



COMMISSION OF INQUIRY RESPECTING THE MUSKRAT FALLS PROJECT

Transcript | Phase 1

Volume 46

Commissioner: Honourable Justice Richard LeBlanc

Monday

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CLERK (Mulrooney): All rise.

This Commission of Inquiry is now open.

The Honourable Justice Richard LeBlanc
presiding as Commissioner.

Please be seated.

THE COMMISSIONER: All right, good morning.

MS. O'BRIEN: Good morning.

THE COMMISSIONER: Just a second here now.

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

MS. O'BRIEN: Thank you.

The witness today is Gilbert Bennett. Prior to having – he's going to be sworn. Prior to doing that, I'm going to ask to have the following exhibits entered: Exhibits P-01314 to P-01357, P-01436 to P-01463.

THE COMMISSIONER: All right.

All right, Mr. Bennett, if you could stand and (inaudible) in your right hand, please.

CLERK: Do you swear that the evidence you shall give to this Inquiry shall be the truth, the whole truth and nothing but the truth, so help you God.

MR. BENNETT: I do.

CLERK: Please state your name for the record.

MR. BENNETT: Gilbert Bennett.

CLERK: Thank you.

MS. O'BRIEN: Thank you, Mr. Bennett.

Can I start by asking you what your current position is with Nalcor?

MR. BENNETT: So I'm the executive vice-president for Power Development with Nalcor.

MS. O'BRIEN: Okay.

And in the period that we're going to be talking about today, which will primarily be the period up to sanction, what was your position with Nalcor?

MR. BENNETT: I was vice-president, Lower Churchill Project.

MS. O'BRIEN: Okay, great. Thank you.

So I just want to confirm – I know the Inquiry has obviously been ongoing for some time, and in the course of my questioning of you I will refer to evidence that has been given by other witnesses. And having canvassed this with you yesterday, I just want to confirm here now that you have had an opportunity to watch some of the previous evidence, but not necessarily all.

MR. BENNETT: That's correct.

MS. O'BRIEN: Okay. And you have at least seen some of Mr. Jason Kean's evidence, Mr. Paul Harrington, Mr. Derek Owen, Mr. John Mallam and the MHI panel.

MR. BENNETT: Yes.

MS. O'BRIEN: Okay.

MR. BENNETT: I've seen some of that work.

MS. O'BRIEN: Some of them, but not necessarily all the evidence from those witnesses. Okay.

MR. BENNETT: That's correct.

MS. O'BRIEN: All right, Thank you.

I'm going to begin by asking you to tell the Commissioner a little bit about your education and work history prior to joining the Lower Churchill Project, and to assist you with that I'm going to bring up Exhibit P-01314. It's in tab 1 of the book before you, Mr. Bennett.

And if we go to page 3 – this is a CV of yours that was in the Nalcor records. It's from 2011. I believe it was put together at the time leading up to financing or financial close. Can you – so please feel free to refer to this and take the Commissioner through your education and work history.

MR. BENNETT: Okay.

So I have a Bachelor of Engineering in electrical engineering, graduated from Memorial in 1986. I'm a professional engineer registered with PEGNL. Over the course of my career – I should point out that my course work in my engineering program was primarily in power, power engineering; however, I worked in the telecom sector for a number of years prior to joining Nalcor. NewTel Communications, of course, turned into Aliant, Bell Canada.

I had a number of manager roles within NewTel over the course of my career. Left NewTel in 1994, spent some time with Cable Atlantic. I was responsible for network development and developing their entry into the telecom business. Subsequently, joined the Group Telecom and went through a number of acquisitions there, but held roles in operations, as well as in service delivery and operational support systems or IT.

MS. O'BRIEN: Okay.

So prior to joining the Lower Churchill Project, all your work experience after you graduated with your engineering degree was in telecoms. Is that correct?

MR. BENNETT: In the telecom sector, yes, but in terms of the work I was doing, network planning, network design, business case analysis, operations, engineering design.

MS. O'BRIEN: Okay.

So perhaps you can explain to the Commissioner what would have been your previous position that was closest in scope and responsibility to that you ultimately took on with the Lower Churchill Project.

MR. BENNETT: So it's interesting looking at sort of the project or where things stood back in 2005, very early work with a concept. Some of the work that I had done at Cable Atlantic, in other words starting a project, the very early planning stages, I'd look at – some of my work was in Group Telecom where we were building a new business, a national organization. Those are comparable activities, albeit in a different sector.

MS. O'BRIEN: Okay.

Now, you joined the Lower Churchill Project in May 23 of 2005. Can you please tell the Commissioner how did that come about, how did it happen?

MR. BENNETT: So early in 2005 I was approached by the chair of Hydro at the time, by Dean MacDonald, who indicated that they were looking for someone to help, I guess, start the – start work on the project to see what could – you know, what could the development of the Lower Churchill look like, could we advance that beyond the concept that existed at the time. The – an expression of interest had been issued earlier that year to look at potential development options. I was approached at the time by him.

MS. O'BRIEN: Okay.

And how did you know Mr. MacDonald?

MR. BENNETT: I had previously worked with him at Cable Atlantic.

MS. O'BRIEN: And was this a competitive process?

MR. BENNETT: I don't know what other process Hydro had to look for the position; I was approached directly by him.

MS. O'BRIEN: Okay.

So it wasn't – you didn't go through a – to your knowledge there wasn't other people interviewed, there wasn't a posting for this position?

MR. BENNETT: I didn't see a posting and I – but I don't know what else they did.

MS. O'BRIEN: Okay.

And so shortly after that, I take it you were hired into the position?

MR. BENNETT: That's correct.

MS. O'BRIEN: And that position was vice-president, Lower Churchill Project?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay.

And at that time how did you understand the role of the vice-president, LCP?

MR. BENNETT: So at that point, what we were looking at was the expression of interest process, starting to build an organization. I was, I think, three, four months ahead of Mr. Martin's hire. We were – you know, initially when I joined the team, we were looking at the results of the expression of interest process and starting to evaluate potential development concepts.

MS. O'BRIEN: Okay.

Now just to be clear, so at that time did you have any hydroelectric experience at all?

MR. BENNETT: In a significant way? No.

MS. O'BRIEN: Okay.

So not in your – since graduating from university you hadn't obtained any experience in that area, is that right?

MR. BENNETT: I had not worked in the hydro sector, no.

MS. O'BRIEN: Okay.

What about construction management experience?

MR. BENNETT: Not at this time, no.

MS. O'BRIEN: Okay.

And what about megaproject experience? Like, what was the, you know, the largest scale project that you'd worked on previously?

MR. BENNETT: It would have been probably in the order of a hundred-million dollars.

MS. O'BRIEN: A hundred million?

MR. BENNETT: Yeah.

MS. O'BRIEN: Okay.

So that's while you were with Cable Atlantic?

MR. BENNETT: Yes.

MS. O'BRIEN: And what was that project?

MR. BENNETT: That was their network rebuild and their entry into the telecom business.

MS. O'BRIEN: Okay.

Did you do any reading on hydroelectric projects and what the experience had been in terms of, you know, costs, schedules, how these projects had fared when you were brought on to the Lower Churchill Project?

MR. BENNETT: No, I hadn't set my mind to that. At that point in time, we didn't know that we were building a project.

MS. O'BRIEN: Okay.

MR. BENNETT: There were a number of different development alternatives that had been looked at in the expression of interest. We were just getting into the evaluation, it wasn't apparent at that time that we were actually going to build a project.

MS. O'BRIEN: Okay but you were looking at developing the Lower Churchill?

MR. BENNETT: We were looking at facilitating or finding a way to develop the Lower Churchill.

MS. O'BRIEN: Okay.

And one of the options that was on the table was the Newfoundland and Labrador Hydro-led option.

MR. BENNETT: That became an option, yes.

MS. O'BRIEN: So you didn't do any reading at that time, I take it. What about afterwards?

MR. BENNETT: I would say over the years off and on informally, yes, I've looked at a number of papers and read various articles. I won't be able to point to them at any given point in time but, you know, certainly it's an area that's of interest. There are lots of other material that I read over the course of the years as well.

MS. O'BRIEN: Okay so would this have been prior to sanction?

MR. BENNETT: Prior to sanction, after sanction, I mean, this is – I'm talking about informal reading as opposed to, you know, a – an organized review.

MS. O'BRIEN: What about megaprojects generally, that you hadn't – you had never worked on a megaproject before. Did you do any reading about megaprojects?

MR. BENNETT: I can't point at specific papers.

MS. O'BRIEN: Okay, all right.

So when you started with the Lower Churchill Project, how was the – and I know it was still Newfoundland and Labrador Hydro at that time. How big was your team?

MR. BENNETT: We had three people.

MS. O'BRIEN: Okay, so you – I guess one of the early things you did was build the team.

MR. BENNETT: Start to build the team, yes.

MS. O'BRIEN: Okay.

All right, I'm going to just look at the Energy Plan. It's not in the book before you, I don't believe, but it will come up on the screen here: P-00029. Now, this was released in September of 2007, Mr. Bennett, but I think the documents show that a discussion paper was first released as early as November 2005. So a fair bit of – you know, a couple of years of effort went into this document.

Did you have any input or involvement in the creation of the Energy Plan?

MR. BENNETT: I was one of a number of people within Hydro who had – you know, had provided input into the plan.

MS. O'BRIEN: And just, specifically, can you tell the Commissioner about, you know, what areas you would have been providing input on?

MR. BENNETT: My prime interest was in the electricity chapter.

MS. O'BRIEN: And from your perspective at Newfoundland and Labrador Hydro and then, ultimately, Nalcor, how did you view the Energy Plan?

MR. BENNETT: Well, the plan is a – you know, a document that confirms the province's policy strategy in relation to energy in general. And if we look at the oil and gas chapter, the electricity chapter, outlines the policy priorities of the government of the day, and lays out, you know, in the – in broad terms, how they intended to address various sectors of the energy business. And to demonstrate or document how it applies, you know, to the province's policies and, ultimately discusses as well, the importance of energy to the province's economy at the time.

MS. O'BRIEN: Okay.

So at Newfoundland and Labrador Hydro would you have viewed that as a document, you know, as a mandate-type document or a document you had to follow, it being – setting out the government's policy?

MR. BENNETT: It's an important description of, you know, what government was thinking, how they looked at the business. I'd say that the individual mandate for more specific objectives would come later, but this was the broad-brush policy view of, you know, of how government intended to address the energy sector in the province.

MS. O'BRIEN: Okay.

But in terms of Newfoundland and Labrador Hydro, did you consider that you were, you know, bound to follow the government's policy?

MR. BENNETT: Bound to follow – needless to say if there was an area where we had a particular initiative, we would discuss that with government. This wasn't the – I would say, the singular decision-making process that government had (inaudible).

MS. O'BRIEN: No, no, I didn't mean to imply that, but I'm just trying to see. Did you consider this as, like, a mandate document, a directive

from government, look, this is our policy, we're expecting you as our Crown corporation to work towards implementing this policy.

MR. BENNETT: I think that's fair.

MS. O'BRIEN: Okay.

Can we go to page 40 of this document, please? On this page, there is a – and this is in the electricity chapter. So this is the chapter that you've had – testified you have input into, Mr. Bennett. This is where we're talking about, obviously, the Lower Churchill Project itself.

It says: "The project is expected to have a capital cost of \$6 to \$9 billion" And, of course, I believe when we read this in the full, this is looking at Gull Island and Muskrat Falls. Do you know how these estimates were derived, the 6 to 9 billion?

MR. BENNETT: So capital cost at that point in time – and I recall that there were capital cost entries in the expression of interest when it was released in January of '05. At that point in time, it was very early in terms of engineering work. Those, I expect, would have been escalated numbers that were taken out of previous feasibility studies for the project. There was no significant engineering done at this point in time.

MS. O'BRIEN: Okay, so previous feasibility studies that would've been done, I think SNC is one name we've heard, and I believe Hatch as well.

MR. BENNETT: Right. Yeah – well, I think this is – this may even be before Hatch.

MS. O'BRIEN: Okay.

MR. BENNETT: The two – the studies that come to mind were completed in 1998.

MS. O'BRIEN: Okay.

MR. BENNETT: That looked at a development concept that included Gull Island, Muskrat Falls and a link to the Island.

MS. O'BRIEN: Okay, and then who would've been responsible for taking those '98 studies and

escalating them up to, you know, 2007 dollars to get these estimates?

MR. BENNETT: I can't confirm who did that. The methodology that I would have expected to have been followed was that somebody would have looked at the price escalation from those previous estimates and simply financially brought them forward.

MS. O'BRIEN: Would that have been done by Newfoundland and Labrador Hydro?

MR. BENNETT: I expect it was.

MS. O'BRIEN: Page 49, please, Madam Clerk. Thank you.

So I want to take you – this page here and this – particularly this sentence here: "Constructing the transmission link, and delivering Lower Churchill power to the Island, is a more cost effective alternative to an Isolated Island grid increasingly dependent upon oil-fired thermal power resources." This is, obviously, a conclusion that the Interconnected Island is more cost effective than the Isolated Island.

At this time, back in 2007, what was that conclusion based upon?

MR. BENNETT: My recollection was that System Planning had been continually looking at the question of interconnecting the Island or continuing to run Holyrood. Would have had capital cost estimates to – again, based on previous work and would continue to study that and would compare it on a regular basis. So I believe that there was a basis for that conclusion at the time.

MS. O'BRIEN: Okay, so that would have been out of work done at Newfoundland and Labrador Hydro? It would have been work done by Newfoundland and Labrador Hydro that would have formed the basis for that conclusion?

MR. BENNETT: Yes, albeit with a – with not a high degree of accuracy at that point in time, because we're dealing with those previous feasibility studies and not a lot of engineering done at the time.

MS. O'BRIEN: Okay. But accurate enough that you felt comfortable putting that conclusion in the chapter on electricity in the Energy Plan?

MR. BENNETT: I believe that there was information to support that, yes.

MS. O'BRIEN: So – sorry, but you believed it accurate enough to put it there as a statement in the Energy Plan?

MR. BENNETT: I didn't – I need to be careful that this is a government document. This is not a Nalcor document where we're definitively saying that, but –

MS. O'BRIEN: We have heard testimony from government, though, that they were – had relied on information from Newfoundland and Labrador Hydro for that statement. And you've –

MR. BENNETT: Oh yeah.

MS. O'BRIEN: – I believe just clarified –

MR. BENNETT: I did.

MS. O'BRIEN: – that's where it would have come from.

MR. BENNETT: Yes, I agree.

MS. O'BRIEN: So –

MR. BENNETT: I just want to clarify that the author of the document is the province, not Nalcor.

MS. O'BRIEN: Yes, I –

MR. BENNETT: And I would also acknowledge that this is information that we would have provided.

MS. O'BRIEN: Okay. And at the time you believed this to be an accurate statement?

MR. BENNETT: We believed it to the level of – yes, with the level of detail and the information we had at the time.

MS. O'BRIEN: Okay. Now, I know you just said a couple of times to the level of detail that

you had at the time, but I'm just going to go back to that. Because when we look at this, it doesn't say, you know, based on a preliminary assessment or – you know, there's no indication of that in the document. Would you agree?

MR. BENNETT: I think that's the case. I – this is a, as I said, as a policy indication, this was the premise. Needless to say, there would be a lot of work to be completed before we ever get to a decision to actually construct –

MS. O'BRIEN: Okay.

MR. BENNETT: – a project.

MS. O'BRIEN: Can we please to go P-00025, please?

So this is – I'm going back now, we're in January 10, 2005. And this is, obviously, a news release from the Government of Newfoundland and Labrador. And this is – it is information about – going out to the public about the request for expressions of interest and proposal for development of the Lower Churchill.

So this was the time that, I think, you had just alluded to it earlier in your testimony that the province was going out for expressions of interest and proposals. And I believe this would be the announcement of this and my understanding is the deadline for submissions to this request was March 31, 2005.

Is that – does that concord with you memory?

MR. BENNETT: That sounds right.

MS. O'BRIEN: Okay.

So we do have – I don't need to go to it right now, but just for your information, Commissioner, at P-00026 there is also a news release August 8, 2005, which is about the responses that were received to the expressions of interest and it shortlists the three main proposals from the 25 received.

But, ultimately, I understand, Mr. Bennett, the decision was made to do a – the Newfoundland and Labrador Hydro-led option, the go-it-alone option.

MR. BENNETT: That's right.

MS. O'BRIEN: Okay.

So we – can we please now go to P-01315. This will be at tab 2 of your binder. So this is April 2006 and this is a presentation; it is regarding the expressions of interest. It's entitled: 2006 Project Strategy for the Lower Churchill Project.

I'd like to go to – well, just – I might just go through a couple pages here just to see. So it just kind of gives a little overview framing our discussion. There is some discussion of the Gateway process, some, you know, timelines there around the Gates.

But this is the – at – I think it's at slide 5, yeah, page 7 here: Pre Sanction Gates & Milestones and PS1, which I understand, stands for pre-sanction. Is that correct? There's a handwritten note –

MR. BENNETT: Yeah.

MS. O'BRIEN: – that indicates it on the slide, but also from the title of the slide. So would that be correct?

MR. BENNETT: I would agree with that, yeah.

MS. O'BRIEN: Okay.

All right, so PS1: "Ready to pursue the NLH led option." It looks to me that this slide or around this time is exactly when the decision to go it alone was made and – is that right?

MR. BENNETT: I think that's accurate.

MS. O'BRIEN: Okay.

MR. BENNETT: Right.

MS. O'BRIEN: And we'll go through but I'm just trying to get the sense, would this have been Decision Gate 1?

MR. BENNETT: Take a concept, start doing the work –

MS. O'BRIEN: Just looking at – just bring it through it. It talks about –

MR. BENNETT: Yeah.

MS. O'BRIEN: – the Gateway Process and it shows here pre-sanction Gates – so we have Gate 2 and Gate 3 – but then we have this here as PS1 – whoops – "Ready to pursue the NLH led option." Is that Gate 1?

MR. BENNETT: That – I think it is. It's consistent with Gate 1.

MS. O'BRIEN: Okay.

Can we go to page 11, please, Madam Clerk? Because when we look through this slide deck in total, it really looks like there's some real evaluation. So it does say here the purpose of this meeting: section 1, seek approval for the PS1 decision, which would be a "Third party ownership (BOOT) vs." an "NL Led Project." So that seems to be the purpose of what's going on here.

I'll get back to BOOT in just a moment and get you to give some explanation on that, but if we can go to page 26, please. So it does – you know, the slide deck as a whole does discuss – actually, could we go to page 15 first? So it – you know, it talks about: "What does an NL Led Development Mean?" So what would that mean, and then it, sort of, goes through a number of slides that covers that, you know, "NL led or Third Party BOOT?"

And it talks about these four decision criteria. And these are discussed at length in the slide presentation: "Do we have the ability to execute the project? Do we understand the key project risks? Can we effectively mitigate key project risks? Can we be ready to pursue the NL Led Option?"

And "If (a), (b), (c) are affirmative" – and I think this is (a), (b) and (c) above – "is it more beneficial for NL to own and lead the project instead of turning it over to a third party BOOT?" And why? So this seems to be the gist of the presentation. And so it talks about, you know, the people, resource availability and whatnot.

And if we could go now to page 26? So here it – these – this slide and the slides after seem to be

discussing the risks associated with the different options. Is that fair?

MR. BENNETT: Yes, that's right.

MS. O'BRIEN: Okay.

So I just wanted to look at the third – the last bullet on that slide, could you please read it out, please?

MR. BENNETT: So the third bullet here says that: "You can 'contract away' some risks through" the BOOT arrangement, "but you will pay at the outset for unrealized risks." So "increased certainty is at cost of lower economic returns and resource control."

MS. O'BRIEN: So I know this is generally speaking, but I believe it to be correct, and I'd like you to confirm it, that, you know, you can – there's often a relationship between cost and risk, so if you want to pay more, you can often reduce your risk; if you want to keep your costs down, you might accept more risk. So there's often a trade-off between those two, is that fair to say?

MR. BENNETT: There is frequently a trade-off, and, depending on who the party is, somebody may say, well, if I see that risk, I'm simply going to assume that that is a given, it's going to happen, and I will price it into my proposal.

MS. O'BRIEN: Yeah, okay. And I think that's what that third bullet is trying to capture, is that fair to say?

MR. BENNETT: That's what we're trying to get there, yes.

MS. O'BRIEN: Okay.

So – and I think this one here does talk about not even – not all risks can be allocated away, even through a BOOT. It talks about mitigation a fair bit here in this proposal.

And we see here some risk mitigation strategies that are outlined.

And I just want to look at a few of those, because, here, we're looking at – I believe this

is, you know, how we – if we did a Newfoundland and Labrador led project, how we could mitigate some of the risks?

MR. BENNETT: That's right.

MS. O'BRIEN: Okay.

So they talk about financing risk and whatnot, but one of them is "Labour Supply Cost/Productivity," and I note the mitigation strategy here includes "Increased contingency in project estimates." So is that fair to say that at this time, at least, that you believe, well, look, one way we can mitigate against this risk is put in enough contingency in our estimates to account for it?

MR. BENNETT: That's definitely an approach, yes.

MS. O'BRIEN: Okay.

But it's an approach at that time that you were considering, is it not?

MR. BENNETT: It's one of the mitigation strategies, and I think it's really important to point out here that this is in the embryonic stage of project planning. There was a lot of work to be done from here. But yes, at the point – at that point in time it was understood that one way to address it would be to set aside additional cash.

MS. O'BRIEN: Okay.

And I think if we go through – here, we just have some more of the – you know, some more of the risks and mitigation strategies, and again, here, we also see one of the – for "Force Majeure" – again, "Appropriate Contingencies." So for the unexpected, out of your hands, major events, one of the strategies is to build in appropriate contingencies?

MR. BENNETT: Yes, that's correct.

MS. O'BRIEN: Okay.

Can we go to page 35, please?

So this is a slide in this presentation that addresses the NL equity contribution amount,

and, here, it says – if you could just read, perhaps, the first bullet there?

MR. BENNETT: The first bullet says that: “Financial advisors indicate the Province can borrow to provide an equity contribution of \$2.0 - \$2.5 billion without having a negative impact on the Province’s credit rating.”

MS. O’BRIEN: Okay.

So this is, obviously, back in 2006, but it looks like an assessment was made on how much the province could afford – at least at that time. Do you know who made this assessment or how this assessment was made?

MR. BENNETT: I know that we have, over the years, retained financial advice. The province does the same. But where that specific number came from, which of those advisors, no, I can’t confirm which one it was.

MS. O’BRIEN: But would it been worked on by the Government of Newfoundland and Labrador or worked on at Newfoundland and Labrador Hydro?

MR. BENNETT: Both entities do that work, so I can’t confirm which is which.

MS. O’BRIEN: Okay.

Do you recall these numbers, 2 to 2.5 billion?

MR. BENNETT: That rings a bell.

MS. O’BRIEN: Okay.

So we know an assessment was made at that time. Do you recall any assessment being made later on that would have increased that amount?

MR. BENNETT: This question had been asked a number of times – I think Derrick Sturge would be closer to the question than I was. His interaction with the Finance Department was stronger than mine.

MS. O’BRIEN: Okay. We have had evidence from Mr. Sturge, but just to get from your – do you have any recollection of, after this time, a further analysis being done and a higher amount being the result?

MR. BENNETT: I know there were – there was further work done. I don’t recall ever hearing a confirmation of what that limit would be.

MS. O’BRIEN: Okay, thank you.

Can we go to slide – sorry, page 45, please?

So I’m gonna get into the – this third party BOOT option here. So this is leading us – the slide deck has led us through these four key decision criteria, when you look at it in whole. But might – maybe right now I’d ask you to talk about what is a third party BOOT arrangement?

MR. BENNETT: So BOOT is an acronym. It stands for build, own, operate and transfer. So the notion is that a developer would be given a concession for the asset for a period of time, and then, at the end of that period, they would return the asset to the province or to us.

MS. O’BRIEN: So the idea being that – I’m – I know, obviously, these are complex arrangements – but if we take it down just to the bare bones of the arrangement – it’s that someone that – you know, a third party comes in, pays for the development of the project. They get to operate it – own and operate it for a period of time until presumably they make back their investment and whatever profit that has been agreed, and then, after that period of time, it would then be transferred to the province or to Nalcor for a nominal amount, and then, in the long term, it would be a Newfoundland and Labrador-owned asset?

MR. BENNETT: That’s the idea.

MS. O’BRIEN: Okay.

So as we go through this slide deck it does talk a little bit about some of the pros and cons of the alternatives. So these are the pros and cons of Newfoundland and Labrador led, and – you know, I suppose the slide does speak for itself. And then the next one, we have the pros and cons of the third party BOOT option. And you know, risk – I will point out here, and I believe it to be accurate and get you to confirm, Mr. Bennett, that one of the pros of the third party BOOT is this risk of cost and schedule overrun is shifted towards the BOOT proponent.

So not necessarily it is fully assumed by the BOOT proponent, but more of the risk goes to that third party.

MR. BENNETT: No question.

MS. O'BRIEN: Okay.

And so we have – here's then we get the summary of the questions that were posed early on.

And I think, here, we get the final recommendation.

So this would have been – is this Newfoundland and Labrador Hydro's recommendation to government?

MR. BENNETT: Yes, it was.

MS. O'BRIEN: At this time were there any estimates received for a BOOT arrangement or turnkey-type arrangement package?

MR. BENNETT: Nobody really had meaningful estimates at that point in time. The only estimates that really existed then were the previous feasibility work that was either completed in 1998 or in the 2000 work that was previously done on Gull Island. That was the information that was available.

Proponents had not undertaken detailed engineering work to come up with capital cost estimates. And, as I recall, it was fairly clear from their concepts that they weren't necessarily thinking about market risks and other risks that were inherent in the overall development. They had the conceptual ideas and not much more than that at the time.

MS. O'BRIEN: Okay. So, ultimately, government accepted Newfoundland and Labrador Hydro's recommendation?

MR. BENNETT: They did.

MS. O'BRIEN: Yeah. Okay.

So I just want to then – one might think that – you know, before – if you're looking at these two options, and one of the big trade-offs is that, look, if we go with a third party BOOT, we

reduce some of our risks, but it's going to cost us more, and we aren't going to own the asset for at least a period of time. But it's going to – you know, but less risk.

Versus the other – it may cost us a little less, but we're going to be taking more risk on as a province. One might think that you'd want to get some sense of what the difference in cost would be. So even if it was just estimated numbers – that you'd have an estimate, look, we figure if we do it ourselves, it would cost us, you know, 6 to 9 billion. And we figure if we go out and we go with one of these third-party BOOTs there's going to be a premium and it's going to cost us whatever that amount would be.

Was there any evaluation done like that even at a – you know, an estimate level?

MR. BENNETT: So the answer to that question would require that somebody would run the project in its various configurations, ultimately, to Decision Gate 3. So the answer to that question is ultimately brought forward with a significant amount of work.

MS. O'BRIEN: So you wouldn't – you'd have to go to Decision Gate 3 as sanction?

MR. BENNETT: You certainly have to get to 2 and have good feasibility numbers and have considerable investment in engineering. And – but the ultimate answer to the question is at 3, in my view, where you have detailed engineering; you know what the costs are, you know what the markets are, you have the business case and, then, you have a real proposal.

MS. O'BRIEN: Okay, you don't believe that any estimate – so we've heard of – the Commissioner has heard a lot of testimony on the AACE levels of estimates; you know, the Class 1, Class 2 –

MR. BENNETT: Yeah.

MS. O'BRIEN: – the best being Class 5, I take it. Or is it – no, best is Class 1. Best is Class 1?

MR. BENNETT: Yeah, right. Yeah.

MS. O'BRIEN: Most accurate is Class 1. But why couldn't you do an evaluation even on an AACE Class 5-type estimate?

MR. BENNETT: You could certainly get a high-level capital cost estimate. Whether the proponents had an understanding of what the revenue looked like, what the markets looked like, what the opportunities were, what the risks were, what the probability of getting through an environmental assessment, because now you're asking them to take the project. And there's a lot of work to be done at that stage before somebody would make a meaningful proposal.

MS. O'BRIEN: Okay, so are you saying that it just – it was really not possible to even get estimates in order to better inform the decision?

MR. BENNETT: I think it was – it would be – if we're, you know, to go back to there to look at what the proponents had in mind. So if I recall, TransCanada, who was one of the BOOT proponents, had a concept that they would build an HVDC line to – I think it was – Ontario. And their proposal was fairly well conditioned: Well, we're not sure what the market is, we're not sure if there's an environmental assessment, we're not sure if you can get across Quebec, but if you really – if you would like somebody to build the line for you, we'd be happy to do it.

MS. O'BRIEN: So I'm really just trying to get the evidence from you from the Commissioner. Here's what I'm understanding your evidence to be but please clarify it. I understand you are saying to me it wasn't possible at that time. Prior to us making this decision to go, you know, NLH led, it wasn't possible to get estimates to give a comparison of the third-party BOOT versus NLH led.

MR. BENNETT: It would be difficult to get a meaningful estimate at the time. What was being looked at were some of the risks and conditions that were put into the expression of interest and really trying to gauge what the level of interest was.

MS. O'BRIEN: Okay, so you're saying difficult but not impossible.

MR. BENNETT: It's not – I mean, nothing is impossible, but you need to take that information and use it in a meaningful way.

MS. O'BRIEN: Okay. And so it was difficult, not impossible, but ultimately it was not done.

MR. BENNETT: The expressions of interest were what the expressions of interest were; they had their own unique qualifications conditions. And when we looked at those, you know, that was the – ultimately, that was the expression of interest.

MS. O'BRIEN: Yeah. I'm just trying to get a sense of whether there was estimates done to find out how much more it would have cost us if we were to transfer the risk. Like, even a rough estimate, that's really what I'm –

MR. BENNETT: There was no meaningful way to do that at that time.

MS. O'BRIEN: Okay.

Let's go to P-01316, which is at tab 3 of your book. And go to page 2, please, Madam Clerk. Oh, sorry, page 3.

So this is a slide deck called 2008 Goal Working Group, Goal 6: Lower Churchill and this is in November 26 of 2007. Am I understanding correctly that this goal, Goal 6, refers to a goal from Newfoundland and Labrador Hydro's 2007 Strategic Plan?

MR. BENNETT: Yes, the corporate planning process. That's right.

MS. O'BRIEN: And if we go to page 6, please. So, here, we get some sense of who the people were working on this, the Goal 6. And I understand from speaking to you earlier, Mr. Bennett, these aren't necessarily all the people who were working on it, but these are the key people working on this goal.

MR. BENNETT: No question. These are key people in the organization who were on the project team and trying to work through what it would take to get to sanction, yes.

