the (inaudible) –”

MR. HARRINGTON: So this is a piece of scope of work that I’ve asked them to perform, that I’m paying for, that we’d like to be able to have the information that we require.

MS. O’BRIEN: And did Mr. Westney ultimately change his report to include the suggestions that you wanted there?

MR. HARRINGTON: He provided the work that we’d suggested. I –

MS. O’BRIEN: He did not make the changes you were requesting in that email?

MR. HARRINGTON: I don’t know.

MS. O’BRIEN: Okay.

MR. HARRINGTON: I don’t think it ever got done.

MS. O’BRIEN: I believe he – well, we have the report, and it’s been referenced –

MR. HARRINGTON: It’s very short.

MS. O’BRIEN: It’s a very short report.

MR. HARRINGTON: Yeah.

MS. O’BRIEN: And it does – you know, it’s in evidence, and it speaks for itself, but I think we’ll find that those changes were not there, and I believe Mr. Westney gave evidence to that effect.

MR. HARRINGTON: Yeah, I mean, look here. “Could you explain to the readers what ‘mode of probability’” – sorry. You’ve skipped it. Can you go down? So this is the type of thing – trying to explain to the people who is going to read this – “the mode of probability distribution’ means – if you could add a few graphs to explain this.”

MS. O’BRIEN: The – I –

MR. HARRINGTON: “Could you –”

MS. O’BRIEN: Sorry to interrupt you, Mr. Harrington, but I didn’t – I don’t have problems with when you’re asking someone to clarify report. I think my concern was when you’re asking someone – you know, I’d like you to quote this other report, it would be helpful if you – where you’re actually going to changing the opinion.

MR. HARRINGTON: I'm not changing an opinion. I'm asking them to elaborate upon something.

MS. O'BRIEN: Okay.

MR. HARRINGTON: This is not asking for an opinion. This is asking for a piece of work to be performed.

MS. O'BRIEN: Okay.

MR. HARRINGTON: That's what it is.

MS. O'BRIEN: Okay. Thank you.

MR. HARRINGTON: It's not an independent – don't give me an independent – don't put the independent label on this, because it isn't. It's asking a company to provide some work to us, and these are the things that we're looking for from you, thank you very much, and we'll pay you for that.

MS. O'BRIEN: Okay. Thank you.

All right, I want to get a sense, Mr. Harrington, of your work effort on the Lower Churchill Project over the years.

In terms of, you know, we've heard from – in our interviews, we've heard from a lot of people on the project team. We've heard from Mr. Kean already here in the hearing room. I want to get a sense of, you know, the number of days a week that you've been putting into this project over the years.

MR. HARRINGTON: Well, I guess I'm constantly on call. I mean, that's a fact.

But going into the office, you know, probably, you know, the normal business day: half 7 'til half 5 or 6 o'clock. That's the type of day that I do. I will generally catch up with things on a Sunday and do that. I take probably two weeks off at Christmas, New Year, a week to ten days off at Easter time and probably another one or two weeks during the fall and the summer to go back to the UK –

MS. O'BRIEN: Okay.

MR. HARRINGTON: – or Europe, generally.

MS. O'BRIEN: And you're saying you work Sundays. Do you typically get Saturdays off or you – do you find yourself at sometimes having to work Saturdays as well?

MR. HARRINGTON: Well, I'll be on the phone or something like that at home, right?

MS. O'BRIEN: Okay. All right.

It's obviously been a very – would you describe it as a heavy workload?

MR. HARRINGTON: Just depends on who you are. You know, I've been doing this type of thing for 40 years.

MS. O'BRIEN: Okay.

MR. HARRINGTON: And if the work needs to be done, I'll step up and do it. So that's just my work ethic; that's just what I do.

MS. O'BRIEN: Okay. All right.

Commissioner, those – no, there's one other question I actually had for you, and that was following up from one earlier questions I had asked you yesterday. What you – I asked you about why you hadn't included the escalated rates when you were calculating the strategic reserve in the contingency.

MR. HARRINGTON: Yeah. Okay.

MS. O'BRIEN: And you had said that was because the escalation work was not done at the time.

MR. HARRINGTON: That was my understanding.

MS. O'BRIEN: Okay.

I just wanted to put – I probably missed an obvious question there. Why would you not have just waited to get the escalation work in so that you could have the more, you know, fulsome review of what the contingency and strategic reserve should be?

MR. HARRINGTON: There was a lot of pressure to get the work done by Westney so

that we'd have it available. So that is what – that's all I can remember really, on that one.

I don't think there's anything – you know –

MS. O'BRIEN: Okay.

MR. HARRINGTON: – nothing more than that.

MS. O'BRIEN: Okay. Thank you.

Commissioner, those are the questions that I had for Mr. Harrington, other than some follow-up questions that I would only ask depending on the outcome of Mr. Harrington's application. So it would be an appropriate time, I believe, for you to hear from Ms. Hutchings on that.

THE COMMISSIONER: Okay.

Ms. Hutchings, maybe you could come over here and ...

MS. HUTCHINGS: I believe, Commissioner – oh, sorry.

I believe, Commissioner, you already have the brief that – application that we filed, and so I'm not going to take too much time in going through the brief itself.

But very simply, this is an application that came about as a result of some discussion between myself and Ms. O'Brien respecting a question, or questions, that would be put to Mr. Harrington to solicit information about his rate of pay.

That is a subject matter of an application that's presently before the Supreme Court of Newfoundland, and it's a – it's one of, I think, three applications of similar nature from employees or contractors from Nalcor. And the – those applications are made pursuant to the ATIPPA legislation, and there is a concern with a provision in that legislation, which essentially states that if the information is available publicly elsewhere, then that basically trumps the ability for the applicant to proceed with their – excuse me – with their application.

So right now, it's not publicly known, and certainly if Mr. Harrington is required to

disclose that information at the Inquiry, then the – his ability to proceed with the application is lost.

So there are, I guess, some points that I want to make in respect of this, and, I guess, the question raises itself that, well, what's the problem with this becoming public? And I don't want to get into the ATIPPA basis for this.

And I should also note that the applications – the three applications that are before the court – are presently awaiting the outcome of a preceding application that was before the Trial Division and then went to the Court of Appeal and, now, is before the Supreme Court seeking leave to file its appeal to the Supreme Court of Canada.

So I – so if Mr. – the issues that Mr. Harrington has with the release of his information – first of all, it's gonna compromise his competitiveness in the marketplace for future contract and consulting work. One of the things that's been argued, I think, with respect to Nalcor is that there is sensitivity information here – or commercial-sensitivity information dealing with the release of certain information respecting the arrangements with certain contractors and so forth. And we're talking about contractors that are working on the project site up in Labrador.

The – Mr. Harrington, while an individual – he himself is in a commercial situation where he has to compete against other consultants for work based upon his experience and his skill level and abilities and, certainly, whether or not his – what he brings to the table in his skill level, et cetera, can compete with another person.

But at the same time, as well, included in that is what he typically charges for his rate – his day rate. And that is competitive with others.

At paragraph 12 of the brief, we also indicate that – the – I guess the second point I want to make here – that in any event that the information that's – that will be sought here does not relate to the Inquiry's mandate. And at the very least, certainly not at this stage – 'cause this stage is dealing with pre-sanction.

There was an affidavit filed by Kirsten Morry, one of the counsel – Inquiry counsel – that was filed in a, I guess a parallel application that we

brought last week before the Supreme Court, owing to an issue arising from whether or not who has the jurisdiction. And in that affidavit she – at paragraphs 3 and 4 – she states very clearly what the purpose of the information is required.

So at paragraph 3 says: the compensation paid to Mr. Harrington or his company was included in the cost estimates for the project and forms part of the construction costs of the Muskrat Falls Project. It is thus, in my belief, relevant to section 4(b) of the Terms of Reference.

And you have before you, of course, all the discussion that we have noted with respect to the Terms of Reference and the interpretation that you have placed upon that as well. I'm not going to go into that, but I'm just going to get to the nub of this. And the issue here is that there's a lump-sum amount that's placed for all contractors, and so to pull out of Mr. Harrington the specific amount that he receives adds nothing further to the information of what is in the total sum of estimates related to the contractors.

So the information, in other words, is not necessary. It's already there in the documentation, although Mr. Harrington's name is not mentioned; the breakdown is not mentioned. It's all lump sum.

Number four, she states: as a primary project manager, Mr. Harrington was a key decision maker within Nalcor before and after sanction of the Muskrat Falls Project. The compensation Mr. Harrington or his company received could have had an effect on his motives or actions. It is my belief that this compensation is the relevant – relevant to and – section 4(a), (b) and (d) of the Terms of Reference.

Now, the information of a day rate – I'm not sure how I can tie the two together as to bringing in the proving of what Mr. Harrington's motives were. The information can be obtained through an alternate means. Number one, the question can be put to Mr. Harrington: well, was the fact that you have this contract with Nalcor a motive for you in the decisions that you made?

THE COMMISSIONER: Should I – just to stop you there –

MS. HUTCHINGS: Yup.

THE COMMISSIONER: – for a second. Because I think – I see it in a little different fashion.

MS. HUTCHINGS: Okay.

THE COMMISSIONER: In the sense that – and of course I don't have – I have no input with regard to what's been filed by Commission counsel or whatever. I was aware there was an application Friday. But I think earlier on in the hearings there was a question put to one of the government people – and I'm trying to recall now, but I believe it was with Mr. Marshall. And the question was – is did you ever give – something to the effect – did you ever give any consideration to the fact that the people that you were relying upon were actually – if the project didn't go ahead, they would actually lose out financially and/or by employment or whatever the situation is.

So there's two aspects of this issue here that I think need to be looked at.

MS. HUTCHINGS: Sure.

THE COMMISSIONER: Whether or not Mr. Harrington had a motive or whatever – that's obviously a matter that could be of concern to the Commission. But also at the same time it could relate to what information the government had in its mind or should have had in its mind –

MS. HUTCHINGS: Mm-hmm.

THE COMMISSIONER: – with regards to who it was relying upon. But I just make that comment, because I think there's – for me, I look at it in two different ways –

MS. HUTCHINGS: Mm-hmm.

THE COMMISSIONER: – specifically. But I'm just trying to address, as I said, what Ms. Morry said in her affidavit, which I had no input in whatsoever.

MS. HUTCHINGS: No, no. And – but I would suggest – just on that point that you made about the comments from – in Mr. Marshall's testimony. Is that – the question can't certainly

be put – those questions can be put to the witness to say, if this project didn't proceed, would you have lost out considerably financially at that time? Did you have another opportunity awaiting for you?

There's all sorts of questions that can be posed to the witness without asking specifically how much was your day rate. Because how much was your day rate, to be quite honest, and with all due respect, does not give us – oh yes, well, there was a motive. There's other questions without having the day rate, there's other questions that can be posed to the witness to get that information.

And whether you want to believe the witness's answers or not, I mean, that's – at the end of the day – that's for the Commissioner, yourself, to be able to make a decision on that. But to put this – the witness through – when he has another matter before the Supreme Court on an ATTIPA application, and then cause him to lose that opportunity, it's a – it's bringing the administration of justice into disrepute, if we wish to say.

It denies him of his given right to be able to bring matters before the court under a privacy legislation and it will certainly – not only thwart it, it will certainly preclude him from doing it after he makes the statements. Just going through my notes here – I think I have most of the

The final thing that I want to refer to in the brief itself is that paragraph 15. And at paragraph 15, just to reiterate that the evidence – this evidence is not relevant to the determination of the questions. And we've referred to the Rules of Procedure and it says that, "anything that touches or concerns the subject matter of the Inquiry or that may directly or indirectly lead to other information that touches or concerns the subject matter of the Inquiry."

And that's the issue of relevance that's there.

And again, I reiterate, that what is relevant here would be the determination or questions relating to whether or not, if the project hadn't proceeded and it was stopped before it proceeded past Decision Gate 3, I guess, that whether or not Mr. Harrington's financial situation would have

changed. And I think that is the – and if it changed – was it to his detriment and so forth?

He has lived here for – since 1994. Would he have had to leave from here? Those are the type of things rather than getting the exact amount, needs to be – those would be more relevant and would probably flesh out, or be more – I'm trying to – I'm not trying to argue the Commissioner's – the Commission counsel's case, but I think, in protecting this information, that would certainly be more relevant questions.

We included in the brief – there are some – a couple of cases there – there is the case of – I'm going to pronounce it Degagné but it's not that – Canadian Broadcasting Corporation.

THE COMMISSIONER: Dagenais.

MS. HUTCHINGS: Okay. Thank you.

The Mentuck Case and the Canadian Broadcasting Corporation case at New Brunswick. And we also included the – an excerpt from the publication of the Conduct of Public Inquiries.

And there are just a couple of things that I want to – I'm sure, Commissioner, you're more than familiar with these – but one of the things that also, to – if you're not satisfied that this information has to be – or should be – shouldn't be released, then there's a couple of ways of doing this.

Of course, there can be an in camera hearing, and there can be publication bans. The only thing is, is that there's an awful lot of people here and there's also the media, and there's also that this – these hearings are available to the public. And so, I'm not certain that a publication ban would certainly satisfy the issue here that we have.

But, in any event, certainly, the test is, as stated in the case is that, certainly, a publication ban should only be ordered when A, such an order is necessary in order to prevent a serious risk of the proper administration of justice, because, reasonably alternative measures will not prevent the risk. And I'm suggesting, here, that even the publication ban may not go as far as it should to protect the information.

The second thing is that the salutary effects of the publication ban outweigh – sorry – the deleterious effects on the rights and interests of the parties and the public, including the effects of the right to freedom expression; the right of the accused to a fair trial; and the (inaudible) of the administration of justice. Now, I know that Mr. Harrington is not on trial, but I think the same principles certainly apply.

In the – at tab 4, in the publication that we've included there, the – there's some examples that's been given.

THE COMMISSIONER: Tab 8, you mean?

MS. HUTCHINGS: That would tab 7 –

THE COMMISSIONER: Okay. Sorry, tab –

MS. HUTCHINGS: – sorry – of our –

THE COMMISSIONER: My tab 8, so – okay. What I did is I had to print off what Mr. Taylor-Hood sent to me –

MS. HUTCHINGS: Yes.

THE COMMISSIONER: – on Sunday, so I knew –

MS. HUTCHINGS: Okay.

THE COMMISSIONER: – you filed a formal one, but I've printed it off, as he sent it to me. So it's my tab –

MS. HUTCHINGS: Okay.

THE COMMISSIONER: – 8, but no problem then.

MS. HUTCHINGS: Okay.

THE COMMISSIONER: I know which one it is.

MS. HUTCHINGS: All right.

So, if we turn to page 333 – and I know some of these deal with sexual assaults, but I think the principles there are the same. And the – in the first full paragraph there on page 333 – talks

about the Commissioner denied the publication ban to a witness in the Cornwall Inquiry.

But coming down the – not the next sentence, but the sentence after that. The applicant sought to protect his privacy and reputational interests, but the Commissioner held that the allegations already had received widespread publication. So in that particular case, once the Commissioner knew that the information was already out there, then it seemed to have been grounds to deny that. And that's not the situation, we would submit, that's here.

And then, at page 333, and this is in the Gomery Inquiry in April of 2005, at the second-last paragraph there, it says: one of the applicants requested an alternative remedy, that is, his testimony before the commission be postponed until after the completion of his criminal trial. And it said that this was rejected since the publication ban would provide equivalent relief.

So the publication ban, while another remedy, I don't think it's satisfactory in this particular case.

And I have no further submissions to make.

THE COMMISSIONER: Okay, I just a couple of questions –

MS. HUTCHINGS: Sure.

THE COMMISSIONER: – to arise from that – or a couple of observations.

First of all, Cornwall and Gomery obviously involved a situation where a person had an interest at stake because – and the interest was more than just a privacy interest. The interest was –

MS. HUTCHINGS: (Inaudible.)

THE COMMISSIONER: – for the proper administration of justice. If this information were released, what impact would it have on criminal trials?

MS. HUTCHINGS: That's correct.

THE COMMISSIONER: And obviously, the cases related to preliminary inquiries and the

issues of interests at stake, clearly indicate that if there are criminal proceedings, then the – generally speaking – a commission of inquiry has to tread very carefully to ensure that the rights of the individual who is charged with an offense is protected to the greatest of degrees.

MS. HUTCHINGS: Mm-hmm.

THE COMMISSIONER: So I don't think that those cases are specifically applicable, because I think – the other – because when I look at this, you know, and I think I'd like to get your comment on this. I mean, the Government of Newfoundland and Labrador has called a public inquiry.

MS. HUTCHINGS: Correct.

THE COMMISSIONER: And they called that Inquiry according to the legislation. The Inquiry has to relate to an issue of public concern. So obviously the issue of public concern relates to the – this whole Muskrat Falls Project.

And I guess my query would be how the Public Inquiries Act is impacted at all by virtue of another piece of legislation that is designed to, first of all, create transparency in government, with some limited restrictions. But it also puts responsibilities on other individuals. So not Mr. Harrington, not a commission of inquiry, but rather on the Government of Newfoundland, public – other public bodies that are referred to there including Crown corporations, things of that nature.

So I just need your comments. Or I'd like to hear from you with regard to how you see – what you see as the interplay, if any, between the ATIPPA legislation under which the application is made and now there being, on another track, another proceeding that is a public inquiry under the *Public Inquiries Act, 2006*.

MS. HUTCHINGS: Very interesting question. And I think what happens – as you've pointed out – is that you've got two opposing rights. You've got the right of the public, as the Government of Newfoundland has ordered in this Inquiry, and also the right of an individual to have his privacy protected. And that right certainly is – I believe – would be entrenched in the rights set out in the Charter of Rights.

Now, certainly, a lot of this goes to situations in dealing with criminal law – criminal situations, criminal law. And this is not a criminal situation of the ATIPPA. But it does go to – as I indicated, and I'm not going to repeat any of – all this. I think what I will say is that the information that's being protected should be protected for the individual if there are – if there's another way of getting at the – what it is that the Commission counsel are trying to establish. And I've already gone through that, that there are other ways of doing that.

And so, in that situation, you know, the – we have both the interests of the public, and the right of the public, not interfered with, nor do we have the rights of the individual interfered with. Because it is the piece of information, just one piece of information, that when we have it, how does that go to prove the basis of what it is that Commission counsel has to – or wishes to establish?

And I think that that is the – I think that's the crux of the issue that you, as Commissioner, has to decide and determine.

THE COMMISSIONER: Okay.

MS. HUTCHINGS: Do you have any other questions?

THE COMMISSIONER: No other questions for now –

MS. HUTCHINGS: Okay.

THE COMMISSIONER: – thank you.

Can I just –

MS. HUTCHINGS: Thank you, Commissioner.

THE COMMISSIONER: – publicly acknowledge, too, something – which I meant to do earlier this morning. Yesterday, as I understand it – and you and I had a discussion about this, because I immediately called you. I understand yesterday afternoon, during the examination of Mr. Harrington, there were occasions where you had wanted to be noticed, and unfortunately, as I spoke to you – and I only learned of this afterwards when you spoke to the

Clerk here – and that’s why we’ve moved you this morning –

MS. HUTCHINGS: Yes.

THE COMMISSIONER: – so that I could actually –

MS. HUTCHINGS: Thank you.

THE COMMISSIONER: – see you – because, as I indicated to you yesterday, I had no intention whatsoever of excluding you, shutting you out –

MS. HUTCHINGS: I understand.

THE COMMISSIONER: – it’s just that I was taking notes, and –

MS. HUTCHINGS: Exactly.

THE COMMISSIONER: – to be quite frank, I didn’t see you, and I didn’t hear you, to be quite frank.

And we’ve had your – the microphone checked down there and whatever just to see why that happened, because it hasn’t happened before –

MS. HUTCHINGS: Yup.

THE COMMISSIONER: – in this Inquiry room. We’ve been sitting, you know, for a few weeks now, at least. So I apologize to you for that yesterday, and it was not meant as any –

MS. HUTCHINGS: I accept that.

THE COMMISSIONER: – sort of slight.

MS. HUTCHINGS: That’s fine.

THE COMMISSIONER: And I would encourage counsel that if they have an objection, or if they want to be heard, you know, get my attention. I’m taking notes and trying to keep up with things, and I may well miss you, but –

MS. HUTCHINGS: (Inaudible.)

THE COMMISSIONER: – generally speaking, I’m trying to survey everybody, and it’s not something that’s unusual for me, ’cause I

usually do it in court anyway, but anyway, I just wanted to say I’m sorry about that yesterday.

MS. HUTCHINGS: I – that’s fine. I accept that, and I didn’t intend to suggest that you intentionally ignored me, ’cause I did note that you were taking notes. But I just wasn’t – it’s unusual for me to be in a room and not get anybody’s –

THE COMMISSIONER: And not be heard.

MS. HUTCHINGS: – attention.

THE COMMISSIONER: That’s been my experience –

MS. HUTCHINGS: Yeah.

THE COMMISSIONER: – too, so ...

But anyway, thank you, Ms. –

MS. HUTCHINGS: Thank you very much.

THE COMMISSIONER: – Hutchings.

Ms. O’Brien?

MS. O’BRIEN: Thank you.

I am not – I’m gonna restrict my comments to just giving you our explanation of why we consider the evidence relevant, and why I chose to – am seeking to ask those questions and put in those documents in relation to Mr. Harrington.

I don’t intend to present a legal argument here. I don’t believe that’s the proper role for me at this juncture.