MS. O'BRIEN: Okay.

And if we go to page 8 we'll see how the goal was framed in the Strategic Plan, so "To achieve Sanction of the Lower Churchill Project." Now, I note here, Mr. Bennett, like, this is – the goal here is pretty clear: To achieve sanction. That's the goal as it was stated. It's not, you know, determine what the least-cost option is for supply of electricity to the province. It doesn't say, you know, evaluate the business case for the Lower Churchill Project; it really seems that the goal you're working to is achieving sanction. Is that right or not?

MR. BENNETT: I would say that achieving sanction is conditional on the other things that you defined. Identifying that we have a feasible project, that it makes economic sense, that the risk is appropriate, that we're prepared to take those – we're prepared to assume those risks, that there's a market strategy, that there's an environmental assessment, that there's Indigenous consultation: All those conditions are prerequisite to achieving that goal.

MS. O'BRIEN: Okay.

If we go to page 10, then we get a bit of a restatement of the goal. And this is the – "To deliver First Power from the Lower Churchill Project to our customers by 2015." So I take it this is a sort of a refined statement of the goal?

MR. BENNETT: Yes.

MS. O'BRIEN: And page 12 – so this is looking at, you know, breaking the goal, I think, down would be a way to say it. Not looking – okay. There's somewhere here, and I don't know if I – I'm not – it might take me a second, I obviously don't have the right ... It says there should be a sound business case maintained. It's one of the slides that says that, I just need to find it here.

MR. BENNETT: Page 16, I think.

MS. O'BRIEN: Great, thank you, page 16.

Yes, here we go. So this is one of the outcomes here. This one does talk about a business case. It says, you know, "Sound ... Business Case Maintained." And it talk about – you know, it talks about how that outcome will be measured.

When I look at this presentation in totality, Mr. Bennett, I'm just going to put it to you that there's not much uncertainty in this – expressed in this presentation. There's not a lot of, well, it's conditional on this, and, you know, having a sound business case. Nothing about, you know, doing an – doing some sort of assurance to ensure it's in fact the least-cost option available.

This really is – this presentation as a whole really has this sense of, you know, this is how – we do have a sound business case, we have to maintain that sound business case and we're going ahead with the goal of sanction. So I'd just like to get your response to that because I hear what you're saying, but I don't see it reflected in the presentation.

MR. BENNETT: There's no question that the team was looking at various approaches to develop the project. And in terms – first of all, in terms of least cost, domestic supply wasn't the only question here, okay? There were export opportunities; there were industrial opportunities being looked at, at the time. I can guarantee that the project would have not made it to sanction if there was no business case.

MS. O'BRIEN: Okay. Thank you.

So what you're saying is it's not expressed in this presentation, but it was still very much – we were considering it?

MR. BENNETT: You had to consider it.

MS. O'BRIEN: Okay.

MR. BENNETT: You're not – there's no financing. There's no commercial support if there's no business case.

MS. O'BRIEN: Okay. All right.

So I'd like to talk now about building that team. Of course, we've just seen some of the build-out of your team in that slide presentation. And you've said that, when you first came in, you had three people on the team. Just – as you were growing the team, can you please identify for the Commissioner, who would have been the key players that you were bringing on to the team, in terms of names?

MR. BENNETT: So the first person, as I recall, who came onto the team as we started looking at, you know, the prospect of leading the project was Mr. Paul Harrington. And his job was to bring a –

MS. O'BRIEN: I'm just gonna interrupt you there, 'cause I'm gonna get into his role –

MR. BENNETT: Okay.

MS. O'BRIEN: – in some detail –

MR. BENNETT: (Inaudible.)

MS. O'BRIEN: – in a moment. So right now if you could just identify who you viewed as the key players on the team.

MR. BENNETT: He was a key player. He was the first one. People who were recruited after that: Jason Kean, Lance Clarke, Ron Power. You know, it's instructive to go back to the working group team.

MS. O'BRIEN: Page 6?

MR. BENNETT: On page 6 in the exhibit – because these are people who came from various places to fill various functions at the time. So if I just really quickly run down through the list –

MS. O'BRIEN: No, that's – I –

MR. BENNETT: – but the reason –

MS. O'BRIEN: The list is there. But I had understood – and I'd asked you previously in our interview, to identify the key players.

MR. BENNETT: Right. They were key –

MS. O'BRIEN: And I understand you identified Mr. Harrington, Mr. Kean, Mr. Clarke and Mr. Power.

MR. BENNETT: From a project perspective, yes. I just also want to point out that there were a number of people here who came from Hydro.

MS. O'BRIEN: Yes.

MR. BENNETT: Okay – who brought the hydro-operating experience, the utility

experience to the team. That was the only point I was gonna make there.

MS. O'BRIEN: Yes. Okay. Thank you.

So I'm just gonna focus on those – the – sort of that key project group that you've identified for this set of questions. Did you know any of those – the four you named – did you know any of those people previously?

MR. BENNETT: I hadn't met them before, no.

MS. O'BRIEN: Okay.

MR. BENNETT: Paul was the first one that I was introduced to and certainly, he was known by Ed. I think all three gentlemen were known by Ed as well, but Paul was their first hire on to the team.

MS. O'BRIEN: When you say all three, you mean the three in addition to –

MR. BENNETT: The three –

MS. O'BRIEN: – Mr. Harrington?

MR. BENNETT: – in addition to Paul, yes.

MS. O'BRIEN: Okay. So they were all known by Mr. Martin –

MR. BENNETT: Mr. Martin.

MS. O'BRIEN: – previously –

MR. BENNETT: That's correct.

MS. O'BRIEN: – from his work experience in the oil and gas sector.

MR. BENNETT: The oil and gas.

MS. O'BRIEN: Okay.

MR. BENNETT: That's my understanding.

MS. O'BRIEN: Do you believe there – the previous work relationship that these men had had with Mr. Martin played any role in them being brought on to the Lower Churchill Project?

MR. BENNETT: As if to say that their qualifications weren't key? So their qualifications were important, were key considerations. Having some knowledge and background about the individuals was certainly helpful.

MS. O'BRIEN: So you – it played a role?

MR. BENNETT: It was–

MS. O'BRIEN: (Inaudible) –

MR. BENNETT: Yeah.

MS. O'BRIEN: (Inaudible) –

MR. BENNETT: I mean, it was helpful information, yes.

MS. O'BRIEN: Okay.

You recall I interviewed you on August 21 and 22 of this year?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay.

And I'm just gonna bring you to what you said there, and just to see if you still agree with that evidence, 'cause it's slightly different than what you've just said.

So –

UNIDENTIFIED MALE SPEAKER: Do you have a page number?

MS. O'BRIEN: Oh, sorry, page 15.

So one of the key – some of the key hires. And if I recall – this is you speaking – at the time, Ed Martin had a relationship with, you know, Paul Harrington, Jason Kean, Lance Clarke and a little bit later Ron Power. Those are people that he knew, was comfortable with, I had met, and they joined the team.

So I asked: Who made the decision to hire them? And you said: There was a – it was a consensus. I had no issue. Ed had a relationship, and they were brought on the team.

MR. BENNETT: Right.

I – now, just one clarification since then is that we did find that there was a competition for Lance Clarke and Jason Kean's role – that there was an ad in the paper that they actually responded to.

MS. O'BRIEN: Yes, and we've had evidence to that –

MR. BENNETT: Yeah.

MS. O'BRIEN: – already, but I understand that there wasn't for Ron Power or Paul Harrington?

MR. BENNETT: That's – I – for Paul, there was not; for Ron, I can't confirm. I don't think there was.

MS. O'BRIEN: Okay.

And we will ultimately hear from Mr. Power.

Were you satisfied, ultimately, that the team that you did build had the requisite skills and experience to carry out the Lower Churchill Project?

MR. BENNETT: From our perspective, where we were and the work that they have done, yes, I was.

MS. O'BRIEN: And Mr. Harrington, you know, has testified that he joined the project after being invited to a meeting at the Guv'nor Pub with you and Ed Martin; I think he said others were there as well. Do you recall that?

MR. BENNETT: There were a number of meetings that we held over the years. I don't recall it specifically.

MS. O'BRIEN: Okay.

Were you part of the decision to – I – you know, hire Mr. Harrington?

MR. BENNETT: Yes, I was engaged.

MS. O'BRIEN: Okay. So would that have been a decision you made jointly with the other members of the executive, or who, ultimately, makes the decision?

MR. BENNETT: I think on that – in that conversation – needless to say, if I was uncomfortable, we would have had – I would have had a conversation with Ed on that. Looking at his experience, I had no issue. Ed knew him, and I believe, ultimately, Gerard McDonald, who was our vice-president of HR at the time, ultimately, finalized the contract with Mr. Harrington.

MS. O'BRIEN: Okay. Any concern that Mr. Harrington had never been a project director, previously?

MR. BENNETT: At that stage of the project, no, I didn't have any concern there.

MS. O'BRIEN: Okay.

MR. BENNETT: Again, we're back in 2006: very early days in our project development, a lot of work to do, and it was important to have project people on the team to begin to build a framework for advancing our work. But we were still at Decision Gate – just passing – you know, just getting to Decision Gate 1 at that time. Because I think that was prior to the decision where the province said: Let's move forward. They were very early days in the project.

MS. O'BRIEN: Okay.

MR. BENNETT: No guarantee that there was going to be a project. No guarantee that there was going to be a business case. So it was important to have people who understood projects on the team to begin the build up of work as the complexity and extent of the project unfolded.

MS. O'BRIEN: Okay. And I do – and Mr. Harrington has testified that he first came on not as project director. He came on, I think, as project implementation manager – was his first role. He –

MR. BENNETT: That's right.

MS. O'BRIEN: Prior to sanction, though, I believe, he'd moved to this project director role.

You said, you know, at the time you didn't have any concern, but how about – did that change over time? I mean, when – by the time you

decide to put Mr. Harrington in charge of the Lower Churchill Project, was there any concern or thought given to the fact that he had not held that type of a position previously? I know he'd worked on megaprojects, but he'd never worked on them in that, you know, very senior position.

MR. BENNETT: So we saw – you know, everybody on the team matured in their experience and developed over the course of our planning process, and I was comfortable with him in that role.

MS. O'BRIEN: Okay. And you knew he didn't have any hydroelectric experience?

MR. BENNETT: He had project experience, and this is a (inaudible) point that's really important –

MS. O'BRIEN: Okay.

MR. BENNETT: – that when you look at the various activities on the team, it's one thing to say whether they had hydroelectric experience; you have to think about where that experience is relevant. So the project is a megaproject. The project has megaproject issues. It requires project functions in various places. And you have to look at – you know, the person in project controls needs project controls experience. The person in quality needs quality experience on significant large-scale work. The person who's in the construction management team, that person would be very helpful to have previous experience on similar work. So it's one thing to look at, sort of, the activities and construction that they looked at, as well as the functions and roles that they carried out within the team.

And to put a finer point on that, if you were looking at a construction manager, is it more helpful to have a construction manager who's worked in the province on a large-scale oil and gas project in our environment here, or would you rather have a hydroelectric construction manager who worked in Africa?

Those are trade-offs, so you have to look at skills and requirements in the function that you're trying to fill, compared to the specific technology or activity that they've undertaken. And that's a balance.

MS. O'BRIEN: And on that point, though, I'm – you know, it's – this was obviously a really important position for the project. And, you know, how do you know if you're striking the right balance, if you have the right person, if you don't go out to a competitive process, see the type of people that would be interested in the position, look at what their various experiences are and, you know, make an informed decision that way?

MR. BENNETT: So you can – we will get there over time when we start to construct and then we will have our – the access to our EPCM contractor. But, again, we're early days here and we don't have a project. And it's difficult to think about whether you're going to get a construction manager to jump into the role. You also have to ask yourself what are the other activities that are going on.

So what we were looking for at this point in time was leadership to help us with the planning process, to start building the team, to build out systems, processes and initiatives to get us through that planning process. And I was comfortable with the person in the role.

MS. O'BRIEN: Okay, but this still doesn't explain, to me at least – and so I'll give you another opportunity to answer the question – why you didn't go with a competitive process.

MR. BENNETT: Because at that point we had a person who was a known entity that we collectively were comfortable putting in the role.

MS. O'BRIEN: Okay.

Fair to say, though, you wouldn't know if there was someone even better out there if you don't look.

MR. BENNETT: You could look at – you know, you could look infinitely. I know in the case of Jason and Lance, we did run a competition –

MS. O'BRIEN: Yes.

MR. BENNETT: – and we – they applied through that process.

MS. O'BRIEN: But –

MR. BENNETT: Now, it was very helpful at the time that they were known entities. But in relation to Mr. Harrington –

MS. O'BRIEN: Mr. (inaudible).

MR. BENNETT: – the conclusion was we have somebody who's a good fit – would be a good fit in the role and he was willing to take the job.

MS. O'BRIEN: Okay.

Were you aware at that time – Mr. Harrington's testified here before the Commissioner that he had never had any experience previously in assessing risks, strategic risks, and how they might impact a project that was not part of his experience previously. Were you aware of that?

MR. BENNETT: At that time? We were just putting ourselves at the earliest stages of our project planning. A lot of work had to be done later. A lot of effort would be put into building out those plans, getting additional resources to deal with the multitude of issues that we were going to have to face as we moved forward.

MS. O'BRIEN: So is that you were not aware of it at the time?

MR. BENNETT: I was not aware at the time.

MS. O'BRIEN: Okay.

MR. BENNETT: Because, again –

MS. O'BRIEN: When did you become aware of it?

MR. BENNETT: I can't give you a specific point.

MS. O'BRIEN: Was it before he gave his testimony here at the Inquiry?

MR. BENNETT: I hadn't cast my mind to the question.

MS. O'BRIEN: So you don't know if you heard it before you heard it in –

MR. BENNETT: No, I don't – actually don't think I did.

MS. O'BRIEN: So this – the first time you heard it was when it came out in the Inquiry.

Okay. Thank you.

P-01002, please. I just want to take you – these are notes from a kickoff meeting with Dick Westney. He's testified to them, but there's just one aspect that I'd like to bring you to. Can you go to page 13, please, Madam Clerk?

THE COMMISSIONER: Tab 40, is it?

MS. O'BRIEN: I'm sorry, I don't have a tab reference here.

THE COMMISSIONER: 01002.

MS. O'BRIEN: I can get it though quickly.

THE COMMISSIONER: Yeah, tab 40.

MS. O'BRIEN: Thank you, Commissioner.

If we go – point 10, this is just down a bit. Mr. Westney's notes indicate – and this was information that he was getting from various people. I should give you that context, Mr. Bennett. He was meeting with various people here; you can see them listed here: Jason Kean, Steven Lethbridge, Lance Clarke from Nalcor.

And this was his note on the project management team: "NLH has about 1000 people of whom 130 are engineers – most ... involved in the Regulated Assets. So LCP has to hire from outside. There is something of a culture clash ('old' NLH vs the new young guns from the oil patch). About 50% of LCP is heritage Hydro" and "50% are new."

Were you aware of this perception at the time?

MR. BENNETT: That there was a distinction or difference in views among various people on the team?

MS. O'BRIEN: Yeah. Well it's – you know, clearly the people Mr. Westney met with reported to him there was a bit of a – something of a culture clash between the old and the new young guns from the oil patch. Were you aware that the team was – at least some people on the team were perceiving it that way at the time?

MR. BENNETT: Was there a – were there differing views as to how we would advance in planning? Yeah, I was aware of that. And there's a – I think part of that was – maybe more so if you look deeper underneath the culture clash, it took some time for people to understand the formality, the processes that were being built on the project team. As opposed to some of the views within Hydro with its operations history, with its heritage in terms of not having built major projects and needing the integrity of process and system that was going to be required for the project. So, yeah, I think there's no doubt, there were different views on that.

MS. O'BRIEN: Okay so you were aware that there was a bit of a culture clash.

MR. BENNETT: Yeah, absolutely.

MS. O'BRIEN: Okay.

And so how did you – is that something that you addressed and, if so, how?

MR. BENNETT: That was an effort of continuing an ongoing communication and dialogue. And I think an interesting point on that – and it's, you know, from people who were – who had joined the team and had previously expressed that concern.

So, for example, I remember comments from some of the folks in engineering who questioned why they weren't writing the technical specs for various packages, and they very quickly saw. When there was a multitude of packages with a multitude of commercial considerations in them they said, oh, okay, now I've begin to understand that – I begin to understand what the project people were talking about, that this thing was going to be huge.

So that effort, that continuing ongoing dialogue with people to help gain the understanding, that's something that I spent a fair bit of time with a number of people on. I can give you another example where the project people would say, hang on now, how come this environmental assessment process is not running as quickly as it should be? Or how come you don't have the commercial work all done so that we can move forward with the project?

And, again, that's a topic for dialogue, for people who understand that there are deeper issues, there are other considerations and it's important that we plan within the process. But it's not simply a matter of saying let's put more resources on it, then the answer will come out the end, that there are other considerations and they're complex and they need to work through.

MS. O'BRIEN: I'd like to turn now to what your duties were as vice-president, Lower Churchill Project. And I'd like you to really focus on the period up to sanction. And I – in – as you're giving your answer I'd like you to do your best to distinguish what you considered is your role as the VP, LCP, versus the role that Mr. Harrington would have played as project director and Mr. Ed Martin would have played as the CEO.

MR. BENNETT: Okay.

So maybe I can start with – I'll start with Ed, with Mr. Martin. That he is the – he's the CEO of the corporation. He's also the Gatekeeper in our Decision Gate process. He's the one who ultimately makes the decision when we pass through a given Gate and assesses and satisfies himself that the work leading up to the Gate is complete and that the team is ready to move forward to its next step and activities.

In terms of my role, I held a – I was – had a leadership role. The – and I'm responsible for making sure that we have all that work done. So I played an active role in a number of activities that were required for the Decision Gate.

I had a role in the commercial development over the years. I worked with Mr. Sturge in some of our industrial opportunities. I dealt with some of our regulatory filings, when we were looking for transmission access through Quebec. I've worked with a negotiating team with respect to the Emera agreements, so I guess where I'm generally going there is I participated in the commercial development for the project.

I held a lot of responsibility in terms of the environmental assessment, 'cause that was a critical activity that had to be complete. The Indigenous consultation, the work with the Innu Nation, was a key deliverable over the years.

And in terms of the project team – to come back to that – certainly relied heavily on the individuals who had project experience, project capabilities, to see them develop the organization and get themselves ready for the next role. I didn't supervise that work directly – relied heavily on Mr. Harrington's capability to organize that team to make sure that we're developed and ready to go.

My role in that was more so to help provide, you know, guidance, support, to deal with sort of the communications issues that we just talked about. But I didn't consider myself to be the supervisor directly of the day-to-day activities in terms of how they were doing what they were doing and how they developed their practices and systems. I needed to be sure that they were done, and I had to be satisfied that they were appropriate. But on a day-to-day basis, they were building out the organization.

MS. O'BRIEN: Okay.

I just want to dig into your – you're saying you didn't supervise them. Now, I understand, you know – supervising – you talked about day-to-day supervision. So –

MR. BENNETT: Right.

MS. O'BRIEN: – I acknowledge that, you know, there's many people who are being – supervising other people doesn't mean that they're supervising their every action on every day –

MR. BENNETT: Right.

MS. O'BRIEN: – day to day. But generally, you can do supervision of someone, and that doesn't necessarily mean you're down in the weeds with them every day. Did you consider that you had any supervisory role with – in relation to Mr. Harrington and his project team?

MR. BENNETT: I was certainly – in terms of developing our various deliverables, I had engagement with him. I had understanding of, you know, what the team's priorities were, what needed to be done, the broad-brush activities that they were undertaking along their planning process. So, yes, I was aware in that regard. If I

had suggestions, I would certainly have those conversations with him.

Can't think of a specific situation where I would say – I had to direct somebody to take a particular course of action. That wasn't a very common event.

MS. O'BRIEN: It was not?

MR. BENNETT: It was not.

MS. O'BRIEN: Would you have considered that you had the authority to direct?

MR. BENNETT: If I had to.

It would be something that I would take very cautiously. The team has a well-developed planning and procedural structure. They've built a series of processes and systems that are strong and well-developed, but if I had to, I would.

MS. O'BRIEN: Okay, so did you see yourself as a supervisor?

MR. BENNETT: I see myself more as a leader as opposed to a day-to-day supervisor.

MS. O'BRIEN: Okay, but not just day to day. That leadership role, did it include an aspect of supervision?

MR. BENNETT: Landing on the word is difficult without that broader context. So high-level priorities, discussing how we're progressing things, identifying large-scale issues where I could provide input, those are things that I would do. But it's important to note that we have a team with professionals on it who are experts in their area, and who are driving their priorities. And those priorities are documented and they're executing to a plan.

MS. O'BRIEN: Okay. We'll perhaps come back to that later.

What was your role with respect to communication with the Government of Newfoundland and Labrador?

MR. BENNETT: So it varied. It depends on the priorities and the activities.

So maybe to give a couple of examples, in relation to the environmental assessment, we were the proponent, and we had a very formal relationship with the province. We clearly understood they were the regulator, we were the proponent. In the context of Indigenous consultation and Aboriginal consultation, we were working very closely together.

And, you know, in that regard we had a delegated responsibility in terms of Aboriginal consultation. We needed to be highly aligned on priorities and the way we were approaching things, so I had a fairly close relationship with Aubrey Gover when we were dealing with these issues. I also had an ongoing discussion with, as he is now, Justice Don Burrage. At the time he was deputy minister of Justice. It was important that we had a common understanding of our approach to Aboriginal consultation.

In the context of the IBA negotiations and the other work with the Labrador Innu, Mr. Burrage, Ed Martin and myself participated in the negotiation of the three important agreements with the Innu Nation – with the Innu of Labrador. So that – and in terms of a relationship with Natural Resources – with Charles Bown – that was a regular and ongoing relationship there. They were our shareholder. So there were a number of activities back and forth there.

MS. O'BRIEN: Okay. So you would have been the primary contact for Charles Bown?

MR. BENNETT: I would have been a day-to-day working contact with Charles. To go beyond that, there are a lot of other conversations and engagements that go with government.

Needless to say, Mr. Martin had direct communication with the minister of the day, with the premier, with Cabinet, and there were issues in communication that happened at his level.

There were regular and ongoing communications with other people in Nalcor as well. So the communications leads within Nalcor had regular and ongoing dialogue with their counterparts both in the various departments as well as in Cabinet Secretariat as well as in the premier's office.

MS. O'BRIEN: Okay.

MR. BENNETT: So there were multiple means of communication between Nalcor and the province.

MS. O'BRIEN: Okay. So Mr. Harrington and Mr. Kean have similarly testified that they did not have very much, if any, contact at all with members of government, with the shareholder – very limited –

MR. BENNETT: Right.

MS. O'BRIEN: – communication. They both viewed their role as responsibility to communicate relevant information to the Nalcor executive, and it would be the Nalcor executive's responsibility to ensure that they shareholder was informed. Is that – would you agree with that?

MR. BENNETT: I agree with that. Yes.

MS. O'BRIEN: Okay.

And – now, Mr. Harrington also testified that his direct report would be to you, although he did say that at times, when you were, you know, out of the office, engaged on, you know – he did mention the environmental – the JRP process and whatnot – that he would be told, you know, to just directly report to Ed in those cases. But primarily his communication went to you. Would you agree with that?

MR. BENNETT: I think there were lots of examples where Mr. Harrington, Mr. Kean, Mr. Clarke would have direct communication with Mr. Martin. If Ed needed to speak to somebody about something, he was going to talk to them. And it's not necessarily that he would come to me and say I need to talk to Paul.

MS. O'BRIEN: Would you be involved in the conversation or be –

MR. BENNETT: I may or may not.

MS. O'BRIEN: Okay.

Did you ever have a sense that you were not in the loop? That decisions were being made,

information was being passed on that you weren't aware of?

MR. BENNETT: It – I would become aware very quickly. So –

MS. O'BRIEN: Okay.

MR. BENNETT: Right. It's not as if there were things that I felt were necessarily going around me –

MS. O'BRIEN: Okay.

MR. BENNETT: – but there were direct dialogue and then –

MS. O'BRIEN: Okay, but you ultimately were comfortable you were kept in the loop on things?

MR. BENNETT: I got to the issues, there's no question.

MS. O'BRIEN: Okay. So then would you have seen it as your responsibility when information came to you that would've been relevant for Charles Bown to have in his position? That would've been your responsibility to ensure that that got communicated to Mr. Bown?

MR. BENNETT: Depends on what that information is. There's lots of information that Mr. Martin, in his capacity as Gatekeeper, would be communicating himself. So my primary relationship with Charles was in relation to, you know, activities of the other departments, understanding how other decisions were affecting, you know, our work progress.

You'll see email traffic, you know, on various reviews and activities that he was involved in, but I did not see my role in dealing with some of the higher level Gatekeeper questions, that that was to Mr. Martin – from Mr. Martin and back and forth to government at his level.

MS. O'BRIEN: Okay, so we'll go – come back to that as we go through your evidence, Mr. Bennett, and we talk about some specifics with respect to communications.

Can we please bring up P-01317? And this is an early version of the project Gateway procedure.

And we know in June 2011, a further version was approved. It's been entered at – I think there's a couple of versions – P-00082, P-00027, but if we could just go to page 10 of this one.

THE COMMISSIONER: Tab 4?

MS. O'BRIEN: I don't – this is – I believe this is – you know, this is, you know, a version of the Decision Gate process, and there is explanations in the documents. But I just ask you, if you could in your own words, express for the Commissioner what the significance was of Decision Gate 1, Decision Gate 2 and Decision Gate 3. And I don't need a very lengthy description but just, generally, how did you view those three gates?

MR. BENNETT: So there were a couple of points, I guess, in relation to the Decision Gate process. At the highest level, we're looking at an opportunity or an idea and implementing a systematic process to determine what to do with it. We recognize that as we work our way through this process we are committing greater levels of resources to a concept, so both personnel and monetary. And the Gateway Process gives us a systematic way of considering those ideas.

So looking at phase 1, we have some initial opportunities and ideas. You look at those and you say, okay, which of those should I carry forward and do more work on. So at Decision Gate 2, just to go there for a second, you would be looking at trying to select a feasible alternative to a problem at hand and then saying, okay, now I'm going to build that out in detail, understand what it's all about and then make a decision as to whether I go forward with that and actually construct or implement it. Or we could stop there, right? I could stop and say, okay, well this thing isn't worthy of sanction, I'm not going to go any further. Once you're into construction, you've built it, then Gate 4 you put it in operations and at Gate 5 you're actually decommissioning it because it's reached the end of its life.

MS. O'BRIEN: Okay.

If we can go to page 21, please.

Now, you've already identified that Decision Gate 1 was really the idea where you identified the opportunity and decided that Newfoundland and Labrador Hydro would be leading the Lower Churchill Project. This here, in this document here, we see this charter for IPR Team Charter for Gateway 1. It's only ever done in draft; it doesn't appear to ever have been used. Is that consistent with your memory that there was no IPR review done at Decision Gate 1?

MR. BENNETT: I don't remember an IPR.

MS. O'BRIEN: Okay.

Any cold eyes or external, you know – externally focused cold eyes-type review?

MR. BENNETT: Thinking back, we're almost – we're 11 years back now. No, I can't remember to be honest.

MS. O'BRIEN: Okay.

We haven't found any documentation to indicate that that decision was ever given a cold eyes review. You know, is that consistent with your memory or do you believe there's something we might be missing?

MR. BENNETT: I don't recall.

MS. O'BRIEN: I assume that you could ensure that if something exists it could be brought to the Commission's attention?

MR. BENNETT: If we can find it, we will –

MS. O'BRIEN: Okay.

MR. BENNETT: – we will deliver it. I'm looking at Mr. Simmons.

MS. O'BRIEN: Our understanding is there is nothing but, obviously, we have a lot of documents and we could miss something. So at times we will, of course, ask Nalcor to, you know, let us know. It's hard to pin down a negative.

Okay, P-01021, please.

THE COMMISSIONER: Tab 5.

MS. O'BRIEN: So this is a document we've already heard testimony about. IPA is Independent Project Analysis. And we've heard – the Commissioner's heard evidence already that they did a – a few reviews for the Lower Churchill Project. This is the first review they did and this was actually back in July of 2008. They did a review for, I think, Decision Gate 2A is – or sorry, it was certainly for the Gull Island-first scenario. I think it was Decision Gate 2A that we would be talking about here.

MR. BENNETT: Yes.

MS. O'BRIEN: Can we go, please, to page 83?

So one of their – one of the findings that they made – they gave you some information here and they found that the "Project reportedly lacks a formal steering committee with regular meetings." And then they provided you with some steering committee facts, that "Only 6 percent of megaprojects in" their "database did not have a steering committee." And large projects "with no steering committee had the following issues" and essentially they weren't as successful.

And if you go to page 132, please. And this is one of the recommendations to Nalcor and that is to implement a formal steering committee for the project. Do you recall getting that information from IPA?

MR. BENNETT: I remember seeing the deck, yes.

MS. O'BRIEN: Okay, but do you recall getting that recommendation?

MR. BENNETT: If I have the deck, then I would have seen the recommendation. I'll acknowledge that.

MS. O'BRIEN: Okay.

If we go to P-00317, please?

And just – IPA, we understand, is a fairly well-known company when – in terms of the industry of megaprojects. And they have a very large database of data they've collected from megaprojects really from around the world. And one of the things that they can do is evaluate

your project, benchmark it against some of those other projects and give you advice about how you're about to carry on the project, looking at your cost and contingencies, those types of things. Is that fair to say?

MR. BENNETT: Benchmark might be strong. I think that they try to look at various attributes of other projects, try to understand what others have done and see if they can draw a correlation between those activities and the project outcome. So there's – like, I – it's a type of benchmarking, but I just want to be careful to point out that there's a lot of detail in the presentation in terms of what they do –

MS. O'BRIEN: Yes.

MR. BENNETT: – and the results they achieve.

MS. O'BRIEN: Did you hear any of Bent Flyvbjerg's testimony here before the Commission of Inquiry?

MR. BENNETT: I heard some.

MS. O'BRIEN: Okay. Are you aware that he is a proponent of what he calls reference-class forecasting? In other words, you know, look at the numbers for your project, compare them against other similar projects?

MR. BENNETT: I did hear him say that. And the thought that crossed my mind at the time was – and crosses my mind now – is what are the attributes of those projects that you are comparing to and what are the other factors that are involved that help make a project successful and how do you get down into more detail about how you do that reference.

So – I mean, just a case in point – if you looked at a series of projects in a given sector, it might be helpful to see how they did as a group. But I think IPA, in their analysis, really, really leaned heavily on the importance of front-end loading and definition and minimizing change. So if you look at a population of projects, and you don't have consistency in some of those value-creating approaches, your reference-class comparison may not give you what you're looking for.

So I guess what I took away from, you know, his presentation, the IPA work here, is yes, there are

clues to be gathered from all of those approaches. But I wouldn't say that one is universally the answer.

MS. O'BRIEN: But, so – but you at least in – at Gate 2 and Gate 2A used IPA to give you some assessment of how the Lower Churchill Project was performing and organized compared to other megaprojects?

MR. BENNETT: Absolutely.

MS. O'BRIEN: Okay. And I take it the point of you doing that is because you're hoping to replicate the success of successful other projects and avoid the errors and mistakes of megaprojects that have failed?

MR. BENNETT: We are trying to identify practices that would help us get there. No question.

MS. O'BRIEN: So you agree with the statement I just made?

MR. BENNETT: I'll ask you to restate it.

MS. O'BRIEN: Okay. I'm finding, Mr. Bennett, oftentimes, I'm asking you a question, and when you answer, you begin by reframing the question.

MR. BENNETT: I'm sorry.

MS. O'BRIEN: If – it's taking more time to get through the examination. So if you could, you know – I'm – I put a question to you for a purpose. If you could listen to that question and answer it as opposed to doing that reframing, it would be more efficient.

MR. BENNETT: I'm sorry.

MS. O'BRIEN: Okay.

So the question is – I take it that one of the reasons that you went to IPA, at Gate 2A and at Gate 2, was so that you could get a comparison of the Lower Churchill Project against other megaprojects that were in IPA's database and they had experience and knowledge about. Yes?

MR. BENNETT: We did do that, with a result, I guess, with an intent.

MS. O'BRIEN: Right. And the intent, generally speaking, would be you're trying to compare to other projects and you're trying to replicate the things that made successful megaprojects successful, and you're trying to avoid the pitfalls or mistakes that megaprojects that failed encountered.

MR. BENNETT: They didn't phrase it that way, right? They were looking for practices and activities that were creating value, yes.

So I'm – I see a little distinction between the question you're asking and what the IPA work –

MS. O'BRIEN: Okay, did they not – they pointed out to you, in their database, stats regarding failure of megaprojects. Do you recall that?

Can we go back to P-01021, please?

MR. BENNETT: Yeah, I think that would be helpful.

MS. O'BRIEN: Yeah.

So I'm not gonna – you know, but I – I'm not – don't – didn't expect this to be a big area of questioning, but I wanted to point it out.

So this is their one at 2A. And if we could just go to the first page, please?

So they do – they talk about their – sorry – their pacesetter evaluation here. (Inaudible) – so this is to provide feedback on the status of the project.

MR. BENNETT: Mmm.

MS. O'BRIEN: "Provide early benchmarks of project's cost and schedule targets to determine and identify areas of risks." And I take it they're benchmarking against other megaprojects –

MR. BENNETT: Yes, they are.

MS. O'BRIEN: – in their database, right?

MR. BENNETT: Yeah.

MS. O'BRIEN: "Present recommendations for risk reduction and performance improvement."

MR. BENNETT: Yes.

MS. O'BRIEN: Okay.

MR. BENNETT: And if I can, just to help move things, I think page 18 is really helpful 'cause this is where I was trying to get.

MS. O'BRIEN: Okay.

MR. BENNETT: Okay, so how much front-end loading have we done, why do the value – and I think this might have been the point you were getting to, is the use of value-improving practices, things that others have done that have added value. And then, finally, the assessment of alignment and team integration.

MS. O'BRIEN: Right. 'Cause –

MR. BENNETT: That's the feedback we were specifically looking for to see where we stacked up against other projects, and then we would identify opportunities and things that we were doing in the way we're doing our work to advance each of those.

MS. O'BRIEN: Okay.

And they also identified for you stats on megaproject failure.

MR. BENNETT: They identified –

MS. O'BRIEN: Well –

MR. BENNETT: Failure's a strong word. They –

MS. O'BRIEN: Well, that's – I'm using their word –

MR. BENNETT: Okay.

MS. O'BRIEN: – from their presentations.

Do you recall that? I mean, the documents are in, so they speak for themselves –

MR. BENNETT: Right.

MS. O'BRIEN: – but do you recall that being an aspect of what they were doing for you?

MR. BENNETT: They were looking at which projects did better than others, yes.

MS. O'BRIEN: Sorry. P-01317. See, I said 317 – no, that's 317. You have to add the one at the front. It should be 01317. I'm sure that was my error, not yours.

Okay, so this here is – can we go to page 17?

So this line of questioning with IPA, I started out with their recommendation to you that the project have a steering committee.

MR. BENNETT: Yes.

MS. O'BRIEN: And here, this is in one of the Gateway documents, we see – and this is an earlier version, but we do see it refers to – as we're leading up the – up to the Gate – that the "NLH Project Steering Committee review the IPR report and make recommendation" to the board, and then the board consider the steering committee recommendation and make a decision and then they would feed that up to the Gatekeeper.

MR. BENNETT: No, I don't think. That's the Gate approval, I think the board – the NLH board – wouldn't report to the Gatekeeper. That's getting through the Gate, and this is –

MS. O'BRIEN: I see. That gets you through the gate, I get – I understand. And I understand we'll hear further testimony, but we know that both the board approved sanction as well as the Gatekeeper –

MR. BENNETT: The other way around.

MS. O'BRIEN: Gatekeeper first, then the board.

MR. BENNETT: The Gatekeeper clears – concludes that we have cleared the Gate and then seeks approval from the board –

MS. O'BRIEN: Okay.

MR. BENNETT: – to move on.

MS. O'BRIEN: Okay, so this suggests at that – at this time at least, you are anticipating having a project steering committee that'd make –

MR. BENNETT: We were, yes. That's what –

MS. O'BRIEN: Who would make recommendation to the board?

MR. BENNETT: That was the thinking at the time, yes.

MS. O'BRIEN: Okay.

Now, can we go to P-01318 please?

So this is a project steering committee charter, you can see there at the front. It is a draft document. If we could go to page 5?

So it's a draft document. It talks about this project steering committee, and it lists a number of people that you were planning to have involved with in.

I just want to point out here, at this time, you were looking at having at least a couple of people who were external: Derek Owen, as a project manager advisor, and Tom Garner or Mark Hughes, as a financial advisor. So I understand, from this, at this time you were looking at having both internal and external people on the steering committee, is that right?

MR. BENNETT: That was the concept, yes.

MS. O'BRIEN: Okay. Now, to the best of our searching, this steering committee charter was never finalized. Is that correct to your knowledge?

MR. BENNETT: That's my understanding.

MS. O'BRIEN: Okay.

And if we go to P-00014 – this is the Grant Thornton report – page 11.

So Grant Thornton did cover this in their report, and they actually put in a question to Nalcor, here referred to as Question 1.3: "Nalcor advised that a DG2 Steering Committee endorsed the acceptance and readiness (step 2) of the DG assessment process. Nalcor also indicated that at DG3 the LCP Executive Committee endorsed the recommendation" – et cetera – "However, during a presentation from the Muskrat Falls Project Team ...on May 31, 2018, we were told

that the draft Steering Committee Project Charter was never finalized and no overarching steering committee was ever formed."

To your knowledge, was a steering committee ever put in place?

MR. BENNETT: A steering committee in the form that you had shown a second ago was not established. I think there's a, you know – there were a couple of attempts to establish a committee that had vice-president participation in it. And, I think, one observation I'd pick is that the clear role of the Gatekeeper in this process left the – sort of the individual vice-presidents with probably less clear – a less clear mandate – than the one that our Gatekeeper had where there was, for various activities and various priorities – a lot of engagement among multiple people within.

MS. O'BRIEN: Okay.

MR. BENNETT: And I guess the point I'm getting to is that the – slide you showed earlier, where we have a committee reporting to the board what ultimately happened in practice and was – is actually consistent with our Decision Gate process is the Gatekeeper, after engagement with a variety of people at the executive level – and not necessarily one of them at a time – looked at the key deliverables, satisfied himself and then led the engagement with the Board. So the overall governance structure that we have is a little different than the steering committee concept that you saw early on.

MS. O'BRIEN: Okay. As the vice-president of the Lower Churchill Project would you have had the authority to implement a steering committee?

MR. BENNETT: We had a couple of attempts at various committees.

MS. O'BRIEN: Sorry. I'm just going to ask –

MR. BENNETT: So –

MS. O'BRIEN: – the question again –

MS. O'BRIEN: Would you have had the authority –

MR. BENNETT: So I –

MS. O'BRIEN: – in your position to implement?

MR. BENNETT: I certainly had the authority to invite people to a regular meeting – no question on that.

MS. O'BRIEN: You could have – you had the authority to implement a steering committee.

MR. BENNETT: I didn't have the authority to make people come to the committee or to assign work to them. I didn't have to have that authority. I certainly had the authority within my team to do that. Right? But I didn't have the authority to force people to come to a meeting and require them to – juggle against their other priorities. So –

MS. O'BRIEN: Sorry, Mr. Bennett –

MR. BENNETT: No but –

MS. O'BRIEN: – I'm not asking you whether you had the ability to force people to come to a meeting –

MR. BENNETT: No but authority –

MS. O'BRIEN: – okay?

MR. BENNETT: – authority takes me there, right? Authority to, you know, to have a steering committee, have people participating in it is beyond what I saw as my mandate.

MS. O'BRIEN: Okay.

Did you have the ability to say: I want to implement a steering committee for this project? Could you make that decision?

MR. BENNETT: I certainly could do that, yes.

MS. O'BRIEN: Okay.

So you could make that – you could decide these are the people I'd like to have on the steering committee?

MR. BENNETT: These are the people I would like to invite to the committee, yes.

MS. O'BRIEN: Right?

And so you could reach out to them and ask them: I'd like to have a steering committee –

MR. BENNETT: Yes.

MS. O'BRIEN: – this is why, we've had a recommendation from IPA that, you know, projects without steering committees don't fare as well, would you please join the steering committee? You could do that?

MR. BENNETT: We did that. We – and there were attempts to do exactly that. We had an Executive Committee where we did establish that – little bit later than you're thinking here, but I think ExCom and the mandate for that shows up later in the documentation; and what we found very quickly, is that the people who were working on priorities in relation to the project were engaged directly and not necessarily waiting to come to the committee and, you know, have the committee make decisions in a number of areas.

But there were efforts to coordinate the work of the various business units across Hydro or Nalcor as applicable in order to make sure the people were aware of each other's priorities.

MS. O'BRIEN: Okay.

Did you – are you saying you – did you make a decision to have a steering committee?

MR. BENNETT: We established –

MS. O'BRIEN: Just you, I'm just going to go with you. Did you make a decision that you wanted to have a steering committee for your project?

MR. BENNETT: We –

MS. O'BRIEN: No, you.

MR. BENNETT: Well it's not – but again, in order for the committee to be functional there's another side to the equation, is the point I'm getting at.

MS. O'BRIEN: Okay, but I'm just – we're going to take a long time here if I can't get

answers to what are pretty simple and direct questions –

MR. BENNETT: Okay.

MS. O'BRIEN: – I'm going to put to you, Mr. Bennett.

So did you ever make the decision that you wanted to have – you were going to have a steering committee for the Lower Churchill Project?

MR. BENNETT: As I said, I didn't – I didn't go out and say: We're going to build a new committee. But there were efforts to improve the communications across the leadership team and to pull people into the process.

MS. O'BRIEN: Okay, so is the answer to the question no?

MR. BENNETT: I didn't individually implement a separate steering committee beyond the other committee structures that we currently had.

MS. O'BRIEN: Okay.

So let's – so you didn't do that and it would have been – you had the authority to do that and you were aware of the recommendation from IPA that that was a – would be a beneficial thing to do, is that correct?

MR. BENNETT: I was aware that it could be a beneficial thing to do.

MS. O'BRIEN: So you're talking about other – were you – you were aware you had the recommendation, Mr. Bennett?

MR. BENNETT: It was – yes, I –

MS. O'BRIEN: Okay.

MR. BENNETT: – am aware. I'm aware, yes.

MS. O'BRIEN: You were aware you had the recommendation –

MR. BENNETT: That –

MS. O'BRIEN: – and you – you –

MR. BENNETT: Most other – just to complete –

MS. O'BRIEN: Yes.

MR. BENNETT: Most other projects – many other projects in their database had a steering committee.

MS. O'BRIEN: Mm.

MR. BENNETT: Good and bad.

MS. O'BRIEN: What do you mean, good and bad?

MR. BENNETT: Well they had – I think they said 94 per cent of their – of their database had a steering committee.

MS. O'BRIEN: Okay, so what's good and bad about that?

MR. BENNETT: Well, I mean – I'm – I guess my point is – the six – they did indicate – while they did indicate that the 6 per cent that didn't have a steering committee had, you know, evidence of poorer outcomes.

MS. O'BRIEN: Yes.

MR. BENNETT: Now my point on this is there are opportunities in our organization for peer-to-peer coordination on priorities; engagement between Derrick and myself, on relevant issues; engagement between myself and the team at Hydro who were responsible for various activities in relation to the project; significant, on-going engagement between myself and the Gatekeeper and other people who were involved in the decision-making process, and we observed when we – we did establish an executive committee that had representation from multiple business units across Hydro. We tried to work that – the committee's process did not work too well.

MS. O'BRIEN: Okay. So no steering committee, right?

MR. BENNETT: I need to make the point that we had other committees –

MS. O'BRIEN: We're gonna get to the other committees –

MR. BENNETT: Okay.

MS. O'BRIEN: – but just confirm for me that no steering committee.

MR. BENNETT: No steering committee with that title was established.

MS. O'BRIEN: Okay.

MR. BENNETT: There were other committees of –

MS. O'BRIEN: And you're saying the executive committee came later on – and is that the other committee that you're referring to?

MR. BENNETT: That – that's one of the others. There was a regular, on-going leadership team meeting that was chaired by Ed.

MS. O'BRIEN: But that's for all of Nalcor, right?

MR. BENNETT: That (inaudible) –

MS. O'BRIEN: That was just Nalcor –

MR. BENNETT: But –

MS. O'BRIEN: – and senior executives –

MR. BENNETT: (Inaudible.)

MS. O'BRIEN: – who met regularly.

MR. BENNETT: Ah, well, the senior executives are the key people who were there.

MS. O'BRIEN: Okay. But they weren't focused on steering – that committee wasn't established to steer the Lower Churchill Project.

MR. BENNETT: Well, so there you – now we get to sort of the mandate of what this committee would be and is it steering the project, is it steering the other activities, is it co-ordinating the other activities across Nalcor.

MS. O'BRIEN: So – tell me what it is.

MR. BENNETT: It was – it was more the latter. Okay? Let's understand what the cross-impacts are, let's understand what the priorities are for the project.

MS. O'BRIEN: And co-ordinate –

MR. BENNETT: Both of them –

MS. O'BRIEN: – with other aspects of what's going on in Nalcor.

MR. BENNETT: Absolutely.

MS. O'BRIEN: Okay. So not actually steering the project development itself – so that's the leadership committee. What about the executive committee? Now is it – there was an executive committee primarily – an executive committee for the Lower Churchill Project?

MR. BENNETT: That was the intent, yes.

MS. O'BRIEN: That was the intent. So this is the one you're saying wasn't very successful.

MR. BENNETT: It was not very successful.

MS. O'BRIEN: Okay.

So why wasn't it successful?

MR. BENNETT: It wasn't successful because when the committee met, many critical project decisions were already being taken – that was one observation. The other observation is that the key people were actually involved in a number of priorities in real time. And they were not necessarily available to participate in this committee structure.

MS. O'BRIEN: Okay.

And no external representation?

MR. BENNETT: That's right.

MS. O'BRIEN: Okay.

And so people weren't necessarily showing up to the committee meetings?

MR. BENNETT: That was a problem, yes.

MS. O'BRIEN: Okay.

And then, often, I hear you saying decisions were taken before even it came to the committee.

MR. BENNETT: Critical decisions would be implemented either at the working level because – as their work unfolded, or if they were significant decisions, they were going to the Gatekeeper anyway.

MS. O'BRIEN: Okay.

And we have not been able to find a finalized version of a terms of reference or charter for the Executive Committee either. At P-01450 – that's at tab 55 of your binder, please ...

So, this is May 2011 and it's a draft charter and terms of reference for the Lower Churchill Executive Committee. Doesn't appear to have been finalized; this is just a draft and – in May 2011.

Can you please bring up P-01453, Madam Clerk? And this is at tab 58 of your binder, Mr. Bennett.

So, this is in April 2012 – so approximately a year later. And, I guess, we still have a draft version of the terms of reference – and, again, marked draft. And it doesn't appear that either were ever finalized from our look.

Is that consistent with your understanding?

MR. BENNETT: That's consistent with my understanding.

MS. O'BRIEN: Okay.

So you've said, in my questioning about the steering committee, that there were, you know, other committees. So we've talked about the leadership committee; we've talked about the Executive Committee.

Is there another committee that you'd like to identify?

MR. BENNETT: I think those are the two that come to mind.

MS. O'BRIEN: Okay.

Commissioner, it's probably a good time for the morning break.

THE COMMISSIONER: Okay.

So we'll take 10 minutes now at this stage.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Ms. O'Brien.

MS. O'BRIEN: Thank you.

Mr. Bennett, I don't need to bring it up on the screen, but at P-00077 what's been filed is Nalcor's submission to the PUB. And I take it you are familiar with that document?

MR. BENNETT: Yes, I am.

MS. O'BRIEN: Okay. And in that document, Nalcor describes a two-phase approach to screening options for supply of electricity to the Island?

MR. BENNETT: Yes, that's right.

MS. O'BRIEN: Okay. And I'm just going to bring up P-01452. And this is a slide deck presentation that Nalcor made to the PUB. So it's a, sort of a shorter bullet form. And if we could go to page 16.

THE COMMISSIONER: Tab 57.

MS. O'BRIEN: So this just talks about these – this sort of, in a short form, describes the two phases.

Now, we have not been able to find in any of Nalcor's documentation of any description of this process other than the PUB submission itself. So just to be clear, here we see in the PUB submission there is a discussion of this, you know, phase 1 screening, phase 2 screening. And in the full submission there's quite a bit of

detail around that process. But we haven't found any documentation of that process, you know, prior to Nalcor going before the PUB.

MR. BENNETT: I think that's fair.

MS. O'BRIEN: Okay. So when did this – when did the phase 1 screening take place?

MR. BENNETT: So we'd have to look at the options. And maybe we can go through that.

MS. O'BRIEN: No, but just generally. When this is – that's the initial screening of options. And as I understand it generally, you did the phase 1 screening – you screened out a number of the options and then you go to phase 2. You took your best two options to phase 2. Is that fair to say?

MR. BENNETT: I wouldn't say the best two because many of the ideas or concepts that are in that screening deck are variants or alternatives that are in one of the two cases. So –

MS. O'BRIEN: Okay. Let me just go – so here's how I understand it. So you're saying – oh, sorry – yeah, phase 1 you do an initial screening. And then you screen down and these are the criteria you're – oops, sorry, my fingers are very jumpy today. Okay. There – these are the criteria that you're screening against, is that right?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay. And then ultimately you screened at phase 1. You screened down to two broad categories, Isolated – oops – Island and Interconnected.

MR. BENNETT: Yes, that's right.

MS. O'BRIEN: Okay. And then those two get further refined during phase 2.

MR. BENNETT: I'm – maybe if we can go to page 19 in this deck. Maybe I can –

MS. O'BRIEN: Okay.

MR. BENNETT: – make this a little bit more clear for you that – and the Commissioner – that some of these alternatives fit into the electricity

system on the Island either being Isolated or Interconnected.

MS. O'BRIEN: Mm-hmm.

MR. BENNETT: So, you know, for example, if we were to refuel Holyrood with natural gas, that's a variation on the Isolated Island scenario.

MS. O'BRIEN: So you're saying natural gas made it to phase 2?

MR. BENNETT: No. I'm saying that natural gas was an alternative in the Isolated configuration.

MS. O'BRIEN: I understood natural gas got phased out – got eliminated at phase 1.

MR. BENNETT: It did. But I'm –

MS. O'BRIEN: Okay. So when did the – my question was, when did the phase 1 screening take place?

MR. BENNETT: So the phase 1 screening, some of these alternatives happened – some of them were done very early on. So, for example, nuclear never was considered by Hydro that I'm aware because it's – there's legislation that precludes that.

So that screening happened – I don't know if the screening ever – it never got in to get out. If you can – if I can make that more clear.

MS. O'BRIEN: Did the phase 1 screening happen before Decision Gate 2?

MR. BENNETT: The phase 1 screening of these alternatives, or these possibilities – yes, it was done – the – it was done in – now, what I think the point you're getting to maybe is was it documented?

MS. O'BRIEN: Well first I'm just trying to get you to establish when it took place.

MR. BENNETT: Yeah, so people screened out various alternatives at various points in time leading up to Gate 2.

MS. O'BRIEN: Okay so phase 1 was completed prior to Gate 2?

MR. BENNETT: Those screenings, yeah, they never –

MS. O'BRIEN: Okay.

MR. BENNETT: – they never made it to Gate 2.

MS. O'BRIEN: Okay.

So why wouldn't this process – if it was ongoing prior to Gate 2, why wasn't it documented until you had – you were making a submission to the PUB in 2011?

MR. BENNETT: Yeah, I'm not entirely sure. These – because these alternatives would have fed in at various places through the system planning process. So for example – now I'll come back to gas for a second – if there was a viable strategy to use natural gas in a thermal plant in the Isolated Island case, that System Planning would have expected – would have looked at that as a fuel option for Holyrood. And if that fuel option made sense, it would carry on their analysis and they would have had something different than the fuel sources that they had for Holyrood.

MS. O'BRIEN: Would you agree with me that Nalcor generally has a corporate culture that emphasizes documenting processes?

MR. BENNETT: The project has a very strong discipline on documenting decision-making and I would say generally speaking, we try to document our work across the board. It ends up in regulatory proceeding, it ends up being reviewed and it's very helpful to have the documentation. I'd say that's also an approach that the rest of the business would use as well.

MS. O'BRIEN: Okay, so it emphasizes documenting your processes.

You know, it strikes someone as unusual – having looked at the mass of documentation that Nalcor and Newfoundland and Labrador Hydro has – it stands out, certainly to me, as unusual that you would have done this screening process, this, you know, looking at alternatives, this phase 1, phase 2 and not had any documentation setting that out prior to 2011. Given that the work was all done –

MR. BENNETT: Well –

MS. O'BRIEN: – sometime prior to 20 – the end of 2010.

MR. BENNETT: So there's an ongoing effort, you know, within – particularly within System Planning and Investment Evaluation where they're looking at some of these alternatives and at some point, you have to get some of these ideas, you know, up to even Decision Gate 1 to be able to say: okay, is this something I should consider some more.

And that's really what we're talking about here, are these options – do they merit further analysis and further consideration before they, you know, go into our alternatives analysis. In many cases there were proxies or market alternatives that you could look at to say: Okay, well should I take this any further?

MS. O'BRIEN: Mr. Bennett, is this a case of Nalcor, when it had to go before the PUB and give a submission to the PUB that it – you know, that's when you articulated this idea of, okay, we have a phase 1 screening and a phase 2 screening? You know, did you – are you putting a process around it after the fact? Or at the time, back in 2009-2010 when this was happening, was there a general understanding that yes, we're in our phase 1 selection process?

MR. BENNETT: So there was no formal phase 1 selection process –

MS. O'BRIEN: Okay.

MR. BENNETT: – this was more a question of what are the alternatives that our System Planning team were carrying through their analysis as viable alternatives. There's no doubt that it was helpful to document that and document the thought process that people were using going into the PUB decision.

MS. O'BRIEN: Okay. So this is –

MR. BENNETT: (Inaudible.)

MS. O'BRIEN: – really the articulation of this phase 1, phase 2, came with the PUB (inaudible) –

MR. BENNETT: It was certainly documented at the PUB, submitted to the PUB and used as a basis to explain, you know, why these – why some of these approaches or some of these alternatives, in terms of supply option, didn't make it to further analysis.

MS. O'BRIEN: Okay. And if we went back in time and we spoke to someone at Newfoundland and Labrador Hydro and Nalcor in 2009 and asked them how the phase 1 screening was going on – am I understanding they wouldn't know what I was talking about?

MR. BENNETT: I'm not sure that they would be talking about – in phase 1 process, you'd be asking someone in System Planning: Did you think that you should've included some of these alternatives in your generation expansion plan portfolio?

MS. O'BRIEN: I understand what you're saying. So the work was going on. It's just this organized process hadn't been developed.

MR. BENNETT: The thinking was happening. That's right.

MS. O'BRIEN: Okay. All right.

Now, I'm gonna look at some of the options that were – and I understand them to have been screened out at phase 1, and one of those is liquefied natural gas. Is that correct?

MR. BENNETT: Yes, as I recall.

MS. O'BRIEN: Okay. So that was – and I'm gonna talk about the import scenario, okay?

So P-01204, please. So this is an email – we looked at this at some length with Jim Keating. Are you familiar with this document and, in particular, this graph that's on the screen?

MR. BENNETT: It's ringing a bell. Just to help me get some context here, can you tell me which tab that is in my book?

MS. O'BRIEN: I don't –

THE COMMISSIONER: It's not in your book.

MR. BENNETT: Oh, it's not in my book.

MS. O'BRIEN: It's not in your book.

MR. BENNETT: I'm sorry, Commissioner.

MS. O'BRIEN: Sorry, this is – it was October 2012:

“Wes;

“Please forward this chart to Ed. I'd like him to confirm” – the results.

You're on this –

MR. BENNETT: I'm copied, yeah.

MS. O'BRIEN: – email, okay. So you're – so you were there. Jim Keating sent it to you –

MR. BENNETT: Okay.

MS. O'BRIEN: – Charles Bown, Ed Martin, Dawn Dalley.

And it is showing, basically, a CPW analysis of the Interconnected Island, Isolated Island, LNG import case, I understand, FPSO Pipeline and a Standalone Pipeline. And I will note that it does say right at the top – it says: “CPWs with LNG and Piped Gas - using Ziff Estimates.”

MR. BENNETT: Okay.

MS. O'BRIEN: Does that help you put it in context?

MR. BENNETT: Okay.

MS. O'BRIEN: Okay.

MR. BENNETT: So now we're – this is a Ziff analysis around DG3.

MS. O'BRIEN: Okay. So now that I've given you the context, you're familiar with it?

MR. BENNETT: Yes, okay.

MS. O'BRIEN: Okay.

So now, here we see LNG here; they did two analyses. I guess, one at – LNG being priced at 80 per cent of Brent and one at – LNG being priced at 90 per cent of Brent, and that's the

reason why there's two bars. So 10.7 would be the 80 per cent and 11.2 would be the 90 per cent.

I mean, this analysis shows at least at the 80 per cent that the LNG import case has a lower CPW than even the Isolated Island scenario that you chose to continue on and evaluate more closely after Decision Gate 2.

MR. BENNETT: Yeah. I mean, yes, it's numerically \$0.1 billion lower –

MS. O'BRIEN: Yeah.

Well, then if we go at P-01213, and Wood Mackenzie did a review of the Ziff numbers – and, again, we reviewed this with Mr. Keating. Were you aware of that review that Wood Mackenzie did of Ziff's numbers?

Sorry – 01312. My apologies.

MR. BENNETT: I can't put my finger on it.

MS. O'BRIEN: Okay.

MR. BENNETT: But I know there were multiple reviews looking at this back at DG3.

MS. O'BRIEN: Okay. So this is a government document, so you might not be aware of it, but I understand, you know, it's attached here – an analysis that Wood Mackenzie did reviewing the Ziff numbers. And – this is down towards the bottom, here we go.

And I'm just gonna summarize some of the information here, but I understand that for the LNG import, Wood Mackenzie suggests that the Ziff numbers were higher than what they would have expected them to be. And I think they, sort of, thought it would be LNG priced at 70 per cent of Brent, and they also talked about some of the changes in the capital cost. But overall that the LNG would be lower than Ziff, which would mean that instead of – if, you know, if Wood Mackenzie is right, then the – it – the gap between the Isolated Island and the LNG import would be bigger than just, you know, \$100 million.

MR. BENNETT: (Inaudible.)

MS. O'BRIEN: So were you not aware of this at the time?

MR. BENNETT: Well, this is at DG3.

MS. O'BRIEN: This is prior, just prior to DG3, yeah.

MR. BENNETT: Just prior to DG3. I'm certainly aware of the Ziff report. I can't put my finger on the WoodMac report.

MS. O'BRIEN: Okay.

Mr. Keating has testified that, you know, he believed that the LNG import scenario was a lower cost option than the particular Isolated Island scenario that you were working with. Were you aware that that was his opinion?

MR. BENNETT: No.

MS. O'BRIEN: Okay.

This is raising a question for us. If – when we're talking – when you were ultimately looking at just supplying the domestic electricity, meeting the domestic needs, why – which I understand you were doing with the CPW analysis when you compared the Isolated Island and the Interconnected, correct?

MR. BENNETT: So our System Planning team was there, yes.

MS. O'BRIEN: Okay. But, you know, I'm gonna be – I'm asking you because –

MR. BENNETT: Yeah.

MS. O'BRIEN: – you're the – one of the vice-presidents of the company, so I – and I would expect that you would have some familiarity with this.

I mean, the question is: Why would LNG have – import have been screened out so early when the CPW even – I acknowledge it's not – it's sort of based on just estimates, preliminary estimates, but when those preliminary estimates are showing that it could be – have a lower CPW, why would that analysis, that option, not have been explored further?

MR. BENNETT: So in terms of LNG, I recall that the commercial – the commercial question is: What is the price reference that an LNG supplier – what might they use in order to price the product? And the conversation that I recall on that point is that we don't have market power. We don't have the ability to set a price. We're not a high volume consumer. And there was certainly a question as to whether that price could be achieved.

MS. O'BRIEN: Mm-hmm.

MR. BENNETT: So looking at a series of potential discounts gets you to a CPW. My recollection was that the LNG supplier would look at us and say: Okay, well what can you afford to pay for LNG? So the price was by no means certain –

MS. O'BRIEN: No.

MR. BENNETT: – in terms of putting it into the CPW analysis. We –

MS. O'BRIEN: Yeah, but you had an analysis by Ziff, and ultimately there was a further analysis done by Wood Mackenzie. So you – there was at least numbers to work with.

MR. BENNETT: Oh, there were numbers to work with, but there was no certainty that you actually had a natural gas supplier who was gonna supply at a given price.