I do wanna correct one thing that Ms. Hutchings said. She said – made – suggested that, as Commission counsel, Mr. Learmonth and I have – are trying to prove or establish something. I wanna be very clear that we have nothing to prove, nothing we are seeking to prove before you, Commissioner.

What we are doing our very best to do, is to assist you in getting to the truth – to the facts – as best as you can ascertain them. And our goal is to get what we consider to be the relevant information that you would need to do that, out

in the open and before you here so that when you make your decision on your Terms of Reference, you have the information you need to do that. So that really is our purpose.

When we are choosing to ask questions and we are – when we are selecting documents to enter as exhibits, what we are guided by are your Terms of Reference, and we are looking for evidence in documents that we consider to be relevant to those Terms of Reference. I am aware of the affidavit that was filed by associate counsel Kirsten Morry, and I support and agree with the position that she's put forward there. I'll perhaps elaborate it – on it just a bit.

When we are looking at – right now, we're in the first phase of the Inquiry so we're really looking at the decision of sanction, and we are also looking at the topic of oversight. So sanction is coming in under term 4(a), oversight under term 4(d). Term 4(b) of course we will be dealing with in 2019.

But when we look at the sanction decision, obviously the amounts paid to the project management team are – as Ms. Morry put out – they were included in the cost estimates. You've had evidence presented before you in the past couple of days showing that between Gate 2 and Gate 3, there was an increase in those costs that went into the estimate – the owners cost, including the project management team costs.

And there would have – we will see and I anticipate that the evidence will show that when the decision was made to move from an EPCM contract to an integrated management team contract, one of the effects of that was that there was, you know, more work, more hours, more dollars needed to be designated for the project management team.

So generally speaking, that's why we consider that relevant to 4(a). Perhaps more important is 4(b) and the issue of oversight. Mr. Harrington was a key decision maker on the Muskrat Falls Project. You've heard evidence from him that he had the ability to make decisions up to dollar amounts of \$35 million.

He has also testified before you that for decisions that didn't require a dollar amount associated with them, that he had to make a

judgment call as to whether that information should go up to the Nalcor executive or not. So we do consider him a key decision-maker, and of course the actions that he took, the choices he made to hand on information or not hand on information, or the recommendations he made to people – those actions will be scrutinized by you, and it becomes part and parcel that you will need to look at the things that might have – you know, the motivations he might have had.

When we list, obviously, income as a motivation, we're not – I'm not, certainly not trying to imply that we're putting forth a position that Mr. Harrington was just motivated by salary. I'm just saying it's – what he was earning was relevant to that assessment.

My learned friend, Mr. Learmonth, has already questioned Tom Marshall, as you noted, about what consideration government gave to those salaries, and I think that is going to be – there's going to be further questions on that, of course, I would expect, put to other government members, and to the executive at Nalcor.

I do note that when we are choosing questions that are relevant or not relevant, one of the things we do not look at is whether there may be parallel processes going on under the ATIPPA legislation. So, for example, the very questions that I am expecting to put forward to Mr. Harrington, particularly with respect to day rate, that's a question that I put to Mr. Kean. Mr. Kean was asked the question; he answered it.

When I go to ask Mr. Harrington, who had – I would, you know, suggest, more decision-making authority on the Muskrat Falls Project than did Mr. Kean, I would – my plan would be to put to him the same question. I don't make a call, well, Mr. Kean doesn't have an ATIPP application, Mr. Harrington does, so therefore I'm going to ask the question to Mr. Kean, but not to Mr. Harrington. I don't believe that that would be a fair treatment of the witnesses that are coming before here.

I also – when we are looking at the evidence that we're looking to put before you, we do not do an assessment of whether it's compellable under the ATIPPA legislation. If that was the case, we, and people may well know, that ATIPPA has an exemption for commercial sensitivity –

commercially-sensitive information from Nalcor.

If we were unable to call evidence in this hearing room that Nalcor does not have to produce under ATIPPA, then I suggest that we would not get very far in our Inquiry and our truth-seeking activities here. So what the strictures are – of ATIPPA are not – do not come into mine and Mr. Learmonth's consideration. So just wanted to give you that information. I don't know if you have any further questions, but

THE COMMISSIONER: I don't think so.

Are there any other submissions of other counsel?

MR. FITZGERALD: Justice, I'd like to be heard.

THE COMMISSIONER: Come up (inaudible).

MR. FITZGERALD: I don't know if I turned my mic off back there.

THE COMMISSIONER: You're fine.

MR. FITZGERALD: I'm good?

THE COMMISSIONER: You got a steady red, so you should be fine.

MR. FITZGERALD: Yes.

In terms of dealing with this issue, I think it's very important that you recognize that the ATIPPA is about records and documents; physical records that are in the possession, custody or control of a public body. It does not apply to testimony in court, otherwise we would have witnesses in court saying, I might have a privacy right under the ATIPPA, under section 40, that might be a Cabinet recommendation I made under section 21 – might be 29 or 30 right now – but it doesn't apply to those types of questions. All it is, is a record mechanism.

So when someone applies for a record, the public body that has custody or control of the record then has to determine whether or not an exception to access exists. So it has to do with

records; it doesn't have to do with testimony before a tribunal or a court, I would suggest, or an inquiry.

Another point that I think you need to keep in mind, and it goes to the question that you asked Ms. Hutchings about: well, the government has tasked you with doing a public inquiry. So, what limit should be placed upon you, vis-à-vis the ATIPPA, if you are doing a public inquiry? How is that to operate? Well, the Legislature has given you the answer, because when this started, under section 4 of the ATIPPA, they have included the Muskrat Falls Commission of Inquiry as an excluded public body. So the ATIPPA does not tie your hands in terms of what information can be released. It's excluded under the ATIPPA.

I would suggest that that was a message to you from government, in the context of the ATIPPA, which talks about the exceptions, which talks about accountability and transparency, that would allow you to allow the question to be asked, and allow it to be answered. The ATIPPA really does not govern this matter, and really the only question that should be asked by you: Is it relevant or not to the Terms of Reference? And I would agree with Ms. O'Brien and Mr. Learmonth on that. That's where that has to land. But in terms of records, that's all the ATIPPA's about. It's not about what's going on here before you.

Those – that's my only submission, but I think it's an important point, because if we get into situations where tribunals and courts are trying to use the ATIPPA, or parties are trying to use the ATIPPA to prevent the administration of justice – that's not what the ATIPPA was designed to do.

Thank you very much.

THE COMMISSIONER: Okay.

Mr. Ralph.

MR. RALPH: Again, briefly Commissioner, I believe it's section 12(3) of the Public Inquiries Act and it's talking about evidence. And it suggests that no other piece of legislation basically trumps the Public Inquiries Act. So I would suggest that in the circumstance, what

you deal with are the principles that you've enunciated in your Rules of Procedure.

I think clearly, in terms of relevancy, that's a fairly low threshold. And what's left really is: Is it a commercially sensitive bit of information? So, in the circumstances, we'd suggest that really transparency and openness should prevail in the circumstances.

THE COMMISSIONER: Any others?

Mr. Budden?

MR. BUDDEN: Mr. Commissioner, I'll be briefer still. The Concerned Citizens Coalition supports the application of the Commission counsel. And we also believe this information is relevant and should be before the Commission.

Thank you.

THE COMMISSIONER: Mr. Peddigrew?

MR. PEDDIGREW: Commissioner, I'll be very brief as well. I don't want to repeat what everybody else just said; some good arguments people did submit.

And on behalf of the Consumer Advocate who represents a great percentage of the overall population, taxpayers, we just would like to reiterate the – I guess the paramount of transparency in a public inquiry. And so I just want it on the record that the Consumer Advocate certainly takes the position that the information is relevant and should be heard.

Thank you.

THE COMMISSIONER: All right, anything else from you, Ms. Hutchings, at this time?

MS. HUTCHINGS: No, there's not.

No. Thank you.

THE COMMISSIONER: All right, obviously I've given this matter some thought. And I needed some blanks filled in and I think I've got those filled in now for myself, so I'm ready to provide a decision with regards to this.

I think the best way to look at this is to compare the two pieces of legislation that are really involved here, and that is the *Public Inquiries Act, 2006* and the ATIPPA legislation.

So if I look at the Public Inquiries Act, section 3 basically indicates that a Lieutenant-Governor in Council – in other words the government – can “establish a commission of inquiry to inquire and report on a matter that the Lieutenant-Governor in Council considers to be of public concern.”

Section 6(2) of the act talks about the fact that there should be oral hearings, and when there are oral hearings conducted they should be conducted in public. But there are opportunities where a commissioner can have hearings in private where the decision is made that the public interest, in holding the hearing or part of it, is outweighed by another – in public is outweighed by another consideration. And it lists some things like the consequences of disclosure of personal matters, issues related to public security and the rights of a person to have a fair trial.

Section 7(2) sets out the ability to restrict or prohibit the reporting on proceedings. Section 8 talks about the fact that a person who appears before a commission to give evidence has the same immunities as a witness appearing before a court. And I think we would agree here that those immunities are not the type of immunities that we're talking about here with regards to the issue of a pay rate, and for the reasons set out by Ms. Hutchings. Section 9 basically indicates that the commission can summons a person to be a witness and to give evidence and require a person to produce documents and records.

Section 12 – which I think is a key piece of this – talks about the issue of privilege. And section 12(1) basically sets out that persons have the same privilege related to disclosure of information and production of a record, documents, or other things as a person would have in a court of law. So it's equivalent to what a person would have in a court of law. Subsection (2) indicates that there's no ability to withhold or refuse to disclose on the grounds that disclosure would be injurious to the public interest or, alternatively, violate a Crown

privilege; so, again, limiting the area in which privilege can be asserted.

And more specifically to this particular application is the fact that sub (3) indicates that a person must disclose information to the commission, even where the disclosure is prohibited by another act or regulation. Now, that seems to be a provision that is being equated to, or at least linked to, the ATIPPA legislation – and I’m going to speak to that in a moment – but I’m not so certain – and basically it’s my view that it – the ATIPPA legislation is not what is being referred to, even if subsection (3) of section 12 said something differently.

Section 13 of the Public Inquiries Act that a person can apply to a court to exclude a record or document or thing that is within the operation of section 12(2) or 12(3). Well, in the circumstances here, I don’t think it falls within 12(2) or 12(3). And, as a result, as I’m going to refer to in a few moments, I do believe that I have the jurisdiction to make this decision at this particular time. And section 14, obviously, sets out a contempt authority

Now, the *Access to Information and Protection of Privacy Act, 2015*, basically refers to the fact that it applies to a public body, which is said to include a commission. Now, as was pointed out by Mr. Fitzgerald, there has been an exemption granted to this Commission of Inquiry pursuant to section 4 of that act. And to be very forthright about this, this was done at the request of the Commission of Inquiry, at my request, based upon the fact that I felt that the application of the ATIPPA legislation to such things as the investigation and the strategy, and whatever being utilized by Commission counsel and by the Commission in general, was not – was a matter that would not – that would hinder, basically, the full operation of this particular Inquiry. But at the same time this exemption was granted by government, and I take the point raised by Mr. Fitzgerald that it is an indication of – by government with regards to this.

Section 3 of the act talks about the purpose of the legislation, and I think this is important. The act is basically designed to ensure that citizens have information required to participate meaningfully in the democratic process. That’s a very general statement but it’s loaded.

It also provides that the legislation will increase transparency in government and public bodies for accountability purposes. And, also, the act does consider the protection of privacy of information, of personal information about individuals that are held or used by public bodies. So in that – and section 2(u) talks about what is personal information and refers to a person’s educational, financial, criminal or employment status or history.

Section 8 of the act talks about that a person can make an application to have access to records by application. So the point again raised by Mr. Fitzgerald related to the fact that this does apply to records, documents, and what they refer to other things, talks about the application being made under section 11 of the act.

Section 9 talks about the ability of a public body to refuse to disclose information but, obviously, the test is where the public interest is outweighed by the privacy interest involved. And there are very limited areas that are set out in section 2 – 9(2) of the act.

So having looked at those two pieces of legislation – and I’ve only referred to some of it, but I’ve obviously reviewed all of the legislation that exists – this is not a case where I believe the ATIPPA legislation applies. Even without the section 4 exemption, I don’t believe the ATIPPA legislation applies to this Commission of Inquiry. This Commission of Inquiry is investigating the Muskrat Falls Project Terms of Reference. If it’s relevant to those Terms of Reference – if information is relative to those Terms of Reference, then the right to have a person or witness disclose exists. And ATTIPA does not – is not at play here.

Now, having said that, I understand that Mr. Harrington has made an application under the ATTIPA legislation; however, having said that and accepting that that is the case, the pure test here for me is the issue of whether this is relevant, whether this information is relevant to this particular Commission of Inquiry’s Terms of Reference.

This – the fact that Mr. Harrington has an application before the court related to that ATTIPA legislation is a matter, obviously, I’m taking into account. And I’ve taken that into

account more – and not with regards to the issue of relevance and the issue of disclosure before the Commission of Inquiry – but to consider what injury or what negative impacts could exist for Mr. Harrington here. And so I have considered that, but as I said, the fact that that application exists and the fact that it's awaiting even another case – the teachers' case before the Supreme Court of Canada leave application – that is really of little consequence to my determination as to the relevance of this particular information for the purposes of meeting the Terms of Reference of this Inquiry.

You know, if Mr. Harrington was appearing before a court of law, the ATTIPA legislation would have no application with regards to his being asked a question, and if the court determined that it was relevant to the issue before the court to his being required to provide that answer. The same thing applies with regards to this particular matter. The interest at stake for Mr. Harrington here are not similar to the interests at stake in the Gomery Inquiry, or the Cornwall Inquiry or whatever. There are no criminal proceedings here ongoing. There is no suggestion of criminal proceedings here, there's no investigations that I'm – been aware of related to criminal charges. And nor are there any specific civil cases that relate to Mr. Harrington, other than, as I say, his application under the ATTIPA legislation.

So I basically have to look at what it is Commission counsel – why it is Commission counsel seek to have this information placed before me.

Having heard what – you know, and I will say this too, the issue of relevance and Ms. Hutchings pointed me to the Rules of Procedure and rule 29 – obviously, that is an issue. But the threshold for relevancy here, I think, is somewhat less than the threshold in a criminal case or even in a civil case. Because this is an Inquiry; this is an investigation into a project that is a matter of public concern in this province.

So when I look at the basis upon which Ms. O'Brien has set out why Commission counsel wish to ask this question, I have to say that I believe it meets that relevancy test. In fact, I have no doubt that it does not. And when I think

about – and I have thought about whether or not there was another way. Perhaps this information could be disclosed by asking general questions, whatever the situation is. I don't think that that can happen here. Again, this is a public inquiry. I'm being advised by Commission counsel that this is information that I may well need to ultimately, at the end of the day, to make a decision. And in the circumstances, as a result of that and having considered what the argument is here with regards to relevancy, I do believe that it is relevant.

And as a result, basically, I am of the view that Mr. Harrington can be asked questions here related to his daily rate of pay, which is what I understand is being questioned and generally with regards to his pay scale. So, you know, I'm not – Mr. Harrington, I'm not disregarding your concern here, but I have come to the point in time where the public interest here outweighs that privacy interest that you have in this particular case.

Now, the next step is whether or not in the circumstances this should be part of a public inquiry, or alternatively should be somehow dealt with, with other restrictions, i.e., for instance, having an in camera hearing, making a non-publication order or whatever. Ms. Hutchings has already indicated that, you know, that may not meet Mr. Harrington's needs, in any event, because of the people that would be present even if we were to have an in camera hearing. But I have considered that, and I've already had to begin to think about the whole aspect of in camera hearings and hearings in the public with regards to some of the things that are coming before me in the next couple of days and weeks with regards to Nalcor Energy.

Again, my view is that, as far as is possible, this is a public inquiry, it should be held in public. Unless there's a very good reason in the circumstances that outweighs that public interest, then the hearing should be public. You know, some of the things that we're talking about – and just so I can be fair to Mr. Harrington here, when we look at, for instance, my decision here that we are going to conduct a hearing on water management in private, when I look at the interest at stake there and compare it now to other interests at stake with regards to questions that will be asked with regards to

privacy hearings, I think, I will have to look to see whether or not there is a distinction.

In this particular case for Mr. Harrington, I understand what his interest is here; however, as I say, the public interest, the fact that the government has called a public inquiry into this project, the information is relevant to those Terms of Reference, and I've decided that based upon what I've been told here this morning by Commission counsel, I think all of that means that this has to be in public and there will be no restrictions with regards to that.

So, Ms. O'Brien, you can proceed with your questions on – with regards to the issue of the day rate now.

MS. O'BRIEN: Thank you, Commissioner.

On the basis of that, I'd like to seek an order to enter some further exhibits.

THE COMMISSIONER: Okay.

MS. O'BRIEN: Exhibit P-01169, which would be an unredacted version of P-01157, which was the Fabcon Canada contract that I reviewed with Mr. Harrington yesterday.

Also seeking to enter P-01175, which is the unredacted version of the exhibit I reviewed with Mr. Harrington yesterday, his initial Erimus Consulting Limited contract that was – the redacted version was entered as P-01173.

I've also asked to have associate counsel provide me with any of the amendment agreements that bring Mr. Harrington's contract up to the date of sanction, because that's what we're looking at now. I have two of those amending agreements, they bring us up to the date of April 1, 2010. I'd ask to enter those as P-01238 and P-01239.

THE COMMISSIONER: All right.

Those will be entered as marked.

MS. O'BRIEN: And so I just will have a couple of questions on those.

THE COMMISSIONER: Go ahead.

MS. O'BRIEN: Could I bring up P-01238, please, Madam Clerk?

So, Mr. Harrington, we've already discussed you were on an evergreen contract and it would be renewed annually, and I think you indicated in some years you would get an – part of that renewal would include a –

MR. HARRINGTON: There's nothing on the screen is there?

MS. O'BRIEN: That's fine, it will come up.

MR. HARRINGTON: Okay.

MS. O'BRIEN: P-01238.

THE COMMISSIONER: Do we have a little technical –

CLERK: Yeah.

THE COMMISSIONER: – issue right now?

MS. O'BRIEN: Okay, we can go deal with that and I can continue to ask the questions until it comes up.

MR. HARRINGTON: Oh, okay, sorry.

MS. O'BRIEN: So I understand you said, Mr. Harrington, that, you know, you had an evergreen contract and it would be renewed annually, and I think you said not every year but every few years there would be an increase to your day rate?

MR. HARRINGTON: Sometimes cost of living, that type of thing.

MS. O'BRIEN: Yes, and then at the same time, if your day rate went up, your hourly rate went up as well?

MR. HARRINGTON: For the – yes.

MS. O'BRIEN: Okay. And, as I understand it, was there – would you get paid for every hour worked or were your day rate – it was capped at your day rate?

MR. HARRINGTON: It was capped.

MS. O'BRIEN: Okay, at the day –

MR. HARRINGTON: At the day rate.

MS. O'BRIEN: – at the maximum day rate?

And then if you worked, say you said you worked on a Sunday sometimes to catch up –

MR. HARRINGTON: It's prorated.

MS. O'BRIEN: – or on a Saturday, it was prorated. So you get – be paid at the hourly rate for that work –

MR. HARRINGTON: Yeah. No, (inaudible).

MS. O'BRIEN: – if it was less than the cap?

MR. HARRINGTON: That's it, yeah.

MS. O'BRIEN: Okay, so those are the questions I wanted to ask you.

The document that's been entered into evidence will show that from April 1, 2010 to March 31, 2011, your hourly rate was \$209.55 and your day rate was \$1,676.42, and I believe the document will come up now.

I don't have the day rate, but you –

THE COMMISSIONER: Okay, so just – I think we're still having difficulty getting that document up. What's –

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

THE COMMISSIONER: Okay, so let's just hold for a second.

MS. O'BRIEN: Okay, we'll just wait.

THE COMMISSIONER: We'll try to get these numbers up – these contracts up before you now.

MR. HARRINGTON: Thank you.

THE COMMISSIONER: We're just having problems getting them up.

MR. HARRINGTON: That's right. Well, that's no issue, really.

Commissioner, if – I mean, if counsel wants to just go ahead, I'm okay with that.

THE COMMISSIONER: Okay. Well, if you need to see the document, we'll hopefully –

MR. HARRINGTON: Okay. Oh, there you go.

MS. O'BRIEN: There it is, it's up on the screen there now. Thank you.

THE COMMISSIONER: Okay.

MS. O'BRIEN: So this is what I was just referring you to. So this is the most recent one we have and it just shows from April 1, 2010 to March 31, 2011, that that was your hourly rate and that was your day rate.

MR. HARRINGTON: Yes.

MS. O'BRIEN: Do you know what your day rate was up until the time of sanction? Do you know what you were at, whether you got an increase in – for 2012?

MR. HARRINGTON: I can't recall to be honest.

MS. O'BRIEN: Okay, thank you.

And those are my questions.

Thank you very much.

THE COMMISSIONER: So your examination is finished at this stage?

MS. O'BRIEN: Yes.

THE COMMISSIONER: All right.

All right, so it's almost 12:30, so we'll take our break here and we'll come back this afternoon.

So with regard to the questioning order. So the government will go first – the Province of Newfoundland and Labrador and then the Concerned Citizens Coalition, et cetera, as we've been doing. Nalcor goes second last and then Ms. Hutchings, you will go last.

All right, so we'll adjourn then until 2 o'clock this afternoon.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: All right.

Government of Newfoundland and Labrador?

MR. RALPH: No questions, Commissioner.