MS. O'BRIEN: Was there ever any certainty that the Lower – the dam in Muskrat Falls and the Lower Churchill Project could be built for 6.2 billion?

MR. BENNETT: There were estimates and they were done to best of people's abilities.

MS. O'BRIEN: Okay, so –

MR. BENNETT: Okay, so the commercial –

MS. O'BRIEN: So, in other words –

MR. BENNETT: – you'd have –

MS. O'BRIEN: – you didn't have certainty then for any option?

MR. BENNETT: The commercial question for gas is an important one. Like, what is the price at which a supplier would elect to sell us gas? The thinking was they would link their price to the cost of our alternative and that being distillate fuel and that therefore it would be difficult to extract a discount from a gas supplier to obtain LNG for the thermal plant.

MS. O'BRIEN: So when did this thinking go on that you're describing?

MR. BENNETT: I recall that conversation around the time of the PUB.

MS. O'BRIEN: Okay, but you are –

MR. BENNETT: And I think – I mean any time that, you know, gas came up, you got to that question: Well, how – what's our – what's the price of our alternative? Where – what market power do we have and what's our probability of getting the price that's being talked about here?

MS. O'BRIEN: So I'm just going to put the question to you again and let you finish your answer. But at – certainly at this time, by your own analysis, prior to Gate 3, you've got numbers from Ziff that indicate that on a CPW analysis importing LNG could be cheaper, could be a lower CPW than the Isolated Island. And then we know further work was done by Wood Mackenzie, whether you're familiar with it or not, that suggests even Ziff's numbers might be high, which would have made this a more attractive option than the Isolated Island for the CPW analysis.

So why would you not, at that time, have put some effort into investigating it further? Particularly, when one of your VPs, your – who was in charge of Oil and Gas, felt that it was a more attractive option than the Isolated that you were working with?

MR. SIMMONS: Mr. Commissioner.

THE COMMISSIONER: Before you answer that, Mr. Simmons?

MR. SIMMONS: Mr. Commissioner, I'm struggling with my recollection of exactly what Mr. Keating said on that point. And I do recall him saying that it may have been a cheaper

option than the alternative to fuel and the Isolated Island. I'm having trouble recollecting whether he said that in his view it would be.

So if we could – we'd have to look at his transcript to be sure. But my recollection was that he acknowledged that it may have been, but I don't know if he came to the conclusion that it definitely would be or not.

MS. O'BRIEN: I certainly haven't meant to misstate any evidence, obviously. Jim Keating's transcript is in a – wasn't yet available, I don't believe, but we'll confirm that. I certainly know that he looked at it. I think Mr. Learmonth just said he felt it was based on the PIRA and the Wood Mackenzie, but we'll confirm that. But he at least thought it was – he at least thought it might be.

You know, he is the VP of Oil and Gas. Like, why wouldn't Nalcor have said, look, we really need to investigate this further; this is a big decision we're making for the province.

MR. BENNETT: In the context of LNG versus distillate, if we go back to the Ziff work – so the CPW, a hundred-million dollars on 10.7, 10.8, I don't see that as a material difference. What I saw there was something that is very comparable to the Isolated Island case. And that number, the Ziff number, is sort of – is consistent with what I was thinking was going to happen here that ...

And I've heard from, you know, our Investment Evaluation and commercial teams that a supplier is likely to exercise their market power in terms of establishing the price that we're going to pay. So there's a big difference between the price that we can expect to pay versus somebody's production cost.

Now, I can't recall having read the WoodMac report in detail. Jim would be closer to that than I was.

MS. O'BRIEN: I don't believe they were suggesting that was the production cost.

MR. BENNETT: Well, I'm just reading there in the second sentence: WoodMac "has used its independent views on the ... markets and its in-depth knowledge of the costs of production and transportation of natural gas from off-shore

plays ... to reach the conclusions herein." So if this is a cost analysis, that doesn't get us to a price analysis.

MS. O'BRIEN: Okay, well, the CPW work, you're saying you thought that that work was done using Ziff's numbers based on the cost of production –

MR. BENNETT: No –

MS. O'BRIEN: – as opposed to what you could expect to buy it for?

MR. BENNETT: No, I was just looking – my first reference was in relation to Ziff; 10.7 versus 10.8. I don't see those as being very different at all, right? That's basically the same number. We're within 1 per cent of each other here.

MS. O'BRIEN: So if you have, you know, three options there and two of them are kind of close to the same number, why not do a deeper dig, a deeper dive into evaluating them both?

MR. BENNETT: Because they weren't close to the Interconnected case.

MS. O'BRIEN: So that's the reason?

MR. BENNETT: (Inaudible.)

MS. O'BRIEN: So then if you were going to eliminate and you had – you're saying the Interconnected case was the best one. So if you're only going to choose one other than the Interconnected case, why did you chose the Isolated Island versus the LNG, if the numbers were suggesting they were similar?

MR. BENNETT: Because the LNG is the Isolated Island. It was simply a different fuel source for Holyrood. It's still an Isolated Island –

MS. O'BRIEN: But didn't they –

MR. BENNETT: – with simply a different choice of fuel in the combined-cycle power plant.

MS. O'BRIEN: But they didn't use – when they did the Isolated Island scenario they didn't

put into Strategist, do an evaluation of importing liquefied natural gas.

MR. BENNETT: If I interpret that slide from Ziff properly, Ziff concluded that the numbers were comparable to the alternative that they had used to the Isolated case.

MS. O'BRIEN: Yes, but my question is, if you have the Isolated cases comparable to the LNG, why did you choose to pick the Isolated Island case and leave the LNG off the table, which I understood you left that off the table –

MR. BENNETT: Because –

MS. O'BRIEN: – before DG2.

MR. BENNETT: Well, the Isolated Island case had the – had a known fuel source, had a relatively transparent market. You had – like, distillate fuel is widely traded at a predictable price and the LNG number is basically the same number.

MS. O'BRIEN: Okay. And to be clear, you – the LNG got screened out at phase 1?

MR. BENNETT: Yes, it did.

MS. O'BRIEN: Prior to Ziff's work?

MR. BENNETT: Right.

MS. O'BRIEN: And you didn't – when you got Ziff's work you didn't rethink that decision or revisit that decision?

MR. BENNETT: I didn't see a reason to revisit it.

MS. O'BRIEN: Okay.

All right, can we go to P-00014, page 24? This is the Grant Thornton report again.

So Grant Thornton has put in their report here some tables that they have actually taken from presentations to the board. And those presentations to the board are all in evidence; I'm just bringing it up this way for ease.

So, this one here does the CPW. And it shows – also it has Isolated Island; Lower Churchill, Gull

Island; Lower Churchill, Muskrat Falls; imports from or via Hydro-Québec; and imports from NEISO via Maritime Link. And you'll note here that imports from – or via Quebec, and as well as imports from New England, both have CPWs that are less than the Isolated Island CPW.

And we know that – I want to talk about the import from Hydro-Québec. Can you please explain for the Commissioner why the Hydro-Québec import or Quebec import option was eliminated?

MR. BENNETT: Looking at Hydro-Québec's market approach, they were selling energy into the North American market at that time, not on a long-term basis. They were opportunistically taking the market price and deciding when they would sell. So we looked at that from a market perspective and, similarly to the natural gas scenario, concluded that Hydro-Québec, if they were to sell to us, would be exercising their market power and establishing the price at which we would pay.

MS. O'BRIEN: Yes.

MR. BENNETT: So they have no obligation to offer us a cost-based price.

MS. O'BRIEN: No, I would understand that.

MR. BENNETT: Right? They have no obligation to make a long-term supply available. And if they were, they would – we – because we would have done the same thing. We've always had a conversation with our potential customers on the basis that we are pricing against your alternative. And – our alternative in buying from Hydro-Québec would be something very similar to the Isolated Island case. There's no reason for them to give us a particularly good deal on energy.

MS. O'BRIEN: No, you'd expect them to give you a market price.

MR. BENNETT: So that's the market price, that's exactly –

MS. O'BRIEN: Yes, I think that's –

MR. BENNETT: – the point.

MS. O'BRIEN: – what most people would expect.

MR. BENNETT: And that's why if you look at the market price, the market price in New England is not firm, capacity-backed – is not a firm, capacity-backed sale. It's a – it's an energy-only price and they sell, when they decide they want to.

MS. O'BRIEN: Well, if we bring up P-00275, please?

MR. BENNETT: I think, after –

MS. O'BRIEN: (Inaudible)

MS. O'BRIEN: – this arrangement they did – they have done long-term deals since then, but at the time –

MS. O'BRIEN: So yeah, 00275, well this is August, 2010. “Quebec and Vermont agree on a new electricity supply contract” and this – they're long-standing partners, valuable ally –

MR. BENNETT: Yeah.

MS. O'BRIEN: – and so they've entered a power purchase agreement, a long-term power purchase agreement with Vermont in 2010.

MR. BENNETT: And I –

MS. O'BRIEN: Were you aware of that?

MR. BENNETT: – I thought at the time that the price was tied to gas.

MS. O'BRIEN: Okay, but – Hydro-Québec was at the time willing to entertain power purchase agreements?

MR. BENNETT: With a market reference – and I guess the point I was trying get to was the market reference was tied to – was tied to gas.

MS. O'BRIEN: Well it was obviously – they worked at a price that was agreeable for Vermont.

MR. BENNETT: They did at the time, yes.

MS. O'BRIEN: Yeah. So they were open for business?

MR. BENNETT: What was the size of this sale and – if we can confirm?

MS. O'BRIEN: The – I don't know if the details are here, but I think, the point is they were open – they obviously came – they were open to longer-term arrangements, would you not agree?

MR. BENNETT: They made this sale. And I had thought –

MS. O'BRIEN: They made the sale, well we –

MR. BENNETT: – I actually thought that –

MS. O'BRIEN: – let's bring up Quebec's –

MR. BENNETT: – I thought, I thought –

MS. O'BRIEN: – energy strategy.

MR. BENNETT: Yeah, I thought this one was later, to be honest.

MS. O'BRIEN: Let's go to P-00274, please. This document's in evidence and I'm not going to go through it in detail, but this is Quebec – if we could just make it a little bit actually smaller, please so I can – thanks.

So this is – thank you. P-00275. So this is – is this the right one – ta-ta-ta. We have here in evidence, I think this must be it, but the Quebec energy strategy for 2006 and 2015, and if this is not the right one, I'll find it on the break.

But that – so that was a document – that was their strategy 2006 to 2015, so that was the strategy that was –

MR. BENNETT: Right.

MS. O'BRIEN: – in place during this period, right?

And that document has lots of discussions about how Quebec is gonna be increasing its power exports. And that was an area that they wanted to focus on.

MR. BENNETT: No question.

MS. O'BRIEN: Okay –

MR. BENNETT: Okay.

MS. O'BRIEN: – so you were aware of that at the time?

MR. BENNETT: They were selling into the market. Our understanding was that they were taking market prices – they do have assets into multiple jurisdictions, including their 2000-megawatt connection into New England. They – as I was aware, they did not have long-term firm contracts. They were a participant in the market and they were seeking a market price.

MS. O'BRIEN: Okay, well, they entered into a contract with Vermont?

MR. BENNETT: They did.

MS. O'BRIEN: Okay.

Can we go to P-00014, page 28, please? This is back to the Grant Thornton report.

So, they make some findings here that essentially, that Nalcor – completed an analysis of electricity imports as an option, but they say, you know, “During our interviews with Nalcor executives it was confirmed that there were no formal procedures initiated with Hydro Quebec.” It says above – the – this is from the – Nalcor said in its submissions to the PUB that they “... did not enter into discussions with Hydro Quebec for long-term electricity supply”

So, given that there – they – Quebec has an energy strategy out that says they are open for increasing their exports – we know that they – Vermont approached them and came to a deal – why would you not have at least approached Hydro-Québec to see if it – you know, that option was there – was it on the table? Start negotiations; open a dialogue? Why wouldn't you have done that – particularly when your own CPW analysis was showing that it had a lower CPW –

MR. BENNETT: Well –

MS. O'BRIEN: – than the Isolated Island?

MR. BENNETT: So – just a point – the CPW analysis looked at the cost of – the projected cost of energy in the New England marketplace. And that was a proxy for the price.

The risk that was included, or considered, in that price analysis was that the New England market as we know it does not have a long-term – firm price, and that Hydro-Québec's behaviour in that market – although they do have a long-term supply commitment – they link their price to natural gas.

MS. O'BRIEN: Why not at least approach Hydro-Québec?

MR. BENNETT: There were a lot of things happening with Hydro-Québec at the time. Um –

MS. O'BRIEN: We have seen a document in evidence, which we'll get to later on today, but – where Nalcor is identifying some of its risk mitigation strategies. And one of the strategies that Nalcor has identified is to leverage the Quebec versus Newfoundland and Labrador – debate and that was to rally support for the Muskrat Falls Project.

Was there a prevailing feeling at Nalcor during this period of Quebec being an opponent? I mean, it was Quebec versus Newfoundland and Labrador.

MR. BENNETT: Hydro-Québec had been fairly clear that they didn't want us in the market. They weren't happy with us being as a competitor. So that view is – I think that view would be fairly clear.

MS. O'BRIEN: Okay, so there was a us-versus-them sentiment at Nalcor?

MR. BENNETT: They were competitive. They were positioned a competitor of ours.

MS. O'BRIEN: Okay and do you believe that that sentiment, which I'm understanding you're agreeing with me, that that sentiment was there? Right?

MR. BENNETT: The sentiment that I described, their positioning as a competitor of

ours, showing up in – if we were showing up in, you know, presentations, conferences in the New England or other marketplaces – yeah – they saw us as a competitor.

Still can't get past the challenge that, in terms of their pricing strategy, when we actually were to sit down, that you wouldn't get past the notion that they would be pricing off our alternative, which was the Isolated case.

MS. O'BRIEN: I know you said that a few times but –

MR. BENNETT: No – but it's important, because it frames more so than simply there being a competitive stance between us and Hydro-Québec, why we didn't think that that was a course of action that was worthy of further consideration?

MS. O'BRIEN: But if they really considered you as a competitor wouldn't that lead one to believe they might be more agreeable to having you as a client?

MR. BENNETT: That's why I said, the real important consideration is what we viewed their pricing approach to be and whether we thought there was merit in that.

MS. O'BRIEN: Okay, but you didn't approach them.

MR. BENNETT: We did not approach them.

MS. O'BRIEN: And – I'm a little unclear so I'm gonna ask the question again. Do you believe that the sentiment at Nalcor, the – a particular feeling with Hydro-Québec that this was a bit of an us-versus-them, have any role to play in the decision not to approach them?

MR. BENNETT: I didn't see it that way. I couldn't get past the pricing question – as to how they would price off our – how they would price anything other than a consideration against our best alternative without Muskrat Falls.

MS. O'BRIEN: So is that the – is that the generally the approach that you take to making decisions that if you – you know – like, we may – deciding that you won't get to an appropriate

price with someone prior to even approaching them?

MR. BENNETT: If were on the selling side, and we have done that in other scenarios, the commercial view is that we're going to try to price not on a cost basis, but what our alternative is. And I think Ed can provide some more context into that commercial thinking. But, generally speaking, when we try to set prices, we're looking at a comparison to their best – their next best alternative.

We put a lot of effort into trying to understand what markets look like, what pricing looked like, what that strategy looks like, and that – you know, if you look at the effort at the Nova Scotia Utilities and Review Board, you know, the supply over the Maritime Link was compared to Emera's other supply alternatives, and we got under the wire.

MS. O'BRIEN: What about Upper Churchill redress?

Do you believe there was an appetite at Nalcor, Government of Newfoundland and Labrador to do a – you know, to approach Hydro-Québec for a potential supply contract that – without addressing redress for the Upper Churchill deal?

MR. BENNETT: I didn't have a strong opinion on that. I can see that – I mean, needless to say, I think if we look at the history, the Churchill Falls contract has gathered a lot of conversation, and that certainly people in the province and in Quebec have very strong feelings about the contract. I don't know what a broader deal could've looked like and it's difficult for me to speculate.

MS. O'BRIEN: No, but I guess my question is do you – you know is – you know, you were there while these, you know, the options were being considered. Was there a – an appetite at, you know, the Government of Newfoundland and Labrador or Nalcor to do any deal with Quebec that didn't address redress for the Upper Churchill?

MR. BENNETT: I don't have a view on that.

MS. O'BRIEN: You don't recall any discussions?

MR. BENNETT: I don't recall – no, I can't. As I said, politically, Churchill Falls, the contract, is a hot button.

MS. O'BRIEN: Yes.

MR. BENNETT: And I never put my mind to, okay, well, what could that deal look like.

MS. O'BRIEN: Okay, 2041 – now, we know that the Upper Churchill contract does expire in 2041. Is it fair to say that negotiations with Hydro-Québec will – won't wait – you won't wait until the last minute, those will be undertaken long before 2041. Is that reasonable?

MR. BENNETT: They shouldn't but I can't predict. They shouldn't wait, right? But it's difficult for me to predict how that's going to unfold. Somebody might say we're going to let it go right to the night before. It depends on the position of the two parties.

MS. O'BRIEN: Okay.

All right, but in your opinion it should happen well before then.

MR. BENNETT: It should.

MS. O'BRIEN: Okay.

MR. BENNETT: I mean – and both parties should have an interest in seeing that happen in a reasonable time. And – but it's not a given, and our position might be that there's a different – there's a plan or you let it go to a market reference. Somebody will need to put their mind to that and think about that a lot before we get to 2041.

MS. O'BRIEN: Right, okay.

And – now, I understand that the waiting-until-2041 option was another option that was screened out at phase 1. Is that correct?

MR. BENNETT: That's right.

MS. O'BRIEN: Okay.

And I'm going to talk about the 2041 option. And that's – what I understand the 2041 option, that was screened out, to be was that, look, you

price up doing a link between Labrador and Newfoundland and Labrador, and then you'd look at just buying market-priced power from Upper Churchill. Is that what that option was?

MR. BENNETT: That would be the notion, yes.

MS. O'BRIEN: Okay. And so, I mean, the Upper Churchill has – generates – has a capacity of about 5,400 megawatts, something like that?

MR. BENNETT: That's correct.

MS. O'BRIEN: Okay, so that's far more than is needed to meet our provincial demand?

MR. BENNETT: Yes, that's correct.

MS. O'BRIEN: Okay.

So if we can go to page 54 of P-00014 that's up, so this a summary table that Grant Thornton put together of the various sensitivities that were run at DG2. And one of the sensitivities that they did was Holyrood to 2041, then Churchill Falls at market price.

MR. BENNETT: Okay.

MS. O'BRIEN: Is that new information to you?

MR. BENNETT: I mean I've seen it in the report. The only observation I'd make is I don't know what upgrades and costs and what the fuel series were for Holyrood in that scenario.

MS. O'BRIEN: Yeah. This is work that was done by Newfoundland and Labrador Hydro.

MR. BENNETT: Okay.

MS. O'BRIEN: This is work – just to be clear, these are sensitivities at –

MR. BENNETT: At DG2. Okay.

MS. O'BRIEN: – at DG2. This is –

MR. BENNETT: Okay.

MS. O'BRIEN: – not Grant Thornton's work.

MR. BENNETT: All right. Perfect.

MS. O'BRIEN: Okay.

So Holyrood to 2041, then Churchill Falls at market price. And if you look at – so this table has the base case up here, right? So it shows the differences – this is the \$2.2-billion difference at DG2? Okay?

The difference between the two options, between this option and the – if you use this one for the Isolated Island Option, the difference is – sorry, I'm losing my place – is only 1.3 billion, so much less. So on the CPW analysis, I know this was only a sensitivity and not a full CPW evaluation.

MR. BENNETT: Right.

MS. O'BRIEN: But on the sensitivity, it looks like it is a more attractive option.

MR. BENNETT: But it's more expensive than the Interconnected case.

MS. O'BRIEN: Okay, but then it comes down to – but it was less expensive, or it looked to be less expensive than the Isolated Island case.

MR. BENNETT: Well, I think I'd qualify. It was the Isolated case for 25 years –

MS. O'BRIEN: Mm-hmm.

MR. BENNETT: – and then you build a Link later.

MS. O'BRIEN: Right.

MR. BENNETT: Right.

MS. O'BRIEN: It's the 2041 option.

MR. BENNETT: Right, but it's – it really is Isolated for 25 years and then Interconnect later.

MS. O'BRIEN: So why not evaluate that one against the Lower Churchill Project?

MR. BENNETT: Because, as I recall, the – well, the CPW of the Interconnected case was lower than this deferred Interconnection.

MS. O'BRIEN: But –

MR. BENNETT: Right, 7,935 versus the 6,652.

MS. O'BRIEN: No.

MR. BENNETT: Yeah, yeah.

MS. O'BRIEN: Sorry, it's –

MR. BENNETT: That's –

MS. O'BRIEN: – 8.8 billion.

MR. BENNETT: That's the Isolated.

MS. O'BRIEN: Yeah, isn't that what we're talking about?

MR. BENNETT: No.

MS. O'BRIEN: 8.8 billion on the Isolated.

MR. BENNETT: You should be comparing that to the 6,652 in the Interconnected case.

MS. O'BRIEN: No, no, but my – I know it's – the Interconnected case was still less, it was still less by 1.3 billion.

MR. BENNETT: Right.

MS. O'BRIEN: But this was a on a CPW evaluation less than the Isolated case, right? Like, the Isolated case was 8.8 billion.

MR. BENNETT: Right.

MS. O'BRIEN: Right? And if you took this – let's wait till 2041, it went down to 7.9 billion.

MR. BENNETT: Yeah.

MS. O'BRIEN: And that's – and the Interconnected Island, that CPW stays the same in both scenarios.

MR. BENNETT: You still have a preference for the Interconnected case.

MS. O'BRIEN: Yes, I understand that. Maybe – I'm sorry; I'm not explaining my question properly. The question is: If the let's wait till 2041 and take advantage of Upper Churchill power at market price looked financially more attractive than the complete Isolated Island case

out for 50, 60 years, why didn't you do a detailed analysis of the 2041 option?

MR. BENNETT: But isn't –

MS. O'BRIEN: Why –

MR. BENNETT: But isn't that the Isolated case for 25 years and then do the Interconnection later. So from a –

MS. O'BRIEN: Yes.

MR. BENNETT: – system planning perspective, I think that case is exactly the same, except we're going to keep Holyrood for another 25 years and do the interconnection later. And I recall a consistent message from System Planning that when you start looking at the Interconnection, the economics favour doing it early, which is what they ultimately proposed.

THE COMMISSIONER: Can I just help you there for a second?

MS. O'BRIEN: Yes, thank you.

THE COMMISSIONER: Because I get your point. This gentleman is not getting it. So let's assume, Sir, that the Isolated Option is what was proposed by your Systems Planning group back at DG1, DG2, okay? That's one Isolated option. Now, I realize the next one might be one that involves 'til 2041 in the sense that you're still going to be Isolated but it's two different options, okay? There are two different things on the table. You're going to do two different things for those two different options.

So with this sensitivity, it shows that the difference between the CPW, or potential CPW for the Isolated Option, which was the real one you guys were looking at, versus the one for the – if you were using this one, would be 1.2 as opposed to 2.2 billion –

MR. BENNETT: Right.

THE COMMISSIONER: – okay? So the question that is being asked is: In view of the fact that this Isolated Option option, so to speak, was less than the other Isolated Option option, why would you not look at this option? Is that your question?

MS. O'BRIEN: Yes.

MR. BENNETT: Okay.

THE COMMISSIONER: Okay.

MR. BENNETT: And I'm not sure that they're really different; because I know that what you're actually – I think what we're talking about is a delay in the interconnection. But – this is a question that Paul Humphries could probably explain better than I do – but the generation – I don't understand the generation expansion plan and the requirements to meet our energy capacity requirements for that 25 years here are any – are different in either case. I think the generation expansion plan, the replacement of Holyrood, the reliance on that facility, the incremental wind and the other upgrades are exactly the same in both cases for 25 years. And at the end 25 years, what you're doing is you're taking off the continued reliance on the facility and you're going to interconnect.

THE COMMISSIONER: Not so sure that's correct.

MR. BENNETT: Okay.

THE COMMISSIONER: Because again – and I'm going to stop here – but for the Isolated – for the 2041, the idea was is you were actually going to be importing oil – or importing power from Quebec until 2041.

But anyway, go ahead Ms. –

MR. BENNETT: Oh, no –

THE COMMISSIONER: – O'Brien.

MR. BENNETT: – just clarification, Commissioner, I think it was after 2041 you'd be importing from Churchill Falls.

THE COMMISSIONER: Right.

MS. O'BRIEN: Churchill Falls.

THE COMMISSIONER: Yeah.

MS. O'BRIEN: Okay so you eliminated the 2041 option at phase 1.

You know, I'm pretty sure if we get –

MR. BENNETT: Yeah.

MS. O'BRIEN: – the recording you'll have already agreed to that –

MR. BENNETT: Yes.

MS. O'BRIEN: – a few minutes ago.

MR. BENNETT: Yes, we did.

MS. O'BRIEN: Okay.

So you eliminated it at phase 1 even though it had a lower CPW than the Isolated Island scenario that you did not eliminate at phase 1?

MR. BENNETT: The – just for clarification, I think this is an important point – the 2041 option is a deferral of the Interconnected case.

MS. O'BRIEN: But it's not just that. It doesn't have a Muskrat Falls generating station built.

MR. BENNETT: That's true –

MS. O'BRIEN: Yes, it's a –

MR. BENNETT: – but what –

MS. O'BRIEN: – very important point.

MR. BENNETT: Well, I'm not sure that it is, though, because it's still more expensive. And the view from System Planning was that, if you're going to commit to the interconnection, you should do it early. But the economics favour that.

MS. O'BRIEN: But we wouldn't have had to build the Muskrat Falls generating station?

MR. BENNETT: That's true, but we would –

MS. O'BRIEN: Okay. (Inaudible) –

MR. BENNETT: – we – at this point, we saw an increased CPW associated with that deferral.

With the deferral of the interconnection – and, yes, I agree that we wouldn't have built Muskrat

Falls; we would have had energy from Churchill Falls at market prices in 2041.

MS. O'BRIEN: Mm-hmm.

MR. BENNETT: But what this analysis shows is that it was economically – we were economically better off in this analysis by doing the interconnection and building Muskrat Falls early.

And, in the meantime, as I recall, we would have had the issues and considerations associated with the Isolated case for those 25 years.

MS. O'BRIEN: With respect to the market price, I wanna put something to you.

Obviously, one of the positions that has been taken by Nalcor and government is the point that CF(L)Co is jointly owned by Hydro-Québec and Newfoundland and Labrador Hydro, or Nalcor. And the point would be, and so, you can't expect to get, you know, free power from CF(L)Co – from the Upper Churchill in 2041.

But if you're looking at getting – I wanna put something to you because it seems to be some common sense that, you know, there's a lot of power at the Upper Churchill – 540 megawatts more than we need for the Island. Quebec has a need for power. Nalcor – we here in Newfoundland and Labrador have a need for power. If you take – if you were to take the power from the Upper Churchill and have to bring it down to sell it at – on – you know, into New England and the United States, you'd have a lot more transmission losses. You'd have to pay tariffs – absorb the cost of tariffs going through the various jurisdictions.

It would seem to me that, you know, given the savings in losses because of shorter lines – the fact that there wouldn't be tariffs – that the pricing for Newfoundland and Labrador, and for Quebec if you split up that 540 megawatts of power, could be actually lower than what either province would be able to get from other sources, and give as much money that CF(L)Co would be able to expect to get if it sold it in New England or elsewhere.

MR. BENNETT: I don't necessarily see it that way. I think the transmission losses across the

Quebec system and their tariff are about 5 per cent. So I don't think that there would be a meaningful difference in the market price to CF compared to what Hydro-Québec is selling for.

MS. O'BRIEN: Yup. But if we just take the power right from the Upper Churchill we don't need to go through Quebec.

MR. BENNETT: No, but we have to get to the Island.

MS. O'BRIEN: Right, okay, but the transmission losses going from the Upper Churchill to the Island are less than the transmission losses going from the Upper Churchill to New England.

MR. BENNETT: I'm not sure that's the case.

MS. O'BRIEN: Okay. I'm sure that can be verified but you know, you are an electrical engineer working in this business and you're saying you don't think that would be the case?

MR. BENNETT: I think the tariff – the Hydro-Québec open access tariff has about a 5 per cent allocation for losses in their – across their system and the average losses on LIL – they're almost exactly the same.

MS. O'BRIEN: But we don't count the whole – the Island system no matter what.

MR. BENNETT: No. That's over –

MS. O'BRIEN: We still have to get power across the Island.

MR. BENNETT: – that's over LIL, that's over LIL.

MS. O'BRIEN: Yeah but – no. I'm talking about getting it from Upper Churchill to the Island.

MR. BENNETT: Yeah but you have to go over the link, the –

MS. O'BRIEN: We have to go over the SOBI –

MR. BENNETT: Yes.

MS. O'BRIEN: – but wherever we buy power from we have to absorb –

MR. BENNETT: We were doing that, yes I agree.

MS. O'BRIEN: – yeah. Right? So it would be really very short transmission from the Upper Churchill –

MR. BENNETT: Yeah.

MS. O'BRIEN: – across the SOBI to the end.

MR. BENNETT: My point was, the transmission losses across the Hydro-Québec system are approximately 5 per cent.

MS. O'BRIEN: Okay.

I'm just putting to you and you can agree with me or not, that the transmission losses to take power from the Upper Churchill down to New England are more than the transmission losses to take power from the Upper Churchill to the Island of Newfoundland.

MR. BENNETT: To New England – yeah, as I said, if you're coming to the Island, including the losses on LIL, I'm not sure that's the case. I'm not sure –

MS. O'BRIEN: No, just getting it right to the Island, Mr. Bennett.

MR. BENNETT: But to the Island is Soldiers Pond, just to be clear.

MS. O'BRIEN: No, it could just be getting it – all right that's fine.

MR. BENNETT: (Inaudible) I'm not trying to argue, I'm just trying to –

MS. O'BRIEN: Okay, so you're not able to – I'm just saying getting it right to the edge of the Island.

MR. BENNETT: But to the edge of the Island is Soldiers Pond. Like, there is no edge; it's either at Muskrat Falls –

MS. O'BRIEN: No, the edge is where it lands after SOBI.

MR. BENNETT: But you can't use it there. It has to get to Soldiers Pond to get to the converter to connect to the grid.

MS. O'BRIEN: I know, but wherever we get our power from we have to move it across the Island.

MR. BENNETT: Okay.

MS. O'BRIEN: Okay, so you're not willing to agree with that. Would you agree that to get power from the Upper Churchill to the people on the Island we don't have to pay any tariffs?

MR. BENNETT: We don't pay a tariff because we have LIL. That's right.

MS. O'BRIEN: Because it's –

MR. BENNETT: We own the asset. That's correct.

MS. O'BRIEN: We own the asset. But if we had to take the same power and get it down to New England, we would have to pay tariffs.

MR. BENNETT: You'd pay the tariff through the Hydro-Québec system and that's what they're doing today.

MS. O'BRIEN: Okay and maybe even in other systems once you got it to New England depending on where it was going. I mean if you had to get it all the way to Massachusetts or whatever –

MR. BENNETT: Depending on the delivery point –

MS. O'BRIEN: Yeah.

MR. BENNETT: – and where it comes out of the system.

MS. O'BRIEN: Okay. Thank you.

Okay. I'm going to talk a little bit about Gull Island. Now, we've had a fair bit of information on why the change from Gull Island-first to Muskrat Falls-first scenarios happened, and I don't really believe that there's very much controversy about this.

Is it fair to say that the Gull Island scenario didn't make sense unless you either had an export market or a very large-scale aluminum-smelter-type development in Labrador?

MR. BENNETT: Yes. I would agree with that.

MS. O'BRIEN: Okay. And we've heard from Derrick Sturge that he had explored the aluminum smelter option and ultimately discovered that the aluminum companies were looking for power much cheaper than we could produce it at Gull Island, and so that option came off the table?

MR. BENNETT: It ultimately came off the table, yes. I was – I worked with Derrick on a number of those engagements.

MS. O'BRIEN: Okay. And so then you were left with – if Gull Island was to make sense, you had to export. And I take it there was two ways you could export. One is through Quebec, and one is through a Maritime route?

MR. BENNETT: That's right.

MS. O'BRIEN: Okay. And so I know that the Maritime route, and this is – I'm just summarizing what I understand from Mr. Sturge's evidence – is that that you were looking at a larger – a Maritime route, a scenario, where New Brunswick was involved and Nova Scotia was involved, and this was a really Gull Island scenario.

But then some negotiations started happening between New Brunswick Power and Hydro-Québec. Really, New Brunswick came out of those tripartite discussions and then when you were left with just you – Newfoundland and Labrador and Nova Scotia – really, Gull Island didn't make sense but Muskrat Falls did.

MR. BENNETT: Right.

MS. O'BRIEN: Okay. And then so that sort of explains it how it changed on the Maritime side.

And on the Quebec side, we've heard evidence already that in May 2010 the regulator in Quebec – the Régie – turned down an application of Nalcor's – and – to transmit – to

get transmission through the province and that really took the Quebec route off the table?

MR. BENNETT: I think that's fair. Yes.

MS. O'BRIEN: Okay. And so then we're there.

So we've had some evidence about the Régie decision already from – I think Danny Williams gave some testimony about it, and one of the things he said – he sort of gave a little summary of it, and he said that – you know, he said it was the most ridiculous decision he'd ever read in 50 or 45 years as a lawyer. So he had some strong feelings about it.

But he also said it was, you know, he says it was ridiculous. It was unbelievable. He said and up – and even up to a point were we ask for capacity information or even to find out – are your pipes full? Is there any room? And we couldn't get that information. Were you at all familiar with this – were you involved in this application?

MR. BENNETT: I was involved in this process. Yeah.

MS. O'BRIEN: Okay, and looking at the decision – and it has been filed, and a translation has been filed. But I understand there was an issue that Nalcor failed to provide information to the Régie within a 45-day window, and ultimately you lost the rights to continue on with the process because of that missed deadline.

MR. BENNETT: So to Hydro-Québec, as –

MS. O'BRIEN: Yes.

MR. BENNETT: – opposed to the Régie.

MS. O'BRIEN: Yes, my – I misspoke.

MR. BENNETT: And we were of the view, and our legal counsel was of the view, that we had provided the necessary information, and Hydro-Québec concluded they didn't have enough information, and they said you're done.

MS. O'BRIEN: And ultimately – so you ultimately filed a complaint, it's sort of like an appeal we might think – but filed a complaint about that initial decision.

MR. BENNETT: That's right.

MS. O'BRIEN: And is it fair that it went – it did get reviewed and the finding was upheld, that Newfoundland and Labrador Hydro had not filed the information that was required.

MR. BENNETT: That was their conclusion.

MS. O'BRIEN: Okay.

Can we go to P-01321, please?

Now, this table –

THE COMMISSIONER: Tab 33.

MS. O'BRIEN: – if we can make it a little –

MR. BENNETT: Okay, thank you.

MS. O'BRIEN: – bigger please. Yeah, sorry, tab 33. Yes, and you'll probably need to see the table, 'cause it's not all that easy to read.

MR. BENNETT: It's hard to read.

MS. O'BRIEN: So this has come up in the hearing room during some earlier testimony about costs being attributed to the Gull Island project.

So I believe I said in the hearing room to the Commissioner that we had asked Nalcor to provide us some more information on what costs had been allocated to the Gull Island project, and this is the document that we have been provided.

And I understand you have had an opportunity to review this prior to coming here today?

MR. BENNETT: Yes, I have.

MS. O'BRIEN: Okay.

And I'm just going to – here, what we see are, you know, allocation of costs.

Can you just describe for the Commissioner, generally, what this is showing, what kind of costs are sitting there in the Gull Island project?

MR. BENNETT: So over the course of planning for Gull Island, there have been a

number of activities undertaken to advance that project.

Primarily, we have the environmental assessment process, field studies that go with that. There was some preliminary engineering done in early years that was charged to the Gull Island project. The negotiation of the various agreements with the Labrador Innu were cost-shared against Gull Island and Muskrat Falls, and for activities that benefited both projects, those costs were shared.

MS. O'BRIEN: Okay. So the ones that would have really benefited both projects, would that – I mean Aboriginal Affairs – I take it that would have been both projects?

MR. BENNETT: Yes.

MS. O'BRIEN: Communications?

MR. BENNETT: Communications stopped early on. Right, so –

MS. O'BRIEN: Oh yes, it did, yeah.

MR. BENNETT: So with the switch in focus from Gull to Muskrat, you're gonna see some charges going from one to the other.

MS. O'BRIEN: Okay.

MR. BENNETT: And they get dropped on one and then picked up on the next one.

MS. O'BRIEN: Engineering, would this be just Gull Island-specific engineering, or would there be some aspects of that Engineering which would be common to both projects?

MR. BENNETT: There would be little engineering that's common to both. My recollection is that the cost of the transmission line, for example, the 315-kV line, the Labrador Transmission Asset, all those costs went to Muskrat. Muskrat drove those. I don't have details on what the \$2 or \$3 million here in Engineering is.

There may have been some, you know, very preliminary looks or some field investigations. Certainly, up to 2010, there were field

investigations going on. I don't have clarity on what's going on in '11, '12 and '13.

MS. O'BRIEN: Okay.

MR. BENNETT: To my mind, there was very little work going on at Gull Island.

MS. O'BRIEN: Okay. Environmental – so this is going on right up to 2017.

MR. BENNETT: Yes.

MS. O'BRIEN: So this is work – ongoing environmental work that would benefit both projects?

MR. BENNETT: That's right. So they're environmental baseline monitoring programs. There are surveys going on to cover the entire project footprint and could be applicable to both Gull and Muskrat.

MS. O'BRIEN: Okay. And would the JRP process, the cost of that, be included in here?

MR. BENNETT: The JRP process should be there. It's interesting 'cause it doesn't look like it's there, 'cause it doesn't like there's enough expenditure for it to be there.

MS. O'BRIEN: Well, there – we have Legal as well as Environment.

MR. BENNETT: Right.

MS. O'BRIEN: So would – is your understanding –

MR. BENNETT: It should have been there, because the Joint Review Panel process covered both projects, right? So both developments were included in what we refer to in the environmental assessment as the Lower Churchill hydroelectric generating project.

MS. O'BRIEN: Okay. And project management? So what would that be that's still being allocated funds?

MR. BENNETT: Well, up to 2010 there still would have been work going on, on Gull Island. And then after that, I do recall that there was some effort to – and this would have been split

between, I suspect, project management, engineering; there may have been some cost estimates.

I know that the – our business development team, our energy marketing team, were still looking at opportunities for Gull, and they were doing some nominal work to refresh the capital cost estimates on Gull. There were a couple of consultant engagements but nothing heavy in terms of activity on Gull Island.

MS. O'BRIEN: One of the documents that we reviewed with Mr. Harrington suggested that for the joint – I think it was environmental, Aboriginal – these joint costs, that they were split 70 per cent to Gull Island, 30 per cent to Muskrat Falls. Is that –

MR. BENNETT: That's consistent with my understanding.

MS. O'BRIEN: Okay.

Now, these are – am I right in saying that these are costs – let's talk about the ones that are split. These are costs that would have had to have been incurred, no matter what, for Muskrat Falls Project to go ahead?

MR. BENNETT: They would have, but their scope or extent, depending on what we're looking at, may have been smaller. Right? So, depending on what baseline work is going on and what commitment came out of the environmental assessment to collect that data – the data collection program may have been scaled back somewhat. In the case of the impacts and benefits agreement, and the payments under there – no question that they would have been assignable to Muskrat – and after 2018 –

MS. O'BRIEN: So –

MR. BENNETT: – we've done that.

MS. O'BRIEN: So what – what's the – yeah – you've changed that now, have you?

MR. BENNETT: That's right, it has.

MS. O'BRIEN: Okay. But only recently changed that to –

MR. BENNETT: It happened for 2018.

MS. O'BRIEN: So what's the justification – just going back – I mean, if these are costs that had to have been incurred, at least to some extent, for Muskrat Falls to go ahead. What's the justification for then taking those costs and allocating 70 per cent of them for Gull Island, even after you knew it wasn't going to be a Gull Island first scenario – that it was going to be a Muskrat Falls Project?

MR. BENNETT: Well, Gull Island was still a live concept, right? So there were – to the extent that those costs benefited the Gull initiative – the conclusion was to charge those costs to Gull.

MS. O'BRIEN: Would they – those costs then, if they were allocated to Gull Island, would they have been kept out of the CPW analysis that you did at Gate 3?

MR. BENNETT: Not sure how much detail – I – I don't have visibility into these – these costs at that level.

MS. O'BRIEN: I'm gonna ask if you could see if –

MR. BENNETT: If we can –

MS. O'BRIEN: – we could get that information –

MR. BENNETT: – check that – sure.

MS. O'BRIEN: – whether the Gull Island costs were used – that the costs attributed to Gull Island were put in the CPW calculation. And is – would you know whether when you announced the – you know, the – I suppose it's a bit of the same question – but when we look at the announced project cost, my understanding is anything attributed to Gull Island would not have been in the announced project cost at DG3?

MR. BENNETT: That would be my expectation, yes.

MS. O'BRIEN: Okay.

MR. BENNETT: Those – those costs are carried on Gull's account.

MS. O'BRIEN: Derrick Sturge testified in response to questions from his own counsel. I think he was asked was there any time he was asked to do something that he was not comfortable with. He said that he had been asked – or that a suggestion had been made from the project team to put a portion of the Labrador Transmission Asset capital cost into the Gull Island envelope. He said he was not – he was not willing to do that. He wasn't comfortable with it and it didn't happen.

Do you recall that suggestion being made by the project management team?

MR. BENNETT: I don't. I remember chatting with Derrick about it after, and got up to speed on what the issue was. At the time, no, I wasn't aware.

MS. O'BRIEN: So the project management team would be making – these asks of the VP finance without keeping you in the loop?

MR. BENNETT: I wouldn't have called it an ask, I think there was –

MS. O'BRIEN: Suggestion?

MR. BENNETT: – suggestion –

MS. O'BRIEN: Yeah.

MR. BENNETT: – yeah, and I don't know where that suggestion came from.

MS. O'BRIEN: I think he said the project team.

MR. BENNETT: No, I – in terms of what was the basis for coming up with the suggestion. Why – where did this – I don't know where the question that the suggestion was trying to deal with arose. I'd have the same concern. At that point in time, LTA was being built to interconnect Muskrat Falls to the grid.

From my perspective, a cost allocation – if Gull were to move forward and all of a sudden this transmission corridor were shared against the two assets, you could make that decision at the time. It's a substantial – there's a substantial value in that asset.

MS. O'BRIEN: What would be the project management team's interest in how Nalcor was allocating funds between its different projects?

MR. BENNETT: I don't have – I don't know where the suggestion came from, so –

MS. O'BRIEN: Let's take Derrick Sturge; he said project team.

MR. BENNETT: I understand, but I mean – I don't mean who originated it, I mean what the basis for the suggestion was.

MS. O'BRIEN: Okay, well I'm trying to – you know, the most obvious was that there was an interest in keeping the cost for the Muskrat Falls Project low.

MR. BENNETT: Well, to the extent that the cost had to go somewhere, had to be funded by somebody, I don't see where that takes us. I mean, in the big scheme from the province's perspective if you take it out of one pot and you charge it to Gull, somebody still has to come up with the funds. So I'm catching up on the suggestion.

MS. O'BRIEN: So why – so that brings me back to my first question, is why would the project team have any interest or suggestions as to how the accounting was going on at the Nalcor corporate level?

MR. BENNETT: Had it come over my desk, I would've said: What are we talking about this for?

MS. O'BRIEN: But it didn't, and when – but Derrick Sturge raised it with you.

MR. BENNETT: Derrick Sturge – it came up after – I saw the testimony and I said what's this about?

MS. O'BRIEN: Oh, so you only learned about it –

MR. BENNETT: Yeah.

MS. O'BRIEN: – here at the Inquiry?

MR. BENNETT: This wasn't live at the time. I have – I don't recall this one.

MS. O'BRIEN: I'm just – this is – I wanna put another piece of information that Mr. Sturge gave to his counsel in the same line of questioning. So these are, you know – he had two areas where he said he'd been asked to do things that he didn't feel comfortable with, and the other one he testified at – that at the end of 2012 into 2013, there was a strong suggestion to advance financing to CIBC. What information do you have on this?

MR. BENNETT: Not much. I can remember – I can remember Mr. Martin making that comment that somebody had suggested it, but it was going nowhere.

MS. O'BRIEN: Okay. Somebody had – you remember Mr. Martin – that somebody who –

MR. BENNETT: Commenting on the issue, and he said: That's not happening.

MS. O'BRIEN: Okay, but the idea – who did you get the understanding that the suggestion was coming from?

MR. BENNETT: I can't – I can't point to anybody other than that. He indicated that that suggestion had been made, and it was a non-starter.

MS. O'BRIEN: Okay, like, suggested from the project management team?

MR. BENNETT: (Inaudible.)

MS. O'BRIEN: A suggestion from the Government of Newfoundland and Labrador? Did you have any – can you give the Commissioner any more information?

MR. BENNETT: I feel confident it wasn't the project management team, 'cause they weren't –

MS. O'BRIEN: Okay.

MR. BENNETT: – involved in the financing.

MS. O'BRIEN: Okay.

MR. BENNETT: Right?

MS. O'BRIEN: So –

MR. BENNETT: Beyond that, I don't have any clarity.

MS. O'BRIEN: Was it your impression that it had come from government?

MR. BENNETT: If I can't say, then I can't confirm.

MS. O'BRIEN: Okay. All right.

That's probably – Commissioner, we're just about at 12:30, so that's a good place to break for lunch.

THE COMMISSIONER: Okay, so we'll take our noontime break then until 2 o'clock then this afternoon.

CLERK: All rise.

Recess

CLERK: All rise.

This Commission of Inquiry is in session.

Please be seated.

THE COMMISSIONER: All right, Ms. O'Brien.

MS. O'BRIEN: Thank you.

Madam Clerk, can we please bring up P-00901. It's, I believe, tab 37 of your book.

Okay, so this is a slide deck that we've looked at before in the hearing room and it's there. It's dated June 2018 [sp 2008] and it's the Lower Churchill Project: Cost, Schedule & Risk Update to the Gatekeeper. It is page 20 that I want to go to.

Mr. Bennett, are you familiar with this slide deck?

MR. BENNETT: Yes, generally.

MS. O'BRIEN: And this is a slide that we've already had testimony on from both Jason Kean and Paul Harrington. And based on their evidence, what our understanding is, is that this

was a recommendation – this is obviously 2008 so it's a Gull Island-first scenario.

But this was the project management team's recommendation to the Gatekeeper – that the recommended capital cost for the project include both a base estimate, another amount to bring it to a P50 for contingency for tactical risk, plus two further amounts that would bring both the tactical risk and the strategic risk reserves up to about a P75 confidence level, okay?

Do you recall this recommendation being made to the Gatekeeper in June of 2008?

MR. BENNETT: I can't specifically recall this deck. When I've – when I look back at it, I mean I recognize the material.

MS. O'BRIEN: Okay.

MR. BENNETT: But for me to be able to say, no, I vividly remember that presentation – no, I can't get there.

MS. O'BRIEN: Okay. What about –

MR. BENNETT: I mean, it is –

MS. O'BRIEN: – a recommendation from the project team that a P75 confidence level be used for the capital cost estimate?

MR. BENNETT: I don't recall. I mean when I look at the material I recognize what it says, I know where it came from, but I didn't independently say, okay, do I remember from 2008, 2009 what these numbers were.

MS. O'BRIEN: What –

MR. BENNETT: And it's a bit of a challenge, I guess, for me in a sense that there's a lot of water under the bridge between then and now. So as I look at the material, yes, I recognize what it's saying there.

MS. O'BRIEN: What prior experience did you have in risk assessments, P-level, P-values and that type of work?

MR. BENNETT: I had not previously looked at projects of this scale over a long time frame

where we were doing probabilistic analysis and separating tactical from strategic risk.

MS. O'BRIEN: Okay, but had you worked on projects previously where you were looking at risk identification and analysis of that risk –

MR. BENNETT: Sure.

MS. O'BRIEN: – and setting aside a contingency reserve?

MR. BENNETT: Yes –

MS. O'BRIEN: Okay.

MR. BENNETT: – but they were smaller scale and shorter term.

MS. O'BRIEN: Okay, and in those cases you just analyzed all risk together?

MR. BENNETT: You looked at those and tried to identify what you thought were the variabilities in the various components of your estimate.

MS. O'BRIEN: Okay.

So some of them would have been strategic, some of them would have been tactical.

MR. BENNETT: Right.

MS. O'BRIEN: And you would do an evaluation of all those together to come up with an appropriate –

MR. BENNETT: Right.

MS. O'BRIEN: – contingency?

MR. BENNETT: Needless to say, this is one of the areas where the project team was bringing megaproject discipline and a megaproject approach to the table.

MS. O'BRIEN: Okay.

And in your previous experience, were you familiar with the concept of a P-value, or confidence level for the estimate?

MR. BENNETT: I understand what the P-value means in general and, yes, as it's applied to the estimate, I get that.

MS. O'BRIEN: No, I didn't ask you if you understood it.

MR. BENNETT: I thought – I'm sorry.

MS. O'BRIEN: I asked you if prior to coming to the Lower Churchill Project you had ever had experience working with P-values and confidence levels on your estimates.

MR. BENNETT: Oh, I thought you said P-levels. I didn't realize it was on the estimate. No, we didn't. We didn't use a probabilistic approach at that level of granularity and detail.

MS. O'BRIEN: Okay, so this was your first time –

MR. BENNETT: Sure.

MS. O'BRIEN: – working with this type of terminology –

MR. BENNETT: Right.

MS. O'BRIEN: – for risk and contingency setting. Okay.

Now – so you – what I'm hearing is that you don't necessarily recall that the project management team made a P75 recommendation.

MR. BENNETT: If you –

MS. O'BRIEN: Is that correct?

MR. BENNETT: Yeah, if you had asked me before I had an opportunity to review the deck I probably wouldn't have remembered that.

MS. O'BRIEN: Okay.

Now, the evidence we have from Mr. Kean – and I believe it was confirmed by Mr. Harrington – is that the Lower Churchill Project they were working with a P75 level up in – confidence level, up until August of 2010. And Mr. Kean testified in August of 2010 for the first time he was asked to provide cash flows on a

P50 level. Is that consistent with your memory of events?

MR. BENNETT: That's my understanding and that's consistent with what we wrote in our PUB submission. So, yes, I'm – that's consistent with my understanding.

MS. O'BRIEN: Okay. Is that the first time you became aware of it when you wrote your PUB submission?

MR. BENNETT: No, I was just providing that as context to give you confirmation that I was aware that it was a P50 estimate.

MS. O'BRIEN: Okay. When were you aware that there was a change made from a P75 to a P50?

MR. BENNETT: Wow, I can't identify a date where that was the case.

MS. O'BRIEN: Okay. Do you recall being aware of that change being made?

MR. BENNETT: I knew that the DG2 estimate for Muskrat Falls was a P50 estimate.

MS. O'BRIEN: Yes.

MR. BENNETT: When the change happened from Gull? No, I can't tell you when that happened.

MS. O'BRIEN: So you don't have any recall or memory of a decision being made to go from a P75 confidence level to a P50 confidence level?

MR. BENNETT: No, I'm not aware of any significant decision-making process that took us through that.

MS. O'BRIEN: Okay. So do you accept the evidence of Mr. Kean and Mr. Harrington that that change happened in or around August of 2010?

MR. BENNETT: I've got no reason to question it.

MS. O'BRIEN: Okay.

Would you – one might expect that you, as the VP of the Lower Churchill Project, would be aware if a decision as significant as that one to change the confidence level for the assessment of the project was being made. Wouldn't that be reasonable that that would be something, in your position, that you would be aware of?

MR. BENNETT: There are many factors, many variables, many things done by a number of people in evaluating that estimate. So I don't recall anybody coming to me and saying this is what we're going to do now.

MS. O'BRIEN: Who would come to you to say this is what we're going to do?

MR. BENNETT: So the work is being done, and I think there's evidence on this. The work – Investment Evaluation is involved in this. There are costs being provided by the project team, and they can provide costs at any desired confidence level, because they have the risk ranging exercise completed from Westney.

So as I understand it, conversation happened between the project team and Investment Evaluation. How that change happened, who ultimately requested it, I'm not entirely sure.

MS. O'BRIEN: Okay.

MR. BENNETT: In fact, I'm not sure.

MS. O'BRIEN: And you're not even sure if you were even aware it was happening at the time?

MR. BENNETT: I knew that when it – when the numbers came together, and presentations went to our Gatekeeper, that that's what it was.

MS. O'BRIEN: Okay, so you knew the change had happened?

MR. BENNETT: I knew that it was P50, as I said. I can't give you clarity in terms of the – how it happened from 75 to 50.

MS. O'BRIEN: Okay.

But you are – you acknowledge that it changed from P75 to P50?

MR. BENNETT: Looking at this deck, yes, I can see that it went from, you know, P75 from the Gatekeeper risk. Although, it does reference P50 tactical risk on that deck. I have seen material where it talks about a P75.

MS. O'BRIEN: But you have no memory of –

MR. BENNETT: How that happened.

MS. O'BRIEN: – when –

MR. BENNETT: Yeah.

MS. O'BRIEN: – the change was made, who authorized the change?

MR. BENNETT: That's right.

MS. O'BRIEN: No memory of either of those two things?

MR. BENNETT: I can't put anything to mind on that.

MS. O'BRIEN: Okay.

As the vice-president responsible for the Lower Churchill Project, do you not – would you not agree that that is information that you should have been made aware of, that is a decision you should have even perhaps been consulted on?

MR. BENNETT: It could have been. Whether I should have been ...

It would have been helpful to have a document that points to that decision. I guess the most important consideration is ultimately the P50 approach and the approach on tactical and strategic risk were documented, and we have – we know what was done.

It's hard for me to speculate as to whether I needed to be in that conversation or whether I should have been or could have been. And I'm talking – I'm not entirely clear here.

MS. O'BRIEN: Well, I mean, you're saying it's not entirely clear whether you should even have been consulted.

MR. BENNETT: There were a lot of models. There were a lot of approaches. There were a lot

of revisions done to the estimate in terms of various cases that were put together. And to the extent that I can't remember, I don't have much more, I guess, insight into how that unfolded that I can offer.

MS. O'BRIEN: Okay. But I think I had put to you that isn't this a decision that – you are the – you know, you are the vice-president of the Lower Churchill Project. You're the most senior person at Nalcor whose exclusive responsibility is the Lower Churchill Project.

MR. BENNETT: I'm – but in terms of –

MS. O'BRIEN: Sorry, is that correct?

MR. BENNETT: Well, in terms of the decision-making. Where I was going was I'm – the Gatekeeper is ultimately the decision-maker on the business case, on the budget, on the approval of the contingency levels.

MS. O'BRIEN: Okay. But you are the most senior person at Nalcor whose sole job is to look after the Lower Churchill project. Is that not right?

MR. BENNETT: That's fair enough, yes.

MS. O'BRIEN: Okay. So – and there's only one person in the entire organization who's senior to you?

MR. BENNETT: That's correct.

MS. O'BRIEN: Okay. And so the question is, do you not consider that it would have been reasonable – a reasonable expectation for you to have been consulted before a decision about changing the confidence level for the evaluation of the project was made?

MR. BENNETT: Can't argue with that. So –

MS. O'BRIEN: Does that mean you agree?

MR. BENNETT: Well, yes, I'll agree with that.

MS. O'BRIEN: Okay. But you weren't consulted?

MR. BENNETT: I don't recall –

MS. O'BRIEN: Okay.

MR. BENNETT: – being consulted.

MS. O'BRIEN: Okay.

Now, Mr. Harrington has testified that he recalls Westney Consulting – advice coming from Westney Consulting – that, in terms of the estimate, that the advice was to be conservative in strategic risk and to use a high confidence level. Did you hear that evidence for Mr. Harrington?

MR. BENNETT: I heard that, yes.

MS. O'BRIEN: Okay. Now, he does not recall being given a specific confidence number – like, a P-number –

MR. BENNETT: Mm-hmm.

MS. O'BRIEN: – from Westney Consulting. He just recalls to be conservative and a high confidence level.

Now, Dick Westney has testified. Did you hear any of Mr. Westney's testimony?

MR. BENNETT: I heard some, but not a lot.

MS. O'BRIEN: Okay. So Mr. Westney has testified that a member of his organization, Keith Dodson, had recommended a – at least a P75, so a P75 or higher, to Mr. Harrington. Did you – were you aware of that evidence from Mr. Westney?

MR. BENNETT: I heard that commentary, yes.

MS. O'BRIEN: Okay. So you know, we have slightly different stories, but there is some consistency between them in that there was a recommendation to high confidence level, so a high confidence level, presumably, would be above a P50, would you agree?

MR. BENNETT: I would expect it to be greater than 50, yes.

MS. O'BRIEN: Yeah. Okay. So looking back at the time, were you aware that Westney Consulting, who was the risk consultant for the

Lower Churchill Project, had made that recommendation to Mr. Harrington?

MR. BENNETT: Looking back, I don't remember that conversation.

MS. O'BRIEN: Okay.

Now, Mr. Harrington has testified that he's not sure whether he gave it to you or not – that –

MR. BENNETT: Okay.

MS. O'BRIEN: – information. He – but I want to put it – ask you, I think, a fairly direct question. If your project director got that information from the risk consultant, and he says he did, is that not something you would expect the project director to pass along to you?

MR. BENNETT: It would've been helpful to have that context, yes.

MS. O'BRIEN: You've said a couple of times now it would've been helpful. You know, it would've been helpful if things were documented; it would've been helpful to have that context. I mean, the question to you is: Would you not expect your project director, getting that advice from your risk consultant, to tell you: Look, this is the advice we got from the risk consultant?

MR. BENNETT: As I've said, yes, it would've been good to have that information.

MS. O'BRIEN: Okay. But you would've expected Mr. Harrington to give it to you, would you not have?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay.

Now, it's been canvassed a number of times, in this hearing room, that a P50 confidence level may be appropriate for a sanction consideration for an owner who is, you know – many projects – a diverse portfolio. But for a Crown corporation, who is – really has one major megaproject in its portfolio, and just the one, and, you know, particularly given, you know, the size of this project, compared to Newfoundland and Labrador Hydro's previously

existing assets, and given the fact that it is a utility investment, which means that the ratepayers ultimately bear the cost – that in that – in this situation, a higher confidence level would be appropriate. So we've heard that from any number of people in Flyvbjerg's – it was there in the Grant Thornton Report, from John Hollmann and whatnot. You're familiar that evidence has come out?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay. I'd like to get your thoughts on that statement.

MR. BENNETT: I think, one really important consideration with Muskrat, in particular, is that there was – there was a period of time with surplus energy, and that surplus energy had some value, and that wasn't put in the business case. And I'm aware that that revenue stream – that one of the things that could have been done with that revenue stream could have been to offset the impact of capital cost overrun.

MS. O'BRIEN: Okay. But that revenue stream could have built more hospitals and upgraded our schools, too?

MR. BENNETT: Oh, it could have, but it was revenue derived from the project and from the investment – this point –.

MS. O'BRIEN: But –

MR. BENNETT: I was trying to get to.

MS. O'BRIEN: Okay, it's a point, but it's not really a response to my question because my question is – the idea here is that: Look, when you have a project like this, you should have had a higher confidence level on your estimates than a P50?

MR. BENNETT: So, if you were to do that, another relevant point is that if you are looking for a higher level of confidence in the Interconnected case, it may take you to a higher level of confidence in the Isolated case. So that we're comparing comparable sets of circumstances and you have both alternatives with a comparable level of certainty.

MS. O'BRIEN: We have found no evidence that for the Isolated Island case that any analysis of the risk at a (inaudible) any probabilistic analysis of the risk was done.

MR. BENNETT: I think, in terms of capital, that's correct, but –

MS. O'BRIEN: Okay.

MR. BENNETT: – the driver in the Isolated case, is the price of oil.

MS. O'BRIEN: I'm talking about capital cost (inaudible) –

MR. BENNETT: And I'm thinking about all of the inputs into the CPW. And I think it's recognized that the – in the Isolated case as we know it, the significant cost driver, is oil.

MS. O'BRIEN: I wanna talk about capital costs.

MR. BENNETT: I understand.

MS. O'BRIEN: Okay?

MR. BENNETT: (Inaudible).

MS. O'BRIEN: So, there was no confidence level analysis done for the capital expenditures for the Isolated Island case, was there?

MR. BENNETT: I'm not aware that there was.

MS. O'BRIEN: Okay. And I assume that you would be aware, if it had been done?

MR. BENNETT: Yes. Generally speaking, the Isolated case options were either relatively small projects – that – didn't have a big capital cost and, I think, in the case of the scrubbers and precipitators, it was a project for which pricing was available and the final point again – whether it was P50 or P75 on the relatively small capex in the Isolated case, probably would not have had a big impact.