THE COMMISSIONER: Okay.

Concerned Citizens Coalition?

MR. BUDDEN: Good afternoon, Mr. Harrington.

MR. HARRINGTON: Good afternoon.

MR. BUDDEN: Good afternoon, Mr. Harrington. As you know, I'm sure, my name is Geoff Budden. I'm the lawyer for the Concerned Citizens Coalition, which – as I'm sure you know as well – is a group of individuals who for many years have been critics of the Muskrat Falls Project.

I'm going to start with some questions for you about the Independent Project Review. And perhaps we'll start with an easy one. What does – what do you understand by the meaning of the word independent in that context?

MR. HARRINGTON: Well, in this context, it's generally a cold eyes review, and it's an independent, meaning people who are not – in my view – you know, day-to-day people who are running part of the project team.

MR. BUDDEN: And would be independent from such people?

MR. HARRINGTON: No. I've done IPRs myself where, you know, we've invited, you know, for example did one for – or involved with one on Sable project where, you know, other people from the – ExxonMobil at that time – were actually part of the independent project review.

MR. BUDDEN: Okay.

MR. HARRINGTON: They're just –

MR. BUDDEN: Okay. But surely –

MR. HARRINGTON: – not part of that project.

MR. BUDDEN: Okay. But surely you would anticipate people who were able to exercise their judgment independently of the project team?

MR. HARRINGTON: Yeah. I believe that the people that we selected are that type of person. Professional people who can be objective.

MR. BUDDEN: People like Mr. Owen, for instance. People of stellar reputation, many, many, many years of experience.

MR. HARRINGTON: Yes.

MR. BUDDEN: That kind of person.

MR. HARRINGTON: Exactly. That's why we selected Mr. Owen to be on the team and to even lead the team, I think.

MR. BUDDEN: And the same would be true of Mr. Westney obviously?

MR. HARRINGTON: Yes, that's exactly the same reason, rationale.

MR. BUDDEN: Sure.

And I understand from their biographies, each of those gentlemen would have been professional engineers from the 1960s, would be obviously a little – you're senior, but they would be a little senior still to you in –

MR. HARRINGTON: Yeah.

MR. BUDDEN: – terms of experience.

MR. HARRINGTON: Yes, exactly.

MR. BUDDEN: And had decades of experience in this kind of environment?

MR. HARRINGTON: Yes.

MR. BUDDEN: Okay.

MR. HARRINGTON: Probably have a decade more than me.

MR. BUDDEN: Yeah. And you, yourself –

MR. HARRINGTON: Not decades.

MR. BUDDEN: – were – and even at this point, were – had an excess of – or about 30 years of major project experience.

MR. HARRINGTON: Forty years, actually.

MR. BUDDEN: Yeah. Well going back to 19 – to 2012.

MR. HARRINGTON: Oh, okay. Can we go back then – okay, yeah. I take your point.

MR. BUDDEN: Sure.

Perhaps we could call up Exhibit 00505, Madam Clerk? This of course is this email that we've talked about already. I'd like to talk about it a little more.

THE COMMISSIONER: Tab 41.

MR. BUDDEN: And perhaps we could scroll down, Madam Clerk. It's the – the second email I'm interested in. Yes, that one.

MR. HARRINGTON: That one.

MR. BUDDEN: Perhaps, Mr. Harrington, you could read that email into the record, 'cause we're gonna talk about it for a bit.

MR. HARRINGTON: Absolutely. So it's from me to Mr. Owen on schedule, August the 31st, 17:13.

So it – this is when I went home after the meeting. So – “Derek

“It was most unfortunate that you used the P1 characterization of the schedule in the meeting this PM. That risk work on the schedule is dated and is in the process of being updated. Jason stated as much. We know that the probability will be less than P50 but for Ed to get the message that it has virtually no chance in such a

manner has resulted in a major blow. We very recently stressed the importance with Ed of allowing the bulk excavation contract to be awarded prior to sanction and with your statement that causes him to doubt the value of making that step now. The schedule risk model is a simplified activity schedule and some work is needed and the critical path assumed earlier regarding sanction being a prerequisite to bulk excavation award is one such change that is necessary and contributed to the low probability result

“So we need to meet and get this back on track so that we are not alarming Ed on dated information and analysis.”

MR. BUDDEN: “Pls call me Saturday or Sunday,” and it's sent by yourself.

MR. HARRINGTON: Sorry, I missed that bit. Yeah – “Pls call me Saturday or Sunday.”

Is there any more? I don't –

MR. BUDDEN: Oh, no, that's good. So –

MR. HARRINGTON: “Thanks Paul.”

MR. BUDDEN: Yes.

So this is an email you would have sent at the – you say immediately after the conclusion of the meeting in which the IPR was presented to the – team report was presented to the executive?

MR. HARRINGTON: That's correct.

MR. BUDDEN: Okay.

So from the tone of this, it would appear that you were surprised and rather stunned at the message that was delivered by the IPR team.

MR. HARRINGTON: Stunned may be pushing it. I was a little bit – (inaudible) like I said, it was most unfortunate.

MR. BUDDEN: Okay.

You remember, I presume, discussing this a couple of months ago in your interview with Ms. O'Brien and Mr. Learmonth.

MR. HARRINGTON: I believe so, yeah. It was July, I think, yeah.

MR. BUDDEN: Well, you had two interviews. One was July, but the one where you discussed this –

MR. HARRINGTON: Oh, right. That was recently, yes.

MR. BUDDEN: Yeah, about two months ago.

So I'm gonna read you a little bit –

MR. HARRINGTON: I was blindsided, I think I said.

MR. BUDDEN: Oh, you did – repeatedly.

MR. HARRINGTON: Yeah. Thank you.

MR. BUDDEN: So let me read to you what you said, and then I'm going to talk a little bit about that. So it goes on for a little bit, but I'll – it's important, I believe.

So it starts off – Ms. O'Brien read that email to you, and –

THE COMMISSIONER: What page are you on, Mr. –?

MR. BUDDEN: I'm sorry. I'm reading from page 13 of that interview.

MR. HARRINGTON: Do I –

MR. BUDDEN: That's the interview – you don't have it, Mr. Harrington.

MR. HARRINGTON: Oh.

MR. BUDDEN: It's the interview that is not an exhibit. (Inaudible) –

THE COMMISSIONER: Could we have a copy for Mr. Harrington so that he could have ...

UNIDENTIFIED MALE SPEAKER:
(Inaudible.)

MR. BUDDEN: I just have the one, but I can get another one back at my desk.

It's marked up, but –

MS. O'BRIEN: Mine is marked up, the one that I have here.

MR. BUDDEN: I don't mind him looking at my marked up copy.

THE COMMISSIONER: I think Ms. Hutchings might have – or Ms. Urquhart, can you help us?

UNIDENTIFIED FEMALE SPEAKER: I have one as well (inaudible).

MR. HARRINGTON: Thank you, Mr. Budden.

MR. BUDDEN: You're welcome.

MR. HARRINGTON: Thank you.

MR. BUDDEN: It starts up at the top, pretty much.

So what we have here, Mr. Harrington, is – Ms. O'Brien read to you the email that you just read or, at least, much of it. And then she said: So can you explain to us what was going on here – do you see where I'm to?

MR. HARRINGTON: Whereabouts on the page?

MR. BUDDEN: It's about a third of the way down.

MR. HARRINGTON: Third of the way.

MR. BUDDEN: You say: Yeah, and then she says –

MR. HARRINGTON: Okay.

MR. BUDDEN: You got it?

MR. HARRINGTON: Oh. So can you explain to us what's going on here?

MR. BUDDEN: Yeah, so I'll read it, but obviously if you feel I'm misreading it –

MR. HARRINGTON: Okay.

MR. BUDDEN: – no doubt, do jump in.

MR. HARRINGTON: I will.

MR. BUDDEN: Ms. O'Brien: So can you explain to us what was going on here? Mr. Harrington: Yeah, because I thought he had blindsided me. Ms. O'Brien: Okay. Mr. Harrington: To be perfectly honest, I've known him a long time. I've known him back 'til Norway in 1980, right? And so I thought he could have told me beforehand. Ms. O'Brien: Is this reporting on the IPR? Mr. Harrington: Yeah. Ms. O'Brien: Okay, so this is a result of – Mr. Harrington: I was stunned. Ms. O'Brien: –

MR. HARRINGTON: Stunned, yeah.

MR. BUDDEN: – Okay, so give us some context, what happened? There was an Independent Project review Team – Harrington: Yeah. Ms. O'Brien: That was put in place to review the readiness to go through Gate 3. Mr. Harrington: Right. Ms. O'Brien: And that team was chaired by Derek Owen? Mr. Harrington: Correct. Ms. O'Brien: Okay, and they did their work, and they presented their report to you and Gil Bennett and Ed Martin and the other people, is that – you say: Yes. Ms. O'Brien: – correct? And that was a PowerPoint presentation? You say: Correct.

Ms. O'Brien: And that – this is following that presentation that you're making these comments to him? Mr. Harrington: Yeah, I said, Ms. O'Brien: Okay. Mr. Harrington: Well, you could've told me. Ms. O'Brien: Okay, so what did he do there that caused you offence? Mr. Harrington: Well, he could have told me he was going to do it before hand.

Ms. O'Brien: So what did he do? Mr. Harrington: He just kind of blindsided me. Do you understand what that is? Ms. O'Brien: I understand the term blindsided. Mr. Harrington: Right. Ms. O'Brien: I want to know what blindsided you. What did he say or do that blindsided you? Mr. Harrington: He kind of just laid it on the table to say, look, you know, you've got no chance of getting this schedule, and you know, he'd only been there a week doing an IPR. There were – there was other factors that he hadn't taken into account, so my – I was a little bit annoyed that he hadn't – that

he didn't have the chance to talk to me about it beforehand.

Ms. O'Brien: Okay. And what was Ed's reaction? Mr. Harrington: Ed's reaction was, well, you know, this is really aggressive. I'm a bit – you know, from what I can remember he was a bit taken aback by it.

And then I'm skipping over a bit that isn't relevant to this. Your lawyer can return to it if she wishes to.

We turn the page and you make a comment: they're all data points, and then Ms. O'Brien says – are you aware of where I'm to?

MR. HARRINGTON: Yes. Yes.

MR. BUDDEN: Yeah.

Ms. O'Brien says: And what was Mr. Owen's response to you raising – you know, you're a bit upset with him here. You say you've been – you felt you were blindsided by him. Mr. Harrington: So I asked him, look, do you need to have a bit – a little bit more discussion about what we're doing? That was what I asked him. Ms. O'Brien says: Mm-hmm.

Mr. Harrington: Right? Because you know, you've only been here a week. You've got a view on life, but you need to have some more information that we can provide to you regarding the mitigations that we've been putting into effect to try and bring the schedule up the curve, and I think his response was: no, this is an IPR. IPR just give the report and we walk away.

Ms. O'Brien says: Okay. Any reason why you would be sending this from a personal email account and why you would not have copied your Nalcor account? And you say: 'Cause he's a friend of mine, right? And this is between me and him, in a way, right? It's a personal thing. If someone offends you, right, blindsides you, right, and you've known them for a long time, you know, I think it's okay to say, you know what – I pick up a phone and speak to him or – that's the same type of thing. I didn't think that that deserves anything more than me speaking to him.

So that's as far as I'm interested in reading right now.

MR. HARRINGTON: Okay.

MR. BUDDEN: So as I said a moment ago, you were indeed surprised and stunned.

MR. HARRINGTON: Stunned, yes.

MR. BUDDEN: That's your word not mine.

MR. HARRINGTON: Yeah.

MR. BUDDEN: And angry. Do you think that's fair to say? You were angry and felt betrayed by Mr. Owens.

MR. HARRINGTON: I didn't feel – I was just taken aback, blindsided, stunned for the moment, but soon picked myself up and tried to reach out to him.

MR. BUDDEN: You did and the tone of your email, I would suggest, I mean, it was you started: "It was most unfortunate that you used" and then you go on. Would you agree –?

MR. HARRINGTON: I don't detect a tone. I mean, you know, that's just the way I am. That's just the way I write things. I don't know how you can detect a particular tone from an email. I mean emails are – you know, sometimes you get an email, and you think what on earth is that person talking about, but they're not intending to be like that.

MR. BUDDEN: Well. The words speak for themselves, I would suggest. And –

MR. HARRINGTON: I – well, I – you know, okay. What tone do you detect then, Mr. Budden?

MR. BUDDEN: I detect a tone of frustration, anger, betrayal. That's what I detect.

MR. HARRINGTON: Okay. Well, it's not that severe. I'm just a little bit annoyed, right, I would say, that he did that in that manner. And – because, you know, the – if you look at the deck that he was presenting – the 50 page – schedule is not included in any of that. He hadn't read that same comment in his earlier presentation to the

project team. He just blurted it out, out of the blue, and we didn't have a chance to put any context around it at all. So that's what I was expressing here –

MR. BUDDEN: Well, you went a bit beyond that, and – but we'll get to that.

MR. HARRINGTON: Okay.

MR. BUDDEN: But even six years later, you're pretty wound up. I mean that interview was over six years after this, so even then – I mean, you used words like blindsided repeatedly –

MR. HARRINGTON: But – no – I mean, that doesn't mean I was worked up about it. I just said he blindsided me.

MR. BUDDEN: Okay.

Okay, maybe you weren't, then. And then you tried to get them to substantively change your IPR after it'd been submitted to the executive.

MR. HARRINGTON: So this is two separate things. I –

MR. BUDDEN: No, I would suggest it's not, but –

MR. HARRINGTON: No, no.

MR. BUDDEN: You have a tone, and then you – immediately in this email and the one following –

MR. HARRINGTON: Right.

MR. BUDDEN: – ask that they make changes to their IPR.

MR. HARRINGTON: So this – there is two things, Mr. Budden, here, right?

MR. BUDDEN: But – just let me ask the questions for a bit.

MR. HARRINGTON: Okay.

MR. BUDDEN: Would you agree that that is in fact what you did? You asked them to make substantive changes to the IPR.

MR. HARRINGTON: Nothing to do with schedule.

MR. BUDDEN: Okay.

MR. HARRINGTON: But that's –

MR. BUDDEN: But you did ask them to make changes.

MR. HARRINGTON: I proposed some wording changes to them, because I thought, as I indicated to – in my previous testimony – that they – we didn't have a chance to review it before he presented to the CEO.

You know, in his own – on his own testimony, Mr. Owen's own testimony – he indicated that it's normal for that to be done to give the opportunity to the project team to provide feedback to them regarding did they get hold of the wrong end of the stick, had they misunderstood anything or had they missed anything? And that's the nature of what I was trying to get to him to open up a dialogue on that – on the secondary email that I sent to him.

MR. BUDDEN: That's your take on Mr. Owen's evidence?

MR. HARRINGTON: That's what he said in his evidence.

MR. BUDDEN: Okay. Well, he said a lot of things – let's look at what he said.

MR. HARRINGTON: Mm-hmm.

MR. BUDDEN: I have the transcript here of his evidence of October 18.

MR. HARRINGTON: I don't.

MR. BUDDEN: You don't.

MR. HARRINGTON: Mm.

MR. BUDDEN: But I will read it to you.

MR. HARRINGTON: Okay.

MR. BUDDEN: And I'll read it accurately. I'm picking up on page 35. It's my cross-examination of Mr. – my examination of Mr.

Owen, and I say to him: "Have you ever in your career, your experience doing IPRs, doing cold eyes reviews, ever received an email of this sort with this kind of tone to it?" He says: "No."

I then say: "Okay. Were you shocked to receive it?" He says: "I wouldn't say I was shocked. I was – I wasn't entirely shocked. I didn't expect the email." And I say: "Okay."

Mr. Owen says: "When I got the email I wasn't shocked because as I said it's very clear in my mind, the moment that during the presentation to Ed Martin that this item was mentioned, and the reaction that happened at that time. So putting that as a backdrop to receiving the email, I wasn't shocked, but I was certainly really somewhat surprised, yes."

And then I say: "'Cause there clearly is a shoot-the-messenger tone to this. You do see that?" And he says: "I see that, yeah."

Do you – I mean, it's years later; we've all calmed down a bit, presumably.

MR. HARRINGTON: Yes.

MR. BUDDEN: Do you see a shoot-the-messenger tone to this email?

MR. HARRINGTON: I personally don't.

MR. BUDDEN: Okay.

MR. HARRINGTON: I really don't. I was trying to reach out to him to try and get some further discussion here, because he was – as I mentioned here, he was dealing with out-of-date information. And so I wanted to make sure that – and I mentioned it in my testimony – well, in my interview that he'd only been there a week, right? And he admits that in many cases it's very difficult to find all the information in one single week.

MR. BUDDEN: Okay.

MR. HARRINGTON: So I wanted to try and get him to understand what we were doing. And I tried that over three or four days and then eventually I was told no. And I said, well fine and I dropped it.

MR. BUDDEN: You did. We'll get to that. But I'd like to talk a little more about this.

So we have Mr. Owen here, who you obviously respected enough that you recruited him to head this team.

MR. HARRINGTON: I think there's a mutual respect.

MR. BUDDEN: Okay. Fair enough.

There may be mutual respect, but he said he'd never been talked to in that tone before by –

MR. HARRINGTON: I'm sure – I find that difficult to believe, to be perfectly honest.

MR. BUDDEN: So he gave – he gave that evidence under oath –

MR. HARRINGTON: Not – you said –

MR. BUDDEN: – Mr. Harrington.

MR. HARRINGTON: – you said that he's never been talked to in that tone before.

MR. BUDDEN: Okay, well, let's revisit what I said. I said: "Have you ever in your career, your experience doing IPRs, doing cold eyes reviews, ever received an email of this sort with this kind of tone to it?" And he said: "No." Those are his words –

MR. HARRINGTON: Yeah –

MR. BUDDEN: – Mr. Harrington.

MR. HARRINGTON: – but you didn't say IPR, you said has he ever been spoken to in that tone before.

MR. BUDDEN: Well, none of us make it to this age without being spoken to in –

MR. HARRINGTON: Well, there you go.

MR. BUDDEN: – all imaginable tones, but –

MR. HARRINGTON: Exactly.

MR. BUDDEN: – let's return to what is important here, what he answered to my question.

MR. HARRINGTON: Right.

MR. BUDDEN: And one more time: "Have you ever in your career, your experience doing IPRs, doing cold eyes reviews, ever received an email of this sort with this kind of tone to it?" And he said: "No."

Then we turn a little bit further and I said: "'Cause there clearly is a shoot-the-messenger tone to this. You do see that?" And he says: "I see that, yeah."

MR. HARRINGTON: That's your opinion and his opinion, I didn't mean to shoot the messenger here.

MR. BUDDEN: Okay.

But you sent an email – that a person as respected as Mr. Owen, as experienced as Mr. Owen, said that he had never in this context receive an email with this – in this context with this tone before. And he got a shoot the messenger – that was the message he got from it.

MR. HARRINGTON: Well, that's the one that you suggested to him and he agreed to.

MR. BUDDEN: Yeah –

MR. HARRINGTON: Right.

MR. BUDDEN: – well, that's the way examinations work. That is what he said.

MR. HARRINGTON: That's fine. I don't disagree, then, with your opinion or his opinion, but they are your opinions.

MR. BUDDEN: They are our opinions.

MR. HARRINGTON: Yes.

MR. BUDDEN: Does it concern you that somebody – that the head of your IPR team, your independent project management team, would take away from your email that particular message?

MR. HARRINGTON: Yeah, because I think he misunderstood what I was meaning – trying to do. I was trying to reach out to him.

Okay, well, let's see what Mr. Westney says. Mr. Westney testified quite recently, so we do not yet have posted transcripts, but I have notes and I had my staff prepare what I believe to be an accurate transcript. So I'll put it to you, and again, other people took notes so if they see it differently I'm sure they interject.

And I said to him – and this is from the evidence –

THE COMMISSIONER: Excuse me, just for a second there.

MS. HUTCHINGS: (Inaudible.)

THE COMMISSIONER: Can you turn your mic off Mr. Budden, so that I can hear from –

UNIDENTIFIED FEMALE SPEAKER:
Excuse me Mr. Ralph you have your (inaudible).

MS. HUTCHINGS: I prefer that if Mr. Budden is going to put to the witness what the other witness said – what Mr. Westney said on the – in his testimony, I prefer that it would be the testimony itself, instead of something that he and his staff has written up. It only seems fair that the – that Mr. Harrington would be referred to the words of Mr. Westney, not that interpretation that's been put on Mr. Budden or his staff.

MR. BUDDEN: May I speak to that, Mr. Justice?

THE COMMISSIONER: Sure.

MR. BUDDEN: What I have here is what I believe to be a true and complete account of the evidence that Mr. Westney gave. There are no official transcripts prepared from Friday to today. It's perfectly acceptable to put the words of one witness to another. I'm doing it as accurate and complete a fashion as I can. And I don't know how else to handle the situation, Mr. Justice, other than to do what I'm doing. I believe it's an important point and I do wish to put Mr. Westney's evidence, here in this Inquiry several days ago, to this witness.

THE COMMISSIONER: Okay, so one of the things that I had attempted to do, in organizing the Inquiry, was to try to ensure that we would actually have daily transcripts prepared. I came to learn that the capacity of the people doing the transcripts, which are basically HOA who we've contracted to do it, is such that they didn't have the capacity. So we actually paid, as a Commission, extra for two extra people to be working there doing the transcripts. And even with that, they are having difficulty keeping up.

So I agree the best way to do this would be to have the transcript, but unfortunately, you know, I just don't want to spend any more of the government's money hiring more people when I'm getting them two days later or three days later or whatever. Generally speaking, up to now we haven't had a difficulty.

So I – what I can say, Ms. Hutchings, is this: Is I know what the evidence was. It's very fresh in my mind. And I think others in this room probably know it as well. So if Mr. Budden doesn't fairly indicate what he – and he's telling me as an officer of the court – even though this is not a court, but I accept that he's a solicitor – that these are, you know – it's a true version of the transcript that they've prepared. Well, then I have no reason to disbelieve that.

But, you know, again, ultimately at the end of the day it's for me to assess what the evidence of Mr. Westney is; what the evidence of Mr. Harrington is. And I will do that as best I can. But I don't think I can prevent Mr. Budden from relying on his notes. And to be quite frank, this has happened before in this Inquiry – a number of times that people are – even Ms. O'Brien this morning was referring to what other witnesses would've said without producing the transcript. And so I'm not sure that this is unfair to the witness.

MS. HUTCHINGS: And I just want to clarify that I have no problem with what you just said. That's fine.

THE COMMISSIONER: Okay.

MS. HUTCHINGS: And I understand that completely. And I'm not suggesting that we'd go – the government would go out and hire more

people in order to be able to turnaround the transcripts quickly.

The issue that I had – have is that Mr. Budden said – and this – made some comment that this is accurate. I would've preferred him say: Well, these are from my notes, or something of that effect. But the witness is being misled to think that this is an accurate transcript, so to speak.

THE COMMISSIONER: Well, we haven't –

MS. HUTCHINGS: And I don't want the witness to be confused.

THE COMMISSIONER: Right. Okay.

Well, I'm sure – well, the witness has said he's heard some of Mr. Westney's testimony; whether he heard this part or not, I'm not sure. But right now, Mr. Budden, I accept that you have – you're going to be giving a version that you say, to the best of your knowledge, is the correct version. Give it to him, let's see what the answer is and I'll assess it as I go through. And if there's a person here who doesn't believe that that was the evidence, then please stand up and let me know. Or if I don't think it was the evidence, I'll let you know.

MR. BUDDEN: Thank you. That's all I ask.

THE COMMISSIONER: Okay.

MR. BUDDEN: I will go through this fairly slowly. It's not that much.

I – my question is as follows. My question, Mr. Westney, is have you ever otherwise, in all the other IPR reports you've done – and you've testified that you've done many – have you otherwise been asked to have a final report, quote, dictated or edited by management and then issued as IPR team work product, unquote, question mark.

Mr. Westney said: Your question is, have I ever been asked to do that?

And my – and then I go – yes, as you were on this occasion, essentially.

Westney: I do not remember an occasion where that happened. Just to be clear, we normally

would say, look, this is our report. You requested it. You have it. You can burn it. You can share it with other people. You can put it in your drawer and take it out a year from now and see if you want to reveal it then. That's your decision, but it's our report. You asked us for our opinion, and we gave it to you. The only exception would be if there was a challenge to our fact base – if we missed something or misinterpreted something, or just flat out got something wrong. Of course, we'd want to fix that, but otherwise – no. That's our opinion. So, that's why no one would ask us to do that.

Me: I guess we can infer what we wish from the tone of all this, but perhaps you can just tell us. What was your state of mind upon being approached in this fashion by Mr. Owen?

Westney: My state of mind?

Budden: Yes. Were you surprised? Shocked? Did any of those words apply, or any others that you would choose?

Westney: Disappointed. Disappointed, and I think I mentioned earlier that – and I think that this has been discussed in other testimony, too – but the point that I felt was, if you look at the original text that we had, you have to say, like, what's wrong with it? I mean, it's really saying, guys, you have this in your procedure – your philosophy, you know? Just do that. We feel strongly that you should do just – you should just do what you yourself say. So why – the fact that something is being proposed to be changed, which isn't actually – which is actually, in the first place, a very mild statement of generally-accepted good practice – that – I really struggled with that.

And I go, okay. Well, I suppose you struggled, and you put your foot down. You wouldn't go along. That's a fair reading, wouldn't you agree?

Westney: I think I expressed that clearly. Yes, I'm not doing it.

So, those are Mr. Westney's words.

MR. HARRINGTON: Mm-hmm.

MR. BUDDEN: He also said that he hadn't had anybody before – well, I'll say what he said.

My question, Mr. Westney, if you – if have – is have you ever other – my question, Mr. Westney, is have you ever otherwise, in all the other IPR reports you’ve done – and you’ve testified that you’ve done many – have you otherwise been asked to have a final report quote, dictated or edited by management and then issued as IPR team work product?

Westney is – Westney: Your question is, have I ever been asked to do that? Yes, as you were on this occasion essentially. Westney: I do not remember an occasion where that happened.

So there we have Mr. Westney’s words –

MR. HARRINGTON: Mm-hmm.

MR. BUDDEN: Also, I would suggest to Mr. Harrington, a highly regarded, very experienced engineer, a man who had done many IPRs and cold eyes reviews –

MR. HARRINGTON: Mm-hmm.

MR. BUDDEN: And that’s what he has to say. What do you have to say about that?

MR. HARRINGTON: Are you asking a question though? Is that a question?

MR. BUDDEN: I’m asking the question: what do you have to say about that?

MR. HARRINGTON: Well, number one, I didn’t ask to have anything dictated or edited. We suggested some comments back to him, right. Number two, the – it’s normal, right, to have a draft IPR report, as Mr. Owen stated in his October 17 testimony – you can look it up – that it’s normal that before you go to the Gatekeeper with this, they give the project team an opportunity to review it and provide feedback to them regarding did – was anything misunderstood by the IPR team, was anything missing from the IPR team or did they get – and I quote him – the wrong end of the stick?

MR. BUDDEN: Okay, so that’s your –

MR. HARRINGTON: No, I haven’t finished –

MR. BUDDEN: – interpretation of what you did.

MR. HARRINGTON: No, so I haven’t finished, all right?

MR. BUDDEN: Well – anyway, carry on. We won’t argue about that right now.

MR. HARRINGTON: Well, you go ahead then.

MR. BUDDEN: Okay, is that your interpretation of what you were requesting of Mr. Owen and the team?

MR. HARRINGTON: That’s what I was requesting and –

MR. BUDDEN: Okay.

MR. HARRINGTON: – in addition – as he’s already stated out, he said but – oh yeah, but if we’d got something wrong, of course we’d need to know. But they wouldn’t even enter into a discussion about it because –

MR. BUDDEN: Let’s go – sorry go ahead. I cut you off, go ahead.

MR. HARRINGTON: Yeah, I’m just trying to get a train of thought going here, Mr. Budden, if you don’t mind.

So he’s talking about we have this in your procedures, and it’s that very item, right – and I think it’s the last bullet on sheet 40, which, you know – wherein he states that – and I mentioned it to Ms. O’Brien just recently, that was the issue that we thought he’d got it wrong. But he wasn’t prepared to enter into any dialogue with it, so if you’re not prepared to enter into any dialogue, how do you know if the project team thinks you’ve got something wrong? I mean that’s a fair comment.

MR. BUDDEN: Well maybe it is. Perhaps we – maybe it’s not. Can we go to 00508, please Madam Clerk? Exhibit 00508?

What we have here – this is in the same few days – it’s an email for – it’s addressed to Derek, obviously Derek Owen. He –

THE COMMISSIONER: Tab 42.

MR. BUDDEN: – works at Westney.

THE COMMISSIONER: Tab 42.

MR. BUDDEN: Perhaps you could read that to us? Read it out loud, Mr. Harrington.

MR. HARRINGTON: All of this?

MR. BUDDEN: It's the first two paragraphs I'm interested in.

MR. HARRINGTON: "I took the time to prepare two slides that show explicitly the differences between what we presented and what Paul suggests." Note suggests. "See attached."

"Here is the first point: we absolutely cannot allow our work product to be dictated or edited by Nalcor management or the LCH project management and then issued as an IPR Team work product. This violates our obligation to the Gatekeeper and our IPR charter, not to mention our professional ethics."

So you will note that it's what Paul is suggesting. And that's a proposal. I put a proposal to them saying hey, can you have a look at this? And it – for a period of time Mr. Owen thought yeah, there's maybe something we can enter into a dialogue with. But the door was closed on me.

MR. BUDDEN: By Mr. Westney, who thought that it would be violating "our obligation to the Gatekeeper and IPR charter," –

MR. HARRINGTON: But how did he know?

MR. BUDDEN: – "not to mention our professional ethics."

MR. HARRINGTON: How did he know that I wasn't going to be pointing out an error that he put in there?

MR. BUDDEN: Well obviously, I would suggest he saw – well, I think the first paragraph is the answer to that, Mr. Harrington. "I took the time to prepare two slides that show explicitly the differences between what we presented and what Paul suggests." So he wasn't talking in a vacuum, like he had no idea what you were proposing. He knew –

MR. HARRINGTON: But he wouldn't –

MR. BUDDEN: – very well what you were proposing.

MR. HARRINGTON: But he wouldn't dialogue with me. He wouldn't recognize that the last bullet point, we had a – we had a point of disagreement on.

MR. BUDDEN: You, as a project team member, had a disagreement with the Independent Project Review.

MR. HARRINGTON: Yes. And he's already indicated that yes, we – you know, it – unless – the exception is, if we missed something or it was wrong. And then that – you just quoted that back to me.

MR. BUDDEN: I did.

MR. HARRINGTON: Mm-hmm.

MR. BUDDEN: But what is the purpose of an Independent Project Review if it's something that can just be finessed and finessed and finessed?

MR. HARRINGTON: It's not a matter of finessing. I'm going back to him and saying I think you got this point wrong.

MR. BUDDEN: You're saying it's not a matter of asking him to change his – asking them to change the report?

MR. HARRINGTON: No. I'm not asking him to change it. I'm saying here's some additional wording, would you consider it? I'm not dictating anything.

MR. BUDDEN: You're not asking them to change the report?

MR. HARRINGTON: No. I'm saying can you have a look at this and can we have – and I mention it in my emails, can we enter into some dialogue here?

MR. BUDDEN: Well that's not exactly the way you framed it. But let's move on a bit.

Okay. So let's just wrap this up a little bit. So you will again confirm to us that Mr. Owen and Mr. Westney, they're both at this time very

experienced and – with particular expertise in project management, what they’re being brought in here for.

MR. HARRINGTON: As am I.

MR. BUDDEN: As well – as are you. They’re certainly no less experienced than you, are they?

MR. HARRINGTON: No.

MR. BUDDEN: Okay. You selected them or at least played a major role in selecting them?

MR. HARRINGTON: Yes, I did.

MR. BUDDEN: Okay. That they have, over their careers, done many cold eyes reviews.

MR. HARRINGTON: As have I.

MR. BUDDEN: And they both said that nobody’s ever asked them – or nobody’s ever spoken to them in the tone of that email.

MR. HARRINGTON: Well, you know, we disagree upon tone, as I pointed out. They have assumed that I was – you know, that tone – well, if you – can we look at the tone of my email, not the one –

MR. BUDDEN: Let me just –

MR. HARRINGTON: – not the one –

MR. BUDDEN: No.

MR. HARRINGTON: – not the one about the –

MR. BUDDEN: I’m asking you the questions, Mr. Harrington.

MR. HARRINGTON: (Inaudible.)

MR. BUDDEN: To a certain degree you have to –

MR. HARRINGTON: I’ll go with –

MR. BUDDEN: – follow my questions.

MR. HARRINGTON: Yeah.

MR. BUDDEN: But we’re asking now of their perception. Clearly, their sworn evidence, sitting in that very chair you’re sitting in, was what it was. I’ve just read it to you. We don’t need to go through it again, I assume.

MR. HARRINGTON: No, but what I’m asking for, Mr. Budden, is could we scroll down and have a look at the email that I wrote to them. Not about schedule.

MR. BUDDEN: We’ve all read your email. They had read it; they testified to it. I’m interested right now –

MR. HARRINGTON: We –

MR. BUDDEN: Mr. Harrington. Mr. Harrington, please.

Was that not – was Mr. Owen’s – did he not testify – Mr. Owens, who we’ve established is an expert – that nobody had ever spoken to him in the context of an IPR or written an email to him using that tone and that he got a shoot-the-messenger tone from that email.

MR. HARRINGTON: So –

MR. BUDDEN: That is – that’s what he said, right?

It’s pretty simple – yes or no?

MR. HARRINGTON: Well, no. That’s what he said about the first email about –

MR. BUDDEN: Yes.

MR. HARRINGTON: – schedule.

MR. BUDDEN: Okay. I’m gonna stop you there. And Mr. Westney had comments about that email as well, didn’t he? Of a similar nature.

MR. HARRINGTON: I don’t know if he even got the one about the schedule. ’Cause I’m –

MS. HUTCHINGS: Commissioner, I hate to interrupt, but I think we’re going around in circles. I think the evidence has been elicited from the – or his answers have been elicited – and I don’t know what the purpose of going

back over and asking him the same questions over again ...

THE COMMISSIONER: Mr. Budden?

MR. BUDDEN: I don't think they're complicated questions. I think the answers are becoming very complicated, but the questions are not. If the witness would answer the question as is put to him, I think we could move pretty fast.

THE COMMISSIONER: Right.

Well, I think – let's put it this way. I'm sitting here listening to all this, and I'm forming my own impressions based upon what I'm hearing and how it's being explained, whatever. I don't know how many more – like, I do agree with Ms. Hutchings on how many times do we keep going over and getting the same answer. That's not really what I'm interested in. I got the answer. It'll be for me to assess –

MR. BUDDEN: Okay. That's –

THE COMMISSIONER: – whether I accept it or not.

MR. BUDDEN: I'm happy with that.

I would suggest to you, Mr. Harrington, that both of these very experienced engineers thought you were out of line here. They thought you were asking of them something that it was not appropriate to ask of them. Would you agree that is indeed what they seem to be suggesting?

MR. HARRINGTON: Would I agree that that would – I can't possibly answer.

MR. BUDDEN: Okay.

MR. HARRINGTON: How can I answer that type of question? It's so open-ended.

MR. BUDDEN: Okay. Fair enough. We'll move on.

Looking back on it, do you believe what you did in asking them to make these changes or open a dialogue – however you wish to frame it –

MR. HARRINGTON: Yes.

MR. BUDDEN: – and sending that email and the emails that followed – do you believe that was a proper way to respond to a IPR review?

MR. HARRINGTON: Yes, I do.

MR. BUDDEN: You do. Okay.

Mr. Owen was your friend, I understand, at that time, perhaps still is. And I gather that was the reason why you sent him that email from your private account.

MR. HARRINGTON: I was at home actually. Okay.

MR. BUDDEN: Well, let's go back to your transcript.

MR. HARRINGTON: Yes. He is a friend as well. So sometimes friends can, you know, go offline when they're trying to, you know, send a message that perhaps, you know, a little bit stronger than the normal I would say.

MR. BUDDEN: Is that what you were doing here?

MR. HARRINGTON: Yeah, a little bit.

MR. BUDDEN: Okay, yeah. In what way?

MR. HARRINGTON: I was telling him, you know, come on, Derek, you blindsided me there kinda thing. That's the long and the short of it, Mr. Budden.

MR. BUDDEN: Okay.

What you actually said – Ms. O'Brien asked you – I'm on page 15 – any reason why you would be sending this from a personal email account and why would you not have copied your Nalcor account? And your answer was: 'Cause he's a friend of mine, right? And this is between me and him in a way, right? It's a personal thing.

MR. HARRINGTON: Yeah. I'm talking about the first one, which is around about the, you know, the blindsiding schedule thing.

MR. BUDDEN: Yeah.

MR. HARRINGTON: So that, and also I was at home.

MR. BUDDEN: Well, you said nothing about being at home here. You said he's a friend of mine. This is between me and him, in a way, right? It's a personal thing

MR. HARRINGTON: But if you go earlier as well why – someone asked me why did you send it from home.

MR. BUDDEN: You said different things at different times, so this is what you said here.

MR. HARRINGTON: (Inaudible.)

MR. BUDDEN: And a question put to you as straightforwardly as one can imagine. Any event, Mr. Harrington –

MR. HARRINGTON: Okay.

MR. BUDDEN: – you thought it appropriate to send, not on your Nalcor account, but on your personal account, a message to your friend because it was a personal thing?

MR. HARRINGTON: I'm looking at page 12 –

MR. BUDDEN: Perhaps you could answer the question rather than –

MR. HARRINGTON: Sorry.

MR. BUDDEN: – looking at page 12.

MR. HARRINGTON: Well, what was the question again, then, please?

MR. BUDDEN: My question is that you chose to send a message to him, not from your Nalcor account, but from your personal account, because it was, quote: He's a friend of mine. This is between me and him in a way, right? It's a personal thing.

MR. HARRINGTON: That's true.

MR. BUDDEN: Okay. What were you asking your friend to do here that you wouldn't ask anybody else to do?

MR. HARRINGTON: I was asking him, in the email, again, to open up a dialogue with me.

MR. BUDDEN: Okay.

The purpose of an independent project review, as we discussed, is to be independent of the project team, to be a cold eyes – a fresh look at this. You're not disputing any of that, I assume?

MR. HARRINGTON: As I mentioned earlier, the IPR is people who are not actively involved in the project on a day-to-day basis. It's a cold eyes review, sometimes called a peer review.

MR. BUDDEN: Yeah, yeah.

And the idea behind all that is to get people who are coming in here, as Mr. Westney put it pretty eloquently – you go in; you lay the report down, you leave. There it is.

MR. HARRINGTON: Well, that's not –

MR. BUDDEN: That's not the way you conceived of it?

MR. HARRINGTON: Well, it's not the way that Mr. Derek Owen conceived of it either, because in his statement, he clearly mentions the fact that it – before you go to the Gatekeeper, it's normal for him – in his experience – for the project team to be given an opportunity to point out did you get hold of the wrong end of the stick, did you misunderstand something or did you miss something. That's what I was doing.

MR. BUDDEN: I mean, going into this meeting with Mr. Martin did you say, like, guys we got to put this on hold, we haven't had this meeting with the IPR, like – ?

MR. HARRINGTON: I don't think –

MR. BUDDEN: Yeah, I don't get that. You –

MR. HARRINGTON: I don't think –

MR. BUDDEN: You're not a victim here. You were involved in this. Why did –

MR. HARRINGTON: I don't –

MR. BUDDEN: – you not ask for that?

MR. HARRINGTON: I don't dictate when the CEO wants to meet with the IPR team. I don't dictate that. That's set up by his secretary, and it was just unfortunate that the IPR team didn't finish their work until very late on Thursday night apparently, so I was told, and when they came to, on Friday morning, they presented to the – 50 slides to the project team. We then drove over to the other place and did it straight away.

I didn't get the opportunity at that point in time, so I wanted to take the opportunity afterwards to point out what I believed to be things that were incorrect.

MR. BUDDEN: Okay.

After the presentation had been made, after what they regard as a final report had been filed?

MR. HARRINGTON: Yeah, that's what they viewed as final, but even Mr. Owen had said in his – some of his emails that he thought it might have been a draft, and I don't know. It's – I don't place a great, you know, importance upon that to be perfectly frank, right? Because we didn't have the opportunity of reviewing the draft. So they presented it, but I wanted to point out that this – we believe there's some areas where you're not quite correct –

MR. BUDDEN: Okay.

MR. HARRINGTON: – in a diplomatic way, I thought.

MR. BUDDEN: Well, how it was perceived, perhaps, wasn't as being quite as diplomatic, you would concede that? Shoot the messenger?

MR. HARRINGTON: Well, you know, that's – those are your words, not mine.

MR. BUDDEN: No, they're not. They're Mr. Owen's words that he –

MR. HARRINGTON: He agreed with –

MR. BUDDEN: – agreed with me on.

MR. HARRINGTON: Yeah. So I mean, I'm not disputing how Mr. Owen saw things, and I'm not disputing how you perceive things.

MR. BUDDEN: Or how Mr. Westney did?

MR. HARRINGTON: Or Mr. Westney.

MS. HUTCHINGS: Mr. Commissioner, again, I gotta – this is the same thing back again about what he thinks of the comments made by Mr. Westney and Mr. Owen and I think we've – I think we all get the gist of where Mr. Budden is going, and we've got the information out.

I can't help it, but we have to move on, I think, with all due respect.

MR. BUDDEN: I'm glad that Ms. Hutchings is concerned about our pace here and all that, but I don't really know if it's her place to suggest we should move on. But, having said that, I think I am about ready to move on for – from this section.

THE COMMISSIONER: Go ahead, then.

MR. BUDDEN: Okay, thank you.

The last couple of questions I do have – Mr. Martin was, from your account and also from Mr. Owen's, taken aback at this news – surprised by this news. Correct – the news that was delivered to him in the IPR.

MR. HARRINGTON: He was taken aback, yes.

MR. BUDDEN: Okay.

And then you went into a damage-control mode.

MR. HARRINGTON: Yes.

MR. BUDDEN: Okay.

The – so we have here – we have news that was, perhaps, unwelcome news, and that was how you responded to it.

MR. HARRINGTON: No, (inaudible) –

MR. BUDDEN: Is that generally how you respond to the reception of news that's not what you want? Like, is that how you manage your subordinates?

MR. HARRINGTON: It's not – what – can you repeat your question again, sorry I (inaudible).

MR. BUDDEN: That's all right.