MS. O'BRIEN: So I want to talk now about the Lower Churchill Project and the confidence level you were using for the estimate that you were using for that project.

MR. BENNETT: Mm-hmm.

MS. O'BRIEN: And the proposition that I'm putting to you – that we've heard from other evidence – is that for Nalcor, in this position, with this large a project, given you're a Crown corporation, and this is a utility project, it would've been appropriate for Nalcor to use a higher level confidence estimate, either a P75 or a P80, but something higher.

Do you agree with that statement?

MR. BENNETT: I don't unconditionally agree with that statement.

MS. O'BRIEN: Okay, you conditionally agree?

MR. BENNETT: Conditionally, I would –

MS. O'BRIEN: Okay.

MR. BENNETT: – and it depends on how you treat the case against which you're comparing.

MS. O'BRIEN: Does it – but is there not an evaluation just of that case alone; for example, can we afford it, is the public being properly disclosed information about how much this project is gonna cost them?

Like, it doesn't just – it's not just about the comparison between the two cases, is it?

MR. BENNETT: Well, it's really important that we do a good comparison between the two cases as best we can. It does need to be comparatively fair, and I accept your point that there are other factors, and they need to be weighed and considered.

MS. O'BRIEN: Okay, so should you have used a higher confidence level that you did?

MR. BENNETT: I believe that if we were to use a higher confidence level on the capital in the Interconnected case, we should look at a higher confidence level in other inputs to the overall business case analysis.

MS. O'BRIEN: Okay, so should you have done that?

MR. BENNETT: We did that through sensitivity analyses at the time.

So that's how that was – that's how the objective was accomplished.

MS. O'BRIEN: I'm gonna keep, you know, I'm gonna –

MR. BENNETT: That's okay.

MS. O'BRIEN: – put the question to you again, because I don't – not finding that you're answering it directly. Obviously, it's up for the Commissioner to decide that at the end of the day, and he's sitting right there, so he's hearing everything that's going on.

I want to know whether you believe that the P-value that was used for the Lower Churchill Project to bring it to sanction, which was a P50 value, that's what was announced, a P50 value, whether that should have been a higher P-value, given the size of this project and the fact that it was a Crown corporation and a utility project.

MR. BENNETT: I believe that for the analysis that was done, I found the P50 appropriate. Needless to say, that a higher probability estimate also had merit.

So, I'm – I'm not – I mean my – sorry, our evidence before the PUB was that P50 was what we – it was what was submitted and we believed it to be appropriate for the analysis that was completed.

MS. O'BRIEN: Going back to the advice that Mr. Harrington was given by Westney Consulting – is that information that the shareholder should have had? I mean, should the shareholder have been told that the risk advisor on the Lower Churchill Project had recommended using a high confidence level?

MR. BENNETT: I think that the conversation that needed to have been had with the shareholder – needed to – should have been the broader conversation that we just talked about. What is the risk appetite? What are the offsetting considerations? What are the risks in the other alternatives? So I don't believe that picking that one statistic and saying: Yes, our consultants said in this scenario it should be P50 or P75 or

P80 or P60. Is it of itself the full context of the conversation?

MS. O'BRIEN: Okay. So you'd have a broader context –

MR. BENNETT: (Inaudible.)

MS. O'BRIEN: – but isn't that information that they should have received as part of that broader context? This is –

MR. BENNETT: So that –

MS. O'BRIEN: – what the risk advisor has recommended.

MR. BENNETT: I believe that the broader conversation is – let's talk about the risk as they are seen.

MS. O'BRIEN: And would you not include in that conversation the advice that the risk advisor had given?

MR. BENNETT: It could be. But I guess my point is – again – we're taking a snapshot of one comment from a risk advisor on a very broad and complex topic. So, you know, I believe the value is in having that broad conversation about that topic.

MS. O'BRIEN: Okay. You had no previous experience in setting P-values or in analyzing strategic risk, right? None. And Mr. Harrington had no experience in that. Right?

MR. BENNETT: He would have seen what was going on through the various work, but that's – I agree with what you've said.

MS. O'BRIEN: Okay. So you have your risk advisor who's been hired, presumably, because that advisor consultant has an expertise that you didn't have in house. Right?

MR. BENNETT: That's right – and their methodology.

MS. O'BRIEN: And you're not sure whether in discussing this broader context with government that you – whether you should have put forward that information to government – what was coming from the risk consultant.

MR. BENNETT: Conversation needed to be – first of all – hire a Gatekeeper, who’s, ultimately, dealing with the broad investment question. All of the other considerations that are associated with it. And –

MS. O’BRIEN: Mr. Bennett, you’re not answering my question.

MR. BENNETT: No, but I think I’m struggling with whether I thought I should take that individual report and simply give it – send it to the shareholder and I don’t think that would be appropriate. I think that there’s a different conversation that needed to have been had – and I believe it should’ve been had and I think was had – in the context of the overall investment decision, hire a Gatekeeper through the board of directors and with the shareholder.

MS. O’BRIEN: So you’re saying that this was a conversation that was had, so let’s talk about that. When we come to confidence levels – and let’s just keep it at that now. So what would be the appropriate confidence level? What discussions did you have with anyone in the Government of Newfoundland and Labrador about that?

MR. BENNETT: I didn’t.

MS. O’BRIEN: Ever.

MR. BENNETT: Right.

MS. O’BRIEN: Okay. Did you – were you ever in the room when someone was having a discussion?

MR. BENNETT: The – my recollection on this is that we had been clear that it was a P50 estimate. It’s been talked about in material; it shows up in our technical briefing, I think, for DG3 that it is a P50 estimate.

MS. O’BRIEN: Mm-hmm.

MR. BENNETT: So it was known.

MS. O’BRIEN: No. Okay, the P –

MR. BENNETT: But –

MS. O’BRIEN: The P50 is there, it’s in lots of documents.

MR. BENNETT: Right.

MS. O’BRIEN: We know that. The question is, I mean we’ve had government – people from government say they knew it was P50, but they didn’t – you know, they had no prior familiarity with P-values.

MR. BENNETT: Mm-hmm.

MS. O’BRIEN: I’m talking about a discussion about, look, this is a P-value. We could go – there may be merits in going with a higher confidence level like a P75 or a P80. We’ve been provided a range from our risk advisors. Our risk advisors have advised us to go at a higher confidence level. Here’s the pros, here are the cons. We want to talk about your risk appetite. Were you ever there when that conversation was had with anybody in government?

MR. BENNETT: I’ve heard those conversations in general terms.

MS. O’BRIEN: Okay. Now, let’s talk about who you’ve heard the conversations with.

MR. BENNETT: So I can vaguely remember, you know, Mr. Martin having that type of conversation with –

MS. O’BRIEN: With whom?

MR. BENNETT: I think it came up in one of the briefing sessions leading up to DG3.

MS. O’BRIEN: Okay, so with whom?

MR. BENNETT: People in the room. We had a number of ministers. I think that was one of the sessions that – another one of the sessions at the Guv’nor’s Pub prior to sanction.

MS. O’BRIEN: Okay, can –

MR. BENNETT: Can’t put a date on it.

MS. O’BRIEN: Can you give us any names?

MR. BENNETT: No, I can’t name the names.

MS. O'BRIEN: Okay.

And you're saying at this, the discussions, the pros and cons of going with a higher confidence level was discussed?

MR. BENNETT: What I'm – what I recall was that there was a conversation about the project opportunities and considerations in, sort of the – we're getting at the other revenue streams that were available, some of the offsetting considerations. Was there a detailed conversation on P50 versus P75 and what it means and what the value is? No.

MS. O'BRIEN: Okay.

MR. BENNETT: Not aware of that.

MS. O'BRIEN: No.

And was there a discussion –

MR. BENNETT: The broader question –

MS. O'BRIEN: – about going with a higher confidence level?

MR. BENNETT: No.

MS. O'BRIEN: No. Okay, that's the answer to the question.

Okay. Thank you.

Okay, can we bring up P-00808, please?

Okay, so we have seen this document before. This is the B1 version of the Gate 2 –

THE COMMISSIONER: (Inaudible.)

MS. O'BRIEN: – QRA document. If we could, please, go to P – page 26.

UNIDENTIFIED MALE SPEAKER: No (inaudible).

MS. O'BRIEN: So, Mr. Bennett, this is probably one of the most accessed pages of all of the documents we have in evidence.

Have you had an opportunity to hear any of the prior evidence on this note here in the B1 version of the QRA at Gate 2?

MR. BENNETT: I've heard snippets; I've heard that it's come up.

MS. O'BRIEN: Okay. All right.

So what this really shows – this is a document, it shows there is an estimate contingency of 15 per cent, a strategic risk exposure of 6 per cent and a full power date of June 2012 [sp 2017]. And what's been of particular note is what's written there under the word note:

“During the negotiations of the Term Sheet with Emera, Senior Management elected to drop the Strategic Risk Exposure allowance of 6% from the overall capital cost recommendations for both the Muskrat Falls and Labrador – Island Transmission Link Projects in order to address Emera's concern regarding its ability to sell the Strategic Risk concept to it's the Nova Scotia regulator, the Nova Scotia” – UARB.

What do you know about the information contained in this note?

MR. BENNETT: I remember vaguely from conversations in looking at the term sheet with Emera that strategic risk wasn't a concept that they had used.

MS. O'BRIEN: It was a – pardon?

MR. BENNETT: It was not a concept that they had used.

MS. O'BRIEN: Okay.

MR. BENNETT: And I don't remember much more than that.

MS. O'BRIEN: Okay, well, you're aware that when we go to the next version of this document – and let's bring it up, P-00097, and go to the same – page 26. We're gonna see that the 6 per cent strategic risk exposure is gone. See, now it's nil.

Are you aware of the edits to this document to remove that note about Emera?

MR. BENNETT: No. I'm aware of the outcome. I'm aware that the PUB documentation didn't have a strategic risk exposure in it and I'm aware of what's written there. And I guess I'm aware, generally, that the concept was not one that was followed by Emera. But I don't remember specifically seeing this document re-edited.

MS. O'BRIEN: Okay.

So here we see, in the B1 version, there is strategic risk exposure of 6 per cent, okay? So that's what's there in the first document, and the note says in negotiations of the term sheet of Emera, for whatever reason, here we go, it's been removed to address a concern of Emera's.

And then in the next version of the document, 6 per cent is gone and "Nil" is in its place, okay?

So did Emera ask you to remove strategic risk from your quote – from your estimate?

MR. BENNETT: No.

MS. O'BRIEN: Okay.

MR. BENNETT: And I've seen the note from Mr. Huskilson, just to make that clear.

MS. O'BRIEN: Yes, yes –

MR. BENNETT: Okay.

MS. O'BRIEN: – I know, I understand you have and we'll get to that in a moment.

MR. BENNETT: Right. They had problems with the concept.

MS. O'BRIEN: I think they – my understanding, from Mr. Huskilson's note, was they didn't break down their risk into strategic and tactical, right?

MR. BENNETT: Correct. Correct.

MS. O'BRIEN: They just dealt with risk all as one element.

MR. BENNETT: That's correct.

MS. O'BRIEN: Okay. So Mr. Huskilson's note – which is put in evidence – basically, as I understand it, says: Look we didn't want them to use that terminology, strategic risk, because it was adding confusion; we just talk about risk.

MR. BENNETT: Right.

MS. O'BRIEN: And is that consistent with your memory?

MR. BENNETT: That was consistent with my recollection, yes.

MS. O'BRIEN: Okay.

So if the concern is just, you know, the way you're using the nomenclature – you're using the words, you know, tactical and strategic – one way to address this concern would just be to stop using those words; call it risk and – but still consider both.

MR. BENNETT: You could.

MS. O'BRIEN: Right.

But the other option, which seems to be the one you went with, was you just removed any consideration of strategic risk from the estimate.

MR. BENNETT: I wouldn't say we removed the consideration because I thought we had described sort of the rationale for this value in our PUB report.

MS. O'BRIEN: Okay.

MR. BENNETT: And as I recall, there were two offsetting considerations at the time.

MS. O'BRIEN: Okay. Well, we will get to that.

MR. BENNETT: Okay.

MS. O'BRIEN: But I'm just trying to get to the point was what – you know, in the Emera negotiations, why wouldn't you just consider all risk together, stop using the terms tactical and strategic and address it this way? Why here does strategic risk exposure become nil?

MR. BENNETT: Can we just see the timing on these two reports for a second?

MS. O'BRIEN: They're both well after DG2.

MR. BENNETT: Right, but just the dates.

MS. O'BRIEN: Yes. This one is, I believe – this one is June. One is in June of 2011 and the other is in September 2011. If we go to the first page, we'll see them.

Just down a little bit, Madam Clerk, yeah. So this one – one was – the first one was in June and the next one's in September.

MR. BENNETT: Okay. So there's nothing in the reports individually. So, yeah, I can't – I don't have an explanation for the difference in the wording and how it arose.

MS. O'BRIEN: Okay.

Now, Mr. Kean has testified that he was asked to change this document from the B1 to the – and the B1 had been signed off on. But he was asked to go back and change it to ensure that it aligned with CE-52, which was one of the confidential exhibits filed with the PUB.

MR. BENNETT: Right.

MS. O'BRIEN: Okay. Were you aware of that information?

MR. BENNETT: That he was asked to change this report? Not specifically, but I can conclude that based on what was said in CE-52, it's helpful to have our documentation lined up.

MS. O'BRIEN: Okay and who drafted CE-52?

MR. BENNETT: I saw CE-52. I don't think I was the originator of it. I actually thought Jason was.

MS. O'BRIEN: I think Mr. Harrington has said he believed you were.

MR. BENNETT: Unusual for me to be writing fulsome exhibits.

MS. O'BRIEN: Okay, so ...

All right, I'm just going to go – before we go to CE-52, I'm just going to go to a couple of notes that we – were put in by Derrick Sturge.

Can we go to P-00834, please? These are notes from Derrick Sturge – page 3, please.

Did you hear Mr. Sturge's testimony with respect to these notes?

MR. BENNETT: I don't say I – I don't think I heard all of it.

MS. O'BRIEN: Okay.

It's very hard for me to read his writing. Yeah: We need to focus – something – and contingency to get estimate reduced for the Nova Scotia regulatory filing. I can't – I know he's read it out in evidence. So I understand it was this: We need to focus – I'm not sure if its explanation and contingency to get estimate reduced.

Do you have any recall of needing to reduce Nalcor's estimate on the Muskrat Falls Project for the Nova Scotia regulatory filing?

MR. BENNETT: I know that there was a ceiling price beyond if you – if you went beyond that in comparing to their other alternatives that the Maritime Link and the overall construct wasn't going to be successful.

MS. O'BRIEN: Okay, and maybe P-00781.

CLERK: 00781?

MS. O'BRIEN: Sorry, 00871.

So this – I understand Mr. Sturge also testified to this and he recalled that there was work being done to try to keep the pricing below \$125. Is that consistent with what you were just mentioning?

MR. BENNETT: That's consistent, yes.

MS. O'BRIEN: Okay.

So here it looks like there was some discussion of moving from P75 to P50. Do you recall any discussion of removing – either changing the confidence level or removing strategic risk from the estimate in order to bring the Muskrat Falls Project estimate below that 125 pricing that needed to happen?

MR. BENNETT: I wasn't aware – I didn't remember seeing this page, but I can see that's where it's going here.

MS. O'BRIEN: Okay. But do you recall that? I mean, you're there –

MR. BENNETT: Yes, so it was –

MS. O'BRIEN: – present during all these negotiations, aren't you?

MR. BENNETT: It was definitely a concern.

MS. O'BRIEN: Okay.

MR. BENNETT: It was definitely a concern that, if the levelized energy price negotiated from the Maritime Link failed at the Nova Scotia regulator, it's not likely that the benefits of the federal loan guarantee would accrue. And that would be a significant issue.

MS. O'BRIEN: Okay.

And so is one of the ways that you addressed that issue by removing any amount from strategic risk from the estimate?

MR. BENNETT: So setting contingency at 15 per cent, adjusting the – as it says there, has a benefit and gets us below that target.

MS. O'BRIEN: Pardon?

MR. BENNETT: I'm agreeing with you that it's there and it was shown as a reduction for their levelized energy cost.

MS. O'BRIEN: Okay, but you were there at these negotiations.

MR. BENNETT: Yes.

MS. O'BRIEN: Okay. Do you recall one of the things that you did to address, you know, getting it below this threshold was to either reduce the confidence level or somehow remove strategic risk amounts or some of the tactical risk amounts –

MR. BENNETT: Right.

MS. O'BRIEN: – but remove any contingencies, reserve amounts, from the numbers in orders to get it below that (inaudible).

MR. BENNETT: I'm acknowledging that's what was done, yeah.

MS. O'BRIEN: Okay, so you know that's what was done. Yes?

MR. BENNETT: Yeah.

MS. O'BRIEN: Yes. And you were there?

MR. BENNETT: I was there for many of the sessions, yes.

MS. O'BRIEN: Okay.

MR. BENNETT: And I knew this was an issue.

MS. O'BRIEN: And you knew that this is –

MR. BENNETT: That the whole question of what the price was going to be was going to be an important issue in this negotiation.

MS. O'BRIEN: And who ultimately made the decision to do that?

MR. BENNETT: Ultimately Mr. Martin would be involved in that decision, yes.

MS. O'BRIEN: Okay. Who else was involved?

MR. BENNETT: He was the – he's the decision-maker.

MS. O'BRIEN: So this –

MR. BENNETT: When it comes to –

MS. O'BRIEN: It was Ed Martin's decision?

MR. BENNETT: Right. When it comes to concluding the negotiations, he's got the final say.

MS. O'BRIEN: Ed Martin made the decision to remove risk contingency or reserve amounts from the estimate in order to get that level down, what you needed to pass before the –

MR. BENNETT: So –

MS. O'BRIEN: – UARB?

MR. BENNETT: So now we're looking at – you know, we're looking at a number of important considerations here.

MS. O'BRIEN: I just want to know. You said – you've acknowledged –

MR. BENNETT: I've said yes –

MS. O'BRIEN: – the decision was made.

MR. BENNETT: Yes, and –

MS. O'BRIEN: Right? You have acknowledged someone made the decision to do that.

MR. BENNETT: Right.

MS. O'BRIEN: And I asked you who, and you've said Ed Martin was involved.

MR. BENNETT: I'm saying that ultimately that decision on what the price would look like, what all these considerations were, that would have fallen to him.

MS. O'BRIEN: So it was Ed Martin's decision?

MR. BENNETT: Yes.

MS. O'BRIEN: Were you consulted in that decision?

MR. BENNETT: I was – I was aware of this. I understood what the benefits were. I understand those considerations. I'd have to say I was consulted. Yes, I was fully aware of it.

MS. O'BRIEN: Okay, and did you agree with it?

MR. BENNETT: Under the circumstances here, yes.

MS. O'BRIEN: And was that decision communicated to government? Your decision to take contingency reserve – risk amounts out of the estimate for these purposes? Was that communicated to government?

MR. BENNETT: I'm not sure how the pricing considerations of these negotiations ultimately were communicated to government.

MS. O'BRIEN: Okay.

MR. BENNETT: I don't have an answer there.

MS. O'BRIEN: Okay, so you didn't communicate anything to government (inaudible) –?

MR. BENNETT: I would not be communicating this type of information directly to my contacts at government.

MS. O'BRIEN: Okay.

So, despite the fact that you took these amounts out of the estimate, of course, you didn't get rid of them; they still existed, right?

MR. BENNETT: Those risks existed.

MS. O'BRIEN: Okay.

So now if we go to P-01003, 'cause I know you've said there was some reasoning went on when CE-52 was drafted. Now, CE-52 was drafted long after Decision Gate 2 had been passed, was it not?

MR. BENNETT: Yes, this was – this summary was for the PUB review.

MS. O'BRIEN: And this summary, which talks about the strategic risk analysis, it does not make any mention of the strategic risk coming out of the estimate during the Emera negotiations, does it?

MR. BENNETT: No, it doesn't.

MS. O'BRIEN: Okay.

Why would you not have included that information in this note to the PUB?

MR. BENNETT: So one of the underpinning assumptions in the PUB process was that the benefits of the Maritime Link were not included in this analysis at all.

MS. O'BRIEN: Okay.

MR. BENNETT: So Maritime Link is not in. If we scroll down, I don't think the federal loan guarantee was in either.

MS. O'BRIEN: No, the federal loan guarantee wasn't in.

MR. BENNETT: Okay. Which was a benefit to the overall business case for Muskrat Falls. That wasn't in either.

MS. O'BRIEN: No, but what this document says is that "With the extent of the mitigation activities undertaken and in progress, and probabilistic cost reductions in the order of - \$400 million being available and a P50 strategic exposure of \$290 million ... Nalcor executive determined that it was not appropriate to create a positive or negative strategic reserve amount at DG2. These factors were also considered in establishing Project tactical contingency at 15%."

MR. BENNETT: Right.

MS. O'BRIEN: That's what it says.

MR. BENNETT: Correct.

MS. O'BRIEN: So your evidence as to why you didn't say we took it out because during the Emera negotiations we had to get the price down so it would be acceptable to the UARB, your reasons for not being direct about that information was that they were not considering the Maritime Link?

MR. BENNETT: The fallout of that adjustment was a substantial benefit in the form of the federal loan guarantee –

MS. O'BRIEN: Mm-hmm.

MR. BENNETT: – which, I think we'll find, is a much bigger benefit than the 6 per cent strategic risk allocation. So I don't think you can consider these facts in isolation. If you – if we can reach a conclusion with Emera, the regional project in Atlantic Canada has an opportunity to come to fruition; we get the benefit of the federal loan guarantee, and that benefit is much greater.

MS. O'BRIEN: But you didn't apply for the federal loan guarantee until February 2011, right?

MR. BENNETT: It was being discussed.

MS. O'BRIEN: Okay, but you hadn't even applied for it –

MR. BENNETT: No, we hadn't.

MS. O'BRIEN: – until 2011. Okay.

MR. BENNETT: No, we hadn't.

MS. O'BRIEN: At – which was after – several months –

MR. BENNETT: That's right.

MS. O'BRIEN: – after Gate 2?

MR. BENNETT: That's right.

MS. O'BRIEN: Okay. So this says that "Nalcor executive determined that it was not appropriate to create a positive or negative strategic reserve amount at" Gate 2. So at Gate 2, you hadn't even applied for the federal loan guarantee yet, let alone found out you were getting it?

MR. BENNETT: It probably would be fair to say in the DG2 analysis as we're presenting.

MS. O'BRIEN: Pardon?

MR. BENNETT: It probably would have been better here to say that we're referring to the benefit of the federal loan guarantee, which wasn't in the analysis presented to the PUB. It was a strategic – for want of a better term – a strategic opportunity.

MS. O'BRIEN: Have you ever heard of a negative reserve – strategic reserve amount or negative contingency?

MR. BENNETT: No.

MS. O'BRIEN: Okay.

MR. BENNETT: But that doesn't mean that there can't be a benefit from something. So needless to –

MS. O'BRIEN: I'm gonna acknowledge that you can have a benefit from something, but the question is have you ever heard of – when you're talking about strategic reserves amounts, which is like a strategic contingency, I mean, I know you guys have – Nalcor – separated, you know, contingency versus reserve, but it's the same concept, right?

MR. BENNETT: It's the same concept, yeah.

MS. O'BRIEN: Okay, have you ever heard of a negative contingency?

MR. BENNETT: No.

MS. O'BRIEN: Okay.

MR. BENNETT: Because you're basically paying yourself.

MS. O'BRIEN: Okay, okay.

MR. BENNETT: But there was a cost reduction opportunity available from the federal loan guarantee. It reduced the cost of borrowing and reduced an expense that was going to be – that is included in the CPW analysis. That was the point.

MS. O'BRIEN: Okay, but it wasn't included in the strategic risk assessment, was it?

So let me just take you. P-00808, please.

So this is the QRA, okay? So this is the B1, though. They're – that this information is the same in both.

MR. BENNETT: Mmm.

MS. O'BRIEN: Can we go to page 134, please?

So this shows the strategic risks that were considered in the range by Westney Consulting and Nalcor working together. Are you familiar with this?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay.

So I just want to take you to a few here because, like, number 3, Financial Risks: "Changes in the

financial market, increased interest rate spreads," this was not included in the analysis.

MR. BENNETT: That's right.

MS. O'BRIEN: Okay?

We go down to another one – I think if we go to 17, or number 7, sorry: "Federal government support for generation and transmission projects." So, again, very relevant to the risks – any risks that might be associated with that "Not Quantified in Analysis."

So if the financial interest rate risks weren't included in the quantification of the appropriate amount to cover the strategic risks that were included, can you explain then, why you would, you know, decide not to reserve anything for that amount because of getting the federal loan guarantee? It seems to be two separate analyses.

MR. BENNETT: They are two separate analyses, but they impact on the business case.

One of these is a direct capital cost point which has to be funded. The other one is a reduction in the financing cost which has a benefit on a CPW basis, but shows up in a reduction in the borrowing expense for the project over its life.

MS. O'BRIEN: Did you –

MR. BENNETT: So I would acknowledge that they're two different concepts, but they – one of them, the reduction in interest rates, actually provides a benefit to ratepayers, to customers.

MS. O'BRIEN: Okay. So you've just said that the strategic risks were something that had to be funded, right? Yes? So you – though you counted the funding that was needed for that. According to CE-52 –

MR. BENNETT: Mm-hmm.

MS. O'BRIEN: – you counted that funding as zero, nil.

MR. BENNETT: Right.

MS. O'BRIEN: Nil, neither positive nor negative, right? But it still was there, it still needed to be funded.

MR. BENNETT: Yes, it did.

MS. O'BRIEN: Right?

So was that communicated to government? By the way, this is still – I know we're calling it zero, but there is actually an amount of risk that's still here and it does need to be funded.

MR. BENNETT: So at DG2, which is what that analysis was talking about, was feasibility-level work with a lot more work to complete between then and the ultimate sanction decision.

MS. O'BRIEN: I think my question had to do with communications to government.

MR. BENNETT: And my point was, we weren't – at this point in time, we weren't funding much of anything because we didn't have the defined concept that we were actually funding. We were doing analysis to try to confirm whether it was appropriate to continue to detailed engineering.

So the funding that was going to be required from the province, in this particular case to move forward, would be leading up to the sanction decision. That's what the DG2 analysis was for.

MS. O'BRIEN: Okay, I'm going to go back to my same question. The question was: Did you communicate this to government?

MR. BENNETT: That there – I mean sort of –

MS. O'BRIEN: What's happening is I'm asking you a question –

MR. BENNETT: I'm saying –

MS. O'BRIEN: – and you're reframing it or you're answering another question. And then by the time I bring you back to the question –

MR. BENNETT: So –

MS. O'BRIEN: – you've forgotten what the question was.

MR. BENNETT: So did I communicate the capital cost estimate of DG2 in a format other

than what's in our PUB submission to government? No, I didn't.

MS. O'BRIEN: Okay. So government was not aware, to your knowledge, that at DG2 there were strategic risks, that they were risks that would have to be funded –

MR. BENNETT: Which may have to be funded.

MS. O'BRIEN: Right, okay, but –

MR. BENNETT: Right.

MS. O'BRIEN: – on a P50 level, they had to be funded to the certain amount, right?

MR. BENNETT: Well, they could be. Yeah – well, they – I'm not sure I follow. You said they had to be funded.

MS. O'BRIEN: The –

MR. BENNETT: They have to be funded if they arise.

MS. O'BRIEN: Yes, okay. And on a – and we can look at the number at DG2, but I mean you were looking at a range when the probabilistic – the range was \$300 to \$600 million.

MR. BENNETT: Yes, yes.

MS. O'BRIEN: Okay?

So in this concept of creating a nil strategic reserve, did you communicate to government that, look, there's still 300 to 600 million risks here, we're just creating a strategic reserve because we think we can save you money in another area by getting the FLG?

MR. BENNETT: So we didn't communicate – I don't recall communicating that directly.

MS. O'BRIEN: And do you recall ever hearing Mr. Martin or anybody else communicate that to government?

MR. BENNETT: The whole question of how to handle strategic risks –

MS. O'BRIEN: No, just that one –

MR. BENNETT: No, but it –

MS. O'BRIEN: (Inaudible.)

MR. BENNETT: It comes back to that. The notion of a reserve, the thought came up, and as I understand it the actual conversation was about contingent equity and getting equity to deal with cost overruns if they arose.

MS. O'BRIEN: Was this a communication that you witnessed?

MR. BENNETT: I can't say that I witnessed a specific conversation.

MS. O'BRIEN: So you –

MR. BENNETT: (Inaudible.)

MS. O'BRIEN: To your knowledge, you're not personally aware of any conversations.

MR. BENNETT: I can't recall one. I know that the topic of contingent equity is one that was addressed between Nalcor and the province.

MS. O'BRIEN: And, to your knowledge – and we're at Gate 2 – that assessment of the strategic risk reserve amount of 300 to 600, to your knowledge was that – million – was that communicated to government?

MR. BENNETT: I don't know.

MS. O'BRIEN: So your only recall is that, generally, contingent equity was discussed.

MR. BENNETT: The need for funds to – the potential need for funds to complete the project, the requirement for a guarantee that the funding would be forthcoming, that concept is one that I'm aware of and I'm comfortable was discussed.

MS. O'BRIEN: Okay. And in terms of putting any dollar amounts to that?

MR. BENNETT: Can't give you specifics there.

MS. O'BRIEN: Okay. We haven't found anything to show that it was communicated to

government but we do show that it was communicated to the board.

Can we go to P-00093, please?

So this is the Decision Support Package for the board at Gate 2. Are you familiar with this document, Mr. Bennett?

MR. BENNETT: This looks familiar.

MS. O'BRIEN: Okay, page 22, please? This is November 17, 2010, so this is prior to Gate 2.

So here the board package does say: "A contingent equity commitment of \$300-600M from the Province is also considered prudent and necessary."

How does that statement – can you – can that be reconciled with CE-52 that says the Nalcor executive had determined that a – neither a positive nor a negative strategic reserve was required at Decision Gate 2?

MR. BENNETT: This was in 2010.

MS. O'BRIEN: It's the Decision Gate 2 support package.

MR. BENNETT: Yeah.

So the only thing I can add to that is that I would expect that the federal loan guarantee conversations were taking us to a better place at the time of the PUB submission.

MS. O'BRIEN: Sorry, I'm just asking if this note here that's up on the screen, what the board was told about contingent equity, if that can be reconciled with the statement in CE-52 that at Decision Gate 2 Nalcor executive determined that a strategic reserve was not necessary.

MR. BENNETT: Yeah, I think it's – as I said, I think it's fairer to look at CE-52, when it was prepared for the PUB in the context of DG2 data.

MS. O'BRIEN: Okay. So –

MR. BENNETT: That document was ultimately prepared after this presentation was given.

MS. O'BRIEN: Yes, yes.

So you're saying that the statement in CE-52, that that was the position of Nalcor executive at Decision Gate 2 is incorrect.

MR. BENNETT: I think that's fair.

MS. O'BRIEN: Okay.

MR. BENNETT: This is a view, absent the federal loan guarantee, no benefits, no comment about it, here's where we are.

MS. O'BRIEN: So then you're saying now at DG2 then, that this idea of – do you agree with the statement, as it was at DG2, that a contingent equity commitment of 300 to 600 million from the province was considered to be prudent and necessary?

MR. BENNETT: It was certainly prudent to have visibility from the province, that they could fund additional costs, if necessary.

MS. O'BRIEN: Okay. Was a commitment from the province of this amount of money necessary?

MR. BENNETT: Province may have other ways to deal with the funding requirement.

MS. O'BRIEN: Is this a true statement in this decision package that when to the board?

MR. BENNETT: We said it was considered to be prudent and necessary. So, yes, that's accurate.

MS. O'BRIEN: Okay. So, it's accurate that, at that time, that you believe that a commitment of 300 to 600 million from the province was necessary?

MR. BENNETT: Was considered to be prudent? Yes, I'm agreeing with the statement.

MS. O'BRIEN: Okay. So, if you thought that to be necessary – I believe your evidence is you thought it to be necessary, but you didn't communicate that information to government.

MR. BENNETT: This information was communicated to our board of directors. I think I've explained that I'm not the one who

individually and independently communicates the funding requirement or the capital budget to the province.

MS. O'BRIEN: So to your knowledge –

MR. BENNETT: And then that –

MS. O'BRIEN: – it wasn't communicated to government?

MR. BENNETT: I don't know.

MS. O'BRIEN: Commissioner, that may be a good time for the afternoon break.

THE COMMISSIONER: All right. We'll take our break then here for 10 minutes.

CLERK: All rise.

Recess

CLERK: All rise.

Please be seated.

THE COMMISSIONER: Ms. O'Brien?

MS. O'BRIEN: So, Mr. Bennett, I'm going to take you to some evidence that we've heard from members of government who have already testified here before the Commission on this concept of strategic risk at Decision Gate 2.

So Danny Williams, former premier, testified that he was not aware of the removal of strategic risk allowance from the estimate that was announced to the public. So I understand Mr. Williams's evidence was that when he went out to the public and said \$5 billion is the cost of this project at Decision Gate 2, he understood that that was a good, solid all-in estimate.

Now, when you heard the government making that announcement at Decision Gate 2, that this was a \$5-billion project, you were aware that there was a strategic risk amount that was not included in that \$5-billion number, right?

MR. BENNETT: That's right. I was aware that that estimate included contingency for tactical risk.

MS. O'BRIEN: Okay, and it didn't include anything for strategic risk?

MR. BENNETT: That's right.

MS. O'BRIEN: Okay.

Mr. Williams also testified it would've been – he was not aware of any pressure put on Nalcor by government to reduce P75 to P50, but he would've objected to that.

He also said that strategic risk and tactical risk were not really explained at his level. Okay, are you aware of that?

MR. BENNETT: No, I didn't –

MS. O'BRIEN: You weren't aware of that evidence?

MR. BENNETT: I didn't (inaudible) –

MS. O'BRIEN: Do you know anything that would contradict any – you know, do you have facts that are inconsistent with anything Premier Williams, former premier Williams, said?

MR. BENNETT: No, I can't place anything.

MS. O'BRIEN: And again, I'm using summaries of the evidence here; I do have all the cites.

Tom Marshall testified. Did you hear any of Mr. Marshall's evidence?

MR. BENNETT: Very little.

MS. O'BRIEN: Okay. He was unaware of any amounts for contingency reserves being excluded at DG2, and he was unaware of any idea that it was removed because of the negotiations with Emera, or at the behest of Emera, I think were his words.

So I understand Mr. Tom Marshall didn't have an accurate picture of events. Is that fair to say?

MR. BENNETT: I'm not gonna try to interpret the overall situation. As I've said earlier, there are other considerations, but I accept what he said in relation to the estimate.

MS. O'BRIEN: Okay.

Terry Paddon was aware that there was an allowance for risk in the \$5-billion estimate that was communicated to the public on November 18, 2010. When he was questioned about the \$300-to-\$600-million strategic risk amount being removed from the DG2 cost estimate, he expressed concern and said that there was an expectation that there were estimate contingencies built in and he didn't recall anything about the removal of that reserve amount. He also believed that strategic risk range should have been disclosed to government.

Okay, so I understand your evidence that that strategic risk range may not have been – to your knowledge it wasn't –

MR. BENNETT: Right.

MS. O'BRIEN: – communicated to government.

Shawn Skinner was also not aware of a removal of strategic risk from the publicly announced numbers. The first time he heard about it was actually from Commission counsel, I believe. He said the removal of the number would have caused him concern had he known. He remembered discussions around risk generally but no recollections of discussions differentiating strategic risk and tactical risk.

Do you have any information, you know, that you know first hand that would contradict Shawn Skinner's understanding?

MR. BENNETT: I can't think of anything off the top of my head.

MS. O'BRIEN: Okay.

We also heard similar from Mr. Thompson, but I don't want to be too repetitive.

Were you aware at DG2 that you were working with the P1 schedule?

MR. BENNETT: DG2?

MS. O'BRIEN: Yes.

P-00808, Madam Clerk.

MR. BENNETT: Yup.

MS. O'BRIEN: Same document again. Can we go to page 118?

So here's the work, the work that was done at DG2. Current schedule was P1. Did you know that?

MR. BENNETT: I knew that there was – at DG2 there was considerable uncertainty in the environmental assessment.

MS. O'BRIEN: No. My question was did you know, at DG2, that you were working with – that Nalcor was working with a P1 schedule?

MR. BENNETT: I'd like to have a look at this exhibit for a second.

MS. O'BRIEN: Sure. It's probably in – I think it's in the common exhibits. This is – I can scroll through it. This is the Westney presentation. It's an exhibit to the QRA at DG2. And this is their presentation. If I just – sorry – there we go; we're almost at the front. This is Risk Analysis Results for the Option of Muskrat Falls First that Westney did at –

MR. BENNETT: So –

MS. O'BRIEN: – Decision Gate 2.

MR. BENNETT: – this was very early.

MS. O'BRIEN: Well, it's the QRA for DG2.

MR. BENNETT: For DG2.

MS. O'BRIEN: Yes. Were you aware that Westney consulting did their analysis for the QRA for DG2 and determined that the schedule date that they were working with was a P1?

MR. BENNETT: I'm trying to remember if I saw – can we just go down – maybe just point – can I – can you tell me which tab number this is in the package here? 'Cause I'd just like to flip through this document.

MS. O'BRIEN: This would be in the common exhibits.

MR. BENNETT: This is hard for me to ...

MS. O'BRIEN: It's tab 17 of the common exhibits. So that will be in binder 5.

MR. BENNETT: Binder 5. Thanks.

MS. O'BRIEN: And the page I just brought you to showing the P1 was on page 118. So if you go back to 118, you'll be in the appendix. That is the Westney QRA work.

MR. BENNETT: All right.

So I've had a chance to look over this document and I think in terms of what we were doing at the feasibility level, in the absence of a lot more detailed work, I was a lot more interested in capital cost than schedule at this point in time.

MS. O'BRIEN: So you weren't aware?

MR. BENNETT: I'm sure I would've seen this report. So it's difficult for me to say. This is before all of our work.

So I expect that I was aware at the time. I expect I would've seen this report. And this would be important for us to work on as we get from the feasibility stage to the sanction decision.

MS. O'BRIEN: That seems –

MR. BENNETT: The only qualification I can ask – I can add here.

MS. O'BRIEN: Okay.

So if you were aware at the time it was a P1, I take it you would view that as a very aggressive schedule, would you not?

MR. BENNETT: Yeah, I think that's fair.

MS. O'BRIEN: It's an unrealistic schedule, isn't it?

MR. BENNETT: Well, it's also at the feasibility study stage and subject to considerable uncertainty and needs a lot of work in order to button it down.

MS. O'BRIEN: Okay. Would you agree with me that it's unreasonable to work with a P1 schedule?

MR. BENNETT: I think that, as a general statement, coming out of DG2 and working towards DG3, a lot of work needs to be done in order to firm that schedule up.

MS. O'BRIEN: Would you agree with me it's unreasonable to work with the P1 schedule?

MR. BENNETT: I'm struggling with the words "work with," okay? Because I recognize that considerable effort needs to be undertaken in order to develop the schedule moving forward.

MS. O'BRIEN: Do you – when we talk – let's talk about work with – let's talk about DG2, doing your analysis of \$5 billion based on a P1 schedule, and going out and announcing to the public that this project is expected to cost \$5 billion when you're working with a P1 schedule, is that reasonable?

MR. BENNETT: So when we look at that estimate, I think we all acknowledge that that work and the level of uncertainty inherent in that estimate is pretty substantial. It would've been, probably, desirable to have greater contingency on the schedule. Primary focus at this point in feasibility was cost.

MS. O'BRIEN: But cost – time and cost are related.

MR. BENNETT: There is a relationship.

MS. O'BRIEN: Yes.

MR. BENNETT: There is a relationship.

MS. O'BRIEN: Was it reasonable to be working with a P1 schedule?

MR. BENNETT: It would've been better, I agree. It would've been better to have more float in the schedule.

MS. O'BRIEN: So you're saying you agree with me that it would be – or are you saying it was unreasonable?

MR. BENNETT: The schedule needed additional work, right, the – to count on this schedule is probably unreasonable on multiple fronts.

MS. O'BRIEN: Okay, so you're agreeing with –

MR. BENNETT: Yes –

MS. O'BRIEN: – unreasonable on multiple fronts?

MR. BENNETT: Yes, on multiple fronts.

MS. O'BRIEN: Okay. Thank you.

At DG3 – when you did the CPW analysis at DG3, you were also using a P1 schedule, were you not?

MR. BENNETT: The schedule – I guess there were two inputs as I understand. You might recall from Mr. Harrington's testimony there were two points there: There was a relatively detailed schedule from SNC-Lavalin, our engineering consultant, and there was the probabilistic analysis that was undertaken by Westney. I think it's a – and I acknowledge that the Westney schedule for the target date was shown as P1.

MS. O'BRIEN: Westney wasn't hired to develop a schedule for you, wasn't ...?

MR. BENNETT: No, that's correct.

MS. O'BRIEN: No. And Westney did not develop any construction schedule for you.

MR. BENNETT: That's right.

MS. O'BRIEN: No.

MR. BENNETT: SNC-Lavalin did.

MS. O'BRIEN: Okay.

And so what – the information that Westney had about your schedule came from Nalcor, right?

MR. BENNETT: The information did but the – as I understand it, the schedule that they'd built

in their modelling system was a simplified version of the schedule.

MS. O'BRIEN: Okay, but from information that Nalcor provided.

MR. BENNETT: Information from us, yes.

MS. O'BRIEN: And you had asked them to go and do this probabilistic analysis of that schedule to tell you what confidence you could have in that schedule and how you could bring it up –

MR. BENNETT: And –

MS. O'BRIEN: – to a P50 or a P25 or a P75, right? That's what you retained Westney to do.

MR. BENNETT: That's one outcome, yes.

MS. O'BRIEN: Yes.

MR. BENNETT: The other is to identify what things can be done in order to mitigate the schedule risk.

MS. O'BRIEN: Okay.

And they did all that work and they came back with a P1.

MR. BENNETT: Their analysis showed, based on the assumptions and the inputs they put into their model, yes, it came back at P1.

MS. O'BRIEN: Okay.

And SNC was not hired to do any probabilistic analysis of your schedule.

MR. BENNETT: That's correct. SNC was hired to do a construction schedule, the one that we were measuring to.

MS. O'BRIEN: Okay, so the – we have had evidence from Messrs. Moulton, Stratton and Warren about the CPW analysis. And I understand that the date of first power that they used in that analysis was, you know, June, July of 2017, which is the very date of first power that Westney –

MR. BENNETT: Mm-hmm.

MS. O'BRIEN: – determined to be P1.

MR. BENNETT: That's what they used for the modelling.

MS. O'BRIEN: Okay.

So my question to you a few minutes ago was putting to you that when you did the CPW analysis for DG3 you used a P1 schedule. Would you agree with that?

MR. BENNETT: At DG3 the Westney results indicated that their model showed P1.

MS. O'BRIEN: And that was the input into the CPW.

MR. BENNETT: That was the input into the CPW. In addition to that, the Westney analysis highlighted a number of critical activities that needed to be complete in short windows, as I recall, if those deliverables weren't met, that there would be significant slippage in the schedule. And they were a focus for the team at Nalcor as a whole to take steps to attempt to maintain the schedule. So, the sanction decision is very important. The start of preliminary work onto the site is very important. The completion of the mass excavation to support the civil contract, the financial close, are all very important milestones. And they were indicators that came out of the Westney work.

MS. O'BRIEN: Yes, and then Mr. Kean has testified that he went back to Westney in the – September of 2012 with the information we are starting, you know, bulk excavation early with all these efforts that Nalcor was making to mitigate schedule. And he's testified, it's there in evidence that he believed at that point maybe that these events would get it up to a P20 or a P30.

MR. BENNETT: Mm-hmm.

MS. O'BRIEN: He asked Westney to validate that for him, and Westney came back and said you're still at a P3, or you're at a P3, you went from P1 to P3.

MR. BENNETT: Yeah, I wasn't aware of that final conversation –

MS. O'BRIEN: But it's –

MR. BENNETT: – until I heard it, I guess I heard it from your testimony –

MS. O'BRIEN: But –

MR. BENNETT: – or from his testimony.

MS. O'BRIEN: – it's in the QRA, all that information is in the QRA for the DG3. Those emails are there in the QRA –

MR. BENNETT: Okay.

MS. O'BRIEN: – document, the –

MR. BENNETT: The –

MS. O'BRIEN: – DG3.

MR. BENNETT: The – and I think there was further conversation, there was further conversation on that. But the importance of achieving those milestones – can't overstate that, and I think –

MS. O'BRIEN: Sorry?

MR. BENNETT: – the, I get back to the point I was making a second ago – that the mass excavation completed so that we can start construction, the completion of the riverside coffer dam as part of the mass excavation program, those milestones were achieved.

MS. O'BRIEN: No, okay, that's not what I'm – we're not doing a –

MR. BENNETT: No, but –

MS. O'BRIEN: – hindsight analysis right now about what you achieved when after sanction.

MR. BENNETT: Right.

MS. O'BRIEN: What we're trying to do right now is look at when you sanctioned what kind of schedule –

MR. BENNETT: Right.

MS. O'BRIEN: – were you dealing with.

MR. BENNETT: So –

MS. O'BRIEN: Okay. So what schedule were you using, and what was communicated to government and what was communicated to the public? That's what I'm trying to focus –

MR. BENNETT: Right.

MS. O'BRIEN: – on here. And I'm putting it to you that it's in the DG3 QRA document, and I can bring it up –

MR. BENNETT: No, no.

MS. O'BRIEN: – but that this work was re-evaluated by Westney in September of 2012, and they said: Look, you're at a P3 now.

MR. BENNETT: And based on their, what I'll say is – their simplified approach in comparison to the detailed SNC-Lavalin estimate, I understand what the QRA shows.

MS. O'BRIEN: But – the – what – I won't make it clear if we – I understand this to be two very different scopes of work. You're asking Westney to evaluate the risk that you won't meet the schedule that's been – you've worked on with SNC.

MR. BENNETT: I understand.

MS. O'BRIEN: So you work on with SNC with the schedule and you say: This is how long we think it's gonna take it. And then, you take that schedule and you give it Westney and say: Can you do an analysis of this to see what is our probability of us either beating that schedule date or running over that schedule date?

MR. BENNETT: Right.

MS. O'BRIEN: Isn't that how it worked?

MR. BENNETT: That is.

MS. O'BRIEN: Okay.

MR. BENNETT: But their analysis is a simplified version of the schedule that SNC-Lavalin has and has in its probabilistic analysis some key dates that need to be met.

MS. O'BRIEN: Yes.

MR. BENNETT: And they're looking for, and they're critical. So my point is the schedule analysis gave us an indication of what those critical issues were.

MS. O'BRIEN: Yes.

MR. BENNETT: They were focussed on –

MS. O'BRIEN: Yes.

MR. BENNETT: – and addressed.

MS. O'BRIEN: And then you reanalysed it?

MR. BENNETT: And they reanalysed it and –

MS. O'BRIEN: It's P3.

MR. BENNETT: – I guess were not convinced that those were going to be achieved. And that's the distinction.

MS. O'BRIEN: No, no. Is it a matter of them not being convinced or they put this information into their –

MR. BENNETT: Into –

MS. O'BRIEN: – the software and that's – and which was a very – it's a complex algorithm –

MR. BENNETT: Right.

MS. O'BRIEN: – and this is the probability that was determined that way.

MR. BENNETT: The model is, though, a simplified representation of the schedule.

MS. O'BRIEN: So you decide – despite having the feedback from Westney Consulting that this was a P3 schedule, that's the one you proceeded to sanction with?

MR. BENNETT: We were working with that schedule and we understood that there was insight from SNC-Lavalin available and that there was also insight to be made available from contractors as we continued through the process. And –

MS. O'BRIEN: At the time of sanction, you were working with a schedule, you had feedback from your expert consultant that it was a P3 schedule, and that's the schedule you went to sanction with, correct?

MR. BENNETT: We had some feedback from multiple places and publicly – no, I'm – there are two schedules and there's a view from SNC-Lavalin. They highlighted some critical issues that really needed to be addressed. We also –

MS. O'BRIEN: It wasn't two schedules. One was a simplified version.

MR. BENNETT: Fair enough.

MS. O'BRIEN: Right? Focussing on the –

MR. BENNETT: Yes.

MS. O'BRIEN: Focussing on the elements of the schedule that were most susceptible to slippage.

MR. BENNETT: They were critical and needed to be met, yeah.

MS. O'BRIEN: Yeah, so that's what it was, not two schedules.

MR. BENNETT: Fair enough.

MS. O'BRIEN: Right. Okay.

So when you went to sanction, you were using a schedule that your feedback from Westney had been was a P3 schedule. Correct?

MR. BENNETT: That is true.

MS. O'BRIEN: Now, the PMT has said in a paper that they've prepared, and it's been filed, that they recommended to the Nalcor executive that a schedule reserve allowance be made at DG3. Do you recall that?

MR. BENNETT: There was certainly conversation about what schedule should be used and what the – how critical this issue was.

MS. O'BRIEN: Okay. P-00864, please. Yes. I've done this any number of times. It's P-00894. I'm not sure. It's the – try P-00094. Yes.

I think –. Thank you, Ms. Martin. P-00264. Try that one. Yes. Thank you. Oh, 00894 was correct. Okay. 00894 was correct. Thank you.

Yes. That's the one I want. Can we go to page 18, please?

So, this is the paragraph here that I was looking for: "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."

We've had testimony from Mr. Kean and Mr. Harrington, I believe, that here, when they refer to the Nalcor executive that they could be referring to more – a broader group – but they would certainly be referring to you and Ed Martin.

Do you recall the PMT making a recommendation to you that there be a schedule reserve allowance for DG3?

MR. BENNETT: I remember that there were conversations about the schedule. I recall that our public material that we used in the technical briefing in October, 2012 did not refer to a mid-17 date. It simply talked about 2017. But the description here that there was no schedule allowance made, that is accurate.

MS. O'BRIEN: Okay –

MR. BENNETT: Okay.

MS. O'BRIEN: – and the question was do you recall –

MR. BENNETT: Do I –

MS. O'BRIEN: – the project management team making a recommendation to you that there be a schedule reserve allowance at DG3?

MR. BENNETT: To me, individually? So, for me, individually, this is not – just to clarify, this is not my decision. This is definitely a Gatekeeper call. Okay.

MS. O'BRIEN: Do you recall the project management team making a recommendation to you that a schedule reserve allowance be –

MR. BENNETT: I'm –

MS. O'BRIEN: – included at DG3?

MR. BENNETT: I remember that there – that an allowance was identified, yes.

MS. O'BRIEN: And they – no, do you recall that the PMT made a recommendation to you that a schedule reserve allowance be included at DG3?

MR. BENNETT: To me, individually, as a point – this is an important point.

MS. O'BRIEN: I really don't – I mean whether it was you individually or you and 15 other people, I don't think it matters to the question.

MR. BENNETT: Well, it does in the sense that I'm not the decision-maker on this point.

MS. O'BRIEN: The question is about your recollection of whether or not you got a recommendation. That's what the question is about.

MR. BENNETT: And I can remember that there was concern about the schedule at sanction.

MS. O'BRIEN: The question is whether you remember there being a recommendation, Mr. Bennett.

MR. BENNETT: So –

MS. O'BRIEN: I don't know how –

MR. BENNETT: Yes, okay, I –

MS. O'BRIEN: – much more I can make clear.

MR. BENNETT: They recommended – I recall there being a request for a reserve.

MS. O'BRIEN: Okay. So you don't recall a recommendation, just a request.

MR. BENNETT: So –

MS. O'BRIEN: Is that how you're parsing it?

MR. BENNETT: I don't see a lot of difference. They were looking for a reserve. They were – yes, okay, I'm fine to say they recommended there be a reserve.

MS. O'BRIEN: Okay. And the Nalcor executive opted not to do that?

MR. BENNETT: Our Gatekeeper opted not to.

MS. O'BRIEN: Okay. So is what – your evidence here is that –

MR. BENNETT: This is –

MS. O'BRIEN: – Ed Martin –

MR. BENNETT: This is a decision of the Gatekeeper.

MS. O'BRIEN: Did Mr. Martin consult you before he made that decision?

MR. BENNETT: I don't recall a specific conversation. I know it's an issue and I know what the outcome was, but I don't recall a specific conversation. So I'm not in a position to specify one way or the other.

MS. O'BRIEN: Okay. Did you support the decision?

MR. BENNETT: I'm drawing a blank. Needless to say that having a – having additional reserve is helpful. And I recall that the – as I said earlier, the fallout from this was that our public communications pushed later. So that's better in the sense that we're not locked to that mid-'17 date publicly.

All things being equal, it's nicer to have – from a project perspective, it's better to have more contingency or – either in the schedule or cost. And I'm aware of our Gatekeepers philosophy on contingency in general.

MS. O'BRIEN: What was that philosophy?

MR. BENNETT: That we were looking for the best possible outcome in both and that the project team, as a rule, including myself in that, were not given large contingencies in either schedule or cost until we could – until such time as we could demonstrate that they were needed.

MS. O'BRIEN: Okay, but that comes to a question about authorizing funds and what funds you need available.

MR. BENNETT: It does all that.

MS. O'BRIEN: So that's a separate question, is it not?

MR. BENNETT: Right.

MS. O'BRIEN: Yeah.

So if you're saying now to the Commissioner that it would be nicer to have more contingency, more schedule allowance and it would be helpful to have those –

MR. BENNETT: Right.

MS. O'BRIEN: – things, why didn't you?

MR. BENNETT: So I'm not the authorizer for those two items.

MS. O'BRIEN: So was this a point of disagreement between you and Mr. Martin?

MR. BENNETT: I understood what he was trying to accomplish.

MS. O'BRIEN: Was this a point of disagreement between you and Mr. Martin?

MR. BENNETT: I didn't argue over it, okay? So my point is –

MS. O'BRIEN: Did you disagree with him?

MR. BENNETT: I didn't disagree, okay?

MS. O'BRIEN: You didn't disagree.

MR. BENNETT: I accepted his decision.

MS. O'BRIEN: Did you agree with his decision?

MR. BENNETT: I accepted his decision.

MS. O'BRIEN: Okay, I'm not asking you whether –

MR. BENNETT: No, but –

MS. O'BRIEN: – you accepted it because at the end of the day it wasn't your call to make.

MR. BENNETT: That's that point.

MS. O'BRIEN: Right, it was his decision –

MR. BENNETT: Right.

MS. O'BRIEN: – to make. The question is not whether you accepted it or not. I take it you had no choice; you could either accept it or go find a new job.

MR. BENNETT: And I wasn't going to – I wasn't –

MS. O'BRIEN: And you didn't want to do that.

MR. BENNETT: I didn't see fit to go find a new job.

MS. O'BRIEN: Okay, I understand that.

MR. BENNETT: So I accepted the outcome.

MS. O'BRIEN: I understand, but the question to you is not whether you accepted it or whether you didn't accept it; the question is did you agree with it or did you disagree with it?

MR. BENNETT: In the context of cost contingency I agreed with his approach there because I saw other opportunities and benefits. In the context of schedule, I found a little bit challenging.

MS. O'BRIEN: You disagreed?

MR. BENNETT: So I would disagree with that.

MS. O'BRIEN: You disagreed.

MR. BENNETT: Yeah.

MS. O'BRIEN: And you understand that the choice of schedule does have a bearing on risk and that there's a cost associated with that.

MR. BENNETT: There is some cost, yes.

MS. O'BRIEN: Now, was the – was this – the fact that you were working with such a low probability, low confidence level schedule at DG3, was that communicated to the board of directors?

MR. BENNETT: I'm not sure, so I can't confirm.

MS. O'BRIEN: Would you have considered it at all part of your responsibility to ensure that the board of directors had that information?

MR. BENNETT: To the extent that there was a broader conversation about the risks inherent in the project, Ed had, on a regular basis, communicated his stance on contingency. I'm not convinced it was necessary to communicate that specific fact to the board. And if I thought it was necessary –

MS. O'BRIEN: You don't think that's information that the board of directors would want to have when they're being asked to sanction a project?

MR. BENNETT: They're –

MS. O'BRIEN: You don't think that's information that would be relevant to them?

MR. BENNETT: They're –

MS. O'BRIEN: That they're looking at numbers that are based on a P1, P3 – whatever it is – very low probability schedule, you don't think that would be important information for them to have?

MR. BENNETT: There is a lot more work to do in order to flesh this out.

MS. O'BRIEN: But sanction is a decision that's being made now.

MR. BENNETT: Sanction – the decision is being made to step forward. You know it's – we know it's another year before we achieve

financial close and the really large commitment is being made.

MS. O'BRIEN: But the board of directors was being asked to vote on whether that project should be sanctioned.

MR. BENNETT: Yes, they were.

MS. O'BRIEN: Okay.

So that decision for sanction is whether we're going ahead with the project or whether we're not going ahead with the project. Isn't that what sanction means?

MR. BENNETT: In this particular case, with this decision, the decision being taken was to continue work until financial close and there were considerable large contracts that were not going to be signed until financial close. So there's more information and more decisions to be taken before we complete the federal loan guarantee and are fully committed to the project.

MS. O'BRIEN: Okay.

MR. BENNETT: A civil contract for example was not signed until financial close.

MS. O'BRIEN: The board of directors was asked to vote on whether or not this project should be sanctioned –

MR. BENNETT: Yes –

MS. O'BRIEN: – were they not?

MR. BENNETT: – they were asked that.

MS. O'BRIEN: Okay, and is that vote to decide to sanction, is that not a vote to decide whether or not we're going ahead with this project?

MR. BENNETT: To start work – to proceed with the project, yes.

MS. O'BRIEN: Right, it's a decision of whether –

MR. BENNETT: It is –

MS. O'BRIEN: – we're gonna proceed –

MR. BENNETT: But –

MS. O'BRIEN: I mean, we can go back and look at all the Decision Gate documents –

MR. BENNETT: It is –

MS. O'BRIEN: – that Nalcor has, you know, many, many, many versions of.

MR. BENNETT: Yeah.

MS. O'BRIEN: I understand that the DG3 decision was the sanction decision. That's the go/no-go decision.

MR. BENNETT: Right, but it's – there is another decision that's coming.

MS. O'BRIEN: Well –

MR. BENNETT: That's my –

MS. O'BRIEN: – you have to get it financed. But I understood – correct me if I'm wrong – I understood that this was an investment-grade project.

MR. BENNETT: Yes, it was.

MS. O'BRIEN: Was it not?

MR. BENNETT: Yes.

MS. O'BRIEN: So even if you didn't get the federal loan guarantee, I understood that this project was investment grade, and that was very important to Nalcor that it be investment grade so you knew –

MR. BENNETT: It was.

MS. O'BRIEN: – that you could go ahead with it and you could get financing with it.

MR. BENNETT: It was. But there was no – we were not deciding to unconditionally commit the full \$6.2 billion with equity from the province in the event that the federal loan guarantee wasn't achieved.

MS. O'BRIEN: They were still being asked to vote whether it was a go or no go, so do you not think that it would be relevant information to the

board of directors, to let them know that the costs that are being put before them, the schedule that's being put before them, is all a P1 or P3 schedule –

MR. BENNETT: I don't accept that –

MS. O'BRIEN: – when they were making that decision –

MR. BENNETT: I don't accept –

MS. O'BRIEN: – don't you think they'd care to hear about that information?

MR. BENNETT: I don't accept that the cost was P1 or P3.

MS. O'BRIEN: No, no, I know that. But the schedule?

MR. BENNETT: The schedule? The schedule is aggressive.

MS. O'BRIEN: Yeah, the question is: Do you not believe that that is information that the board of directors would want to have before they are acting in a fiduciary capacity to this corporation –

MR. BENNETT: (Inaudible.)

MS. O'BRIEN: – and being asked to make a decision as to whether or sanction or – to sanction it or not, do you not accept that that would be important information that any director would want to have –

MR. BENNETT: Mmm.

MS. O'BRIEN: – when being asked to make that kind of a decision?

MR. BENNETT: The relative importance of a mid-'17 first power date or the end of '17 first power date, in my view, needed a lot more work. So if I –

MS. O'BRIEN: That is not an answer to my question.

MR. BENNETT: So my – where I'm going is I'm not sure, I'm not convinced that that was the

most important point in all of our deliberations on the sanction decision.

MS. O'BRIEN: My question is not is that the most important point, my question is quite simply: Is it not information that the board of directors would want to have and would expect to have that, when they're being asked to make the sanction decision that Nalcor is working with and has done its estimates and everything else, based on a very, very low probability of successful outcome schedule?

MR. BENNETT: In hindsight it may have been helpful to have float in there. So, yes, it would've been helpful to have float.

MS. O'BRIEN: No. My question was not is it helpful to have float. My question: Is this information that should've been given to the board of directors?