We have here your particular response to this. And we won't argue anymore about the tone or anything – Mr. Commissioner can draw his own conclusions – but that is your response. And what I'm suggesting to you – okay, put it this way – you see nothing wrong with the way you responded here, I take it? You see nothing wrong with it?

MR. HARRINGTON: No.

MR. BUDDEN: So, can I take it from that this is the way you would typically respond to news that you – that was unwelcome to you?

MR. HARRINGTON: It wasn't unwelcome news; it was just inappropriately delivered, because he was delivering old information that was, you know, potentially misleading to the CEO, because we were in the process, then, of trying to get these three contracts awarded. And, you know, the IPR – and as indeed Mr. Owen – if you go down here – he says the schedule has got nothing to do with us, right? So he was – basically just threw that one out of the blue, and he was dealing with out-of-date information. And I'd been very clear on that in my emails to him, saying, look, you're outdated here.

MR. BUDDEN: Okay.

My question to you was, is this – you see nothing wrong with the tone, or anything about this email –

MR. HARRINGTON: I've told you that, yes.

MR. BUDDEN: Yes, and my suggestion to you – is this an example of your typical managerial style if news that is unwelcome to you is brought to you?

MR. HARRINGTON: It's not –

MR. BUDDEN: Is this the way you would respond to a subordinate?

MR. HARRINGTON: I didn't say it was unwelcome; I said it was inappropriate.

MR. BUDDEN: Is this the way you would respond to information that you regarded as inappropriate?

MR. HARRINGTON: Not every time. I mean I don't have a standard way of responding to things like that. That's – doesn't – you don't have – you know, I'm not a robot. I don't, you know, (inaudible) one, I do that. No, it's – different situations of course will require different responses.

MR. BUDDEN: Okay. If Mr. Owen might perceive something you did as 'shoot-the-messenger' – and we'll leave aside for a minute everything else – do you not see a problem that a subordinate might take the same kind of message, if that subordinate were to deliver news to you that you regarded as inappropriate or unwelcome or incorrect?

MR. HARRINGTON: Absolutely not. I don't – I can't agree with that, no.

MR. BUDDEN: You can't connect the dots at all?

MR. HARRINGTON: Not at all.

MR. BUDDEN: Okay.

Was there, within Nalcor, a culture where those who brought forward unwelcome news were met with this shoot-the-messenger response?

MR. HARRINGTON: So again, you've used unwelcome news. Inappropriate in this case. But we are very open with regards to having consensus opinions and bringing things forward. If someone doesn't agree with things, we talk about them. There's no culture, as you've just described, at all.

MR. BUDDEN: Okay. Perhaps we could call – and I am finally moving on now. Perhaps we can call up example – or Exhibit P-00926. Totally different topic.

THE COMMISSIONER: Tab 33.

MR. HARRINGTON: Thank you, Commissioner.

MR. BUDDEN: This was – I'll give you a moment to get it.

MS. HUTCHINGS: Oh yeah.

MR. BUDDEN: Yeah.

MS. HUTCHINGS: (Inaudible.)

MR. BUDDEN: This was, I understand, the DG3 Alignment Session, which took place about approximately five months before sanction. I'm correct on that I believe, Mr. Harrington?

MR. HARRINGTON: Yes, I believe you are.

MR. BUDDEN: Perhaps we could go to page 6 of that – rather, page 7, Madam Clerk. Page 7. Okay. The – this, of course, is the alignment session, and the head – the big heading is “Why the change in cost estimates?” And then “Significant increases in transmission costs (\$600mm).”

And then it's the fourth bullet down I'm interested in. Could you perhaps just read that for us?

MR. HARRINGTON: “Actual bids have ... been received for transmission equipment/construction.”

MR. BUDDEN: Okay.

So I take it from this that we're now about five months ahead of sanction, so there would have been – and we've heard other evidence that certain pre-sanction work was being done. I'm not concerned about whether that was right or wrong, not at all.

But what I am wondering about is: can you tell us how many bid packages would have been tendered and how many responding bids would have been received prior to sanction?

MR. HARRINGTON: I don't have that information to provide to you.

MR. BUDDEN: Would it be a handful? Hundreds?

MR. HARRINGTON: I wouldn't speculate. I've been told not to speculate, so I'm not speculating.

MR. BUDDEN: Well, I don't think that's an unreasonable thing to ask you. If you have any knowledge, if you don't – I don't have any knowledge for instance; if you have more than I have then it's not pure speculation.

MR. HARRINGTON: I wouldn't know – I wouldn't offer an answer on that one, because I don't have an answer.

MR. BUDDEN: Okay.

So you're not able to tell us whether – that the bids that were being received, whether they were – how they compared to the anticipated contract prices.

MR. HARRINGTON: I don't understand your question, because you asked me one question which was: how many had we received, and I said I didn't know. And now you've asked me a specific question.

MR. BUDDEN: I'm saying in a more general sense. You may not know how many there were, and if you don't know the answer that's fine, you can say it.

MR. HARRINGTON: I don't know the answer.

MR. BUDDEN: Okay.

So that's not something that would have been in your awareness in this pre-sanction period.

MR. HARRINGTON: No, other than this specific one – where – I didn't prepare this, someone of – or that manager for that particular area might have prepared this and provided it to them.

MR. BUDDEN: Okay.

Are you able to tell us whether there would have been any adjustments to the DG3 project estimates based on the bids that were coming in and how they aligned with the anticipated costs?

MR. HARRINGTON: So when was this?

MR. BUDDEN: This would have been August of 2012, August 3rd.

MR. HARRINGTON: What this is talking about, Mr. Budden, is from DG2 to DG3 –

MR. BUDDEN: Yes.

MR. HARRINGTON: – so what this is saying is, that that 600 million is included in the DG3 numbers.

MR. BUDDEN: Yes, that's – I agree to – that is what the exhibit is saying. I'm asking you now a more general question.

MR. HARRINGTON: Oh, okay.

MR. BUDDEN: And my general question is: did you – do you have an awareness now, a present awareness, as to whether the bids that had been put out – either tendered or otherwise – whether the bids that were being made were – in response to those tenders – were higher than anticipated. And if so, what impact did that have on the DG3 cost estimates.

MR. HARRINGTON: By then – I can't answer that question because I don't know how many we received. I told you that earlier, so.

MR. BUDDEN: And you don't have a general sense.

MR. HARRINGTON: I don't have a general sense to offer here, no.

MR. BUDDEN: Okay.

Who might know?

MR. HARRINGTON: Well, it's not one person who would know. You would – you know, you would have to ask the individual managers, for the individual areas. Or even perhaps the commercial manager or his team.

THE COMMISSIONER: Ms. O'Brien.

MS. O'BRIEN: Sorry to interrupt Mr. Budden's examination, but I can advise that as part of our presentation in Phase 2 of the Inquiry, we will be looking at the various different contract packages when bids were received and when

contracts were awarded. There is some that we'll cover in the pre-sanction period, but we'll be covering it all more holistic then –

MR. BUDDEN: Sure, I can return to it then.

MS. O'BRIEN: – holistically then.

Thank you.

MR. BUDDEN: I think it has relevance to pre-sanction, because obviously if a pattern was here where bids were coming in much higher than had been estimate, then that obviously could have a bearing on the pre-sanction decision, but we'll get to that.

THE COMMISSIONER: See, one of the problems that we have with this Inquiry is that, while I divided it up into phases, I understand that there's gonna be a bit of overlap between Phase 1 and Phase 2. That's why I'm not writing the report at the end of Phase 1. I have to wait and hear –

MR. BUDDEN: Understood.

THE COMMISSIONER: – more evidence in Phase 2, because some of it will relate back to Phase 1 and vice versa. So – because there's some witnesses, well, that we're calling in this phase that we won't be calling on Phase 2. So that doesn't restrict the fact that their evidence will be considered with regard to Phase –

MR. BUDDEN: Yeah.

THE COMMISSIONER: – 2 issues. Okay?

MR. BUDDEN: So we'll be taking a deeper dive some point this winter, and I'll leave it 'til then.

THE COMMISSIONER: Okay.

MR. BUDDEN: Mr. Harrington, yesterday your – let me find it here now. Yeah.

You gave – you were questioned yesterday by Ms. O'Brien, and you gave an answer I just want to briefly explore with you, and I don't think a whole lot of contextualizing is necessary. I think you'll get where I'm going.

Your answer – I won't bother with the question. I'll give it to you later if you need it. You said, yes I would agree with that. I'm at page 50, carrying over onto 51, from the transcript that was circulated last night. The comment was also part of the – or a similar comment was also part of the submission – Nalcor submission to the PUB in addition to the C-52.

So it talks about here is – I believe – is that the Gatekeeper is looking at strategic risk exposure. It's also looking at strategic opportunities, and I think this specific thing – I remember reading this one – was about two things. There was the benefit of the federal loan guarantee as a strategic opportunity and, also, the fact that this – the type of technology used for the HVDC was changed from VSC, which was an emerging technology, to a more traditional LCC type of technology.

And then you said: So this indicated to us that the Gatekeeper's looking at strategic risks, and he's also looking at strategic opportunities, and he's seeing that one can offset the other.

So I presume you remember saying something to that effect yesterday?

MR. HARRINGTON: I do.

MR. BUDDEN: Okay. What I'm interested in here is the reference, and I'll read it. That was the benefit of the federal loan guarantee as a strategic opportunity, and then you – so I guess my question is about the benefit of the federal loan guarantee as a strategic opportunity.

And I guess my question is – my understanding of the FLG is that it's solely for the purpose of financing the project, of getting the project a better rate, as, obviously, it would be present from the lenders with a federal loan guarantee. And since the – as I understand it, the project cost estimates at DG3, the \$6.2 billion, did not reflect any finance related cost. Why was the FLG even relevant to a discussion of strategic risk?

MR. HARRINGTON: Because strategic risks are, you know, set aside for something that may happen – this is my understanding – and the financing – and my read of CE-52 and the submission from Nalcor to the PUB – was

looking at the bigger picture. It was looking at, well, if we get the federal loan guarantee, they said that it would save 700 million, I think, was looked at, at that point in time. And that 700 million that – additional interest that you wouldn't have to pay.

MR. BUDDEN: Mmm.

MR. HARRINGTON: So it's a benefit to the ratepayer, ultimately.

MR. BUDDEN: Okay.

And the benefit is that it would reduce the financing costs, and if I follow your logic, the savings in financing costs could be used to offset any cost overruns. Is that what you're saying?

MR. HARRINGTON: I think that's how I read CE-52, yes.

MR. BUDDEN: Okay.

But you're not suggesting that any element of the project cost estimate as was presented at DG3, the actual 1 per cent of the 6.2 billion, would be impacted in any way by the FLG, are you?

MR. HARRINGTON: Yeah, the 6.2 excluded strategic risks.

MR. BUDDEN: Yes.

MR. HARRINGTON: Right. So this discussion was strategic risks and opportunities.

MR. BUDDEN: Okay.

MR. HARRINGTON: So separate.

MR. BUDDEN: Okay.

And are you suggesting that might be a justification for the exclusion of strategic risk?

MR. HARRINGTON: The exclusion of strategic risk?

MR. BUDDEN: Yes, from the project costs. Are you suggesting that the –

MR. HARRINGTON: No, strategic risks are always excluded from the project, you know, base capital costs.

MR. BUDDEN: Yeah, well, obviously it's not –

MR. HARRINGTON: We've been through that.

MR. BUDDEN: – the capital cost – yeah.

MR. HARRINGTON: Yeah, we've been through that.

MR. BUDDEN: Well, if we put it that way, would it justify perhaps the exclusion of the strategic risks from the CPW comparison?

MR. HARRINGTON: Well, the strategic risks were never involved – never included in the CPW analysis, because if you included strategic risks on one side – and as Mr. Kast, I think, sitting here a few weeks ago, stated that if you included strategic risk on the connected island, the Muskrat Falls-type project, you would have to include strategic risks on the Isolated Island, and that would throw the balance out even more.

So the CPW analysis was done at – without strategic risk on either side. It was done at a P50 level, apples to apples.

MR. BUDDEN: Okay.

MR. HARRINGTON: That's it.

MR. BUDDEN: I'm certainly not going to concede that point, but nor am I gonna argue it, because we've argued it elsewhere, but –

MR. HARRINGTON: Okay.

MR. BUDDEN: I have my answer.

MR. HARRINGTON: Thank you.

MR. BUDDEN: Mr. Harrington, can you – and think carefully about this – can you think of any recommendations with respect to the determination of project cost estimates, which you made to the executive in the lead up to DG3, which executive declined to accept? Can you think of anything?

MR. HARRINGTON: No.

MR. BUDDEN: Okay. So any –

MR. HARRINGTON: We were totally clear, up front and transparent.

MR. BUDDEN: Okay. So if there was anything excluded or included, it wasn't done over your objections?

MR. HARRINGTON: Let me think about that question. It's quite a complicated – can you repeat it?

MR. BUDDEN: Of course I can.

MR. HARRINGTON: Yes, please.

MR. BUDDEN: My question is – obviously, we've all heard from you that it ultimately was a decision of the executive and, I guess, ultimately the board, what numbers to go forward with – not yours, we realize that. Having said that, can you think of anything that you might have recommended to the board using a different P-factor including something, excluding something, any particular recommendation that you might have made to the executive, rather, that the executive declined to accept that you believe may have had an impact on the – on these numbers?

MR. HARRINGTON: No, I can't.

MR. BUDDEN: Okay.

Page 99 of the – of your interview transcript, the first one – the one of July. The question there – or really something you said that I don't understand that I want to –

MR. HARRINGTON: Which page?

MR. BUDDEN: It's page 99 of your first interview, which you don't actually have. But I'll let you have a look at it and –

MR. HARRINGTON: Okay. Thanks, Mr. Budden. You've been (inaudible) –

MR. BUDDEN: (Inaudible) perhaps you can just read the part that's highlighted in blue –

MR. HARRINGTON: Yeah.

MR. BUDDEN: – and tell us what you meant by that?

MR. HARRINGTON: The whole thing?

MR. BUDDEN: Just the part I've highlighted in blue.

MR. HARRINGTON: The way that it did work out is the CEO determined that, no, I'm gonna stick to 2017 'til such time as the contracts – contractors come back and tell me different.

MR. BUDDEN: Okay. Tell us a bit more about that. Do you recall him specifically saying that? Was that your sort of general impression of Mr. Martin's view of things? Just elaborate a little bit if you could.

MR. HARRINGTON: No, well, you know, this all goes back to the schedule issue, and you know, we were – you know, had a higher degree of confidence in the work that was done by Mr. Lee Stanton and SNC, the very detailed schedule. So we had confidence in that. We – Mr. Martin also knew and was very aware and supportive of the mitigation actions that we were taking with regards to: number one, the award of the contracts prior to sanction, which, you know, that was quite a bold step to do that; the second thing, he was very well aware of the actions that we'd taken to ensure that labour availability wasn't going to be a problem; and thirdly, he was very aware of the work that we'd done regarding productivity going back to 2008 when we engaged someone from – well, a very – a professor from the Calgary university to come and do an efficiency and productivity analysis.

We also developed, in 2010 that is, a productivity improvement program or plan. We were working with the unions to identify, you know, where in other projects where productivity issues became a problem. And we were actively mitigating them and incorporating those things into the labour agreements, and some of the improvements in the labour agreements over the previous ones which, you know, would increase the opportunity to the contractors for better productivity.

So all of those things being said, right, what we – he was going to stick with 2017 – and that was his call – until such time as the contractors came back and tell me different. Well, the contractors did come back and they said they could do – they could meet the schedule and they were prepared to put liquidated damages to the amount of \$75 million if they didn't achieve the schedule that they had agreed to. So we had this feedback from the contractors and this is – you know, this is after sanction so I'm probably –

MR. BUDDEN: Yeah.

MR. HARRINGTON: – straying into an area that I shouldn't stray, Commissioner.

MR. BUDDEN: Well, I'll stop you there because I guess I'm mostly interested in when was this decision made to stick to 2017 or as it's worded there? Well –

MR. HARRINGTON: Around about sanction time, yeah.

MR. BUDDEN: Okay.

MR. HARRINGTON: Yeah.

MR. BUDDEN: So it was a pre-sanction decision that played out later.

MR. HARRINGTON: Yes.

MR. BUDDEN: Okay. Fair enough.

MR. HARRINGTON: Yeah. Yeah.

MR. BUDDEN: Your own company, Erimus, it's – is the name of your own personal company?

MR. HARRINGTON: That's correct. Yes.

MR. BUDDEN: Okay.

So do I understand correctly that other than yourself, no other shareholder or employee of Erimus was –

MR. HARRINGTON: And my wife.

MR. BUDDEN: Pardon?

MR. HARRINGTON: And my wife.

MR. BUDDEN: Yeah, I understand your wife is also a shareholder and partial employee.

MR. HARRINGTON: Yeah, yeah.

MR. BUDDEN: But I – my understanding is that she was not an employee of the – with regard to the Muskrat Falls Project.

MR. HARRINGTON: All right, absolutely, but from a company perspective –

MR. BUDDEN: Yeah.

MR. HARRINGTON: – right.

MR. BUDDEN: Sure, you might’ve hired her to do the books or something, but she wasn’t on a Muskrat Falls-related payroll.

MR. HARRINGTON: She didn’t work on the project, no.

MR. BUDDEN: And nobody other than yourself was.

MR. HARRINGTON: That’s correct.

MR. BUDDEN: Okay and you had no equity interest in any other company that had –

MR. HARRINGTON: I have no shares or equity or financial reward from any other company.

MR. BUDDEN: Okay.

Perhaps we could call up Exhibit 00998. That’s an organizational chart, Mr. Harrington. I’m just going to take my notes back from you, if I may.

MR. HARRINGTON: Oh, sorry. There you go, Mr. Budden. And this one is not mine either –

MR. BUDDEN: (Inaudible.)

MR. HARRINGTON: – so, yeah, I’m collecting them.

MR. BUDDEN: This is the Lower Churchill organizational chart and I’d like you to bring to page 9 of this, perhaps, Madam Clerk.

And I’m most interested – to the degree that I can read it – I see working from the right I see an “Environmental and Aboriginal Affairs Manager, S. Pellerin.”

MR. HARRINGTON: Yeah.

MR. BUDDEN: Who is that person?

MR. HARRINGTON: That’s Mr. Steve Pellerin.

MR. BUDDEN: Okay. And from this chart it would appear that he answered to yourself. Is that correct?

MR. HARRINGTON: It shows it on the chart that way, but in reality, at this point in time, myself and Mr. Bennett, you know, we had so much on our plates that we had to try and divide things up and this being such a high-profile piece of work that Mr. Bennett took, you know, control and direction of the environmental assessment process. He attended the EA hearings, you know. He was the face of that, right?

MR. BUDDEN: Okay. Well, that my signify –

MR. HARRINGTON: So even though it shows reporting to me, in practice, during that point in time at least, he was reporting through to Gilbert.

MR. BUDDEN: Sure. That may simplify the rest of my handful of questions.

So who would be the most appropriate person to answer questions with respect to the environmental assessment and mitigation measures? Would that be yourself or Mr. Bennett?

MR. HARRINGTON: I would say Mr. Bennett.

MR. BUDDEN: Okay.

MR. HARRINGTON: He’d give you a more fulsome answer than I could.

MR. BUDDEN: Pardon?

MR. HARRINGTON: He could give you a more fulsome answer than (inaudible).

MR. BUDDEN: Okay. Sure.

And with respect to responding to the JRP report and the various requests and recommendations in that report, who'd be the most appropriate person?

MR. HARRINGTON: It would be Mr. Bennett.

MR. BUDDEN: Okay.

And the project team, generally, it's response to the JPR report; any steps that were taken, and so forth, again that'd be Mr. Bennett, I assume?

MR. HARRINGTON: Yes, that would be correct.

MR. BUDDEN: Okay.

And anything to do with Aboriginal, Indigenous relations – again, Mr. Bennett?

MR. HARRINGTON: Yes.

MR. BUDDEN: Okay.

MR. HARRINGTON: Mr. Bennett.

MR. BUDDEN: And – okay, I think those are all my questions for you.

Thank you, Mr. Harrington.

MR. HARRINGTON: Thank you, Mr. Budden.

THE COMMISSIONER: All right.

Edmund Martin?

MR. SMITH: No questions, Mr. Chairman.

THE COMMISSIONER: Okay.

Kathy Dunderdale?

MR. GRANT: No questions, Commissioner.

THE COMMISSIONER: Former Provincial Government Officials?

MR. T. WILLIAMS: No questions, Mr. Commissioner.

THE COMMISSIONER: Julia Mullaley, Charles Bown?

MR. FITZGERALD: No questions.

Thank you.

THE COMMISSIONER: Okay.

Robert Thompson?

MR. COFFEY: Good afternoon, Mr. Harrington.

My name is Bernard Coffey. I represent Robert Thompson.

MR. HARRINGTON: Good afternoon, Mr. Coffey.

MR. COFFEY: (Inaudible.)

Ms. O'Brien asked you at times about whether or not you dealt with Mr. Bennett, Gilbert Bennett, in respect to certain matters.

MR. HARRINGTON: Yes.

MR. COFFEY: You recall that?

MR. HARRINGTON: Yes.

MR. COFFEY: And at one point you responded: I would discuss these matters with Mr. Bennett because we were, you know, we were pretty close working hand in hand on all matters. Okay?

MR. HARRINGTON: That's right.

MR. COFFEY: So I'm gonna ask you – could you tell us, please, between May of 2010, which is when the Régie decision was handed down –

MR. HARRINGTON: Mm-hmm.