MR. BENNETT: Yes, I suspect it was.

MS. O'BRIEN: Okay.

Now, as an officer of this company, which you are, and you hold fiduciary duties –

MR. BENNETT: Mm-hmm.

MS. O'BRIEN: – and responsibilities of the corporation, do you not?

MR. BENNETT: Yes, I do.

MS. O'BRIEN: Okay.

Would you not have considered it part of those duties, part of your duty to ensure that the board had all the key important information before it, before it made its sanction decision?

MR. BENNETT: So, on that point, that key and important information – key information, yes. And I'm not convinced that this question is in fact key information in the same regard as the capital cost. So I'm drawing a distinction between is it the most important question –

MS. O'BRIEN: I didn't ask if it was the most important.

MR. BENNETT: But I think it's –

MS. O'BRIEN: The question is: Do you not believe that you had a duty to get this information before the board that you were working with a P1, P3 – whatever it is – schedule? Should you not have ensured that that information came to the board? That's the question.

MR. BENNETT: So on that point, I'm not – I don't accept that it was key information tied to my fiduciary duty.

MS. O'BRIEN: Okay.

What about the government? Do you believe the government should've been given this information? And I'm talking about the low probability schedule.

MR. BENNETT: So my understanding, in the conversation with government, is that we were talking about a more general date than mid-2017.

MS. O'BRIEN: Well, you had used a mid-2017 in the CPW analysis that everyone was talking about.

MR. BENNETT: We did do that.

MS. O'BRIEN: Yes. So that's what government understood, isn't it?

MR. BENNETT: Right. But the public communication was more generic than 2017.

MS. O'BRIEN: Okay.

I'm not talking about public communication now. I'm talking about communication with the Government of Newfoundland and Labrador.

MR. BENNETT: So the information that goes to the board should be consistent with what goes to government.

MS. O'BRIEN: So then this information should also have gone to government. Is that your evidence?

MR. BENNETT: Yes.

MS. O'BRIEN: It should've gone to government. And who –

MR. BENNETT: But was it key information that trips over what I interpret as my fiduciary duty? I'm not convinced it's there.

MS. O'BRIEN: I don't want you to get hung up on your fiduciary duty. I want you to get – I want you to address whether the government should've had this information and should the board have had this information.

I understand you to say the board should've had it and government should've had it.

MR. BENNETT: Agree with that.

MS. O'BRIEN: And did you bear any responsibility – if they should've had it, was there any responsibility on you to ensure they got it?

MR. BENNETT: The communication of this material to the board, to the government is a decision of our Gatekeeper who's looking at the business risk and who's assessing a broad set of parameters. And I've covered that previously. So I'm not happy to take that one point in isolation in communication to government.

MS. O'BRIEN: Well, I don't know what you're happy or unhappy with. But I understand your evidence to be that this is information that the board should've had, right? Yes? That's what you just said, right?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay. And this is information the government should've had?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay. And I understand you to say that it's Ed Martin who should've given it to them?

MR. BENNETT: He is the decision-maker. And I talked about earlier, my happiness or unhappiness or satisfaction or acceptance or understanding of the target that he gave me to work with.

MS. O'BRIEN: Is it Ed Martin who should've given them that information?

MR. BENNETT: If anybody were to have given it to government, it would've been Ed.

MS. O'BRIEN: You said they should've had it, so that means it's Ed Martin who should've given it to them.

MR. BENNETT: Ed would be the one, yes.

MS. O'BRIEN: And the fact that, from all indications from people in the government, it wasn't given to them, that would be – I take you to say that would be a failing of Ed Martin's and not a failing of Gil Bennett's?

MR. BENNETT: That's a decision of Ed's, yes.

MS. O'BRIEN: And in all your day-to-day communications with Charles Bown, did you never mention the aggressiveness of the schedule to him?

MR. BENNETT: I don't recall. I don't think so. I know it was reviewed, but I didn't have a direct conversation with him over the schedules, same way I didn't have a direct conversation with him over the capital cost.

MS. O'BRIEN: And so if you could just clarify why would you not have had those conversations with Charles Bown?

MR. BENNETT: Because I was clearly of the understanding and – I mean, I understood clearly that the conversation about the schedule and the cost and the targets that the team was to maintain go through our CEO, through the Gatekeeper.

MS. O'BRIEN: So who told you that was the case?

MR. BENNETT: Who –?

MS. O'BRIEN: Who told you that this kind of information flows just through the Gatekeeper?

MR. BENNETT: I understood that he, as a decision-maker, is the person who has given me direction and has identified, you know, what we as a team are working with.

MS. O'BRIEN: Okay. But did he give you direction – did he say: Mr. Bennett, I don't want

you to communicate with government or Charles Bown about the schedule, about the cost. I want you to leave all that communication up to me. I'll handle it.

MR. BENNETT: For a long time, I understood that the path – the spokesperson for the company, and the person who gives me direction, is Mr. Martin.

MS. O'BRIEN: Okay. So you understood that based on what?

MR. BENNETT: Based on seeing the project unfold for at that point in time – nine or 10 years – understanding the types of information that I communicated with government, and understanding his role as a spokesperson and the leader of the company.

MS. O'BRIEN: I'm still not really clear. So are you saying – did Ed Martin ever give you such a direction that look, Mr. Bennett, I don't want you speaking with government about schedule and cost; leave that up to me. Did he ever give you such a direction?

MR. BENNETT: For as long as I can remember, he was the spokesperson on those topics.

MS. O'BRIEN: Now, I –

MR. BENNETT: No, I mean, it – that was –

MS. O'BRIEN: I've asked you a question.

MR. BENNETT: So – I –

MS. O'BRIEN: It is a basic – like, it – if you were six-years old, you'd understand that question.

MR. BENNETT: I –

MS. O'BRIEN: So I – you know, can you just please give me an answer.

Did Ed Martin ever tell you that you should not communicate to government about the cost and the schedule?

MR. BENNETT: He – no. He was the one who did it.

MS. O'BRIEN: Okay. So he never told you not to communicate?

MR. BENNETT: That's right. But he –

MS. O'BRIEN: Okay.

MR. BENNETT: And he was the one who consistently did it, had the relationship with the decision-makers in government, in various departments, and did that – carried out that role.

MS. O'BRIEN: But now you could have two people communicating with government. I mean, you were communicating back and forth with Charles Bown on a day-to-day basis, you've said?

MR. BENNETT: I – one could have, and I have seen in other scenarios where the consequences of doing that outside of what I'll call our normal communication process, and the normal interfaces that we have in the – between the company and government, is – well, first of all, I don't think that would be appropriate.

So I – we don't think it would be appropriate for me to communicate that to Charles and have that communicated up the line, when I clearly understood that the decision-maker in that regard is Mr. Martin.

MS. O'BRIEN: Okay, so is this something you consciously did not do – I mean, were you consciously, like, okay, I'm not gonna speak to Charles Bown; I'm not gonna let him know what we're dealing with on schedule here. I'm not gonna talk to him by cost – about cost. Is that some – a decision you were consciously making to avoid those topics with Mr. Bown?

MR. BENNETT: No.

MS. O'BRIEN: Okay.

MR. BENNETT: It wasn't a conscious decision.

MS. O'BRIEN: So it just – it –

MR. BENNETT: It was my understanding of the protocol that we were following in relation to communicating that information by the right person to the right place.

MS. O'BRIEN: Okay, and was this protocol written down anywhere?

MR. BENNETT: No.

MS. O'BRIEN: And was it communicated to you verbally by anyone?

MR. BENNETT: No, it wasn't communicated verbally, but I had – I have understood, over a number of years, that the person who did that communicating was Mr. Martin.

MS. O'BRIEN: Okay, so it wasn't written down anywhere, and no one told you about it?

MR. BENNETT: As I said, it was my understanding of the consistent approach – the role – certainly, the – in relation to the board – I'll go back to that for a second – the information that went to the board went through Ed, okay?

MS. O'BRIEN: So, it wasn't written –

MR. BENNETT: In –

MS. O'BRIEN: That was not written down anywhere?

MR. BENNETT: No.

MS. O'BRIEN: No. And nobody told you that was the protocol?

MR. BENNETT: That's right.

MS. O'BRIEN: Okay.

MR. BENNETT: It was a protocol that had been followed for many years.

MS. O'BRIEN: That you had followed, at least, for many years?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay.

Did you talk to anyone about it? Did you ask questions? Did you say, look, I'm – you know, I'm not – I just wanna make sure that I'm understanding this unwritten, unspoken protocol correctly? Did you ever think about raising that

with Mr. Martin and getting some clarification on it?

MR. BENNETT: No, I didn't. I never – I – because I never thought it was inappropriate that –

MS. O'BRIEN: (Inaudible) –

MR. BENNETT: – the Gatekeeper who makes those decisions would be the one who communicates those.

MS. O'BRIEN: Okay.

What about Mr. Sturge? Did you ever have any communications with Mr. Sturge about this very aggressive schedule at DG3?

MR. BENNETT: Not directly, no.

MS. O'BRIEN: Okay.

MR. BENNETT: I don't think.

MS. O'BRIEN: He has testified that he didn't know about it.

MR. BENNETT: Okay.

MS. O'BRIEN: Do you have any information that would contradict his evidence in that regard?

MR. BENNETT: Nothing that I can think of.

MS. O'BRIEN: And, to be clear, he was on the Executive Committee –

MR. BENNETT: Yes.

MS. O'BRIEN: – for the Lower Churchill Project, and he was on the leadership team?

MR. BENNETT: Yeah.

MS. O'BRIEN: Okay. So fair then to say that this information didn't come then either to the Executive Committee for the Lower Churchill Project or the leadership team?

MR. BENNETT: It would appear not.

MS. O'BRIEN: P-01008, please.

So this is a presentation – final version of a presentation deck that, the evidence is so far, was being prepared to present to – in Ottawa – to Canada in the summer of 2012.

Are you familiar with this exhibit?

MR. BENNETT: I need to have a quick look here.

I know there were a number of decks that were used during the rating process and the federal loan guarantee negotiations. I wasn't in some of those meetings.

MS. O'BRIEN: Okay. Let's go to page 37.

MR. BENNETT: So if we can –

MS. O'BRIEN: Okay. Can you make it a little bit smaller, Madam Clerk, please? I'd like to get it all on one page. Okay. Thank you.

Are you familiar with this slide?

MR. BENNETT: I remember the quote.

MS. O'BRIEN: Okay. Do you remember seeing this quote in multiple presentations and documents from Nalcor?

MR. BENNETT: I've seen it in a few places, yes.

MS. O'BRIEN: Okay.

I would – the evidence is that this is a slide deck that was shown to – this slide was shown in presentations to the board and to lenders and, I believe, also to the shareholder. Would that be generally consistent with your understanding?

MR. BENNETT: Yes, I've seen – as I said, I've seen the quote in various places in those types of events.

MS. O'BRIEN: And were you aware that this quote was taken from a draft report?

MR. BENNETT: Not at the time.

MS. O'BRIEN: When did you learn that this was taken from a draft report?

MR. BENNETT: In this proceeding.

MS. O'BRIEN: During the Inquiry. Okay.

MR. BENNETT: Yes.

MS. O'BRIEN: Did you ever read that draft report?

MR. BENNETT: I hadn't seen the report.

MS. O'BRIEN: Did you know that Validation engineering – or Estimating – had been engaged by Nalcor to review the DG3 base estimate? Did you know that at the time? You know –

MR. BENNETT: I think I did.

MS. O'BRIEN: Okay.

Were you aware that Mr. Hollmann, Validation Estimating, were – you know, he was a fairly high profile. It says right here, you know, the recipient of AACE's highest honour, the award with merit and whatnot. Were you aware that this consultant had that sort of reputation and, well, qualifications in the industry?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay, so you knew that at the time.

And so if you knew that this was going to be a third-party validation of the estimate and you knew that the consultant that you were hiring was someone who was, you know, of some significant reputation, one might wonder that you as the vice president for the Lower Churchill Project would be interested in seeing what his report or review was.

So why did you go looking for his report? If you knew the work was being done, you knew this man had been hired, why didn't you seek out – ask to see what the results of it were?

MR. BENNETT: It never crossed my mind at the time.

MS. O'BRIEN: Okay.

The senior members of the project management team were all consultants to Nalcor. Is that not right?

MR. BENNETT: Yes, they were.

MS. O'BRIEN: And, you know, we've had some indication of what the day rates were, but – and it's fair to say that these were all, you know, well-paid positions.

MR. BENNETT: Yes.

MS. O'BRIEN: Okay. And I understand that they don't have pension plans or employment benefits, and they probably didn't have significant overhead either, but they – but these were good paying jobs. And I'm not suggesting that the people in these jobs aren't worthy of these salaries. And I suppose you would agree that, you know, to get those calibre of people you have to pay, you know, really good salaries. Would you agree?

MR. BENNETT: I agree with that.

MS. O'BRIEN: Okay.

If the project didn't get sanctioned, is it fair to say that these people would have to move on and find other work?

MR. BENNETT: I'm sure they would've found another assignment, yes.

MS. O'BRIEN: Okay, but there wouldn't – you didn't have a place for them at Nalcor if the project didn't get sanctioned.

MR. BENNETT: No.

MS. O'BRIEN: Okay.

Now, we've heard evidence from Jason Kean that when he applied for the Lower Churchill Project, there wasn't a lot of opportunities for him on the East Coast at the time. Did you hear that evidence?

MR. BENNETT: No, I never heard that.

MS. O'BRIEN: Okay.

Do you have any reason to doubt his evidence in that regard?

MR. BENNETT: No, I have no reason to doubt his evidence personally.

MS. O'BRIEN: Okay.

And he now, I understand – now that he no longer works for the Lower Churchill Project, he commutes back and forth to Texas, I understand, on a regular basis. Are you –?

MR. BENNETT: That's my understanding as well, yes.

MS. O'BRIEN: Okay.

So I know you're saying these people would've, you know, found other work, you have no doubt these people would've found other work. Is that correct?

MR. BENNETT: Yes.

MS. O'BRIEN: Okay, but would you agree with me that they may well have to move away from Newfoundland and Labrador or spend a lot of time commuting from away from Newfoundland and Labrador to get equivalent type work?

MR. BENNETT: At the time, I'm not sure.

At the time of sanction, that's not at all obvious. Hebron was in play at the same time, so I'm – it's difficult for me to draw a conclusion on what would've happened around sanction for those individuals. I know that Mr. Kean is commuting today.

MS. O'BRIEN: Mm-hmm.

MR. BENNETT: I know that other people who have left the team are commuting, but I'm also aware that there are other projects in the province that are taking people as well.

So it's difficult for me to speculate on where he would've landed.

MS. O'BRIEN: And fair to say that many of these people on the project management team

were Newfoundlanders; I mean this is where they were from, this is where they wanted to be.

MR. BENNETT: No question.

MS. O'BRIEN: Okay.

So, would you acknowledge that each of these people on the project management team, they had a personal interest in the project being sanctioned.

MR. BENNETT: No. I would assert that they had a – they were professionals and that they were doing appropriate work on a professional basis, to the best of their ability –

MS. O'BRIEN: No –

MR. BENNETT: – and if the project didn't proceed, then, as professionals, they'd take their next assignment.

MS. O'BRIEN: I understand that, and I'm actually in no way suggesting that they weren't professionals, and I am no way suggesting that it – that they compromised their jobs because of it.

But do you not see that they did have a personal interest in this project going ahead?

MR. BENNETT: To the extent that they continue their job, yes, I guess that's, you know, that's a reality.

But I won't go any further than that.

MS. O'BRIEN: Okay, but that was a reality. If the project –

MR. BENNETT: Yes.

MS. O'BRIEN: – got sanctioned, they had a really good paying job here in Newfoundland for the next number of years, right?

MR. BENNETT: Fair enough.

MS. O'BRIEN: So that is a personal interest.

MR. BENNETT: Um –

MS. O'BRIEN: You don't think people are personally interested in having a job in their home province?

MR. BENNETT: Yes, but there are also – these positions and the people in these roles are in high demand, so I don't think it's a question of one project uniquely.

They've developed their career and they have multiple opportunities, and people move back and forth between projects. We have lost people to Hebron; it's worked the other way, we're losing people today to the Husky work in Argentina, for a variety of reasons, but I accept that, you know, had the project continued, yes, they would've been with us for a longer period of time.

MS. O'BRIEN: And I'm gonna put it to you that there is an inherent conflict of interest here, in that – and it's not one that I say I believe that you can get rid of, I think it's inherent; that when you have people who are working to, you know, get – move forward to see if a project will be sanctioned, it is reasonable that those people, if those people are going to have jobs after sanction, there is – it's – they – it's necessary that they continue on their work and do a good job and you've hired them to do the very best possible job –

MR. BENNETT: Right.

MS. O'BRIEN: – that they can up to the sanction date. But the fact of the matter just is if the project get sanctioned, then they're going to have a job after the fact. So it's an – what I'm calling an inherent conflict of interest.

MR. BENNETT: Right. And I don't know how you avoid it.

MS. O'BRIEN: That's right. I don't think it is avoidable.

MR. BENNETT: Right.

MS. O'BRIEN: It's just inherent in the way it is. But – you can't avoid it, but you can do – you can do things to mitigate it or just acknowledge it and look for ways that you can help ensure that you prevent that inherent conflict of interest

from – in any way shape or form either consciously, subconsciously biasing the work.

MR. BENNETT: I think the corollary to that, though, is that, you know, doing something that's, you know, less than what one would've expected has consequences as well. So, you know, that kind – that issue has to be traded off against the importance of any professional doing their work to their best of their ability and making sure they do a good job. That's the other side of the equation because that has consequences on the next assignment as well.

MS. O'BRIEN: Okay, sorry, I – just let's talk about this side of the equation –

MR. BENNETT: Okay.

MS. O'BRIEN: – just for a moment, okay?

So my – I'm putting to you that you can't get rid of the conflict of interest, it's inherent, but you can do things to mitigate against it or to – ways to help ensure that any bias or undue influence or anything that might either – and it can be subconscious, it doesn't have to –

MR. BENNETT: Right.

MS. O'BRIEN: – someone purposely doing something – that to keep that bias from slipping in, that you can do things to mitigate against it. And a big one of those would be to provide oversight, would it not?

MR. BENNETT: Sure. Okay.

MS. O'BRIEN: Okay? Like, do you see my point? The point is that, look, when you have someone who's in this inherent conflict of interest, oversight becomes all the more important.

MR. BENNETT: I think it's important and appropriate at any point.

MS. O'BRIEN: And one of the ways that you can do oversight is to ensure that when you're – let's talk about the project management team – one of the critical ways to do that is ensure that the key aspects, the critical aspects of their work was reviewed or validated by independent

parties. Isn't that an important part of the oversight?

MR. BENNETT: That's certainly a consideration. The other point on those independent reviews is making sure that we get the benefit of the reviewer's input.

MS. O'BRIEN: Of course. Okay.

So here you have a critical piece of work, the DG3 base estimate. Okay? You know it's being reviewed by someone of high reputation in the industry and you don't even bother to read the man's report. How is that good oversight?

MR. BENNETT: On that particular validation, the quote is substantial. It's not inconsistent with other commentary that I had seen.

MS. O'BRIEN: That's not my question –

MR. BENNETT: I know.

MS. O'BRIEN: – Mr. Bennett.

MR. BENNETT: I understand.

MS. O'BRIEN: Okay.

MR. BENNETT: And I think the –

MS. O'BRIEN: Would you like me to ask it again?

MR. BENNETT: No. The detailed –

MS. O'BRIEN: Okay.

MR. BENNETT: The detailed review of this estimator's work was one of many activities that was going on in my organization at the time, and I did not find an opportunity or see an important need to drill into this particular evaluation.

MS. O'BRIEN: Let's – at DG3, in terms of third-party, independent reviewers or validators, you had Mr. Hollmann, right? Okay. You had the work the government had done by MHI. Yes?

MR. BENNETT: Yes.

MS. O'BRIEN: And you had the Independent Project Review?

MR. BENNETT: Right.

MS. O'BRIEN: What else did you have?

MR. BENNETT: DG3? Those were the primary deliverables, as I recall.

MS. O'BRIEN: Okay. There's three, okay? So you're saying you didn't have time to read the report of one of those three?

MR. BENNETT: This review of the estimate was, as I recall, not the IPR and was not involved in MHI. So they did this work. The team, as a matter of course, is doing quality assurance reviews on various aspects of the work, and I didn't see this as one of our major reviews.

MS. O'BRIEN: So out of the three reviews, you didn't see – there was only three. You didn't see it as a major one?

MR. BENNETT: It was helpful.

MS. O'BRIEN: How do you know it was helpful if you didn't read it?

MR. BENNETT: Well, I'm assuming – if this is a direct quote, this is a helpful comment.

MS. O'BRIEN: This is a – well, we can get to it, but this is a edited quote. Are you aware of that?

MR. BENNETT: I understand that now.

MS. O'BRIEN: Okay. And Mr. Hollmann said a lot more than this quote, some of which was not very flattering to the project.

MR. BENNETT: In the quote or in the overall report?

MS. O'BRIEN: In the overall report.

MR. BENNETT: Okay, 'cause you said in the quote.

MS. O'BRIEN: This quote was part of a larger report –

MR. BENNETT: Yes, it was.

MS. O'BRIEN: – some of which was not very flattering to the project.

MR. BENNETT: I think, having read the report, I thought the commentary in the report was that this was advice, but the upshot was that it was a well-done capital cost estimate.

MS. O'BRIEN: Well, we can get to the report in just a moment, but right now I want to focus on the fact that you didn't read it.

MR. BENNETT: Okay.

MS. O'BRIEN: Okay. So, just to be clear, you were aware, you're saying it was, you knew that oversight was important. Your oversight of the project management team, that was important, yes?

MR. BENNETT: Yes, absolutely.

MS. O'BRIEN: Okay. And one of the best ways to provide oversight is to ensure that you get an independent review of the project management team's work.

MR. BENNETT: Yes.

MS. O'BRIEN: And at DG3 there were three independent reviews done of the project management team's work, yes?

MR. BENNETT: Yup.

MS. O'BRIEN: And for one of those three you did not bother to read the report.

MR. BENNETT: I didn't see the report, no.

MS. O'BRIEN: Okay, and you didn't seek it out?

MR. BENNETT: At the time I did not.

MS. O'BRIEN: Okay, but you knew it had been done.

MR. BENNETT: I knew it had been done and I saw this comment.

MS. O'BRIEN: Do you acknowledge that this quote – were you aware that Mr. Hollmann was only engaged to do a qualitative review of the base estimate? Did you know he wasn't doing a quantitative review of doing a deep look at the numbers, he was just doing –

MR. BENNETT: Oh –

MS. O'BRIEN: – looking at the processes –

MR. BENNETT: That's right.

MS. O'BRIEN: – qualitatively at the processes.

MR. BENNETT: I vaguely remember that and I don't recall him being assigned to redo the capital cost estimate.

MS. O'BRIEN: Okay. I understand he was looking at the processes, generally, whether the processes were important.

MR. BENNETT: That's my understanding.

MS. O'BRIEN: Okay.

Do you not acknowledge this quote would be misleading to a reader? If you just read this quote and you see that Mr. Hollmann, you know, who's got the award of merit and whatnot, has said that the base estimate was one of the best he'd seen in some time? Would not the general reader of this, looking at it, think Mr. Hollmann looked at the numbers of the estimate and he thinks those numbers are good?

MR. BENNETT: Hard to say. I'm – the current – the estimate in its current state is one of the best estimates that he's seen in some time. I took it at face value.

MS. O'BRIEN: But most people when you think of base estimate you're thinking of numbers, aren't you?

MR. BENNETT: Probably.

MS. O'BRIEN: So, I put it you that most people reading this would see base estimate, they'd think numbers, that it's one of the best. One would think he'd looked at the numbers.

MR. BENNETT: You could draw that conclusion. You could draw that conclusion, yes.

MS. O'BRIEN: Isn't it most likely that's the conclusion someone would draw?

MR. BENNETT: It goes on when he says its: "in large part due to the active involvement of the owner ... in striving for best practices and quality."

Yeah, sure. Okay.

MS. O'BRIEN: But this is really a misleading quote, isn't?

MR. BENNETT: I don't know that. It's what he said. Right?

MS. O'BRIEN: No, it misleads the reader as to the work that was done by Mr. Hollmann. If most people were reading it would think Mr. Hollmann looked at the numbers – that's what most people would think and you acknowledge that, right?

MR. BENNETT: Said that people could draw that conclusion. Right.

MS. O'BRIEN: And it was likely, I believe, we got likely in there. Did we not?

MR. BENNETT: Okay.

MS. O'BRIEN: Do you agree with that? I thought you just did but –

MR. BENNETT: Yeah. Okay.

MS. O'BRIEN: Okay? So if that's the most likely read, or the more likely the not read, and that's –but that's not what happened is it? He didn't look at the numbers.

MR. BENNETT: He looked at the estimating process.

MS. O'BRIEN: Right. And if reading this quote someone is more likely than not to think he looked at the numbers and the fact of the matter is he didn't look at the numbers. Would you not agree with me that that makes this quote misleading?

MR. BENNETT: If somebody relied on this statement to draw a conclusion on the quality of the estimate itself, then that's a little bit problematic. Yes.

MS. O'BRIEN: That would be misleading.

MR. BENNETT: Right.

MS. O'BRIEN: Yes. Misleading. And, of course, you were putting this quote and this slide entitled Third Party Validation in presentations that you were making to Canada. Right?

MR. BENNETT: That quote was used in multiple places. Yes.

MS. O'BRIEN: Yeah. To government? Yes?

MR. BENNETT: I think so.

MS. O'BRIEN: Yeah. And to the board of directors?

MR. BENNETT: Yes.

MS. O'BRIEN: Now, the evidence that – this report, you didn't see it, and were you aware of Mr. Kean's evidence that he – were you aware that his evidence was that he's not sure if he ever showed it even to Paul Harrington?

MR. BENNETT: I became aware of that evidence, yes.

MS. O'BRIEN: Okay.

And did you see the email between Mr. Kean, Mark Turpin when he forwarded him the report? And it's actually – if we go to page –

MR. BENNETT: Yeah.

MS. O'BRIEN: – 1 here, please.

MR. BENNETT: I did after.

MS. O'BRIEN: Yeah.

Oh and, sorry, I think it's in a – I don't – maybe it's not – where he sends it to Mark Turpin – oh no sorry, that's the other – I need the whole site, sorry. If we bring that up it's – I'll get it in just a moment, I don't have the site right here.

But were you aware of when he sent it to Paul Turpin, John Hollmann's draft report, he said: Please don't circulate it or leave it lying around. Did you hear that evidence?

MR. BENNETT: I heard that evidence, yes.

MS. O'BRIEN: Okay.

Was that surprising to you? Did it cause you any concern?

MR. BENNETT: Yes, it did.

MS. O'BRIEN: Okay.

And you didn't see it?

MR. BENNETT: No, I didn't.

MS. O'BRIEN: And we know that – it's P-00610, actually. You can bring that up, Madam Clerk.

And did you hear Mr. Harrington's testimony that he didn't see it either?

MR. BENNETT: I understand that to be the case.

MS. O'BRIEN: Okay.

So it's caused you concern. And please describe for us: What's the concern that it causes you?

MR. BENNETT: Well, it would have been appropriate and beneficial to have that report circulated.

MS. O'BRIEN: Okay. So any concern that Mr. Kean chose not to circulate it?

MR. BENNETT: I would have – I would like to understand why he elected not to.

MS. O'BRIEN: Is there any good reason for him not to circulate this to you and to Mr. Harrington?

MR. BENNETT: I can't think of a reason for him not to.

MS. O'BRIEN: Commissioner, I'd be moving now to another area of examination that's likely

to take more than the eight or so minutes remaining before 4:30. So I'll let you –

THE COMMISSIONER: Okay.

MS. O'BRIEN: – decide what you would like me to do.

THE COMMISSIONER: All right, so I understand tomorrow we have a little bit of a scheduling issue. Mr. Simmons – I was just alerted to this on my way in this afternoon – your client has an important engagement elsewhere for about an hour, as I understand it, from 11 'til 12 tomorrow?

MR. SIMMONS: Yes, we alerted Commission counsel a couple of days ago to the possibility that this would be an issue. And Mr. Bennett has to be examined in another important matter; it's happening by distance, by video. And that's scheduled to begin tomorrow at 11:30 and I understand it has a hard-stop time at 1:30.

It's important that he be, you know, prepared and ready to go with that, so we'd like to ensure that he's got at least a reasonable opportunity to, kind of, clear his head and get ready to do that at 11:30 tomorrow. So we're at your discretion as how you want to organize the scheduling in order to best accommodate that.

THE COMMISSIONER: Right. Well, in fairness to him, if he's not finishing until 1:30, I mean he needs – he's going to need a bit of a break after that, too. So that likely means our afternoon won't start 'til probably 2:15 or 2:30 – likely 2:30, I mean, in fairness to Mr. Bennett.

So I think what I'd like to do then, if that's the case, is go to 10:30 tomorrow morning and I think we should start at 9 o'clock. Is that workable?

MR. SIMMONS: We were hoping for 9 to 10, but if 10:30 is the time, then that's – we'll do our best to accommodate that.

THE COMMISSIONER: Well, how about if – maybe I got to ask Mr. Bennett: How much time do you think, if I – if we were to start at 2:15 tomorrow afternoon, if you – I understand it's a hard time that you finish at 1:30. Is that going to

give you enough time to, sort of, get a bit of a breather, get something for lunch and ...?

MR. BENNETT: That should be okay.

THE COMMISSIONER: Should be okay. All right, so we'll compromise. So we'll go to 10:15 tomorrow morning. So we'll start at 9 to 10:15 and come back at 2:15 tomorrow afternoon.

Where are we, Ms. O'Brien, with regards to your questioning?

MS. O'BRIEN: I've – as a result – I've had to move around my questioning a fair bit. I certainly – I believe I'm at least halfway through, probably over halfway through.

My hope was to be able to finish with Mr. Bennett tomorrow. That was my goal.

THE COMMISSIONER: Okay.

MS. O'BRIEN: And I believe that's still a reasonable goal but, obviously, we are losing some time –

THE COMMISSIONER: Right.

MS. O'BRIEN: – tomorrow.

THE COMMISSIONER: Well, we might even go a little later tomorrow afternoon if we have to.

So let's try to get that far tomorrow, and then that will give us two days, then, for other examinations before Friday, because Friday we are set for our water management day.

All right, so we're adjourned 'til tomorrow morning at 9 o'clock then.

CLERK: All rise.

This Commission of Inquiry is concluded for the day.