MR. COFFEY: – that's been referred to throughout the Inquiry – and sanction in

December of 2012 – and I appreciate that covers more than two years. But what would fall into the category of working hand in hand on all matters? I mean, how did – and you just – in fact just then responded to Mr. Budden by saying, you’re – yourself and Mr. Bennett divvied up the work.

MR. HARRINGTON: Yeah.

MR. COFFEY: So perhaps you could, in a concrete way, with some illustrations –

MR. HARRINGTON: Okay.

MR. COFFEY: – explain that.

MR. HARRINGTON: Well, the first illustration would be the environmental assessment and the Aboriginal that we’ve just described. Anything to do with the Emera negotiations would generally fall under Mr. Bennett working with the other members of the Nalcor team. I would be partly involved in that when it came to the Joint Development Agreement and the responsibilities that were being talked about with regards to how the Lower Churchill Project director would have some involvement and influence over some of the decisions that the Emera team – project manager, Mr. Brennan, would be making.

When it comes to the development of all of the deliverables required for – to meet the DG3 decision, you know, the comprehensive list of procedures and analysis and whatever, that would, generally, would be falling under myself and I would be spearheading that, delegating that to the various people within the team. Whilst at the same time, you know, we were then mobilizing to the Torbay Road offices, so there was a shift in how we were split up. So some of us remained in the offices at Hydro Place and others were then relocated to Torbay Road. So we had to set up that office.

MR. COFFEY: Okay. So as we –

MR. HARRINGTON: We had to get –

MR. COFFEY: – if I could just –

MR. HARRINGTON: Sure.

MR. COFFEY: – (inaudible) in case I forget it. So it’s between yourself and Mr. Bennett who ended up where, physically?

MR. HARRINGTON: Physically, both of us were – he’s on the sixth floor, so he’s on the executive floor; I was on the fifth floor, which is the floor below, obviously –

MR. COFFEY: Okay.

MR. HARRINGTON: – for a period of time. But when things started getting very busy at Torbay Road, which they did in –

MR. COFFEY: Yes.

MR. HARRINGTON: – 2011, I relocated to there.

MR. COFFEY: Okay, great, thank you. Yeah.

MR. HARRINGTON: Yeah, (inaudible).

MR. COFFEY: Go ahead, please.

So you were describing just then –

MR. HARRINGTON: Train of thought, sorry.

MR. COFFEY: – one of the instances then. So the move to Torbay Road was – were you raising that in the context of that was kind of within your umbrella?

MR. HARRINGTON: Yes.

MR. COFFEY: Shepherding that?

MR. HARRINGTON: Yes, shepherding –

MR. COFFEY: Okay.

MR. HARRINGTON: – that because the – and then of course the SNC, the EPCM contractor was mobilizing as well. So we were setting up the – all of that interfacing and getting the contract sorted out with them and making sure that we had all of the responsibilities –

MR. COFFEY: Yeah.

MR. HARRINGTON: – clear and getting the procedures –

MR. COFFEY: Okay.

MR. HARRINGTON: – that we needed throughout that period. There was an awful lot of development through that period of processes, procedures to make sure that we had a project management system in place.

MR. COFFEY: And so that fell to you?

MR. HARRINGTON: That fell to me.

MR. COFFEY: Okay, go ahead.

MR. HARRINGTON: And then in addition to that, then we had the supply chain. So the supply chain is all talking about the long lead items that –

MR. COFFEY: Mm-hmm.

MR. HARRINGTON: – you would need to do in order to make a, you know, a construction period perhaps three years, four years down the line, you know, and so one of the key things was the turbine and generator sets.

MR. COFFEY: Yes.

MR. HARRINGTON: So that was something that we needed to kick off. So that was a kind of a joint thing because, you know, Mr. Bennett has a, you know, a high technical interest in the – a lot of the equipment, so I was responsible to getting the – all of the paperwork together to get that contract kicked off. He was very deeply interested in the model testing that would be required.

So it was a kind of – that's what I mean a hand-in-glove thing. It wasn't a hard line, Mr. Coffey, it was –

MR. COFFEY: Mm-hmm.

MR. HARRINGTON: – you know, in many cases Mr. Bennett had a, you know, real interest in the technical aspects of certain things and he would then – and we would encourage that, he would be getting involved in that with us. And meanwhile, we were pushing ahead getting the project management system up and running.

MR. COFFEY: Okay.

So is that –

MR. HARRINGTON: So –

MR. COFFEY: It certainly helps me. I'm going to try to articulate now my understanding of it, and correct me if I have it wrong. Okay?

MR. HARRINGTON: I will.

MR. COFFEY: That there were a number of different subject matter areas, and you've just described, if not all of them certainly quite a number of them, that yourself and Mr. Bennett ended up in some instances dealing with – in a personal way – almost entirely that area. In some areas there was overlap and they'd be the areas where you would be working, kind of, hand-in-hand, as it were to use your phrase.

MR. HARRINGTON: Yeah, so one area where it was, you know, pretty much exclusive –

MR. COFFEY: Yes

MR. HARRINGTON: – I think that was any dealings with the shareholder.

MR. COFFEY: Mm-hmm. And in respect of that, who did that?

MR. HARRINGTON: Gilbert Bennett and Mr. Martin. Gilbert Bennett did it at the deputy minister meeting level, I think –

MR. COFFEY: Yes.

MR. HARRINGTON: – which is a bi-weekly meeting, and, you know, and then Mr. Martin would be, you know, I guess the premiers and other. I don't really know so I'm speculating so I shouldn't do that. But you know –

MR. COFFEY: That was your understanding.

MR. HARRINGTON: Yes.

MR. COFFEY: Yeah.

MR. HARRINGTON: We, as project team, were kind of separated from that. Similarly, anything to do with, you know, the public face of the project, that would be Mr. Martin and Mr. Bennett, and sometimes Mr. Sturge when it

came to the annual general meetings, those types of things.

MR. COFFEY: Okay.

Now, in respect of that division or divvying up of responsibilities, was that ever formally recorded in any way or kind of sit down and map it out?

MR. HARRINGTON: No. Well, we used to meet on a weekly basis, you know –

MR. COFFEY: Yeah.

MR. HARRINGTON: – to, you know, what's ahead of us this week, you know. He would say to me: Are you travelling this week, you know, are you going to China or wherever, you know, to look at some factory or whatever? And if that was the case, then I'd say: Well, can you take care of this?

MR. COFFEY: And you've described that in an earlier instance –

MR. HARRINGTON: Yeah.

MR. COFFEY: – to Ms. O'Brien yesterday, I believe. So, over time it evolved in an informal way, and you've described that.

The – in respect of what you referred to as the public face, and as well, dealing with the shareholder, did you ever have occasion in that period between May of 2010 and December of 2012, to deal with the shareholder? Did you ever make any presentations to the shareholder?

MR. HARRINGTON: I'm searching.

MR. COFFEY: Oh, no, no, take your time.

MR. HARRINGTON: If it would be, it would be – no – I did have dealings with a shareholder –

MR. COFFEY: Yeah.

MR. HARRINGTON: – with regards to the Vale renegotiations.

MR. COFFEY: Oh, yes, well, that – no, I – yes, I'm –

MR. HARRINGTON: You're talking about the project?

MR. COFFEY: I'm talking about this project, yeah.

MR. HARRINGTON: Okay.

So, no –

MR. COFFEY: Okay.

MR. HARRINGTON: – I didn't.

MR. COFFEY: Yeah. And that was my understanding but I just wanted to –

MR. HARRINGTON: Yeah, okay. That's fine.

MR. COFFEY: – clarify that.

Now, you have indicated that in terms of gathering paperwork and making sure it was done, that in respect of – my understanding is a number of things that fell to you.

I'm going to ask you in particular about the decision support packages at DG2. As I understand it, there was one for the Gatekeeper/CEO and one for the Nalcor board of directors. Do I have them all?

MR. HARRINGTON: Yes.

MR. COFFEY: Okay. And who was responsible for preparing those?

MR. HARRINGTON: The Gatekeeper one was just a collection of information. So everyone would be supplying it, be they from the project team, be they from financing, be they from environmental assessment, being from wherever. So who was actually coordinating and compiling –

MR. COFFEY: Yes.

MR. HARRINGTON: – all that? I can't remember. I don't know, right?

MR. COFFEY: Yeah.

MR. HARRINGTON: But it's probably – it might have been an administrative person to do

that because everyone was feeding information. It ended up, as I mentioned, you know, a pile of information.

MR. COFFEY: Yes. And we have an electronic copy of it here.

MR. HARRINGTON: Yeah.

And then Mr. Martin, the Gatekeeper, said, well, let's – I can't be taking that in to the board.

MR. COFFEY: No, I'll get to that in a minute.

MR. HARRINGTON: Okay.

MR. COFFEY: I'll get to DG3. I – to DG2.

MR. HARRINGTON: Oh no, no –

MR. COFFEY: Okay. Okay.

MR. HARRINGTON: – DG2 the same thing. He said I can't be taking that in and showing that to the board (inaudible).

MR. COFFEY: Oh, no, yeah, I'm going to get to that even in a moment, please.

MR. HARRINGTON: All right.

MR. COFFEY: I want to deal with the package for Mr. Martin, okay?

MR. HARRINGTON: Right.

MR. COFFEY: How was it decided as to what would go into that pile that ended up in Mr. Martin's office?

MR. HARRINGTON: There was a kind of an index produced.

MR. COFFEY: Okay, who created the index? Do you know?

MR. HARRINGTON: I think – was it something that – no that was a DG3 one. I don't know whether there was an actual document produced which said these are the deliverables for DG2. If there was, I can't remember but that would be it. That would be the index.

MR. COFFEY: Okay.

MR. HARRINGTON: DG2 deliverables.

MR. COFFEY: And you can't recall who created the list of deliverables for DG2?

MR. HARRINGTON: No, it's going back, what, eight years?

MR. COFFEY: Oh, yeah, I understand that. Yeah.

MR. HARRINGTON: No, I can't.

MR. COFFEY: Would it have been somebody in your office, as opposed to Mr. Bennett's or Mr. Martin's office?

MR. HARRINGTON: Again, I wouldn't – I couldn't say –

MR. COFFEY: Okay.

MR. HARRINGTON: – for sure. I think it was at Hydro Place. I seem to remember but –

MR. COFFEY: Yes.

MR. HARRINGTON: – again, I'm stretching here, so I shouldn't do that.

MR. COFFEY: Okay.

Well, we do know that a significant number of – at least in pages – were delivered to Mr. Martin as part of the decision support package.

MR. HARRINGTON: All right.

MR. COFFEY: Do you know whether or not it was delivered to Mr. Martin all at one time, like, on a – gone in and dumped on his desk? Or was it – do they come in a piece at a time and add to the pile, add to the pile?

MR. HARRINGTON: I'm sorry, I can't –

MR. COFFEY: Okay, all right.

MR. HARRINGTON: – I can't remember.

MR. COFFEY: And I appreciate that and –

MR. HARRINGTON: Yeah.

MR. COFFEY: – so that’s going on. Now, you started to tell the Commission about – and I cut you off and I – well, I apologize –

MR. HARRINGTON: (Inaudible.)

MR. COFFEY: – but I (inaudible) deal with that. You said that Mr. Martin had this stack of paper at DG2 and you were about to tell us what he said should be done with it or suggested be done.

MR. HARRINGTON: Well, he wanted a condensed version because there was – I mean, you know, showing a board a procedure for, you know, ordering widgets, you know, is not really valuable to the board. So I think what he wanted to do is have a condensed version of the, you know, the pertinent information, I would say.

MR. COFFEY: And who created that, do you know?

MR. HARRINGTON: Again, I’m sorry, I –

MR. COFFEY: Okay. It wasn’t you I take it?

MR. HARRINGTON: I wasn’t me, I don’t think, no. I would remember if it was me.

MR. COFFEY: Yes, I would suggest it would stand out in your mind.

MR. HARRINGTON: Yeah.

MR. COFFEY: So whoever did it – and how about the choice as to what went into the package for the board?

MR. HARRINGTON: That might’ve been Mr. Martin –

MR. COFFEY: Okay, it wasn’t – was it you, is what I’m –

MR. HARRINGTON: No, it wasn’t me.

MR. COFFEY: And to your – well, whomever it was, it wasn’t you. And you’re not aware of exactly, necessarily, who it was?

MR. HARRINGTON: Yes, it’s – yeah. Going back eight years is tough for me.

MR. COFFEY: Yeah.

Now, as I understand it, these decision support packages – and I don’t have the Exhibit number immediately at hand, but aren’t they signed off on in the cover page, or the second page?

MR. HARRINGTON: I don’t think they were.

MR. COFFEY: Okay. And I stand to be corrected –

MR. HARRINGTON: Yeah.

MR. COFFEY: – and it may not be – oh, oh, this is the –

MS. O’BRIEN: (Inaudible) that’s the one for DG3.

MR. COFFEY: Okay, well DG3, which – thank you very much, Ms. O’Brien. It’s Exhibit P-00121 –

MR. HARRINGTON: There’s lots of signatures on it, right?

MR. COFFEY: Oh yes there are, there’s – certainly on DG3 there are. And I – would DG2 have had a similar signature page?

MR. HARRINGTON: I’m – I can’t – I’m still – I can’t remember that one.

MR. COFFEY: If a signature page existed for DG2, who would’ve created that kind of list for signatures that were gonna be required?

MR. HARRINGTON: So let’s look at –

MR. COFFEY: We’ll look at this one –

MR. HARRINGTON: (Inaudible.)

MR. COFFEY: – yeah, this may help you; this is DG3.

MR. HARRINGTON: – this is probably helpful, because this is a three stage – this is a three-stage process. So stage 1 is basically the – a lot of the project team, a lot of the people reporting to me, right? “This is to declare/verify that the required level of readiness has been achieved and that any remaining work

associated with the Gateway Phase 3 is not considered to be a showstopper for the Decision Gate 3 consideration.

“Where appropriate, a readiness report and deficiency list is attached to address any incomplete work, to identify any work-around and/or mitigating steps taken.”

And if you step down you’ll see –

MR. COFFEY: (Inaudible.)

MR. HARRINGTON: – you know, the RFO manager of project controls, deputy project manager, Steve Pellerin from the EAA and so it goes on. And then, if you go to the next page – no that’s –

MR. COFFEY: (Inaudible.)

MR. HARRINGTON: – just carried on –

MR. COFFEY: (Inaudible.)

MR. HARRINGTON: – that’s me.

MR. COFFEY: Page 4 actually has your signature on it.

MR. HARRINGTON: So this is the listing of the key deliverables, right?

MR. COFFEY: Yes.

MR. HARRINGTON: It states then, saying okay, well that one’s 100 per cent – tick the box. This one’s 98 per cent complete, if you can see there. And it says there’s a – excuse me – there’s an estimate report and basis of estimate produced, but not yet located – it hasn’t been filed yet.

MR. COFFEY: Yeah.

MR. HARRINGTON: So it’s kind of a very – summary way of – instead of attaching all of those documents, you’re just stating they’re available. They’re done.

MR. COFFEY: Okay, now –

MR. HARRINGTON: If somebody wanted to go get them, they could go get them from document control.

MR. COFFEY: Okay, so – and would there – there may be a similar document in a similar sort of formatting at the beginning of DG2 or DSP. Do we have the DSP, Ms. O’Brien? I apologize, Mr. Commissioner, I should’ve had that –

MS. O’BRIEN: I’ll (inaudible).

MR. COFFEY: Okay, thank you.

MR. HARRINGTON: So if you scroll down there’s more here.

So then you go – and it goes on and on and on and on.

MR. COFFEY: Now this particular document electronically is 525 pages.

MR. HARRINGTON: Yes, so then you come to Step 2, which is the recommendation, endorsement and approval.

MR. COFFEY: That’s at page 9 for the record – go ahead.

MR. HARRINGTON: Yeah, yeah. And then, you know, this is to confirm and it goes on and on and on. And then you – what you – the signal – sorry, the signature is here, and now looking at myself and the Executive Committee.

MR. COFFEY: Yeah –

MR. HARRINGTON: So this – these are the VPs, the people on the sixth floor, generally. And then it’s approved by Mr. Bennett and Mr. Sturge. And then if you go to carry on, Step 3 is the final signature by the Gatekeeper stating that Gate X – it should’ve been Gate 3 – has been achieved.

MR. COFFEY: Yes. Yeah.

MR. HARRINGTON: So this is a – the three-stage sign-off that’s part of the Gateway process.

MR. COFFEY: Okay. So if I could back then to DG2 – thank you.

MS. O'BRIEN: (Inaudible.)

MR. COFFEY: The board? Oh, thank you, Ms. O'Brien.

And it's your memory that there was a fairly thick decision support package created at DG2 for Mr. Martin?

MR. HARRINGTON: That's correct.

MR. COFFEY: And you've explained that Mr. Martin, upon examining it, felt that it should be summarized for the board – the board's package?

MR. HARRINGTON: Correct.

MR. COFFEY: And you don't recall who actually did the –

MR. HARRINGTON: No –

MR. COFFEY: – that summary?

MR. HARRINGTON: – I don't.

MR. COFFEY: Would you have seen the package yourself before it went to the board?

MR. HARRINGTON: Not generally, no. I don't – it's not my area.

MR. COFFEY: I'm not suggesting it – I'm just asking you, okay, so –

MR. HARRINGTON: Yeah. I may have done. I may have looked at it, but – yeah, I wouldn't be the guy who says, oh, okay, this can go to the board now, you know?

MR. COFFEY: And as well, you wouldn't – I take it from that comment you wouldn't be the person who was deciding what should or shouldn't be included when –

MR. HARRINGTON: Yeah, I might have –

MR. COFFEY: – to go to the board?

MR. HARRINGTON: You know, there might – it might have been provided to me just to look at it for completeness from a project perspective. But I – you know, again, it was eight years ago.

It's a bit tough for me to remember everything here.

MR. COFFEY: So – now, at DG3 – and we do have – this is the decision support package for Mr. – for the Gatekeeper, for Mr. Martin.

MR. HARRINGTON: Yeah.

MR. COFFEY: It's Exhibit P-00121. And as I've just mentioned, it's 525 pages long. And – so if I understood your evidence earlier – and I – maybe I misunderstood you. I think, yesterday, you indicated that at the DG3 process, the package for the Gatekeeper was shorter?

MR. HARRINGTON: Yes.

MR. COFFEY: So this is shorter than the DG2 one?

MR. HARRINGTON: Yes, and it's still quite long.

MR. COFFEY: Okay.

Now, at the DG3 stage, the decision support package for the board – well, first of – I should go back a bit. The DG3 stage, who was involved in creating the package for Mr. Martin?

MR. HARRINGTON: Again – I think I mentioned previously, to Ms. O'Brien, there's a collection – I mean, if you look at the content here, there's project-related information; there's financing –

MR. COFFEY: Yeah.

MR. HARRINGTON: – information; there's load forecasting information, and there's Investment –

MR. COFFEY: Yes.

MR. HARRINGTON: – Evaluation (inaudible). So it's a compilation –

MR. COFFEY: Yeah.

MR. HARRINGTON: So –

MR. COFFEY: I appreciate that.

MR. HARRINGTON: Yeah.

MR. COFFEY: And I understand the engineers will provide the engineering work, the finance people provide that – I – I understand that. What I'm asking about, though, is that – who decided what sort of information should be included? In other words, who created the index that would have to be filled out?

MR. HARRINGTON: I think Ms. O'Brien –

MR. COFFEY: Yes.

MR. HARRINGTON: – showed us an exhibit earlier on – and I can't for the life of me remember which one it was. But there was –

MR. COFFEY: (Inaudible.)

MR. HARRINGTON: – a document produced, signed off, which listed the deliverables for DG3, am I correct –

MR. COFFEY: Oh, yes.

MR. HARRINGTON: – Ms. O'Brien?

MR. COFFEY: Yeah, and I don't doubt that, Mr. Harrington. Mr. Harrington, you can take it as a given, I understand there would have been a list of deliverables, okay? I'm asking who created the list of deliverables.

MR. HARRINGTON: It would be on the sign-off page.

MR. COFFEY: Okay, thank you.

So – that's fine. If you – you can't recall it. Was it – do you recall was it you?

MR. HARRINGTON: I may have signed off, but I may have not been the final approval. I'd have to have a look at the (inaudible).

MR. COFFEY: Okay, so it'll be there on the page, is what you're telling me. That's fine. Thank you.

MS. O'BRIEN: (Inaudible) have the exhibit number.

MR. COFFEY: Thank you – if you – that's –

MS. O'BRIEN: P-011 –

MR. COFFEY: P-11 ...?

MS. O'BRIEN: Eighty-five. P-01185.

MR. COFFEY: P-01185, thank you very much.

MS. O'BRIEN: It's the final DG3 deliverables (inaudible).

MR. HARRINGTON: There you go. So prepared by Mr. Kean, checked by Mr. Peddle, signed off by Mr. Power and myself, and finally Mr. Bennett would approve it.

MR. COFFEY: Okay, so Mr. Kean, who reported directly to you.

MR. HARRINGTON: Yeah.

MR. COFFEY: He was the one who created the list of deliverables?

MR. HARRINGTON: He was just the one who said, okay, I'll prepare this and, you know, upon – you know, put it up for your approval.

MR. COFFEY: Now, at DG3, again, we have the 525-page document for Mr. Martin. Who created the decision support package for the board, do you know?

MR. HARRINGTON: I don't think there was a separate one.

MR. COFFEY: They got a 525 page –

MR. HARRINGTON: I don't even know whether that went to the board, but I don't think there was a separate one. I don't think so.

MR. COFFEY: Okay.

Again, in relation to what went to the board – whatever, if anything went to the board – what went, that wasn't your decision?

MR. HARRINGTON: That's correct.

MR. COFFEY: It would be either Mr. Bennett or Mr. Martin?

MR. HARRINGTON: Yes.

MR. COFFEY: There is ...

THE COMMISSIONER: I just noticed the time there, Mr. Coffey, did you want to take a break, or is this a good –

MR. COFFEY: Yes, please, that will help, and I'll come back and finish fairly promptly.

THE COMMISSIONER: Okay.

MR. COFFEY: Thank you.

THE COMMISSIONER: Let's take our 10 minutes then.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Mr. Coffey –

MR. COFFEY: Thank you, Commissioner.

THE COMMISSIONER: – when you're ready.

MR. COFFEY: Thank you.

If I could bring up, please, P-00078.

THE COMMISSIONER: P-00078?

MR. COFFEY: Yes. Commissioner, it's not on the – Mr. – it will come up on the screen.

Okay, this is a document – November 16, 2010. It is the – it's the – styled or titled –

MR. HARRINGTON: Yeah.

MR. COFFEY: – the Gatekeeper's Decision Support Package: Request –

MR. HARRINGTON: Mm-hmm.

MR. COFFEY: – for Approval to Proceed to Gateway Phase 3.

MR. HARRINGTON: Mm-hmm.

MR. COFFEY: Now, this particular document is 67 pages. I take it that – is this the document that went to Mr. Martin?

MR. HARRINGTON: Yes.

MR. COFFEY: And I have to – I will acknowledge that I was under the impression that there was a much – myself – there was a much longer document at DG2, but apparently this one is just over 10 per cent of the length of the one at DG3.

MR. HARRINGTON: Can I just check the date –

MR. COFFEY: Sure, you go (inaudible) –

MR. HARRINGTON: – of this? So this is the DG2 one.

MR. COFFEY: Oh yes, this is DG2.

MR. HARRINGTON: Sorry. Yeah.

MR. COFFEY: So at DG2 – if we can just scroll down, please, Madam Clerk? Keep going – thank you. That's a blank page. And then here – right there. It's a table of contents.

MR. HARRINGTON: Right.

MR. COFFEY: And the executive summary takes up eight pages.

MR. HARRINGTON: Hmm.

MR. COFFEY: Continue on, please. And then it goes on from there.

And in this particular one, there's no sign – I don't believe there's any sign off pages.

MR. HARRINGTON: No.

MR. SIMMONS: (Inaudible) there is.

MR. COFFEY: What's that, sorry?

MR. SIMMONS: (Inaudible) the end.

MR. COFFEY: At the end. Oh, yeah. Okay. Very end. Mr. – thank you.

If we could go to the very end, please.

MR. HARRINGTON: (Inaudible.)

MR. COFFEY: Yes, there we are.

So Mr. Martin, and go up one, please. Go up, please. Thank you. So, yes, thank you. And Mr. Simmons had mentioned that to me on the (inaudible).

So the process, then, at DG2 – at least the documentation that was put before Mr. Martin was a lot less detailed. Would you agree, Mr. Harrington?

MR. HARRINGTON: Yes. There was – hmm – there was a lot more detail, but this is the condensed version.

MR. COFFEY: Okay.

MR. HARRINGTON: Yeah.

MR. COFFEY: And so what's your recollection of that package at the DG2 stage? Like, what's your (inaudible) –

MR. HARRINGTON: This amount (inaudible) –

MR. COFFEY: – yeah, and you're gesturing, perhaps, 18-inches high, or –

MR. HARRINGTON: Yeah, yeah –

MR. COFFEY: – something –

MR. HARRINGTON: – yeah, yeah –

MR. COFFEY: – of that (inaudible), okay –

MR. HARRINGTON: Yes, I've got that. It's in my – one of my cabinets.

MR. COFFEY: Okay.

So just leave that –

MR. HARRINGTON: So DG2 was basically saying: Okay, well, you know, this is – we're not sanctioning the project, but here we are, we know we're going to move ahead with the

EPCM contract, are we gonna do more site investigation –

MR. COFFEY: Yes.

MR. HARRINGTON: – work? It's – so it's a, you know, it's a budgetary thing is all. There would be an AFE to back this up – an approve for expenditure submission.

MR. COFFEY: Now, yesterday in answering a question that Ms. O'Brien asked you, you indicated that – because she was asking you about the – what occurred after the bifurcation of the entire project by Mr. Marshall – Stan Marshall.

And you responded: Mr. Bennett has a lot more time to attend to matters on the generation side of things. And then I'm leaving out a couple of words: Previously, he was stretched fairly thin across lots of areas – and a couple of words left out – but now – a couple of words left out – we see him a lot more.

So I'm gonna ask you about your comment to Ms. O'Brien that previously – which presumably is before the Stan Marshall bifurcation – Mr. Bennett you described, was stretched fairly thin across lots of areas. What did you mean by that?

MR. HARRINGTON: This is Phase 2?

MR. COFFEY: Yeah – no, this is –

MR. HARRINGTON: Am I allowed to –?

MR. COFFEY: No, no, no, this is not Phase 2. At this point (inaudible) – okay, I'll ask you this, to have you zone in, I'm not going after December 2012, we'll just assume for the moment – ignore that.

Between May of 2010 and December of 2012 –

MR. HARRINGTON: Right.

MR. COFFEY: – would that comment have applied to Mr. Bennett at that time?

MR. HARRINGTON: Not so much.

MR. COFFEY: Okay.

MR. HARRINGTON: Because, you know, we weren't heavily into construction at that phase, you know, with multiple sites on the go and Strait of Belle Isle and Soldiers Pond and all of the work at Churchill Falls. You know, we had – we were spread over, you know, a long, big area, right?

So at 2010 to 2012 –

MR. COFFEY: Yes.

MR. HARRINGTON: – not so much. And it's basically the – you know, going back to your original question or the first one – the first question you asked me: How was that split organized?

MR. COFFEY: Yes.

MR. HARRINGTON: And it – so I would kind of point to that.

MR. COFFEY: And you – in responding to a question I had before the break, you referred to weekly meetings.

MR. HARRINGTON: Yeah.

MR. COFFEY: In the context of – you know, during which you would discuss, for example, your plans for the following week or the coming weeks and who would be where and who would handle what. Do you remember that?

MR. HARRINGTON: That's – I do remember that.

MR. COFFEY: So which weekly meetings are they?

MR. HARRINGTON: That's just me and Gilbert getting together, either face to face or on the phone.

MR. COFFEY: And was that regularly scheduled?

MR. HARRINGTON: Irregularly scheduled I would say. So we'd try and get together once a week if we could. We didn't have a set time because, you know, we – if we said it was every Monday and I was out travelling or he was out travelling, then we'd miss each other. So we'd

try and connect once a week by phone or face to face.

MR. COFFEY: And the purpose of doing so was what.

MR. HARRINGTON: To keep each other abreast of ongoing situations, if there was any big issues that we needed to each be aware of. Not necessarily to be able to fix them but just to be able to say, look, I'm – you know, I'll be out of the office for the next three days because I'm dealing with, you know, a court case in somewhere or other.

MR. COFFEY: And you also, earlier this afternoon I believe, said in response to a question – I hope I have it right – we were totally clear, up front and transparent. I believe you made the comment in the context of in your relationship with Mr. Bennett and with Mr. Martin.

MR. HARRINGTON: Absolutely. You know, we made sure that we were putting everything on the table. Everything that we, you know, knew about or felt about, it was out there.

MR. COFFEY: So anything that you felt was important or might – or – well, you felt was important, you would make them aware of it?

MR. HARRINGTON: Yes.

MR. COFFEY: And you presumed that going the other way it was vice versa. That was your understanding.

MR. HARRINGTON: Yes, to the degree that, you know, I needed to know. I mean, you know, political matters I didn't need to know about. And, you know, other matters above my – you know, my area of responsibility. So it – you know, obviously they've got things in their mind that don't necessarily I need to know about because it's their world, right, you know.

MR. COFFEY: Well, could you perhaps give me a concrete example?

MR. HARRINGTON: Well, he wouldn't tell me necessarily that he – you know, he'd had a meeting with the premier and this is what was discussed, for example.

MR. COFFEY: Okay.

MR. HARRINGTON: Yeah.

MR. COFFEY: Thank you, Mr. Commissioner.

MR. HARRINGTON: Thank you.

THE COMMISSIONER: Thank you.

Todd Stanley, Terry Paddon?

MS. VAN DRIEL: Good afternoon, Mr. Harrington.

MR. HARRINGTON: Good afternoon.

MS. VAN DRIEL: My name is Gerlinde van Driel.

MR. HARRINGTON: Hi.

MS. VAN DRIEL: We know each other, of course.

MR. HARRINGTON: Yes, we do.

MS. VAN DRIEL: And I represent Todd Stanley and Terry Paddon.

Just a brief follow-up on a question that Ms. O'Brien asked you this morning in connection with document 00894, P-00894, which is – we don't need to bring it up, but just a briefing note to McInnes Cooper that Nalcor had been asked to prepare.

So this is in connection with the question on page 17. It showed – or on page 19, it showed a diagram showing P1 factor in connection with the first power date for June '17 –

MR. HARRINGTON: Mm-hmm.

MS. VAN DRIEL: – followed by an explanation why June '17 for first power was kept. And then she asked you whether the P1 factor was communicated to Mr. Bennett and Mr. Martin, to which you answered, yes. She asked you whether it was communicated, I guess by you, to Derrick Sturge and you said you don't know or whether anybody had communicated it to Derrick Sturge.

MR. HARRINGTON: That's correct.

MS. VAN DRIEL: Correct?

MR. HARRINGTON: Yes.

MS. VAN DRIEL: And the one question that I didn't hear and that's what I'm asking you here: Did you communicate that to anybody in government: deputy minister, maybe Terry Paddon, minister of – deputy minister of Justice or –

MR. HARRINGTON: No –

MS. VAN DRIEL: – of Natural Resources?

MR. HARRINGTON: – I wouldn't normally do that and I certainly didn't do it in this case.

MS. VAN DRIEL: Right. And do you know whether Mr. Bennett or Mr. Martin communicated this P1 factor?

MR. HARRINGTON: I don't know, no.

MS. VAN DRIEL: You don't know.

MR. HARRINGTON: No, I don't know.

MS. VAN DRIEL: Okay.

Thank you, that's all I have.

MR. HARRINGTON: Thank you.

THE COMMISSIONER: All right, it's 4 o'clock. Did you want to start? We're a little ahead of what I – where I expected to be and I keep – you keep – or you or Mr. Hogan keep coming up just as we're getting close to break. So this is one time where I'm going to recognize that if you want to wait to start tomorrow morning, we can do that, so that it's not broken up.

MR. PEDDIGREW: Right.

THE COMMISSIONER: Or if you want to start this afternoon that is up to yourself.

MR. PEDDIGREW: I am prepared to start, and I think we should still be out of here by 4:30.

I'm sure everyone's anxious to get out and get home.

THE COMMISSIONER: Okay.

MR. PEDDIGREW: And if I do go beyond 4:30, I don't think it'll be much beyond, so...

THE COMMISSIONER: Okay.

MR. PEDDIGREW: Okay.

THE COMMISSIONER: Go ahead.

MR. PEDDIGREW: Good afternoon, Mr. Harrington.

MR. HARRINGTON: Good afternoon, Mr. Peddigrew.

MR. PEDDIGREW: Yes, my name is Chris Peddigrew and I'm representing the Consumer Advocate, so representing the ratepayers of the province.

So I did have some questions for you today, some of which have been answered, but some in follow-up to some of the questions you were asked yesterday and today as well.

Just going back to some of the initial questions yesterday from Ms. O'Brien about your background, your experience, education. And, actually, before I ask you that, your position as project director of the Muskrat Falls Project –

MR. HARRINGTON: Right.

MR. PEDDIGREW: – would it be fair to say that as project director, ultimately you're responsible for delivering a project that's on or as close to schedule and budget?

MR. HARRINGTON: That's correct. I am there to deliver to the approved cost and schedule.

MR. PEDDIGREW: Right. So, ultimately – as if you say now the captain goes down with the ship, you're the person who's ultimately responsible for that. Is that – would that be a fair assessment?

MR. HARRINGTON: Yes. That's my responsibility, to steward to the cost and schedule that's been approved by the board.

MR. PEDDIGREW: Okay. And I believe you said yesterday as well that it was your first – and I think it's accepted that your experience is in the oil and gas industry; this would be your first hydro project?

MR. HARRINGTON: That's right.

MR. PEDDIGREW: And there were some questions about what you might have done to, I guess, educate yourself, taking on a role in a new industry. And I guess I'm just wondering what did you do to educate yourself in the area of hydroelectric projects?

MR. HARRINGTON: What I did, for the first – you know, when I joined in 2006 to 2012 for sanction, I was working with a whole bunch of Hydro people. I didn't do any formal education on – in that matter. So I was working with the – with all of the Hydro people, gaining that knowledge and experience from them. It was kind of on-the-job training.

MR. PEDDIGREW: Any textbooks, anything like that?

MR. HARRINGTON: No, no.

MR. PEDDIGREW: Any journal articles?

MR. HARRINGTON: No, no.

MR. PEDDIGREW: Okay.

So besides immersing yourself with people who worked at Hydro, there was no extra education or –

MR. HARRINGTON: No, I was –

MR. PEDDIGREW: – reading that you did?

MR. HARRINGTON: I was full time trying to get the organization, get the projects and the procedures and the systems up and running.

MR. PEDDIGREW: Okay.

MR. HARRINGTON: I was full time on that.

MR. PEDDIGREW: You worked on several large megaprojects in your career?

MR. HARRINGTON: Yes.

MR. PEDDIGREW: And oil and gas related, for the – I think there was one, I think you said, that wasn't, but for the most part, oil- and gas-related megaprojects. Is that – that's correct?

MR. HARRINGTON: That is correct.

MR. PEDDIGREW: Okay.

The project directors on those types of oil and gas projects, were they people who came with an oil and gas background or did – were they people who had a different background?

MR. HARRINGTON: Generally, they would be from the owner company, so it would be ExxonMobil, it would be Chevron, it would be Petro-Canada. So they would be, you know, people within that particular owner company.

MR. PEDDIGREW: So somebody with an oil and gas background would be –

MR. HARRINGTON: That's correct.

MR. PEDDIGREW: – a project director of an oil and gas project?

MR. HARRINGTON: That would be correct, yes.

MR. PEDDIGREW: Were you involved at all in the Hebron project?

MR. HARRINGTON: No, I was going to join the Hebron project, and I think there was an email –

MR. PEDDIGREW: Yes, yeah.

MR. HARRINGTON: – to that effect earlier, but I didn't join them, no.

MR. PEDDIGREW: Okay. And are you – you're aware that the –

MR. HARRINGTON: Oh, sorry. Yes, I was Nalcor's representative on the technical

committee in the initial days of Hebron before it was actually, finally sanctioned.

MR. PEDDIGREW: Before sanction (inaudible) –

MR. HARRINGTON: So I sat on the technical committee for representing Nalcor on that project. So yes. Sorry, I did – I'd forgotten about that.

MR. PEDDIGREW: Okay.

The Hebron Project has – there's oil production right now, but there's – the project – the construction project went over budget, behind schedule like a lot of megaprojects do. You'd agree with that? You're aware of that?

MR. HARRINGTON: I am aware of that. Yes.

MR. PEDDIGREW: Okay. Within Nalcor, was there any discussion or lessons learned or information sharing between people who worked on the Hebron Project and people who worked on the Muskrat Falls Project about what was learned from Hebron and ways to mitigate risks on the Lower Churchill Project?

MR. HARRINGTON: Yes.

MR. PEDDIGREW: The Muskrat Falls Project?

MR. HARRINGTON: Yes. We – as part of the productivity improvement plan, right? There was benchmarking done with both Long Harbour and the Hebron Project on various trades and production rates, productivity efficiencies, and we actually developed, in part of the productivity improvement plan, specific actions that were taken to identify areas that productivity was falling behind.

And that was part of a submission that we made to Grant Thornton, and I don't know whether the Inquiry counsel got it as well. That was made some months ago, and it was a comprehensive view of all of the – to answer your question very thoroughly – it was, you know, it was a complete binder full of the mitigation steps that had been taken based upon the known areas that of – could potentially improve the output of a, you know, productivity –

MR. PEDDIGREW: Okay.

MR. HARRINGTON: – for any particular trade, so it was very thorough.

And we had the benefit of a gentleman called David Clark, who was the labour relations individual on the Long Harbour project, at least, but he'd also worked in other areas across Canada, and he developed a, you know, the – basically, the plan to try and improve as much as you can the productivity, and that fed into – a bit of a long answer, this, but ...

MR. PEDDIGREW: It's okay. Keep going.

MR. HARRINGTON: But it fed into the negotiations that we did with – we ended up with three special – well, three labour agreements. We had – for one, it was a back-to-back IBEW for the transmission. That was one labour agreement with particular, you know, negotiated terms that we identified would improve the overall output.

Secondarily, there was the Muskrat Falls with the RDTC. Same thing. We, you know, we'd identified things – along with the unions, which they – you know, they were fully co-operative – that would – you know, work teams, that type of thing – that would improve productivity.

And finally, we had another labour agreement with the Labourers, which was for the clearing of the reservoir.

So that was three separate negotiations but all, kind of, tying in with the labour productivity plan that had been established in 2010 and was being worked throughout that time. So yes, there was a lot of – I don't have – I don't think it's – it's not evidence here, but I'm sure it's available out there. I don't know. I'm looking –

MR. PEDDIGREW: Okay.

MS. O'BRIEN: So I'm assuming that this is material that was provided to Grant Thornton for their Phase 2 report, when they're looking at the cost –

MR. HARRINGTON: Okay.

MS. O'BRIEN: – overruns.

MR. HARRINGTON: Yeah.

MS. O'BRIEN: And so issues with the unions and – we were planning on covering –

MR. HARRINGTON: But it was in the Phase 1, as well, because they were interested in it, but I could – I'm not challenging you at all. I've done that enough.

MR. PEDDIGREW: Okay.

So just, you know, I think you did answer the question at the beginning and then elaborated, but I guess my question was about lessons learned from other projects. So I think you mentioned the Long Harbour project. Did you mention Hebron as well, sorry, was that –?

MR. HARRINGTON: Hebron as well.

MR. PEDDIGREW: Hebron as well –

MR. HARRINGTON: Yeah.

MR. PEDDIGREW: – okay.

And so –

MR. HARRINGTON: And Wuskwatim, as well. I think there was a benchmarking done against Wuskwatim. We also had benchmarking information from SNC for the Eastmain and Romaine projects.

MR. PEDDIGREW: Right, okay.

MR. HARRINGTON: So quite a lot of, you know ...

MR. PEDDIGREW: And were you involved in the negotiation of the collective agreements that you referred to?

MR. HARRINGTON: I personally wasn't.

MR. PEDDIGREW: Okay. And who did you say was on behalf of Nalcor?

MR. HARRINGTON: Mr. Lance Clarke –

MR. PEDDIGREW: Okay.

MR. HARRINGTON: – and Mr. David Clark.

MR. PEDDIGREW: Lance Clarke and David Clark.

MR. HARRINGTON: And there was some others, but their names escape me.

MR. PEDDIGREW: And when were they negotiated, do you know?

MR. HARRINGTON: Well, they're in the – in 2012. I think there was some initial meetings in 2011 but, I think, in earnest in 2012.

MR. PEDDIGREW: So before sanction or after sanction?

MR. HARRINGTON: Before sanction. I think it was a pre-requisite for sanction.

MR. PEDDIGREW: And do you know when they were finalized?

MR. HARRINGTON: I'm sorry, Mr. Peddigrew.

MR. PEDDIGREW: Do you know if it was before or after sanction?

MR. HARRINGTON: I think they were finalized before sanction.

MR. PEDDIGREW: Did SNC have any involvement in the negotiations or were they –?

MR. HARRINGTON: No.

MR. PEDDIGREW: Just trying to get a sense of their role. So if they had remained on as EPCM, would they have had a role in the negotiations?

MR. HARRINGTON: No, because it's an owner's-type responsibility, that.

MR. PEDDIGREW: Right. And so Nalcor hired, I think you said David Clark –

MR. HARRINGTON: Yes.

MR. PEDDIGREW: – to do that?

MR. HARRINGTON: Yes.

MR. PEDDIGREW: All right.

MR. HARRINGTON: To lead that, I think.

MR. PEDDIGREW: And Lance Clarke from the project team –?

MR. HARRINGTON: Yes, supported that.

MR. PEDDIGREW: All right.

So your understanding, again, is that the collective agreements were in place at the time of sanction. Are you sure of that or are you uncertain?

MR. HARRINGTON: Now you've put doubt in my mind, now.

MR. PEDDIGREW: If you're not certain, that's okay.

MR. HARRINGTON: I'm pretty sure. That's about – I'm not 100 per cent sure.

MR. PEDDIGREW: Okay.

MR. HARRINGTON: I wouldn't like to go under oath and say it was a hundred per cent sure, and I'm not sure.

MR. PEDDIGREW: To your recollection they were, but you're not certain?

MR. HARRINGTON: That's correct.

MR. PEDDIGREW: All right.

I'd like to take you now, Mr. Harrington, to document P-01171, Madam Clerk.

And so on the first page –

THE COMMISSIONER: Tab 3.

MR. PEDDIGREW: Just let me know when you have it up there Mr. Harrington.

MR. HARRINGTON: It's up now.

MR. PEDDIGREW: Okay. So the first page of this document is an email from yourself to Gilbert and Derek – Derek Owen –

MR. HARRINGTON: Twelve years ago.

MR. PEDDIGREW: Twelve years ago, yup. Time flies.

So this – and then attached – if we scroll down a page or two.

We have a presentation, so am I correct this is a presentation that you prepared?

MR. HARRINGTON: Yes. I may have got input from people, but I was probably the primary author.

MR. PEDDIGREW: And this would have been shortly after you were initially approached about –

MR. HARRINGTON: Yes.

MR. PEDDIGREW: – having involvement in developing the Lower Churchill?

MR. HARRINGTON: Yeah, and to give some thoughts on that matter.

MR. PEDDIGREW: All right.

If we can scroll down to page 5, please. Just a little bit ...

So just the first bullet there, Mr. Harrington, where it says: “Following EOI round there are 3 proponents under active consideration in addition to the NLH option.”

Who were those three proponents?

At this time it’s a Gull Island scenario, is that correct?

MR. HARRINGTON: Yeah, it’s Lower Churchill development – you know, that was probably both.

So one of them was Hydro-Québec, Ontario Hydro and SNC, and that’s the fourth bullet down. And I’m not too sure of the other two.

MR. PEDDIGREW: Were they – do you know if they were hydroelectric –

MR. HARRINGTON: I don’t –

MR. PEDDIGREW: – entities from other provinces or were they private companies?

MR. HARRINGTON: I think they were private companies.

MR. PEDDIGREW: Right.

MR. HARRINGTON: Australian company springs to mind, but I wouldn’t like to go under oath to say for sure.

MR. PEDDIGREW: Okay.

Then the second bullet there where it says the premier– and I think in direct examination you indicated that was Premier Williams.

MR. HARRINGTON: At the time, yes, it would’ve been.

MR. PEDDIGREW: At the time, yes.

“... has stated a strong preference for the NLH option of delivering the Project.” How did you come by that information to include it in your presentation?

MR. HARRINGTON: I don’t know what it – again, whether he actually said so – said as much in either an interview or on the – in the media, I don’t know.

MR. PEDDIGREW: So you’re saying you got it from a media story?

MR. HARRINGTON: I think so but I’m – 12 years ago, I’m really struggling here, right?

MR. PEDDIGREW: Right.

Be strange to include something in a presentation just based on a media story, wouldn’t it? Like, would there be anybody who was involved in the project, Mr. Bennett, anybody else that might have indicated that to you?

MR. HARRINGTON: Might have but, you know, that’s –

MR. PEDDIGREW: You can’t remember.

MR. HARRINGTON: It’s – yeah.

MR. PEDDIGREW: Okay. I guess you were confident enough at the time that you did include it in your presentation.

MR. HARRINGTON: Absolutely, yeah. I mean it's there.

MR. PEDDIGREW: And then the fourth bullet down there says: The leading expression of interest proponent is Hydro-Québec, Ontario Hydro, "SNC however there are concerns on how this JV" – which I guess means joint venture – "is being put forward and lack of EPC bidding."

So what's the basis for saying that the leading expression of interest proponent is Hydro-Québec, Ontario Hydro and SNC?

MR. HARRINGTON: Probably they, you know, out of the three – and, again, I'm stretching here. From what I can recollect, out of the three they seemed to have the best of the three. Whether it was good enough is another thing, but I think it stood out as being at least, you know, they had, you know, some expertise in this area.

MR. PEDDIGREW: Did you receive any documentation, any proposals or whatever they submitted in response to the expression of interest?

MR. HARRINGTON: I –

MR. PEDDIGREW: Did you see any of that?

MR. HARRINGTON: I didn't – I wasn't involved in that. I would've got this information from either Mr. Bennett or Mr. Martin.

MR. PEDDIGREW: And do you know why ultimately that – my understanding is that option was not pursued further, was not studied in any great detail. Do you know why that was?

MR. HARRINGTON: No, I don't. I can't answer that.

MR. PEDDIGREW: Was there – did you ever have any discussions with Mr. Bennett or anybody else about the decision not to proceed further?

MR. HARRINGTON: No, because, you know, this wasn't my – it wasn't my area, right? So I can't recall any discussions on that, that they would have involved me in, you know, per se because it was – yeah, I was looking at the project implementation rather than, you know, the other things that were going on, so ...

MR. PEDDIGREW: When you say project implementation, you mean a project implementation by Newfoundland and Labrador Hydro?

MR. HARRINGTON: Yeah, to see what would be needed should –

MR. PEDDIGREW: If Hydro went ahead with it.

MR. HARRINGTON: Correct, yes.

MR. PEDDIGREW: Okay.

MR. HARRINGTON: You've always got to prepare.

MR. PEDDIGREW: So your role was strictly in terms of if Hydro – Newfoundland and Labrador Hydro did the project.

MR. HARRINGTON: That's right.

MR. PEDDIGREW: You weren't asked for input into what if Hydro-Québec and Ontario and SNC?

MR. HARRINGTON: I was not, yes.

MR. PEDDIGREW: Okay.

If we can scroll down to the next page? And then the – sorry, the fourth bullet: "The project cost estimate and schedule was provided by SNC (most likely prepared by SNC in contemplation as a lump sum contract bidder in the future, so could well be padded accordingly)."

So it seems as though what you're saying there – I just wanna confirm that because SNC had submitted a lump sum bid that they would potentially pad it, add amounts to it, is that –?

MR. HARRINGTON: Yeah, padded, you know, is another way because they would have to include, you know, a large risk premium in any lump sum for such a large project.

MR. PEDDIGREW: Because they were taking on the risk that if they didn't deliver at that lump sum, they would be responsible for the cost overruns.

MR. HARRINGTON: That's correct, unless there was some provision in the contract, I don't know.

MR. PEDDIGREW: Right.

Going back to – I don't have any more questions on this document right now, Mr. Harrington. But going back for a moment to the selection of the people on the project team, there was some questions about that as well.

MR. HARRINGTON: Right.

MR. PEDDIGREW: So I just wanna get some clarification. I believe you said Jason Kean – so Jason Kean didn't apply for a job in the newspaper or on Nalcor's website. He was selected by yourself –

MR. HARRINGTON: No.

MR. PEDDIGREW: – is that correct?

MR. HARRINGTON: No, he wasn't. He did apply. There was a newspaper advert and he did apply and he went through an interview process. I wasn't clear about this in my interview, but he did actually go through an interview process with three or four of the VPs. I think Mr. Keating, Mr. Bennett, Mr. Sturge and possibly the VP of human resources.

So there was a newspaper advert, he responded and the newspaper advert was for business manager and, I think, three or four people applied from what I can remember. And it was decided that – to split that business manager up into two roles. So Mr. Kean got one of those roles.

MR. PEDDIGREW: Right, okay. So – and I do recall that from some of his evidence now. He

was – he applied for one position but eventually came on in a different position.

MR. HARRINGTON: That's right.

MR. PEDDIGREW: Did you have any involvement at all in his – the decision to hire him?

MR. HARRINGTON: No, not in the hiring process. No, not at all.

MR. PEDDIGREW: And in the position he eventually ended up in, did you have any say or role in that?

MR. HARRINGTON: No, I was pleased to have him –

MR. PEDDIGREW: Okay.

MR. HARRINGTON: – to be honest.

MR. PEDDIGREW: Yeah, I'm not suggesting anything untoward, I'm just wondering did you have input into –

MR. HARRINGTON: No, no, I (inaudible) –

MR. PEDDIGREW: – the decision to take him on.

MR. HARRINGTON: The interview process was by those, I think, four individuals that I just mentioned.

MR. PEDDIGREW: Okay. What about Lance Clarke?

MR. HARRINGTON: Same thing, he applied and went through the same process.

MR. PEDDIGREW: Right, and did – were – did you have any involvement in Mr. Clarke's –

MR. HARRINGTON: No, I didn't.

MR. PEDDIGREW: – hiring? Okay.

You mentioned as well about – in your direct testimony about Ron Power. I think you said he was – would it be fair to say he was recruited based on his experience?

MR. HARRINGTON: He – we had him on our – you know, we had him on our radar screen because he had that perfect blend – as we each saw it – of hydro experience and megaproject experience. So, he was working for Petro-Canada as a staff position at the time. And, you know, we knew he had his, you know, experience from Hinds Lake, you know, a whole bunch of hydro projects in the province but also in Africa. He'd – the Jebba project was a project very similar in size and output and volume of concrete as the Muskrat Falls Project is.

So, you know, we saw him as a very strong candidate for taking on a lead role. And I think he was – we sought him out.

MR. PEDDIGREW: How long had he been with Petro-Canada before he moved to the Muskrat Falls Project?

MR. HARRINGTON: I think plus 20 years.

MR. PEDDIGREW: Twenty years?

MR. HARRINGTON: Yes.

MR. PEDDIGREW: Okay. My understanding is Hinds Lake would have been around 1984. Is that – do you have any knowledge of that?

MR. HARRINGTON: I don't know.

MR. PEDDIGREW: Okay.

MR. HARRINGTON: I really don't know.

MR. PEDDIGREW: And the Jebba project – and I don't know the project in Africa, I didn't get the term you said there.

MR. HARRINGTON: Jebba.

MR. PEDDIGREW: Jebba project.

MR. HARRINGTON: J-E-B-B-A.

MR. PEDDIGREW: J-E-B-B-A?

MR. HARRINGTON: Yeah.

MR. PEDDIGREW: Do you know around when that was?

MR. HARRINGTON: No.

MR. PEDDIGREW: More in 20 –

MR. HARRINGTON: But I do know that he submitted his kind of summary of experiences to Grant Thornton. So I suppose it would come to Inquiry counsel.

MS. O'BRIEN: We do anticipate calling Mr. Power (inaudible).

MR. PEDDIGREW: Okay. So we can maybe leave it for then.

During your direct or your – the questioning from Ms. O'Brien, you also indicated that Newfoundland and Labrador Hydro, I guess in the past when doing megaproject has used an EPCM contractor. What –

MR. HARRINGTON: Sometimes an EPC-type contractor as well.

MR. PEDDIGREW: Okay. What megaprojects are you referring? Are you referring to Hebron?

MR. HARRINGTON: No, I was talking about some of the hydro projects that they'd done.

MR. PEDDIGREW: So which ones –

MR. HARRINGTON: I think Granite –

MR. PEDDIGREW: – do you know?

MR. HARRINGTON: – Granite Canal would be the last one.

MR. PEDDIGREW: Mr. Harrington, do you know, at the time of sanction, had there been a budget established for labour? So for cost of wages, salaries, benefits, had that been established at the time of sanction?

MR. HARRINGTON: For contractors or consultants or project team?

MR. PEDDIGREW: Everything.

MR. HARRINGTON: Oh, yes, yes.

MR. PEDDIGREW: That was part of the 6.2?

MR. HARRINGTON: Yes, because the – and that's where the labour agreement would come into play, because the rates would be part of that.

MR. PEDDIGREW: Right.

MR. HARRINGTON: Once you negotiated that, then you would have to –

MR. PEDDIGREW: Without a collective agreement in place, you would – you'd be speculating as to what the rates might be?

MR. HARRINGTON: That's correct, yes, yes.

So the – I think it's P-00130 includes – no, that's the wrong one, sorry. There is a detailed basis of estimate document. It's probably one of the exhibits that will provide you with all of the assumptions that were made to form the basis –

MR. PEDDIGREW: Okay.

MR. HARRINGTON: – of the estimate.

MR. PEDDIGREW: During the discussion of tactical risk, strategic risk – I know we talked a lot about that the past day and a half – did the issue of water management and the availability of water, did that ever come up with – as a point of discussion with the project team?

MR. HARRINGTON: I think the only time that I can recall would be part of the federal loan guarantee discussion and some – yeah, some report from the independent engineer, I think. That was about the long and short of it that I knew about water management.

MR. PEDDIGREW: When you say as part of the federal loan guarantee, do you mean –?

MR. HARRINGTON: The submission from the independent engineer –

MR. PEDDIGREW: Which was who?

MR. HARRINGTON: – to the federal loan guarantee.

MR. PEDDIGREW: Right, but I guess my question was in – like, among the project team, was it ever a point of discussion?

MR. HARRINGTON: No, no, we –

MR. PEDDIGREW: Between yourself and Mr. Kean?

MR. HARRINGTON: No, absolutely not. I mean, that was –

MR. PEDDIGREW: Yourself and Mr. Bennett or Mr. Martin?

MR. HARRINGTON: Mr. Bennett would be involved in it, but not myself.

MR. PEDDIGREW: But did you discuss it with Mr. Bennett, I guess, is my question?

MR. HARRINGTON: No, no.

MR. PEDDIGREW: Okay.

Was it ever anything that was raised with Manitoba Hydro International, do you know, for something for them to consider?

MR. HARRINGTON: I don't know.

MR. PEDDIGREW: What about Westney?

MR. HARRINGTON: Westney, no.

MR. PEDDIGREW: And the IPR?

MR. HARRINGTON: No, not part of the scope.

MR. PEDDIGREW: So as far as you know it was not anything that was put to you?

MR. HARRINGTON: It was almost a separate thing.

MR. PEDDIGREW: Right.

MR. HARRINGTON: As it is now (inaudible).

MR. PEDDIGREW: It wasn't something that was given to your advisors to consider?

MR. HARRINGTON: No, no, no, no. I got no insight.

MR. PEDDIGREW: In relation to the request to Westney to provide you with – I think it was a review of the PIRA price estimates for oil –

MR. HARRINGTON: Right.

MR. PEDDIGREW: – going forward.

Mr. Westney – and again, I'll be paraphrasing now, but if you listened to some of his evidence, I believe he said he told you that it wasn't the type of thing that they – Westney – did, reviewing PIRA oil forecasts, but that, if you wanted him to do it, he would. Does that – would you agree with that? Did Mr. Westney indicate to you that that was not their –

MR. HARRINGTON: It's not their core business; I would agree with that. But probability analysis is their core business, so that was really what we asked them to do, you know, based upon the – you know, high PIRA, low PIRA, expected PIRA, whatever PIRA, you know, mean PIRA – which one, statistically, might be one to use.

And I think he came back and said well, you know, on the – from a probabilistic point of view, the expected value would be the value that you might wanna use. In the CPW analysis, it wasn't used. And if it had of been used, the CPW difference, preferring the Muskrat Falls, would have been higher.

MR. PEDDIGREW: Right. But my question, I guess, was – Mr. Westney did give you the disclaimer that it wasn't the type of work that they normally did?

MR. HARRINGTON: Sure.

MR. PEDDIGREW: And did you – I believe you said it was Mr. Martin who asked you to engage Mr. Westney to do that work.

MR. HARRINGTON: Yeah, because, you know, he knew that they were, you know, somebody we knew and they did probabilistic analysis.

MR. PEDDIGREW: Right. Did you tell Mr. Martin that Mr. Westney told you that that's not the kind of work that they normally did?

MR. HARRINGTON: I gave him the information back that I was provided by Mr. –

MR. PEDDIGREW: But that's not my question. I said did you tell Mr. Martin that Mr. Westney told you that that was not the kind of work that Westney normally did? Did you pass that on to Mr. Martin?

MR. HARRINGTON: Yeah, I would've done. Yeah.

MR. PEDDIGREW: You would've – so you did?

MR. HARRINGTON: I did.

MR. PEDDIGREW: Okay.

MR. HARRINGTON: 'Cause he – to condition that, and it's because he knew that they weren't PIRA experts, but they were experts in probability analysis, and that's what we were asking them to do. We weren't asking them to replace the PIRA work. We were asking them to say, given these two values and – you know, high and low, where would you be on a probability curve?

MR. PEDDIGREW: Okay.

MR. HARRINGTON: And that's – so that's the nature of –

MR. PEDDIGREW: Right.

MR. HARRINGTON: So – you know, Mr. Martin knew very well that they didn't do PIRA.

MR. PEDDIGREW: Right, and that was my question.

MR. HARRINGTON: Okay.

MR. PEDDIGREW: Okay.

In your – or sorry, in the questions from Ms. O'Brien, you also indicated, I think – and again I could be paraphrasing, and so if I have you can certainly clarify but – that the project team had a great deal of autonomy. Is that fair to say?

MR. HARRINGTON: That's what Mr. Bennett said.

MR. PEDDIGREW: Okay. And I think you said you agreed with that?

MR. HARRINGTON: Yeah, yeah. I mean, I'm just saying – we – within our area of responsibilities.

MR. PEDDIGREW: Right. Yeah.

MR. HARRINGTON: So we didn't have to ask, you know, for every small decision to go up the line.

MR. PEDDIGREW: Right.

MR. HARRINGTON: So if we –

MR. PEDDIGREW: You had authority (inaudible).

MR. HARRINGTON: If we had a budget –

MR. PEDDIGREW: Yeah.

MR. HARRINGTON: – and you worked within that budget, then you were good.

MR. PEDDIGREW: Right. Yeah. And I think then, you know, you qualified the statement that you had a – or I guess your agreement with the statement that you had a great deal of autonomy by saying that, if there was something of public concern, you would – I think you said go up the line. Is that –

MR. HARRINGTON: Well, yeah –

MR. PEDDIGREW: – the phrase you used?

MR. HARRINGTON: – anything – you know, obviously, if we were working on something that could, you know, trigger some, you know, public concern, then we would raise it, you know, up the line, even though it may be within the budget.

MR. PEDDIGREW: And up the line means to Mr. Bennett or Mr. Martin?

MR. HARRINGTON: That's correct, yes.

MR. PEDDIGREW: Okay. Your trip to Houston, in June 2012, with Mr. Kean.

MR. HARRINGTON: Yes.

MR. PEDDIGREW: When was that planned? Was that planned before the May session with Westney in Newfoundland or was that after?

MR. HARRINGTON: I think it was after.

MR. PEDDIGREW: And who decided that you would go? Was it just yourself and Mr. Kean? Was it a direction from Mr. Bennett?

MR. HARRINGTON: We spoke to Mr. Bennett, and I think I sent an email on it, saying, look, we think this would be more efficient if we went down there rather than bring all these guys back up again because that's where they have all of their main equipment.

So that's – I discussed it with him, and we agreed. He would always sign my travel, so any travel that I would need outside of Canada, Mr. Bennett would sign.

MR. PEDDIGREW: Right.

MR. HARRINGTON: So we didn't – you know, it's a travel authorization form process that we used, so I submitted my travel authorization for myself; Mr. Kean did his. Mr. Bennett approved it.

MR. PEDDIGREW: And was Mr. Bennett aware that the session in St. John's in May – with the large group of people – that the topic of strategic risk was not – generally not discussed at that session; it was more tactical risk.

MR. HARRINGTON: Yeah, I think that was the focus, but we had the list of strategic risks already identified as well, and you've seen the risk database that's been shown by Ms. O'Brien a few times now.

MR. PEDDIGREW: Right. My understanding, though, from your – what you said yesterday, is that largely the topic of strategic risk was left 'til Houston, between yourself and Mr. Kean and Mr. – I forget the third gentleman's name – Dobson?

MR. HARRINGTON: No. Ah, it's gone now, sorry. It's a long day.

MR. PEDDIGREW: So who was it you were dealing with when you went to Houston in –?

MR. HARRINGTON: It was – Dodson.

MR. PEDDIGREW: Dodson, yes, okay.

MR. HARRINGTON: Yes. Keith Dodson.

MR. PEDDIGREW: So yeah, my understanding was that when you were in Houston, you were discussing strategic risk?

MR. HARRINGTON: Yeah, we talked the strategic risks, and we were (inaudible) – you know, we got the information back to say these are the three strategic risks you should be focused on.

MR. PEDDIGREW: Right, so was that your agenda, those three topics, those three strategic risks?

MR. HARRINGTON: No, we went down there for – to finalize the tactical risk ranges, which, Ms. O'Brien, as we've talked about. We were there to talk about when they would get the report back to us, and I think they got the report back to us later that same month. And we talked about how you're going to start work on the strategic risk ranging and, you know, the final report for it. Including in that was the, you know, the famous stress test schedule work.

MR. PEDDIGREW: And who – when you met with Mr. Dodson in Houston, was it just the three of you?

MR. HARRINGTON: I think there was another gentleman there –

MR. PEDDIGREW: Somebody else from Westney?

MR. HARRINGTON: Yes, but not Mr. Westney.

MR. PEDDIGREW: And how many times did you meet down there in Houston? Was it just one meeting, or did you meet over a series of days?

MR. HARRINGTON: That was, perhaps, one or two days. Yeah, two days, I think. I'd have to look at the TA to be absolutely sure.

MR. PEDDIGREW: But to your recollection was it two – did you go in for an hour and leave –

MR. HARRINGTON: Oh, no, no.

MR. PEDDIGREW: – or were you there for the full day, both days?

MR. HARRINGTON: We were there for a day or so, yeah, yeah.

MR. PEDDIGREW: A day or so both days?

MR. HARRINGTON: Yes, yeah.

THE COMMISSIONER: So I think this is where we might break now.

MR. PEDDIGREW: Okay.

THE COMMISSIONER: And we'll come back tomorrow morning at 9:30.

Okay, so 9:30 tomorrow morning.

MR. PEDDIGREW: Thank you.

MR. HARRINGTON: My eyes are tired.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.